

ADMINISTRATIVE PANEL DECISION

Photo Tour Books, Inc. d/b/a PhotoSecrets v. Beate Chelette
Case No. D2010-1373

1. The Parties

The Complainant, represented *pro se*, is Photo Tour Books, Inc. d/b/a PhotoSecrets of San Diego, California, United States of America.

The Respondent is Beate Chelette of Culver City, California, United States of America, also represented *pro se*.

2. The Disputed Domain Names and Registrar

The disputed domain names <freephotosecrets.biz>, <photosecrets.biz> and <photosecretsblog.com> are all registered with GoDaddy.com, Inc. (the "Registrar").

3. Procedural History

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), which was adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999, and approved on October 24, 1999, and also in accordance with the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") as approved on October 30, 2009 and the World Intellectual Property Organization ("WIPO") Supplemental Rules for Uniform Domain Name Dispute Resolution Policy in effect as of December 14, 2009 (the "Supplemental Rules").

The Complaint, with accompanying Annexes 1-20 was filed with the WIPO Arbitration and Mediation Center (the "Center") by email on August 13, 2010. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amendment to the Complaint on August 26, 2010. All references hereinafter to the Complaint will be to the Complaint as amended.

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 Complaint, the Center, in accordance with paragraph 5 of the Supplemental Rules, verified that the original Complaint complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on August 13, 2010, the Center requested confirmation from the Registrar as to: whether the Registrar received a copy of the Complaint from the Complainant, contact and registrant

information set forth in that Complaint relative to each of the disputed domain names, and whether the disputed domain names are indeed registered with the Registrar. The Center also requested the Registrar to specify for each of the disputed domain names: (a) the dates on which the registrant registered that name (or acquired the registration) and when the registration will expire, (b) whether the Policy applies to that name, (c) the language of the registration agreement, and (d) for confirmation that the name will remain "locked" during the proceeding.

Subsequently, on August 14, 2010, the Registrar provided its response to the Center through which it confirmed it is the registrar for each of the disputed domain names, and specified name and contact information pertinent to each of the disputed domain names to the extent, as it then existed, in its Whois database. Further, the Registrar stated that it had received a copy of the Complaint. The Registrar's response further indicated that: (a) the registration for the <freephotosecrets.biz>, <photosecrets.biz> and <photosecretsblog.com> names were respectively created on August 27, 2009; March 20, 2009; and March 1, 2010; and will expire on August 27, 2011; March 19, 2011 and March 1, 2012, (b) the Policy applies to each of the domain names, (c) the registration agreement for each of the domain names is in English, and (d) all the domain names will remain locked during the proceeding.

The Center verified that the Complaint satisfied the formal requirements of the Policy, the Rules and the Supplemental Rules.

On August 26, 2010, the Center formally notified the Respondent of the filing of the Complaint, including an indication that the Center was forwarding a complete copy of the Complaint to the Respondent, together with all its annexes, by email. 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), 2(b) and 4(a) of the Rules.

Hence, the notification to the Respondent having occurred on August 26, 2010, under paragraph 4(c) of the Rules, this administrative proceeding is deemed to have commenced on that date.

Having reviewed the Complaint and all the correspondence, including that between the Center and the Registrar, 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 September 15, 2010 and subsequently re-set by the Center to September 25, 2010, to file her Response with the Center and the Complainant.

On September 25, 2010, the Respondent timely filed her Response with the Center.

Pursuant to the Rules and Supplemental Rules, by email letter dated September 21, 2010, the Center contacted the undersigned, Mr. Peter L. Michaelson, Esq., requesting his service as the sole panelist for this dispute. Subsequently, on the same date, Mr. Michaelson accepted and, pursuant to the requirements of paragraph 7 of the Rules, returned, by email attachment to the Center, a fully executed Statement of Acceptance and Declaration of Impartiality and Independence. The Center, through an email letter dated September 28, 2010, notified the Parties of the appointment of Mr. Michaelson as sole Panelist. The Panel finds that it was properly constituted.

The Complainant filed a supplemental filing with the Center, by e-mail, on September 26, 2010. Acting in its discretion, the Panel has considered this supplemental filing.

