



NATIONAL ARBITRATION FORUM

DECISION

Mortgage Research Center LLC v. Russell Miranda
Claim Number: FA0705000993017

PARTIES

Complainant is **Mortgage Research Center LLC** ("Complainant"), represented by **Kim Force**, of **Rotts & Gibbs, LLC**, 1001 E Walnut Ste. 201, P.O. Box 7385, Columbia, MO 65201. Respondent is **Russell Miranda** ("Respondent"), 83 Henry Street, Apt. 16, New York, NY 10002.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**mortgageresearchcenter.org**>, registered with **eNom, Inc.**

PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his 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 25, 2007; the National Arbitration Forum received a hard copy of the Complaint on May 29, 2007.

On June 1, 2007, eNom, Inc. confirmed by e-mail to the National Arbitration Forum that the <**mortgageresearchcenter.org**> 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 June 8, 2007, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of June 28, 2007 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@mortgageresearchcenter.org by e-mail.

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

On July 6, 2007, 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:

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

[a.] **The domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights:**

Complainant's mark is MORTGAGE RESEARCH CENTER. Complainant has owned and operated a website at the <mortgageresearchcenter.com> domain name since the inception of its business in November 2002, and continues to own and operate such website as of the filing date of this Complaint. This website is Complainant's primary vehicle for advertising its services, reaching potential customers, and generating its business income.

Respondent has registered the domain <mortgageresearchcenter.org>, which is virtually identical to both Complainant's trademark MORTGAGE RESEARCH CENTER and Complainant's domain <mortgageresearchcenter.com>. The only difference is that the suffix ".org" has been substituted. It is well settled that the addition of a top-level domain suffix is irrelevant when comparing the disputed domain name and the trademark for determining whether the domain name is identical or confusingly similar to the trademark. *See King v. Alberta Hot Rods*, D2005-0570 (WIPO July 21, 2005).

Admittedly, Complainant's trademark is descriptive of its services, and therefore, it does not have the status of a "strong" trademark. However, the manner in which Respondent is using the mark on the domain name in dispute, as detailed below, nonetheless, entitles Complainant to the relief requested herein.

[b.] Respondent has no rights or legitimate interests in respect of the domain name that is the subject of this Complaint.

Respondent does not operate a legitimate business on the domain that is the subject of this Complaint. To Complainant's knowledge, Respondent does not offer any legitimate mortgage-related services. Rather, Respondent copied Complainant's entire website* several months ago and posted it under Respondent's domain name. Originally, Respondent posted different contact information on his website. However, Respondent has recently changed this to include Complainant's contact information, except that Respondent's site lists a different e-mail address of admin@mortgagereasearch.org. The result is that while clients who call the number on Respondent's website may actually reach Complainant, clients who attempt to contact Complainant by e-mail using the address listed on Respondent's site would instead reach Respondent. Respondent is thus circumventing e-mails from potential clients for Complainant's business, and is consequently causing harm to Complainant's business.

*Please note that Complainant recently modified its website to reflect a new corporate image. While the overall appearances of the two sites are now different, the majority of the content on both sites remains identical.

[c.] The domain name should be considered as having been registered and being used in bad faith.

The information included on "Whois.net" regarding the registration of the domain name in question appears to be fraudulent. Complainant has tried unsuccessfully to contact Respondent. Providing false information with respect to the registration of a domain name supports a finding of bad faith.

The fact that Respondent copied Complainant's entire website further supports a finding that the domain name was registered and is being used in bad faith. Respondent cannot prove any legitimate reason for copying Complainant's content and posting an identical website at a confusingly similar domain name.

Respondent is also engaging in consumer deception by claiming credentials that it does not have. Complainant has achieved numerous credentials with respect to its mortgage services, some of which include:

- Approval through the VA for mortgage lending.
- Approval through HUD (Housing and Urban Development).
- In good standing with the Better Business Bureau.
- Membership in the Mortgage Bankers Association.
- Lending license in almost all states around the country, and doing business in all states except NY, NV, PA, and AZ.

Respondent's counterfeit website also includes all of these claims, as well as customer testimonials. Respondent is thus misleading the public into believing that Respondent's site is owned and operated by a legitimate business that has earned these outstanding credentials and has serviced many satisfied customers. Allowing Respondent's continued use of the domain name will only serve to tarnish Complainant's trademark and reputation in the industry.

[d.] Additional Considerations:

- (i.) To Complainant's knowledge, Respondent has not, heretofore, made any legitimate use of the disputed domain name, nor has Respondent engaged in 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.
- (ii.) To Complainant's knowledge, Respondent has not been commonly known by the name "Mortgage Research Center."
- (iii.) Respondent is not now making, and has not made in the past, any legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.
- (iv.) Respondent has registered the domain name at issue in order to prevent Complainant from reflecting the mark in a corresponding domain name. Given the manner in which Respondent has blatantly copied Complainant's entire website, it is suspected that Respondent has engaged in a pattern of such conduct.
- (v.) It is unclear exactly how Respondent profits by using the domain name at issue, but it is apparent that Respondent has intentionally attempted to attract Internet users to Respondent's website by creating a likelihood of confusion with Complainant's mark and website as to the source, sponsorship, affiliation, or endorsement of Respondent's website.

