



## NATIONAL ARBITRATION FORUM

### DECISION

Whitney National Bank v. Digi Real Estate Foundation  
Claim Number: FA0602000637811

#### **PARTIES**

Complainant is **Whitney National Bank** ("Complainant"), represented by **Raymond G. Areaux**, of **Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC**, 1100 Poydras Street, Suite 2700, New Orleans, LA 70163. Respondent is **Digi Real Estate Foundation** ("Respondent"), P.O. Box 7-5324, Panama City N7 8DJ, PA.

#### **REGISTRAR AND DISPUTED DOMAIN NAME**

The domain name at issue is <**witneybank.com**>, registered with **Enom, Inc.**

#### **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 January 31, 2006; the National Arbitration Forum received a hard copy of the Complaint on February 1, 2006.

On February 1, 2006, Enom, Inc. confirmed by e-mail to the National Arbitration Forum that the <**witneybank.com**> domain name is registered with Enom, Inc. and that Respondent is the current registrant of the name. Enom, Inc. has verified that Respondent is bound by the Enom, Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On February 2, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of February 22, 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@witneybank.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 1, 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:

#### **FACTUAL AND LEGAL GROUNDS**

This Complaint is based on the following factual and legal grounds. *See* ICANN Rule 3(b)(ix).

Complainant has used the trademarks and service marks WHITNEY and WHITNEY BANK for over one hundred and twenty (120) years (i.e., since its inception in 1883). Additionally, Complainant has used the term WHITNEY in conjunction with NATIONAL BANK as part of its name for at least ninety-four (94) years.

Complainant is the oldest continuously operating bank in New Orleans, Louisiana (having been in continuous operation since 1883) and a banking industry leader in the Gulf South region of the United States. Complainant, a multi-billion dollar financial institution, engages in community banking in its market areas in the five-state Gulf Coast region, including Houston, Texas; southern Louisiana; the coastal region of Mississippi; central and south Alabama; and the panhandle of Florida. Complainant also has a foreign branch on Grand Cayman in the British West Indies.

Through its bank, and together with its affiliates, Whitney Securities, L.L.C. and Whitney Community Development Corporation, Complainant offers commercial, retail, and international banking services, as well as brokerage, investment, trust, and mortgage services throughout the Gulf South region of the United States.

As a result of its many, many years of offering an extensive array of banking and financial services, Complainant has developed an extraordinary amount of goodwill and an excellent

reputation as a leading banking and financial institution. Complainant consistently and prominently displays and advertises the WHITNEY, WHITNEY BANK, and WHITNEY NATIONAL BANK marks (the “Whitney Marks”) in connection with its banking and financial services. Throughout the years, Complainant has spent incalculable amounts of money extensively promoting and advertising its banking and financial services under the Whitney Marks.

Because of the extraordinary amount of goodwill developed by Complainant and its extensive advertising and promotion of its banking and financial services, the Whitney Marks have become, long prior to Respondent’s registration of the domain name at issue in this proceeding, famous and distinctive marks and assets of incalculable value to Complainant.

Pursuant to ICANN Rule 3(b)(ix)(1) and ICANN Policy ¶4(a)(i), the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, for the following reasons:

Complainant enjoys extensive rights in the Whitney Marks. Complainant has used the Whitney Marks for many, many years in connection with banking and financial services. In addition, Complainant owns and actively uses the domain name <whitneybank.com> as its primary domain name.

Respondent’s <witneybank.com> domain name is confusingly similar to Complainant’s WHITNEY and WHITNEY BANK marks because the slight differences (to-wit: the omission of the letter “h” in the term “whitney,” the elimination of a space, and the addition of a global top-level domain (“gTLD”)) are insufficient to distinguish Respondent’s domain name from Complainant’s mark. It is well settled that the mere omission of a letter in a prior mark, designed to exploit a common typing error by users — is insufficient to avoid confusing similarity. *See Expedia, Inc. v. Palmside Holdings Pty Ltd.*, FA 538533 (Nat. Arb. Forum Sept. 27, 2005) (finding the domain name <expeda.com> confusingly similar to complainant’s EXPEDIA.COM mark); *Compaq Info. Techs. Group, L.P. v. Seocho*, FA 103879 (Nat. Arb. Forum Feb. 25, 2002) (finding the domain name <compq.com> confusingly similar to complainant’s COMPAQ mark); *State Farm Mut. Auto. Ins. Co. v. Try Harder & Co.*, FA 94730 (Nat. Arb. Forum June 15, 2000) (finding the domain name <statfarm.com> confusingly similar to complainant’s STATE FARM mark).

