



## DECISION

TechSmith Corporation v. Dina Methoes / V&L Technologies

Claim Number: FA1508001632286

### PARTIES

Complainant is **TechSmith Corporation** ("Complainant"), represented by **James R. Duby** of **DUBY LAW FIRM**, Michigan, United States. Respondent is **Dina Methoes / V&L Technologies** ("Respondent"), Illinois, United States.

### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<techsmithcoupon.com>**, registered with **GoDaddy.com, LLC**.

### 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.

Darryl C. Wilson, as Panelist.

### PROCEDURAL HISTORY

Complainant submitted a Complaint to the FORUM electronically on August 6, 2015; the FORUM received payment on August 6, 2015.

On August 13, 2015, GoDaddy.com, LLC confirmed by e-mail to the FORUM that the **<techsmithcoupon.com>** domain name is registered with GoDaddy.com, LLC and that Respondent is the current registrant of the name. GoDaddy.com, LLC

has verified that Respondent is bound by the GoDaddy.com, LLC registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On August 14, 2015, the FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of September 3, 2015 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to postmaster@techsmithcoupon.com. Also on August 14, 2015, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

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

On September 8, 2015, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Darryl C. Wilson, as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the 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" 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 ICANN Policy, ICANN Rules, the 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

Complainant uses the TECHSMITH mark in connection with its computer consultation, computer design, and programming services. Complainant has registered the TECHSMITH mark with the United States Patent and Trademark Office ("USPTO") (*e.g.*, Reg. No. 1,749,869, registered February 2, 1993), which demonstrates its rights in the mark. The <techsmithcoupon.com> domain name is confusingly similar to Complainant's mark as it merely adds the descriptive word "coupon" and the generic top-level domain ("gTLD") ".com."

Respondent has no rights or legitimate interests in the disputed domain name. First, Respondent is not commonly known by the disputed domain name or any derivative of Complainant's mark. Second, Respondent has no authorization or license to use Complainant's mark. Finally, Respondent is not making a *bona fide* offering of goods or services through the disputed domain name or a legitimate noncommercial or fair use. Rather, Respondent used the disputed domain name to redirect Internet users to a generic unauthorized coupon redemption page until the page was suspended on June 22, 2015. Respondent also received pay-per-click revenue in connection with the disputed domain name.

Respondent registered and used the disputed domain name in bad faith. Respondent used the disputed domain name intentionally in an attempt to divert, for commercial gain, Internet users to the <techsmithcoupon.com> generic coupon redemption page. Further, Respondent registered the disputed domain name with actual knowledge of Complainant's rights in its TECHSMITH mark.

#### B. Respondent

Respondent failed to submit a Response in this proceeding.

### FINDINGS

Complainant is TechSmith Corporation of Okemos, MI, USA. Techsmith is the owner of domestic and international registrations for the mark TECHSMITH, which it has used continuously since at least as early as 1991, in connection with its provision of goods and services in the computer consulting, programming and design business.

Respondent is Dina Methoes / V&L Technologies of IL, USA. Respondent's registrar's address is listed as Scottsdale, AZ, USA. The Panel notes that the disputed domain name was registered on or about May 29, 2015.

### 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 and 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.").

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

Complainant uses the TECHSMITH mark in connection with its computer consultation, computer design, and programming services. Complainant has registered the TECHSMITH mark with the USPTO (*e.g.*, Reg. No. 1,749,869, registered February 2, 1993). Complainant contends that this USPTO registration suffices to demonstrate its rights in the TECHSMITH mark. The Panel notes that a trademark registration with the USPTO suffices to demonstrate a complainant's rights in its mark for the purposes of Policy ¶ 4(a)(i). *See Paisley Park Enters. v. Lawson*, FA 384834 (Nat. Arb. Forum Feb. 1, 2005) (concluding that the complainant had established rights in the PAISLEY PARK mark under Policy ¶ 4(a)(i) through registration of the mark with the USPTO). The Panel here finds

that Complainant has demonstrated its rights in the TECHSMITH mark under Policy ¶ 4(a)(i).

