



NATIONAL ARBITRATION FORUM

DECISION

LD Products, Inc. v. Brassring Taxation Company
Claim Number: FA0607000758792

PARTIES

Complainant is **LD Products, Inc.** ("Complainant"), represented by **Karl S. Kronenberger**, of **Kronenberger Hanley, LLP**, 220 Montgomery Street, Suite 1920, San Francisco, CA 94104. Respondent is **Brassring Taxation Company** ("Respondent"), #3238, 68 corporate Dr., Toronto, ON M1H 3H3, Canada.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**4inkjet.net**>, registered with **Go Daddy Software, 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 July 25, 2006; the National Arbitration Forum received a hard copy of the Complaint on July 26, 2006.

On July 26, 2006, Go Daddy Software, Inc. confirmed by e-mail to the National Arbitration Forum that the <**4inkjet.net**> domain name is registered with Go Daddy Software, Inc. and that Respondent is the current registrant of the name. Go Daddy Software, Inc. has verified that Respondent is bound by the Go Daddy Software, 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 August 7, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of August 28, 2006 by which Respondent could file a response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@4inkjet.net by e-mail.

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

On September 1, 2006, 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., dba 4inkjets.com, was founded in 1999. With offices in Paramount, CA and Spring Valley, NY, 4inkjets.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 service mark "4inkjets." On August 3, 2004, Complainant filed an application for the service mark "4INKJETS" (hereinafter, the "Mark") with the United States Patent and Trademark Office. The Mark was published for opposition on June 28, 2005, and was registered on September 20, 2005 (Registration No. 2998115). Complainant's 4INKJETS service mark is now among the most widely recognized brands in the Internet printer supplies industry.

By 2005, Complainant's annual sales growth rate under the Mark exceeded 50%, with sales increasing from \$10.3 million in 2004 to \$16.4 million in 2005, a trend which Complainant projects will continue in the current year.

Complainant has also devoted extensive resources to advertising and marketing expenditures under the Mark, issuing press releases, utilizing pay-per-click marketing on Google and other major search engines, and partnering with popular online coupon distributors. As a direct result of these efforts, and increasing recognition of the Mark, Complainant enjoyed tremendous growth, allowing it to expand its facilities in 2006. On

April 1, 2006, Complainant relocated its headquarters to a 26,000 square foot warehouse in Long Beach, California.

The notoriety and secondary meaning of the Mark is further evidenced by extensive unsolicited media coverage. Over the past seven years, Complainant has consistently received high user ratings and multiple awards recognizing its dedication to high quality customer service, including the Bizrate Platinum Circle of Excellence for Customer Service and the Yahoo! 5 Star merchant certification. Complainant was also recognized multiple times by the *Internet Retailer*, in the Top 400 Retail Websites (#288) and Top 500 Guide to Retail Web Sites (#285).

Complainant has recently become aware of the fact that Respondent has registered Complainant's Mark in the domain name, 4inkjet.net ("Disputed Domain"). Respondent has registered virtually the exact Mark of Complainant in the Disputed Domain, with the exception of the "s" at the end of "4inkjet."

Respondent is generating revenues through the sale and distribution of the exact same products as Complainant, specifically printer supplies. As a direct competitor of Complainant, Respondent is benefiting from the good will associated with Complainant's mark, thereby deriving profit at the expense of Complainant.

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

A. ***The Disputed Domain is either identical to a trademark or service mark in which the Complainant has rights. (UDRP § 4(a)(i))***

i) ***Complainant has rights to the Mark based on its registration of the Mark as a Service Mark with the United States Patent and Trademark Office.***

Registered Service Mark: 4INKJETS

The Complainant holds a registered service mark issued for the word, "4INKJETS," in the category of retail store services, featuring inkjets, laser toners, and computer related accessories, including paper, electronic media, and camera cards (USPTO Registration No. 2998115). Complainant first used the Mark in commerce in November, 1999, and the registered mark consists of the standard word mark "4INKJETS."

Additionally, although the Mark was not registered at the time Respondent registered the Disputed Domain, Complainant's Mark had already been in use for nearly five years. Further, registration of a trademark or service mark is not required for rights to exist in the mark. *See British Broad. Corp. v. Renteria*, D2000-0050 (WIPO Mar. 23, 2000) (noting that the Policy also applies to "unregistered trademarks and service marks"); *Great Plains Metromall, LLC v. Creach*, FA 97044 (NAF May 18, 2001) ("The

Policy does not require that a trademark be registered by a governmental authority for such rights to exist.").

