



NATIONAL ARBITRATION FORUM

DECISION

LD Products, Inc. v. Gary Lam c/o XC2
Claim Number: FA0908001279061

PARTIES

Complainant is **LD Products, Inc.** ("Complainant"), represented by **Matthew M Thomson**, of **Kronenberger Burgoyne, LLP**, California, USA. Respondent is **Gary Lam c/o XC2** ("Respondent"), Hong Kong.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**123inkjes.com**>, registered with **Moniker**.

PANEL

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

Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on August 11, 2009; the National Arbitration Forum received a hard copy of the Complaint on August 13, 2009.

On August 12, 2009, Moniker confirmed by e-mail to the National Arbitration Forum that the <**123inkjes.com**> domain name is registered with Moniker and that Respondent is the current registrant of the name. Moniker has verified that Respondent is bound by the Moniker 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 August 18, 2009, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of September 8, 2009 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@123inkjes.com by e-mail.

Having received no response from Respondent, the National Arbitration Forum transmitted to the parties a Notification of Respondent Default.

On September 10, 2009, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the National Arbitration Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

Complainant LD Products, Inc., d/b/a 123Inkjets.com, was founded in 1999. With its office in Simi Valley, CA, 123Inkjets.com serves as one of the largest Internet retailers for printer supplies and accessories, distributing a wide range of products, including inkjet cartridges, laser toner cartridges and refill kits.

Since its inception, Complainant has marketed and sold its products and services under the 123INKJETS mark. On October 5, 2005, Complainant filed an application for the service mark 123INKJETS (hereinafter, the "**Mark**") with the United States Patent and Trademark Office. The Mark was published for opposition on December 12, 2006, and was registered on February 27, 2007 (Registration No. 3,212,566). Complainant's 123INKJETS mark is now among the most widely recognized brands in the Internet printer supplies industry.

Complainant generated approximately \$30M in revenue during 2007 and 2008 under the 123INKJETS mark. During this time, Complainant also devoted extensive resources to advertising and marketing expenditures under the Mark, for example through pay-per-click marketing on Google and other major search engines.

Complainant has recently learned that Respondent has registered the <123inkjes.com> domain name (the "**Disputed Domain**"). Respondent registered the Disputed Domain on January 2, 2003—nearly 4 years after Complainant began using the 123INKJETS mark. Importantly, the Disputed Domain name consists of a common misspelling of Complainant's mark and the addition of the generic top-level domain (gTLD) ".com." Moreover, the Disputed Domain resolves to a parked website, which displays hyperlinks to direct competitors of Complainant. Through such hyperlinks, Respondent is earning

significant revenue in the form of pay-per-click (PPC) commissions. As such, Complainant is benefiting from the goodwill associated with the 123INKJETS mark and thereby profiting at the expense of Complainant.

Complainant brings this ICANN UDRP complaint, requesting that ownership of the Disputed Domain be transferred to Complainant, pursuant to the following reasons:

A. The Disputed Domain Is Identical or Confusingly Similar To A Service Mark In Which Complainant Has Rights. (UDRP § 4(a)(i))

Registered Service Mark: 123INKJETS

The Complainant holds a registered service mark issued for the word 123INKJETS in the category of online retail store services featuring inkjet printer cartridges, inkjet printer ink, filled inkjet printer ink cartridges, toners, toner cartridges and related accessories (USPTO Registration 5 No. 23,212,566). Complainant first used the Mark in commerce in November 1999, and the registered mark consists of the standard word mark 123INKJETS.

It is well established that Complainant's registration of the 123INKJETS mark with the USPTO adequately demonstrates its rights in the mark under Policy ¶4(a)(i). *See Lockheed artin Corp. v. Hoffman*, FA 874152 (Nat. Arb. Forum Jan. 31, 2007) (finding that the complainant had sufficiently established rights in the SKUNK WORKS mark through its registration of the mark with the USPTO); *SDC Media, Inc. v. SCMedia*, FA 960250 (Nat. Arb. Forum June 7, 2007) (holding that "[t]his trademark registration [with the USPTO] establishes Complainant's rights in the mark pursuant to [UDRP] ¶4(a)(i).").

