



NATIONAL ARBITRATION FORUM

DECISION

Steven Samblis v. FriendsOf PNCH

Claim Number: FA1411001591261

PARTIES

Complainant is **Steven Samblis** ("Complainant"), represented by **Steven L. Rinehart**, Utah, USA. Respondent is **FriendsOf PNCH** ("Respondent"), Delaware, USA.

REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are **<stevensamblis.com>**, **<stevensamblis.net>**, **<stevesamblis.com>**, and **<samblis.com>**, registered with **GoDaddy.Com, LLC**.

PANEL

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

Nathalie Dreyfus as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on November 20, 2014; the National Arbitration Forum received payment on November 20, 2014.

On November 21, 2014, Godaddy.Com, LLC confirmed by e-mail to the National Arbitration Forum that the **<stevensamblis.com>**, **<stevensamblis.net>**,

<stevesamblis.com>, and <samblis.com> domain names are registered with Godaddy.Com, LLC and that Respondent is the current registrant of the names. Godaddy.Com, LLC has verified that Respondent is bound by the Godaddy.Com, LLC registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On November 24, 2014, the Forum served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of December 15, 2014 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to postmaster@stevensamblis.com, postmaster@stevensamblis.net, postmaster@stevesamblis.com, postmaster@samblis.com. Also on November 24, 2014, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

A timely Response was received and determined to be complete on December 14, 2014.

On December 22, 2014, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Nathalie Dreyfus as sole 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" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2. 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.

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant

1. The domain names <stevensamblis.com>, <stevensamblis.net>, <stevesamblis.com>, and <samblis.com> are confusingly similar to Complainant's STEVEN SAMBLIS common law trademark.

Complainant uses the personal name mark STEVEN SAMBLIS to identify stockbrokerage services and has done so since 1985. Complainant's financial services and information have been relayed through media such as the Wall Street Journal or Barons. Since 2008, Complainant has hosted a broadcast where Complainant interviews Hollywood directors and performers who are the stars of blockbuster releases. The use of this mark is as such to give the STEVEN SAMBLIS name secondary meaning in the eyes of the relevant public, and thus Complainant ought to be viewed as having trademark rights in the name mark. Further, the <stevensamblis.com>, <stevensamblis.net>, <stevesamblis.com>, and <samblis.com> disputed domain names largely take the entire STEVEN SAMBLIS mark, or abbreviate and/or shorten it in some way, and affix the respective gTLD. As such, all of the domain names are confusingly similar to the STEVEN SAMBLIS mark.

2. Respondent has no rights or legitimate interests in the <stevensamblis.com>, <stevensamblis.net>, <stevesamblis.com>, and <samblis.com> disputed domain names.

Respondent has no rights or legitimate interests in the continued holding of these Internet domain names. Respondent is not known, nor has it ever been, commonly known by any of the <stevensamblis.com>, <stevensamblis.net>, <stevesamblis.com>, and <samblis.com> disputed domain names. Complainant notes the case of *Dar Al-Arkan Real Estate Development Company v. Anonymous Speech*, D2012-0692 (WIPO June 4, 2012), wherein that panel agreed that free speech and criticism protections do not extend to the appropriation of the trademark of another into a disputed domain name. Complainant believes that a “free speech” use of a domain name is only protectable under limited circumstances, and even then only when the domain name itself consists of the trademark plus a derogatory term (i.e., “[MARK]sucks” or “[MARK]scam”).

3. Respondent registered and is using the <stevensamblis.com>, <stevensamblis.net>, <stevesamblis.com>, and <samblis.com> disputed domain names in bad faith.

Respondent’s interest in selling the domain names to Complainant illustrates bad faith, especially when the domain names are used to spread very negative messages about Complainant. Respondent is spreading libel through the use of the <stevensamblis.com>, <stevensamblis.net>, <stevesamblis.com>, and <samblis.com> disputed domain names by presenting information that stands unsupported by any evidence. To make Respondent’s bad faith more transparent, it is clear from the offer to sell the domain names and the use of the domain names to target Complainant in particular, Respondent had good

knowledge of Complainant's interest in using his name as a trademark. Respondent decided to register the domain names nonetheless in disregard for Complainant's interest in the trademark.

