



**NATIONAL ARBITRATION FORUM
DECISION**

TechSmith Corporation v. Madelyn Bradford
Claim Number: FA1402001543582

PARTIES

Complainant is **TechSmith Corporation** ("Complainant"), represented by **James R. Duby** of **DUBY LAW FIRM**, Michigan, USA. Respondent is **Madelyn Bradford** ("Respondent"), USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<snagitsoftware.com>**, registered with **NameSilo, LLC**.

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.

Darryl C. Wilson, as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on February 13, 2014; the National Arbitration Forum received payment on February 13, 2014.

On February 14, 2014, NameSilo, LLC confirmed by e-mail to the National Arbitration Forum that the **<snagitsoftware.com>** domain name is registered with

NameSilo, LLC and that Respondent is the current registrant of the name. NameSilo, LLC has verified that Respondent is bound by the NameSilo, LLC 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 February 17, 2014, the Forum served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of March 10, 2014 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@snagitsoftware.com. Also on February 17, 2014, 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.

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

On March 17, 2014 pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Darryl C. Wilson 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

1. Complainant has rights in the SNAGIT mark under Policy ¶ 4(a)(i).
 - a. Complainant has used the SNAGIT mark in connection with computer software, specifically, screen capture utility software, since at least as early as February 19, 1991.
 - b. Complainant owns registrations for the SNAGIT mark with the United States Patent and Trademark Office ("USPTO") (Reg. No. 2,104,800 registered October 14, 1997).
 - c. Respondent's <snagitsoftware.com> domain name is confusingly similar to Complainant's SNAGIT mark.
 - i. Respondent adds the generic term "software" and the generic top-level domain ("gTLD") ".com."
 - ii. Respondent's disputed domain name contains Complainant's entire SNAGIT mark.
2. Respondent has no rights or legitimate interests in the <snagitsoftware.com> domain name.
 - a. Respondent is not commonly known by the <snagitsoftware.com> domain name.
 - i. Complainant used its SNAGIT mark for over 23 years prior to Respondent's registration of the disputed domain name.

- ii. The WHOIS information for Respondent's disputed domain name lists "Madelyn Bradford" as registrant.
 - b. Respondent is not making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.
 - i. Respondent's disputed domain name resolves to a website that competes with Complainant's business by offering links and advertisements for products and services similar to Complainant and thereby disrupting complainant's business.
 - ii. Respondent uses the disputed domain name for commercial gain by attracting Internet users to its website by confusion them as to Complainant's affiliation with Respondent's disputed domain name.
 - iii. Respondent's disputed domain name resolves to a website providing information and promotions to technology related products and services, and is thereby collecting pay-per-click revenue.
- 3. Respondent registered and is using the <snagitsoftware.com> domain name in bad faith.
 - a. Respondent uses the dispute domain name to divert Internet users to its website.
 - b. Respondent uses the disputed domain name to attract Internet users to the website resolving from the disputed domain name that features advertisements from which Respondent is collecting revenue.
 - c. Respondent had actual notice of Complainant and Complainant's mark when it registered the disputed domain name.

B. Respondent

Respondent failed to submit a Response in this proceeding.

FINDINGS

Complainant is TechSmith Corporation of Okemos, MI, USA. Complainant is the owner of a 1997 USA registration for the mark SNAGIT which it purports to have used continuously since 1991 in connection with its computer software products and services. Complainant also owns the domain name <snagit.com> as well as a USA trademark registration for the mark SNAGIT.COM.

Respondent is Madelyn Bradford of Chesapeake, VA, USA. Respondent's registrar's address is listed as Phoenix, AZ, USA. Respondent appears to have registered the disputed domain name on or about December 9, 2013.

Preliminary issue: Consent to Transfer

The National Arbitration Forum was copied on documentation submitted from Respondent to Complainant, which was identified in this proceeding as "Other Correspondence." The Other Correspondence was a series of emails from the Respondent purporting to consent to the transfer of the <snagitsoftware.com> domain name and seeking a way to facilitate the transfer. Other email submitted originated with Respondent's registrar containing similar message content. Although the Panel is under no obligation to acknowledge any such documents, the panel confirms their submission and finds that the facts warrant action based on the documentation. That conclusion is due to the fact that the emails seek the same outcome as the relief requested by the Complainant, namely transfer of the disputed domain from the Respondent to the Complainant. The emails together seek guidance in the most expeditious way of completing the transfer.

Because Respondent's consent to transfer the <snagitsoftware.com> domain name to Complainant occurred after the initiation of this proceeding, NameSilo, LLC placed a hold on Respondent's account and therefore Respondent cannot transfer the disputed domain name while this proceeding is still pending. The Panel finds that in a circumstance such as this, where Respondent has not contested the transfer of the disputed domain name but instead agrees to transfer the domain name in question to Complainant, the Panel may forego the traditional UDRP analysis and order an immediate transfer of the <snagitsoftware.com> domain name. *See Boehringer Ingelheim Int'l GmbH v. Modern Ltd. – Cayman Web Dev.*, FA 133625 (Nat. Arb. Forum Jan. 9, 2003) (transferring the domain name registration where the respondent stipulated to the transfer); *see also Malev Hungarian Airlines, Ltd. v. Vertical Axis Inc.*, FA 212653 (Nat Arb. Forum Jan. 13, 2004) ("In this case, the parties have both asked for the domain name to be transferred to the Complainant . . . Since the requests of the parties in this case are identical, the Panel has no scope to do anything other than to recognize the common request, and it has no mandate to make findings of fact or of compliance (or not) with the Policy."); *see also Disney Enters., Inc. v. Morales*, FA 475191 (Nat. Arb. Forum June 24, 2005) ("[U]nder such circumstances, where Respondent has agreed to comply with Complainant's request, the Panel felt it to be expedient and judicial to forego the traditional UDRP analysis and order the transfer of the domain names.").

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

See above; Preliminary issue: Consent to Transfer

Respondent has consented to transfer the disputed domain name.

Rights or Legitimate Interests

See above; Preliminary issue: Consent to Transfer

Respondent has consented to transfer the disputed domain name.

Registration and Use in Bad Faith

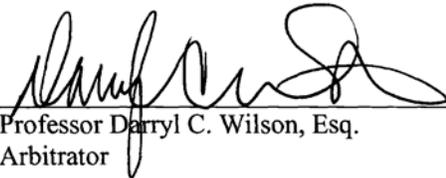
See above; Preliminary issue: Consent to Transfer

Respondent has consented to transfer the disputed domain name.

DECISION

Because the Respondent has consented to transfer the disputed domain name the Panel concludes that Complainant's requested relief shall be **GRANTED**.

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



Professor Darryl C. Wilson, Esq.
Arbitrator

Darryl C. Wilson, Panelist

Dated: March 31, 2014