



NATIONAL
ARBITRATION
FORUM

DECISION

General Casualty v. Justin Johnson
Claim Number: FA0111000102485

PARTIES

Complainant is **General Casualty**, Sun Prairie, WI (“Complainant”) represented by **Eugenia G. Carter**, of **LaFollette, Godfrey & Kahn, S.C.**. Respondent is **Justin Johnson**, of Story City, IA (“Respondent”).

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**general-casualty.com**>, registered with **Network Solutions, Inc.**

PANEL

The undersigned certify that they have acted independently and impartially and, to the best of their knowledge, have no known conflict in serving as Panelists in this proceeding.

Honorable Carolyn M. Johnson, Peter L. Michaelson Esq. and Alan L. Limbury Esq. as Panelists.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum (the “Forum”) electronically on November 20, 2001; the Forum received a hard copy of the Complaint on November 26, 2001.

On November 21, 2001, Network Solutions, Inc. confirmed by e-mail to the Forum that the domain name <**general-casualty.com**> is registered with Network Solutions, Inc. and that Respondent is the current registrant of the name. Network Solutions, Inc. has verified that Respondent is bound by the Network Solutions, Inc. 5.0 registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy”).

On November 28, 2001, a Notification of Complaint and Commencement of Administrative Proceeding (the “Commencement Notification”), setting a deadline of December 18, 2001 by which Respondent could file a Response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent’s registration as technical, administrative and billing contacts, and to postmaster@general-casualty.com by e-mail.

Having received no Response from Respondent, using the same contact details and methods as were used for the Commencement Notification, the Forum transmitted to the parties a Notification of Respondent Default.

On January 15, 2002, pursuant to Complainant’s request to have the dispute decided by a three-member Panel, the Forum appointed the Honorable Carolyn M. Johnson, Peter L. Michaelson Esq. and Alan L. Limbury Esq. as Panelists.

Having reviewed the communications records, the Administrative Panel (the “Panel”) finds that the Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) “to employ reasonably available means calculated to achieve actual notice to Respondent.” Therefore, the Panel may issue its Decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the Forum’s Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any Response from Respondent.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from the Respondent to the Complainant.

PARTIES’ CONTENTIONS

A. Complainant

The disputed domain name is almost identical and is confusingly similar to Complainant’s trade and service marks and domain names. Respondent has no rights or legitimate interests with respect to the disputed domain name because Complainant has prior trademark rights and because Respondent has not used the disputed domain name for any legitimate or proper purpose. The disputed domain name was registered in bad faith and any attempted or continued use would also be in bad faith.

B. Respondent

No Response was filed within the time or in the form specified by the Rules. However, on January 15, 2002, Respondent sent an email to the Forum asserting his Constitutional right to free speech, saying, *inter alia*:

“They don’t deserve to be able to take away something that I legally purchased to exercise my given right to free speech and the truth”.

FINDINGS

Complainant is an insurance company which, since 1925, has used the trade and service mark GENERAL CASUALTY and, since 1999, various domain names incorporating that mark, including <generalcasualty.com>.

Respondent is a former policyholder of Complainant displeased with Complainant's response to a claim under his homeowners policy and with Complainant's decision not to renew it.

On May 22, 2001, while in the middle of settling the claim, and having just been notified of the forthcoming non-renewal of the policy, Respondent registered the disputed domain name <**general-casualty.com**> and sent an email to Complainant (Complaint, Exhibit D) which contained, *inter alia*, the following passages:

"I bought a web site today in which I will design and implement my whole experience called www.general-casualty.com. Keep your eye on this one because everyone that searches for your company will also pull up my web site link right next to yours. My caption will be "The injustices that General Casualty is capable of doing to it's insured". I will then go on to tell my true story, which will not be defamation, due it being the truth.

...

You better pass this along to legal also. I'm sure they'll want to try and get an injunction on my web site. Freedom of speech is a good thing.

The insurance claim was settled next day (Complaint Exhibit F). Also on that day, Respondent wrote to Complainant's agent (*ibid*):

"I feel that there should be compensation involved for me un-voluntarily having to seek new homeowner's coverage and it costing me more money since your goal is to be difficult. I am willing to sell my www.general-casualty.com domain rights for its fair market value which is \$10,000".

On June 12, 2001, in response to a cease and desist letter from Complainant's attorney, Respondent's attorney wrote, *inter alia*, (Complaint, Exhibit I):

"While [Respondent's] earlier correspondence suggested that he acquired this site as a venue to post information about the shabby treatment he received from General Casualty, there is no suggestion that this was the only purpose of acquiring the site name.

