77 USPQ2D 1229
Estate of Marlon Brando v. WhoisGuard

National Arbitration Forum

Claim No. FA0506000503817
Decided August 29, 2005

Headnotes

TRADEMARKS AND UNFAIR TRADE PRACTICES

[1] Acquisition, assignment, and maintenance of marks — Assignment, licenses, and franchises (§305.06)

JUDICIAL PRACTICE AND PROCEDURE

Jurisdiction — Subject matter jurisdiction — In general (§405.0701)

Arbitration panel lacks jurisdiction to resolve dispute in which complainant estate seeks transfer of Internet domain name "marlonbrando.com"from respondent to complainant, since outcome of dispute turns on issue of whether actor Marlon Brando made valid inter vivos gift of disputed domain name to respondent, since resolution of that issue would require tribunal to examine whether Brando intended to make gift of domain name to respondent, and whether he actually completed such gift, prior to his death, by transferring domain name to respondent without retaining any power to revoke, since such inquiries have no bearing on cybersquatting and lie completely outside narrow and sharply focused reach of Uniform Domain Name Dispute Resolution Policy of Internet Corporation for Assigned Names and Numbers, and since such inquiries are inappropriate for administrative panel to address, owing to their fact-dependent character, and to rather summary nature of ICANN proceeding; resolution of dispute must be left to adjudication before

California courts, not ICANN administrative panel.

Case History and Disposition

Complaint filed by Estate of Marlon Brando pursuant to Uniform Domain Name Dispute Resolution Policy of Internet Corporation for Assigned Names and Numbers, against respondents WhoisGuard and Jo An Corrales. Complainant requests that Internet domain name "marlonbrando.com"be transferred from respondent Corrales to complainant. Complaint dismissed for lack of jurisdiction.

Attorneys:

Kevin Costanza, of Seed IP Law Group, Seattle, Wash., for complainant.

Peter J. Linden, of Peter J. Linden & Associates, Newport Beach, Calif., for respondent.

Opinion Text

Opinion By:

Michaelson, panelist.

PARTIES

Complainant is *The Estate of Marlon Brando* ("Complainant"), represented by *Kevin Costanza*, of *Seed IP Law Group PLLC*, 701 Fifth Avenue, Suite 6300, Seattle, WA 98104. Respondent is *WhoisGuard* c/o *WhoisGuard Protected* ("Respondent"), represented by *Peter J. Linden*, of *Peter J. Linden &Associates*, 2500 Anniversary Lane, Newport Beach, CA 92660.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is *<marlonbrando.com>*, registered with *Enom, Inc.*

PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

Mr. Peter L. Michaelson, Esq. as Panelist.

PROCEDURAL HISTORY

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy"), available at <icann.org/services/udrp/udrppolicy24oct99.htm>, 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 National Arbitration Forum Supplemental Rules for Uniform Domain Name Dispute Resolution Policy then in effect ("Supplemental Rules").

Complainant submitted a Complaint to the National Arbitration Forum ("Forum") electronically on June 23, 2005; the Forum received a hard copy of the Complaint, together with Annexes 1-4 and a declaration of Mr. Kevin Costanza (itself containing a separate set of exhibits numbered A-C), on June 29, 2005. Subsequently and within the time limit allotted, Complainant submitted a slightly amended Complaint to definitively identify the actual respondent. In particular, the "WhoisGuard"service is provided by the Registrar to mask the true identity of a domain name registrant by preventing public access to that information through its (and any) WHOIS database and thus attempt to safeguard privacy interests of that registrant. Complainant filed its original complaint simply noting Respondent as "WhoisGuard c/o WhoisGuard Protected". In response to a letter from the Forum requiring a more definitive identification of the actual respondent at interest, Complainant contacted the Registrar which, in turn, identified the actual current registrant as Ms. Jo An Corrales. Complainant then amended its complaint to specify Ms. Jo An Corrales as the actual Respondent. Hence, for simplicity, this decision will hereinafter view Respondent as solely being Ms. Corrales.

