



NATIONAL ARBITRATION FORUM

DECISION

Countrywide Financial Corporation v. Web Domain Names
Claim Number: FA0605000708909

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. Respondent is **Web Domain Names** ("Respondent"), 777 Mo Xue Fang Road, Shanghai, PR 435002, China.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**countrywide.com**>, registered with **Moniker Online Services, 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 May 17, 2006; the National Arbitration Forum received a hard copy of the Complaint on May 30, 2006.

On May 18, 2006, Moniker Online Services, Inc. confirmed by e-mail to the National Arbitration Forum that the <**countrywide.com**> domain name is registered with Moniker Online Services, Inc. and that Respondent is the current registrant of the name. Moniker Online Services, Inc. has verified that Respondent is bound by the Moniker Online Services, 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 June 6, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of June 26, 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@countrywide.com by e-mail.

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

On June 28, 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:

Summary of Complainant's Contentions

1. Complainant is the owner of the COUNTRYWIDE trade name and federally registered service mark, and several other federally registered marks incorporating COUNTRYWIDE. Complainant has been using COUNTRYWIDE since 1969 in connection with the financing of mortgages, as evidenced in several service mark registrations issued by the U.S. Patent and Trademark Office.

2. Respondent's domain name is confusingly similar to Complainant's COUNTRYWIDE[®] mark in violation of Policy ¶4(a)(i) because it wholly appropriates Complainant's COUNTRYWIDE name, then deletes the letter "n" to take advantage of a common typographical error.

3. Respondent does not have any rights or legitimate interests in the disputed domain name in violation of Policy ¶4(a)(ii) because (a) Complainant owns service mark rights to COUNTRYWIDE, (b) there is no evidence that Respondent has ever been known by Countrywide, and (c) Respondent uses the disputed domain name to divert users to a link farm site with pay-per-click links that are identified with Complainant's COUNTRYWIDE mark and name. By clicking on the links, the user is taken to a web site, <low.com> that refers users to Complainant's competitors, in violation of Policy ¶4(c)(ii or iii).

4. Respondent registered and is using the disputed domain name in bad faith in violation of Policy ¶4(a)(iii) because, among other things, Respondent (a) had actual and constructive knowledge of Complainant's service mark rights; and (b) registered and is using a confusing variant of Complainant's mark and reflective domain names for commercial gain by, among other things, diverting Complainant's consumers to the web sites of Complainant's competitors and/or creating a false implication that Respondent is affiliated with Complainant or acting with Complainant's endorsement or approval and, c) is holding the disputed domain name without transferring same to Complainant.

Averments of Fact

I. Complainant owns registered and unregistered service mark rights to COUNTRYWIDE® -- (ICANN Rule 3(b)(viii)):

Complainant owns a number of federal U.S. service mark registrations for COUNTRYWIDE in connection with its business services. See *Countrywide Financial Corporation v. Search Terms c/o Domain Admin*, FA629218 (Nat. Arb. Forum March 7, 2006).

Complainant's registrations for its business services include:

U.S. Service Mark Registration No. 1,744,794, issued on January 5, 1993, for COUNTRYWIDE covering "financial services, namely, mortgage banking, insurance agency and securities brokerage services"; and

U.S. Service Mark Registration No. 1,918,325, granted on September 12, 1995, for COUNTRYWIDE covering "financial services, namely mortgage lending, mortgage banking, securities brokerage, and insurance agency services".

Countrywide Financial Corporation v. Search Terms c/o Domain Admin, FA629218 (Nat. Arb. Forum March 7, 2006).

These registrations are deemed to be "incontestable" under U.S. law, which is conclusive evidence of the validity of the registered mark, the registrant's ownership of the mark, and of the registrant's exclusive right to use the mark in commerce. 11 U.S.C. §§ 1053 and 1115(b). An incontestable status is also conclusive proof under U.S. law that the registered marks are distinctive. See, *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 196, 83 L. Ed. 2d 582, 105 S. Ct. 658 (1985); and 2 J. McCarthy, *Trademarks and Unfair Competition*, § 11:44, p. 11-87 (4th ed. 2005).

