



## DECISION

AARC, Inc. v. Doug Petrie  
Claim Number: FA0708001069923

### PARTIES

Complainant is **AARC, Inc.**, Spartanburg, SC (“Complainant”) represented by **Alicia Brown Oliver**, of **Chambliss, Bahner & Stophel, P.C.**, 1000 Tallan Building, Two Union Square, Chattanooga, TN 37402. Respondent is **Doug Petrie** (“Respondent”), 154 State Street, Hackensack, NJ 07601.

### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**advance-america.us**>, registered with **GoDaddy Software, Inc.**

### PANEL

The undersigned certifies that he or she has acted independently and impartially and to the best of his or her knowledge has no known conflict in serving as Panelist in this proceeding.

Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum (the “Forum”) electronically on August 27, 2007; the Forum received a hard copy of the Complaint on August 29, 2007.

On August 28, 2007, GoDaddy Software, Inc. confirmed by e-mail to the Forum that the <**advance-america.us**> domain name is registered with GoDaddy Software, Inc. and that Respondent is the current registrant of the name. GoDaddy Software, Inc. has verified that Respondent is bound by the GoDaddy Software, Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with the U.S. Department of Commerce’s usTLD Dispute Resolution Policy (the “Policy”).

On September 7, 2007, a Notification of Complaint and Commencement of Administrative Proceeding (the “Commencement Notification”), setting a deadline of September 27, 2007 by which Respondent could file a Response to the Complaint, was transmitted to Respondent in compliance with Paragraph 2(a) of the Rules for usTLD Dispute Resolution Policy (the “Rules”).

Having received no Response from Respondent, the Forum transmitted to the parties a Notification of Respondent Default.

On October 4, 2007, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the Forum appointed Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the Forum has discharged its responsibility under Paragraph 2(a) of the Rules. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the Policy, the Rules, the Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any Response from Respondent.

### **RELIEF SOUGHT**

Complainant requests that the domain name be transferred from Respondent to Complainant.

### **PARTIES' CONTENTIONS**

#### **A. Complainant**

1. Respondent's <**advance-america.us**> domain name is identical to Complainant's ADVANCE AMERICA mark.
2. Respondent does not have any rights or legitimate interests in the <**advance-america.us**> domain name.
3. Respondent registered and used the <**advance-america.us**> domain name in bad faith.

B. Respondent failed to submit a Response in this proceeding.

### **FINDINGS**

Complainant, AARC, Inc., operates a chain of payday advance businesses across the United States. Complainant conducts these businesses under the ADVANCE AMERICA mark and has done so since 1997. Complainant has invested considerable time and effort in promoting its business under the ADVANCE AMERICA mark and the mark has become widely known to consumers. Complainant holds a trademark registration for the ADVANCE AMERICA mark with the United States Patent and Trademark Office ("USPTO") (Reg. No. 3,005,984 issued October 11, 2005). Complainant also advertises its payday advance services online at the <advanceamerica.net> domain name.

Respondent registered the <**advance-america.us**> domain name on October 31, 2005. Respondent is using the disputed domain name to redirect Internet users to a website that features Complainant's ADVANCE AMERICA mark and offers payday advance loans in direct competition with Complainant.

### **DISCUSSION**

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

In view of Respondent's failure to submit a Response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to Paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to Paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) (“In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.”).

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered or is being used in bad faith.

Given the similarity between the Uniform Domain Name Dispute Resolution Policy (“UDRP”) and the usTLD Policy, the Panel will draw upon UDRP precedent as applicable in rendering its decision.

### **Identical and/or Confusingly Similar**

By virtue of its trademark registration with the USPTO, the Panel finds Complainant has sufficiently established rights in the ADVANCE AMERICA mark pursuant to Policy ¶4(a)(i). *See Vivendi Universal Games v. XBNetVentures Inc.*, FA 198803 (Nat. Arb. Forum Nov. 11, 2003) (“Complainant's federal trademark registrations establish Complainant's rights in the BLIZZARD mark.”); *see also U.S. Office of Pers. Mgmt. v. MS Tech. Inc.*, FA 198898 (Nat. Arb. Forum Dec. 9, 2003) (“[O]nce the USPTO has made a determination that a mark is registrable, by so issuing a registration, as indeed was the case here, an ICANN panel is not empowered to nor should it disturb that determination.”).

