



NATIONAL ARBITRATION FORUM

DECISION

Nike, Inc., Converse Inc. and Hurley International LLC v. Transure Enterprise Ltd c/o Host Master
Claim Number: FA1002001308870

PARTIES

Complainant is **Nike, Inc., Converse Inc. and Hurley International LLC** (“Complainant”), represented by **Steven M. Levy**, Pennsylvania, USA. Respondent is **Transure Enterprise Ltd c/o Host Master** (“Respondent”), British Virgin Islands.

REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are <**3anike.com**>, <**niikegolf.com**>, <**nike-action-sports.com**>, <**nikeblazer.com**>, <**nikeclearancestore.com**>, <**nikeclearance.com**>, <**nikeis.com**>, <**nikeoffers.com**>, <**nikepluse.com**>, <**nikewomens.com**>, <**wwwnikestore.com**>, <**wwwniketennis.com**>, <**nikeairdunks.com**>, <**nietown.com**>, <**niiketown.com**>, <**wwwswoosh.com**>, <**airjordanfootwear.com**>, <**conerse.com**>, <**conversechuck.com**>, <**conversesallstar.com**>, <**createconverse.com**>, and <**hurley.com**>, registered with **Above, Inc.**

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 February 19, 2010. With its Complaint, Complainant also chose to proceed entirely electronically under the new Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”) and the new Forum’s Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“Supplemental Rules”) by submitted an “opt-in” form available on the Forum’s website.

On March 1, 2010, Above, Inc. confirmed by e-mail to the National Arbitration Forum that the <**3anike.com**>, <**niikegolf.com**>, <**nike-action-sports.com**>, <**nikeblazer.com**>, <**nikeclearancestore.com**>, <**nikeclearance.com**>, <**nikeis.com**>, <**nikeoffers.com**>, <**nikepluse.com**>, <**nikewomens.com**>, <**wwwnikestore.com**>, <**wwwniketennis.com**>, <**nikeairdunks.com**>, <**nietown.com**>, <**niiketown.com**>, <**wwwswoosh.com**>, <**airjordanfootwear.com**>, <**conerse.com**>, <**conversechuck.com**>, <**conversesallstar.com**>, <**createconverse.com**>, and <**hurley.com**> domain names are registered with Above, Inc. and that Respondent is the

current registrant of the names. Above, Inc. has verified that Respondent is bound by the Above, Inc. 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 March 3, 2010, the Forum served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of March 23, 2010 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to postmaster@3anike.com, postmaster@niikegolf.com, postmaster@nike-action-sports.com, postmaster@nikeblazer.com, postmaster@nikeclearancestore.com, postmaster@nikeclearance.com, postmaster@nikeis.com, postmaster@nikeoffers.com, postmaster@nikepluse.com, postmaster@nikewomens.com, postmaster@wwwnikestore.com, postmaster@wwwniketennis.com, postmaster@nikeairdunks.com, postmaster@nietown.com, postmaster@niiketown.com, postmaster@wwwwoosh.com, postmaster@airjordanfootwear.com, postmaster@conerse.com, postmaster@conversechuck.com, postmaster@conversesallstar.com, postmaster@createconverse.com, and postmaster@hurlley.com. Also on March 3, 2010, the Written Notice of the Complaint, notifying Respondent of the email addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

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

On March 30, 2010, 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 (effective March 1, 2010, but opted-in to by Complainant for this case) "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of a Written Notice, as defined in Rule 1. 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 names be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

I. Jurisdictional Basis for the Administrative Proceeding

1. The dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The registration agreement, pursuant to which all of the Disputed Domains were registered, incorporates the Policy. The Disputed Domains were registered on the following dates:

<u>Domain</u>	<u>Registration Date</u>
3anike.com	June 21, 2009
niikegolf.com	October 17, 2007
nike-action-sports.com	November 17, 2009
nikeblazer.com	August 10, 2007
nikeclearancestore.com	October 25, 2007
nikeclearance.com	August 4, 2007
nikeis.com	July 14, 2007
nikeoffers.com	September 17, 2009
nikepluse.com	August 27, 2007
nikewomens.com	March 13, 2009
wwwnikestore.com	February 29, 2008
wwwniketennis.com	August 20, 2009
nikeairdunks.com	June 24, 2009
nietown.com	September 5, 2008
niiketown.com	May 2, 2009
wwwswoosh.com	January 6, 2009
airjordanfootwear.com	July 21, 2009
conerse.com	August 8, 2008
conversechuck.com	November 22, 2009
conversesallstar.com	March 24, 2007
createconverse.com	July 28, 2007
hurlley.com	May 5, 2008

2. In addition, in accordance with the Policy ¶4(a), the Respondent is required to submit to a mandatory administrative proceeding because:

(a) The domain names are identical or confusingly similar to trademarks or service marks in which the Complainants have rights; and

(b) The Respondent has no rights or legitimate interests in respect of the domain names; and

- (c) The domain names were registered and are being used in bad faith.

II. Factual and Legal Grounds

3. As noted above, Complainant Nike is the parent company of both Complaint Converse and Complainant Hurley. Given the close legal relationship between the Complainants and the fact that all of the Disputed Domains are owned by a single Respondent, consolidation of this Complaint is appropriate. See, *Alabama One Call, Louisiana One Call System, Tennessee One-Call System, Inc. v. Windward Marketing Group, Inc.*, WIPO Case No. D2009-1243 (Consolidation upheld where “Complainants are represented by a single authorized representative; each Complainant seeks the same remedy with respect to each disputed domain name; and the Complaint involves a single Respondent...”); and *Fulham Football Club (1987) Limited, Tottenham Hotspur Public Limited, West Ham United Football Club PLC, Manchester United Limited, The Liverpool Football Club And Athletic Grounds Limited v. Domains by Proxy, Inc./ Official Tickets Ltd*, WIPO Case No. D2009-0331 (Consolidation appropriate where there is a “common grievance” and “common legal interest” amongst the complainants).

4. As set forth more fully below, the Complainants own certain trademarks and make extensive use of them such that they have become famous.

(a) Complainant Nike Owns Its Marks Complainant Nike is the owner of the distinctive and well known NIKE, NIKE TOWN, NIKE DUNK, NIKE ID, AIR JORDAN and SWOOSH (referring to the curved check-mark logo) trademarks and their corresponding logos (the “NIKE Marks”). For decades, and long prior to the creation of the dispute domains, Complainant commenced use of the NIKE Marks in connection with the design, advertising, distribution and sale of footwear, sportswear, athletic equipment and other products and services related thereto. Since that time, Complainant Nike has continually used the Marks in commerce.

