



**WIPO Arbitration and Mediation Center**

**ADMINISTRATIVE PANEL DECISION**

Fall Nummer: D2003-0641

Entscheidung vom 3. Oktober 2003

1. The Parties

The Complainant is Zeeks, ..., United States of America.

The Respondent is KME aka Mr. S.O., Delaware, Algeria.

2. The Domain Name and Registrar

The disputed domain name <nsyncfilm.com> ("Domain Name") is registered with Go Daddy Software.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 14, 2003. On August 15, 2003, the Center transmitted by email to Go Daddy Software a request for registrar verification

in connection with the domain name at issue. On August 15, 2003, Go Daddy Software transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the administrative, billing, and technical contact. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 20, 2003. In accordance with the Rules, paragraph 5(a), the due date for Response was September 9, 2003. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 10, 2003.

The Center appointed Michael Treis as the sole panelist in this matter on September 23, 2003. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### 4. Factual Background

Based on the Complainant's assertions, supported by the documents enclosed as appendix to the Complaint, and undisputed by the Respondent because of its default, and further based on general knowledge and on publicly available information from the Internet, the Panel finds the following:

The Complainant is a Delaware corporation formed by the five individual members of the music group \*NSYNC, James Lance Bass, Joshua Scott Chasez, Joseph Anthony Fatone, Jr., Christopher Alan Kirkpatrick, and Justin Randall Timberlake. The Complainant is the owner of the trademarks NSYNC and NSYNC & Design, registered in the United States of America in 2002 and 2003 and first used between 1995 and 2001 for a broad range of goods. The Complainant also owns the domain name <nsync.com>, and it uses this domain name to host a website that offers information concerning Complainant's goods and services promoted and sold in the United States and worldwide under the NSYNC trademark. The Complainant also uses the domain name <nsync.com> for sale of goods under the NSYNC trademark through ecommerce.

\*NSYNC is the name of a musical group consisting of the five founders of the Complainant. The group was founded in 1995, had first successes in 1996 and 1997, became famous in 1998, sold 9.9 million copies of its album No Strings Attached from March to December of 2000, and had a similar hit with its album entitled Celebrity. The group founded and is using the Complainant as a legal entity to exploit their fame commercially, in particular by marketing various goods under the NSYNC trademark.

The Respondent registered the Domain Name <nsyncfilm.com> on May 17, 2003. He uses this Domain Name to operate a website containing pornographic material. Respondent uses the Domain Name to link to a website "www.goldensluts.com", which also displays pornographic material. The domain name <goldensluts.com> is also owned by the Respondent. The Respondent has used nonsensical contact information for the registration of the Domain Name; neither is Delaware in Algeria, nor is Algeria in Delaware.

## 5. Parties's Contentions

### A. Complainant

The Complainant asserts that by using the Domain Name in connection with the sale and promotion of pornographic material, Respondent tarnishes Complainant's image and goodwill.

### B. Respondent

The Respondent did not reply to the Complainant's contentions.

## 6. Discussion and Findings

Paragraph 4 (a) of the Policy lists three tests which the Complainant must satisfy in order to prevail, namely that:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interest in respect of such domain name; and

(iii) the domain name has been registered and is being used in bad faith.

#### A. Identical or Confusingly Similar

The Domain Name <nsyncfilm.com> is clearly confusingly similar to the trademark NSYNC in which the Complainant has rights in the USA. The addition of the generic element "film" is not only insufficient to avoid confusion, but is indeed capable of increasing the confusion, as an internet user may reasonably believe that the Domain Name <nsyncfilm.com> would be used for a website containing information about the group's films or music videos.

#### A. Rights or Legitimate Interests

The Panel has considered the allegations by the Complainant as to the lack of rights and legitimate interests of the Respondent and found them to be highly plausible. NSYNC is a highly unusual acronym and invented word, and it appears extremely unlikely that the Respondent should have any proper reason to use this Domain Name for the purposes described above. The Respondent is in default with his response to the Complaint, and for this reason also, there are no indications whatsoever as to any rights or legitimate interests of the Respondent in the Domain Name.

#### C. Registered and Used in Bad Faith

As to the registration and use of the Domain Name in bad faith, the Panel considers this criterion clearly proved. In line with numerous UDRP decisions of other Panels, this Panel considers that bad faith is established when it is very unlikely that the registrant would have chosen the domain name had it not known of its fame. This clearly applies to the group \*NSYNC and its trademark. The Panel finds that the Respondent has registered and used the Domain Name in an attempt to exploit the fame of the NSYNC name and trademark in an unfair and manifestly unethical manner. It is also evident that the use of the Domain Name will tarnish Complainant's NSYNC trademark and damage the goodwill the Complainant has built up. The bad faith of the Respondent's registration and use is further corroborated by the fact that the Respondent's contact information is false.

## 7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <nsyncfilm.com> be transferred to the Complainant.

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Sole Panelist