Respondent's <**advance-america.us**> domain name is identical to Complainant's ADVANCE AMERICA mark, as the disputed domain name merely adds a hyphen between the two words in the mark. Previous panels have found, and this Panel so finds, the addition of a hyphen is not enough to distinguish a disputed domain name from a

corresponding mark. The disputed domain name also differs from the ADVANCE AMERICA mark because it adds the country-code top-level domain (“ccTLD”) “.us.” However, as a top-level domain is required of all domain names, the addition of a ccTLD is irrelevant under the Policy.

Therefore, the Panel finds the <advance-america.us> domain name is identical to Complainant’s ADVANCE AMERICA mark pursuant to Policy ¶4(a)(i). *See Chernow Commc’ns, Inc. v. Kimball*, D2000-0119 (WIPO May 18, 2000) (holding “that the use or absence of punctuation marks, such as hyphens, does not alter the fact that a name is identical to a mark”); *see also InfoSpace.com, Inc. v. Ofer*, D2000-0075 (WIPO Apr. 27, 2000) (finding that “[t]he domain name ‘info-space.com’ is identical to Complainant’s INFOSPACE trademark. The addition of a hyphen and .com are not distinguishing features.”); *see also Gardline Surveys Ltd. v. Domain Fin. Ltd.*, FA 153545 (Nat. Arb. Forum May 27, 2003) (“The addition of a top-level domain is irrelevant when establishing whether or not a mark is identical or confusingly similar, because top-level domains are a required element of every domain name.”); *see also Tropar Mfg. Co. v. TSB*, FA 127701 (Nat. Arb. Forum Dec. 4, 2002) (finding that since the addition of the country-code “.us” fails to add any distinguishing characteristic to the domain name, the <tropar.us> domain name is identical to the complainant’s TROPAR mark).

The Panel finds Policy ¶4(a)(i) satisfied.

### **Rights or Legitimate Interests**

Complainant asserts Respondent lacks rights and legitimate interests in the <advance-america.us> domain name. Under Policy ¶4(a)(ii), the initial burden of proving this allegation lies with Complainant. Once Complainant has made a *prima facie* case, however, the burden shifts to Respondent to show he does have rights or legitimate interests in the disputed domain name. In the instant case, the Panel finds Complainant has established a *prima facie* case under the Policy. *See eHealthInsurance Servs. Inc. v. Hasan*, FA 982289 (Nat. Arb. Forum July 9, 2007) (“Complainant bears the initial responsibility of making a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name.”); *see also Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (holding that once the complainant asserts that the respondent has no rights or legitimate interests with respect to the domain, the burden shifts to the respondent to provide “concrete evidence that it has rights to or legitimate interests in the domain name at issue”).

As Respondent has failed to answer the Complaint, the Panel presumes Respondent lacks rights and legitimate interests in the disputed domain name. *See Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) (“Given Respondent’s failure to submit a substantive answer in a timely fashion, the Panel accepts as true all of the allegations of the complaint.”); *see also Vanguard Group, Inc. v. Collazo*, FA 349074 (Nat. Arb. Forum Dec. 1, 2004) (finding that because the respondent failed to submit a response, “Complainant’s submission has gone unopposed and its arguments undisputed. In the absence of a Response, the Panel accepts as true all reasonable allegations . . . unless

clearly contradicted by the evidence.”). Nevertheless, the Panel will still examine the record to determine if Respondent has rights or legitimate interests pursuant to Policy ¶4(c).

As Complainant has established rights to the ADVANCE AMERICA mark and Respondent has not come forward with any evidence showing he is the owner or beneficiary of a mark identical to the <advance-america.us> domain name, Complainant has satisfied Policy ¶4(c)(i). *See Meow Media Inc. v. Basil*, FA 113280 (Nat. Arb. Forum Aug. 20, 2002) (finding that there was no evidence that the respondent was the owner or beneficiary of a mark that is identical to the <persiankitty.com> domain name); *see also Pepsico, Inc. v Becky*, FA 117014 (Nat. Arb. Forum Sept. 3, 2002) (holding that because the respondent did not own any trademarks or service marks reflecting the <pepsicola.us> domain name, it had no rights or legitimate interests pursuant to Policy ¶4(c)(i)).

