



## NATIONAL ARBITRATION FORUM

### DECISION

Ulysses Learning Corporation v. G. Sone and Associates, Inc.  
Claim Number: FA0602000645878

#### PARTIES

Complainant is **Ulysses Learning Corporation** (“Complainant”), represented by **Sarah A. Keefe**, of **Womble Carlyle Sandridge & Rice, PLLC**, 150 Fayetteville Street Mall, Suite 2100, Raleigh, NC 27601. Respondent is **G. Sone and Associates, Inc.** (“Respondent”), 4351 Lakeshore Road, Newcastle, ON L1B 1L9, Canada.

#### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**salesmentor.com**>, registered with **Network Solutions, Inc.**

#### 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 February 15, 2006; the National Arbitration Forum received a hard copy of the Complaint on February 16, 2006.

On February 16, 2006, Network Solutions, Inc. confirmed by e-mail to the National Arbitration Forum that the <**salesmentor.com**> domain name is registered with Network Solutions, Inc. and that Respondent is the current registrant of the name. Network Solutions, Inc. has verified that Respondent is bound by the Network Solutions, 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 February 17, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of March 9, 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@salesmentor.com by e-mail.

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

On March 16, 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 name be transferred from Respondent to Complainant.

#### **PARTIES' CONTENTIONS**

A. Complainant makes the following assertions:

1. Respondent's <**salesmentor.com**> domain name is identical to Complainant's SALESMENTOR mark.
2. Respondent does not have any rights or legitimate interests in the <**salesmentor.com**> domain name.
3. Respondent registered and used the <**salesmentor.com**> domain name in bad faith.

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

#### **FINDINGS**

Complainant, Ulysses Learning Corporation, owns several trademark registrations with the United States Patent and Trademark Office ("USPTO") for the SALESMENTOR mark. Complainant first registered the SALESMENTOR mark with the USPTO on February 18, 2003 (Reg. No. 2,689,434).

Complainant has been in the business of providing consulting services, management services and education services to businesses regarding customer service skills since sometime in 1997. Since 2001, Complainant has used the SALESMENTOR mark in connection with its products and services.

Respondent registered the <salesmentor.com> domain name on November 28, 1997. Respondent's disputed domain name does not resolve to a website.

## **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 established rights in the SALESMENTOR mark under Policy ¶4(a)(i) through Complainant's registration of its mark with the USPTO. *See Nordstrom, Inc. v. Grotte*, FA 115347 (Nat. Arb. Forum Aug. 26, 2002) ("Complainant has established its rights in the NORDSTROM mark through securing a variety of trademark registrations with the USPTO reflecting its NORDSTROM mark."); *see also Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) ("Registration of the NASAL-AIRE mark with the USPTO establishes Complainant's rights in the mark.").

Respondent's <salesmentor.com> domain name incorporates Complainant's mark in its entirety and adds the generic top-level domain ".com." The addition of a generic top-level domain does not negate the fact that the disputed domain name is identical to Complainant's mark. Therefore, the Panel finds Respondent's <salesmentor.com> domain name is identical to Complainant's SALESMENTOR mark pursuant to Policy ¶4(a)(i). *See Pomellato S.p.A v. Tonetti*, D2000-0493 (WIPO July 7, 2000) (finding <pomellato.com> identical to the complainant's mark because the generic top-level

domain (gTLD) “.com” after the name POMELLATO is not relevant); *see also Blue Sky Software Corp. v. Digital Sierra, Inc.*, D2000-0165 (WIPO Apr. 27, 2000) (holding that the domain name <robohelp.com> is identical to the complainant’s registered ROBOHELP trademark, and that the "addition of .com is not a distinguishing difference").

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

### **Rights or Legitimate Interests**

Pursuant to Policy ¶4(a)(ii), the initial burden of proof is on Complainant to prove Respondent lacks rights or legitimate interests in the disputed domain name. Once Complainant has established a *prima facie* case, the burden then shifts to Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name under Policy ¶4(c). *See Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that, under certain circumstances, the mere assertion by the complainant that the respondent has no right or legitimate interest is sufficient to shift the burden of proof to the respondent to demonstrate that such a right or legitimate interest does exist); *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”). The Panel finds Complainant has presented a *prima facie* case and will evaluate the evidence on record to determine whether Respondent has demonstrated rights or legitimate interests under Policy ¶4(c).

