



## NATIONAL ARBITRATION FORUM

### DECISION

Saba's Stores Inc. v. Web Development Group Ltd.  
Claim Number: FA0706000997451

#### PARTIES

Complainant is **Saba's Stores, Inc.** ("Complainant"), represented by **Jay L. Raftery, Jr.**, of **Jennings, Strouss & Salmon P.L.C.**, 16427 N. Scottsdale Rd., Suite 300, Scottsdale, AZ 85254-1597. Respondent is **Web Development Group Ltd.** ("Respondent"), represented by **Ari Goldberger**, of **ESQwire.com Law Firm**, 35 Cameo Drive, Cherry Hill, NJ 08003.

#### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**sabas.com**>, registered with **Tucows Inc.**

#### PANEL

The undersigned certify that they have acted independently and impartially and to the best of their knowledge have no known conflict in serving as Panelists in this proceeding.

Houston Putnam Lowry, Chartered Arbitrator, David E. Sorkin and Dennis A. Foster (chair) as Panelists.

#### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on May 31, 2007; the National Arbitration Forum received a hard copy of the Complaint on June 4, 2007.

On June 1, 2007, Tucows Inc. confirmed by e-mail to the National Arbitration Forum that the <**sabas.com**> domain name is registered with Tucows Inc. and that Respondent is the current registrant of the name. Tucows Inc. has verified that Respondent is bound by the Tucows 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 June 6, 2007, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of June 26, 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@sabas.com](mailto:postmaster@sabas.com) by e-mail.

On June 22, 2007, Respondent requested, pursuant to Supplemental Rule 6, an extension of time to respond to the Complaint. On June 25, 2007, the National Arbitration Forum,

without Complainant's consent, granted Respondent an extension and set a new deadline of July 10, 2007 for a filing of a Response.

A timely Response was received and determined to be complete on July 10, 2007.

A Supplemental Complaint, complying with the requirements of Supplemental Rule 7, was received on July 16, 2007. Furthermore, a Supplemental Response, complying with the requirements of Supplemental Rule 7, was received on July 20, 2007. The Panel has taken into account both Complainant's and Respondent's supplemental filings in reaching its Decision.

On July 19, 2007, pursuant to Complainant's request to have the dispute decided by a three-member Panel, the National Arbitration Forum appointed Houston Putnam Lowry, Chartered Arbitrator, David E. Sorkin and Dennis A. Foster as Panelists.

## **RELIEF SOUGHT**

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

## **PARTIES' CONTENTIONS**

### **A. Complainant**

- Complainant has sold boots, hats, belts, shirts, pants and other items of clothing with a Western American motif since 1960 under the trademark, SABA'S. This Western apparel is currently marketed by Complainant through stores in the state of Arizona and over the Internet.

- Since 1989, Complainant has had a valid United States Registered trademark in the name, SABA'S. The trademark is well known through its extensive and long-term use.

- The disputed domain name is identical to Complainant's trademark and confusingly similar to several domain names that are registered by Complainant, including <sabaswesternwear.com>.

- Respondent has no rights or legitimate interests in the disputed domain name. Respondent is not commonly known by that name, and Respondent's use of the name – to divert Internet users to the websites of direct competitors of Complainant (some operating in the same Arizona geographical area as Complainant) – is not a legitimate noncommercial or fair use of the same.

- Respondent's diversion attempts demonstrate its bad faith in registration and use of the disputed domain name. Respondent is seeking commercial gain from misleading Internet users into believing that Complainant is the source or sponsor of the website found at the disputed domain name.