Moreover, it is well settled that the elimination of a space and the addition of a gTLD to a prior mark — as Respondent has done with the <witneybank.com> domain name — is insufficient to avoid confusing similarity. *See CBS Broadcasting, Inc. v. Worldwide Webs, Inc.*, D2000-0834 (WIPO Sept. 4, 2000) (finding that the elimination of the spaces and addition of a gTLD in <ilovelucy.com> was insufficient to avoid confusing similarity to the complainant’s I LOVE LUCY registered mark); *Document Technologies, Inc. v. International Electronic Communications, Inc.*, D2000-0270 (WIPO June 6, 2000) (finding that the elimination of the spaces and addition of a gTLD in <htmlase.com> was insufficient to avoid confusing similarity to the complainant’s HTML EASE mark); *CBS Broadcasting, Inc. v. Toeppen*, D2000-0400 (WIPO Feb. 28, 2001) (finding that the elimination of the spaces and addition of a gTLD in

<twilightzone.com> was insufficient to avoid confusing similarity to the complainant's THE TWILIGHT ZONE registered mark because "the addition of .net or .com or the absence of a space between the words is not significant in determining similarity").

Pursuant to ICANN Rule 3(b)(ix)(2) and ICANN Policy ¶4(a)(ii), the Respondent (domain-name holder) has no rights or legitimate interests in respect of the domain name that is the subject of the complaint, for the following reasons:

Respondent neither uses, nor to Complainant's knowledge has made demonstrable preparations to use, the <witneybank.com> domain name in connection with a bona fide offering of goods or services. See ICANN Policy ¶4(c) (i). As demonstrated by the home page of the <witneybank.com> web site, the site contains no content or information relative to Respondent's financial institution (if any), or to any other financial institution (if any) named Whitney Bank. Rather, Respondent's site merely contains links to various third-party sites and links such as "Online Bank Accounts," "Investment Banks," "Banks and Credit Unions," and "Internet Banking." Such use of the domain name does not constitute a bona fide offering of goods or services. See *Whitney National Bank v. Unasi Management, Inc.*, FA 449357 (Nat. Arb. Forum May 13, 2005) (inferring that respondent receives pay-per-click fees when Internet users follow the links on respondent's web sites and finding that respondent's use of the <whitneybnak.com> and <whitneynationalbankcard.com> domain names did not constitute a bona fide offering of goods or services); *Wachovia Corp. v. InterMos*, FA 102520 (Nat. Arb. Forum Jan. 8, 2002) (finding that respondent's use of the <firstunionbank.com> domain name to offer links to an online casino gambling site did not constitute a bona fide offering of goods or services); *Torrington Savings Bank v. North American Export Co.*, FA 147312 (Nat. Arb. Forum May 19, 2003) (finding that respondent's use of the <torringtonsavingsbank.com> domain name to link to a site offering web hosting services did not constitute a bona fide offering of services).

As it is evident that Respondent does not operate a bank in connection with the <witneybank.com> domain name, Respondent's use of the term "bank" in the <witneybank.com> domain name creates the false and misleading impression that Respondent operates a bank. Respondent's use of this domain name is calculated to mislead, confuse, and divert consumers who are seeking the goods and services provided by Complainant. A use calculated to mislead, confuse, and divert consumers does not constitute a bona fide offering of goods or services. See *Capital One Financial Corp. v. Spider Webs, Ltd.*, FA 98830 (Nat. Arb. Forum Sept. 28, 2001) (finding that respondent's use of the <capitolonebank.com> domain name to divert Internet consumers to respondent's own site was not a bona fide use); *TransOcean Bank & Trust, Ltd. v. Erica Ojaruwedia*, FA 158163 (Nat. Arb. Forum July 7, 2003) (finding that respondent's use of the <transoceanbank.com> domain name to divert complainant's potential customers to respondent's web site was not a bona fide offering of services).

