



NATIONAL ARBITRATION FORUM

DECISION

Greenhouse Fabrics, Inc. v. Texas International Property Associates - NA NA
Claim Number: FA0908001281603

PARTIES

Complainant is **Greenhouse Fabrics, Inc.** ("Complainant"), represented by **Allison M. Meade**, of **Wyatt Early Harris Wheeler, LLP**, North Carolina, USA. Respondent is **Texas International Property Associates - NA NA** ("Respondent"), Texas, USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**greenhousefabric.com**>, registered with **Compana, LLC**.

PANEL

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

Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on August 26, 2009; the National Arbitration Forum received a hard copy of the Complaint on August 28, 2009.

On September 1, 2009, Compana, LLC confirmed by e-mail to the National Arbitration Forum that the <**greenhousefabric.com**> domain name is registered with Compana, LLC and that Respondent is the current registrant of the name. Compana, LLC has verified that Respondent is bound by the Compana, LLC 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 September 2, 2009, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of September 22, 2009 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@greenhousefabric.com by e-mail.

Having received no response from Respondent, the National Arbitration Forum transmitted to the parties a Notification of Respondent Default.

On September 28, 2009, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration 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 National Arbitration 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 name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

Complainant has a registered United States service mark for "GREENHOUSE" (USPTO Serial No. 78/365,216, filed February 10, 2004), International Class 035, in connection with "Wholesale distributorship services in the field of upholstery fabrics." As set forth in the USPTO registration, the mark was first used in commerce as of at least 1975.

FACTUAL AND LEGAL GROUNDS

A. Factual Background

Complainant Greenhouse Fabrics, Inc. ("Greenhouse Fabrics" or "Complainant") was established in North Carolina in 1975 and has operated as a wholesale fabric distributor to the present day. In 1997, Greenhouse Fabrics was acquired by Irvin Alan Fabrics, a Michigan-based wholesale fabric distributor, and the business was subsequently incorporated in Michigan and qualified to do business in North Carolina.

In December 1997, Greenhouse Fabrics registered the domain name <*greenhousefabrics.com*> and in September 1999 developed its first website at that site. By at least 2002, the company was actively using and marketing the website to its customers. Greenhouse Fabrics also owns the domain names <*greenhousefabrics.net*> and <*greenhousefabric.net*>.

On February 10, 2004, Greenhouse Fabrics filed for and subsequently was granted a service mark by the United States Patent and Trademark Office ("USPTO") on the word GREENHOUSE for use in connection with "wholesale distributorship services in the field of upholstery fabrics." The application was granted as Serial Number

78365216 with a registration date of February 15, 2005. As declared in its trademark application, Greenhouse Fabrics had used the word GREENHOUSE in connection with its commercial activities since at least 1975.

Respondent Texas International Property Associates (“TIPA”) is a notorious cybersquatter and “typosquatter” that has been the respondent in literally hundreds of arbitrations brought under the Uniform Domain Name Dispute Resolution Policy of ICANN. Indeed, a prior NAF panel has specifically found that TIPA is generally “engaged in a pattern of bad faith registration and use . . .” *ABC Liquors, Inc. v. Texas International Property Associates*, Claim No. FA0906001266499 (Nat. Arb. Forum July 28, 2009).

TIPA registered the disputed domain name, *<greenhousefabric.com>*, in November 2004. At that time, Greenhouse Fabric’s trademark registration application, filed in February 2004, was publically available through the USPTO, giving TIPA actual or constructive notice of the application. In addition, Greenhouse Fabric had been operating its website at *<greenhousefabrics.com>* for some five years, and TIPA was on actual or constructive notice of that fact. Nonetheless, TIPA proceeded to register the disputed domain name, identical to Greenhouse Fabric’s domain name aside from the missing “s,” in a patently bad faith effort to trade on the customers, trademark, and name of Greenhouse Fabrics.

