



NATIONAL ARBITRATION FORUM

DECISION

National Westminster Bank plc v. Sampat Business Development
Claim Number: FA0802001145847

PARTIES

Complainant is **National Westminster Bank plc** ("Complainant"), represented by **James A. Thomas**, of **Troutman Sanders LLP**, North Carolina, USA. Respondent is **Sampat Business Development** ("Respondent"), South Africa.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**natwestbnking.com**>, registered with **Direct Information Pvt Ltd** d/b/a **Publicdomainregistry.com**.

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 14, 2008; the National Arbitration Forum received a hard copy of the Complaint on February 15, 2008.

On February 16, 2008, Direct Information Pvt Ltd d/b/a Publicdomainregistry.com confirmed by e-mail to the National Arbitration Forum that the <**natwestbnking.com**> domain name is registered with Direct Information Pvt Ltd d/b/a Publicdomainregistry.com and that Respondent is the current registrant of the name. Direct Information Pvt Ltd d/b/a Publicdomainregistry.com has verified that Respondent is bound by the Direct Information Pvt Ltd d/b/a Publicdomainregistry.com 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 25, 2008, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of March 17, 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@natwestbnking.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 21, 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:

The trademark on which this Complaint is based is "NATWEST." Complainant National Westminster Bank plc ("NatWest"), founded in 1968, is a leading financial institution based in the United Kingdom that offers a full range of financial services, including personal and business banking services and credit cards, to more than 7.5 million personal customers and 850,000 small business accounts. Owned by The Royal Bank of Scotland Group, NatWest has 3,600 branches and is among the top ten banks in the world in terms of market capitalization.

Complainant holds numerous trademark registrations for its "NATWEST" mark. The "NATWEST" mark has been registered with the United Kingdom Intellectual Property Office ("UKIPO") since 1973 and with the United States Patent and Trademark Office ("USPTO") since 1983. Complainant has also registered its "NATWEST" mark in the EU Office for Harmonization in the Internal Market ("OHIM"). Complainant uses the mark "NATWEST" in promoting and providing financial services, including banking, financial planning and insurance services, throughout the United Kingdom and abroad.

Complainant, through its parent company, The Royal Bank of Scotland Group plc, also owns and uses numerous domain names, including: <natwest.com>, <natwestbanking.com>, <natwestonline.com>, and <natwestonlinebanking.org>, all of which resolve to the main <natwest.com> website.

As the foregoing indicates, and by virtue of its longstanding role as a major presence in financial markets, its deep commitment to the provision of quality financial products and services, and its significant commitment to the marketing and advertising of its name,

Complainant has built up substantial goodwill in the NATWEST mark, and in marks derived therefrom.

Furthermore, Complainant's rights to the NATWEST mark have been recognized in numerous decisions, including a recent decision before the NAF. *See National Westminster Bank plc v. nwestob.net*, FA0706001025031 (Nat. Arb. Forum Oct. 3, 2007).

FACTUAL AND LEGAL GROUNDS

The Domain Name is identical or confusingly similar to a trademark in which Complainant has rights.

The Domain Name is confusingly similar to Complainant's mark because it fully incorporates Complainant's mark and the mere addition of a descriptive or generic term does not make the Domain Name distinct. The Domain Name is confusingly similar to Complainant's registered word mark "NATWEST" because it fully incorporates Complainant's mark with the addition of a term describing a service provided by Complainant. "A general rule under [ICANN] Policy ¶4(a)(i) is that a domain name is confusingly similar to a third-party mark where the domain name fully incorporates the mark and simply adds additional words that correspond to the goods or services offered by the third party under the mark." *Sony Kabushiki Kaisha v. 0-0 Adult Video Corp.*, FA 475214 (Nat. Arb. Forum June 27, 2005) (finding the domain names <sonycdplayer.com>, <sonyreceiver.com>, and <sonyremote.com> confusingly similar to the complainant's "Sony" mark). Similarly, in *Yahoo! v. Zuccarini*, FA 183997 (Nat. Arb. Forum Oct. 20, 2003), the ICANN panel found the domain names "yahoofiance.com" and "yahoomal.com" confusingly similar to the complainant's "Yahoo" mark since the names fully incorporated the mark and added a misspelled term for a service provided by the complainant. *See also Victoria's Secret v. Zuccarini*, FA 95762 (Nat. Arb. Forum Nov. 18, 2000) (finding that, by misspelling words and adding letters to words, a respondent does not create a distinct mark but nevertheless renders the domain name confusingly similar to the complainant's marks). In this case, Respondent's domain name <natwestbnking.com> fully incorporates Complainant's mark "NATWEST" and adds the term "bnking," which, albeit misspelled, describes a service Complainant provides under the mark. The Domain Name strongly gives the impression that it is owned or sponsored by Complainant, and that it is associated with Complainant's banking services.

