



NATIONAL ARBITRATION FORUM

DECISION

Doctors Signature Sales & Marketing International Corp. d/b/a Life Force International v. The LifeForce Center
Claim Number: FA0807001216435

PARTIES

Complainant is **Doctors Signature Sales & Marketing International Corp. d/b/a Life Force International** ("Complainant"), represented by **James R. Duby**, of **Duby & Associates, PLC**, Michigan, USA. Respondent is **The LifeForce Center** ("Respondent"), New Mexico, USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**lifeforceplan.com**>, registered with **Network Solutions, Inc.**

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.

Bruce E. Meyerson as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on July 18, 2008; the National Arbitration Forum received a hard copy of the Complaint on July 22, 2008.

On July 21, 2008, Network Solutions, Inc. confirmed by e-mail to the National Arbitration Forum that the <**lifeforceplan.com**> domain name is registered with Network Solutions, Inc. and that Respondent is the current registrant of the name. Network Solutions, Inc. has verified that Respondent is bound by the Network Solutions, Inc. 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 August 4, 2008, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of August 25, 2008 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@lifeforceplan.com by e-mail.

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

On September 2, 2008, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Bruce E. Meyerson 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 <**lifeforceplan.com**> domain name is confusingly similar to Complainant's LIFE FORCE mark.
2. Respondent does not have any rights or legitimate interests in the <**lifeforceplan.com**> domain name.
3. Respondent registered and used the <**lifeforceplan.com**> domain name in bad faith.

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

FINDINGS

Complainant markets and sells nutritional and dietary supplements under the LIFE FORCE mark, which Complainant registered with the United States Patent and Trademark Office ("USPTO") on Dec. 8, 1998 (Reg. No. 2,207,986). Complainant has sold nutritional and dietary supplements continuously in commerce throughout the United States since 1985.

Respondent registered the <**lifeforceplan.com**> domain name on March 8, 1999. The disputed domain name redirects Internet visitors to the <**mccombsplan.com**> website, which advertises nutritional and dietary supplement products that directly compete with Complainant's LIFE FORCE products.

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. 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.").

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

The Panel finds that Complainant has established rights in the LIFE FORCE mark for purposes of Policy ¶ 4(a)(i) through its trademark registration with the USPTO. *See Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) (“Registration of the NASAL-AIRE mark with the USPTO establishes Complainant's rights in the mark.”).

Complainant contends that Respondent’s <lifeforceplan.com> domain name is confusingly similar to its LIFE FORCE mark. The <lifeforceplan.com> domain name differs from Complainant’s mark in two ways: (1) the generic term “plan” has been added to the end of the mark; and (2) the generic top-level domain (“gTLD”) “.com” has been added. The addition of a generic term does not sufficiently distinguish a domain name from an incorporated mark for the purposes of Policy ¶ 4(a)(i), nor does the addition of a gTLD, because every domain name must contain a top-level-domain. *See Body Shop Int’l PLC v. CPIC NET*, D2000-1214 (WIPO Nov. 26, 2000) (finding that the domain name <bodyshopdigital.com> is confusingly similar to the complainant’s THE BODY SHOP trademark); *see also Daedong-USA, Inc. v. O’Bryan Implement Sales*, FA 210302 (Nat. Arb. Forum Dec. 29, 2003) (“Respondent's domain name, <kioti.com>, is identical to Complainant's KIOTI mark because adding a top-level domain name is irrelevant for purposes of Policy ¶ 4(a)(i).”).

Therefore, the Panel finds that these changes do not minimize or eliminate the resulting likelihood of confusion, and so Respondent’s disputed domain name is not sufficiently distinguished from Complainant’s mark pursuant to Policy ¶ 4(a)(i).

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

Rights or Legitimate Interests

Complainant contends that Respondent lacks all rights and legitimate interests in the <lifeforceplan.com> domain name. Under Policy ¶ 4(a)(ii), after the complainant makes a *prima facie* case against the respondent, the respondent then has the burden of showing evidence that it does have rights or legitimate interests in the disputed domain name. Complainant has made a *prima facie* case under Policy ¶ 4(a)(ii). *See Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (holding 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 “concrete evidence that it has rights to or legitimate interests in the domain name at issue”). The Panel finds that Complainant has met that burden; nevertheless the Panel will proceed to consider the remaining elements of the Policy.

