



NATIONAL

ARBITRATION

FORUM

DECISION

Leiner Health Services Corp. v. ESJ Nutritional Products
Claim Number: FA0307000173362

PARTIES

The Complainant is **Leiner Health Services Corp.**, Carson, CA (“Complainant”) represented by **Michael A. Painter, Esq. of Isaacman, Kaufman & Painter**. The Respondent is **ESJ Nutritional Products**, Carson City, NV (“Respondent”).

REGISTRAR AND CONTESTED DOMAIN NAME

The contested domain name at issue is <yourlifemedicine.com>, registered with **Network Solutions, Inc.**

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.

Mr. Peter L. Michaelson, Esq. as Panelist.

PROCEDURAL HISTORY

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”), available at <icann.org/services/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 National Arbitration Forum Supplemental Rules for Uniform Domain Name Dispute Resolution Policy then in effect (“Supplemental Rules”).

The Complainant submitted a Complaint to the National Arbitration Forum (the “Forum”) electronically on July 25, 2003; the Forum received a hard copy of the Complaint, together with accompanying Exhibits 1-4, on July 28, 2003.

On July 30, 2003, Network Solutions, Inc. (NSI) confirmed by e-mail to the Forum that the domain name <**yourlifemedicine.com**> is registered with NSI and that the Respondent is the current registrant of the name. NSI has verified that the Respondent is bound by the NSI 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 August 1, 2003, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of August 21, 2003 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@yourlifemedicine.com by e-mail.

An electronic version of the Response was received by the Forum and determined to be complete on August 22, 2003; a hard copy version, together with Exhibits 1-11, was also received by the Forum on the same date. The Respondent served an initial version of the Response, submitted on-line, to WIPO rather than to the Forum on August 21, 2003. WIPO notified the Respondent of its error via an e-mail dated August 22, 2003. Given that: (a) WIPO received the Response on a timely fashion; (b) the Respondent's error in having sent the Response to the incorrect dispute resolution service provider (WIPO rather than the Forum) appears to be inadvertent; and (c) as noted below and as a result of the Response, the Complainant then filed an additional submission through which, inter alia, it did not contest the timeliness of the Response and hence waived any objection it might have had therewith, the Panel views the Response as having been timely filed and thus has fully considered it.

The Complainant timely filed an additional submission, together with Exhibits 5-7, with the Forum on August 26, 2003. The Panel has fully considered this submission as well.

On September 3, 2003, pursuant to the Complainant's request to have the dispute decided by a single-member Panel, the Forum appointed Mr. Peter L. Michaelson, Esq. as Panelist and set a due date of September 17, 2003 to receive the decision from the Panel.

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant

1. Confusing similarity/identicality

The Complainant contends that the contested domain name is confusingly similar to the Complainant's registered trademarks and service mark, i.e. its "YOUR LIFE" marks.

Hence, the Complainant concludes that the requirements of paragraph 4(a)(i) of the Policy are satisfied.

2. Rights and legitimate interests

The Complainant contends that the Respondent has no rights or legitimate interests in the contested domain name.

Specifically, the Complaint avers that:

- (i) the Respondent adopted and registered the contested domain name long subsequent to the Complainant's adoption of its "YOUR LIFE" marks;
- (ii) the Respondent adopted and registered that domain name with the sole intent to attain commercial gain by misleadingly diverting consumers by leading them to believe that use of the contested domain name is by Complainant or is sponsored or endorsed by Complainant;
- (iii) through the Respondent's unfair and misleading use of the domain name, the Respondent's continued use is causing damage to Complainant's "YOUR LIFE" marks over which the Complainant has no control; and
- (iv) the Complainant has directed correspondence to the Respondent at the address maintained in the files of NSI demanding a transfer of the contested domain name to the Complainant. Although the Complainant's written notice to the Respondent was delivered, the Respondent has failed or otherwise refused to respond.

Thus, the Complainant concludes that the Respondent cannot demonstrate any rights or legitimate interests in the contested domain name pursuant to paragraph 4(a)(ii) of the Policy.

3. Bad faith use and registration

The Complainant contends that the Respondent has registered and is using the contested domain name in bad faith in violation of the Policy.

