

This is Google's cache of <http://www.domainstatute.com/domain-name-disputes/naf4/677782.html>. It is a snapshot of the page as it appeared on Aug 19, 2008 13:36:53 GMT. The [current page](#) could have changed in the meantime. [Learn more](#)

These search terms are highlighted: **christopher russell ameridream**

[Text-only version](#)

# Domain Statute

## UDRP Disputes

[Home](#) | [Blog](#) | [Alleged Cybersquatters Database](#) | [Someone Took Your domain? Report it!](#) | [UDRP Rules & Decisions](#)



### NATIONAL ARBITRATION FORUM

#### DECISION

**Ameridream, Incorporated v. Christopher Russell**

Claim Number: FA0604000677782

#### PARTIES

Complainant is **Ameridream, Incorporated** (“Complainant”), represented by **Dennis B. Lisbon**, of **Ameridream, Incorporated**, 200 Professional Drive, Suite 400, Gaithersburg, MD 20879.

Respondent is **Christopher Russell** (“Respondent”), 18403 Woodfield Rd, Suite E, Gaithersburg, MD 20879.

#### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**ameridreamprogram.com**>, registered with **Austrian**.

#### 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.

Jacques A. Léger, Q.C. as Panelist.

#### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on April 12, 2006; the National Arbitration Forum received a hard copy of the Complaint on April 14, 2006.

On April 12, 2006, Austrian confirmed by e-mail to the National Arbitration Forum that the <**ameridreamprogram.com**> domain name is registered with Austrian and that the Respondent is the current registrant of the name. Austrian has verified that Respondent is bound by the Austrian 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 April 20, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the “Commencement Notification”), setting a deadline of April 20, 2006 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@ameridreamprogram.com by e-mail.

A timely Response was received and determined to be complete on May 5, 2006.

An Additional Submission from the Complainant was received on May 9, 2006.

On May 10, 2006, pursuant to Complainant’s request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Jacques A. Léger, Q.C. as Panelist.

## **RELIEF SOUGHT**

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

## **PARTIES’ CONTENTIONS**

### **A. Complainant**

Complainant asserts that it promotes home ownership by providing and administering a downpayment gift assistance program; it maintains a website at the domain name <www.ameridream.org>, to provide buyers and lenders with information on the program offered. Its mark **AMERIDREAM** is registered with the United States Patent and Trademark Office (hereinafter the USPTO); Complainant alleges that home purchasers and lenders rely on the **AMERIDREAM** mark and the above mentioned website to obtain information on Complainant’s services.

Complainant further contends that Respondent registered the disputed domain name on March 31, 2006, although the WHOIS refers to registration on March 29, 2006, and that said domain name revolves to a website that contains links to other downpayment assistance programs and resources.

Furthermore, Complainant alleges that the domain name in dispute is legally equivalent and confusingly similar to its mark, if not nearly identical. The dominant portion of said domain name is **AMERIDREAM** and the suffix “program” added does not prevent the trademark from being nearly identical, a common descriptive term being insufficient to avoid a likelihood of confusion between the domain and the mark, nor does the addition of a top level domain (.com) to the mark prevent the domain in dispute to be confusingly similar to the Complainant’s mark.

Complainant further asserts that Respondent has no rights or legitimate interests in the domain name in dispute, as it is not known by the name **AMERIDREAM**, nor any current connection or affiliation with Complainant. Complainant further contends that it was originally founded by Respondent **Christopher Russell** along with Ryan Hill, both having signed Non-Competition Agreements that expired on March 30, 2006, thus one day after the domain names (below mentioned) were registered; in Complainant’s view, this is evidence that the Respondent intended to use the disputed domain name to compete or disparage Complainant.

Finally, Complainant contends that Respondent was one of the founders of the Complainant, and thus intimately familiar with Complainant’s services and reputation, represented by the **AMERIDREAM** mark; the use of this mark in connection with the disputed domain name is intended to harass Complainant, to cause damage to its reputation and to create confusion, and

indicates bad faith.

Complainant also alleges that the use of its trademark in its entirety with the addition of a descriptive word is an indication to trade on the goodwill of Complainant, and is also an indication of bad faith.

## **B. Respondent**

Respondent asserts that the addition of a distinctive word is dissimilar enough for the USPTO to believe it does not cause confusion, as the mark **AMERIDREAM** was filed on October 30, 2001, and the mark **AMERIDREAM ENTERPRISES** was filed on January 20, 1999, and is still in use by another party. Thus, by the addition of the distinctive word “program”, the domain name in dispute is neither identical nor confusing with Complainant’s mark.

