



NATIONAL ARBITRATION FORUM

DECISION

easyDNS Technologies Inc. v. PDR Ltd. d/b/a PublicDomainRegistry.com
Claim Number: FA1312001532690

PARTIES

Gaining Registrar is **easyDNS Technologies Inc.** (“Gaining Registrar”), represented by **Mark Jeftovic**, Ontario, Canada. The Registrar of Record is **PDR Ltd. d/b/a PublicDomainRegistry.com** (“The Registrar of Record”), India.

REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are **<maxalbums.com>**, **<emp3world.com>**, and **<full-albums.net>**, registered with **PDR Ltd. d/b/a PublicDomainRegistry.com**.

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.

Bruce E. Meyerson as Panelist.

PROCEDURAL HISTORY

Gaining Registrar submitted a TDRP Appeal of the Registry Operator’s Decision on the First-Level Dispute to the National Arbitration Forum electronically on December 3, 2013 and the National Arbitration Forum received payment on December 3, 2013.

On December 10, 2013, the Forum served the TDRP Appeal of the Registry Operator’s Decision on the First-Level Dispute and all Annexes, including a Notification of the Complaint via e-mail to the Registrar of Record as identified by ICANN.

On December 23, 2013, the Registrar of Record submitted a Response to the National Arbitration. The Response was not permitted under the TDRP Appeal Rules. Nevertheless the Response has been considered by the Panel.

On December 10, 2013, the National Arbitration Forum appointed Bruce E. Meyerson as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration Forum has discharged its responsibility under ICANN's Registrar Transfer Dispute Resolution Policy through submission of Electronic Notices. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN TDRP Policy, the National Arbitration Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable.

RELIEF SOUGHT

The Gaining Registrar requests that the domain names be transferred from the Registrar of Record to the Gaining Registrar.

PARTIES' CONTENTIONS

The dispute between the parties to this appeal is straightforward. easyDNS Technologies, Inc., the Gaining Registrar, contends that PDR Ltd., the Registrar of Record, breached the Policy on Transfer of Registrations by Registrars (the "Transfer Policy") by refusing to transfer the **<maxalbums.com>**, **<emp3world.com>**, and **<full-albums.net>** domain names. The Registrar of Record refused to do so because the domain names at issue were identified by the City of London Police as "suspected to be involved in the criminal distribution of copyrighted material either directly or indirectly and liable to prosecution" under a number of United Kingdom laws.

The Gaining Registrar contends that the Transfer Policy does not permit a registrar of record to withhold a transfer on this basis. According to the Gaining Registrar, the Transfer Policy permits a registrar of record to withhold a transfer of a domain name only in response to a court order.

FINDINGS

No court order has been issued which would prohibit the transfer of the domain names at issue from the Registrar of Record to the Gaining Registrar. Therefore, there is nothing in the Transfer Policy which authorizes the Registrar of Record to refuse to transfer the domain names.

DISCUSSION

Section 3 of the Transfer Policy specifies the grounds on which a Registrar of Record may deny a transfer request. It provides in part:

1. Upon denying a transfer request for any of the following reasons, the Registrar of Record must provide the Registered Name Holder and the potential Gaining Registrar with the reason for denial. The Registrar of Record may deny a transfer request only in the following specific instances:

* * *

3. Court order by a court of competent jurisdiction

On September 24, 2013, the City of London Police issued a Domain Name Suspension Request regarding a large number of domain names, including the three at issue in this case. The Request asked the relevant registrars to do the following:

We request that you review your processes to see if you provide a service for the identified domain(s). If so, we would ask you to review the terms and conditions on the basis of which that service is provided and withdraw or suspend the service if you are satisfied that the terms and conditions have been breached.

You should also ensure that no changes to the DNS and WHOIS records are made by any party before the date of expiration of the domain.

This request was for the following reason: "The owners of the aforementioned domains are suspected to be involved in the criminal distribution of copyrighted material either directly or indirectly and are liable to prosecution under UK law."

On or about October 9, 2013 the Registrar of Record complied with the request and "shut down" the three domains. On October 23, 2013 the Gaining Registrar notified the Registrar of Record that its actions did not comply with the Transfer Policy which required court order and stating that request from the "police force is not a court order."

The Gaining Registrar filed a request for enforcement with Verisign on October 29, 2013. After Verisign issued a decision of "No Decision," the Gaining Registrar appealed

to the Forum. The appeal states that the Gaining Registrar is “appealing this decision because Registrars cannot lock-down domains which have no legal action against them simply because somebody asks them to, even if that somebody is a police officer somewhere.”

Although there are compelling reasons why the request from a recognized law enforcement agency such as the City of London Police should be honored, the Transfer Policy is unambiguous in requiring a court order before a Registrar of Record may deny a request to transfer a domain name. *See, e.g., Toomer v. City Cab*, 443 F.3d 1191, 1194 (10th Cir. 2006) (“If the terms of the statute are clear and unambiguous the inquiry ends and we simply give effect to the plain language of the statute.”) *American Bankers Ins. Group v. U.S.*, 408 F.3d 1328, 1332 (11th Cir. 2005) (words in a statute are “given their ordinary, plain meaning”). The term “court order” is unambiguous and cannot be interpreted to be the equivalent of suspicion of wrong doing by a policy agency.

To permit a registrar of record to withhold the transfer of a domain based on the suspicion of a law enforcement agency, without the intervention of a judicial body, opens the possibility for abuse by agencies far less reputable than the City of London Police. Presumably, the provision in the Transfer Policy requiring a court order is based on the reasonable assumption that the intervention of a court and judicial decree ensures that the restriction on the transfer of a domain name has some basis of “due process” associated with it.

The Registrar of Record’s December 23, 2013 Response raises a somewhat different issue which was not the subject of Verisign’s Decision because of the lateness of the Response. The Registrar of Record argued that a basis for withholding the transfer of the domain names was their involvement in fraudulent activity. The Response stated that the three domain names “were involved in criminal distribution of copyrighted material directly or indirectly and are liable to prosecution under UK law which serves as evidence of fraud” under the Transfer Policy. First, the Registrar of Record’s assertion is not correct as the London Police Request does not state that it has evidence of fraud. The Registrar of Record apparently contacted the London Police, as the Registrar states that the London Police have “agreed to answer any and all questions that might arise with regards to these domain names.”

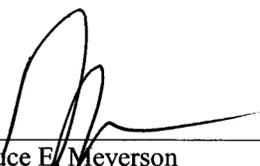
Second, the reference to “evidence of fraud” in the Transfer Policy does not refer to fraudulent conduct by the holder of the domain name, but evidence of fraud with respect

to the transfer of that domain name. See GNSO Issues Report, Inter-Registrar Transfer Policy Part B at 14-15 (May 15, 2009).

DECISION

Having found that the Registrar of Record withheld the transfer of the domain names at issue in violation of the Policy on Transfer of Registrations by Registrars, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <maxalbums.com>, <emp3world.com>, and <full-albums.net> domain names be **TRANSFERRED** from the Registrar of Record to the Gaining Registrar.



Honorable Bruce E. Meyerson
Arbitrator

Bruce E. Meyerson, Panelist
Dated: January 6, 2014