Specifically, the Complainant states that the contested domain name is substantially similar to the Complainant's "YOUR LIFE" marks and is purportedly used for services which are the same as or are legally related to the Complainant's services. In view of this, the Complainant avers that the Respondent's actions, which are solely intended for commercial gain, are creating a likelihood of confusion in the minds of Internet users as to the source, sponsorship, affiliation or endorsement of the Respondent's web site with the Complainant -- when apparently no relationship exists between the Complainant and the Respondent.

B. Respondent

1. Confusing similarity/identicality

The Respondent contends that the contested domain name is not confusingly similar to the Complainant's "YOUR LIFE" marks

Specifically, the Respondent states that the contested domain name is used to forward or point Internet users to the Respondent's Internet site at esj1.com and there through are redirected to the Respondent's bulletin board "Your Life Medicine Bulletin Board", also known as yourlifemedicine.com "The Mother Of All Bulletin Boards".

The Respondent states that it is the registered owner of the domain name esj1.com and ten other domain names which function to forward Internet users to the esj1.com web site. These other domain names include: vitaminforless.com, buyanything4less.com, yourhealthvitamins.com, **yourlifemedicine.com**, cogitoergosumvitamins.com, ithinktherforeiamvitamins.com, cogitoergosummedicine.com, ithinktherforeiammedicine.com, invitaminswetrust.com and inmedicinewetrust.com.

Furthermore, the Respondent avers that the contested domain name, **yourlifemedicine.com**, is used for services which are not the same as or are not legally related to the Complainant's services. The Respondent states that the Complainant is the registered owner of the yourlifevitamins.com domain name, which reaches an Internet site used to provide information regarding vitamins and dietary food supplement products manufactured by the Complainant.

The Respondent states that its web site at esj1.com provides an online retail store service for various brand names of over-the-counter medicine, health products, vitamins, mineral, herbs, nutritional, dietary supplements, homeopathic remedies, home essentials, home electronics and airlines tickets.

The Respondent also notes that the welcome page of the esj1.com site states clearly the mission and goal of the Respondent as that of avoiding confusion.

Lastly, the Respondent points to the following domains names, which it believes are identical or similar to the Complainant's existing domain names, yourlifevitamins.com and all of which the Respondent contends are then available for registration through NSI: yourlifevitamins.net, yourlifevitamins.org, yourlifevitamins.biz, yourlifevitamins.info, yourlifevitamins.us, yourlifevitamins.cc, yourlifevitamins.biz, yourlifevitamins.tv, your-life-vitamins.com, yourlifevitamin.com, yourlifevitamine.com, yourlifevitamines.com and your-life-vitamin.com.

2. Rights and legitimate interests

The Respondent does not appear to specifically counter the Complainant's allegations regarding the Respondent's lack of rights and legitimate interests in the contested domain name.

3. Bad Faith

The Respondent contends that in view of the domain names noted above that are also similar to the Complainant's "YOUR LIFE" marks and are available for registration through NSI, the Respondent is "not a cybersquatter which will cause damage to those marks". Further, the Respondent contends that the availability of those names further indicates that the Respondent has registered the contested domain name in good faith and with no intent to attract, for commercial gain, Internet users to the Respondent's web site by creating a likelihood of confusion with Complainant's "YOUR LIFE" marks as to the source, sponsorship, affiliation or endorsement of the Respondent's site.

4. Reverse Domain Name Hijacking

The Respondent requests the Panel consider whether the Complainant's actions in filing the Complaint constitute reverse domain name hijacking under the Policy.

C. Additional Submission

Through its additional submission, which, as noted above, the Panel has considered, the Complainant, though not taking any issue with the timeliness of the Response, rebuts various contentions set forth in the Response.

First, the Complainant states that the Respondent's contention, that its use of the contested domain name, for services which are not the same or are not legally related to the Complainant's services, has no merit. In that regard, the Complainant states that its "YOUR LIFE" marks have been in continuous use for vitamins and dietary food supplements since 1975 and thus have gained substantial recognition by the public. As evidence of that, the Complainant points to a 1999 Gallup Study of Vitamin Use in the United States (a copy of which it provided in Exhibit 5 to its Additional Submission). Based on this study, the Complainant comments that "The public's awareness of the "YOUR LIFE" trademark places it among the well-known brands of vitamins sold in the United States".