Panelists have specifically rejected attempts like Respondent's here to distinguish domain names from established marks based on the addition of a generic word. Generally, a user of a mark "may not avoid likely confusion by appropriating another's entire mark and adding descriptive or non-distinctive matter to it." 3 J. Thomas McCarthy, *McCarthy on Trademarks & Unfair Competition* § 23:50 (4th ed. 1998). It is well established that when a domain name incorporates a complainant's mark, the addition of a descriptive or generic word describing the complainant's business to the complainant's mark does not distinguish the domain name and does not prevent the domain name from being

confusingly similar to the complainant's mark. *See, e.g., National Westminster Bank plc v. David Borders*, FA0705000990434 (Nat. Arb. Forum June 26, 2007) (finding that the disputed domain names <natwestcredit.com> was confusingly similar to the complainant's mark and that the addition of descriptive term did nothing to distinguish the disputed domain name from the complainant's mark); *Microsoft Corp. v. WDW Inc. and William Claude Dukenfield*, D2002-0412 (WIPO July 1, 2002) (finding that the addition of the generic word "certified" as a suffix to the mark does not sufficiently distinguish the disputed domain names, <microsoftcertified.com> and <microsoftcertified.info>, from the MICROSOFT trademark).

In this case, the Domain Name fully incorporates Complainant's famous registered mark "NATWEST", in which Complainant has built up substantial rights. Complainant's mark is the dominant and distinctive element in the Domain Name. The only deviation is that the word "credit" has been added. This deviation is not enough to avoid a finding of confusing similarity. Accordingly, in light of the foregoing, and given the fame of Complainant's mark, Complainant respectfully asserts that it has met its burden of establishing that the domain name is identical or confusingly similar to Complainant's mark.

Respondent has no rights or legitimate interests in respect of the Domain Name that is the subject of this Complaint.

Respondent has no rights to or legitimate interest in the Domain Name . Any value the Domain Name may have is derived solely by incorporating Complainant's mark. *See Am. West Airlines v. N. Am. Leasing, LLC*, FA 232956 (Nat. Arb. Forum Mar. 18, 2004) (finding that the domain names had value only in that they incorporated the complainant's mark, which the respondent had utilized without authorization by the complainant). Complainant has not licensed or otherwise authorized Respondent to use the NATWEST mark, or any variation thereof. Respondent registered the Domain Name on October 26, 2007. This is over 34 years after Complainant first registered the mark "NATWEST" in 1973.

Respondent has used the Domain Name to operate a website that imitated Complainant's website and that apparently was being used in an effort to fraudulently acquire personal information from Complainant's customers. Further, Respondent's website provided links by which Internet users could contact, and provide information to, persons associated with Respondent's website.

Under ICANN Policy, when a complainant demonstrates rights in a domain name, the burden shifts to the registrant to prove that it has rights in the name. ICANN Policy ¶4(c)(i)–(iii) provides three situations under which a respondent would have rights in a domain name:

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connections with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Respondent cannot establish any of these situations and, therefore, cannot demonstrate any rights or legitimate interests in the Domain Name.

