NATIONAL ARBITRATION FORUM

DECISION

Dollar Financial Group, Inc. v VQM NET
Claim Number: FA0011000096101

PARTIES

The Complainant is **Dollar Financial Group, Inc.**, Berwyn, PA, USA ("Complainant") **represented by Hilary B. Miller**. The Respondent is **VQM NET**, Delray Beach, FL, USA ("Respondent").

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **auto-loan-mart.com**, registered with **Tucows.com, 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 a Panelist in this proceeding.

Mr. Peter L. Michaelson, Esq. as Panelist.

PROCEDURAL HISTORY

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy"), available at *http://www.icann.org/services/udrp/udrp-policy-24oct99.htm*, which was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999, and approved on October 24, 1999, and in accordance with the ICANN Rules for Uniform Domain Name Dispute Resolution Policy ("Rules") as approved on October 24, 1999, as supplemented by the National Arbitration Forum Supplemental Rules for Uniform Domain Name Dispute Resolution Policy in effect for cases filed as of October 1, 2000 ("Supplemental Rules").

The Complainant submitted a Complaint to the National Arbitration Forum (the "Forum") electronically on November 20, 2000. The Forum received a hard copy of the Complaint, together with Exhibits 1-3, also on November 20, 2000.

On December 12, 2000, and in response to a confirmation request from the Forum, Tucows.com, Inc. confirmed by e-mail to the Forum that the domain name **auto-loan-mart.com** is registered with Tucows.com, Inc. and that the Respondent is the current registrant of the name. Tucows.com, Inc. has verified that the Respondent is bound by the Tucows.com, 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 December 15, 2000, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of January 4, 2001 by which Respondent could file a Response to the Complaint, was transmitted to the Respondent via e-mail, post and fax, to all entities and persons listed on the Respondent's registration as technical, administrative and billing contacts, and to postmaster@auto-loan-mart.com by e-mail.

On January 3, 2001, the Respondent filed its response, by facsimile with the Forum. In accordance with Supplemental Rule 7 and on January 9, 2001, the Complainant filed a rebuttal submission, with an accompanying exhibit and a requisite fee, with The Forum.

On January 12, 2001, pursuant to the Complainant's request to have the dispute decided by a One-Member Panel, the Forum appointed Mr. Peter L. Michaelson, Esq. as Panelist.

Based on deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to The Forum on or before January 26, 2001

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant

1. Confusing similarity

The Complainant contends that the contested domain name is confusingly similar to its LOAN MART mark by virtue of incorporating that mark into the contested domain name; hence, satisfying the confusing similarity requirement in paragraph 4(a) of the Policy.

In that regard, the Complainant states that inclusion of the term "AUTO" into the contested domain name is insufficient to dispel confusion, and in fact, probably exacerbates it. The Complainant submits that by including the term "AUTO" in the contested domain name, the Respondent is indicating to those who see the domain name that an operator of the associated site is somehow involved in making automobile loans.

The Complainant states that consumers, here Internet users, would view automobile loans as being related to the consumer loan services that the Complainant currently offers through its own web site. Accordingly, the Complainant concludes that those Internet users who see the contested domain name would be confused as to the source of any automobile loan services which the Respondent (or anyone else) might offer through a web site addressed through the contested domain name, i.e., apparently thinking that a connection or affiliation of some sort exists between the Complainant and the Respondent, when, in fact, no such relationship exists at all.

2. Legitimacy

The Complainant contends, that the Respondent has no rights or legitimate interest in the contested domain name.

In particular, the Complainant contends that the Respondent is not generally known by the mark AUTO-LOAN-MART, has made no commercial use of the mark AUTO-LOAN-MART and has not sold any goods or services under the mark AUTO-LOAN-MART (or any colorably similar mark) in any jurisdiction. Furthermore, the Complainant states that it has conducted an extensive business name, common-law and state and federal trademark search and has not discovered any evidence of use of the mark AUTO-LOAN-MART by the Respondent in any trade or business.

In addition, the Complainant contends that since the Respondent has not attempted to develop a web site in a nine month period since it registered the contested domain name, the Respondent's inaction apparently does not constitute demonstrable preparations to use the name, as required under paragraph 4(c)(i) of the Policy.

