

Domain Name Dispute Proceedings and Decisions

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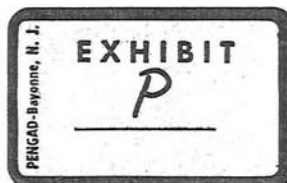
Search Results for Domain Dispute Cases

Records 1 to 1 of 1

Case No.	Domain(s)	Case Name	Domain Policy	Commenced	Status	Decision Date
1002628	sproutsmart.com	Children's Network LLC v sum blue	UDRP	6/14/2007	<u>Transferred</u>	7/26/2007

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NATIONAL ARBITRATION FORUM

DECISION

Children's Network, LLC v. sum blue
Claim Number: FA0706001002628

PARTIES

Complainant is **Children's Network, LLC** ("Complainant"), represented by **David M. Silverman**, of **Davis Wright Tremaine LLP**, 1919 Pennsylvania Ave. N.W., Suite 200, Washington, DC 20006. Respondent is **sum blue** ("Respondent"), 444 Oak, Bethel, OK 40404.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**sproutsmart.com**>, registered with **Fabulous.com Pty Ltd**.

PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

Bruce E. Meyerson as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on June 8, 2007; the National Arbitration Forum received a hard copy of the Complaint on June 11, 2007.

On June 11, 2007, Fabulous.com Pty Ltd. confirmed by e-mail to the National Arbitration Forum that the <**sproutsmart.com**> domain name is registered with Fabulous.com Pty Ltd. and that Respondent is the current registrant of the name. Fabulous.com Pty Ltd. has verified that Respondent is bound by the Fabulous.com Pty Ltd. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On June 14, 2007, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of July 4, 2007 by which Respondent could file a response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@sproutsmart.com by e-mail.

On July 11, 2007, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Bruce E. Meyerson as Panelist.

On July 17, 2007 Respondent submitted a Response to the Complaint. Although the Response was untimely, the Panel, in the exercise of its discretion, has chosen to consider the Response.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

are unrelated to Complainant's business.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

Complainant asserts rights in the SPROUT and SPROUT SMART marks. Complainant has pending trademark applications with the USPTO, but the marks are not currently registered. However, it is not necessary for Complainant to hold a registered trademark in order to establish rights in the marks. Common law rights are sufficient to satisfy Policy ¶ 4(a)(i). *See Artistic Pursuit LLC v. calcuttawebdevelopers.com*, FA 894477 (Nat. Arb. Forum Mar. 8, 2007) (finding that Policy ¶ 4(a)(i) does not require a trademark registration if a complainant can establish common law rights in its mark).

Complainant has not established common law rights in the SPROUT SMART mark. Complainant is planning to launch a "prosocial" campaign, but has not submitted any evidence that this has taken place. There is no evidence of any current consumer recognition of SPROUT SMART; therefore, the mark cannot have secondary meaning. *See Kip Cashmore v. URLPro*, D2004-1023 (WIPO Mar. 14, 2005) (finding no common law rights where the complainant did not present any credible evidence establishing acquired distinctiveness); *see also Occidental Hoteles Mgmt., S.A., & Corictal II, S.A. v. Hargrave Arts, LLC*, FA 959645 (Nat. Arb. Forum May 21, 2007) (finding that the complainant did not submit sufficient evidence showing that its OCCIDENTAL mark had acquired the necessary secondary meaning for it to establish common law rights pursuant to Policy ¶ 4(a)(i)). Similarly, there is no evidence in the record that Respondent has established common law rights "to the name 'sproutsmart' for the purpose of operating a search service."

However, Complainant has sufficiently established common law rights in its SPROUT mark through extensive and continuous use. Complainant has consistently aired its children's television programming using the SPROUT mark since April of 2005, and has generated more than 100 million on-demand orders for its programming. Its digital channel is currently in 20 million homes. Furthermore, Complainant has branded games and other merchandise using the SPROUT mark. Therefore, the Panel finds that Complainant has established sufficient secondary meaning in the SPROUT mark to establish common law rights in the mark pursuant to Policy ¶ 4(a)(i). *See George Weston Bakeries Inc. v. McBroom*, FA 933276 (Nat. Arb. Forum Apr. 25, 2007) (finding that the complainant could establish common law rights in its GW BAKERIES mark through consistent and continuous use of the mark, which helped the mark become distinctive and generate "significant goodwill").

FA 190644 (Nat. Arb. Forum Oct. 17, 2003) (“Respondent's use of a domain name confusingly similar to Complainant's mark to divert Internet users to websites unrelated to Complainant's business does not represent a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii).”); *see also* *Seiko Kabushiki Kaisha v. CS into Tech*, FA 198795 (Nat. Arb. Forum Dec. 6, 2003) (“Diverting customers, who are looking for products relating to the famous SEIKO mark, to a website unrelated to the mark is not a *bona fide* offering of goods or services under Policy ¶ 4(c)(i), nor does it represent a noncommercial or fair use under Policy ¶ 4(c)(iii).”). Therefore, the Panel concludes that Respondent's use of the <**sproutsmart.com**> domain name does not constitute a *bona fide* offering of goods and services under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii).

The Panel finds that Policy ¶ 4(a)(ii) has been satisfied.

Registration and Use in Bad Faith

Respondent is using the <**sproutsmart.com**> domain name to display a list of hyperlinks that are unrelated to Complainant's business. Because the disputed domain name is confusingly similar to Complainant's SPROUT mark, this use may lead customers to become confused as to the affiliation, sponsorship, or endorsement of the goods and services advertised on Respondent's website that resolves from the disputed domain name. Respondent is attempting to commercially benefit from the goodwill associated with Complainant's SPROUT mark, presumably from earning click-through fees. Thus, Respondent's registration and use of the <**sproutsmart.com**> domain name constitutes bad faith pursuant to Policy ¶ 4(b)(iv). *See Metropolitan Life Ins. Co. v. Bonds*, FA 873143 (Nat. Arb. Forum Feb. 16, 2007) (“The Panel finds such use to constitute bad faith registration and use pursuant to Policy ¶ 4(b)(iv), because [r]espondent is taking advantage of the confusing similarity between the <metropolitanlife.us> domain name and Complainant's METLIFE mark in order to profit from the goodwill associated with the mark.”); *see also American Univ. v. Cook*, FA 208629 (Nat. Arb. Forum Dec. 22, 2003) (“Registration and use of a domain name that incorporates another's mark with the intent to deceive Internet users in regard to the source or affiliation of the domain name is evidence of bad faith.”).

The Panel finds that Policy ¶ 4(a)(iii) has been satisfied.

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <**sproutsmart.com**> domain name be **TRANSFERRED** from Respondent to Complainant.

Bruce E. Meyerson, Panelist

Dated: July 26, 2007

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On October 9, 2003, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the Forum appointed the Honorable Charles K. McCotter, Jr. (Ret.) as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any Response from Respondent.

Pursuant to Rule 11(a) the Panel determines that the language requirement has been satisfied through the Korean language Complaint and Commencement Notification and, absent a Response, determines that the remainder of the proceedings may be conducted in English.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

1. Respondent's <nicklausgolf.com> domain name is confusingly similar to Complainant's NICKLAUS mark.
2. Respondent does not have any rights or legitimate interests in the <nicklausgolf.com> domain name.
3. Respondent registered and used the <nicklausgolf.com> domain name in bad faith.

B. Respondent failed to submit a Response in this proceeding.

FINDINGS

Complainant has produced evidence of several trademark registrations with the United States Patent and Trademark Office ("USPTO") for the NICKLAUS mark, including Reg. No. 1,919,841 (registered on September 19, 1995) related to golf gloves. Complainant operates the official website for Jack Nicklaus and Complainant at the <nicklaus.com> domain name.

Respondent registered the <nicklausgolf.com> domain name on May 23, 1999. Respondent is using the disputed domain name to divert Internet users to a search-engine website, which provides links to a variety of other websites.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

In view of Respondent's failure to submit a Response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules.