As of at least the spring of 2009, TIPA’s *<greenhousefabric.com>* website included advertising for “Green house Fabric” and “Woven Greenhouse Fabric.” On or about March 17, 2009, counsel for Greenhouse Fabrics delivered a letter to TIPA notifying it that its registration and operation of the website constituted unlawful infringement of Greenhouse Fabric’s trademark rights and unlawful cybersquatting and demanded that TIPA cease and desist its infringing activities. Despite additional warnings and communications with TIPA’s counsel, TIPA refused to transfer the domain name to Greenhouse Fabrics. It did modify its website to remove references to “Greenhouse Fabrics” or “Green House Fabrics,” but still includes links to “Fabrics” on the site.

B. Respondent’s Domain Name, *<greenhousefabric.com>*, is Identical and Confusingly Similar to Complaint’s Registered Service Mark, “Greenhouse,” For Distribution Of Upholstery Fabrics.

Complainant has a registered federal service mark on GREENHOUSE, granted in connection with Complainant’s business distributing fabrics. Complainant has thus established rights in the mark as of its trademark application filing date of February 10, 2004. *See Thompson v. Zimmer*, FA 190625 (Nat. Arb. Forum Oct. 27, 2003) (“As Complainant’s trademark application was subsequently approved by the U.S. Patent and Trademark Office, the relevant date for showing “rights” in the mark for the purposes of [UDRP] Policy 4(a)(i) dates back to Complainant’s filing date.”) In addition, Complainant has operated its *<greenhousefabrics.com>* website since 1999.

TIPA's domain name, <*greenhousefabric.com*>, completely incorporates Complainant's trademark, and is thus identical and/or confusingly similar to Complainant's mark. The disputed domain name is also confusingly similar with Complainant's mark precisely in connecting that mark, GREENHOUSE, with "fabrics," the distribution of which is the usage for which Complainant has registered its service mark. And finally, of course, the disputed domain name is a patent effort to "typosquat" on Complainant's website, being identical except for dropping the "s" at the end of Complainant's domain name.

C. Respondent Has No Rights or Legitimate Interests With Respect to the <*greenhousefabric.com*> Domain Name.

Respondent is not known by the disputed domain name. Respondent does not engage in any business involving the bona fide offering of goods or services related to fabrics. Nor does Respondent make any non-commercial fair use of the disputed name. At present, Respondent's site appears to contain links to search results that link to third parties promoting, in part, sales of fabrics. Respondent is purely a park-and-hold cybersquatter or "typosquatter" that is using the disputed domain name for its own commercial interests by taking unfair advantage of web-users seeking to find Greenhouse Fabrics' products, information about Greenhouse Fabrics, or Greenhouse Fabrics' website.

The above facts establish that Respondent has no rights or legitimate interests in the disputed name. *See, e.g., Ganz v. Texas International Property Associates*, FA 0705000991778 (Nat. Arb. Forum July 19, 2007); *ABC Liquors, Inc. v. Texas International Property Associates*, FA 0906001266499 (Nat. Arb. Forum July 28, 2009), and authorities cited therein.¹

D. Respondent Has Registered and Used the GREENHOUSEFABRIC.COM Domain Name in Bad Faith

TIPA has demonstrated bad faith by registering the disputed domain name despite having actual or constructive notice of Complainant's trademark and its on-going business at the <*greenhousefabrics.com*> domain site. Complainant filed for registration of its mark on February 10, 2004. Trademark registration filings are searchable; accordingly Respondent was on public notice of Complainant's mark before registering the disputed domain name in November 2004. *Thompson v. Zimmer*, FA 190625 (Nat. Arb. Forum Oct. 27, 2003) ("As Complainant's trademark application was subsequently approved by the U.S. Patent and Trademark Office, the relevant date for showing "rights" in the mark for the purposes of [UDRP] Policy 4(a)(i) dates back to Complainant's filing

¹ Complainant notes that it has carried its *prima facie* case on this element of its complaint, and it is Respondent that bears the burden of showing that it has rights or legitimate interests in the disputed domain name. *See Ganz v. Texas International Property Associates* and *ABC Liquors, Inc. v. Texas International Property Associates*, *supra*, and authorities cited therein.

date.”) In addition, Complainant had been operating its website at <greenhousefabrics.com> for more than five years before Respondent registered its typosquatting <greenhousefabric.com> domain.