Furthermore, the Complainant states that it is the owner of the domain name <yourlifevitamins.com> and its web site (hard-copy pages of which appear in Exhibit 6 to the Complainant's Additional Submission), reachable through that name, is specifically directed to provide information and market vitamins and dietary food supplement products designated by Complainant's "YOUR LIFE" marks. The

Complainant also states that that site provides Internet users with locations of retailers at which the Complainant's products can be purchased and allows those users to obtain coupons which can be used for the purchase of the Complainant's "YOUR LIFE" products.

Moreover, the Complainant states that the address for the Respondent's web site is <esj1.com> (hard-copies of various pages from the Respondent's site appear in Exhibit 7 to the Complainant's Additional Submission). The Complainant avers that the contested domain name has no independent purpose other than to link to the <esj1.com> site. As shown in that exhibit, the Respondent's web site markets vitamins and dietary food supplements manufactured by third parties, including manufacturers which are direct competitors of the Complainant. By providing a domain name which incorporates the Complainant's "YOUR LIFE" marks, the Complainant contends that Internet users are likely to be confused, mistaken or deceived into believing that the Respondent's web site is presented by the source of the Complainant's "YOUR LIFE" vitamins or that the source of the "YOUR LIFE" vitamins sponsors or endorses the Respondent's web site.

Hence, the Complainant concludes that use and registration of the contested domain name <**yourlifemedicine.com**> was and is in bad faith since its purpose is nothing more than to enhance the commercial gain of the Respondent by creating a likelihood of confusion with the Complainant's "YOUR LIFE" marks.

FINDINGS

A copy of the WHOIS registration record for the contested domain name appears in Exhibit 1 to the Response. This record indicates that the Respondent registered the <**yourlifemedicine.com**> domain name on October 26, 2001 with NSI.

A. The Complainant's "YOUR LIFE" marks

The Complainant owns four federal trademark applications for the term "YOUR LIFE" and has provided, collectively in Exhibits 1-4 to the Complaint, a copy of the federal registration, as issued by the United States Patent and Trademark Office (USPTO), for each of these marks. The pertinent details are as follows:

1. YOUR LIFE (block letter)
US registration 1,029,138; registered January 6, 1976
Renewal commencing January 6, 1996

This mark was registered for use in connection with: "vitamins " in international class 5. This mark claims a first use date of October 31, 1972 and a first use in inter-state commerce date of March 18, 1975.

2. YOUR LIFE (stylized)
US registration 1,402,829; registered July 29, 1986

This mark was registered for use in connection with: "vitamins and dietary food supplements" in international class 5. This mark claims first use and first use in inter-state commerce dates of October 30, 1985. A declaration of continued use and incontestability was filed in the PTO and later accepted on January 7, 1992.

3. YOUR LIFE (stylized)
US registration 1,596,015; registered May 15, 1990

This mark was registered for use in connection with: "vitamins and dietary food supplements" in international class 5. This mark claims first use and first use in inter-state commerce dates of April 4, 1989. A renewal application was filed in the PTO and later accepted on December 8, 2000.

4. YOUR LIFE (block letter)
US registration 2,084,936; registered July 29, 1997

This service mark was registered for use in connection with: "providing information regarding vitamins and dietary food supplements by means of a global computer network" in international class 42. This mark claims first use and first use in inter-state commerce dates of October 8, 1996. A declaration of continued use and incontestability was filed in the PTO and later accepted on January 23, 2003.

B. The Parties' Activities

In 1975, the Complainant adopted and commenced use of the mark "YOUR LIFE" in interstate commerce for the purpose of designating vitamins and dietary food supplement products.

On October 8, 1996, the Complainant adopted and commenced use of the mark "YOUR LIFE", then as a service mark in interstate commerce, in conjunction with providing information regarding vitamins and dietary food supplements by means of a global computer network.

The Complainant owns the domain name <yourlifevitamins.com> with hard-copy print-outs of the home page and various other pages from this site appearing in Exhibits 7 and 7A-C to the Response. Through this site, the Complainant provides information and markets vitamins and dietary food supplement products designated by the Complainant's "YOUR LIFE" marks, and locations of retailers at which the Complainant's products can be purchased. Further, this site also allows those users to obtain coupons which can be used for the purchase of the Complainant's "YOUR LIFE" products.

