PROCEDURAL HISTORY

The Complaint was filed with CPR on May 28, 2003 and, after review for administrative compliance, served on the Respondent on May 28, 2003. The Respondent did not serve a Response on or before the due date, June 18, 2003. CPR sent Respondent notice of his failure to provide a Response and that a single Panelist would be appointed pursuant to Uniform Domain Name Dispute Resolution Policy (“UDRP”) Rule 5(e). I was appointed Arbitrator pursuant to the UDRP Rules promulgated by the Internet Corporation for Domain Names and Numbers (ICANN). Upon the written submitted record including the Complaint (dated May 28, 2003), and email correspondence regarding whois information from the registrar (dated May 27, 2003), I find as follows:

FINDINGS

Respondent’s registered domain name, surefiremarketing.net, was registered with Register.com on April 11, 2003. In registering the name, Respondent agreed to submit to this forum to resolve any dispute concerning the domain name, pursuant to the UDRP.

As there has been no Response filed with CPR, the Panelist will "proceed to a decision on the complaint." UDRP Rule14 (a). This does not mean, however, that Complainant is excused from satisfying the requirements of the Policy.

The UDRP Policy 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 is required under Paragraph 4(a)(i) of the Policy to prove that the domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights. Under the heading "Specify the trademark or service marks on which the complaint is based," the Complaint states only "Surefire Marketing, Inc. and surefiremarketing.com sells resources and tools for entrepreneurs and business owners." No further information regarding Complainant's asserted trademark or service mark rights is provided. No trademark registration is cited. Complainant can only be relying on common law rights which might arise from use.

The name of Complainant's business, Surefire Marketing, Inc., is its trade name. Trade names do not necessarily function as trademarks or service marks. The web page <surefiremarketing.com> features the trade name prominently as well as various books and seminars offered for sale. The only apparent trademark use of "Surefire" appears on a product offering near the bottom of the page, being given away, entitled "Surefire Secrets Ezine." This use of "Surefire" in combination with these other words in this single instance is not enough to demonstrate trademark or service mark rights in "Surefire Marketing." The word "Surefire" is commonly used in a variety of context and "Marketing" is a generic word. Complainant has failed to demonstrate that the domain name in question is "identical or confusingly similar to a trademark or service mark in which Complainant has rights."

The Complaint provides more detail about the alleged wrongdoing by respondent—that he "hacked" into the complaint's merchant account and stole customer information, which he then used to perpetrate a criminal fraud as part of a scheme to steal money or identities. The U.S. Secret Service is allegedly investigating the conduct. Complainant advises that it succeeded in "shutting down" the website that had appeared at <surefiremarketing.net> through the Digital Millennium Copyright Act (DMCA) procedure under 17 U.S.C.§ 512(g).

Complainant may well have a legal claim against Respondent, but it has not alleged a viable UDRP claim. The Complaint fails to satisfy the requirement of showing trademark or service mark rights, an essential element of a UDRP claim under paragraph 4(a)(i) of the Policy. I therefore conclude that the registered domain name in question is not identical or confusingly similar to a trademark or service mark in which Complainant has asserted rights.

As I have determined that Complainant has failed to satisfy the first required finding of UDRP Paragraph 4(a), there is no need to consider whether the requirements of paragraph 4(a)(ii) and (iii) have been met.

CONCLUSION

In light of my finding that the registered domain name is not identical or confusingly similar to a trademark or service mark in which Complainant has rights, I find in favor of the Respondent.

REMEDY

Complainant’s request to transfer the domain name surefiremarketing is hereby DENIED.

________________________     ______________________
Signature of Arbitrator        Date