



**WIPO Arbitration and Mediation Center**

**ADMINISTRATIVE PANEL DECISION**

Fall Nummer: DLA2003-0001

Entscheidung vom 9. Oktober 2003

**1. The Parties**

The Complainant is Sparco ..., Italy, ....

The Respondent is Mr. O. F.-G., ..., California, ....

**2. The Domain Name and Registrar**

The disputed domain name <sparco.la> is registered with GAA International / LA Names Corporation.

**3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 1, 2003. On August 14, 2003, the Center transmitted by email to GAA International / LA Names Corporation a request for registrar verification in connection with the domain name at issue. On August 20, 2003, GAA International / LA Names Corporation 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 21, 2003. In accordance with the Rules, paragraph 5(a), the due date for Response was September 10, 2003. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 17, 2003.

The Center appointed Peter G. Nitter as the Sole Panelist in this matter on September 25, 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. F a c t u a l B a c k g r o u n d

The domain name <sparco.la> was registered on June 18, 2003.

Complainant Sparco S.p.A. (formerly Sparco S.r.l.) is a well known company in Italy and internationally in the field of specialized products and clothing for racing cars activities. Complainant is the owner of several trademark registrations for SPARCO, ref. Annex 1 to the Complaint.

A renewal application was filed on April 15, 2003, for the Italian registration 335748 SPARCO, dating back to July 12, 1983, ref. Annex 2 to the Complaint.

The Complainant also has an international registration 478132 SPARCO of July 12, 1983, and corresponding renewal application, ref. Annex 3 to the Complaint.

The Complainant also has the U.S. registrations 1367444 SPARCO (1985), 2276975 SPARCO (1996/99) and 2282386 SPARCO and device (1996/99), ref. Annexes 4-6 to the Complaint.

#### 5. P a r t i e s ' C o n t e n t i o n s

##### A. Complainant

Complainant is and has been for many years the owner of the trademark SPARCO. SPARCO is also the main part of Complainant's trade name.

The domain name <sparco.la> is identical with the trademark SPARCO and with the trade name Sparco S.p.A.

There is no way that Respondent may not have been aware of the trade name and trademark SPARCO, and registration may only have occurred in bad faith. The use in the website "www.sparco.la" of a title tag "Sparco LA Racing Cars Products" in Respondent's pornographic website confirms that Respondent did intend to refer to Complainant, whose trademarks and trade name are commonly and uniquely associated with racing car products.

A Google search associating "Sparco" and "racing cars" elicited 308 results, all associated to Complainant, ref. Annex 7 to the Complaint.

That Respondent operates in bad faith is evidenced by his registration of several other domain names identical to, or confusingly similar with, well-known Italian trademarks, such as, for example, <ermenegildozegna.la>, <agnona.la> and <rottapharm.la>, ref. Annexes 8, 9, 10, all of them pointing to pornographic websites.

Respondent has no rights or legitimate interests in respect of the domain name. In particular:

(i) there is no evidence of the Respondent's use of, or demonstrable preparations to, use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services. The only thing Respondent offers through its domain name is a link to a pornographic website specialized in anal sex;

(ii) Respondent has never been commonly known in the normal course of business by the trademark, trade name or domain name SPARCO.

(iii) Respondent links to the default page of a website, which can be further navigated only by paying a fee. Hence, its use is commercial, and any possibility of a non-commercial fair use is excluded.

Respondent uses the domain name in bad faith. The domain name <sparco.la> leads to a pornographic website selling various services connected with pornography. The title tag says "Sparco LA Racing Cars Products," but its only content in fact refers to anal sex.

Consequences for Complainant, as a well-known and reputable company are potentially catastrophic, should even a minority of Internet users come to believe that Complainant is actually associated with such kind of pornography. The possibility is very real, taking into account that ".la" domain names have been largely promoted with reference to Los Angeles (rather than Laos), ref. Annex 16 to the Complaint. Also the title tag may indicate that the site is indeed the place where information about SPARCO products on sale in Los Angeles are to be found.

