



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Religious Technology Center v. Freie Zone E. V

Case No. D2000-0410

1. The Parties

Complainant is Religious Technology Center, a non-profit corporation organized and existing under the laws of the State of California, U.S.A., having its principal place of business at 1710 Ivar Avenue, Los Angeles 90028, U.S.A. Complainant is represented by Thomas M. Small and Ms. J. Alison Grabell, Small Larkin, LLP, 10940 Wilshire Boulevard, 18th Floor, Los Angeles, CA 90024, U.S.A.

Respondent is Freie Zone e.V. (Free Zone Association), an association founded and registered under the laws of Germany, having its principal place of business at P.O. Box 1215, 83524 Haag i. Obb., Germany. Respondent is represented by Bernd Luebeck, Curd-Juergens-Str. 4, 81739 Munich, Germany.

2. The Domain Name and Registrar

The domain name at issue is <scientologie.org> (“Domain Name”). The registrar is Network Solutions, Inc. (“NSI”).

3. Procedural History

A Complaint was submitted to the World Intellectual Property Organization Arbitration and Mediation Center (the “WIPO Center”) on May 9, 2000. An Acknowledgment of Receipt was sent on May 12, 2000 by the WIPO Center to Complainant.

On May 12, 2000 a Request for Registrar Verification was transmitted to NSI. NSI confirmed by reply e-mail on May 16, 2000 that the Domain Name is registered with NSI, that Respondent, Freie Zone e.V., was the current registrant of the name and that NSI’s 4.0 Service Agreement was in effect. The reply also contained contact information for Respondent.

No formal deficiencies having been recorded, the WIPO Center transmitted a Notification of Complaint and Commencement of Administrative Proceeding to Respondent on May 17, 2000, setting a deadline of June 5, 2000 to file a Response to the Complaint.

On May 31, 2000, the WIPO Center received a Response by Respondent in hardcopy, which the WIPO Center acknowledged to the parties on June 2, 2000.

On June 9, 2000, after receiving Dr. Bernhard F. Meyer-Hauser's completed and signed Statement of Acceptance and Declaration of Impartiality and Independence, the WIPO Center transmitted to the parties a Notification of Appointment of Administrative Panel and Projected Decision Date of June 23, 2000. The Sole Panelist finds that the Panel was properly constituted and appointed in accordance with the Uniform Domain Name Dispute Resolution Policy ("Policy") and the Rules for Uniform Domain Name Dispute Resolution Policy ("Rules").

Between June 13 and June 22, 2000, the WIPO Center received alternately four further unsolicited submissions by Complainant and Respondent. The Panelist received these submissions between June 15 and June 22, 2000.

4. Factual Background

The following facts and statements appear from the Parties' submissions and the documents annexed thereto and have not been contested:

Complainant's trademark and service mark SCIENTOLOGIE has been registered for numerous goods and services from 1984 on in the following 9 countries outside of the United States: Burundi, Canada, Czech Republic, France, Haiti, Madagascar, Monaco, Rwanda and Switzerland.

In addition, Complainant is the owner of the trademarks and service marks SCIENTOLOGY, SCIENTOLOGIA, SCIENTOLOGI and SAJENTOLOGIJA registered in 19 countries.

In the United States, the SCIENTOLOGY trademark is used since at least as early as 1951 for books, booklets, newsletters and bulletins in connection with religious and ministerial services as well as for educational services, namely conducting courses in philosophy and religion (Complainant's trademarks and service marks mentioned in this decision are hereinafter referred to jointly as the "Marks").

In 1934, a book in the German language: "Scientologie - Wissenschaft von der Beschaffenheit und Tauglichkeit des Wissens" [engl. "Scientology - Science of the Constitution and Usefulness of Knowledge"] (hereinafter referred to as the "Book"), was written and published in Germany by Dr. Anastasius Nordenholz. This book appears to be based, at least partially, on the same or similar philosophical sources as L. Ron Hubbard's own philosophy when developing the Church of Scientology. On the other hand, it was L. Ron Hubbard who seems to have first used the English word "Scientology" to describe his philosophy in 1952.

By contract dated January 26, 1995, Respondent obtained from the heirs of late Dr. Nordenholz exclusive rights to use the Book and to sell it to the public. The Book was then republished by Respondent in 1995 in both German and English.

In December 1995, Respondent registered with NSI the Domain Name which is at the center of this dispute. The Domain Name was suspended and put on hold by NSI in September 1996 on request of Complainant.

5. Parties' Contentions

A. Complainant's Complaint (dated May 9, 2000)

Respondent has registered a domain name which is identical or confusingly similar to the Marks. Respondent has no rights or legitimate interests in respect of the Domain Name, and the Domain Name was registered and is being used in bad faith.

In particular, Respondent registered the Domain Name long after the use and registrations of the Marks, and Respondent had actual knowledge of Complainant's rights when registering the Domain Name.

