



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Global Fine Art Registry LLC v. Cartoon Heaven

Case No. D2008-1203

1. The Parties

The Complainant is Global Fine Art Registry, LLC, Phoenix, Arizona, United States of America, represented by Donald J. Lenkszus, United States of America.

The Respondent is Cartoon Heaven, California, United States of America.

2. The Domain Name and Registrar

The disputed Domain Name <aboutfineartregistry.com> is registered with Tucows, Inc.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 7, 2008. On August 8, 2008, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 8, 2008, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 12, 2008 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on August 17, 2008. The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 18, 2008. In accordance with the Rules, paragraph 5(a), the due date for Response was

September 7, 2008. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 12, 2008.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on September 25, 2008. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is an Arizona limited liability company based in Phoenix, Arizona, United States of America. The Complainant employs a patented system for assigning identification numbers to objects of art, antiques, and collectibles and then registering them, with photographs and descriptions, in an online database. The Complainant sells identification and registration services to artists, collectors, galleries, and museums, largely through its website at "www.fineartregistry.com". It also provides related investigative services and reports, a central location for reporting lost and stolen artworks, and certificates of authenticity.

The Complainant owns a registered service mark, FINE ART REGISTRY, United States Registration No. 3445181 (June 10, 2008). The application was filed on December 8, 2005 and shows first use in commerce on May 31, 2003. The Internet Archive Wayback Machine at "www.archive.org" displays archived versions of the Complainant's website as early as February 5, 2003, and these regularly display the "TM" trademark symbol following the mark FINE ART REGISTRY. The Complaint asserts that FINE ART REGISTRY is a famous mark but offers little evidence of this apart from Google search results that refer to the Complainant.

The Complainant has published on its website articles critical of cruise ship art auctions, especially those operated by Park West Gallery, with titles such as "Confessions of a Park West Cruise Line Art Auctioneer". The Complainant's website also challenges the validity of appraisals provided by Park West Gallery. The website publishes press releases about multiple lawsuits filed by Park West Gallery against "a consumer advocacy group" (apparently referring to the Complainant itself) following a televised story on the CBS network program *Inside Edition* in February 2008. The television news story concerned Park West Gallery's cruise ship art auctions, with interviews of the Complainant's CEO and several Park West Gallery customers.

The Domain Name was registered on June 18, 2008, using the Registrar's domain privacy service, which automatically displays "Contactprivacy.com" as the name of the registrant and the Registrar's own postal address in Toronto as the address of the registrant. Once contacted by the Center regarding the Complaint in this proceeding, the Registrar furnished information identifying the registrant as Cartoon Heaven, with a post office box in "Line Drive, CA 91390 US". The Panel notes that this postal zip code is assigned to the city of Santa Clarita, California. The Registrar indicates that the administrative contact for the Domain Name shows an email address in the <guerillaprgirlz.com> domain and a post office box in Jamaica, Vermont, United States of America.

The Complaint attaches printouts of screen shots from the website associated with the Domain Name on July 16, 2008. The website was headed, "About Fine Art Registry" and "The Worlds First Critics of Online Permanent Registry and Marketplace for Truth

in Fine Art and Collectibles.” The home page displayed an article by Louis Postel entitled “Scam alert! How Rogue Registries take your money”. The article was critical of art registry services, especially the Complainant’s FINE ART REGISTRY. The article recommended instead that collectors rely on appraisers who provide services to major art auction houses and galleries, such as “Park West Gallery”.

In addition, the website formerly associated with the Domain Name featured a press release dated June 30, 2008 by Park West Gallery, which described itself as “the world’s largest art dealer”. Park West Gallery claimed to have obtained a default judgment in a Michigan court against “Fine Art Registry (FAR) and its CEO and owner on counts “ranging from defamation to civil conspiracy”. According to its website at “www.parkwestgallery.com”, Park West Gallery is located in Southfield, Michigan, United States of America, where it operates an art gallery. The company also organizes art auctions and fundraisers, offers art appraisal services, and conducts art auctions on cruise ships – the business criticized on the Complainant’s website, as noted above.