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

In addition to the rights acquired by registration with the US Patent & Trademark Office, Complainant also has common law service mark rights to the Mark which are also protected under the UDRP Rules.

Under common law principles, a protectable trademark right is established upon the mark's 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). Determining factors as to whether a mark has attained secondary meaning have been held to include the length of use, exclusivity of use, any copying, and actual confusion. *Id.*

Additionally, the issue of secondary meaning has been extensively addressed by the U.S. Federal Courts. Federal case law explains that the test for secondary meaning requires a demonstration that the mark, by means of sufficient marketing, sales, usage, and passage of time, has become identified in the public mind with a particular source of the goods or services. See *Big Star Entertainment, Inc. v. Next Big Star, Inc.*, 2000 WL 420549*9 (S.D.N.Y); see also, *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 851, n. 11, 102 S. Ct. 2182, n. 11 (1982); *Bristol-Meyers Squibb Co. v. McNeil-P.P.C., Inc.*, 973 F.2d 1033, 1040 (2d Cir. 1992). For support of this standard, the Courts look to the following factors:

- 1) advertising expenditures,
- 2) consumer surveys linking the mark to a source,
- 3) unsolicited media coverage of the service,
- 4) sales success,
- 5) attempts to plagiarize the mark, and
- 6) length and exclusivity of the mark's use. See *Centaur Communications Ltd. v. A\S\M Communications, Inc.*, 830 F.2d 1217, 1221 (2d Cir. 1987); *Zatarain's, Inc. v. Oak Grove Smokehouse, Inc.*, 698 F.2d 786 (5th Cir. 1983).

These factors expressed by both prior arbitration panels and U.S. courts will be addressed in turn as they relate to this case:

a) Length of Use. The Complainant has used the Mark since at least November of 1999, and the use has been continuous since such date. Complainant has used this Mark as its marketed identity and brand for nearly seven years, with great success. The Mark is identical to the Complainant's primary domain name for a bulk of its sales and marketing since

1999, and the Mark is used and has been used on signage at Complainant's headquarters and offices.

b) Exclusivity of Use. Complainant's registration of the Mark has ensured its exclusivity. Additionally, 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. As a result, the use of the service mark "4INKJETS" by Complainant is and has been exclusive.

c) Advertising Expenditures. Complainant has spent significant sums on advertising and marketing the "4INKJETS" mark and brand to consumers and businesses nationwide, in the form of Internet advertising on Google and other major search engines, diversified Internet marketing, partnerships with Internet coupon distributors, and press releases. Complainant's advertising and marketing expenditures amount to approximately \$6 million per year, and such efforts have directly supported and enhanced the nationwide recognition of the 4INKJETS mark and brand in the printer supplies industry.

d) Unsolicited Media Coverage. The 4INKJETS mark and brand have received unsolicited media coverage in a variety of media outlets over the years, to include articles in the *Internet Retailer*, and profiles on merchant review sites, such as MSN Shopping, PriceGrabber, and DealTime. Complainant and the 4INKJETS mark have also received recognition in the *Internet Retailer* Top 400 Retail Websites (#288) and Top 500 Guide to Retail Web Sites (#285), as well as awards for excellent customer service from Bizrate and Yahoo!. Finally, Complainant been listed one of sixty online retailers to receive "HACKER SAFE Certification" from Scan Alert, Inc.

e) Sales Success. Sales under the 4INKJETS mark have grown tremendously every year 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. Sales under the Mark steadily increased to \$10.3 million in 2004, shooting up to \$16.4 million in 2005, an unprecedented growth of 58.7% in just one year. Complainant expects this number to increase dramatically with its further expansion under the Mark in 2006, with an expected sales growth of 50%.

f) Identification in the Public Mind. Most importantly, the service mark, brand, and the website containing the mark "4INKJETS" are famous nationwide. In the computer and printer industry, the brand "4INKJETS" is widely recognized for its high-quality products and excellent customer service. The significant brand recognition in the public's mind has been a key to the ongoing business success of the Complainant, and simply put, Complainant would not be recognized by any other name.

