

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

America Online, Inc. ("AOL")
22000 AOL Way
Dulles, Virginia 20166,

DECISION

COMPLAINANT,

vs.

Forum File No.: FA0001000092016

QTR Corporation
Paris, France,

RESPONDENT.

The above entitled matter came on for an administrative hearing on February 4, 2000 before the undersigned on the Complaint of America Online, Inc. ("AOL"), hereafter "Complainant", against QTR Corporation, hereafter "Respondent". Complainant was represented by: James R. Davis, II, 1050 Connecticut Avenue, N. W., Washington, D. C. 20036. There was no representation on behalf of Respondent: Upon the written submitted record, the following **DECISION** is made:

PROCEDURAL FINDINGS

Domain Name: icqsms.com
Domain Name Registrar: Network Solutions, Inc.
Domain Name Registrant: QTR Corporation
Date of Domain Name Registration: December 3, 1999
Date Complaint Filed: January 11, 2000

Date of Commencement of Administrative Proceeding in Accordance with Rule 2(a)¹ and Rule 4(c): January 11, 2000

Due date for a Response: February 3, 2000. Respondent did not submit a Response to the Complaint.

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 January 11, 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. Respondent did not submit a response to The Forum within twenty (20) days pursuant to Rule 5(a).

On December 3, 1999, Respondent registered the domain name "icqsms.com" with Network Solutions, the entity that is the Registrar of the domain name. On January 11, 2000, Network Solutions verified that Respondent is the Registrant for the domain name "icqsms.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 OF FACT

1. That Complainant is the owner of numerous trademarks, service marks, and trade names that include the term "ICQ", e.g. ICQ, ICQ IT!, ICQ SMS (collectively the ICQ Marks). Complainant also uses the mark ICQ.COM as the domain name for its portal Web site for the ICQ services. The ICQ Marks are used extensively at this portal Web site, which is a significant method of promoting the ICQ service.

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.

2. That Complainant is the owner of at least 9 trademark registrations worldwide for the mark ICQ, including registration in Austria, Australia, Chile, Denmark, Finland, France, Mexico, Norway, and Switzerland.
3. That as early as 1996, Complainant and its predecessor-in-interest adopted and began using many of its ICQ Marks in connection with computer on-line services and other Internet-related services. Complainant adopted and began using the Mark ICQ SMS publicly at least as early as November, 1999 in connection with wireless services offered through the ICQ service. The ICQ Marks have been used continuously and extensively in interstate and international commerce in connection with the advertising and sale of Internet-related services.
4. That Complainant has invested substantial sums of money in developing and marketing its service.
5. That Respondent registered the domain name "icqsms.com" in bad faith and has no rights or legitimate interests in respect to said domain name. The following is evidence of Respondent's bad faith:
 - a. That Respondent registered the domain name on December 3, 1999, shortly after Complainant's adoption and first use of the mark "ICQ SMS" in November 1999, and long after Complainant began using its other ICQ marks.
 - b. That respondent has made no legitimate use of the domain name "icqsms.com" and it seeks to profit from its registration of said domain name by trading upon the goodwill associated with the ICQ Marks. Respondent's profit motive is evidenced by its offer to sell said domain name by listing in the WHOIS directory "...This domain name is for sale..." Further that Respondent provided incomplete and/or false contact information in the WHOIS directory by failing to provide any street address or street name, and that the facsimile number provided does not route to a legitimate facsimile number.
 - c. Respondent, or persons affiliated with Respondent, have engaged in a pattern of registering domain names that infringe upon other entities' marks.
6. Complainant's prayer for relief requests that the domain name "icqsms.com" be transferred from Respondent to Complainant.

CONCLUSIONS

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 impartial, the undersigned makes the following findings and conclusions:

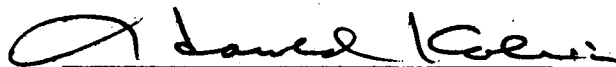
1. The domain name "icqsms.com", registered by Respondent on December 3, 1999 with Network Solutions, is identical to Complainant's ICQ Mark, ICQ SMS and is nearly identical and confusingly similar to the other ICQ marks in which Complainant has rights, including the mark ICQ, and to which Respondent has no right or legitimate interests.
2. Respondent registered and acquired the domain name "icqsms.com" primarily for the purpose of selling or otherwise transferring the said domain name registration to the Complainant who is the owner of the trade mark or service mark, or to a competitor of the Complainant, for valuable consideration in excess of Respondent's out-of-pocket costs directly related to the domain name. Respondent registered and used the domain name in bad faith.

DECISION

Based upon the above findings and conclusions, and pursuant to Rule 4(i), it is decided as follows:

THE UNDERSIGNED DIRECTS THAT THE DOMAIN NAME "icqsms.com" REGISTERED BY RESPONDENT QTR CORPORATION BE TRANSFERRED TO COMPLAINANT AMERICA ONLINE, INC. (AOL).

Dated: February 10, 2000, by Judge Harold Kalina (Ret.), Arbitrator



Honorable Harold Kalina