



NATIONAL ARBITRATION FORUM

DECISION

Iredale Mineral Cosmetics, Ltd. v. ideaman.com c/o Hyun Bang
Claim Number: FA1003001315260

PARTIES

Complainant is **Iredale Mineral Cosmetics, Ltd.** ("Complainant"), represented by **Steven M. Levy**, Pennsylvania, USA. Respondent is **ideaman.com c/o Hyun Bang** ("Respondent"), Kansas, USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**iredale.com**>, registered with **Onlinenic, 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 March 24, 2010.

On March 29, 2010, Onlinenic, Inc. confirmed by e-mail to the National Arbitration Forum that the <**iredale.com**> domain name is registered with Onlinenic, Inc. and that Respondent is the current registrant of the name. Onlinenic, Inc. has verified that Respondent is bound by the Onlinenic, 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 31, 2010, the Forum served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of April 20, 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@iredale.com by email. Also on March 31, 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 April 22, 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 "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 name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

Factual and Legal Grounds

The Complainant owns the trademarks JANE IREDALE (the "Marks") and makes extensive use of them such that they have become famous.

Complainant Owns The Marks Complainant is the owner of the distinctive and well known JANE IREDALE trademark as well as its company name IREDALE MINERAL COSMETICS, LTD. (collectively, the "Marks"). At least as early as 1997, Complainant commenced use of the Marks in connection with the production, promotion, sale and distribution of cosmetics and skin care products. Since that time, Complainant has continually used the Marks in commerce. Further, Complainant's corporate name Iredale Mineral Cosmetics, Ltd. excludes the word "Jane."

The Marks Are Extensively Used, Promoted and Protected. Complainant was the first to supply, to the cosmetics industry, a full-line of makeup based on minerals and was the first to see the potential of offering physicians a makeup that was good for the skin. Complainant's founder and namesake, Jane Iredale, has worked with world-renowned plastic surgeons and dermatologists in the development of Complainant's product line. Its products are promoted and sold through spas, cosmetologists, aestheticians, salons and other independent retailers throughout the US and in 48 other countries worldwide.

Complainant extensively promotes its JANE IREDALE Marks through print and web-based advertising. It's ads routinely appear in widely distributed magazines such as Cosmopolitan, Allure, Woman's Day, Seventeen, Family Circle, and others, and it

maintains the Jane Iredale Mineral Makeup Channel on the popular video website YouTube.com. Further, Complainant has received glowing reviews and mentions in such broadly distributed magazine's as Good Housekeeping, InStyle Essence, Elle and many others. Complainant has also received numerous awards for its products including the 2003 Editor's Choice Award by DAYSPA Magazine; the 2005 Readers Choice Award by Beauty Launchpad Magazine; the Best of Beauty Editor's Choice award in October of 2007 by Allure Magazine; the Professional's Choice Awards for both Favorite Cosmetics Line and Favorite Company For Product Education in December of 2008 by American Spa Magazine; and nine Readers Choice Awards in December of 2008 by Beauty Launchpad Magazine.

Complainant generates significant sales revenue as a result of the advertising and marketing it conducts on its <janeiredale.com> website. Through the website at this domain, Complainant provides information to current and prospective customers and lists retailers where its products may be purchased. As a result of Complainant's long usage and promotion of the Marks, they serve to identify and indicate the source of Complainant's goods and services to the consuming public, and to distinguish its goods and services from those of others. The Marks have also become well-known to, and widely recognized by consumers.

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

Mark	Goods and Services	Reg. No.	Reg. Date
JANE IREDALE	IC 003. US 001 004 006 050 051 052. G & S: Cosmetics and skin care products, namely, loose and pressed face and body powders, eye shadows, mascara, lipsticks, lip and eye pencils, skin concealers and camouflage skin concealers, [and skin conditioners; perfumes, colognes and body lotions]. FIRST USE: 19970601. FIRST USE IN COMMERCE: 19970601	2242708	May 4, 1999
JANE IREDALE	IC 021. US 002 013 023 029 030 033 040 050. G & S: Cosmetic brushes. FIRST USE: 19970601. FIRST USE IN COMMERCE: 19970601	3511008	October 7, 2008
JANE IREDALE THE SKIN CARE MAKEUP	IC 003. US 001 004 006 050 051 052. G & S: Cosmetics and skin care products, namely, loose and pressed face and body powders, eye shadows, mascara, lipsticks, lip and eye pencils, skin concealers and camouflage skin concealers. FIRST USE: 19971201. FIRST USE IN COMMERCE: 19971201	3004196	October 4, 2005

Respondent's registration of the <iredale.com> violates the Policy.