Based on Complainant's exclusive use of its mark, extensive expenditures promoting the mark, sales success and market identification, the Mark has clearly

achieved secondary meaning. It has therefore met the requirements to be entitled to Common Law trademark protection.

iii) Domain Name Identical to Mark – 4inkjet.net v. 4INKJETS

Except for the deletion of the “s” at the end of “4inkjet,” the Disputed Domain 4inkjet.net contains the exact trademark of the Complainant, without the addition of any other words or letters. A domain name does not become dissimilar to a service mark merely because of the deletion of the “s” from the Mark. *See Delta Air Lines, Inc. v. Stonybrook Investments, Ltd*, D2000-1686 (WIPO January 2, 2001) (finding that the deletion of the “s” from the mark neither alters the meaning of the domain name, nor removes the likelihood of confusion arising therefrom).

Accordingly, the Complainant has submitted sufficient information to satisfy the first prong of the analysis under the Policy regarding the domain 4inkjet.net.

B. Respondent has no rights or legitimate interests in the Disputed Domain. UDRP § 4(a)(ii)

i) Respondent's registration of the Disputed Domain does not establish any rights in the Domain.

A domain name registrant generally lacks rights or legitimate interests in a domain name where the Complainant has prior rights in a mark which precede respondent's registration of the domain name. *Oki Data Americas, Inc. v. Albert Jackson*, WIPO Case No. D2004-0087 (2004); *The Rockport Company, LLC v. Gerard A. Powell*, WIPO Case No. D2000-0064 (2000). 4INKJETS is a nationally known name in the printer supplies industry, which has seen exponential growth in notoriety and revenue over the past seven years. Complainant began using its mark to operate an online retail store for printer supplies and accessories in 1999, and filed a federal service mark application on August 3, 2004, which was registered on September 20, 2005. Respondent only registered the Disputed Domain on February 15, 2004 – nearly five years after Complainant began using the 4INKJETS trademark in selling printer supplies and accessories. Thus, Respondent's domain registration cannot give Respondent rights in the Mark due to Complainant's clear prior rights in the mark.

ii) Respondent has never been known by the Domain Name and has never used the name in association with a bona fide offering of goods or services.

Respondent is not nor has it ever been known by the name “4INKJETS” and does not have any legitimate interest in being associated with the domain name 4inkjet.net. Accordingly, there is no legitimate interests in the Disputed Domain pursuant to UDRP § 4(c)(ii). *See Broadcom Corp. v. Intellifone Corp.*, NAF Case No. 96356 (2001) (finding no rights or legitimate interests because Respondent is not commonly known by the disputed domain or using the domain name in connection with a legitimate or fair use);

see also Gallup Inc. v. Amish Country Store, NAF Case No. 96209 (2001) (finding Respondent does not have rights in a domain name when Respondent is not known by the mark).

Furthermore, there is no evidence that Respondent intended to use the Disputed Domain in conjunction with a *bona fide* offering of goods or services. Instead, Respondent is selling goods and services competitive to that of Complainant (discussed in more detail, *infra* at § 6(C)(i), from which Respondent likely receives substantial revenue.

Importantly, Respondent cannot argue that its use of the web page resolving to the Disputed Domain to sell or promote goods and services competitive to that of Complainant is a legitimate offering of goods or services to establish rights under the UDRP. *See Pitney Bowes, Inc. v. Mike Ostanik*, WIPO Case No. D2000-1611 (2001) (domain name holder's un-authorized use of confusing similar domain name in connection with offering of goods and services competitive with those of trademark owner Pitney Bowes "cannot be legitimate").

ii) Respondent's awareness of Complainant's mark prior to registration evidences Respondent's lack of rights or legitimate interest in Disputed Domain.

Respondent was aware of the Complainant's mark before Respondent registered the Disputed Domain as detailed, *infra* at § 6(C)(ii). Respondent's prior awareness of another's mark is evidence that Respondent lacks rights and legitimate interest in the Disputed Domain. *See, Bayer Aktiengesellschaft v. Dangos & Partners*, WIPO Case No. D2002-1115 (2003).

iii) Respondent's use of Disputed Domain is not for any legitimate fair use.