TIPA’s bad faith is also demonstrated by its profligate and ongoing course of cyber-squatting conduct. According to the records of the World Intellectual Property Organization (WIPO), TIPA has been the named respondent in some 104 domain dispute arbitration cases in which decisions were issued by WIPO arbitration panels in the 18 months from 2007 to June 2009 . (See http://www.wipo.int/amc/en/domains/statistics/filing_party.jsp (search term “Texas International Property Associates”).) TIPA has been the subject of another 169 domain name disputes decided by panels of the National Arbitration Forum over just the last 18 months. (See <http://domains.adrforum.com/decision.aspx> (search term “Texas International Property Associates”).) A prior NAF panel has specifically found TIPA “to be engaged in a pattern of bad faith registration and use . . .” *ABC Liquors, Inc. v. Texas International Property Associates*, Claim No. FA0906001266499 (Nat. Arb. Forum July 28, 2009); see also *Westcoast Contempo Fashions Ltd. V. Manila Indus., Inc.*, FA814312 (Nat. Arb. Forum Nov. 29, 2006) (finding bad faith registration and use where respondent had been subject to numerous UDRP proceedings in which the panels had ordered the transfer of disputed domain names containing the trademarks of the complainants).

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

FINDINGS

Complainant, Greenhouse Fabrics, Inc., is a wholesale fabrics distributor who operates through the <greenhousefabrics.com> domain name. Complainant owns a trademark registration with the United States Patent and Trademark Office (“USPTO”) for the GREENHOUSE mark (Reg. No. 2,926,409 issued November 23, 2004).

Respondent registered the <greenhousefabric.com> domain name on November 27, 2004. Respondent’s disputed domain name resolves to a website displaying third-party links to websites offering fabrics in competition with Complainant.

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. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See *Vertical Solutions Mgmt., Inc. v. webnet-*

marketing, inc., FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

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 owns a trademark registration for the GREENHOUSE mark with the USPTO (Reg. No. 2,926,409 issued November 23, 2004). The Panel finds Complainant has established rights in the GREENHOUSE mark for purposes of Policy ¶4(a)(i) through its trademark registration with the USPTO. *See Thermo Electron Corp. v. Xu*, FA 713851 (Nat. Arb. Forum July 12, 2006) (finding that the complainants had established rights in marks where the marks were registered with a trademark authority); *see also Paisley Park Enters. v. Lawson*, FA 384834 (Nat. Arb. Forum Feb. 1, 2005) (finding that the complainant had established rights in the PAISLEY PARK mark under Policy ¶4(a)(i) through registration of the mark with the USPTO).

Complainant argues Respondent's disputed domain name is confusingly similar to Complainant's GREENHOUSE mark pursuant to Policy ¶4(a)(i). Respondent's <**greenhousefabric.com**> domain name contains Complainant's mark in its entirety, adds the generic (but descriptive) term "fabric," and adds the generic top-level domain ("gTLD") ".com." The Panel finds generic terms, especially generic terms with an obvious relationship to a complainant's business operation that are added to a complainant's registered mark, create a confusing similarity between the disputed domain name and the mark. *See Allianz of Am. Corp. v. Bond*, FA 680624 (Nat. Arb. Forum June 2, 2006) (finding that the addition of the generic term "finance," which described the complainant's financial services business, as well as a gTLD, did not sufficiently distinguish the respondent's disputed domain name from the complainant's mark under Policy ¶4(a)(i)); *see also Christie's Inc. v. Tiffany's Jewelry Auction, Inc.*, D2001-0075 (WIPO Mar. 6, 2001) (finding that the domain name <christiesauction.com> is confusingly similar to the complainant's mark since it merely adds the word "auction" used in its generic sense). In addition, the Panel finds that the addition of a gTLD is irrelevant in distinguishing a disputed domain name from a registered mark. *See Rollerblade, Inc. v. McCrady*, D2000-0429 (WIPO June 25, 2000) (finding that the top level of the domain name such as ".net" or ".com" does not affect the domain name for

