



NATIONAL ARBITRATION FORUM

DECISION

Bergdorf Goodman, Inc. & NM Nevada Trust v. Edwyn Huang
Claim Number: FA0909001286505

PARTIES

Complainant is **Bergdorf Goodman, Inc. & NM Nevada Trust** ("Complainant"), represented by **David J. Steele**, of **Christie, Parker & Hale LLP**, California, USA. Respondent is **Edwyn Huang** ("Respondent"), New York, USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**bergdorfhodman.com**>, registered with **Godaddy.com, 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 September 25, 2009; the National Arbitration Forum received a hard copy of the Complaint on September 28, 2009.

On September 28, 2009, Godaddy.com, Inc. confirmed by e-mail to the National Arbitration Forum that the <**bergdorfhodman.com**> domain name is registered with Godaddy.com, Inc. and that Respondent is the current registrant of the name. Godaddy.com, Inc. has verified that Respondent is bound by the Godaddy.com, 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 September 30, 2009, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of October 20, 2009 by which Respondent could file a response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@bergdorfhodman.com by e-mail.

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

On October 26, 2009, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

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

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

NM Nevada Trust owns and licenses to Bergdorf Goodman, Inc. (collectively "Complainant") the BERGDORF GOODMAN trade name and mark, which it has used for over 100 years to identify its highly successful retail business. The subject domain name is virtually identical to Complainant's BERGDORF GOODMAN mark, substituting one letter in the mark for the neighboring letter on a keyboard, to form a common mistyping of the mark. Respondent has used the domain name to provide advertisements for companies that compete with Complainant, and after notice of the dispute has used the domain name to redirect visitors to his website at <hoodman.tv>, where he sells merchandise such as tee-shirts and hooded sweatshirts in competition with Complainant. Respondent is engaged in cybersquatting and has violated the Policy.

A. Complainant's Rights in its BERGDORF GOODMAN Mark

Complainant owns the world-famous Bergdorf Goodman trade name and BERGDORF GOODMAN trademark and service mark, and operates the Bergdorf Goodman store located in New York City. Complainant also reaches hundreds of thousands of customers via its BERGDORF GOODMAN mail order catalogs and its website, available at www.bergdorfgoodman.com. Bergdorf Goodman is one of the most successful retailers in the United States, and around the world. For over a century, Complainant and its predecessors in interest, have used the Bergdorf Goodman trade name and BERGDORF GOODMAN trademarks and service marks for its retail store services, mail order catalogs, and its private label merchandise. As a result of this long and extensive use and tens of millions of dollars in advertising and promotions, Bergdorf Goodman has acquired an extremely valuable goodwill and reputation among consumers and professionals in the fashion and retail community.

Complainant owns at least seven United States registrations for the trademark BERGDORF GOODMAN and variations thereof (the “Bergdorf Goodman Trademarks”). Since 1907, Complainant and its predecessors have continuously and exclusively used the Bergdorf Goodman Trademarks in the United States and in many countries around the world, long before Respondent unlawfully registered the contested domain name. In view of the information above, Complainant has established strong rights in its Bergdorf Goodman Trademarks and is entitled to broad protection.

B. The Subject Domain Name is Confusingly Similar to Complainant’s BERGDORF GOODMAN Mark

To support a finding that the subject domain name is identical or confusingly similar to Complainant’s marks, all that is required is:

that the domain name misappropriates sufficient textual components from the mark such that an ordinary Internet user who is familiar with the goods or services distributed under the mark would upon seeing the domain name likely think that owing to the visual and/or phonetic similarity between the mark and the domain name that an affiliation exists between the site identified by that domain name and the owner or licensed user of the mark.

Awesome Kids LLC v. Selavy Comm., D2001-0210 (WIPO Apr. 16, 2001); *see also Shields v. Zuccarini*, 254 F.3d 476, 484 (3d Cir. 2001) (“A reasonable interpretation of conduct covered by the phrase ‘confusingly similar’ is the intentional registration of domain names that are misspellings of distinctive or famous names, causing an Internet user who makes a slight spelling or typing error to reach an unintended site.”).

