



NATIONAL ARBITRATION FORUM

DECISION

Chevron Intellectual Property LLC v. Caribbean Online International Ltd.
Claim Number: FA0611000833024

PARTIES

Complainant is **Chevron Intellectual Property LLC** ("Complainant"), represented by **Eliane Setton**, of **Chevron Intellectual Property LLC**, 6001 Bollinger Canyon Road, San Ramon, CA 94583. Respondent is **Caribbean Online International Ltd.** ("Respondent"), Kings Court, Bay Street, P.O. Box N-3944, Nassau BS.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**texacocreditcards.com**>, registered with **Capitoldomains, Llc**.

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 November 6, 2006; the National Arbitration Forum received a hard copy of the Complaint on November 6, 2006.

On November 6, 2006, Capitoldomains, Llc confirmed by e-mail to the National Arbitration Forum that the <**texacocreditcards.com**> domain name is registered with Capitoldomains, Llc and that Respondent is the current registrant of the name. Capitoldomains, Llc has verified that Respondent is bound by the Capitoldomains, Llc 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 November 14, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of December 4, 2006 by which Respondent could file a response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@texacocreditcards.com by e-mail.

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

On December 8, 2006, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the National Arbitration Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

- [a.] The Domain Name TEXACOCREDITCARDS.COM is Virtually Identical to Complainant's TEXACO Trademark. ICANN Rule 3(b)(ix)(1); ICANN Policy ¶4(a)(i)

Respondent, a cybersquatter, has registered the domain name TEXACOCREDITCARDS.COM which incorporates Complainant's famous mark. This domain name is virtually identical to Complainant's TEXACO trademark. The Respondent has included the generic terms CREDIT CARDS as a part of its domain name, but Complainant also uses similar domain names, for example CHEVRONTEXACOCARDS.COM for its credit card services. It is a well established principle of trademark law that use of a third party's mark in conjunction with a generic or descriptive term creates a mark confusingly similar to that third party's mark. *Trademark Manual of Examining Procedure* § 1207.01(b)(iii). Stated another way, if the dominant portion of both marks is the same, confusion is likely notwithstanding peripheral differences. *Id. See also In re El Torito Restaurants Inc.*, 9 USPQ 2d 2002 (TTAB 1988) (MACHO COMBOS (with "combos" disclaimed) held to be confusingly similar to MACHO (Stylized)); *In re Denisi*, 225 USPQ 624 (TTAB 1985) (PERRY'S PIZZA held confusingly similar to PERRY'S where PIZZA is a generic term); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and Design) (with "California" disclaimed) held confusingly similar to COLLEGIENNE). Accordingly, TEXACOCREDITCARDS.COM is virtually identical and confusingly similar to TEXACO.

Additionally, the use of the generic top-level domain “.com” is irrelevant under the Policy. See *Magnum Piering, Inc. v. Mudjackers & Wilson*, D20001525 (IPO January 29, 2001) (holding that confusing similarity under the Policy is decided upon the inclusion of a trademark in the domain name); see also *Oki Data Americas, Inc. v. ASD Inc.*, D2001-0903 (WIPO November 6, 2001) (finding that incorporating complainant’s mark is sufficient to establish identical or confusing similarity for purposes of the Policy); see also *Busy Body, Inc. v. Fitness Outlet Inc.*, D20000127 (WIPO April 22, 2000) (finding that the addition of a top-level domain is without legal significance).

Accordingly, Respondent’s use of Complainant’s famous TEXACO trademark in its entirety in conjunction with the generic terms CREDIT CARDS creates a domain name virtually identical to the Complainant’s mark for the purposes of the Policy. Thus, the domain name TEXACOCREDITCARDS.COM is clearly confusingly similar to Complainant’s TEXACO trademark.

[b.] Respondent Has No Rights or Legitimate Interests in the Domain Name TEXACOCREDITCARDS.COM. ICANN Rule 3(b)(ix)(2); ICANN Policy ¶4(a)(ii)

(i.) Respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name has not been in connection with a bona fide offering of goods or services

By registering the domain name TEXACOCREDITCARDS.COM to direct Internet users to a website which includes click-through links from which financial revenue is received based upon the number of clicks, Respondent clearly intended to profit from the use of a domain name which is confusingly similar to Complainant’s famous TEXACO trademark. Such use of the TEXACOCREDITCARDS.COM domain name simply cannot be the basis for a *bona fide* offering of goods or services, nor does it constitute a legitimate non-commercial or fair use of the domain name.

According to *Tercent Inc. v. Yi*, FA 139720 (Nat. Arb. Forum February, 2003) (holding that respondent’s use of the disputed domain name to host a series of hyperlinks and banner advertisement was neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the domain name) and *Bank of America Corp. v. Out Island Props., Inc.*, FA 154531 (Nat. Arb. Forum June 3, 2003) (holding that respondent’s use of the disputed domain names to direct Internet traffic to a search engine website that hosted advertisements was evidence that it lacked rights or legitimate interests in the domain names), such use of TEXACOCREDITCARDS.COM cannot be the basis for a bona-fide offering of goods or services, nor does it constitute a legitimate non-commercial or fair use of the domain name.

