NATIONAL ARBITRATION FORUM

NATIONAL ARBITRATION FORUM

DECISION

Fair Isaac Corporation v. Jim Krage c/o Zero Out Debts, LLC
Claim Number: FA0811001233506

PARTIES

Complainant is **Fair Isaac Corporation** ("Complainant"), represented by **Timothy M. Kenny**, of **Fulbright & Jaworski**, Minnesota, USA. Respondent is **Jim Krage** c/o **Zero Out Debts, LLC** ("Respondent"), California, USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<lowficohomeloans.com>**, registered with **1 & 1 Internet Ag**.

PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

Petter Rindforth as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on November 11, 2008; the National Arbitration Forum received a hard copy of the Complaint on November 12, 2008.

On November 13, 2008, 1 & 1 Internet Ag confirmed by e-mail to the National Arbitration Forum that the **<lowficohomeloans.com>** domain name is registered with 1 & 1 Internet Ag and that the Respondent is the current registrant of the name. 1 & 1 Internet Ag has verified that Respondent is bound by the 1 & 1 Internet Ag 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 November 18, 2008, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of December 8, 2008 by which Respondent could file a Response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@lowficohomeloans.com by e-mail.

Respondent's timely Response was received in electronic copy on December 8, 2008; however no hard copy was received prior to the Response deadline. Thus the National

Arbitration Forum does not consider the Response to be in compliance with ICANN Rule 5.

On December 15, 2008, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Mr. Petter Rindforth as Panelist.

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant

Complainant, founded in 1956, claims to be the leading provider of decision management solutions powered by advanced analytics, and refers to articles and rankings (no copies provided in the Complaint) made by IDC in *Worldwide Business Analytics Software 2004-2008 Forecast and 2003 Vendor Shares, Business 2.0, Computer Business Review* and *American Banker and Financial Insights*. Complainant states that its FICO scores are the most used credit scores in the world, available through all of the major consumer reporting agencies in the United States and Canada, including Equifax, Experian and TransUnion.

Complainant contends that is has continuously and extensively used the name and mark FICO since at least as early as 1995 (claiming common law rights to FICO) and that it is also the owner of numerous other marks that incorporate "FICO." Complainant informs of its U.S. trademark registrations (Exhibit B of the Complaint), and claims to have numerous registrations for its FICO marks worldwide. Complainant also uses the FICO mark in domain names to identify itself on the Internet (including, but not limited to, <fico.com> and <myfico.com>).

Complainant states that it has invested considerable effort and money in promoting its credit related products and services under the FICO marks and in carefully controlling the public's perception of the nature and quality of the products and services associated with that marks. The FICO marks are distinctive, well-known and famous marks, and have become highly valuable assets of the Complainant, representing substantial goodwill. The value of these assets has been cultivated as a result of Complainant's continuous and exclusive use of the marks for many years.

Complainant states that the disputed domain name is confusingly similar to the FICO marks, and that the addition of a common or generic term to a trademark does nothing to reduce the domain name's confusing similarity.

Complainant further states that Respondent has no rights or legitimate interest in the disputed domain name, as Respondent has no relationship with Complainant, has never been commonly known by **<lowficohomeloans.com>**, has no trademark rights in the

same and has not used the domain name in good faith and in connection with a b*ona fide* offering of goods or services. As to the latter statement, Complainant argues that Respondent is using the disputed domain name—for commercial gain—for the sole purpose of driving Internet traffic to Respondent's website and trading on the goodwill associated with Complainant and the FICO marks.

The website located at **<lowficohomeloans.com>** offers services that are identical or related to, and in competition with, the services offered by Complainant. Specifically, the website contains information related to loan modification services, credit repair agencies, lending companies, loan consolidation companies and other related businesses, as well as offers for sale several lending and credit-related publications (a copy of Respondent's website provided as Exhibit D of the Complaint).

Finally, Complainant states that Respondent registered and used the disputed domain name in bad faith, as (i) Respondent used Complainant's trademark in its domain name to offer services in competition with Complainant; (ii) Respondent was imparted with constructive knowledge of Complainant's trademark rights at the time it registered and began using the disputed domain name in light of Complainant's numerous trademark applications and registrations containing FICO; and (iii) Respondent had actual knowledge of Complainant's trademark rights as a result of receiving communication from Complainant providing details of Complainant's trademark rights.

