



NATIONAL ARBITRATION FORUM

DECISION

LTD Commodities, LLC v. Spiral Matrix
Claim Number: FA0607000744554

PARTIES

Complainant is **LTD Commodities, LLC** ("Complainant"), represented by **Irwin C. Alter**, of **Law Offices of Alter and Weiss**, 19 S. LaSalle, Suite 1650, Chicago, IL 60603. Respondent is **Spiral Matrix** ("Respondent"), 1st Floor Muya House, Kenyatta Ave., P.O.BOX 4276-30100, Eldoret, KE 30100, KE.

REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are <**ltdcommoditiesltd.com**>, <**ltdcommidity.com**> and <**lakesidecollections.net**>, registered with **Intercosmos Media Group, Inc.** d/b/a **Directnic.com**.

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 July 6, 2006; the National Arbitration Forum received a hard copy of the Complaint on July 10, 2006.

On July 6, 2006, Intercosmos Media Group, Inc. d/b/a Directnic.com confirmed by e-mail to the National Arbitration Forum that the <**ltdcommoditiesltd.com**>, <**ltdcommidity.com**> and <**lakesidecollections.net**> domain names are registered with Intercosmos Media Group, Inc. d/b/a Directnic.com and that Respondent is the current registrant of the names. Intercosmos Media Group, Inc. d/b/a Directnic.com has verified that Respondent is bound by the Intercosmos Media Group, Inc. d/b/a Directnic.com 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 July 13, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of August 2, 2006 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@ltdcommoditiesltd.com, postmaster@ltdcommodity.com and postmaster@lakesidecollections.net by e-mail.

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

On August 9, 2006, 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 names be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

Complainant LTD Commodities, LLC, owns the following U.S. trademarks:

LTD COMMODITIES -U.S. Registration No. 2409188

Goods and services: catalog mail order distributorship for general merchandise including toys, jewelry, watches, housewares, luggage, clothing sports equipment, clothing, beauty products, food, tools, rugs, greeting cards, office products, furniture, crockery, dolls, puzzles, games, pans, wall hangings and other decorations, lighting, rugs, shoes and slippers, wallets, checkbooks, candles, frames, giftware, cookware, photo albums, books

LTD COMMODITIES, INC. - U.S. Registration No. 2315412

Goods and services: catalog mail order distributorship for general merchandise including toys, jewelry, watches, housewares, luggage, clothing sports equipment, clothing, beauty products, food, tools, rugs, greeting cards, office products, furniture, crockery, dolls, puzzles, games, pans, wall hangings and other decorations, lighting, rugs, shoes and slippers, wallets, checkbooks, candles, frames, giftware, cookware, photo albums, books.

LTD COMMODITIES, INC. & design - U.S. Registration No. 2927697

Goods and services: Catalog mail order distributorship for general merchandise including toys, jewelry, watches, housewares, luggage, clothing, sports equipment, beauty products,

food, tools, rugs, greeting cards, office products, furniture, crockery, dolls, puzzles, games, pans, wall hangings and other decorations, lighting, rugs, shoes and slippers, wallets, checkbooks, candles, frames, giftware, cookware, photo albums, and books.

LTD COMMODITIES, LLC - U.S. Registration No. 2986121

Goods and services: Catalog mail order distributorship for general merchandise including toys, jewelry, watches, housewares, luggage, clothing, sports equipment, leather goods, health products, catalog shopping, kitchen items, patio items, car items, fishing items, garage items, children's items, computer items, holiday items, bathroom items, camera items, hobby items, cooking items, sports items, storage items, school supplies, beauty products, accessories, food, tools, rugs, clocks, radios, cd players, electronic goods, greeting cards, office products, furniture, crockery, dolls, bedding, sheets, pillows, puzzles, games, pans, picture frames, wall hangings and other decorations, lighting, shoes and slippers, wallets, checkbooks, candles, frames, giftware, cookware, photo albums, books.

THE LAKESIDE COLLECTION, INC. - U.S. Registration No. 2606505

Goods and services: mail order catalog distributorship services featuring wearing apparel.

THE LAKESIDE COLLECTION, INC. - U.S. Registration No. 2432488

Goods and services: catalog mail-order distributorship services featuring general merchandise, namely, housewares, domestics, giftware, hardware, electronics, books and media including tapes and compact discs.