Complainant respectfully submits that Respondent has not made any use of the TEXACOCREDITCARDS.COM domain name in connection with a bona fide offering

of goods or services before notice of this dispute to Respondent nor has Respondent made a legitimate non-commercial or fair use of the domain name.

(ii.) Respondent (as an individual, business, or other organization) is neither commonly known by the domain name, nor has it acquired trademark or service mark rights in the domain name;

Complainant and its predecessors-in-interest have used the TEXACO trademark in commerce for over 100 years. As a result, the TEXACO trademark should be considered a well-known and famous trademark. Complainant's ownership of several trademark applications and registrations and its long-standing use establish a clear priority in favor of Complainant regarding the TEXACO trademark.

Moreover Complainant has neither authorized nor licensed Respondent in any way to use or exploit the TEXACO trademark, to appropriate this domain name, or to otherwise associate itself with Complainant. In fact, Respondent was most likely well aware of Complainant's famous mark when Respondent registered the domain name TEXACOCREDITCARDS.COM and acquired the domain name for the purpose of diverting Internet traffic from Complainant's legitimate website to a website containing click-through links.

Where it appears that the sole purpose of the owner of a domain name is to divert Internet traffic through the use of a well-known mark, no legitimate rights are established *Kosmea Pty Ltd v. Carmel Krpan*, D2000-0948 (WIPO October 3, 2000). Moreover, diverting traffic to a website providing hyperlinks and banner ads does not create legitimate rights in the domain name. *See Tercent, supra and Bank of America, supra.*

(iii.) Respondent has not made 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 has not made a legitimate non-commercial or fair use of the domain name TEXACOCREDITCARDS.COM. The Respondent's website has a series of click-through links which when accessed generate financial gain for Respondent. Additionally, when the user initially goes to or exits the TEXACOCREDITCARDS.COM website, the user encounters several pop-up advertisements. Finally, as Complainant actually offers its own credit card services under its TEXACO trademark, it is clear that consumers desiring to find information regarding such services would expect a website titled "texacocreditcards.com" to have such information. It is clear then that Respondent is using TEXACOCREDITCARDS.COM to mislead and divert legitimate TEXACO credit card customers.

[c.] Respondent has Registered and Is Using the TEXACOCREDITCARDS.COM Domain Name in Bad Faith. ICANN Rule 3(b)(ix)(3); ICANN Policy ¶4(a)(iii).

By using the domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's web site or other on-line location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site or location or of a product or service on Respondent's web site or location.

As stated above, Respondent's website contains a series of click-through links which when accessed generate financial revenue for Respondent. Internet users when searching for information regarding TEXACO credit card services would naturally believe that the website TEXACOCREDITCARDS.COM provides information regarding these services. Instead, the user finds a series of advertisements for other financial services. Furthermore, by using a domain name which incorporates Complainant's famous TEXACO trademark and is virtually identical to the domain name which does contain information regarding Complainant's credit card services, i.e. CHEVRONTEXACOCARDS.COM; Internet users are likely to believe that Complainant sponsors or endorses Respondent's website when it actually it does not.

In conclusion, Complainant has established that (i) Respondent's domain name is identical or confusingly similar to Complainant's trademark; (ii) Respondent has no rights or legitimate interests in the domain name TEXACOCREDITCARDS.COM and (iii) Respondent registered and is using the domain name in bad faith. Having met the requirements set forth in ICANN Rule 3(b)(ix), Complainant respectfully requests that the domain name TEXACOCREDITCARDS.COM be transferred to Complainant.

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

FINDINGS

Complainant, Chevron Intellectual Property LLC, uses the TEXACO trademark in connection with a variety of different products and services including gasoline, lubricants, service station services and credit card services. Complainant holds a trademark registration with the United States Patent and Trademark Office ("USPTO") for the TEXACO mark (Reg. No. 2,169,700 issued June 30, 1998).

Respondent registered the <texacocreditcards.com> domain name on October 17, 2002. Respondent is using the disputed domain name to redirect Internet users to Respondent's commercial website that features links to a variety of websites related and unrelated to Complainant.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Paragraph 4(a) of the Policy requires Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

Complainant has established rights in the TEXACO mark through registration of the mark with the USPTO. *America Online, Inc. v. Thomas P. Culver Enters.*, D2001-0564 (WIPO June 18, 2001) (finding that successful trademark registration with the USPTO creates a presumption of rights in a mark); *see also Vivendi Universal Games v. XBNetVentures Inc.*, FA 198803 (Nat. Arb. Forum Nov. 11, 2003) ("Complainant's federal trademark registrations establish Complainant's rights in the BLIZZARD mark.").