(b) The NIKE Marks Are Extensively Used, Promoted and Protected. Founded in 1971, Complainant Nike is one of the world’s most famous designers and sellers of footwear, apparel and athletic equipment, and sells its goods through its own retail stores and the retail stores of other companies around the world through its NIKE Marks. Nike, Inc. is the parent company of a number of other famous footwear and sportswear brands including CONVERSE, HURLEY, UMBRO, and the fashion footwear brand COLE HAAN. In its fiscal year ending May 31, 2009, the Nike family of companies reported record revenues of US\$19.2 billion.

Complainant Nike extensively promotes its NIKE Marks through worldwide print, web and, television advertising as well as an extensive program of worldwide sports sponsorships which includes the Olympic Games. Nike operates in more than 160 countries around the globe. Through its subsidiaries, suppliers, shippers, retailers and other service providers, Nike directly or indirectly employs nearly one million people. Complainant is also the recipient of numerous awards including being named for Apparel & Innovation on Fortune Magazine’s 2008 list of Most Admired Companies, being

named to the Global 100 Most Sustainable Corporations List by Corporate Knights Inc. and Innovest Strategic Value Advisors, and being named one of the World's Most Ethical Companies by the Ethisphere Institute.

Complainant Nike generates significant sales revenue as a result of the advertising and marketing it conducts on its various websites including <nike.com>, <niketown.com>, <nikedunks.com>, <airjordan.com>, and <swoosh.com> among others. Through these domains, Complainant provides information to prospective customers in many different languages. As a result of Complainant Nike's long usage and promotion of the NIKE Marks, they have become well-known to, and widely recognized by consumers.

Complainant's NIKE Marks are aggressively protected through registration and enforcement. Amongst others, Complainant Nike owns United States Federal Trademark Registrations for the NIKE Marks as follows:

Mark	Goods and Services	Reg. No.	Reg. Date
NIKE	IC 025. US 039. G & S: Footwear. FIRST USE: 19710618. FIRST USE IN COMMERCE: 19710618	1214930	November 2, 1982
NIKE	IC 042. US 100. G & S: Retail Footwear and Apparel Store Services. FIRST USE: 19720200. FIRST USE IN COMMERCE: 19720200	1243248	June 21, 1983
NIKE (Logo)	IC 042. US 101. G & S: Retail Footwear and Apparel Store Services. FIRST USE: 19720200. FIRST USE IN COMMERCE: 19720200	1238853	May 17, 1983
NIKE	IC 025. US 022 039. G & S: Athletic and casual clothing for men, women and children-namely, shirts, pants, shorts, jackets, warm-up suits, ((swimwear, tennis wear, skirts, sweaters, underwear,)) headwear, socks ((and wristbands))). FIRST USE: 19710618. FIRST USE IN COMMERCE: 19710618	1277066	May 8, 1984
NIKE (Logo)	IC 025. US 039. G & S: Footwear. FIRST USE: 19710618. FIRST USE IN	1325938	March 19, 1985

	COMMERCE: 19710618		
NIKE AIR (Logo)	IC 025. US 039. G & S: Footwear. FIRST USE: 19810911. FIRST USE IN COMMERCE: 19820216	1284386	July 3, 1984
NIKE AIR	IC 025. US 039. G & S: Footwear and Cushioning Elements for Footwear Soles. FIRST USE: 19810911. FIRST USE IN COMMERCE	1307123	November 27, 1984
NIKE AIR (Logo)	IC 025. US 022 039. G & S: Clothing, namely t-shirts [, pullovers, sweatshirts ((, jackets, [pants,] shorts and socks))]. FIRST USE: 19870714. FIRST USE IN COMMERCE: 19870714	1571066	December 12, 1989
NIKE TOWN	IC 042. US 101. G & S: retail store services in the field of clothing, footwear, bags and related accessories. FIRST USE: 19901121. FIRST USE IN COMMERCE: 19901121	1796122	September 28, 1993
NIKE TOWN	IC 025. US 022 039. G & S: clothing; namely, shirts, T-shirts, sweatshirts, [jackets, SHORTS] [, SOCKS] AND HATS. FIRST USE: 19901121. FIRST USE IN COMMERCE: 19920303	1775629	June 8, 1993
AIR JORDAN	IC 025. US 022 039. G & S: FOOTWEAR AND ATHLETIC CLOTHING, NAMELY, SHIRTS, PANTS, SHORTS [, AND WRIST BANDS]. FIRST USE: 19841128. FIRST USE IN COMMERCE: 19841128	1370283	November 12, 1985
AIR JORDAN (Logo)	IC 025. US 022 039. G & S: Footwear; Apparel, namely shirts, pants, shorts and sweatbands.; Jackets, hats.; Sweatshirts. FIRST USE: 19850125. FIRST USE IN COMMERCE: 19850125	3725535	December 15, 2009
SWOOSH	IC 025. US 039. G & S:	1200529	July 6, 1982

	Footwear. FIRST USE: 19710618. FIRST USE IN COMMERCE: 19710618		
SWOOSH	IC 025. US 022 039. G & S: clothing namely, socks and T-shirts. FIRST USE: 19930925. FIRST USE IN COMMERCE: 19930925	2164810	June 9, 1998
SWOOSH FLEX	IC 025. US 022 039. G & S: Headwear, namely hats and caps. FIRST USE: 19990824. FIRST USE IN COMMERCE: 19990824	2980895	August 2, 2005

(c) Complainant Converse Owns Its Marks Complainant Converse is a wholly-owned subsidiary of Complainant Nike and is the owner of the distinctive and well known CONVERSE, CHUCK TAYLOR, and ALL STAR trademarks and their corresponding logos (the “CONVERSE Marks”). For decades, and long prior to the creation of the dispute domains, Complainant commenced use of the CONVERSE Marks in connection with the design, advertising, distribution and sale of footwear, sportswear, athletic equipment and other products and services related thereto. Since that time, Complainant Converse has continually used the Marks in commerce.

(d) The CONVERSE Marks Are Extensively Used, Promoted and Protected. Founded in 1908, Complainant Converse is one of the world’s most famous designers and sellers of footwear, apparel and athletic equipment, and sells its goods through its own retail stores and the retail stores of other companies around the world through its CONVERSE Marks. Complainant Converse extensively promotes its CONVERSE Marks through worldwide print, web and, television advertising as well as an extensive program of sports sponsorships.

