COMPLAINANT

IDT Corporation
520 Broad Street
Newark, NJ 07102
Telephone: (973) 438-4419
Fax: (973) 438-1455
E-mail: gene.grieco@corp.idt.net

Date of Commencement: July 12, 2001
Domain Name: CHEAPER.COM
Registrar: ALLDOMAINS.COM
Arbitrator: Sherman G. Finesilver

RESPONDENTS

Alpha Web Group
249 North Brand Blvd., #358
Glendale, CA 91203
Telephone: (801) 409-8926
Fax: (801) 409-8926
E-mail: admin@alpha6.com

SEGOD
5 Tpagrichnery, Suite 33
Yerevan, Armenia 375010
Telephone: (208) 978-3555
Fax: (208) 978-3555
E-mail: admin@alpha6.com

Before Sherman G. Finesilver, Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR on July 12, 2001, and, after review for administrative compliance, was timely served on the Respondents. The Respondent Alpha Web Group did not file a Response on or before the deadline of August 2, 2001, but did file a Response on August 6, 2001. I was appointed the 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 Domain Name Dispute Complaint Form, Complaint with Annexes, Response with Exhibits, Reply to Response with Exhibits, and careful consideration of certification by counsel as to the completeness and accuracy of recitals in written submissions, I find as follows.
Respondents in this proceeding are Alpha Web Group and SEGOD. The reference to Respondent in various recitals in this Administrative Panel Decision refer to Respondent, Alpha Web Group, unless otherwise indicated. Respondent, Alpha Web Group, in its Response states that: there is no association, affiliation or commonality between SEGOD and Alpha Web Group. In its Reply to Response, Complainant states that Respondent SEGOD registered the domain name CHEAPER.COM on June 12, 2001 and Respondent Alpha Web Group became the Registrar of record on June 29, 2001. Both Respondents are named in this proceeding and the action taken in this arbitration applies to both Respondents. SEGOD has not entered an appearance in this proceeding.

The Arbitrator accepts the late filing of the Response by Respondent, Alpha Web Group, and the Reply to Response by Complainant.

FINDINGS

Respondents’ registered domain name, CHEAPER.COM, was registered with a Registrar. In registering the name, Respondents 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.

Subsequently, I find as follows:

1. That Complainant, IDT Corporation ("IDT"), is the rightful registrant of the domain name CHEAPER.COM, pursuant to Network Solutions, Inc.’s ("NSI") Name Change Agreement entered into between IDT Corporation and Berdo Enterprises on January 21, 2001. Evidence of payment of the applicable fee is present; trademark rights were also transferred. On January 25, 2001, IDT and Berdo Enterprises filed a Registrant Name Change Agreement with Network Solutions. As set forth in the WHOIS database, the domain name CHEAPER.COM was registered by IDT on January 25, 2001, to expire on January 25, 2002.

2. On June 26, 2001, the WHOIS database named Respondent SEGOD as registrant of the domain name CHEAPER.COM, with creation on June 12, 2001, to expire on June 12, 2002. ALLDOMAINS.COM is named as Registrar. The database named SEGOD as registrant of CHEAPER.COM
listing the domain name for sale and information that the domain name was registered for the principal purpose of selling or otherwise transferring the domain name for valuable consideration. Significantly, it appears that ALLODOMAINS.COM was able to register the domain name despite IDT’s prior registration of the domain name, as a result of the erroneous release of the IDT registration by NSI. Appropriate re-registration to IDT followed after the mistake was called to the attention of NSI.

3. It appears that the domain name CHEAPER.COM was made available for sale for $50,000 by SEGOD. This finding is based on an anonymous call made by an attorney for IDT to SEGOD on July 2, 2001, indicating an interest in buying the domain name (voice mail message). On July 2, 2001, it is represented that a person responded to the call and that person informed the attorney that the domain name CHEAPER.COM was available for $50,000. On July 5, 2001, the WHOIS data base named the Respondent as the registrant of the domain name and further that the registration was due to expire on the same date as SEGOD’s registration, i.e., June 12, 2001 – June 12, 2002. On July 5, 2001, attorney for Complainant spoke to an employee of SEGOD and was informed that contact was made with Respondent Alpha Web Group. It appears that Respondents had ready access to each other in exchange of information relating to the telephone call of the attorney for Complainant.

