



NATIONAL ARBITRATION FORUM

DECISION

Spectacor Films Corporation v. Spectacor Group c/o Lore Kurtzman
Claim Number: FA0504000468973

PARTIES

Complainant is **Spectacor Films Corporation** (“Complainant”), represented by **Andrew Grosso**, of **Andrew Grosso & Associates**, 2121 K Street NW, Suite 800, Washington, DC 20037. Respondent is **Spectacor Group c/o Lore Kurtzman** (“Respondent”), 429 Santa Monica Blvd., Santa Monica, CA 90405.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**spectacor.com**>, registered with **Register.com**.

PANEL

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

Louis E. Condon as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on April 27, 2005; the National Arbitration Forum received a hard copy of the Complaint on May 3, 2005.

On April 28, 2005, Register.com confirmed by e-mail to the National Arbitration Forum that the domain name <**spectacor.com**> is registered with Register.com and that Respondent is the current registrant of the name. Register.com has verified that Respondent is bound by the Register.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 May 9, 2005, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of May 31, 2005 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@spectacor.com by e-mail.

Having received no Response from Respondent, using the same contact details and methods as were used for the Commencement Notification, the National Arbitration Forum transmitted to the parties a Notification of Respondent Default.

On June 2, 2005, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Louis E. Condon 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 <**spectacor.com**> domain name is confusingly similar to Complainant's SPECTACOR FILMS mark.
2. Respondent does not have any rights or legitimate interests in the <**spectacor.com**> domain name.
3. Respondent registered and used the <**spectacor.com**> domain name in bad faith.

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

FINDINGS

Complainant holds a trademark registration with the United States Patent and Trademark Office for the SPECTACOR FILMS mark (Reg. No.1,572,471 issued December 19, 1989) for entertainment services, namely production of motion pictures and television programs.

Respondent registered the <**spectacor.com**> domain name on February 15, 2001. Respondent is using the disputed domain name to redirect Internet users to a website featuring links to third-party websites not affiliated 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.

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 established in this proceeding that it has rights in the SPECTACOR FILMS mark through registration with the United States Patent and Trademark Office and by continuous use in commerce. *See Men's Wearhouse, Inc. v. Wick*, FA 117861 (Nat. Arb. Forum Sept. 16, 2002) ("Under U.S. trademark law, registered marks hold a presumption that they are inherently distinctive and have acquired secondary meaning."); *see also Janus Int'l Holding Co. v. Rademacher*, D2002-0201 (WIPO Mar. 5, 2002) (finding that panel decisions have held that registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive. The respondent has the burden of refuting this assumption.).

The <**spectacor.com**> domain name registered by Respondent is confusingly similar to Complainant's mark because the disputed domain name incorporates the dominant features of Complainant's mark and merely omits the word "films" from the mark. The omission of the word "films" from the mark does not negate the confusingly similar

aspects of Respondent's domain name pursuant to Policy ¶ 4(a)(i) because Complainant's mark continues to be the dominant element of Respondent's domain name. *See Asprey & Garrard Ltd v. Canlan Computing*, D2000-1262 (WIPO Nov. 14, 2000) (finding that the domain name <asprey.com> is confusingly similar to the complainant's "Asprey & Garrard" and "Miss Asprey" marks); *see also Wellness Int'l Network, LTD v. Apostolics.com*, FA 96189 (Nat. Arb. Forum Jan. 16, 2001) (finding that the domain name <wellness-international.com> is confusingly similar to the complainant's "Wellness International Network"); *see also Hammond Suddards Edge v. Westwood Guardian Ltd.*, D2000-1235 (WIPO Nov. 6, 2000) (finding that the domain name, "hammondsuddards.net," is essentially identical to the complainant's mark, Hammond Suddards Edge, where the name "Hammond Suddards" identifies the complainant independently of the word "Edge").

Additionally, Respondent's <**spectacor.com**> domain name is confusingly similar to Complainant's SPECTACOR FILMS mark because the domain name incorporates the dominant feature of Complainant's mark and deviates with the addition of the generic top-level domain ".com." The mere addition of a generic top-level domain does not negate the confusing similarity between Respondent's domain name and Complainant's mark pursuant to Policy ¶ 4(a)(i). *See Fed'n of Gay Games, Inc. v. Hodgson*, D2000-0432 (WIPO June 28, 2000) (finding that the domain name <gaygames.com> is identical to the complainant's registered trademark GAY GAMES); *see also Little Six, Inc. v. Domain For Sale*, FA 96967 (Nat. Arb. Forum Apr. 30, 2001) (finding that <mysticlake.net> is plainly identical to the complainant's MYSTIC LAKE trademark and service mark).

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

Rights or Legitimate Interests

Complainant alleges that Respondent has no rights or legitimate interests in the <**spectacor.com**> domain name that contains the dominant feature of Complainant's SPECTACOR FILMS mark. The burden shifts to Respondent to show that it does have rights or legitimate interests once Complainant establishes a *prima facie* case pursuant to Policy ¶ 4(a)(ii). Due to Respondent's failure to respond to the Complaint, the Panel assumes that Respondent has no rights or legitimate interests in the disputed domain name. *See G.D. Searle v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002) (holding that where the complainant has asserted that the respondent has no rights or legitimate interests with respect to the domain name it is incumbent on the respondent to come forward with concrete evidence rebutting this assertion because this information is "uniquely within the knowledge and control of the respondent"); *see also Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (finding 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 credible evidence that substantiates its claim of rights and legitimate interests in the domain name); *see also 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 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).

