



**NATIONAL
ARBITRATION
FORUM**

NATIONAL ARBITRATION FORUM

DECISION

Garry Kasparov v. Mark Andreev
Claim Number: FA0505000471047

PARTIES

Complainant is **Garry Kasparov** ("Complainant"), represented by **Max J. Sprecher**, of **Liner Yankelevitz Sunshine & Regenstreif LLP**, 11000 Glendon Ave, 14th Floor, Los Angeles, CA 90024. Respondent is **Mark Andreev** ("Respondent"), 11, Gvardieskaya, Kara-Balta, 123841, KG.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**kasparov.org**>, registered with **Enom**.

PANEL

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

Hon. Ralph Yachnin as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on May 2, 2005; the National Arbitration Forum received a hard copy of the Complaint on May 4, 2005.

On May 3, 2005, Enom confirmed by e-mail to the National Arbitration Forum that the domain name <**kasparov.org**> is registered with Enom and that Respondent is the current registrant of the name. Enom has verified that Respondent is bound by the Enom 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 May 6, 2005, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of May 26, 2005 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@kasparov.org by e-mail.

Having received no Response from Respondent, using the same contact details and methods as were used for the Commencement Notification, the National Arbitration Forum transmitted to the parties a Notification of Respondent Default.

On June 3, 2005, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Hon. Ralph Yachnin as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the National Arbitration Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any Response from Respondent.

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

1. Respondent's <kasparov.org> domain name is identical to Complainant's KASPAROV mark.
2. Respondent does not have any rights or legitimate interests in the <kasparov.org> domain name.
3. Respondent registered and used the <kasparov.org> domain name in bad faith.

B. Respondent failed to submit a Response in this proceeding.

FINDINGS

Complainant, Garry Kasparov, is a former International Grandmaster chess competition champion. Complainant was the number one rated chess player in the world from 1985 through 2004. In addition to his achievements in international chess play, Complainant participated in the well-publicized chess matches against IBM's Deep Blue computer in 1996 and 1997, which generated approximately \$1,000,000,000 in publicity for IBM and 72 million hits on IBM's website related to the competition.

Complainant holds a trademark registration with the United States Patent and Trademark Office for the KASPAROV mark (Reg. No. 1,653,781 issued August 13, 1991) relating to electronic and computerized games, including chess games.

Respondent registered the <kasparov.org> domain name on August 8, 2001. Respondent is using the disputed domain name to redirect Internet users to a website featuring links to third-party products and services, including chess-related links in competition with Complainant's registered mark.

DISCUSSION

Paragraph 15(a) of 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."

In view of Respondent's failure to submit a Response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules.

Paragraph 4(a) of the Policy requires that 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 Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) 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 asserted in this proceeding that it has rights in the KASPAROV mark through registration with the United States Patent and Trademark Office. The Panel finds that registration of Complainant's mark is *prima facie* evidence that Complainant has rights in the mark pursuant to Policy ¶ 4(a)(i). *See Men's Wearhouse, Inc. v. Wick*, FA 117861 (Nat. Arb. Forum Sept. 16, 2002) ("Under U.S. trademark law, registered marks hold a presumption that they are inherently distinctive and have acquired secondary meaning."); *see also Janus Int'l Holding Co. v. Rademacher*, D2002-0201 (WIPO Mar. 5, 2002) (finding that panel decisions have held that registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive. The respondent has the burden of refuting this assumption).

The <kasparov.org> domain name registered by Respondent is identical to Complainant's KASPAROV mark because the domain name incorporates Complainant's mark in its entirety and merely adds the generic top-level domain ".org." The addition of a generic top-level domain to Complainant's mark does not negate the identical aspects of Respondent's domain name pursuant to Policy ¶ 4(a)(i). *See Rollerblade, Inc. v.*

McCrary, D2000-0429 (WIPO June 25, 2000) (finding that the top level of the domain name such as “.net” or “.com” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar); *see also Microsoft Corp. v. Mehrotra*, D2000-0053 (WIPO Apr. 10, 2000) (finding that the domain name <microsoft.org> was identical to the complainant’s mark); *see also Koninklijke Philips Elecs. NV v. Goktas*, D2000-1638 (WIPO Feb. 8, 2001) (finding that the domain name <philips.org> was identical to the complainant’s PHILIPS mark); *see also BMW AG v. Loophole*, D2000-1156 (WIPO Oct. 26, 2000) (finding that there was “no doubt” that the domain name <bmw.org> was identical to the complainant’s well-known and registered BMW trademarks).

