



NATIONAL ARBITRATION FORUM

DECISION

Continental Airlines, Inc v. Salvia Corporation c/o Genadijs Vasiljevs
Claim Number: FA1002001308850

PARTIES

Complainant is **Continental Airlines, Inc.** (“Complainant”), represented by **Michael C. Henning**, Texas, USA. Respondent is **Salvia Corporation c/o Genadijs Vasiljevs** (“Respondent”), Latvia.

REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are <**contiental.com**>, <**coninental.com**>, and <**conrinental.com**>, registered with **Dotregistrar**.

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 February 19, 2010, Dotregistrar confirmed by e-mail to the National Arbitration Forum that the <**contiental.com**>, <**coninental.com**>, and <**conrinental.com**> domain names are registered with Dotregistrar and that Respondent is the current registrant of the names. Dotregistrar has verified that Respondent is bound by the Dotregistrar 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 February 19, 2010, the Forum served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of March 11, 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@contiental.com, postmaster@coninental.com, and postmaster@conrinental.com. Also on February 19, 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 18, 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:

1. This dispute concerns the domain names (1) **contiental.com**, which was first registered on March 29, 1999; (2) **coninental.com**, which was first registered on January 15, 2002; and (3) **conrinenta.com**, which was first registered on September 15, 2003.

TRADEMARKS AND SERVICE MARKS AT ISSUE

2. This Complaint is based upon the name, trademark, and service mark **CONTINENTAL** and a family of related marks that Continental owns and uses in commerce in connection with airline transportation services, which presently reach five continents: North America, South America, Europe, Asia, and Australia. Continental is the world's fifth largest airline and carries approximately 63 million passengers per year.

3. Continental's issued United States registrations include (1) Registration No. 1,993,534 for the mark **CONTINENTAL** (registered Aug. 13, 1996); (2) Registration No. 2,288,901 for the mark **CONTINENTAL AIRLINES** (registered Oct. 26, 1999);

and (3) Registration No. 1,963,372 for the mark **CONTINENTAL & DESIGN** (registered Mar. 19, 1996). Continental also owns registered European Community Trade Mark No. 000377077 for a globe design with the word **CONTINENTAL** (registered Sept. 11, 1998) and No. 003498714 for the word mark **CONTINENTAL AIRLINES** (registered Feb. 25, 2005).

4. Continental has been using the **CONTINENTAL** name and mark since 1937 and continues to use this name and mark in connection with all of its businesses throughout the world. As a result of the widespread, long-term, continuous, and prominent use of this mark, the **CONTINENTAL** mark and variations thereof have acquired significant goodwill, wide public recognition, and fame as a means by which Continental and its goods and services are known to the public and their source and origin are identified.

FACTUAL AND LEGAL GROUNDS

A. The Disputed Domain Names Are Identical Or Confusingly Similar To Continental Airlines' Marks.

5. Continental has established rights in the **CONTINENTAL** mark and variations thereof under ICANN Policy Paragraph 4(a)(i) through registration of the marks with the United States Patent and Trademark Office, as well as other trademark authorities such as the OHIM in the European Union. *Continental Airlines, Inc. v. Li*, FA 0290160 (Nat. Arb. Forum Aug. 9, 2004) (finding that Continental satisfied Policy Paragraph 4(a)(i) when the disputed domain name incorporated the **CONTINENTAL** mark); *see also Louis Vuitton Malletier S.A. v. Salvia Corp.*, FA 0600968 (Nat. Arb. Forum Jan. 5, 2006) (finding that the complainant had established rights in its mark for purposes of Policy Paragraph 4(a)(i) as a result of registering its mark with the USPTO). Moreover, as the owner of the **CONTINENTAL** mark and its many variations, including **CONTINENTAL AIRLINES** and **CONTINENTAL & DESIGN**, Continental has invested a substantial amount of money in an effort to market its goods and services throughout the world without confusion.

