



My Vault Services LLC)
39 S. LaSalle Street, Suite 1000)
Chicago, IL 60603)
United States)
(Complainant))
v.)
Softline Studios)
Loren Stocker)
P.O. Box 2004)
Del Mar, CA 92014)
United States)
(Respondent))

Domain Name In Dispute:
<myvault.com>

**COMPLAINT IN ACCORDANCE WITH
THE UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY**

1. This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (UDRP), adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999, and approved by ICANN on October 24, 1999, and the Rules for Uniform Domain Name Dispute Resolution Policy (UDRP Rules), with an effective date of March 1, 2010, and the National Arbitration Forum (FORUM) Supplemental Rules (Supp. Rules). UDRP Rule 3(b)(i). Respondent has registered as a domain name www.myvault.com, a name essentially identical to Complainant's trademark registrations MY VAULT and MYVAULT. Upon information and belief, Respondent improperly seeks to capitalize on the goodwill of the MYVAULT brand, marks, and domain name by gaining revenue from traffic misdirected from other sites.

2. **COMPLAINANT'S INFORMATION AND AUTHORIZED REPRESENTATIVE**

Name:	My Vault Services LLC	Representative:	Julianne Hartzell
Address:	39 S. LaSalle Street Suite 1000 Chicago, IL 60603	Address:	Marshall Gerstein & Borun 233 S. Wacker Drive, Ste. 6300 Chicago, Illinois 60606
Telephone:	800.699.0441	Telephone:	312.474.6300
Fax:	312.260.9161	Fax:	312.474.0448
E-Mail:	cdejong@myvaultstorage.com	E-Mail:	jhartzell@marshallip.com

COMPLAINANT'S PREFERRED METHOD OF COMMUNICATION

Method: Electronic mail
Address: jhartzell@marshallip.com; ahernandez@marshallip.com
Contact: Julianne Hartzell

Method: Mail/Post
Address: 233 S. Wacker Drive, Ste. 6300
Chicago, Illinois 60606
Contact: Julianne Hartzell

Pursuant to ICANN Rule 3(b)(iv), the Complainant chooses to have this dispute heard before a **single-member** administrative panel.

3. RESPONDENT'S INFORMATION

Name: Softline Studios, Loren Stocker
Address 1: P.O. Box 2004, Del Mar, CA 92014
Telephone: (858) 792-5000
E-Mail: domain@800.net

Representative for Respondent:

William A. Delgado, Esq.
Willenken Wilson Loh & Lieb LLP
707 Wilshire Boulevard
Suite 3850
Los Angeles, CA 90017
wdelgado@willenken.com

4. DISPUTED DOMAIN NAME

(a) The following domain name is the subject of this Complaint:
<myvault.com>

(b) Registrar Name: eNom, Inc.
Registrar Address: 5808 Lake Washington Blvd., NE Ste. 300, Kirkland, WA
98033
Telephone Number: (425) 274-4500
FAX: (425) 974-4703
E-Mail Address: legal@enom.com

(c) Trademark/Service Mark Information:

Complainant asserts common law rights in MY VAULT for providing secure digital storage of personal information since at least as early as 1997. In addition, Complainant owns United States federal trademark registration number 2,907,143, granted November 30, 2004, for MY VAULT in International Class 038 for "online computer services for the transmission and exchange of secure information of all kinds, received from customers who seek to secure such information on the internet, in paper form, or in private databases for subsequent retrieval for use

in every day business and claim filing” and in International Class 039 for “online computer services that enable storage of secure information of all kinds, received from customers who seek to secure such information on the internet, in paper form, or in private databases for subsequent retrieval for use in every day business and claim filing.” Complainant also owns United States federal trademark registration number 3,551,655, granted December 23, 2008 for MYVAULT in International Class 045 for “Compiling inventories of personal items for others for insurance or security purposes.” Records from the United States Patent and Trademark office relating to each registration are attached as **Annexes A and B**.

5. FACTUAL BACKGROUND

A. Complainant’s Business and Website

E-INSURE Services, Inc. (“E-INSURE”), the parent company of Complainant My Vault Services, LLC, was founded in 1992 as a global platform for the presentation and trade of a variety of insurance and security products, online information storage solutions, digital asset management, and related internet services. See Declaration of David Thompson attached as **Annex C** at ¶¶ 1-2.