Complainant generates significant sales revenue as a result of the advertising and marketing it conducts on its website <converse.com>. Through this site, Complainant provides information to prospective customers. As a result of Complainant’s long usage and promotion of the CONVERSE Marks, they have become well-known to, and widely recognized by consumers.

Complainant’s CONVERSE Marks are aggressively protected through registration and enforcement. Amongst others, Complainant Converse owns United States Federal Trademark Registrations for the CONVERSE Marks as follows:

Mark	Goods and Services	Reg. No.	Reg. Date
------	--------------------	----------	-----------

CONVERSE	IC 010 025 026. US 039. G & S: [Hunting boots, fishing boots, industrial boots, rubber boots, tennis shoes,] basketball shoes, [boat shoes,] general purpose athletic sneakers, [casual shoes, wading sandals, jackets, trousers, parkas, shirts, overalls, hats, raincoats, and suspenders]. FIRST USE: 19670101. FIRST USE IN COMMERCE: 19670101	0924169	November 23, 1971
CONVERSE	IC 016 018 020 022 025 028. US 022. G & S: Games, toys, and sporting goods-namely, [golf shoes,] track shoes, wrestling shoes [, baseball shoes, football shoes, air floats and air mattresses]. FIRST USE: 19651000. FIRST USE IN COMMERCE: 19651000 IC 010 025 026. US 039. G & S: Clothing-namely, [hunting boots, fishing boots,] industrial boots, rubber boots, tennis shoes, basket ball shoes, boat shoes, general purpose athletic sneakers, casual shoes, jackets, trousers, parkas, shirts, overalls, raincoats and suspenders. FIRST USE: 19161000. FIRST USE IN COMMERCE: 19161000	0868375	April 22, 1969
CONVERSE	IC 026. US 037 039 040 042 050. G & S: Shoe laces. FIRST USE: 20050630. FIRST USE IN COMMERCE: 20050630	3289613	September 11, 2007
CONVERSE CHUCK TAYLOR ALL STAR	IC 025. US 039. G & S: Athletic footwear. FIRST USE: 19220000. FIRST USE IN COMMERCE: 19220000	1490262	May 31, 1988

(e) Complainant Hurley Owns Its Marks Complainant Hurley is a wholly-owned subsidiary of Complainant Nike and is the owner of the distinctive and well known HURLEY trademark (the “HURLEY Marks”). For decades, and long prior to the creation of the dispute domains, Complainant commenced use of the HURLEY Marks in connection with the design, advertising, distribution and sale of footwear, sportswear,

athletic equipment and other products and services related thereto. Since that time, Complainant Hurley has continually used the Marks in commerce.

(f) The HURLEY Marks Are Extensively Used, Promoted and Protected.

Founded in 1979, Complainant Hurley is one of the most famous designers and sellers of sports and fashion apparel and sells its goods through its own website and the retail stores of other companies through its HURLEY Marks. Complainant Hurley extensively promotes its HURLEY Marks through print, web and, television advertising as well as sports sponsorships.

Complainant generates significant sales revenue as a result of the advertising and marketing it conducts on its website <hurley.com>. Through this site, Complainant provides information to prospective customers. As a result of Complainant's long usage and promotion of the HURLEY Marks, they have become well-known to, and widely recognized by consumers.

Complainant's HURLEY Marks are aggressively protected through registration and enforcement. Amongst others, Complainant Hurley owns United States Federal Trademark Registrations for the HURLEY Marks as follows:

Mark	Goods and Services	Reg. No.	Reg. Date
HURLEY	<p>IC 018. US 001 002 003 022 041. G & S: Wallets, backpacks, duffel bags. FIRST USE: 19981109. FIRST USE IN COMMERCE: 19981109</p> <p>IC 025. US 022 039. G & S: Clothing and headwear, namely t-shirts, shorts, sweat pants, sweat shirts, swim wear, jackets, wet suits, belts, jeans, slacks, woven shirts, knit shirts, tank * tops * [taps] and socks. FIRST USE: 19780000. FIRST USE IN COMMERCE: 19810000</p> <p>IC 028. US 022 023 038 050. G & S: Sporting goods, namely surfboards. FIRST USE: 19780000. FIRST USE IN COMMERCE: 19810000</p>	2334509	March 28, 2000
HURLEY	IC 006. US 002 012 013 014 023 025 050. G & S: Metal key chains, key holders and key rings. FIRST	2484181	September 4, 2001

	<p>USE: 19980820. FIRST USE IN COMMERCE: 19990108 IC 016. US 002 005 022 023 029 037 038 050. G & S: Printed material, namely, decals and bumper stickers. FIRST USE: 19980820. FIRST USE IN COMMERCE: 19981117</p> <p>IC 020. US 002 013 022 025 032 050. G & S: Non-metal key chains, key holders and key rings. FIRST USE: 19980820. FIRST USE IN COMMERCE: 19990106</p>		
HURLEY	IC 025. US 022 039. G & S: Footwear. FIRST USE: 20030120. FIRST USE IN COMMERCE: 20030127	2780274	November 4, 2003
HURLEY	IC 009. US 021 023 026 036 038. G & S: Sunglasses. FIRST USE: 20030600. FIRST USE IN COMMERCE: 20030600	3114972	July 11, 2006
HURLEY	IC 035. US 100 101 102. G & S: Retail and online stores featuring clothing, headwear, footwear, wetsuits, luggage, bags, eyewear, printed matter. FIRST USE: 20080827. FIRST USE IN COMMERCE: 20080827	3596522	March 24, 2009

5. Respondent is a known cybersquatter and is engaged in a pattern of bad faith registration of domain names that are confusingly similar to trademarks in which the Respondent has no rights. Over fifty prior UDRP decisions, involving well-known trademarks have been successfully brought against Respondent and include:

Case No.	Domain(s)	Case Name	Status	Decision Date
WIPO D2009-1638	tupies-swarovski.com	Swarovski Aktiengesellschaft v. Transure Enterprise Ltd./Above.com Domain Privacy	Transfer	February 11, 2010
NAF 1301619	hhotopic.com hhotopiv.com [4 others]	Hot Topic, Inc. v. Transure Enterprise Ltd c/o Host Master	Transferred	February 22, 2010

WIPO D2009-1660	danonne.com	COMPAGNIE GERVAIS DANONE v. Above.comTransure Enterprise Ltd	Cancellation	January 27, 2010
WIPO D2009-1347	legobioncle.com legoeducation.com legofriends.com	LEGO Juris A/S v. Transure Enterprise Ltd	Transfer	December 19, 2009
WIPO D2009-0630	radioshackl.com radioshackultimate .com	TRS Quality, Inc. v. Above.com Domain Privacy/Transure Enterprise Ltd David Smith	Transferred	July 3, 2009

In the present dispute, Respondent's registration of the Disputed Domains similarly violates the Policy.

