COMPLAINANT:
Smokey Mountain Knife Works, Inc.
P.O. Box 4430
Sevierville, Tennessee 37864
Contact Person: Susan B. Flohr, Esq.
Telephone: (202) 530-7470
FAX: (202) 463-6915
E-Mail: flohr@blankrome.com

File No.CPR00 0312
Date of Commencement: October 5, 2004
Domain Name: <ekniveworks.com>
Registrar: Key-Systems GmbH
Arbitrator: Hon. Sherman G. Finesilver

vs.

RESPONDENT:
Party Night, Inc. & Peter Carrington
Jan Luykenstraat 58
Amsterdam 1071 CS
Netherlands
Contact Person: Peter Carrington
Telephone: +20.573.0730
FAX: Unavailable
E-Mail: oofeelsogood@clublife.nl

Before: Hon. Sherman G. Finesilver, Arbitrator

The Complaint was filed with CPR on October 5, 2004, and after review for administrative compliance, was timely served on the Respondent. 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 submitted record filed by Complainant, I find as follows:
FINDINGS

Respondent’s registered domain name, <ekniveworks.com>, was registered with Key-Systems GmbH on November 22, 2002. In registering the name, Respondent agreed to submit to this forum to resolve any dispute concerning the domain name, pursuant to the UDRP.

I further find:

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 <ekniveworks.com> is identical or confusingly similar to Complainant’s trademark, <eknifeworks.com>, which applies to goods (i.e., knives of many varieties). I agree.

ADDITIONAL FINDINGS

The Arbitrator further finds as follows:

1. The Complaint is based upon Complainant’s common-law trademark rights in the term <eknifeworks.com>, as used on the Internet since January 5, 2000. The Complainant has used the trademark <eknifeworks.com> and Design, as displayed on its website at such Internet address, to sell a variety of knives and related products.

2. Complainant, Smokey Mountain Knife Works, Inc., registered the Internet domain name <eknifeworks.com> with Network Solutions, Inc., on January 5, 2000. The Complainant has used the trademark <eknifeworks.com> and Design and domain name to sell knives and related products on the Internet since that time. The Internet address is a commercial/retail site that sells various types of knives.
The Respondents, Party Night, Inc. and Peter Carrington, registered the domain name <ekniveworks.com> with Key-Systems GmbH on November 22, 2002. It is unrefuted that, upon entering this domain name, an Internet user is automatically redirected to <http://amaturevideos.nl/hanky-panky-party.html>, which is a pornographic website. It is also unrefuted that the Pornographic Website contains graphic pictures of naked women performing various sexual acts, the pictures containing such subtitles as CELEB PORN, YOUNG AND SLUTTY, THE XXX JACKPOT, and EXTREME PENETRATION. A printout of the Pornographic Website showing examples of the above is attached as Appendix E to the Complaint filed herein.

3. Complainant is the owner of the trademark <eknifeworks.com>. Respondent’s domain name, <ekniveworks.com>, is substantially identical to the Complainant’s, except that the plural form of the word “knife” is used. The result is a difference of one letter between the two domain names, where the Complainant’s domain name has an “f” and the Respondent’s a “v.” Respondent’s domain name is thus confusingly similar to Complainant’s.

4. Respondent has no legitimate interest in the domain name <ekniveworks.com>. It is significant that the Respondent is not commonly known by the name, nor has it otherwise used the name in connection with any offering of goods or services.

The Internet site for <ekniveworks.com> has no content. The domain name, which refers to knives, is wholly unrelated to knives and is not suggestive of pornography or the content provided on the Pornographic Website. It is misleading users as to its content and attracting people to its website in a deceptive manner. Such misdirected users are likely to be prospective purchasers of the Complainant’s products offered for sale on its <eknifeworks.com> website. It is realistic that potential users may mistakenly access the Respondent’s website by error in keystroke or mistaken recollection of the spelling of Complainant’s domain name.
THE DOMAIN NAME WAS REGISTERED IN BAD FAITH

The Respondent registered the domain name <ekniveworks.com> on November 22, 2002, almost three years after the registration of <eknifeworks.com> by the Complainant. The Respondent’s domain name is wholly unrelated to the content provided therein, and in fact, misleads Internet users as to its content. The Respondent is attempting to attract, for commercial gain, Internet users searching for Complainant’s website.

I have discussed Respondent’s bad faith registration and use in above findings.

I FIND AND CONCLUDE that Respondent did register and use the domain name <ekniveworks.com> in bad faith.

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.

I FIND IN FAVOR OF THE COMPLAINANT.

The intentional misspelling of a key word by Respondent does not lend support to continuous use by a Respondent or entitlement to domain protection.

Respondent’s use and registration of the name without appropriate authorization for the purpose of directing users to advertisements lends support to the contention of Respondent’s bad faith. Respondent’s bad faith is shown by Respondent’s attempt to create the likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation or endorsement of Respondent’s website and the activities listed and promoted therein, and improperly directs consumers into non-legitimate commercial purposes.
REMEDY

Complainant’s request to transfer the domain name registration to Complainant is hereby GRANTED. The domain name <ekniveworks.com> shall be transferred from Respondent to Complainant Smokey Mountain Knife Works, Inc. Respondent shall have no further claim or benefit in and for the domain name.

ENTERED in Denver, Colorado on the 12th day of November, 2004.

/ s / Sherman G. Finesilver

Hon. Sherman G. Finesilver, Arbitrator

Law Office of Judge Sherman G. Finesilver (Ret.)
3515 S. Tamarac Drive, Suite 200
Denver, Colorado  80237
Telephone: (303) 785-2815 or 757-5000
Fax: (303) 689-9627
E-Mail: afinesilver@worldnet.att.net