Other articles and posts on the website formerly associated with the Domain Name suggested that the Complainant’s principals were “linked” to a “convicted sex-offender and alleged swindler and deadbeat dad”, that the Complainant was “in default for tens of millions”, and that the Complainant’s online art registry business puts “the art market” at risk. An article referring to the Complainant asserted that “art experts say FAR leaves a lot to be desired compared to established galleries and other providers of art-related services”.

The website formerly associated with the Domain Name included several links to the Park West Gallery website. The website also included advertisements and short articles by other professional fine art appraisers and art researchers.

Mr. Postel, who wrote the lead article critical of the Complainant on the website formerly associated with the Domain Name, evidently has a business association with Park West Gallery. Attached to the Complaint is a printout of the biographical summary of Louis Postel published on the social networking website “www.linkedin.com”, as it appeared on July 16, 2008. It refers to Mr. Postel as an “interior design journalist”, and the first item under the “Current” heading is “Consultant/Writer at Park West Gallery”. According to the Park West Gallery website, the company is celebrating its 40th anniversary this year, in part by “launching a new book”, 40 Years of Art and Art History, edited by Mr. Postel. The blog on the Park West Gallery website also includes an interview by Mr. Postel of satisfied Park West Gallery customers. The interview promotes Park West Gallery’s art auctions on cruise ships.

It appears that Mr. Postel maintains his own website at “www.designbard.com”. On that website, Mr. Postel characterizes himself as a leader in “cultural journalism” and says that he writes for “creative editors and PR counselors about interior design and the arts”, naming the same publications mentioned in the biographical squib at the end of his article on the website formerly associated with the Domain Name. Mr. Postel’s website says that he lives in Cambridge, Massachusetts and Jamaica, Vermont. The Panel notes that the administrative contact address for the Domain Name is also listed as a post office box in the small town of Jamaica, Vermont.

The Domain Name does not currently resolve to a website.

5. Parties’ Contentions

A. Complainant

The Complainant asserts that the Domain Name is confusingly similar to its registered FINE ART REGISTRY service mark. The Complainant believes that Park West Gallery is behind the registration and use of the Domain Name and that the registrant has no rights or legitimate interests in the Domain Name.

The Complainant contends that the Domain Name was registered and used in bad faith to disrupt the Complainant's business, in retaliation for the Complainant's critical remarks about the business of Park West Gallery. The Complainant argues that the Domain Name was selected because of its potential for confusing and misdirecting Internet users for the Respondent's commercial gain. The Complainant cites the disparaging content of the website formerly associated with the Domain Name as evidence of the Respondent's knowledge of the Complainant and bad-faith intent to harm the Complainant's business. The Complainant argues as well that the effort to hide the beneficial owner of the Domain Name registration reflects bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of a disputed domain name, the Complainant must demonstrate each of the following:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

Under paragraph 15(a) of the Rules,

“A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

A. Domain Privacy and Proper Respondent

The Rules, paragraph 1, define a “respondent” in a UDRP administrative proceeding as “the holder of a domain-name registration against which a complaint is initiated.” While it has not changed its WHOIS database showing the registration of the Domain Name in the name of the Registrar's domain privacy service, Contactprivacy.com, the Registrar informed the Center that Cartoon Heaven is the actual registrant.

There is no evidence in the record that the Registrar or Contactprivacy.com, the domain privacy service, had any role in selecting or using the Domain Name. This Decision will refer henceforth to Cartoon Heaven as the Respondent.

B. Identical or Confusingly Similar

The Complainant unquestionably holds the registered service mark FINE ART REGISTRY. This mark is incorporated in its entirety in the Domain Name. The Domain Name differs only in adding the generic English word “about”. Adding a preposition here does not eliminate the confusing similarity of the Domain Name to the mark. To the contrary, it may heighten rather than lessen the likelihood of confusion because at least some Internet users may presume that a website “about” the Complainant’s service is associated with the Complainant. See, e.g., *F. Hoffman-La Roche AG v. Dean Gagnon*, WIPO Case No. D2007-1009 and cases cited therein (transferring the domain names <about-valium.info> and <about-xenical.info>).

