

# CPR Institute for Dispute Resolution

<b>COMPLAINANT</b>	Heathrow Land Company, LLP	File Number: CPR00-010
Address	1275 Lake Heathrow Lane	Date of Commencement: 10/6/00
Address	Lake Mary, FL 32746-4341	Domain Name: heathrow.com
Telephone	(407) 333-1000	Registrar: Tucows, Inc.
FAX	(407) 333-2945	Arbitrator: John J. Upchurch
E-mail	heathrow.com	

vs.

<b>RESPONDENT</b>	Rask, Inc. f/k/a Orthogonal Technologies, Inc.
Address	9784 Indian Key Trail
Address	Seminole, FL 33776
Telephone	(949) 496-6648
FAX	(813) 596-5062
E-mail	info@rask.com

Before John J. Upchurch, Arbitrator

## PROCEDURAL HISTORY

The Complaint was filed with CPR on 10/4/00 and, after review for administrative compliance, served on the respondent on 10/6/00. The Respondent timely filed a Response on 10/17/00. I was appointed Arbitrator pursuant to the Uniform Domain Name Dispute Resolution Policy (UDRP) and Rules promulgated by the Internet Corporation for Domain Names and Numbers (ICANN). Upon the written submitted record including 1) Complaint and all attachments; 2) Response and attachments; 3) Procedural History; and 4) Miscellaneous correspondence via e-mail, I find as follows:

## FINDINGS

Respondent's registered domain name, heathrow.com, was registered with Network Solutions, Inc. on 10/6/96. In registering the name, Respondent agreed to submit to this forum to resolve any dispute concerning the domain name, pursuant to the UDRP.

The UDRP provides, at Paragraph 4(a), that each of three findings must be made in order for a Complaint to prevail:

- i. Respondent's domain name must be identical or confusingly similar to a trademark or service mark in which complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

**IDENTITY/CONFUSING SIMILARITY:** Complainant alleges that heathrow.com is identical or confusingly similar to Complainant's trademark, Heathrow, which applies to planning and laying out of residential and office communities.

Given the fact that the second level domain name, "heathrow," is identical to complainant's registered trademark, "HEATHROW," the name and trademark are found to be virtually identical, and certainly confusingly similar.

I therefore conclude that the registered domain name is identical or confusingly similar to Complainant's protected mark.

**RIGHTS AND LEGITIMATE INTERESTS:** Complainant alleges that Respondent has no rights or legitimate interest with respect to the domain name at issue. In support for this allegation, Complainant notes that respondent has no trademark or service mark rights in the name “heathrow.com” and has not acquired any federal or state registrations for any similar marks, or acquired any rights based upon use in commerce. Respondent, on the other hand, notes that it has operated the site as a travel site for close to four years.

UDRP Paragraph 4(c) provides that Respondent’s rights or legitimate interests in a domain name may be demonstrated, without limitation, by (a) before notice to Respondent of the dispute, Respondent’s 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; or (b) Respondent has been commonly known by the domain name; or (c) Respondent is making 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.

Respondent apparently used the subject site for the offering of travel services for several years before any notice of the dispute. There is no indication this was not a bona fide offering of services. Further, there is no relationship between Complainant’s business of the planning and laying out of residential and office communities and Respondent’s travel related services, and thus no indicia of a motive to misleadingly direct customers.

I therefore conclude that Respondent does have rights or a legitimate interest with respect to the domain name at issue.

**BAD FAITH:** In support of the contention of Respondent’s bad faith registration and use, Complainant notes efforts by Respondent to “ransom” the name to Complainant for \$10,000, a sum far in excess of the costs of establishing the domain name. Respondent notes that it clearly communicated to a third party in 1997 that the domain name was not for sale. Respondent further noted that Complainant contacted it threatening legal action over the domain name in 1998, and that the possible sale of the name was a part of settlement negotiations with respect to the dispute initiated by Complainant.

Paragraph 4(b) of the UDRP provides that indications of bad faith include, without limitation, (a) registration for the purposes of selling, renting or transferring the domain name to the Complainant for value in excess of Respondent’s cost; (b) a pattern of registration in order to prevent Complainant from reflecting the mark in a corresponding domain name; (c) registration for the primary purpose of disrupting the business of a competitor; or (d) an intentional attempt to attract, for commercial gain, Internet users to Respondent’s web site by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation or endorsement of Respondent’s web site or location, or of a product or service on Respondent’s web site or location.

Complainant has failed to establish any conduct on the part of Respondent that meets any of the above criteria. Complainant’s allegations focus on the “ransom” question. However, see *Penguin Books Ltd. v. The Katz Family and Anthony Katz*, D2000-0204, May 20, 2000. (“Complainants opened the door to Respondent’s offer to settle”)

I therefore conclude that Respondent did not register and use the domain name in bad faith, as that term is defined in the ICANN Policy.

## **CONCLUSION**

In light of my findings above that (a) the registered domain name is identical or confusingly similar to Complainant’s protected mark; (b) Respondent does have rights or legitimate interest with respect to the domain name at issue; and (c) Respondent did not register and use the domain name in bad faith, as that term is defined in the ICANN Policy, I find in favor of the Respondent.

## **REMEDY**

Complainant’s request to transfer the domain name heathrow.com is hereby DENIED.

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John J. Upchurch, Arbitrator

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Date