Mr. Johnson can post whatever he likes on his web site about General Casualty so long as his postings are true. While General Casualty may wish to silence him, he still has a Constitutional right to free speech.

...

I spoke to Mr. Johnson and he is willing to sell his domain name to General Casualty. I have convinced him that it is not worth \$10,000.00. By the same token, he's not going to simply sign it over. Once you have some authority from General Casualty to negotiate a resolution of this issue, please give me a call. The other alternative is for him to simply auction it on eBay or list it for sale on the Internet".

The web page reached by means of the disputed domain name shortly before the Complaint was filed stated that it was under construction (Complaint, Exhibit E).

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to “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.”

In view of Respondent's failure to submit a Response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules.

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) 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
- (2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

The disputed domain name is confusingly similar to Complainant's common law mark GENERAL CASUALTY because it incorporates the entirety of Complainant's mark and merely adds a hyphen to separate the words. The addition of a hyphen to another's mark is not enough to create a distinct domain name capable of overcoming a claim of confusing similarity. See *Nintendo Of Am. Inc. v. This Domain Is For Sale*, D2000-1197 (WIPO Nov. 1, 2000) (finding <game-boy.com> identical and confusingly similar the Complainant's GAME BOY mark, even though the domain name is a combination of two descriptive words divided by a hyphen); see also *InfoSpace.com v. Tenenbaum Ofer*,

D2000-0075 (WIPO Apr. 27, 2000) (finding that “[t]he domain name ‘info-space.com’ is identical to Complainant’s INFOSPACE trademark. The addition of a hyphen and .com are not distinguishing features”).

Rights or Legitimate Interests

This is not a free speech case. The disputed domain name was registered for the purpose of attempting to gain leverage in relation to the settlement of the insurance claim and compensation for the refusal to renew the policy. In the former regard it was successful, since the claim was settled the very next day, the Respondent having announced to Complainant that he had registered the disputed domain name and having threatened to expose the Complainant’s “injustices” to him.

The Respondent tied his offer to sell the disputed domain name for \$10,000 to his statement that he felt there should be compensation for having to seek new homeowner’s coverage. Clearly he saw his registration of the disputed domain name as a way of inducing Complainant to pay him what he thought he deserved, an amount which his own attorney conceded the disputed domain name was not worth.

Far from implementing his threat to expose the truth about Complainant in exercise of his undoubted right of free speech, Respondent has not used nor demonstrated any preparations to use the disputed domain name, save in his attempt to recover compensation for the perceived injustice he suffered at the hands of Complainant. This does not constitute a bona fide offering of goods or services within paragraph 4(c)(i) of the Policy. Nor does such use constitute fair use within paragraph 4(c)(iii) of the Policy.

Respondent is not known by the mark "General Casualty". The Complainant has apparently never licensed or authorized the Respondent to use the GENERAL CASUALTY mark. Hence the Respondent is unable to satisfy paragraph 4(c)(ii) of the Policy.

The Complainant has established that Respondent has no rights to nor legitimate interests in the disputed domain name.

Registration and Use in Bad Faith

Respondent’s offer to sell the disputed domain name to Complainant for \$10,000, one day after having registered it (for \$40, see Complaint, Exhibit D), coupled with Respondent’s failure six months later to have established an active web site of any kind, let alone a site where his undoubted right of free speech might be exercised, satisfy the Panel that Respondent registered the disputed domain name primarily for the purpose of selling it to Complainant for more than it cost him. This is evidence of both bad faith registration and bad faith use pursuant to paragraph 4(b)(i) of the Policy. See *Matmut v. Tweed*, D2000-1183 (WIPO Nov. 27, 2000) (finding bad faith under Policy paragraph 4(b)(i) where Respondent stated in communication with Complainant, “if you are interested in buying this domain name, we would be ready to sell it for \$10,000”); see also *Grundfos A/S v. Lokale*, D2000-1347 (WIPO Nov. 27, 2000) (failure to use the

domain name in any context other than to offer it for sale to Complainant amounts to use in bad faith).

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 disputed domain name, namely <**general-casualty.com**>, is ordered transferred to the Complainant.

Alan L. Limbury, Esq., Presiding Panelist

Honorable Carolyn M. Johnson
Panelist

Peter L. Michaelson Esq.
Panelist

Dated: January 28, 2002