Decision for dispute CAC-UDRP-100576

Case number	**CAC-UDRP-100576**
Time of filing	**2013-03-25 14:06:56**
Domain names	**audioenglish.net**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Name	**Mr. Titi Tudorancea**

Respondent

Name	**Patrick Laroche**

IDENTIFICATION OF RIGHTS

The Complainant alleges that he has used the term AUDIOENGLISH.NET via the Complainant's company Global Info SRL since 2005, which used the term for its website for language course services reaching an estimated figure of 36 million unique visitors per year in 2012. According to the Complainant he has established common law rights in the term AUDIOENGLISH.NET through continuous and extensive use thereof.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The disputed domain name has been owned by the Complainant from August 2005 until March 12, 2013. On March 13, 2013 the disputed domain name was registered by Respondent without authorization of the Complainant. The Respondent was only prepared to assign the disputed domain name to the Complainant for a fee that exceeds the nominal registration fee of the disputed domain name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant is the general manager of Global Info SRL, which company owned the disputed domain name to host the website at http://www.AudioEnglish.net from August 2005 until March 12, 2013. Global Info SRL used the domain name and the term AUDIOENGLISH.NET for providing paid, subscription based online access to a database of English-learning resources and courses, online access to free English-learning resources and free access to an English language dictionary with over 140,000 entries targeted at learners of English from all over the world. AUDIOENGLISGH.NET is not registered as a trademark, but the Complainant alleges to have established common law trademark rights in such term.
On March 12, 2013 the website under the disputed domain name stopped working because the DNS records were changed by a cybercriminal (probably the Respondent) who gained full control over the disputed domain name. The Complainant has

had contact with the Respondent, who has made an offer to sell the domain name to the Complainant for a sum far above the price that is usually paid to register a domain name. Therefore, there are circumstances indicating that the Respondent has registered (or acquired) the domain name primarily for the purpose of selling or otherwise transferring the domain name registration to the Complainant who is the owner of the AUDIOENGLISH.NET mark, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the domain name.
Further, the disputed domain name audioenglish.net links to an advertisement parking website, with an ultimate link to worddictionary.com.au, so that is clear that the Respondent has intentionally attempted to mislead and attract, for commercial gain, Internet users to Respondent's website or to another on-line location by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of service on Respondent's website or on another location.
The Respondent further appears to have used a fake address, because according to the US Postal Service website there is no town called Bergen in Connecticut. Furthermore, according to the same website, the postal code 45788 points to Whipple, Ohio. It is therefore unclear if the name of the Respondent is the name of a real person or it is only a fake identity created by the hacker of the disputed domain name.
Given the fact that there are circumstances indicating that the Respondent or the hacker impersonating the Respondent has registered the disputed domain name by fraud for the purpose of disrupting the business of the Complainant, breaching not only one but all the terms of the UDRP article: "Evidence of Registration and Use in Bad Faith", the Complainant ask the Panelist to require that any Response from the Respondent should be accompanied by a copy of a proper, government-issued ID document of the Respondent.
The Panelists should keep in mind that, without such a copy of proper identification document(s), the hacker may submit a Response by email only to delay the resolution of the dispute, for the purpose of creating even bigger losses to the business of the Complainant.
Also, the Panelists should take into consideration the fact that the Complainant states that the speed of decision on his Complaint is of major importance for his business.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

In this case the Complainant is the general manager of the company Global Info SRL that has been using the term AUDIOENGLISH.NET for about eight years. On the basis of the Complainant's contentions the Panelist has no reason to doubt that Global Info SRL established common law rights trademark rights in said term. The Complainant did, however, not explain why or how the common law trademark rights should have been vested in him. In absence of such explanation the Panel is not satisfied that the Complainant has a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).
As the first element of paragraph 4(a) of the Policy has not been met, the other elements need no further discussion.

NO RIGHTS OR LEGITIMATE INTERESTS

The element of paragraph 4(a)(ii)of the Policy need not to be discussed.

BAD FAITH

The element of paragraph 4(a)(iii)of the Policy need not to be discussed.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Complainant did not meet the requirements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **AUDIOENGLISH.NET**: Remaining with the Respondent

PANELLISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2013-04-28

Publish the Decision