Based on the deadline set forth in paragraph 15 of the Rules, a decision is to be issued by the Panel before October 12, 2010. Owing to unexpected time conflicts experienced by the Panel all of which constituted unforeseen circumstances, the Center, at the request of the Panel, extended this due date to October 26, 2010.

This dispute concerns three domain names, specifically <freephotosecrets.biz>, <photosecrets.biz> and <photosecretsblog.com>.

4. Factual Background

As indicated in the Whois registration record appearing in Annex 5 to the Complaint, the disputed domain names <freephotosecrets.biz>, <photosecrets.biz> and <photosecretsblog.com> names were respectively created on August 27, 2009; March 20, 2009; and March 1, 2010; and will expire on August 27, 2011; March 19, 2011 and March 1, 2012.

A. The Complainant's PHOTOSECRETS Mark

The Complainant owns a United States registration for the mark PHOTOSECRETS in block letters. The Complainant has provided, in Annex 1 to the Complaint, a copy of the record for this registration as listed on the publicly accessible TESS (Trademark Electronic Search System) database provided by the United States Patent and Trademark Office (USPTO). Pertinent details of this registration are as follows:

PHOTOSECRETS
United States Registration No. 2,207,238
registered: December 1, 1998
renewed: September 13, 2008

This mark is registered for use in connection with: "printed publications, namely travel guides for travel photography" in international class 16, and "travel photography information services" in international class 39. The record indicates that both first use and first use in commerce of this mark, when used in conjunction with the goods and services in classes 16 and 39, were June 1997 and April 1996, respectively.

B. The Parties and their activities

(i). The Complainant

The Complainant states that it uses its PHOTOSECRETS mark, in connection with goods and services related to photography, and has done so continuously since at least as early as 1999. The goods are a book it provides entitled "PhotoSecrets How To Sell Your Photos" and its services are its website, accessible through <photosecrets.com>, through which the Complainant provides various goods, services and information all related to the art of travel photography itself and apparently intended for amateur and aspiring photographers. A copy of the home page of that site appears in Annex 3 to the Complaint.

According to the Complainant, its <photosecrets.com> website ranks highly on Google for certain search terms such as "Sell Photos" and "How To Sell Your Photos", won the 1999 Benjamin Franklin Award for Best Publisher's Website, and has been recommended by The New York Times, Nikon, and Shutterbug Magazine. The Respondent believes that the results were caused by the Complainant having previously purchased the respective search terms, as keywords, from Google.

(ii). The Respondent

The Respondent is a photography consultant and coach and is known and recognized in the photography industry. She provides information concerning various business aspects of professional photography, such as marketing, selling, automation, negotiation, client and customer service. The Respondent, being directed to a different aspect of the photography industry, *i.e.*, commercial considerations rather than aesthetics, and to a different audience, *i.e.*, professionals as against amateur and aspiring photographers, does not believe her product and service offerings compete with any of those offered by the Complainant.

The Respondent uses the following terms: Photography Business Success Coach, PhotoBizCoach Beate, Photography Business Secrets and Photosecrets. She also speaks professionally about the business of photography and has a number of professional photography clients.

Since March 2009, the Respondent's <photosecrets.biz> website provides, through a user sign-up mechanism, free webinars that are geared to photo professionals. The only traffic to this site is from direct mail or through a blog whenever a call is being facilitated. The Respondent's <freephotosecrets.biz> website features the Respondent's online videos. This second site collects contact information by offering free information concerning the business of photography. Lastly, the Respondent's <photosecretsblog.com> is a photography blog geared toward professional photographers. The majority of the content on this site is self-created by and unique to the Respondent. None of these three websites offers any products or services or directly provide income to the Respondent. However, the Respondent explicitly states that all of these sites are "marketing websites". Moreover, these three sites appear to contain common content. Copies of the home and underlying pages from these sites are provided in Annex 11 to the Complaint.