In short, Complainant has established rights in the COUNTRYWIDE mark through registration of the COUNTRYWIDE mark with the USPTO. *Countrywide Financial Corporation v. Search Terms c/o Domain Admin*, FA629218 (Nat. Arb. Forum March 7, 2006), citing *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”); and *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”).

Complainant, through its subsidiary, Countrywide Home Loans, Inc., owns the reflective domain names <countrywide.com> (since July 1994) and <mycountrywide.com> (since May 2002). *Countrywide Financial Corporation v. Search Terms c/o Domain Admin*, FA629218 (Nat. Arb. Forum March 7, 2006). These domains receive more than a million visitors per week and allow users to access information about Complainant’s home loan (purchase, refinance, and home equity), banking, and insurance services. See *Countrywide Financial Corporation v. Charles Johnson*, FA 169095 (Nat. Arb. Forum Aug. 29, 2003).

Complainant’s COUNTRYWIDE marks are not descriptive of the intended purpose, function, or use of the services; the provider of the services; the class of users of the services; the nature of the services; or the end effect upon the user. Imagination is required to associate the term “countrywide” with a company in the mortgage services field. See *Countrywide Financial Corporation v. Charles Johnson*, FA 169095 (Nat. Arb. Forum Aug. 29, 2003).

None of Complainant’s COUNTRYWIDE service mark registrations has ever been cancelled on any ground.

Complainant also owns substantial unregistered service mark rights under U.S. common law in connection with the COUNTRYWIDE name for home loan mortgage services. Extended use and substantial promotion since 1969 imbues the COUNTRYWIDE mark as a distinctive, famous designation of quality services within the market for home loans, banking, and insurance services. See 15 U.S.C. § 1052(f) (acquired distinctiveness after five years of continuous use) and *Countrywide Financial Corporation v. Charles Johnson*, FA 169095 (Nat. Arb. Forum Aug. 29, 2003) (recognizing Countrywide as a “leading financial services company both in the United States and abroad”).

Complainant was established in 1969 and was subsequently incorporated as Countrywide Credit Services, LLC in the State of Delaware and first offered services under that name in U.S. commerce. See *Countrywide Financial Corporation v. Search Terms c/o Domain Admin*, FA629218 (Nat. Arb. Forum March 7, 2006).

On November 13, 2002, Countrywide Credit Services, LLC changed its name to Countrywide Financial Corporation, Inc. to reflect its growth and recognition as a leading financial services company both in the United States and throughout the world. Since 1969, Complainant has been known as “Countrywide” by consumers and others within the financial services industry. Complainant encloses news stories predating the March 6, 2003 registration date of the disputed domain name showing that, before the registration date of the disputed domain name, Complainant had become known as “Countrywide”.

Countrywide is a large and successful company with a pervasive presence in markets for financial services. *Countrywide Financial Corporation v. Search Terms c/o Domain Admin*,

FA629218 (Nat. Arb. Forum March 7, 2006). Complainant through its principal subsidiary, Countrywide Home Loans, Inc., originates, purchases, sells, and services residential mortgage loans. Countrywide company segments are similarly directed to banking, capital markets, insurance, and global operations.

Countrywide's business reputation was established well before the disputed domain name was registered on March 6, 2003. By 1992, Countrywide had become the #1 mortgage originator in the United States. Ten years later, in 2002, Countrywide financed more than 1.8 million loans worth about \$251.9 billion by December 31, 2002. Additionally, in FY '02 total revenues had reached over \$4.5 billion, net earnings eclipsed \$842,000,000, and total assets were in excess of \$58 billion.

Countrywide's record growth and development has continued to the present date. In FY '04, Countrywide had over \$128 billion in assets, \$13 billion in revenues, and over \$9 billion in intangibles (including trademark goodwill). *Countrywide Financial Corporation v. Search Terms c/o Domain Admin*, FA629218 (Nat. Arb. Forum March 7, 2006). In 2004, Countrywide was ranked 155th in the Forbes Global 2000, 150th in the Fortune 500, 116th on the S&P 500, and 65th in Barron's 500. *Id.* ("Countrywide ... ranks in the 150 in the Fortune 500"). Fortune ranked Countrywide Financial 2nd in mortgage services among America's Most Admired Companies. *Id.* These consistently high rankings serve as a reliable measure of the strength of the COUNTRYWIDE mark and its recognition in the financial services, mortgage loan, and banking marketplace.

