



NATIONAL ARBITRATION FORUM

DECISION

National Westminster Bank plc v. john cars c/o city com
Claim Number: FA0902001247577

PARTIES

Complainant is **National Westminster Bank plc** ("Complainant"), represented by **James A. Thomas**, of **Troutman Sanders LLP**, North Carolina, USA. Respondent is **john cars c/o city com** ("Respondent"), Niger.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<ntwestonlinebank.com>**, registered with **Directi Internet Solutions 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 13, 2009; the National Arbitration Forum received a hard copy of the Complaint on February 16, 2009.

On February 14, 2009, Directi Internet Solutions Pvt. Ltd. d/b/a Publicdomainregistry.com confirmed by e-mail to the National Arbitration Forum that the **<ntwestonlinebank.com>** domain name is registered with Directi Internet Solutions Pvt. Ltd. d/b/a Publicdomainregistry.com and that Respondent is the current registrant of the name. Directi Internet Solutions Pvt. Ltd. d/b/a Publicdomainregistry.com has verified that Respondent is bound by the Directi Internet Solutions 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 19, 2009, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of March 11, 2009 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@ntwestonlinebank.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 19, 2009, 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's Mark). 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 plc ("RBS"), NatWest has more than 3,600 branches and is part of the fifth-largest financial services group in the world.

Complainant holds numerous trademark registrations for its "NATWEST" mark. Complainant's "NATWEST" mark has been registered with the U.K. 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"). Further, Complainant also holds trademark registration for the "NATWEST ON LINE" mark. Complainant uses the mark "NATWEST" in promoting and providing, among other things, banking, credit cards, financial planning and insurance services throughout the United Kingdom and abroad.

An important part of Complainant's business today is its online banking business and financial services. Through NatWest's secure online banking gateway, accessed through its website at <natwest.com> or <natwestonline.com>, customers can, among other things, view balances and statements, pay bills, make payments, and move money between accounts. Complainant, through its parent company, RBS, also owns and uses the following domain names: <natwestbank.org>, <natwestbanking.com>, <natwestonlinebanking.org>, and <ntwestaccess.org> all of which resolve to Complainant's main website at <natwest.com>.

Complainant's rights to the NATWEST mark have been recognized by the National Arbitration Forum. *See National Westminster Bank plc v nat west*, FA 993119 (Nat. Arb. Forum July 9, 2007) ("Complainant has established rights in the NATWEST mark pursuant to Policy ¶4(a)(i) by virtue of its numerous trademark registrations for the mark around the world"); *National Westminster Bank plc v Gregory Buening c/o Gregory Buening*, FA 871066 (Nat. Arb. Forum Jan 29, 2007) ("The Panel f[ound] that Complainant's timely registration and extensive use of the NATWEST mark for over twenty years is sufficient to establish rights in the mark in accordance with Policy ¶4(a)(i)").

As the foregoing indicates, and by virtue of its longstanding role in financial markets in the United Kingdom and elsewhere, its deep commitment to the provision of quality financial products and services, and its significant commitment to the marketing and advertising of its name and mark, Complainant has built up substantial goodwill in the "NATWEST" mark, and in marks derived therefrom.

FACTUAL AND LEGAL GROUNDS

The Domain Name is identical or confusingly similar to trademarks or service marks in which the Complainant has rights.

The Domain Name is confusingly similar to Complainant's Mark because it fully incorporates a misspelled version of Complainant's Mark with the addition of the terms "online" and "bank," which correspond to services provided by Complainant under the mark, and a generic top level domain ("gTLD") ".com". Complainant's Mark is the dominant and distinctive element in the Domain Name. The only deviation is that a single letter "a" is omitted from Complainant's Mark and that "online" and "bank", words corresponding to Complainant's business, and a gTLD have been added. As such, the Domain Name strongly gives the impression that it is owned or sponsored by Complainant, and that it is associated with Complainant's online banking business and financial services.

