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ADMINISTRATIVE PANEL DECISION

Under the ICANN Uniform Domain Name Dispute Resolution Policy

Complainant:	Meineke Discount Muffler Shops, Inc.
Respondent:	Gabriel Richard; 50.com/meineke.org
Case Number:	AF- 00972
Contested Domain Name:	meineke.org
Panel Member:	Daniel J. Greenwood, Esq.

1. Parties and Contested Domain Name

The Complainant, Meineke Discount Muffler Shops, Inc., is owner of the registered trademark "Meineke" and respondent, Gabriel Richard, is owner of the registered domain name "meineke.org". The domain name "meineke.org" is contested.

2. Procedural History

The electronic version of the Complaint form was filed on-line through eResolution's Website on August 7, 2001. The hardcopy of the Complaint Form and annexes were received on August 16, 2001. Payment was received on August 16, 2001.

Upon receiving all the required information, eResolution's clerk proceeded to:

- Confirm the identity of the Registrar for the contested Domain Name;
- Verify the Registrar's Whois Database and confirm all the essential contact information for Respondent;
- Verify if the contested Domain Name resolved to an active Web page;
- Verify if the Complaint was administratively compliant.

This inquiry lead the Clerk of eResolution to the following conclusions: the Registrar is Domain Bank, the Whois database contains all the required contact information, the contested Domain Name resolves to an active Web page and the Complaint is administratively compliant.

An email was sent to the Registrar by eResolution Clerk's Office to obtain confirmation and a copy of the Registration Agreement on August 16, 2001. The requested information was received August 22, 2001.

The Clerk then proceeded to send a copy of the Complaint Form and the required Cover Sheet in accordance with paragraph 2 (a) of the ICANN's Rules for Uniform Domain Name Dispute Resolution Policy. The Clerk's Office fulfilled all its responsibilities under Paragraph 2(a) in forwarding the Complaint to the Respondent, notifying the Complainant, the concerned Registrar and ICANN on August 22, 2001. This date is the official commencement date of the administrative proceeding.

All the faxes and emails were successful.

The complaint, official notification and all the annexes were sent via registered mail with proof of service, to the respondent. According to the Canada Post tracking system, all were delivered.

On September 4, 2001, the Respondent submitted, via eResolution Internet site, his response. The signed version of the response was received on September 5, 2001.

On September 6, 2001, the Clerk's Office contacted Daniel Greenwood, and requested that he act as panelist in this case.

On September 10, 2001, Daniel Greenwood accepted to act as panelist in this case and filed the necessary Declaration of Independence and Impartiality.

On September 10, 2001, the Clerk's Office forwarded a user name and a password to Daniel Greenwood, allowing him to access the Complaint Form, the Response Form, and the evidence through eResolution's Automated Docket Management System.

On September 10, 2001, the parties were notified that Daniel Greenwood had been appointed.

3. Factual Background

Complainant, Meineke Discount Muffler Shops, Inc., is a large company which owns rights to the trademark Meineke. Respondent registered the domain name "meineke.org". Complainant contacted respondent about this domain name and respondent requested payment in return for transfer of the domain name. A business web site, 50.com, also owned by respondent, lists the domain name meineke.org along with many other domain names as available for commercial use (such as sale or rental as part of web site hosting). Complainant indicates that only after being contacted by complainant did the respondent create a web site associated with the contested domain name. This web site dealt with missing children. The parties were unable to resolve the dispute over rightful ownership of the domain name meineke.org and complainant initiated the present dispute resolution proceeding.

4. Parties' Contentions

The complainant contends that the respondent's domain name, meineke.org, should be transferred to the complainant under the UDRP of ICANN. It is alleged that the respondent's domain name is confusingly similar to the federally registered trademark of the complainant, that the respondent has no legitimate rights or interest in the domain name and that the respondent has registered and used the domain name in bad faith. Complainant alleges that the respondent's site is only a shell and that the respondent is not offering bona fide goods or services at the website. The respondent denies each of these claims and asserts it is not interested in getting into the muffler business but is interested in missing children.