Furthermore, Complainant asserts that Respondent is not commonly known by the <witneybank.com> domain name. See ICANN Policy ¶4(c)(ii). Complainant further asserts that if Respondent were, in fact, known by the <witneybank.com> domain name, Respondent's web site would contain more than the single, isolated reference to the term at the top of the home page. See *Princeton University Press v. Good Domains*, FA 124993 (Nat. Arb. Forum Nov. 4,

2002) (finding that “[t]he fact that the website associated with the disputed domain name never mentions the phrase ‘Princeton University Press’ [nor] has any content remotely related to the phrase . . . is additional evidence that Respondent is not commonly known by the name”).

Complainant further asserts that, to the best of its knowledge, it is the only bank or financial institution — and the only entity of any kind in the world — known as Whitney Bank.<sup>1</sup> As proof, Complainant submits the first 100 hits from a Google search on the phrase “Whitney Bank.” The <witneybank.com> web site fails to appear in the listing of the first 100 hits. Complainant respectfully submits that if Respondent were, in fact, known by the term “Whitney Bank,” Respondent’s <witneybank.com> web site would appear somewhere in the first 100 hits of a Google search.

Complainant asserts that Respondent’s sole purpose for registering and operating the domain name was (and continues to be) to surreptitiously divert users attempting to reach Complainant’s web site — a deceitful cyber “hook.” Such use is not legitimate commercial, noncommercial, or fair use. *See* ICANN Policy ¶4(c)(iii); *see also* *Chancellor, Masters and Scholars of the University of Oxford vs. CQ*, D2001-0920 (WIPO Sept. 19, 2001) (finding use of the domain name <oxford-university.org> “as a ‘hook’ to attract Internet visitors looking for a site of the Complainant” was not a legitimate, fair use).

And, finally, for the avoidance of doubt and merely to complete the record herein, Complainant observes and states that Complainant has never licensed nor otherwise authorized Respondent to use any of its trademarks or service marks (including, but not limited to, the Whitney Marks) for any purpose whatsoever.

Pursuant to ICANN Rule 3(b)(ix)(3) and ICANN Policy ¶4(a)(iii), Respondent registered and is using the domain name in bad faith, for the following reasons:

As demonstrated above, Respondent has no rights or legitimate interests in the domain name <witneybank.com>. Complainant is a well-known, long-established financial institution with a distinctive, well-recognized name. The <witneybank.com> domain name appropriates a common misspelling of Complainant’s WHITNEY BANK mark in its entirety. In view of these circumstances, there is no reasonable possibility that the domain name was selected by Respondent for any purpose other than a brazen attempt to create a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s web site. Such an attempt is evidence of the registration and use of a domain name in bad faith. *See* ICANN Policy ¶4(b)(iv); *see also* *Albrecht v. Natale*, FA 95465 (Nat. Arb. Forum Sept. 16, 2000) (finding bad-faith registration and use where “the Respondent’s domain name is composed entirely of the Complainant’s name” and “[t]here is no reasonable possibility that the name ‘KARLALBRECHT.COM’ was selected at random”).

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<sup>1</sup> Complainant is aware of an Internet site for a privately held, home-owned bank named First Whitney Bank & Trust with two locations in Atlantic, Iowa. The domain name used by First Whitney Bank & Trust is <firstwhitneybank.com>.

Respondent has used a confusingly similar misspelling of Complainant’s famous WHITNEY BANK mark to ensnare unsuspecting Internet users. Respondent then redirects the users to its web site, which offer links to other web sites that sell competing and unrelated services. This practice strongly suggests that Respondent commercially benefits from this diversion by receiving pay-per-click fees from advertisers when Internet users follow the links on its web sites. As such, Respondent is unfairly and opportunistically appropriating the goodwill associated with Complainant’s famous WHITNEY and WHITNEY BANK marks. These circumstances strongly evidence Respondent’s bad-faith registration and use of the domain name. *See Whitney National Bank v. Unasi Management, Inc., supra* (holding that respondent’s diversionary use of <whitneybnak.com> and <whitneynationalbankcard.com> domain names is evidence of bad-faith registration and use); *Wyndham IP Corp. v. LaPorte Holdings, Inc., supra* (same with respect to <wynhdam.com> domain name); *Capital One Financial Corp. v. LaPorte Holdings, Inc., supra* (same with respect to several domain names featuring common misspellings of complainant’s CAPITAL ONE mark).

