PROCEDURAL HISTORY

The Complaint was filed with CPR on January 14, 2005 and, after review for administrative compliance, served on the Respondent on January 25, 2005. The Respondent did not file a Response. 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 record including:


(2) A declaration of Kenneth Friedl, an officer of Complainant in support of the complaint and certifying that the information contained therein is to the best of his knowledge complete and accurate, that the complaint is not being presented for an improper purpose such as to harass and that the assertions in this complaint are warranted under the rules and under applicable law as it now exists or as it may be extended by good faith and reasonable argument. This declaration was executed on December 10, 2004. Attached as Appendices to the complaint are the following documents:
1. Printouts of Ultra’s website featuring the GLARE polishing products.
2. USPTO report on the GLARE trademark.
3. “whois” database report for the glare.com domain name.
4. ENOM Inc. registration agreement.

(3) Notice by email dated January 25, 2005 from ENOM Compliance to Michael Schrieber, Panels Management Group CPR Institute for Dispute Resolution notifying that in accordance with uniform dispute resolution policy the domain name glare.com had been placed under locked status and other formal matters in accordance with the policy.

(4) Document setting out procedural history of the claim.

(5) Email dated February 16, 2005 from the Respondent (mydomain@dreamwiz.com) to Allen Glover.

I FIND AS FOLLOWS:

1. Respondent’s domain name is identical to the trademark GLARE™ in which Complainant has rights.
2. Respondent does not have rights or legitimate interests in respect of the domain name www.glare.com.
3. Respondent’s domain name has been registered and used in bad faith as that term is defined in the ICANN policy.
4. Complainant’s request to transfer the domain name www.glare.com is hereby granted. The domain name should be transferred to the Complainant Ultra 2000 Manufacturing International, Inc.

DETAILED FINDINGS

Respondent’s registered domain name www.glare.com was registered with the Registrar ENOM Inc. on 10 May 2000 to expire on 10 May 2006. In registering the name the 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:

1. Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent as no rights or legitimate interests in respect of the domain name; and
3. Respondent’s domain name has been registered and is being used in bad faith.

IDENTITY/CONFUSING SIMILARITY: The Complainant alleges that www.glare.com is identical or confusingly similar to the Complainant’s trademark GLARE™ which applies to surface polish for automobiles, aircraft and watercraft and was registered on 29 April 2003 (Complaint Appendix 2).
There is no doubt that the domain name www.glare.com in so far as it uses the word “glare” is identical or confusingly similar to the Complainant’s trademark “GLARE”. Apart from the difference between “glare” (lower case) and GLARE (higher case) the relevant name and mark are clearly identical. I regard that difference, in the circumstances, as of no significance.

I THEREFORE CONCLUDE that the registered domain name www.glare.com is identical or confusingly similar to Complainant’s protected mark GLARE™.

RIGHTS AND LEGITIMATE INTERESTS:

Complainant alleges that the Respondent has no rights or legitimate interests with respect to the domain name at issue. It has annexed to its complaint a printout of its website which features the products it sells under the GLARE™ trademark.

In support of this allegation Complainant by verified statement says that it is a manufacturer of polishing products for autos, boats and other vehicles under the trade name “GLARE”, that it is currently distributing its “GLARE” polishing products in 16 countries and is growing and that it is commonly known by the name of “GLARE™ polishing products”. It says that Respondent has not made any bona fide offering of goods or services in connection with the domain name nor does it own any trademark or service mark rights in the name “Glare” or made any actual legitimate non-commercial use of the domain name.

Respondent has not filed any response in answer to the complaint. The only communication of significance received from Respondent is an email from it to Mr Allen Glover the relevant part of which is that “Glare” is a general noun. I therefore have no evidence of any use by Respondent of the domain name since its registration. The reference to “glare” being a noun has no ultimate relevance because “GLARE™” the trademark has clearly been used by Complainant on its products over a period. The print out of Complainant’s website illustrates the use Complainant is making of it. In my view it is not descriptive of the goods in respect of which it is registered and used and is adapted to distinguish those goods.

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 preparation 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 non-commercial 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.

I have nothing before me to establish that any of these matters has occurred, that is to say any use of the domain name, that Respondent was commonly known by it or has made or is making any legitimate non-commercial or fair use of it without the intent referred to in (c) or at all. Complainant alleges to the contrary and verifies its allegation by the declaration of Kenneth Friedl.

In the circumstances, I consider I can come to no other conclusion than that Respondent makes no claims and has no rights in this respect.

I THEREFORE CONCLUDE that the 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 held the domain name since the year 2000 yet has made no use of it and that in the circumstances Respondent’s interest in acquiring the domain name could only have been for the purpose of
selling the said domain name, a classic case of “cyber squatting”. I have nothing before me to answer that allegation which has been verified.

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 the 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 website by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website or location, or of a product or service on Respondent’s website or location.

I have nothing before me to support (b), (c) or (d). However in the circumstances and in the absence of any evidence or even assertion to the contrary and in the absence of any evidence of use or assertion of use I think there is a strong inference and it is open to me to infer that registration of the domain name www.glare.com was made by Respondent for the purposes of selling, renting or transferring the domain name to Complainant for value in excess of Respondent’s costs and I so infer.

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 favour of the Complainant.

REMEDY

Complainant’s request to transfer the domain name www.glare.com is hereby GRANTED. The domain name shall be transferred to Ultra 2000 Manufacturing International, Inc.

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Signature of Arbitrator Date