Respondent is using the <nicklausgolf.com> domain name to redirect Internet traffic to a search-engine website, which provides links to a number of other websites. Respondent's use of a domain name confusingly similar to Complainant's mark to divert Internet users to websites unrelated to Complainant's business does not represent a bona fide offering of goods or services under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii). See *WeddingChannel.com Inc. v. Vasiliev a/k/a NA & Free Domains Parking*, FA 156716 (Nat. Arb. Forum June 12, 2003) (finding that Respondent's use of the disputed domain name to redirect Internet users to websites unrelated to Complainant's mark, websites where Respondent presumably receives a referral fee for each misdirected Internet user, was not a bona fide offering of goods or services as contemplated by the Policy); see also *Disney Enters., Inc. v. Dot Stop*, FA 145227 (Nat. Arb. Forum March 17, 2003) (finding that Respondent's diversionary use of Complainant's mark to attract Internet users to its own website, which contained a series of hyperlinks to unrelated websites, was neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain names).

Moreover, there is no evidence that suggests Respondent is commonly known by NICKLAUS GOLF or <nicklausgolf.com>. Thus, the Panel finds that Respondent has failed to demonstrate any rights to or legitimate interests in the disputed domain name pursuant to Policy ¶ 4(c)(ii). See *Gallup Inc. v. Amish Country Store*, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) (finding that Respondent does not have rights in a domain name when Respondent is not known by the mark); see also *RMO, Inc. v. Burbridge*, FA 96949 (Nat. Arb. Forum May 16, 2001) (interpreting Policy ¶ 4(c)(ii) "to require a showing that one has been commonly known by the domain name prior to registration of the domain name to prevail").

The Panel finds that Policy ¶ 4(a)(ii) has been established.

Registration and Use in Bad Faith

The Panel presumes from the record in this proceeding that Respondent's use of the <nicklausgolf.com> domain name to divert Internet traffic to a search-engine website, which offers links to other websites, was for commercial gain. The Panel finds that Respondent's registration and use of the disputed domain name indicates that Respondent intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's website, which evidences bad faith registration and use pursuant to Policy ¶ 4(b)(iv). See *G.D. Searle & Co. v. Celebrex Drugstore*, FA 123933 (Nat. Arb. Forum Nov. 21, 2002) (finding that Respondent registered and used the domain name in bad faith pursuant to Policy ¶ 4(b)(iv) because Respondent was using the confusingly similar domain name to attract Internet users to its commercial website); see also *Kmart v. Khan*, FA 127708 (Nat. Arb. Forum Nov. 22, 2002) (finding that if Respondent profits from its diversionary use of Complainant's mark when the domain name resolves to commercial websites and Respondent fails to contest the Complaint, it may be concluded that Respondent is using the domain name in bad faith pursuant to Policy ¶ 4(b)(iv)).

Accordingly, the Panel finds that Complainant has established Policy ¶ 4(a)(iii).

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be GRANTED.

Accordingly, it is Ordered that the <nicklausgolf.com> domain name be TRANSFERRED from Respondent to Complainant.

The Honorable Charles K. McCotter, Jr. (Ret.), Panelist
Dated: October 17, 2003

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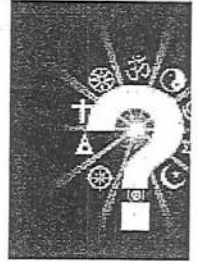
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PBKs.info

Official P.B.K. video and Murli website

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P.B.K. website in English and Polish

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Alternative P.B.K. website also in English

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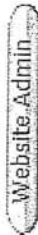
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Shivbaba narrated Gyan Murli (flute of knowledge) through Brahma Baba and is now clarifying the true meaning of those Murli's (the true Gita), the advanced knowledge, to the Prajapita Brahma Kumar/Kumaris (i.e. Advance Party). The Advance Party and the Brahma Kumaris Organization (BKWSU) form the two halves of the alokik (other-worldly) Brahmin family who will eventually re-unite to transform this hell into heaven

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www.a1spiritual.info

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www.a1shivshakti.info

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VCD No.	Audio Cassette Number	Language	Sakar Murli / Avyakt Varni Date	Clarification Class Date	Location of Clarification Class	Streaming				
						Video				
						22k dial up	56k dial up	150k Broadband	450k Broadband	M u r l i w
215	696		Mu. 30 May 66	20-Apr-05	Nellur	22k	56k			
220	701		Mu. 15 June 66	25-Apr-05	Kadiri	22k	click	click		
233	714		General	17-May-05	Pandey ka tighara	22k	click	click		
245	726		Mu.17Agu 66	31-May-05	Nellur	22k	click	click		
311	795		31-Dec-66	30-Sep-05	Dandmukundpur	22k	56K	click		
315	799		General	3-Oct-05	Vijaywada	22k	click	click		
316	800		General class & Mu 1.01-67	0 3.Oct.05 & 04.Oct.05	Vijaywada & Narsaraopet	22k	click	click		
535	1021		18.5.67	19.10.06	Hishmda	22K	56K	150k		
582	1068		24.25.6.67	26.12.06	Jharsuguda	22k	32k	150k		

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VCD No.	Audio Cassette Number	Sakar Murli / Avyakt Varni Date	Clarification Class Date	Location of Clarification Class	Streaming Downloads			VCD No.	
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37		Mu. 13 Apr 98	20-Nov-00	Tadepalligudem (A.P.)	22k	56k	150	Download	37
42		Mu 29-5-86	16-Jul-00	Bangalore	22k	56k	150	Download	42
95	564	Mu 6-July-65	02-Nov-03	Indraprasta Park, Ahamdabad Party	22k	56k	150	Download	95
146i	617	Mu. 10 Aug 65	09-Jun-04	Indraprasta Park, Andhra Party		56k	150	Download	146
146ii						56k	150	Download	146
212	693	Mu. 9 May 66	17-Apr-05	Vishakhapatnam	22k	56k	150	Download	212

213	694	Mu. 9 May 66	19-Apr-05	Hydrabad MM	22k	56k	150	Download	213
217	698	Mu. 30 May 66	21-Apr-05	Tirupati	-	56k	150	Download	217
258	739	Mu.7 Oct 66	03-Jul-05	Nagloi party park	22k	56k	150	Download	258
310	794	31-Dec-66	29-Sep-05	Raurkela	22k	56k	150	Download	310
311	795	31-Dec-66	30-Sep-05	Dandmukundpur	22k	56k	150	Download	311
315&316	800	General class & Mu 1.01-67	0 3.Oct.05 & 04.Oct.05	Vijaywada & Narsaraopet	22k	56k	150	Download	315&316
327	816	Mu. 5Jan 67	01-Nov-05	Tadepalligudem (A.P.)	22k	56k	150	Download	327
373	859	mu 25-1-67	18-Jan-06	Gorakhpur GP	22k	56k	150	Download	373
378	864	mu. 27.1.67	28-Jan-06	Nandurbar	22k	56k	150	Download	378
402	888	mu. 5.2.67	04-Mar-06	Nagpur	22k	56k	150	Download	402
405	891	mu 5/7/8-2-67	15-Mar-06	Calcutta	-	56k	150	Download	405
425	911	mu.15.2.67	21-Apr-06	Vishakapatnam	22k	56k	150	Download	425
427	913	mu.15.2.67+16.2.67	24-Apr-06	Surunga	-	56k	150	Download	427
455	941	mu 9-3-67	14-Jun-06	Gorakhpur	22k	56k	150	Download	455
468	954	mu 19-3-67	09-Jul-06	Mumbai	-	56k	151	Download	468
470	956	mu 20-3-67	12-Jul-06	Ambalnagar	-	56k	150	Download	470
472	958	mu 21-3-67	14-Jul-06	Ongole	-	56k	150	Download	472
600	1086	6 & 10.7.67	19.1.07	Tadepalligudam	-	56k	150	Download	600

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Case Details for WIPO Case D2000-0279

WIPO Case Summary

WIPO Case Number	D2000-0279
DDomain name(s)	kwasizabantu.com kwasizabantu.net kwasizabantu.org
Complainant	Mission KwaSizabantu
Respondent	Benjamin Rost
Panelist	Terry, John
Decision Date	07-Jun-2000
Decision	Transfer

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WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Mission KwaSizabantu v. Benjamin Rost

Case No. D2000-0279

The Parties

The Complainant is Mission KwaSizabantu, a non-profit association with legal status, registered under the laws of Republic of South Africa and having its principal place of business at KwaSizabantu, District of Kranskop, KwaZulu-Natal, South Africa.