(a) The Disputed Domains are identical or confusingly similar to the Marks under Policy ¶4(a)(i). Each of Respondent's Disputed Domain is confusingly similar, on its face, to one or more of the various Complainant's registered trademarks. Searchers will likely be confused into believing that there is a connection of source, sponsorship, affiliation or endorsement between the respective Complainant's Marks and Respondent by Respondent's use of the Disputed Domains.

It has been held, in decisions too numerous to mention, that a minor misspelling of a Complainant's trademark, or the addition of generic or other words creates a confusingly similar domain name. In *DIRECTV, Inc v. Digi Real Estate Foundation*, NAF Claim No. FA0702000914942 the Panel found that "Respondent's <dirrectv.com>, <durectv.com>, <dorectv.com>, and <dishdirectv.com> domain names are all confusingly similar to Complainant's DIRECTV mark pursuant to Policy ¶4(a)(i), because Respondent's domain names each contain Complainant's mark in its entirety or are simply a misspelled variation of the DIRECTV mark." In relation to a different domain owned by respondent, the Panel went on to hold that "Respondent's <dishdirectv.com> domain name contains Complainant's mark in its entirety and adds the generic word 'dish.' Prefixing 'directv' with the generic word 'dish' does not prevent a finding of confusingly similarity under Policy ¶4(a)(i)." The Panel held that all of the domains at issue are "likely to cause confusion among customers searching for Complainant's goods and services." Similarly, in *Brownells, Inc. v. Texas International Property Associates*, WIPO Case No. D2007-1211, the respondent used a minor misspelling of the complainant's trademark leading the panel to find that "Respondent has chosen the Domain Name precisely to attract users who mistype the name of the complainant's website." *Id.* See also, *Christie's Inc. v. Tiffany's Jewelry Auction, Inc.*, WIPO Case No. D2001-0075 (finding that the domain name <christiesauction.com> is confusingly similar to the complainant's mark since it merely adds the word "auction" used in its generic sense).

Similarly to the above-cited decisions, the Respondent in the present dispute initially attracts searchers to its websites by using an identical or confusingly similar copy of one or more of the Complainants' Marks, thereby making visitors to its website think that they are being linked to one of the Complainants' legitimate sites. See, *Focus Do It All Group v. Athanasios Sermbizis*, WIPO Case No. D2000-0923 (Complainant's trademark rights and use of its mark "make it likely beyond real doubt that consumers who know that mark will think that 'focus-do-it-all.com' is their address. As reasoned in *Athanasios*, even if searchers discover they are not at one of Complainants' sites, searchers may be led to believe that one of the Complainants endorsed, sponsored or affiliated themselves with the good and services offered at the websites of the Disputed Domains. Similar to the facts in *Athanasios*, Respondent here uses the Marks in its sites' domain names as well as in the title and body of most of its websites. It only makes sense that if searchers see the Marks listed in the body of the Disputed Domain web pages and numerous links to other goods and services are also listed on those pages, searchers will be confused and led to believe that, even if the goods and services are not those of Complainants, they are at least affiliated with, endorsed or sponsored by Complainants. This is apparent because the Marks are clearly used on the web pages in most instances.

(b) Respondent has no rights or legitimate interest in the Disputed Domains Under Policy ¶4(a)(ii). Section 4(c) of the Policy sets out certain circumstances which, if proven by the evidence presented, may demonstrate Respondent's rights or legitimate interests to the Disputed Domains. None of these circumstances apply to Respondent in the present dispute.

Respondent's actions are not a *bona fide* offering of goods or services under Policy ¶4(c)(i). Through the use of classic pay-per-click websites, Respondent's domain names divert Complainants' customers and potential customers to Respondent's pay-per-click websites and then to many websites which are not associated with Complainants. ICANN panels have found that leading consumers who are searching for a particular business, to a site where the same or similar services provided by others are listed, is not a *bona fide* use. *Homer, TLC Inc. v. Kang*, NAF Case No. FA573872 ("Respondent's use of domain name that is identical to Complainant's mark to divert Internet users to third-party websites for Respondent's own commercial gain does not constitute a *bona fide* offering ... or a legitimate noncommercial or fair use").

Respondent is not commonly known by any of the Disputed Domains and so its actions do not fall within Policy ¶4(c)(ii). Upon information and belief, Respondent is not commonly known by any of the names NIKE, NIKE TOWN, NIKE ID, NIKE DUNK, AIR JORDAN, SWOOSH, CONVERSE, CHUCK TAYLOR, ALL STAR, or HURLEY, nor does Respondent operate a business or other organization under any of these marks or names and does not own any trademark or service mark rights in these names. See, *Dell Inc. v. George Dell and Dell Net Solutions*, WIPO Case No. D2004-0512 (Regarding the domain <dellnetsolutions.com> "there is no evidence that the Respondents' business has

been commonly known by that name. Further, the Respondents added terms to the surname to create the disputed domain name.”)

Respondent is not making a legitimate noncommercial or fair use of the Disputed Domains without intent for commercial gain, and so its actions do not fall within Policy ¶4(c)(iii). Instead, Respondent is using the Disputed Domains to confuse and misleadingly divert consumers, or to tarnish the Marks of the Complainants. In *Dr. Ing. h.c. F. Porsche AG v. Limex, LLC*, WIPO Case No. D2003-0649 the Panel noted that “The 3 domain names in issue use the PORSCHE trademark to attract potential customers to the generic [auto] loan business.” The Panel held that such use, in a domain name, of one manufacturer’s trademark to offer products or services relating to goods sold under that trademark and also other manufacturer’s trademarks did not constitute a legitimate or fair use of the domain. *Id.*

Further, in *Athanasios, supra*, the Panel found that respondent’s use “could in no way be characterized as fair, because consumers would think that they were visiting a site of the Complainant until they found that instead they were in a directory which would do the Complainant potential harm”. Here, searchers for Complainants’ various goods and services, who found any of the Disputed Domains, would be confused and think they were visiting a site of the respective Complainants’ until they discovered that they were in a directory of links to competitors and other goods and services. Such use cannot be considered fair. See, *Mpire Corporation v. Michael Frey*, WIPO Case No. D2009-0258 (“While the intention to earn click-through-revenue is not in itself illegitimate, the use of a domain name that is deceptively similar to a trademark to obtain click-through-revenue is found to be bad faith use. See for instance *L’Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc.* WIPO Case No. D2005-0623.”)

