



## NATIONAL ARBITRATION FORUM

### DECISION

Doctors Signature Sales Marketing International Corp. d/b/a Life Force International v. John Fike

Claim Number: FA1012001364947

#### PARTIES

Complainant is **Doctors Signature Sales & Marketing International Corp. d/b/a Life Force International** (“Complainant”), represented by **James R. Duby of Duby & Associates, PLC**, Michigan, USA. Respondent is **John Fike** (“Respondent”), California, USA.

#### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**mylifeforceonline.com**>, registered with **MyDomain, Inc.**

#### 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.

The Honorable Charles K. McCotter, Jr. (Ret.) as Panelist.

#### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on December 23, 2010; the National Arbitration Forum received payment on December 23, 2010.

On Dec 27, 2010, MyDomain, Inc. confirmed by e-mail to the National Arbitration Forum that the <**mylifeforceonline.com**> domain name is registered with MyDomain, Inc. and that Respondent is the current registrant of the names. MyDomain, Inc. has verified that Respondent is bound by the MyDomain, Inc. registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy”).

On January 4, 2011, the Forum served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of January 24, 2011 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent’s registration as technical, administrative, and billing contacts, and to postmaster@mylifeforceonline.com. Also on January 4, 2011, the Written Notice of the Complaint, notifying Respondent of the email addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent’s registration as technical, administrative and billing contacts.

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

On January 27, 2011, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed the Honorable Charles K. McCotter, Jr. (Ret.) 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" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2. 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 <**mylifeforceonline.com**> domain name is confusingly similar to Complainant's LIFE FORCE mark.
2. Respondent does not have any rights or legitimate interests in the <**mylifeforceonline.com**> domain name.
3. Respondent registered and used the <**mylifeforceonline.com**> domain name in bad faith.

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

#### **FINDINGS**

Complainant, Doctors Signature Sales & Marketing International Corp. d/b/a Life Force International, sells nutrition and dietary products primarily online. Complainant has been running its nutrition products business since 1985. Complainant holds a trademark registration with the United States Patent and Trademark Office ("USPTO") (Reg. No. 2,207,986 issued December 8, 1998) for its LIFE FORCE mark.

Respondent, John Fike, registered the <**mylifeforceonline.com**> domain name on August 8, 2008. Respondent's disputed domain name resolves to a site offering goods and products in the nutrition and dietary field which 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**

Complainant contends that it has established rights in the disputed mark by registering that mark with a federal trademark authority. Previous panels have found that registration with a federal trademark authority provides affirmative evidence of the registrant's rights in the mark. *See Expedia, Inc. v. Tan*, FA 991075 (Nat. Arb. Forum June 29, 2007) ("As the [complainant's] mark is registered with the USPTO, [the] complainant has met the requirements of Policy ¶ 4(a)(i)."); *see also Intel Corp. v. Macare*, FA 660685 (Nat. Arb. Forum Apr. 26, 2006) (finding that the complainant had established rights in the PENTIUM, CENTRINO and INTEL INSIDE marks by registering the marks with the USPTO). Therefore, the Panel finds that Complainant has established its rights in the mark under Policy ¶ 4(a)(i) by obtaining a trademark registration in the mark with the USPTO.

Complainant also contends that Respondent's <**mylifeforceonline.com**> domain name is confusingly similar to its own LIFE FORCE mark. The disputed domain name incorporates the entire mark while removing a space, adding the generic terms "my" and "online," along with the generic top-level domain ("gTLD") ".com." The Panel finds that Respondent has failed to differentiate its domain name from Complainant's mark by

adding generic terms and a gTLD while removing a space, making the two confusingly similar under Policy ¶ 4(a)(i). *See Gurney's Inn Resort & Spa Ltd. v. Whitney*, FA 140656 (Nat. Arb. Forum Feb. 19, 2003) (“Punctuation and spaces between words are not significant in determining the similarity of a domain name and a mark because punctuation and spaces are not reproducible in a domain name.”); *see also Warner Bros. Entm't Inc. v. Sadler*, FA 250236 (Nat. Arb. Forum May 19, 2004) (finding the addition of generic terms to Complainant's HARRY POTTER mark in the respondent's <shop4harrypotter.com> and <shopforharrypotter.com> domain names failed to alleviate the confusing similarity between the mark and the domain names); *see also 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.”).

The Panel finds that the requirements of Policy ¶ 4(a)(i) have been met.

### **Rights or Legitimate Interests**

The Panel finds that Complainant has met its burden of proof by making a *prima facie* case against Respondent. Previous panels have found that the burden shifts to Respondent to prove it has rights or legitimate interests in the disputed domain name after Complainant has met its *prima facie* burden. *See Domtar, Inc. v. Theriault.*, FA 1089426 (Nat. Arb. Forum Jan. 4, 2008) (“It is well established that, once a complainant has made out a *prima facie* case in support of its allegations, the burden shifts to respondent to show that it does have rights or legitimate interests pursuant to paragraph 4(a)(ii) of the Policy.”). When Respondent failed to file an answer to the initial complaint the Panel may assume that Respondent lacks any rights or legitimate interests in the disputed domain name. *See Am. Express Co. v. Fang Suhendro*, FA 129120 (Nat. Arb. Forum Dec. 30, 2002) (“[B]ased on Respondent's failure to respond, it is presumed that Respondent lacks all rights and legitimate interests in the disputed domain name.”). Nonetheless, the Panel will still examine the entire record to determine whether Respondent does in fact retain rights or legitimate interests in the disputed domain name according to the factors listed in Policy ¶ 4(c).