The Respondent is Benjamin Rost, an individual having the address at Handelsvertretung Rost, Dahlienweg 14, D-74417 DE, Gschwend, Germany.

The Domain Name(s) and Registrar(s)

The domain names at issue are:

kwazabantu.com
kwazabantu.org
kwazabantu.net

The Registrar with which the domain names are registered is Network Solutions, Inc., having the postal address PO Box 17305, Baltimore, MD21297-0525, USA.

Procedural History

A Complaint was submitted electronically to the World Intellectual Property Organization Arbitration and Mediation Center (the "WIPO Center") on April 11, 2000, and the signed original together with four copies was received on April 13, 2000. An Acknowledgment of Receipt was sent by the WIPO Center to the Complainant on April 14, 2000.

On April 12, 2000, a Request for Registrar Verification was transmitted to the registrar, Network Solutions, Inc. ("NSI") requesting it to: (1) confirm that the domain names at issue were registered with NSI; (2) confirm that the person identified as the Respondent is the current registrant of the domain names; (3) provide the full contact details (i.e., postal address(es), telephone number(s), facsimile number(s), e-mail address(es)) available in the registrar's Whois database for the registrant of the disputed domain name, the technical contact, the administrative contact and the billing contact; (4) confirm that the Uniform Domain Name Dispute Resolution Policy (the "Policy") is in effect; (5) indicate the current status of the domain name.

On April 13, 2000, NSI confirmed by reply e-mail that the domain names <kwasizabantu.com>, <kwasizabantu.org> and <kwasizabantu.net> are registered with NSI, are currently in active status, and that the Respondent, Benjamin Rost, is the current registrant of the names. The Registrar also forwarded the requested Whois details, and confirmed that the Policy is in effect.

The WIPO Center determined that the Complaint satisfies the formal requirements of the Policy, the Rules for Uniform Domain Name Dispute Resolution Policy (the "Uniform Rules") and the Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules"). The Panel has independently determined and agrees with the assessment of the WIPO Center that the Complaint is in formal compliance with the requirements of the Uniform Domain Name Dispute Resolution Policy, adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999 (the "Policy"), the Uniform Rules, and the Supplemental Rules. The required fees for a single member Panel were paid on time and in the required amount by the Complainant.

No formal deficiencies having been recorded, on April 25, 2000, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification") was transmitted to the Respondent (with copies to the Complainant, NSI and ICANN), setting a deadline of May 14, 2000, by which the Respondent could file a Response to the Complaint. The Commencement Notification was transmitted to the Respondent by e-mail to the e-mail addresses indicated in the Complaint and specified in NSI's confirmation. In addition, the complaint was sent by courier to the postal address given. Having reviewed the communications records in the case file, the Administrative Panel finds that the WIPO Center has discharged its responsibility under Paragraph 2(a) of the Uniform Rules "to employ reasonably available means calculated to achieve actual notice to Respondent." In any event, evidence of proper notice is provided by the evidence in the record of the Respondent's participation in these proceedings.

In response to a request to WIPO by email on May 14, 2000, WIPO determined that time was extended to May 21, 2000 for the filing of a response by Benjamin Rost. On May 20, 2000, WIPO received by email a Response and a hard copy confirmation was received by fax May 22, 2000.

On May 26, 2000, in view of the Respondent's election of a single member panel, WIPO Center appointed John Terry to serve as Panelist in Case No. D2000-0279, having received a Statement of Acceptance and a Declaration of Impartiality.

On May 26, 2000, the WIPO Center notified the parties that John Terry had been appointed as the Panel and set the projected decision date as June 8, 2000.

Factual Background

The Complainant does not assert that it is the owner of any registered trade marks or applications for registered trade marks in any countries but states that after it was established in South Africa in 1970, its activities had become known in many countries as activities of an organization known by the name "Mission KwaSizabantu", that the organisation's activities have been generally known with reference to the word "KwaSizabantu" and from 1970 that name became a trade mark of Mission KwaSizabantu. The Complainant states it is operating internationally in Netherlands, Belgium, Germany, Switzerland, Russia, Australia and Romania.

The Complainant also contends it is commonly known by the following names:

KwaSizibantu,
KwaSizabantu Mission,
Sizabantu,
KSB,
Mission KSB,
KSB Mission, and
KwaSiza.

The activities of the Complainant are that of a religious sect in which the Zulu language is stated to be that most commonly used. The word "KwaSizabantu" is said to be a Zulu word meaning "*The Place Where People are Helped*" and is only found in the Zulu language. The Complainant contends that the word "KwaSizabantu" is without meaning [other than in the Zulu language] except insofar as the word has meaning as referring to the Complainant.

The Complainant states that its primary business is to help and uplift people spiritually, socially and physically, and the people who have come for help are from all walks of life and are of many different nationalities and varied ages, backgrounds and interests. The Complainant states that the expansion of this organization and activities is included in the establishment of a complex of buildings in South Africa with on average 1,300 people per day staying at the complex or visiting the complex.

The Complainant states that in addition to the spiritual work, it is involved in some 27 projects including adult education and projects run on a commercial basis such as bottling mineral water. The Complainant lists some 18 specific project examples in its complaint and states that the projects have "their own trade names [and] they are closely associated with KwaSizabantu". The Complainant contends:

"In religious circles, anybody familiar with the name 'KwaSibantu' will, when he/she sees the name, immediately associate it with the Complainant."

The Response includes Annex A being an extract from the home page of the Respondent's website. This evidence shows that the subject home page relates to "the South African mission, KwaSizabantu, situated in Krums Kop, KwaZulu/Natal, South Africa" and states that responsibility for the home page rests with "former leaders, co-workers and followers of the South African based KwaSizabantu Mission and European branches who could not, in good conscience, before God and men, continue to agree with or be affiliated with the mission".

Except as noted below, the Response does not dispute the factual assertions summarised above but does make legal contentions referred to below and which relate to the interpretation to be given to the factual circumstances.

Parties' Contentions

Complainant

The Complainant contends that the domain names are identical to the name or trademark by which the Complainant is generally known internationally and in which the Complainant has rights, that the Respondent has no rights or legitimate interest in respect of the domain names and the domain names were registered and are being used in bad faith.

Respondent

The Respondent contends that the Complainant does not "own any trademark or copyright on the name 'KwaSizabantu' in any country" and that the name is generic, not owned by the Complainant and also used by other unrelated businesses. The Respondent contends that the domain names are not identical or confusingly similar to a trademark or service mark in which the Complainant has rights and asserts he is making a

legitimate non-commercial and fair use of the domain names. The Respondent asserts the domain names were registered for and have been used for providing information about the Complainant and not "to mislead or divert consumers or to tarnish the service mark of [the Complainant]", that the domain names were not registered with the intention of disrupting the business of the Complainant and the "website reflects no business purposes or efforts (sic) for financial gain or competition with the businesses of [the Complainant]".

Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." This dispute concerns activities over a broad range of countries with the parties domiciled in different jurisdictions. The parties have not made any submissions as to any particular applicable laws. The Panel must therefore decide this matter applying appropriate general principles.

Paragraph 4(a) of the Policy directs that the Complainant must prove **each** of the following:

- a. that the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; **and**,
- b. that the Respondent has no rights or legitimate interests in respect of the domain name; **and**,
- c. the domain name has been registered and used in bad faith.