(ii) *Complainant has Common Law rights in the Mark based on secondary meaning.*

In addition to the federal trademark rights in the 123INKJETS mark, Complainant has common law trademark rights in the Mark, which rights are also protected under the UDRP Rules. Under common law principles, a protectable trademark right is established upon the mark acquiring secondary meaning in use with commerce. "Secondary meaning is demonstrated where in the minds of the public, the primary significance of a product feature or term is to identify the source of the product itself." *Citigroup, Inc. v. Joseph Parvin*, WIPO Case No. D2002-0969 (May 12, 2003), citing *Sari Rattner Dahl Primo Incense v. Spring.net*, NAF Case No. FA0096565 (April 12, 2001). Previous administrative panels and arbitrators have held length & exclusivity of use, advertising expenditures and sales success to be determining factors as to whether a mark has attained secondary meaning. These factors will be addressed in turn as they relate to this case:

a) Length & Exclusivity of Use. Complainant has used the 123INKJETS mark since 1999, and the use has been continuous since such date. In addition, Complainant's registration of the Mark has ensured its exclusivity. Importantly,

Complainant has vigilantly policed use of the Mark over the years in the form of “cease and desist” letters from Complainant’s counsel, among other enforcement tactics.

b) Advertising Expenditures. Complainant has spent significant sums on advertising and marketing the 123INKJETS mark and brand to consumers and businesses nationwide, in the form of Internet advertising on Google and other major search engines and diversified Internet marketing. Over 2007 and 2008, Complainant’s advertising and marketing expenditures amounted to approximately \$2.7M, and such efforts have directly supported and enhanced the nationwide recognition of the 123INKJETS mark and brand in the printer supplies industry.

c) Sales Success. Sales under the 123INKJETS mark have grown tremendously since its inception, and despite the existence of countless competitors who offer printer supplies and accessories, Complainant has grown under the Mark to become one of the largest online retailers of printer supplies in the country. Over 2007 and 2008, sales under the Mark amounted to approximately \$30M, and Complainant expects this number to increase dramatically with further expansion under the Mark in future years.

(iii) *The Disputed Domain is identical or confusingly similar to Complainant’s Mark – 123INKJES v. 123INKJETS*

Except for the common misspelling of Complainant’s mark and the addition of the gTLD “.com,” the Disputed Domain contains the trademark of the Complainant. Importantly, the misspelling of the 123INKJETS mark does not sufficiently distinguish <123inkjes.com> for the purposes of Policy ¶4(a)(i). Likewise, the addition of the “.com” gTLD does not reduce the likelihood of confusion between the Disputed Domain and the 123INKJETS mark. *See Toronto-Dominion Bank v. Karpachev*, D2000-1571 (WIPO Jan. 15, 2001) (finding that the domain names <tdwatergouse.com> and <dwaterhouse.com> are virtually identical to the complainant’s TD WATERHOUSE name and mark); *Google Inc. v. Jon G.*, FA 106084 (Nat. Arb. Forum Apr. 26, 2002) (finding <googel.com> to be confusingly similar to the complainant’s GOOGLE mark and noting that “[t]he transposition of two letters does not create a distinct mark capable of overcoming a claim of confusing similarity, as the result reflects a very probable typographical error”); *Hewlett-Packard Co. v. Zuccarini*, FA 94454 (Nat. Arb. Forum May 30, 2000) (finding the domain name <hewlitpackard.com> to be identical or confusingly similar to the complainant’s HEWLETT-PACKARD mark); *see also Isleworth Land Co. v. Lost in Space*, SA, FA 117330 (Nat. Arb. Forum Sept. 27, 2002) (“[I]t is a well-established principle that generic top-level domains are irrelevant when conducting a Policy ¶4(a)(i) analysis.”).

Accordingly, the Complainant has submitted sufficient information to satisfy the first prong of the analysis under the Policy regarding the <123inkjes.com> domain.

B. Respondent Has No Rights Or Legitimate Interests In The Disputed Domain. (UDRP § 4(a)(ii))

(i) *Respondent has not used the Disputed Domain in connection with any bona fide offering of goods or services or legitimate noncommercial or fair use.*

Respondent's <123inkjes.com> resolves to a so-called "parked website," which displays hyperlinks to direct competitors of Complainant. Through such hyperlinks, Respondent is earning significant revenue in the form of pay-per-click (PPC) commissions. It is well established that Respondent's use of the website corresponding to the Disputed Domain as a parked, pay-per-click website does not constitute a *bona fide* offering of goods or services under Policy ¶4(c)(i) or a legitimate noncommercial or fair use under Policy ¶4(c)(iii). *See Disney Enters., Inc. v. Kamble*, FA 918556 (Nat. Arb. Forum Mar. 27, 2007) (holding that the operation of a PPC website at a confusingly similar domain name was not a *bona fide* offering of goods or services or a legitimate noncommercial or fair use); *Vance Int'l, Inc. v. Abend*, FA 970871 (Nat. Arb. Forum June 8, 2007) (concluding that the operation of a PPC website at a confusingly similar domain name does not represent a *bona fide* offering of goods or services or a legitimate noncommercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees).