On June 30, 2005, the Registrar, Enom, Inc. confirmed by e-mail to the Forum that the <*marlonbrando.com*> domain name is registered with Enom, Inc. and that the Respondent is the current registrant of the name. Enom, Inc. has verified that Respondent is bound by the Enom, Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with the Policy, the registration agreement is in English, the disputed domain name will remain in a locked status, and that the registrant submitted to the jurisdiction at the location of the principal office of the Registrar for court adjudication of disputes concerning or arising from the use the disputed domain name.

On July 7, 2005, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of July 27, 2005 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@marlonbrando.com by e-mail.

A timely Response, together with Annexes 1-5, was received by the Forum and determined to be complete on July 27, 2005.

Thereafter and pursuant to Supplemental Rule 7, on August 1, 2005, Complainant timely filed an additional submission, captioned "Complainant's Reply", with the Forum.

On August 3, 2005, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the Forum appointed Mr. Peter L. Michaelson, Esq. as the Panelist and set a deadline of August 17, 2005 to receive the decision from the Panel.

Subsequently on August 8, 2005, Respondent timely filed, in accordance with Supplemental Rule 7, its first supplemental submission, captioned "Response to the Complainant's Reply," with the Forum.

Thereafter, each of the parties filed another additional submission with the Forum, though neither of these submissions was timely under Supplemental Rule 7. Specifically, on August 12, 2005, Complainant filed its second supplemental submission, captioned "Complainant's Sur-reply". On August 16, 2005, Respondent filed its second supplemental submission, captioned "Respondent's Objections to Complainant's Sur-Reply."

In light of unexpected conflicts experienced by the Panel — which amounted to exceptional circumstances, the Forum, at the Panel's request, extended the deadline for the decision to August 31, 2005.

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

The following contentions of Complainant and Respondent are predicated on portions of the Costanza declaration and a declaration of Jo An Corrales, respectively (the latter declaration appears in

Annex 1 to the Response). For simplicity, all references to specific paragraphs in those declarations have been omitted from the following discussion.

A. Complainant

1. Confusing similarity/identicality

Complainant contends that the disputed domain name is confusingly similar to Complainant's common law mark, MARLON BRANDO.

Specifically, Complainant alleges that it currently holds exclusive rights in at least the United States in the disputed name and MARLON BRANDO mark, with those rights long preceding the August 7, 2004 date on which Ms. Corrales modified the registration records at the Registrar to transfer that name into her sole ownership.

Further, Complainant notes, through citing to *Experience Hendrix, L.L.C. v. Hammerton*, D2000-0364 (WIPO Aug. 2, 2000), that, in assessing whether a domain name is identical or confusingly similar to a mark, the top-level domain (here being ".com") is ignored.

Consequently, Complainant alleges that the disputed domain name, <*marlonbrando.com*>, is identical to Complainant's mark but for the space between the first and last name, and hence is certainly confusingly similar thereto.

Therefore, Complainant concludes that it has met the requirements of paragraph 4(a)(i) of the Policy.

2. Rights and legitimate interests

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name.

Specifically, Complainant contends that:

(a) Ms. Corrales is not commonly known as "Marlon Brando" and does not operate a business or

organization commonly known as "Marlon Brando."

(b) To the extent Ms. Corrales had any association with Mr. Brando, it is through her former employment as Mr. Brando's business manager. In that position, she was serving as Mr. Brando's agent and owed fiduciary duties to Mr. Brando: to always act in Mr. Brando's best interest, to always avoid taking advantage of business opportunities presented to Mr. Brando and to always avoid personally profiting at Mr. Brando's expense. Consequently, Ms. Corrales could not, herself, acquire any

rights in the name, and MARLON BRANDO mark; instead, all such rights would automatically inure to the benefit of Mr. Brando, by operation of agency law.

(c) Mr. Brando terminated Ms. Corrales' employment in March 2004, prior to the date when she transferred the disputed domain name from Mr. Brando to herself (*i.e.*, prior to August 7, 2004). Along with her job having been terminated, Ms. Corrales lost all authority, actual and implied, to act on behalf of Mr. Brando, including the legal authority to transfer that name. Ms. Corrales has never had the authority to act on behalf of the Brando estate.

(d) Neither Mr. Brando nor the Brando estate granted a license, consented to, or otherwise authorized Ms. Corrales to use the name, MARLON BRANDO.