Respondent is an international association of an "underground" nature that has, as one of its purposes, interference with the activities of Complainant and its affiliated organizations. Respondent has acquired the copyrights of the Book solely for the purpose of creating an apparent justification for use of the title of the Book as a domain name, against the interests of Complainant. The Domain Name and the corresponding home page was created for the purpose of blocking the registration of <scientology.org> and for using Complainant's SCIENTOLOGY mark in relation to Respondent's activities.

B. Respondent's Response (dated May 31, 2000)

Respondent is not an underground association. It was founded and registered publicly under the law of the Federal Republic of Germany. It runs webpages in many different languages to be found at <www.freezone.org> and <www.freezone.de>. The goal of the association is to support the philosophies of cognition and the free use of the technology and the philosophy of L. Ron Hubbard, the founder of Scientology. As the Book by Dr. Nordenholz is in the field of philosophy of cognition, Respondent inquired into that work. Respondent purchased the copyright, republished the Book, and registered the Domain Name in order to promote the philosophy of Dr. Nordenholz. According to Respondent, the free and unrestricted pursuit of Scientology is currently impossible both in the Church of Scientology and in society in general. Respondent explicitly separates itself from the official and unofficial organizations of the Church of Scientology.

After NSI suspended Respondent's Domain Name, Respondent registered a domain name <scientologie.de> with DE-NIC. Complainant never legally objected against this. Respondent uses the "de" domain as a substitute to <scientology.org>, continues, however, to pay the annual fees to NSI in order to keep the domain name <scientologie.org> alive. Respondent is still interested in using the disputed Domain Name and considers the country domain "de" not as a suitable substitute.

The word "Scientologie" as a name for the philosophy is the intellectual property of Dr. Nordenholz and is protected as a "work title" according to § 5 Sect 3 of the

German Trademark Act. This right was originally acquired by Dr. Nordenholz by publication of his Book in 1934 and did not expire. In addition, Respondent holds the copyrights for the Book, which entitles it to sell and market the Book.

It is Respondent's explicit interest not to be confused with the Complainant or its affiliated organizations. It is obvious to internet users that Respondent's home page does not have any affiliation with the Church of Scientology or Complainant.

C. Complainant's Reply to Respondent's Response (dated June 12, 2000)

Respondent admits in its submissions that the copyrights to the Book have been purchased with the sole purpose of gaining a claim of right to use Complainant's trademark. Accordingly, the Domain Name was registered for the purpose of attracting internet users to the competitive website of Respondent.

According to German laws, copyrights do not grant a trademark status to book titles but only negative rights against unfair competition from a later confusingly similar book title.

Respondent's bad faith in the registration and use of the Domain Name is established by the fact that the Marks were registered long before Respondent's use of "Scientologie". In addition, the purpose of Respondent's website is to attract people who are interested in the services and material of Complainant and its licensees by using its well-known trademark.

D. Respondent's Reply to Complainant's Response (dated June 15, 2000)

A "work title" under German Trademark Law has the same order of legal protection as a trademark or a company name. Domain names can be derived from work titles and conflict with them (cf. decision by the Landesgericht Hamburg, "eltern.de").

Complainant did not and was not able to register the trademark SCIENTOLOGIE in Germany because of Respondent's older rights regarding the word "Scientologie".

Respondent's website is not an economical competition for Complainant and therefore there is no danger of confusion.

E. Complainant's Response to Respondent's Reply (dated June 21, 2000)

Respondent's statements regarding the priority of trademarks, work titles and copyright in German Law are misleading and wrong. In the case cited by Respondent, the grounds of the decision were, first, the trademark rights and, second, the title rights which actually reinforced the trademark rights. The title rights became important because the title had a very high brand awareness.

In Germany, SCIENTOLOGY, rather than SCIENTOLOGIE, was registered in the same form as the registrations in the United States because the "GIE" form of the word is not regarded as the proper German translation of the mark SCIENTOLOGY.

Respondent admits in its own materials that the reason for purchasing, reviving

and promoting the obscure Nordenholz book was to associate that book with L. Ron Hubbard, the predecessor of Complainant as owner of the SCIENTOLOGY mark and its phonetic equivalents.

F. Respondent's Last Comments (dated June 22, 2000)

The priority rights to the name "Scientologie" have arisen with publication of the Book in the year 1934. Therefore, the point in time when Respondent acquired the re-publication rights to the Book is irrelevant.

As can be verified on the website <www.scientologie.de> of Respondent (which is a copy of the dormant website <www.scientologie.org>), this site is used for the promotion of the Book and does not contain any incorrect or misleading statements about Complainant's "Church of Scientology".

6. Discussion and Findings

Although not bound to do so under the Rules, the Panelist accepts and considers the Parties' further submissions after the Complaint and Response.