Complainant first contacted Respondent via e-mail on July 13, 2007, informing Respondent on Complainant's trademarks and demanding Respondent to cease all use of the disputed domain name. Complainant offered to reimburse Respondent $50 for the fees paid to register the domain name. Respondent refused this offer and continued the use of the **<lowficohomeloans.com>** domain name. Complainant contacted Respondent again on March 7, 2008, further explaining its rights in the FICO marks, reiterating its request that Respondent cease all use of the domain name and transfer the registration to Complainant. Complainant increased its reimbursement offer to $100. Complainant followed up with Respondent again on May 21, 2008 after not receiving a response to its March 7 letter. Respondent replied to Complainant by indicating that the letters constitute "harassment" and offering to sell the domain for $5,000 (with the price to increase to $50,000 if Complainant did not accept the original offer within 14 days). Copies of the correspondence provided as Exhibit E of the Complaint.

B. Respondent

Respondent generally denies all allegations made by Complainant, and demurs to the Complaint, informing that Respondent does not agree to arbitration as Respondent does not believe Respondent's First Amendment and other rights are properly respected in arbitration. Respondent informs that Respondent wishes a full trial.

Respondent, being of the opinion that it is forced into arbitration merely because of that Respondent registered a domain name on a server within the United States, argues that Respondent has a constitutional right to trial by jury and that only a U.S. District Court or

the Superior Court of California have jurisdiction to decide the current dispute, involving complicated trademark issues.

Respondent informs that Respondent registered the disputed domain name on January 17, 2007, and was contacted by Complainant in May and July, 2007. According to Respondent, Complainant asked Respondent to add to **<lowficohomeloans.com>** copyright information and links to Complainant's websites. Respondent promptly added the following to the website:

*"(*FICO is a registered trademark of Fair Isaac - see www.fairisaac.com and www.myfico.com)"*

Complainant thereafter asked Respondent to remove FICO from the domain name. On July 13, 2007, Respondent offered to let the Complainant have the domain for $200 (being less than what Respondent is said to have spent for registration, hosting and web creation), an offer that Complainant refused and made a counter-offer of $50.

Respondent claims that the website under the disputed domain name is non-commercial, "*posting articles to help consumers hurt by their low fico score, along with news.*" Respondent admits that Respondent allows advertisers to display their ads on the website for revenue, however claims that this is only to support the website costs and refer to that this is a custom for many other non-commercial and non-profit websites. Respondent informs that Respondent makes revenue from Google Adsense, Commission Junction, ClickBank and Amazon from the website, as well as from ads for leads on Loan Audits and Loan Modifications. Respondent concludes that losing the disputed domain name would cause Respondent many thousands of dollars of lost revenue, and places the value of the website at $10,000 in the current market.

In the Response, Respondent formally offers the disputed domain name to the Complainant for $10,000.

Respondent admits that Complainant has a trademark for FICO for their niche of Credit Scoring and Credit Reporting, but denies all other allegations, and contest Complainant's claim of FICO having common law trademark rights.

Respondent asserts that Respondent has no intent to profit by selling the domain name to Complainant, or to disrupt Complainant's business.

When Respondent registered **<lowficohomeloans.com>**, Respondent considered the term "low fico" generic, as FICO Score being a popular synonym to "Credit Score." Respondent refers to a search in the Google search engine, delivering 67,300 results of websites. According to Respondent, almost all of these websites are using FICO as a general term.

In addition, Respondent is not offering credit scoring or credit reporting in competition to Complainant. Respondent claims that his use of the disputed domain name is fair use.

Respondent requests for immediate dismissal of arbitration. If this request is overruled, Respondent requests an extension of time to determine if a 3-member panel is desired, and with leave to amend the answer.

Finally, Respondent accuses Complainant of having brought the Complaint in bad faith for Reverse Domain Name Hijacking purposes, referring to the fact that Respondent's claimed good faith offer of $200 in 2007 was refused by Complainant.