Hence, the Complainant concludes that the Respondent cannot demonstrate any rights or legitimate interests in the contested domain name pursuant to paragraph 4(a) of the Policy.

3. Bad Faith

The Complainant contends that the Respondent registered the contested domain name in bad faith and inferentially that the Respondent is using that name in bad faith.

Specifically, the Complainant states that that the Respondent has registered the contested domain name to prevent the Complainant from using that name.

In addition, the Complainant contends that inasmuch as the Respondent's web site presently has no content related to the contested domain name, with the absence of such content being viewed by the Complainant as passive holding, such passive holding is, in itself, evidence of bad faith usage.

Furthermore, the Complainant contends bad faith usage is also evidenced from the fact that any visitor to a web site addressed by the contested domain name is automatically re-directed to another domain which spawns the opening of a search page (specifically at www.handi.net/shopping.asp?id=10120) where the mark AUTO-LOAN-MART does not appear but which does provide links to sites and/or web pages offering information concerning consumer financial and loan services -- which apparently do compete with the consumer loan services offered by the Complainant.

Furthermore, the Complainant points to the Respondent's offer, in its e-mail of July 5, 2000, to the Complainant's counsel, Mr. Hilary Miller, made in response to the Complainant's cease and desist letter to the Respondent dated July 3, 2000, to transfer the contested domain name to the Complainant for the sum of $ 1500.00. The Complainant contends that this sum, being "vastly in excess" of the Respondent's costs of registration, is further evidence of bad faith registration.

Therefore, the Complainant concludes that the Respondent's conduct amounts to bad faith under paragraph 4(a) of the Policy.

B. Respondent

1. Confusing similarity

In contrast to the Complainant's position, the Respondent contends that the contested domain name and the Complainant's mark are neither similar, let alone confusingly similar, to each other.

In that regard, the Complainant contends that the Complainant's mark is formed of a combination of generic terms, i.e., "LOAN" and "MART". Inasmuch as the Complainant has disclaimed the use of the term "LOAN" in its federal registration, the Respondent appears to contend that the Complainant's mark LOAN MART is sufficiently weak, as a trademark, such that no consumer confusion would occur between concurrent use of that mark and the contested domain name "auto-loan-mart.com", or is generic or sufficiently descriptive of the Complainant's services as to be incapable of functioning as a trademark.

2. Legitimacy

In contrast to the Complainant's position, the Respondent states it has rights and legitimate interests in the contested domain name.

The Respondent states that it does not now, nor has ever, engaged in the business of providing auto loans.

The Respondent, while conceding that it has not developed a web site addressable through the contested domain name, states that it does utilize the contested domain name, AUTO-LOAN-MART.COM, to generate traffic through various search engines using search terms such as "auto loans", "car loans", "auto leasing" and others. In that regard, the Respondent states that, through this use, web visitors who click on links, returned by such search engines in response to entry of these terms as input keywords, are re-directed, as essentially referrals, to programs, apparently provided by affiliates of the Respondent, that provide those services and remit payment to the Respondent for such referrals. This use, so states the Respondent, has continuously occurred since the date the contested domain name was registered, i.e., April 21, 2000.

3. Bad Faith

The Respondent counters by stating that it neither uses nor has registered the contested domain name in bad faith.

Specifically, the Respondent states that, in addition to the contested domain name, it has also registered, on the same day as it registered that name, other domain names, namely: "auto-insurance-site.com", "auto-loan-center.com", "auto-loan-central.com", "auto-loan-online.com", "auto-loan-store.com", "auto-loan-vendor.com", as well as others that contain keywords for specific categories such as, e.g., loans, insurance, books and music.

Given this registration activity, the Respondent states that its intent was "not to capitalize on the complainant's mark, but to develop the search engine traffic".

With respect to its offer to sell the contested domain name, the Respondent contends that the Complainant first verbally offered, in a telephone conversation made subsequent to the July 3, 2000 cease and desist letter, to purchase the contested domain name from the Respondent for $ 750. The Respondent states that it rejected this sum and counter-offered with $ 1500 even though the latter sum was less than its capital outlay associated with that domain name. In making and justifying its counter-offer, the Respondent stated that it informed the Complainant' s counsel that the Respondent had: "invested substantial time and man power hours into developing 'search engine friendly' web pages (over 1000 individual HTML pages now exist on this domain) and lining up affiliate programs, not to mention the costs associated with registering the domain and having the domain set up on our server by our programmer".