The evidence on record does not indicate that Respondent is commonly known by the <salesmentor.com> domain name. Respondent registered the disputed domain name under the name “G. Sone and Associates, Inc.” Therefore, Respondent has not established rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(c)(ii). *See Brown v. Sarrault*, FA 99584 (Nat. Arb. Forum Oct. 16, 2001) (finding that the respondent was not commonly known by the <mobilitytrans.com> domain name because it was doing business as “Mobility Connections”); *see also Gallup, Inc. v. Amish Country Store*, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) (finding that the respondent does not have rights in a domain name when the respondent is not known by the mark).

No *bona fide* offering of goods and services has been made through the domain name under Policy ¶4(c)(i), or a legitimate noncommercial or fair use under Policy ¶4(c)(iii). *See Boeing Co. v. Bressi*, D2000-1164 (WIPO Oct. 23, 2000) (finding no rights or legitimate interests where the respondent has advanced no basis on which the panel could conclude that it has a right or legitimate interest in the domain names, and no commercial use of the domain names has been established); *see also TMP Int’l, Inc. v. Baker Enters.*, FA 204112 (Nat. Arb. Forum Dec. 6, 2003) (“[T]he Panel concludes that Respondent's passive holding of the domain name does not establish rights or legitimate interests pursuant to Policy ¶4(a)(ii).”).

Respondent has failed to prove any demonstrable preparations to use the <salesmentor.com> domain name in connection with a *bona fide* offering of goods or services under Policy

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

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

Complainant asserts Respondent has registered *and* is using the disputed domain name in bad faith. Both points must be proven to prevail in this proceeding.

Respondent's whois contact information is false. Emails did not get through. Federal Express could not deliver a letter because it was an "incorrect address." The telephone number does not work (it resolves to a "fast busy"). Respondent cannot be found with a Google search. Providing false or misleading whois contact information creates a presumption of bad faith, *Agent Host v. Host Dot Com Investments*, AF-0343 (October 16, 2000), *The Procter & Gamble Company v. Hong Gil Dong*, FA0510000572962 (November 10, 2005), *Mattel, Inc. v. RanComp Ltd.*, FA0510000579563 (11/17/2005) and *Delta Corporate Identity, Inc. and Delta Air Lines, Inc. v. Yong Li*, FA0510000576550 (11/21/2005). This Panel elects to draw that conclusion.

It should be noted Respondent registered the domain name on November 28, 1997. This would normally suggest there was no bad faith in the registration because it predates the December 2001 first use Complainant claimed to the United States Patent and Trademark Office. However, Respondent did provide false contact information and this Panel elects to find a bad faith registration even though the registration of the domain name predates the first use of Complainant's trademark.

Respondent cannot avoid this Panel finding there was use of the domain name by not having the domain name resolve to an active web site. Such a ruling would unnecessarily reduce the effectiveness of the UDRP in a case where a Respondent does not respond.

A domain name can be used for a number of purposes:

1. Hosting a web site.
2. Providing email addresses.
3. Providing a "back-end" for ecommerce transactions.
4. Blocking another from using the domain name.

*see Basic Chemical Solutions, LLC v. BCS California Corporation and Jason Singh*, AF-0923 (8/3/2001). The fact there is no web site merely means the domain name is not being used for that purpose; it does not mean the domain name is not being used at all.

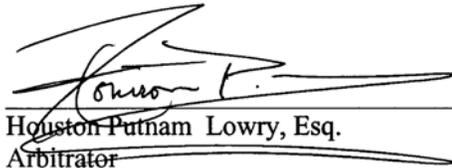
Respondent has failed to rebut Complainant's assertion of bad faith use. In *CBS Broad., Inc. v. LA-Twilight-Zone*, D2000-0397 (WIPO June 19, 2000), the panel found the complainant had established that the respondent had registered and was using the disputed domain name in bad faith, despite respondent's failure to link the domain name to a website. According to the panel, respondent's inactivity and silence with regard to the domain name and the dispute did not necessarily prevent a finding of bad faith. In light of the facts of this case, this Panel finds bad faith use as well.

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 <**salesmentor.com**> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.  
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist  
Dated: March 27, 2006

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