



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Keller Williams Realty, Inc. v. Advantage Realtor

Case No. D2002-0123

1. The Parties

The Complainant is Keller Williams Realty, Inc., a corporation of the state of Texas, having a principal place of business at 3701 Bee Cave Road, Suite 200, Austin, Texas, 78746, United States of America.

The Respondent is Advantage Realtor located at 1520 Jasmine Street, St. Joseph, Michigan 49085, United States of America.

2. The Domain Name and Registrar

The Contested Domain Name is <kwrealtor.com>.

The Registrar is Network Solutions, Inc. (NSI), located at 505 Huntmar Drive, Herndon, Virginia 20170, USA.

3. Procedural History

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy”), 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 (the “Rules”) as approved on October 24, 1999, and by the World Intellectual Property Organization Supplemental Rules for Uniform Domain Name Dispute Resolution Policy in effect as of December 1, 1999 (the “Supplemental Rules”).

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) in e-mail form on February 6, 2002, and in hard-copy form on February 11, 2002 with Annexes A-P and the appropriate payment,

The Complainant's attorney stated that he separately served, on February 5, 2002 and by e-mail, a copy of the Complaint itself together with a copy of the cover sheet, on the Respondent, and, by first class mail and with the annexes, on the Respondent.

Pursuant to paragraph 4(d) of the Policy, the Complainant selected the Center as the ICANN approved administrative dispute resolution service provider to administer this proceeding. Through the Complaint, the Complainant requested a single member panel.

After receiving the original Complaint, the Center, in accordance with paragraph 5 of the Supplemental Rules, determined whether the Complaint fully complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on February 11, 2002, the Center requested confirmation from the Registrar of information set forth in the Complaint relative to the contested domain name; specifically, contact and registrant information for that domain name, as well as whether the Registrar received a copy of the Complaint from the Complainant. The Center also requested the Registrar to specify: (a) whether the ICANN Policy applies to the contested domain name, (b) the current status of that domain name, and (c) whether the registrant has submitted, in its registration agreement, to the jurisdiction at the location of the principal office of the registrar for court adjudication of disputes concerning or arising from the use of the domain name.

On February 14, 2002, the Registrar provided its response to the Center through which the Registrar provided contact information pertinent to the contested domain name from its WHOIS database, confirmed that NSI is the registrar of that name, stated that the language of the registration agreement is English, and stated that the domain name was then in an "active" status. The Registrar also informed the Center that the Respondent, through its registration agreement, submitted to the jurisdiction at the location of the principal office of the registrar for court adjudication of disputes concerning or arising from the use of the domain name(s).

On February 15, 2002, the Center notified the Respondent of the filing of the Complaint, including an indication that the Center was forwarding a complete copy of the Complaint, both in e-mail and hard-copy form, to the Respondent (with the latter method forwarding a copy of all the annexes as well). The Complaint, and its accompanying documents, and all subsequent communications associated therewith were provided in the preferred manners and to the addresses as mandated by paragraphs 2(a), 2(b) and 4(a) of the Rules.

Hence, the notification to the Respondent having occurred on February 15, 2002, under paragraph 4(c) of the ICANN Policy, this administrative proceeding is deemed to have commenced on that date.

Having reviewed the Complaint and succeeding correspondence between the Center and the Registrar, in detail, the Panel agrees with the determination of the Center that the Complaint and its handling met the requirements of the Rules and the Supplemental Rules.

The Respondent was then provided with a 20-calendar day period, expiring on March 7, 2002, to file its Response with the Center and serve a copy of the Response on the Complainant.

As of March 7, 2002, the Center had not received any Response to the Complaint from the Respondent; hence, the Center, in an e-mail letter dated March 11, 2002, notified the Complainant and the Respondent of the Respondent's default.

Accordingly, pursuant to the Rules and Supplemental Rules, by e-mail letter dated March 14, 2002, the Center contacted the undersigned, Mr. Peter L. Michaelson, Esq., requesting his service as a sole panelist for this dispute. Subsequently, on that date, Mr. Michaelson accepted and returned, by facsimile to the Center, a fully executed Statement of Acceptance and Declaration of Impartiality and Independence. The Center, through an e-mail letter dated March 15, 2002, notified the parties of the appointment of Mr. Michaelson as sole panelist.

Based on the deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to the Center on or before March 29, 2002.