5. Discussion and Findings

This arbitration decision shall apply the Uniform Domain Name Dispute Resolution Policy (UDRP) and the Rules, both approved by the Internet Corporation for Assigned Names and Number (ICANN) on October 24, 1999, as well as the eResolution Supplemental Rules. In applying the cited policy and rules to the facts presented, the Panel shall take care, according to Section 15 of the ICANN Rules, to make legal conclusions "in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable" - including principles of equity.

This single arbitrator Panel shall also derive guidance from the Code of Ethics for Arbitrators in Commercial Disputes, which was prepared in 1977 by a joint committee consisting of a special committee of the American Arbitration Association and a special committee of the American Bar Association. It has been approved and recommended by both organizations. Section F. of the Code provides:

"When an arbitrator's authority is derived from an agreement of the parties, the arbitrator should neither exceed that authority nor do less than is required to exercise that authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator

to comply with such procedures or rules." (see: <http://www.adr.org/roster/arbitrators/code.html>)

The framework of this decision shall mirror the requirements for transfer of a domain name under the ICANN UDRP and Rules. Accordingly, in order to grant the domain name transfer requested by the complainant, it must be determined:

- A. That the meineke.org domain name is identical or confusingly similar to the trademark or service mark of the complainant;
- B. That Respondent has no rights or legitimate interests in respect of the meineke.org domain name; and
- C. That Respondent has registered and used the domain name meineke.org in bad faith.

A. Similarity of Domain Name to Mark:

Meineke is a federally registered trademark of the complainant. Some decades after registration of this trademark, respondent acquired the domain name meineke.org. Meineke.org is identical to or confusingly similar to the trademark of the complainant.

B. Respondent's Rights or Legitimate Interests in the Domain Name:

The second element of the UDRP requires that, in order to transfer a domain name from a respondent to a complainant, the respondent have no rights or legitimate interests in the domain name. The UDRP provides examples of situations wherein it can be concluded that a respondent does have a right or legitimate interest in the disputed domain name. The UDRP reads, in relevant part, as follows:

"4 (a) Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your 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"

The Panel finds that the respondent has no right or legitimate interest in the domain name meineke.org. Respondent runs a web hosting and development company, 50.com, which also holds out many registered domain names for sale or rent as part of its business, including the domain name meineke.org. Respondent has not been authorized to use the federally registered trademark of the complainant as part of a domain name or otherwise.

The respondent requested \$27,995.00 from complainant in return for a transfer of the disputed domain name. Further, the domain name meineke.org has been and continues to be available for sale or other commercial use on the web site of the respondent. The relevant page on the respondent's web site indicates that the domain name Meineke.org is "available only" from the respondent.

Respondent points out in its filings that in white text on a white background the words "not available" appear next to the domain name Meineke.org. These letters, the respondent concedes are not visible, absent using the cursor to select that text. If a user were to decide for no apparent reason to attempt to highlight the blank space next to the offering for sale of the disputed domain name, then the invisible words would appear. Respondent also concedes that complainant "would never have known that." Indeed, this panel is forced to conclude that no person in the market to purchase the domain name Meineke.org would have reason to know of this invisible text. The fact that respondent continues to list the disputed domain name as for sale or rent and has chosen to include this disclaiming text in an invisible fashion indicates a deceit and weighs heavily in favor of the finding that respondent has no legitimate right or interest in the domain name.

Based upon all the evidence presented, the Panel finds that the complainant is correct in claiming that the current use of the domain name is a "shell" web site, and that the alleged "missing children" usage of the domain name is intended to falsely protect respondent from domain name transfer.

First, respondent claims that the name Meineke was chosen because it "stood for popular children's names that [were] easy to pronounce." When pressed in additional filings on this point, respondent stated that "I find [the domain name] to be a very nice easy name and it was great for the most popular children names." This claim is not persuasive. Meineke is not easy to pronounce. In fact, according to the complainant, because of the difficulty with pronouncing Meineke it was necessary to register the phonetic spelling of Meineke under the trademark "say-mine-a-key" in an effort to help new markets advertise Meineke services and products. If it were not for the enormous amount of money spent by complainant on advertising, marketing and deploying retail outlets under this name across this country, it is clear that the name Meineke would be vexing to most who might attempt to read it aloud.

