



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Maria Bartiromo v. “Maria Bartiromo” and Dave Walton

Case No. D2007-0242

1. The Parties

The Complainant is Maria Bartiromo, c/o Frankfurt Kurnit Klein & Selz, PC, of the United States of America, represented by Frankfurt Kurnit Klein & Selz, PC United States of America.

The Respondents are “Maria Bartiromo” of Shaker Heights, Ohio, United States of America and Dave Walton also of Shaker Heights, Ohio United States of America.

2. The Domain Name and Registrar

The disputed domain name <mariabartiromo.com> is registered with Tucows (the “Registrar”).

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 Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) as approved on October 24, 1999, and 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 email form on February 16, 2007, and in hard copy form, along with accompanying Exhibits A-H, on February 28, 2007.

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 Complaint, the Center, in accordance with paragraph 5 of the Supplemental Rules, verified that the Complaint complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on February 21, 2007, the Center requested confirmation from the Registrar of information set forth in the Complaint relative to the disputed 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 Policy applies to the disputed domain name, (b) 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, (c) the language of the registration agreement, and (d) whether the domain name will remain “locked” during the proceeding.

Subsequently, on February 21, 2007, the Registrar provided its response to the Center through which the Registrar specified name and contact information pertinent to the disputed domain name to the extent present in its WhoIS database, and which confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative and technical contacts. The response also confirmed that Tucows is the registrar of that domain name and stated that: the Registrar had not received a copy of the Complaint, the Policy applied to the disputed domain name, and the domain name was then held in a “locked” status. The Registrar also indicated, through the response, that: the Respondent has submitted, for court adjudication, to the jurisdiction at the location of the principal office of the Registrar; and the registration agreement is in English.

The Center verified that the Complaint satisfied the formal requirements of the Policy, the Rules, and the Supplemental Rules.

On March 1, 2007, the Center formally notified the Respondent, by email letter, of the filing of the Complaint, including an indication that the Center was forwarding a complete copy of the Complaint to the Respondent, together with all its Exhibits, by courier and without the Exhibits by email. 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 March 1, 2007, under paragraph 4(c) of the Rules, this administrative proceeding is deemed to have commenced on that date.

Having reviewed the Complaint and all preceding and succeeding correspondence between the Center and the Registrar, 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 21, 2007, to file its Response with the Center and serve a copy of the Response

on the Complainant.

As of March 21, 2007, the Center had not received a Response to the Complaint from the Respondent; hence, the Center, in an email letter March 22, 2007, notified the Complainant and Respondent of the default of the Respondent.

Accordingly, pursuant to the Rules and Supplemental Rules, by email letter dated March 28, 2007, the Center contacted the undersigned, Mr. Peter L. Michaelson, requesting his service as a Sole Panelist for this dispute. Subsequently, on the same day, 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 email letter dated March 29, 2007, 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 April 12, 2007.

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

The language of this proceeding is English.

4. Factual Background

As discussed below, the actual registrant of the disputed domain name, Seaber D. (“David”) Walton, supplied false registration information, including registering the Complainant’s name as the name and address of the registrant, to the registrar at the time he registered the disputed domain name. Consequently, for purposes of simplifying the ensuing discussion in this decision, the Respondent here will be taken to include the actual registrant, David Walton.

A copy of the WhoIs registration record for the disputed domain name appears in Annex A to the Complaint. As indicated on this record, the Respondent registered the disputed domain name on January 11, 1999.

A. Complainant’s MARIA BARTIROMO mark

As delineated below, the Complainant claims common law trademark rights in her personal name MARIA BARTIROMO, based on its continuous prior use, over the past 14 years, of that name as a mark used in conjunction with her services in providing financial news reporting and commentary. The Complainant has no trademark registrations for this mark.

B. Complainant

Since at least 1993, the Complainant has used her name in connection with news reporting services. Presently, the Complainant is the anchor of CNBC’s “Closing Bell with Maria Bartiromo” and its host. She is also managing editor of the nationally syndicated “The Wall Street Journal Report with Maria Bartiromo” which is a half-hour weekly newscast appearing on over 200 stations each week. This newscast is produced by CNBC in conjunction with the editors of *The Wall Street Journal* and distributed by NBC Universal Domestic Television Distribution.

The Complainant also writes a biweekly column in *Business Week* magazine entitled "FaceTime with Maria Bartiromo" and a monthly column in *Reader's Digest* magazine (having a circulation of over 40 million) entitled "MoneyMakers". Further, the Complainant hosts a nationally syndicated, daily radio report called "Your Money Matters" which airs on Clear Channel Communications stations.