FACTUAL AND LEGAL GROUNDS

This Complaint is based on the following factual and legal grounds:

In accordance with UDRP Rules, paragraph 3(b)(viii), specification of the Complainant's service mark on which this Complaint is based is as follows: On January 15, 2003, LTD Commodities, Inc., assigned its service marks to Complainant LTD COMMODITIES, LLC. The Complainant, LTD COMMODITIES, LLC (formerly known as LTD Commodities, Inc.), has been in business since 1963 in the field of catalog mail order distributorships for general merchandise including toys, housewares, and gifts. This catalog has become very well-known among consumers and costs millions of dollars each year to design, print and advertise. The Complainant conducts business from its corresponding commercial websites at "ltdcommodities.com," created in 1996. Additionally, Complainant owns U.S. trademark registrations for LTD COMMODITIES, LLC, Reg. No. 2986121; LTD COMMODITIES, Reg. No. 1409188; LTD COMMODITIES, INC., Reg. No. 2315412; and LTD COMMODITIES, INC. & design, Reg. No. 2927697.

The Complainant has also distributed and marketed its catalog under its Assumed Name, THE LAKESIDE COLLECTION, INC., since 1995. An Illinois Assumed Name

Registration was filed. The Complainant conducts business from its corresponding commercial websites at “lakeside.com,” created in 1997, and “lakesidecollection.com,” created in 2002. Additionally, Complainant owns two U.S. trademark registrations for THE LAKESIDE COLLECTION, INC., Reg. Nos. 2606505 and 2432488.

a. The domain names in dispute are confusingly similar to service marks in which Complainant has rights.

Under the UDRP Rules, paragraph 3(b)(ix), the additional factual and legal grounds on which the Complaint is made are as follows: The Respondent's domain names “ltdcommoditiesltd.com”, “ltdcommidity.com” and “lakesidecollections.net” are confusingly similar to the Complainant’s service mark registrations for LTD COMMODITIES, LTD COMMODITIES, INC., LTD COMMODITIES, LLC and THE LAKESIDE COLLECTION, INC. and to the Complainant’s domain names “ltdcommodities.com” and “lakesidecollection.com” because the Respondent’s domain names are common misspellings of the Complainant’s marks or simple typographical errors of Complainant’s marks and domain names.

b. Respondent has no legitimate interests in the domain name that is the subject of this dispute.

The Respondent should be considered as having no rights or legitimate interests in the particular domain names that are the subject of the Complaint for the following reasons: The Respondent has no registration for the marks “ltdcommoditiesltd.com”, “ltdcommidity.com” and “lakesidecollections.net” either in whole or in part.

Furthermore, Respondent is using the disputed domain names to divert internet traffic to portal websites that provide connections to websites offering a variety of goods and services. The Respondent’s use of confusingly similar domain names to the Complainant’s registered marks to divert internet users is not a use in connection with a bona fide offering of goods or services pursuant to Policy ¶4 (c)(i); additionally, Respondent’s use is not a legitimate noncommercial or fair use pursuant to Policy ¶4 (c)(iii). The Respondent’s sole purpose in deliberately registering common misspellings of the Complainant’s marks is to cause confusion with Complainant’s websites and service marks.

Additionally, Complainant finds no records indicating that the Respondent is involved with any legitimate enterprise under a name identical or confusingly similar to the marks in which the Complainant has rights.

c. Respondent registered and is using the domain names, which are the subject matter of this Complaint, in bad faith.

The Respondent’s domain names should be considered as having been registered in bad faith under paragraph 4(b) of the ICANN policy because by registering the commercial domain names in which it has no rights, Respondent intentionally attracts Internet users to its own commercial sites by creating a likelihood of confusion with the Complainant’s marks as to the source, sponsorship, affiliation, or endorsement of the Respondent’s

websites or location of a product or service on the Respondent's websites. The disputed domain names were registered as commercial sites to Respondent long after Complainant started using the service marks LTD COMMODITIES and THE LAKESIDE COLLECTION, and registered the domains "ltdcommodities.com", "lakeside.com" and "lakesidecollection.com".

Additionally, Respondent has intentionally misspelled the Complainant's service marks and corresponding domain name with the intent to intercept and siphon off traffic from its intended destination by preying on internet users, namely the Complainant's customers, who make common typing errors. Respondent purports to be doing business as the Complainant, which epitomizes Respondent's bad faith use of the contested domain.

In short, Respondent has registered domain names that completely subsume the domain name of Complainant and relies upon typographical errors to garner traffic to Respondent's sites in order to siphon traffic away from Complainant's site. Complainant's service marks and its domain names "ltdcommodities.com" and "lakesidecollection.com" are valuable assets and create a potential unjust windfall for those trying to siphon off of Complainant's heavy traffic volume without having paid anything other than a domain name registration fee—an inconsequential amount when compared to the millions of dollars Complainant spends on advertising and developing its goodwill in the marketplace. Furthermore, Respondent's continued use of common misspelled domains of Complainant's marks indicates prima facie bad faith.

