



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

American Home Products Corporation vs. Ben Malgioglio

Case No. D2000-1602

1. The Parties

The Complainant is American Home Products Corporation, One Campus Drive, Parsippany, New Jersey 07054, USA.

The Respondent is Mr. Ben Malgioglio, 920 N. Kings Rd # 101, West Hollywood, California 90069 USA.

2. The Domain Name and Registrar

Contested Domain Name: "solgarvitamins.com"

The Registrar is Network Solutions, Inc. (NSI), 505 Huntmar Drive, Herndon, Virginia 20170, USA.

3. Procedural History

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy"), which was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999 and approved on October 24, 1999 and in accordance with the ICANN Rules for Uniform Domain Name Dispute Resolution Policy ("Rules") as approved on October 24, 1999 as supplemented by the World Intellectual Property Organization Supplemental Rules for Uniform Domain Name Dispute Resolution Policy in effect as of December 1, 1999 ("Supplemental Rules").

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") by e-mail on November 20, 2000, and in hard copy, with Annexes A-D, as well as the appropriate payment on November 20, 2000. The Complainant's attorney, Mr. Steven J. Baron, stated that on November 16, 2000, he served a copy of the Complaint, together with a copy of the cover sheet, on the Respondent, by certified mail; and, on the same date, also provided a copy of the Complaint to the Registrar,

NSI.

Pursuant to paragraph 4(d) of the Policy, the Complainant selected the Center as the ICANN approved administrative dispute resolution service provider to administer this proceeding. Through the Complaint, the Complainant requested a single member panel.

After receiving the original Complaint, the Center, in accordance with paragraph 5 of the Supplemental Rules, determined whether the Complaint fully complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on November 27, 2000, the Center requested confirmation from NSI of information set forth in the Complaint relative to the contested domain name; specifically, contact and registrant information for that domain name, as well as whether NSI received a copy of the Complaint from the Complainant. The Center also requested NSI to specify: (a) whether the ICANN Policy applies to the contested domain name, and (b) the current status of that domain name. On December 1, 2000, NSI provided its response to the Center through which NSI provided contact information pertinent to the contested domain name from its WHOIS database, confirmed that NSI is the registrar of the contested domain name, stated that the Policy is in effect (through Network Solutions' version 4.0 registration agreement) for the contested domain name, and that the contested domain name was then in an "active" status.

Inasmuch as version 4.0 of the NSI service agreement governed the contested domain name, the Center, through an e-mail to the Complainant and dated December 1, 2000 requested the Complainant to amend the mutual jurisdiction clause of the Complaint to consent to jurisdiction, in the event of a challenge by the Respondent to a decision by the Panel to transfer or cancel the contested domain name, of the courts of the principal place of residence of the Respondent. On December 1, 2000, the Complainant submitted a suitable amendment to the mutual jurisdiction clause of the Complaint to the Center as well as to both the Respondent and NSI.

On December 5, 2000, the Center notified the Respondent of the filing of the Complaint, including providing a complete copy of the Complaint, with an explanatory cover sheet, to the Respondent, by email and in hardcopy form by post/courier (the latter including a copy of the Annexes supplied by the Complainant). The Complaint, and its accompanying documents, and all subsequent communications associated therewith were provided in the preferred manners and to the addresses as mandated by paragraphs 2(a) and 4(a) of the Rules.

Hence, the notification to the Respondent having occurred on December 5, 2000 under paragraph 4(c) of the ICANN Policy, this administrative proceeding is deemed to have commenced on that date.

Having reviewed the Complaint and succeeding correspondence between the Center and NSI, in detail, the Panel agrees with the determination of the Center that the Complaint and its handling met the requirements of the Rules and the Supplemental Rules.

The Respondent was then provided with a 20-calendar day period, expiring on December 24, 2000 to file its response with the Center and serve a copy of the response on the Complainant.