FINDINGS

Deficient Response

As mentioned above under "Procedural History," Respondent's Response was received in electronic copy; however no hard copy was received prior to the Response deadline. Thus the National Arbitration Forum does not consider the Response to be in compliance with ICANN Rule 5.

The Panel notes that Respondent has filed a timely and full Response in electronic format. In the interests of fairness and in accordance with ICANN Rule 10(b), the Panel has decided to consider the Response in spite of the lack of a hard copy Response. *See J.W. Spear & Sons PLC v. Fun League Mgmt.*, FA 180628 (Nat. Arb. Forum Oct. 17, 2003) (finding that where respondent submitted a timely response electronically, but failed to submit a hard copy of the response on time, "[t]he Panel is of the view that given the technical nature of the breach and the need to resolve the real dispute between the parties that this submission should be allowed and given due weight").

Jurisdiction

Respondent in its Response extensively argues that Respondent has not agreed to arbitration, and that the Panel lacks jurisdiction to adjudicate trademark matters.

However, the Respondent consented to be bound to the jurisdiction of the UDRP when it executed the Registration Agreement with the Registrar. *See Weber-Stephen Prod. Co. v. Armitage Hardware*, D2000-0187 (WIPO May 11, 2000) (finding that the UDRP applied because: "[b]y virtue of its contract with NSI, Respondent agreed to be bound by NSI's then-current domain name dispute policy, and any changes made to that policy made by NSI in the future").

The Panel reminds the Parties of Policy ¶ 4(k) allowing the parties to litigate in court, *"The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded."*

This Panel finds no reasons to not decide the instant dispute on the merits strictly under the guidelines of the Policy, while trademark issues other than those expressly enumerated within the Policy ¶ 4(a) elements fall outside of the scope of the Panel's jurisdiction.

Extension of time

ICANN Rule 5 sets out the time limits for, and the formal contents of, the Response. Rule ¶ 5 (b)(iv) states that if Complainant has elected a single-member panel in the Complaint, the Respondent shall in its Response state whether Respondent elects instead to have the dispute decided by a three-member panel.

Rule ¶ 5 (d) states that, at the request of the Respondent, the Provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written stipulation between the Parties, provided the stipulation is approved by the Provider.

In the Response, Respondent has requested an extension of time to determine if a 3-member panel is desired, providing that Respondent's request for dismissal of the arbitration is dismissed. The Panel notes that the Response is already considered deficient by the Forum, although the Panel decided to consider the Response in the interests of fairness. However, there are no grounds to allow Respondent an extension of time as there are no exceptional circumstances in this case. The sole Panel will therefore make a decision within the time limits given by the Provider.

Scope of the Proceedings under the UDRP

Respondent argues extensively in its Response various legal points pursuant to federal law as they may apply to the disputed domain name and relevant trademark rights and/or trademark infringement. As stated above, the instant dispute is governed by the UDRP and not by federal law and while Policy ¶ 4(k) allows the parties to litigate these points in court, the Panel finds that these arguments are not applicable to this arbitration proceeding within the scope of the UDRP and its elements.

Reverse Domain Name Hijacking

Respondent suggests that Complainant is guilty of Reverse Domain Name Hijacking. Rule ¶ 1 defines Reverse Domain Name Hijacking as "using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name." Rule ¶ 15(e) further defines the situation as filing the complaint "in bad faith, for example in an attempt to harass the domain-name holder."

The background of Respondent's accusations of Reverse Domain Name Hijacking seems to be the fact that Respondent's offer of $200 for the disputed domain name was refused by Complainant.

There is no evidence of harassment from Complainant, and the accusations and presumptions filed against Respondent are well within the scope of what the Panel finds acceptable from a trademark owner who discovers a domain name that may infringe its trademark rights. A complainant is free to consider, accept and/or reject any offer from a respondent/domain name holder. To base an accusation for Reverse Domain Name Hijacking only of this situation is a misuse of the possibilities given to a respondent by the Rules.

The Panel therefore states that this is *not* a case of Reverse Domain Name Hijacking.

Complainant's Trademark Rights and Respondent's domain name registration

Respondent registered the domain name **<lowficohomeloans.com>** on January 18, 2007.