The <iredale.com> domain is identical or confusingly similar to the Marks under Policy ¶4(a)(i). Respondent's domain <iredale.com> is confusingly similar, on its face, to Complainant's registered JANE IREDALE trademarks and its Iredale Mineral Cosmetics, Ltd. corporate name. Searchers will likely be confused into believing that there is a connection of source, sponsorship, affiliation or endorsement between Complainant and Respondent by Respondent's use of the domain name <iredale.com>.

It has been held in numerous decisions that the deletion of a single word from a Complainant's trademark, or making some other minor change to the mark, creates a confusingly similar domain name. See, *Emory University, Emory Healthcare, Inc. v. Abadaba S.A.*, WIPO Case No. D2009-1241 ("The deletion of the term 'care' does not change the overall impression of the domain name or avoid confusing similarity with Complainant's EMORY HEALTHCARE trademark."); *Ashley Furniture Industries, Inc. v. Versata Software, Inc. c/o Versata Hostmaster*, NAF Claim No. FA0904001259286 (2009) ("[D]eletion of the word 'the' fails to alleviate the confusing similarity between Complainant's THE ASHLEY COMPANIES mark and Respondent's <ashleycompanies.com> domain name."); *Rand A Technology Corp v. Peter Janus*, NAF Claim No. FA0901001243749 (2009) (Panel found that removal of the word technologies" in the domain <imaginitt.com> "do[es] not sufficiently distinguish the disputed domain name from Complainant's mark [IMAGINIT TECHNOLOGIES] and, thus, do[es] not prevent the disputed domain name from being confusingly similar to Complainant's marks under Policy ¶4(a)(i)"); *Wellness Int'l Network, LTD v. Apostolics.com*, NAF Claim No. FA96189 (2001) (finding that the domain name <wellness-international.com> is confusingly similar to the complainant's WELLNESS INTERNATIONAL NETWORK).

Similarly to the above-cited decisions, the Respondent in the present dispute initially attracts searchers to its website by using an identical copy of the most distinctive element of the JANE IREDALE trademark and of Complainant's IREDALE MINERAL COSMETICS, LTD. company name and points its domain to a website featuring pay-per-click links to companies in the cosmetics industry. This can only have the effect of confusing visitors to its website and making them think that they are being linked to Complainant's site. Even if searchers discover they are not at Complainant's site, searchers may be led to believe that Complainant endorsed, sponsored or affiliated themselves with the good and services offered at the <iredale.com> website. 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. Similar to the facts in *Athanasios*, Respondent uses the Marks in its site's domain name as well as in the title and body of its website. It only makes sense that if searchers see the Marks listed in the body of the <iredale.com> web page and numerous links to other goods and services are also listed on that page, searchers will be confused and led to believe that, even if the

goods and services are not those of Complainant, they are at least affiliated with, endorsed or sponsored by Complainant.

(b) Respondent has no rights or legitimate interest in the domain name <iredale.com> 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 <iredale.com> domain. 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 a classic pay-per-click website, Respondent's domain name diverts Complainant's customers and potential customers to Respondent's pay-per-click website and then to many websites which are not associated with Complainant and many of which are Respondent's competitors in the cosmetics industry. 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 the <iredale.com> name and so its actions do not fall within Policy ¶4(c)(ii). Upon information and belief, Respondent is not commonly known by the name "IREDALE" nor does Respondent operate a business or other organization under this mark or name and does not own any trademark or service mark rights in the IREDALE name. 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 <iredale.com> domain without intent for commercial gain, and so its actions do not fall within Policy ¶4(c)(iii). Instead, Respondent is using the domain name to confuse and misleadingly divert consumers, or to tarnish the Marks. 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 *Focus Do It All Group v. Athanasios Sermbizis, 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 Complainant’s JANE IREDALE goods and services, who used the domain name <iredale.com>, would be confused and think they were visiting a site of the Complainant’s until they discovered that they were in a directory of links to Complainant’s competitors in the cosmetics industry. 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 Complainant by using the Marks in association with a directory site which provides links to numerous products and services not associated with or related to Complainant’s quality branded products. Respondent’s use creates the very real risk that Complainant’s trademarks are not only being associated with numerous products and services not related to Complainant’s branded products, but also to products and services linked to a directory site over which Complainant has no quality control.

(c) Respondent Registered The Domain 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 without consent from Complainant. Respondent was put on constructive notice of Complainant’s rights in the Marks through Complainant Federal Trademark Registrations, most of which predate the date on which Respondent acquired the <iredale.com> domain, as well as Complainant’s extensive use of its Marks and the media coverage thereof. 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 Complainant’s rights in the Marks. Moreover, the content on Respondent’s website at <iredale.com> reveals that Respondent has actual knowledge of the Marks and Complainant’s goods associated with the mark and is purposefully trading on the Marks.