(e) To the extent Ms. Corrales tries to assert any right or legitimate interest in the name MARLON BRANDO, that interest did not exist prior to her having actual knowledge of Mr. Brando's and the Complainant's exclusive rights in the MARLON BRANDO mark. Indeed, the reason Ms. Corrales transferred the disputed domain name to herself was precisely because she was aware that the domain name was identical to that mark. Hence, she had prior notice of that mark which, in turn, counters any claim of hers that she had any rights or legitimate interest in the disputed domain name, citing to *Experience Hendrix, L.L.C. v. Hammerton*, D2000-0364 (WIPO Aug. 2, 2000).

(f) Lastly, to the extent Ms. Corrales tries to assert that she is making a legitimate noncommercial or

fair use of the domain name, without intent for commercial gain, Complainant notes that, prior to receiving notice of Complainant's objections, the home page associated with the disputed domain name expressly stated that once the site goes operational that site would be subscription-based (the home page stating: "As a bonus for joining early and helping us test we will add an extra month to your subscription.").

3. Bad faith use and registration

Complainant contends that Respondent has registered and is using the disputed domain name in bad faith, hence in violation of paragraph 4(a)(iii) of the Policy.

With respect to bad faith registration, Complainant alleges the following:

(a) On November 1, 1997 and prior to hiring Ms. Corrales, Mr. Brando originally registered the disputed domain name in his name and listed his address on the registration record. In 2000, Mr. Brando had Ms. Corrales manage the domain name for him after she was hired to be his business manager. Because Ms. Corrales was authorized by Mr. Brando to handle his business affairs, Ms. Corrales'name was added in the registrant and contact fields, and the contact information was modified to list only Ms. Corrales' telephone number, fax number and e-mail address in the contact fields.

(b) Mr. Brando terminated Ms. Corrales' employment in March 2004. At that time, any authority, actual or implied, that Ms. Corrales had to manage Mr. Brando's business or other affairs and/or control his property, including the disputed domain name, immediately terminated as a matter of law.

(c) Upon Mr. Brando's death on July 1, 2004, his estate assumed ownership and control of all his property including his interest in the disputed domain name.

(d) The estate did not immediately update the registrant and contact information associated with that name. Consequently, although Ms. Corrales lost all authority for managing that name, she unilaterally changed the registrant and contract information associated with that name in order to transfer ownership of that name to herself. Specifically, on August 6, 2004, and in spite of knowing that she had been terminated by Mr. Brando, Mr. Brando had previously died, and she had no authorization to manage the domain name, Ms. Corrales nevertheless sent an e-mail to the Registrar instructing it to transfer that

name from Mr. Brando to herself. To "hide her tracks," Ms. Corrales used "WhoisGuard"to prevent others from learning that she is the current registrant.

As to its contention of bad faith use, Complainant alleges the following:

(a) Ms. Corrales is using the disputed domain name to intentionally attract, for commercial gain, Internet users to her web site, by creating a likelihood of confusion with Complainant's mark, as to the source, sponsorship, affiliation, or endorsement of that site. In that regard, she intends to charge a subscription fee for its services once the web site officially opens.

(b) To add to the confusion created by Ms. Corrales as to source, sponsorship, affiliation and endorsement of her web site associated

with the disputed domain name, she refers to her web site as "The Official Marlon Brando Forum and Discussion Group."Accordingly, any initial interest confusion caused by the disputed domain name is only furthered by her deceptive use of the term "Official Marlon Brando."

(c) Ms. Corrales buries a single-line disclaimer in small, inconspicuous text toward the bottom of the home page of her web site and provides no disclaimer anywhere else on the web site. Complainant opines that use of such a disclaimer does not avoid a finding of bad faith, as the disclaimer may be missed, ignored or misunderstood by Internet users, and hence does nothing to dispel initial interest confusion inevitable from Respondent's actions, citing to *Ciccone v. Parisi*, D2000-0847 (WIPO Oct. 12, 2000).

(d) Further, Ms. Corrales' use of the disputed domain name disrupts the business of Complainant, damages Complainant's reputation if consumers are unhappy with Ms. Corrales' web site, or even worse, results in lost revenues to Complainant.

B. Respondent

1. Confusing similarity/identicality

Respondent does not contest that the disputed domain name is either identical or confusingly similar to the MARLON BRANDO mark.

