COMPLAINANT
George Wimpey Plc
3, Shortlands
London, W6 8EZ
England
Tel: 44 020 8748 2020
Fax: 44 020 8846 2110
E-mail: wimpey.co.uk

vs.

RESPONDENT
Easy4all Internet Solutions
396, Garratt Lane, Earlsfield
London SW18 4HP
England
Tel: 44 020 8944 2932
Fax: 44 020 8944 2991
Easy4all.com

Before James P. O’Shaughnessy, Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR on March 15, 2001 and, after review for administrative compliance, served on the Respondent on March 23, 2001. The Respondent did not file a Response on or before April 19, 2001 nor, as of the date of this decision, has Respondent replied in any manner to the Complaint. 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, consisting only of an unverified Complaint and its attachments, I find as follows:

FINDINGS

Respondent's registered domain name, “wimpey.com,” was registered with Internet Names WorldWide (a division of Melbourne IT, Ltd.) on December 6, 2000. 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 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.

BACKGROUND: Complainant is in the business of constructing homes in the UK. It was the prior registrant of the domain name in dispute, <wimpey.com>. Its registrar, Network Solutions, Inc., sent Complainant three renewal notices over the period 8 May 2000 through 28 June 2000. Renewal in accordance with procedures established by Network Solutions was required for Complainant to maintain its recordation of the domain name. Complainant says it did not receive any of those notices. When Complainant failed to renew the domain name within the prescribed period, its registration lapsed. Respondent thereafter secured registration of the domain name and now holds it for sale on a website listing a score or more of other domain names it likewise advertises for sale to the public at large.

Complainant and Respondent have corresponded by mail and by e-mail concerning this matter. Respondent has offered to reconvey the domain name to Complainant. It has fixed the value of the domain name at £1.2 million. Having read the correspondence attached to the Complaint, it is apparent that Respondent places a high price on the domain name in dispute at least in part because of the correspondingly high value Complainant created in respect of this name while Complainant conducted its business under it.

Complainant portrays a sympathetic position in its Complaint. However, the relief it requests (transfer of the domain name registration) cannot be granted. This is so despite Respondent's default in this case.

Fairly read in Complainant's favor, its Complaint fails to plead or to offer facts establishing a prima facie case under Paragraph 4 of the UDRP. That failure undercuts Complainant's requested relief. I briefly address below the elements of that prima facie case to highlight the shortcomings of Complainant's position.

IDENTITY/CONFUSING SIMILARITY: Complainant alleges that the domain name, "wimpey.com," is identical or confusingly similar to Complainant's trademarks and servicemarks which incorporate or are based on the formative, "Wimpey," used in its home construction business. Complainant reproduces in the Complaint two logos on which it relies. Each contains the name, "Wimpey." However, in both cases the name "Wimpey" is one element of a compound mark including other terms, words or symbols. Thus, the overall commercial impression created by the cited marks encompasses more than simply "Wimpey."

"Wimpey" is a surname. Surnames can, of course, function as valid trademarks (e.g., Ford). But, it takes proof that the surname also serves a trademark—specifically, a source-identifying—function (sometimes called “secondary meaning”). Complainant has offered no proof of such enforceable trademark rights. Complainant has provided neither a trademark registration nor evidence from which I am able to conclude that the public, or interested
members in it, recognize the name “Wimpey” as a trade or service mark synonymous with Complainant, its business or the source of the homes or services it offers to the public. Moreover, Complainant offers no proof that it holds rights to the name “Wimpey” when that name is used without the other trappings of corporate identity evident in the logos on which Complainant relies. In other words, holding valid and enforceable rights to a name such as “George Wimpey” or “Wimpey Home Holdings” does not establish trademark rights respecting the name “Wimpey” alone.

I therefore conclude that Complainant has not established protectible trademark rights in the name “Wimpey” sufficient to claim rights to the registered domain name.

**RIGHTS AND LEGITIMATE INTERESTS**: Complainant fails to allege that Respondent has no rights or legitimate interest with respect to the domain name at issue.

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.

Rather than allege or set forth facts from which I am able to deduce the absence of rights or legitimate interests in favor of Respondent, Complainant merely invites me to decide this element in its favor because of Respondent's behavior. More is required than Complainant's displeasure over the situation where it formerly owned the domain name, allowed it to lapse and now wishes to avoid paying an admittedly high price for its return. On this record, I cannot conclude that Respondent lacks rights or legitimate interests in the disputed domain name.

**BAD FAITH**: Once again, Complainant fails to allege facts or even to aver that Respondent's actions have been undertaken in “bad faith” as that term is used in the UDRP. Complainant states simply that Respondent “only obtained the domain name to sell [it] back to us at a profit.” Complaint at 2.

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.
The inference is strong that Respondent falls within the scope of clause (a) above. However, more is required in view of the absence of proof concerning the other elements of the *prima facie* case. I cannot conclude on such a sparse record that Respondent registered the disputed domain name in bad faith, as that term is defined in the ICANN Policy.

**CONCLUSION**

Complainant fails to plead or to present evidence establishing the elements of a *prima facie* case under UDRP, Paragraph 4. Respondent’s default must be analyzed in that framework.

This situation is unlike the recent default ruling involving the domain name, <mountaingear.com>, CPR Case Number 019, [www.cpradr.org/ICANNDecisionCPR019](http://www.cpradr.org/ICANNDecisionCPR019). In *MountainGear*, the complainant presented all of the elements required by UDRP Paragraph 4 in a verified complaint to which was attached documentary evidence sufficient in the aggregate to establish the elements of its *prima facie* case. Complainant here has not demonstrated trademark rights in the fundamental name at issue, “Wimpey,” sufficient to establish Complainant’s superior rights over any other party. Complainant here has not proven the absence of any rights or legitimate interests to be accorded the Respondent. Though proof of the negative proposition is difficult, merely inviting the arbitrator to conclude that as a matter of fact Respondent lacks such rights or interests is insufficient as a matter of law. The same is true regarding the last element of Complainant’s case, that the new registration by Respondent was secured in bad faith.

It is plausible that Respondent here elected not to respond to the allegation set forth in the Complaint because of its palpable defects. Thus, my criticism of Complainant’s submission in this case is not intended to reflect blind adherent to administrative form. The deficiencies of the Complaint are demonstrably substantive, not procedural. Complainant is obliged to submit a complaint that complies with the requirements of the UDRP if it expects a remedy in conformity with it. That Complainant has failed to do and, thus, the remedy it requests cannot be granted.

In view of the entire record, it is my decision that the Complaint be dismissed, without prejudice to its refiling in a manner that takes into account the evidence that must be presented if Complainant is to prevail.

**REMEDY**

Complainant's request to transfer the domain name “wimpey.com” is hereby DENIED.