As to her background, in 1995, the Complainant became the first journalist to report live from the floor of the New York Stock Exchange (NYSE) on a daily basis where she covered breaking news for CNBC's unscripted business morning program "Squawk Box". She continued to report from the NYSE for 10 years and subsequently in 1999, after having been a producer and assignment editor with CNBC Business news, joined CNBC where she became an anchor.

For the past nine years, the Complainant has written monthly columns for *Individual Investor* and *Ticker* magazines. She has been published in *Newsweek*, *Town and Country*, *Registered Rep* and the *New York Post*. In June 2001, HarperCollins published her book, "Use the News: How to Separate the Noise from the Investment Nuggets and Make Money in Any Economy" in June 2001 which subsequently was on the bestseller lists of *The New York Times*, *The Wall Street Journal* and *USA Today*.

C. Respondent

Contrary to the information set forth in the registration record for the disputed domain name, there appears to be no person named "Maria Bartiromo" in Shaker Heights, Ohio. This is suggested by the lack of any telephone directory listing for this named individual in the Shaker Heights, Ohio area or in the entire state of Ohio, and a lack of any entries for such an individual in any of a number of credit reporting databases.

The contact information given for both the name of the registrant and the administrative contact is false, as no post office box 17822 exists in the Shaker Heights, Ohio post office for zip code 44120. Further, the email address for the administrative contact jimcramer@shakerheights.com is also false, inasmuch as Jim Cramer is another well-known financial reporter for CNBC.

Currently, the disputed domain name does not resolve to any active website, but rather is parked at a "coming soon" page provided by the Registrar -- as evidenced by a hard-copy printout of that page provided in Exhibit D to the Complaint.

The <shakerheights.com> domain name used for the administrative contact email is registered to Dave Walton located at 2986 Warrington, Shaker Heights OH 44120, with his listed email address being Walton.dave@gmail.com.

Walton also registered the domain name <jimcramer.com> in his own name and is the technical contact for the name <markhaines.com>. Mark Haines is another CNBC reporter. A copy of the corresponding WhoIs entries for these names appears in Exhibits G and H to the Complaint. These two names, as indicated by the hard-copy printouts of web pages appearing in Exhibit H, also point to the same parked page as does the disputed domain name. The Respondent registered the domain names <mariabartiromo.com>, <jimcramer.com> and <markhaines.com> at approximately the same time and specifically on January 11, 1999, December 25, 1998 and January 12, 1999, respectively.

According to the Ohio Secretary of State, Seaber D. Walton of 2986 Warrington, Shaker Heights, Ohio 44120 is the registered agent of Paragon Services, Inc. (“Paragon”). Paragon was incorporated in the State of Ohio on September 8, 1998, but that corporation was subsequently cancelled on August 16, 2006, by the tax department of the State of Ohio. Currently, Paragon is not listed in the telephone or business directories for Cleveland, Ohio area which includes Shaker Heights. However, when the telephone number, presumably that indicated in the state incorporation records, for Paragon is dialed, an automated voice message answers which states “Hello. No one is available to take your call”. Paragon is listed as the Registration Services Provider on the registration record for the disputed domain name.

The disputed domain name registration was set to expire on January 11, 2007. However, on December 12, 2006, the Respondent renewed the registration for a subsequent two-year period expiring on January 11, 2008.

D. Complainant’s attempted contact with Respondent

On August 28, 2006, the Complainant, through her counsel, sent an email to the Respondent expressing interest in purchasing the disputed domain name. This email was addressed to Ms. Maria Bartiromo and sent to the jimcramer@shakerheights.com email address listed for the administrative contact of this domain name. A copy of this email was also sent to the paragon@ameritech.net email address listed as the technical contact for this domain name (a copy of the email appears in Exhibit E to the Complaint). No response was received. Subsequently, on September 18, 2006, Counsel sent a follow up message to the same email addresses at ameritech.net. Again, no response was received.

5. Parties’ Contentions

A. Complainant

(i) Identical or Confusingly Similar

First, the Complainant asserts that, as a consequence of her continuous prior use of her name MARIO BARTIROMO over the past 14 years as a mark for her financial news reporting and commentary services, the Complainant has acquired common law trademark rights in her name which are sufficient to invoke paragraph 4(a)(i) of the Policy.

Given those rights, the Complainant implicitly asserts that, apart from the inclusion of the generic top level domain (gTLD) “.com” in the domain name, the domain name is identical to her mark.

Hence, the Complainant believes that she has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

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

First, the Complainant alleges that the Respondent acquired the domain name for no other reason than primarily and ultimately to sell, rent, or otherwise transfer this domain name to the Complainant or an entity or individual affiliated with her for valuable consideration in excess of the Respondent's out-of-pocket costs for registering that name. As evidence of this intention, the Complainant opines that the Respondent is not currently using, has not used, and has made no preparations to use the domain name in connection with any *bona fide* offering of any goods or services.