Complainant asserts Respondent is not authorized to use Complainant’s ADVANCE AMERICA mark in any way and Respondent is not associated with Complainant in any way. In addition, Respondent’s WHOIS information does not indicate, and there is no other evidence in the record to suggest, Respondent is commonly known by the <advance-america.us> domain name. The Panel finds Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶4(c)(iii). *See Gallup, Inc. v. Amish Country Store*, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) (finding that the respondent does not have rights in a domain name when the respondent is not known by the mark); *see also Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where 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).

Respondent is using the <advance-america.us> domain name to offer payday advance loans in direct competition with Complainant, and the Panel presumes Respondent profits when Internet users pursue a loan through his website. The Panel finds this type of activity does not constitute either a *bona fide* offering of goods or services under Policy ¶4(c)(ii) or a legitimate noncommercial or fair use under Policy ¶4(c)(iv), and further indicates Respondent’s lack of rights and legitimate interests in the disputed domain name. *See Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 180704 (Nat. Arb. Forum Sept. 30, 2003) (“Respondent’s demonstrated intent to divert Internet users seeking Complainant’s website to a website of Respondent and for Respondent’s benefit is not a *bona fide* offering of goods or services under [UDRP] ¶4(c)(i) and it is not a legitimate noncommercial or fair use under [UDRP] ¶4(c)(iii).”); *see also Toronto-Dominion Bank v. Karpachev*, 188 F.Supp.2d 110, 114 (D. Mass. 2002) (finding that, because the respondent’s sole purpose in selecting the domain names was to cause confusion with the complainant’s website and marks, its use of the names was not in connection with the offering of goods or services or any other fair use).

The Panel finds Policy ¶4(a)(ii) satisfied.

### **Registration and Use in Bad Faith**

As mentioned above, Respondent is using the <**advance-america.us**> domain name to redirect Internet users to its own website, which offers services in direct competition with Complainant. The Panel finds this constitutes a disruption of Complainant's business and indicates Respondent registered and is using the disputed domain name pursuant to Policy ¶4(b)(iii). See *Lambros v. Brown*, FA 198963 (Nat. Arb. Forum Nov. 19, 2003) (finding that the respondent registered a domain name primarily to disrupt its competitor when it sold similar goods as those offered by the complainant and "even included Complainant's personal name on the website, leaving Internet users with the assumption that it was Complainant's business they were doing business with"); see also *Hewlett Packard Co. v. Full Sys.*, FA 94637 (Nat. Arb. Forum May 22, 2000) (finding that the respondent registered and used the domain name primarily for the purpose of disrupting the business of the complainant by offering personal e-mail accounts under the domain name <openmail.com> which is identical to the complainant's services under the OPENMAIL mark).

Finally, the Panel finds Respondent is attracting Internet users, presumably seeking Complainant's business, to its own website for commercial gain. Respondent is profiting on the likelihood that users will confuse the owner of the <**advance-america.us**> domain name with Complainant. This is further evidence of Respondent's bad faith registration and use of the disputed domain name under Policy ¶4(b)(iv). See *Amazon.com, Inc. v. Shafir*, FA 196119 (Nat. Arb. Forum Nov. 10, 2003) ("As Respondent is using the domain name at issue in direct competition with Complainant, and giving the impression of being affiliated with or sponsored by Complainant, this circumstance qualifies as bad faith registration and use of the domain name pursuant to [UDRP] ¶4(b)(iv)."); see also *Drs. Foster & Smith, Inc. v. Lalli*, FA 95284 (Nat. Arb. Forum Aug. 21, 2000) (finding bad faith where the respondent directed Internet users seeking the complainant's site to its own website for commercial gain).

The Panel finds Policy ¶4(a)(iii) satisfied.

## **DECISION**

Complainant having established all three elements required under the usTLD Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <**advance-america.us**> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.  
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist  
Dated: Tuesday, October 16, 2007

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