



## **WIPO Arbitration and Mediation Center**

### **ADMINISTRATIVE PANEL DECISION**

**The Clorox Company v. TechLever Inc.**

**Case No. D2001-0914**

#### **1. The Parties**

The Complainant is the Clorox Company, a State of Delaware (USA) corporation with principal place of business at 1221 Broadway, Oakland, California 94612, U.S.A.

The Respondent is TechLever, Inc., an entity located at 34256 Duffy Terrace, Fremont, California, 94555, U.S.A.

#### **2. The Domain Name and Registrar**

The domain name in dispute is <clorox.net>.

The registrar for the disputed domain name is Easyspace Ltd, 2 Park Court, Pyrford Road, West Byfleet, Surrey, KT14 6SD, United Kingdom.

#### **3. Procedural History**

This dispute is to be resolved in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and Rules (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, and the World Intellectual Property Organization Arbitration and Mediation Center's Supplemental Rules for Uniform Domain Name Dispute Resolution (the Center, the Supplemental Rules).

The Complaint was filed on July 17, 2001, in hard copy and by e-mail on July 23, 2001. The Complainant requested and paid for a three person panel.

Also on July 23, 2001, the Center requested that the registrar named in the Complaint, Network Solutions, Inc. (NSI), check and report back on the registrant for the domain name <clorox.net>. On July 24, 2001, NSI reported to the Center that it was not the registrant for the disputed domain name.

On July 30, 2001, the Center contacted the current registrar of the disputed domain name, Easyspace Ltd., which replied on July 30, 2001 and confirmed the registrant was TechLever Inc. and that the Policy was in effect. The registrar Easyspace Ltd. also stated the disputed domain name's status was "registrar-locked" and that it had no current services.

On July 27, 2001, the Center requested that the Complainant amend the Complaint to substitute NSI with Easyspace Ltd. and thus reflect the current registrar of the disputed domain name. On August 3, 2001 (e-mail) and on August 7, 2001 (hard copy), the Complainant corrected the name of the registrar.

On August 8, 2001, the Center requested that the Complainant amend the Complaint to reflect the correct name of the Respondent, TechLever Inc. On August 16, 2001 (e-mail) and August 17, 2001 (hard copy), the Complainant forwarded an amendment attempting but failing to correct this Complaint deficiency. On August 28, 2001 (e-mail) and August 30, 2001 (hard copy), the Complainant correctly named the Respondent.

But then, on September 6, 2001, the Complainant requested that the proceeding be suspended as it appeared the parties would reach a settlement. On September 10, 2001, the Center officially notified the parties that the proceeding was suspended. On October 2, 2001, the Respondent also requested a delay in the proceeding and stated its willingness to transfer the disputed domain name to the Complainant. Accordingly, the Center on October 5, 2001 further suspended the proceeding until November 4, 2001.

The parties did not reach a settlement, however, and on November 20, 2001, the Complainant requested that the Center reinstate the Complaint and recommence the proceeding. The Center communicated its agreement to the Complainant on November 21, 2001.

Thereafter, on November 21, 2001 the Center notified the Complaint to the Respondent by registered mail and by e-mail and this proceeding officially began. The Respondent did not file a Response within the 20 day time limit prescribed by Rule (5), and on December 12, 2001 was declared in default.

The Administrative Panel (Peter L. Michaelson, M. Scott Donahey and Dennis A. Foster, presiding panelist) each submitted a Declaration of Impartiality and Independence by January 24, 2002, and the Center proceeded to appoint the panel on January 29, 2002.

The Panel finds the Center has adhered to the Policy and the Rules in administering this Case.

#### **4. Factual Background**

The Complainant Clorox is the manufacturer and distributor of a line of bleach and cleaning products under the trademark Clorox, including bleach, cleaners, disinfectant wipes, and toilet bowl cleaners which are sold throughout the United States and abroad. Complainant is the owner of numerous United States and foreign trademarks for its products (Complaint Exhibit 3). Complainant's Clorox brand bleach has been sold in the U.S. since 1912.

On October 27, 1999 the Respondent registered the disputed domain name, <clorox.net>. After becoming aware of the Respondent's domain name and website, on July 27, 2000 the Complainant wrote to the Respondent and alleged trademark infringement (Complaint Exhibit 18). On September 10, 2000, the Respondent wrote to the Complainant asking \$8,086 for the disputed domain name to cover its investment expenses (Complaint Exhibit 18). Throughout 2000 and 2001 the parties were in sporadic communication and it appeared they might reach a settlement, but this was not to be.

The Complainant now seeks transfer of the disputed domain name, <clorox.net>, in this proceeding.

## **5. The Parties' Contentions**

### **Complainant's Summarized Contentions:**

- The domain name <clorox.net>, apart from the top level domain, is identical to and confusingly similar to Complainant's trademark Clorox, its domain name <clorox.com> and its trade names Clorox and The Clorox Company.
- Complainant is the owner of one of the world's most popular and well-recognized trademarks, Clorox.
- Complainant has extensively advertised and promoted its Clorox products throughout the United States and the world in TV and magazine advertising.
- The Clorox products of Complainant, by reason of their excellent quality, are in high demand throughout the United States and the world.
- As a result of extensive use and advertising, Complainant's trademark has become famous, and the public identifies Clorox immediately and exclusively with the Complainant, The Clorox Company.
- The Respondent has no rights or legitimate interests in the disputed domain name <clorox.net> because the Complainant's trademark Clorox is famous and known to virtually 100% of the (U.S.) population. Respondent's use of this name comprises dilution and infringement of Complainant's mark.
- There is absolutely no material on Respondent's web site, <clorox.net>, related to its domain name, other than the obvious reference to Complainant.
- Respondent's only possible reason for using the famous Clorox name is to disrupt Complainant's registration, use and enjoyment of its trademark and trade name to attract Internet users to its web site by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its web site.
- Respondent's adoption of the name clearly comprises dilution of Complainant's name and trademark.
- Respondent's domain name was both registered and used in bad faith in view of the fame of Complainant's mark and name, hence, Respondent has no legitimate purpose for using the domain name. Respondent's only purpose in using this