### **B. Respondent**

- Sabas is a common first name and the name of a number of saints. Reference to “Sabas” as a first name is found in *Behind the Name, the Etymology and History of First Names*. Anyone has the right to register a common name as a domain name, and the first to do so has rights and legitimate interests in that domain name.
- An Internet search yields some 565,000 third-party web pages that contained the name, Sabas.
- Respondent registered the disputed domain name five years prior to the filing of this case, such delay in filing giving rise to the inference that Complainant does not truly believe the registration was in bad faith.
- Respondent had no knowledge of Complainant’s trademark as Complainant operates mainly in the American state of Arizona (where all of its stores are located) and Respondent resides in Canada.
- Respondent’s website found at the disputed domain name contained links to Complainant’s competitors for only a short length of time. The listing of those links was not intended by Respondent, but resulted solely from an automated placement, which Respondent corrected swiftly.
- With a partner, Respondent uses the disputed domain name to display pay-per-click advertisement links, dividing the advertising revenue thus generated with said partner. Between 2003 and 2006 only generic links, such as airline tickets, hotels, finance, etc. appeared at the disputed domain name.
- Because the disputed domain name incorporates a common word, the posting of related advertising links constitutes use of that name for the “*bona fide* offering of goods and services” as that phrase is understood under the Policy.
- The temporary appearance, five years after domain name registration, of links created by a third-party domain monetization service on Respondent’s website constitutes neither illegitimate use nor bad faith on the part of Respondent.
- Complainant has failed to meet its burden of proving bad faith registration or use of the disputed domain name. Respondent did not register the name with the knowledge of Complainant’s trademark; or with the intent to sell, rent or transfer such name to Complainant; or to prevent Complainant from reflecting its trademark in a domain name; or to disrupt Complainant’s business or attract customers seeking to purchase its products. Even if the temporary appearance of links related to Complainant’s competitors is deemed bad faith use, it cannot be used as evidence of bad faith registration because that appearance occurred five years after registration of the disputed domain name. Respondent registered the name because it corresponds to the common first name, Sabas.

### C. Complainant's Supplemental Contentions

- Complainant has never authorized Respondent, in any way, to use Complainant's trademark, and Respondent does not conduct a *bona fide* business under the disputed domain name.
- Sabas is not a common first name.
- Respondent contradicted itself in its Response when it asserted both: that Respondent did not learn of Complainant or its trademark before the instant filing on May 31, 2007; and that Respondent became aware of the disputed content on its website in February 2007. Thus, Respondent's overall credibility is in question.
- Respondent's ignorance of Complainant and its trademark cannot be inferred from Respondent's residence in Canada because customers of Complainant's Arizona stores come from all over the world and Complainant regularly sells and ships to many places internationally, including Canada.
- In its Response, Respondent cites UDRP cases incorrectly in support of its arguments.
- The five year gap between registration of the disputed domain and the filing of this case does not undercut Complainant's contention of bad faith on the part of Respondent.
- Respondent obtained additional time to respond to this Complaint based upon a fabrication, which demonstrated again bad faith and should negate its filing of the Response in this case.
- Complainant's long-standing trademark gave Respondent constructive notice of Complainant's rights in its mark, notwithstanding the prior Policy cases cited by Respondent.
- Earlier UDRP panels have found Respondent to have engaged routinely in registering domain names in violation of existing trademark rights.
- The use of a third-party automated website operator does not relieve Respondent from the responsibility of which links appear on its website at the disputed domain name and should not provide a shield for Respondent's piratical use of the name.
- The number of websites on which the word, sabas, is found using an Internet search engine is irrelevant to this proceeding.
- Respondent did not explain why links to Complainant's competitors appeared on the disputed domain name through an automated system.

- Respondent failed to mention that it was formerly a Belizean, not a Canadian company, and that assertions of its ignorance based on foreign residence have been repudiated in prior Policy rulings.

- Respondent intended that the automated software used to provide links at its website list links based on Internet user searches, which would inevitably produce links based on users looking for Complainant's trademark and the products that it sells. There are no links on Respondent's website relating to ancestry names or saints.

#### D. Respondent's Supplemental Contentions

- "Sabas" is common, not in the sense of being a popular name, but in the sense that it is a first name and thus a common word. It is a Spanish not English first name. An Internet search of "sabas" references fifty third-party sites before Complainant's website is listed.

- Respondent did not claim to be aware of Complainant's website or trademark in February 2007, only that Respondent removed links to Western clothing websites found at the disputed domain name at that time.