Lastly, the Respondent contends, or at least so the Panel understands, that since the Respondent perceives the Complainant to be providing the services of "payday advance loans or tax refund advances", no confusion is likely to occur between concurrent use of domain name in connection with promoting search terms, such as "auto loans" or "auto leasing", and the Complainant's services. Hence, in the absence of creating such

confusion, the Respondent concludes that its current use of the domain name is does not amount to bad faith use within paragraph 4(b)(iv) of the Policy.

FINDINGS

Upon consideration of the record before it, the Panel makes the following findings.

The Complainant, Dollar Financial Group, Inc., owns a currently valid and subsisting U.S. service mark registration for the mark "LOAN MART"; a copy of the registration record, as available from the US Patent and Trademark Office (US PTO) web site, has been provided in Exhibit 2 to the Complaint, with the salient details as follows:

mark: LOAN MART (block letters)

US registration 2,192,247; registered August 29, 1998

This service mark was registered, on the Principal Register, for use in connection with: "consumer lending services", in international class 36. This mark claims first use and first use in inter-state commerce of September 1, 1997. This record also indicates that the Complainant has disclaimed any exclusive rights to use the term "MART" apart from its mark.

The Complainant is a large national originator of small consumer loans, which it provides to consumers under its name and registered mark "LOAN MART".

Since 1997, the Complainant has expended millions of dollars advertising its consumer financial services and has, to date, originated over $310,000,000 in consumer loans, a substantial portion of which has been originated at the Complainant's stores that bear its mark "LOAN MART".

The Complainant also originates loans online at its various websites, including those that have a domain name that incorporate its registered mark, e.g., www.loanmart.net.

The Complainant has started its use of its mark LOAN MART approximately two and a half years prior to the date, April 21, 2000, on which the Respondent registered the contested domain name and started using the term "LOAN MART" within, e.g., its domain name, and has been using its mark, both in block letters and in a stylized logo, continuously ever since in connection with its consumer loan services.

No web site currently exists which is directly resolvable through the contested domain name. Specifically, when the contested domain name is entered as an address into a browser, as the Panel has done, no web page directly addressed by that domain name is returned, instead the browser is re-directed to a web page which depicts a search page (at

address www.handi.net/shopping.asp?id=10120). While this page does not depict the mark AUTO-LOAN-MART, this page, under a "Handi Web Search" banner, appears to provide links to other web sites and/or pages through which consumer financial and loan services and related information can be obtained. In particular, one category of displayed links is captioned "Finance" with sub-links being listed as "Loans & Finance", "Mortgage", "Bankruptcy", "Home Business Finance", "Credit", "Auto Loans", "Consulting". "Stocks" and "Interest Rates". Certain of these services compete with, or are at very least related to, consumer loan services which are currently offered by the Complainant through its web site.

Correspondence did occur between the Complainant's counsel, Mr. Miller, and the Respondent. In that regard, Mr. Miller sent a letter dated July 3, 2000 to the Respondent protesting the Respondent's registration of the contested domain name and requesting that the Respondent cease and desist from all further use of that domain name. By e-mail dated July 5, 2000, the Respondent set forth a sum of $ 1500, ostensibly to reimburse it for its time and expense it incurred related to registering and developing an associated domain, in exchange for which it would transfer the contested domain name to the Complainant.

DISCUSSION

Paragraph 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (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."

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

(1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
(2) the 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

It is beyond question that confusion would likely arise when and if the Respondent, or any third-party not affiliated with the Complainant to which the Respondent were to transfer the contested domain name, or were to start using the contested domain name in conjunction with goods and/or services similar to those of the Complainant.

Such confusion, should it occur, would undoubtedly cause Internet users intending to access the Complainant's website, but who reach a website through the contested domain

name, to think that an affiliation of some sort exists between the Complainant and the Respondent or its third-party transferee, when, in fact, no such relationship would exist at all. *See Treeforms, Inc. v. Cayne Ind. Sales Corp.* FA 95856 (Nat. Arb. Forum Dec. 18, 2000), *The Pep Boys Manny, Moe and Jack of California v. E-Commerce Today, Ltd.* AF-0145 (eResolution May 3, 2000).