Second, the Complainant alleges that the Respondent, as an individual, business or other entity, is not known by the name "Maria Bartiromo".

(iii) Registered and Used in Bad Faith

The Complainant contends that, for any of various reasons, the Respondent registered and is now using the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy.

First, the Respondent intentionally registered the domain name for no other reason than to:

- (a) primarily and ultimately to sell, rent, or otherwise transfer it to either the Complainant or someone else for valuable consideration in excess of the Respondent's out-of-pocket costs of registering it;
- (b) prevent the Complainant from reflecting her common law mark in a corresponding domain name, particularly since the Respondent has engaged in a pattern of doing so with other domain names, particularly <jimcramer.com> and <markhaines.com>; and/or
- (c) intentionally attempt to attract, for commercial gain, Internet users to his future website 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 their website or location or of a product or service on their website or location.

Second, the Respondent intentionally provided false contact information to the Registrar when registering the name, including specifying false contact email addresses which contained the names of other well-known financial reporters (Jim Cramer and Mark Haines) who appear on the same television network, CNBC, as does the Complainant.

Lastly, the Respondent never used the name to resolve to an operating website but instead merely parked it at a "coming soon" page maintained by the Registrar, and also renewed the registration for that name only after the Complainant placed the Respondent on notice of the present dispute, thus further evidencing bad faith.

B. Respondent

The Respondent failed to file any 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.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is identical to the Complainant's MARIA BARTIROMO mark.

As a general matter, the Policy does not contain any restriction whatsoever that specifically limits its reach to only registered marks. Therefore, given the apparent inclusive nature of the Policy, whether the Complainant has rights to an unregistered mark and hence a protectable interest under the Policy, lies with national trademark law that governs the Respondent's actions that are the subject of the Complaint. Under American law, rights accrue in unregistered, so-called "common law", marks as a result of usage, though limited by geographic and product/service markets in which the mark is used. As evidence of this, one need turn no further than to §43 of the Lanham Act (15 U.S.C. §1125(a)) which states, in pertinent part: "Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof ... (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person ... shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act."

Consequently, numerous panels including this one, when faced with unregistered marks, have upheld their protectable status in the United States under the Policy. In that regard, when faced with this issue, the panel in *Brooklyn Institute of Arts and Sciences v. Fantastic Sites, Inc.*, NAF Case No. FA 95560 (November 2, 2000) held: "ICANN dispute resolution policy is broad in scope in that the reference to a trademark or service mark in which the complainant has rights means that ownership of a registered mark is not required, unregistered or common law trademark or service mark rights will suffice to support a domain name complaint under the policy." See, e.g., *Animals for Advertising, Inc. v. Cathryn Long*, WIPO Case No. D2007-0049 (March 30, 2007); *William M. Krings v. Hugo Hernandez*, WIPO Case No. D2006-0237 (April 18, 2006); *Sound Unseen, Ltd.; Apple Bottoms, LLC; and Cornell Haynes p/k/a "Nelly" v. Patrick Vanderhorst*, WIPO Case No. D2005-0636 (August 18, 2005); *True Blue Productions, Inc. v. Chris Hoffman*, WIPO Case No. D2004-0930 (December 22, 2004); *AT&T Corp. v. Roman Abreu d/b/a Smarttalk Wireless*, WIPO Case No. D2002-0605 (September 11, 2002); *Peter Frampton v. Frampton Enterprises, Inc.*, WIPO Case No. D2002-0141 (April 17, 2002); *America Online, Inc. v. John Deep d/b/a Buddy USA Inc.*, NAF Case No. FA 96795 (May 14, 2001); *Missing Children Minnesota v. Run Yell Tell, Ltd.*, NAF Case No. FA 95825 (November 20, 2000); *Mike Warner 2001 v. Mike Larson*, NAF Case No. FA 95746 (November 15, 2000); *CMG Worldwide Inc. v. Naughtya Page*, NAF Case No. FA 95641 (November 8, 2000); *Home Properties v. SMSOnline*, NAF Case No. FA 95639 (November 2, 2000); and *Bridal Rings Company v. Yemenian*, NAF Case No. FA 95608 (October 26, 2000). Furthermore, the panel in *United States Postal Service v. Consumer Info. Org.*, NAF Case No. FA 95757 (November 27, 2000), held: "The UDRP does not discriminate between registered and unregistered marks."

