



DECISION

Netbooks, Inc. v. F.B. (us)
Claim Number: FA0708001069929

PARTIES

Complainant is **Netbooks, Inc.**, (“Complainant”) represented by **J. Scott Gerien**, of **Dickenson, Peatman & Fogarty**, 809 Coombs St., Napa, CA 94559. Respondent is **F.B. (us)**, 89th Street at 4739, Kenosha, WI 53142.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**netbooks.us**>, registered with **Iholdings.com, Inc.** d/b/a **Dotregistrar.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 (the “Forum”) electronically on August 27, 2007; the Forum received a hard copy of the Complaint on August 29, 2007.

On August 28, 2007, Iholdings.com, Inc. d/b/a Dotregistrar.com confirmed by e-mail to the Forum that the <**netbooks.us**> domain name is registered with Iholdings.com, Inc. d/b/a Dotregistrar.com and that Respondent is the current registrant of the name. Iholdings.com, Inc. d/b/a Dotregistrar.com has verified that Respondent is bound by the Iholdings.com, Inc. d/b/a Dotregistrar.com registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with the U.S. Department of Commerce’s usTLD Dispute Resolution Policy (the “Policy”).

On September 4, 2007, a Notification of Complaint and Commencement of Administrative Proceeding (the “Commencement Notification”), setting a deadline of September 24, 2007 by which Respondent could file a Response to the Complaint, was transmitted to Respondent in compliance with Paragraph 2(a) of the Rules for usTLD Dispute Resolution Policy (the “Rules”).

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

On September 28, 2007, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the Forum appointed Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the Forum has discharged its responsibility under Paragraph 2(a) of the Rules. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the Policy, the Rules, the 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

This Complaint is based on the following factual and legal grounds: usTLD Rule 3(c)(ix).

[a.] usTLD Rule 3(c)(ix)(1); usTLD Policy ¶4(a)(i).

The domain name at issue is virtually identical and confusingly similar to Complainant's trademark, in which Complainant has valid rights.

Complainant is the owner of the trademark NETBOOKS for computer software for accounting, as registered with the U.S. Patent and Trademark Office (Reg. No. 2,064,629).

As demonstrated in the registration certificate, Complainant's predecessor-in-interest first used the NETBOOKS mark on September 30, 1995. As shown in the registration, Complainant also has a constructive first use date for the mark of November 20, 1995 based upon the filing of the trademark application on such date and subsequent registration of the mark. 15 U.S.C. §1057(c).

As demonstrated by the WHOIS record for the domain name at issue, <netbooks.us>, the domain name was first registered by the Respondent on March 18, 2007.

Complainant has established with extrinsic evidence that it has rights in the NETBOOKS mark through registration with the USPTO, and that such rights date to 1995, well prior to Respondent's registration of the <netbooks.us> domain name. "Complainant's timely registration with the USPTO, executed years before Respondent's registration of the disputed domain name, sufficiently establishes rights in the mark pursuant to Policy ¶4(a)(i)." Citrix Systems, Inc. v. Sarah Louise, FA 998089 (Nat. Arb. Forum July 10, 2007), citing Mothers Against Drunk Driving v. phix, FA 174052 (Nat. Arb. Forum Sept. 25, 2003) (finding that the complainant's registration of the MADD mark with the United

States Patent and Trademark Office established the complainant's rights in the mark for purposes of Policy ¶4(a)(i); *VICORP Rests., Inc. v. Triantafillos*, FA 485933 (Nat. Arb. Forum July 14, 2005) ("Complainant has established rights in the BAKERS SQUARE mark by registering it with the United States Patent and Trademark Office ("USPTO").")

As can be seen, the only difference between Complainant's mark NETBOOKS and Respondent's domain name <netbooks.us>, is the addition of the generic top-level domain ("gTLD") ".us" in the domain name. As was found by the panel in the matter of *Mothers Against Drunk Driving v. phix*, FA 174052 (Nat. Arb. Forum Sept. 25, 2003), simply combining Complainant's mark and a gLTD is not sufficient to distinguish the disputed domain name from Complainant's mark under Policy ¶4(a)(i). See also *Pomellato S.p.A v. Tonetti*, D2000-0493 (WIPO July 7, 2000) (finding <pomellato.com> identical to Complainant's mark because the generic top-level domain (gTLD) ".com" after the name POMELLATO is not relevant); see also *Nike, Inc. v. Coleman*, D2000-1120 (WIPO Nov. 6, 2000) (finding that the domain name <nike.net> is identical to Complainant's NIKE mark). Accordingly, Respondent's domain name <netbooks.us> is virtually identical and confusingly similar to Complainant's NETBOOKS mark for purposes of satisfying Policy ¶4(a)(i).