B. Respondent

1. Respondent believes that the Complainant does not have common law trademark rights in the name STEVEN SAMBLIS

Respondent believes Complainant has suspect-at-best "trademark rights" in his own name. Respondent notes that despite engaging in a multi-year feud with Complainant, the allegation of there being a common law STEVEN SAMBLIS mark was never mentioned until a few weeks ago on December 3, 2014. Respondent points out to the much-diminished exposure of Respondent's financial services in recent years, and Respondent believes that the outdated evidence relied on by Complainant fails to adequately show continuous use of a trademark. Complainant's claim that the mark dates back to 1985 is disingenuous, as this is merely a time when Complainant started his career. Under such view, any human being on earth could claim to have rights in a legal trademark dating back to the first day they started a job—a notion which is not possible under trademark law. Complainant has no more a right to associate his name as a mark related with businesses or products he is associated with than say Bill Gates or Steve Jobs could have in claiming MICROSOFT or APPLE products should actually be considered BILL GATES software and STEVE JOBS computers (in fact <stevejobs.com> is not even owned by the estate or successor of Mr. Jobs).

Respondent believes Complainant's Complaint is little more than a SLAPP lawsuit designed to discourage free speech and strike fear into the minds of Internet users. Respondent is an investor in Complainant's business venture, having invested \$12,000 that has since diminished to about \$1.00 value due to

Complainant's continuous reverse-splits of the stock and poor management abilities. Respondent's goal is to comment on the shortcomings of the CEO (Complainant) of a company in which Respondent and others have contributed substantial investments in. Complainant is trying to get hold of these domain names by any means possible to silence criticism of his practices so he can continue unabated.

2. Respondent has legitimate rights in the disputed domain names

Respondent has posted critical content for years, but it was not until 2013 that Respondent was able to acquire these domain names. It is worth noting that when Complainant originally approached Respondent, it claimed only that Respondent used copyrighted material—there was no claim or reservation of any trademark interest in Complainant's own name until December 3, 2014. In general, Complainant and Respondent engaged in a mutual lambasting of one another through letters, cease and desist notices, postings on public Internet forums, and profanity-laden e-mail messages.. The criticism offered by Respondent is substantiated by information, and is not a mere hyperbolic tirade.

3. Respondent did not act in bad faith.

Respondent did not register these domain names in order to sell them, but entertained Complainant's original offers only to see what Complainant had to say. Respondent never accepted such offers from Complainant, but cancelled its agreement to sell for \$1,500. Respondent is not profiting through any commercial use of the domain name as there is no advertising on the domain name's website, nor does Respondent sell off a good or service through these domain names. As explained above, Respondent is acting in furtherance of free speech and the spreading of facts related to Complainant's management practices. Complainant's reliance on the *Dar Al-Arkan Real Estate Development Company*

v. Anonymous Speech, D2012-0692 (WIPO June 4, 2012) is not well-based as in that case the respondent had completely concealed its identity. Here Respondent takes ownership of the message and controls what appears on the domain names' websites accordingly.

Complainant is trying its luck-of-the-draw under the UDRP in hopes that it could get the domain names without much of a fight. In reality, Complainant has failed to establish its trademark rights and comes to these proceedings in bad faith.

FINDINGS

Complainant Steven Samblis started his activity as a broker in 1985. Beginning in 2008, the Complainant starts to critique movies from the screen to the camera and created an imdb page under its name.

Respondent registered the domain names **stevensamblis.com**>, <**stevensamblis.net**>, <**stevesamblis.com**>, and <**samblis.com**>.

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."