E-INSURE began using the MYVAULT trademark in connection with the provision of secure digital storage of personal information on the website E-INSURE.COM in 1997. Annex C at ¶ 3. The original login page for the MYVAULT service offered on the E-INSURE.COM website as it existed in 1998 is attached as **Annex D**; see also Annex C at ¶ 3. Customer data was entered in to the MYVAULT database at least as early as January 1998. Annex C at ¶ 4. This service was offered through a division of E-INSURE referred to as My Vault. Annex C at ¶ 1. By March, 2000, more than 750 users nationwide stored data in the database offered under the MYVAULT mark. Annex C at ¶ 4.

On August 18, 2000, David Thompson on behalf of E-INSURE registered the domain name <MY-VAULT.NET> and established a separate website to provide digital information storage services. Annex C at ¶ 5. The Whois Registration Record for My-Vault.net is attached as **Annex E**. At least as early as April 10, 2001, E-INSURE Services expanded its use of its MYVAULT trademark to include providing online computer services for the transmission, exchange, and storage of secure information via the My-Vault.net site. Annex C at ¶ 6. E-INSURE and Complainant have continuously used the MYVAULT mark since its introduction in 1997. Annex C at ¶¶ 11-13. David Thompson was the original registrant of a federal registration for the MY VAULT trademark for its services, Registration No. 2,907,143, granted November 30, 2004. Annex A; Annex C at ¶7.

In 2010, Complainant My Vault Services LLC was incorporated as a separate, wholly-owned subsidiary of E-INSURE. Annex C at ¶ 1. At that time, Mr. Thompson assigned all rights, interest, and goodwill in the MY VAULT trademark to Complainant, now Mr. Thompson’s successor in interest. Annex C at ¶12; Annex A. Registration No. 2,907,143 has become incontestable. Annex A. Complainant is also the owner of a federal registration for MYVAULT, Registration No. 3,551,655, granted December 23, 2008. Annex A.

Complainant’s public website is located at <MYVAULTSTORAGE.COM>. Annex C at ¶ 6. Each of the domains listed below also direct visitors to Complainant’s public website:

<GETMYVAULT.COM>
<GOMYVAULT.COM>
<MY-VAULT.CO>
<MY-VAULT.COM>
<MY-VAULT.TV>

<MYVAULTS.COM>
<MYVAULT.CO>
<MYVAULT.NET>
<MYVAULT.TV>
<MYVAULTSECURITY.COM>
<MY-VAULTHOME.COM>
<MYVAULTHOME.COM>

Annex C at ¶¶ 6, 8-10.

B. Relationship Between the Parties

There is not, nor has there ever been, any license or other business relationship between Complainant and Respondent. Accordingly, Respondent has no permission whatsoever to use Complainant's MY VAULT and MYVAULT trademarks. Annex C at ¶ 14.

C. Respondent's Business and Website

Respondent registered the disputed domain on March 6, 2000. A copy of the Whois registrant result for <myvault.com> is attached as **Annex F**.

Complainant was unable to find any information regarding the business of Softline Studios. The website <softlinestudios.com>, which is registered to Respondent, resolves to a blank search page with sponsored listings. **Annex G**.

Search engine results for Softline Studios (in conjunction with Mr. Stocker's name) returned one link to another company owned by Mr. Stocker (Del Mar Studios) along with a multitude of results identifying Softline Studios as the registrant of domain names. A sampling of these search results are attached as **Annex H**. According to the WHOIS record for myvault.com, Softline Studios owns about 5,131 domain names. Annex F. Included among the domains registered to Softline Studios are domains incorporating or slightly altering third party trademarks. For example, Softline Studios is the listed registrant for Halston.net, Intershield.com, Euroshop.net, margaritaville.net, hortonplaza.net, varisign.com, fishermanswharf.net, and depaul.net. The core of each is a registered trademark or a misspelling of a registered trademark and each website resolves to a search page. See **Annex I**. At least one of these sites, <Hortonplaza.net>, indicates that it is available for purchase. Annex I.