Because Respondent has not submitted a response, the Panel accepts all reasonable allegations and inferences in the Complaint as true. *See 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.”); *see also Bayerische Motoren Werke AG v. Bavarian AG*, FA110830 (Nat. Arb. Forum June 17, 2002) (finding that in the absence of a response the panel is free to make inferences from the very failure to respond and assign greater weight to certain circumstances than it might otherwise do).

Nothing in the record establishes that Respondent is commonly known by the <**spectacor.com**> domain name, despite listing its name as “Spectacor Group c/o Lore Kurtzman” in the WHOIS contact information. Respondent is not licensed or authorized to register or use a domain name that incorporates the dominant features of Complainant’s mark. Therefore, the Panel concludes that Respondent does not have rights or legitimate interests in the domain name pursuant to Policy ¶ 4(c)(ii). *See Yoga Works, Inc. v. Arpita*, FA 155461 (Nat. Arb. Forum June 17, 2003) (finding that the respondent was not “commonly known by” the <shantiyogaworks.com> domain name despite listing its name as “Shanti Yoga Works” in its WHOIS contact information because there was “no affirmative evidence before the panel that the respondent was ever ‘commonly known by’ the disputed domain name prior to its registration of the disputed domain name”); *see also Web House USA, Inc. v. eDollarShop Hostmaster*, FA 155180 (Nat. Arb. Forum June 10, 2003) (finding that the respondent was not “commonly known by” the <edollarshop.com> domain name, despite naming itself “eDollarShop,” because the respondent’s website was almost identical to the complainant’s “first in use” website and infringed on the complainant’s marks); *see also Neiman Marcus Group, Inc. v. Neiman-Marcus*, FA 135048 (Nat. Arb. Forum Jan. 13, 2003) (noting that “Complainant has established itself as the sole holder of all rights and legitimate interests in the NEIMAN MARCUS mark,” in holding that the respondent was not commonly known by the <neiman-marcus.net> name, despite naming itself “Neiman-Marcus” in its WHOIS contact information).

Additionally, the <**spectacor.com**> domain name is confusingly similar to Complainant’s SPECTACOR FILMS mark and is used to redirect Internet users to a website advertising links for a wide variety of third-party services and products. The Panel finds that Respondent’s use of the domain name that is confusingly similar to Complainant’s mark to divert Internet users to a website that links to third-party websites and for which Complainant presumably receives click-through fees is 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). *See Disney Enters., Inc. v. Dot Stop*, FA 145227 (Nat. Arb. Forum

Mar. 17, 2003) (finding that the respondent's diversionary use of the complainant's mark to attract Internet users to its own website, which contained a series of hyperlinks to unrelated websites, was neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain names); *see also Black & Decker Corp. v. Clinical Evaluations*, FA 112629 (Nat. Arb. Forum June 24, 2002) (holding that the respondent's use of the disputed domain name to redirect Internet users to commercial websites, unrelated to the complainant and presumably with the purpose of earning a commission or pay-per-click referral fee did not evidence rights or legitimate interests in the domain name).

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

Registration and Use in Bad Faith

Respondent intentionally registered a domain name that incorporates the dominant features of Complainant's SPECTACOR FILMS mark for Respondent's commercial gain. Respondent registered and used the <spectacor.com> domain name in bad faith pursuant to Policy ¶ 4(b)(iv) because Respondent intentionally attempted to attract potential customers from Complainant to Respondent's website by taking advantage of Internet users who are searching under Complainant's SPECTACOR FILMS mark and diverting them to Respondent's commercial website. *See Perot Sys. Corp. v. Perot.net*, FA 95312 (Nat. Arb. Forum Aug. 29, 2000) (finding bad faith where the domain name in question is obviously connected with the complainant's well-known marks, thus creating a likelihood of confusion strictly for commercial gain); *see also Am. Online, Inc. v. Fu*, D2000-1374 (WIPO Dec. 11, 2000) (finding that the respondent intentionally attempted to attract Internet users to his website for commercial gain by creating a likelihood of confusion with the complainant's mark and offering the same services as the complainant via his website); *see also Reuters Ltd. v. Global Net 2000, Inc.*, D2000-0441 (WIPO July 13, 2000) (finding bad faith where the respondent attracted users to a website sponsored by the respondent and created confusion with the complainant's mark as to the source, sponsorship, or affiliation of that website).


Respondent registered the <spectacor.com> domain name with actual or constructive knowledge of Complainant's rights in the SPECTACOR FILMS mark due to Complainant's registration of the mark with the United States Patent and Trademark Office. Registration of a domain name that is confusingly similar to a mark, despite actual or constructive knowledge of another's rights in the mark, is evidence of bad faith registration and use pursuant to Policy ¶ 4(a)(iii). *See Samsonite Corp. v. Colony Holding*, FA 94313 (Nat. Arb. Forum Apr. 17, 2000) (finding that evidence of bad faith includes actual or constructive knowledge of a commonly known mark at the time of registration); *see also Orange Glo Int'l v. Blume*, FA 118313 (Nat. Arb. Forum Oct. 4, 2002) ("Complainant's OXICLEAN mark is listed on the Principal Register of the USPTO, a status that confers constructive notice on those seeking to register or use the mark or any confusingly similar variation thereof.").

The Panel finds that Policy ¶ 4(a)(iii) has been satisfied.

DECISION

Complainant having established all three elements required under the ICANN Policy, the Panel concludes that relief should be **GRANTED**.

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



Honorable Louis E. Condon
Arbitrator

Louis E. Condon, Panelist
Dated: June 14, 2005