Prior administrative panels and arbitrators have consistently concluded that a domain name that appropriates another party's trademark with only slight variations – such as the omission of a single letter - remains confusingly similar to the other party's mark. *See National Westminster Bank plc v. Isidro Vera c/o Vera & Frank Invest*, FA 1145779 (Nat. Arb. Forum March 28, 2008) (finding the domain name <ntwestaccess.org> confusingly similar to Complainant's NATWEST mark despite, among other things, the omission of the letter "a"); *Guinness UDV N. Am., Inc. v. Dallas Internet Servs.*, D2001-1055 (WIPO Dec. 12, 2001) (finding the <smirnof.com> domain name confusingly similar to the complainant's SMIRNOFF mark because merely removing the letter "f" from the mark was insignificant); *America Online Inc., v. Yetek Communications, Inc.*, D2001-0055 (WIPO Apr. 23, 2001) ("Precedent clearly supports the principle that the adaptation of a recognized trademark in a domain name by variation in spelling or by the deletion, addition or insertion of letters, words or acronyms does not escape a finding of confusing similarity.") In this case, the Domain Name is confusingly similar to

Complainant's Mark because the omission of a single letter "a" in the Domain Name is insignificant and does not distinguish the Domain Name from Complainant's Mark.

"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." See *TransOcean Bank & Trust, Ltd. v. Erica Ojaruwedia*, FA158163 (Nat. Arb. Forum July 7, 2003) (<transoceanbank.com> ruled confusingly similar to TRANSOCEAN mark where the addition of the word "bank" did not distinguish it from Complainant's mark as "bank" is a generic term describing the business of Complainant); *PBS Privat Bank Schweiz v. Tuzen*, D2001-1311 (WIPO Dec. 5, 2001) (finding that "the juxtaposition of the word 'bank' with these letters which changes the whole complexion of the domain name [<pbsbank.com>] from being one depicting anything at all to one connected with a banking institution"); *The Prudential Ins. Co. of Am. v. TPB Financial*, FA 105218 (Nat. Arb. Forum Mar. 11, 2002) (finding the domain name <prumericaprivatebank.com> confusingly similar to the complainant's PRUMERICA mark because the addition of a term that describes the complainant's business to the domain name does not significantly change the overall impression of the mark).

Moreover, panelists have specifically rejected attempts like Respondent's here to distinguish domain names from established marks based on the addition of the word "online." Indeed, it is well established that when a domain name incorporates a Complainant's trademark, the addition of the word "online" to that mark does not distinguish the domain name and does not prevent the domain name from being confusingly similar to Complainant's trademark. See *National Westminster Bank plc v. Vonase Inc*, FA 0792449 (Nat. Arb. Forum Oct. 25, 2006) (finding the disputed domain name <natwestbank-online.net> confusingly similar to the complainant's NATWEST mark and noting, *inter alia*, that the term "online" (1) is a descriptive term with a relationship to the complainant's business, (2) suggested that the disputed domain name led to a website where the complainant's customers could engage in online banking services, and (3) did not distinguish the disputed domain name from the complainant's mark). In many cases, the addition of the word "online" can increase the likelihood of confusion. See *Credit Lyonnais v. Jehovah Tech. Pte LTD*, D2000-1425 (WIPO Dec. 28, 2000) (finding that "the word 'online' strengthens the confusion since it induces e-banking services offered by this worldwide known banking operator"). Domain names that combine the trademarks of well-known financial institutions with terms describing the online businesses of those institutions, as does the domain name here, have been found to be confusingly similar to the marks at issue. See, e.g., *Citigroup, Inc. v. Horoshiy, Inc. a/k/a Horoshiy*, FA 290633 (Nat. Arb. Forum Aug. 11, 2004) (ordering transfer of <citibankonlinebanking.com>); *Wachovia Corp. v. Asia Ventures, Inc.*, FA 473245 (Nat. Arb. Forum June 27, 2005) (ordering transfer of <wachoviaonlinebanking.com>). Thus, Respondent's addition of the descriptive word "online" to Complainant's Mark does not distinguish the Domain Name from Complainant's Mark but further increases the likelihood of confusion with Complainant's Mark.

Additionally, Respondent's use of the Domain Name contributes to the confusion. Respondent is using the Domain Name to resolve to a website that is a counterfeit of Complainant's genuine website, which suggests that Respondent intended the Domain Name to

be confusingly similar. In a similar case involving a domain name that resolved to a fraudulent copy of the complainant's website, a panelist found that such use was evidence that the domain name was confusingly similar to the mark in question. *The Gaming Board for Great Britain v. Gaming Board*, D2004-0739 (WIPO Oct. 18, 2004) (“[T]he way in which the Respondent has used the domain name [<gbgamingboard.org>] suggests that the Respondent intended users of the Respondent's website to believe that the website at the disputed domain name was associated with the Complainant”). As a result, Respondent's use of the Domain Name to resolve to a fraudulent copy of Complainant's genuine website is further evidence that the Domain Name is confusingly similar to Complainant's Mark.