[b.] usTLD Rule 3(c)(ix)(2); usTLD Policy ¶4(a)(ii).

Respondent has no right or legitimate interest in respect of the domain name that is the subject of the Complaint.

As demonstrated by Complainant's trademark registration certificate, Complainant has rights and legitimate interests in the mark, which is contained in its entirety within the disputed domain name. Complainant hereby alleges that, upon information and belief, Respondent has no such rights in the domain name at issue. Furthermore, Complainant did not authorize or license the Respondent's use of Complainant's mark in a domain name.

As demonstrated by a print-out of Respondent's web site maintained at the domain name <netbooks.us>, the disputed domain name is used to redirect Internet users to click-through advertising for a series of web sites unrelated to Complainant's NETBOOKS mark. Obviously, the use of the term "Sponsored Links" by Respondent at the top of the web site demonstrates that Respondent is receiving compensation for these click-through advertising links to third-party web sites at the <netbooks.us> domain. Furthermore, as can be seen on the header and the footer of the web site print out, the <netbooks.us> domain name actually redirects to a URL identified as http://traffic.revenuedirect.com/feeds/drfeed.php?domain_name=netbooks.us. The fact that this redirect URL encompasses the term "revenuedirect" also indicates that Respondent is receiving compensation for this misuse of the <netbooks.us> domain name.

"Respondent's use of the disputed domain name to misdirect unsuspecting Internet users to a website featuring click-through advertising is neither a bona fide offering of goods or

services pursuant to Policy ¶4(c)(i) nor a legitimate noncommercial or fair use in accordance with Policy ¶4(c)(iii).” Certified Financial Planner Board of Standards Inc. v. Financial Planners Index c/o Alex Zamboni, FA 910784 (Nat. Arb. Forum March 9, 2007), citing Wells Fargo & Co. v. Lin Shun Shing, FA 205699 (Nat. Arb. Forum Dec. 8, 2003) (finding that using a domain name to direct Internet traffic to a website featuring pop-up advertisements and links to various third-party websites 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) because the registrant presumably receives compensation for each misdirected Internet user); see also Tercent Inc. v. Lee Yi, FA 139720 (Nat. Arb. Forum Feb. 10, 2003) (holding that a respondent’s use of a disputed domain name to host a series of hyperlinks and a banner advertisement was neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the domain name).

An examination of Respondent’s WHOIS registration indicates that the registrant of the <netbooks.us> domain name is F.B. (us). This demonstrates that Respondent is not commonly known by the disputed domain name in accordance with Policy 4(c)(ii). Citrix Systems, Inc. v. Sarah Louise, FA 998089 (Nat. Arb. Forum July 10, 2007), citing M. Shanken Commc’ns v. WORLDTRAVELERSONLINE.COM, FA 740335 (Nat. Arb. Forum Aug. 3, 2006) (finding that the respondent was not commonly known by the <cigaraficionada.com> domain name under Policy ¶4(c)(ii) based on the WHOIS information and other evidence in the record); Reese v. Morgan, FA 917029 (Nat. Arb. Forum Apr. 5, 2007) (concluding that the respondent was not commonly known by the <lilpunk.com> domain name as there was no evidence in the record showing that the respondent was commonly known by that domain name, including the WHOIS information as well as the complainant’s assertion that it did not authorize or license the respondent’s use of its mark in a domain name).

Thus, the evidence demonstrates that Respondent has no right or legitimate interest to the <netbooks.us> domain name pursuant to paragraph 4(c)(i)-(iii) of the Policy.

[c.] usTLD Rule 3(c)(ix)(3); usTLD Policy ¶4(a)(iii).