The present facts are similar to those in *Singapore Airlines, Ltd. v. P&P Servicios de Comunicacion S.L.*, D2000-0643 (WIPO Aug. 29, 2000), in which the complainant therein sought transfer of the domain name <singaporeairlines.com>. The panel stated, “The domain name ‘singaporeairlines.com’ is so obviously connected with a well-known airline that its very registration and use by someone with no connection to the airline suggests opportunistic bad faith. Indeed, it is hard to imagine a more blatant exercise in ‘cybersquatting’.” *See also National Australia Bank Ltd. v. Xuhui, Dai*, D2000-0987 (WIPO Oct. 16, 2000) (finding that registration of <nationalaustraliabank.com> by a registrant that was not a bank and had no connection with Australia suggested opportunistic bad faith).

As in *Singapore Airlines* and *National Australia Bank*, here the <witneybank.com> domain name is so obviously connected with Complainant that its very registration and use by someone with no connection to Complainant similarly suggests opportunistic bad faith.

Furthermore, it is well settled that Respondent’s omission of the letter “h” in the term “whitney” in Complainant’s WHITNEY BANK mark — designed to take advantage of a common typing error by users — is known as “typosquatting,” and evidences bad faith on the part of Respondent. *See Wyndham IP Corp. v. LaPorte Holdings, Inc., supra* (ordering transfer of <wynhdam.com> domain name to complainant); *Capital One Financial Corp. v. LaPorte Holdings, Inc., supra* (ordering transfer to complainant of several domain names featuring common misspellings of complainant’s CAPITAL ONE mark).

Finally, Respondent has demonstrated a pattern of registering domain names in order to prevent the owner of a trademark or service mark from reflecting the mark in a corresponding domain name. *See ICANN Policy ¶4(b)(ii)*. There are at least nine reported UDRP decisions in which Respondent was determined to have registered and used a domain name in bad faith, including three decisions involving domain names relating to banking institutions. These nine decisions are summarized in the table below:

Case Name	Domain Names
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<i>Morgan Stanley v. Digi Real Estate Foundation</i> , FA 604974 (Nat. Arb. Forum Jan. 23, 2006)	<mogranstanley.com>
<i>Delta Corporate Identity, Inc. and Delta Air Lines, Inc. v. Digi Real Estate Foundation</i> , FA 590680 (Nat. Arb. Forum Dec. 27, 2005)	<deltaairlines.com> <detaairlines.com> <deltaailines.com>
<i>Adidas – Salomon AG v. Digi Real Estate Foundation</i> , D2004-1079 (WIPO Feb. 11, 2005)	<adidas1.com> <adidasone.com>
<i>State Farm Mutual Automobile Insurance Company v. Digi Real Estate Foundation</i> , FA 463105 (Nat. Arb. Forum May 27, 2005)	<statefrm.com>
<i>MB Financial Bank, N.A. v. Digi Real Estate Foundation</i> , FA 451104 (Nat. Arb. Forum May 12, 2005)	<wwwmbfinancial.com>
<i>America Online, Inc. v. Digi Real Estate Foundation</i> , FA 434241 (Nat. Arb. Forum April 25, 2005)	<aimexperss.com> <aolawaymessages.com> <aolwebmail.com> <comppuserve.com> <winump.com> <wunamp.com>
<b>Case Name</b>	<b>Domain Names</b>
<i>Wachovia Corporation v. Digi Real Estate Foundation</i> , FA 416643 (Nat. Arb. Forum March 29, 2005)	<wcahovia.com> <wachoviia.com> <wwwwachoviabank.com> <wwwachovia.com>
<i>Bank of America Corporation v. Digi Real Estate Foundation</i> , FA 400529 (Nat. Arb. Forum March 3, 2005)	<bankamrica.com> <wwwbancofamerica.com>
<i>State Farm Mutual Automobile Insurance Company v. Digi Real Estate Foundation</i> , FA 366186 (Nat. Arb. Forum Jan. 20, 2005)	<stateefarm.com> <statefarmm.com>

