



NATIONAL ARBITRATION FORUM

DECISION

American Society of Plumbing Engineers v. Lee Youngho
Claim Number: FA0701000882390

PARTIES

Complainant is **American Society of Plumbing Engineers** (“Complainant”), represented by **David J. Lynam**, 1 N LaSalle #3100, Suite 3100, Chicago, IL 60606. Respondent is **Lee Youngho** (“Respondent”), Cheongnyangri 1-dong, Dongdaemun-gu, Seoul 130011, KR.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**aspe.com**>, registered with **Korea Information Certificate Authority, Inc.** d/b/a **Domainca.com**.

PANEL

The undersigned certifies that he or she has acted independently and impartially and to the best of his or her knowledge has no known conflict in serving as Panelist in this proceeding.

Hong Oo Baak as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on January 5, 2007; the National Arbitration Forum received a hard copy of the Complaint on January 8, 2007.

On January 15, 2007, Korea Information Certificate Authority, Inc. d/b/a Domainca.com confirmed by e-mail to the National Arbitration Forum that the <**aspe.com**> domain name is registered with Korea Information Certificate Authority, Inc. d/b/a Domainca.com and that the Respondent is the current registrant of the name. Korea Information Certificate Authority, Inc. d/b/a Domainca.com has verified that Respondent is bound by the Korea Information Certificate Authority, Inc. d/b/a Domainca.com registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy”).

On January 23, 2007, a Notification of Complaint and Commencement of Administrative Proceeding (the “Commencement Notification”), setting a deadline of February 12, 2007, by which Respondent could file a Response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent’s

registration as technical, administrative and billing contacts, and to postmaster@aspe.com by e-mail.

A timely Response was received and determined to be complete on February 12, 2007.

On February 20 2007, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Hong Oo Baak as Panelist.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant

1. Complainant asserts that Complainant's U.S. registered trademark, ASPE, is identical to Respondent's domain name.

2. Complainant asserts that Respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint. Neither before nor after Complainant's notice to Respondent of the dispute, Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name had absolutely no connection with a bona fide offering of goods or services, as Respondent's domain was dedicated entirely to links to other websites with no connection to Respondent or any business related to Respondent.

Complainant further asserts that Respondent has not been commonly known by the domain name, and that Respondent has no business relating to the domain name, and also has not and cannot acquire trademark or service mark rights due to the absence of any legitimate use. According to Complainant, Respondent only uses the mark for commercial gain to misleadingly divert consumers.

3. Complainant asserts that Respondent's registration of the domain name should be considered as having been registered and being used in bad faith. According to Complainant, there are circumstances indicating that Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark, or service mark, or to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the domain name. According to Complainant, Complainant was the registrant until 2002 and Respondent offered to sell the domain back to Complainant.

Complainant further asserts that Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's 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 Respondent's web site or location or of a product or service on Respondent's web site or location, as Respondent's site contains links to others who have no relationship with Respondent.

B. Respondent

1. Respondent contends that although Complainant's mark, ASPE, is registered in the USA with its name suggesting it is an association in the USA, it does not mean that the mark is well-known in countries other than the USA.

Respondent contends that the four-letter domain name, namely ASPE, is non-exclusively used by a large number of other users having no connection to Complainant's ASPE mark.

Respondent further contends that Complainant's mark ASPE is not internationally well-known therefore it would be unreasonable to deny others from registering a domain name identical or similar to Complainant's mark.

2. Respondent asserts that it acquired <aspe.com> for the purpose of opening up a business, however due to some changes in the plan, he is not using the domain, and he contends that his non-use of the domain does not constitute sufficient evidence to prove that he used it for dishonest purpose.

Therefore Respondent contends that he does have rights and a legitimate interest in the domain name <aspe.com>.

3. Respondent contends that he did not register <aspe.com> in bad faith.

Respondent asserts that he had purchased <aspe.com> at US \$3,400 in 2002. When Respondent received a letter from Complainant, he suggested an amount of US \$3,000 for compensation only. Respondent asserts that the amount of US \$3,000 was much that the price offered for the purchase of many other four (4)-letter ".com" domain.

Respondent also asserts that he did not purchase <aspe.com> for the purpose of selling the disputed domain name to the Complainant, because it is beyond expectation for non-profit organizations such as the Complainant to have interest in purchasing the domain name which ends with ".com".

Respondent contends that it used the domain name <aspe.com> without intent for commercial gain to misleadingly divert consumers. Respondent asserts that there was an average of 15 persons a day visiting <aspe.com> and Respondent earned only an average of \$5 a month, where the money gained during one year was spent for renewal of the domain registration for <aspe.com>.

FINDINGS

1. Complainant obtained registration of the mark "ASPE" with the United States Patent Office on February 7, 1978 as Registration No. 1,085,124.
2. Respondent obtained registration of <aspe.com> in 2002.
3. Complainant sent a letter dated February 20, 2006 to Respondent, to demand that he immediately cease and desist from use of the ASPE mark in his domain name and the American Society of Plumbing Engineers on Respondent's website, and to also transfer ownership of the <aspe.com> domain name to Complainant.
4. Respondent suggested a price to Complainant for compensation for the transfer of <aspe.com>.
5. As of December 29, 2006, Respondent's website at the disputed domain name contains links to other sites including plumbing- related sites, such as presumably Complainant's site.
6. As of March 6, 2007, Respondent's website at the disputed domain name is entirely dedicated to links to other sites, but linking service to plumbing related sites is suspended after the dispute with Complainant over the domain name.
7. Respondent gets commercial gain by operating the website at the disputed domain name.