The domain name bergdorfhoodman.com is confusingly similar to the BERGDORF GOODMAN mark. The only difference between the contested domain name and Complainant’s mark is the substitution of the letter “h” for the letter “g.” Because the contested domain name bergdorfhoodman.com misappropriates sufficient textual components from Complainant’s BERGDORF GOODMAN mark, ordinary Internet users familiar with Complainant’s goods are likely to think that, owing to the visual and phonetic similarities between the domain name and Complainant’s marks, an affiliation exists between the domain name and Complainant.

Because of the proximity of the letter “h” to the letter “g” on a standard keyboard, this registration also constitutes typosquatting. It is well-settled that a domain name that is a common mistyping or misspelling of a mark is confusingly similar to that mark. *See Gregg Appliances, Inc. v. Maria Varela*, FA 449837 (Nat. Arb. Forum May 14, 2009) (finding that “the disputed domain name is confusingly similar to Complainant’s mark under Policy ¶4(a)(i)” because “[t]he <hhgreg.com> domain name contains a misspelled version of the HHGREGG.COM mark, in that the last “g” has been removed from the mark”); *see also Bank of America Corporation v. InterMos*, FA 95092 (Nat. Arb. Forum Aug. 1, 2000) (finding that “[wwwbankofamerica.com] is confusingly similar to the

Complainant's mark. It takes advantage of a typing error (eliminating the period between the www and the domain name) that users commonly make when searching on the Internet.); *see also Oxygen Media, LLC v. Primary Source*, D2000-0362 (WIPO Jun. 19, 2000) (finding that the domain name <0xygen.com> (with zero in place of letter O) is confusingly similar to Complainant's mark by exploiting upon likely mistakes by users when entering the URL address.”)

Moreover, the addition of the generic top-level domain (“gTLD”) name “.com” to the Complainant's trademark does not reduce the likelihood of confusion. *See Dermalogica, Inc. and The International Dermal Institute, Inc. v. Andrew Porter and Zen Day Spa*, FA 1155710 (Nat. Arb. Forum Apr. 14, 2008) (the addition of the gTLD “.com” is not relevant in determining whether a disputed domain name is confusingly similar to a mark because a gTLD is a required part of every domain name).

Accordingly, a finding that the subject domain name is confusingly similar to Complainant's trademark and trade name is supported by both applicable case law and prior administrative proceedings.

C. Respondent Has Registered and is Using the Contested Domain Name in Bad Faith

The Policy expressly details specific circumstances which, “if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.” Policy ¶4(b). Any one of these express circumstances will suffice to establish bad faith. The circumstance applicable here is detailed in Policy ¶4(b)(iv), which states that:

by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

In the instant case, Respondent has used the contested domain name in two ways. Prior to notice of the dispute, Respondent used the domain name to present a parking page that contained advertisements for Complainant's competitors. On July 9, 2009, Complainant sent a cease and desist letter to Respondent via email. After receipt of the letter, Respondent changed his use of the contested domain name. At present, the domain name is being used to redirect visitors to the website at <hoodman.tv> that offers for sale tee shirts and hooded sweatshirts.

With respect to Respondent's use before notice of the dispute of the domain name to provide a parking page, it is well-settled that use of a confusingly similar domain name to provide advertisements for the trademark owner's competitors shows bad faith under Policy ¶4(b)(iv). *See Asbury Auto. Group, Inc. v. Tex. Int'l Prop. Assocs.*, FA 958542 (Nat. Arb. Forum May 29, 2007) (finding that the respondent's use of the disputed domain name to advertise car dealerships that competed with the complainant's business

would likely lead to confusion among Internet users as to the sponsorship or affiliation of those competing dealerships, and was therefore evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv)); *see also Serta Inc. v. Dawson*, WIPO Case No. D2008-1474 (November 20, 2008) (“Respondent’s bad faith is further illustrated by the domain name’s resolution to a PPC parking page with links to websites selling products competing with Complainant’s. It is now well-established that the use of a parking page in this manner is strong evidence of bad faith.”).