Lastly, Respondent’s use has tarnished and diluted the Marks. Respondent has diminished consumers’ capacity to associate the Marks with the quality products offered under the Marks by the respective Complainants by using the Marks in association with directory sites which provide links to numerous products and services not associated with or related to the Complainants’ quality branded products. Respondent’s use creates the very real risk that Complainants’ trademarks are not only being associated with numerous products and services not related to Complainants’ branded products, but also to products and services linked to a directory site over which Complainants have no quality control.

(c) Respondent Registered The Disputed Domains In Bad Faith Under Policy ¶4(a)(iii). The Policy clearly explains that bad faith can be found where a Respondent, by using a domain name, intentionally attempts to attract, for commercial gain, Internet searchers to its website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location. See Policy ¶4(b)(iv).

Respondent intentionally used the Marks of each Complainant without consent from such Complainant. Respondent was put on constructive notice of Complainants' rights in their respective Marks through Complainants' extensive prior use of their respective Marks as well as their Federal Trademark Registrations, most of which predate the creation dates of the respective Disputed Domains. See, *American Funds Distributors, Inc. v. Domain Administration Limited*, WIPO Case No. D2007-0950 ("the extensive prior use of that name and the fact that it comprises the dominant part of several U.S. registered trademarks provided constructive knowledge of the Complainant's trademark rights...."). Therefore, Respondent knowingly and intentionally used the Marks in violation of Complainants' respective rights in such Marks. Moreover, the content on most of Respondent's websites at the Disputed Domains reveals that Respondent has actual knowledge of the Marks and Complainants' goods associated with each and is purposefully trading on the Marks.

Respondent is obtaining commercial gain from its use of the websites at the Disputed Domains. These are directory or "pay-per-click" websites providing a listing of hyperlinks, some of which lead to Complainants' websites and some to the websites of Complainants' competitors. Upon information and belief, each time a searcher clicks on one of these search links, Respondent receives compensation from the various website owners who are linked through the websites of the Disputed Domains. Most likely, Respondent receives compensation based upon the number of hits the website owners get from being linked to the directory site. See *AllianceBernstein LP v. Texas International Property Associates - NA NA*, WIPO Case No. D2008-1230, and *Brownells*, D2007-1211 (finding in similar cases that a respondent intentionally attempted to attract internet searchers for commercial gain).

In, *AllianceBernstein* the respondent registered the domain name <allaincebernstein.com>, which was almost identical to complainant's ALLIANCEBERNSTEIN mark. The domain name led to a search directory website with links to third party vendors, including competitors of Complainant. *Id.* The Panel inferred that the respondent received click-thru fees by directing users to various commercial websites through these links and found that the respondent's use was for commercial gain and was a bad faith use of the domain name under Policy ¶4(b)(iv). *Id.*

In *Brownells*, the respondent registered the domain name <brwonells.com>, which the panel found to be nearly identical to the complainant's mark, with two of the letters in the mark reversed. *Brownells*, D2007-1211. The respondent's website offered links to hunting equipment and related items. *Id.* The panel found that such listing of links were provided purely for respondent's commercial gain. *Id.*

Here, Respondent's generation of click-through fees from its operation of pay-per-click sites under the Disputed Domains alone constitutes commercial gain. See *AllianceBernstein*, D2008-1230. Moreover, similar to the facts in *Brownells* and *AllianceBernstein*, Respondent's use of the domain names and websites results in a commercial gain for others by placing links to competitors of Complainants and other

individuals, groups or entities on its websites. Just as commercial gain was sought for the respondents in the abovementioned cases, commercial gain was sought by Respondent here for itself and the various website owners who were linked to the web pages of the Disputed Domains. Respondent's use of these domain names is commercial because the various companies linked to the directory sites of the Disputed Domains benefit from the subsequent interest and purchases of those searches. ICANN Panels have held that there only needs to be commercial gain sought by *some* party for the use to be commercial. See, *Focus Do It All Group v. Athanasios Sermbizis*, WIPO Case No. D2000-0923 (finding that "[I]t is enough that commercial gain is being sought for someone" for a use to be commercial).

Finally, as more fully set forth above, Respondent bad faith is demonstrated by its intentional use of the Marks in its domain name to attract Internet searchers by creating a likelihood of confusion with Complainants' Marks. See, e.g., *DIRECTV, Inc v. Digi Real Estate Foundation*. Thus, all of the factors under Policy ¶4(b)(iv) strongly demonstrate that Respondent has registered and used the Disputed Domains in bad faith.

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

FINDINGS

Complainants Converse Inc. and Hurley International LLC, are wholly-owned subsidiaries of Complainant Nike, Inc. and having shown sufficient nexus between the three, will hereafter be referred to collectively as Complainant. Complainant designs and sells footwear, sportswear, athletic equipment and other products and services related thereto. Complainant has registered the following marks with the United States Patent and Trademark Office ("USPTO"): (1) NIKE (Reg. No. 1,243,248 issued June 21, 1983); (2) NIKE TOWN (Reg. No. 1,796,122 issued September 28, 1993); (3) SWOOSH (Reg. No. 1,200,529 issued on July 6, 1982); (4) AIR JORDAN (Reg. No. 1,370,283 issued on November 12, 1985); (5) CONVERSE (Reg. No. 0,868,375 issued on April 22, 1969); and (6) HURLEY (Reg. No. 2,334,509 issued March 28, 2000).

Respondent registered the disputed domain names on the following dates: (1) <3anike.com> on June 21, 2009; (2) <niikegolf.com> on October 17, 2007; (3) <nike-action-sports.com> November 17, 2009; (4) <nikeblazer.com> on August 10, 2007; (5) <nikeclearancestore.com> on October 25, 2007; (6) <nikeclearance.com> on August 4, 2007; (7) <nikeis.com> on July 14, 2007; (8) <nikeoffers.com> on September 17, 2009; (9) <nikepluse.com> on August 27, 2007; (10) <nikewomens.com> March 13, 2009; (11) <wwwnikestore.com> on February 29, 2008; (12) <wwwniketennis.com> on August 20, 2009; <nikeairdunks.com> on June 24, 2009; (13) <nietown.com> on September 5, 2008; (14) <niiketown.com> on May 2, 2009; (15) <wwwwoosh.com> on January 6, 2009; (16) <airjordanfootwear.com> on July 21, 2009; (17) <conerse.com> on August 8, 2008; (18) <conversechuck.com> November 22, 2009; (19) <conversesallstar.com> on March 24, 2007; (20) <createconverse.com> on July 28, 2007; and (21) <hurley.com> on May 5, 2008. The disputed domain names each

resolve to websites that display links to third-party websites that compete with Complainant's business.