The Panel finds that Complainant has established trademark rights in the FICO marks (FICO being first used in commerce in 1995) in the U.S. as follows:

No. 2,273,432 **FICO** (Registered on August 31, 1999, in respect of "consultation services in the field of financial information, namely, providing credit scoring services" Intl. Class 36)

No. 2,573,131 **FICO** (Registered on May 28, 2002, in respect of "business information services, statistical forecasting and analysis, preparing business reports", etc in Intl. Class 35 as well as education and training services in Intl. Class 41)

No. 2,989,390 **FICO** (Registered on August 30, 2005, in respect of computer software in Intl. Class 9)

No. 3,119,897 **FICO.ORG** (Registered on July 25, 2006, in respect of services in Intl. Class 36)

No. 3,121,526 **myFICO officially certified FICO credit score** (Registered on July 25, 2006, in respect of "credit risk management and risk management services; credit scoring services" in Intl. Class 36, including a disclaimer for "officially certified" and "credit score")

No. 3,184,462 **FICO EXPANSION** (Registered on December 12, 2006, in respect of services in Intl Classes 35 - including business information services, 36 and 39).

The Panel finds that the following factual contentions of Complainant are not supported by any evidence and are inadmissible:

i) Complainant's trademark rights to the FICO marks outside of the U.S.
ii) the articles and rankings made by IDC in *Worldwide Business Analytics Software 2004-2008 Forecast and 2003 Vendor Shares, Business 2.0, Computer Business Review* and *American Banker and Financial Insights*.

Otherwise, the factual contentions of the parties have been admitted and considered in this decision.

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

Complainant has established rights in the FICO mark in the U.S. through the Registration Nos. 2,273,432; 2,573,131 and 2,989,390. In addition, Complainant has proved registered trademark rights to at least three other FICO-related U.S. marks.

Under U.S. trademark law, registered marks hold a presumption that they are inherently distinctive and have acquired secondary meaning. *See Expedia, Inc. v. Emmerson*, FA 873346 (Nat. Arb. Forum Feb. 9, 2007) ("Complainant's trademark registrations with the USPTO adequately demonstrate its rights in the [EXPEDIA] mark pursuant to Policy ¶ 4(a)(i)."); *see also Janus Int'l Holding Co. v. Rademacher*, D2002-0201 (WIPO Mar. 5, 2002) ("Panel decisions have held that registration of a mark is prima facie evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive.")

The relevant part of the disputed domain name is "lowficohomeloans." *See Gardline Surveys Ltd. v. Domain Fin. Ltd.*, FA 153545 (Nat. Arb. Forum May 27, 2003) ("The addition of a top-level domain is irrelevant when establishing whether or not a mark is identical or confusingly similar, because top-level domains are a required element of every domain name.").

Accordingly, the domain name consists of Complainant's trademark FICO, with the addition of the generic terms "low" and "home loans." As stated in many UDRP cases, the addition of a generic term does not necessarily distinguish a domain name from a trademark. The generic word may even add to the confusing similarity. *See Scholastic Inc. v. 366 Publ'n*, D2000-1627 (WIPO Feb. 21, 2001), holding that "[t]he addition of the generic term 'online'…is not a distinguishing feature. In fact, in this case it seems to

increase the likelihood of confusion because it is an apt term for [the] Complainant's online business"), *see also Experian Info. Solutions, Inc. v. Credit Research, Inc.*, D2002-0095 (WIPO May 7, 2002) (finding that several domain names incorporating the complainant's entire EXPERIAN mark and merely adding the term "credit" were confusingly similar to the complainant's mark).

In this case, the terms "low" and "home loans," together with the mark FICO, relates to Complainant's credit risk management services.

While Complainant also has other registrations where FICO is a distinctive part of the mark, such as No. 3,119,897 **FICO.ORG**, No. 3,121,526 **myFICO officially certified FICO credit score**, and No. 3,184,462 **FICO EXPANSION**, the similarities between these and "lowficohomeloans" are somewhat less obvious – at least for the two latter ones. The existence of these registrations however adds to the presumption that FICO is a distinctive word, as No. 3,184,462 was registrered (without any disclaimer for FICO) as late as one month before the registration of the disputed domain name.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to at least Complainant's trademark FICO. The Policy ¶ 4(a)(i) has been satisfied.

