

eResolution

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Administrative Panel Decision

Under the ICANN Uniform Domain Name Dispute Resolution Policy

Complainant: Multimatic, Inc,
85 Valleywood Drive
Markham, Ontario, Canada L3R 5E5

Respondent: Heinz Jakob / Effekta
Klausenburgerstrasse 9
Baden Wuerttemberg, Germany 88069

Case number: AF-0264

Contested Domain Name: multimatic.com

Panel Members: Peter L. Michaelson, Esq.

1. Parties and Contested Domain Name

The Complainant in this proceeding is Multimatic, Inc, of Markham, Ontario, Canada.

The Respondent is Heinz Jakob / Effekta of Baden Wuerttemberg, Germany.

The domain name at issue is "multimatic.com", originally registered by the Respondent with Network Solutions, Inc. (NSI) of Herndon, Virginia but transferred by the Respondent and presently registered with CORE Internet Council of Registrars (Core-39) ("Registrar").

2. Procedural History

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy"), available at <http://www.icann.org/udrp/udrp-policy-24oct99.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 eResolution Supplemental Rules ("Supplemental Rules").

The Complaint was filed electronically with eResolution, through its web site, on June 22, 2000 and in hard-copy form, with 12 annexes, on June 27, 2000. Appropriate payment was received by eResolution on June 27, 2000.

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

After receiving the Complaint, the Provider, in accordance with paragraph 6 of the Supplemental Rules, determined that the Complaint fully complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, the provider confirmed the identity of the present registrar for the contested domain name; verified, based on that registrar's Whois database, the contact information for the respondent; verified if the domain name resolved to an active web page; and finally verified that the complaint was administratively compliant. In accomplishing this, on June 22, 2000, the provider electronically contacted the Registrar to confirm the billing contact of the respondent and to obtain a copy of the registration agreement for the domain name. Not having received a timely response, the Provider sent a reminder to the Registrar.

On July 6, 2000, the Provider received a response from the Registrar containing the requested verification.

On July 7, 2000, the Provider 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. The Complaint, and its accompanying documents, and all subsequent communications associated therewith were provided in the preferred manner and to the address as mandated by paragraphs 2(a) and 4(a) of the Rules.

Hence, with the notification to the Respondent having occurred on July 7, 2000, under paragraph 4(c) of the ICANN Policy, this administrative proceeding is deemed to have commenced on July 7, 2000, and the Provider so notified the Complainant, the Respondent, the Registrar and ICANN. The record indicates that the Respondent received proper notification of this proceeding.

Having reviewed the Complaint and the succeeding events as delineated by the Provider, the Panel agrees with the determination of the Provider 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 July 27, 2000 to file its Response with the Provider and serve a copy of the response on the Respondent. On that date, the Respondent contacted the Provider to request a username and password to electronically file its response

with the Provider and also to request an extension to file the response. On that date, the Provider supplied the Respondent with a username and password, as requested, and extended the time until August 2, 2000, 5 PM Montreal time, for the Respondent to file its response.

On August 1, 2000, the Respondent electronically filed its Response with the Provider and specifically through the Provider's web site. The Response, as filed electronically, did not contain any annexes. The Respondent submitted his signed version of the Response, including his annexes (in German), which were received by the Provider on August 14, 2000. The Provider advised the Respondent that the Response was filed late, i.e. after the 10 days specified in the Supplemental Rules and that the Panel, once appointed, would decide whether to accept the late-filed Response or not.

Accordingly, pursuant to the Rules and Supplemental Rules, on August 14, 2000 the Provider contacted the undersigned requesting his service as a sole panelist to consider and decide this dispute. On August 14, 2000, the undersigned accepted the appointment and returned, by facsimile to the Provider, a fully executed Declaration of Independence and Impartiality. On August 15, 2000, the Provider appointed the undersigned as the sole panelist to consider this dispute, and so notified both parties by e-mail. The Provider then forwarded a username and password to the undersigned permitting him access to the record as it then existed, including the Complaint and the Response (but without the supporting annexes (in German) which had not yet been uploaded) on the Provider's automated docket management system.

Based on deadline set forth in paragraph 15 of the Rules, i.e. within 14 days of appointment, a decision is to be issued by the undersigned to the Provider on or before August 29, 2000.

