

CPR INSTITUTE FOR DISPUTE RESOLUTION

UNDER THE UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY

COMPLAINANT

Jensen Research Corporation
169 Ramapo Valley Rd.
Oakland, NJ 07436
Tel.: (201) 337-4000
Fax: (201) 337- 4334
Email: rkaller@jensenresearch.com

vs.

RESPONDENT

Future Media Architects, Inc.
P.O. Box 71
Road Town, Tortola 99999
British Virgin Islands
Tel.: (703) 868-6000
Fax: (703) 780-4738
Email: 1@1tv.tv

File Number: CPR 0310
Date of Commencement: March 20, 2003
Domain Name: jrc.com
Registrar: Dotster

Arbitrators: David E. Sorkin, James P. O'Shaughnessy, Peter L. Michaelson

PROCEDURAL HISTORY

This matter concerns a complaint brought pursuant to the ICANN Uniform Domain Name Dispute Resolution Policy ("ICANN Policy"). The Complaint was filed with the CPR Institute for Dispute Resolution and, following review for administrative compliance, was served on Respondent on March 20, 2003 (the "Date of Commencement"). Following correspondence among CPR and the parties and an apparent delay in providing Respondent with actual notice of the proceeding, CPR granted Respondent an extension of the deadline for filing a Response. Respondent submitted its Response on April 18, 2003, and elected to have this matter decided by a

three-member panel pursuant to paragraph 5(b)(iv) of the ICANN Rules for Uniform Domain Name Dispute Resolution Policy (“ICANN Rules”). The matter was referred to a three-member panel on May 7, 2003.

FINDINGS

Paragraph 4(a) of the ICANN Policy requires Complainant to prove each of the following elements:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (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.

The disputed domain name has been registered to Respondent Future Media Architects, Inc., since January 2003. From approximately March 2002 until January 2003, the domain name was registered in the name of Thunayan Khalid Al-Ghanim, with a physical address in Kuwait, who shares the same email address as Future Media Architects, Inc. Prior to March 2002 the domain name was registered to Oleg Eremenko of Canada, who apparently registered it in June 2001, following its abandonment by a previous registrant. For purposes of this decision the Panel considers March 2002 to be the date on which the disputed domain name was registered or acquired by Respondent, but notes that the result would likely be the same regardless of the relevant date.

Complainant is a New Jersey corporation known by its name, Jensen Research Corporation, and acronym, JRC. Complainant’s service mark JRC appears on the Principal Register of the U.S. Patent and Trademark Office (registration number 2692914). The application for that mark was filed on April 24, 2002, and it was granted on March 4, 2003. The date of first use claimed in the application was October 23, 1991. The services described by the mark are “Application service provider (ASP) featuring software in the field of database management.”

Other than the aforementioned trademark registration, the only evidence offered by Complainant concerning its trademark rights is two virtually identical undated one-page advertisements that use JRC to identify the source of a product called “XREFPL US!” Neither advertisement includes any trademark symbols or other indicia of trademark claims.

It is well established that common-law trademark rights are sufficient to support a claim under the Policy. See, e.g., *Frampton v. Frampton Enterprises, Inc.*, Case No. D2002-0141 (WIPO Apr. 17, 2002). However, Complainant bears the burden of proving the existence of such rights.

Some panelists have interpreted paragraph 4(a)(i) of the Policy to require proof of trademark rights in existence as of the date on which the disputed domain name was registered or acquired. Other panelists consider present-day trademark rights sufficient under paragraph 4(a)(i), but require proof of trademark rights that predate the domain name in order to satisfy the bad faith registration requirement contained in paragraph 4(a)(iii). See, e.g., *Ode v. Intership Ltd.*, Case No. D2001-0074 (WIPO May 1, 2001). Under either view of the Policy, Complainant in this matter is obligated to prove that it had protectable rights in the JRC mark as of March 2002, and it has failed to do so.

CONCLUSION

Complainant has failed to prove that it had trademark rights in the JRC mark as of the date that the disputed domain name was registered or acquired, and the Complaint therefore fails to meet all of the elements set forth in paragraph 4(a) of the ICANN Policy.

REMEDY

Complainant's request to transfer the disputed domain name jrc.com is hereby DENIED.

May 20, 2003

David E. Sorkin, chair

James P. O'Shaughnessy

Peter L. Michaelson