Rights or Legitimate Interests

Complainant's assertion that Respondent lacks rights or legitimate interests in the disputed domain name establishes a *prima facie* case under the Policy. Once a *prima facie* case has been established, the burden shifts to Respondent to demonstrate that it does have rights or legitimate interests pursuant to Policy ¶ 4(c). *See Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (holding that, where the complainant has asserted that the respondent has no rights or legitimate interests with respect to the domain name, it is incumbent on the respondent to come forward with concrete evidence rebutting this assertion because this information is "uniquely within the knowledge and control of the respondent.").

Respondent, Jim Krage c/o Zero Out Debts, LLC, has not established in any way that it is known by the domain name at issue. *See Wells Fargo & Co. v. Onlyne Corp. Services11, Inc.*, FA 198969 (Nat. Arb. Forum Nov. 17, 2003) ("Given the WHOIS contact information for the disputed domain [name], one can infer that Respondent, Onlyne Corporate Services11, is not commonly known by the name 'welsfargo' in any derivation."); *see also Instron Corp. v. Kaner*, FA 768859 (Nat. Arb. Forum Sept. 21, 2006) (finding that the respondent was not commonly known by the <shoredurometer.com> and <shoredurometers.com> domain names because the WHOIS information listed Andrew Kaner c/o Electromatic a/k/a Electromatic Equip't as the registrant of the disputed domain names and there was no other evidence in the record to suggest that the respondent was commonly known by the domain names in dispute).

Respondent is obviously not associated in any way with Complainant and has never been authorized or licensed to use domain names incorporating the FICO marks.

Respondent argues that the disputed domain name resolves to a primarily noncommercial website with 12 articles and other news feeds discussing how to aid consumers with low credit score problems. While Respondent admits that it allows advertisers to display their ads on the website for revenue, Respondent claims that this is only to support the website costs. At the same time, Respondent concludes that losing the disputed domain name would cause many thousands of dollars of lost revenue. Referring to Respondent's own statements as well as from the printouts of the corresponding website (attached the Response), the Panel finds it clear that the revenues and expected future revenues from Respondent's activities with the domain name go way beyond what may be acceptable for a non-commercial website.

Complainant is in the financial business, especially providing credit score information and similar. Respondent seems to be in the same or at least closely-related business, providing information on financial solutions for consumers with low credit score problems. Thus, Respondent is offering services related to Complainant's financial services. The articles provided at both parties websites are also with related content. The Panel finds that this cannot be considered a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii). *See Ameritrade Holdings Corp. v. Polanski*, FA 102715 (Nat. Arb. Forum Jan. 11, 2002) (finding that the respondent's use of the disputed domain name to redirect Internet users to a financial services website, which competed with the complainant, was not a *bona fide* offering of goods or services); *see also Glaxo Group Ltd. v. WWW Zban*, FA 203164 (Nat. Arb. Forum Dec. 1, 2003) (finding that the respondent was not using the domain name within the parameters of Policy ¶¶ 4(c)(i) or (iii) because the respondent used the domain name to take advantage of the complainant's mark by diverting Internet users to a competing commercial site).

Finally, Respondent has in the Response expressed a willingness to transfer the disputed domain name to Complainant for U.S. $10,000. This statement further indicates that Respondent has no rights or legitimate interests in the domain name. *See Marcor Int'l v. Langevin*, FA 96317 (Nat. Arb. Forum Jan. 12, 2001) (Respondent's willingness to transfer the domain name at issue indicates that it has no rights or legitimate interests in the domain name in question); *see also Vance Int'l, Inc. v. Abend*, FA 970871 (Nat. Arb. Forum June 8, 2007) ("An attempt by a respondent to sell a domain name to a complainant who owns a trademark with which the domain name is confusingly similar for an amount in excess of out-of-pocket costs has been held to demonstrate a lack of legitimate rights or interests.").

The Panel concludes that Respondent does not have any rights or legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii).