In contrast, the contested domain name, when applied as an address to an Internet browser, acts to forward or point users to a home page of the Respondent's web site at

<esj1.com> which carries the title <vitaminforless.com>. A hard-copy printout of the home page and various lower level pages for this site are provided in Exhibits 4 and 4A to the Response and in Exhibit 7 to the Complainant's Additional Submission. The Respondent uses its <esj1.com> web site to provide nutritional information and also market vitamins and dietary food supplements manufactured by third parties, including manufacturers which directly compete with the Complainant.

DISCUSSION

Paragraph 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (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 the 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 the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (2) the 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

The Panel finds that confusion is likely to arise as a result of the Respondent's use of contested domain name.

In particular, the contested domain name includes Complainant's registered "YOUR LIFE" mark. The earliest allegation of first use made by the Complainant in its "YOUR LIFE" marks indicates that the Complainant has been using its "YOUR LIFE" mark in connection with its own vitamins and dietary supplements since at least as early as October 1975 -- approximately 26 years prior to the October 26, 2001 date on which the Respondent registered the contested domain name. As a result of such use, the Complainant's "YOUR LIFE" marks have certainly acquired requisite secondary meaning and distinctiveness quite some time prior to October 2001, and clearly to a level sufficient from which the Panel can infer that potential customers and Internet users are likely to recognize the "YOUR LIFE" marks as signifying vitamins and dietary food supplements offered by the Complainant and not by the Respondent.

Further, in the context of vitamins and dietary food supplements -- which both the Complainant and Respondent market, the Panel finds that the term "medicine" is simply a generic term which adds absolutely no distinctive element to the contested domain name, let alone of any magnitude sufficient to distinguish that name from the Complainant's

“YOUR Life” marks and thus precludes confusion. In fact, the Panel believes, and the record fails to indicate otherwise, that the Respondent’s concatenation of the generic term “medicine” to the Complainant’s mark is far more likely to exacerbate, rather than ameliorate, the confusion.

Therefore, there can be no doubt that the Respondent had just this goal in mind and hence intentionally chose to cause and opportunistically exploit the user confusion that would inevitably arise to the Respondent’s own commercial advantage, when it formed the contested domain name by appending the generic word “medicine” to the mark “YOUR LIFE”. Otherwise, why would the Respondent have chosen a domain name that verbatim incorporates the Complainant’s “YOUR LIFE” mark? The Panel can think of no plausible reason. It is simply inconceivable to the Panel that the Respondent was completely unaware of the “YOUR LIFE” mark and its reputation when it formed and registered the contested domain name.

Such confusion would undoubtedly cause Internet users intending to access Complainant's web site, but who reach a web site through the contested domain name, to think that an affiliation of some sort exists between Complainant and Respondent, when, in fact, no such relationship would exist at all. *See, e.g., Am. Family Life Assurance Company of Columbus v. defaultdata.com*, FA 123896 (Nat. Arb. Forum Oct. 14, 2002); *AT&T Corp. v. Abreu*, D2002-0605 (WIPO Sept. 11, 2002); *Pfizer Inc. v. Order Viagra Online*, D2002-0366 (WIPO July 11, 2002); *L.F.P., Inc. v. B and J Props.*, FA 109697 (Nat. Arb. Forum May 30, 2002); *Frampton v. Frampton Enters, Inc.*, D2002-0141 (WIPO Apr. 17, 2002); *Spence-Chapin Servs. to Families and Children v. Wynman*, FA 100492 (Nat. Arb. Forum Dec. 10, 2001); *MPL Communications v. LOVEARTH.net*, FA 97086 (Nat. Arb. Forum June 4, 2001); *Meijer, Inc. v. Porksandwich Web Servs.*, FA 97186 (Nat. Arb. Forum July 6, 2001); *MPL Communications v. IWebAddress.com*, FA 97092 (Nat. Arb. Forum June 4, 2001); *Am. Home Prods. Corp. v. Malgioglio*, D2000-1602 (WIPO Feb. 19, 2001); *Surface Prot. Indus., Inc. v. The Webposters*, D2000-1613 (WIPO Feb. 5, 2001); *Dollar Fin. Group, Inc. v. VQM NET*, FA 96101 (Nat. Arb. Forum Jan. 25, 2001); *eBAY Inc. v. G L Liadis Computing, Ltd.*, D2000-1463 (WIPO Jan. 10, 2001); *Treeforms, Inc. v. Cayne Indus. Sales Corp.*, FA 95856 (Nat. Arb. Forum Dec. 18, 2000); *see also The Pep Boys Manny, Moe and Jack of CA v. E-Commerce Today, Ltd.*, AF-0145 (eResolution May 3, 2000).

