PROCEDURAL HISTORY

The Complaint was filed with CPR on September 18, 2000 and, after review for administrative compliance, served on the respondent on September 19, 2000. The Respondent DID file a Response on or before an exact date which is unknown to the arbitrator, but which is deemed to be timely for the purposes of this proceeding. 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 1) Complaint, with attachments A-H; 2) Response; 3) Letter of Sept. 21, 2000 from Register.com, I find as follows:

FINDINGS

Respondent’s registered domain name, azdailystar.com, was registered with Register.com on December 1, 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 Complaint to prevail:

i. Respondent’s domain name must be 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 azdailystar.com is identical or confusingly similar to Complainant’s trademark, The Arizona Daily Star, which applies to Newspapers distributed in print and on-line; electronic and media publications.

Although the complaint form refers to other trademarks and/or service marks, the only registration submitted to the arbitrator is found at Exhibit “E” to the Complaint. That registration includes the word “The” before “Arizona Daily Star.” It is noted that the federal registration was first submitted on March 9, 2000, after the registration date of the disputed domain name. However, the registration shows a first use in 1879 and there is no evidence before the arbitrator to contradict actual usage in commerce for a significant period of time. The exemplars submitted to the arbitrator do not demonstrate actual usage for an online service prior to the registration date of the disputed domain name. However, the arbitrator does take notice of the fact that AZ is the official abbreviation for Arizona. Taking into account the information before the arbitrator it is determined that azdailystar.com is confusingly similar to The Arizona Daily Star in actual use on the internet.

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 interest with respect to the domain name at issue. In support for this allegation, Complainant notes that there has been no preparations by or on behalf of the Respondent for bona fide use of the disputed domain name. The Arbitrator finds no evidence in the record to support the speculation of Complainant that Respondent intends to sell or rent the disputed domain name to Complainant or its competitors. Respondent, on the other hand, admits that there has been no actual use of the disputed domain name but notes that there is no evidence of an intent to sell or rent the disputed domain name.

UDRP Paragraph 4(c) provides that Respondent’s rights or legitimate interests in a domain name may be demonstrated, without limitation, by (a) before notice to Respondent of the dispute, Respondent’s use of, or demonstrable preparations to us, 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 admits that there has been no actual use. Respondent indicates that due to other priorities there has been no actual preparation for use. Significantly, Respondent has not provided any evidence, or even any speculation, about Respondent being commonly known by that name or having a legitimate noncommercial or fair use intention in relation to the disputed domain name.

I therefore conclude that Respondent DOES NOT have rights or legitimate interest 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 speculation about a bad faith intent. Respondent notes that there is no evidence of a bad faith intent.

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.

Respondent has not shown any good faith need for retention of the domain name. However, the current standards require that the Complainant affirmatively demonstrate bad faith under specified guidelines. Regarding 4(b)(a), there is no factual basis for the speculation about the intentions of the Respondent. There was no evidence of communication between the parties. Nor was there any evidence that the Respondent has engaged in such conduct in other circumstances. Regarding 4(b)(b), (c) and (d), there was no evidence nor was there even any argument which would address those grounds. Of course, this would not prevent such a finding if, in the future, there is evidence that Respondent has proceeded in bad faith.

I therefore conclude that Respondent DID NOT 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 interest with respect to the domain name at issue; and (c) Respondent DID NOT register and use the domain name in bad faith, as that term is defined in the ICANN Policy. As such, under the current ICANN Policy, I find in favor of the RESPONDENT.

REMEDY

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

__________________________________  ______________________
Signature of Arbitrator    Date