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

FINDINGS

Complainant, Mortgage Research Center LLC, provides mortgage-related products and services under the MORTGAGE RESEARCH CENTER mark, primarily online through a website located at the <mortgageresearchcenter.com> domain name. Complainant is one of the top mortgage lenders in the United States, especially VA loans to United States Veterans and active duty members, which make up 95% of its loan business and constitute \$300 million of the money it lends out each year.

Complainant has continuously used the MORTGAGE RESEARCH CENTER mark since 2002 and has applied to the United States Patent and Trademark Office (“USPTO”) for a trademark registration for the mark (Ser. No. 78/894,592 filed May 26, 2006). The USPTO has approved the MORTGAGE RESEARCH CENTER mark for registration on the Supplemental Register but had not yet been published for opposition or issued a registration number when this Complaint was filed.

Respondent’s <mortgageresearchcenter.org> domain name, which it registered on January 16, 2006, resolves to a website virtually identical to Complainant’s own previous website at the <mortgageresearchcenter.com> domain name. Until recently, Respondent listed its own contact information, but the website now includes Complainant’s contact information but with Respondent’s e-mail address.

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 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

Even though the USPTO has approved Complainant’s mark for registration on the Supplemental Register, it had not yet issued a registration number when Complainant filed this Complaint. This means Complainant’s mark cannot be considered a “registered mark.” Nevertheless, the Panel finds Complainant need not hold a trademark registration for the MORTGAGE RESEARCH CENTER to establish rights in the mark under Policy

¶ 4(a)(i), if it can establish common law rights in the mark due to sufficient secondary meaning. *See Zee TV USA, Inc. v. Siddiqi*, FA 721969 (Nat. Arb. Forum July 18, 2006) (finding that the complainant need not own a valid trademark registration for the ZEE CINEMA mark in order to demonstrate its rights in the mark under Policy ¶ 4(a)(i)); *see also Artistic Pursuit LLC v. calcuttawebdevelopers.com*, FA 894477 (Nat. Arb. Forum Mar. 8, 2007) (finding that Policy ¶ 4(a)(i) does not require a trademark registration if a complainant can establish common law rights in its mark).

Complainant is one of the top mortgage lenders in the nation and has continuously done business under the MORTGAGE RESEARCH CENTER mark since late 2002. The Panel finds Complainant's mark has acquired sufficient secondary meaning for Complainant to establish common law rights in the mark pursuant to Policy ¶ 4(a)(i). *See Kahn Dev. Co. v. RealtyPROshop.com*, FA 568350 (Nat. Arb. Forum June 23, 2006) (holding that the complainant's VILLAGE AT SANDHILL mark acquired secondary meaning among local consumers sufficient to establish common law rights where the complainant had been continuously and extensively promoting a real estate development under the mark for several years); *see also George Weston Bakeries Inc. v. McBroom*, FA 933276 (Nat. Arb. Forum Apr. 25, 2007) (finding that the complainant could establish common law rights in its GW BAKERIES mark through consistent and continuous use of the mark, which helped the mark become distinctive and generate "significant goodwill").

The <**mortgageresearchcenter.org**> domain name is an exact replica of Complainant's MORTGAGE RESEARCH CENTER mark. The only changes are functional—the omission of spaces between terms of the mark and the addition of the generic top-level domain ("gTLD") ".org." These alterations are not distinguishing differences. As a result, the Panel finds that the disputed domain name is identical to Complainant's mark pursuant to Policy ¶ 4(a)(i). *See Red Hat, Inc. v. Haecke*, FA 726010 (Nat. Arb. Forum July 24, 2006) (concluding that the <redhat.org> domain name is identical to the complainant's RED HAT mark because the mere addition of gTLD was insufficient to differentiate the disputed domain name from the mark); *see also Bond & Co. Jewelers, Inc. v. Tex. Int'l Prop. Assocs.*, FA 937650 (Nat. Arb. Forum Apr. 30, 2007) (finding that the elimination of spaces between terms and the addition of a gTLD do not establish distinctiveness from the complainant's mark under Policy ¶ 4(a)(i).

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

Rights or Legitimate Interests

Complainant alleges Respondent has no rights or legitimate interests in the <**mortgagereserachcenter.org**> domain name. The burden of proof is initially upon Complainant to establish a *prima facie* case supporting these allegations. If Complainant establishes a *prima facie* case, the burden of proof then shifts to Respondent to show that it does have rights or legitimate interests pursuant to Policy ¶ 4(a)(ii). *See AOL LLC v. Gerberg*, FA 780200 (Nat. Arb. Forum Sept. 25, 2006) ("Complainant must make a

prima facie showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interest in the subject domain names.”); *see also Swedish Match UK Ltd. v. Admin, Domain*, FA 873137 (Nat. Arb. Forum Feb. 13, 2007) (finding that once a *prima facie* case has been established by the complainant under Policy ¶ 4(c), the burden then shifts to the respondent to demonstrate its rights or legitimate interests in the disputed domain name). In the instant proceeding, the Panel finds that Complainant has established a *prima facie* case in support of its allegations.