2. Rights and legitimate interests

Respondent contends that, under paragraph 4(a)(ii) of the Policy, she has legitimate rights and interests in the disputed domain name for the simple reason that Mr. Brando gifted the domain name to her in late 2001.

In that regard, Ms. Corrales alleges:

(a) She has been a close, personal friend and confidant of Mr. Brando for over forty years. She also served as his business manager for approximately four years.

(b) Mr. Brando originally had the disputed domain name registered in his name on November 1, 1997. However, Mr. Brando gifted the "web page"(which the Panel takes to mean the disputed domain name) to Ms. Corrales to do with it as she pleases. Subsequently, Mr. Brando added Ms. Corrales as a registrant of the that name and used her telephone number, fax number and e-mail address in the new contact fields. Ms. Corrales points to a domain name history printout from Whois Source (a copy of the relevant page appears in Annex 3 to the Response) showing that on August 18, 2002, Joanne Corrales (sic) is named as a registrant together with Mr. Brando.

(c) During Ms. Corrales' employment with Mr. Brando, Ms. Corrales had no knowledge of developing or designing web pages. Hence, there would be no reason why Mr. Brando would add Ms. Corrales as a registrant in order for her to manage the domain name. Mr. Brando had many employees working at his Mulholland home who were knowledgeable in web design. Mr. Brando gave Ms. Corrales the disputed domain name as a gift. Consistent with his gift to Ms. Corrales, Mr. Brando subsequently added her name as a registrant.

(d) At no time did the estate of Marlon Brando, Mr. Brando himself or any representative of Mr. Brando demand that Ms. Corrales the return the disputed domain name. The Complaint is the first

instance in which anyone ever objected or otherwise demanded the return of that name since the time it was gifted over to Ms. Corrales in late 2001. In that regard, Respondent states that failing to act within a reasonable time from the date of registration and use of the domain name amounts to acquiescence by Complainant to the registration and use of it by Ms. Corrales. Thus, Complainant has waived any rights to now request that the domain name be transferred back to it, citing to *Smith v. DNS Research, Inc.*, FA 220007 (Nat. Arb. Forum Feb. 21, 2004).

3. Bad faith use and registration

Respondent contends that her behavior does not reflect bad faith registration and use.

In that regard, Ms. Corrales alleges the following:

(a) After her employment with Mr. Brando ended, she still retained the authority and power to change the registrant and contact information associated with the disputed domain name because that name had previously been gifted to her by Mr. Brando. Furthermore, she was the rightful owner, registrant and contact administrator with the authority to make the transfer.

(b) When Mr. Brando gifted the disputed domain name to Ms. Corrales, he instructed her to do what she wanted with it including

removing his name as the registrant, but she had not done so until August 6, 2004 when she transferred the domain name from Jo An Corrales and Marlon Brando to just Jo An Corrales. Ms. Corrales believed she had the authority as the registrant and owner of the name to make the transfer; hence, she did so in absolute good faith.

(c) Due to the thousands of e-mails and phone calls to Ms. Corrales from around the world after Mr. Brando's death, she subsequently used "WhoisGuard"to alleviate the intrusion of privacy produced by the calls and e-mails. She did not use "WhoisGuard" to "hide her tracks" but only to protect her privacy from the flood of inquires to her home at all hours of the night.

(d) Her actions do not constitute bad faith use because the name was gifted to her by Mr. Brando. Additionally, the use of that name does not disrupt the business of Complainant nor damage Complainant's reputation because the domain name has not been used for an improper purpose. Contrarily, the name has been used as a forum to discuss the life and memories of Mr. Brando, including interesting aspects of his life told by those who were his closes friends, longtime employees and associates. In that regard, a copy of the home page of that site appears in Annex 4 to the Response.

(e) She has not intentionally attempted to attract, for commercial gain, Internet users to her web site by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of that site. In that regard, she has stated on the home page that the forum and website is run by Mr. Brando's closest friends and assistants. Furthermore, that site includes a disclaimer stating that the site is not affiliated with the Marlon Brando estate. Ms. Corrales does not intend, nor has she purported to act on behalf of the estate.

(f) The home page of her web site states that once the site goes operational, it would be subscription-based. However, when Mr. Brando gifted the disputed domain name to Ms. Corrales, he informed her that she could do whatever she wanted with it. Ms. Corrales is simply acting in good faith and according to Mr. Brando's instructions.