Respondent's use of the Domain Name to perpetrate a fraud does not constitute 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 Am. Int'l Group, Inc. v. Busby, FA 156251 (Nat. Arb. Forum May 30, 2003) (finding that the respondent's attempt to pass itself off as the complainant online, through wholesale copying of the complainant's website, was evidence that the respondent had no rights or legitimate interests in the disputed domain name); see also 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, 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").

Respondent was using the Domain Name to "phish" personal and financial information from Complainant's customers through a website that looked similar in appearance to Complainant's main website at <natwest.com>. This use of a domain name, presumably for commercial gain, clearly fails to constitute 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 *Juno Online Servs., Inc. v. Nelson*, FA 241972 (Nat. Arb. Forum Mar. 29, 2004) ("Phishing" involves the use of e-mails, pop-ups or other methods to trick Internet users into revealing credit cards, passwords, social security numbers and other personal information to the 'phishers' who intend to use such information for fraudulent purposes."); see also *HOPE worldwide, Ltd. v. Jin*, FA 320379 (Nat. Arb. Forum Nov. 11, 2004) (defining "phishing" as fooling "Internet users into sharing personal financial data so that identities can be stolen, fraudulent bills are run up, and spam e-mail is sent"). Accordingly, Respondent's attempt to capitalize on Complainant's well-known mark by attracting Internet users to its website, imitating Complainant's site, and soliciting personal information—possibly in furtherance of some further fraudulent activity—does not constitute a use in connection with a bona fide offering of goods and services, or any other legitimate use or interest in the domain name.

Nor has Respondent ever been commonly known by the name <natwestbnking.com>. See ICANN Policy ¶4(c)(ii). Respondent does not now use and has never used the name in connection with a business. Respondent registered the Domain Name under "Sampat Business Development c/o Mr. Ivan Herr Motsch", which has no apparent relation to the Complainant's mark "NATWEST". This is evidence that Respondent is not commonly

known by the disputed domain name. *Nike, Inc. v. BargainName.com*, FA 496731 (Nat. Arb. Forum August 2, 2005) (pointing out that respondent is not commonly known by the disputed domain name “nikezone.com” . . . “Respondent’s WHOIS information indicates that Respondent operates under the name “BargainName.com”); *Wells Fargo & Co. v. Onlyne Corp. Services II, Inc.* FA 198969 (Nat. Arb. Forum Nov. 17, 2003) (“Given the WHOIS contact information for the disputed domain [name], one can infer that Respondent . . . is not commonly known by the name ‘welsfargo’ in any derivation.”).

Further, Respondent is not now using and has never used the Domain Name to host a legitimate website. Indeed, the Respondent’s Domain Name no longer resolves to any active website at all. This constitutes further evidence that Respondent has no rights or legitimate interest in the domain name. *See USDrive Tech. Corp. v. Rischar*, FA 97762 (Nat. Arb. Forum July 27, 2001) (passive holding of a domain name does not establish rights in that domain name); *Hewlett-Packard Co. v. Rayne*, FA 101465 (Nat. Arb. Forum Dec. 17, 2001).

Complainant respectfully asserts that it has met its burden of proving that Respondent has no rights or legitimate interests in respect to the Domain Name .

The Domain Name was registered and is being used in bad faith.

The mark upon which Complainant relies is a registered trademark and well-known around the world. Respondent is thus deemed to have actual or constructive knowledge of this mark. *State Farm Mutual Auto. Ins. Co. v. Unasi, Inc.*, FA 521055 (Nat. Arb. Forum Aug. 29, 2005). Based on the fame of Complainant’s mark, and the fact that Respondent chose a domain name which fully incorporates Complainant’s mark, and the fact that Respondent used the Domain Name to operate a fraudulent imitation of Complainant’s legitimate website, it is clear that Respondent had knowledge of Complainant’s mark and was trying to take advantage of Complainant’s goodwill. *See Morgan Stanley v. Blog Network Int’l*, FA 564204 (Nat. Arb. Forum Oct. 28, 2005) (stating, “[t]here is a legal presumption of bad faith, when Respondent reasonably should have been aware of Complainant’s trademarks, actually or constructively”); *see also Reed Elsevier Inc. v. Colan*, FA 161469 (Nat. Arb. Forum Sept. 19, 2003) (finding bad faith by the respondent based solely on the fact that the respondent had constructive knowledge of the complainant’s registered trademark). Since Respondent had knowledge of Complainant’s mark, Respondent’s registration and continued holding of the confusingly similar domain names was and is in bad faith.

