



**NATIONAL
ARBITRATION
FORUM**

**THE NATIONAL ARBITRATION FORUM
P.O. BOX 50191
MINNEAPOLIS, MINNESOTA 55405 USA**

America Online, Inc.

DECISION

COMPLAINANT,

vs.

Forum File No.: FA 0003000094265

Pablo Barrutia

RESPONDENT.

The above-entitled matter came on for an administrative hearing on April 17, 2000, before the undersigned on the Complaint of America Online, Inc., hereafter "Complainant", against Pablo Barrutia, hereafter "Respondent". Complainant appears by James R. Davis, Attorney of Washington, D.C. The Respondent appears pro se.

PROCEDURAL FINDINGS

Domain Name: aolmoviefone.com

Domain Name Registrar: Network Solutions, Inc.

Domain Name Registrant: Pablo Barrutia

Date of Domain Name Registration: February 1, 1999

Date Complaint Filed: March 8, 2000

Date of Commencement of Administrative Proceeding in Accordance with Rule 2(a)¹ and Rule 4(c): March 9, 2000.

Due date for a Response: April 3, 2000.

After reviewing the Complaint, and determining it to be in administrative compliance, the National Arbitration Forum (The Forum) forwarded the Complaint to the Respondent on March 9, 2000 in compliance with Rule 2(a), and the administrative proceeding was commenced pursuant to Rule 4(c). In compliance with Rule 4(d), The Forum immediately notified Network Solutions, Inc. (Network Solutions), the Internet Corporation for Assigned Names and Numbers (ICANN), and the Complainant that the administrative proceeding had commenced. The Respondent responded to The Forum by memorandum dated March 31, 2000, pursuant to Rule 5(a).

On February 1, 1999, Respondent registered the domain name "aolmoviefone.com" with Network Solutions, the entity that is the Registrar of the domain name. On March 8, 2000, Network Solutions verified that Respondent is the Registrant for the domain name "aolmoviefone.com", and that further by registering its domain name with Network Solutions, Respondent agreed to resolve any dispute regarding its domain name through ICANN's Rules for Uniform Domain Name Dispute Resolution Policy, and the Uniform Domain Name Dispute Resolution Policy.

FINDINGS AND CONCLUSIONS

1. The Complainant is a corporation that operates an interactive online internet service with over 20 million subscribers and has used the "AOL" mark since at least 1989. Among its extensive internet business activities, Complainant operates a portal web site and uses the mark "moviefone.com" and the mark "moviefone" in connection therewith. AOL is the owner of numerous trademark registrations for the marks AOL and MOVIEFONE, including U.S. trademark registration No. 1,977,731 for AOL, and No. 1,606,658 for MOVIEFONE and regularly uses them in national and international commerce in connection with its advertising and sales of service.
2. The Respondent is an individual. He has provided no information pertaining to any business interest relative to the domain name in dispute.

¹ Any reference to "Rule" or "Rules" are to ICANN's Rules for Uniform Domain Name Dispute Resolution Policy and Uniform Domain Name Dispute Resolution Policy as supplemented by the National Arbitration Forum's supplemental Rules to ICANN's Uniform Domain Resolution Policy.

3. The Respondent states in his response to the complaint made:
- (a) ". . . it should be stated that I purchased the Property for a legitimate noncommercial use without intent for commercial gain, consumer confusion or dilution of the complainant's mark. Specifically, I purchased the Property as an individualistic act of expression that showed my resentment toward an act America Online committed against Spanish-speaking people a few years ago". Response, page 2.
 - (b) ". . . my principal purpose in owning the Property was to express my resentment toward an action committed by America Online. In 1996, America Online staff patrolled discussion groups and enforced a discriminatory rule of English-only. They nonchalantly erased non-English messages, most of which were in Spanish. These roving censors essentially held back the voice of Spanish-speaking people during that time. It is important to realize that the Internet is a place of free speech. I believe that no one should be in the business of censorship and that all people should be given their individual freedom of speech. As such, I own the said domain name in order to express my feeling of resentment for past actions committed by the Complainant". Response, page 4.
4. Complainant has invested substantial sums of money in developing and marketing its services utilizing the marks "AOL" and "MOVIEFONE" and both are well known and associated with Complainant's business.
5. On February 1, 1999, the same day AOL announced its intended acquisition of Moviefone, and long after AOL's adoption and first use of the marks AOL and MOVIEFONE, Respondent registered the domain name "aolmoviefone.com" through Network Solutions, Inc.
6. The domain name is nearly identical and confusingly similar to "AOL" and "MOVIEFONE", marks owned by Complainant.
7. The Respondent registered the domain name "aolmoviefone" in bad faith and has no rights or legitimate business interests in respect to said domain name. The following is evidence of Respondent's bad faith:
- (a) At the time Respondent registered the domain name "aolmoviefone", Complainant was actively using the same identical names in its businesses throughout the world;
 - (b) At the time Respondent registered the domain name "aolmoviefone", he was not engaged in any legitimate business activity that utilized that name;

- (c) Respondent by his own admission registered the domain name out of resentment and in protest of certain actions of Complainant that Respondent believes are offensive toward Spanish-speaking discussion groups.
- (d) Respondent registered the domain name "aolmoviefone" primarily for the purpose of disrupting the business of Complainant.
- (e) Respondent has registered other domain names which appear to infringe on other duly registered trademarks or prominent business names, specifically:

<u>Respondent's Registration</u>	<u>Trademark or Business Name</u>
"vodafone-airtouch.com"	VODAFONE AIRTOUCH
"vodafone-airtouch.net"	VODAFONE AIRTOUCH
"newbritishaerospace.com"	BRITISH AEROSPACE
"newbritishaerospace.net"	BRITISH AEROSPACE

The foregoing constitutes a pattern of conduct, which limits, disrupts or prevents legitimate business use of established trademarks and business names.

- (f) Respondent has articulated no anticipated use of the domain name other than to transfer it to Complainant in exchange for contributions to organizations of Respondent's choice. The foregoing constitutes a pattern of conduct, which limits, disrupts or prevents legitimate business use of established trademarks and business names.

- 8. Complainant's prayer for relief requests that the domain name "aolmoviefone.com" be transferred from Respondent to Complainant.

DECISION

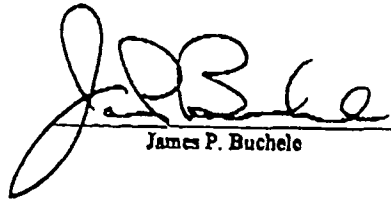
The undersigned certifies that he has acted independently and has no known conflict of interest to serve as the Arbitrator in this proceeding. Having been duly selected, and being neutral, the undersigned makes the following DECISION based upon the findings and conclusions:

- 1. The domain name "aolmoviefone.com", registered by Respondent on February 1, 1999, with Network Solutions, Inc., is nearly identical and confusingly similar to the other marks in which Complainant has established rights.
- 2. Respondent registered the domain name primarily for the purpose of protest and

to disrupt Complaint's business.

3. Respondent has engaged in a pattern of conduct of registering domain names strikingly similar or identical to registered trademarks or established business names to interfere with or prevent the owners from utilizing certain domain names.

Accordingly, pursuant to Rule 4(i), it is decided that the domain name "aolmoviefone.com" should be transferred from Respondent to the Complainant.



James P. Buchele

Dated: April 17, 2000

Judge James P. Buchele (Retired)
Arbitrator