(ii) *Respondent was not commonly known by 123INKJETS prior to registration of the Disputed Domain.*

Respondent is not, and has never been, known by the <123inkjes.com> domain name, nor is Respondent authorized or licensed to use Complainant's 123INKJETS mark for any purpose. Importantly, mere registration of the Disputed Domain is not sufficient to prove the "commonly known by requirement" of the Policy. *See Alain-Martin Pierret d/b/a Bordeau West v. Sierra Technology Group, LLC*, FA 472135 (Nat. Arb. Forum July 1, 2005) ("Mere ownership of a domain name is not sufficient to show that a respondent has been "commonly known by the domain name;" if it were, every domain name registrant automatically could claim protection under paragraph 4(c)(ii) of the ICANN Policy."). Further, the WHOIS domain name registration information lists the registrant of record as "Gary Lam c/o XC2" which bears absolutely no relationship to the Disputed Domain. *See Am. W. Airlines, Inc. v. Paik*, FA 206396 (Nat. Arb. Forum Dec. 22, 2003) ("Respondent has registered the domain name under the name 'Ilyoup Paik a/k/a David Sanders.' Given the WHOIS domain name registration information, Respondent is not commonly known by the <awvacations.com> domain name.").

Therefore, Respondent lacks rights and legitimate interests in the Disputed Domain name pursuant to Policy ¶4(c)(ii). *See Charles Jourdan Holding AG v. AAIM*, D2000-0403 (WIPO June 27, 2000) (finding no rights or legitimate interests where (1) the respondent is not a licensee of the complainant; (2) the complainant's prior rights in the domain name precede the respondent's registration; (3) the respondent is not commonly known by the domain name in question).

While Complainant does not bear the burden of producing evidence showing that Respondent lacks rights or legitimate interests in the Disputed Domain (*see Citigroup, Inc. v. Parvin*, Case No. D2002-0969, WIPO, 2003), Complainant *has* submitted sufficient information to satisfy the second prong of the analysis under the Policy regarding the <123inkjes.com> domain.

C. The Disputed Domain Was Registered And Is Being Used In Bad Faith. (UDRP §4(a)(iii))

(i) *Respondent's use of the Disputed Domain name disrupts the business of Complainant and constitutes bad faith registration and use.*

The Disputed Domain resolves to a parked website, which displays hyperlinks to direct competitors of Complainant. Respondent's use of the 123INKJETS mark in the confusingly similar <123inkjes.com> domain to host competitive third-party advertisements clearly disrupts Complainant's business and constitutes bad faith registration and use under Policy ¶4(b)(iii). See *Red Hat, Inc. v. Haecke*, FA 726010 (Nat. Arb. Forum July 24, 2006) (finding that respondent's use of the domain names to operate a commercial search engine with links to the products of complainant's competitors constitutes bad faith registration and use of the disputed domain names pursuant to Policy ¶4(b)(iii); *Tesco Pers. Fin. Ltd. v. Domain Mgmt. Servs.*, FA 877982 (Nat. Arb. Forum Feb. 13, 2007) (concluding that respondent's use of a confusingly similar domain to attract Internet users to a directory website containing links to competitor websites represents bad faith registration and use of the domain under Policy ¶4(b)(iii)). Moreover, Respondent is responsible for the content of any website, parked or otherwise, resolving from the Disputed Domain, and Respondent cannot pass such responsibility off to its registrar or domain name service provider. See *Netbooks, Inc. v. Lionheat Publ'g*, FA 1069901 (Nat. Arb. Forum Oct. 18, 2007); *StaffEx Corp. v. Pamecha*, FA 1029545 (Nat. Arb. Forum Aug. 27, 2007).