This dispute concerns one domain name, specifically: <kwrealtor.com>.

The language of this proceeding is English.

4. Factual Background

A copy of the WHOIS registration record for the contested domain name appears in Annex A to the Complaint. As indicated on this record, the Respondent registered this name with Register.com on October 1, 1999.

The Complainant owns various United States and Canadian trademark registrations for its "Keller Williams" and "KW" marks (Marks) on which this dispute is based. The Complainant has respectively provided, in Annexes C and D to the Complaint, hard-copy printouts of corresponding records from the United States Patent and Trademark Office (Trademark Electronic Search System -- TESS) web server for its United States registrations and from the website of the Canadian Intellectual Property Office for its Canadian registrations. These registrations are as follows:

- a) KELLER WILLIAMS (block letters)
US registration 2,309,099; registered January 18, 2000

This mark was registered for use in connection with: "Franchising, namely, offering technical assistance in the establishment and/or operation of real estate brokerages" in international class 35, and "Real estate brokerages" in international class 36. This mark claims first use of December 31, 1989, and first use in inter-state commerce of July 31, 1992, for international class 35, and first use of December 31, 1983, and first use in inter-state commerce of October 31, 1984, for international class 36.

- b) KW (block letters)
US registration 2, 146,559; registered March 24, 1998

This mark was registered for use in connection with: "Franchising, namely, offering technical assistance in the establishment and/or operation of real estate brokerages" in international class 35, and "Real estate brokerage" in international class 36. This mark claims first use and first use in inter-state commerce of December 21, 1994, for both classes.

- c) KELLER WILLIAMS (block letters)
Canadian registration TMA 542364; registered March 14, 2001

This mark was registered for use in connection with: “Franchising, namely, offering technical assistance in the establishment and/or operation of real estate brokerages”, and “Real estate brokerage”.

- d) KW (block letters)
Canadian registration TMA 542382; registered March 14, 2001

This mark was registered for use in connection with: “Franchising, namely, offering technical assistance in the establishment and/or operation of real estate brokerages”, and “Real estate brokerages”.

The Complainant is one of the fastest growing franchising real estate companies in the United States and Canada, with its growth rate of sales and commissions topping 700% from 1995 through 2001. Specifically, the Complainant is a leading franchisor of residential real estate and brokerage services, beginning its franchising activities in 1983. The Complainant has offered franchises in approximately twenty-five states within the United States and three Canadian provinces with continued growth in the near future.

The Complainant has been using the trade name “KELLER WILLIAMS” and the service mark “KELLER WILLIAMS,” alone and in combination with other components since at least as early as 1983...The mark “KW” is an arbitrary mark that neither suggests nor describes any ingredient, quality or characteristic of the goods and services offered under it.

The Complainant is also the owner of various related domain names, including, e.g., <kellerwilliams.com> registered on August 28, 1995, and <kw.com> registered on April 17, 1995. The Complainant has provided a hard-copy printout of the WHOIS information for each of these domain names in Annex E to the Complaint.

The Complainant, through its significant efforts, skills and experience, has acquired and enjoys substantial goodwill and a valuable reputation as a result of using its Marks. The maintenance of high standards of quality and excellence for Complainant’s services has contributed to this valuable goodwill and reputation. In that regard, the Complainant has expended and continues to expend a significant amount of time and money to advertise and promote Complainant’s services through its Marks and domain names.

On or about December 7, 2001, the Complainant discovered, through correspondence from one of its licensees, that by typing <kwrealtor.com>, as a uniform resource locator (URL), Internet users were then being re-directed to a website offering real estate and related services by the Respondent and his wife, Paula Schatz, on behalf of Coldwell Banker, a real estate brokerage company that directly competes with the Complainant. The Complainant has provided a print-out of a screen shot for the home page for website <kwrealtor.com>, as it existed on or about December 7, 2001, in Annex F to the Complaint. On December 7, 2001, in response to this finding, the Complainant’s attorney sent the Respondent a letter requesting the Respondent to immediately discontinue its use of the contested domain name and immediately refrain from re-directing users to the Respondent’s website. The Complainant has provided a copy of this correspondence in Annex G to the Complaint. This letter also requested

the Respondent to transfer the contested domain name to the Complainant on or before December 27, 2001.