Accordingly, in light of the foregoing, 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. Complainant has not licensed or otherwise authorized Respondent to use the “NATWEST” mark or any variations thereof. Respondent registered the disputed Domain Name on January 2, 2009. This was more than thirty years after Complainant first registered the mark “NATWEST” in 1973.

Respondent has never used the Domain Name in connection with a *bona fide* offering of goods or services nor made a legitimate noncommercial or fair use of the Domain Name. To the contrary, the Domain Name resolves to a website that intentionally imitates Complainant's genuine website in virtually all respects, including imitations of Complainant's marks and logos, in an obvious effort to mislead users into believing that they are in fact at Complainant's website. This permits Respondent to obtain, through deception, various information from unsuspecting users. For example, Complainant's unsuspecting customers and potential customers who arrive at this site and click on the “Contact Us” link would find contact information and would be deceived into believing that they were viewing Complainant's genuine contact information when in fact this contact information is not found in Complainant's genuine website and is unrelated to Complainant or Complainant's business. As a result, Respondent is able to redirect to itself mail, telephone, fax and e-mail messages from Complainant's customers or potential customers who have mistaken Respondent's website for Complainant's legitimate website. Even more troubling, the “Customer Login” section in Respondent's website brings customers to a login page where they are asked to provide their “Account Number/User ID” and “Password”. Respondent is clearly attempting to use the deception of this counterfeit site to trick users into entering their personal details such as “Driver's License Number or Passport Number,” or their bank account details that users may maintain with Complainant, which when entered would be fraudulently captured by Respondent for its own nefarious purposes.

Such use assuredly 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. See *National Westminster Bank plc v. Blues William*, FA 731824 (Nat. Arb. Forum Aug. 7, 2006) (“Respondent is using the disputed domain name [<uknatwest.com>] to divert Internet users attempting to locate

Complainant's website to a website that is a fraudulent imitation of Complainant's website....such diversion via an imitation website as an attempt by Respondent to pass itself off as Complainant is neither a bona fide offering of goods or services under [the Policy] nor a legitimate noncommercial or fair use under [the Policy]"); *Juno Online Services, Inc. v. Roberto Iza*, FA245960 (Nat. Arb. Forum May 3, 2004) ("Respondent's <my-juno.com> domain name...redirects Internet users to a website that imitates Complainant's billing website, and is used to fraudulently acquire personal information from Complainant's clients. Respondent's use of the domain name does not constitute a bona fide offering of goods or services ... or a legitimate noncommercial or fair use"); *Vivendi Univ. Games and Davidson & Assocs. v. Ronald A. Ballard*, FA 146621 (Nat. Arb. Forum Mar. 13, 2003) (finding that the respondent had no rights or legitimate interests in domain name that was used to host a duplicate of the complainant's site and to procure personal information from Internet users who believed that they had accessed one of the complainant's sites). Accordingly, Respondent's attempt to capitalize on Complainant's well known mark by using a confusingly similar Domain Name to attract Internet users to its website that imitates Complainant's genuine website and solicits personal information – likely in furtherance of some fraudulent activity - does not constitute a use in connection with a bona fide offering of goods and services, pursuant to Policy ¶4 (c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶4 (c)(iii).

Given that Complainant has trademark rights in the distinctive, well-known "NATWEST" mark, any actual use by Respondent of the <ntwestonlinebank.com> domain name would infringe on Complainant's trademark rights. As a matter of law, no use by Respondent of this Domain Name could be legitimate or in connection with a *bona fide* offering of goods or services. See *Broadcom Corp. v. Ayers Int'l Group, Inc.*, FA 112562 (Nat. Arb. Forum July 24, 2002) (finding that "any actual use by Respondent of the disputed domain name [<broadcom-usa.com>] would be an infringement of Complainant's statutory rights in its BROADCOM trademark"); see also *Deutsche Bank Aktiengesellschaft v New York TV Tickets Inc.*, D2001-1314 (WIPO Feb. 12, 2002) ("given the notoriety of the Complainant's Deutsche Bank Mark, any use which the Respondent would make of any domain name [<duetsche-bank.com> and <duetschebank.com>], as here, that incorporated the Complainant's Deutsche Bank Mark, or one confusingly similar thereto, would likely violate the exclusive trademark rights which the Complainant has long held in its mark"). Accordingly, Respondent will not be able to use the Domain Name in connection with a *bona fide* offering of goods or services under Policy ¶4(c)(i), or for a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii).