Complainant anticipates that Respondent will attempt to minimize its own use of the domain name to provide a parking page by arguing that GoDaddy and not Respondent provided the page, and that Respondent only received minimal revenue from this use if any. However, it is also well-established that a domain name registrant is responsible for whatever use is made of a domain name registered in his name, even if that use is made by a third-party registrar. *See, e.g., Larry Graham v. Company, S.E.E.*, FA 1268274 (Nat. Arb. Forum Jul. 22, 2009) (“Even if Respondent was not benefiting from those PPC advertisements, the law is clear that Respondent permitted the registrar to post this improper content (or, at the minimum, failed to direct the registrar to remove these advertisements), and thus Respondent is ultimately responsible for the content the registrar posted on the website.”); *Express Scripts v. Windgather Invs. Ltd./Mr. Cartwright*, WIPO Case No. D2007-0267 (Apr. 26, 2007) (in considering whether respondent registered and used a domain name in bad faith, it makes no difference that respondent was not responsible for posting the links because it should have been aware that such links would be generated by the registrar). Accordingly, Respondent’s use of the domain name prior to notice of the dispute establishes bad faith pursuant to Policy ¶4(b)(iv).

After Respondent received notice of the dispute, the commercial parking page accessible at the contested domain name was disabled and the contested domain name was configured to redirect visitors to the domain name <hoodman.tv> where Respondent sells tee shirts and hooded sweatshirts. As a threshold matter, Respondent’s new use of the domain name after notice of the dispute cannot cleanse the bad faith shown by its use prior to the dispute. *See Movado LLC v. Simo Elbaz*, D2004-1029 (WIPO Feb. 17, 2005) (refusing to consider the new use of the domain name after notice of the dispute stating: “It is not necessary to decide whether Respondent’s new use of the challenged domain name is a *bona fide* use or, as appears more likely, a sham. The new use of the challenged domain name can avail Respondent nothing because it is untimely.”)

However, even Respondent’s new use to redirect visitors to his commercial website where visitors can purchase competing products supports bad faith under Policy ¶4(b)(iv) and Policy ¶4(b)(iii). The additional circumstance applicable to the new use of the domain name is detailed in Policy ¶4(b)(iii), which addresses “registr[ation] of the domain name primarily for the purpose of disrupting the business of a competitor.” The website accessible at <hoodman.tv> offers for sale several products that are similar to those available at Complainant’s website bergdorfgoodman.com. Use of a domain name that is confusingly similar to a trademark to advertise for or sell goods in competition

with the trademark owner has repeatedly supported a finding of bad faith. *See Disney Enters., Inc. v. Noel*, FA 198805 (Nat. Arb. Forum Nov. 11, 2003) (“Respondent registered a domain name confusingly similar to Complainant's mark to divert Internet users to a competitor's website. It is a reasonable inference that Respondent's purpose of registration and use was to either disrupt or create confusion for Complainant's business in bad faith pursuant to Policy ¶¶4(b)(iii) [and] (iv).”); *see also Vacation Publications, Inc. v. Best Flights Pty Ltd.*, FA 801001126493 (Nat. Arb. Forum February 27, 2008) (finding bad faith under 4(b)(iii) and 4(b)(iv) where the respondent registered a domain name that was confusingly similar to the complainant's and offered competing travel services); *see also Gardens Alive, Inc. v. D&S Linx*, FA 203126 (Nat. Arb. Forum Nov. 20, 2003) (“Respondent registered and used the <my-seasons.com> domain name in bad faith pursuant to Policy ¶¶4(b)(iii) and (iv) because Respondent is using a domain name that is confusingly similar to the MYSEASONS mark for commercial benefit by diverting Internet users to the <thumbgreen.com> website, which sells competing goods and services.”); *see also Dollar Financial Group, Inc. and National Money Mart Company v. The Loan Office, Inc.*, FA 711001112559 (Nat. Arb. Forum January 2, 2008) (finding the respondent's registration and use of <nationalmoneymart.com> to compete with the NATIONAL MONEY MART trademark owner violates 4(b)(iii) and (iv) of the UDRP).

Finally, the registration of a confusingly similar domain name that is obviously connected with a particular trademark owner by someone with no connection with the trademark owner suggests bad faith. *See Deutsche Bank AG v. Diego-Arturo Bruckner*, D2000-0277 (WIPO May 30, 2000) (“The domain name is so obviously connected with the complainant and its services that its very use by someone with no connection with the complainant suggests opportunistic bad faith”); *FAO Schwarz v. John Zuccarini*, FA95828 (Nat. Arb. Forum Dec. 1, 2000); *Household International, Inc. v. Cyntom Enterprises*, FA95784 (Nat. Arb. Forum Nov. 7, 2000) (inferring that the respondent registered a well-known business name with hopes of attracting the complainant's customers); *Woolworths plc. v. David Anderson*, D2000-1113 (WIPO Oct. 10, 2000). In the present case, Respondent registered a common mis-typing of Complainant's entire distinctive BERGDORF GOODMAN mark. Because the BERGDORF GOODMAN mark is so obviously connected with Complainant, and because the contested domain name so clearly references the Complainant's marks, registration by Respondent, who has no connection to Complainant suggests a finding of bad faith.