DISCUSSION

Paragraph 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (2) the Respondent has no rights or legitimate interests in respect of the domain name;
and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

Complainant has established that it has rights in the ASPE mark by virtue of its registration with the United States Patent Office. In the absence of the Respondent having provided any documentary nor sufficient proof, tending to show that the mark ASPE as understood by its relevant consumers either as a generic name or term, or sufficiently descriptive to warrant its cancellation, the Panel has no reason to take a contrary view to that of the United States Patent Office. *See H. Marvin Ginn Corp. v. Int'l Assoc. of Fire Chiefs, Inc.* 228 U.S.P.Q. 528, 530 (Fed. Cir.1986).

The addition of the generic top-level domain (“gTLD”) “.com” is not sufficient to distinguish the disputed domain name from the mark pursuant to Uniform Domain Name Dispute Resolution Policy (“Policy”). *See Pomellato S.p.A v. Tonetti*, D2000-0493 (WIPO July 7, 2000). Furthermore, the distinction between “.org” and “.com” is not significant in determining similarity. *See NetGrocer, Inc. v. Anchor*, FA 94207 (Nat. Arb. Forum Apr.11, 2000).

The Panel finds that Complainant has satisfied that <aspe.com> is identical to or confusingly similar to the mark, ASPE, in which the Complainant has rights. Policy 4(a)(i).

Rights or Legitimate Interests

The failure of Respondent to respond to the Complaint functions both as an implied admission that Respondent lacks rights and legitimate interests in the domain name, as well as an opportunity for the Panel to accept Complainant’s reasonable allegations as true. *See Pavillion Agency, Inc. v. Greenhouse Agency Ltd.*, D2000-1221 (WIPO Dec. 4, 2000).

Even though, Respondent’s use of the disputed domain name before any notice from the Complainant would be acknowledged, such use does not constitute bona fide offering of goods or services pursuant to *Policy 4(c)(i)*. The reason is that Respondent has been using the disputed domain name for the purpose of redirecting Internet users who are confused by the domain name identical to Complainant’s mark to a website which is entirely dedicated to links to other sites. *See eBay Inc. v. Sunho Hong*, D2000-1633 (WIPO Jan. 18, 2001) (stating that the "use of complainant’s entire mark in infringing domain names makes it difficult to infer a legitimate use"); *see also TM Acquisition Corp. v. Sign Guards*, FA 132439 (Nat. Arb. Forum Dec. 31, 2002) (finding that Respondent’s diversionary use of Complainant’s marks to send Internet users to a website which displayed a series of links was not a bona fide offering of goods or services)

In addition, Respondent’s assertion that he planned to use the disputed domain name in opening up his business is not sufficient to prove demonstrable preparations to the disputed domain name.

Furthermore, Complainant asserts that Respondent is not commonly known by the domain name <aspe.com>, and Respondent fails to prove to the contrary.

In light of the above, the Panel finds that Complainant has established Policy 4(a)(ii).

Registration and Use in Bad Faith

Complainant fails to provide sufficient evidence that Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant or to a competitor of Complainant, for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the domain name. Respondent also fails to provide

evidence that he purchased <aspe.com> at a price of US \$3,400 in 2002 and that he suggested an amount of US \$3,000 for compensation only. Therefore both Complainant and Respondent fail to offer any proof of their respective allegation.

However, Respondent diverts Internet users who have interest in Complainant's website to his website by using the disputed domain names identical to Complainant's mark. . Moreover, Respondent admits that he benefits from using the disputed domain name. *See Kmart v. Khan*, FA 127708 (Nat. Arb. Forum Nov. 22, 2002) (finding that if Respondent profits from its diversionary use of Complainant's mark when the domain name resolves to commercial websites and Respondent fails to contest the Complaint, it may be concluded that Respondent is using the domain name in bad faith pursuant to *Policy 4(b)(iv)*); *see also H-D Michigan, Inc. v. Petersons Auto.*, FA 135608 (Nat. Arb. Forum Jan. 8, 2003) (finding that the disputed domain name was registered and used in bad faith pursuant to *Policy 4(b)(iv)* through Respondent's registration and use of the infringing domain name to intentionally attempt to attract Internet users to its fraudulent website by using Complainant's famous marks and likeness).

Therefore, Respondent's use of the domain name <aspe.com> to redirect Internet users to other websites is evidence of bad faith

The Panel finds that Respondent registered the domain name in bad faith. Policy 4(a)(iii).

Other

The Complainant requests Panel to issue a decision that the domain-name registration be transferred to Respondent in the Remedy Sought of its Complaint. "Respondent" in the Remedy Sought is considered as the misrepresentation of "Complainant".

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <ASPE.COM> domain name be **TRANSFERRED** from Respondent to Complainant.



Hong Oo Baek, Panelist
Dated: March 6, 2007

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