Respondent has been subject to numerous UDRP proceedings where the disputed domain names were ordered to be transferred from Respondent to the respective complainants in those cases. *See, e.g., Academy Ltd. v. Transure Enter. Ltd*, FA 1283916 (Nat. Arb. Forum Oct. 27, 2009); *Hot Topic, Inc. v. Transure Enterprise Ltd*, FA 1301619 (Nat. Arb. Forum Feb. 22, 2010); *Edible Arrangements, LLC v. Transure Enterprise Ltd*, FA 1303677 (Nat. Arb. Forum Mar. 12, 2010).

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

A complainant can establish rights in a mark through registration of the mark with a governmental trademark authority. Complainant has provided evidence of its registration of the following marks with the USPTO: (1) NIKE (*e.g.*, Reg. No. 1,243,248 issued June 21, 1983); (2) NIKE TOWN (*e.g.*, Reg. No. 1,796,122 issued September 28, 1993); (3) SWOOSH (*e.g.*, Reg. No. 1,200,529 issued on July 6, 1982); (4) AIR JORDAN (*e.g.*,

Reg. No. 1,370,283 issued on November 12, 1985); (5) CONVERSE (*e.g.*, Reg. No. 0,868,375 issued on April 22, 1969); and (6) HURLEY (*e.g.*, Reg. No. 2,334,509 issued March 28, 2000). Therefore, the Panel finds Complainant established rights in its NIKE, NIKE TOWN, SWOOSH, AIR JORDAN, CONVERSE, and HURLEY marks pursuant to 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 Koninklijke KPN N.V. v. Telepathy Inc.*, D2001-0217 (WIPO May 7, 2001) (finding that the Policy does not require that the mark be registered in the country in which the respondent operates; therefore it is sufficient that the complainant can demonstrate a mark in some jurisdiction).

Complainant alleges Respondent’s <3anike.com>, <niikegolf.com>, <nike-action-sports.com>, <nikeblazer.com>, <nikeclearancestore.com>, <nikeclearance.com>, <nikeis.com>, <nikeoffers.com>, <nikepluse.com>, <nikewomens.com>, <wwwnikestore.com>, <wwwniketennis.com>, and <nikeairdunks.com> are confusingly similar to Complainant’s NIKE mark. The disputed domain name <3anike.com> adds the number “3” and letter “a” to Complainant’s mark. The disputed domain name <niikegolf.com> inserts an extra “i” and the descriptive term “golf” to Complainant’s mark. In addition, the disputed domain name <nike-action-sports.com> adds the words “action” and “sports” to Complainant’s NIKE mark. This disputed domain name also adds hyphens between the generic words and Complainant’s mark. The disputed domain name <nikeis.com> adds letters to Complainant’s mark, but sounds phonetically similar to NIKE. Respondent also affixes the common Internet prefix “www” to Complainant’s mark in two of the disputed domain names.

Overall, many of the disputed domain names add generic or descriptive terms to Complainant’s mark (*i.e.* “blazer,” “clearance,” “offers,” “womens,” etc.). Finally, Respondent adds the generic top-level domain (“gTLD”) “.com” to Complainant’s mark in each of the disputed domain names. The Panel finds Respondent’s misspellings, punctuation changes, affixation of the common Internet prefix “www,” addition of generic or descriptive terms, and addition of the gTLD “.com” do not sufficiently distinguish its disputed domain names from Complainant’s mark.

Therefore, the Panel finds Respondent’s disputed domain names are confusingly similar to Complainant’s NIKE mark under Policy ¶4(a)(i). *See Am. Online, Inc. v. garybush co uk*, FA 360612 (Nat. Arb. Forum Dec. 22, 2004) (“Respondent’s domain name is confusingly similar to Complainant’s AOL mark because the disputed domain name incorporates the mark with the mere addition of the nondistinctive number ‘0.’ The addition of the number ‘0’ is insufficient to distinguish the domain name from Complainant’s mark.”); *see also Belkin Components v. Gallant*, FA 97075 (Nat. Arb. Forum May 29, 2001) (finding the <belken.com> domain name confusingly similar to the complainant’s BELKIN mark because the name merely replaced the letter “i” in the complainant’s mark with the letter “e”); *see also Eastman Chem. Co. v. Patel*, FA 524752 (Nat. Arb. Forum Sept. 7, 2005) (“Therefore, the Panel concludes that the addition of a

term descriptive of Complainant's business, the addition of a hyphen, and the addition of the gTLD '.com' are insufficient to distinguish Respondent's domain name from Complainant's mark."); *see also Arthur Guinness Son & Co. (Dublin) Ltd. v. Healy/BOSTH*, D2001-0026 (WIPO Mar. 23, 2001) (finding confusing similarity where the domain name in dispute contains the identical mark of the complainant combined with a generic word or term); *see also Hewlett-Packard Co. v. Cupcake City*, FA 93562 (Nat. Arb. Forum Apr. 7, 2000) (finding that a domain name which is phonetically identical to the complainant's mark satisfies ¶4(a)(i) of the Policy); *see also Neiman Marcus Group, Inc. v. SIA*, FA 128683 (Nat. Arb. Forum Dec. 6, 2002) (holding confusing similarity has been established because the prefix "www" does not sufficiently differentiate the <wwwneimanmarcus.com> domain name from the complainant's NEIMAN-MARCUS mark); *see also Reese v. Morgan*, FA 917029 (Nat. Arb. Forum Apr. 5, 2007) (finding that the mere addition of the generic top-level domain ".com" is insufficient to differentiate a disputed domain name from a mark).