Respondent's <**texacocreditcards.com**> domain name is confusingly similar to Complainant's TEXACO mark because Respondent's domain name incorporates Complainant's mark in its entirety and adds the terms "credit" and "cards," which describe an aspect of Complainant's business. The Panel finds such minor additions to Complainant's registered mark do not negate the confusingly similar aspects of Respondent's domain name 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 Arthur Guinness Son & Co. (Dublin) Ltd. v. Healy/BOSTH*, D2001-0026 (WIPO Mar. 23, 2001) (finding confusing similarity where the domain name in dispute contains the identical mark of the complainant combined with a generic word or term).

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

Rights or Legitimate Interests

Complainant established it has rights to and legitimate interests in the mark contained in its entirety in the disputed domain name. Complainant has alleged Respondent does not have rights or legitimate interests in the disputed domain name. Under Policy ¶4(a)(ii), the burden is on Complainant to prove Respondent does not have rights or legitimate interests in the disputed domain name. Once Complainant has made a *prima facie* case, the burden then shifts to Respondent to show it has rights or legitimate interests pursuant to Policy ¶4(c). *See Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (once the complainant asserts that the respondent has no rights or legitimate interests with respect to the domain, the burden shifts to the respondent to provide “concrete evidence that it has rights to or legitimate interests in the domain name at issue”); *see also 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).

The <**texacocreditcards.com**> domain name is confusingly similar to Complainant’s TEXACO mark and is used to redirect Internet users to Respondent’s commercial website that features “sponsored links” to a variety of websites related and unrelated to Complainant and Complainant’s business. The Panel finds Respondent’s use of a domain name that includes Complainant’s entire mark to divert Internet users to a website that links to third-party websites related and unrelated to Complainant, and for which Respondent presumably receives click-through fees, is not 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 eBay Inc. v. Hong*, D2000-1633 (WIPO Jan. 18, 2001) (stating that the respondent’s use of the complainant’s entire mark in domain names makes it difficult to infer a legitimate use); *see also Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 180704 (Nat. Arb. Forum Sept. 30, 2003) (“Respondent’s demonstrated intent to divert Internet users seeking Complainant’s website to a website of Respondent and for Respondent’s benefit is not a bona fide offering of goods or services under Policy ¶4(c)(i) and it is not a legitimate noncommercial or fair use under Policy ¶4(c)(iii).”); *see also MSNBC Cable, LLC v. Tsysys.com*, D2000-1204 (WIPO Dec. 8, 2000) (finding no rights or legitimate interests in the famous MSNBC mark where the respondent attempted to profit using the complainant’s mark by redirecting Internet traffic to its own website).

Complainant asserts without opposition Respondent is neither commonly known by the <**texacocreditcards.com**> domain name nor authorized to use a domain name featuring Complainant’s mark. The Panel finds Respondent is not commonly known by the disputed domain name pursuant to Policy ¶4(c)(ii). *See Charles Jourdan Holding AG v. AAIM*, D2000-0403 (WIPO June 27, 2000) (finding no rights or legitimate interests where (1) a respondent is not a licensee of a complainant; (2) complainant’s prior rights in the domain name precede that respondent’s domain name registration; (3) that respondent is not commonly known by the domain name in question); *see also*

Compagnie de Saint Gobain v. Com-Union Corp., D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interests where a respondent was not commonly known by the mark and never applied for a license or permission from a complainant to use the trademarked name).

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

Registration and Use in Bad Faith

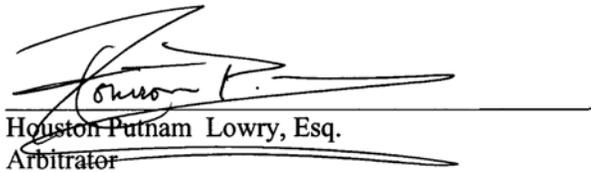
The <**texacocreditcards.com**> domain name resolves to Respondent's commercial website that features "sponsored links" (which someone presumably had to pay to get) to a variety of websites related and unrelated to Complainant. The Panel presumes Respondent receives fees for diverting Internet users to related and unrelated third-party websites. Additionally, Respondent's use of Complainant's distinctive TEXACO mark in the domain name creates a likelihood of confusion and suggests an attempt to attract Internet users to Respondent's website for Respondent's commercial gain. The Panel finds this is evidence of Respondent's bad faith registration and use pursuant to Policy ¶4(b)(iv). *See Am. Univ. v. Cook*, FA 208629 (Nat. Arb. Forum Dec. 22, 2003) ("Registration and use of a domain name that incorporates another's mark with the intent to deceive Internet users in regard to the source or affiliation of the domain name is evidence of bad faith."); *see also G.D. Searle & Co. v. Celebex Drugstore*, FA 123933 (Nat. Arb. Forum Nov. 21, 2002) (finding that the respondent registered and used the domain name in bad faith pursuant to Policy ¶4(b)(iv) because the respondent was using the confusingly similar domain name to attract Internet users to its commercial website).

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



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: December 20, 2006

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

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

NATIONAL ARBITRATION FORUM