National Arbitration Forum®

NATIONAL ARBITRATION FORUM

DECISION

Vancouver Organizing Committee for the 2010 Olympic and Paralymic Games and International Olympic Committee v. Hardeep Malik
Claim Number: FA0603000666119

PARTIES

Complainant is **Vancouver Organizing Committee for the 2010 Olympic and Paralympic Games** and **International Olympic Committee** (collectively, "Complainant"), represented by **Bradley J. Freedman**, of **Borden Ladner Gervais LLP**, 1200-200 Burrard Street, Vancouver, Canada, BC V7X 1T2. Respondent is **Hardeep Malik** ("Respondent"), 6475 Marguerite St, Vancouver, Canada V6M 3L5.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<vancouver2010.org>**, registered with **Stargate Holdings Corp**.

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.

The Honorable Charles K. McCotter, Jr. (Ret.) as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on March 24, 2006; the National Arbitration Forum received a hard copy of the Complaint on March 30, 2006.

On April 5, 2006, Stargate Holdings Corp. confirmed by e-mail to the National Arbitration Forum that the **<vancouver2010.org>** domain name is registered with Stargate Holdings Corp. and that Respondent is the current registrant of the name. Stargate Holdings Corp. has verified that Respondent is bound by the Stargate Holdings Corp. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On April 6, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of April 26, 2006 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@vancouver2010.org by e-mail.

Having received no response from Respondent, the National Arbitration Forum transmitted to the parties a Notification of Respondent Default.

On May 2, 2006, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed the Honorable Charles K. McCotter, Jr. (Ret.) as Panelist.

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

PRELIMINARY ISSUE

There are two named Complainants in this case: International Olympic Committee ("IOC") and Vancouver Organizing Committee for the 2010 Olympic and Paralympic Games ("VANOC"). It has been accepted that it is permissible for two complainants to submit a single complaint if they can demonstrate a link between the two entities such as a relationship involving a license, a partnership or an affiliation that would establish the reason for the parties bringing the complaint as one entity.

In this case, Complainant IOC has recognized the VANOC as the National Olympic Committee for the country of Canada and responsible for the implementation and oversight of all aspects of the 2010 Olympic Games to be held in Vancouver. The Panel finds that Complainants have sufficiently demonstrated a proper affiliation for the purposes of the UDRP, and thus the Complaint may go forward with the two named Complainants.

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

1. Respondent's **<vancouver2010.org>** domain name is identical to Complainant's VANCOUVER 2010 mark.

2. Respondent does not have any rights or legitimate interests in the **<vancouver2010.org>** domain name.

3. Respondent registered and used the **<vancouver2010.org>** domain name in bad faith.

B. Respondent failed to submit a Response in this proceeding.

FINDINGS

Complainant, International Olympic Committee, is the international, non-governmental organization that is the umbrella organization of the Olympic Movement. Complainant holds several trademark registrations around the world for the VANCOUVER 2010 mark, including a registration with the Swiss trademark authority (Reg. No. 784,289 issued July 10, 2002).

Complainant, Vancouver Organizing Committee for the 2010 Olympic and Paralympic Games, is the Canadian organization responsible for planning, organizing, promoting, financing and staging

the XXI Olympic Winter Games and the X Paralympic Winter Games, which will be held at various venues in and around Vancouver, Canada in February 2010. Complainant holds several trademark registrations around the world for the VANCOUVER 2010 mark, including a registration with the Canadian trademark authority (Reg. No. 915,644 issued April 14, 2004).

Respondent registered the **<vancouver2010.org>** domain name on March 6, 2006. Respondent is using the disputed domain name to redirect Internet users to Respondent's commercial website that features links to various businesses and commercial organizations. Respondent has also offered to sell the disputed domain name to Complainant for $4,000.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Paragraph 4(a) of the Policy requires that 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 Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
(2) Respondent has no rights or legitimate interests in respect of the domain name; and
(3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

Complainant has established rights in the VANCOUVER 2010 mark through numerous trademark registrations with trademark authorities throughout the world. *See Koninklijke KPN N.V. v. Telepathy Inc.*, D2001-0217 (WIPO May 7, 2001) (finding that the Policy does not require that the mark be registered in the country in which the respondent operates; therefore it is sufficient that the complainant can demonstrate a mark in some jurisdiction); *see also Wal-Mart Stores, Inc. v. Stork,* D2000-0628 (WIPO Aug. 11, 2000) (finding the complainant has rights to the name when the mark is registered in a country even if the complainant has never traded in that country).

Respondent's **<vancouver2010.org>** domain name is identical to Complainant's VANCOUVER 2010 mark, as the domain name incorporates the mark in its entirety, adds the generic top-level domain ".org" and omits the space between the terms of Complainant's mark. The Panel finds that such minor changes are insufficient to distinguish Respondent's domain name from Complainant's mark pursuant to Policy ¶ 4(a)(i). *See Isleworth Land Co. v. Lost in Space, SA*,

FA 117330 (Nat. Arb. Forum Sept. 27, 2002) (finding it is a "well established principle that generic top-level domains are irrelevant when conducting a Policy ¶ 4(a)(i) analysis"); *see also Hannover Ruckversicherungs-AG v. Ryu*, FA 102724 (Nat. Arb. Forum Jan. 7, 2001) (finding <hannoverre.com> to be identical to HANNOVER RE, "as spaces are impermissible in domain names and a generic top-level domain such as '.com' or '.net' is required in domain names").

The Panel finds that Policy ¶ 4(a)(i) has been satisfied.