On or about August 17, 2000, the Provider informed the Panel that the Response was filed late and requested the Panel to consider whether to accept the Response or not. After suitable consideration, the Panel informed the Provider, by e-mail dated August 21, that in the interests of fairness, it would accept the late-filed Response. Inasmuch as the annexes were in German, the Panel instructed the Provider to request that the Respondent: (a) agree, within two days of such request by the Provider, to supply English-language translations of all salient portions of the annexes that he wishes the Panel to consider, and (b) file those translations within seven days, i.e. no later than August 28, 2000; otherwise, the Panel would ignore the annexes in formulating its decision. By e-mail dated August 25, 2000, the Provider informed the Panel that the Respondent agreed to the Panel's request to provide translations by the specified deadline. On August 30, 2000, the Provider received the translations, specifically three documents from the Respondent, by e-mail. The Provider, in turn, supplied two of those documents to the Panel on August 31, 2000 for its consideration and inquired to the Panel as to whether those translations were

filed late. At that time, the Provider was attempting to open the third document. That document was then supplied to the Panel later on August 31, 2000.

The Panel in re-considering the deadline it imposed for submission of the translations appreciates that the deadline could have been interpreted as providing an additional seven day period, expiring on August 30, 2000, for the Respondent to actually file the translations beyond the initial 2 day period, expiring on August 23, 2000, during which the Respondent was to have agreed or not to supply those translations. Given this interpretation, the Panel views the submission of these translations as being timely.

On September 1, 2000, the Complainant requested additional time to provide its comments in response to the translations filed by the Respondent. On the same day, the Panel granted this request and afforded the Complainant until September 6, 2000 to file any additional comments it might have. The Complainant timely filed its additional comments with the Provider on September 5, 2000 which, in turn, forwarded those comments to the Panel. These comments were appropriately considered by the Panel.

Due to the late filing of the Response and the additional time granted the Respondent to supply the translations and to the Complainant to file its comments -- all of which the Panel views as exceptional circumstances, the Panel, under paragraph 10(c) of the Rules extended the deadline, under paragraph 15 of the Rules, by which it will render its decision to 14 days after the translations were due, i.e. no later than to September 11, 2000.

This dispute concerns one domain name alone, specifically "multimatic.com". The language of this proceeding is English.

3. Factual Background

The dispute is based on the following mark and its usage by the Complainant as follows:

MULTIMATIC (in block letters)

This mark is the subject of a Community Trademark (CTM) application serial number 000821132, filed May 11, 1998 and registered October 1, 1999 -- a copy of a database record for this registration from "OAMI-Online - The Community Trademark Consultation" service was provided in Annex 6 to the Complaint. As indicated in the record, this CTM registration covers the following goods and services:

Measuring and testing apparatus for use in connection with motor vehicles; apparatus for testing vehicle suspension systems; shock absorber dynamometers and four post road simulators, all in class 9;

Hinges and checks, and hinge and check mechanisms, for swing and sliding doors, for boots (deck-lids, or trunks), for bonnets (hoods) and for hoods (roofs); seat mountings and seat mounting mechanisms; suspension units and suspension mechanisms; instrument panel structures and instrument panel mounting assemblies; and parts and fitting for all the aforesaid; all being for use in motor vehicles, all in class 12; and

Engineering services relating to the design and manufacture of motor vehicles; technical consultation and engineering in the field of automobile parts design and manufacture; design work, feasibility studies, concept art, prototyping, and predictive engineering (CAE), all relating to motor vehicles, all in class 42.

The Complainant has used this mark in the Canada, the United States and Europe since as early as 1984 in connection with at least its goods and services recited in its CTM registration.

The Complainant is a privately held Canadian corporation supplying components, systems, and services to the global automotive industry, and is headquartered in Markham, Ontario, Canada with operating divisions in North America and Europe, as evidenced in Annex 1 to the Complaint by print-outs of web pages provided on the Complainant's web site. Further print-outs of pages from this site are provided in Annexes 2-5 to the Complaint.

The Complainant provides engineering and manufacturing of, inter alia, hinge systems, suspension systems, welded assemblies and engineering services for the automotive industry and specifically to various original equipment (automobile) manufacturers, on a worldwide basis. See the materials provided in Annexes 2 and 3 to the Complaint.

