



NATIONAL ARBITRATION FORUM

DECISION

Countrywide Financial Corporation v. Ara Hakobyan
Claim Number: FA0602000638287

PARTIES

Complainant is **Countrywide Financial Corporation** ("Complainant"), represented by **Lance G. Johnson**, of **Roylance, Abrams, Berdo & Goodman, L.L.P.**, 1300 19th Street NW, Suite 600, Washington, DC 20036-1649, USA. Respondent is **Ara Hakobyan** ("Respondent"), 806 S 142nd Pl. #B, Bellevue, WA 98007, USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**countrywidefinancing.com**>, registered with **Tucows 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 2, 2006; the National Arbitration Forum received a hard copy of the Complaint on February 6, 2006.

On February 3, 2006, Tucows Inc. confirmed by e-mail to the National Arbitration Forum that the <**countrywidefinancing.com**> domain name is registered with Tucows Inc. and that Respondent is the current registrant of the name. Tucows Inc. has verified that Respondent is bound by the Tucows 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 February 10, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of March 2, 2006 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@countrywidefinancing.com by e-mail.

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

On March 8, 2006, 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:

1. Respondent's <**countrywidefinancing.com**> domain name is confusingly similar to Complainant's COUNTRYWIDE mark.
2. Respondent does not have any rights or legitimate interests in the <**countrywidefinancing.com**> domain name.
3. Respondent registered and used the <**countrywidefinancing.com**> domain name in bad faith.

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

FINDINGS

Complainant Countrywide Financial Corporation has been providing mortgage lending, mortgage banking, insurance agency, and securities brokerage services since 1969. Complainant is well known in the financial services industry as "Countrywide" and ranks 150th in the Fortune 500, 116th on the S&P 500, and 65th in Barron's 500. In 2004, Complainant produced more than \$300 billion worth of mortgages, or one out of every eight home loans in the United States mortgage market. In 2005, Complainant ranked first for United States residential mortgage originations and United States residential mortgage service providers. Complainant ranked second in the mortgage services category of *Fortune* magazine's list of America's Most Admired Companies. Complainant had over \$128 billion in assets, \$13 billion in revenues, and \$9 billion in intangibles in fiscal year 2004.

Complainant holds trademark registrations for the COUNTRYWIDE mark with the United States Patent and Trademark Office (“USPTO”) (Reg. No. 1,744,794 issued January 5, 1993 and Reg. No. 1,918,325 issued September 12, 1995). Complainant has also registered several variations of the COUNTRYWIDE mark, including COUNTRYWIDE INVESTPLUS (Reg. No. 2,249,405 issued June 1, 1999), COUNTRYWIDE BANK (Reg. No. 2,767,566 issued September 23, 2003), and COUNTRYWIDE FINANCIAL (Reg. No. 2,903,702 issued November 16, 2004). Complainant registered the <countrywide.com> domain name on July 26, 1994 and the <mycountrywide.com> domain name on May 6, 2002.

Respondent registered the <countrywidefinancing.com> domain name on August 18, 2004. Respondent is using the disputed domain name to operate a website in direct competition with Complainant. On the home page of Respondent’s website, Respondent identifies itself as “Home Loan Mortgage Company,” a regional business offering a “one-stop source for mortgage and real estate services” in Washington, Oregon, California, Idaho, and Nevada areas. The website also displays links to home loan services and to the contact information of two mortgage lenders. When Internet users click on the “Loan Process” link, they are diverted to an on-line pre-qualification application for a loan and advised to seek a personal meeting with one of Respondent’s loan professionals to discuss financial information.

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 to the COUNTRYWIDE mark by registering the mark with the USPTO. *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 Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) (“Registration of the NASAL-AIRE mark with the USPTO establishes Complainant's rights in the mark.”).

Respondent’s <countrywidefinancing.com> domain name is confusingly similar to Complainant’s COUNTRYWIDE mark pursuant to Policy ¶4(a)(i), because it completely incorporates Complainant’s mark and merely adds the generic term “financing,” a common term for Complainant’s services. In *Sony Kabushiki Kaisha v. Inja, Kil*, D2000-1409 (WIPO Dec. 9, 2000), the Panel found that the addition of generic words to the end of the Sony mark rendered the respondent’s domain names confusingly similar because “[n]either the addition of an ordinary descriptive word . . . nor the suffix ‘.com’ detract from the overall impression of the dominant part of the name in each case.”

Respondent’s addition of the term “financing” to the COUNTRYWIDE mark in its domain name is also confusingly similar because Complainant’s mark is the dominant part of the domain name. *See also Space Imaging LLC v. Brownell*, AF-0298 (eResolution Sept. 22, 2000) (finding confusing similarity where the respondent’s domain name combines the complainant’s mark with a generic term that has an obvious relationship to the complainant’s business).

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

Rights or Legitimate Interests

Complainant alleges Respondent lacks rights and legitimate interests in the <countrywidefinancing.com> domain name. Complainant must first make a *prima facie* case in support of its allegations, and then the burden shifts to the Respondent to show it does have rights or legitimate interests pursuant to Policy ¶4(a)(ii). *See Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (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”); *see also Compagnie Generale des Matieres Nucleaires v. Greenpeace Int’l*, D2001-0376 (WIPO May 14, 2001) (“Proving that the Respondent has no rights or legitimate interests in respect of the Domain Name requires the Complainant to prove a negative. For the purposes of this sub paragraph, however, it is sufficient for the Complainant to show a *prima facie* case and the burden of proof is then shifted on to the shoulders of Respondent. In those circumstances, the common approach is for respondents to seek to bring themselves within one of the examples of paragraph 4(c) or put forward some other reason why they can fairly be said

to have a relevant right or legitimate interests in respect of the domain name in question.”).