The redirection to pornographic sites from a domain name incorporating the trademark of another company is, per se, evidence of bad faith and has been confirmed by several Panel decisions as such. The Complainant refers to inter alia the following decisions:

- Ty, Inc. v. O.Z. Names, WIPO Case No. D2000-0370, finding that absent contrary evidence, linking the domain names in question to graphic, adult-oriented websites is evidence of bad faith;

- Oxygen Media, LLC v. Primary Source, WIPO Case No. D2000-0362, finding bad faith even where Respondent merely threatened to develop the domain name in question into a pornography site;

- Dell Computer Corporation v. RaveClub Berlin, WIPO Case No. D2002-0601, stating inter alia that "the fact that the pornographic website uses "mouse-trapping" techniques to prevent visitors from leaving it, clearly reinforces the bad faith use of the disputed domain name";

- Six Continents Hotels, Inc. v. Seweryn Nowak, WIPO Case No. D2003-0022, noting that "the diversion of the domain names to a pornographic site is itself certainly consistent with the finding that the Domain Name was registered and is being used in bad faith."

All the above decisions refer to cases as clear as the present one of " pornosquatting," where a cybersquatter tries to take advantage of a well-known trademark and/or trade name to attract Internet users to a pornographic Website.

In particular:

(a) a trademark the " pornosquatter" does not own is used;

(b) the site to which the user is redirected is obviously pornographic;

(c) the site is commercial, i.e. in order to access further pornographic images the Internet user is invited to pay; and

(d) there is a "mouse-trapping effect" making it more difficult for the casual Internet user to leave the pornographic website.

B. Respondent

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

## 6. Discussion and Findings

It is incumbent on the Complainant to make out its case in all respects under the Rules set out in paragraph 4(a) of the Policy. However, under the paragraph 5(e) if the Respondent does not submit a response and in the absence of exceptional circumstances, "the Panel shall decide the dispute based upon the Complaint." Further, under paragraph 14 of the Rules where a party does not comply with any provision of the Rules, the panel "shall draw such inferences therefrom as it considers appropriate."

### A. Identical or Confusingly Similar

The domain name is <sparco.la>.

"SPARCO" is the registered trademark of the Complainant. The trademark is registered in a large number of jurisdictions around the world and is very well-known.

The disputed domain name consists of the trademark of the Complainant in its entirety without any additions, except from the suffix ".la."

The domain name <sparco.la> is thus found to be identical to the trademark SPARCO in which the Complainant has rights.

The Panel is satisfied that the Complaint has met the requirements of paragraph 4(a) of the policy.

### B. Rights or Legitimate Interests

The Complainant has not licensed or otherwise permitted the Respondent to use its trademark or to apply for any domain name incorporating any such mark.

The use of the disputed domain name by the Respondent is not done in connection with a bona fide offering of goods or services. The Respondent is not commonly known by the disputed domain name.

There is no evidence before the Panel in this case that the Respondent has any legitimate interest in the domain name <sparco.la> for the purposes of paragraph 4 (c) of the Policy.

The Panel draws the inference from the Respondent's failure to respond to this administrative proceeding, that the Complainant is correct in its assertion that the Respondent has no rights or legitimate interests in the disputed domain name.

### C. Registered and Used in Bad Faith

The "SPARCO" trademark is very well-known internationally. It cannot be reasonably argued that the Respondent could have been unaware of the trademark when registering the disputed domain name. This is supported by the fact that the word "sparco" does not have a meaning in English language.

An Internet user who enters <sparco.la> is likely to expect that he will arrive at a website belonging to the Complainant. On the pornography related website links are offered that invite users to access other pornographic sites, against payment. It can therefore be found that the Respondent by using the disputed domain name has intentionally attempted to attract, for commercial gain, internet users to the website or other on-line location by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the website.

The use of Sparco as a domain name offering pornographic material certainly tarnishes the Complainant's existing marks, which is also evidence of bad faith. Reference is made to America Online, Inc. v. Viper, WIPO Case No. D2000-1198, MatchNet plc. v. MAC Trading, WIPO Case No. D2000-0205 and America Online, Inc. v. East Coast Exotics, WIPO Case No. D2001-0661.

The fact that the pornographic website uses "mouse-trapping" techniques to prevent visitors from leaving it clearly reinforces the bad faith use of the disputed domain name. Reference is made to Dell Computer Corporation v. RaveClub Berlin, WIPO Case No. D2002-0601.

The Panel finds that bad faith is evidenced by Respondents registration of several other domain names identical to, or confusingly similar with, well-known Italian trademarks, such as, for example, <ermenegildozegna.la>, <agnona.la> and <rottapharm.la>, all of them pointing to pornographic websites.

The Panel concludes that the Complainant has established this element.

## 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, <sparco.la> be transferred to the Complainant.

(Sole Panelist)