Respondent is obtaining commercial gain from its use of the <iredale.com> website. This is a directory or “pay-per-click” website providing a listing of hyperlinks, some of which lead to the websites of Complainant’s competitors. When a searcher reaches the <iredale.com> site, and clicks on one of the links, he or she is lead to the sites of Complainant’s 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 <iredale.com> website. 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, Inc. v. Texas International Property Associates*, WIPO Case No. D2007-1211 (finding in similar cases that a respondent intentionally attempted to attract internet searchers for commercial gain).

In, *AllianceBernstein, supra*, 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, supra*, 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 a pay-per-click site under the <iredale.com> domain alone constitutes commercial gain. See *AllianceBernstein*, D2008-1230. Moreover, similar to the facts in *Brownells* and *AllianceBernstein*, Respondent's use of the domain name and website results in a commercial gain for others by placing links to competitors of Complainant and other individuals, groups or entities on its website. 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 <iredale.com> web page. Respondent's use of the domain name is commercial because the various companies linked to the <iredale.com> directory site 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, supra*, (finding that "[I]t is enough that commercial gain is being sought for someone" for a use to be commercial).

It may be that Respondent will claim that Iredale is merely a surname and that it is not responsible for the cosmetics-related content on its website arguing that the ads may be served by a third-party based on keywords which are related to the <iredale.com> domain. Of course, it is well accepted that a domain owner is responsible for the content of any website under its domain, even if consists of a pay-per-click site with links automatically generated by a third party. See, *Sanofi-aventis v. Transure Enterprise Ltd*,

Host Master, WIPO Case No. D2008-1636 (“The Respondent is ultimately responsible for the content of the website within it [sic] control. As such, the Respondent could not avoid responsibility for the automatic generation of links at the subject website.”), citing, *Villeroy & Boch AG v. Mario Pingerna*, WIPO Case No. D2007-1912; *State of Florida, Florida Department of Management Services v. Bent Pettersen*, WIPO Case No. D2008-0039; *Owens Corning v. NA*, WIPO Case No. D2007-1143. Thus, Respondent cannot hide behind any excuses that it did not intentionally use its <iredale.com> domain to wrongly capitalize on the value of the JANE IREDALE Marks in the cosmetics industry.

Finally, as more fully set forth above, Respondent uses the Marks intentionally in its domain name to attract Internet searchers by creating a likelihood of confusion with Complainant’s JANE IREDALE Marks and such intentional action, alone, is strong evidence of its bad faith. 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 <iredale.com> domain in bad faith.

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

FINDINGS

Complainant, Iredale Mineral Cosmetics, Ltd., is a manufacturer and distributor of cosmetic and skin care products as well as the accessories for those items. Complainant owns several trademark registrations with the United States Patent and Trademark Office (“USPTO”) for its JANE IREDALE mark (e.g. Reg. No. 2,242,708 issued on May 4, 1999).

Respondent, ideaman.com c/o Hyun Bang, registered the <iredale.com> domain name on July 3, 2002. Respondent’s disputed domain name resolves to a website that displays third-party links to cosmetic and skin care companies that are in 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

The Panel finds Complainant possesses rights in its JANE IREDALE mark pursuant to Policy ¶4(a)(i) through its trademark registrations with the USPTO (*e.g.* Reg. No. 2,242,708 issued on May 4, 1999). *See Expedia, Inc. v. Tan*, FA 991075 (Nat. Arb. Forum June 29, 2007) (“As the [complainant’s] mark is registered with the USPTO, [the] complainant has met the requirements of Policy ¶4(a)(i).”); *see also Intel Corp. v. Macare*, FA 660685 (Nat. Arb. Forum Apr. 26, 2006) (finding that the complainant had established rights in the PENTIUM, CENTRINO and INTEL INSIDE marks by registering the marks with the USPTO).

Respondent’s <iredale.com> domain name contains the entire second term of Complainant’s mark in an unadulterated form. The only addition to the word is the generic top-level domain (“gTLD”) “.com.” Complainant contends the use of one of the two terms contained in its mark renders the disputed domain name confusingly similar to Complainant’s mark. The Panel finds Respondent’s <iredale.com> domain name is confusingly similar to Complainant’s JANE IREDALE mark under Policy ¶4(a)(i) where Respondent deletes term word from Complainant’s mark in the disputed domain name. *See Asprey & Garrard Ltd v. Canlan Computing*, D2000-1262 (WIPO Nov. 14, 2000) (finding that the domain name <asprey.com> is confusingly similar to the complainant’s ASPREY & GARRARD and MISS ASPREY marks); *see also WestJet Air Ctr., Inc. v. W. Jets LLC*, FA 96882 (Nat. Arb. Forum Apr. 20, 2001) (finding that the <westjets.com> domain name is confusingly similar to the complainant’s mark, where the complainant holds the WEST JET AIR CENTER mark).