Furthermore, as illustrated by materials provided in Annex 4 to the Complaint, the Complainant, through its Multimatic Motorsports Division, has engaged in various well-known stock car racing events throughout the United States and Europe, starting at least as 1992 and apparently continuing to date, in an effort to, among other effects, enhance the public visibility of the Complainant and its mark.

The Complainant has also developed, as indicated by the materials provided in Annex 5 to the Complaint, a replaceable skate blade system (apparently for ice skates) which it sells under its trademark QUIKBLADE. Inasmuch as this mark is not at issue here, it will not be discussed any further.

The Complainant owns three domain name registrations registered with Network Solutions Inc., namely MULTISALES.COM, MULTIINC.COM and QUIKBLADE.COM (all as indicated by registration records provided in Annex 7 to

the Complaint). Since none of these domain names is at issue here, none of these names will be discussed any further either.

The Complainant has provided, in Annexes 11 and 12 to the Complaint, copies of communications between the Registrant and the Complainant regarding the following events:

- a) On April 5, 2000, Mr. Jonathan Vinden, Vice President of Interactive Services of Brickworks Communications Inc. (which is a marketing company hired by the Complainant to design its website) received a telephone call from the Respondent, Heinz Jakob. Mr. Jakob informed Mr. Vinden that Mr. Jakob was the owner of the domain name MULTIMATIC.COM and was prepared to sell it to Multimatic Inc. for \$10,000.00 US.
- b) Shortly after April 5, 2000, Mr. Vinden sent an e-mail to the Respondent indicating that while the Complainant "was not overly thrilled with the idea of purchasing the domain, the Complainant would consider the purchase for a fee in the amount of \$5,000.00".
- c) On April 13, 2000, Mr. Jakob sent a facsimile letter to Andrew Bardwell, Director of Marketing for Multimatic, Inc. The letter identifies Mr. Jakob as the owner of the domain name MULTIMATIC.COM and offers to sell the domain name to Multimatic, Inc. for \$25,000.00.
- d) On April 28, 2000, Respondent Heinz Jakob sent another e-mail message to the Complainant. The e-mail, in English translation (supplied in Annex 11), indicated that another German company had expressed an interest in buying the domain name for \$16,500.00 and that offer price for transferring the domain name to the Complainant was then \$18,000.00 US.
- e) Through an e-mail dated May 5, 2000 to the Respondent, the Complainant, being unaware of the Policy, expressed a willingness to offer the Respondent the original amount of \$10,000.00 for the domain name.
- f) On May 11, 2000, the Respondent informed the Complainant that the domain name was still available but that the offer of \$10,000.00 US was "too low"; hence rejecting the Complainant's offer.
- g) On June 5, 2000, solicitors for the Complainant (specifically Borden, Ladner and Gervais in Ottawa, Canada) sent a letter to the Respondent requesting that the Respondent immediately transfer the domain name to the Complainant. The letter indicated that the Complainant was still prepared to settle the matter amicably and was therefore willing to pay a nominal amount for the transfer of the domain name. The letter set forth a

deadline of June 9, 2000 within which the Respondent was to submit its answer. The letter, although addressed to the address shown on the WHOIS record for the domain name, was returned to the those solicitors unopened. It is not know whether the email communication reached Mr. Jakob. To date, the solicitors have received no response to the letter from the Respondent.

The contested domain name presently resolves to a website bearing a banner advertisement for REGISTER.COM, which is a domain name registrar. After several seconds, one is transported to a webpage with the following URL: http://members.xoom.com/_XMCM/RusEvens/index.html. The web page at the that particular is entitled FREE ENERGY LINKS and contains a list of over a hundred links to third party web pages or websites. The webpage is allegedly designed by DAODESIGN WEB DESIGN. There does not appear to be any reference to Heinz Jakob or Multimatic on the web page (a copy of the listed links is provided in Annex 10 to the Complaint).

The Respondent is the owner and Chief Executive Officer of a German company Effekta GmbH, located in the city of Tettngang, Germany.

Effekta, in a stylized form, is a registered trademark in Germany, as evidenced by a copy of a German trademark registration for that mark provided in Annex 1 to the Response. The Panel clearly notes that this particular mark is not at issue here, hence it and its use are both irrelevant to the present proceeding.

Effekta GmbH designs and manufactures uninterruptible power supplies (UPS).