However, on December 14, 2000, the Center received an email message from the

Respondent through which he expressed a desire to settle the domain name dispute with the Complainant. The Center in an email of the same date forwarded the Respondent's message to the Complainant's counsel and inquired of counsel whether the Complainant had any desire to suspend the proceeding in order to negotiate a settlement. The record provided to this Panel contains no response from the Complainant's counsel, hence evidently indicative of the Complainant's desire to continue with the administrative procedure.

As of December 24, 2000, the Center had not received a substantive response to the Complaint from the Respondent; hence, the Center, in an email letter dated December 29, 2000, notified the Complainant and Respondent of the default of the Respondent.

Accordingly, pursuant to the Rules and Supplemental Rules, on January 31, 2001, the Center contacted the undersigned, Mr. Peter L. Michaelson, Esq., requesting his service as a sole panelist for this dispute. On February 1, 2001, Mr. Michaelson accepted and on February 2, 2001, returned, by facsimile to the Center, a fully executed Statement of Acceptance and Declaration of Impartiality and Independence. The Center, through an e-mail letter dated February 6, 2001, notified the parties of the appointment of Mr. Michaelson as the panelist.

Based on deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to the Center on or before February 20, 2001.

This dispute concerns one domain name, specifically "solgarvitamins.com".

The language of this proceeding is English.

4. Factual Background

Inasmuch as the Respondent, Mr. Ben Malgioglio, has failed to respond to the Complaint as required by the Policy and Rules, all the factual representations alleged by the Complainant, American Home Products Corporation, will be accepted as undisputed. For convenience of the reader, factual allegations from the Complaint are reproduced below.

A copy of the WHOIS registration record for the contested domain name appears in Annex A to the Complaint. As indicated on that record, the Respondent registered the contested domain name with NSI on May 28, 1999.

The Complainant currently owns the following valid and subsisting U.S. trademark registrations on which this dispute is based. The Complainant has provided a copy of each of these registrations, as issued by the United States Patent and Trademark Office (PTO), in Annex D to the Complaint.

a) **SOLGAR (block letters)**

US registration 1,105,419; registered November 7, 1978 (for a 20 year term), renewed November 7, 1998 (for a ten year renewal term).

This trademark was registered, for use in connection with: "Vitamins and dietary supplements", in international class 18. This mark claims first use

and first use in inter-state commerce of December 31, 1947.

b) SOLGAR (stylized)

US registration 1,141,226; registered November 11, 1980 (for a twenty year term)

This trademark was registered, for use in connection with: "Vitamins and dietary supplements", in international class 18. This mark claims first use and first use in inter-state commerce of December 31, 1974. Absent any indication to the contrary, the Panel assumes that the Complainant has renewed this registration.

The Complainant states that it also owns over sixty other trademark registrations or applications in various countries for the block letter and stylized forms of the term SOLGAR. Furthermore, the Complainant states that it also owns and is the registrant of the domain name "solgar.com" and its associated website at "www.solgar.com".

The Complainant also asserts that, by virtue of its long and continuous use of its tradename "Solgar Vitamin and Herb Company", it has acquired common law trademark rights, within the United States, in that name.

In that regard, the Complainant states that Solgar Vitamin and Herb Company, Inc., is a direct subsidiary of the Complainant, and manufactures, offers for sale, and advertises a wide variety of over-the-counter vitamin, mineral, and vitamin supplement products in the United States. Specifically, the Complainant states that these products are marketed and sold to among others wholesalers, retailers, so-called health food stores, pharmacies, the military, and ultimately to the consumer. The Complainant uses its marks in connection with these products. The Complainant states that the mark "SOLGAR" and/or the trade name "Solgar Vitamin and Herb Company" has been in use at least as early as 1947, over fifty years prior to the registration of the domain name at issue. According to the Complainant, the mark "SOLGAR" appears on product packaging, labels, advertising and promotional items and letterheads. In Annex C to the Complaint, the Complainant has provided copies of a representative sample of the product packaging, labeling, advertising and product literature that bear the mark.