On April 30, 2010, the Respondent filed a United States (US) trademark application to register, as her mark, the term "Photosecrets" in connection with "on-line journals, namely blogs featuring the business of photography" in international class 41. In connection with this mark, the Respondent claimed first use and first use in commerce dates of March 1, 2009. A copy of the record for this application from the publicly accessible TARR (Trademark Application and Registration Retrieval) database provided by the USPTO appears in Annex 13 to the Complaint. The USPTO, in an office action sent August 12, 2010, refused registration of the Respondent's mark, under §2(d) of the Lanham Act, as being likely to cause confusion with registration 2,207,238 (the Complainant's registration). The Trademark Examining Attorney viewed that the marks were identical and that the goods and services of the respective parties, even though they may not be identical or even directly competitive, were nevertheless sufficiently related "such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source". He further noted "[i]n this case, the parties' services and/or goods are all directed to the field of photography. While the registrant's [the Complainant's] goods and services involve information about 'travel photography' there are no limits in the registrant's identification to indicate that this information is solely for amateur photographers (as opposed to the business of photography)." A copy of this action appears in the Complainant's Supplemental Filing.

(iii). Interactions between the parties

The Complainant sent an e-mail message on March 25, 2010 with subsequent messages on April 1 and 25, 2010 to the Respondent (though none of these messages appears in the record) through which presumably the Complainant demanded that the Respondent transfer the disputed domain names to the Complainant. See responding letter dated April 26, 2010 (a copy of which appears in Annex 12) from the Respondent's counsel to the Complainant which references the earlier correspondence. The Respondent refused the Complainant's demand. Through subsequent e-mail correspondence directly between the parties from May 17, 2010 through June 14, 2010 (excerpted passages from this correspondence appear in Annex 14 to the Complaint), the Respondent, in an effort to amicably settle the dispute, attempted to solicit an offer from the Complainant for purchase of the disputed domain names. Ultimately, on June 14, 2010, the Respondent stated that she sought "not quite \$ 20K but no less than \$ 15K" for the <photosecrets.biz> domain name – which apparently was then of most interest to the Complainant.

At the request of the Complainant and specifically its assertion that the Respondent's address for her blog, <photosecrets.wordpress.com>, incorporated the Complainant's mark, the Respondent's hosting company, WordPress, suspended the Respondent's "Photosecrets' Blog". The Respondent then simply moved its blog to her own host at another URL, <photosecretsblog.com>. The Respondent, by an e-mail message dated May 17, 2010 notified the Complainant of this new address for her blog.

5. Parties' Contentions

A. Complainant

(i). Identical or Confusingly Similar

The Complainant contends that each of the three disputed domain names is identical to the Complainant's PHOTOSECRETS mark simply because the domain names fully incorporated the mark.

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii). Rights or Legitimate Interests

The Complainant contends that, for any of several reasons, the Respondent has no rights or legitimate interests in any of the disputed domain names pursuant to paragraph 4(a)(ii) of the Policy.

First, the Respondent has no prior rights or legitimate interest in the Complainant's PHOTOSECRETS mark nor did it have any prior registration for this mark.

Second, the Respondent has never received any authorization from the Complainant to use the latter's mark.

Third, the Respondent has never used the mark in connection with any offering of goods or services, and she is not commonly known by the mark. As to the latter, the Respondent used several trade names, as the Complainant specifies in Annex 8 to the Complaint, in conjunction with the Respondent's business, but none of which incorporated the Complainant's mark.

Lastly, the Complainant contends that inasmuch as the name of the Respondent's current business is "Photography Business Secrets", the Respondent had no need to register any of the disputed domain names as she already had an "appropriate domain name", *i.e.*, <photographybusinesssecrets.com>.

(iii). Registered and Used in Bad Faith

Lastly, the Complainant contends that the Respondent registered and is now using each of the disputed domain names in bad faith under paragraph 4(a)(iii) of the Policy.

As to bad faith registration, the Complainant contends that, at the time the Respondent registered each of the disputed domain names, she knew or should have known of the Complainant's PHOTOSECRETS mark. In that regard, the trademark registration provided the Respondent with constructive notice of the Complainant's mark and Respondent also had the responsibility, prior to registering any of the domain names, to have conducted a trademark search through which she would have expressly discovered the Complainant's mark.