Respondent alleges that it has created a protest site by adding the word “fuck”, in addition to other domains adding the word “program”, to communicate Complainant’s mishandling of public benefit monies. According to Respondent’s contentions, the use of a word loaded with criticism would make it clear to visitors that they have not reached the official **AMERIDREAM** website, and that not even an inexperienced Internet user would consider the disputed domain name and the mark confusingly similar.

Respondent contends that ICANN Policy provides as a complete defense for the Registrant’s continued use of the domain by stating “*Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*” Respondent’s site was established on April 29, 2006, and has been maintained as a legitimate protest site directed towards the Complainant.

Respondent asserts that he is one of the founders and former CEO of Complainant, and is dedicated to providing information to the public with the hope that it will be able to provide public pressure to better regulate rogue exempt organizations. Respondent maintains several domains: <fuckameridream.com>, <fuckameridream.net>, <fuckameridream.org>, <ameridreamprogram.net> and <ameridreamprogram.org>, in addition to the one disputed in this case. All of these sites are directed to the protest site “Fuck **Ameridream**.”

Respondent also argues that it operates the <**ameridreamprogram.com**> domain name with a legitimate First Amendment purpose of expressing its views about Complainant. It further notes that the domain is an information site and that Respondent does not gain any commercial advantage from its use, nor does it operate the site with the purpose of competing or disparaging Complainant’s service mark.

Furthermore, Respondent argues that the Complaint was filed just ten days after the disputed domain name was acquired, and thus that it did not have adequate time to develop and execute a protest site that was the intended use. Respondent states that within thirty days of acquiring the disputed domain name, it has made legitimate use of it, dozens of members of the public having visited the site and several participated in the discussions.

Finally, Respondent asserts that Complainant must show both bad faith in registration and use of the domain name in dispute, and that it has not met its burden. Registration was done in good faith on March 31, 2006, with the intention of launching a protest site, to convince **AmeriDream** to adopt fiscally responsible policies in the use of public benefit funds. The protest site is damaging to **AmeriDream** as it informs the public of the gross mismanagement and squandering of public monies; Respondent has never wished to compete or economically harm **AmeriDream**, and Complainant’s only evidence of bad faith is the fact that the Respondent was formerly employed by Complainant.

### **C. Additional Submissions**

Complainant submits that subsequent to initiating this proceeding, Respondent changed the content of its website in order to feature a discussion on said proceeding; however, Respondent's communications to Complainant don't reflect the intent to maintain a protest site but rather the intent to maintain the ownership of the domain name in dispute.

Complainant also asserts that Respondent is trying to demonstrate that because there is a third-party trademark registration also including the word **AMERIDREAM**, it must follow that the combination with any other name is sufficient to avoid the likelihood of confusion. Complainant argues that the services offered by the third-party company are unrelated to its services, while Respondent is offering a competitive program and disrupting Complainant's business; furthermore, the presence of other potential infringers does not vitiate the confusion caused by Respondent's use of the disputed domain name.

The addition of the generic term "program" does not create a new mark, according to Complainant, nor does adding "suck," or as in this particular case "fuck," to a mark prevent the domain name from being confusingly similar.

Complainant alleges that prior to the proceedings, Respondent demonstrated the intention to compete with or to disrupt Complainant's business; Respondent's direct communications with Complainant demonstrate the launching of a downpayment assistance program from Respondent at the domain name in dispute, and thus the offering of a competing program.

Furthermore, another email subsequent to the proceedings was sent to Tom Carmody, the former Chairman of the Complainant's Board, in which Respondent indicated that it was willing to sell the domain names, and suggested to Complainant to "cut the losses now". Complainant asserts that Respondent's attempt to profit from the sale of the disputed domain name, in excess of its value, is indicative of bad faith.

In response to Respondent's statements to the effect that bad faith in both registration and use of the domain name in dispute, Complainant asserts that Respondent sent the information that it had the intent to offer a competing downpayment assistance program, and further sought payment in exchange for the transfer of the domain name. Respondent's admonition to "cut the losses" is, according to Complainant, a threat to continue to harass Complainant.

Finally, Respondent alleged that it had insufficient time to prepare a protest site; in Response to that statement, Complainant contends that Respondent was able to change promptly the content of the website following the initiation of the proceeding.