the purpose of determining whether it is identical or confusingly similar); *see also Busy Body, Inc. v. Fitness Outlet Inc.*, D2000-0127 (WIPO Apr. 22, 2000) (“[T]he addition of the generic top-level domain (gTLD) name ‘.com’ is . . . without legal significance since use of a gTLD is required of domain name registrants . . .”). Therefore, Respondent’s disputed domain name is confusingly similar to Complainant’s GREENHOUSE mark pursuant to Policy ¶4(a)(i).

The Panel finds Policy ¶4(a)(i) satisfied.

Rights or Legitimate Interests

Complainant alleges Respondent lacks all rights and legitimate interests in the disputed domain name. If Complainant makes a *prima facie* case in support of its allegations, the burden shifts to Respondent to prove that rights and legitimate interests exist pursuant to Policy ¶4(a)(ii). The Panel finds Complainant has established a *prima facie* case and Respondent has failed to submit a response in this proceeding. *See Document Techs., Inc. v. Int’l Elec. Commc’ns Inc.*, D2000-0270 (WIPO June 6, 2000) (“Although Paragraph 4(a) of the Policy requires that the Complainant prove the presence of this element (along with the other two), once a Complainant makes out a *prima facie* showing, the burden of production on this factor shifts to the Respondent to rebut the showing by providing concrete evidence that it has rights to or legitimate interests in the Domain Name.”); *see also Towmaster, Inc. v. Hale*, FA 973506 (Nat. Arb. Forum June 4, 2007) (“Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶4(a)(ii), and then the burden shifts to Respondent to show it does have rights or legitimate interests.”).

Complainant contends Respondent is neither commonly known by, nor licensed to register, the disputed domain name. Respondent’s WHOIS information identifies Respondent as “Texas International Property Associates.” The Panel finds the WHOIS information demonstrates that Respondent is not commonly known by the disputed domain name. Therefore, pursuant to Policy ¶4(c)(ii), Respondent lacks rights and legitimate interests in the disputed domain name. *See Braun Corp. v. Loney*, FA 699652 (Nat. Arb. Forum July 7, 2006) (concluding that the respondent was not commonly known by the disputed domain names where the WHOIS information, as well as all other information in the record, gave no indication that the respondent was commonly known by the disputed domain names, and the complainant had not authorized the respondent to register a domain name containing its registered mark); *see also Coppertown Drive-Thru Sys., LLC v. Snowden*, FA 715089 (Nat. Arb. Forum July 17, 2006) (concluding that the respondent was not commonly known by the <coppertown.com> domain name where there was no evidence in the record, including the WHOIS information, suggesting that the respondent was commonly known by the disputed domain name).

Respondent registered the <greenhousefabric.com> domain name on November 27, 2004. Respondent is using the disputed domain name to display links advertising third-party websites offering fabric products in competition with Complainant. The Panel

infers Respondent is using the disputed domain name to earn click-through fees, and thus finds Respondent has not made 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 Wells Fargo & Co. v. Lin Shun Shing*, FA 205699 (Nat. Arb. Forum Dec. 8, 2003) (finding that using a domain name to direct Internet traffic to a website featuring pop-up advertisements and links to various third-party websites is neither a *bona fide* offering of goods or services under Policy ¶4(c)(i) nor a legitimate noncommercial or fair use under Policy ¶4(c)(iii) because the registrant presumably receives compensation for each misdirected Internet user); *see also Coryn Group, Inc. v. Media Insight*, FA 198959 (Nat. Arb. Forum Dec. 5, 2003) (finding that the respondent was not using the domain names for a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use because the respondent used the names to divert Internet users to a website that offered services that competed with those offered by the complainant under its marks).