As to bad faith use, the Respondent offered to sell two of the disputed domain names to the Complainant for over USD20,000 each.

Further, both the Complainant and the Respondent compete with each other by offering goods and services to photographers who wish to make money from their work. The Complainant's underlying analysis of the competitive nature of the parties appears in Annex 6 to the Complaint. As such, by registering and using each of the disputed domain names, the Respondent intentionally created a likelihood of confusion between the Complainant's mark and the name. Due to the confusion, the Respondent effectively diverts Internet users who sought the Complainant's website to the Respondent's site instead at which the Respondent offers various products and services competitive with those of the Complainant – to the detriment of the Complainant and ultimately the commercial benefit to the Respondent.

Lastly, at the request of the Complainant and specifically its assertion that the Respondent's address for its blog, <photosecrets.wordpress.com>, incorporated the Complainant's mark, the Respondent's hosting company, WordPress, suspended the Respondent's "Photosecrets' Blog". The Respondent then simply moved her blog to her own hosting site at another URL, <photosecretsblog.com>, which still incorporated the Complainant's PHOTOSECRETS mark. Clearly, the Respondent could have used this opportunity to move her blog to a non-infringing address but intentionally chose not to do so.

B. Respondent

(i). Identical or Confusingly Similar

The Respondent apparently does not dispute the existence of the Complainant's trademark registration or the trademark rights which the Complainant has in its mark.

However, the Respondent alleges that the mark does not extend to encompass the activities which she is conducting and, inasmuch as the parties serve widely differing segments of the same industry, they do not compete with each other. Thus, no confusion is likely to occur were she to continue using the disputed domain names as she does now.

Moreover, the Respondent states that <photosecrets.biz> and <freephotosecrets.biz> and <photosecretsblog> were all created as abbreviations for "Photography Business Secrets".

(ii). Rights or Legitimate Interests

In contrast to the Complainant's position, the Respondent alleges that, for various reasons, she has rights or legitimate interests in each of the disputed domain names.

First, the Respondent points to the mere passage of time. More than a year elapsed from the date the Respondent registered two of the domain names and close to a month for the other to the date when the Complainant initially objected to the Respondent. Based on this delay, the Respondent can only conclude that the Complainant intentionally waited in purposefully to enrich himself on the extensive business experience of the Respondent and her hard work in the photography industry. In addition, the Complainant, by claiming the disputed domain names are his, will basically unjustly enrich himself and benefit by obtaining both traffic destined to the Respondent's websites and ultimately her clients.

Second, the Respondent alleges that she is not using the Complainant's mark but "merely URL's that are easy to remember for specific marketing actions".

(iii). Registered and Used in Bad Faith

Lastly, the Respondent alleges that, for any of several reasons, she did not register or use any of the disputed domain names in bad faith.

First, though she made repeated offers to sell the domain names to the Complainant, she did so amicably and in good faith merely to resolve the dispute between her and the Complainant.

In that regard, the Respondent has no interest in engaging in the business of buying and selling domain names. She had simply asked that, if the Complainant insists on owning the disputed domain names, that he provide her with reasonable compensation for the web traffic that would otherwise have gone to her web sites. The content of those sites include videos, concerning the business of photography, which the Respondent created. She does not want the Complainant to enrich himself through those videos and the attendant value which the Respondent has created for herself.

Second, the Complainant's claim to the term "photosecrets" is meritless as the words "photo" and "secrets" are words of the English language.

Third, the Respondent has not used any of the disputed domain names in bad faith. No e-commerce is conducted through any of the Respondent's websites. No product, service or seminar is offered through any such site nor is any product, service or seminar named "photosecrets". Further, as reflected in the content of the parties' respective websites, the parties serve widely differing segments of the photographic industry and thus do not overlap with or compete with each other.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that each of the disputed domain names is either identical or confusingly similar to the Complainant's PHOTOSECRETS mark.

From a simple comparison of each of those names to the Complainant's mark PHOTOSECRETS, no doubt exists that each of the disputed domain names is identical or confusingly similar to the Complainant's mark.