These nine cases plainly demonstrate that Respondent has engaged in a pattern of registering domain names in order to prevent the owner of a trademark or service mark from reflecting the mark in a corresponding domain name. The present case is the latest manifestation of Respondent's cybersquatting activity.

In short, the facts of the present case demonstrate that Respondent is a blatant cybersquatter, typosquatter, and a common cyberbandit.

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

## FINDINGS

Complainant, Whitney National Bank, is the oldest continuously operating bank in New Orleans, Louisiana. Since its inception in 1883, Complainant has been a leader in the banking industry in the Gulf South region of the United States and maintains a presence in Texas, Louisiana, Mississippi, Alabama, and on the Florida panhandle. Complainant also has a foreign branch in the Cayman Islands. Complainant primarily offers commercial, retail, and international banking services, including brokerage, investment, trust and mortgage services. Complainant spends a great deal of money marketing and advertising the WHITNEY mark.

Complainant holds several trademark registrations for the WHITNEY mark with the United States Patent and Trademark Office ("USPTO") (U.S. Reg. No. 2,439,672 issued on March 27, 2001, U.S. Reg. No. 2,032,936 issued on January 21, 1997, U.S. Reg. No. 2,042,371 issued on March 4, 1997, U.S. Reg. No. 2,032,935 issued on January 21, 1997, and U.S. Reg. No. 1,311,411 issued on December 25, 1984). Complainant also registered the WHITNEY SECURITIES mark on April 8, 2003 (U.S. Reg. No. 2,704,964).

Respondent registered the <**witneybank.com**> domain name on June 22, 2004. Respondent is using the disputed domain name to operate a web directory displaying links such as "online bank accounts," "credit unions," and "internet banking," that resolve to Complainant's direct competitors and to unrelated content.

## 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 established rights in the WHITNEY mark through registration of the mark with the USPTO. *See 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.”); *see also Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) (“Registration of the NASAL-AIRE mark with the USPTO establishes Complainant's rights in the mark.”).

Respondent’s <**witneybank.com**> domain name is confusingly similar to Complainant’s WHITNEY mark pursuant to Policy ¶4(a)(i), because it misspells the mark by one letter and attaches the descriptive word “bank,” a common word in Complainant’s industry, to the end of the mark. Panels have held that the mere misspelling of a mark or the addition of a generic word do not distinguish a domain name from a mark. *See State Farm Mut. Auto. Ins. Co. v. Try Harder & Co.*, FA 94730 (Nat. Arb. Forum June 15, 2000) (finding that the domain name <statfarm.com> is confusingly similar to the complainant’s STATE FARM mark); *see also Sony Kabushiki Kaisha v. Inja, Kil*, D2000-1409 (WIPO Dec. 9, 2000) (finding that “[n]either the addition of an ordinary descriptive word . . . nor the suffix ‘.com’ detract from the overall impression of the dominant part of the name in each case, namely the trademark SONY” and thus Policy ¶4(a)(i) is satisfied).

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

### **Rights or Legitimate Interests**

Complainant alleges Respondent lacks rights or legitimate interests in the <**witneybank.com**> domain name. Complainant has the initial burden of proof in establishing Respondent lacks rights or legitimate interests in the 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 pursuant to Policy ¶4(a)(ii). *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) (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”).

Respondent’s failure to answer the Complaint raises a presumption Respondent has no rights or legitimate interests in the <**witneybank.com**> domain name. *See BIC*

*Deutschland GmbH & Co. KG v. Tweed*, D2000-0418 (WIPO June 20, 2000) (“By not submitting a response, Respondent has failed to invoke any circumstance which could demonstrate, pursuant to ¶4(c) of the Policy, any rights or legitimate interests in the domain name”); *see also Am. Express Co. v. Fang Suhendro*, FA 129120 (Nat. Arb. Forum Dec. 30, 2002) (“[B]ased on Respondent's failure to respond, it is presumed that Respondent lacks all rights and legitimate interests in the disputed domain name.”). However, the Panel will now examine the record to determine if Respondent has rights or legitimate interests under Policy ¶4(c).