The Panel recognizes that often trademarks are formed of generic components; however, even where as here a given component of a mark, such as the term "MART", has a very high degree of descriptiveness or is even generic, the entire mark is not dissected into its fundamental elements with each element individually assessed as to its generic or descriptive nature; rather marks are viewed in their entirety.

The US PTO is charged, in the first instance during examination of a federal trademark application, with ensuring that the mark, if registration is sought on the Principal Register (as the Complainant has sought and ultimately achieved for its mark LOAN MART) that, under §2(e)(1) of the Lanham Act (15 U.S.C. §1052(e)(1)), that mark is not "merely descriptive or deceptively misdescriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods or services". See Trademark Manual of Examining Procedure (TMEP) § 1209.01(b) which also states that "great variation in facts from case to case prevents the formulation of specific rules for specific fact situations" and that "the examining attorney must consider the following legal points in determining whether a mark is merely descriptive:

> ... (4) Combinations of merely descriptive components have been found registrable if the juxtaposition of the words is inventive or evokes a unique commercial impression, or if the term has a bizarre or incongruous meaning as applied to the goods. *See In re Colonial Stores Inc.* 157 U.S.P.Q. 382 (C.C.P.A. 1968) (SUGAR & SPICE held not merely descriptive of bakery products); *In re TBG, Inc.* 229 U.S.P.Q. 759 (TTAB 1986) (SHOWROOM ONLINE held not merely descriptive of computerized interior furnishings product information service). ... The issue is whether the mark considered in its entirety possesses a merely descriptive significance as applied to the goods in question, i.e., whether it conveys a readily understood meaning to the average purchaser of such goods. *See In re Bright-Crest, Ltd.* 204 U.S.P.Q. 591 (TTAB 1979)".

As to generic names, TMEP § 1209.01(c) states that generic terms for goods or services are incapable of functioning as registrable trademarks denoting origin or any specific source. "Such terms are not registrable on the Principal Register or on the Supplemental Register". In that regard, see also §2(f) of the Lanham Act (15 U.S.C. 1052(f)) which precludes registration for marks that are not distinctive of an applicant's goods or services. To show genericness of a mark, the Court of Appeals for the Federal Circuit has set forth a two part test in *H. Marvin Ginn Corp. v. Int'l Assoc. of Fire Chiefs, Inc.* 228 U.S.P.Q. 528, 530 (Fed. Cir. 1986): (1) What is the class of goods or services at issue? and (2) Does the relevant public understand the designation primarily to refer to that class of goods or services? See also TMEP § 1209.01(c).

Here, the Examining Attorney at the US PTO, though requiring the Complainant to disclaim a component term, i.e., "MART", of its mark "LOAN MART", permitted this mark to be registered on the Principal Register. In so doing, the Examining Attorney, who has requisite expertise and official governmental responsibility to initially decide the issue through ex-parte examination, did not conclude that the mark LOAN MART, when taken as a whole, was either sufficiently descriptive or generic to preclude its registration; but rather that the mark was sufficiently distinctive when used in connection with consumer lending services to function as a federal trademark.

In the absence of the Respondent having provided any documentary, let alone sufficient, proof, of the sort required under the *H. Marvin Ginn* case, tending to show that the mark LOAN MART as understood by its relevant consumers either as a generic name or term, or sufficiently descriptive to warrant its cancellation, the Panel has no reason to take a contrary view to that of the US PTO.

Hence, the Panel rejects the Respondent's argument that the Complainant's mark is sufficiently descriptive or generic so as not to convey any federal trademark rights to the Complainant.

Given that, the Panel believes that the addition of the term "AUTO" to the contested domain name not only fails to ameliorate the confusion, but also, by virtue of the Complainant and the Respondent (the latter through one of its affiliates, as discussed below, to which Internet users, who enter the contested domain name, are re-directed) offering competing financial services, likely increases its occurrence. In that regard, those Internet users, including but not limited to those customers of the Complainant, who might think that the Complainant offers automobile loan services -- which is a reasonable view given that the Complainant provides various type of consumer loan services -- might very well attempt to reach the Complainant's site by prepending the term "AUTO" to the mark "LOAN MART" to form a domain and then adding a common top level domain, such as ".com" to the result; hence, possibly forming "AUTO-LOAN-MART.com". However, unbeknownst to each of them until after (s)he enters this domain name as an address (URL) into his(her) browser, doing so will not transport that individual to the Complainant's site, but to that of an affiliate of the Respondent, which, as discussed below, has no relationship with the Complainant; hence causing confusion.