Complainant argues Respondent's <nietown.com> and <niiketown.com> domain names are confusingly similar to Complainant's NIKE TOWN mark. Respondent's disputed domain names omit a "k" or add an "i" to Complainant's mark, creating common misspellings of the mark. Respondent also deletes the space between the words "nike" and "town" in Complainant's mark (which must be done to create a valid domain name). Finally, Respondent adds the gTLD ".com" to Complainant's mark. The Panel finds these alterations do not sufficiently distinguish Respondent's domain names from Complainant's mark. Therefore, the Panel finds Respondent's disputed <nietown.com> and <niiketown.com> domain names are confusingly similar to Complainant's NIKE TOWN mark under Policy ¶4(a)(i). *See Reuters Ltd. v. Global Net 2000, Inc.*, D2000-0441 (WIPO July 13, 2000) (finding that a domain name which differs by only one letter from a trademark has a greater tendency to be confusingly similar to the trademark where the trademark is highly distinctive); *see also CEC Entm't, Inc. v. Peppler*, FA 104208 (Nat. Arb. Forum Mar. 21, 2002) (finding that the <chuckcheese.com> domain name was confusingly similar to the complainant's CHUCK E. CHEESE mark because the domain name only differed from the mark by one letter); *see also Am. Int'l Group, Inc. v. Domain Admin. Ltd.*, FA 1106369 (Nat. Arb. Forum Dec. 31, 2007) (finding that "spaces are impermissible and a generic top-level domain, such as '.com,' '.net,' '.biz,' or '.org,' is required in domain names. Therefore, the panel finds that the disputed domain name [<americangenerallifeinsurance.com>] is confusingly similar to the complainant's [AMERICAN GENERAL] mark."); *see also Reese v. Morgan, supra*.

Complainant asserts Respondent's <wwwswoosh.com> domain name is confusingly similar to Complainant's SWOOSH mark. Respondent replicates Complainant's SWOOSH mark in its entirety. Respondent then affixes the common Internet prefix "www" and the gTLD ".com" to Complainant's mark. The Panel finds these additions do not render Complainant's mark sufficiently distinguishable. Therefore, the Panel finds Respondent's disputed <wwwswoosh.com> domain name is confusingly similar to Complainant's SWOOSH mark under Policy ¶4(a)(i). *See Bank of Am. Corp. v. InterMos*, FA 95092 (Nat. Arb. Forum Aug. 1, 2000) (finding that the respondent's

domain name <wwwbankofamerica.com> is confusingly similar to the complainant's registered trademark BANK OF AMERICA because it "takes advantage of a typing error (eliminating the period between the www and the domain name) that users commonly make when searching on the Internet"; *see also Marie Claire Album v. Blakely*, D2002-1015 (WIPO Dec. 23, 2002) (holding that the letters "www" are not distinct in the "Internet world" and thus the respondent's <wwwmarieclaire.com> domain name is confusingly similar to the complainant's MARIE CLAIRE trademark); *see also Reese v. Morgan, supra*.

Complainant contends Respondent's <airjordanfootwear.com> domain name is confusingly similar to Complainant's AIR JORDAN mark. Respondent deletes the space between the words "air" and "jordan" in Complainant's mark (which must be done to create a valid domain name). Respondent also adds the descriptive term "footwear" in the disputed domain name. Finally, Respondent adds the gTLD ".com" to Complainant's mark. These modifications do not render Respondent's disputed domain name sufficiently unique. The Panel finds Respondent's disputed <airjordanfootwear.com> domain name is confusingly similar to Complainant's AIR JORDAN mark under Policy ¶4(a)(i). *See Am. Int'l Group, Inc. v. Domain Admin. Ltd., supra*; *see also Am. Express Co. v. MustNeed.com*, FA 257901 (Nat. Arb. Forum June 7, 2004) (finding the respondent's <amextravel.com> domain name confusingly similar to Complainant's AMEX mark because the "mere addition of a generic or descriptive word to a registered mark does not negate" a finding of confusing similarity under Policy ¶4(a)(i)); *see also Reese v. Morgan, supra*.

Complainant argues Respondent's <conerse.com>, <conversechuck.com>, <conversesallstar.com>, <createconverse.com> domain names are confusingly similar to Complainant's CONVERSE mark. Respondent omits the letter "v" from Complainant's CONVERSE mark in the disputed <conerse.com> domain name. Respondent also adds generic terms to Complainant's mark. Finally, Respondent adds the gTLD ".com" to each of the disputed domain names. These alterations do not render Respondent's disputed domain names distinguishable from Complainant's mark. Therefore, the Panel finds Respondent's <conerse.com>, <conversechuck.com>, <conversesallstar.com>, <createconverse.com> domain names are confusingly similar to Complainant's CONVERSE mark pursuant to Policy ¶4(a)(i). *See Reuters Ltd. v. Global Net 2000, Inc., supra*; *see also Am. Express Co. v. MustNeed.com, supra*; *see also Reese v. Morgan, supra*.

Complainant asserts Respondent's <hurley.com> domain name is confusingly similar to Complainant's HURLEY mark. Respondent adds the letter "l" to Complainant's mark, creating a common misspelling. Respondent also affixes the gTLD ".com" to Complainant's mark. The additions in Respondent's disputed domain name do not distinguish it from Complainant's mark. The Panel finds Respondent's disputed <hurley.com> domain name is confusingly similar to Complainant's HURLEY mark as confusingly similar pursuant to Policy ¶4(a)(i). *See Google, Inc. v. DktBot.org*, FA 286993 (Nat. Arb. Forum Aug. 4, 2004) ("The mere addition of a single letter to the

complainant's mark does not remove the respondent's domain names from the realm of confusing similarity in relation to the complainant's mark pursuant to Policy ¶4(a)(i)."); *see also Reuters Ltd. v. Global Net 2000, Inc.*, *supra*; *see also Reese v. Morgan*, *supra*.

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

Rights or Legitimate Interests

Pursuant to Policy ¶4(a)(ii), Complainant must make a *prima facie* case showing Respondent lacks rights or legitimate interests in the <3anike.com>, <niikegolf.com>, <nike-action-sports.com>, <nikeblazer.com>, <nikeclearancestore.com>, <nikeclearance.com>, <nikeis.com>, <nikeoffers.com>, <nikepluse.com>, <nikewomens.com>, <wwwnikestore.com>, <wwwniketennis.com>, <nikeairdunks.com>, <nietown.com>, <niiketown.com>, <wwwwoosh.com>, <airjordanfootwear.com>, <conerse.com>, <conversechuck.com>, <conversesallstar.com>, <createconverse.com>, and <hurlley.com> domain names. A *prima facie* case has been demonstrated in this proceeding. The burden then shifts to Respondent to prove it has rights or legitimate interests in the disputed domain names. The Panel views Respondent's failure to submit a Response as evidence Respondent lacks rights or legitimate interests. *See Intel Corp. v. Macare*, FA 660685 (Nat. Arb. Forum Apr. 26, 2006) (finding the "complainant must first make a *prima facie* case that [the] respondent lacks rights and legitimate interests in the disputed domain names under Policy ¶4(a)(ii), and then the burden shifts to [the] respondent to show it does have rights or legitimate interests."); *see also 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"); *see also Am. Express Co. v. Fang Suhendro*, FA 129120 (Nat. Arb. Forum Dec. 30, 2002) ("[B]ased on Respondent's failure to respond, it is presumed that Respondent lacks all rights and legitimate interests in the disputed domain name."). Although Respondent has failed to respond, the Panel will examine the record to determine if Respondent has rights or legitimate interests in the disputed domain names pursuant to Policy ¶4(c).