Complainant argues that the <techsmithcoupon.com> domain name is confusingly similar to Complainant's mark as it merely adds the descriptive term "coupon" and the gTLD ".com." Past panels have found that the addition of a descriptive term that relates to a complainant's business, along with the gTLD ".com" fails to sufficiently differentiate the disputed domain name from the complainant's mark for the purposes of Policy ¶ 4(a)(i). *See Gillette Co. v. RFK Assocs.*, FA 492867 (Nat. Arb. Forum July 28, 2005) (finding that the additions of the term "batteries," which described the complainant's products, and the generic top-level domain ".com" were insufficient to distinguish the respondent's <duracellbatteries.com> from the complainant's DURACELL mark). The Panel here finds that Respondent's disputed domain name is confusingly similar to Complainant's mark per Policy ¶ 4(a)(i).

Respondent makes no contentions with regards to Policy ¶ 4(a)(i).

Complainant has proven this element.

### **Rights or Legitimate Interests**

The Panel recognizes that Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii), then 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). The Complainant has met this burden.

Complainant argues that Respondent has no rights or legitimate interests in the disputed domain name. Complainant contends that Respondent is not commonly known by the disputed domain name or any variant of Complainant's mark. Further, Complainant argues that Respondent has no license or authorization to use Complainant's mark. The Panel notes that the WHOIS information lists "Dina Methoes / V&L Technologies" as registrant and that Respondent has failed to submit any evidence for the Panel's consideration. As Respondent has not formally replied to the complaint or otherwise provided any contrary evidence the Panel finds no basis upon which to conclude that Respondent is commonly known by the disputed domain name pursuant to Policy ¶ 4(c)(ii). *See Tercent Inc. v. Lee Yi*, FA 139720 (Nat. Arb. Forum Feb. 10, 2003) (stating "nothing in [the respondent's] WHOIS information implies that [the respondent] is 'commonly known by' the disputed domain name" as one factor in determining that Policy ¶ 4(c)(ii) does not apply).

Complainant alleges that Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii). Specifically, Complainant argues that Respondent used the disputed domain name to redirect Internet users to a generic unauthorized coupon redemption page until the page was suspended on June 22, 2015. Further, Complainant asserts that Respondent received pay-per-click revenue in connection with the disputed domain name. Prior panels have found that there is not a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use, where the website resolving from the disputed domain name links to products and services that compete directly with Complainant's business, and where the respondent presumably receives referral fees. *See Persohn v. Lim*, FA 874447 (Nat. Arb. Forum Feb. 19, 2007) (finding that the respondent was not using a disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use by redirecting Internet users to

a commercial search engine website with links to multiple websites that may be of interest to the complainant's customers and presumably earning "click-through fees" in the process). The Panel here finds that Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use per Policy ¶ 4(c)(i) and Policy ¶ 4(c)(iii).

Respondent makes no contentions with regards to Policy ¶ 4(a)(ii).

As the Respondent has not provided a response to this action, the Respondent has failed to meet its burden regarding proof of any rights or legitimate interest in the disputed domain.

The Complainant has proven this element.

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

Complainant argues that Respondent has been engaged in bad faith disruption pursuant to Policy ¶ 4(b)(iii) by offering products and services similar to Complainant's own via the disputed domain name. Previous panels have found similar behavior by Respondents support a finding of bad faith registration and use. *See DatingDirect.com Ltd. v. Aston*, FA 593977 (Nat. Arb. Forum Dec. 28, 2005) ("Respondent is appropriating Complainant's mark to divert Complainant's customers to Respondent's competing business. The Panel finds this diversion is evidence of bad faith registration and use pursuant to Policy ¶ 4(b)(iii)."). The Panel here finds that Respondent has engaged in bad faith disruption under Policy ¶ 4(b)(iii).

Complainant further argues that Respondent registered and used the disputed domain name in bad faith pursuant to Policy ¶ 4(b)(iv) by intentionally attempting to divert, for commercial gain, Internet users to the <techsmithcoupon.com>

generic coupon redemption page. Prior panels have found bad faith under Policy ¶ 4(b)(iv) where a respondent's disputed domain name resolved to a website that offered links to third-party websites that offered products and services similar to the complainant's, and where the respondent presumably commercially benefited from the disputed domain name by receiving referral fees. *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.'"). The Panel here finds Respondent's actions support a finding of bad faith registration and use pursuant to Policy ¶ 4(b)(iv).

Respondent makes no contentions with regards to Policy ¶ 4(b)(iv) or Policy ¶ 4(a)(iii).

The Complainant has proven this element.

## DECISION

As the Complainant has established all three elements required under the ICANN Policy, the Panel concludes that Complainant's requested relief shall be **GRANTED**.

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

  
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Professor Darryl C. Wilson, Esq.  
Arbitrator

Darryl C. Wilson, Panelist  
Dated: September 22, 2015