COMPLAINANT Cruiseship Centers International, Inc.
Address  555-1111 West Hastings Street
Address  Vancouver, BC V6E 2J3
Telephone  604-685-1445
fax  604-685-1245
E-mail  jfelice@cruiseshipcenters.com

vs.

RESPONDENT Uniglobe Gateway Travel
Address  7523 Little Avenue, Suite 103
Address  Charlotte, NC 28226
Telephone  704-542-4242
fax  704-542-9442
E-mail  john@uniglobeto.com

Before Harold D. Field, Jr., Arbitrator

PROCEDURAL HISTORY

As to the domain name cruiseshipcenter.com:
The Complaint was filed with CPR on January 15, 2003 and, after review for administrative compliance, served on the Respondent Uniglobe Gateway Travel, the registrant of cruiseshipcenter.com, on January 28, 2003. The Respondent DID file a Response on or before February 18, 2003. 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 correspondence from complainant dated January 15 and January 24, 2003, a complaint form, a verification response from Verisign, Inc., Respondent’s response dated February 18, 2003, a letter from Respondent to Complainant dated February 5, 2001, supplemental information from both parties dated February 26 and February 27, 2003, and administrative e-mails to and from CPR, I make the findings set forth below with regard to the domain name cruiseshipcenter.com:

As to the domain name cruiseshipcenters.net:
The Complaint was filed with CPR on January 15, 2003. The complaint form with respect to the domain name cruiseshipcenters.net listed the respondent as UNIGLOBE Summit View Travel of Puyallup, WA. During the course of administrative review, Complainant wrote to CPR on January 24, 2003 requesting that the complaint be amended “to address the two Domains registered by UNIGLOBE.” CPR evidently understood that Respondent Uniglobe Gateway Travel was the owner of the registrations for both cruiseshipcenter.com and cruiseshipcenters.net, and accordingly served only Respondent. The file provided to the arbitrator, however, includes the verification response from Verisign, Inc. which states that the registrant of the domain name cruiseshipcenters.net is Uniglobe CruiseShipCenter of Puyallup, WA. That is consistent with the whois database which also shows the registrant of the domain name cruiseshipcenters.net as UNIGLOBE CruiseShipCenter of Puyallup, WA. Supplemental information provided by Complainant on February 26, 2003 states (or at least intimates) that Uniglobe CruiseShipCenter has changed its name to Uniglobe Travel International, Inc. and is a franchisor which has among its independent franchisees Uniglobe Gateway Travel and Uniglobe Summit View Travel. Since no notice of the present proceeding was given to the franchisor or to any franchisee other than Respondent Uniglobe Gateway Travel, the arbitrator concludes that this proceeding has not yet been duly commenced as to the domain name cruiseshipcenters.net, that the owner/registrant of that domain name has not received notice or an opportunity to be heard, and that the arbitrator does not yet have jurisdiction to make any decision regarding that domain name.

FINDINGS

Respondent’s registered domain name, cruiseshipcenter.com, was registered with Network Solutions, Inc. on December 23, 1999. 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.

IDENTITY/CONFUSING SIMILARITY: Complainant alleges that cruiseshipcenter.com is identical or confusingly similar to Complainant’s trademark, CRUISESHIPCENTERS, which applies to franchising services, namely, offering technical assistance in the establishment of travel agencies, and also travel agency and travel arrangement services. Complainant’s trademark is registered on the Supplemental Register in the United States Patent and Trademark Office, claiming first use and first use in commerce in 1994. The U.S. application was filed on April 6, 2001. Complainant’s trademark is also registered in Canada. Complainant asserts that it has been using the trademark CRUISESHIPCENTERS since 1987, and that use of the trademark is substantial. Although the trademark is highly suggestive, if not descriptive, it seems clear that complainant has at least some rights in the trademark. The difference between the plural trademark and the singular domain name is inconsequential. 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 is a competitive travel agency which has no rights or legitimate interests with respect to the domain name at issue. In support of this allegation, Complainant notes that Respondent’s franchisor was using the expression “cruiseshipcenters” to refer to aspects of the franchisor’s CruiseShipCenters franchise system for some unspecified period prior to September 15, 2000. Complainant states that on that date Complainant entered into a Settlement Agreement with Respondent’s franchisor providing that Respondent’s franchisor would cease use of the name “Cruiseshipcenters” and would have until March 31, 2001 to phase out of the use of such name. Respondent, on the other hand, notes that it registered the domain name cruiseshipcenter.com on December 23, 1999, long before the agreed-upon phase out date. It seems reasonable to infer that, at the time of registration of the domain name, the right to use the name (in the plural if not in the singular) was probably among the rights granted to Respondent by its franchisor. While Respondent’s franchisor may not at that time have been entitled to grant such rights to its franchisee, Complainant has not made such a showing here.

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.

Complainant asserts that Respondent was aware of Complainant’s use of the trademark CRUISESHIPCENTERS before Respondent registered the domain name cruiseshipcenter.com on December 23, 1999. Respondent, on the other hand, says “We were not aware of any trademark for the name ‘cruiseshipcenters’. We did know of CruiseShipCenters in Canada and through our franchise affiliation with Uniglobe International, purchased the franchise opportunity to market cruises.” It is unclear to the arbitrator whether CruiseShipCenters in Canada refers to Complainant or to an affiliate of Respondent’s franchisor. In either event, the record does not convincingly show that Respondent had notice of the dispute before approximately January, 2001 when Complainant wrote a letter (not submitted by either party) to which Respondent replied on February 5, 2001. However, despite having evidently registered cruiseshipcenter.com prior to notice of the dispute, respondent did not use (and does not claim to have prepared to use) the domain name or a corresponding name until December, 2002. Both parties confirm the lack of activity by Respondent until it began to host a website at cruiseshipcenter.com at that time. Even though Respondent, by virtue of its franchise arrangement, seems to have had a plausible claim of right to register the domain name in question in 1999, Respondent’s non-use and virtual abandonment of the domain name for three years from the registration date of December 23, 1999 until the first use date of December, 2002 (nearly two years after receipt of notice of the dispute) means that Respondent does not meet the test of UDRP Paragraph 4(c).

I therefore conclude that Respondent DOES NOT now 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’s letter to Complainant dated February 5, 2001 offered to transfer the domain name cruiseshipcenter.com to Complainant for $10,000. Respondent relies on the lack of any response to its letter from February 5, 2001 until January 15, 2003 when Complainant gave notice of the filing of the present proceeding.

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.

Complainant asserts that it has been using the domain name “cruiseshipcenters.com” (i.e., the plural form) since 1997. It is not realistic to believe that Respondent registered the domain name “cruiseshipcenter.com” (i.e., the singular form) on December 23, 1999 without knowing that the plural form was already in use. The timing and surrounding circumstances support a finding that the registration – even if authorized by Respondent’s franchisor - was, at least in part, for the purpose of selling, renting or transferring the domain name to Complainant for value in excess of Respondent’s cost. Furthermore, the commencement of use of the singular form domain name in December, 2002, must have been accompanied by the expectation that there would be consumer confusion between the singular form and the plural form which had been used by Complainant for the preceding five years, and this supports a finding of an intentional attempt to attract, for commercial gain, Internet users to Respondent’s web site as a result of such confusion.

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 “cruiseshipcenter.com” is hereby GRANTED. The domain name shall be transferred to Complainant CruiseShip Centers International, Inc.

/s/ Harold D. Field, Jr.
Signature of Arbitrator

March 3, 2003
Date