The Respondent merely asserted that the name "KwaSizabantu" was generic and used by unrelated businesses but has not given any particulars or evidence to rebut the prima facie claim to the trademark ownership as set out in the Complaint. The Panel holds that the Complainant has established rights in the word "KwaSizabantu" as a trademark or service mark by virtue of its reputation and such rights would be enforceable at least in such jurisdictions as recognise common law rights or similar principles of law. The Panel finds that each of the domain names is identical to the trademark or service mark asserted by the Complainant since the suffix portion of the total domain name, i.e. <.com> or <.net> or <.org> does not characterise the domain name but refers to the top level domain in which the characterising unique name is to be found.

It is beyond the scope of the present adjudication to consider any such issues as the boundaries of free speech generally and the manner and extent to which a trademark in general may be used fairly and without infringement of registered trademark rights or in breach of other relevant principles of law directed at protecting consumers or protecting trademark owners' rights. In the present matter, the Respondent has plainly used the best Internet vehicles to attract those wanting to and indeed expecting to find material associated with the Complainant. The Respondent is not simply using the Complainant's trademark in e.g. the body of material published such as might be legitimate, at least in some jurisdictions, in circumstances of comparative advertising or out of necessity to refer to the Complainant and/or its activities and characteristics. The domain names of the Respondent can be characterised as creating initial interest confusion even though closer inspection of the website will result in such initial confusion being displaced and deception avoided. However, such initial confusion is not enough for a Complaint to justify remedy under the Policy.

Paragraph 4(c) of the Policy sets out three non-limiting examples of circumstances which, if established to the satisfaction of the Panel, rebut a Complainant's assertion that the domain name owner has no rights or legitimate interests in respect of the domain name. The Respondent relies on circumstance (iii) of paragraph 4 (c) which is in the following terms:

"[The domain name owner is] making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

Paragraph 4(c) of the Policy places the onus on the Respondent to rebut a Complainant's assertion of lack of rights or legitimate interest in the domain name. The Panel construes circumstance (iii) to the effect that the

Respondent must establish:

- a. his use is legitimate non-commercial or fair use of the domain name. It is not enough under this requirement for the Respondent simply to show there is fair use of a trademark e.g. in a website but the Respondent must satisfy the Panel there is either legitimate non-commercial use or legitimate fair use of the domain name itself; and
- b. his use is without intent for commercial gain; and
- c. his use is without intent to misleadingly divert consumers; and
- d. his use is without intent to tarnish the trademark or service mark at issue.

The admitted nature of the use of the domain names in a website includes alternative views and indeed critical views concerning the Complainant and its activities. The Panel holds such activity amounts to tarnishing the activities associated with the trademark or service mark "KwaSizabantu", and this is sufficient to fail point (d) of the test. Therefore, the Respondent does not establish any rights or legitimate interests under the express circumstances of paragraph 4(c).

The Panel further holds that the Respondent has failed to establish that he has otherwise any rights or interests legitimate in terms of paragraph 4(c) since the effect of using each of the domain names in issue is to attract into any website to which the domain name resolves persons who believe and expect they will be accessing material from the Complainant; the Panel holds this is not legitimate use of the domain name in issue. The Respondent does not establish any other basis for otherwise rebutting the Complainant's case that the Respondent has no rights or legitimate interest in respect of the domain name.

The third requirement under paragraph 4(a) of the Policy is that the Complainant establishes that the domain name "has been registered and is being used in bad faith". Paragraph 4(b) sets out exemplary but non limiting circumstances which if found are deemed to constitute registration and use of a domain name in bad faith. Circumstance (i) does not apply as there is no assertion by the Complainant that the Respondent has registered any of the domain names for the purpose of selling, renting or otherwise transferring a domain name registration. Circumstance (ii) is not established; although the Complainant has asserted that the names were all registered on 1 February 2000 for a purpose of preventing the Complainant from reflecting its own name in a corresponding domain name, circumstance (ii) also requires that there be proof that the Respondent has engaged in a pattern of such conduct. There is no assertion or proof of any such pattern of conduct. Circumstance (iv) only applies where it is shown that the intent of the Respondent in using the domain name was to attract the users "for commercial gain". The Panel holds that the evidence of the Respondent is sufficient rebuttal, if indeed rebuttal is required; paragraph 18.5 of the Complaint does not plead that the activity of the Respondent was for commercial gain.

A critical circumstance is in paragraph 4(b)(iii) in relation to the present matter, namely whether the Complainant has shown that the Respondent has registered the domain name "*primarily for the purpose of disrupting the business of a competitor*". The Policy does not define who is a "competitor" for the purpose of the paragraph, i.e. is it a competitor of the domain name owner or a competitor of the Complainant? Neither does the paragraph define what is encompassed by the expression "business of a competitor". There is no reference to the business being one where trade is conducted for commercial gain. For this reason and because of the context of paragraph 4(b)(iii) as an example within the general heading of "bad faith", the Panel holds that the expression "business" must be liberally construed to cover activities concerning the supply of some goods or services and in respect of which a reputation may be gained. The activities of the Complainant are held to come within the ambit of this term. Regarding the word "competitor" similarly, the Panel holds that this term naturally should be read as relating to the "competitor" of the domain name owner. The natural meaning of the word "competitor" is one who acts in opposition to another and the context does not imply or demand any restricted meaning such as a commercial or business competitor. The Panel holds that the Respondent meets this definition and therefore paragraph 4(b)(iii) now turns upon whether the Complainant has established that the activity of the Respondent was "*primarily for the purpose of disrupting*" the activities of another.

On the admitted facts and in particular Annex A to the Response setting out an extract from the website, it is plain that the intent and indeed the effect of the website is to publish to a reader highly negative views which inevitably have a propensity to undermine any prior favourable views that the visitor to the website might have previously had. Plainly the Respondent in registering the domain names and establishing his website has used

the best vehicle known to him of securing publicity for the website information on the Internet and has done so in a manner which inevitably brings visitors to the website who had an intention to find out authorised information about the Complainant's activities. The activities of the Respondent, as demonstrated by its website, is therefore disruptive of the activities of the Complainant. Both parties recognised rights of free speech and commentary. The Respondent could have made its publications otherwise than in the present manner but chose not to and the Panel holds that on the evidence, a primary effect of the Respondent in registering and using the domain names has been to have a disruptive effect on the activities of the Complainant, the Panel infers this was a primary purpose of the Respondent and it is no rebuttal for the Respondent to assert that any disruption is merely a consequence of him publishing his view of the truth. In the light of the Panel's determination of the way in which paragraph 4(b)(iii) should be construed and the facts of this matter, the Panel holds that bad faith has been established in terms of that paragraph 4(b)(iii) of the Policy.

Had the Panel ruled otherwise in relation to paragraph 4(b)(iii), that would not be the end of the matter as the four circumstances are not limiting and the Panel would have to consider whether registration and use by the Respondent was within the general expression "in bad faith". The Policy does not define "bad faith" and none of the prior decisions reviewed by the Panel under the ICANN procedures seek to make such a definition. If the Panel's interpretation of paragraph 4(b)(iii) above were to be held to be too wide and as a consequence the Complainant had not made out its case, then the Panel would still find that the requirement for registration and use in that bad faith had been made out on the ground that the actual use of the domain name in fact achieved the purpose of disrupting activities of the Complainant and the primary purpose of the Respondent (not rebutted in the Response) in choosing the present domain names was to cause the persons seeking information on the Complainant's activities to be drawn into the Respondent's website and thereby to be exposed to contrary and critical views. The Panel holds that bad faith in terms of paragraph 4(a)(iii) is established, it being no answer that the content of the website is offered in good faith. This determination is reinforced by the facts that visitors to the website are exposed to the Respondent's views and his continued ownership and use of the domain names is a barrier to the visitor finding out the information and views of the Complainant which is denied the opportunity to have a domain name in the most popular Registry where persons can be most expected to go at first instance to try and find a relevant website.