The Complainant states that its annual gross sales and marketing expenditures for its Solgar branded products are estimated to be in the hundreds of thousands of dollars; with annual unit sales of these products being estimated in the millions.

When an Internet user enters the contested domain name as part of a URL into a browser, the user receives a web page from NSI indicating that the site is "under construction".

The Complainant states that in spite of a pre-filing investigation it performed of the Respondent, the Complainant has not been able to locate any publicly available materials that refer to the Respondent through use of the contested domain name.

5. Parties' Contentions

A. Complainant

i. Similarity

The Complainant takes the position that the contested domain name is identical or confusingly similar, under paragraph 4(a)(i) of the Policy, to its registered marks and to its unregistered (common law) mark as to likely confuse Internet users who may believe they are doing business with Complainant or with an entity whose services are endorsed by, sponsored by, or affiliated with Complainant; hence, satisfying the confusing similarity requirement in paragraph 4(a) of the Policy.

This contention is apparently predicated on the inclusion of the term "SOLGAR" or "SOLGAR VITAMINS", in the contested domain name, in which the Complainant, by virtue of its registered mark and unregistered tradename, claims legal exclusivity.

ii. Legitimacy

The Complainant contends, that the Respondent has no rights or legitimate interests in the contested domain name.

Specifically, the Complainant asserts that the Respondent does not conduct any legitimate commercial or non-commercial business activity using the contested domain name, and points to the fact that the Respondent's website, accessible through the contested domain name and by virtue of the returned message "under construction", is inactive . The Complainant views such inactivity as evidencing a lack of legitimate rights and interests in that name. In that regard, the Complainant alleges that the Respondent, prior to receiving notice of the Complaint, has not engaged in any demonstrable preparations to use the contested domain name in a connection with a bona fide offering of goods or services. Hence, the Complainant takes the position that the Respondent violates paragraph 4(c)(i) of the Policy.

Further, the Complainant contends that the Respondent is not commonly known by the contested domain name, i.e. "solgarvitamins.com". In that regard, the Complainant points to the results of its pre-filing investigation which failed to uncover any publicly available evidence that establishes any connection between the Respondent and that domain name. As such, the Complainant takes the position that the Respondent, in the absence being so commonly known, violates paragraph 4(c)(ii) of the Policy.

Lastly, the Complainant states that the Respondent is not making any legitimate noncommercial or fair use of the domain name, without presumably any intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue -- as would be permitted under paragraph 4(c)(iii) of the Policy.

Hence, the Complainant concludes that the Respondent cannot demonstrate any rights or legitimate interests in the contested domain name pursuant to paragraph 4(a) of the Policy.

iii. Bad Faith

The Complainant contends that the Respondent has registered and is now using the contested domain name in bad faith.

In that regard, the Complainant contends that the Respondent registered the contested domain name primarily for the purpose of selling, renting or otherwise preventing the Complainant from registering that domain name ostensibly (though the Complaint omits the following) for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to that domain name; hence violating paragraph 4(b)(i) of the Policy.

Furthermore, the Complainant asserts that the Respondent registered the contested domain name to prevent the Complainant from reflecting the mark in a corresponding domain name, thus violating paragraph 4(b)(ii) of the Policy, or to attempt in bad faith to redirect users of the Internet from Complainant's legitimate, commercial website at "www.solgar.com" to other websites, thus violating paragraph 4(b)(iv) of the Policy. As to the latter, the Complainant points to the fact that, at least as of October 25, 2000, anyone accessing a website addressed through the contested domain name receives an "under construction" message.

Therefore, the Complainant concludes that, under paragraph 4(a) of the Policy, the Respondent's conduct in registering the contested domain name amounts to bad faith and its passive use of that name amounts to bad faith usage.

B. Respondent

The Respondent has not filed any substantive response to the allegations raised in the Complaint.

