



NATIONAL ARBITRATION FORUM

DECISION

Baylor University v. Internet Community c/o Domain Administrator
Claim Number: FA0802001153702

PARTIES

Complainant is **Baylor University** ("Complainant"), represented by **Wendy C. Larson**, Texas, USA. Respondent is **Internet Community c/o Domain Administrator** ("Respondent"), Arizona, USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**baylorcommunity.com**>, registered with **Enom, 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 electronically on February 26, 2008; the National Arbitration Forum received a hard copy of the Complaint on February 27, 2008.

On February 26, 2008, Enom, Inc. confirmed by e-mail to the National Arbitration Forum that the <**baylorcommunity.com**> domain name is registered with Enom, Inc. and that Respondent is the current registrant of the name. Enom, Inc. has verified that Respondent is bound by the Enom, Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On March 5, 2008, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of March 25, 2008 by which Respondent could file a response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@baylorcommunity.com by e-mail.

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

On April 1, 2008, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the National Arbitration 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 makes the following assertions:

Baylor University (referred to herein as "Complainant" or "Baylor"), located in Waco, Texas, was originally chartered in 1845 by the Republic of Texas. It is the oldest institution of higher learning in the state and is the largest Baptist university in the world. Baylor provides a wide curriculum of educational services at both the undergraduate and graduate levels, including arts, sciences, business, law, nursing, education, engineering, computer science, music, social work, and theology. For more detail on Baylor's history and offerings, see its website at <baylor.edu>.

Baylor is the owner of and has long used the marks BAYLOR, BAYLOR UNIVERSITY, BAYLOR BEARS, and other marks that include the term BAYLOR in connection with a wide range of goods and services. Baylor owns a number of registrations for these marks in the United States, and other countries, including the following (among others):

- BAYLOR: U.S. Reg. Nos. 1465910, 1468436, 1858559, and 1936714
- BAYLOR UNIVERSITY: U.S. Reg. Nos. 1923603 and 1935130
- BAYLOR BEARS B (and bear design): U.S. Reg. No. 1467391
- BAYLOR BEAR FOUNDATION: U.S. Reg. No. 2028572
- BAYLOR (and bear design): U.S. Reg. Nos. 1467390 and 1916400
- BAYLOR B (and bear design): U.S. Reg. No. 1467491

i. Baylor Bookstore, Merchandise and Apparel

Baylor operates an on-campus bookstore under the mark BAYLOR UNIVERSITY BOOKSTORE (*see* <baylor.bkstr.com>), and an on-line store using the BAYLOR and

BAYLOR UNIVERSITY marks (*see* <baylorbears.cstv.com/store>). Baylor sells a variety of products through these stores, including apparel, gifts, and other merchandise.

ii. The Baylor Community

The term “community” is commonly used in connection with the BAYLOR mark to describe groups who are connected to Baylor in some fashion, such as the students, faculty, staff or alumni. For example:

- Attached is an article about an event at Baylor, found at <hispanictips.com/2007/04/11/iesta-brings-hispanic-culture-baylor-community-baylor-university>. The article is entitled, “[F]iesta brings Hispanic culture to Baylor community – Baylor University.”
- Attached is an article about the enormous success of Baylor’s men’s basketball team, found at <star-telegram.com/college_sports/story/470766.html>. The article states, “It’s also been fun and games for the Bears, who have brought a sense of pride back to the Baylor community.”
- Attached is an article about the passing of a former Baylor University president, found at <kcentv.com/news/local-article-arch.php?nid=13104>. The article states, “The Baylor community said good-bye to one of its most renowned Presidents Wednesday.”

FACTUAL AND LEGAL GROUNDS

This Complaint is based on the following factual and legal grounds¹:

a. The domain name <**baylorcommunity.com**> is identical or confusingly similar to Complainant’s BAYLOR mark. The domain name contains the identical mark BAYLOR – a famous mark exclusively associated with Baylor University — and merely tacks on the generic or descriptive term, “community,” that is commonly associated with Baylor. The presence of a generic top level domain (e.g., “.com”) is irrelevant in a UDRP ¶4(a)(i) analysis.²

b. Respondent has no rights or legitimate interests in the domain name.

(i) Respondent has not used, nor made any 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. Baylor’s attorneys sent Respondent a cease-and-desist letter on December 20, 2007. Respondent answered by stating, among other things, “if your client would like to make an offer to purchase the domain name, we would be happy to entertain it. We’re willing to be very reasonable, and **will accept a price far less than it would take you to litigate this**” (emphasis added). Complainant’s attorneys responded to this email in an email on January 31, 2008, and repeated the demand that Respondent transfer the domain name. That day, Respondent again refused to transfer

the domain name, although it stated that it would remove the parking page, and offered to sell the domain name to Baylor for \$800.00.