Loren Stocker, the identified contact for Softline Studios, has previously been sued in an individual capacity for his 1997 registration of the domain <ncaa.net>. The NCAA filed a trademark infringement suit against Mr. Stocker in May 2007. A copy of the Complaint filed by the NCAA is attached as **Annex J**. Mr. Stocker consented to entry of judgment against him and the court ordered transfer of the domain to the NCAA. A copy of the final judgment is attached as **Annex K**.

Mr. Stocker successfully opposed allegations brought by Goldline International, Inc. that his 1997 registration of <goldline.com> was made in bad faith in a UDRP proceeding filed in August 2000. A copy of the panel's decision is attached as **Annex L**. Mr. Stocker explained to the panel that he had been taking steps to build a high-end "Internet and community services" business since at least 1995 under the Gold Line Internet business name. Despite his success in the UDRP proceeding, Mr. Stocker apparently abandoned his long-standing business plans just months after the panel's decision when Goldline International obtained (under circumstances not known to Complainant) the

<goldline.com> domain name. A copy of <goldline.com> from November 2001 as found at www.archive.org is attached as **Annex M**.

Complainant contacted Respondent on January 18, 2011, and requested that it cease its use of the MYVAULT marks. To date, the parties have been unable to reach resolution. Annex C at ¶ 15.

In the course of the 11 years that Mr. Stocker has owned the disputed domain, the site has operated ostensibly as a search engine and featured sponsored links to third parties. These hyperlinks presumably provide Respondent compensation. A screenshot of the website from February 10, 2011 (just after the first correspondence from Complainant to Respondent) is attached as **Annex N**. As currently configured, the website still includes a search engine function as well as sponsored links to third parties. Complainant believes Respondent receives compensation for these sponsored links, as evidenced by the “About Us” page that states “myvault.com displays the top advertisers for and more” and “myvault.com brings you the most comprehensive group of advertisers in an easily navigated format, giving users a vast range of choices in as few clicks as possible.” A current capture of the website is attached as **Annex O**.

6. LEGAL ARGUMENT

FIRST ELEMENT: The Respondent’s domain name is either identical or confusingly similar to a trademark or service mark in which Complainant has rights.

Complainant owns an incontestable United States trademark registration for the mark MY VAULT for “online computer services for the transmission and exchange of secure information of all kinds, received from customers who seek to secure such information on the internet, in paper form, or in private databases for subsequent retrieval” and owns a registration for the mark MYVAULT for “compiling inventories of personal items for others for insurance or security purposes.” Complainant’s ownership of federal registrations in its mark establishes its rights in the marks MY VAULT and MYVAULT. See *Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) (“Registration of the NASAL-AIRE mark with the USPTO establishes Complainant’s rights in the mark”).

However, even prior to the federal registration, Complainant’s use of the mark in commerce on the internet since at least 1997 establishes rights in MY VAULT. See Annexes C and D. The Policy protects a “trademark or service mark” in which the complainant has rights, and does not expressly limit its application to a registered trademark or service mark. Policy at Paragraph 4(a)(i); *Imperial College v. Christophe Dessimoz* D2004-0322 (WIPO June 30, 2004). It is widely accepted that registration of a common law mark is not a prerequisite to relief under the Policy.

Respondent’s domain name <myvault.com> is identical in sound, appearance, meaning and commercial impression to Complainant’s trademark registrations MY VAULT and MYVAULT cited above. Further, the addition of the generic top-level domain (gTLD) name “.com” is without legal significance. Use of a gTLD is required of all domain name registrants. Hence, the gTLD “.com” does not serve to identify a specific service provider as a source of goods and services. See *Rollerblade, Inc. v. McCrady*, D2000-0429 (WIPO June 25, 2000) (finding that the top level of the domain name such as “.net” or “.com” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar). Accordingly, Complainant has satisfied the first element of its case pursuant to ICANN Policy ¶ 4(a)(i).

SECOND ELEMENT: Respondent Has No Rights Or Legitimate Interests In The Disputed Domain Name.

Pursuant to ¶4(c) of the Policy, a Panel may consider the following non-exhaustive factors to determine whether a Respondent has any rights or legitimate interests in the disputed domain name: (i) before any notice 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 (ii) Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if they have acquired no 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.