domain name was to trade upon the fame of Complainant's name and mark to intentionally attempt to attract for commercial gain internet users to its web site by creating a likelihood of confusion with Complainant's mark and name as to the source, sponsorship, affiliation or endorsement of its website as to the product or service of the site.

- Respondent's bad faith is further shown by its request for compensation for far in excess of directly related out of pocket expenses for transfer of the domain name as evidenced by the letter dated September 10, 2000 from Respondent to Complainant ( Complaint Exhibit 18).
- The Respondent makes no use of the domain name in a bona fide offering of goods or services, nor is it commonly known by the domain name, nor is it making a legitimate noncommercial or fair use of the domain name.
- It has been held that bad faith will be found where a domain name is so obviously connected with Complainant and its product that use by anyone else suggests "opportunistic bad faith." (Veuve Cliquot Ponsardin v. The Polygenix Group, Co., WIPO D2000-0163).
- The Panel should order transfer of the disputed domain name <clorox.net> from the Respondent to the Complainant.

**Respondent's Contentions:**

The Respondent is in default in this proceeding and thus did not file any contentions.

**6. Discussion and Findings**

In order for the Complainant to prevail and have the disputed domain name <clorox.net> transferred to it, the Complainant must prove the following (the Policy para 4(a)(i-iii)):

- the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- the Respondent has no rights or legitimate interests in respect of the domain name; and
- the domain name was registered and is being used in bad faith

**Identical or Confusingly Similar**

The Complainant has exhibited overwhelming proof showing it has been using its "Clorox" trademark for many years in the United States and abroad and that this trademark has for a similar period been registered in multiple categories in the United States and abroad. The Panel notes for illustration the Complainant's certified copies of the following trademarks registered on the principal register of the United States of America: Reg. No. 251, 292 dated January 1, 1929 for bleach/cleaner/antiseptic and Reg. No. 290, 449 dated January 5, 1932 for liquid preparation for general household cleaning purposes; or Reg. No. 2,358,705 dated June 13, 2000 for disposable wipes (Complaint Exhibits 4-10).

The Respondent's disputed domain name, <clorox.net>, is identical to the Complainant's Clorox trademark. It has long been settled in these proceedings beyond cavil or doubt that a top level domain indicator such as "net" does not affect the domain name's identity or confusing similarity. (see e.g. *Viacom Inc. v. Erik Peterson*, ICANN/WIPO Case No. D2001-0346, June 3, 2001; and *Grupo Financiero BBVA Bancomer and Banco Bilbao Vizcaya Argentaria, S.A. v. MIC*, ICANN/NAF Case No. FA0101000096454, February 28, 2001)

### **Legitimate Rights or Interests**

The Complainant categorically states it "has no connection with the Respondent or its business" (the Complaint p. 10). The Respondent is in default and thus has not attempted to come forward to show any legitimate rights or interests in the disputed domain name under the Policy at 4(c).

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

On September 10, 2000, the Respondent wrote to the Complainant requesting U.S.\$8,086 to transfer the disputed domain name to the Complainant (Complaint Exhibit 18). Respondent stated this figure represented the value of the resources it invested to create a web site at the disputed domain name. The Complainant contends the Respondent merely registered and held the disputed domain name while looking for ways to exploit the Complainant's good will contained in the Clorox trademark.

The Panel agrees with the Complainant. Some two years after registration, it does not look as though the Respondent has done anything with the disputed domain name except attempt to resell it to the Complainant for far more than Respondent's out-of-pocket expenses. This is in violation of the bad faith provisions of the Policy at 4(b)(i).

Furthermore, the Panel agrees with the Complainant that the fame and strength of the Clorox mark is such that the mere registration by the Respondent suggests "opportunistic bad faith" since a legitimate good faith use by a party other than the Complainant or its licensee is hard to conceive. (see *Veuve Cliquot Ponsardin v. The Polygenix Group, Co.* ICANN /WIPO Case No. D2000-0163, May 1, 2000.

The Panel finds the Respondent registered and is using the disputed domain name in bad faith.

## **7. Decision**

The Panel has found the Respondent's disputed domain name, <clorox.net>, is identical to the Complainant's famous Clorox mark. Further, the Panel finds that the Respondent has no legitimate rights or interests in the domain name. Finally, the Panel has found the Respondent registered and was using the disputed domain name in bad faith because (a) it attempted to sell the disputed domain name back to the Complainant for far more than the Respondent paid for it; and (b) the Complainant's mark is so famous and strong that the Respondent's very act of registering the domain name is tantamount to bad faith.

Hence, per the Policy at 4(i) and Rule (15), the Panel orders that the disputed domain name <clorox.net> be transferred from the Respondent, Techlever Inc., to the Complainant, The Clorox Company.

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Dennis A. Foster  
Presiding Panelist

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Peter L. Michaelson  
Panelist

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M. Scott Donahey  
Panelist

Dated: February 12, 2002