In particular, the name <photosecrets.biz>, apart from its inclusion of the generic top level domain (gTLD) ".biz", is otherwise identical to the mark. The addition of the gTLD is irrelevant in assessing confusing similarity or identity under paragraph 4(a) of the Policy and thus ignored.

As to the other two disputed domain names, <freephotosecrets.biz> and <photosecretsblog.com>, the difference, again ignoring the addition of the gTLD to the mark, between each of the domain names and the mark is the prepending of the word "free" in one instance and the appending of the word "blog", as effectively a suffix, in the other instance to the Complainant's mark to form the corresponding name.

It is now very well established in UDRP precedent, including numerous decisions previously rendered by this Panel, that a minor variation, such as adding short letter or number groups or even common, generic or highly descriptive words, or country names to a mark, is usually insufficient in and of itself, when used in forming a domain name that results from modifying the mark, to confer requisite and sufficient distinctiveness to that name to avoid user confusion. Such is the case here. See, e.g., *Clearwire Legacy, LLC v. Leon Ganesh*, WIPO Case No. D2010-0148 (March 17, 2010); *Oakley, Inc. v. Kate Elsberry, Elsberry Castro*, WIPO Case No. D2009-1286 (November 18, 2009); *Burberry Limited v. Domain Admin*, WIPO Case No. D2009-0703 (August 11, 2009); *Krispy Kreme Doughnuts, Inc. v. John Sharp*, WIPO Case No. D2009-0099 (April 20, 2009); *MasterCard International Incorporated v. Global Prepaid*, WIPO Case No. D2008-2008 (March 25, 2009); *HRB Innovations Inc., Express Tax Service Inc. v. Calvin Brown*, WIPO Case No. D2008-1072 (September 4, 2008); *Dreamworks Animation, LLC v. Creahq, Mike Furlong*, WIPO Case No. D2008-0505 (May 28, 2008); *Marvel Manufacturing Company Inc. v. Koba Internet Sales, LP*, WIPO Case No. D2008-0265 (May 5, 2008).

Hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

However despite the Complainant's assertions to the contrary, the Panel finds that the Respondent has established her rights and legitimate interests in each of the disputed domain names under paragraph 4(c)(i) of the Policy.

Paragraph 4(c) of the Policy states:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name, or a name corresponding to the domain name in connection with a *bona fide* offering of

goods or services” [emphasis added].

First, did the Respondent use or make demonstrable preparations to use all the disputed domain names prior to receiving notice of her dispute with the Complainant? The record shows that the Respondent used two of the domain names for at least a year (and the other for almost a month) prior to receipt of the first communication from the Complainant through which the Complainant objected to her use.

Next, has that pre-notice use involved an offering of goods or services? It is undisputed that the Respondent does not derive any revenue directly from her websites. While those websites provide information regarding the business of the professional photography industry, specifically: copies of her own reports and publications, her own videos and audio presentations, webinars invitations, and selected client feedback; all that information is provided for free. Providing information is clearly a service. As paragraph 4(c)(i) does not require that any good or service be provided for a fee or cost, the Panel will not infer any such requirement. Hence, the Respondent’s pre-notice activity constitutes an offer for services.

Lastly, was this offering *bona fide* within the meaning of paragraph 4(c)(i)? *Bona fide* is defined as “1. Made in good faith, 2. Sincere, genuine” *Black’s Law Dictionary*, Seventh Ed., p. 168 (© 1999, West Group). The Complainant strenuously argues that the Respondent was under constructive notice of the Complainant’s US registration of its PHOTOSECRETS mark and, as such, it knew or should have known that registration and use of the disputed domain names would violate the Complainant’s exclusive trademark rights resulting from its trademark registration and thus any action towards that end would constitute bad faith.