Finally, Respondent has engaged in a pattern of bad faith registrations that prevent legitimate trademark holders from reflecting their marks in corresponding domain names. See, for example, *Societe des Hotels Meridien v. Spiral Matrix/Kentech Inc*, WIPO Case No. D2005-1196; *Deutsche Telekom AG v. Spiral Matrix*, WIPO Case No. D2005-1145; *Dr. Ing. h. c. F. Porsche AG v. Kentech, Inc. a.k.a. Orion Web a.k.a. Titan Net a.k.a. Panda Ventures a.k.a. Spiral Matrix and Domain Purchase, NOLDC, Inc.*, WIPO Case No. D2005-0890; *American Century Proprietary Holdings, Inc. v. Spiral Matrix*, NAF Case No. FA0510000584708; and *Finaxa S.A. v. Spiral Matrix*, WIPO Case No. D2005-1044.

Complainant LTD Commodities, LLC, and its predecessor, LTD Commodities, Inc., have been very aggressive in protecting their service mark rights and pursuing domain name typosquatters. LTD COMMODITIES and THE LAKESIDE COLLECTION are valuable names which Complainant intends to protect as necessary.

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

FINDINGS

Complainant, LTD Commodities, LLC, produces and distributes mail-order catalogs selling general merchandise, including toys, housewares and other gifts. Complainant has continuously used the LTD COMMODITIES mark to refer to its catalog products

and services since 1963. Complainant has operated a website at the <ltdcommodities.com> domain name since 1996. Complainant has also produced and distributed a catalog under the THE LAKESIDE COLLECTION, INC. mark since 1995. Complainant maintains a website at the <lakeside.com> (registered in 1997) and <lakesidecollection.com> (registered in 2002) domain names in connection with it's the LAKESIDE CONNECTION, INC. catalog.

Complainant holds numerous trademark registrations with the United States Patent and Trademark Office ("USPTO"), including trademark registrations for the following marks: LTD COMMODITIES (Reg. No. 2,409,188 issued November 28, 2000) and THE LAKESIDE COLLECTION, INC. (Reg. No. 2,606,505 issued August 13, 2002; Reg. No. 2,432,488 issued March 6, 2001).

Respondent registered the disputed domain names on the following dates: <ltdcommoditiesltd.com> on December 5, 2005, <ltdcommidity.com> on December 14, 2005 and <lakesidecollections.net> on February 1, 2006. Respondent's domain names each resolve to a web directory displaying links to various content unrelated to 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 has demonstrated its rights in the LTD COMMODITIES and THE LAKESIDE COLLECTION, INC. marks by registering the marks with the USPTO. *See Microsoft Corp. v. Burkes*, FA 652743 (Nat. Arb. Forum Apr. 17, 2006) (“Complainant has established rights in the MICROSOFT mark through registration of the mark with the USPTO.”); *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).

Because Respondent’s domain names contain misspellings and variations of Complainant’s mark, the disputed domain names are confusingly similar to the marks. Respondent’s <**ltdcommoditiesltd.com**> domain name merely duplicates a term of Complainant’s mark and attaches it to the end of the domain name, the <**ltdcommidity.com**> simply misspells Complainant’s LTD COMMODITIES mark and Respondent merely omits the article “the” and corporate identifier “inc.” from Complainant’s THE LAKESIDE COLLECTION, INC. mark in the <**lakesidecollections.net**> domain name and adds the letter “s.” None of these alterations sufficiently distinguish the disputed domain names from Complainant’s mark and thus the disputed domain names are confusingly similar to the mark pursuant to Policy ¶4(a)(i). *See Victoria’s Secret v. Zuccarini*, FA 95762 (Nat. Arb. Forum Nov. 18, 2000) (finding that, by misspelling words and adding letters to words, a respondent does not create a distinct mark but nevertheless renders the domain name confusingly similar to the complainant’s marks); *see also Saul Zaentz Co. v. Dodds*, FA 233054 (Nat. Arb. Forum Mar. 16, 2004) (the domain name merely omitted the definite article “the” and the preposition “of” from the complainant’s mark and thus, failed to “sufficiently distinguish the domain name from the mark pursuant to Policy ¶4(a)(i)”); *see also Belkin Components v. Gallant*, FA 97075 (Nat. Arb. Forum May 29, 2001) (finding the <belken.com> domain name confusingly similar to the complainant’s BELKIN mark because the name merely replaced the letter “i” in the complainant’s mark with the letter “e”); *see also Nat’l Geographic Soc’y v. Stoneybrook Invs.*, FA 96263 (Nat. Arb. Forum Jan. 11, 2001) (finding that the domain name <nationalgeographics.com> was confusingly similar to the complainant’s NATIONAL GEOGRAPHIC mark).