C. Additional Submissions

While each of parties filed two additional submissions, the first one of which was timely filed and the other was not, this Panel — as it is apt to do —has read all the submissions. These submissions basically re-iterate and amplify allegations made in both the Complaint and the Response through an exercise of what can best be described as "dueling declarations" complete with additional inconsistencies, invective and a heavy complement of accusations and self-serving statements — all of which are candidly of no use to the Panel. Consequently, the Panel discounts all these submissions and accords essentially no weight to any of them. Thus, the Panel sees absolutely no need to summarize any of them.

FINDINGS

A copy of the WHOIS registration record for the disputed domain name appears across Exhibit 2 to the Complaint and Exhibit C to the Costanza declaration. This name was registered on November 1, 1997. Sometime during 2001, the record was modified to ostensibly transfer ownership of the name to Mr. Brando and Ms. Corrales jointly. Currently, the record reflects both Mr. Marlon Brando and Ms. Corrales as the organization, administrative and zone contacts for that name. Respondent did use and continues to use the WhoisGuard service provided by the Registrar to mask the identities of Mr. Brando and Ms. Corrales as the current domain name registrants.

Marlon Brando was an extraordinarily well known actor and movie personality, whose reputation extended worldwide. He was also a director and producer. Mr. Brando's acting achievements illustratively include the following roles and awards: *A Streetcar Named Desire*; *Viva Zapata!* (Cannes Film Festival, Best Actor; British Film Academy, Best Foreign Actor); *Julius Caesar* (British Film Academy, Best Foreign Actor); *The Wild One*; *On the Waterfront* (New York Film Critics Circle, Best Actor; Golden Globe, Best Actor, Drama; British Film Academy, Best Foreign Actor; Oscar, Best Actor; Cannes Film Festival, Best Actor); *Guys and Dolls*; *Mutiny on the Bounty*; *The Godfather* (Oscar, Best Actor; Golden Globe, Best Actor in a Motion Picture, Drama); *Last Tango in Paris* (National Society of Film Critics, Best Actor; New York Film Critics Circle, Best Actor); *Roots: The Next Generations* (Emmy, Outstanding Supporting Actor in a Limited Series or a Special); *Superman*; *Apocalypse Now*; *Don Juan DeMarco*; and *The Island of Dr. Moreau*. Mr.

Brando also received the following honors: 1955: Golden Globe, World Film Favorite, Male; 1972: Golden Globe, World Film Favorite, Male; and 1973: Golden Globe, World Film Favorite, Male.

Through Mr. Brando’s prominent public presence and recognition on stage, on screen, in print, and elsewhere, the name “MARLON BRANDO” long ago—at least as long ago as the 1960s—became famous in the minds of the entertainment-consuming public. Consequently, the relevant marketplace immediately associates the name, and MARLON BRANDO mark with the services that Marlon Brando provided, i.e., as an actor, entertainer, director and producer.

Mr. Brando died on July 1, 2004. While the record does not specify the place of death, the Panel takes judicial notice of the fact that Mr. Brando died in Los Angeles, California. *See* Adam Bernstein, *Actor Marlon Brando, 80, Dies*, Wash. Post, July 2, 2004, available at http://www.washingtonpost.com/wp-dyn/ articles/A23157-2004Jul2.html.

Upon his death, Mr. Brando's estate, acting through his will, assumed legal ownership and control over his assets, including the rights in his name, mark and the disputed domain name.

Until Mr. Brando's death, Ms. Corrales had been a close personal friend of his for over forty years and his business manager for nearly the past four years.

On August 6, 2004, Ms. Corrales sent an e-mail to the Registrar instructing it to transfer the disputed domain name from both Mr. Brando and her names to just her name individually.

DISCUSSION

Paragraph 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (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."

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;

(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.

Jurisdiction

While Complainant attempts to wrap this dispute in the garb of cybersquatting in order to "shoe-horn" it under the Policy presumably for a rapid determination of ownership of the disputed

domain name, that attempt is misguided. This dispute simply does not involve cybersquatting.

