



NATIONAL ARBITRATION FORUM

DECISION

FJ Enterprises v. Belize Domain WHOIS Service Lt
Claim Number: FA0910001291660

PARTIES

Complainant is **FJ Enterprises** ("Complainant"), represented by **Frank H. Bria**, Arizona, USA. Respondent is **Belize Domain WHOIS Service Lt** ("Respondent"), Belize.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**huntwise.com**>, registered with **Directnic, Ltd.**

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 October 27, 2009; the National Arbitration Forum received a hard copy of the Complaint on October 28, 2009.

On October 28, 2009, Directnic, Ltd confirmed by e-mail to the National Arbitration Forum that the <**huntwise.com**> domain name is registered with Directnic, Ltd and that Respondent is the current registrant of the name. Directnic, Ltd has verified that Respondent is bound by the Directnic, 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 October 29, 2009, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of November 18, 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@huntwise.com by e-mail.

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

On November 24, 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:

- [a.] The Respondant's domain name is based upon Complainant's USPTO trademark registration, HuntWise. The registration of a mark with an appropriate government authority, such as the USPTO, confers rights in the mark to Complainant. *See Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb 18, 2004)

The disputed domain name is confusingly similar and identical to Complainant's mark HuntWise since the disputed domain name contains the mark in its entirety and only adds the generic top-level domain ("gTLD") ".com" The addition of the gTLD is not sufficient to detract from the overall impression of the dominant part of the name, HuntWise. *See Sony Kabushiki Kaisha v. Inja, Kil*, D2000-1409 (WIPO Dec 9, 2000)

- [b.] Respondent is not commonly known by disputed domain name huntwise.com. Based on the WHOIS information, Respondent is identified as "Belize Domain WHOIS Service Lt." Therefore, pursuant to Policy paragraph 4(c)(ii), Respondent lacks rights and legitimate interests in the huntwise.com domain name. *See Ian Schrager Hotels, L.L.C. v. Taylor*, FA 173369 (Nat. Arb Forum Sept. 25, 2003)

Respondent is also using huntwise.com domain name to redirect Internet users to a web page containing links to various third-party websites that does not represent a *bona fide* offering of goods or services under Policy paragraph 4(c)(i) nor a legitimate noncommercial or fair use under Policy paragraph 4(c)(iii) because the registrant presumably receives compensation for each misdirect Internet user. *See Yahoo! Inc. v. Web Master*, FA 127717 (Nat. Arb. Forum Nov. 27, 2002)

[c.] Respondent also has a pattern of registering domain names to prevent the owner of a Trademark from reflecting the mark in a corresponding domain name. Evidence shows that Respondent has been involved in 35 UDRP arbitration proceedings in which Respondent was ordered to transfer the disputed domain name to Complainant. *See Fertur Peru E.I.R.L. v. Belize Domain WHOIS Service Lt.*, FA 1111951 (Nat. Arb. Forum Dec. 7, 2007); *see also SkinMedica, Inc. v. Belize Domain WHOIS Service Lt.*, FA 1112556 (Nat. Arb. Forum Nov. 27, 2007); *see also Bondurant School of High Performance Driving, Inc. v. Belize Domain WHOIS Service Lt.*, FA 1157312 (Nat. Arb. Forum Apr. 14, 2008). In previous cases, it has been concluded that Respondent's registration and use of above mentioned domain names is in bad faith pursuant to Policy paragraph 4(b)(ii). *See Philip Morris Inc. v. r9.net* D2003-0004 (WIPO Feb. 28, 2003); *see also Yahoo! Inc. v. Deiana*, FA 339579 (Nat. Arb. Forum Nov. 22, 2004)

In addition, Respondent's huntwise.com domain name resolves to a website that features links to direct competitors with Complainant's clients. Respondent presumably receives referral fees from these advertisers. By incorporating Complainant's HuntWise mark within its confusingly similar disputed domain name, Respondent has created a likelihood of confusion as to the affiliation and endorsement of the disputed domain and corresponding website. Thus, it can only be concluded that Respondent has engaged in bad faith registration and use pursuant to Policy paragraph 4(b)(iv). *See Drs. Foster & Smith, Inc. v. Lalli*, FA 95284 (Nat. Arb. Forum Aug. 21, 2000); *see also TM Acquisition Corp. v. Warren*, FA 204147 (Nat Arb. Forum Dec. 8, 2003)

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

FINDINGS

Complainant, FJ Enterprises, holds a registration for the HUNTWISE mark with the United States Patent and Trademark Office ("USPTO") (Reg. No. 3,657,987 issued July 21, 2009, filed January 22, 2009). Complainant uses the HUNTWISE mark in connection with online non-downloadable software for assisting sportsmen to query, investigate, and review hunting information for finding the best hunt area applications across different states.

Respondent, Belize Domain WHOIS Service Lt, registered the <huntwise.com> domain name on November 19, 2005. The disputed domain name resolves to a website that features hyperlinks to third-party websites, some of which directly compete 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

The Panel finds Complainant has established rights in the HUNTWISSE mark under Policy ¶4(a)(i) through its registration of the mark with the USPTO (Reg. No. 3,657,987 issued July 21, 2009, filed January 22, 2009). The Panel further finds Complainant's rights in the mark commence on January 22, 2009, which is the filing date of its application for federal registration. *See Planetary Soc'y v. Rosillo*, D2001-1228 (WIPO Feb. 12, 2002) (holding that the effective date of Complainant's trademark rights date back to the application's filing date); *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); *see also Reebok Int'l Ltd. v. Santos*, FA 565685 (Nat. Arb. Forum Dec. 21, 2005) (finding trademark registration with the USPTO was adequate to establish rights pursuant to Policy ¶4(a)(i)).