II. Summary of Respondent's Actions

A) On and before May 3, 2006-- Respondent's registration and use of disputed domain name

Based on the records on the WHOIS database, the disputed domain name was registered on March 6, 2003. Complainant believes, and on that belief avers, that Respondent has not been commonly known by the name that is reflected in the disputed domain name.

Complainant's service mark registrations issued, and its substantial recognition value among consumers was established, well before the disputed domain name was registered. Thus, Complainant has superior rights to the COUNTRYWIDE name.

Until as recently as May 3, 2006, the disputed domain name resolved to Respondent's web site. A version of Respondent's web site dated April 6, 2006 and a version dated May 3, 2006 are attached.

On a web site page, the portion that typically first catches the user's eye is the upper left hand portion. Respondent fully exploits this on its web site. In this case, in the upper left hand portion of the home page of the Respondent's site, the disputed domain name (that is, Complainant's misspelled mark) is featured.

Under each address, the words, “What you need, when you need it” is identified. Immediately under these words several links appear horizontally. The first link is identified as “Countrywide”, or “Countrywide Home Loan”, or “Countrywide Mortgage”, etc. The other links appearing horizontally either feature or begin with “Countrywide” or refer generally to services that Countrywide provides.

In sum, the placement, size, and bold font of the disputed domain name in the upper-left hand corner, and the vertical juxtaposition and proximity between disputed domain name, the words, “What you need, when you need it” immediately above the links that begin with “Countrywide,” is calculated to create an association between the disputed domain name and Complainant. By extension, this also creates a false association between Respondent and Complainant as well.

The remainder of the content on the page reinforces this false association. Below the top horizontal line of links, a vertical list of buttons appears to the left, in a place where a user would readily perceive them. The links appearing at the top or near the top of the list feature Complainant’s Countrywide mark.

Upon clicking on links that feature or begin with “Countrywide,” the user is taken to a web site called <low.com>. <Low.com> purportedly provides a service whereby the site “matches [the user] with Lenders regardless of [the user’s] credit”. The user enters information pertaining to various loans types (home finance, home equity, debt consolidation, and home purchase) to obtain referrals from companies that compete with Complainant.

The <low.com> domain name and web site appear to be owned by a company called Oversee.net located at 818 West 7th St., Los Angeles, California, 90017. Oversee.net touts low.com’s effectiveness which it advertises on its web site as “a leading consumer financial portal [that] delivers leads within seconds of the consumer displaying interest. Proven targeted advertising methods result in maximum quality, not quantity, with minimum intrusiveness.”

The “link” to Oversee.net goes beyond its ownership of <low.com>. <http://searchportal.information.com> is identified at the bottom of home page to which the disputed domain name resolves, as well as on all internal pages within the site. Oversee.net is the registrant of <information.com> domain, which encompasses <http://searchportal.information.com>. A Betterwhois record of <information.com> identifying Oversee.net as the registrant is enclosed. It also appears that Oversee.net hosts the disputed domain name since it resides on Oversee.net’s server.

On the home page of the <Oversee.net> web site, under “Domain Portfolios”, the company identifies itself as “a leader in domain name monetization.” Oversee.net provides services under its euphemistically entitled “DomainSponsor revenue program” in which Oversee.net “helps domain [name] holders... maximize revenue from their *parked domains* by providing a straight-forward and easy-to-use monetization system” (emphasis added).

The “monetization system” that Oversee.net provides is described on Oversee.net’s <domainsponsor.com> web site (FAQ → “What is Domain Name monetization? How can I earn

money from it?”). Oversee.net explains that “DomainSponsor allows you to forward your domains directly to an auto-optimized landing page with relevant advertisements. Each time a visitor clicks on an ad you get credited with a per-click payment.”

