WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Google, Inc. v. wwwgoogle.com and Jimmy Siavesh Behain

Case No. D2000-1240

1. Parties

The Complainant in this administrative proceeding is Google Inc., a California corporation with its principal place of business at 2400 E. Bayshore Parkway, Mountain View, California U.S.A. The Respondent wwwgoogle.com maintains a postal address at THIS DOMAIN IS FOR SALE, 11288 Ventura Blvd., Suite #341, Studio City, California 91604 U.S.A. The Respondent Jimmy Siavesh Behain is the Administrative, Technical, Billing and Zone Contact. (Respondents wwwgoogle.com and Behain are referred to herein as "Respondent.")

2. Domain Name and Registrar

The domain name in dispute is as follows: wwwgoogle.com. The domain name was registered by Respondent with Network Solutions, Inc. (NSI) on March 3, 1999.

3. Procedural Background

On September 20, 2000, the WIPO Arbitration and Mediation Center received from Complainant via e-mail a complaint for decision in accordance with the Uniform Policy for Domain Name Dispute Resolution, adopted by the Internet Corporation of Assigned Names and Numbers (ICANN) on August 26, 1999 ("Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN on October 24, 1999 ("Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (Supplemental Rules).

The complaint was filed in compliance with the requirements of the Rules and the Supplemental Rules, payment was properly made, the administrative panel was properly constituted, and the panelist submitted the required Statement of Acceptance and Declaration of Impartiality and Independence.

The instant Administrative Proceeding was commenced on September 29, 2000.

Respondent did not file a Response, and a "Notification of Respondent Default," dated October 20, 2000, was forwarded by WIPO to Respondent.

The decision of the Panel was due to WIPO on or before November 12, 2000.

4. Factual Background

As set forth in the Complaint, the GOOGLE search engine was created in 1997, and has since become one of the most highly recognized and widely used Internet search engines in the world. Complainant also offers co-branded web search solutions for information content providers, and has partnerships with some of the Internet's most prominent companies.

Google is the owner of several U.S. trademark applications (Serial Nos. 75/554461 and 75/978469) for the mark GOOGLE and also owns numerous registrations and applications in other countries throughout the world for the mark GOOGLE. Google also owns the domain name google.com, which was registered with NSI on September 15, 1997, and has been used to identify Google's web site since on or about that date.

Respondent uses the domain name wwwgoogle.com to webforward Internet users to its pointcom.com web site, which, in turn, is a framed internal page from the web site of a direct competitor of Google, the search engine Goto.com. After Internet users are webforwarded to Respondent's pointcom.com web site, their attempts to exit that web site generate the opening of multiple, additional browser windows.

When Respondent registered the domain name in dispute, it included the solicitation, 'THIS DOMAIN NAME IS FOR SALE" in the space allotted for its postal mailing address.

5. Parties' Contentions

Complainant contends that the domain name in issue is identical to and confusingly similar to Google's GOOGLE mark and trade name; that there is no evidence that Respondent has any rights or legitimate interests in the domain name; and that Respondent registered and used the domain name in "bad faith." With respect to the "bad faith" element, Complainant argues that: (1) Respondent is soliciting offers for the domain name in issue in amounts in excess of its documented out-of-pocket expenses; (2) Respondent registered the domain name primarily for the purpose of disrupting Complainant's business; (3) Respondent uses the domain name to intentionally attract, for commercial gain, Internet users to its web site by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation and endorsement of Respondent's wwwgoogle.com and pointcom.com websites: and (4) Respondent breached its registration contract with NSI because it falsely represented that its registration of the domain name did not infringe the rights of any third party.

On information and belief, Complainant maintains that Respondent Behain is a principal in Global Net 2000, Inc. Previous Panel decisions have found that Global Net 2000 Inc. registered and used numerous domain names in "bad faith." See, e.g., Reuters Limited v. Global Net 2000, Inc. (WIPO Case No. D2000-0441) (Panel ordered transfer of REUTERS (or misspellings thereof)-formative domain names); Yahoo! Inc. and GeoCities v. Data Art, Corp. et al. (WIPO Case No. D2000-0587) (Panel ordered transfer of 36 YAHOO!-formative and GEOCITIES-formative domain names); Microsoft Corp. v. Global Net 2000, Inc. (WIPO Case No. D2000-0554) (Panel ordered transfer of five domain names comprised of misspellings of HOTMAIL mark and of domain name that incorporated fully MICROSOFT mark).

6. Discussion and Findings

The Panel has carefully weighed the evidence presented and determines that Complainant has met the requirements set forth in 4.a. of the Policy.

There is no question that the domain name in dispute is identical or confusingly similar to a mark in which Complainant has rights. The domain name incorporates, in full, the GOOGLE mark, which has been used by Complainant since 1997, and is the subject of numerous trademark registrations and applications around the world. Respondent's domain name differs from Complainant's mark only through the addition of the characters "www" and ".com". The addition of these characters does not avoid a finding of confusing similarity since, as used in connection with a web site, they have little, if any, trademark significance.

The Panel further determines that Respondent has no rights or legitimate interests with respect to the domain name. The evidence reveals that Respondent does not appear to have used "google" as part of its name and has not used the domain name in connection with a bona fide offering of goods or services. As noted above, Respondent merely uses the domain name wwwgoogle.com to webforward Internet users to its pointcom.com web site. No goods or services are offered under the domain name in issue.

There is also abundant evidence to support a determination of "bad faith" registration and use. The evidence, in particular Respondent's indication that "THIS DOMAIN NAME IS FOR SALE" in the space allotted for its postal address, supports a finding that Respondent registered the domain name primarily for the purpose of selling it for valuable consideration in excess of documented out-of-pocket costs, within the meaning of §4.b.(i) of the Policy.

There is also evidence that Respondent registered the domain name in issue in order to prevent Complainant from reflecting its mark in a corresponding domain name, within the meaning of §4.b.(ii) of the Policy. The requisite "pattern of such conduct" is established through evidence relating to three prior adverse determinations against a company affiliated with Respondent Behain, involving scores of domain names.

The Panel further concludes that Respondent registered the domain name in dispute primarily for the purpose of disrupting the business of a competitor, within the meaning of §4.b.(iii) of the Policy. As noted above, Respondent uses the domain name wwwgoogle.com to webforward Internet users to its pointcom.com website, which, in turn, is a framed internal page from the web site of a direct competitor of Google.

The evidence also establishes that Respondent, by using the domain name, intentionally attempted to attract, for commercial gain, Internet users to its site by creating a likelihood of confusion with Complainant's mark as to sponsorship or affiliation of Respondent's web site, within the meaning of §4.b.(iv) of the Policy.

In sum, each of the circumstances set forth in the Policy as constituting evidence of bad faith registration and use exists in this case. Moreover, while not spelled out in the Policy, Respondent's false representation to NSI that its domain name did not infringe the rights of any third party is also proof of the requisite "bad faith." See Slep-Tone Entertainment Corp. v. Sound Choice Disc Jockeys, Inc. (NAF File No. FA2002000093636).

7. Decision

In view of the above, the Panel GRANTS Complainant's request for transfer to it of the domain name wwwgoogle.com.

Jeffrey M. Samuels
Panelist

Dated: November 9, 2000