Complainant asserts that Respondent is not commonly known by the <mylifeforceonline.com> domain name. Respondent has failed to offer any evidence rebutting this assertion. The WHOIS information identifies the registrant as “John Fike.” Based on the evidence in the record, the Panel finds that Respondent is not commonly known by the <mylifeforceonline.com> domain name pursuant to Policy ¶ 4(c)(ii). *See 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); *see also Coppertown Drive-Thru Sys., LLC v. Snowden*, FA 715089 (Nat. Arb. Forum July 17, 2006) (concluding that the respondent was not commonly known by the <coppertown.com> domain name where there was no

evidence in the record, including the WHOIS information, suggesting that the respondent was commonly known by the disputed domain name).

Complainant also asserts that Respondent has not made a *bona fide* offering of goods and services or a legitimate noncommercial or fair use of the <**mylifeforceonline.com**> domain name. Respondent's disputed domain name resolves to a site selling the same type of product Complainant sells. Respondent apparently receives revenue from the sale of these competing goods. Thus, the Panel finds that Respondent is not making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the dispute domain name according to Policy ¶¶ 4(c)(i) and 4(c)(iii). See *Wal-Mart Stores, Inc. v. Power of Choice Holding Co.*, FA 621292 (Nat. Arb. Forum Feb. 16, 2006) (finding that the respondent's use of domain names confusingly similar to the complainant's WAL-MART mark to divert Internet users seeking the complainant's goods and services to websites competing with the complainant did not constitute 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 also *Florists' Transworld Delivery v. Malek*, FA 676433 (Nat. Arb. Forum June 6, 2006) (holding that the respondent's use of the <ftdflowers4less.com> domain name to sell flowers in competition with the complainant did not give rise to any legitimate interest in the domain name).

The Panel finds that the requirements of Policy ¶ 4(a)(ii) have been met.

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

Complainant contends that Respondent's use of the disputed domain name disrupts its business under Policy ¶ 4(b)(iii). Respondent's <**mylifeforceonline.com**> domain name resolves to a site selling goods that directly compete with Complainant's own products. The Panel finds that Respondent's use of the confusingly similar domain name to sell goods that compete with Complainant supports the contention of bad faith use and registration on the part of Respondent, under Policy ¶ 4(b)(iii). See *Spark Networks PLC v. Houlihan*, FA 653476 (Nat. Arb. Forum Apr. 18, 2006) (holding that the respondent's registration of a domain name substantially similar to the complainant's AMERICAN SINGLES mark in order to operate a competing online dating website supported a finding that respondent registered and used the domain name to disrupt the complainant's business under Policy ¶ 4(b)(iii)); see also *DatingDirect.com Ltd. v. Aston*, FA 593977 (Nat. Arb. Forum Dec. 28, 2005) ("Respondent is appropriating Complainant's mark to divert Complainant's customers to Respondent's competing business. The Panel finds this diversion is evidence of bad faith registration and use pursuant to Policy ¶ 4(b)(iii).").

Complainant also contends that Respondent's sale of competing products from its <**mylifeforceonline.com**> domain name constitutes bad faith registration and use. Internet users interested in Complainant's business may become confused as to Complainant's affiliation with the disputed domain name, resolving website, and featured competing products. Previous panels have found that usage of a confusingly similar domain name to commercially profit by selling competing goods is affirmative evidence

of bad faith registration and use under Policy ¶ 4(b)(iv). *See Computerized Sec. Sys., Inc. v. Hu*, FA 157321 (Nat. Arb. Forum June 23, 2003) (finding that the respondent's use of the <saflock.com> domain name to offer goods competing with the complainant's illustrates the respondent's bad faith registration and use of the domain name, evidence of bad faith registration and use pursuant to Policy ¶ 4(b)(iv)); *see also Nokia Corp. v. Private*, D2000-1271 (WIPO Nov. 3, 2000) (finding bad faith registration and use pursuant to Policy ¶ 4(b)(iv) where the domain name resolved to a website that offered similar products as those sold under the complainant's famous mark). Therefore, the Panel finds that Respondent has registered and used the disputed domain name in bad faith pursuant to Policy ¶ 4(b)(iv).

The Panel finds that the requirements of Policy ¶ 4(a)(iii) have been met.

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

  
Honorable Charles K. McCotter  
Arbitrator

The Honorable Charles K. McCotter, Jr. (Ret.), Panelist  
Dated: February 4, 2011