COMPLAINANT
GlobCard, Inc.
5201 Blue Lagoon Drive
Miami, Florida 33126
United States of America
vs.

RESPONDENT
Glob Card International
55 avenue de l’armee royale
Casablanca, 21000
Morocco

Before Dr. Bernardo M. Cremades, Sole Arbitrator

PROCEDURAL HISTORY

The Complaint dated December 8, 2006 was submitted to CPR Institute for Dispute Resolution ("CPR"), pursuant to the Uniform Domain Name Dispute Resolution Policy (hereinafter, the “Policy”) and the Rules for Uniform Domain Name Dispute Resolution Policy (the “ICANN Rules”). In accordance with the Policy and the Rules, the Respondent was duly notified of the Complaint on December 12, 2006.

On December 13, 2006 the Registrar GoDaddy.com provided details concerning the registration of the domain name globcard.com (the ‘Domain Name’ hereafter) including the Registrant’s identity and the date of registration.

In the absence of any subsequent formal response from the Respondent within the 20 days time frame permitted by ICANN Rule 5(a) CPR proceeded to appoint a single Panelist in accordance with ICANN Rule 6(b). On January 5, 2007, the Panel was constituted by the appointment of Dr. Bernardo M. Cremades as Sole Arbitrator.
On January 8, 2007 the Respondent submitted a response in the understanding that the response was submitted within the time frame addressed in ICANN Rule 5(a) as the word “days” in ICANN Rule 5(a) means business days and not calendar days.

Upon the written submitted record, the Panel finds as follows:

FACTUAL BACKGROUND

The Complainant is a company incorporated under the laws of Florida, United States of America, with its principal place of business in Miami.

The Respondent is a company incorporated under the laws of Morocco, with its principal place of business in Casablanca.

On or about April 8, 2004, the Complainant registered the Domain Name with the Registrar DOTREGISTRAR.COM. The Domain Name’s last registration renewal was on June 15, 2006.

The Complainant is currently the owner of the French semi-figurative trademark “GlobCard,” registered on December 11, 2004, under number 3323372 with the “Institut National de la Propriete Industriel” in Paris, France, for goods in International Classes 9, 34, 35, 36, 38 and 42.

The Complainant contends that in October 2006, the Respondent accessed the Complainant’s account with DotRegitrar.com and fraudulently transferred the Domain Name from DotRegitrar.com to the registrar GoDaddy.com. The Complainant alleges that the Respondent also modified the Complainant’s contact information in order to avoid that the Complainant be immediately informed about the fraudulent transfer.

The Panel has confirmed that the Internet address http://www.globcard.com leads to a website stating that “This Domain Name is For Sale!”

The Respondent’s defense –as addressed in its response of January 8, 2007– states that the Complainant “…offered the Respondent to take in exchange the domain name and to trade it to get back [the] money…” owed to it by the Complainant. No documentary evidence was submitted with the response.

FINDINGS

The Panel is required to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems appropriate.

Pursuant to ICANN Rule 5(a) the Respondent shall submit a response within 20 days of the date of commencement of the proceedings. Under ICANN Rule 2(g), time begins to
run “…on the earliest date that the communication…” notifying the Complaint to the Respondent “… is deemed to have been made,” namely December 13, 2006 (Rule 2(f)). Taking December 13, 2006 as the date on which the time began to run, the Panel finds that January 2, 2007 was deadline for submitting the response.

The Panel rejects Respondent’s contention that the word “days” under ICANN Rule 5(a) means business days, not calendar days. As the response was submitted on January 8, 2007, the Respondent did not comply with the time frame set forth in ICANN Rule 5(a); and finds that there are no exceptional circumstances in the present case which would justify an extension of time for submitting the response.

Under ICANN Rule 5(e) “if a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.” For these reasons, in reaching its decision, the panel has not taken the response into account.

The Complainant seeks that the Domain Name be transferred to his ownership. Paragraph 4(a) of the Policy requires the Complainant to prove all three of the following elements to be entitled to the relief sought: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) that the Respondent’s domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy elaborates some circumstances that shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the disputed Domain Name is identical to the Complainant’s trademark. Accordingly, the first element of paragraph 4 (a) of the Policy is established.

The Complainant contends that the Respondent has no rights or legitimate interests in the Domain Name, as it registered the Domain Name with GoDaddy.com by fraudulent transfer. The Panel finds that there is no evidence of any basis on which the Respondent might have rights or legitimate interests in respect of the Domain Name; nor an indication that the Respondent has been using the Domain Name in connection with a bona fide offering of goods or services. Accordingly, the Panel finds that the second element of paragraph 4 (a) of the Policy has been established and the Respondent has no rights or legitimate interests in respect of the Domain Name.

Paragraph 4(b) of the Policy sets out four non-exclusive circumstances any of which, if found by the Panel, shall be evidence of registration and use of a domain name in bad faith. The Complainant alleges that the Respondent registered the Domain Name in bad faith because it fraudulently transferred the Domain Name to GoDaddy.com for the purpose of disrupting the business of the Complainant.

The Panel considers that Complainant has established the bad faith of the Respondent in registering and using the Domain Name in accordance with paragraph 4(b)(iii) of the Policy in that it is using the disputed domain name with the intention of disrupting the
business of the Complainant. In addition, there are circumstances in the present case indicating that the Respondent acquired the Domain Name primarily for the purpose of selling the Domain Name to the Complainant who is the owner of the GlobCard trademark. Accordingly, the third element of paragraph 4 (a) of the Policy is established.

CONCLUSION

For all the foregoing reasons, the Complainant has established that (i) the Domain Name is identical or confusingly similar to Complainant’s registered trademark; (ii) the Respondent has no rights or legitimate interests in the Domain Name; and (iii) the Domain Name has been registered and is being used in bad faith.

REMEDY

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name www.globcard.com be transferred to the Complainant.

January 16, 2007

Bernardo M. Cremades
Sole Arbitrator