By failing to submit a Response, the Panel presumes Respondent has no rights or legitimate interests in the <**mortgageresearchcenter.org**> domain name. *See Am. Express Co. v. Fang Suhendro*, FA 129120 (Nat. Arb. Forum Dec. 30, 2002) (“[B]ased on Respondent's failure to respond, it is presumed that Respondent lacks all rights and legitimate interests in the disputed domain name.”); *see also 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). Nevertheless, the Panel will consider the evidence in the record with respect to the factors listed in Policy ¶ 4(c) before making this determination.

Respondent appears to be known as “Russell Miranda,” because this is the name listed in the WHOIS database as the registrant of the <**mortgageresearchcenter.org**> domain name. After reviewing the available evidence, the Panel finds no indication Respondent is commonly known by the domain name in dispute. As a result, Respondent has not established rights or legitimate interests pursuant to Policy ¶ 4(c)(ii). *See Coppertown Drive-Thru Sys., LLC v. Snowden*, FA 715089 (Nat. Arb. Forum July 17, 2006) (concluding that the respondent was not commonly known by the <coppertown.com> domain name where there was no evidence in the record, including the WHOIS information, suggesting that the respondent was commonly known by the disputed domain name); *see also Educ. Broad. Corp. v. DomainWorks Inc.*, FA 882172 (Nat. Arb. Forum Apr. 18, 2007) (concluding that the respondent was not commonly known by the <thirteen.com> domain name based on all evidence in the record, and the respondent did not counter this argument in its response).

Respondent is using the <**mortgageresearchcenter.org**> domain name, which wholly incorporates Complainant’s MORTGAGE RESEARCH CENTER mark, to operate a website with content that is almost identical to Complainant’s prior website at the <mortgageresearchcenter.com> domain name. Respondent has even changed most of the contact information on its website to Complainant’s information, except for the e-mail address. The facts of this case are similar to *American International Group, Inc. v. Busby*, FA 156251 (Nat. Arb. Forum May 30, 2003), where the respondent was using the <aig-ma.com> domain name to operate a website displaying the complainant’s logo and attempting to offer the same financial services that complainant offered under the AIG mark. The panel found that the respondent’s attempts to impersonate the complainant online did not establish any rights or legitimate interests in the disputed domain name

pursuant to Policy ¶ 4(c)(i) or ¶ 4(c)(iii). *Id.* Because Respondent in this case is also attempting to pass itself off as Complainant, presumably for financial gain, the Panel finds Respondent is not using the <**mortgageresearchcenter.org**> domain name for a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i), or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii). *See Vivendi Universal Games v. Ballard*, FA 146621 (Nat. Arb. Forum Mar. 13, 2002) (stating that where the respondent copied the complainant's website in order to steal account information from the complainant's customers, that the respondent's "exploitation of the goodwill and consumer trust surrounding the BLIZZARD NORTH mark to aid in its illegal activities is *prima facie* evidence of a lack of rights and legitimate interests in the disputed domain name").

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

Registration and Use in Bad Faith

Because Respondent is operating a website virtually identical to Complainant's own website, Respondent has registered and is using the disputed domain name for the primary purpose of disrupting Complainant's business under the MORTGAGE RESEARCH CENTER mark 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 SR Motorsports v. Rotary Performance*, FA 95859 (Nat. Arb. Forum Jan. 4, 2001) (finding it "obvious" that the domain names were registered for the primary purpose of disrupting the competitor's business when the parties are part of the same, highly specialized field).

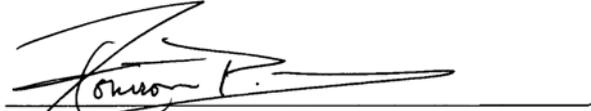
Respondent has registered and is using the <**mortgageresearchcenter.org**> domain name in bad faith pursuant to Policy ¶ 4(b)(iv), because Respondent is attempting to attract, for commercial gain, Internet users to a website virtually identical to Complainant's website at the <mortgageresearchcenter.com> disputed domain name. In *Hunter Fan Co. v. MSS*, FA 98067 (Nat. Arb. Forum Aug. 23, 2001), the panel found bad faith registration and use where the respondent used the disputed domain name to sell the complainant's products without permission and mislead Internet users by implying that the respondent was affiliated with the complainant. Likewise, in *DaimlerChrysler Corp. v. Bargman*, D2000-0222 (WIPO May 29, 2000), the panel found that the respondent's use of the title "Dodgeviper.com Official Home Page" gave consumers the impression that the complainant endorsed and sponsored the respondent's website. Similarly, Respondent is implying an affiliation with Complainant, and consumers seeking Complainant's mortgage products and services may become confused when encountering Respondent's website. Therefore, Respondent's diversion of Internet users to its own website for commercial gain constitutes bad faith registration and use according to Policy ¶ 4(b)(iv).

The Panel concludes Complainant 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 <**mortgageresearchcenter.org**> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: Monday, July 9, 2007

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