



## NATIONAL ARBITRATION FORUM

### DECISION

TechSmith Corporation v. Eugene Shamilton /Easy Domain Connect LTD.

Claim Number: FA1304001496635

### PARTIES

Complainant is **TechSmith Corporation** ("Complainant"), represented by **James R. Duby** of **DUBY LAW FIRM**, Michigan, USA. Respondent is **Eugene Shamilton /Easy Domain Connect LTD.** ("Respondent"), United Kingdom.

### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<camtasia.us>**, registered with **KEY-SYSTEMS GMBH**.

### 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.

Sandra J. Franklin as Panelist.

### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on April 25, 2013; the National Arbitration Forum received a hard copy on April 25, 2013.

On April 30, 2013, KEY-SYSTEMS GMBH confirmed by e-mail to the National Arbitration Forum that the **<camtasia.us>** domain name is registered with KEY-

SYSTEMS GMBH and that Respondent is the current registrant of the name. KEY-SYSTEMS GMBH has verified that Respondent is bound by the KEY-SYSTEMS GMBH registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with the U.S. Department of Commerce's usTLD Dispute Resolution Policy (the "Policy").

On May 2, 2013, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of May 22, 2013 by which Respondent could file a Response to the Complaint, was transmitted to Respondent in compliance with Paragraph 2(a) of the Rules for usTLD Dispute Resolution Policy.

Having received no response from Respondent, the National Arbitration Forum transmitted to the parties a Notification of Respondent Default.

On May 31, 2013, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Sandra J. Franklin 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) Rules for the U.S. Department of Commerce's usTLD Dispute Resolution Policy "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the usTLD Policy, usTLD 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' CONTENTION

A. Complainant makes the following assertions:

1. Respondent's <camtasia.us> domain name is confusingly similar to Complainant's CAMTASIA mark.
2. Respondent does not have any rights or legitimate interests in the <camtasia.us> domain name.
3. Respondent registered and used the <camtasia.us> domain name in bad faith.

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

## FINDINGS

Complainant, TechSmith Corporation, uses its CAMTASIA mark in connection with video capture utility software. Complainant is the owner of trademark registrations with the United States Patent and Trademark Office ("USPTO") for the CAMTASIA mark (*e.g.*, Reg. No. 2,488,689, registered September 11, 2001). Complainant also owns a trademark registration with the Office for Harmonization in the Internal Market ("OHIM") for the CAMTASIA mark (Reg. No. 002068575, registered February 1, 2001).

Respondent registered the <camtasia.us> domain name on October 5, 2012 and uses it to display unauthorized information regarding Complainant's products, and to provide links to websites purporting to sell Complainant's goods.

## 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."

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 or is being used in bad faith.

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. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See 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); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Given the similarity between the Uniform Domain Name Dispute Resolution Policy (“UDRP”) and the usTLD Policy, the Panel will draw upon UDRP precedent as applicable in rendering its decision.

### **Identical and/or Confusingly Similar**

The Panel finds that Complainant’s registration of its CAMTASIA mark with the OHIM and USPTO sufficiently evidences its rights in the mark pursuant to Policy ¶ 4(a)(i). *See Petroleo Brasileiro S.A. – Petrobras v. Munoz*, FA 1222428 (Nat. Arb. Forum Oct. 16, 2008) (finding complainant’s multiple trademark registrations around the world, including those with the European Union’s Office for Harmonization in the Internal Market (“OHIM”), established complainant’s rights in its mark under Policy ¶ 4(a)(i)).

Respondent’s <camtasia.us> domain name is identical to Complainant’s CAMTASIA mark except for the addition of the ccTLD “.us,” which is inconsequential to a Policy ¶ 4(a)(i) analysis. *See Tropar Mfg. Co. v. TSB*, FA 127701 (Nat. Arb. Forum Dec. 4, 2002) (finding that since the addition of the country-code “.us” fails to add any distinguishing characteristic to the domain name, the <tropar.us> domain name is identical to the complainant’s TROPAR mark). The Panel thus finds that Respondent’s <camtasia.us> domain name is identical to Complainant’s CAMTASIA mark.

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

### **Rights or Legitimate Interests**

Once Complainant makes a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii), the burden shifts to Respondent to show it does have rights or legitimate interests.

*See Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) (holding that the complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under UDRP ¶ 4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name); *see also AOL LLC v. Gerberg*, FA 780200 (Nat. Arb. Forum Sept. 25, 2006) (“Complainant must first make a *prima facie* showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interests in the subject domain names.”).

