



## WIPO Arbitration and Mediation Center

### ADMINISTRATIVE PANEL DECISION

Fall Nummer: D2003-0954

Entscheidung vom 11. Februar 2004

#### 1. The Parties

The Complainant is Cincinnati Bell, Inc., ..., United States of America.

The Respondent is H. C., ..., Bahamas.

#### 2. The Domain Names and Registrars

The disputed domain names <cincinnati.com>, <cincinnati.com>, and <cincinnati.com> are registered with iHoldings.com Inc. d/b/a DotRegistrar.com.

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 1, 2003. On December 4, 2003, the Center transmitted by email to iHoldings.com Inc. d/b/a DotRegistrar.com a request for registrar verification in connection with the domain names at issue. On December 4, 2003, iHoldings.com Inc. d/b/a DotRegistrar.com 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 of the domain names <cincinnati.com>, <cincinnati.com> and <cincinnati.com>. The Center verified that the Complaint together with the amendment to 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 paragraphs 2(a) and 4(a) of the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 9, 2003. In accordance with paragraph 5(a) of the Rules, the due date for Response was December 29, 2003. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 6, 2004.

The Center appointed Martin Michaus-Romero as the Sole Panelist in this matter on January 19, 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 paragraph 7 of the Rules.

On February 4, 2004, the Center informed the parties that the panel ordered the Complainant to file before the Center, copies of the trademark registrations mentioned in Annex 4 to the Complaint. The submission was due on February 7, 2004. On February 6, 2004, the Panel received from the Center in electronic version, copies of the trademark registrations mentioned in Annex 4 of the Complaint, as well as a copy of the notice of allowance from the United States Patent and Trademark Office for the mark Cincinnati Bell Directory.

On February 9, 2004, the Panel received from the Center in electronic version a copy of the registration No. 1546153 BELL.

#### 4. Factual Background

The Complainant has common law rights in the CINCINNATI BELL trademark. Such company and its related companies own the following trademark registrations and applications:

MARK	REGISTRATION No.	FILING DATE
BELL	1,546,153	May 11, 1988
CINCINNATI BELL WIRELESS	2,371,972	February 12, 1998
CINCINNATI BELL LONG DISTANCE	1,773,835	March 5, 1991
CINCINNATI BELL GOLD PROGRAM	2,378,421	January 5, 1998
CINCINNATI BELL GOLD PROGRAM	2,371,962	January 5, 1998
CINCINNATI BELL DIRECTORY	76/173,802	December 1, 2000
	APPLICATION No.	
CINCINNATI BELL NETWORK SOLUTIONS	75/539,776	August 8, 1998

The Complainant submitted copies of each of the trademark registrations as published by the Trademark Gazette and those trademarks are registered among other for the following goods and services.

Reg. No. 1,546,153

Class 38: Providing telecommunications services to others.

Serial No. 76/173802

Class 35: Promoting the goods and services of others through consulting on directory advertising programs, designing directory advertisements and listings, and placing such advertisements and listings in directories and on-line computer directory services.

Reg. No. 1,773,835

Class 38: Telecommunication services.

Reg. No. 2,371,962

Class 38: Personalized telecommunication services, namely, call waiting, voice messaging, call forwarding, caller ID, three-way calling, call return, repeat dial, satellite transmission of television programs.

Reg. No. 2,371,972

Class 38: Wireless telephone communication services.

Reg. No. 2,378,421

Class 38: Personalized telecommunication services, namely, call waiting, voice messaging, call forwarding, caller ID, three-way calling, call return, repeat dial, satellite transmission of television programs, providing multiple-user access to a global computer information network, and pre-paid calling card services, all featuring a customer incentive award program.

Reg. No. 2,622,571

Class 37: Installation, maintenance and repair of telecommunications equipment and data networking equipment, for others.