Decision

For all of the foregoing reasons, the Panel decides that the domain names at issue are identical to the trade mark or service mark which had previously been used by the Complainant, that the Respondent has no rights or legitimate interests in respect of the domain names at issue, and that the domain names at issue have been registered and are being used in bad faith. Accordingly, the Panel requires, pursuant to paragraph 4(i) of the Policy, that the domain names at issue be transferred to the Complainant.

John Terry
Sole Panelist

Dated: June 7, 2000

Domain Name Dispute Proceedings and Decisions

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Search Results for Domain Dispute Cases

Records 1 to 1 of 1

Case No.	Domain(s)	Case Name	Domain Policy	Commenced	Status	Decision Date
132439	century21alabama.com, century21alaska.com, century21arkansas.com, century21california.com, century21connecticut.com, century21idaho.com, century21iowa.com, century21kansas.com, century21kentucky.com, century21louisiana.com, century21maryland.com, century21michigan.com, century21minnesota.com, century21mississippi.com, century21missouri.com, century21montana.com, century21nebraska.com, century21nevada.com, century21newmexico.com, century21northcarolina.com, century21northdakota.com, century21oklahoma.com, century21oregon.com, century21pennsylvania.com, century21rhodeisland.com, century21southcarolina.com, century21tennessee.com, century21texas.com, century21virginia.com, century21westvirginia.com, century21wyoming.com, century21southdakota.com	TM Acquisition Corp. v Sign Guards aka William Moore	UDRP	11/21/2002	<u>Transferred</u>	12/31/2002

Records 1 to 1 of 1

[« New Search](#)





DECISION

TM Acquisition Corp. v. Sign Guards a/k/a William Moore
Claim Number: FA0211000132439

PARTIES

Complainant is **TM Acquisition Corp.**, Las Vegas, NV ("Complainant") represented by **Kathryn S. Geib**. Respondent is **Sign Guards a/k/a William Moore**, Wixom, MO ("Respondent").

REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are <century21alabama.com>, <century21alaska.com>, <century21arkansas.com>, <century21california.com>, <century21connecticut.com>, <century21idaho.com>, <century21iowa.com>, <century21kansas.com>, <century21kentucky.com>, <century21louisiana.com>, <century21maryland.com>, <century21michigan.com>, <century21minnesota.com>, <century21mississippi.com>, <century21missouri.com>, <century21montana.com>, <century21nebraska.com>, <century21nevada.com>, <century21newmexico.com>, <century21northcarolina.com>, <century21northdakota.com>, <century21oklahoma.com>, <century21oregon.com>, <century21pennsylvania.com>, <century21rhodeisland.com>, <century21southcarolina.com>, <century21tennessee.com>, <century21texas.com>, <century21virginia.com>, <century21westvirginia.com>, <century21wyoming.com> and <century21southdakota.com>, registered with Register.com.

PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

James A. Carmody, Esq., as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum (the "Forum") electronically on November 8, 2002; the Forum received a hard copy of the Complaint on November 11, 2002.

On November 5, 2002, Register.com, Inc. confirmed by e-mail to the Forum that the domain names <century21alabama.com>, <century21alaska.com>, <century21arkansas.com>, <century21california.com>, <century21connecticut.com>, <century21idaho.com>, <century21iowa.com>, <century21kansas.com>, <century21kentucky.com>, <century21louisiana.com>, <century21maryland.com>, <century21michigan.com>, <century21minnesota.com>, <century21mississippi.com>, <century21missouri.com>, <century21montana.com>, <century21nebraska.com>, <century21nevada.com>

<century21newmexico.com>, <century21northcarolina.com>, <century21northdakota.com>, <century21oklahoma.com>, <century21oregon.com>, <century21pennsylvania.com>, <century21rhodeisland.com>, <century21southcarolina.com>, <century21tennessee.com>, <century21texas.com>, <century21virginia.com>, <century21westvirginia.com>, <century21wyoming.com> and <century21southdakota.com> are registered with Register.com, Inc. and that Respondent is the current registrant of the names. Register.com, Inc. has verified that Respondent is bound by the Register.com, Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On November 21, 2002, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of December 11, 2002 by which Respondent could file a Response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@century21alabama.com, postmaster@century21alaska.com, postmaster@century21arkansas.com, postmaster@century21california.com, postmaster@century21connecticut.com, postmaster@century21idaho.com, postmaster@century21iowa.com, postmaster@century21kansas.com, postmaster@century21kentucky.com, postmaster@century21louisiana.com, postmaster@century21maryland.com, postmaster@century21michigan.com, postmaster@century21minnesota.com, postmaster@century21mississippi.com, postmaster@century21missouri.com, postmaster@century21montana.com, postmaster@century21nebraska.com, postmaster@century21nevada.com, postmaster@century21newmexico.com, postmaster@century21northcarolina.com, postmaster@century21northdakota.com, postmaster@century21oklahoma.com, postmaster@century21oregon.com, postmaster@century21pennsylvania.com, postmaster@century21rhodeisland.com, postmaster@century21southcarolina.com, postmaster@century21tennessee.com, postmaster@century21texas.com, postmaster@century21virginia.com, postmaster@century21westvirginia.com, postmaster@century21wyoming.com and postmaster@century21southdakota.com by e-mail.

Having received no Response from Respondent, using the same contact details and methods as were used for the Commencement Notification, the Forum transmitted to the parties a Notification of Respondent Default.

On December 26, 2002, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the Forum appointed James A. Carmody, Esq., as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any Response from Respondent.

RELIEF SOUGHT

Complainant requests that the domain names be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

Respondent's <century21alabama.com>, <century21alaska.com>, <century21arkansas.com>, <century21california.com>, <century21connecticut.com>, <century21idaho.com>, <century21iowa.com>, <century21kansas.com>, <century21kentucky.com>, <century21louisiana.com>, <century21maryland.com>, <century21michigan.com>, <century21minnesota.com>, <century21mississippi.com>, <century21missouri.com>, <century21montana.com>, <century21nebraska.com>, <century21nevada.com>, <century21newmexico.com>, <century21northcarolina.com>, <century21northdakota.com>, <century21oklahoma.com>, <century21oregon.com>, <century21pennsylvania.com>, <century21rhodeisland.com>, <century21southcarolina.com>, <century21tennessee.com>, <century21texas.com>, <century21virginia.com>, <century21westvirginia.com>, <century21wyoming.com> and <century21southdakota.com> domain names are confusingly similar to Complainant's registered CENTURY 21 mark.

Respondent does not have any rights or legitimate interests in the disputed domain names.

Respondent registered and used the disputed domain names in bad faith.

B. Respondent failed to submit a Response in this proceeding.

FINDINGS

Complainant, TM Acquisition Corp., holds numerous trademark registrations for variations on the CENTURY 21 mark, including five for the CENTURY 21 word mark (e.g. U.S. Reg. No. 1,063,488, registered on April 12, 1977). Complainant licenses these marks to its licensee, Century 21 Real Estate Corporation, who in turn operates a franchise business for the promotion and assistance of independently owned and operated real estate brokerage offices. Currently, there are approximately 4,200 franchised offices in the United States and approximately 2,400 franchised offices in other countries, all licensed to operate under the CENTURY 21 mark.

Respondent, Sign Guards a/k/a William Moore, is not licensed or authorized to use Complainant's CENTURY 21 mark for any purpose. Respondent registered the <century21alabama.com>, <century21arkansas.com>, <century21connecticut.com>, <century21idaho.com>, <century21iowa.com>, <century21kansas.com>, <century21kentucky.com>, <century21louisiana.com>, <century21maryland.com>, <century21minnesota.com>, <century21mississippi.com>, <century21missouri.com>, <century21nebraska.com>, <century21nevada.com>, <century21newmexico.com>, <century21northcarolina.com>, <century21northdakota.com>, <century21oklahoma.com>, <century21pennsylvania.com>, <century21rhodeisland.com>, <century21southcarolina.com>, <century21westvirginia.com>, <century21wyoming.com> and <century21southdakota.com> domain names on April 5, 2000 (the "April 2000 Domain Names"). Respondent has made no use of these domain names since their registration. Respondent registered the <century21oregon.com> domain name on May 19, 2002, and has failed to post any original content on this website as well.