The Panel finds that Policy ¶ 4(a)(i) has been satisfied.

Rights or Legitimate Interests

Complainant alleges that Respondent has no rights or legitimate interests in the <kasparov.org> domain name, containing Complainant’s KASPAROV mark in its entirety. Once Complainant makes a *prima facie* case in support of its allegations, the burden shifts to Respondent to show that it does have rights to or legitimate interests in the domain name. Due to Respondent’s failure to respond to the Complaint, the Panel assumes that Respondent does not have rights or legitimate interests in the disputed domain name. *See G.D. Searle v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002) (holding that, where the complainant has asserted that the respondent has no rights or legitimate interests with respect to the domain name, it is incumbent on the respondent to come forward with concrete evidence rebutting this assertion because this information is “uniquely within the knowledge and control of the respondent”); *see also Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (finding that once the complainant asserts that the respondent has no rights or legitimate interests with respect to the domain, the burden shifts to the respondent to provide credible evidence that substantiates its claim of rights and legitimate interests in the domain name); *see also Pavillion Agency, Inc. v. Greenhouse Agency Ltd.*, D2000-1221 (WIPO Dec. 4, 2000) (finding that the respondents’ failure to respond can be construed as an admission that they do not have rights or legitimate interests in the domain names).

The Panel finds that Complainant has made the *prima facie* showing. Since Respondent has not responded to the Complaint, the Panel is entitled to accept all reasonable allegations and inferences in the Complaint as true. *See Bayerische Motoren Werke AG v. Bavarian AG*, FA 110830 (Nat. Arb. Forum June 17, 2002) (finding that, in the absence of a response, the panel is free to make inferences from the very failure to respond and assign greater weight to certain circumstances than it might otherwise do); *see also Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent’s failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true).

Respondent is using the <kasparov.org> domain name to redirect Internet users to a commercial website featuring links to goods and services which are in competition with

Complainant. The Panel infers that Respondent earns pay-per-click fees for linking users to the featured websites. Respondent's use of a domain name that is identical to Complainant's KASPAROV mark to redirect Internet users interested in Complainant's goods and services to a commercial website that offers links to competitor's goods and services is not in connection with a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶ 4(c)(iii). *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 Disney Enters., Inc. v. Dot Stop*, FA 145227 (Nat. Arb. Forum Mar. 17, 2003) (finding that the respondent's diversionary use of the complainant's mark to attract Internet users to its own website, which contained a series of hyperlinks to unrelated websites, was neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain names); *see also Black & Decker Corp. v. Clinical Evaluations*, FA 112629 (Nat. Arb. Forum June 24, 2002) (holding that the respondent's use of the disputed domain name to redirect Internet users to commercial websites, unrelated to the complainant and presumably with the purpose of earning a commission or pay-per-click referral fee did not evidence rights or legitimate interests in the domain name).

Respondent has offered no evidence and nothing in the record suggests that Respondent is commonly known by the <kasparov.org> domain name. Complainant has never authorized or licensed Respondent to use its KASPAROV mark in any way. Thus, Respondent has not established rights or legitimate interests in the disputed domain name pursuant to Policy ¶ 4(c)(ii). *See Gallup Inc. v. Amish Country Store*, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) (finding that the respondent does not have rights in a domain name when the respondent is not known by the mark); *see also RMO, Inc. v. Burbridge*, FA 96949 (Nat. Arb. Forum May 16, 2001) (interpreting Policy ¶ 4(c)(ii) "to require a showing that one has been commonly known by the domain name prior to registration of the domain name to prevail"); *see also Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interests where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name).