D. Respondent Has No Rights or Legitimate Interest in the Contested Domain Name

Respondent has no rights or legitimate interest in the subject domain name. Respondent bears the burden of proving that it has rights or legitimate interests in the contested domain name pursuant to Policy ¶4(a)(ii). *See G.D. Searle & Co. v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002); *Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000).

Respondent is not known individually, or as a business, or in any other manner by “Bergdorf Hoodman” or by bergdorfhoodman.com. Complainant has not licensed Respondent to use its BERGDORF GOODMAN mark, nor does Respondent have any legal relationship with Complainant that would entitle it to use Complainant’s mark. Complainant anticipates that Respondent may argue that it is known by the trademark HOODMAN, and that it selected the trademark HOODMAN as a parody of the Bergdorf Goodman Trademarks. Setting aside the parody issue, which is discussed in greater detail below, even if Respondent has established rights in the mark HOODMAN, these rights do not extend to the use of BERGDORF HOODMAN. Accordingly Respondent is not known by “Bergdorf Hoodman” and cannot establish rights to or legitimate interest in the domain name under Policy ¶4(a)(ii).

Respondent cannot show that “before any notice to [it] of the dispute, [it used or made] demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services.” Policy ¶4(c)(i). Because of the “before any notice” temporal requirement, Respondent’s use after notice of the dispute cannot show a *bona fide* use. Respondent’s original use of the contested domain name to provide a parking page does not constitute a *bona fide* use under the Policy. *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)); *see also Vance Int’l, Inc. v. Abend*, FA 970871 (Nat. Arb. Forum Jun. 8, 2007) (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a *bona fide* offering of goods or services or a legitimate noncommercial or fair use, regardless of whether the links resolve to competing or unrelated websites or whether the respondent is itself commercially profiting from the click-through fees).

Assuming for argument that Respondent registered the domain name with the idea of re-directing it to <hoodman.tv>, use of the contested domain name to sell competing goods does not constitute a *bona fide* use under the Policy. *See Diners Club Int’l Ltd. v. Car in Won Australia Pty Ltd*, FA 338427 (Nat. Arb. Forum Nov. 10, 2004) (“Since Complainant and Respondent both offer credit card accounts for sale, the Panel finds that Respondent is using the domain names to offer strictly competing services with Complainant, which would be legitimate had Respondent not incorporated Complainant’s mark in a confusingly similar domain name to accomplish this end.”); *see also Florists’ Transworld Delivery v. Malek*, FA 676433 (Nat. Arb. Forum Jun. 6, 2006) (holding that the respondent’s use of the <ftdflowers4less.com> domain name to sell flowers in competition with the complainant did not give rise to any legitimate interest in the domain name); *see also Carey Int’l, Inc. v. Kogan*, FA 486191 (Nat. Arb. Forum Jul. 29, 2005) (holding that the respondent’s use of disputed domain names to market competing limousine services was not a *bona fide* offering of goods or services under Policy ¶4(c)(i), as the respondent was appropriating the complainant’s CAREY mark in order to profit from the mark). Accordingly, Respondent cannot establish rights to and legitimate interest in the domain name under Policy ¶4(c)(i).

Respondent is not making a “legitimate noncommercial or fair use of the domain name, without intent for commercial gain.” Policy ¶4(c)(iii). Respondent’s original use of the domain name as a parking page as well as the current use to forward visitors to an online clothing retailer both establish “intent for commercial gain” and undermines any claim that the use was “noncommercial.” Accordingly, Respondent cannot establish rights to and legitimate interest in the domain name under Policy ¶4(a)(iii).

Complainant anticipates that Respondent will argue that its registration and use of the bergdorfhoodman.com domain name is a “fair use” and does not establish bad faith because it is a “parody.” Complainant expects that Respondent will cite several cases in which respondents established businesses under a name that was a parody of a famous trademark and then registered domain names to match their business names. Unlike these cases, Respondent has not established a business under the name Bergdorf Hoodman. In fact, Respondent has done business under the name Hoodman for several years. Further, the contested domain name in this dispute is such a close mistyping to the Complainant’s mark, that the existing parody domain name cases can be distinguished.