6. The domain names at issue are identical or confusingly similar to Continental's **CONTINENTAL** mark because they incorporate the entirety of the mark, except that **contiental.com** is missing an "n", **coninental.com** is missing a "t", and **conrinenta.com** contains an "r" instead of a "t". All of the disputed domain names also contain the generic top-level domain ("gTLD") ".com". "It is well-established that the inclusion of a gTLD, and a misspelling or omission of one letter from a mark, will not distinguish a disputed domain name." *DaimlerChrysler AG v. Cinquemille Corp.*, FA 1094616 (Nat. Arb. Forum Nov. 30, 2007); *see also Louis Vuitton Malletier S.A. v. Salvia Corp.*, FA 0600968 (Nat. Arb. Forum Jan. 5, 2006) (finding that minor alterations to the LOUIS VUITTON mark did not negate the confusingly similar aspects of Respondent Salvia Corporation's <vuiton.com> domain name pursuant to Policy ¶4(a)(i)). As a result, the disputed domain names are identical to, or at a minimum confusingly similar to,

Continental's mark pursuant to Policy Paragraph 4(a)(i).

B. Respondent Has No Rights Or Legitimate Interests In The Disputed Domain Names.

7. Numerous factors show that Respondent lacks any rights to or legitimate interests in **contiental.com**, **coninental.com**, and **conrinental.com**. First, Continental has not granted any license, permission, or authorization to Respondent for the use of the **CONTINENTAL** mark and family of marks for any purpose. Second, Continental is aware of no evidence, such as the WHOIS information supplied by Respondent for these domain names, showing that Respondent is operating a legitimate business under the **contiental.com**, **coninental.com**, and **conrinental.com** domain names or that it is commonly known by any of these domain names. (providing no indication that Respondent is commonly known by **contiental.com**, **coninental.com**, or **conrinental.com**); *see also Association of Tex. Prof'l Educators, Inc. v Salvia Corp.*, FA 0685104 (Nat. Arb. Forum May 31, 2006) (finding that Respondent Salvia Corporation "does not have any rights or legitimate interests in the domain names pursuant to Policy ¶4(c)(ii)" because "Respondent is not commonly known by the <atpe.com> domain name, because the WHOIS information lists 'Salvia Corporation' as the registrant of the domain name, and there is no other evidence in the record to suggest that Respondent is commonly known by the <atpe.com> domain name"); *The University of Houston Sys. v. Salvia Corp.*, FA 0637920 (Nat. Arb. Forum Mar. 21, 2006) (finding no rights or legitimate interests for purposes of Policy ¶4(c)(ii) where Respondent Salvia Corporation was not licensed to register domain names featuring Complainant's KUHf mark and was not commonly known by the disputed domain name <kuhf.com>).

8. Third, all three of Respondent's domain names resolve to domain parking web sites that direct Internet users to air travel sites that compete with Continental. For example, if an Internet user clicks the link for "Continental Airlines" on either **contiental.com** or **conrinental.com**, the web sites direct the user to, among others, <BookingBuddy.com>, a "sponsored listing" that competes with Continental's **coninental.com** web site for airline ticket sales. Likewise, if an Internet user clicks on the link for "Continentalairlines" on **coninental.com**, the user is directed to multiple "sponsored listings" that compete with Continental, including <Expedia.com>, <LowFares.com>, and <BookingBuddy.com>. "Respondent [Salvia Corporation's] use of . . . domain name[s] that [are] confusingly similar to Complainant's . . . mark to redirect Internet users interested in Complainant's products to . . . website[s] that offer[] similar products in competition with Complainant's business is not a use in connection with a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i), or a legitimate noncommercial or fair use of the domain name[s] pursuant to Policy ¶4(c)(iii)." *Louis Vuitton Malletier S.A. v. Salvia Corp.*, FA 0600968 (Nat. Arb. Forum Jan. 5, 2006). Given the above, it is clear that Respondent has no rights to or legitimate interests in the domain names **contiental.com**, **coninental.com**, and **conrinental.com**. *See* ICANN Policy ¶4(a)(ii).