For more than two years, the Respondent has been negotiating to buy or merge with another German company which also produces and sells UPS devices, with that other company being named "Multimatic GmbH" and located in Rottweil, Germany.

During 1999, the Respondent registered the contested domain name apparently to reserve that name for the use of his company and Multimatic GmbH, with which he wanted to merge his company Effekta GmbH. Apparently, those negotiations between the two companies are still continuing.

4. Parties' Contentions

Through the Complaint, the Complainant contends that:

- (i) the contested domain name is identical and/or confusingly similar to its registered trademark for the mark "MULTIMATIC";
- (ii) any rights the Respondent has in the contested domain name are illegitimate; and
- (iii) the Respondent has registered the contested domain name in bad faith.

The Respondent, through its Response, specifically denies each of these contentions.

A) Identity/Confusing Similarity

As to similarity of the contested domain name to its registered trademark, the Complainant has provided a copy, as noted above, of its registered CTM for the its mark "MULTIMATIC".

The Complainant contends that the contested domain name is identical and/or confusingly similar to the Complainant's registered European trade-mark MULTIMATIC and its trade-name "Multimatic, Inc." The Complainant states that the only difference between the domain name MULTIMATIC.COM and the Complainant's trade-mark MULTIMATIC is the addition of the .COM extension.

In contrast, the Respondent denies that the domain name is identical or confusingly similar to the registered mark or trade name. Specifically, the Respondent takes the position that while the mark and trade name are in upper case letters, the contested domain name is in lower case; hence the difference in case sufficiently distinguishes the contested domain name from the Complainant's registered mark and trade name.

B) Illegitimacy

The Complainant contends that no active website offering any bona fide goods and/or services has ever been set up to resolve to the domain name MULTIMATIC.COM. As evidence of this, the Complainant points to the fact, as noted above, that the contested domain name presently resolves to a website bearing a banner advertisement for REGISTER.COM a domain name Registrar. After several seconds, one is transported to a webpage with the following URL: http://members.xoom.com/_XMCM/RusEvans/index.html. The web page at the above-noted URL is entitled FREE ENERGY LINKS and contains a list (given in Annex 10) of over a hundred links to third party web pages or websites. The web page is allegedly designed by DAODESIGN WEB DESIGN and does not appear to contain any reference to either Heinz Jakob or any use by him of the term "MULTIMATIC".

The Complainant also contends that the Respondent: 1) does not own any trademark rights in the word MULTIMATIC in either Germany, the European Community, Canada or the United States. 2) has not registered, incorporated or operated any business under the name MULTIMATIC; and 3) is not commonly known by the name MULTIMATIC.

Furthermore, the Complainant contends that the only "use" to which the Registrant has made of the contested domain name in excess of a year since its

registration is a repeated offer to sell the domain name to the Complainant for monetary consideration well in excess of any plausible out of pocket expenses.

Hence, the Complainant concludes that the Respondent has not established that it has any rights or legitimate interest in the domain name. Specifically, the Respondent : 1) has not made 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; or 2) is not commonly known by the domain name; or 3) has not made a legitimate non-commercial of fair use of the domain name.

In contrast, the Respondent contends that, for some time prior to its having received notice of the dispute, it registered the contested domain name and used it, first for noncommercial purposes, second for the purposes of his own company, Effekta GmbH.

In that regard, the Respondent points to its use of the term "Effekta" in connection with UPS devices. The Respondent also states that, for over two years, it was negotiating to buy or merge with Multimatic, GmbH. The Respondent states that, during 1999, it registered the contested domain name to reserve the contested domain name for future use by the successor entity of his company and Multimatic GmbH.

The Respondent also contends that while the contested domain name resolves to a third-party site and that this site contains links to web sites providing information regarding energy saving, this use, occurring until the Respondent can utilize the contested domain name in conjunction with his successor entity, constitutes a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue. The Respondent also contends that this use constitutes preparation made in connection with the Respondent's intended bona fide offering of goods and services which will occur when his company ultimately merges with Multimatic GmbH.

C) Bad Faith

The Complainant contends that the Respondent's conduct in connection with the contested domain name clearly constitutes bad faith.

In particular, the Complainant points to the chronology of events, listed above, which evidences repeated offers by the Respondent to sell the contested domain name to the Complainant for costs well in excess of the costs of registration.