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

Rights or Legitimate Interests

Complainant has alleged Respondent lacks rights and legitimate interests in the disputed domain names. Complainant must first make a *prima facie* case in support of its allegations, and the burden then shifts to Respondent to show it does have rights or legitimate interests pursuant to Policy ¶4(a)(ii). *See 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).”); *see also Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (holding that once the complainant asserts that the respondent has no rights or legitimate interests with respect to the domain, the burden shifts to the respondent to provide “concrete evidence that it has rights to or legitimate interests in the domain name at issue”).

Respondent’s failure to answer the Complaint raises a presumption Respondent has no rights or legitimate interests in the disputed domain names. *See Geocities v. Geocities.com*, D2000-0326 (WIPO June 19, 2000) (finding that the respondent has no rights or legitimate interests in the domain name because the respondent never submitted a response or provided the panel with evidence to suggest otherwise); *see also Parfums Christian Dior v. QTR Corp.*, D2000-0023 (WIPO Mar. 9, 2000) (finding that by not submitting a response, the respondent has failed to invoke any circumstance which could demonstrate any rights or legitimate interests in the domain name). However, the Panel will now examine the record to determine if Respondent has rights or legitimate interests under Policy ¶4(c).

There is no evidence in the record Respondent is commonly known by the disputed domain names. Respondent has registered the domain names under the name “Spiral Matrix” and Complainant has not authorized or licensed Respondent to register a domain name incorporating any variation of its LTD COMMODITIES or THE LAKESIDE COLLECTION, INC. marks. Consequently, Respondent has not established rights or legitimate interests in the disputed domain names pursuant to Policy ¶4(c)(ii). *See The 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 M. Shanken Commc’ns v. WORLDTRAVELERSONLINE.COM*, FA 740335 (Nat. Arb. Forum Aug. 3, 2006) (finding that the respondent was not commonly known by the <cigaraficionada.com> domain name under Policy ¶4(c)(ii) based on the WHOIS information and other evidence in the record).

Respondent is not using the disputed domain names for 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) by simply redirecting Internet users to a web directory. In *WeddingChannel.com Inc. v. Vasiliev*, FA 156716 (Nat. Arb. Forum June 12, 2003), the respondent registered the <weddingchannel.com> domain name and used it to redirect Internet users seeking Complainant’s services under the WEDDING CHANNEL mark to unrelated third-party websites. The panel presumed Respondent received referral fees for each misdirected Internet user and held that Respondent’s “diversionary and commercial use” of the complainant’s WEDDING CHANNEL mark was not a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii). In this case, Respondent is also likely earning click-through

fees for each consumer it diverts to other websites and therefore is redirecting Internet users to other websites for commercial gain. As a result, Respondent does not have rights or legitimate interests under Policy ¶4(c)(i) or Policy ¶4(c)(iii). See *Pioneer Hi-Bred Int'l Inc. v. Chan*, FA 154119 (Nat. Arb. Forum May 12, 2003) (finding that the respondent did not have rights or legitimate interests in a domain name that used the complainant's mark and redirected Internet users to a website that pays domain name registrants for referring those users to its search engine and pop-up advertisements).

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

Registration and Use in Bad Faith

The disputed domain names each resolve to a web directory displaying links to various content unrelated to Complainant. In *ESPN, Inc. v. Ballerini*, FA 95410 (Nat. Arb. Forum Sept. 15, 2000), the panel found bad faith where the respondent had registered the <espnclassic.com> domain name and used it to redirect Internet users to a website at the <iwin.com> domain name, because the respondent presumably received a portion of the advertising revenue from the third-party website by redirecting Internet traffic there and thus the respondent was using the domain name to attract Internet users for commercial gain. Because Respondent is also likely receiving click-through fees for diverting Internet users to other websites, Respondent is taking advantage of the confusing similarity between the disputed domain names and Complainant's marks in order to profit from the goodwill associated with the marks. The Panel finds such registration and use to be in bad faith under Policy ¶4(b)(iv). See *MySpace, Inc. v. Myspace Bot*, FA 672161 (Nat. Arb. Forum May 19, 2006) (holding that the respondent registered and used the <myspacebot.com> domain name in bad faith by diverting Internet users seeking the complainant's website to its own website for commercial gain because the respondent likely profited from this diversion scheme).

The Panel finds Complainant satisfied 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 <ltdcommoditiesltd.com>, <ltdcommidity.com> and <lakesidecollections.net> domain names be **TRANSFERRED** from Respondent to Complainant.


Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: August 22, 2006