The domain should be considered as having been registered and used in bad faith.

As discussed in the previous section, the disputed domain name is being used by Respondent to misdirect unsuspecting Internet users to a website featuring click-through advertising for third parties unrelated to Complainant’s NETBOOKS mark. “Such use of the disputed domain name to misdirect unsuspecting Internet users to its own website, presumably with the intent of securing financial benefit, suggests registration and use in bad faith pursuant to Policy ¶4(b)(iv).” Certified Financial Planner Board of Standards Inc. v. Financial Planners Index c/o Alex Zamboni, FA 910784 (Nat. Arb. Forum March 9, 2007) (finding bad faith where Respondent used registered mark CERTIFIED FINANCIAL PLANNER in domain name to resolve to web site with click-through advertising), citing Anne of Green Gable Licensing Auth., Inc. v. Internetworks, AF-0109 (eResolution June 12, 2000) (finding that a respondent violated Policy ¶4(b)(iv) because where it admittedly used a complainant’s well-known mark to attract users to

that respondent's website); Perot Sys. Corp. v. Perot.net, FA 95312 (Nat. Arb. Forum Aug. 29, 2000) (finding bad faith where the domain name there in question was obviously connected with a complainant's well-known marks, thus creating a likelihood of confusion for a respondent's commercial gain).

Additionally, it would appear that Respondent registered the <netbooks.us> domain name with constructive knowledge of Complainant's rights in the NETBOOKS mark by virtue of Complainant's prior registration of the mark with the PTO. "Registration of a confusingly similar domain name despite such constructive knowledge is, without more, evidence of bad faith registration and use of the domain name pursuant to Policy ¶4(a)(iii)." Certified Financial Planner Board of Standards Inc. v Financial Planners Index c/o Alex Zamboni, FA 910784 (Nat. Arb. Forum March 9, 2007), citing Digi Int'l v. DDI Sys., FA 124506 (Nat. Arb. Forum Oct. 24, 2002); Orange Glo Int'l v. Blume, FA 118313 (Nat. Arb. Forum Oct. 4, 2002).

The WHOIS record for Respondent's mark also indicates that the administrative contact name for the domain name is "FOR SALE – Inquiries Welcome -.US." This also demonstrates bad faith as it implies that the domain name was registered primarily for the purpose of selling it. See Microsoft Corp. v. Amit Mehrotra, D2000-0053 (WIPO Apr. 10, 2000) (finding that Respondent registered the domain name for the purpose of selling it, as revealed by the name the Respondent chose for the registrant, "If you want this domain name, please contact me"); Parfums Christain Dior v. QTR Corp., D2000-0023 (WIPO Mar. 9, 2000) (finding bad faith where the Respondent's WHOIS registration information contained the words, "This domain name is for sale.").

The facts in this matter clearly demonstrate that Respondent has also registered and used the domain name in bad faith.

B. Respondent

Respondent did not respond to this proceeding.

FINDINGS

Complainant, Netbooks, Inc., holds a registered trademark with the United States Patent and Trademark Office ("USPTO") for the NETBOOKS mark (Reg. No. 2,064,629 issued May 27, 1997) to be used in association with computer software for accounting.

Respondent, F.B. (us), registered the <netbooks.us> domain name on March 18, 2007, and is using the disputed domain name to display a list of hyperlinks advertising various unrelated goods and services.

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 the Complainant's undisputed representations pursuant to Paragraphs 5(f), 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 the 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 the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered or is being used in bad faith.

Given the similarity between the Uniform Domain Name Dispute Resolution Policy ("UDRP") and the usTLD Policy, the Panel will draw upon UDRP precedent as applicable in rendering its decision.

Identical and/or Confusingly Similar

Complainant has asserted rights to the NETBOOKS mark through its USPTO registration. In accordance with a majority of panels, the Panel finds this sufficient to confer rights in the NETBOOKS mark to Complainant pursuant to Policy ¶4(a)(i). *See Diners Club Int'l Ltd. v. Rulator Corp.*, FA 967678 (Nat. Arb. Forum June 5, 2007) (conferring rights in the DINERS mark to the complainant based upon its USPTO trademark registration); *see also Expedia, Inc. v. Emmerson*, FA 873346 (Nat. Arb. Forum Feb. 9, 2007) ("Complainant's trademark registrations with the USPTO adequately demonstrate its rights in the [EXPEDIA] mark pursuant to UDRP Policy ¶4(a)(i).").