The Panel finds that Policy ¶ 4(a)(ii) has been satisfied.

Registration and Use in Bad Faith

Respondent is using the <kasparov.org> domain name, which is identical to Complainant's KASPAROV mark, to redirect Internet users to a commercial website featuring links to goods and services which are in competition with Complainant's business. Such use constitutes disruption and is evidence of registration and use in bad faith pursuant to Policy ¶ 4(b)(iii). *See Six Continents Hotels, Inc. v. Asia Ventures*, D2003-0659 (WIPO Oct. 14, 2003) (finding that the respondent registered a domain name primarily to disrupt the business of its competitor because it directed "its web site to travel-related services in competition with the complainant and is deriving a financial benefit from such direction and redirection of users to such sites, particularly, through

banner advertisements, pop-up windows and its affiliate relationships”); *see also S. Exposure v. S. Exposure, Inc.*, FA 94864 (Nat. Arb. Forum July 18, 2000) (finding that the respondent acted in bad faith by attracting Internet users to a website that competes with the complainant’s business).

Additionally, the Panel infers that Respondent receives click-through fees for diverting Internet users to third-party websites featuring competitor’s goods and services. Since Respondent is using a domain name that is identical to Complainant’s mark, consumers searching for Complainant online who access Respondent’s domain name may become confused as to Complainant’s affiliation with the resulting website. Thus, the Panel finds that Respondent’s commercial use of the <**kasparov.org**> constitutes bad faith registration and use pursuant to Policy ¶ 4(b)(iv). *See Kmart v. Khan*, FA 127708 (Nat. Arb. Forum Nov. 22, 2002) (finding that if the respondent profits from its diversionary use of the complainant's mark when the domain name resolves to commercial websites and the respondent fails to contest the complaint, it may be concluded that the respondent is using the domain name in bad faith pursuant to Policy ¶ 4(b)(iv)); *see also eBay, Inc v. Progressive Life Awareness Network*, D2000-0068 (WIPO Mar. 16, 2001) (finding bad faith where the respondent is taking advantage of the recognition that eBay has created for its mark and therefore profiting by diverting users seeking the eBay website to the respondent’s site).

Furthermore, Respondent registered the <**kasparov.org**> domain name with actual or constructive knowledge of Complainant’s rights in the KASPAROV mark due to Complainant’s registration of the mark with the United States Patent and Trademark Office. Moreover, the Panel finds that Respondent registered the disputed domain name with actual knowledge of Complainant’s rights in the mark because of the obvious link between Complainant and the content advertised on Respondent’s website. Thus, Respondent registered and used the <**kasparov.org**> domain name in bad faith pursuant to Policy ¶ 4(a)(iii). *See Samsonite Corp. v. Colony Holding*, FA 94313 (Nat. Arb. Forum Apr. 17, 2000) (finding that evidence of bad faith includes actual or constructive knowledge of a commonly known mark at the time of registration); *see also Orange Glo Int’l v. Blume*, FA 118313 (Nat. Arb. Forum Oct. 4, 2002) (“Complainant’s OXICLEAN mark is listed on the Principal Register of the USPTO, a status that confers constructive notice on those seeking to register or use the mark or any confusingly similar variation thereof.”); *see also Pfizer, Inc. v. Suger*, D2002-0187 (WIPO Apr. 24, 2002) (finding that because the link between the complainant’s mark and the content advertised on the respondent’s website was obvious, the respondent “must have known about the Complainant’s mark when it registered the subject domain name”).

The Panel finds that Policy ¶ 4(a)(iii) has been satisfied.

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 <**kasparov.org**> domain name be **TRANSFERRED** from Respondent to Complainant.



Honorable Ralph Yachnin
Arbitrator

Hon. Ralph Yachnin, Panelist
Justice Supreme Court, NY (Ret.)

Dated: June 16, 2005

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