Further, Respondent’s use of the Domain Name to perpetrate a fraud and exploit Complainant’s established goodwill evidences bad faith. Respondent promoted its purported banking services under the heading “NATWEST” in a manner that would give the impression to Internet users that they had reached a domain name affiliated with Complainant, evidently in order to acquire personal information from Complainant’s customers. Numerous panels have held that using a domain name as Respondent was doing here constitutes bad faith under the ICANN Policy. *See Kmart of Michigan, Inc. v. WhoisGuard Protected*, FA 569042 (Nat. Arb. Forum Nov. 11, 2005) (finding that the

respondent's registration and use of the domain name was in bad faith where it was passing itself off as the complainant to take advantage of the complainant's customers); *Juno Online Servs., Inc. v. Iza*, FA 245960 (Nat. Arb. Forum May 3, 2004) (finding bad faith registration and use where a domain name "is confusingly similar to Complainant's mark, redirects Internet users to a website that imitates Complainant's billing website, and is used to fraudulently acquire personal information from Complainant's clients"); *see also Capital One Fin. Corp. v. Howel*, FA 289304 (Nat. Arb. Forum Aug. 11, 2004) (finding bad faith registration and use where the respondent used the domain name to redirect Internet users to a website imitating the complainant's website to fraudulently acquire personal information from the complainant's clients).

Additionally, ICANN policy dictates that bad faith can be established by evidence that demonstrates that "by using the domain name, [Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [Respondent's] web site. . . , by **creating a likelihood of confusion with the complainant's mark** as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on [Respondent's] web site or location." ICANN Policy 4(b)(iv). Here, Respondent's efforts to solicit personal and confidential information from Complainant's banking customers were almost certainly in pursuit of some commercial gain. Furthermore, by utilizing the "NATWEST" mark, Respondent created a high "likelihood of confusion" for unsuspecting Internet users. This is further evidence of Respondent's bad faith. *See Capital One Financial Corp. v. Howel*, FA 289304 (Nat. Arb. Forum Aug. 11, 2004).

Finally, Respondent's bad faith should be considered in light of the particular dangers raised by the improper use of a financial institution's trademark. Respondent's use of the Domain Name to connect to a website that appeared to be a fraudulent imitation of Complainant's official website was quite possibly in furtherance of some sort of "phishing" scheme.

In general, due to the sensitive nature of the confidential information that is routinely exchanged between online banks and their customers, these banks are consistently exposed to online threats and schemes, such as "webjacking" and "phishing." Unfortunately, "the Internet makes it effortless for impostors to assume false identities, and therefore, it is a seamless haven for identity theft." *Punitive Damages in Cyberspace: Where in the World is the Consumer?*, 7 Chap. L. Rev. 39, 40 (Spring 2004). "The seamy side of the Internet is rapidly becoming a global Petri dish for new torts and crimes perpetrated against consumers." *Id.*

Financial institutions, such as Complainant, are among the most common targets. Indeed, the NAF and WIPO databases reflect literally thousands of cases initiated by well-known banks and other financial institutions. For instance, Complainant and its affiliates recently have been forced to initiate numerous proceedings before the NAF to recover domain names used to perpetrate fraudulent schemes targeted at Complainants' online banking customers. *See, e.g., The Royal Bank of Scotland Group plc v. Badie*, FA 1105834 (Nat. Arb. Forum Dec. 26, 2007) (ordering transfer of <r-bs.net> domain name where Respondent attempted to "pass itself off" as Complainant in an effort to defraud