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

Registration and Use in Bad Faith

Complainant contends Respondent has been the respondent in multiple other UDRP cases wherein the disputed domain names were transferred to the respective complainants in those cases. *See, e.g., Hewlett-Packard Co. v. Tex. Int'l Prop. Assoc.*, FA 1248985 (Nat. Arb. Forum Apr. 16, 2009); *see also IMT Servs. Corp. v. Tex. Int'l Prop. Assoc.*, FA 1259913 (Nat. Arb. Forum June 15, 2009). The Panel finds this constitutes a pattern of bad faith registration and use pursuant to Policy ¶4(b)(ii). *See Westcoast Contempo Fashions Ltd. v. Manila Indus., Inc.*, FA 814312 (Nat. Arb. Forum Nov. 29, 2006) (finding bad faith registration and use pursuant to Policy ¶4(b)(ii) where the respondent had been subject to numerous UDRP proceedings where panels ordered the transfer of disputed domain names containing the trademarks of the complainants); *see also Nat'l Abortion Fed'n v. Dom 4 Sale, Inc.*, FA 170643 (Nat. Arb. Forum Sept. 9, 2003) (finding bad faith pursuant to Policy ¶4(b)(ii) because the domain name prevented the complainant from reflecting its mark in a domain name and the respondent had several adverse decisions against it in previous UDRP proceedings, which established a pattern of cybersquatting).

The Panel finds Respondent's use of the disputed domain name to disrupt the business of Complainant by offering links to competitors is evidence of bad faith registration and use pursuant to Policy ¶4(b)(iii). *See EBAY, Inc. v. MEODesigns*, D2000-1368 (Dec. 15, 2000) (finding that the respondent registered and used the domain name <eebay.com> in bad faith where the respondent has used the domain name to promote competing auction sites); *see also Disney Enters., Inc. v. Noel*, FA 198805 (Nat. Arb. Forum Nov. 11, 2003) ("Respondent registered a domain name confusingly similar to Complainant's mark to divert Internet users to a competitor's website. It is a reasonable inference that Respondent's purpose of registration and use was to either disrupt or create confusion for Complainant's business in bad faith pursuant to Policy ¶4(b)(iii) [and] (iv).").

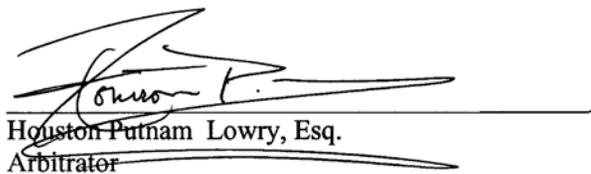
In addition, Respondent is using the disputed domain name to intentionally divert Internet users to the associated website, which displays third-party links to competing websites offering fabric products. In cases such as this, the Panel prebutable presumes Respondent is collecting click-through fees and attempting to profit by creating a likelihood of confusion between Complainant's mark and the disputed domain name. The Panel finds Respondent's use of the disputed domain name is further evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv). *See Zee TV USA, Inc. v. Siddiqi*, FA 721969 (Nat. Arb. Forum July 18, 2006) (finding that the respondent engaged in bad faith registration and use by using a domain name that was confusingly similar to the complainant's mark to offer links to third-party websites that offered services similar to those offered by the complainant); *see also Univ. of Houston Sys. v. Salvia Corp.*, FA 637920 (Nat. Arb. Forum Mar. 21, 2006) ("Respondent is using the disputed domain name to operate a website which features links to competing and non-competing commercial websites from which Respondent presumably receives referral fees. Such use for Respondent's own commercial gain is evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv).").

The Panel finds Policy ¶4(a)(iii) 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 <**greenhousefabric.com**> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: October 7, 2009

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