Further, there is no indication that Respondent is commonly known by the name <ntwestonlinebank.com>. See ICANN Policy ¶4(c)(ii). To the contrary, the name, "john cars c/o city com", under which Respondent registered the Domain Name has no apparent relation to the Domain Name or to Complainant's Mark. (See Exhibit A) This is evidence that Respondent is not commonly known by the disputed Domain Name. See *Nike, Inc. v. BargainName.com*, FA 496731 (Nat. Arb. Forum Aug. 2, 2005) (pointing out that the respondent had registered the domain name <nikezone.com> under the name "BargainName.com" and noting that based on the Whois contact information, one can infer that the respondent is not commonly known by the name). Moreover, the fact that Respondent is using the Domain Name in a scheme imitating Complainant in a deliberate attempt to deceive Complainant's current and potential customers,

likely in furtherance of some fraudulent activity, further supports the conclusion that Respondent is not commonly known by the name <ntwestonlinebank.com>. See *Dell Inc. v. George Dell and Dell Net Solutions*, D2004-0512 (WIPO Aug. 24, 2004) (finding that Respondent's business has not been commonly known by the disputed domain name when, "the Complainant has made a substantial showing that the DELL mark is a well known or famous mark . . . , and given the strength of the DELL mark, the Respondents' use of the disputed domain name seems calculated to falsely suggest to Internet users that the Complainant is affiliated with the website"). Hence, Respondent lacks rights and legitimate interests in the Domain Name pursuant to Policy ¶4(c)(ii).

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 "NATWEST" mark upon which Complainant relies is a registered trademark and well-known throughout the world. In fact, Complainant's Mark has been registered for more than thirty years. Respondent is thus deemed to have actual or constructive knowledge of the mark. 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"). Based on the fame of Complainant's Mark, which is used in providing services to over 7.5 million customers, the fact that Respondent recently chose a domain name which fully incorporates Complainant's Mark, and the fact that Respondent is using the Domain Name to operate a fraudulent imitation of Complainant's legitimate website, it is clear that Respondent had actual knowledge of Complainant's Mark, business, products and website and was trying to take advantage of Complainant's goodwill when it registered the Domain Name. Since Respondent had actual and/or constructive knowledge of Complainant's Mark, Respondent's registration and continued holding of the confusingly similar Domain Name was and is in bad faith.

Respondent's use of the Domain Name to resolve to a fraudulent imitation of Complainant's site, in order to acquire personal information from Complainant's current and potential customers constitutes evidence that Respondent registered and used the Domain Name in bad faith pursuant to Policy ¶4(a)(iii). See *Capital One Fin. Corp. v. Howel*, FA 289304 (Nat. Arb. Forum Aug. 11, 2004) (finding bad faith registration and use pursuant to Policy ¶4(a)(iii) 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); *Waterman, S.A.S. v. Brian Art*, D 2005-0340 (WIPO June 13, 2005) (use in bad faith was found when the users were directed to a site that mirrored the Complainant's website, except for fake contact information and a page devoted to promoting an illegal scheme); *Halifax plc v. Sontaja Sunducl*, D 2004-0237 (WIPO June 3, 2004) ("evidence of duplication in the Complainant's trading get-up, branding and imagery is direct evidence of the domain name being used in bad faith... [T]he apparent potential for "phishing" and obtaining information by deception, is not just evidence of bad faith but possibly suggestive of criminal activity"). In this case, Respondent has demonstrated its bad faith by using a confusingly similar domain name to resolve to a website

which imitates Complainant's website duplicating Complainant's marks and logos in an apparent effort to acquire by false pretense personal and account information from Complainant's customers and potential customers.