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

Rights or Legitimate Interests

Complainant alleges Respondent does not have any rights or legitimate interests in the <iredale.com> domain name. Complainant is required to make a *prima facie* case in support of these allegations. After Complainant has produced a *prima facie* case the burden of proof shifts to Respondent to show it possesses rights or legitimate interests in

the disputed domain name. 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 *Domtar, Inc. v. Theriault.*, FA 1089426 (Nat. Arb. Forum Jan. 4, 2008) (“It is well established that, once a complainant has made out a *prima facie* case in support of its allegations, the burden shifts to respondent to show that it does have rights or legitimate interests pursuant to paragraph 4(a)(ii) of the Policy.”). The Panel finds Complainant has produced a *prima facie* case. Due to Respondent’s failure to respond to these proceedings, the Panel may assume Respondent does not have any rights or legitimate interests in the disputed domain name. The Panel, however, will examine the record to determine whether Respondent possesses rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(c). See *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.”); see also *Am. Online, Inc. v. AOL Int’l*, D2000-0654 (WIPO Aug. 21, 2000) (finding no rights or legitimate interests where the respondent fails to respond).

Complaint argues Respondent is neither commonly known by the disputed domain name, nor has Complainant given Respondent permission to use Complainant’s mark. The WHOIS information indicates “Hyun Bang” as the registrant of the disputed domain name, and Respondent does not offer evidence to show it is commonly known by the disputed domain name. The Panel finds that without affirmative evidence of Respondent being commonly known by the disputed domain name, Respondent lacks rights and legitimate interests in the disputed domain name pursuant to 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 *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).

Respondent’s <iredale.com> domain name resolves to a directory website displaying various third-party links to cosmetic and skin care businesses that are in competition with Complainant. Complainant argues Respondent’s use of the disputed domain name to direct Internet users to competing websites and businesses of Complainant, while misappropriating Complainant’s mark is evidence Respondent lacks rights and legitimate interests in the disputed domain name. The Panel finds Respondent’s diversion of Internet users seeking Complainant’s products, under the confusingly similar domain name, to the businesses and websites of Complainant’s competitors is not a use in

connection with a *bona fide* offering of goods or services under Policy ¶4(c)(i) nor a legitimate noncommercial or fair use under Policy ¶4(c)(iii). *See Tesco Pers. Fin. Ltd. v. Domain Mgmt. Servs.*, FA 877982 (Nat. Arb. Forum Feb. 13, 2007) (finding that the respondent was not using the <tesco-finance.com> domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use by maintaining a web page with misleading links to the complainant's competitors in the financial services industry); *see also Bond & Co. Jewelers, Inc. v. Tex. Int'l Prop. Assocs.*, FA 937650 (Nat. Arb. Forum Apr. 30, 2007) (finding that the use of the disputed domain name to operate a website displaying links to competing goods and services 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

Complainant argues Respondent's use of the confusingly similar domain name to divert Internet users seeking Complainant's products to the products of Complainant's competitors is evidence of bad faith registration and use. The Panel finds Respondent's use of the disputed domain name to divert Internet users from Complainant's business and products to the competitors of Complainant is evidence of bad faith registration and use under Policy ¶4(b)(iii). *See Red Hat, Inc. v. Haecke*, FA 726010 (Nat. Arb. Forum July 24, 2006) (finding that 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); *see also 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)).

Complainant further argues Respondent is using the <iredale.com> domain name to intentionally attract Internet users to its directory website for commercial gain, where it presumably collects click-through fees for the third-party links displayed on its website. Complainant argues this type of use is further evidence of bad faith registration and use. The Panel finds Respondent has engaged in bad faith registration and use of the disputed domain name under Policy ¶4(b)(iv), where it has used the disputed domain name to operate a directory website where it presumably collects referral fees associated with the third-party links displayed on its website. *See Zee TV USA, Inc. v. Siddiqi*, FA 721969 (Nat. Arb. Forum July 18, 2006) (finding that the respondent engaged in bad faith registration and use by using a domain name that was confusingly similar to the complainant's mark to offer links to third-party websites that offered services similar to those offered by the complainant); *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)).

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 <iredale.com> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: Monday, April 28, 2010

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