C. The Disputed Domain Names Were Registered And Are Being Used In Bad Faith.

9. Respondent's use of Continental's marks and use of the disputed domain names to offer links to competing travel and airfare sites suggest that Respondent had actual knowledge of Continental's rights in its marks when Respondent registered **contiental.com**, **coninental.com**, and **conrinental.com**. Additionally, given Continental's United States and European Union trademark registrations, substantial presence on the Internet, and substantial presence in Europe (where Respondent's resident country of Latvia is located), Respondent was undoubtedly aware of Continental's famous name and **CONTINENTAL** mark when it registered the subject domain names. *See AT&T Knowledge Ventures, L.P. v. Briers*, D2007-1245 (WIPO Oct. 26, 2007) ("The Complainant otherwise appears to have a substantial presence on the Internet of which the Respondent, even though in Belgium, would likely have been aware."); *Caixa D'Estalvis / Pensions de Barcelona v. Salvia Corp.*, D2006-0504 (WIPO July 20, 2006) ("The inclusion of the generic first level domain name 'es' cannot be casual, but reflects [Respondent Salvia Corporation's] intention to associate the domain name with the country where the Complainant has its headquarters.").

10. At a minimum, Respondent had constructive notice of Continental's rights in its marks due to Continental's registration of its **CONTINENTAL** mark and family of related marks with the USPTO and European authorities and Continental's use of the **CONTINENTAL** and **CONTINENTAL AIRLINES** marks since the year 1937. "Respondent's registration of the domain name[s] including Complainant's [**CONTINENTAL**] mark with actual or constructive knowledge of Complainant's rights in the mark is evidence of bad faith registration and use under Policy ¶4(a)(iii)." *Radisson Hotels Int'l, Inc. v. Stillekens*, FA 0570293 (Nat. Arb. Forum Nov. 18, 2005). Moreover, as discussed below, Continental respectfully submits that Respondent chose the typosquatted domain names in order to (1) prevent Continental from reflecting its marks in a corresponding domain name; (2) disrupt the business of Continental; and/or (3) misleadingly divert Internet customers for commercial gain. *See ICANN Policy ¶¶4(b)(ii)-(iv)*.

1. Respondent Is Preventing Continental From Reflecting Its Marks.

11. Respondent has been subject to at least seven other UDRP proceedings where it was ordered to transfer domain names to the rightful trademark holders:

- (1) *Louis Vuitton Malletier S.A. v. Salvia Corp.*, FA 0600968 (Nat. Arb. Forum Jan. 5, 2006) (ordering that <vuiton.com> be transferred);
- (2) *The University of Houston Sys. v. Salvia Corp.*, FA 0637920 (Nat. Arb. Forum Mar. 21, 2006) (ordering that <kuhf.com> be transferred);

- (3) *Association of Tex. Prof'l Educators, Inc. v Salvia Corp.*, FA 0685104 (Nat. Arb. Forum May 31, 2006) (ordering that <atpe.com> be transferred);
- (4) *Caixa D'Estalvis / Pensions de Barcelona v. Salvia Corp.*, D2006-0504 (WIPO July 20, 2006) (ordering that <lacaixaes.com> be transferred);
- (5) *neckermann.de GmbH v. Salvia Corp.*, D2007-1052 (WIPO Sept. 10, 2007) (ordering that <neckermannde.com> be transferred);
- (6) *Cirrus System, LLC v. Salvia Corp.*, D2008-0695 (WIPO July 11, 2008) (ordering that <cirruscard.com> be transferred); and
- (7) *Intuit Inc. v. Salvia Corp.*, D2008-1253 (WIPO Oct. 15, 2008) (ordering that <intiut.com> be transferred).