Further, Respondent's use of the Domain Name to operate a website purporting to be Complainant's website in an effort to pass itself off as Complainant, evidently for commercial gain, is also evidence of bad faith under ICANN Policy ¶4(b)(iv). See *National Westminster Bank plc v. Blues William*, FA 731824 (Nat. Arb. Forum Aug 7, 2006) ("Respondent is using the disputed domain name for its own commercial benefit by impersonating Complainant and attempting to convince Internet users that it is Complainant's website...[s]uch impersonation for commercial benefit based on the mark and services of Complainant constitutes bad faith registration and use under [the Policy]"); *The Royal Bank of Scotland Group plc v. 123register.com*, FA 649493 (Nat. Arb. Forum Apr. 14, 2006) (holding that the respondent's attempt to pass itself off as the complainant for commercial gain constitutes bad faith registration and use pursuant to Policy ¶4(b)(iv)). As discussed above, the Domain Name resolves to a website fraudulently imitating Complainant's legitimate website, misappropriating Complainant's marks and logos and giving the impression that it is associated with or sponsored by Complainant. The purpose of Respondent's website is to confuse and mislead Complainant's existing and potential customers who are looking for Complainant's products and services into providing personal information to be used in what appears to be a fraudulent scheme. The effect of Respondent's registration and use of the Domain Name is to interfere with Complainant's business and goodwill, likely for Respondent's own commercial gain – and is evidence of bad faith registration and use.

For these reasons, Complainant respectfully asserts that it has met its burden of proving that the Domain Name was registered and used in bad faith.

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

FINDINGS

Complainant, National Westminster Bank plc, is a financial institution that offers banking and credit services to more than 7.5 million individuals and 850,000 small businesses. Complainant has operated under its NATWEST mark since 1968, and has registered the mark with the United Kingdom Intellectual Property Office ("UKIPO") (Reg. No. 1,021,601 filed December 3, 1973), the United States Patent and Trademark Office ("USPTO") (Reg. No. 1,241,454 issued June 7, 1983), and the European Union Office for Harmonization in the Internal Market ("OHIM") (Reg. No. 4,319,067 issued April 18, 2006).

Respondent registered the <**ntwestonlinebank.com**> domain name on January 2, 2009, and is using the disputed domain name to resolve to a website that passes itself off as Complainant's 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

The Panel finds each of Complainant's registrations of the NATWEST mark with the USPTO, UKIPO, and OHIM demonstrate Complainant's rights in the mark under Policy ¶4(a)(i). *See Reebok Int'l Ltd. v. Santos*, FA 565685 (Nat. Arb. Forum Dec. 21, 2005) (finding trademark registration with the USPTO was adequate to establish rights pursuant to Policy ¶4(a)(i)); *see also Royal Bank of Scot. Group plc & Nat. Westminster Bank plc v. Soloviov*, FA 787983 (Nat. Arb. Forum Nov. 3, 2006) ("Complainant's trademark registrations for the NATWEST mark with the United Kingdom Patent Office . . . establish Complainant's rights in the mark pursuant to Policy ¶4(a)(i)."). Complainant's ownership of the "NatWest on line" mark (which is registered with the UKIPO) is particularly important in this case.

The disputed <**ntwestonlinebank.com**> domain name contains Complainant's NATWEST marks (in particular the "NatWest on line" mark) while making the following changes: (1) the letter "a" has been removed from the NATWEST mark; (2) the descriptive term "bank" has been attached; and (3) the generic top-level domain ".com" has been attached. First, the Panel finds the addition of a top-level domain is immaterial under Policy ¶4(a)(i). Second, the removal of a letter from a mark and the addition of

descriptive terms relating to Complainant's business fail to create meaningful distinctions that would thwart a finding of confusing similarity. Therefore, the Panel finds the disputed domain name is confusingly similar to Complainant's mark under Policy ¶4(a)(i). See *Rollerblade, Inc. v. McCrady*, D2000-0429 (WIPO June 25, 2000) (finding that the top level of the domain name such as ".net" or ".com" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar); see also *Google, Inc. v. DktBot.org*, FA 286993 (Nat. Arb. Forum Aug. 4, 2004) ("The mere addition of a single letter to the complainant's mark does not remove the respondent's domain names from the realm of confusing similarity in relation to the complainant's mark pursuant to Policy ¶4(a)(i)."); see also *Vance Int'l, Inc. v. Abend*, FA 970871 (Nat. Arb. Forum June 8, 2007) (finding that by adding the term "security" to the complainant's VANCE mark, which described the complainant's business, the respondent "very significantly increased" the likelihood of confusion with the complainant's mark).