As such, the Panel finds that sufficient similarity exists under paragraph 4(a)(i) of the Policy for the contested domain name.

Rights or Legitimate Interests

Based on its federal trademark registration, the Complainant has acquired exclusive rights to use its LOAN MART mark. Furthermore, by virtue of the registration of that mark, as

discussed above, the US PTO has implicitly recognized that this mark has acquired appropriate secondary meaning in the marketplace.

The Respondent has yet to provide any basis that would legitimize any claim it has to the contested domain name. In fact, it is extremely unlikely that the Respondent can even make such a claim.

The simple reason is that the contested domain name includes the Complainant's LOAN MART mark under which the Complainant provides it services, and has been doing so for several years. The Complainant has never authorized the Respondent to utilize its registered mark, nor does the Complainant have any relationship or association whatsoever with the Respondent. Hence, any use to which the Respondent were to put to of the LOAN MART mark, in connection with, as set forth in its registration, consumer lending services would directly violate the exclusive trademark rights now residing in the Complainant. Even if the Panel accepts the Respondent's assertion that the Complainant does not currently offer consumer automotive loans, such loans, by virtue of being a specific type of consumer lending, fall squarely within the category of services encompassed by the service description in the registration; hence, constituting trademark infringement.

In light of the above findings, the Panel is not persuaded that the Respondent has any or, based on current facts provided to the Panel, is likely to acquire any legitimate rights in the contested domain name, whether on a commercial or non-commercial basis.

In that regard, the Panel finds that the Respondent's efforts in registering the contested domain name and simply using it as a means to re-direct Internet users to a web site of an affiliate of the Respondent that has no connection whatsoever with the Complainant, fail to constitute a bona fide commercial offering of goods or services under the contested domain name. The illegitimacy is compounded by the fact that the contested domain name, which includes the Complainant's registered mark, ultimately transports Internet users to the affiliate's web site, where the affiliate has apparently no relationship with the Complainant, but through which services are offered which compete with those of the Complainant. It is simply beyond question that such activity might very well be diverting Internet users to the affiliate's site who otherwise might be attempting to seek information, on automobile financing, from the Complainant.

The Panel has very recently seen an instance where a respondent has used a contested domain name to re-direct Internet users to web sites provided by the respondent itself, where that respondent has no relationship whatsoever with a complainant. *See College Summit, Inc. v. Yarmouth Educ. Consultants, Inc.* D2000-1575 (WIPO Jan. 17, 2001)

Here, in contrast, the Respondent, through its use of the contested domain name at issue, is re-directing users to a third-party site affiliated with the Respondent, where both the third-party and the Respondent apparently have no relationship with the Complainant.

The Panel sees no reason to draw any distinctions, with respect to illegitimacy, between these situations. Whether a respondent acts alone or in concert with another, such as an affiliate, the Panel believes that it is the use of the contested domain name, when viewed as an entity, that is assessed, not just the specific actor. Otherwise, those actions that would clearly depict illegitimate rights and bad faith use, if committed solely by a respondent, could escape the Policy's prohibition if accomplished by one acting in concert with that respondent.

Hence, the Panel finds that the Respondent's use here, particularly when viewed in its totality with that of its affiliate, certainly does not constitute a legitimate non-commercial or fair use without any intent either for commercial gain, or to misleadingly divert consumers or tarnish the trademark or service mark at issue. In fact, the Respondent's continued retention of the contested domain name coupled with its re-direction of an Internet user, who enters that domain name into his(her) browser, to the affiliate's site, leads the Panel to conclude that the Respondent specifically intends to accomplish just the opposite.