Respondent's <netbooks.us> domain name contains Complainant's NETBOOKS mark in its entirety and adds the country-code top-level domain ("ccTLD") ".us." The addition of a ccTLD is irrelevant under the Policy; therefore, the Panel finds Respondent's <netbooks.us> domain name is identical to Complainant's NETBOOKS mark pursuant to Policy ¶4(a)(i). *See Lifetouch, Inc. v. Fox Photographics*, FA 414667 (Nat. Arb. Forum Mar. 21, 2005) (finding the respondent's <lifetouch.us> domain name to be identical to the complainant's LIFETOUCH mark because "[t]he addition of ".us" to a mark fails to distinguish the domain name from the mark pursuant to the Policy"); *see*

also Tropar Mfg. Co. v. TSB, FA 127701 (Nat. Arb. Forum Dec. 4, 2002) (finding that since the addition of the country-code “.us” fails to add any distinguishing characteristic to the domain name, the <tropar.us> domain name is identical to the complainant’s TROPAR mark).

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

Rights or Legitimate Interests

Complainant has alleged Respondent does not have rights and legitimate interests in the <netbooks.us> domain name. Once Complainant makes a *prima facie* case in support of its allegations, the burden then shifts to Respondent to show it does have rights or legitimate interests under Policy ¶4(a)(ii). The Panel finds Complainant has established a *prima facie* case 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 Hanna-Barbera Prods., Inc. v. Entm’t Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) (holding that the complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under UDRP Policy ¶4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name). Since Respondent has not responded to the Complaint, the Panel will examine the record to determine if Respondent has rights or legitimate interests pursuant to Policy ¶4(c).

Complainant has successfully established rights to the NETBOOKS mark. Furthermore, Respondent has not submitted any evidence showing that it is the owner or beneficiary of a mark identical to the <netbooks.us> domain name. Therefore, the Panel finds Complainant has satisfied Policy ¶4(c)(i). *See Meow Media Inc. v. Basil*, FA 113280 (Nat. Arb. Forum Aug. 20, 2002) (finding that there was no evidence that the respondent was the owner or beneficiary of a mark that is identical to the <persiankitty.com> domain name); *see also Pepsico, Inc. v. Becky*, FA 117014 (Nat. Arb. Forum Sept. 3, 2002) (holding that because the respondent did not own any trademarks or service marks reflecting the <pepsicola.us> domain name, it had no rights or legitimate interests pursuant to Policy ¶4(c)(i)).

Complainant has noted the WHOIS information identifies Respondent as “F.B. (us).” Therefore, Complainant argued Respondent is not commonly known by the <netbooks.us> domain name, and cites two UDRP cases as persuasive authority. *See M. Shanken Commc’ns v. WORLDTRAVELERSONLINE.COM*, FA 740335 (Nat. Arb. Forum Aug. 3, 2006) (finding that the respondent was not commonly known by the <cigaraficionada.com> domain name under UDRP Policy ¶4(c)(ii) based on the WHOIS information and other evidence in the record); *see also Reese v. Morgan*, FA 917029 (Nat. Arb. Forum Apr. 5, 2007) (concluding that the respondent was not commonly known by the <lilpunk.com> domain name as there was no evidence in the record

showing that the respondent was commonly known by that domain name, including the WHOIS information as well as the complainant's assertion that it did not authorize or license the respondent's use of its mark in a domain name). The Panel agrees with Complainant. Absent a response, the Panel can find no evidence in the record indicating that Respondent is commonly known by the disputed domain name. Therefore, the Panel concludes Respondent is not commonly known by the <netbooks.us> domain name pursuant to Policy ¶4(c)(iii).