Complaint contends Respondent is neither commonly known by the disputed domain name, nor has Complainant given Respondent permission to use Complainant's mark in a domain name. The WHOIS information does not indicate that Respondent is commonly known by the disputed domain names. Without evidence to the contrary, the Panel finds Respondent is not commonly known by the disputed domain names pursuant to Policy ¶4(c)(ii). *See Braun Corp. v. Loney*, FA 699652 (Nat. Arb. Forum July 7, 2006) (concluding that the respondent was not commonly known by the disputed domain names where the WHOIS information, as well as all other information in the record, gave no indication that the respondent was commonly known by the disputed domain names, and

the complainant had not authorized the respondent to register a domain name containing its registered mark); *see also Reese v. Morgan*, FA 917029 (Nat. Arb. Forum Apr. 5, 2007) (concluding that the respondent was not commonly known by the <lilpunk.com> domain name as there was no evidence in the record showing that the respondent was commonly known by that domain name, including the WHOIS information as well as the complainant's assertion that it did not authorize or license the respondent's use of its mark in a domain name).

Respondent's disputed domain names each resolve to websites that list links to other websites and links to Complainant's competitors. Respondent likely receives pay-per-click fees from each Internet user redirected to these third-party websites. The Panel finds Respondent's use of the disputed domain names does not constitute a *bona fide* offering of goods and services under Policy ¶4(c)(i) or a legitimate noncommercial fair use under Policy ¶4(c)(iii). *See Computer Doctor Franchise Sys., Inc. v. Computer Doctor*, FA 95396 (Nat. Arb. Forum Sept. 8, 2000) (finding that the respondent's website, which is blank but for links to other websites, is not a legitimate use of the domain names); *see also Jerry Damson, Inc. v. Tex. Int'l Prop. Assocs.*, FA 916991 (Nat. Arb. Forum Apr. 10, 2007) (concluding that the use of a confusingly similar domain name to operate a portal with hyperlinks to various third-party websites, some of which may be in direct competition with a complainant, 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 also Expedia, Inc. v. Compaid*, FA 520654 (Nat. Arb. Forum Aug. 30, 2005) (finding that the respondent's use of the <expediate.com> domain name to redirect Internet users to a website featuring links to travel services that competed with the complainant was not 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

Respondent has been subject to numerous UDRP proceedings where the disputed domain names were ordered to be transferred from Respondent to the respective complainants in those cases. *See, e.g., Academy Ltd. v. Transure Enter. Ltd.*, FA 1283916 (Nat. Arb. Forum Oct. 27, 2009); *Hot Topic, Inc. v. Transure Enter. Ltd.*, FA 1301619 (Nat. Arb. Forum Feb. 22, 2010); *Edible Arrangements, LLC v. Transure Enter. Ltd.*, FA 1303677 (Nat. Arb. Forum Mar. 12, 2010). Therefore, the Panel finds Respondent has engaged in a pattern of bad faith registration and use under the Policy ¶4(b)(ii). *See Arai Helmet Am., Inc. v. Goldmark*, D2004-1028 (WIPO Jan. 22, 2005 (finding that "Respondent has registered the disputed domain name, <aria.com>, to prevent Complainant from registering it" and taking notice of another Policy proceeding against the respondent to find that "this is part of a pattern of such registrations"); *see also Westcoast Contempo Fashions Ltd. v. Manila Indus., Inc.*, FA 814312 (Nat. Arb. Forum Nov. 29, 2006) (finding bad faith registration and use pursuant to Policy ¶4(b)(ii) where the respondent

had been the subject of numerous UDRP proceedings where panels ordered the transfer of disputed domain names containing the trademarks of the complainants).

The Panel finds Respondent's use of the disputed domain names to redirect Internet users to websites that list links to third-party websites, including links to Complainant's competitors, disrupts Complainant's business and constitutes registration and use in bad faith pursuant to Policy ¶4(b)(iii). *See Tesco Pers. Fin. Ltd. v. Domain Mgmt. Servs.*, FA 877982 (Nat. Arb. Forum Feb. 13, 2007) (concluding that the use of a confusingly similar domain name to attract Internet users to a directory website containing commercial links to the websites of a complainant's competitors represents bad faith registration and use under Policy ¶4(b)(iii)); *see also Persohn v. Lim*, FA 874447 (Nat. Arb. Forum Feb. 19, 2007) (finding bad faith registration and use pursuant to Policy ¶4(b)(iii) where a respondent used the disputed domain name to operate a commercial search engine with links to the complainant's competitors).

The Panel also finds Respondent use of confusingly similar domain names to attract Internet users seeking Complainant's services and then diverting them to websites containing links to third-party competing websites is evidence of bad faith registration and use under Policy ¶4(b)(iv). As previously discussed, Respondent presumably profits from this use through the receipt of pay-per-click fees. The Panel finds this behavior constitutes bad faith registration and use under Policy ¶4(b)(iv). *See T-Mobile USA, Inc. v. utahhealth*, FA 697821 (Nat. Arb. Forum June 7, 2006) (holding that the registration and use of a domain name confusingly similar to a complainant's mark to direct Internet traffic to a commercial "links page" in order to profit from click-through fees or other revenue sources constitutes bad faith under Policy ¶4(b)(iv)); *see also Red Hat, Inc. v. Haecke*, FA 726010 (Nat. Arb. Forum July 24, 2006) (finding that the respondent engaged in bad faith registration and use pursuant to Policy ¶4(b)(iii) by using the disputed domain names to operate a commercial search engine with links to the products of the complainant and to complainant's competitors, as well as by diverting Internet users to several other domain names).

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

DECISION

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

Accordingly, it is Ordered that the <3anike.com>, <niikegolf.com>, <nike-action-sports.com>, <nikeblazer.com>, <nikeclearancestore.com>, <nikeclearance.com>, <nikeis.com>, <nikeoffers.com>, <nikepluse.com>, <nikewomens.com>, <wwwnikestore.com>, <wwwniketennis.com>, <nikeairdunks.com>, <nietown.com>, <niiketown.com>, <wwwwoosh.com>, <airjordanfootwear.com>, <conerse.com>, <conversechuck.com>, <conversesallstar.com>,

<createconverse.com>, and <hurley.com> domain names be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: April 14, 2010

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

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

NATIONAL ARBITRATION FORUM