

**BLOGS**

Trademarks

## Continued Use of Domain Names After Termination Found to Constitute Trademark Infringement

A federal bankruptcy court has held that continued use of a franchisor's trademark as part of a domain name after termination was trademark infringement. *In re Gharbi, 21 Real Estate LLC v. Gharbi*, 2010 Bankr. LEXIS 1247 (Bankr. W.D. Tex. April 19, 2010). The defendant, a former franchisee of the Century 21 real estate franchise system, continued to use domain names that included the mark CENTURY 21 on various Web sites after termination and featured the mark itself prominently on the home page of another Web site. The court granted summary judgment to the franchisor on the issue of trademark infringement under the Lanham Act, rejecting the defendant's claim that the use was not "in commerce" because the defendant was only selling his own property.

The court, however, denied summary judgment on the issue of whether use of the mark in the domain names was a violation of the Anti-Cybersquatting Protection Act (ACPA). The ACPA requires that the person have a "bad faith intent to profit from the mark" to be liable. The court reasoned that the evidence did not support a finding of bad faith, as slowness to act in removing the mark and shutting down the businesses' Web sites following termination of franchise agreements may not constitute bad faith.