The Complainant is registrant, among others, of the following domain names:

<cincinnatiBell.com>  
<cincinnatiBell.net>  
<cincinnatiBell.biz>  
<cincinnatiBell.info>  
<cincinnatiBellwireless.net>

The domain names disputed are:

<cincinnatiBell.com> registered on/or about December 2, 2002  
<cincinnatiBell.com> registered on/or about December 29, 2002  
<cincyBell.com> registered on/or about February 13, 2003

These three domain names can be redirected to websites containing links to various telecommunication companies.

## 5. Parties and Contentions

### A. Complainant

The Complainant states in his Complaint:

(a) Cincinnati Bell, Inc. is one of the seven regional Bell operating companies, formed in 1993, resulting from the break-up of American Telephone and Telegraph Co., Inc. (AT&T). It became one of the users of all AT&T's rights in the Bell and Bell design marks and federal registrations for those marks.

Since 1994 it has used the bell mark with the modifier Cincinnati, resulting in the mark CINCINNATI BELL.

(b) It has common law rights in the CINCINNATI BELL trademark and together with its related companies, owns 4 trademark registrations and 2 pending applications in the United States for trademarks containing the designation Cincinnati Bell. That this designation has been used in connection with telecommunication goods

and/or services and complemented by extensive advertising, promotion and press coverage.

(c) The CINCINNATI BELL mark is well-known in the United States and identifies a broad range of telecommunication goods and services, including wireless telecommunication services.

d) The disputed domain names include the misspelling of the Complainant's domain names, Cincinnati Bell or the word Cincy in conjunction with the word Bell.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall 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." Considering that the Complainant and Respondent are domiciled in different jurisdictions, the Panel in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the policy, would essentially base its decision on the Policy and Rules.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following: "(i) that the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and (ii) that the Respondent has no rights or legitimate interests in respect of the domain name; and (iii) that the domain name has been registered and used in bad faith."

The Panel finds that the disputed domain names violate the Policy due to the following:

### **A. Identical or Confusingly Similar**

The disputed domain names violate paragraph 4(a)(i) of the Policy, as they are confusingly similar to the trademarks indicated in Annex 4 in which the Complainant has prior right. The disputed domain names: <cincinatibell.com> and <cincinnatiibell.com> are identical to the Cincinnati Bell trademark-service mark and they are used to offer goods or services closely similar to those distinguished by the CINCINNATI BELL trademark-service marks.

A similar situation is applicable regarding the domain name <cincybell.com> in connection with trademark CINCINNATI BELL, noting that the term Cincy, as is indicated by the Complainant, is a short form of the word Cincinnati, and therefore the Panel considers the domain name <cincybell.com> confusingly similar to the CINCINNATI BELL trademark-service marks.

### **B. Rights or Legitimate Interests**

The disputed domain names violate paragraph 4(a)(ii) of the Policy, as the Respondent has not received permission nor authorization to use the trademark-service marks Cincinnati Bell. The Respondent did not reply to the Complainant's contentions, and therefore has not provided any evidence or arguments to prove anything to the contrary. In addition, Complainant's use of the trademark-service mark CINCINNATI BELL precedes the registration of the domain names. It should be pointed out that the Respondent is not (as individual, business or corporation) known by the names "cincinatibell," "cincinnatiibell" nor "cincybell."

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

Paragraph 4(b) of the Policy gives examples of circumstances which, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. This Panel considers that circumstances enumerated in sections (iii) and (iv) of that paragraph are at present in this case. The Panel considers that the Respondent registered the disputed domain names with the intent to trade on the goodwill of the Complainant's trademark (see *Cellular One Group v. Paul Brien*, WIPO Case No. D2000-0028), thus disrupting the business of the Complainant. Furthermore, the Panel finds lack of

response by the Respondent as another element of bad faith. Therefore, the domain names were registered and used in bad faith.

## **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 names <cincinatibell.com>, <cincinnattibell.com> and <cincybell.com>, be transferred to the Complainant.

(sole panelist)