Respondent has registered the domain name under the name “Digi Real Estate Foundation,” and there is no evidence in the record suggesting Respondent is commonly known by the <**witneybank.com**> domain name. Thus, Respondent has not established rights or legitimate interests in the <**witneybank.com**> domain name pursuant to Policy ¶4(c)(ii). *See Broadcom Corp. v. Intellifone Corp.*, FA 96356 (Nat. Arb. Forum Feb. 5, 2001) (finding no rights or legitimate interests because the respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use); *see also Am. Online, Inc. v. World Photo Video & Imaging Corp.*, FA 109031 (Nat. Arb. Forum May 13, 2002) (finding that the respondent was not commonly known by <aolcamera.com> or <aolcameras.com> because the respondent was doing business as “Sunset Camera” and “World Photo Video & Imaging Corp.”).

Respondent is using the <**witneybank.com**> domain name, which is confusingly similar to Complainant’s WHITNEY mark, to divert Internet users seeking Complainant’s banking services to a web directory featuring links to third-party websites, some of which are to Complainant’s competitors. Use of the disputed domain name for commercial gain by misdirecting Internet users to third-party websites to earn referral fees does not constitute a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i), or a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶4(c)(iii). *See WeddingChannel.com Inc. v. Vasiliev*, FA 156716 (Nat. Arb. Forum June 12, 2003) (finding that the respondent’s use of the disputed domain name to redirect Internet users to websites unrelated to the complainant’s mark, websites where the respondent presumably receives a referral fee for each misdirected Internet user, was not a *bona fide* offering of goods or services as contemplated by the Policy); *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 Ameritrade Holdings Corp. v. Polanski*, FA 102715 (Nat. Arb. Forum Jan. 11, 2002) (finding that the respondent’s use of the disputed domain name to redirect Internet users to a financial services website, which competed with the complainant, was not a *bona fide* offering of goods or services).

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

### **Registration and Use in Bad Faith**

Respondent has registered and is using the <**witneybank.com**> domain name in bad faith pursuant to Policy ¶4(b)(iv), because the disputed domain name resolves to a web directory displaying links to Complainant's direct competitors and to unrelated content. Respondent likely receives click-through fees for each consumer it diverts to other websites. Therefore, Respondent is taking advantage of the likelihood of confusion between Respondent's domain name, which is confusingly similar to Complainant's WHITNEY mark, and capitalizing on the goodwill associated with the mark. *See Kmart v. Khan*, FA 127708 (Nat. Arb. Forum Nov. 22, 2002) (finding that if the respondent profits from its diversionary use of the complainant's mark when the domain name resolves to commercial websites and the respondent fails to contest the complaint, it may be concluded that the respondent is using the domain name in bad faith pursuant to Policy ¶4(b)(iv)); *see also AltaVista Co. v. Krotov*, D2000-1091 (WIPO Oct. 25, 2000) (finding bad faith under Policy ¶4(b)(iv) where the respondent's domain name resolved to a website that offered links to third-party websites that offered services similar to the complainant's services and merely took advantage of Internet user mistakes); *see also Nokia Corp. v. Private*, D2000-1271 (WIPO Nov. 3, 2000) (finding bad faith registration and use pursuant to Policy ¶4(b)(iv) where the domain name resolved to a website that offered similar products as those sold under the complainant's famous mark).

Respondent has also engaged in a pattern of registering "typosquatting" domain names as shown by the ten other cases Respondent has been a party to (and has lost). This is number eleven. This pattern is further evidence of bad faith and suggests Respondent's business model is to purchase and re-sell typosquatting domain names.

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

  
Houston Putnam Lowry, Esq.  
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist  
Dated: March 15, 2006

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**NATIONAL ARBITRATION FORUM**