Para. 4.a. of the Policy provides that a complainant must prove cumulatively each of the following three grounds in order to be successful with the challenge of a registered domain name:

- (i) that the domain name registered by respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) that the respondent has no legitimate rights or interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

1. Identity or similarity: The Second Level Domain at issue, "scientologie", is identical to Complainant's trademark SCIENTOLOGIE which has obtained registration between 1984 and 1994 in 9 countries around the world. Furthermore, the Domain Name is similar to Complainant's English trademark SCIENTOLOGY, as it is phonetically similar to the English version and completely identical to the French translation (SCIENTOLOGIE). Complainant's basic trademark SCIENTOLOGY was first registered in the United States in 1970 and subsequently obtained registration in Germany in 1990. Although Complainant uses the original English version of its trademark for activities in Germany, there is a danger that the Domain Name could be understood as German translation of Complainant's English trademark SCIENTOLOGY. Thus, Respondent's Domain Name is identical or confusingly similar to some of Complainant's Marks.

2. Legitimate rights or interests: According to para. 4.c. of the Policy, the following shall demonstrate rights of a respondent to and legitimate interests in a domain name:

- (i) before any notice was given to respondent of the dispute, respondent used, or demonstrably made 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; or

- (ii) respondent (as an individual, business, or other organization) has been commonly known by the domain name, even though it has not acquired any trademark or service mark rights; or
- (iii) respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The record shows that Respondent had obtained the exclusive rights (“die ausschließlichen Nutzungsrechte”) to use the Book entitled “Scientologie - Wissenschaft von der Beschaffenheit und Tauglichkeit des Wissens” in January 1995 (see Exhibit 4 to Respondent’s Response of May 31, 2000). It registered the Domain Name in December 1995 with NSI and then immediately started to run a homepage where Respondent stated its intentions with regard to the promotion and sale of the Book as follows: “Because of the name similarity and parallels in content to the philosophy of L. Ron Hubbard’s “Scientology”, the Free Zone Association (Freie Zone e.V.) decided to preserve this book by republishing it in its original context.” After interventions by Complainant with Respondent and NSI, the Domain was put on hold by NSI in September 1996. The fact remains that Respondent used or tried to use the Domain Name for the sale of the Book before it received notice of a dispute by the representatives of Complainant.

An inquiry by the Panelist on June 22, 2000 into the page <www.scientologie.de>, described by Respondent to be a substitute site for “scientology.org”, and the linked homepage of Respondent’s association, <www.freezone.de>, revealed that Respondent “formed itself [...] in the days when the RTC (Religious Technology Center [= Respondent]) took over the Church of Scientology [CofS]. This was from 1982 on, when thousands of CofS members left the church or were expelled by the RTC.”

Looking at Respondent’s history as stated on its website, it appears to be a renegade group of the Church of Scientology: Free Zone was founded around 1982 by “Captain” Bill Robertson, apparently the “right arm” of L. Ron Hubbard at the time. According to the Articles of Association of Respondent, the “purpose of the association is to inform the public about the philosophies of cognition, especially the philosophy of L. Ron Hubbard, as well as about organizations working in this field. The association emphatically differentiates itself from the official and unofficial organizations of the Church of Scientology. The members of the association do not agree with their practice as well as their interpretation of the philosophy of L. Ron Hubbard.”

In summary, it is apparent that Respondent separated from the Church of Scientology, whose founder and leader, L. Ron Hubbard, assigned all rights to the trademark SCIENTOLOGY to Complainant. On the other hand, Respondent is holding genuine rights in the German Book entitled “Scientologie - Wissenschaft von der Beschaffenheit und Tauglichkeit des Wissens” which seems to be sharing philosophical roots with the philosophy of L. Ron Hubbard. The copyrights and other rights in this book have been licensed to Respondent by Dr. Nordenholz’s heirs, and these rights appear to be even older than Complainant’s trademarks. Under these circumstances it cannot be said that Respondent has no right whatsoever and no legitimate interest in the Domain Name. In the contrary, to use the Domain Name as an international platform to disseminate information about Respondent’s book and its underlying philosophy appears to be a legitimate interest in itself of Respondent. Accordingly, Complainant has failed to sustain its burden of proof in this respect.

3. Bad faith: Because the three grounds mentioned above must *cumulatively* be proven by Complainant, and Complainant failed already on the second ground, it needs not to be further examined if the disputed Domain Name was registered and used by Respondent in bad faith. However, for the sake of completeness, the Panelist would like to mention that there are little indications of circumstances according to para. 4.b. of the Policy given Respondent's non contested rights in the Book and given Respondent's interest in the Book's dissemination.

7. Decision

Considering the above, Complainant's request for relief under para. 4.i. of the Policy is denied.

Bernhard F. Meyer-Hauser
Sole Panelist

Dated: June 23, 2000