In *Exario Network Inc. v. THE DOMAIN NAME YOU HAVE ENTERED IS FOR SALE*, eResolution Case No. AF-0536 (December 11, 2000), the panel recognized: “It is well established that a complainant need not own a registered trademark to invoke the policy. It is sufficient that a complainant have rights in an unregistered trademark.” In that regard, also see *Sand Hill Wholesale of Ohio v. Hatton*, NAF Case No. FA 95970 (December 18, 2000), and *David Taylor Cadillac/Buick Co. v. Spider Works, Ltd.*, NAF Case No. FA 95832 (November 30, 2000). Similarly, see *American Home Products Corp. v. Healthy Futures*, WIPO Case No. D2000-0454 (August 3, 2000); *Cho Yong Pil v. ImageLand, Inc.*, WIPO Case No. D2000-0229 (May 10, 2000); *SeekAmerica Networks, Inc. v. Tariq Masood and Solo Signs*, WIPO Case No. D2000-0131 (April 13, 2000); and *Bennett Coleman & Co. Ltd. v. Steven S Lalwani and Bennett Coleman & Co. Ltd. v. Long Distance Telephone Company*, WIPO Case No. D2000-0014 and D2000-0015 (March 11, 2000).

Given that common law trademark rights in the United States suffice for purposes of invoking paragraph 4(a)(i) of the Policy, the inquiry shifts to whether the Complainant had acquired common law trademark rights in her name MARIA BARTIROMO. The Complainant’s use of her name as a mark in connection with her financial news reporting services dates back to 1993 -- some 6 years prior to the date the domain name was registered and continue to the present, and clearly her common law rights have requisite priority over the Respondent and are continuing.

Since, as a predicate, the Panel has found that the Complainant has common law rights in the mark MARIA BARTIROMO, then no doubt exists that the disputed domain name is, for all practical purposes, identical to that mark. The difference between the name and that mark is merely the appending of a generic top level domain (gTLD) “.com” to the mark and the omission of spaces between the individual words in the mark. Well-established UDRP precedent holds that the addition of a gTLD, the deletion of spaces or other such trifling changes are utterly *de minimus*, if not completely irrelevant, in assessing identity/confusing similarity and thus is totally ignored. See, e.g., *Lane-Labs USA, Inc. v. Powell Productions*, NAF Case No. FA 155896 (July 1, 2003).

Therefore, the Panel finds that the disputed domain name <mariabartiromo.com> is identical to and sufficiently resembles the Complainant’s MARIA BARTIROMO mark as to cause confusion; hence, the Complainant has shown identity between that mark and that name under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel believes that the Respondent has not provided any basis that would in the circumstances here legitimize a claim to the disputed domain name under paragraph 4(c) of the Policy.

There is absolutely no evidence of record that the Respondent has ever been commonly known by the domain name. Nor could the Respondent ever become so known, in light the Complainant’s continuous use of her mark for the prior 14 years and the ensuing nationwide reputation she has garnered in it during that time, without infringing on the exclusive trademark rights of the Complainant.

Hence, the Respondent is highly likely to have known of the Complainant and her

notoriety at the time the name was registered -- particularly since no individual by that name exists in the Respondent's geographic area and the Respondent is not so named. Yet, in spite of that knowledge, the Respondent intentionally registered the name. In the absence of any response, the Panel infers that the Respondent did so to ultimately trade on, or otherwise exploit and possibly tarnish the Complainant's reputation. Such use of a domain name can never be valid, hence precluding the Respondent from ever having acquired rights and legitimate interests in the name.

In addition, the Respondent has not used the domain name in connection with any *bona fide* offering of goods and services, rather the domain name, since its registration and to date, has been parked on a page provided for that purpose by the Registrar.

Accordingly, the Panel is not persuaded that the Respondent has any rights or legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

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

There can be no doubt, when the facts here are viewed in their totality, that the Respondent registered and used the domain name with the specific intention of opportunistically exploiting the Complainant's goodwill in her mark for the Respondent's eventual pecuniary benefit and the Complainant's detriment. This is seen in the Respondent's intentional acts of: having registered the disputed domain name which mirrored the Complainant's own name and mark; providing erroneous contact information to the registrar; parking and thus passively holding the disputed domain name since its original registration on January 11, 1999; and finally, renewing the registration after having been placed on notice of the present dispute. This conduct contravenes paragraph 4(b)(i) of the Policy.

Further, the Respondent has registered domain names that mirrored the names of other well-known CNBC financial reporters, here being <jimcramer.com> and <markhaines.com>, not just that of the Complainant, thus having established a pattern of prior conduct. Upon viewing the Respondent's actions in registering the present domain name in light of this pattern, the Panel finds that this conduct contravenes paragraph 4(b)(ii) of the Policy.

Hence, the Panel views the Respondent's actions as constituting bad faith registration and use of the disputed domain name <mariabartiromo.com> in violation of paragraph 4(a)(iii), as well as paragraphs 4(b)(i) and 4(b)(ii) of the Policy.

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

7. Decision

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

The disputed domain name, <mariabartiromo.com>, is ordered transferred to the Complainant.

Peter L. Michaelson
Sole Panelist

Dated: April 11, 2007