Respondent registered the <century21alaska.com>, <century21california.com>, <century21michigan.com>, <century21montana.com>, <century21tennessee.com>, <century21texas.com> and <century21virginia.com> domain names on July 9, 2002 (the "July 2002 Domain Names"). These domain names resolve to a web portal page with links to various

other websites, including websites with subject matter pertaining to “real estate” and “home loans.”

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

In view of Respondent's failure to submit a Response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules.

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

Complainant has established rights in the CENTURY 21 mark through proof of registration on the Principal Register of the United States Patent and Trademark Office.

All of the disputed domain names are confusingly similar to Complainant's CENTURY 21 mark. For each domain name, Respondent has appropriated Complainant's mark in its entirety, and merely added the name of one of the fifty United States. The dominant feature of each of the disputed domain names is Complainant's mark, not the addition of a state name; each is therefore found to be confusingly similar to Complainant's mark. See *Net2phone Inc, v. Netcall SAGL*, D2000-0666 (WIPO Sept. 26, 2000) (finding that the Respondent's registration of the domain name <net2phone-europe.com> is confusingly similar to Complainant's mark... "the combination of a geographic term with the mark does not prevent a domain name from being found confusingly similar"); see also *WalMart Stores, Inc. v. Walmarket Canada*, D2000-0150 (WIPO May 2, 2000) (finding that the domain name, <walmartcanada.com> is confusingly similar to Complainant's famous mark).

Accordingly, the Panel finds that the disputed domain names are all confusingly similar to Complainant's registered CENTURY 21 mark under Policy ¶ 4(a)(i).

Rights or Legitimate Interests

In lieu of a response, Complainant can meet its burden of showing that Respondent has no rights or legitimate interests in the disputed domain names through a showing that the elements of Policy ¶ 4(c)(i)-(iii) are inapplicable to Respondent. At that point, the burden will shift to Respondent to rebut Complainant's allegations, and without a response to rely upon, the result will be a finding for Complainant. See *Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (finding that once Complainant asserts that Respondent has no rights or legitimate interests in respect of the domain, the burden shifts to Respondent to provide credible evidence that substantiates its claim of rights and legitimate interests in the domain name).

Through its lack of response to the Complaint, Respondent not only fails to meet its burden, but

has also made a tacit assertion that it has no rights or legitimate interests in the disputed domain names. See *Am. Online, Inc. v. AOL Int'l*, D2000-0654 (WIPO Aug. 21, 2000) (finding no rights or legitimate interests where Respondent fails to respond); see also *Parfums Christian Dior v. QTR Corp.*, D2000-0023 (WIPO Mar. 9, 2000) (finding that by not submitting a Response, Respondent has failed to invoke any circumstance which could demonstrate any rights or legitimate interests in the domain name).

Respondent has not used either the April 2000 Domain Names or the <century21oregon.com> domain name since their registration. By failing to utilize these domain names, Respondent is not making a bona fide offering of goods or services pursuant to Policy ¶ 4(c)(i), nor a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii). See *Pharmacia & Upjohn AB v. Romero*, D2000-1273 (WIPO Nov. 13, 2000) (finding no rights or legitimate interests where Respondent failed to submit a Response to the Complaint and had made no use of the domain name in question); see also *Vestel Elektronik Sanayi ve Ticaret AS v. Kahveci*, D2000-1244 (WIPO Nov. 11, 2000) (finding that "merely registering the domain name is not sufficient to establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy"). Respondent has also failed to use the <century21oregon.com> domain name since its registration over six months ago; while the time frame involved is substantially shorter, this domain name falls under the same analysis above.

Respondent has used the July 2002 Domain Names, but has used them in a manner that does not reflect rights or legitimate interests in the domain names. Respondent appropriated Complainant's CENTURY 21 mark and used it to redirect Internet users to a website that hosts links to websites offering products in competition with Complainant. Respondent's diversionary uses alone would deny it the protections of Policy ¶¶ 4(c)(i) and (iii); Respondent's diversion to websites of Complainant's competitors only reinforces this conclusion. See *Ticketmaster Corp. v. DiscoverNet, Inc.*, D2001-0252 (WIPO Apr. 9, 2001) (finding no rights or legitimate interests where Respondent generated commercial gain by intentionally and misleadingly diverting users away from Complainant's site to a competing website); see also *Big Dog Holdings, Inc. v. Day*, FA 93554 (Nat. Arb. Forum Mar. 9, 2000) (finding no legitimate use when Respondent was diverting consumers to its own website by using Complainant's trademarks); see also *Kosmea Pty Ltd. v. Krpan*, D2000-0948 (WIPO Oct. 3, 2000) (finding no rights in the domain name where Respondent has an intention to divert consumers of Complainant's products to Respondent's site by using Complainant's mark).

Respondent's WHOIS information reveals that it is known by the name "Sign Guards" or "William Moore." Complainant's unconsted allegations attest to the fact that Respondent is not "commonly known by" any derivative of the CENTURY 21 mark, or that it is commonly known by the name of any of the 50 United States in conjunction with that mark. The Panel finds Policy ¶ 4(c)(ii) inapplicable to Respondent. See *Vestel Elektronik Sanayi ve Ticaret AS v. Kahveci*, D2000-1244 (WIPO Nov. 11, 2000) (finding that "merely registering the domain name is not sufficient to establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy"); see also *RMO, Inc. v. Burbridge*, FA 96949 (Nat. Arb. Forum May 16, 2001) (Interpreting Policy ¶ 4(c)(ii) "to require a showing that one has been commonly known by the domain name prior to registration of the domain name to prevail").

Accordingly, the Panel finds that Respondent does not have rights or legitimate interests in the disputed domain names under Policy ¶ 4(a)(ii).

Registration and Use in Bad Faith

Respondent registered 24 of the infringing domain names on April 5, 2000. On May 19, 2002, Respondent registered an additional infringing domain name, and shortly after this registered an

additional 7 infringing domain names. Each registration incorporated in its entirety Complainant's CENTURY 21 mark. These registrations of infringing domain names prevent Complainant from reflecting its mark on the Internet, and the fact that Respondent performed these registrations 32 times evidences a pattern of such conduct permitting the Panel to conclude that Respondent registered and used each of the disputed domain names in bad faith pursuant to Policy ¶ 4(b)(ii). See *Caterpillar Inc. v. Myar*, FA 95623 (Nat. Arb. Forum Dec. 14, 2000) (finding that registering multiple domain names in a short time frame indicates an intention to prevent the mark holder from using its mark and provides evidence of a pattern of conduct); see also *BIC Deutschland GmbH & Co. KG v. Tweed*, D2000-0418 (WIPO June 20, 2000) (finding that the Respondent violated ¶ 4(b)(ii), as revealed by the number of other domain name registrations incorporating others' trademarks and the fact that the domain names in question do not link to any online presence or website); see also *Harcourt, Inc. v. Fadness*, FA 95247 (Nat. Arb. Forum Sept. 8, 2000) (finding that registration of more than one domain name that infringes on another's registered mark(s) supports the inference that Respondent knew of Complainant's marks upon registering the domain names; and the registration of multiple domain names that infringe on Complainant's trademark(s) is evidence of a pattern of conduct).