Complainant's customers); *The Royal Bank of Scotland Group plc v. Williams c/o Williams*, FA 1105825 (Nat. Arb. Forum Dec. 27, 2007) (ordering domain name <rbsuk-online.net> be transferred where "Respondent was deceiving Complainant's Internet customers and manipulating them into divulging sensitive personal information by imitating Complainant's genuine financial website"); *Nat'l Westminster Bank plc v. Thomas*, FA 1052605 (Nat. Arb. Forum Sept. 12, 2007) (requiring that disputed domain name <natwestsbk-international.com> be transferred where the Panel found "Respondent's use of the disputed domain name amounts to phishing, and is therefore indicative of Respondent's registration and use in bad faith pursuant to Policy ¶4(a)(iii)."); *Citizens Fin. Group, Inc. v. Alvarado*, FA 897530 (Nat. Arb. Forum Mar. 8, 2007) (ordering transfer of domain name where "Respondent has used the <citizensbankplc.com> domain name, which is confusingly similar to Complainant's CITIZENS BANK mark, to imitate Complainant's website and attempt to fraudulently acquire personal information, in what appears to be a 'phishing' scheme"); *The Royal Bank of Scotland Group plc v. Domain Discreet c/o ATTN: rbs-edinburgh.com*, FA 986696 (Nat. Arb. Forum June 26, 2007) (ordering transfer of <rbs-edinburgh.com> domain name since "Respondent appears to be engaged in fraudulent phishing scheme ... [b]y operating a website virtually identical to Complainant's website ... to fraudulently acquire the personal and financial information of Complainant's customers.").

The type of wrongful activity recurring in these cases results in serious harm not only to the financial institutions involved, but also to their customers, who are often unsuspecting Internet users seeking access to their bank accounts. In *Capital One Fin. Corp. and Capital One Bank v. Howel*, FA 289304 (Nat. Arb. Forum Aug. 11, 2004), for instance, the respondent used the domain name <capitalonebank.biz> in connection with an Internet phishing scam to defraud consumers into revealing their personal and proprietary information for the respondent's commercial gain. See also *Wells Fargo & Co. v. John Doe as Holder of Domain Name <wellsifargo.com>*, FA 466104 (Nat. Arb. Forum June 3, 2005) (domain name resolving to website that lured unsuspecting customers into entering personal information under the mistaken belief that they were visiting the complainant financial institution's security page found to be part of "phishing" scam, illegitimate, and in bad faith); *Am. Int'l Gr., Inc. v. Busby*, FA 156251 (Nat. Arb. Forum May 30, 2003) ("Following its registration of the disputed domain name, Respondent proceeded to host a website that duplicated Complainant's mark and logo, giving every appearance of being associated or affiliated with Complainant's business In a nutshell, Respondent used the disputed domain name to perpetrate a fraud upon individual shareholders who respected the goodwill surrounding the AIG mark."). Similarly, in this case, Respondent has hosted a website that duplicated Complainant's mark and logo in order to perpetrate a fraud on consumers.

For all of the above reasons, Respondent's registration and use of the Domain Name was and continues to be in bad faith.

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

FINDINGS

Complainant, National Westminster Bank plc, provides a full range of financial services to individuals and businesses. Complainant operates a website for this business at the <natwest.com> domain name (and a variety of other domain names). Complainant has registered its NATWEST mark with multiple governmental agencies. Complainant provided evidence of several of its NATWEST mark registrations including its registration with: (1) the United Kingdom Intellectual Property Office (“UKIPO”) on January 2, 1975 (Reg. No. 1,021,601); (2) the United States Patent and Trademark Office (“USPTO”) on June 7, 1983 (Reg. No. 1,241,454); and (3) the European Union Office of Harmonization for the Internal Market (“OHIM”) on April 18, 2006 (Reg. No. 4,319,067).

Respondent’s <natwestbking.com> domain name previously resolved to a website which mimicked Complainant’s website at its <natwest.com> domain name. Respondent appeared to be attempting to “phish” for Internet users’ personal and financial information by mimicking Complainant’s website. Respondent’s disputed domain name currently does not resolve to an active website.