Policy ¶ 4(c) provides four elements that a respondent may satisfy: (i) a respondent is the owner or beneficiary of a trade or service mark that is identical to the domain name; (ii) a respondent is making a *bona fide* offering of goods and services; (iii) a respondent is commonly known by the disputed domain name; or (iv) a respondent is making a legitimate noncommercial or fair use of the disputed domain name.

There is no evidence to support a determination that Respondent owns any trademarks that reflect the <camtasia.us> domain name. Accordingly, the Panel finds that Respondent does not satisfy Policy ¶ 4(c)(i). *See Meow Media Inc., v. Basil*, FA 113280 (Nat. Arb. Forum Aug. 20, 2002 (finding that there was no evidence that Respondent was the owner or beneficiary of a mark that is identical to the <persiankitty.com> domain name).

Complainant argues that Respondent is not commonly known by <camtasia.us> given that Respondent has no affiliation with Complainant and did not receive Complainant’s consent to use the CAMTASIA mark in any manner. The WHOIS information associated with the disputed domain name identifies Respondent as “Eugene Shamilton,” operating under the company name “Easy Domain Name

Connect LTD,” showing no connection to the disputed domain name. Thus, the Panel finds that Respondent is not commonly known by the domain name under Policy ¶ 4(c)(iii). See *Coppertown Drive-Thru Sys., LLC v. Snowden*, FA 715089 (Nat. Arb. Forum July 17, 2006) (concluding that the respondent was not commonly known by the <coppertown.com> domain name where there was no evidence in the record, including the WHOIS information, suggesting that the respondent was commonly known by the disputed domain name).

Complainant argues that Respondent uses the <camtasia.us> domain name to display unauthorized information regarding Complainant’s products, and to provide links to websites purporting to sell Complainant’s goods. The Panel notes that the disputed domain name resolves to a website featuring links such as “Download Movies,” “TV Series Download,” “Free Antivirus,” in direct competition with Complainant. The Panel finds that Respondent’s competing use of the domain name is not a *bona fide* offering of goods and services pursuant to Policy ¶ 4(c)(ii) or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iv). See *H-D Michigan Inc. v. Buell*, FA 1106640 (Nat. Arb. Forum Jan. 2, 2008) (finding that, because the “[r]espondent’s disputed domain names resolve to a website featuring a series of advertising links to various third-parties, many of whom offer products and services in direct competition with those offered under [the complainant’s] mark,” the respondent is not using the disputed domain names for a *bona fide* offering of goods or services or a legitimate noncommercial or fair use).

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

### **Registration and Use in Bad Faith**

Respondent uses the <camtasia.us> domain name to attract Internet consumers to its website by creating a false affiliation with Complainant to generate pay-per-

click fees. The Panel finds that this constitutes bad faith under Policy ¶ 4(b)(iv). *See Associated Newspapers Ltd. v. Domain Manager*, FA 201976 (Nat. Arb. Forum Nov. 19, 2003) (“Respondent's prior use of the <mailonsunday.com> domain name is evidence of bad faith pursuant to Policy ¶ 4(b)(iv) because the domain name provided links to Complainant's competitors and Respondent presumably commercially benefited from the misleading domain name by receiving ‘click-through-fees.’”).

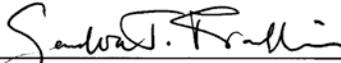
Complainant asserts that Respondent had actual notice of Complainant's registered CAMTASIA mark prior to registering the <camtasia.us> domain name, based on Respondent's prominent and frequent use of the CAMTASIA mark to directly compete with Complainant. The Panel agrees and finds that Respondent had actual knowledge of Complainant's mark and rights, further evidence of bad faith under Policy ¶ 4(a)(iii). *See Nat'l Patent Servs. Inc. v. Bean*, FA 1071869 (Nat. Arb. Forum Nov. 1, 2007) (“[C]onstrucive notice does not support a finding of bad faith registration.”); *see also Minicards Vennootschap Onder Firma Amsterdam v. Moscow Studios*, FA 1031703 (Nat. Arb. Forum Sept. 5, 2007) (holding that respondent registered a domain name in bad faith under Policy ¶ 4(a)(iii) after concluding that respondent “actual knowledge of Complainant's mark when registering the disputed domain name”).

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

## DECISION

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

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

  
Sandra J. Franklin  
Arbitrator

Sandra J. Franklin, Panelist

Dated: June 9, 2013