Respondent is using the <netbooks.us> domain name to display a list of hyperlinks advertising various goods and services that are unrelated to Complainant's business. Complainant has alleged Respondent receives click-through fees for each redirected Internet user, and is therefore commercially benefiting from use of Complainant's NETBOOKS mark. The Panel finds Respondent's use of the <netbooks.us> domain name does not constitute a *bona fide* offering of goods or services under Policy ¶4(c)(ii), or a legitimate noncommercial or fair use under Policy ¶4(c)(iv). *See Constellation Wines U.S., Inc. v. Tex. Int'l Prop. Assocs.*, FA 948436 (Nat. Arb. Forum May 8, 2007) (finding that the respondent had no rights or legitimate interests under UDRP Policy ¶¶4(c)(i) or 4(c)(iii) by using the disputed domain name to operate a website featuring links to goods and services unrelated to the complainant); *see also Vanderbilt Univ. v. U Inc.*, FA 893000 (Nat. Arb. Forum Feb. 19, 2007) (holding that the respondent did not have rights or legitimate interests in a domain name where it was redirecting Internet users to its own website promoting the respondent's books unrelated to the complainant).

As Complainant has noticed, the WHOIS information identifies the administrative contact for the <netbooks.us> domain name as "FOR SALE-Inquiries Welcome-.US." Complainant has alleged this illustrates Respondent's intention to register the disputed domain name primarily for the purpose of selling it. The Panel finds this to be further evidence Respondent lacks rights or legitimate interests in the <netbooks.us> domain name pursuant to Policy ¶4(a)(ii). *See Hewlett-Packard Co. v. High Performance Networks, Inc.*, FA 95083 (Nat. Arb. Forum July 31, 2000) (finding no rights or legitimate interests where the respondent registered the domain name with the intention of selling its rights); *see also Mothers Against Drunk Driving v. Hyun-Jun Shin*, FA 154098 (Nat. Arb. Forum May 27, 2003) (holding that under the circumstances, the respondent's apparent willingness to dispose of its rights in the disputed domain name suggested that it lacked rights or legitimate interests in the domain name).

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

Registration and Use in Bad Faith

The Panel agrees with Complainant's contention Respondent registered the <netbooks.us> domain name primarily for the purpose of selling it. The administrative contact information listed in the WHOIS information supports this conclusion. Therefore, Respondent registered and is using the <netbooks.us> domain name in bad faith pursuant to Policy ¶4(b)(i). *See Euromarket Designs, Inc. v. Domain For Sale VMI*, D2000-1195 (WIPO Oct. 26, 2000) ("[T]he manner in which the Respondent chose to

identify itself and its administrative and billing contacts both conceals its identity and unmistakably conveys its intention, from the date of the registration, to sell rather than make any use of the disputed domain name.”); *see also Am. Anti-Vivisection Soc’y v. “Infa dot Net” Web Serv.*, FA 95685 (Nat. Arb. Forum Nov. 6, 2000) (finding that “general offers to sell the domain name, even if no certain price is demanded, are evidence of bad faith”).

Respondent’s <**netbooks.us**> domain name is identical to Complainant’s NETBOOKS mark, and is likely to cause confusion among customers searching for Complainant’s products. Complainant has alleged Respondent redirects Internet users to its website that resolves from the disputed domain name for Respondent’s own commercial gain. Examining the hyperlinks, it is fairly clear Respondent receives click-through fees for each redirected Internet user, and is therefore attempting to commercially profit from the goodwill associated with Complainant’s NETBOOKS mark. Therefore, the Panel finds Respondent’s registration and use of the <**netbooks.us**> domain name constitutes bad faith pursuant to Policy ¶4(b)(iv). *See Ass’n of Junior Leagues Int’l Inc. v. This Domain Name My Be For Sale*, FA 857581 (Nat. Arb. Forum Jan. 4, 2007) (holding that the respondent’s use of the disputed domain name to maintain a pay-per-click site displaying links unrelated to the complainant and to generate click-through revenue suggested bad faith registration and use under UDRP Policy ¶4(b)(iv)); *see also Allianz of Am. Corp. v. Bond*, FA 680624 (Nat. Arb. Forum June 2, 2006) (finding bad faith registration and use under UDRP Policy ¶4(b)(iv) where the respondent was diverting Internet users searching for the complainant to its own website and likely profiting).

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

DECISION

Complainant having established all three elements required under the usTLD Policy, the Panel concludes that relief shall be **GRANTED**.

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



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: October 12, 2007

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