Respondent has neither a license nor any other permission to use Complainant's trademarks. As expressed above, Respondent's domain name is identical to and wholly incorporates Complainant's registered MY VAULT and MYVAULT trademarks. This evidence establishes a *prima facie* case showing that Respondent has no rights or legitimate interest in the disputed domain name which wholly incorporates the Complainant's trademark. *Sanofi-aventis v. Igor Peklov*, Case No. D2008-1419 (WIPO November 27, 2008). Further, as described in detail below, Respondent cannot provide evidence supportive of the exceptions set forth in paragraph 4(c) of the Policy.

(i) Before notice of the dispute, Respondent had never used the domain name in connection with a bona fide offering of goods or services

At the time Complainant first contacted Respondent regarding the dispute, the website provided a list of sponsored links and search functionality. The website included categories such as "internet provider," "wireless internet," "internet dating," "autos," "finances," "lifestyle," "education," "entertainment," and "shopping." Annex N. Use of the domain name as a search engine directing users to websites unrelated to Complainant's MY VAULT and MYVAULT marks does not constitute the offering of *bona fide* goods and services under Policy ¶ 4(c)(i). *Smith Travel Research, Inc. v. Victor An*, FA 1259999 (Nat. Arb. Forum June 15, 2009); *see also Disney Enters., Inc. v. Kamble*, FA 918556 (Nat. Arb. Forum Mar. 27, 2007) (holding that operation of a "pay-per-click" website using a confusingly similar domain name is not a bona fide offering of goods and services). In its current usage, Respondent capitalizes the first letter of My and the first letter of Vault in a manner similar to Complainant's usage. Annex O. This provides further evidence that Respondent seeks to capitalize on Complainant's mark and goodwill. *Which? Limited v. Whichcar.com c/o Whois Identity Shield/Vertical Axis, Inc.*, Case No. D2008-1637 (WIPO January 27, 2009).

To the extent that Respondent contends that the domain name was registered based on a good faith belief that the domain name's value derives from its generic or descriptive qualities, this argument must fail because Respondent cannot show that the use of the domain name is consistent with the value of this descriptive term chosen. In other words, the domain name must profit from the value of the word itself. *Cengage Learning Inc. v. Steve Myers*, FA0712001116919 (Nat. Arb. Forum January 15, 2008). To the contrary, prior to any notice of this dispute, Respondent used the domain to provide links to products having nothing to with the meaning of the word vault including autos, lifestyle, internet dating, shopping, etc. Annex N. Even in its current format, the website is primarily directed to links to roofing products having no clear link to the meaning of the words of the domain name. Similarly, while "my" and "vault" are both words within the dictionary, the two combined have no clear connection to Respondent's search engine. *Cengage Learning Inc. v. Steve Myers*, FA0712001116919 (Nat. Arb. Forum January 15, 2008).

- (ii) Respondent has never been commonly known by the disputed domain name

Respondent's WHOIS information identifies the registrant as Softline Studios and does not indicate that Respondent is commonly known by the <myvault.com> domain name, nor is there any other information known to Complainant to indicate that Respondent has ever been known by the disputed domain name. The Respondent has not sought, nor has Complainant granted, a license or permission to Respondent to use Complainant's mark in any way. Therefore, Respondent is not commonly known by the disputed domain name pursuant to Policy ¶ 4(c)(ii). *See Gallup, Inc. v. Amish Country Store*, FA 96209 (Nat. Arb. Forum Jan. 23, 2001)(finding that respondent does not have rights in a domain name when the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name).

- (iii) Respondent's use of the disputed domain is not for any legitimate non-commercial or fair use

Paragraph 4(c)(iii) of the Policy provides that a respondent has no rights or legitimate interests in a disputed domain name if it is not making any legitimate, non-commercial or fair use of that disputed domain name. In this instance, Respondent does not offer at the disputed website any non-commercial, fair use information. Instead, Respondent uses the domain name to offer a search function. Since Respondent's website is commercial in nature, it cannot qualify under the safety of Policy ¶ 4(c)(iii) as a legitimate noncommercial fair use without intent for commercial gain. To the extent that Respondent disputes that he receives commercial compensation from the disputed domain, Complainant submits that the use of a blank search engine in this instance is merely a pretext for cybersquatting. Specifically, Respondent's use of the same blank search page on each of the domains identified above as belonging to another trademark owner demonstrates Respondent's true cybersquatting business model. Annex I. Such a pretext is insufficient to establish a legitimate noncommercial or fair use. *Martha Stewart Living Omnimedia Inc. v. Josh Gorton*, WIPO Case D2005-110 ("there can be no legitimate noncommercial or fair use of a domain name within the meaning of Paragraph 4(c)(iii) where such use is merely a pretext for cybersquatting").