(ii) Until recently, Respondent used the domain name in connection with parking pages with links that appeared to relate to Baylor, yet diverted traffic to third-party websites not affiliated with Baylor. Specifically, on November 1, 2007, the website at <**baylorcommunity.com**> displayed links entitled, “Baylor Bookstore,” “Baylor Apparel,” and “Baylor Shirts” and on January 2, 2008, the website displayed links entitled “Baylor Bookstore,” “Baylor Apparel,” “Baylor University,” and “Baylor Merchandise”). Given Respondent’s past use of the domain name in this manner, as well as its uncooperative and misinformed positions throughout this process, Baylor believes Respondent may again use the domain name for a parking page once some time has passed.

(iii) Respondent is not commonly known by the domain name <**baylorcommunity.com**>.

(iv) Respondent is not making a legitimate noncommercial or fair use of the domain name <**baylorcommunity.com**>.

c. Respondent registered and used the domain name in bad faith.

(i) Respondent’s registration and use of <**baylorcommunity.com**> for a website that provided pay-per-click links is registration and use in bad faith.³

(ii) Respondent has refused Baylor’s repeated demands to transfer the domain name despite being given notice of Baylor’s trademark rights.

(iii) Not only is the domain name <**baylorcommunity.com**> itself highly likely to cause confusion, Respondent has used the domain name for parking pages that display unauthorized link titles on its websites that are obvious references to Baylor.

(iv) Respondent offered to sell the domain name to Complainant for \$800.00, well in excess of Respondent’s documented out-of-pocket costs directly related to the domain name.⁴

(v) Respondent’s statement that it would “accept a price far less than it would take [Baylor] to litigate this” indicates that the Respondent intends to take advantage of Baylor in this situation, and is further evidence of bad faith.

(vi) Respondent’s bad faith is further evidenced by the fact that it owns no trademark or other intellectual property rights in the domain name <**baylorcommunity.com**>; the domain name does not consist of the legal name of or a name commonly used to identify Respondent; Respondent has not used the domain name in connection with the *bona fide* offering of any goods or services; Respondent has made

no *bona fide* noncommercial or fair use of Complainant's marks in a site accessible under the domain name; and Respondent's domain name incorporates exactly the highly distinctive and famous mark BAYLOR. *See* 15 U.S.C. § 1125(d)(1)(B)(i).

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

FINDINGS

Complainant, Baylor University, is the largest Baptist university in the world and the oldest institution of higher education in the State of Texas. Baylor owns several trademark registrations with the United States Patent and Trademark Office ("USPTO") including the BAYLOR (Reg. No. 1,465,910 issued Nov. 17, 1987), BAYLOR UNIVERSITY (Reg. No. 1,923,603 issued Oct. 3, 1995), and BAYLOR BEARS marks (Reg No. 1,467,391 issued Dec. 1, 1987).

Respondent registered the <baylorcommunity.com> domain name on Sept. 28, 2006. Respondent's disputed domain name resolves to a website that featured links to what appeared to relate to Complainant, yet diverted Internet traffic to third-party websites not affiliated 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 Complainant's undisputed representations pursuant to paragraphs 5(e), 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 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 Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

Complainant has established rights in the BAYLOR mark through its trademark registration 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 Metro. Life Ins. Co. v. Bin g Glu*, FA 874496 (Nat Arb. Forum Feb. 13, 2007) (finding rights in the METLIFE mark as a result of its registration with the United States federal trademark authority).

Respondent’s <baylorcommunity.com> domain name is confusingly similar to Complainant’s mark. The disputed domain name contains Complainant’s BAYLOR mark in its entirety and adds the generic term “community” as well as the generic top-level domain (“gTLD”) “.com.” The Panel finds Respondent has failed to distinguish its disputed domain name from Complainant’s mark pursuant to Policy ¶4(a)(i). *See Am. Online, Inc. v. Anytime Online Traffic Sch.*, FA 146930 (Nat. Arb. Forum Apr. 11, 2003) (finding that the respondent’s domain names, which incorporated the complainant’s entire mark and merely added the descriptive terms “traffic school,” “defensive driving,” and “driver improvement” did not add any distinctive features capable of overcoming a claim of confusing similarity); *see also Body Shop Int’l PLC v. CPIC NET*, D2000-1214 (WIPO Nov. 26, 2000) (finding that the domain name <bodyshopdigital.com> is confusingly similar to the complainant’s THE BODY SHOP trademark); *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.”).