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed representations. In that regard and apart from judging this proceeding through mere default of the Respondent, the Panel makes the following specific findings:

i. Similarity

The Panel finds that confusion would likely arise when and if the Respondent, or any third-party not affiliated with the Complainant to which the Respondent were to transfer the contested domain name, were to start using the contested domain name in conjunction with goods similar to those of the Complainant.

Such confusion, should it occur, would undoubtedly cause Internet users intending to access the Complainant's website, but who reach a website through the contested domain name, to think that an affiliation of some sort exists between the Complainant and the Respondent or its third-party transferee, when, in fact, no such relationship would exist at all. See *Dollar Financial Group, Inc. v VOM NET* FA 96101 (Nat. Arb. Forum January 24, 2000); *EBAY Inc. v. G L Liadis Computing, Ltd. and John L. Liadis d/b/a G L Liadis Computing Ltd.* D2000-1463 (WIPO January 10, 2001); *Treeforms, Inc. v. Cayne Ind. Sales Corp.* FA 95856 (Nat. Arb. Forum December 18, 2000) and *The Pep Boys Manny, Moe and Jack of California v. E-Commerce Today, Ltd.* AF-0145 (eResolution May 3, 2000).

Regarding any distinction in coverage between registered and unregistered marks, paragraph 4(a) of the Policy simply recites: "You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that ... (i) your domain name is identical or confusingly similar to a *trademark or service mark in which the complainant has rights*" [emphasis added]. Nowhere does the Policy contain a restriction that specifically limits its reach to only registered marks. Therefore, given the apparent inclusive nature of the Policy, whether the Complainant has rights to an unregistered mark and hence a protectable interest under the Policy lies with national trademark law that governs the Respondent's actions that are the subject of the Complaint. Under American law, rights accrue in unregistered, so-called "common law", marks as a result of usage, though limited by geographic and product markets in which the mark is used. As evidence of this, one need turn no further than to §43 of the Lanham Act (15 U.S.C. §1125(a)) which states, in pertinent part: "Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce *any word, term, name, symbol, or device*, or any combination thereof ... (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person ... shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act." [emphasis added].

Numerous panels, when faced with unregistered marks, have upheld their protectable status in the United States under the Policy. In that regard, when faced with this issue, the Panel in *Brooklyn Institute of Arts and Sciences v. Fantastic Sites, Inc.* FA 95560 (Nat. Arb. Forum November 2, 2000) held: "ICANN dispute resolution policy is broad in scope in that the reference to a trademark or service mark in which the complainant has rights means that ownership of a registered mark is not required -- unregistered or common law trademark or service mark rights will suffice to support a domain name complaint under the policy". See, e.g., *Bridal Rings Company v. Abert Yemenian/ Albert Yemenian* FA 95608 (Nat. Arb. Forum October 26, 2000); *CMG Worldwide Inc. v. Naughty Page* FA 95641 (Nat. Arb. Forum November 8, 2000); *Home Properties v. SMI Online* FA 95639 (Nat. Arb. Forum November 2, 2000); *Missing Children Minnesota v. Run Yell Tell, Ltd.* FA 95825 (Nat. Arb. Forum November 20, 2000); *Mike Warner 2001 v. Mike Larson* FA 95746 (Nat. Arb. Forum November 15, 2000). Furthermore, the Panel in *United States Postal Service v. Consumer Organization* FA 95757 (Nat. Arb. Forum November 27, 2000) held: "The UDRP does not discriminate between registered and unregistered marks.". In *Exario Network Inc. v. THE DOMAIN NAME YOU HAVE ENTERED IS FOR SALE* AF-0538 (eResolution, December 11, 2000) the Panel recognized: "It is well established that a complainant need not own a registered trademark to invoke the policy. It is sufficient that a complainant have rights in an unregistered trademark." In that regard, also see *David Taylor Cadillac/Buick Co. v. Spider Works, Ltd.* FA 95832 (Nat. Arb. Forum November 30, 2000) and *Sand Hill Wholesale of Ohio v. Chris Hatton d/b/a Sand Hill Wholesale* FA 95970 (Nat. Arb. Forum December 18, 2000). Similarly, see *Bennett Coleman & Co. Ltd. v. Steven S Lalwani and Bennett Coleman & Co. Ltd. v. Long Distance Telephone Company* D2000-0014 and 2000-0015 (WIPO March 11, 2000); *SeekAmerica Networks, Inc. v. Tariq Masood and Solo Signs* D2000-0131 (WIPO April 13, 2000); *Cho Yong Pil v. ImageLand, Inc.* D2000-0229 (WIPO May 10, 2000), and a case similar to that at present, *American Home Products Corporation v. Healthy Futures* D2000-0454 (WIPO August 3, 2000).