Statements by an agent or employee of a principal are not objectionable as hearsay and are excluded from application or hearsay principles. Therefore, the statements of the person responding to the inquiry by the attorney for Complainant are admissible. Rule 801(d)(2) Fed. R. Evid.

4. It is alleged by Respondent that the entity SEGOD was a registrant of the domain name prior to the Alpha Web Group, the current registrant of the domain name.

5. In affidavits filed on behalf of Alpha Web Group, it is alleged that principals of Respondent have been developing the business that will use the domain name in its effort to provide websites that will offer a variety of products at low discount prices. Each affidavit states that the company an/or associates of the Respondent’s company “did not sell or attempt to sell any domain name.” See, Exhibits A, B, C, D, E, and F.

6. Affidavits filed on behalf of Respondent state that Respondent “generally” engaged in demonstrable preparations for use of this domain name in connection with a bona fide offering of goods and services.

7. In an effort to establish bona fide business activity, Respondent lists files of business goods to prove demonstrable preparation. See, Respondent’s Exhibit H. It is submitted by Complainant that files listed in the exhibits
contain exact reproductions of the website of SR-Systems, Inc., an Idaho company. The President of SR-Systems, Inc., Keith Sigler, disavowed any knowledge of Respondent Alpha Web Group, or of SEGOD (Exhibit C to Reply of Complainant).

8. A visual review of several items set forth in the websites of the Respondent and SR-Systems, Inc., indicate similarity and identical recitals and descriptions of items for sale.

9. I find that there was no bona fide offering of goods or services nor demonstrable activity by Respondents to market goods and services and there were no legitimate demonstrable preparations to use the domain name by Respondents.

**IDENTITY/CONFUSING SIMILARITY:** Complainant alleges that the domain name CHEAPER.COM is identical or confusingly similar to Complainant’s trademark, which applies to goods, services, communication services, telecommunication, long distance and call back service, Internet provider services, as well as telephone calling card services.

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 interests with respect to the domain name at issue. In support for this allegation, Complainant notes that prior rights were developed by Complainant and by its demonstrable activities and therefore Respondents’ activity is not bona fide. Also I find that Respondent, SEGOD, was making the domain name available for sale for the sum of $50,000.

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 of 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.

Respondents’ activity is suspect by displaying the same items for sale as found on another’s unrelated website.

I therefore conclude that Respondents DO NOT have rights or legitimate interests with respect to the domain name at issue.

**BAD FAITH:** In support of the contention of Respondents’ bad faith registration and use, Complainant notes the availability for sale of the domain rights for a sum in excess of the registration fee. Further, that the Respondent alleges that it lists its own files in its directories
(Response, Exhibit H), when, in fact, it is apparent that such web pages were identical to those of another company. These findings are considered, together with the findings set forth above, individually and in their totality, to establish that the activity of Respondent was marked with bad faith.

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 website or location, or of a product or service on Respondent’s website or location.

I find that Respondents have neither a legitimate interest in the domain name nor a bona fide interest to use the domain name CHEAPER.COM in commerce. The Complainant has established that Respondents had registered and are making use of the domain name in bad faith.

I therefore conclude that Respondents 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) Respondents, Alpha Web Group and SEGOD do not have rights or legitimate interests with respect to the domain name at issue; and (c) Respondents 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 CHEAPER.COM is hereby GRANTED. The domain name shall be transferred to Complainant. Respondents’ claim to the domain name CHEAPER.COM is cancelled and Respondents Alpha Web Group and SEGOD have no further interest, claim or benefit from the domain name CHEAPER.COM.

__________________________________________
Signature of Arbitrator

Entered in Denver, Colorado,
on the ___ day of August, 2001