



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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### Decision Submission

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Decision ID	DE-0600064
Case ID	HK-0500075
Disputed Domain Name	www.americawidemortgage.com
Case Administrator	Dennis CAI
Submitted By	M Scott Donahey
Participated Panelist	

Date of Decision	17-01-2006
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### The Parties Information

<b>Claimant</b>	Americawide Mortgage, Inc.
<b>Respondent</b>	America Wide Funding Inc.

### Procedural History

The complainant in this case is Americawide Mortgage, Inc., a corporation organized under the laws of the State of California, United States of America, whose address is P.O. Box 1312, Loomis, California ( "Complainant" ). Their authorized representative in these proceedings is Bridget Beater, Pillsbury Winthrop Shaw Pittman LLP. The respondent is America Wide Funding Inc., whose address in Whois is 117 N. 1st Street, Suite 11, Mount Vernon, Washington, United States of America ( "Respondent" ). Although Respondent has not appointed any representative in these proceedings, Jim Christensen is listed in the Whois record as Administrative Contact for Respondent.

The domain name in dispute is <americawidemortgage.com>. The Registrar of the domain name is Network Soutlions, LLC, which is located within the jurisdiction of the United States District Court for the Northern District of Virginia, United States of America.

On 24 November 2005, pursuant to the Uniform Domain Name Dispute Resolution Policy ( "the Policy" ), the Rules for the Uniform Domain Name Dispute Resolution Policy ( "the Rules" ) and Hong Kong International Arbitration Centre Supplemental Rules ( "the HKIAC Supplemental Rules" ), the Complainant submitted a complaint in the English language to the Hong Kong International Arbitration Centre (the "HKIAC" ), an office of the Asian Domain Name Dispute Resolution Centre and elected this case to be dealt with by a one-person panel. On 24 November 2005, the HKIAC sent to the complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the HKIAC Supplemental Rules. All correspondence to and from the HKIAC described herein was in the English language.

On 6 December 2005 the HKIAC notified the Respondent of the commencement of the action.

On 4 January 2006, the HKIAC notified the Complainant that the Respondent had failed to submit a Response.

Since the Respondent did not file a response in accordance with the time specified in the Rules the HKIAC Supplemental Rules, and the Notification, the HKIAC informed Complainant and Respondent by email about the default, stating that, as Respondent did not file a response within the required time, the HKIAC would appoint the panelist to proceed to render the decision, in the absence of a response by Respondent.

The HKIAC notified the parties that the Panel in this case had been selected, with M. Scott Donahey acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 9 January 2006, the Panel received the file from HKIAC.

## Factual Background

### For Claimant

Complainant has been using the AMERICAWIDE MORTGAGE and AMERICAWIDE marks since 1994. Complaint, Annexes 2, 3, and 5. Applications for registration were filed with the United States Patent and Trademark Office on August 20, 2003 and December 16, 2003 respectively, and registrations issued for both marks on September 6, 2005. Complaint, Annexes 2 and 3 The marks are registered in connection with real estate brokerage and lending services, and have been used in connection with said business since September 1994. Complaint, Annex 5.

Perry Knight began working for Complainant as a loan officer in 1997. He and Jim Christensen, who is designated as Respondent's Administrative Contact, began processing loans under Complainant's real estate broker's license in California. Several years later, Perry Knight and Jim Christensen started Americawide Funding Inc., a corporation organized under the laws of the State of Nevada, United States of America. Complaint, Annex 6. Respondent registered the domain name at issue on June 19, 2002. Respondent has used the domain name at issue to resolve to a web site at which Respondent offers real estate brokerage and financing services in direct competition with Complainant under the name "AmericaWide Mortgage inc." Complaint, Annex 4.

By letter dated September 9, 2005, Complainant's counsel sent Respondent a cease and desist letter in which it demanded that Respondent transfer the domain name at issue to Complainant. Complaint, Annex 7. Respondent did not reply to the letter.

### For Respondent

Respondent has failed to file a response in this matter.