In view of Complainant’s distinctive marks, this commercial use by Respondent violates Complainant’s rights under Section 43(a) of the Lanham Act. Respondent’s use of the subject name is “on or in connection with any goods or services,” and Respondent “uses in commerce any word, term, [or] name ... , or any combination thereof ... , which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person.” Lanham Act §43, 15 U.S.C. §1125; *see Household International, Inc. v. Cyntom Enterprises*, FA 95784 (Nat. Arb. Forum Nov. 7, 2000), (finding that use of someone else’s well-known business name undermines any claims to a legitimate interest). Moreover, it is well-settled law that misdirecting Internet traffic by using another party’s trademark is unlawful. *Brookfield Communs., Inc. v. West Coast Entertainment Corp.*, 174 F.3d 1036 (9th Cir. 1999). Accordingly, under the laws of the United States and the decisions of prior administrative proceedings, Respondent cannot show any rights to or legitimate interest in the contested domain name.

As Complainant has satisfied all three elements of the Policy, it requests the panel grant the requested remedy.

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

FINDINGS

Complainant, Bergdorf Goodman, Inc., is a successful retail store in New York that offers products onsite, through mail order, and through its official website located at the <bergdorfgoodman.com> domain name. Complainant owns numerous trademark registrations with the United States Patent and Trademark Office (“USPTO”) for the BERGDORF GOODMAN mark (e.g., Reg. No. 674,632 issued February 24, 1959).

Respondent registered the <**bergdorfhoodman.com**> domain name on July 8, 2009. Before Complainant contacted Respondent about Respondent's disputed domain name, the disputed domain name resolved to a website displaying third-party links to websites offering retail services in competition with Complainant. Currently, Respondent's disputed domain name resolves to Respondent's commercial website located at the <hoodman.tv> domain name, which offers clothing for sale 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

Complainant owns several registrations for the BERGDORF GOODMAN mark with the USPTO (e.g., Reg. No. 674,632 issued February 24, 1959). Complainant has established rights in the BERDORF GOODMAN mark pursuant to Policy ¶4(a)(i) through registration of the mark with the USPTO. *See Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) ("Registration of the NASAL-AIRE mark with the USPTO establishes Complainant's rights in the mark."); *see also Vivendi Universal Games v. XBNetVentures Inc.*, FA 198803 (Nat. Arb. Forum Nov. 11, 2003)

(“Complainant's federal trademark registrations establish Complainant's rights in the BLIZZARD mark.”).

Complainant argues Respondent's <**bergdorfhodman.com**> domain name is confusingly similar to Complainant's BERGDORF GOODMAN mark pursuant to Policy ¶4(a)(i). Respondent's disputed domain name contains a misspelled version of Complainant's mark and adds the generic top-level domain (“gTLD”) “.com.” The Panel finds a disputed domain name that contains a misspelled version of a complainant's mark, especially when it is misspelled by only one letter, normally creates a confusing similarity between the disputed domain name and the complainant's mark (especially with a mark this long). *See Reuters Ltd. v. Global Net 2000, Inc.*, D2000-0441 (WIPO July 13, 2000) (finding that a domain name which differs by only one letter from a trademark has a greater tendency to be confusingly similar to the trademark where the trademark is highly distinctive); *see also Granarolo S.p.A. v. Dinoia*, FA 649854 (Nat. Arb. Forum Apr. 17, 2006) (finding that the <granarolo.com> domain name was confusingly similar to the complainant's registered G GRANAROLO mark). .” In addition, the Panel finds the omission of spacing and the addition of a gTLD are irrelevant in distinguishing a disputed domain name from an established mark. *See Trip Network Inc. v. Alviera*, FA 914943 (Nat. Arb. Forum Mar. 27, 2007) (concluding that the affixation of a gTLD to a domain name is irrelevant to a Policy ¶4(a)(i) analysis); *see also Bond & Co. Jewelers, Inc. v. Tex. Int'l Prop. Assocs.*, FA 937650 (Nat. Arb. Forum Apr. 30, 2007) (finding that the elimination of spaces between terms and the addition of a gTLD do not establish distinctiveness from the complainant's mark under Policy ¶4(a)(i). Therefore, the Panel finds the disputed domain name is confusingly similar to Complainant's BERGDORF GOODMAN mark pursuant to Policy ¶4(a)(i).