(ii) *Respondent's use of the Disputed Domain to profit from the goodwill associated with Complainant's 123INKJETS mark constitutes bad faith registration and use.*

Given the widespread recognition of Complainant's services offered under the 123INKJETS mark, Internet consumers are likely to mistakenly believe that Complainant is affiliated with the Disputed Domain, or has sponsored or endorsed the Disputed Domain. Moreover, Respondent has placed hyperlinks to competitor services at the website resolving from the Disputed Domain, from which Respondent likely generates significant revenue in the form of PPC commissions. Therefore, by using the confusingly similar <123inkjes.com> domain to profit from a likelihood of confusion, Respondent has registered and is using the Disputed Domain for commercial gain in violation of Policy ¶4(b)(iv). See *Univ. of Houston Sys. v. Salvia Corp.*, FA 637920 (Nat. Arb. Forum Mar. 21, 2006) ("Respondent is using the disputed domain name to operate a website which features links to competing and non-competing commercial websites from which Respondent presumably receives referral fees. Such use for Respondent's own

commercial gain is evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv).”); *Zee TV USA, Inc. v. Siddiqi*, FA 721969 (Nat. Arb. Forum July 18, 2006) (finding that the respondent engaged in bad faith registration and use by using a domain name that was confusingly similar to the complainant’s mark to offer links to third-party websites that offered services similar to those offered by the complainant).

(iii) *Respondent was aware or should have been aware of Complainant's prior use of the 123INKJETS mark.*

Registration and use of a domain name containing a third-party mark constitutes bad faith where the registrant of the domain had knowledge of the mark prior to registration. *See Network Solutions, LLC v. Terry Wang*, D2004-0675 (WIPO 2004); *Christian Dior Couture S.A. v. Liage International Inc.*, D2000-0098 (WIPO 2000). Complainant’s Mark is widely recognized and maintains a strong presence in popular Internet search engines and shopping sites. Given Complainant’s ten year use of the Mark, it is difficult to conceive how Respondent did not have knowledge of the 123INKJETS mark prior to the registration of the Disputed Domain.

Furthermore, Respondent was responsible for conducting a thorough search of trademarks and domain names before Respondent selected the Disputed Domain. *See Value Marketing, Inc. v. Karlo Volak*, FA 0602000649735 (Nat. Arb. Forum April 25, 2005); *see also Compact Disc World, Inc. v. Artistic Visions, Inc.*, FA 0107000097855 (Nat. Arb. Forum Aug.15, 2001) (finding Respondent cannot acquire rights or legitimate interest in a mark by willful blindness of the existence of the rights of others).

B. Respondent failed to submit a Response in this proceeding.

FINDINGS

Complainant, LD Products, Inc., was founded in 1999 and operates under the trademark 123INKJETS at the <123inkjets.com> domain name. Complainant uses this mark in connection with its business of retailing printer supplies and accessories. Complainant has registered its 123INKJETS mark with the United States Patent and Trademark Office (“USPTO”) (Reg. No. 3,212,566 issued February 27, 2007, filed October 6, 2005). Complainant has generated approximately \$30 million in revenue between 2007 and 2008. Complainant has expended significant resources in marketing and advertising under its 123INKJETS mark.

Respondent, Gary Lam c/o XC2, registered the disputed <123inkjes.com> domain name on January 2, 2003. Respondent is using the disputed domain name to resolve to a parked web page wherein links to Complainant’s direct competitors are shown. Some of these competitive links are listed as “Color Laser Printer,” “Inkjet Cartridge,” and “Hp Ink Cartridge.”

DISCUSSION

Paragraph 15(a) of 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."

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Paragraph 4(a) of the Policy requires that 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 Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) 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 submitted evidence demonstrating its registration of the 123INKJETS mark with the USPTO (Reg. No. 3,212,566 issued February 27, 2007, filed October 6, 2005). The Panel concurs with prior UDRP precedent in holding Complainant has sufficient rights in the 123INKJETS mark through its registration of the mark, and that such rights date back to the mark's filing date with the USPTO under Policy ¶4(a)(i). *See AOL LLC v. Interrante*, FA 681239 (Nat. Arb. Forum May 23, 2006) (finding that where the complainant had submitted evidence of its registration with the USPTO, "such evidence establishes complainant's rights in the mark pursuant to Policy ¶4(a)(i)."); *see also Planetary Soc'y v. Rosillo*, D2001-1228 (WIPO Feb. 12, 2002) (holding that the effective date of Complainant's trademark rights date back to the application's filing date); *see also Thompson v. Zimmer*, FA 190625 (Nat. Arb. Forum Oct. 27, 2003) ("As Complainant's trademark application was subsequently approved by the U.S. Patent and Trademark Office, the relevant date for showing 'rights' in the mark for the purposes of Policy ¶4(a)(i) dates back to Complainant's filing date.").