Given this, the Panel believes that if a Complainant puts forth an appropriate showing

of prior continuous use in a given product and territorial market of an unregistered mark or a tradename over a sufficiently long period to evidence the acquisition of common law trademark rights, then those rights are susceptible of protection under paragraph 4(a) of the Policy to the same extent as are those emanating from registered marks.

Here, given over 50 years of continuous use of the Complainant's tradename in commerce, when viewed in the context of its present nationwide annual sales (under its tradename) of its vitamins and dietary supplements in excess of a million units and the associated annual marketing expenses in excess of several hundred thousand dollars (US), there is simply no question that the Complainant has made such a showing.

Therefore, the Panel sees no reason why the tradename "Solgar Vitamins and Minerals" should not enjoy the same protection against misappropriation in a domain name that the registered mark "SOLGAR" enjoys.

All that is necessary is that the domain name misappropriate sufficient textual components from the mark(s), whether registered or unregistered (the latter including tradenames), such that an ordinary Internet user who is familiar with the goods or services distributed under the mark(s) would upon seeing the domain name likely think that owing to the visual and/or phonetic similarity between the mark(s) and the domain name that an affiliation exists between the site identified by that domain name and the owner or licensed user of the mark(s).

With respect to a test for "confusing similarity", § 5.01[3], page 5-15 of J. Gilson, et al, Trademark Protection and Practice (© 1996, Matthew Bender & Co., Inc.) states:

"When one trademark is said to be 'confusingly similar to another', it is so similar to the other that, when it is used on products the purchasing public is likely to be confused. The term [confusingly similar] is simply another way to express the fact that confusion is likely."

In assessing whether sufficient similarity exists between two marks, Gilson, at § 5.02[1], states: "If a word trademark sounds similar to the plaintiff's mark courts often find likelihood of confusion, especially if the associated product is typically ordered orally. Visual similarity frequently causes confusion if there is sufficient resemblance in overall appearance. Even if word trademarks neither sound alike nor look alike, similarity in meaning may cause confusion." In its seminal decision on the issue, *In re E.I. du Pont de Nemours & Co.* 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973), the United States Court of Customs and Patent Appeals (predecessor to the United States Court of Appeals for the Federal Circuit), in its definitive listing of factors for assessing if the likelihood of confusion exists or not, enumerated as its first factor: "(1) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression."

The Panel finds that such similarity clearly exists here inasmuch as the contested domain name includes the registered mark "SOLGAR" as well as the term "solgar vitamins" which forms a significant portion of the Complainant's tradename in which the Complainant has acquired common law trademark rights.