12. In addition, Respondent is a serial cybersquatter and has a history of registering typosquatted domain names that incorporate or are confusingly similar to other trademarked company names, including the following:

- (1) <nortwest.com>, which is a misspelling substantially identical to the name of Northwest Airlines, an air carrier recently acquired by Delta Air Lines.
- (2) <expediait.com>, which is a misspelling substantially identical to the name of Expedia, an online travel site.
- (3) <symnatec.com>, which is a misspelling substantially identical to the name of Symantec, an anti-virus and anti-spyware company.
- (4) <quiken.com>, which is a misspelling substantially identical to the name of Quicken, a personal finance software program.
- (5) <cevrolet.com>, which is a misspelling substantially identical to the name of Chevrolet, an automobile company.
- (6) <hyundai.com>, which is a misspelling substantially identical to the name of Hyundai, an automobile company.
- (7) <betbuy.com>, which is a misspelling substantially identical to the name of Best Buy, an electronics store.

- (8) <nasdap.com>, which is a misspelling substantially identical to the name of NASDAQ, a stock market.
- (9) <dinerclub.com>, which is a misspelling substantially identical to the name of Diners Club, a charge card. and
- (10) <jrew.com>, which is a misspelling substantially identical to the name of J.Crew, a clothing company.

13. Like the disputed domain names in this case, all of these domain names resolve to domain parking web sites that contain links to businesses which compete with the corresponding trademark owner. Respondent's repeated pattern of registering domain names, including **contiental.com**, **coninental.com**, and **conrinental.com**, to prevent the rightful owners from reflecting their marks constitutes bad faith registration and use. See ICANN Policy ¶4(b)(ii); *The University of Houston Sys. v. Salvia Corp.*, FA 0637920 (Nat. Arb. Forum Mar. 21, 2006) (finding bad faith registration and use where Respondent Salvia Corporation "engaged in a pattern of cybersquatting"); *Intuit Inc. v. Salvia Corp.*, D2008-1253 (WIPO Oct. 15, 2008) ("There is another factor that is also supportive of a finding of bad faith registration in this case. That is the fact that the Respondent [Salvia Corporation] has been held in four other cases to have engaged in abusive registrations.").

2. Respondent Registered The Disputed Domain Names Primarily To Disrupt The Business Of Continental.

14. As noted above, Respondent's **contiental.com**, **coninental.com**, and **conrinental.com** domain names resolve to parked web sites that offer links to Continental's competitors. Respondent's use of the disputed domain names in this manner is likely to tarnish and disparage the reputation and goodwill associated with the Continental marks and be dilutive of the marks, both by creating an unwanted association with the services offered for sale at the competing web sites and by presenting services in a manner that is not commensurate with the presentation expected from Continental in regards to the **CONTINENTAL** mark and related marks. By registering and using domain names for the purpose of attracting and diverting Internet users to competing travel web sites, Respondent has disrupted Continental's business and has engaged in bad faith registration and use under Policy Paragraph 4(b)(iii). See *Louis Vuitton Malletier S.A. v. Salvia Corp.*, FA 0600968 (Nat. Arb. Forum Jan. 5, 2006) (finding that Respondent Salvia Corporation's use of a web site "that features goods and services that compete with Complainant's business . . . constitutes disruption and is evidence of bad faith registration and use pursuant to Policy ¶4(b)(iii)); *BB&T Corp. v. Walker*, FA 1177130 (Nat. Arb. Forum May 14, 2008) (finding the respondent's use of parked domain names, which linked to the complainant's competitors, constituted disruption and bad faith registration and use pursuant to Policy Paragraph 4(b)(iii)).

3. Respondent Is Diverting Internet Customers For Commercial Gain.

15. Respondent clearly intended to attract, for commercial gain, Internet users to Respondent's web sites by creating confusion with Continental's marks. For example, the disputed domain names revert to parked web sites that include links to businesses that are closely related to Continental's business. "That fact alone suggests that the Respondent deliberately sought to create confusion to divert Internet users looking for [Continental]." *AT&T Knowledge Ventures, L.P. v. Briers*, D2007-1245 (WIPO Oct. 26, 2007). Moreover, although Respondent's web sites contain "related search" links such as "Continental Airlines" and "Continentalairlines," those links are not affiliated with Continental and do not resolve to **continental.com**.