Respondent’s failure to answer the Complaint raises a presumption Respondent has no rights or legitimate interests in the <countrywidefinancing.com> name. *See Canadian Imperial Bank of Commerce v. D3M Virtual Reality Inc.*, AF-0336 (eResolution Sept. 23, 2000) (finding no rights or legitimate interests where no such right or interest was immediately apparent to the panel and the respondent did not come forward to suggest any right or interest it may have possessed); *see also Eroski, So. Coop. v. Getdomains Ishowflat Ltd.*, D2003-0209 (WIPO July 28, 2003) (“It can be inferred that by defaulting Respondent showed nothing else but an absolute lack of interest on the domain name.”). However, the Panel will now examine the record to determine if Respondent has rights or legitimate interests under Policy ¶4(c).

Respondent registered the domain name under the name “Ara Hakobyan,” and there is no other evidence in the record suggesting Respondent is commonly known by the <countrywidefinancing.com> domain name. Respondent has not established rights or legitimate interests in the <countrywidefinancing.com> domain name pursuant to Policy ¶4(c)(ii). *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’s <countrywidefinancing.com> domain name, which is confusingly similar to Complainant’s COUNTRYWIDE mark, resolves to a website in direct competition with Complainant. Respondent is offering the same home loan services and financial advice Complainant offers and likely receives referral fees for diverting Internet users to its own financial professionals. In *Ultimate Elecs., Inc. v. Nichols*, FA 195683 (Nat. Arb. Forum Oct. 27, 2003), the Panel found that use of a domain name featuring a complainant’s entire mark to sell products in competition with a complainant “demonstrates neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the name.” Respondent is misleading consumers seeking Complainant’s financial services to its own website for commercial gain, which does not constitute a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i), or a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶4(c)(iii). *See also Clear Channel Commc’ns, Inc. v. Beaty Enters.*, FA 135008 (Nat. Arb. Forum Jan. 2, 2003) (finding that the respondent, as a competitor of the complainant, had no rights or legitimate interests in a domain name that utilized the complainant’s mark for its competing website).

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

Registration and Use in Bad Faith

Respondent has registered and is using the <countrywidefinancing.com> domain name in bad faith pursuant to Policy ¶4(b)(iv), because he is diverting Internet users to a website in direct competition with Complainant and earning referral fees for redirecting consumers to his own financial professionals. Respondent's website offers the same home loan services and financial advice that Complainant offers at its <countrywide.com> and <mycountrywide.com> domain names, and it is therefore taking advantage of the confusingly similarity between Respondent's domain name and Complainant's COUNTRYWIDE mark, and capitalizing on the goodwill associated with the mark for its own commercial gain. Respondent's registration of the domain name constitutes bad faith registration and use under Policy ¶4(b)(iv). *See Busy Body, Inc. v. Fitness Outlet, Inc.*, D2000-0127 (WIPO Apr. 22, 2000) (finding bad faith pursuant to Policy ¶4(b)(iv) because the respondent and the complainant were in the same line of business and the respondent was using a domain name confusingly similar to the complainant's FITNESS WAREHOUSE mark to attract Internet users to its <efitnesswarehouse.com> domain name); *see also MathForum.com, LLC v. Weiguang Huang*, D2000-0743 (WIPO Aug. 17, 2000) (finding bad faith under Policy ¶4(b)(iv) where the respondent registered a domain name confusingly similar to the complainant's mark and the domain name was used to host a commercial website that offered similar services offered by the complainant under its mark).

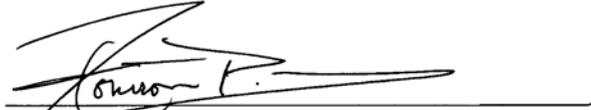
By registering a domain name confusingly similar to Complainant's COUNTRYWIDE mark and using the domain name to operate a competing website, Respondent has registered the domain name for the primary purpose of disrupting Complainant's business. Respondent's website offers the same services as Complainant and diverts Internet users seeking Complainant's financial service professionals to Respondent's own financial service professionals. Such use of the disputed domain name to divert and potentially disrupt Complainant's business constitutes bad faith registration and use pursuant to Policy ¶4(b)(iii). *See Gen. Media Commc'ns, Inc. v. Vine Ent.*, FA 96554 (Nat. Arb. Forum Mar. 26, 2001) (finding bad faith where a competitor of the complainant registered and used a domain name confusingly similar to the complainant's PENTHOUSE mark to host a pornographic web site); *see also Disney Enters., Inc. v. Noel*, FA 198805 (Nat. Arb. Forum Nov. 11, 2003) ("Respondent registered a domain name confusingly similar to Complainant's mark to divert Internet users to a competitor's website. It is a reasonable inference that Respondent's purpose of registration and use was to either disrupt or create confusion for Complainant's business in bad faith pursuant to Policy ¶4(b)(iii) [and] (iv).").

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

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 <**countrywidefinancing.com**> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: March 22, 2006

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