(a) Respondent is not making any fair use of the domain name.

Respondent is not making any legitimate, noncommercial use of the domain 4inkjet.net. Instead, Respondent is using the Disputed Domain to sell and distribute goods and services that are competitive to that of Complainant, and from which Respondent likely receives substantial revenue. Simply put, the Respondent is profiting on the substantial Internet traffic to 4inkjet.net domain that exists due to the fame of the trademark of Complainant.

Based on the aforementioned evidence, it is clear that Respondent's interest in the Disputed Domain is commercial in nature. Thus, its use of the Disputed Domain does not constitute a legitimate noncommercial use without intent for commercial gain, thereby disqualifying it from protection under the safe harbor of UDRP § 4(c)(iii).

Importantly, Complainant does not bear the burden of producing evidence showing that respondent lacks rights or legitimate interests in respect to the domain names. *See*

Citigroup, Inc. v. Parvin, Case No. D2002-0969, WIPO, 2003. However, the evidence submitted by Complainant in this Complaint is compelling evidence that Respondent lacks any rights or legitimate interests in the Disputed Domain.

C. The domain name was registered and is being used in bad faith. UDRP § 4(a)(iii)

i) The sale of goods and services competitive to Complainant at the Disputed Domain demonstrates that the domain is being used in bad faith.

Respondent is using the Disputed Domain to sell and distribute products identical to those offered by Complainant under the Mark, by linking directly to Complainant's direct competitors. Such use is a deliberate effort to attract for commercial gain Internet users to Respondent's website, thereby constituting bad faith within the meaning of UDRP § 4(b)(iv). *See Endeavors Technology, Inc. v. Dick in Jar* WIPO No. D2001-0770 (July 29, 2001) (domain name offering products directly competitive with those of Complainant constitutes bad faith within the meaning of paragraph 4(b)(iv) of the Policy). Thus, Respondent's sale of competitor's products and promotion of Complainant's competitors is a clear bad faith use under UDRP § 4(b)(iv).

ii) Respondent was aware or should have been aware of Complainant's prior use of the Mark "4INKJETS."

Registration and use of a disputed domain name will be found to be in bad faith if a respondent had knowledge of a complainant's prior use of the mark when the respondent registered the domain name. *Network Solutions, LLC v. Terry Wang*, WIPO Case No D2004-0675 (2004); *Christian Dior Couture S.A. v. Liage International Inc.*, WIPO Case No D2000-0098 (2000). In light of Complainant's nearly seven years of use of the Mark, including distribution of products nationally over the Internet, it is nearly impossible to conceive how Respondent did not have knowledge of the 4INKJETS trademark at the time of registration of the Disputed Domain.

Moreover, Complainant's Mark is widely recognized nationally, and maintains a strong presence in popular Internet search engines and shopping sites. Given this fact, it is very likely that Respondent has received or come in contact with Complainant's mark due to the heavy traffic Complainant receives on its website across the nation and worldwide.

Furthermore, given that Respondent is a direct competitor of Complainant, and an online retailer of printer supplies, it is very unlikely that Respondent would not be aware of other online merchants in the printer supplies industry. It is common practice before embarking on a business venture to research and evaluate other companies in the industry, and a simple search of the Internet would have revealed Complainant's mark to Respondent.

The fact that Respondent registered the “dot net” address, instead of the “dot com” address, is also relevant. Specifically, Respondent was certain to check the availability of the “dot com” domain name before registering the Disputed Domain, which is the “dot net” version of the Mark. Upon such a search, Respondent would have become aware of Complaint and its Mark.

Finally, Complainant has delivered to Respondent written communication regarding its rights, requesting that Respondent cease and desist using Complainant’s mark, and has further notified Respondent’s affiliate tracking company, Commission Junction, Inc., of the infringement. However, Respondent continues to maintain its presence at 4inkjet.net and profit from Complainant’s mark despite such notice.

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

FINDINGS

Complainant, LD Products, Inc., is one of the largest Internet retailers for printer supplies and accessories. Complainant started its business in 1999, and since that time has spent millions of dollars in advertising and promotion for its services, products, and 4INKJETS mark, which it has used continuously and extensively since that time. Complainant holds a registration with the United States Patent and Trademark Office (“USPTO”) for its 4INKJETS mark (Reg. No. 2,998,115 issued September 20, 2005, filed August 3, 2004). Additionally, Complainant operates a website at <4inkjets.com>.