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

In order to successfully pursue a complaint under the UDRP Policy, a complainant has to first establish that it has rights in a trademark. *See Backstreet Boys Productions, Inc. v. John Zuccarini, Cupcakeparty, Cupcake Real Video, Cupcake-Show, and Cupcakes-First Patrol*, WIPO Case No. D2000-1619; *The Church in Houston v. Jim Moran, Light of Truth Ministries*, WIPO Case No. D2001-0683.

The Complainant does not rely on a registered trademark but rather alleges that he has common law trademark right in his personal name, STEVEN SAMBLIS.

Several decisions under the Policy have addressed the factors that should be assessed in determining whether trademark rights have arisen in a personal name. In order to obtain protection for common law trademarks, the personal name has to have taken the characteristics of a trademark and acquired sufficient secondary meaning. There are a variety of factors that have to be considered, like the extent of its usage in connection with goods or services and the degree to which the relevant public in connection with goods recognizes the name and services.

Based on the Complainant's contention and evidence submitted, the Panel finds that Complainant has done an insufficient showing that STEVEN SAMBLIS is a trademark protectable and prosecutable under the UDRP and determines that Complainant has failed to illustrate rights in a mark under Policy ¶ 4(a)(i). *See*

Yao Ming v. Evergreen Sports, Inc., FA 154140 (Nat. Arb. Forum May 29, 2003 (stating that “[b]ald assertions of consumer knowledge are not an adequate form of evidence to establish secondary meaning in a name” in holding that the complainant had not established common-law rights in the YAO MING mark); *see also Planned Parenthood Federation of America, Inc. and Gloria Feldt v. Chris Hoffman*, WIPO Case No. D2002–1073 (stating that “Complainants have failed to show that the personal name at issue, “Gloria Feldt,” has been used in connection with the commercial offering of goods or services or that the personal name in question has acquired secondary meaning as the source of such goods or services. It is certainly true that Ms. Feldt has acquired a reputation as an articulate spokesperson for freedom of reproductive choice. However admirable that might be, it is not enough to acquire a common law trademark or service mark. Accordingly, the panel finds that Complainant Feldt does not have rights in a trademark or service mark.”); *David Pecker v. Mr. Ferris*, WIPO Case No. D2006–1514 (deciding that the Panel is not convinced based on the limited record before it that Complainant has established rights in the name “David Pecker” for the purpose of this proceeding).

Rights or Legitimate Interests/Registration and Use in Bad Faith

In order to prevail in this proceeding, the Complainant must prove all three elements under Paragraph 4(a). As this Panel concludes that the Complainant failed to prove the element listed in Paragraph 4(a)(i), this means that this Panel does not have to consider whether Complainant has proven the remaining elements contained in Paragraph 4(a)(ii) and 4(a)(iii). *See Creative Curb v. Edgetec Int’l Pty. Ltd.*, FA 116765, NAF Sept. 20, 2002 or *Hugo Daniel Barbaca Bejinha v. Whois Guard Protected*, FA 836538 NAF Dec. 28, 2006, deciding not to inquire into the respondent’s rights or legitimate interests or its registration and use in bad faith where the complainant could not satisfy the requirements of Policy 4(a)(i).

Reverse Domain Name Hijacking

Even if this Panel finds that Complainant has failed to satisfy its burden under the Policy, it does not render a finding of reverse domain name hijacking on behalf of Complainant in bringing the instant claim. The Complainant failed to bring sufficient evidence to prove common law trademark rights, but reverse domain name hijacking requires bad faith on the Complainant's part, which was not proven. *See ECG European City Guide v. Woodell*, FA 183897 (Nat. Arb. Forum Oct. 14, 2003)

DECISION

Having not established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **DENIED**.

Accordingly, it is Ordered that the <stevensamblis.com>, <stevensamblis.net>, <stevesamblis.com>, and <samblis.com> domain names or **REMAIN WITH** Respondent.



Nathalie DREYFUS, Esq.
Arbitrator

Nathalie Dreyfus, Panelist

Dated: January 5, 2015