On December 21, 2001, and in response to the Complainant's December 7, 2001 letter, the Respondent sent an e-mail (a copy of which appears in Annex H to the Complaint) to the Complainant's attorney pursuant to which the Respondent indicated that he immediately complied with the Complainant's requests to cease redirecting users to his web site but that he was unwilling to transfer the contested domain name unless the Complainant purchased that name from the Respondent.

Currently, users that enter <kwrealtor.com> as a URL are not directed to the Respondent's web site offering competing services. Instead, the contested domain name is directly linked to a web page that is under construction but which contains a pop-up window which provides users with an interactive message board with the following titles -- some of which indicate topics relating to the Complainant and its business: (a) <kwrealtor.com> - "Domain name information"; (b) "Keller Williams-Anything what you would like to share about Keller Williams"; (c) "Realtor"; and (d) "Real Estate". Upon double clicking on the title <kwrealtor.com>, users are permitted to enter bids to purchase the contested domain name from the Respondent. The Complainant has provided, in Annex I, a printout of the pop-up message board and a screen/shot offering the contested domain name for sale. The Complainant has never authorized the Respondent to offer the contested domain name for sale.

In response to the Respondent's December 21, 2001, e-mail, the Complainant, through its attorney and via a letter dated December 31, 2001 (a copy of which appears in Annex J to the Complaint), informed the Respondent it had failed to comply with Complainant's attorney's letter of December 7, 2001, and that the Respondent's continued use of the contested domain name constituted a violation of the Complainant's trademark rights.

On January 14, 2002, the Complainant's attorney contacted the Respondent by telephone in an attempt to amicably settle the dispute. During that conversation, the Respondent offered to sell the contested domain name to the Complainant.

After the Respondent's failure to transfer this name as requested in its letters of December 7 and 31, 2001, and its unsolicited offer to sell the contested domain name to the Complainant's attorney, the Complainant instituted this proceeding.

The Respondent registered the contested domain name while the Respondent's wife, Paula Schatz, was a real estate agent for one of the Complainant's licensees in Indiana.

The Complainant is unsure as to the purpose for which the Respondent registered the contested domain name, as the Complainant only became aware that this name was registered in the Respondent's name on December 7, 2001, and discovered that the name was then being used to promote a competing real estate business. Notwithstanding, the Complainant does not permit its licensees or their agents to register domain names using the Complainant's marks without first obtaining the Complainant's express permission. The Respondent registered the contested domain name without permission or authority from Complainant.

5. Parties' Contentions

A. Complainant

i. Similarity

The Complainant contends that the contested domain name is identical and confusingly similar to the Complainant's Marks inasmuch as that name includes the Complainant's mark "KW".

Specifically, the Complainant cites to prior panel decisions that, in its view, have seriously questioned whether pairing a registered trademark with another word, where the latter associates the domain name with the underlying business of the owner of the registered mark, provides the name registrant with any rights to the domain name. *See Chanel, Inc. v. Uraina Heyward* D2000-1802 (WIPO February 23, 2001), and *Expedia, Inc. v. European Travel Network* D2000-0137 (WIPO April 18, 2000).

Further, the Complainant states that prior panel decisions have also ignored the generic top level domain when analyzing the domain name for confusing similarity. *See Experience Hendrix, L.L.C. v. Denny Hammerton, et al.* D2000-0364 (WIPO August 2, 2000); and *Wal-mart Stores, Inc. v. Yongsoo Hwang, et al.* D2000-0838 (WIPO December 3, 2000).

Therefore, the Complainant takes the position that merely tacking the word "REALTOR" after "KW", which users could logically use while looking for the Complainant's web site (i.e. append to the term "KW"), and without the ".com" suffix, is not sufficient to ameliorate user confusion.

Hence, the Complainant concludes that it has met the confusing similarity requirement in paragraph 4(a)(i) of the Policy.

ii. Legitimacy

The Complainant contends that, for several reasons, that the Respondent has no rights or legitimate interests in the contested domain name pursuant to paragraph 4(a)(ii) of the Policy.

First, the Complainant states that the Respondent is not related to the Complainant nor has the Respondent ever been licensed by Complainant or otherwise permitted to use the mark "KW" or apply for any domain name incorporating any of those marks.