16. In addition, Respondent presumably benefits commercially from the "sponsored listings" that populate after an Internet user clicks on one of the "related search" links; the "sponsored listings" consist of links to multiple third-party sites that offer discounted airfares in competition with Continental. *see also Netbooks, Inc. v. F.B. (us)*, FA 1069929 (Nat. Arb. Forum Oct. 12, 2007) ("Obviously, the use of the term 'Sponsored Links' by Respondent at the top of the web site demonstrates that Respondent is receiving compensation for these click-through advertising links to third-party web sites."). Respondent is thus capitalizing on the likelihood that Internet users who are attempting to seek information about Continental's products and services will be confused as to Continental's affiliation with the disputed domain name. *See Cirrus System, LLC v. Salvia Corp.*, D2008-0695 (WIPO July 11, 2008) ("By exploiting the renown of the CIRRUS trademark, the Respondent [Salvia Corporation] diverts Internet users looking for the Complainant's website and seeks to gain profit out of the domain name by providing sponsored links to several other websites (offering goods and services of Cirrus and other competitors) and obtaining revenues from the diverted traffic[.]"). "The registration and use of a domain name containing Complainant's mark primarily to capitalize on the goodwill associated with Complainant's mark by attracting Complainant's customers is evidence of bad faith registration and use[] under Policy ¶4(b)(iv)." *Radisson Hotels Int'l, Inc. v. Stillekens*, FA 0570293 (Nat. Arb. Forum Nov. 18, 2005); *The University of Houston Sys. v. Salvia Corp.*, FA 0637920 (Nat. Arb. Forum Mar. 21, 2006) (finding that Respondent Salvia Corporation's use of "the disputed domain name to operate a website which features links to competing and non-competing commercial websites from which Respondent presumably receives referral fees . . . is evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv)").

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

FINDINGS

Complainant, Continental Airlines, Inc., is an airline service provider and has continuously used the CONTINENTAL mark in connection with these services since 1937. Complainant holds numerous registrations for this mark with various governmental authorities throughout the world, including the United States Patent and Trademark Office ("USPTO") (*e.g.*, Reg. No. 1,963,372 issued March 19, 1996).

Respondent, Salvia Corporation c/o Genadijs Vasiljevs, registered the <contiental.com> domain name on March 29, 1999, the <coninental.com> domain name on January 15, 2002 and the <conrinental.com> domain name on September 15, 2003. All of the disputed domain names resolve to similar websites that display hyperlinks to third-party websites, some of which directly compete 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

The Panel finds Complainant has established rights in the CONTINENTAL mark under Policy ¶4(a)(i) through its numerous registrations with various governmental authorities throughout the world, including the USPTO (*e.g.*, Reg. No. 1,963,372 issued March 19, 1996). *See Google, Inc. v. DktBot.org*, FA 286993 (Nat. Arb. Forum Aug. 4, 2004) (finding that the complainant had established rights in the GOOGLE mark through its holding of numerous trademark registrations around the world); *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); *see also Janus Int'l Holding Co. v. Rademacher*, D2002-0201 (WIPO Mar. 5, 2002) ("Panel decisions have held that registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive.").

All of the disputed domain names contain misspellings of Complainant's CONTINENTAL mark and add the generic top-level domain ("gTLD") ".com." Specifically, the <contiental.com> domain name deletes the letter "n," the <coninental.com> domain name deletes the letter "t," and the <conrinental.com> domain name replaces the letter "t" with the letter "r." The Panel finds these minor alterations to Complainant's mark do not sufficiently distinguish these disputed domain names from Complainant's mark. Therefore, the Panel finds the <contiental.com>, <coninental.com>, and <conrinental.com> domain names are confusingly similar to Complainant's CONTINENTAL mark under Policy ¶(a)(i). *See Pfizer Inc. v. BargainName.com*, D2005-0299 (WIPO Apr. 28, 2005) (holding that the <pfzer.com> domain name was confusingly similar to the complainant's PFIZER mark, as the respondent simply omitted the letter "i"); *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 Jerry Damson, Inc. v. Tex. Int'l Prop. Assocs.*, FA 916991 (Nat. Arb. Forum Apr. 10, 2007) ("The mere addition of a generic top-level domain ("gTLD") ".com" does not serve to adequately distinguish the Domain Name from the mark.").