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 registered its NATWEST mark with the UKIPO, the USPTO and the OHIM (and the trademark offices of approximately 35 other countries). The Panel finds this evidence satisfactorily establishes Complainant's rights in its NATWEST mark pursuant to Policy ¶4(a)(i). See *Janus Int'l Holding Co. v. Rademacher*, D2002-0201 (WIPO Mar. 5, 2002) ("Panel decisions have held that registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive."); see also *Koninklijke KPN N.V. v. Telepathy Inc.*, D2001-0217 (WIPO May 7, 2001) (finding that the Policy does not require that the mark be registered in the country in which the respondent operates; therefore it is sufficient that the complainant can demonstrate a mark in some jurisdiction).

Respondent's <natwestbnking.com> domain name completely incorporates Complainant's NATWEST mark with the addition of the descriptive term "banking," which includes a common typographical error, the deletion of the letter "a." Additionally, the generic top-level domain ("gTLD") ".com," is not relevant in evaluating whether a disputed domain name is confusingly similar to a mark because it is a required element of every domain name. Therefore, the Panel finds Respondent's <natwestbnking.com> domain name is confusingly similar to Complainant's NATWEST mark pursuant to Policy ¶4(a)(i). See *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); see also *Victoria's Secret v. Zuccarini*, FA 95762 (Nat. Arb. Forum Nov. 18, 2000) (finding that, by misspelling words and adding letters to words, a respondent does not create a distinct mark but nevertheless renders the domain name confusingly similar to the complainant's marks); see also *Busy Body, Inc. v. Fitness Outlet Inc.*, D2000-0127 (WIPO Apr. 22, 2000) ("[T]he addition of the generic top-level domain (gTLD) name '.com' is . . . without legal significance since use of a gTLD is required of domain name registrants . . .").

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

Rights or Legitimate Interests

Complainant has alleged Respondent does not have rights or legitimate interests in the disputed domain name. Once Complainant presents a *prima facie* case in support of these allegations, the burden shifts to Respondent to establish it does have rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(a)(ii). The Panel finds Complainant has established a *prima facie* case to support its allegations and Respondent has failed to submit a response to the case. Therefore, the Panel may assume Respondent does not have rights or legitimate interests in the disputed domain name. The Panel will nevertheless examine the record to determine whether Respondent has rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(c). See *G.D. Searle v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002) ("Because

Complainant's Submission constitutes a *prima facie* case under the Policy, the burden effectively shifts to Respondent. Respondent's failure to respond means that Respondent has not presented any circumstances that would promote its rights or legitimate interests in the subject domain name under Policy ¶4(a)(ii)."); *see also 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").

Respondent previously used the <**natwestbnking.com**> domain name to "pass itself off" as Complainant in order to defraud Complainant's Internet customers by "phishing" for their confidential information. Respondent's disputed domain name resolved to a website that imitated the website resolving from Complainant's <natwest.com> website. The Panel finds Respondent's previous attempt to pass itself off as Complainant and phish for customers' confidential information was neither a use in connection with a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i), nor a legitimate noncommercial or fair use of the disputed domain name pursuant to Policy ¶4(c)(iii). *See Juno Online Servs., Inc. v. Nelson*, FA 241972 (Nat. Arb. Forum Mar. 29, 2004) (finding that using a domain name in a fraudulent scheme to deceive Internet users into providing their credit card and personal information is not a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use); *see also Capital One Fin. Corp. v. Howel*, FA 289304 (Nat. Arb. Forum Aug. 11, 2004) (finding that using a domain name to redirect Internet users to a website that imitated the complainant's credit application website and attempted to fraudulently acquire personal information from the complainant's clients was not a *bona fide* offering of goods or services or a legitimate noncommercial or fair use).

