

Overseas Concepts International
Registration Department
POB 1345 Georgetown
Cayman Islands, BWI

October 24, 2002

Steve Lewis
National Arbitration Forum
P.O. Box 50191
Minneapolis, MN 55405
USA

RE: Forum Case Number FA0210000128643, kiddkraddick.com
CC: David Cradick, c/o Claudia Werner

Mr. Lewis:

We are in receipt of your communication regarding kiddkraddick.com. Accordingly, the following response is submitted:

We, the Respondent, may be reached via postal mail addressed to:

Overseas Concepts International
Registration Department
POB 1345 Georgetown
Cayman Islands, BWI

-or-

via electronic mail (e-mail) to email@kiddkraddick.com

We agree to the Complainant's choice to have this dispute heard before a single-member administrative panel. ICANN Rule 3(b)(iv).

In response to the allegations made by the Complainant, we, the registrant, are neither related to nor affiliated with Russ Martin, as hypothesized by Complainant. We are therefore unable to comment with regard to any information that may have been placed on a website under Russ Martin's control. To the extent that the basis of this complaint may be confined to the fact that Complainant and Russ Martin are apparently competitors in the field of radio entertainment broadcasting, Respondent asks that the complaint be immediately withdrawn. It is neither our desire nor our intent to become involved in any dispute that may exist between the Complainant and any previous registrant of the kiddkraddick.com domain name.

The Respondent submits its legitimate interest in the kiddkraddick.com domain name is that of a musical artist bearing the stage name Kidd Kraddick. Development of the kiddkraddick.com website has not yet been completed. No unique or original content has been displayed by Respondent to date. It is not our intent to tarnish the reputation of or in any way disparage the Complainant. As to an allegation of intentional disparagement towards Complainant, certainly, no reference has been made to the Complainant. It is unclear as to how any of the pages that

were displayed as a result of a redirection from the kiddkraddick.com domain name could be construed as an attempt by Respondent to tarnish the reputation or image of the Complainant.

The Complainant has purported that the information contained on the domain name registration is false. We regard this statement as ill informed. Every effort was made to fill out the form provided by the Registrar as accurately as possible. The complainant has stated there is no such country listed as "KY" in the world. In fact, "KY" is the universally accepted ISO country code for the Cayman Islands. "BWI" is a similarly accepted abbreviation for "British West Indies", which refers to the geographical region in which the Cayman Islands exist. It was the Respondent's intention to input its non-United States contact information into a format the Respondent submits is "U.S.-centric" in as compatible a format as possible. To date, the Respondent has not received any direct communication from Complainant, and is unaware of any attempts by the Complainant to directly contact Respondent. The Complainant's failure to accurately research the contact information provided on the registration must not be interpreted as the Registrant's non-existence.

Complainant's allegation that an Internet user would only enter "kiddkraddick.com" into their web browsing software in an attempt to view information pertaining to the assumed name of a morning radio personality, as well as the supposition that only a single individual in the world could coin the name "Kidd Kraddick" is most certainly presumptuous. No attempt has been made to benefit from or trade off of whatever notoriety the radio deejay by the same name may enjoy. Respondent has made no reference to Complainant.

A bad faith registration, as submitted by the Complainant, would suppose that the Respondent have an awareness of Complainant's use of the Kidd Kraddick name, or even the Complainant's very existence. Indeed, we are unfamiliar with the Complainant and / or any radio program that may exist in the Respondent's name, either real or assumed.

Any confusion that may occur among a limited portion of the Internet population as a result of Respondent's use of "kiddkraddick.com", while regrettable, is hardly cause to transfer the domain name to Complainant. In *Tarkan Tevetoglu and H.I.T.T. Muzik Produksiyon Tanitim Turizm Sanayi Ve Dis Ticaret Ltd.Sti., v. Deep.Net Corp.* (WIPO Case No. D2002-0278) the Complainants' assertions that the disputed Domain Name was registered in bad faith and is being used in bad faith do not outweigh Respondent's reply that the Domain Name was registered innocently and is not being used in bad faith.

Complainant's statement that "Complainant's attorney discovered though the domain name registration was not even near expiration, it had been transferred..." would appear irrelevant. It is Respondent's understanding that domain names are regularly traded between parties and transferred between registrars in the course of legitimate and good faith transactions.

We respectfully submit that, as referenced in the Complainant's initial complaint, Mr. Cradick enjoys sufficient use of other domain names, including but not limited to "kiddlive.com" and "kiddkraddickinthemorning.com." The fact that Respondent has not yet provided unique identifying content to the kiddkraddick.com domain name should not be construed as the Respondent's lack of legitimate interest in the domain name.

In preparing a response to Complainant, we have noted several discrepancies in Complainant's statement. The Complainant certifies in the original complaint that "Continuously since at least

as early as 1978, Complainant has used the name “Kidd Kraddick” to distinguish his morning radio broadcasting show.” However, our research has only shown evidence the Complainant has used this moniker since 1990.

Further, the Complainant references an application for a United States Trademark for the mark “KIDD KRADDICK.” It should be noted that no Trademark rights have been certified and no federal trademark has been awarded by the United States Patent and Trademark Office (USPTO). According to the USPTO, a trademark application was only submitted on October 2, 2002. It could be argued that the sole reason for attempting a United States Trademark registration is to bolster a case against Respondent or previous registrant of “kiddkraddick.com.” In *Infodev Electronic Designers International, Inc. v. Infodev* (WIPO Case No. D2002-0565), the panel found that since the Complainant did not hold a registered trademark identical to the domain name, the Respondent was under no obligation to relinquish the domain name to the Complainant. Moreover, the panel found that “in these circumstances, it is not necessary for the Panel to make any findings in relation to elements (ii) and (iii) of paragraph 4(a) of the Policy, even though the Panel considers that the domain name <infodev.com> is undoubtedly confusingly identical to the name "INFODEV" and the Respondent has not filed any Response to the Complaint and then has not alleged any facts or elements to justify prior rights or legitimate interests in the said domain name.”

The Respondent submits that it has apparently been very much “caught in the middle” of a dispute between the Complainant and the previous registrant of the domain name kiddkraddick.com. Complainant’s assertions that the Respondent does not exist, has provided false contact information, or is somehow connected with a previous registrant are unfounded.

In conclusion, there is no trademark violation, the domain name has not been registered in bad faith, and cannot show that the Respondent has no rights or legitimate interests in the domain name. The Complainant has failed to make a case under ICANN Rule 3(b)(ix). Therefore, we respectfully ask that the Panel enter a decision in favor of the Respondent.

Respondent asserts that a copy of this response has been sent or transmitted to Complainant as prescribed by applicable ICANN Rule(s).

Respondent certifies that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response 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.