This form of business method by DomainSponsors has been the subject of frequent criticism in decisions by ICANN arbitration forums and consistent findings that it is not a good faith use that is consistent with Policy ¶4(c)(ii or iii). *See, e.g., The PNC Financial Services Group Inc. v. Mark Andreev*, FA 593127 (Nat. Arb. Forum Dec. 20, 2005), *Wachovia Corporation v. I D L and R G*, FA 523308 (Nat. Arb. Forum Sept. 6, 2005), *IndyMac Bank, F.S.B. v. Jason U Carpenter d/b/a Jason U Internet Inc.*, FA 474818 (Nat. Arb. Forum June 24, 2005), and *Wal-Mart Stores, Inc. v. Modern Limited-Cayman Web Development*, D2005-0322 (WIPO May 24, 2005).

As one Panel concluded in addressing a similar fact pattern based on redirecting web sites using Oversee.net:

“The Complainant has furnished evidence of the fact that the disputed domain name directs towards a site exploited by a company OVERSEE.net which publishes a service of the “parking” of domain name named DomainSponsor. The service consists of a simple redirection of the domain name towards a UPL of “parking” which mostly contains advertising bonds... This and other information submitted by the Complainant leads to the presumption that the domain name in dispute was registered and has been used by the Respondent in bad faith. The Panel agrees with the said contention of the Complainant and concludes that the registration of the domain name amounts to the registration and use of the domain name in bad faith.”

Schneider Electric SA v. Laporte Holdings, Case No. D2005-0925 (WIPO November 10, 2005).

Undoubtedly, this scheme has been profitable for Respondent. According to Alexa, a web site that measures various indicia relating to the amount of traffic that a given web site receives, Respondent’s web site connected to the disputed domain name received about 4,000 hits over the last three months, an increase of 167% from the previous three month period.

The disputed domain name has been blacklisted as a spam site by <domaintools.com> (“DomainTools”). DomainTools first blacklisted the disputed domain name on April 29, 2006 and the site blacklisted the site every day up and through May 11, 2006. According to DomainTools, the true identity of the Registrant of the disputed domain name might, in fact, be Leo Kuvayev. Leo Kuvayev, aka “BadCow”, is a prolific spammer and is the alleged ring leader of one of the largest “Internet Spam Gangs”. The Attorney General of the State of Massachusetts brought suit against Mr. Kuvayev and even obtained an emergency order shutting down dozens of sites allegedly operated by Mr. Kuvayev and his gang.

B) Sometime after May 3, 2006- present: Respondent's holding of disputed domain name

More recently, perhaps in response to Complainant's cease and desist letter of April 6, 2006, the disputed domain name no longer resolves to Respondent's web site—but the Respondent is still holding the disputed domain name and has not transferred it to Complainant. This so-called “passive” holding is also evidence that Respondent has no rights or legitimate interests in the disputed domain name. *See Am. Home Prod. Corp. v. Malgioglio*, D2000-1602 (WIPO Feb. 19, 2001) (finding no rights or legitimate interests in the domain name <solgarvitamins.com> where Respondent passively held the domain name).

Identical and/or Confusingly Similar

The disputed domain name is confusingly similar to Complainant's COUNTRYWIDE mark pursuant to Policy ¶4(a)(i) because it wholly appropriates Complainant's COUNTRYWIDE name, then deletes the letter “n” to take advantage of a common typographical error. *See DatingDirect.com Limited v. Web Domain Names c/o Domain Administrator*, FA 594723 (Nat. Arb. Forum December 19, 2005) (“The <dateingdirect.com> domain name registered by Respondent is confusingly similar to Complainant's DATINGDIRECT.COM mark because it is a typographically misspelled version of Complainant's mark, incorporating the letter “e” into the word “dating.” The Panel finds that the addition of the letter “e” does not distinguish Respondent's domain name from Complainant's mark”); *See also Crédit Lyonnais v. Ass'n Etre Ensemble*, D2000-1426 (WIPO Dec. 7, 2000) (finding that the addition of the letter “e” and a hyphen does not distinguish the Respondent's domain name from the Complainant's mark in determining confusing similarity).