- There is no evidence that Complainant's mark is well known outside of Arizona, and Complainant has presented no evidence that Respondent knew of the mark before registration of the disputed domain name.

- Complainant has put forth insufficient evidence to sustain a finding of Respondent's bad faith registration and use of the disputed domain name.

- The long delay between registration of the disputed domain name and the filing of this Complaint is at least evidence that Complainant had no basis to assert bad faith on the part of Respondent until the inadvertent listing of links to Complainant's competitor's websites appeared at the disputed domain name.

- In its Supplemental Contentions, Complainant has misstated the facts surrounding Respondent's request for additional time to submit the Response, which facts were accurately related in that request, one which proceeded without Complainant's consent.

- Despite the fact that Respondent has suffered several adverse UDRP rulings in the past, where panels disregarded the descriptive or common nature of word(s) incorporated in the disputed domain names registered by Respondent, this case should be decided on its own merits.

- Use of a domain name for pay-per-click advertising supports a legitimate interest where the domain name was not registered in bad faith. The fact the links related to Complainant appeared for only about two months – years after there not being any such links – is compelling evidence that Respondent did not register the disputed domain name in bad faith.

- Although Respondent does not deny that links to websites relating to Complainant appeared as a result of Internet users looking for Complainant's website, that result was because of an automated response and not Respondent's intent to mislead.
- Imputing constructive knowledge of Complainant's trademark to Respondent is inappropriate, because Respondent was under no duty to conduct a worldwide trademark search before registering the disputed domain name.
- Respondent did not place links at the disputed domain name to websites of people or saints with the name, Sabas, because those sites are not maintained by advertisers.

## **FINDINGS**

Since at least 1960, Complainant has sold clothing and accessories with a Western American motif through stores it owns in the state of Arizona, United States of America. It also sells its merchandise over the Internet under various domain names, including <sabaswesternwear.com>, registered by Complainant on August 23, 1999. Complainant owns a valid United States of America trademark in a stylized version of the mark, SABA'S (Registration No. 1,528,383; March 7, 1989).

Respondent registered the disputed domain name <**sabas.com**> on June 21, 2002. Respondent uses the name to post Internet links to third-party websites, deriving advertising revenue from Internet user traffic on a pay-per-click basis. For a relatively short period of time, those third party links included links to the websites of third parties that offer products which compete directly with those of Complainant.

## **DISCUSSION**

Paragraph 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (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;
- (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 submitted to the Panel uncontested evidence of its registration with the United States Patent and Trademark Office of a stylized version of the mark SABA'S. The Panel finds this evidence sufficient to establish Complainant's rights in that mark for purposes of the Policy. See *Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004), in which the panel stated, "Registration of the NASAL-AIRE

mark with the USPTO establishes Complainant's rights in the mark.”; and *Hola S.A. & Hello Ltd. v. Idealab*, D2002-0089 (WIPO March 27, 2002), where the panel concluded that, “The holding of a registered mark is sufficient for the purposes of the Policy.”

Since the stylization of Complainant’s mark cannot be duplicated in a domain name, the Panel concludes that the only deviation from that mark and the disputed domain name is the deletion of the apostrophe and the addition of the gTLD, “.com.” These differences do not prevent the disputed domain name from being confusingly similar to Complainant’s valid trademark. See *Turner Entm’t Co. v. Fagle*, FA 440216 (Nat. Arb. Forum May 2, 2005), where the panel found that, “The addition of the generic top-level domain “.com” coupled with the omission of the apostrophe in Complainant’s mark as well as the omission of the space between the terms of Complainant’s THE REAL GILLIGAN’S ISLAND mark are not enough to distinguish Respondent’s domain name from Complainant’s mark pursuant to Policy ¶ 4(a)(i).”); see also *LOreal USA Creative Inc v. Syncopate.com – Smart Names for Startups*, FA 203944 (Nat. Arb. Forum Dec. 8, 2003); and *Stella D’oro Biscuit Co., Inc. v. Patron Group Inc.*, D2000-0012 (WIPO Feb. 17, 2000).