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

Rights or Legitimate Interests

Complainant contends Respondent lacks all rights or legitimate interests in the <baylorcommunity.com> domain name. When Complainant has made a *prima facie* case under Policy ¶4(a)(ii), the burden shifts to Respondent to set forth concrete evidence it possesses rights or legitimate interests in the disputed domain name. *See Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (holding that, where the complainant has asserted that the respondent has no rights or legitimate interests with respect to the domain name, it is incumbent on the respondent to come forward with concrete evidence rebutting this assertion because this information is “uniquely within the knowledge and control of the respondent”).

Complainant contends Respondent is using the <baylorcommunity.com> domain name to a website that contains various sponsored links to what appeared to relate to Complainant, yet diverted Internet traffic to third-party websites not affiliated with Complainant. The Panel finds Respondent’s operation of a website at the disputed

domain name for the purpose of collecting click-through fees for each misdirected Internet user is neither a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i) nor a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii). See *ALPITOUR S.p.A. v. Ali Albloushi*, FA 888651 (Nat. Arb. Forum Feb. 26, 2007) (rejecting the respondent's contention of rights and legitimate interests in the <bravoclub.com> domain name as the respondent is merely using the domain name to operate a website containing links to various competing commercial websites, which is neither a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i) nor a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii)); see also *Black & Decker Corp. v. Clinical Evaluations*, FA 112629 (Nat. Arb. Forum June 24, 2002) (holding that the respondent's use of the disputed domain name to redirect Internet users to commercial websites, unrelated to the complainant and presumably with the purpose of earning a commission or pay-per-click referral fee did not evidence rights or legitimate interests in the domain name).

Respondent has submitted no evidence that it is either commonly known by the disputed domain name or authorized to register domain names featuring Complainant's mark. In the absence of such evidence, the Panel finds Respondent has not established rights or legitimate interests pursuant to Policy ¶4(c)(ii). See *Ian Schrager Hotels, L.L.C. v. Taylor*, FA 173369 (Nat. Arb. Forum Sept. 25, 2003) (finding that without demonstrable evidence to support the assertion that a respondent is commonly known by a domain name, the assertion must be rejected); see also *IndyMac Bank F.S.B. v. Eshback*, FA 830934 (Nat. Arb. Forum Dec. 7, 2006) (finding that the respondent failed to establish rights and legitimate interests in the <emitmortgage.com> domain name as the respondent was not authorized to register domain names featuring the complainant's mark and failed to submit evidence of that it is commonly known by the disputed domain name).

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

Registration and Use in Bad Faith

Respondent is using the <baylorcommunity.com> domain name for the purpose of collecting click-through fees for each misdirected Internet user connected to another website (commonly called a "cash parking" scheme). Internet users searching for Complainant's legitimate website will likely be confused when stumbling upon Respondent's domain name as to Complainant's sponsorship of or affiliation with the resulting website. The Panel finds Respondent is attempting to capitalize on such confusion by collecting referral fees for each Internet user. Such use is evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv). See *Associated Newspapers Ltd. v. Domain Manager*, FA 201976 (Nat. Arb. Forum Nov. 19, 2003) ("Respondent's prior use of the <mailonsunday.com> domain name is evidence of bad faith pursuant to Policy ¶4(b)(iv) because the domain name provided links to Complainant's competitors and Respondent presumably commercially benefited from the misleading domain name by receiving 'click-through-fees.'"); 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 Complainant has satisfied Policy ¶4(a)(iii).

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <baylorcommunity.com> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: April 15, 2008

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¹ Prior panels have held in favor of Baylor in virtually identical situations. *See, e.g., Baylor Univ. v. Baylor Univ.*, FA 791433 (Nat. Arb. Forum Oct. 23, 2006) (transferring domain names <bayloraid.com>, <baylorfan.com>, <baylorgrapevinehospital.com>, <baylorhospitaldallas.com>, <baylormedicalcenter.com>, and <baylormedicalschool.com>), and *Baylor Univ. v. SZK.com*, FA 791668 (Nat. Arb. Forum Oct. 16, 2006) (transferring domain name <baylorhospital.com>).

² *See Liz Claiborne, Inc. et al v. Barakat*, FA 1116749 (Nat. Arb. Forum Jan. 29, 2008) (transferring domain name).

³ *See, e.g., Baylor Univ. v. Baylor Univ.*, FA 791433 (Nat. Arb. Forum Oct. 23, 2006) (finding use of confusingly similar domain names in connection with "click-through" sites did not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use, and constituted bad faith); *see also Baylor Univ. v. SZK.com*, FA 791668 (Nat. Arb. Forum Oct. 16, 2006) (same).

⁴ *See Educ. Testing Serv. v. TOEFL*, D2000-0044 (WIPO Mar. 16, 2000) (offer of sale combined with no legitimate use of the domain name was registration and use in bad faith).