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

Rights or Legitimate Interests

Complainant alleges Respondent lacks all rights and legitimate interests in the <**bergdorfhodman.com**> domain name. If Complainant makes a *prima facie* case in support of its allegations, the burden shifts to Respondent to prove that its rights and legitimate interests exist pursuant to Policy ¶4(a)(ii). The Panel finds Complainant has established a *prima facie* case and Respondent has failed to respond in this proceeding. *See Document Techs., Inc. v. Int'l Elec. Commc'ns Inc.*, D2000-0270 (WIPO June 6, 2000) (“Although Paragraph 4(a) of the Policy requires that the Complainant prove the presence of this element (along with the other two), once a Complainant makes out a *prima facie* showing, the burden of production on this factor shifts to the Respondent to rebut the showing by providing concrete evidence that it has rights to or legitimate interests in the Domain Name.”); *see also Towmaster, Inc. v. Hale*, FA 973506 (Nat. Arb. Forum June 4, 2007) (“Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶4(a)(ii), and then the burden shifts to Respondent to show it does have rights or legitimate interests.”).

Complainant contends Respondent is neither commonly known by nor licensed to register the <**bergdorfhoodman.com**> domain name. Respondent's WHOIS information identifies Respondent as "Edwyn Huang," and does not reflect that Respondent is commonly known by the disputed domain name. The Panel finds the WHOIS information and lack of other evidence in the record demonstrates Respondent is not commonly known by the disputed domain name. Therefore, pursuant to Policy ¶4(c)(ii), Respondent lacks rights and legitimate interests in the <**bergdorfhoodman.com**> domain name. *See Instron Corp. v. Kaner*, FA 768859 (Nat. Arb. Forum Sept. 21, 2006) (finding that the respondent was not commonly known by the <shoredurometer.com> and <shoredurometers.com> domain names because the WHOIS information listed Andrew Kaner c/o Electromatic a/k/a Electromatic Equip't as the registrant of the disputed domain names and there was no other evidence in the record to suggest that the respondent was commonly known by the domain names in dispute); *see also Wells Fargo & Co. v. Onlyne Corp. Services11, Inc.*, FA 198969 (Nat. Arb. Forum Nov. 17, 2003) ("Given the WHOIS contact information for the disputed domain [name], one can infer that Respondent, Onlyne Corporate Services11, is not commonly known by the name 'welsfargo' in any derivation.").

Complainant presents evidence that prior to Complainant's contact with Respondent about its use of the <**bergdorfhoodman.com**> domain name, the disputed domain name resolved to a website displaying third-party links to websites offering retails services in competition with Complainant. The Panel infers Respondent was using the disputed domain name to earn click-through fees, and thus finds Respondent has not made 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 Wells Fargo & Co. v. Lin Shun Shing*, FA 205699 (Nat. Arb. Forum Dec. 8, 2003) (finding that using a domain name to direct Internet traffic to a website featuring pop-up advertisements and links to various third-party websites is neither 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) because the registrant presumably receives compensation for each misdirected Internet user); *see also 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).

Additionally, Complainant presents evidence that after Complainant's contact with Respondent, the disputed domain name redirected Internet users to the website resolving from the <hoodman.tv>, which contains Respondent's commercial website offering clothing sales in direct competition with Complainant. The Panel finds Respondent's current use of the disputed domain name is further evidence Respondent lacks rights and legitimate interests in the disputed domain name pursuant to Policy ¶4(c)(i) and 4(c)(iii). *See Ameritrade Holdings Corp. v. Polanski*, FA 102715 (Nat. Arb. Forum Jan. 11, 2002) (finding that the respondent's use of the disputed domain name to redirect Internet users

to a financial services website, which competed with the complainant, was not a *bona fide* offering of goods or services); *see also DLJ Long Term Inv. Corp. v. BargainDomainNames.com*, FA 104580 (Nat. Arb. Forum Apr. 9, 2002) (“Respondent is not using the disputed domain name in connection with a bona fide offering of goods and services because Respondent is using the domain name to divert Internet users to <visual.com>, where services that compete with Complainant are advertised.”).