The Panel is also concerned that the Respondent's future use of the domain name, may actually exacerbate confusion. Specifically, it is quite foreseeable that an Internet user who seeks information on the Complainant's products, given current naming conventions on the Internet, would form a domain name by concatenating the two

words "Solger" and "Vitamins" together to form a resulting domain name -- that realistically being the contested domain name here "www.solgarvitamins.com" -- and then enter that domain name in his(her) browser. If that user merely entered "www.solgar.com", that person would be brought to the Complainant's site, but if that person were to enter the concatenated domain name, that person would instead be transported to the non-existent site of the Respondent. While this lack of a reachable website does not in and of itself lead to consumer confusion, such confusion could well arise if, at some point in the future, the Respondent or any third party to which it were to transfer the contested domain name were to implement a website addressable through that domain name on which it were to provide information on products similar to, let alone competitive with, those then being offered by the Complainant. Hence, that user would very likely perceive this site as having a relational linkage, whether by, e.g., association or endorsement, with the Complainant; when in fact no such linkage would exist; thus heightening confusion. See *Surface Protection Industries, Inc. v. The Webposters* D2000-1613 (WIPO February 5, 2001).

Therefore, the Panel finds that the contested domain name "solgarvitamins.com" sufficiently resembles the Complainant's registered marks and its common law trademark rights in its tradename, as to cause confusion.

Accordingly, the Panel also finds that sufficient similarity exists under paragraph 4(a)(i) of the Policy for the contested domain name "solgarvitamins.com".

ii. Illegitimacy

Based on its federal trademark registrations, the Complainant has acquired exclusive rights to use its SOLGAR marks. Furthermore, by virtue of the registration of this mark, as well as its stylized version, the US PTO has implicitly recognized that these marks have acquired appropriate secondary meaning in the marketplace. In addition, the Complainant has acquired common law trademark rights in its tradename "Solgar Vitamins and Minerals" as a result of its usage of that term.

The Respondent has not proven any basis that would legitimize any claim it has to the contested domain name. In fact, the Panel believes that, under the present facts, it is extremely unlikely that the Respondent can even make such a claim.

The contested domain name includes the Complainant's mark SOLGAR as well as the term "solgar vitamins" from its tradename under which the Complainant provides its products and has been doing so for quite some time -- over 50 years. The Panel, given a lack of any substantive response from the Respondent and pursuant to paragraph 14(b) of the Rules, infers that the Complainant has never authorized the Respondent to utilize the mark SOLGAR -- whether in block letters or in the specific stylized form shown in the Complainant's registrations or the Complainant's tradename, nor does the Complainant appear to have any relationship or association whatsoever with the Respondent. Hence, any use to which the Respondent were to put of the term SOLGAR, including "solgar vitamins", in connection with the goods with which the Complainant is using its marks and tradename would directly violate the exclusive trademark rights now residing in the Complainant.

The Panel is cognizant of the heavy burden that would be placed on complainants if in support of their cases on illegitimacy each of those complainants were to be impressed with a burden of providing detailed proof of any lack of rights or legitimate interests on behalf of their respondents. The Panel believes that where allegations of illegitimacy

are made, particularly as here, when coupled with conduct of respondents that evidences bad faith, it is quite reasonable to shift the burden of proof to each such respondent to adequately show that its use of the contested domain name is legitimate, such as by showing that, in conjunction with the contested domain name, it is making a bona fide commercial offering of goods or services or preparations for such offerings, or non-commercial or fair use. Given the situation now facing the Panel, it is beyond question that the Respondent's conduct here falls far short of meeting this burden -- particularly given that no facts have been proven to support such usage. *See Playboy Enterprises International, Inc.*, D2000-1016 (WIPO November 7, 2000), *MSNBC Cable, LLC v. Tysys.com* D2000-1204 (WIPO December 8, 2000) and *College Summit, Inc. v. Yarmouth Educational Consultants, Inc.* D2000-1575 (WIPO January 17, 2001) and *Surface Protection Industries, Inc. v. The Webposters* cited infra.

Further, the Panel finds, based on the record before it, that the Respondent has merely held the contested domain strictly passively. The Respondent's website is not operational and the Panel infers that it never has been. The Panel simply does not see such passive use as rising up to a level under paragraph 4(c) of the Policy to constitute a legitimate non-commercial or fair use without any intent to misleadingly divert consumers or tarnish the trademark or service mark at issue.