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

Rights or Legitimate Interests

Initially, Complainant must make a *prima facie* showing Respondent lacks rights and legitimate interests in the disputed domain names. Once Complainant makes this showing, the burden then shifts to Respondent and Respondent must establish it has rights or legitimate interests in the disputed domain names. The Panel finds Complainant has sufficiently made its *prima facie* showing under Policy ¶4(a)(ii). The burden now shifts to Respondent, from whom no response was received. *See Compagnie Generale des Matieres Nucleaires v. Greenpeace Int'l*, D2001-0376 (WIPO May 14, 2001) ("Proving that the Respondent has no rights or legitimate interests in respect of the Domain Name requires the Complainant to prove a negative. For the purposes of this sub paragraph, however, it is sufficient for the Complainant to show a *prima facie* case and the burden of proof is then shifted on to the shoulders of Respondent. In those circumstances, the common approach is for respondents to seek to bring themselves within one of the examples of paragraph 4(c) or put forward some other reason why they can fairly be said to have a relevant right or legitimate interests in respect of the domain name in question."); *see also G.D. Searle v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002) ("Because Complainant's Submission constitutes a *prima facie* case under the Policy, the burden effectively shifts to Respondent. Respondent's failure to respond means that Respondent has not presented any circumstances that would promote its rights

or legitimate interests in the subject domain name under Policy ¶4(a)(ii).”). Although Respondent did not allege that it has rights or legitimate interests in the disputed domain names, the Panel elects to examine the record under Policy ¶4(c).

The WHOIS information for all of the dispute domain names lists “Salvia Corporation c/o Genadijs Vasiljevs” as the registrant, which does not indicate Respondent is commonly known by any of the disputed domain names. Respondent has not presented any evidence to suggest Policy ¶4(c)(ii) applies in this case. Moreover, Complainant asserts it has not licensed or otherwise authorized Respondent to use the CONTINENTAL mark. Therefore, the Panel finds Respondent is not commonly known by the <contiental.com>, <coninental.com>, and <conrinental.com> domain names under Policy ¶4(c)(ii). *See IndyMac Bank F.S.B. v. Eshback*, FA 830934 (Nat. Arb. Forum Dec. 7, 2006) (finding that the respondent failed to establish rights and legitimate interests in the <emitmortgage.com> domain name as the respondent was not authorized to register domain names featuring the complainant’s mark and failed to submit evidence of that it is commonly known by the disputed domain name); *see also Coppertown Drive-Thru Sys., LLC v. Snowden*, FA 715089 (Nat. Arb. Forum July 17, 2006) (concluding that the respondent was not commonly known by the <coppertown.com> domain name where there was no evidence in the record, including the WHOIS information, suggesting that the respondent was commonly known by the disputed domain name).

All of the disputed domain names resolve to similar websites that display hyperlinks to third-party websites, some of which directly compete with Complainant. The Panel presumes, as does Complainant, Respondent receives click-through fees for these hyperlinks. Therefore, the Panel finds Respondent’s use of the <contiental.com>, <coninental.com>, and <conrinental.com> domain names does not represent a *bona fide* offering of goods or services under Policy ¶4(c)(i) or a legitimate noncommercial or fair use under Policy ¶4(c)(iii). *See Disney Enters., Inc. v. Kamble*, FA 918556 (Nat. Arb. Forum Mar. 27, 2007) (holding that the operation of a pay-per-click website at a confusingly similar domain name was not 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 ALPITOUR S.p.A. v. Albloushi*, FA 888651 (Nat. Arb. Forum Feb. 26, 2007) (rejecting the respondent’s contention of rights and legitimate interests in the <bravoclub.com> domain name because the respondent was merely using the domain name to operate a website containing links to various competing commercial websites, which the panel did not find to be a use in connection with 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 that Policy ¶4(a)(ii) has been satisfied.