III. Registration and Use in Bad Faith

1) Respondent's constructive , if not actual, knowledge of Complainant's COUNTRYWIDE trade name and service marks before the disputed domain name was registered evidences bad faith

Respondent had constructive or actual notice of Complainant's rights before registration and use of the disputed domain name. Complainant's COUNTRYWIDE[®] service marks were registered on the Principal Register of the USPTO in 1993 and 1995, prior to the date on which the disputed domain name was registered. *See Orange Glo Int'l v. Blume*, FA 118313 (Nat. Arb. Forum Oct. 4, 2002) (“Complainant's OXICLEAN mark is listed on the Principal Register of the USPTO, a status that confers constructive notice on those seeking to register or use the mark or any confusingly similar variation thereof”); *see also* 15 U.S.C. § 1072. Constructive notice of Complainant's rights and Respondent's subsequent registration and use of a confusingly similar domain name creates a legal presumption of bad faith. *See Digi Int'l v. DDI Sys.*, FA 124506 (Nat. Arb. Forum Oct. 24, 2002) (“there is a legal presumption of bad faith, when Respondent reasonably should have been aware of Complainant's trademarks, actually or constructively”).

Furthermore, Complainant sent a cease and desist letter to Respondent pertaining to the disputed domain name on April 6, 2006 advising Respondent of its ownership rights to the

COUNTRYWIDE trade name and federally registered service marks and demanding that Respondent immediately transfer the disputed domain name to Complainant. Therefore, Respondent had actual notice of Complainant's rights and demand for transfer of the disputed domain name for over a month but refused to respond or comply, which evidences Respondent's continuing bad faith.

2) Respondent's holding of the disputed domain name, believed to be in response to Complainant's cease and desist letter, evidences bad faith

Respondent failed and/or refused to reply and did not transfer the disputed domain name to Complainant. Instead, Respondent has resorted to passively holding the disputed domain name as a means of subterfuge and/or in the mistaken belief that such action will avoid a finding of bad faith.

"Passive holding" constitutes "active use". In fact, Panels have consistently held that passive holding is evidence of registration and use in bad faith. *See Telstra Corp. v. Nuclear Marshmallows*, D2000-0003 (WIPO Feb. 18, 2000). *See also Spenco Medical Corporation v. Extreme One Media Group*, FA 95290 (Nat. Arb. Forum September 7, 2000); *General Media Communications, Inc. v. Sean McCabe*, FA 95073 (Nat. Arb. Forum August 8, 2000); *DCI S.A. v. Link Commercial Corp.*, D2000-1232 (WIPO Dec. 7, 2000).

This is particularly the case where, as here, Respondent previously registered and used the disputed domain name in bad faith.

3) Respondent's registration and use of a typographical variant of Complainant's mark for commercial gain from pay-per click revenue based on (a) confusion with Complainant's business and (b) diversion to a link farm with links to Complainant's competitors, evidences bad faith

Respondent wholly appropriates Complainant's COUNTRYWIDE name, then deletes the letter "n". By so doing, Respondent is diverting Internet users to its web site, a link farm featuring links identified by Complainant's mark. These links then resolve to sites that direct users to Complainant's competitors. Respondent receives click-through fees for diverting consumers from the web directory to third-party websites. This constitutes bad faith registration and use. *See DatingDirect.com Limited v. Web Domain Names c/o Domain Administrator*, FA 594723 (Nat. Arb. Forum December 19, 2005 ("Respondent intentionally registered a domain name incorporating Complainant's entire mark to divert Internet users to a website offering links to third party commercial websites. Such activity is evidence of Respondent's bad faith registration and use pursuant to Policy ¶4(b)(iv)").