The Panel finds Respondent has engaged in the practice of typosquatting by registering a domain name designed to take advantage of Internet users’ typographical errors. The Panel finds this to be further evidence Respondent lacks rights or legitimate interests in the disputed domain name under Policy ¶4(a)(i). *See IndyMac Bank F.S.B. v. Ebeyer*, FA 175292 (Nat. Arb. Forum Sept. 19, 2003) (finding that the respondent lacked rights and legitimate interests in the disputed domain names because it “engaged in the practice of typosquatting by taking advantage of Internet users who attempt to access Complainant’s <indymac.com> website but mistakenly misspell Complainant’s mark by typing the letter ‘x’ instead of the letter ‘c’”); *see also LTD Commodities LLC v. Party Night, Inc.*, FA 165155 (Nat. Arb. Forum Aug. 14, 2003) (finding that the <lttdcommadities.com>, <lttdcommmodities.com>, and <lttdcommodaties.com> domain names were intentional misspellings of Complainant’s LTD COMMODITIES mark and this “‘typosquatting’ is evidence that Respondent lacks rights or legitimate interests in the disputed domain names”).

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

Registration and Use in Bad Faith

The Panel finds Respondent’s prior and current use of the <**bergdorfhodman.com**> domain name to disrupt the business of Complainant by either displaying links to competitors offering retail services or offering competing clothing products through Respondent’s commercial website are evidence of bad faith registration and use pursuant to Policy ¶4(b)(iii). *See EBAY, Inc. v. MEODesigns*, D2000-1368 (Dec. 15, 2000) (finding that the respondent registered and used the domain name <ebay.com> in bad faith where the respondent has used the domain name to promote competing auction sites); *see also Disney Enters., Inc. v. Noel*, FA 198805 (Nat. Arb. Forum Nov. 11, 2003) (“Respondent registered a domain name confusingly similar to Complainant’s mark to divert Internet users to a competitor’s website. It is a reasonable inference that Respondent’s purpose of registration and use was to either disrupt or create confusion for Complainant’s business in bad faith pursuant to Policy ¶4(b)(iii) [and] (iv).”).

Additionally, Respondent’s previous use of the <**bergdorfhodman.com**> domain name to intentionally divert Internet users to the associated website, which displays third-party links to competing websites, and Respondent’s current use of the disputed domain name to profit by redirecting Internet users to its commercial website selling competing clothing products are further evidence of bad faith registration and use. In cases involving third-party links, the Panel presumes Respondent was collecting click-through

fees and attempting to profit by creating a likelihood of confusion between Complainant's BERGDORF GOODMAN mark and the confusingly similar disputed domain name. The Panel finds Respondent's uses of the <bergdorfhodman.com> domain name are further evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv). *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 Luck's Music Library v. Stellar Artist Mgmt.*, FA 95650 (Nat. Arb. Forum Oct. 30, 2000) (finding that the respondent engaged in bad faith use and registration by using domain names that were identical or confusingly similar to the complainant's mark to redirect users to a website that offered services similar to those offered by the complainant).

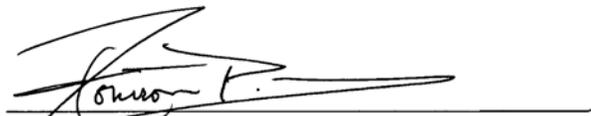
Lastly, Complainant alleges Respondent has engaged in the practice of typosquatting. The Panel finds Respondent's typosquatting is additional evidence of bad faith registration and use pursuant to Policy ¶4(a)(iii). *See Zone Labs, Inc. v. Zuccarini*, FA 190613 (Nat. Arb. Forum Oct. 15, 2003) ("Respondent's registration and use of [the <zonelarm.com> domain name] that capitalizes on the typographical error of an Internet user is considered typosquatting. Typosquatting, itself is evidence of bad faith registration and use pursuant to Policy ¶4(a)(iii)."); *see also Dermalogica, Inc. v. Domains to Develop*, FA 175201 (Nat. Arb. Forum Sept. 22, 2003) (finding that the <dermatologica.com> domain name was a "simple misspelling" of the complainant's DERMALOGICA mark which indicated typosquatting and bad faith pursuant to Policy 4 ¶(a)(iii)).

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



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: November 4, 2009

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