Registration and Use in Bad Faith

Complainant argues that Respondent had actual or constructive knowledge of Complainant's FICO marks and therefore Respondent registered and used the domain

name in bad faith. Registration of a domain name that is confusingly similar to another's mark, despite knowledge of the mark holder's rights, is evidence of bad faith registration and use pursuant to Policy ¶ 4(a)(iii). *See Digi Int'l v. DDI Sys.*, FA 124506 (Nat. Arb. Forum Oct. 24, 2002) ("there is a legal presumption of bad faith, when Respondent reasonably should have been aware of Complainant's trademarks, actually or constructively").

Respondent registered the disputed domain name almost 12 years after Complainant's first use in commerce of the mark FICO, and almost 8 years after the first trademark registration. Respondent is domiciled in the U.S., and could easily have checked the USPTO's Trademark Registry prior to the registration of the domain name. *See Orange Glo Int'l v. Blume*, FA 118313 (Nat. Arb. Forum Oct. 4, 2002) ("Complainant's OXICLEAN mark is listed on the Principal Register of the USPTO, a status that confers constructive notice on those seeking to register or use the mark or any confusingly similar variation thereof.").

In the Response, Respondent admits to the fact that Complainant has trademark rights to FICO, but seems to be of the opinion that the scope of protection for FICO is limited to credit scores and credit reports, and further that the FICO in combination with the word "low" has become generic. Respondent refers to a Google search for "low FICO," yielding 67,300 third party web pages using FICO as a general term (Exhibit 1 of the Response). As far as the Panel can determine from studying the main part of these hits, most of them are referring to the services and trademarks of Complainant, and none are using FICO as part of their domain names.

Complainant registered the mark **FICO EXPANSION**—in respect of services in Intl. Classes 35, 36 and 39—as late as on December 12, 2006, just a month before Respondent registered the domain name **<lowficohomeloans.com>** to be used for a website providing financial information.

The Panel finds it unlikely that Respondent had no knowledge of Complainant's trademark rights at the time of the registration of the disputed domain name.

According to Respondent, the domain name has become a valuable asset. Exhibit E of the Complaint shows the correspondence between Complainant and Respondent, in particular the May 21, 2008 e-mail from Respondent, stating:

"My offer of $5,000 will be good for 14 days. After that, I may discuss what I consider to be your harassment of me on www.StopCityFraud.com and perhaps even www.LowFICOhomeLoans.com. After 14 days, the price of www.LowFICOhomeLoans.com will be $50,000."

In the Response, Respondent has again offered the disputed domain name for sale, now to the price of $10,000.

The Panel find the above a clear indication of bad faith registration and use of the domain name, violating several of the factors listed in Policy ¶ 4(b), especially that Respondent registered the domain name primarily for the purpose of selling it to Complainant for a valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the domain name. *See Neiman Marcus Group, Inc. v. AchievementTec, Inc.*, FA 192316 (Nat. Arb. Forum Oct. 15, 2003) (finding the respondent's offer to sell the domain name for $2,000 sufficient evidence of bad faith registration and use under Policy ¶ 4(b)(i)); *see also Campmor, Inc. v. GearPro.com*, FA 197972 (Nat. Arb. Forum Nov. 5, 2003) ("Respondent registered the disputed domain name and offered to sell it to Complainant for $10,600. This demonstrates bad faith registration and use pursuant to Policy ¶ 4(b)(i).").

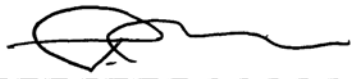
Moreover, the Panel finds that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the FICO marks as to the source, sponsorship, affiliation, or endorsement of Respondent's site and the services offered at that website. The fact that Respondent, for a time and upon Complainant's request, placed a small disclaimer on its website does not alter the Panels view. Internet users could not see this disclaimer before entering the website and the not so easy to find text is just stating that "FICO is a registered trademark of Fair Isaac" with links to two of Complainant's websites. There is nothing indicating that Respondent has no business relationship with Complainant or is not in any other way affiliated with Complainant.

Referring to all the above circumstances, the Panel concludes that Respondent has registered and used the domain name in bad faith. The Panel finds that Policy ¶ 4(a)(iii) has been satisfied.

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the **<lowficohomeloans.com>** domain name be **TRANSFERRED** from Respondent to Complainant.



Petter Rindforth, Esq.
Arbitrator

Petter Rindforth, Panelist
Dated: December 29, 2008

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