Under US law, a federal trademark registration provides constructive notice to all third-parties of the associated rights of exclusivity then held by the owner of the registration. UDRP precedent exists which support the imposition of such constructive notice in instances where a US trademark registration exists, and a complainant and a respondent-registrant of a disputed domain name are both from the US. See, e.g., *The Sportsman’s Guide, Inc. v. Modern Limited, Cayman Islands*, WIPO Case No. D2003-0305 (June 18, 2003), and *Kate Spade, LLC v. Darmstadter Designs*, WIPO Case No. D2001-1384 (January 3, 2002). In contrast, see *Alberto-Culver Company v. Pritpal Singh Channa*, WIPO Case No. D2002-0757 (October 7, 2002) and *Toronto Star Newspaper Ltd. v. Elad Cohen*, WIPO Case No. DTV2000-0006 (January 22, 2001) where, in light of the parties not being from the US and/or the trademark registration involved was foreign to the US, UDRP panels declined to hold that the trademark registration itself provided constructive notice to a respondent-registrant.

However, even if constructive notice of the Complainant’s PHOTOSECRETS mark is imputed to the Respondent here – as both she and the Complainant are from the US and the trademark registration is as well – as Complainant urges this Panel to do, doing so ignores a key determinative factor.

Under the particular facts of record here, the Respondent possessed a reasonable basis for believing that her use of the term PHOTOSECRETS in connection with the disputed domain names would not cause any likelihood of confusion and thus would not infringe upon the exclusive trademark rights then held by the Complainant, namely that, owing to segmentation of the photography industry, the Complainant and the Respondent serve rather disparate and seemingly diametric market segments. It is immaterial, to this Panel, whether her belief ultimately will be proven correct or not as long as, under the facts of record, she had a reasonable basis at the time for it, and the case does not otherwise have the hallmarks of a typical case of self-evident cybersquatting. Here, the Panel is persuaded that she did, and the case is not an otherwise obvious instance of abusive registration under the Policy. The Panel is also not aware of this particular Respondent having been found guilty of cybersquatting in previous WIPO proceedings under the Policy.

It is undisputed that the Respondent had no actual notice of the Complainant’s mark until more than a year with respect to two of the domain names, and close to a month with respect to the other domain name after she registered the disputed domain names and thus only formed her belief at that time (which continues thereafter). It seems only fair to this Panel that if the Respondent is held to be on constructive notice of the Complainant’s mark as of at least the time the Respondent registered each of the disputed domain names, then her reasonable belief of no likely confusion and non-infringement should similarly relate back to that

very same time as it seems highly likely – as the Panel infers given no statements to the contrary in the record – that the Respondent would have formulated the same belief at that early date and then simply maintained it thereafter.

Hence, the Panel finds that the Respondent's pre-notice offering of services through her websites was on balance *bona fide*.

Consequently, the Panel concludes that, under paragraph 4(c)(i) and hence paragraph 4(c) of the Policy, the Respondent has rights or legitimate interests in all three disputed domain names. The Complainant has, on the present record, failed to meet the burden of proving otherwise.

C. Registered and Used in Bad Faith

In light of the Panel's findings immediately above regarding paragraph 4(c)(i) of the Policy, all issues concerning whether the Respondent registered and used all the disputed domain names in bad faith are now moot. Hence, the Panel sees no need, despite the Complainant's allegations and arguments to the contrary, to opine on such issues. See, e.g., *322 West 57th Owner LLC v. Administrator, Domain*, WIPO Case No. D2008-0736 (August 6, 2008); *Marvel Mfg. Co, Inc. cited supra*; *Groovr, Inc. v. Active Interactive, Inc.*, NAF Claim No. 1103425 (December 18, 2007); *CPFilms, Inc. v. Solar Lunar Performance Film*, NAF Claim No. 861127 (February 6, 2007); *Hugo Daniel Barbaca Bejinha v. Whois Guard Protected*, NAF Claim No. 836538 (December 28, 2006); and *Pom Wonderful LLC v. Redavid*, NAF Claim No. 846577 (January 8, 2006).

Inasmuch as Complainant has failed to meet its burden under paragraph 4(c) of the Policy, it has failed to establish a case for relief under paragraph 4(a). Naturally, the finding on the record in this particular proceeding does not prevent either party from seeking redress through a court of competent jurisdiction should they choose to do so.

7. Decision

Accordingly, the Panel denies the relief sought by the Complainant.

Peter L. Michaelson

Sole Panelist

Dated: October 21, 2010