Consistent with the preceding analysis, the Panel finds that Complainant has succeeded in proving that the disputed domain name is confusingly similar to a trademark in which Complainant has rights.

### **Rights or Legitimate Interests**

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name. The initial burden of establishing Respondent’s lack of rights or legitimate interests in that name rests upon Complainant. However, after Complainant sets forth a *prima facie* case, the burden shifts to Respondent to establish rights or legitimate interests in the disputed domain name pursuant to Policy Paragraph 4(a)(ii). See *Hanna-Barbera Prods., Inc. v. Entm’t Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) where the panel held that the complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under Policy Paragraph 4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name); and *Compagnie Generale des Matieres Nucleaires v. Greenpeace Int’l*, D2001-0376 (WIPO May 14, 2001) (where the panel stated that, “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.”).

In this case, Complainant has established its trademark rights to a mark nearly identical to the disputed domain name, and has asserted, without contradiction from Respondent, that

Complainant never authorized Respondent to use the trademark in any way. This showing is sufficient to make Complainant's *prima facie* case, and thus the Panel will next analyze whether Respondent can demonstrate its rights or legitimate interests pursuant to Paragraph 4(c) of the Policy.

The Panel first notes that Respondent has furnished no evidence that Respondent is commonly known by the <**sabas.com**> domain name. Therefore, the Panel finds that Respondent does not have rights or legitimate interests in the disputed domain name under Policy Paragraph 4(c)(ii). Furthermore, Respondent admits that it is using the domain name in question to provide consumers with links to third-party websites that are unrelated to Complainant. The Panel finds that Respondent's use of a domain name that is confusingly similar to Complainant's trademark to divert Internet users to third-party websites constitutes neither a *bona fide* offering of goods or services pursuant to Policy Paragraph 4(c)(i), nor a legitimate noncommercial or fair use pursuant to Policy Paragraph 4(c)(iii). See *Iowa Sports Found. v. Web Dev. Group Ltd*, FA 600886 (Nat. Arb. Forum Jan. 4, 2006); see also *Seiko Kabushiki Kaisha v. CS into Tech*, FA 198795 (Nat. Arb. Forum Dec. 6, 2003); and *WeddingChannel.com Inc. v. Andrey Vasiliev*, FA 156716 (Nat. Arb. Forum June 12, 2003), (where the panel found that the respondent's use of the disputed domain name to redirect Internet users to websites unrelated to the complainant's mark, websites where the respondent presumably receives a referral fee for each misdirected Internet user, was neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use as contemplated by the Policy).

Outside of Policy Paragraph 4(c), Respondent raises the common nature of the name, Sabas, as a rationale for its rights and legitimate interests in the disputed domain name. Respondent cites a number of prior UDRP rulings to support the proposition that the registration of common names is open to anyone regardless of whether there is a similar registered trademark. See *Lana Sociedad Cooperativa Ltd. v. Alberta Hot Rods*, D2005-1200 (WIPO Feb. 6, 2006); see also *Rusconi Editore S.p.A v. FreeView Publishing, Inc.*, D2001-0875 (WIPO Oct. 10, 2001); see also *Vernon's Pools Ltd. v. Vertical Axis, Inc.*, D2003-0041 (WIPO Mar. 12, 2003); see also *Etam, plc. v. Alberta Hot Rods*, D2000-1654 (WIPO Jan. 31, 2001); and *Lyons P'ship, LP v. Netsphere, Inc.*, D2004-0118 (WIPO May 27, 2004). However, the Panel does not find these cases controlling in the present circumstances because the names referred to in those cases (i.e., respectively, Lana, Donna, Vernon, Tammy and Barney) are far more familiar to the Panel – and the Panel believes to reasonable people – than is Sabas. The Panel does not reach this conclusion because the former names are English and the latter name Spanish, for there are many Spanish names (i.e., Miguel, Lucinda, Jose, Sergio, Juanita, Alberto, etc.) that the Panel would deem common first names. In short, any first name that would be recognized as such only after reference to a source like *Behind the Name, the Etymology and History of First Names* (as recommended by Respondent) is certainly not common.

