



NATIONAL ARBITRATION FORUM

DECISION

TechSmith Corporation v. Linda Lucia

Claim Number: FA1301001479401

PARTIES

Complainant is **TechSmith Corporation** (“Complainant”), represented by **James R. Duby** of **Duby Law Firm**, Michigan, USA. Respondent is **Linda Lucia** (“Respondent”) ostensibly represented by **Nick Lucia**.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<snagitnow.com>**, registered with **ENOM, 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.

Paul M. DeCicco as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on January 9, 2013; the National Arbitration Forum received payment on January 9, 2013.

On January 14, 2013, ENOM, INC. confirmed by e-mail to the National Arbitration Forum that the **<snagitnow.com>** domain name is registered with

ENOM, INC. and that Respondent is the current registrant of the name. ENOM, INC. has verified that Respondent is bound by the ENOM, 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 15, 2013, the Forum served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of February 19, 2013 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@snagitnow.com. Also on January 15, 2013, the Written Notice of the Complaint, notifying Respondent of the e-mail 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.

On February 4, 2013, Respondent submitted an Extension Request to the Forum. The National Arbitration Forum granted the extension, over the non-consent of Complainant, on February 4, 2013. The Forum gave Respondent until February 19, 2013, to submit a Response. Having received no response from Respondent, the National Arbitration Forum transmitted to the parties a Notification of Respondent Default.

On February 25, 2013, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Paul M. DeCicco 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

Complainant contends as follows:

Complainant's basis for rights is its United States Patent & Trademark Office ("USPTO") trademark registration for the SNAGIT mark. *See* Reg. No. 2,104,800 registered on Oct. 14, 1997.

Respondent's WHOIS information shows that Respondent has registered the <snagitnow.com> domain name no earlier than July 8, 2012.

Respondent's <snagitnow.com> domain name is confusingly similar under Policy ¶ 4(a)(i) since the domain name is merely the SNAGIT mark with the addition of the generic term "now" and the generic top-level domain ".com." The use of a top level domain name and the addition of a random generic term do not create a meaningful distinction between the <snagitnow.com> domain name and the mark.

Respondent lacks rights and legitimate interests in the <snagitnow.com> domain name under Policy ¶ 4(a)(ii). Respondent is not commonly known by the domain name as no evidence in the WHOIS information, or anywhere else, illustrates that Respondent is known as anything other than “Linda Lucia” or “WhoisGuard.”

Respondent is also not using the domain name for a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use. The <snagitnow.com> domain name resolves to a website that is a generic hosting page for competing and unrelated hyperlinks. Respondent could accomplish the purpose of this hyperlink-filled website without the need for Complainant’s registered SNAGIT mark in the domain name.

Respondent registered and is using the <snagitnow.com> domain in bad faith under Policy ¶ 4(a)(iii). Respondent is using the disputed domain name to disrupt Complainant’s business under Policy ¶ 4(b)(iii) by redirecting Complainant’s potential customers to competing products and websites.

Respondent is also seeking to confuse Internet users to affect a commercial gain under Policy ¶ 4(b)(iv). Internet users are likely to mistakenly believe that Complainant sponsors or endorses the content of the <snagitnow.com> domain and follow the hyperlinks therein to goods and services that actually compete with Complainant. Respondent then profits each time an Internet user clicks on a hyperlink by way of click-through advertising revenue.

Respondent’s bad faith is evident through its constructive knowledge of Complainant’s mark via the USPTO registrations. Respondent had a duty to investigate USPTO registrations prior to embodying the SNAGIT mark into its domain names.

B. Respondent

Respondent failed to submit a Response in this proceeding.

FINDINGS

Complainant owns a trademark registration with the USPTO for the SNAGIT mark.

Respondent registered the at-issue domain name after Complainant acquired rights in the SNAGIT mark.

Respondent is not affiliated with Complainant or authorized to use Complainant's trademark.

Respondent's <snagitnow.com> domain name addresses a website that is a generic hosting page for competing and unrelated hyperlinks.

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."

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.

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.").

Identical and/or Confusingly Similar

The at-issue domain name is confusingly similar to a trademark in which Complainant has rights.

Complainant demonstrates rights in the SNAGIT mark by way of its USPTO trademark registration. Complainant's USPTO registration is sufficient evidence of rights in the SNAGIT mark under Policy ¶ 4(a)(i). *See Towmaster, Inc. v. Hale*, FA 973506 (Nat. Arb. Forum June 4, 2007) (finding that "Complainant's timely registration with the USPTO and subsequent use of the BIG TOW mark establishes rights in the mark pursuant to Policy ¶ 4(a)(i).")