Complainant was founded in 1999 and has operated under the trademark 123INKJETS at the <123inkjets.com> domain name since that time (although a formal USPTO trademark registration was filed only on October 6, 2005). Complainant operates as an Internet retailer of printer supplies and accessories, and has expended significant resources in marketing and advertising under its 123INKJETS mark. Furthermore, Complainant has generated approximately \$30 million in revenue between 2007 and 2008. In order to demonstrate common law rights in the mark, Complainant must establish sufficient secondary meaning under Policy ¶4(a)(i). In this case, the Panel finds Complainant has provided evidence in its assertions of secondary meaning associated with the 123INKJETS mark through its continuous use of the mark, and resulting widespread public awareness of the mark through substantial revenues since 1999. This result has been found in 8 other cases beginning with *LD Products, Inc. v. Brassring Taxation Company*, FA0607000758792 (9/13/2006). Without any contrary indications from Respondent or the record, the Panel finds Complainant has common law rights in the mark dating back to 1999 under Policy ¶4(a)(i). *See Phoenix Mortgage Corp. v. Toggas*, D2001-0101 (WIPO Mar. 30, 2001) ("setting aside the contrary statements about the date of Complainant's first actual use, the mere claim of use is not enough to establish rights. Use must be in a manner sufficiently public to create some public awareness."); *see also Toyota Sunnyvale v. Adfero Publ'g Co.*, FA 921194 (Nat. Arb. Forum Apr. 10, 2007) (concluding that the complainant's TOYOTA SUNNYVALE mark had acquired secondary meaning sufficient for it to establish common law rights in the mark through continuous and extensive use of the mark since 2003 in connection with a car dealership under that mark); *see also Artistic Pursuit LLC v. calcuttawebdevelopers.com*, FA 894477 (Nat. Arb. Forum Mar. 8, 2007) (concluding that the complainant had established common law rights in the ARTISTIC PURSUIT mark by using the mark in commerce before Respondent registered the disputed domain name).

The disputed <123inkjes.com> domain name contains Complainant's 123INKJETS mark with the sole changes being the removal of the letter "t" in the mark and the addition of the generic top-level domain ".com." In cases analogous to these facts, panels have held that the removal of a letter from a mark does not render a disputed domain name as sufficiently distinguished from such a mark. *See, e.g., Guinness UDV N. Am., Inc. v. Dallas Internet Servs.*, D2001-1055 (WIPO Dec. 12, 2001) (finding the <smirnof.com> domain name confusingly similar to the complainant's SMIRNOFF mark because merely removing the letter "f" from the mark was insignificant); *see also Pfizer Inc. v. BargainName.com*, D2005-0299 (WIPO Apr. 28, 2005) (holding that the <pfizer.com> domain name was confusingly similar to the complainant's PFIZER mark, as the respondent simply omitted the letter "i"). Moreover, the inclusion of a top-level domain is simply considered irrelevant under the Policy, as every domain name requires a top-level domain. *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."). Therefore, the Panel finds the <123inkjes.com> domain name is confusingly similar to Complainant's 123INKJETS mark under Policy ¶4(a)(i).

The Panel finds Policy ¶4(a)(i) satisfied.

Rights or Legitimate Interests

Complainant has asserted Respondent lacks rights and legitimate interests in the disputed domain name. Because Complainant has set forth a *prima facie* case supporting its allegations, Respondent carries the burden to show that it does have rights or legitimate interests. *See Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (holding that once the complainant asserts that the respondent has no rights or legitimate interests with respect to the domain, the burden shifts to the respondent to provide “concrete evidence that it has rights to or legitimate interests in the domain name at issue”); *see also Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that, under certain circumstances, the mere assertion by the complainant that the respondent has no right or legitimate interest is sufficient to shift the burden of proof to the respondent to demonstrate that such a right or legitimate interest does exist).