Respondent's disputed domain name does not currently resolve to an active website. The Panel finds this constitutes a failure to make an active use of the disputed domain name and is not a use in connection with a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i), nor a legitimate noncommercial or fair use of the disputed domain name pursuant to Policy ¶4(c)(iii). *See Bloomberg L.P. v. Sandhu*, FA 96261 (Nat. Arb. Forum Feb. 12, 2001) (finding that no rights or legitimate interests can be found when the respondent fails to use disputed domain names in any way); *see also Nike, Inc. v. Crystal Int'l*, D2001-0102 (WIPO Mar. 19, 2001) (finding no rights or legitimate interests where the respondent made no use of the infringing domain names).

In addition, the record and WHOIS information provide no evidence suggesting Respondent is commonly known by the <**natwestbnking.com**> domain name. Respondent is listed in the WHOIS information as "Sampat Business Development." Furthermore, the record indicates Respondent was not authorized to use Complainant's NATWEST mark. Therefore, the Panel finds Respondent has not established rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(c)(ii). *See Tercent Inc. v. Lee Yi*, FA 139720 (Nat. Arb. Forum Feb. 10, 2003) (stating "nothing in

Respondent's WHOIS information implies that Respondent is 'commonly known by' the disputed domain name" as one factor in determining that Policy ¶4(c)(ii) does not apply); *see also Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interests 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).

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

Registration and Use in Bad Faith

Respondent was using the <natwestbnking.com> domain name, which is confusingly similar to Complainant's NATWEST mark, to phish for Internet users' confidential information by passing the website off as Complainant's. Respondent's disputed domain name resolved to a website that mimicked the website resolving from Complainant's <natwest.com> website. The Panel finds such use constitutes bad faith registration and use pursuant to Policy ¶4(a)(iii). *See Juno Online Servs., Inc. v. Iza*, FA 245960 (Nat. Arb. Forum May 3, 2004) (finding that using a domain name that "is confusingly similar to Complainant's mark, redirects Internet users to a website that imitates Complainant's billing website, and is used to fraudulently acquire personal information from Complainant's clients" is evidence of bad faith registration and use); *see also Capital One Fin. Corp. v. Howel*, FA 289304 (Nat. Arb. Forum Aug. 11, 2004) (finding bad faith registration and use because the respondent used the domain name to redirect Internet users to a website that imitated the complainant's website and to fraudulently acquire personal information from the complainant's clients).

In addition, the Panel finds Respondent's previous use of the <natwestbnking.com> domain name constituted registration and use in bad faith pursuant to Policy ¶4(b)(iv) because it is confusingly similar to Complainant's website and Respondent was profiting by obtaining Internet users' fraudulently obtained confidential financial information ("phishing"). Respondent was attempting to use the recognition Complainant built up in its NATWEST mark to fraudulently lure Internet users into providing their confidential personal and financial information to Respondent. *See Perot Sys. Corp. v. Perot.net*, FA 95312 (Nat. Arb. Forum Aug. 29, 2000) (finding bad faith where the domain name in question is obviously connected with the complainant's well-known marks, thus creating a likelihood of confusion strictly for commercial gain); *see also HOPE worldwide, Ltd. v. Jin*, FA 320379 (Nat. Arb. Forum Nov. 11, 2004) (finding that the respondent registered and used the domain name in bad faith because it redirected Internet users to a website that imitated the complainant's website and was used to fraudulently acquire personal information from the complainant's potential associates).

Respondent's disputed domain name no longer resolves to an active website. The Panel finds this current inactive use constitutes bad faith registration and use pursuant to Policy ¶4(b)(iii) after the domain name was previously used for phishing purposes by the same owner. *See DCI S.A. v. Link Commercial Corp.*, D2000-1232 (WIPO Dec. 7, 2000)

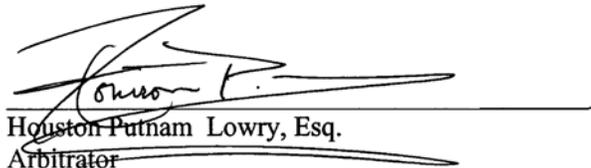
(concluding that the respondent's inactive use of the domain name satisfies the requirement of ¶4(a)(iii) of the Policy); *see also Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that merely holding an infringing domain name without active use can constitute use in bad faith).

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



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: Tuesday, March 26, 2008

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