Accordingly, Complainant has established the second element of its case.

THIRD ELEMENT: The disputed domain name was registered and is being used in bad faith.

- (i) Respondent's bad faith is evidenced by his failure to use the disputed domain for a bona fide purpose

A UDRP Respondent should not be permitted to circumvent the reach of the Policy by simply holding a domain name that consists of the trademark of the Complainant until a profitable purpose comes along. A Respondent's speculative statement about amorphous and hypothetical plans for the disputed domain should be given no credence. The Respondent has held the disputed domain for eleven years and has not used it in connection with any bona fide goods or services in that time. Rule 4(c)(i) requires use or demonstrable preparations to use a domain name before any notice of the dispute. *See Pepperdine University v. BAD Partners, Inc.*, WIPO Case D2006-1003. Respondent's failure to actively use the disputed domain name evidences bad faith registration and use under the Policy. *See Am. Broad. Cos., Inc. v. Sech*, FA 893427 (Nat. Arb. Forum Feb. 28, 2007) (concluding that respondent's failure to make active use of its domain name in the three months after its registration indicated that the respondent registered the disputed domain name in bad faith); *DCI S.A. v. Link Commercial Corp.*, D2000-1232 (WIPO Dec. 7, 2000) (concluding that the respondent's [failure to make an active use] of the domain name satisfies the requirement of ¶ 4(a)(iii) of the Policy).

- (ii) Respondent owns many domains and has no apparent legitimate business interest in them

As noted above, Complainant's research revealed a list of Respondent's domains and many of these domains appear to infringe on the trademark rights of third parties. None of the links tested by Complainant link to any website that reveals a good faith use of the domain by the Respondent. To the contrary, each links to third party websites including search engines and online revenue generating programs. Screen shots of the relevant web pages are attached as **Annex J**. Respondent's prior history with the NCAA and Goldline International, Inc. further demonstrate Respondent's pattern of conduct in registering domain names to profit financially from the trademark rights of others. One of the factors that support a panel's finding of bad faith use is a Respondent's pattern of conduct in registering domain names in order to prevent the owner of a trademark from using its mark in a corresponding domain name. Policy ¶ 4(b)(ii). The pattern of conduct of this Respondent demonstrates that Respondent is acting in bad faith.

7. REMEDY SOUGHT

The Complainant requests that the Panel issue a decision that the domain-name registration be transferred to Complainant.

8. OTHER LEGAL PROCEEDINGS

At this time, to Complainants knowledge, no other legal proceedings have been commenced or terminated in connection with or relating to the domain name that is the subject of the complaint.

10. COMPLAINT TRANSMISSION

The Complainant asserts that a copy of this Complaint, together with the cover sheet as prescribed by FORUM's Supplemental Rules, has been sent or transmitted to the Respondent in accordance with UDRP Rule 2(b) and to the Registrar(s) of the domain name(s), in accordance with FORUM Supp. Rule 4(e).

11. MUTUAL JURISDICTION

The Complainant will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the jurisdiction where the Respondent is located, as shown by the address given for the registrant in the WHOIS Database at the time of the submission of the Complaint to NAF.

12. LANGUAGE OF THE PROCEEDINGS

The language of the Registration Agreement is English and the Complaint is accordingly provided in English pursuant to Paragraph 11(a) of the Rules. A copy of all of the applicable policies is provided as **Annex P** to this Complaint.

13. JURISDICTIONAL BASIS

This dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The Registration Agreement incorporates the Policy. Annex P. To

Complainant's knowledge, no other legal proceedings have commenced or terminated in connection with or relating to the subject domain name.

14. CONCLUSION

Based on the foregoing, Complainant respectfully requests the Panel to find in its favor, and order the transfer of the disputed domain name to Complainant.

15. CERTIFICATION

Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain-name holder and waives all such claims and remedies against (a) the dispute-resolution provider and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator, and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.

Complainant certifies that the information contained in this Complaint is to the best of Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully Submitted,

My Vault Services LLC

By its attorney:

December 20, 2011

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