Respondent is taking advantage of the likelihood of confusion between Respondent's domain name and Complainant's mark and capitalizing on the goodwill associated with the mark. Such use constitutes evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv). *See Am. Univ. v. Cook*, FA 208629 (Nat. Arb. Forum Dec. 22, 2003) ("Registration and use of a domain name that incorporates another's mark with the intent to deceive Internet users in regard to the

source or affiliation of the domain name is evidence of bad faith.”); *see also Identigene, Inc. v. Genetest Labs.*, D2000-1100 (WIPO Nov. 30, 2000) (finding bad faith where the respondent’s use of the domain name at issue to resolve to a website where similar services are offered to Internet users is likely to confuse the user into believing that the complainant is the source of or is sponsoring the services offered at the site); *see also Nokia Corp. v. Private*, D2000-1271 (WIPO Nov. 3, 2000) (finding bad faith registration and use pursuant to Policy ¶4(b)(iv) where the domain name resolved to a website that offered similar products as those sold under the complainant’s famous mark).

This practice is a well-recognized, and universally condemned scheme. *See The PNC Financial Services Group Inc. v. Mark Andreev*, FA 593127 (Nat. Arb. Forum Dec. 20, 2005), *Wachovia Corporation v. I D L and R G*, FA 523308 (Nat. Arb. Forum Sept. 6, 2005), and *IndyMac Bank, F.S.B. v. Jason U Carpenter d/b/a Jason U Internet Inc.*, FA 474818 (Nat. Arb. Forum June 24, 2005).

4) Respondent’s pattern of registering and using domain names that are identical or confusingly similar to another party’s mark for the purposes of commercial gain and other illegitimate purposes evidences Respondent’s bad faith registration and use in the present case

Respondent has been involved in four other UDRP proceedings where Respondent was ultimately found by each Panel to have registered and used the disputed domain names in bad faith and was ordered to transfer the domain names to the respective complainants. *See DatingDirect.com Limited v. Web Domain Names c/o Domain Administrator*, FA 594723 (Nat. Arb. Forum December 19, 2005); *Argosy Gaming Co. v. Web Domain Names*, FA 306742 (Nat. Arb. Forum Sept. 20, 2004); *Promissor v. Web Domain Names*, FA 346305 (Nat. Arb. Forum Dec. 6, 2004); *Robert Half Int’l, Inc. v. Web Domain Names*, FA 422313 (Nat. Arb. Forum Mar. 31, 2004).

These previous findings of bad faith registration and use evidence a pattern of conduct that supports a finding of Respondent’s bad faith registration and use in this case. *See DatingDirect.com Limited v. Web Domain Names c/o Domain Administrator*, FA 594723 (Nat. Arb. Forum December 19, 2005) (“Respondent’s involvement in several previous UDRP proceedings is evidence that Respondent has engaged in a pattern of registering domain names featuring the marks of others. Thus, the Panel finds that Respondent registered and used the disputed domain name in bad faith pursuant to Policy ¶4(b)(ii)”); *See also Australian Stock Exch. V. Cmty. Internet (Australia) Pty Ltd*, D2000-1384 (WIPO Nov. 30, 2000) (finding bad faith under Policy ¶4(b)(ii) where the respondent registered multiple infringing domain names containing the trademarks or service marks of other widely known Australian businesses); *Armstrong Holdings, Inc. v. JAZ Assocs.*, FA 95234 (Nat. Arb. Forum Aug. 17, 2000) (finding that the respondent violated Policy ¶4(b)(ii) by registering multiple domain names that infringe upon others’ famous and registered trademarks).

5) Respondent's practice of using a typographically misspelled version of Complainants' mark to take advantage of errors made by Internet users amounts to typosquatting, which is evidence of bad faith registration and use

As Respondent is no doubt aware, "coutry" is a common typographically misspelled version of "country". A Google search for "coutrywide" generates pages of references in which third parties misspell "countrywide" as "coutrywide".

When one is typing at a computer keyboard, as one would when trying to locate Complainant's web site on his or her computer, this misspelling likely occurs with greater frequency. When a user wants to type "country" on a keyboard, after typing "cou" there is a tendency to then type "try" because "t" "r" and "y" are located on the same horizontal line of letters on the keyboard. To properly enter "country," one's fingers must travel down two rows of letters after typing "cou" to type the "n" before traveling back up two rows of letters to enter the "try". Even experienced keyboarders fail to enter the "n" in "country" for this reason.