### **FINDINGS**

Complainant is the owner of registered trademark Number 2,578,724, issued June 11, 2002 (**AMERIDREAM**), and the domain name in dispute, <**ameridreamprogram.com**>, registered on March 29, 2006, is confusingly similar with said trademark.

Complainant and Respondent are not currently affiliated in any way; Respondent registered various domain names, in addition to the one in dispute, in order to protest against Complainant's policies on managing the public monies, and this is pointing away from legitimate rights or interest in the domain name in dispute.

The use of the domain name by Respondent leads, for reasons stated below, with respect to evidence adduced and all surrounding circumstances, to an indication of bad faith.

## 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; and*
- (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 argued that the disputed domain name, **<ameridreamprogram.com>**, registered on March 30, 2006 in the name of **Christopher Russell**, is confusingly similar to its mark **AMERIDREAM**, filed with the United States Patent and Trademark Office (“USPTO”) on October 30, 2001 (Reg. No. 2,578,724 issued June 11, 2002).

As per this registration, Complainant has established rights in the mark pursuant to Policy ¶4(a)(i). As the decisions *Innomed Techs. Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) and *U.S. Office of Pers. Mgmt. v. MS Tech. Inc.*, FA 198898 (Nat. Arb. Forum Dec. 9, 2003) have recognized: “Once the USPTO has made a determination that a mark is registrable, by so issuing a registration, as indeed was the case here, an ICANN panel is not empowered to nor should it disturb that determination”.

The Panel agrees with these decisions; the issuance of a Registration certificate by the empowered US federal authority on trademark matters is a scheme to regulate trade and commerce in relation to trademarks, and unless registration is shown invalid, it gives its owner the exclusive right to the use of said trademarks in respect of those wares or services for which it is registered.

On that basis, Complainant has satisfied its burden on the first element.

Complainant’s contentions are to the effect that merely adding a commonly used term, as in the word “program” to the mark **AMERIDREAM**, does not vitiate the possibility of confusion. The Panel finds that the suffix added to the disputed domain name does not sufficiently distinguish Complainant’s mark from the domain name in dispute, and neither does the addition of the top level name “.com.” As in *Sony Kabushiki Kaisha v. Inja, Kil*, D2000-1409 (WIPO Dec. 9, 2000), the Panel agrees that “neither the addition of an ordinary descriptive word... nor the suffix “.com” detract from the overall impression of the dominant part of the name.”

Consequently, the Panel finds in favor of Complainant on the first element.

### Rights or Legitimate Interests

As to the second element, Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii), and then the burden shifts to Respondent to show it does have rights or legitimate interests.

Complainant alleges that Respondent is not known by the name **AMERIDREAM**, nor does it have any current connection or affiliation with the Complainant, who was originally founded by Respondent **Christopher Russell**, along with Ryan Hill. Apart from the WHOIS indicating “**Christopher Russell**” as the registrant of the disputed domain name, there is no other evidence that Respondent is commonly known by the <**ameridreamprogram.com**> domain name.

Furthermore, Complainant contends that Respondent is using the disputed domain name to operate a website featuring other downpayment assistance programs links that compete with the Complainant’s services. As set forth in Exhibit 6 submitted by Complainant, all the websites registered by Respondent are linked to a webpage titled “Owners Alliance”, and is defined as “The Association for Real Estate Owners”, providing negotiation for rebates and discounts. The Panel finds this evidence as indicative of an intent to compete with Complainant’s services.

Respondent also signed a Non-Competition Agreement which expired on March 30, 2006, and registered the domain name in dispute on March 29, 2006; the Complainant submits that this indicates the intent to disparage the Complainant. The Panel agrees with this view, and adds that the proximity between said registration and termination of the Non-Competition Agreement leads to the inference, at least in Complainant’s mind, that such registration could potentially be in competition with Complainant’s activities. According to ICANN Policy ¶ 4(c)(i), this does not constitute a *bona fide* offering of goods or services, and neither is a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii).

The disputed domain name, <**ameridreamprogram.com**>, now resolves, as evidenced by Respondent, to a protest site named “Fuck **AmeriDream**”, protesting Complainant’s business practices. The Panel finds that maintaining this protest site containing criticism does not give Respondent rights or legitimate interests in the disputed domain name, despite the Respondent’s argument that the U.S. Constitution’s First Amendment provides the liberty of expressing its views. As decided in *E. & J. Gallo Winery c. Hanna Law Firm*, D2000-0615 (WIPO Aug. 3, 2000), “establishing a legitimate free speech/complaint site does not give rights to use a famous mark in its entirety”.