Complainant contends that Respondent is not commonly known by the <lifeforceplan.com> domain name nor has Respondent ever been the owner or licensee of the LIFE FORCE mark. Although the WHOIS record for the disputed domain name lists Respondent as “The LifeForce Center,” which could lead to an inference that Respondent has been known by the <lifeforceplan.com> domain name, Respondent has failed to show any evidence contrary to Complainant’s contentions, which compels the Panel to find that Respondent is not commonly known as <lifeforceplan.com> pursuant to Policy ¶ 4(c)(ii). *See Yoga Works, Inc. v. Arpita*, FA 155461 (Nat. Arb. Forum June 17, 2003) (finding that the respondent was not “commonly known by” the <shantiyogaworks.com> domain name despite listing its name as “Shanti Yoga Works” in its WHOIS contact information because there was “no affirmative evidence before the Panel that the respondent was ever ‘commonly known by’ the disputed domain name prior to its registration of the disputed domain name”); *see also American Express Co. v. Fang Suhendro*, FA 129120 (Nat. Arb. Forum Dec. 30, 2002) (“[B]ased on

Respondent's failure to respond, it is presumed that Respondent lacks all rights and legitimate interests in the disputed domain name.”).

Respondent maintains a website at the <lifeforceplan.com> domain name that redirects Internet visitors to a website hosted at the <mcombsplan.com> domain name. Respondent uses the website at <mcombsplan.com> to market and sell products that directly compete with Complainant's products. The Panel finds that this use of the <lifeforceplan.com> domain name is neither a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) nor a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii). See *Ameritrade Holdings Corp. v. Polanski*, FA 102715 (Nat. Arb. Forum Jan. 11, 2002) (finding that the respondent's use of the disputed domain name to redirect Internet users to a financial services website, which competed with the complainant, was not a *bona fide* offering of goods or services); see also *DLJ Long Term Inv. Corp. v. BargainDomainNames.com*, FA 104580 (Nat. Arb. Forum Apr. 9, 2002) (“Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services because Respondent is using the domain name to divert Internet users to <visual.com>, where services that compete with Complainant are advertised.”).

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

Registration and Use in Bad Faith

Complainant contends that the similarity between the LIFE FORCE mark and the <lifeforceplan.com> domain name causes confused Internet visitors to be diverted from Complainant's website to Respondent's website that resolves from the disputed domain name. See *EthnicGrocer.com, Inc. v. Latingrocer.com*, FA 94384 (Nat. Arb. Forum July 7, 2000) (finding bad faith where the respondent's sites pass users through to the respondent's competing business). Complainant also contends that Respondent, a competitor of Complainant, intended to cause this confusion as a means of disrupting Complainant's business. The Panel finds that Respondent's use of the disputed domain name disrupts Complainant's business, and is evidence of registration and use in bad faith pursuant to Policy ¶ 4(b)(iii). See *Lubbock Radio Paging v. Venture Tele-Messaging*, FA 96102 (Nat. Arb. Forum Dec. 23, 2000) (concluding that domain names were registered and used in bad faith where the respondent and the complainant were in the same line of business in the same market area); see also *Surface Prot. Indus., Inc. v. Webposters*, D2000-1613 (WIPO Feb. 5, 2001) (finding that, given the competitive relationship between the complainant and the respondent, the respondent likely registered the contested domain name with the intent to disrupt the complainant's business and create user confusion).

Complainant also contends that Respondent is gaining commercially through this disruption of Complainant's business, through the sales of nutritional and dietary supplements that Respondent makes to Internet visitors who originally intended to buy them at Complainant's website. The Panel finds that this is an intentional use of the disputed domain name for commercial gain through a likelihood of confusion with Complainant's mark, and so, pursuant to Policy ¶ 4(b)(iv), this use is also evidence of registration and use in bad faith. See *TM Acquisition Corp. v. Carroll*, FA 97035 (Nat. Arb. Forum May 14, 2001) (finding bad faith where the respondent used the domain name, for commercial gain, to intentionally attract users to a direct competitor of the complainant); see also *Computerized Sec. Sys., Inc. v. Hu*, FA 157321 (Nat. Arb. Forum June 23, 2003) (finding that the respondent's use of the <saflock.com> domain name to offer goods competing with the complainant's illustrates the respondent's bad faith registration and use of the domain name, evidence of bad faith registration and use pursuant to Policy ¶ 4(b)(iv)).

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 <lifeforceplan.com> domain name be **TRANSFERRED** from Respondent to Complainant.

Bruce E. Meyerson, Panelist
Dated: September 16, 2008

[Click Here](#) to return to the main Domain Decisions Page.

[Click Here](#) to return to our Home Page

NATIONAL ARBITRATION FORUM