Respondent's typosquatting in the present case is evidence of bad faith use and registration. *See Nat'l Ass'n of Prof'l Baseball League, Inc. v. Zuccarini*, D2002-1011 (WIPO Jan. 21, 2003) ("Typo squatting ... is the intentional misspelling of words with [the] intent to intercept and siphon off traffic from its intended destination, by preying on Internauts who make common typing errors. Typo squatting is inherently parasitic and of itself evidence of bad faith."); *see also Dermalogica, Inc. v. Domains to Develop*, FA 175201 (Nat. Arb. Forum Sept. 22, 2003) (finding that the <dermalogica.com> domain name was a "simple misspelling" of the complainant's DERMALOGICA mark which indicated typo squatting and bad faith pursuant to Policy ¶4(a)(iii)).

Complainant notes that this Respondent was previously found to have registered and used a typographically misspelled version of another Complainant's mark to take advantage of errors made by Internet users. *See DatingDirect.com Limited v. Web Domain Names c/o Domain Administrator*, FA 594723 (Nat. Arb. Forum December 19, 2005). The Panel in that case found that such actions constituted bad faith. *Id.* ("Respondent's practice of using a typographically misspelled version of Complainants' [] mark to take advantage of errors made by Internet users amounts to typosquatting, which is evidence of bad faith registration and use").

The fact that this same Respondent has engaged in this practice previously heightens and underscores its bad faith in this case.

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

FINDINGS

Complainant, Countrywide Financial Corporation, is a financial services corporation that has used its COUNTRYWIDE mark since 1969. Complainant holds several marks with the United States Patent and Trademark Office ("USPTO"), including for its COUNTRYWIDE mark (Reg. No. 1,744,794 issued January 5, 1993). In addition,

Complainant's subsidiary, Countrywide Home Loans, Inc. owns the <countrywide.com> and <mycountrywide.com> domain names.

Respondent registered the <countrywide.com> domain name on March 6, 2003. Respondent's disputed domain name previously resolved to a website that displayed links that featured Complainant's name, but which actually resolved to a competing website. Respondent is currently passively holding the disputed domain name, and has been doing so since at least May 3, 2006, after Complainant sent a cease and desist letter.

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 Complainant 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

The Panel finds Complainant's federal mark registrations with the USPTO sufficiently establish Complainant's rights in the COUNTRYWIDE® mark. *See 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."); *see also 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.").

Respondent's <countrywide.com> domain name is confusingly similar to Complainant's COUNTRYWIDE® mark pursuant to Policy ¶4(a)(i) as it omits the "n" from Complainant's mark, which is a common typing error. *See Compaq Info. Techs. Group, L.P. v. Seocho*, FA 103879 (Nat. Arb. Forum Feb. 25, 2002) (finding that the domain name <compq.com> is confusingly similar to the complainant's COMPAQ mark because the omission of the letter "a" in the domain name does not significantly change the overall impression of the mark); *see also Bama Rags, Inc. v. Zuccarini*, FA 94380 (Nat. Arb. Forum May 8, 2000) (finding that <davemathewsband.com> is a common misspelling of the DAVE MATTHEWS BAND mark and therefore confusingly similar).

The amount of traffic this site receives according to Alexa suggests it is getting about 20,000 hits a day. Given the sparse content of this site, it must be receiving this traffic due to the similarity of its domain name with Claimant's registered trademark.

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

Rights or Legitimate Interests

Complainant has alleged Respondent lacks rights or legitimate interests in the <countrywide.com> domain name. Complainant must first make a *prima facie* case in support of its allegations, and the burden then shifts to 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) (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"); *see also Woolworths plc. v. Anderson*, D2000-1113 (WIPO Oct. 10, 2000) (finding that, absent evidence of preparation to use the domain name for a legitimate purpose, the burden of proof lies with the respondent to demonstrate that it has rights or legitimate interests).

Respondent's failure to answer the complaint raises a presumption Respondent has no rights or legitimate interest in the <countrywide.com> domain name. *See Charles Jourdan Holding AG v. AAIM*, D2000-0403 (WIPO June 27, 2000) (finding it appropriate for the panel to draw adverse inferences from the respondent's failure to reply to the complaint); *see also Desotec N.V. v. Jacobi Carbons AB*, D2000-1398 (WIPO Dec. 21, 2000) (finding that failing to respond allows a presumption that the complainant's allegations are true unless clearly contradicted by the evidence). However, the Panel will now examine the record to determine if Respondent has rights or legitimate interests under Policy ¶4(c).