Respondent's <**huntwise.com**> domain name contains Complainant's HUNTWISSE mark and merely adds the generic top-level domain ("gTLD") ".com." The Panel finds, as previous panels have, that the addition of a gTLD to a mark does not sufficiently distinguish the disputed domain name from Complainant's mark. *See Jerry Damson, Inc.*

v. Tex. Int'l Prop. Assocs., FA 916991 (Nat. Arb. Forum Apr. 10, 2007) (“The mere addition of a generic top-level domain (“gTLD”) “.com” does not serve to adequately distinguish the Domain Name from the mark.”); *see also Treeforms, Inc. v. Cayne Indus. Sales Corp.*, FA 95856 (Nat. Arb. Forum Dec. 18, 2000) (finding that the respondent’s <treeforms.com> domain name is identical to the complainant’s TREEFORMS mark). Therefore, the Panel finds that the <huntwise.com> domain name is identical to Complainant’s HUNTWISE mark under Policy ¶4(a)(i).

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

Rights or Legitimate Interests

Pursuant to Policy ¶4(a)(ii), Complainant must make a *prima facie* showing that Respondent lacks rights and legitimate interests in the disputed domain name. Upon making such a showing, the burden then shifts to Respondent and Respondent must establish that it has rights or legitimate interests in the disputed domain name. The Panel finds Complainant has sufficiently made its *prima facie* showing under Policy ¶4(a)(ii). The burden now shifts to Respondent, from whom no response was received. *See Compagnie Generale des Matieres Nucleaires v. Greenpeace Int'l*, D2001-0376 (WIPO May 14, 2001) (“Proving that the Respondent has no rights or legitimate interests in respect of the Domain Name requires the Complainant to prove a negative. For the purposes of this sub paragraph, however, it is sufficient for the Complainant to show a *prima facie* case and the burden of proof is then shifted on to the shoulders of Respondent. In those circumstances, the common approach is for respondents to seek to bring themselves within one of the examples of paragraph 4(c) or put forward some other reason why they can fairly be said to have a relevant right or legitimate interests in respect of the domain name in question.”); *see also G.D. Searle v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002) (“Because Complainant’s Submission constitutes a *prima facie* case under the Policy, the burden effectively shifts to Respondent. Respondent’s failure to respond means that Respondent has not presented any circumstances that would promote its rights or legitimate interests in the subject domain name under Policy ¶4(a)(ii).”). However, the Panel chooses to examine the record under Policy ¶4(c).

The WHOIS information for <huntwise.com> domain name lists “Belize Domain WHOIS Service Lt” as the registrant, which does not indicate Respondent is commonly known by the disputed domain. Respondent has not provided any evidence to suggest that Policy ¶4(c)(ii) applies in this case. Therefore, the Panel finds Respondent is not commonly known by the <huntwise.com> domain name under Policy ¶4(c)(ii). *See Tercent Inc. v. Lee Yi*, FA 139720 (Nat. Arb. Forum Feb. 10, 2003) (stating “nothing in Respondent’s WHOIS information implies that Respondent is ‘commonly known by’ the disputed domain name” as one factor in determining that Policy ¶4(c)(ii) does not apply); *see also 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).

The disputed domain name resolves to a website that displays hyperlinks to third-party websites, some of which directly compete with Complainant. Complainant alleges and the Panel presumes Respondent receives click-through fees for these hyperlinks. Accordingly, the Panel finds Respondent's use of the <**huntwise.com**> domain name 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 *TM Acquisition Corp. v. Sign Guards*, FA 132439 (Nat. Arb. Forum Dec. 31, 2002) (finding that the respondent's diversionary use of the complainant's marks to send Internet users to a website which displayed a series of links, some of which linked to the complainant's competitors, was not a *bona fide* offering of goods or services); see also *Disney Enters., Inc. v. Kamble*, FA 918556 (Nat. Arb. Forum Mar. 27, 2007) (holding that the operation of a pay-per-click website at a confusingly similar domain name was not 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)).

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

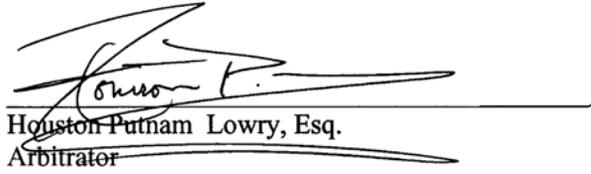
Registration and Use in Bad Faith

Complainant has provided evidence of its rights in the mark through the registration of its HUNTWISE mark with the USPTO. Previous panels have held that a complainant's registration with the USPTO creates rights in the mark commence on the filing date of its application for federal registration. The earliest evidence of Complainant's registration of its HUNTWISE mark with the USPTO dates back to the filing date of January 22, 2009. Complainant has not provided any evidence that it possessed common law rights or other trademarks prior to this date. Since Respondent registered the disputed domain name on November 19, 2005, over three years before Complainant has alleged rights in the mark, the Panel finds Respondent did not register or use the mark in bad faith pursuant to Policy ¶4(a)(iii). See *Open Sys. Computing AS v. degli Alessandri*, D2000-1393 (WIPO Dec. 11, 2000) (finding no bad faith where the respondent registered the domain name in question before application and commencement of use of the trademark by the complainant); see also *Interep Nat'l Radio Sales, Inc. v. Internet Domain Names, Inc.*, D2000-0174 (WIPO May 26, 2000) (finding no bad faith where the respondent registered the domain prior to the complainant's use of the mark).

The Panel finds Policy ¶4(a)(iii) **NOT** satisfied.

DECISION

Having failed to establish all three elements required under the ICANN Policy, the Panel concludes that relief shall be **DENIED**.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: December 8, 2009

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