Respondent registered the <4inkjet.net> domain name on February 15, 2004 (which predates Complainant’s trademark registration). Respondent’s disputed domain name resolves to a website that sells products in direct competition with Complainant.

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 is not required to own a trademark registration to establish rights in the 4INKJETS mark under Policy ¶4(a)(i). *See British Broad. Corp. v. Renteria*, D2000-0050 (WIPO Mar. 23, 2000) (noting that the Policy “does not distinguish between registered and unregistered trademarks and service marks in the context of abusive registration of domain names” and applying the Policy to “unregistered trademarks and service marks”); *see also SeekAmerica Networks Inc. v. Masood*, D2000-0131 (WIPO Apr. 13, 2000) (finding that the Rules do not require that the complainant's trademark or service mark be registered by a government authority or agency for such rights to exist).

Complainant has established common law rights in the 4INKJETS mark, which predates its registration of the mark with the USPTO, through continuous and extensive use of the mark in connection with its goods and services since 1999. Complainant holds a trademark registration with the USPTO and is well recognized for its offering of goods and services. Complainant also operates a website at <4inkjets.com>. Therefore, Complainant's 4INKJETS mark has acquired secondary meaning sufficient to establish common law rights in the mark. *See Keppel TatLee Bank v. Taylor*, D2001-0168 (WIPO Mar. 28, 2001) (“[O]n account of long and substantial use of [KEPPEL BANK] in connection with its banking business, it has acquired rights under the common law.”); *see also Tuxedos By Rose v. Nunez*, FA 95248 (Nat. Arb. Forum Aug. 17, 2000) (finding common law rights in a mark where its use was continuous and ongoing, and secondary meaning was established).

Respondent's <4inkjet.net> domain name is confusingly similar to Complainant's 4INKJETS mark as it is Complainant's mark with the omission of the letter “s” combined with a generic top-level domain (“gTLD”), which is irrelevant for the purposes of a Policy ¶4(a)(i) analysis. As such, the Panel finds Respondent's disputed domain name is confusingly similar to Complainant's mark under Policy ¶4(a)(i). *See Universal City Studios, Inc. v. HarperStephens*, D2000-0716 (WIPO Sept. 5, 2000) (finding that deleting the letter “s” from the complainant's UNIVERSAL STUDIOS STORE mark did not change the overall impression of the mark and thus made the disputed domain name confusingly similar to it); *see also Rollerblade, Inc. v. McCrady*, D2000-0429 (WIPO June 25, 2000) (finding that the top level of the domain name such as “.net” or “.com” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar).

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

Rights or Legitimate Interests

Complainant has alleged Respondent lacks rights and legitimate interests in the <4inkjet.net> domain name. Complainant has the initial burden of proof in establishing Respondent lacks rights or legitimate interests in the disputed domain name. Once Complainant makes a *prima facie* case in support of its allegations, the burden then shifts to Respondent to show it does have rights or legitimate interests pursuant to Policy ¶4(a)(ii). See *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 *Woolworths plc. v. Anderson*, D2000-1113 (WIPO Oct. 10, 2000) (finding that, absent evidence of preparation to use the domain name for a legitimate purpose, the burden of proof lies with the respondent to demonstrate that it has rights or legitimate interests).

Respondent’s failure to answer the Complaint raises a presumption Respondent lacks rights and legitimate interests in the <4inkjet.net> domain name. See *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) (“[Rule 14(b)] expressly provide[s] that the Panel ‘shall draw such inferences’ from the Respondent’s failure to comply with the rules ‘as it considers appropriate.’”); see also *Charles Jourdan Holding AG v. AAIM*, D2000-0403 (WIPO June 27, 2000) (finding it appropriate for the panel to draw adverse inferences from the respondent’s failure to reply to the complaint). The Panel will now examine the record to determine if Respondent has rights or legitimate interests under Policy ¶4(c).

