



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Fall Nummer: D2003-0923

Entscheidung vom 8. Januar 2004

1. The Parties

The Complainant is 2Advanced ..., United States of America....

The Respondent is Dreamrack ..., United States of America.

2. The Domain Name and Registrar

The disputed domain name (the "Domain Name") is registered with Tucows Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 20, 2003. On November 21, 2003, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 21, 2003, the Registrar 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 December 8, 2003. In accordance with the Rules, paragraph 5(a), the due date for a Response was December 28, 2003. The Respondent did not submit a Response. Accordingly, the Center notified the parties of the Respondent's default on December 29, 2003.

The Center appointed Maxim H. Waldbaum as the sole panelist in this matter on January 6, 2004. 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

The Complainant is a website design firm which markets and sells its services under the name "2Advanced Studios". Complainant's mark 2ADVANCED is a federally registered trademark in the United States. According to the Registrar, the domain name was registered by the Respondent on November 16, 2003.

5. Parties' Contentions

A. Complainant

The Complainant is a very well known, cutting edge website design firm which operates under the name "2Advanced Studios". The Complainant has continuously used the mark 2ADVANCED to identify its business and services and the mark has been listed on the principal register of the United States Patent and Trademark Office since August 21, 2001.

In November 2001, the Complainant registered the Domain Name and began using it to point to its website. However, the Domain Name expired on November 13, 2003, due to Complainant's unintentional failure to

reregister the Domain Name. Just three days after Complainant's registration expired, the Respondent registered the Domain Name.

The Respondent's registration for the Domain Name is identical to the domain name previously registered by the Complainant. In addition, the "2ADVANCED" portion of the Domain Name is identical in appearance and sound to Complainant's registered trademark.

There is no evidence of the Respondent's use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. In addition, the Respondent has not been commonly known by the Domain Name and is not making any legitimate non-commercial or fair use of the Domain Name.

The circumstances surrounding Respondent's registration of the Domain Name suggest that the Respondent intends to use the Domain Name for commercial gain, to misleadingly divert Internet users, or to tarnish the Complainant's trademark. For example, the fact that the Complainant is very well known in its industry suggests that the Respondent likely acquired the Domain Name for the purpose of selling it to the Complainant or a competitor of the Complainant.

The Respondent's registration of the Domain Name has prevented the Complainant, as owner of the mark, from reflecting the mark 2ADVANCED in a corresponding domain name. Furthermore, by using the Domain Name, the Respondent is likely to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant's mark 2ADVANCED is a federally registered trademark in the United States. The Complainant's evidence shows that the mark has gained recognition in the Complainant's field of business. The Panel thus finds that the mark is protected by federal and common law.

As the second-level domain of the domain name is identical to the Complainant's mark, the Panel finds that the Domain Name is confusingly similar to the Complainant's mark.

B. Rights or Legitimate Interests

The Respondent is not a licensee of the Complainant or otherwise authorized to use the Domain Name and there is no evidence that the Respondent is commonly known by the Domain Name. In addition, the Respondent is not making a legitimate non-commercial or fair use of the Domain Name or using the Domain Name in connection with a *bona fide* offering of goods or services.

The Panel finds that the Respondent has no rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

The Complainant has failed to meet its burden of showing that the Respondent registered and used the Domain Name in bad faith. The Complainant has not shown that the Respondent is a competitor of the Complainant or knew of the Complainant's mark.

The Panel considers the Respondent's registration of the Domain Name, which corresponds to a mark recognized in the web-design field, three days after the Complainant's registration lapsed to be highly suspicious and quite possibly in bad faith. However, the Complainant provides no evidence that the Respondent was aware of the Complainant's mark and no information about the intentions of the Respondent. In addition, except for the Whois details, the Complainant has submitted no information about

the Respondent's identity. Such information would likely be relevant to a determination of whether the Respondent knew of the Complainant's trademark when registering the Domain Name.

The Panel is aware that some respondents take great care in avoiding contact with complainants, precisely for the purpose of avoiding a UDRP proceeding. However, the Panel notes that the Complainant provides no indication that it even attempted to communicate with the Respondent in order to ascertain the Respondent's reason for registering the Domain Name or the intended use of the Domain Name, or to demand that the Respondent cease and desist using the Domain Name.

Under these circumstances, the Panel chooses not to draw any inferences from the Respondent's current nonuse of the Domain Name as the Respondent registered the Domain Name only four days before the Complaint was filed and only two months before the date of this opinion.

Mere allegations of bad faith registration and use are not enough to warrant a finding for the Complainant. Despite the suspicious circumstances surrounding the registration of a known trademark and the failure of the Respondent to file a Response, because the Complainant has put forward no tangible evidence supporting its accusation of the Respondent's bad faith registration and use of the Domain Name, the Panel has no choice but to find that the element of bad faith has not been proven.

The Panel's ruling on bad faith is based on the evidence presented to the Panel as of the date of this ruling. The ruling does not, however, imply that the Complainant will have no UDRP remedy in the future in the event the Respondent begins using the Domain Name in bad faith or in a manner inconsistent with Complainant's rights in the mark 2ADVANCED. If bad faith is manifested by the Respondent at a future date, the Complainant may elect to file a new complaint seeking transfer of the Domain Name based on subsequent facts and such complaint will be reviewed by the WIPO panel based on the facts and evidence presented at such time.

7. Decision

For all the foregoing reasons, the Complaint is denied.

(Sole Panelist)