While the Complainant cannot unequivocally state that the Registrant originally registered the domain name primarily for the purpose of selling the domain name to the Complainant, the Complainant contends that the recent communications from the Respondent offering to sell the domain name to the Complainant for

financial consideration exceeding \$10,000.00 are, when combined with the Registrant's lack of demonstrated right or legitimate interest in the domain name, clear evidence of bad faith registration and use.

In contrast, the Respondent, while acknowledging that he had offered to sell the contested domain name to the Complainant, states that the amount chosen by the Respondent was such as to provide "a reasonable amount for his loss of the domain, so he can buy the already registered ccTLD 'multimatic.de' from the registrant of this domain". Furthermore, the Respondent stated that it was not he who first contacted the Complainant, but it was the Complainant, who took the first step.

5. Discussion and Findings

A) Similarity

No doubt exists whatsoever that the domain name in question, while not absolutely identical to the Complainant's registered mark ("MULTIMATIC") and its trade name, Multimatic, Inc., is clearly sufficiently similar to both as to cause a likelihood of confusion to arise between the relevant consumers of the Complainant and those who were to view the disputed domain name -- when and if the Respondent, or any third-party not affiliated with the Complainant to which the Respondent were to transfer the disputed domain name, were to start using the domain name in conjunction with goods similar to those of the Complainant. Such confusion, should it occur, would undoubtedly cause consumers to think that a relationship 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.

The differences between the domain name, and the registered mark and the trade name, being the difference in case with the former in lower case and the latter two are in upper case along with appending of a top-level domain (.com) to the domain name, are so de minimus as utterly unable to preclude any such confusion from occurring. Moreover, it is well-established trade mark law, that a block letter registration for a word mark, as is the Complainant's CTM here, covers within its ambit any stylization, such as case changes or differences in font, to the word mark.

As such, the Panel finds that sufficient similarity exists under paragraph 4(a)(i) of the Policy.

B) Illegitimacy

The Respondent has failed to provide any basis, under paragraph 4(c) of the Policy, that would legitimize any claim it might have to the contested domain name in connection with any goods or services which it intends to provide, e.g.,

through a future web site in connection with its future merger, affiliation or relationship with Multimatic, GmbH -- assuming such a merger, affiliation or relationship would in fact arise.

Though the Respondent attempts to obfuscate this proceeding by pointing to its UPS products marked with the term "Effekta", the Panel, after thoroughly examining the record, finds that such products are marked only with the term "Effekta" and not with the term "Multimatic". Since the mark "Effekta" is not in issue here, all use of that term by the Respondent is immaterial. What is material and on which the Panel has sharply focused its attention is the conduct of the Respondent in connection with the term "Multimatic".

The Respondent essentially predicates its argument of legitimacy based on having registered the contested domain name, with the intent to effectively reserve it, for future use in connection with its potential merger with Multimatic GmbH.

Specifically, the Panel finds that the Respondent has neither established any web site or other on-line service that uses nor has it made any demonstrable preparations to use the contested domain name in connection with a bona fide offering of goods or services, and particularly such a use that would not likely cause consumer confusion with the services offered under the Complainant's mark. The use to which the Respondent purportedly makes of the contested domain name is simply a sham -- one with, on first glance, a patina of apparent legitimacy that actually masks the Respondent's true intentions, i.e. to reserve the contested domain name and preclude its legitimate owner from obtaining and using it.

Here, that patina takes the form of a link, through a third-party page, to a single displayed page that provides a list of links to sites directed to, inter alia, energy conservation. Such limited use clearly does not exemplify use in connection with a bona fide offering or preparations for such an offering.

The Respondent, based on the record before the Panel, is not in the business of commercially or even non-commercially supplying a wide range of information on energy saving devices or other subjects. By its own submissions in annexes 1-3 to the Response, the Respondent manufactures UPS devices. That is its business. Nowhere does the Respondent utilize the mark "Multimatic" in connection with any of these devices. These devices all bear the mark "Effekta" -- which is not at issue here.