The Panel concludes that the Domain Name is confusingly similar to the Complainant’s mark for purposes of the Policy, paragraph 4(a)(i).

C. Rights or Legitimate Interests

The Respondent does not claim a relationship with the Complainant or dispute the Complainant’s assertion that it has not authorized the Respondent to use its FINE ART REGISTRY mark. This establishes the Complainant’s *prima facie* case on this element of the Complaint, and the burden shifts to the Respondent to produce evidence of its rights or legitimate interests under paragraph 4(c) of the Policy. See, e.g., *Admiral Insurance Services Limited v. Mr. Adam Dicker*, WIPO Case No. D2005-0241; *Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited*, WIPO Case No. D2004-0753.

The Policy, paragraph 4(c), provides a non-exhaustive list of circumstances in which the Respondent could demonstrate rights or legitimate interests in the Domain Name:

- “(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a 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.”

There is no indication in the record, or from a perusal of the relevant websites, that any party other than the Complainant has used a name corresponding to the Domain Name to identify itself or in connection with a *bona fide* offering of goods or services.

The Respondent could conceivably argue that it was making fair use of the Domain Name for a criticism website aimed at the Complainant. It has not come forward to advance and support such an argument, however. The evidence suggests that the Domain Name has been controlled by persons whose commercial interests are aligned with Park West Gallery, which competes with the Complainant in the sense that both offer services relating to the investigation and authentication of works of art and, incidentally, their appraisal. The website to which the Domain Name formerly resolved prominently featured references and links to Park West Gallery, as well as to other

professional art investigators and appraisers, in addition to disparaging the Complainant and its services. Thus, it does not appear that the Respondent made 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”.

From the Respondent’s silence, and from the evidence suggesting commercial motives for appropriating the Complainant’s mark in connection with a website disparaging the Complainant and promoting its competitors, it may reasonably be inferred that the Respondent has no rights or legitimate interests in the Domain Name.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances that indicate bad faith, including the following on which the Complainant implicitly relies:

- “(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Respondent was clearly aware of the Complainant, since much of the content of the website previously associated with the Domain Name was expressly critical of the Complainant and its online business. The Complainant’s mark was registered shortly before the registration of the Domain Name, and a trademark symbol has been prominently displayed along with the mark on the Complainant’s website since 2003. Thus, it is probable that the Respondent had actual knowledge of the Complainant’s mark at the time the nearly identical Domain Name was registered. The Respondent does not deny such knowledge or offer any legitimate reason for registering and using a Domain Name incorporating the Complainant’s mark in its entirety.

It appears likely, as discussed above, that Park West Gallery or persons associated with that company have exercised control over the Domain Name from the outset. It also appears that Park West Gallery competes with the Complainant in offering certain commercial services related to art investigations, authentication, and appraisals. The website formerly associated with the Domain Name disparaged the Complainant and promoted Park West Gallery and other art professionals. It is not likely a coincidence that a paid consultant of Park West Gallery, residing in the same small Vermont town shown as the address of the administrative contact for the Domain Name, wrote the lead article on the website, and that this was followed by press releases from Park West Gallery itself.

The Complainant and Park West Gallery are openly critical of each other, and their mutual contempt is reflected in lawsuits, press releases, and media interviews. It is beyond the scope of this administrative proceeding to determine which, if any, of their respective allegations about business misconduct are true, or whether either party has defamed the other. From the record in this proceeding, however, it appears more likely than not that the Domain Name was registered and used in a bad-faith attempt to divert Internet users interested in the Complainant to a website that criticized the Complainant and promoted Park West Gallery, consistent with paragraphs 4(b)(iii) and (iv) of the Policy.

While the use of a domain privacy service is not necessarily itself evidence of bad faith, as the Complainant suggests, providing incomplete or inaccurate registration details when presented with a legal challenge suggests bad faith, as does the failure to respond to the substance of a Complaint asserting misuse of a trademark. Such conduct in this case merely reinforces the inference of bad faith based on the points described above.

7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <aboutfineartregistry.com> be transferred to the Complainant.

W. Scott Blackmer
Sole Panelist

Dated: October 11, 2008