Complainant contends Respondent is not commonly known by the disputed domain name, and is not authorized to use Complainant’s mark. Complainant further argues the WHOIS domain name registration information merely lists Respondent as “Gary Lam c/o XC2.” The Panel finds Respondent lacks rights and legitimate interests under Policy ¶4(c)(ii), as there is no evidence in the record indicating Respondent is, or ever was, commonly known by the disputed domain name. *See Am. W. Airlines, Inc. v. Paik*, FA 206396 (Nat. Arb. Forum Dec. 22, 2003) (“Respondent has registered the domain name under the name ‘Ilyoup Paik a/k/a David Sanders.’ Given the WHOIS domain name registration information, Respondent is not commonly known by the [*awvacations.com*] domain name.”); *see also Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name).

Respondent is using the disputed <**123inkjes.com**> domain name to resolve to a parked web page wherein links to Complainant’s direct competitors are shown. Some of these competitive links are listed as “Color Laser Printer,” “Inkjet Cartridge,” and “Hp Ink Cartridge.” The Panel infers Respondent obtains a commercial benefit through the receipt of referral fees every time that an Internet user follows one of these links. In light of these facts, the Panel finds Respondent has not engaged in a *bona fide* offering of goods or services under Policy ¶4(c)(i) or a legitimate noncommercial or fair use under Policy ¶4(c)(iii). *See Persohn v. Lim*, FA 874447 (Nat. Arb. Forum Feb. 19, 2007) (finding that the respondent was not using a disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use by redirecting Internet users to a commercial search engine website with links to multiple websites that may be of interest to the complainant’s customers and presumably earning “click-through fees” in the process); *see also Summit Group, LLC v. LSO, Ltd.*, FA

758981 (Nat. Arb. Forum Sept. 14, 2006) (finding that the respondent's use of the complainant's LIFESTYLE LOUNGE mark to redirect Internet users to respondent's own website for commercial gain does not constitute either 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)).

The Panel finds Policy ¶4(a)(ii) satisfied.

Registration and Use in Bad Faith

The resolving website for the disputed domain name displays advertisements for Complainant's competitors. The disruptive nature of this endeavor with regards to Complainant's business is clear because Internet users seeking Complainant could be directed to Complainant's competitors. Therefore, the Panel finds Respondent has engaged in Policy ¶4(b)(iii) bad faith registration and use of the disputed domain name. *See David Hall Rare Coins v. Tex. Int'l Prop. Assocs.*, FA 915206 (Nat. Arb. Forum Apr. 9, 2007) (finding that the respondent registered and used the disputed domain name in bad faith pursuant to Policy ¶4(b)(iii) because respondent used the disputed domain name to advertise goods and services of complainant's competitors, thereby disrupting the complainant's business); *see also Travant Solutions, Inc. v. Cole*, FA 203177 (Nat. Arb. Forum Dec. 6, 2003) ("Respondent registered and used the domain name in bad faith, pursuant to Policy ¶4(b)(iii), because it is operating on behalf of a competitor of Complainant . . .").

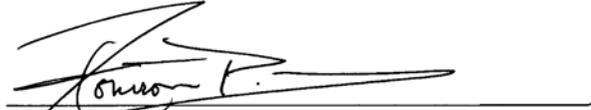
The Panel finds Respondent has created a likelihood of confusion as to Complainant's source of, or affiliation with, the disputed domain name and resolving website. The Panel infers Respondent primarily intended to garner commercial benefit through the registration and use of the confusingly similar disputed domain name and the resulting advertisements on the corresponding website. Thus, Respondent has engaged in bad faith registration and use under Policy ¶4(b)(iv). *See GMAC LLC v. WhoisGuard Protected*, FA 942715 (Nat. Arb. Forum May 9, 2007) ("Under Paragraph 4(b) of the Policy, evidence that a domain name registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant's website by creating a likelihood of confusion with the complainant's mark serves as evidence of bad faith."); *see also Williams-Sonoma, Inc. v. Fees*, FA 937704 (Nat. Arb. Forum Apr. 25, 2007) (holding that the use of a confusingly similar domain name to display links to various third-party websites demonstrated bad faith registration and use pursuant to Policy ¶4(b)(iv)).

The Panel finds Policy ¶4(a)(iii) 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 <123inkjes.com> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: Tuesday, September 22, 2009

[Click Here](#) to return to the main Domain Decisions Page.

[Click Here](#) to return to our Home Page

NATIONAL ARBITRATION FORUM