In light of the above findings, the Panel is not persuaded that the Respondent has any or, based on current facts provided to the Panel, is likely to acquire any legitimate interests in the contested domain name, whether on a commercial or non-commercial basis.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in the contested domain name within paragraph 4(a)(ii) of the Policy.

iii. Bad Faith

The Panel is disturbed by the Respondent's registration of the contested domain name followed by its continued retention, particularly here in the absence since late May 1999 (a period of approximately 1 ½ years to the date of the Complaint), of implementing an operational website resolvable through that name. The Panel views such holding as being a continuing denial to the Complainant of its right, as a trademark owner of the marks "SOLGAR" and "solgar vitamins", to reflect its mark (both registered and unregistered) in a domain name; hence, further reflecting bad faith registration and use. Quite a few panels have held that, under appropriate circumstances, passive holding evidences bad faith use. Such circumstances, when viewed in their totality, exist here. See, e.g., *JVC Americas Corp. v. Damian Macafee* CPR007 (CPR November 10, 2000); *Pacific Investment Management Co. LLC v. Alex Szabo* FA95614 (Nat. Arb. Forum October 18, 2000); *National Australia Bank Limited v. Quality Systems Consulting -- QSC Pty Ltd.* D2000-0765 (WIPO August 31, 2000); *Gonvarri Industrial, S.A. v. Gon Varr I An Sexo a Domicilio* D2000-0637 (WIPO August 28, 2000); *Garage Records, Inc. v. Garage Records* FA95071 (Nat. Arb. Forum August 17, 2000); *Dollar Financial Group, Inc. v. RXW Management* FA 95108 (Nat. Arb. Forum August 4, 2000); *Lusomundo - Sociadada Gestora de Participacoes Sociais, S.A. and Lusomundo Audiovisuais, S.A. v. Inmo Soria and Andres Ceballos Moscoso* D2000-0523 (WIPO August 2, 2000); *Valigene Corp. v. MIC* FA94860 (Nat. Arb. Forum August 1, 2000); *Vertical Solutions Management, Inc. v. webnet-marketing, inc.* FA95095 (Nat. Arb. Forum July 31, 2000); *Hewlett-Packard Co. v. High Performance Networks, Inc.* FA95083 (Nat. Arb. Forum July 31, 2000); *CBS Broadcasting, Inc. v. Dennis Toeppen* D2000-0400 (WIPO July 6, 2000); August

Storck KG v. Tony Mohamed D2000-0196 (WIPO May 3, 2000); Recordati S.P.A. v. Domain Name Clearing Co. D2000-0194 (WIPO July 21, 2000); Sanrio Company, Ltd. and Sanrio, Inc. v. Neric Lau D2000-0172 (WIPO April 20, 2000); and Telstra Corp. Ltd. v. Nuclear Marshmallows D2000-0003 (WIPO February 18, 2000).

Hence, the Panel finds that the Complainant has shown a sufficient basis to establish bad faith registration and use of the contested domain name under paragraph 4(a)(iii) of the Policy.

In this connection the Panel notes that in its opinion, the Respondent's actions in registering and now retaining the contested domain name also evince bad faith in violation of the Anti-Cybersquatting provisions of the US Lanham Act (15 USC § 1125(d)(1) with various factors indicative of 'bad faith' given in 15 USC § 1125(d)(1)(B)(i) though limited by 15 USC § 1125(d)(1)(B)(ii).

Thus, the Panel concludes that the Complainant, even apart from default of the Respondent, has provided sufficient proof of its allegations to establish a prima facie case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

7. Decision

In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the relief sought by the Complainant is hereby granted.

The contested domain name, specifically "solgarvitamins.com", is ordered transferred to the Complainant.

Peter L. Michaelson, Esq.
Sole Panelist

Dated: February 19, 2001