Complainant asserts Respondent is not authorized to use Complainant's COUNTRYWIDE® mark, and Respondent is not associated with Complainant in any way. Respondent's WHOIS information does not suggest Respondent is commonly known by the disputed domain name. There is also no evidence in the record to suggest Respondent is or has ever been known by the disputed domain name. Consequently, the

Panel finds Respondent is not commonly known by the disputed domain name under Policy ¶4(c)(ii). *See Ian Schragger 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 Wells Fargo & Co. v. Onlyne Corp. Services11, Inc.*, FA 198969 (Nat. Arb. Forum Nov. 17, 2003) (“Given the WHOIS contact information for the disputed domain [name], one can infer that Respondent, Onlyne Corporate Services11, is not commonly known by the name ‘welsfargo’ in any derivation.”).

The evidence on record indicates Respondent is using the disputed domain name to divert Internet users attempting to locate Complainant’s website to Respondent’s commercial website, which was used to display links to third-party websites and which is now being passively held. In *Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 180704 (Nat. Arb. Forum Sept. 30, 2003), the panel found that the respondent’s demonstrated intent to divert Internet users seeking the complainant’s website to a website of the respondent and for respondent’s benefit was not a *bona fide* offering of goods or services under Policy ¶4(c)(i) or a legitimate noncommercial or fair use under Policy ¶4(c)(iii). *See TMP Int’l, Inc. v. Baker Enters.*, FA 204112 (Nat. Arb. Forum Dec. 6, 2003) (“[T]he Panel concludes that Respondent’s passive holding of the domain name does not establish rights or legitimate interests pursuant to Policy ¶4(a)(ii).”). The Panel thus finds Respondent’s use of the disputed domain name is neither a *bona fide* offering of goods or services under Policy ¶4(c)(i) nor a legitimate noncommercial or fair use under Policy ¶4(c)(iii).

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

Registration and Use in Bad Faith

Complainant has alleged Respondent acted in bad faith by registering and using the disputed domain name that contains a misspelled variation of Complainant’s mark. Respondent was using the disputed domain name to divert Internet users to competitors of Complainant, and is now passively holding the disputed domain name. The Panel finds Respondent’s use and current nonuse constitutes disruption and is evidence of bad faith registration and use under Policy ¶4(b)(iii). *See 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).”); *see also Caravan Club v. Mrgsale*, FA 95314 (Nat. Arb. Forum Aug. 30, 2000) (finding that the respondent made no use of the domain name or website that connects with the domain name, and that passive holding of a domain name permits an inference of registration and use in bad faith).

Based on the uncontested evidence presented by Complainant, the Panel infers Respondent has used the disputed domain name to receive click-through fees for diverting Internet users to third-party websites. Respondent’s disputed domain name

creates a likelihood of confusion as to Complainant's affiliation with the <countrywide.com> domain name (especially since it receives nearly 20,000 hits a day and has virtually no content other than as a forwarding portal). In *Amazon.com, Inc. v. Shafir*, FA 196119 (Nat. Arb. Forum Nov. 10, 2003), the panel found that as the respondent was using the disputed domain name in direct competition with the complainant, and giving the impression of being affiliated with or sponsored by the complainant, and that such circumstances qualified as bad faith registration and use of the domain name pursuant to Policy ¶4(b)(iv). See *Caravan Club v. Mrgsale*, FA 95314 (Nat. Arb. Forum Aug. 30, 2000) (finding that the respondent made no use of the domain name or website that connects with the domain name, and that passive holding of a domain name permits an inference of registration and use in bad faith). This Panel concludes Respondent's use of the disputed domain name for commercial gain is equivalent to bad faith registration and use pursuant to Policy ¶4(b)(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 <countrywide.com> domain name be **TRANSFERRED** from Respondent to Complainant.

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: Friday, June 30, 2006

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