Address: 7108 Crossroads Blvd, Suite 325
Address: Brentwood, TN 37067
Telephone (615)221-9890
fax (615)221-9791
E-mail jean@harrisonsbirdfoods.com

vs.

RESPONDENT: Asia Ventures, Inc.
Address: GPO 11136
Address: Central HK
Telephone 852.9333.333
E-mail asiasupport@asiaventures.com

Before Joseph J. Ferretti, Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR on January 28, 2004 and, after review for administrative compliance, served on the Respondent on March 31, 2004. The Respondent did not file a Response on or before April 20, 2004. I was appointed Arbitrator pursuant to the Uniform Domain Name Dispute Resolution Policy (“UDRP”) and Rules promulgated by the Internet Corporation for Domain Names and Numbers (ICANN). Upon the written submitted record including the Complaint, I find as follows:

FINDINGS

Respondent’s registered domain name, harrisonsbirdfood.com, was registered with IARegistry on January 4, 2002. In registering the name, Respondent agreed to submit to this forum to resolve any dispute concerning the domain name, pursuant to the UDRP.

The UDRP provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

i. Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

ii. Respondent has no rights or legitimate interests in respect of the domain name; and

iii. Respondent’s domain name has been registered and is being used in bad faith.

Although Respondent failed to respond to the Complaint, and is therefore in default, the above factors will nevertheless be analyzed under the record before the Arbitrator as Paragraph 4(a) requires that each of these findings be made in order for Complainant to prevail.

IDENTITY/CONFUSING SIMILARITY: Complainant alleges that the domain name: harrisonsbirdfood.com is identical or confusingly similar to Complainant’s trademark, HARRISON’S BIRD FOODS (and design) U.S. Reg. No. 2,263,635, which applies to organic bird food, registered with the United State Patent and Trademark Office on July 20, 1999.
The domain name, harrisonsbirdfood.com, is simply the singular of the word portion of Complainant’s registered trademark, (i.e. harrisonsbirdfood.com v. HARRISON’S BIRD FOODS). While Complainant’s registered trademark also contains a design, because a design cannot be replicated in a domain name, that portion of Complainant’s registered trademark is not relevant to the immediate analysis.

I therefore conclude that the registered domain name is identical or confusingly similar to Complainant’s protected mark.

RIGHTS AND LEGITIMATE INTERESTS: Complainant alleges that Respondent has no rights or legitimate interests with respect to the domain name at issue. In support for this allegation, Complainant notes that Respondent offers no product or product lines associated with HARRISON’S BIRD FOODS, rather Respondent has redirected its domain name to another website. Complainant points out that Respondent has simply registered the singular of Complainant’s domain name for the sole purpose of taking advantage of the traffic that is looking for Complainant’s website (harrisonsbirdfoods.com), but has simply misspelled the Complainant’s trademark.

UDRP Paragraph 4(c) provides that Respondent’s rights or legitimate interests in a domain name may be demonstrated, without limitation, by showing that (a) before notice to Respondent of the dispute, Respondent has used, or made demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or (b) Respondent has been commonly known by the domain name; or (c) Respondent is making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Respondent did not respond to the Complaint, and therefore, there is no support that Respondent’s registration of the domain name is legitimate pursuant to the above listed factors (a) or (b). With regard to factor (c), the website located at Respondent’s domain name (harrisonsbirdfood.com) is a website containing a general directory listing a wide variety of product and service providers. Use of Complainant’s misspelled trademark as a domain name diverts customers who are looking for Complainant’s website, but have misspelled Complainant’s trademark, and directs such people to Respondent’s website with the intent that such people will use the directory offered at that website – which is a commercial gain for Respondent.

I therefore conclude that Respondent does not have rights or legitimate interests with respect to the domain name at issue.

BAD FAITH: In support of the contention of Respondent’s bad faith registration and use, Complainant notes that Respondent has simply registered the misspelling of its registered trademark to divert traffic to its general directory website for commercial gain. Complainant notes that it also suffers harm because it has had inquiries whether it has gone out of business or has been hacked. Complainant asserts that not only has Respondent’s registration been accomplished for purposes of Respondent’s commercial gain, this has also disrupted its business as it believes it has lost sales based upon Respondent’s registration of the domain name.

Paragraph 4(b) of the UDRP provides that indications of bad faith include, without limitation, (a) registration for the purposes of selling, renting or transferring the domain name to the Complainant for value in excess of Respondent’s cost; (b) a pattern of registration in order to prevent Complainant from reflecting the mark in a corresponding domain name; (c) registration for the primary purpose of disrupting the business of a competitor; or (d) an intentional attempt to attract, for commercial gain, Internet users to Respondent’s web site by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation or endorsement of Respondent’s web site or location, or of a product or service on Respondent’s web site or location.

As discussed above, Respondent has registered the misspelling of Complainant’s trademark as a domain name in an intentional attempt to attract internet users who are looking for Complainant’s website, but mistakenly type in Respondent’s domain name. These internet users are then directed to Respondent’s directory website in hopes that such users will use Respondent’s website, once they arrive there. Respondent intends to financially benefit (experience commercial gain) from the use of its website by the unintended traffic. This type of confusion is known as initial interest confusion. See, Brookfield Communications, Inc. v. West Coast Entertainment Corp., 174 F.3d 1036 (9th Cir. 1999). In this case, it has been accomplished by the registration of a misspelling of Complainant’s registered trademark – also referred to as typosquatting.
I therefore conclude that Respondent did register and use the domain name in bad faith, as that term is defined in the ICANN Policy.

CONCLUSION

In light of my findings above that (a) the registered domain name is identical or confusingly similar to Complainant’s protected mark; (b) Respondent does not have rights or legitimate interests with respect to the domain name at issue; and (c) Respondent did register and use the domain name in bad faith, as that term is defined in the ICANN Policy, I find in favor of the Complainant.

REMEDY

Complainant’s request to transfer the domain name harrisonsbirdfood.com is hereby GRANTED. The domain name shall be transferred to Complainant HBD, International, Inc.

/Joseph J. Ferretti/  
Signature of Arbitrator

April 29, 2004  
Date