Respondent has registered the disputed domain name under the name “Brassring Taxation Company” and there is no other evidence in the record suggesting Respondent is commonly known by the <4inkjet.net> domain name. Complainant asserts Respondent is not authorized to use Complainant’s 4INKJETS mark, and Respondent is not associated with Complainant in any way. In *Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000), the panel found no rights or legitimate interest where the respondent was not commonly known by the mark and had never applied for a license or permission from the complainant to use the trademarked name. See *Brown v. Sarrault*, FA 99584 (Nat. Arb. Forum Oct. 16, 2001) (finding that the respondent was not commonly known by the <mobilitytrans.com> domain name because it was doing business as “Mobility Connections”).

Respondent’s <4inkjet.net> domain name, which is confusingly similar to Complainant’s 4INKJETS mark, resolves to a website that sells products in direct competition with Complainant. The fact the parties’ products directly compete does not

prevent the panel from finding Respondent is making a *bona fide* offering of goods and services. There are a number of additional factors that must be considered:

Forwarding web site. Respondent's web site forwards to a third party web site. This fact invites a higher level of scrutiny, *Thrifty, Inc. and Thrifty Rent-a-Car System, Inc. v. Airportparkinglots.com*, FA0211000129123 (1/2/2003).

Failure to act as a principal. Respondent apparently does not actually sell products directly. It collects commissions from Commission Junction for referring customers to other sellers.

Even though Complainant failed to take any action from February 15, 2004 (the date Respondent registered this domain name) until the original UDRP complaint was failed on July 26, 2006 (almost 2½ years), Respondent did not acquire any rights to this domain under Policy ¶4(c)(i) in light of these two additional factors.

This is also not a legitimate non-commercial or fair use under Policy ¶4(c)(iii). *See Coryn Group, Inc. v. Media Insight*, FA 198959 (Nat. Arb. Forum Dec. 5, 2003) (finding that the respondent was not using the domain names for a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use because the respondent used the names to divert Internet users to a website that offered services that competed with those offered by the complainant under its marks); *see also Computerized Sec. Sys., Inc. v. Hu*, FA 157321 (Nat. Arb. Forum June 23, 2003) (“Respondent’s appropriation of [Complainant’s] SAFLOK mark to market products that compete with Complainant’s goods does not constitute a bona fide offering of goods and services.”).

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

Registration and Use in Bad Faith

Respondent has registered and is using the <4inkjet.net> domain name in bad faith pursuant to Policy ¶4(b)(iii) as Respondent is either a competitor of Complainant or is running a “para-site” to make money from typographical errors of Complainant’s domain name (when a user types .net instead of .com).

Respondent is using the disputed domain name to disrupt Internet users attempting to locate Complainant’s site and redirecting them to Respondent’s website (or web sites which pay a commission to Respondent). In *S. Exposure v. S. Exposure, Inc.*, FA 94864 (Nat. Arb. Forum July 18, 2000), the panel found the respondent registered the domain name in question to disrupt the business of the complainant, a competitor of the respondent. *See Surface Prot. Indus., Inc. v. Webposters*, D2000-1613 (WIPO Feb. 5, 2001) (finding that, given the competitive relationship between the complainant and the respondent, the respondent likely registered the contested domain name with the intent to disrupt the complainant's business and create user confusion). As such, the Panel finds

Respondent's use of the <**4inkjet.net**> domain name constitutes disruption and is evidence of bad faith registration and use under Policy ¶4(b)(iii).

The Panel further finds Respondent has registered and is using the disputed domain name to profit commercially from the goodwill associated with Complainant's 4INKJETS mark (even though the mark was unregistered at the time Respondent began its activities). The <**4inkjet.net**> domain name is capable creating confusion for Internet users as to the source and affiliation of Complainant with Respondent's disputed domain name and corresponding website, and Respondent is taking advantage of this. *See Computerized Sec. Sys., Inc. v. Hu*, FA 157321 (Nat. Arb. Forum June 23, 2003) (finding that the respondent's use of the <saflock.com> domain name to offer goods competing with the complainant's illustrates the respondent's bad faith registration and use of the domain name, evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv)); *see also Identigene, Inc. v. Genetest Labs.*, D2000-1100 (WIPO Nov. 30, 2000) (finding bad faith where the respondent's use of the domain name at issue to resolve to a website where similar services are offered to Internet users is likely to confuse the user into believing that the complainant is the source of or is sponsoring the services offered at the site).

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 <**4inkjet.net**> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: Wednesday, September 13, 2006