[1] When stripped of all its irrelevancies — with which the record is quite rife, this dispute distills down, at its kernel, to just one dispositive issue and one which does not implicate cybersquatting at all: did Mr. Brando make a valid inter vivos gift of the disputed domain name to Ms. Corrales? Unfortunately, this issue is one which the Panel lacks jurisdiction to address.

A domain name is personal property no different, for purposes of its proper administration as a possible asset of a decedent, from any other personal property then owned by the decedent. Given that Mr. Brando died in California, the Panel therefore turns to the law of the State of California as governing.

While relevant California case law appears to be somewhat scant, *Blonde v. Estate of Jenkins*, 131 Cal. App. 2d 682, 281 P. 2d 14 (Cal.App.2.Dist. 1955) is nevertheless quite instructive. There, an issue arose as to which one of two alleged donees, Wade and Blonde, Decedent Jenkins made an inter vivos gift of 250 shares of corporate stock. Each donee alleged ownership of the shares and filed an action to quiet title to the same shares as against the other, with both actions then having been consolidated below by the trial court.

On appeal, the Court began its analysis by noting:

> Gifts first asserted after the death of the alleged donor are always regarded with suspicion by the courts.... In order to make a valid gift, a donor must not only make delivery and part with control of the object claimed, but the donor must at the same time have the intention to complete a presently effectively gift and a delivery amounting to a present transfer of title ... And that intention must be executed by a complete

> and unconditional delivery.... The donor has the burden to prove the gift. *Id.* at 685-686 (citation omitted).

In assessing whether Donor Wade had, in fact, received an inter vivos gift of the shares, the Court used as its test:

> To constitute a valid gift inter vivos, the gift must be complete by actual delivery without power of revocation.... If dominion and control over the gift is retained by the donor until his death, it becomes merely an unexecuted and unenforceable promise to make a future gift.... Reserving dominion and control over property is fatal to the asserted gift thereof. To accomplish a gift inter vivos, the donor must divest himself completely of the power of revocation. (citations omitted). *Id.* at 686 (citations omitted).

Upon applying this test to the facts at hand, the Court found that, in spite of the fact that Donor Jenkins made a verbal statement gifting the shares to Donee Blonde, the donor nevertheless retained his stock certificates under the guise of requiring those certificates to be guaranteed by his bank, hence retaining control over their ultimate disposition. Consequently, the Court affirmed the trial court's decision that Donor Jenkins did not make an inter vivos gift of those shares to Donee Wade.

See also In re Hall's Estate, 98 P. 269 (Cal. 1908) ("A written gift inter vivos need not be actually delivered, but no gift of personal property, whether written or verbal (except a donatio causa mortis), is complete and effectual unless the donor intends to divest himself completely of control or dominion over the property given."); *see also Berl v. Rosenberg*, 169 Cal.App.2d 125, 336 P.2d 975 (Cal.App.1.Dist. 1959) ("The two basic elements are the intention of the donor to make a voluntary transfer to the donee, and a delivery, actual or constructive, by the donor to the donee or to someone on his behalf.").

Now, as to the dispute at hand and under California law, a tribunal faced with deciding whether Mr. Brando made a valid inter vivos gift of the disputed domain name to Ms. Corrales must examine whether Mr. Brando not only intended to make a gift of that name to Ms. Corrales but in fact actually completed that gift, prior to his death, by completely transferring that name to her without retaining any power to revoke the gift.

Such inquiries, which have no bearing on cybersquatting, lie completely outside the narrow and sharply focused reach of the Policy.

Moreover, because such inquiries are highly factually dependent — particularly given the inherent

judicial skepticism towards posthumously asserted inter vivos gifts (which forms the crux of Respondent's case), those inquiries are simply inappropriate for this Panel to address owing to the rather summary nature of an ICANN proceeding which precludes a complete factual record from being established and duly considered.

Therefore, this Panel believes that this matter, lying outside the purview of an ICANN proceeding, is best left and must solely be left to adjudication before the California courts and not to an ICANN administrative panel.

Consequently, this Panel rules that it is without jurisdiction to hear this matter.

Thus, all consideration of any of the factors under the Policy is now moot.

DECISION

In accordance with paragraph 15 of the Rules, the Complaint is hereby *DISMISSED* for lack of jurisdiction.

- End of Case -
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