Second, respondent asserts that each letter of the trademark Meineke is to be used to correspond with the name of a missing child, for purposes of publicizing these cases. Even viewing the facts in the light most favorable to the respondent, this Panel must conclude that the trademark Meineke is not reasonably suitable to stand for missing children. No deeper analysis than this is needed: three of the seven letters of the trademark Meineke are the letter "e". A cursory review of legitimate missing children web sites, and the common sense of this Panel, indicates that nowhere near three out of seven names of missing children begin with the letter "e". It is not credible that an acronym or other word that was truly designed to representatively highlight names of missing children would include the letters of the trademark Meineke and exclude letters relating to so many other more broadly used names. Under all the facts as presented, it is far more likely that the respondent is using the trademark Meineke as part of the domain name `meineke.org` for commercial ends that do not constitute a legitimate purpose under the UDRP.

Further, the web site associated with the domain name `Meineke.org` includes several clear indications that it was put up hastily and not for the purpose of actually assisting users interested in missing children. For example, the site links to a "parent quiz". There are five multiple-choice questions relating to missing children. A user can select one of the answers for each of the questions. That is all a user can do. There is no way to submit the results. There is no way to link to an answer page or otherwise to get any feedback on this purported "quiz". There are some answers that are mutually exclusive on the "quiz", and no way to determine which response is supposed to be best for missing children.

Another section of the site is supposed to shed light on "why" children go missing. This section read as follows: "I left him right here! She was only playing in the yard! He was walking right behind me! She was coming home from school! He was in the shopping cart while I went to look! She just went to the bathroom! He was supposed to be back! She was asleep in the crib! I Can't Find Him!!!!!!!!!!!!!! I Can't Find Her!!!!!!!!!!!!!!" and gives statistics relating to how many children go missing each year. Neither on this section of the site, nor anywhere else on the site can one find any information on why children in fact go missing, what to do to reduce the risk, to quickly identify a problem if it occurs, or what to do in the event you suspect a child had gone missing.

Further, respondent had made no use or demonstrable preparation to use the domain name `meineke.org` before being contacted by the complainant. The evidence is not entirely clear on the question of how long the respondent has possessed the domain name `meineke.org` prior to being contacted by the complainant. However, respondent indicates in its filings that it has used the domain name for "years". Complainant first contacted respondent approximately two months ago and, according to the evidence presented to this Panel, the web site only came into existence after that contact. This suggests a long period of possession with no use of the domain name in connection with missing children or any other legitimate purpose and is further evidence in support of complainant's view that the respondent has no legitimate right or interest in the domain name and that the current site is in fact a sham.

C. Bad Faith Registration and Use:

i. "Likelihood of Confusion"

Under Section 4(b)(iv) of the UDRP, the following rule applies to determine whether there is evidence of registration and use in bad faith:

"by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion

with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

The Panel finds that the respondent has registered and used the domain name meineke.org in bad faith. It is clear that the respondent intentionally attempted to attract, for commercial gain, Internet users to their web site by trading upon the good will and wide recognition resulting from the hundreds of millions of dollars spent by complainant toward the popularization of the trademark Meineke. As has been noted, the Panel agrees with the accusation of the complainant and rejects the notion that the highly unusual word "Meineke" is being genuinely used in support of missing children. Given the evident "shell" nature of the respondent's site, this Panel also finds that holding up the emotional image of missing children as a shield against domain name transfer constitutes bad faith.

ii. Leveraging Domain Name Registration Against Trademark Owner

Under Section 4(b)(i) of the UDRP, the following rule applies to determine whether there is evidence of registration and use in bad faith:

"circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name"

As has been noted, respondent has and does offer the domain name meineke.org for sale or rent on their web site to any buyer (presumably including to competitors of complainant) and has requested tens of thousands of dollars from the complainant in return for transfer of this domain name.

6. Conclusions

If respondent in fact wishes to acquire a domain name that does not infringe upon the intellectual property of a rightful trademark owner and that addresses the real and pressing problem of missing children in some way, then respondent is free to seek another domain name. There are nearly limitless other options, but the federally registered trademark and national business identity of the complainant cannot be counted among them.

For all the above reasons, I order the transfer of the domain name meineke.org from the respondent to the complainant.

7. Signature

This decision of the Panel in Case No. AF-00972 as rendered on the 9th day of October 2001 and duly signed by:

(s) **Daniel J. Greenwood**

Cambridge, Massachusetts, United States of America

Presiding Panelist