Respondent's failure to develop the April 2000 Domain Names, in light of the fact that each incorporates Complainant's CENTURY 21 mark, permits the Panel to conclude that those registrations were done with actual knowledge of Complainant's mark. As Respondent passively held these domain names for over two years, these registrations coupled with inactivity equates with bad faith use and registration. See *Mondich & Am. Vintage Wine Biscuits, Inc. v. Brown*, D2000-0004 (WIPO Feb. 16, 2000) (holding that Respondent's failure to develop its website in a two year period raises the inference of registration in bad faith); see also *DCI S.A. v. Link Commercial Corp.*, D2000-1232 (WIPO Dec. 7, 2000) (concluding that Respondent's passive holding of the domain name satisfies the requirement of ¶ 4(a)(iii) of the Policy).

The Panel infers from Respondent's use of the May 2002 Domain Names that it receives a commission for each redirected Internet user it attracts online, an inference that Respondent has offered no evidence rebutting. As each of these domain names are confusingly similar to Complainant's mark, this attraction for commercial gain equates to bad faith use and registration under Policy ¶ 4(b)(iv). See *Kmart v. Kahn*, FA 127708 (Nat. Arb. Forum Nov. 22, 2002) (finding that if Respondent profits from its diversionary use of Complainant's mark when the domain name resolves to commercial websites and Respondent fails to contest the Complaint, it may be concluded that Respondent is using the domain name in bad faith pursuant to Policy 4(b)(iv)); see also *Am. Online, Inc. v. Tencent Comm. Corp.*, FA 93668 (Nat. Arb. Forum Mar. 21, 2000) (finding bad faith where Respondent registered and used an infringing domain name to attract users to a website sponsored by Respondent).

Therefore, the Panel finds that Respondent registered and used the disputed domain names in bad faith, and Policy ¶ 4(a)(iii) is satisfied.

DECISION

Having established all three elements under ICANN Policy, the Panel concludes that relief shall be hereby GRANTED.

Accordingly, it is Ordered that the <century21alabama.com>, <century21alaska.com>, <century21arkansas.com>, <century21california.com>, <century21connecticut.com>, <century21idaho.com>, <century21iowa.com>, <century21kansas.com>, <century21kentucky.com>, <century21louisiana.com>, <century21maryland.com>, <century21michigan.com>, <century21minnesota.com>, <century21mississippi.com>,

<century21missouri.com>, <century21montana.com>, <century21nebraska.com>, <century21nevada.com>, <century21newmexico.com>, <century21northcarolina.com>, <century21northdakota.com>, <century21oklahoma.com>, <century21oregon.com>, <century21pennsylvania.com>, <century21rhodeisland.com>, <century21southcarolina.com>, <century21tennessee.com>, <century21texas.com>, <century21virginia.com>, <century21westvirginia.com>, <century21wyoming.com> and <century21southdakota.com> domain names be TRANSFERRED from Respondent to Complainant.

James A. Carmody, Esq., Panelist
Dated: December 31, 2002

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Case Details for WIPO Case D2005-0205

WIPO Case Summary

WIPO Case Number	D2005-0205
DDomain name(s)	samsonairline.com
Complainant	Sam Ash Music Corporation
Respondent	Zoroastrian Tech
Panelist	Bernasconi, Michael A.R.
Decision Date	26-Apr-2005
Decision	<u>Transfer</u>

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WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Sam Ash Music Corporation v. Zoroastrian Tech

Case No. D2005-0205

1. The Parties

The Complainant is Sam Ash Music Corporation, Hicksville, New York, United States of America. Complainant is represented by Katten Muchin Zavis Rosenmann, New York, New York, United States of America.

The Respondent is Zoroastrian Tech, Maharashtra, India.

2. The Domain Name and Registrar

The dispute concerns the domain name <samsonairline.com> (the "Domain Name").

The Domain Name is registered with Direct Information Pvt. Ltd., dba Directi.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 22, 2005, by e-mail and on February 24, 2005, in hardcopy. The Acknowledgement of Receipt of the Complaint was issued on February 23, 2005.

On February 23, 2005, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 24, 2005, the Registrar transmitted by email to the Center its verification response confirming that the Domain Name is registered with the Registrar, that the Respondent is the current registrant of the Domain Name, and providing details of the administrative, technical and billing contacts for said registration.

On March 2, 2005, the Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy ("Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, Paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint on March 2, 2005, and the proceedings commenced on the same day. The Respondent was required to submit a response on or before March 22, 2005, pursuant to Paragraph 5(a) of the Rules.

On March 17, 2005, the Respondent submitted its Response by email. In hardcopy, the Response was received by the Center on March 21, 2005. The Acknowledgment of Receipt of the Response was issued on March 17, 2005.

The Center appointed Michael A.R. Bernasconi as the sole panelist in this matter on March 23, 2005.

On March 23, 2005, after having received a Statement of Acceptance and Declaration of Impartiality and Independence from Michael A. R. Bernasconi in accordance with Paragraph 7 of the Rules, the Center notified the representative of the Complainant and the Respondent by email that Michael A. R. Bernasconi has been appointed as Administrative Panel and that the decision is anticipated by April 6, 2005.

4. Factual Background

Complainant manufactures and distributes professional audio equipment and accessories on a worldwide scale. Since 1973, Complainant by and through its subsidiary Samson Technologies Corporation has used its "SAMSON" trademark and trade name on and in connection with professional audio products and accessories, including electronic mixing consoles and wireless microphones which Complainant manufactures and/or distributes. Complainant's products bearing the name and mark "SAMSON" are sold throughout the world in Complainant's retail stores, through its catalog and via its Internet platform "www.samsontech.com", as well as on the "www.amazon.com" website.

The Complainant has provided evidence of some 35 trademark registrations consisting of or incorporating the name "samson" in many countries, including, *inter alia*, the United States of America, many European countries as well as Japan, Brazil, Hong Kong SAR of China, China, Singapore and Taiwan Province of China. In addition, Complainant has provided evidence of the trademark "AIRLINE" which it uses together with the "SAMSON" trademarks for wireless microphones, wireless instrument systems, consisting primarily of wireless microphones, instrument transmitters and wireless receivers.

The Respondent registered the domain name <samsonairline.com> on December 8, 2004. Under the Domain Name at issue, Respondent first provided links to offerors of Samson products and – after having been put on notice by Complainant by a cease and desist letter – modified its use of the Domain Name by now providing links to all kinds of service providers, such as sellers of airline tickets, car insurers, gambling casinos and cell phone manufacturers.

On December 21, 2004, Complainant as mentioned above sent Respondent a cease and desist letter, requesting a transfer of the Domain Name. In reply, Respondent wrote to Complainant on December 22, 2004, requesting a copy of Complainant's trademark registrations. Complainant provided this information the same day, asking Respondent to cease all use of the "SAMSON" name and mark and take all necessary steps to immediately transfer the Domain Name to Complainant. Follow-up letters were sent to Respondent by Complainant on January 13, 2005, and on February 2, 2005. No evidence of a response to these letters has been provided.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed Domain Name is identical with its trademarks "SAMSON" and "AIRLINE" and the corresponding product line. Furthermore, Complainant argues that Respondent has no rights or legitimate interests in respect of the Domain Name because Respondent is not using it in connection with a *bona fide* offering of goods or services. Rather, Respondent uses the Domain Name in a deliberate attempt to attract users seeking Complainant's website and products. In addition, Complainant argues that Respondent is neither known by the Domain Name nor does Respondent own any "SAMSON" trademarks. As a final point, Complainant contends that Respondent has registered and is using the Domain Name in bad faith as Respondent must have been aware of the "SAMSON" trademarks and the fame of the products. Respondent therefore simply attempted to attract for commercial gain internet users to the Respondent's website or other online locations by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. The Respondent's bad faith registration and use of the Domain Name in view of

Complainant is confirmed by Respondent's behavior further to the receipt of the cease and desist letter, as Respondent has modified its use of the Domain Name but still continues to use the web site in an infringing and illegitimate manner by misdirecting customers to advertising sites for commercial gain.