Registration and Use in Bad Faith

Complainant submitted evidence of previous UDRP cases in which Respondent was ordered to transfer the disputed domain name to the rightful trademark holder. *See e.g., Louis Vuitton Malletier S.A. v. Salvia Corp.*, FA 0600968 (Nat. Arb. Forum Jan. 5, 2006);

see also Univ. of Houston Sys. v. Salvia Corp., FA 637920 (Nat. Arb. Forum Mar. 21, 2006); *see also Assoc. of Tex. Prof'l Educators, Inc. v. Salvia Corp.*, FA 0685104 (Nat. Arb. Forum May 31, 2006). The Panel finds this is sufficient to establish a rebuttable presumption of a pattern of bad faith registration and use by Respondent pursuant to Policy ¶4(b)(ii). *See 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 subject to numerous UDRP proceedings where panels ordered the transfer of disputed domain names containing the trademarks of the complainants); *see also Arai Helmet Americas, 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 UDRP proceeding against the respondent to find that “this is part of a pattern of such registrations”)).

Since Respondent registered the <contiental.com> domain name on March 29, 1999, the <coninental.com> domain name on January 15, 2002 and the <conrinental.com> domain name on September 15, 2003, these disputed domain names have resolved to similar websites that display hyperlinks to third-party websites, some of which directly compete with Complainant. The Panel finds Respondent’s use of the disputed domain names disrupt Complainant’s business. The Panel further finds that such a disruption constitutes bad faith registration and use under 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 Am. Airlines, Inc. v. Tex. Int’l Prop. Assoc.*, FA 914854 (Nat. Arb. Forum Apr. 10, 2007) (holding that where the respondent’s website featured hyperlinks to competing websites and included a link to the complainant’s website, the respondent’s use of the <redeemaamiles.com> domain name constituted disruption under Policy ¶4(b)(iii)).

The Panel finds Respondent’s use of the <contiental.com>, <coninental.com>, and <conrinental.com> domain names creates a likelihood of confusion as to Complainant’s affiliation with the disputed domain names. The Panel further finds Respondent is commercially gaining from this likelihood of confusion through its presumed receipt of click-through fees, which constitutes evidence of bad faith registration and use under Policy ¶4(iv). *See Univ. of Houston Sys. v. Salvia Corp.*, FA 637920 (Nat. Arb. Forum Mar. 21, 2006) (“Respondent is using the disputed domain name to operate a website which features links to competing and non-competing commercial websites from which Respondent presumably receives referral fees. Such use for Respondent’s own commercial gain is evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv).”); *see also 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)).

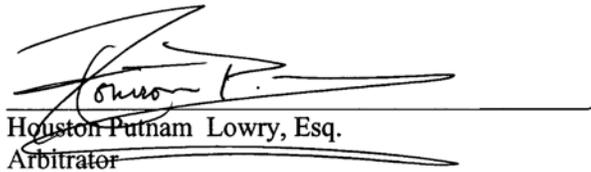
Finally, the Panel finds Respondent's aforementioned engagement in typosquatting is further evidence of bad faith registration and use under Policy ¶4(a)(iii). *See Computerized Sec. Sys., Inc. v. Hu*, FA 157321 (Nat. Arb. Forum June 23, 2003) (finding that the respondent engaged in typosquatting, which is evidence of bad faith registration and use under Policy ¶4(a)(iii)); *see also Bank of Am. Corp. v. Tak Ume domains for sale*, FA 154528 (Nat. Arb. Forum May 19, 2003) ("Respondent's registration and use of the disputed domain name demonstrates a practice commonly referred to as 'typosquatting.' This practice diverts Internet users who misspell Complainant's mark to a website apparently owned by Respondent for Respondent's commercial gain. 'Typosquatting' has been recognized as evidencing bad faith registration and use under Policy ¶4(b)(iv).").

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

DECISION

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

Accordingly, it is Ordered that the <**contiental.com**>, <**coninental.com**>, and <**conrinenta.com**> domain names be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: April 15, 2010

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

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

NATIONAL ARBITRATION FORUM