## Parties' Contentions

### Claimant

Complainant asserts that the domain name at issue is identical or confusingly similar to Complainant's marks, in that the domain name at issue is comprised of the AMERICAWIDE MORTGAGE mark with the addition of the gTLD .com and incorporates the AMERICAWIDE mark.

Complainant further alleges that Respondent has no rights or legitimate interests in respect of the domain name, and that Respondent's domain name has been registered in bad faith and is being passively used in bad faith.

### Respondent

The respondent did not file a response within the stipulated time.

## Findings

### Identical / Confusingly Similar

Paragraph 15(a) of the Uniform Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall 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."

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- 1) that 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) that the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) that the domain name has been registered and is being used in bad faith.

Identical or Confusing Similarity

The Panel finds that the domain name <americawidemortgage.com> is identical to one of Complainant's marks and confusingly similar to the Complainant's other registered mark. Credit Management Solutions, Inc. v. Collex Research Management, WIPO Case No. D2000-0029 (lack of space in domain name not considered for purposes of analysis); EAuto L.L.C. v. EAuto Parts, WIPO Case No. D2000-0096.

Complainant has not established that rights in the trademark existed prior to the time that Respondent registered the domain name at issue. Respondent's registration of the domain name at issue preceded the filing of Complainant's applications for its marks. Neither did Respondent produce evidence that would tend to establish that Complainant's marks had acquired secondary meaning as of the time that Respondent registered the domain name at issue. Complainant failed to produce evidence of advertising, use on the web, and the other indicia present in the cases cited by Complainant in the Complaint See Planetary Society v. Salvador Rosillo Domainsforlife.com, WIPO Case No. D2001-1228 and Carfax, Inc. v. Setyo Djoenaedi & Associates, WIPO Case No. D2001-0986.

However, this is not fatal to Complainant's establishment of rights in the marks. "Registration of a domain name before a complainant acquires trademark rights in a name does not prevent a finding of identity or confusing similarity. The UDRP makes no specific reference to the date of [sic] which the owner of the trade or service mark acquired rights. However it can be difficult to prove that the domain name was registered in bad faith as it is difficult to show that the domain name was registered with a future trademark in mind." WIPO Overview on WIPO Panel Views on Selected UDRP Questions, § 1.4, "Does the complainant have UDRP-relevant trademark rights in a mark that was registered/acquired unregistered trademark rights after the disputed domain name was registered?"

### **Rights and Legitimate Interests**

Complainant has in a credible way alleged that Respondent has no rights or legitimate interests in respect of the domain name at issue. Respondent has failed to show that Respondent has any rights or legitimate interests in respect of the domain name at issue. This entitles the Panel to infer that Respondent has no rights or legitimate interests in respect of the domain name at issue. Alcoholics Anonymous World Services, Inc. v. Lauren Raymond, WIPO Case No. D2000 0007; Ronson Plc v. Unimetal Sanayi ve Tic. A.S., WIPO Case No. D2000 0011. Accordingly, the Panel finds that Respondent has no rights or legitimate interests in respect of the domain name.

### **Bad Faith**

In the present case, a former employee of Complainant and co-owner of Respondent registered a domain name identical and confusingly similar to Complainant's marks. Clearly the domain name at issue "was registered with a future trademark in mind." WIPO Overview on WIPO Panel Views on Selected UDRP Questions, § 1.4. Custom Bilt Metals v. Conquest Consulting, WIPO Case No. D2004-0023. Respondent used the domain name at issue to resolve to a web site at which services directly competitive to those offered by Complainant were offered by Respondent. This is a clear violation of the Policy. UDRP, Paragraph 4(b)(iv).

### **Status**

www.americawidemortgage.com Domain Name Transfer

### **Decision**

For all of the foregoing reasons, the Panel decides that the domain name registered by Respondent is confusingly similar to the marks in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name at issue, and that the Respondent's domain name has been registered and is being used in bad faith. Accordingly, pursuant to Paragraph 4(i) of the Policy, the Panel requires that the registration of the domain name <americawidemortgage.com> be transferred to the Complainant.

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