In conclusion, on balance, the Panel finds that Complainant has satisfactorily met its burden on the second element, and finds Respondent having no rights or legitimate interests in the domain name in dispute.

### **Registration and Use in Bad Faith**

Complainant maintains that Respondent has registered and is using the <**ameridreamprogram.com**> domain name in bad faith pursuant to Policy ¶ 4(b)(iv), because it is diverting Internet users seeking Complainant’s downpayment assistance program to a website providing links to other websites offering competing services; furthermore, it contains that the domain names were registered primarily in order to disrupt Complainant’s business.

It is most of the time quite difficult, if not impossible, to actually show bad faith, at the time of registration and use, with concrete evidence. While bad faith cannot be presumed, once Complainant has presented some evidence pointing in that direction, it is then incumbent upon Respondent to either respond or explain why its conduct should not be assimilated to bad faith. The Panel’s understanding of the Policy is that although the initial burden to prove Respondent’s bad faith in the registration and the use of the disputed domain name relies squarely on the shoulders of Complainant, such obligation is only to make out a *prima facie* case, and once it has done so, it is then incumbent upon Respondent to either justify or explain its business conduct (if not to demonstrate the contrary). As stated in *Old Sturbridge Inc. v S.C.I. Management Inc.*, FA 96461 (Mar. 1, 2001), “The burden of proof is shifted to a Respondent only when the complaint and

supporting evidence demonstrate to the Panel that Complainant is entitled to relief.” Failure to do so will, in some circumstances, enable the Panel to draw a negative inference.

In the present case, the registration by Respondent of several websites containing a word loaded with criticism, such as “fuck”, is, from Respondent’s own admission, intended to launch a protest website, in order to inform the public of the “gross mismanagement and squandering of public monies” by Complainant.

Respondent is the founder and former CEO of Complainant; he has signed a Non-Competition Agreement, which terminated one day after the registration of the domain names. The Response states that the “only” evidence of Complainant’s bad faith is the “fact that Respondent was formerly employed by Complainant; the Response also says that the protest site is “damaging to **AmeriDream** as it informs the public of the gross mismanagement (...)”. The Panel infers from this admission that Respondent clearly knows that the registration of a various domain names, including the disputed one, adding the prefix “fuck” or the suffix “program”, and all leading to the website “Fuck **AmeriDream**” is damaging to Complainant. Had there still been a doubt, the fact that Respondent waited until the expiry of its Non-Competition Agreement clause is also an indication that, at least from its perspective, there might be a doubt as to bad faith of so doing.

Furthermore, evidence submitted by Respondent, showing the homepage of their “Fuck **AmeriDream**” website, is an indication of bad faith, in the Panel’s view, as the Respondent writes “*Just ten days after we bought the domains for this site, **AmeriDream** spent thousands filing a complaint with the Internet gods, ICANN. We offered to let them save their money and just buy the domains, for what we have in them*”.

ICANN, at Policy ¶ 4(b)(i), considers that certain circumstances present are evidence of registration and use of a domain name in bad faith, of which:

“circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant or to a competitor of that complainant (...)”

If this wasn’t enough, the Additional Submission’s evidence submitted by the Complainant point out to the fact that Respondent is trying to benefit from the sale of the disputed domain name in excess of its value. The email dated April 10, 2006, from ryanandchris@fuckameridream.org, and addressed to Tom Carmody, currently a consultant with Complainant, reads:

“Tom,

You can do much better than this, I am truly disappointed. You could have bought the names from us for the six fucking grand you had to spend just filing your stupid complaint!”

(...)

As Ryan and I are reasonable people, we are now willing to sell the names for \$5000 each. Especially since you’ve already spent \$20k plus on this, cut your losses now.”

The Panel infers from this Exhibit that Respondent was, before the initiation of the proceedings, trying to sell the domain names it registered to Complainant, and also after the Complaint was filed, thus contravening ICANN Policy ¶ 4(b)(i).

In light of these conclusions, the Panel's finds that, on balance, Complainant has met its initial burden in regards to the third element, and that Respondent has failed to adequately rebut it, as the nature of its usage points out to bad faith use. The Panel finds that based on the totality of circumstances and evidence submitted, Respondent's registration and use of the disputed domain name is indicative of bad faith under ICANN Policy ¶ 4(a)(iii).

## **DECISION**

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

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

Jacques A. Léger, Q.C., Panelist  
Dated: May 24, 2006

**NATIONAL ARBITRATION FORUM**