Second, on December 7, 2001, when the Complainant and its attorney viewed the Respondent's web site, the contested domain name was being used to direct users to a home page where the Respondent and his wife advertised their affiliation with Coldwell Banker, which is a direct competitor of Complainant. Further, the contested domain name was not used by the Respondent to establish a web site, since that name did not appear as the URL and was merely used to divert users to a competing page. Subsequent to the Complainant's December 7th letter, the Respondent changed the web site associated with the contested domain

name such that the name now directs users to a message board where that name is offered for sale. Therefore, the Complainant contends that the Respondent is not currently using the contested domain name in connection with a bona fide offering of realty or real estate goods or services.

Lastly, the Complainant contends that the contested domain name does not reflect the name of the Respondent's corporate identity nor does the Respondent have any rights to any trade names or trademarks consisting in whole or in part the marks "KW" or "KELLER WILLIAMS."

Thus, the Complainant concludes that the Respondent has no rights or legitimate interests in the contested domain name pursuant to paragraph 4(a)(ii) of the Policy.

iii. Bad Faith

The Complainant contends that, also for various reasons, the Respondent has registered and is now using the contested domain name in bad faith.

First, the Complainant contends that by registering and using <kwrealtor.com>, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's web site by creating a likelihood of confusion with the Complainant's Marks as to the source, sponsorship, affiliation, or endorsement of Respondent's web site.

Specifically, as noted above, the Respondent's web site <kwrealtor.com> currently directs users to a web page under construction and provides a link to a message board. The message board not only contains a number of topics relating to the Complainant and its business, but also provides a link to solicit offers (bids) from interested parties to purchase the contested domain name. Further, while the December 21, 2001 correspondence, from the Respondent offered the contested domain name for sale to the Complainant, no price was quoted. The Complainant contends that implicit in that offer was the fact that the Respondent sought compensation in excess of its registration costs. Hence, the Complainant takes the position that the Respondent's acts in offering to sell the contested domain name to third parties for an amount in excess of the registration costs evidences bad faith under paragraph 4(a)(iii) of the Policy.

Additionally, the Complainant also contends that the Respondent is also guilty of opportunistic bad faith. In that regard, the Respondent registered the contested domain name while the Respondent's wife, Paula Schatz, was a real estate agent for a Keller Williams licensee in Indiana. Inasmuch as the Complainant did not permit the Respondent to register any domain name that incorporated any of the Complainant's Marks, the Complainant contends that the Respondent is holding the contested domain name hostage to capitalize, in some fashion, on the Respondent's wife's prior association with the Complainant.

Further, the Complainant believes that, had it not been for the wife's affiliation with the Complainant, it is unlikely that the Respondent would have known that the term "KW" was a mark affiliated with the Complainant's business. As noted, the mark "KW" is an arbitrary mark

that neither suggests nor describes any ingredient, quality or characteristic of the goods and services offered under it. Hence, the Complainant contends that it is highly unlikely that the Respondent happened by chance upon the letters “k” or “w” or the words “keller” or “williams,” let alone those words combined with “realtor” to form the contested domain name <kwrealtor.com>. Additionally, it also seems unlikely that the Respondent would happen upon that combination of words to offer third party goods and services that are in direct competition to those of the Complainant. The Complainant believes that this is especially true since the Complainant had been using its Marks for over eighteen years and its domain names for over six years prior to the Respondent’s registration of the contested domain name. Therefore, the Complainant contends that the contested domain name can only refer to the Complainant and no one else. In that regard, the Complainant cites to *Deutsche Bank AG v. Diego-Arturo Bruckner*, D2000-0277 (WIPO May 30, 2000), in which the domain name there at issue, <deutsche-bank-ag.com>, was held to be “so obviously connected with the Complainant and its services that its very use by someone with no connection with the Complainant suggests opportunistic bad faith.” By analogy, as the domain name <deutsche-bank-ag.com> was obviously connected with Deutsche Bank AG, so to, as the Complainant believes, is the contested domain name, <kwrealtor.com>, obviously connected with the Complainant, Keller Williams Realty, Inc. Thus, the Complainant contends that the registration and use by the Respondent of the contested domain name exhibits opportunistic bad faith; hence, apparently contravening paragraph 4(b) of the Policy.

Moreover, the Respondent was originally using the Complainant’s “KW” mark as a domain name to, in part, offer third party services in the same business as and competitive with the Complainant. The Complainant submits this as additional evidence of Respondent’s bad faith in registering and using the contested domain name. In the Complainant’s mind, the fact that the Respondent has now altered its web site to offer the domain name for sale does not negate the effect of the Respondent’s original actions.