Therefore, the Panel finds that the contested domain name <**yourlifemedicine.com**> sufficiently resembles the Complainant's “YOUR LIFE” marks as to cause confusion; hence, the Complainant has shown sufficient similarity between its marks and the contested domain name under paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests

The Panel believes that the Respondent has yet to provide any basis that would legitimize any claim it has to the contested domain name. In fact, it is extremely unlikely that the Respondent can even make such a claim.

The simple reason is that the contested domain name contains the Complainant's mark "YOUR LIFE" under which the Complainant provides its goods. Furthermore, the Complainant has never authorized the Respondent to utilize the mark "YOUR LIFE", or a mark confusingly similar thereto, in conjunction with the specific goods which the Complainant provides under those marks, nor does the Complainant have any relationship or association whatsoever with the Respondent.

Hence, any use to which the Respondent were to put the mark "YOUR LIFE" or a mark confusingly similar thereto, in connection with vitamins or dietary food supplements, or an Internet-based service of providing information concerning those goods, would directly violate the exclusive trademark rights now residing in the Complainant. *See, e.g., AT&T Corp., supra; MPL Communications, FA 97086 and FA 97092, supra; Am. Online, Inc. v. Fu, WIPO Case No. D2000-1374 (Dec. 11, 2000); Treeforms, Inc., supra.*

It is eminently clear to this Panel, as stated previously, that the Respondent, in choosing a domain name that at its essence completely incorporates the Complainant's "YOUR LIFE" mark and then appending to it the generic term "medicine", is intentionally seeking to create a confusingly similar name that opportunistically exploits Internet user confusion by diverting, through re-direction and diversion, Internet users away from the Complainant's site to the Respondent's site for the latter's own pecuniary benefit. Specifically, those users would think they are purchasing the Complainant's goods through the Respondent's site and, by doing so, generate profit to the Respondent from those sales -- to the Complainant's ultimate detriment.

Such parasitic use, which at its essence relies on instigating and exacerbating user confusion, can not and does not constitute bona fide commercial or fair use sufficient to legitimize any rights and interests the Respondent might have in the contested domain name. *See Frampton, supra.*

In light of the above findings, the Panel is not persuaded that the Respondent has any rights or legitimate interests or, based on current facts provided to the Panel, is likely to acquire any rights or legitimate interests in the contested domain name under any provision of paragraph 4(c) of the Policy.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in the contested domain name within paragraph 4(a)(ii) of the Policy.

Registration and Use in Bad Faith

The Panel firmly believes that the Respondent's actions constitute bad faith registration and use of the contested domain name.

Again as stated above, it is absolutely inconceivable to this Panel that the Respondent was unaware of the Complainant's "YOUR LIFE" mark when the former registered the contested domain name on October 26, 2001 -- some 26 years after the Complainant started using that mark.

In fact, by virtue of offering highly competitive vitamins and food supplements to those then being offered by the Complainant and through a web site resolvable through the contested domain name, the Panel believes that not only was the Respondent very much aware of those marks but moreover deliberately decided to utilize the term "YOUR LIFE", without authorization, in an attempt to cause user confusion and, by doing so, misappropriating to itself the goodwill inherent in the Complainant's "YOUR LIFE" marks for its own commercial gain and to the ultimate detriment of the Complainant.

Hence, the Panel views these actions as constituting bad faith registration and use in violation of paragraph 4(b)(iv) of the Policy.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations to establish a *prima facie* case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

Reverse Domain Name Hijacking

Given that the Complainant had more than ample basis to bring its Complaint, the Panel finds that its actions were clearly not occasioned by bad faith and thus do not constitute reverse domain name hijacking.

DECISION

In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the relief sought by the Complainant is hereby **GRANTED**.

The Respondent's request to have the Panel designate the Complainant's actions in bringing the Complaint as reverse domain name hijacking is **DENIED**.

The contested domain name, namely <**yourlifemedicine.com**>, is ordered **TRANSFERRED** from the Respondent to the Complainant.

Peter L. Michaelson, Esq., Panelist
Dated: September 16, 2003