Accordingly, the Panel rules that Complainant has sustained its burden in showing that Respondent has no rights or legitimate interests in respect of the disputed domain name.

## **Registration and Use in Bad Faith**

To counter Complainant's allegation of bad faith registration and use of the disputed domain name, Respondent has asserted that as a Canadian entity it had no knowledge of Complainant, an Arizona company, or its trademark upon registration of the name, which Respondent claims is a common name free to be registered by anyone. Respondent also contends that Complainant's delay in filing this Complaint until about five years after registration of the disputed domain name implies that Complainant lacks credibility in asserting that Respondent acted in bad faith in its registration or use of the name.

On the surface, Respondent's contentions might seem persuasive when not considered in the glaring light of Respondent's record in prior UDRP proceedings. While, as Respondent notes, all cases under the Policy must be decided on their own merits, the Panel majority cannot help but examine the previous cases involving Respondent as put forth in Complainant's Supplemental Complaint and addressed in Respondent's Supplemental Response. In all of those cases, *Focus on the Family v. Web Development Group, Ltd.*, FA 578410 (Nat. Arb. Forum Nov. 30, 2005); *Iowa Sports Foundation, supra*; *Norm Thompson Outfitters, Inc., LLC v. Web Development Group, Ltd.*, FA 645461 (Nat. Arb. Forum Apr. 4, 2006); *Forbes, LLC v. Web Development Group, Ltd.*, D2006-1655 (WIPO May 9, 2007); *Aventura Mall Venture, LLC v. Web Development Group, Ltd.*, FA 964645 (Nat. Arb. Forum May 31, 2007), a similar fact pattern emerges – the same pattern found in this case. In each case, Respondent registered a domain name(s) that is comprised of one or more arguably common words, which “just happen” to be virtually identical to an established trademark. In each case, Respondent used the domain name solely to provide links to third-party websites, Respondent profiting on Internet user traffic to such websites on a per-click basis. In each and every case, the learned panels ruled that Respondent's conduct in this regard constituted bad faith registration and use of the domain names at issue.

In none of the aforementioned cases did Respondent bother to file a response. In this case, Respondent's Supplemental filing addresses those cases briefly to provide rationales for the registration of the domain names in question. The majority of the Panel finds those post-ruling rationales to be unpersuasive. For instance, Respondent claims it registered the domain name <forbs.com> not because it was nearly the same as the world famous “FORBES” trademark but because “forbs” is another word for “weeds” (a rather arcane listing found by the Panel in some, but not all, dictionaries consulted). Respondent's “business” is to earn pay-per-click fees by steering Internet users to third-party commercial websites. It appears clear to the Panel majority that, at least in some cases, Respondent carefully selects the domain names it registers so that they are composed of a somewhat arguable common word or words that is/are nearly identical to an established trademark to increase the volume of traffic through the names due to Internet users looking to access the trademark owner's products or services.

In the present case, Respondent argues that Sabas is a common word – a Spanish language name – and that Respondent was unaware of its similarity to Complainant's mark since Respondent did not know of Complainant's existence at the time of

registration. However, in the opinion of the majority of the Panel, while Complainant may operate physically in Arizona, United States and Respondent is a Canadian entity, Respondent, an Internet-based company, surely had access to and knowledge of Complainant's own domain name <sabaswesternwear.com> under which Complainant does business. That domain name was registered in 1999, nearly three years before Respondent's registration of the disputed domain name. Moreover, while Sabas may be a first name found in Spanish speaking countries, the Panel majority, as reasoned above, finds that it is a decidedly uncommon name. A name whose dubious "commonness" is used in this proceeding by Respondent as a mere pretext to engage in bad faith Internet operations.