Therefore, the Complainant concludes that the Respondent’s conduct in registering and using the contested domain name constitutes bad faith registration and use under paragraph 4(a)(iii) of the Policy.

B. Respondent

The Respondent has filed any substantive Response to the allegations raised in the Complaint.

6. Discussion and Findings

In view of the lack of a Response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant’s undisputed representations. In that regard and apart from judging this proceeding through mere default of the Respondent, the Panel makes the following specific findings.

i. Similarity

The Panel finds that confusion would likely arise as a result of the Respondent's current use of the contested domain name.

In that regard, the contested domain name includes the Complainant's registered mark "KW" which has clearly acquired requisite secondary meaning and distinctiveness as a result of the Complainant's apparently continuous and rather extensive use since 1994, and particularly in conjunction with its real estate brokerage and related services. There can be no question here that the contested domain name, by virtue of its inclusion of the term "KW", as currently used by the Respondent or by a third-party to which the Respondent might transfer that name, will likely cause user confusion.

The Panel takes notice of a very common propensity currently occurring amongst the Internet user community regarding composite domain names. Specifically, contemporary Internet naming conventions are such that a user who seeks to visit a web site for an organization, but for which (s)he does not know the correct domain name, that user will often form a domain name by combining a well-known trademark or service mark associated with that entity with a generic word describing the products or services offered by that entity. The user's expectation is that this domain name will be an address of (or at least be automatically re-directed to) and associated with the desired website, thus sending the user to what (s)he wants to reach. Hence, in this case, it is well within reason for the Panel to assume that various users seeking the Complainant's website, but do not know its URL, will form an address by concatenating "KW" with "REALTORS", then enter that address as a URL and see where they are taken. However, doing so does not dispel user confusion, rather it likely exacerbates it. In view of the Complainant's continuing activities in promoting its real estate brokerage and related services -- which clearly predate, by at least 5 years, any of the Respondent's activities in registering the contested domain name, this Panel clearly finds that any Internet user familiar with the Complainant -- and when confronted with the domain name <kwrealtor.com> would very likely, if not reflexively think, that this name and there through the Respondent was affiliated in some fashion with the Complainant -- when, in fact, no such relationship exists. In fact, it is rather inconceivable to this Panel that any such user would likely think otherwise. See, e.g., *Viacom International, Inc. v. Matrix Management and T. Parrott* D2001-1442 (WIPO March 11, 2002); *Park Place Entertainment Corporation v. Bowno* D2001-1410 (WIPO January 9, 2002); *Meijer, Inc. v. Porksandwich Web Services* FA 97186 (Nat. Arb. Forum July 6, 2001); *MPL Communications v. LOVEARTH.net* FA 97086 (Nat. Arb. Forum June 4, 2001); *MPL Communications v. IWebAddress.com* FA 97092 (Nat. Arb. Forum June 4, 2001); *American Home Products Corp. v. Malgioglio* D2000-1602 (WIPO February 19, 2001); *Surface Protection Industries, Inc. v. The Webposters* D2000-1613 (WIPO February 5, 2001); *Dollar Financial Group, Inc. v. VQM NET* FA 96101 (Nat. Arb. Forum January 25, 2001); *eBAY Inc. v. G L Liadis Computing, Ltd., and John L. Liadis* D2000-1463 (WIPO January 10, 2001); *Treeforms, Inc. v. Cayne Indus. Sales Corp.* FA 95856 (Nat. Arb. Forum December 18, 2000), and *The Pep Boys Manny, Moe and Jack of California v. E-Commerce Today, Ltd.* AF-0145 (eResolution May 3, 2000).

Therefore, the Panel finds that the contested domain name <kwrealtor.com> sufficiently resembles the Complainant's Marks as to cause confusion; hence, the Complainant has shown sufficient similarity between these marks and the contested domain name under paragraph 4(a)(i) of the Policy.

ii. Illegitimacy

Based on its federal trademark registrations, the Complainant has acquired exclusive rights to use its Marks. Furthermore, by virtue of the registration of these marks, the US Patent and Trademark Office has implicitly recognized that each such mark is distinctive and 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 ever make such a claim.

The simple reason is that the contested domain name includes the Complainant's mark "KW" under which the Complainant provides its real estate brokerage and related services and has been doing since 1994.