Specifically, the Respondent by its own admission intends to change the use of contested domain name from pointing to such a list to serving as the domain name for its successor entity -- should that entity even arise (which itself can not be determined with sufficient certainty given the record before the Panel). Clearly, repeated offers to sell the contested domain name, for a sufficiently large

price to the Complainant, appear inconsistent with an intention to hold that domain name for use with a successor entity. Obviously, this inconsistency becomes even more apparent in the face of Respondent's failed attempt to involve a third-party bidder in an effort to increase the price of the contested domain name. In short, the Respondent, having recognized the value of the contested domain name to the Complainant, has simply reduced its negotiations to price -- and has repeatedly demanded a significant and increasing price well in excess of the costs of registration. Whatever motivation the Respondent might have had in initially registering the contested domain name, assuming arguendo that its conduct reflected legitimate use or interest at that time, that motivation clearly transformed its character to one being strictly pecuniary: i.e. price.

The Panel believes that, in general, far more is needed to show use or proper preparation for such use, on which legitimacy can be predicated, than merely linking, through a third-party site, a contested domain name to a page containing a list of links. If this is all that is generally necessary, then such inconsequential efforts will effectively blunt section 4(c) of the Policy and provide a ready and convenient escape mechanism for all would-be respondents holding domain names that rightfully should belong to others. While the Panel recognizes that exceptions may well arise where such a use, under specific factual circumstances present in a future matter, may properly evidence legitimacy, such an exception -- in view of the Respondent's repeated offers to sell the contested domain name significantly in excess of the costs of its registration as well as attempt to manipulate the price upward -- does not lie here.

Furthermore, the Panel is highly skeptical that Respondent could not select a mark for the goods and/or services to be provided by its successor entity and hence a corresponding domain name that are both sufficiently distinct from the Complainant's registered mark as to negate the slightest possibility of a likelihood of confusion should those goods and services, at a future date, overlap with those of the Complainant.

In addition, the Respondent has not shown that its purported use would in any way constitute "fair use".

Lastly, the Panel finds that it is extremely unlikely that the Respondent can even make a legitimate claim on the contested domain name. The simple reason is that the contested domain name incorporates the registered mark and trade name of the Complainant. Based on its CTM registration and its use in commerce in, e.g., the United States, the Complainant has acquired exclusive rights to use its mark and trade name in conjunction with its goods and services. It is eminently clear from the record that absolutely no relationship whatsoever exists between it and the Respondent, hence precluding the Respondent from using that mark in any manner, including within a domain name, that may cause a likelihood of confusion to occur or dilute the value of the Complainant's mark.

In light of the above findings, the Panel is unpersuaded that the Respondent has any rights or legitimate interests in the contested domain name.

Thus, the Panel concludes that the Respondent's continued use of the contested domain name is illegitimate within paragraph 4(a)(ii) of the Policy.

C) Bad Faith

It is eminently clear to the Panel, that the Respondent, rather than to legitimize the use of the contested domain name, has as its express purpose to:

- (a) sell the contested domain name to the Complainant for an amount in excess of the costs of its registration, or to a third-party unrelated to the Complainant; and
- (b) prevent the Complainant, as lawful owner of the registered trademark "MULTIMATIC", from reflecting its trademark in a corresponding domain name (here being "multimatic.com").

The Panel finds that the repeated refusal of the Respondent to transfer the contested domain name, which it has yet to use in a bona fide offering of goods or services or preparations for such use, to the Complainant for an amount equal to its costs of registration directly exemplifies the very conduct which ICANN in approving the Policy now seeks to redress (see paragraph 4 of the Policy).

The Panel believes that bad faith under both the Policy is not proportional to, measured by or even excused by the quanta of the payment demanded that exceeds the costs of registration. As long as the amount demanded amounts to financial gain, that in and of itself suffices. Such offers, particularly when repeated as here, lay bare the inherent untoward character and underlying motivation of the domain name holder's acts.

Hence, the Panel finds that the Respondent's actions clearly evince bad faith under paragraphs 4(a)(iii) and (b) of the Policy.

6. Conclusions

Thus, the Panel concludes that the Complainant has provided sufficient proof of all three elements, i.e. identity/confusing similarity, illegitimacy and bad faith, required under paragraphs 4(a) of the Policy and 3(ix) of the Rules such that, under paragraphs 4(i) of the Policy and 15 of the Rules, the relief it now seeks can be granted.

7. Award

Accordingly, the contested domain name is ordered transferred to the Complainant.

The Provider is authorized to publish this entire decision in its discretion on a publicly accessible web site.

September 6, 2000

Peter L. Michaelson, Arbitrator
Anchorage, Alaska USA