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

Rights or Legitimate Interests

Complainant asserts Respondent lacks rights and legitimate interests in the disputed domain name. The Panel finds Complainant has set forth a sufficient *prima facie* case supporting its allegations, and thus Respondent has the burden to prove to the contrary under Policy ¶4(a)(ii). See *Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that, under certain circumstances, the mere assertion by the complainant that the respondent has no right or legitimate interest is sufficient to shift the burden of proof to the respondent to demonstrate that such a right or legitimate interest does exist); 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's disputed domain name and corresponding website imitate Complainant's own legitimate website. Indeed, Respondent has attempted to pass itself off as Complainant for commercial gain through this deceptive practice. There is no evidence within the record to suggest that there is any independent content or usage that would constitute 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). The Panel therefore finds Respondent lacks rights and legitimate interests in the disputed domain name pursuant to Policy ¶4(c)(i) and (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”); *see also Am. Int’l Group, Inc. v. Busby*, FA 156251 (Nat. Arb. Forum May 30, 2003) (finding that the respondent attempts to pass itself off as the complainant online, which is blatant unauthorized use of the complainant’s mark and is evidence that the respondent has no rights or legitimate interests in the disputed domain name).

There is no evidence in the record to suggest Respondent is commonly known by the disputed domain name. The registrant is listed as “john cars c/o city com” in the WHOIS information. Therefore, the Panel finds Respondent lacks rights and legitimate interests pursuant to Policy ¶4(a)(ii). *See St. Lawrence Univ. v. Nextnet Tech*, FA 881234 (Nat. Arb. Forum Feb. 21, 2007) (concluding a respondent has no rights or legitimate interests in a disputed domain name where there was no evidence in the record indicating that the respondent was commonly known by the disputed domain name); *see also 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).

It is clear Respondent has engaged in “phishing,” which refers to the deception of Internet users so as to lead them into voluntarily divulging their private information. Respondent’s confusingly similar domain name and corresponding counterfeit website fall within this definition. Therefore, the Panel finds Respondent’s engagement in phishing constitutes evidence of Respondent’s lack of rights and legitimate interests pursuant to Policy ¶4(a)(ii). *See Juno Online Servs., Inc. v. Iza*, FA 245960 (Nat. Arb. Forum May 3, 2004) (finding that using a domain name to redirect “Internet users to a website that imitates Complainant’s billing website, and is used to fraudulently acquire personal information from Complainant’s clients,” is neither 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).

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

Registration and Use in Bad Faith

Respondent’s domain name diverts Internet users to a website that purports to belong to Complainant. Respondent seeks this confusion so as to disrupt Complainant’s business for its own purposes. The Panel therefore finds Respondent has engaged in bad faith registration and use pursuant to Policy ¶4(b)(iii). *See Mission KwaSizabantu v. Rost*, D2000-0279 (WIPO June 7, 2000) (defining “competitor” as “one who acts in opposition to another and the context does not imply or demand any restricted meaning such as

commercial or business competitor”); *see also S. Exposure v. S. Exposure, Inc.*, FA 94864 (Nat. Arb. Forum July 18, 2000) (finding that the respondent registered the domain name in question to disrupt the business of the complainant, a competitor of the respondent).

Respondent’s confusingly similar domain name resolves to a website that attempts to imitate Complainant. Respondent presumably seeks to obtain the private information of Internet users through this imitation to pursue monetary gain. Thus, Respondent’s registration of the disputed domain name and subsequent use has created a likelihood of confusion as to the source and endorsement of the disputed domain name and corresponding website. Therefore, the Panel finds Respondent has engaged in bad faith registration and use under Policy ¶4(b)(iv). *See Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1148 (9th Cir. 2002) (“While an intent to confuse consumers is not required for a finding of trademark infringement, intent to deceive is strong evidence of a likelihood of confusion.”); *see also 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).

Furthermore, the Panel finds Respondent’s engagement in phishing constitutes bad faith registration and use under 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 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).

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



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: April 2, 2009

[Click Here](#) to return to the main Domain Decisions Page.

[Click Here](#) to return to our Home Page

NATIONAL ARBITRATION FORUM