The at-issue domain name is merely the SNAGIT mark with the addition of the generic term "now" and the top level domain name ".com." These distinctions between the at-issue domain name and Complainant's trademark are ineffective in removing two from the realm of confusing similarity. Therefore, the Panel concludes that Respondent's <snagitnow.com> domain name is confusingly similar to Complainant's SNAGIT mark under Policy ¶ 4(a)(i). *See Hewlett-*

Packard Co. v. Jinsu Kim, FA 98012 (Nat. Arb. Forum. Sept. 5, 2001) (finding that the generic term “now” in the <hpnw.com> domain name made the domain name confusingly similar to the HP mark); *see also Reese v. Morgan*, FA 917029 (Nat. Arb. Forum Apr. 5, 2007) (finding that the mere addition of the generic top-level domain “.com” is insufficient to differentiate a disputed domain name from a mark).

Rights or Legitimate Interests

Respondent lacks both rights and legitimate interests in respect of the at-issue domain name. Respondent is not authorized to use Complainant’s trademark in any capacity and there are no Policy ¶4(c) circumstances from which the Panel might find that Respondent has rights or interests in respect of the at-issue domain name.

Under Policy ¶ 4(a)(ii), Complainant must first make out a *prima facie* case showing that Respondent lacks rights and legitimate interests in respect of an at-issue domain name and then the burden, in effect, shifts to Respondent to come forward with evidence of its rights or legitimate interests. *See Hanna-Barbera Prods., Inc. v. Entm’t Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006). Since Respondent failed to respond and as discussed below there is no evidence supporting a finding pursuant to Policy 4(c) that Respondent *has* rights or interests in respect of the at-issue domain name, Complainant’s *prima facie* showing acts conclusively.

Respondent is not commonly known as <snagitnow.com>. WHOIS information for the <snagitnow.com> domain name lists the domain names registrant as “Linda Lucia.” Furthermore, the record before the Panel contains no evidence that might otherwise tend to prove that Respondent is nevertheless commonly known by the at-issue domain name despite the contrary WHOIS indication. The Panel therefore concludes that Respondent is not commonly known by the

<snagitnow.com> domain name for the purposes of Policy ¶ 4(c)(ii). See *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 contends, and there is no evidence opposing such contention, that the <snagitnow.com> domain name addresses a website that is a generic hosting page for competing and unrelated hyperlinks. Respondent's use of the domain name in this manner is neither a *bona fide* offering of goods or services under Policy ¶ 4(c)(i), nor a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii). See *TM Acquisition Corp. v. Sign Guards*, FA 132439 (Nat. Arb. Forum Dec. 31, 2002) (finding that the respondent's diversionary use of the complainant's marks to send Internet users to a website which displayed a series of links, some of which linked to the complainant's competitors, was not a *bona fide* offering of goods or services).

Given the forgoing, Complainant satisfies its initial burden and conclusively demonstrates Respondent's lack of rights and lack of interests in respect of the at-issue domain name pursuant to Policy ¶4(a)(ii).

Registration and Use in Bad Faith

As discussed below, there is Policy 4(b) evidence from which the Panel may conclude that Respondent acted in bad faith in registering and using the at-issue domain name under Policy 4(a)(iii).

Complainant's unrebutted allegations and inferences made therefrom urge that Respondent is indifferent to the fact that Respondent's registration and use of the at-issue domain name creates a situation where Internet users seeking

Complainant are instead directed to Respondent's <snagitnow.com> website. Furthermore, Respondent appears to profit whenever a misguided website visitor clicks on one or more of the displayed hypertext links. Some visitors, confused as to the websites ownership, may believe that Complainant sponsors or endorses the website's content. These circumstances demonstrate bad faith registration and use of the at-issue domain name pursuant to Policy 4(b)(iv). *See Red Hat, Inc. v. Haecke*, FA 726010 (Nat. Arb. Forum July 24, 2006) (finding that the respondent engaged in bad faith registration and use pursuant to Policy ¶ 4(b)(iv) by using the disputed domain names to operate a commercial search engine with links to the products of the complainant and to complainant's competitors, as well as by diverting Internet users to several other domain names).

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



Paul Michael DeCicco, Esq.
Arbitrator

Paul M. DeCicco, Panelist

Dated: February 28, 2013