B. Respondent

The Respondent argues that the Domain Name consists of the two generic words "samson" and "airline". Furthermore, Respondent contends that it acquires generic or otherwise useful abandoned domain names, which are initially parked to provide a page of general interested links. Respondent then develops each domain name by matching selected search results from a third-party advertiser database. This is what Respondent has done with the Domain Name, creating an advertising portal without misleading or diverting consumers in any way. However, the Domain Name, according to Respondent, has not been registered with online search engines yet. Finally, Respondent argues that Complainant has not registered any "SAMSONAIRLINE" trademark.

6. Discussion and Findings

According to Paragraph 4(a) of the Policy, the Complainant must prove that:

- A. The domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- B. the Respondent has no rights or legitimate interests in respect of the domain name; and
- C. the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Complainant has provided evidence of some 35 "SAMSON" trademark registrations as well as of the trademark "AIRLINE".

The Respondent argues that the Complainant has not registered the trademark "SAMSONAIRLINE" and that therefore, the requirements of Paragraph 4(a)(i) of the Policy are not met.

The disputed Domain Name combines the Complainant's two trademarks "SAMSON" and "AIRLINE". The Panel is aware that "airline" is a rather generic word and that the term "samson" by itself is essentially a name, standing for "a man of great physical strength", as Respondent argues. The Complainant nevertheless owns trademark rights with regard to these two words.

In the context of the present case, the Panel finds that the Complainant does satisfy the requirements of the Policy Paragraph 4(a)(i): "your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights". Without doubt, the Domain Name may be understood as a reference to the Complainant's fairly famous "SAMSON" trademarks, because that term stands at the beginning of the combination of the two words. The Domain Name is thus confusingly similar in particular with Complainant's "SAMSON" trademark, but also with its trademark "AIRLINE".

In addition, the Domain Name at issue consists of Complainant's trademarks "samson" and "AIRLINR", to which only the suffix ".com" is added. The suffix ".com" is a generic top level domain name, which of course is without legal significance to render a domain name dissimilar or to prevent customer confusion. The distinctive element of the Domain Name is obviously the term "samsonairline", while the suffix ".com" is of descriptive nature only.

In these circumstances, Internet users finding "www.samsonairline.com" are likely to be misled into thinking that the Complainant is the registrant or is otherwise associated with the disputed Domain Name, or are at least confused.

In the view of the Panel, the disputed Domain Name is essentially identical with and therefore confusingly similar to the trademarks of Complainant. The Complainant has succeeded in proving that a risk of confusion is very likely. The first criterion, as per Paragraph 4(a) of the Policy, is established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy defines the circumstances which, if proved, establish a registrant's rights or legitimate interests to a disputed domain name.

There is no evidence that the Respondent is commonly known by the disputed Domain Name or has been authorized by the Complainant to use the "SAMSON", "AIRLINR" trademarks.

Initially, it seems according to the evidence submitted by Complainant (Exhibit F, the accuracy of which has not been disputed by Respondent), that the Respondent used the Domain Name to provide links to numerous offerors of goods similar to Complainant's products. It is quite apparent to the Panel that Respondent, at least since having received Complainant's cease and desist letter, has not been using and has not made preparations to using the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods and services.

An informal check of the website under the Disputed Domain Name on April 6, 2005, showed that no goods or services are offered. Instead, the various categories of items that are pretended to be offered on the homepage of Respondent solely divert the Internet traffic to numerous other websites around the globe. These linked websites, however, are to a large extent unrelated to the categories of goods which are purportedly offered on Respondent's website. Some of the links provided on the Respondent's homepage are links to retailers and service providers of all kinds and there are also sponsored links to websites with pornographic content, such as "www.camcandy.com" or "www.sexshop24.ch" to name but a few. A second informal check of the Panel of the website under the disputed Domain Name on April 21, 2005, furthermore showed that a user entering the Domain Name is automatically redirected to another domain, i.e. that Respondent no longer runs a homepage with the Disputed Domain Name.

In these circumstances, the Panel is of the view that the sole diversion of Internet traffic by Respondent to other, unrelated websites, does not represent a use of the Domain Name in connection with a *bona fide* offering of goods and services. Rather, the conduct of Respondent appears to serve the purpose of generating revenues, e.g. from advertised pay-per-click products. Further, it misleads Internet users by diverting traffic intended for the Complainant to websites, which are in no way connected with the word "samson", and it may create the impression of association with the Complainant's group.

The Panel in the circumstances fails to find any evidence that would support a finding of a legitimate interest by Respondent. Thus, the second requirement, as per Paragraph 4(a) of the Policy, is established.

C. Registered and used in Bad Faith

The trademark "SAMSON" is fairly well known in the field of audio equipment and accessories throughout the world. Therefore, the Respondent is likely to have known of Complainant, its products and its trademarks prior to registering the disputed Domain Name. This finding of the Panel is also evidenced by Exhibit F to the Complaint, which illustrates that the initial content of the website running under the Domain Name predominantly contained links and information to many internet providers of Complainant's products such as "Samson Wireless Blowout", "Samson UHF Wireless", "Samson Audio Sale" and many others. This is in contradiction with the Respondent's argument that it had chosen the Domain Name for the generic nature of the English words "samson" and "airline".

Respondent argues that it acquires "generic or otherwise useful abandoned domain names, which are initially parked to provide a page of general interest links". Whereas "parking" domain names by itself is insufficient evidence for bad faith use of a domain name, the Panel in the present case must come to the conclusion that Respondent's registration and use of the Domain Name is nevertheless not in compliance with the Rules.

In relation to the initial use of the Domain Name by Respondent, the disputed Domain Name is so obviously connected with the name, the trademark and in particular the products of the Complainant's group, that its very use by Respondent with no connection to the Complainant suggests opportunistic bad faith in the least.

The current use of the Domain Name by the Respondent supports this finding. In view of the Panel, the Respondent based on its own statements may well be engaged in a strategy of registering domain names based on well-known or famous trademarks to maximize traffic to one or more directory-based websites. This fortifies the Complainant's contention that the Domain Name in the present case was registered and may have been used for this purpose. The Panel is therefore satisfied that on balance of probabilities the Respondent has engaged in intentionally attempting to attract, for commercial gain, Internet users to its website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and that this constitutes registration and use in bad faith.

Nevertheless, for the sake of completeness, the Panel will consider the Respondent's citation of *Virgin Enterprises v. Internet Domains, virginmail.com*, [WIPO Case No. D2001-1008](#). This case is not helpful to the Respondent. In the *Virgin-*

case, a request for transfer by complainant was dismissed because the Panel found that the domain name at issue and the trademarks of the complainant Virgin Enterprises were neither identical, nor confusingly similar. Besides, in the *Virgin*-case, the domain name in dispute had been registered by the respondent before a particular product was launched on the market by the complainant Virgin Enterprises. The Panel therefore did not deny the respondent's rights or legitimate interests in the disputed domain name and denied a bad faith registration, because the use of the name virgin as a part of a domain name by the respondent who was running an adult web site was not sufficient evidence to the panel for a bad faith registration. The panel in the *Virgin*-case however found for a bad faith use of the domain name in dispute, as the respondent had opportunistically decided to offer the domain name to the complainant for sale. The facts of the *Virgin*-case as well as its finding are thus rather distinguished from the present dispute before the Panel, where the Domain Name is confusingly similar to the trademarks of Complainant in the first place, and where it is quite clear from the initial web page Respondent has set up under the Domain Name, that Respondent must have been aware of Complainant and its products when registering the Domain Name.

To conclude, the third requirement of Paragraph 4(a) of the Policy is satisfied.

7. Decision

Therefore, as directed by Paragraphs 14(a) and (b) and 15(a) of the Rules, the Panel finds:

- (1) that the Domain Name is confusingly similar to the Complainant's trademark;
- (2) that the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (3) that the Domain Name has been registered and is being used in bad faith by the Respondent.

For all the foregoing reasons, in accordance with Paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <samsonairline.com> shall be transferred to the Complainant.

Michael A.R. Bernasconi
Sole Panelist

Dated: April 26, 2005