The Complainant has apparently never authorized the Respondent to utilize any of its marks, nor does the Complainant have any relationship or association whatsoever with the Respondent. Hence, any use to which the Respondent were to put of the "KW" mark, including "KWREALTOR" (or the like) in connection with the real estate brokerage and/or related services listed in any of the Complainant's registrations would directly violate the exclusive trademark rights now residing in the Complainant. Consequently, inasmuch as the Respondent is not now nor has ever been commonly known by the mark "KW", the Respondent's actions are in direct contravention of paragraph 4(c)(ii) of the Policy. See, e.g., *Viacom International, Inc. v. Matrix Management and T. Parrott* cited *supra*; *Park Place Entertainment Corporation v. Bowno*, cited *supra*; *Jones Apparel Group, Inc. v. Robin Sousa*, WIPO Case No. D2001-1308, December 21, 2001; *America Online, Inc. v. Curtis Wood*, WIPO Case No. D2001-0555, June 13, 2001; *Treeforms, Inc. v. Cayne Industrial Sales, Corp.* cited *supra*; *MSNBC Cable, LLC v. Tysys.com*, WIPO Case No. D2000-1204, December 8, 2000; and *Cabletron Systems, Inc. v. DLS Enterprises*, WIPO Case No. D2000-0571, August 18, 2000. As such, the Respondent's conduct violates paragraph 4(c)(ii) of the Policy.

Further, this Panel clearly finds that the Respondent, in using the contested domain name that identically incorporates the Complainant's registered "KW" mark, is intentionally seeking to exploit user confusion by diverting Internet users away from the Complainant's site to the Respondent's own website for the latter's own benefit. Whether that benefit is, as the Complainant surmises, to hold the contested domain name hostage and by doing so capitalize, in some fashion, on the Respondent's wife's prior association with the Complainant -- for whatever business advantages that might yield, or just to preclude the Complainant from obtaining that name unless it remits a sufficiently large sum to purchase the name, the ultimate effect is the same: the Respondent reaps financial benefit. If this was not the case, why else would the Respondent have chosen a domain name that misappropriates and identically includes the Complainant's "KW" mark, particularly when the initials KW do not identify and have absolutely no linkage

with the Respondent's present, but competitive, business, if the Respondent had no intention to commercially benefit from doing so? Since the Respondent has failed to file a Response, the Panel infers, pursuant to paragraph 14(b) of the Rules, that there is no other reason. Hence, the Respondent's actions directly contravene paragraph 4(c)(iii) of the Policy.

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 rights or legitimate interests in the contested domain name under any provision of paragraph 4(c) of the Policy.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in the contested domain name within paragraph 4(a)(ii) of the Policy.

iii. Bad Faith

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

Given the prior association which the Respondent's wife had with the Complainant and the widespread recognition that the Complainant's Marks have achieved, it is simply strains reason to think that the Respondent was not intimately familiar with the Complainant's Marks when the Respondent registered the contested domain name. This is particularly evident since the Complainant has been using its "KW" mark on a widespread basis for approximately five years prior to the October 1999, date on which the Respondent registered the contested name and in connection with the very services which the Respondent's wife had been offering, i.e. real estate brokerage, as a sales agent for one of the Complainant's licensees in Indiana. There can be no doubt that the Respondent's actions were motivated by its own self-serving goal of financially enriching themselves at the expense of the Complainant either as a direct result of the user confusion that would inevitably arise or the Complainant acting, in its own self-interest to prevent such confusion and concomitant injury, by being forced to purchase the contested domain name from the Respondent for a sum well in excess of the costs of its registration. The Panel views such opportunistic registration of the contested domain name as indicative of bad faith registration and the subsequent use of that domain name by the Respondent in an effort to attain such benefit as bad faith use, both collectively actionable under paragraph 4(b)(iv) of the Policy. See, e.g., *Viacom International, Inc. v. Matrix Management and T. Parrott* cited *supra*; *Novus Credit Services Inc. v. Personal D2000-1158* (WIPO November 29, 2000), and *Guinness UDV North America v. Lewis*, cited *supra*.

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

7. Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel now grants the relief sought by the Complainant.

The contested domain name, specifically <kwrealtor.com>, is ordered transferred to the Complainant.

Peter L. Michaelson, Esq.
Sole Panelist

Dated: March 29, 2002