Respondent's remaining contention that the time lag between registration of the name in question and the filing of the Complaint weighs conclusively against Complainant is not persuasive as viewed by the Panel majority. In four of the five previously cited Policy cases decided adversely to Respondent, the disputed domain names were registered at least four years prior to the respective complaint filing. Furthermore, in yet another UDRP case in which Respondent was required to transfer ownership of a domain name, *Weld Racing, Inc. v. Web Development Group Ltd.*, D2005-0357 (WIPO June 6, 2005), the panel rejected precisely the same contention raised by Respondent, opining that, "The Panel finds that such silence and lack of action from the Complainant does not disentitle the Complainant to a remedy under the Policy." See also *Scorpions Musikproductions und Verlagsgesellschaft MBH. v. Alberta Hot Rods*, D2001-0787 (WIPO Nov. 7, 2001).

Therefore, in light of the above, the Panel majority concludes that Respondent intentionally attempted to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with Complainant's mark as to affiliation with Respondent's website, evidence which compels a finding of bad faith registration and use of the disputed domain name pursuant to Paragraph 4(b)(iv) of the Policy.

As a result, the majority of the Panel finds that Complainant has satisfied its burden in demonstrating that Respondent registered and is using the disputed domain name in bad faith.

## **DECISION**

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

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

  
\_\_\_\_\_  
Dennis A. Foster, Esq.  
Arbitrator

Dennis A. Foster, Chair  
Houston Putnam Lowry, Panelist

## DISSENTING OPINION

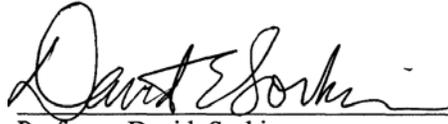
I respectfully dissent.

As a preliminary matter, I would not have taken into account the parties' supplemental submissions (although I do not think considering them here would affect the outcome). Complainant contends that its supplemental submission is warranted because Complainant "could not have anticipated that opposing counsel would make a filing so replete with inaccuracies," and because the supplemental submission represents the "first and only opportunity to respond" by Complainant's counsel (whom Complainant engaged only after the Response was filed). Respondent does not even bother to offer any grounds for consideration of its supplemental submission, apparently merely assuming that it is entitled to reply as a matter of right.

Although the Forum's Supplemental Rule 7 sets forth a procedure by which parties may submit additional information to the Forum during the pendency of a proceeding, that rule does not supersede Paragraph 12 of the ICANN UDRP Rules, under which discretion to receive such information rests solely with the Panel. In general, a Panel should consider additional submissions only in exceptional circumstances, such as where they reflect newly discovered evidence not reasonably available to the submitting party at the time of its original submission or rebut arguments by the opposing party that the submitting party could not reasonably have anticipated. *See, e.g., Deep Foods, Inc. v. Jamruke, LLC*, FA 648190 (Nat. Arb. Forum Apr. 10, 2006). The circumstances here are far from exceptional, and in my view they do not warrant consideration of supplemental submissions.

With regard to the substantive matter before the Panel, I agree with much of the majority's analysis, but would reach a different result on the dispositive issue of bad faith registration and use. Complainant indeed has trademark rights in its SABA'S mark, but that mark is quite obscure relative to other uses of "sabas" (as a personal name or otherwise), and there is no evidence that Respondent even knew of Complainant's mark when it registered the disputed domain name. (A simple Google search for "sabas" without the apostrophe—which appears to be much more common than "saba's" with an apostrophe—does not yield even a single reference to Complainant or its mark within the first 100 search results. That fact admittedly is not properly in evidence before the Panel, but Complainant bears the burden of proof here, and it is worth noting that a simple Google search demonstrates the utter untenability of Complainant's position.).

I share much of the majority's skepticism with regard to Respondent's claims, but even disregarding those claims I simply do not believe it is more likely than not that Respondent selected the domain name for reasons having anything to do with Complainant or its mark. Absent that connection, Respondent's activity is not bad faith registration or use under Paragraph 4(b)(iv) of the Policy. For this reason, I would find that Complainant has failed to sustain its burden of proving bad faith, and would dismiss the Complaint on that basis.



---

Professor David Sorkin  
Arbitrator

David E. Sorkin, Panelist

Dated: August 2, 2007

[Click Here](#) to return to the main Domain Decisions Page.

[Click Here](#) to return to our Home Page

**NATIONAL ARBITRATION FORUM**