Rights or Legitimate Interests

Complainant has alleged that Respondent does not have rights to or legitimate interests in the **<vancouver2010.org>** domain name. Once Complainant makes a *prima facie* case in support of its allegations, the burden shifts to Respondent to prove that it does have rights or legitimate interests pursuant to Policy ¶4(a)(ii). *See G.D. Searle v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002) (holding that, where the complainant has asserted that respondent does not have rights or legitimate interests with respect to the domain name, it is incumbent on respondent to come forward with concrete evidence rebutting this assertion because this information is "uniquely within the knowledge and control of the respondent"); *see also Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that, under certain circumstances, the mere assertion by the complainant that the respondent does not have rights or legitimate interests is sufficient to shift the burden of proof to the respondent to demonstrate that such a right or legitimate interest does exist).

Respondent is using the **<vancouver2010.org>** domain name to redirect Internet users to its commercial website that features links to various businesses and commercial organizations. Respondent's use of a domain name that is identical to Complainant's VANCOUVER 2010 registered mark to redirect Internet users interested in Complainant's products and services to a website that features links to various businesses and commercial organizations is not a use in connection with a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i), or a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶4(c)(iii). *See Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 180704 (Nat. Arb. Forum Sept. 30, 2003) ("Respondent's demonstrated intent to divert Internet users seeking Complainant's website to a website of Respondent and for Respondent's benefit is not a bona fide offering of goods or services under Policy ¶ 4(c)(i) and it is not a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii)."); *see also Black & Decker Corp. v. Clinical Evaluations*, FA 112629 (Nat. Arb. Forum June 24, 2002) (holding that the respondent's use of the disputed domain name to redirect Internet users to commercial websites, unrelated to the complainant and presumably with the purpose of earning a commission or pay-per-click referral fee did not evidence rights or legitimate interests in the domain name).

Respondent offered no evidence and no evidence in the record suggests Respondent is commonly known by the **<vancouver2010.org>** domain name. Respondent has not established rights or legitimate interests in the **<vancouver2010.org>** domain name pursuant to Policy ¶4(c)(ii). *See Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interests where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name); *see also Gallup Inc. v. Amish Country Store*, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) (finding that the respondent does not have rights in a domain name when the respondent is not known by the mark); *see also Broadcom Corp. v. Intellifone Corp.*, FA 96356 (Nat. Arb. Forum Feb. 5, 2001) (finding no rights or legitimate interests because respondent was not commonly known by the

disputed domain name and was not using the domain name in connection with a legitimate or fair use).

Additionally, the Panel finds that Respondent's offer to sell the disputed domain name is not a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶ 4(c)(iii). *See Mothers Against Drunk Driving v. Hyun-Jun Shin*, FA 154098 (Nat. Arb. Forum May 27, 2003) (holding that under the circumstances, the respondent's apparent willingness to dispose of its rights in the disputed domain name suggested that it lacked rights or legitimate interests in the domain name); *see also Wal-Mart Stores, Inc. v. Stork*, D2000-0628 (WIPO Aug. 11, 2000) (finding the respondent's conduct purporting to sell the domain name suggests it has no legitimate use).

The Panel finds Policy ¶ 4(a)(ii) satisfied.

Registration and Use in Bad Faith

Complainant also alleged Respondent acted in bad faith by registering and using a domain name containing Complainant's mark without Complainant's authorization. The **<vancouver2010.org>** domain name resolves to Respondent's commercial website that features links to various businesses and commercial organizations. Additionally, Respondent's use of Complainant's entire VANCOUVER 2010 registered mark in the domain name creates a likelihood of confusion and suggests an attempt to attract Internet users to Respondent's website for Respondent's commercial gain. The Panel finds this is evidence of Respondent's bad faith registration and use pursuant to Policy ¶4(b)(iv). *See Am. Univ. v. Cook*, FA 208629 (Nat. Arb. Forum Dec. 22, 2003) ("Registration and use of a domain name that incorporates another's mark with the intent to deceive Internet users in regard to the source or affiliation of the domain name is evidence of bad faith."); *see also G.D. Searle & Co. v. Celebes Drugstore*, FA 123933 (Nat. Arb. Forum Nov. 21, 2002) (finding that the respondent registered and used the domain name in bad faith pursuant to Policy ¶4(b)(iv) because the respondent was using the confusingly similar domain name to attract Internet users to its commercial website).

Furthermore, Complainant contends that Respondent sought to sell the **<vancouver2010.org>** domain name registration to Complainant for an amount that far exceeded Respondent's out-of-pocket costs. In the absence of evidence providing otherwise, the Panel finds that Respondent's attempt to sell its infringing domain name to Complainant for an amount over and above Respondent's costs is evidence of bad faith registration and use pursuant to Policy ¶ 4(b)(i). *See Neiman Marcus Group, Inc. v. AchievementTec, Inc.*, FA 192316 (Nat. Arb. Forum Oct. 15, 2003) (finding the respondent's offer to sell the domain name for $2,000 sufficient evidence of bad faith registration and use under Policy ¶ 4(b)(i)); *see also Campmor, Inc. v. GearPro.com*, FA 197972 (Nat. Arb. Forum Nov. 5, 2003) ("Respondent registered the disputed domain name and offered to sell it to Complainant for $10,600. This demonstrates bad faith registration and use pursuant to Policy ¶ 4(b)(i).").

The Panel finds Policy ¶ 4(a)(iii) satisfied.

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the **<vancouver2010.org>** domain name be **TRANSFERRED**

from Respondent to Complainant.

The Honorable Charles K. McCotter, Jr. (Ret.), Panelist
Dated: May 12, 2006

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