Furthermore, the Panel is cognizant of the heavy burden that would be placed on complainants if in support of their cases on illegitimacy each of those complainants was to be impressed with a burden of providing detailed proof of any lack of rights or legitimate interests on behalf of their respondents. Such a burden is particularly problematic given that the underlying facts more than not are in exclusive or near exclusive possession and control of the respondents, particularly if they have not in fact made publicly discernible use. As such, the Panel believes that where allegations of illegitimacy are made, particularly as here, when coupled with conduct of respondents that evidences bad faith, it is quite reasonable to shift the burden of proof to each such respondent to adequately show that its use of the contested domain name is legitimate, such as by showing that, in conjunction with the contested domain name, it is making a bona fide commercial offering of goods or services or preparations for such offerings, or non-commercial or fair use. Given the situation now facing the Panel, it is beyond question that the Respondent's conduct falls short of meeting this burden. There simply is no proof whatsoever of any such usage. *See eBay Inc., v. G L Liadis Computing, Ltd.* et al D2000-1463 (WIPO Jan. 10, 2001), *Playboy Enterprises Int., Inc. v. Hector Rodriguez* D2000-1016 (WIPO Nov. 7, 2000) and *MSNBC Cable, LLC v. Tysys.com* D2000-1204 (WIPO Dec. 8, 2000).

Thus, the Panel finds that use of the contested domain name by the Respondent is illegitimate within paragraph 4(a)(ii) of the Policy.

Registration and Use in Bad Faith

The Panel firmly believes that the Respondent's actions constitute bad faith registration and use of the contested domain name.

First, the Respondent has admitted that it does not maintain a web site with any content reachable through the contested domain name, and, as far as the record before this Panel reveals, has no intention to ever develop or post such a site. If this use without more constituted the actions of the Respondent, then it would present a question of passive holding. See *Telstra Corp. v. Nuclear Marshmallows,* D2000-0003 (WIPO February 18, 2000).

However, the Respondent's conduct here amounts to far more than passive holding and is far more pernicious in its effect. Passive holding, by its very nature, does not engender consumer confusion; for the simple reason that a domain name is simply not being used by its registrant. That is not the case here; the Respondent (together with its affiliate) has done and is doing far more.

In that regard, the Panel points to the Respondent's continued use, since its registration some nine months ago, of the contested domain name, which includes the Complainant's registered mark LOAN MART, as a vehicle to automatically re-direct Internet users to a web site maintained by an affiliate of the Respondent, and one which offers competing services to those offered by the Complainant -- even though absolutely no connection or affiliation whatsoever exist between the Complainant and either the Respondent or its affiliate. Furthermore, by virtue of the compensation scheme in place between the Respondent and its affiliate, through which the Respondent is paid by its affiliate for the referrals, the Respondent has a clear pecuniary incentive to not only perpetuate but also increase the number of Internet users that it re-directs to its affiliates, and hence the number of users that experience consumer confusion. Increasing that number obviously increases the number of such users who will ultimately inquire about consumer lending services from the Respondent thinking these services emanate from the Complainant, when in fact they do not, and ultimately for which the Respondent will receive compensation.

Paragraph 4(b) of the Policy states, in pertinent part, "the following circumstances ... shall be evidence of the registration and use of a domain name in bad faith:

> ... (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

Therefore, the Panel concludes that the Respondent's registration and continued use of the domain name clearly constitutes, a violation of Paragraph 4(b)(iv) of the Policy inasmuch as the web site of the Respondent's affiliate falls within an "other on-line location".

Hence, the Panel finds that the Complainant has shown a sufficient basis to establish bad faith under paragraphs 4(a)(iii) of the Policy.

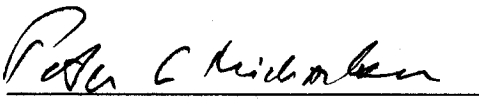
In this connection the Panel notes that in its opinion, the Respondent's actions in registering and now retaining the contested domain name also evince bad faith in violation of the Anti-Cybersquatting provisions of the Lanham Act (15 USC § 1125(d)(1) with various factors indicative of 'bad faith' given in 15 USC § 1125(d)(1)(B)(i) though limited by 15 USC § 1125(d)(1)(B)(ii).

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations for all elements under paragraph 4(a) of the Policy so as to establish a prima facie case upon which the relief it now seeks can be granted.

DECISION

In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the relief sought by the Complainant is hereby granted.

The contested domain name, "AUTO-LOAN-MART.COM", is ordered transferred to the Complainant.



PETER L. MICHAELSON, ESQ.
ARBITRATOR

Dated: January 25, 2001