



## NATIONAL ARBITRATION FORUM

### DECISION

Caterpillar Inc. v. Jonathan Phillips  
Claim Number: FA0610000824404

#### PARTIES

Complainant is **Caterpillar Inc.** ("Complainant"), represented by **Christopher P. Foley**, of **Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.**, 901 New York Avenue Nw, Washington, DC 20001. Respondent is **Jonathan Phillips** ("Respondent"), 123 Terimar St, Chicopee, MA 01013.

#### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**caterpillarconstructionequipment.com**>, registered with **Go Daddy Software, Inc.**

#### PANEL

The undersigned certifies that he or she has acted independently and impartially and to the best of his or her knowledge has no known conflict in serving as Panelist in this proceeding.

Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

#### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on October 20, 2006; the National Arbitration Forum received a hard copy of the Complaint on October 23, 2006.

On October 20, 2006, Go Daddy Software, Inc. confirmed by e-mail to the National Arbitration Forum that the <**caterpillarconstructionequipment.com**> domain name is registered with Go Daddy Software, Inc. and that Respondent is the current registrant of the name. Go Daddy Software, Inc. has verified that Respondent is bound by the Go Daddy Software, Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On October 26, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of November 15, 2006 by which Respondent could file a response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@caterpillarconstructionequipment.com by e-mail.

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

On November 20, 2006, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

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

#### **RELIEF SOUGHT**

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

#### **PARTIES' CONTENTIONS**

A. Complainant makes the following assertions:

#### **BACKGROUND FACTS**

##### **A. Caterpillar, its Products and Services, and its Famous CATERPILLAR Name and Mark**

1. Caterpillar is a Fortune 100 company and the world's largest manufacturer of construction and mining equipment, diesel and natural gas engines, and industrial gas turbines. Caterpillar is ranked first in its industry.
2. Caterpillar manufactures, sells, and distributes a wide assortment of heavy-industry equipment, including track-type tractors, track loaders, wheel loaders, integrated tool carriers, excavators, mining shovels, off-highway trucks, scrapers, motor graders, backhoe loaders, paving products, agricultural equipment, forest machines, wheel tractors and compactors, telescopic handlers, compacts, engines, and gas turbines.
3. Caterpillar also provides numerous services including financing, maintenance and support, logistics, insurance, training, and rental services.
4. In addition to its equipment and services, Caterpillar uses and licenses its CATERPILLAR name and mark on a variety of collateral products. The popularity of CATERPILLAR-branded merchandise, particularly its footwear and clothing products, is immense.

5. Caterpillar owns the trademark and service mark CATERPILLAR. In use since 1904, the CATERPILLAR mark enjoys unquestionable fame as a result of extensive and long use and advertising, and favorable public acceptance and recognition worldwide. Indeed, the CATERPILLAR mark has become one of the most recognized brands in the world, and was ranked one of the “Top 100 Brands” and valued at more than \$4,500,000,000 by Interbrand in 2006.

6. Caterpillar has sold many billions of dollars worth of products under the CATERPILLAR mark. For example, Caterpillar had worldwide sales and revenue in excess of U.S. \$ 36,000,000,000 in 2005.

7. Caterpillar over the years has extensively and widely advertised and promoted its products and services under the CATERPILLAR mark. Caterpillar spends many millions of dollars every year to advertise and promote its products and services under the CATERPILLAR mark.

8. Caterpillar’s products and components are manufactured in approximately 50 facilities located in the U.S., and over 50 additional locations in 20+ countries, including India. Caterpillar has nearly 200 authorized dealers in more than 200 countries, and offers rental services through more than 1,400 outlets worldwide.

9. Caterpillar extensively promotes its products and services under the CATERPILLAR mark on the Internet. Since 1993, Caterpillar has used its website as a worldwide information and distribution channel for its business. Caterpillar’s website, accessible via the domain names CATERPILLAR.COM and CAT.COM, receives many millions of hits each month.

## **B. Caterpillar’s Trademark Holdings**

10. Caterpillar has continuously used CATERPILLAR as a trade name, trademark, and service mark since 1904, and owns registrations for the CATERPILLAR word and design mark in more than 150 countries around the world.

11. Caterpillar owns numerous registrations for the CATERPILLAR mark in the United States alone, including the following representative registrations:

- a. Registration No. 85,816, first used September 1, 1904, filed November 18, 1910, issued March 19, 1912, covering goods in International Class 7 (engines and machines).
- b. Registration No. 85,748, first used 1910, filed August 19, 1911, issued March 12, 1912, covering goods in International Class 4 (lubricants).
- c. Registration No. 345,499, first used September 1904, filed December 12, 1936, issued April 27, 1937, covering goods in International Class 7 (tractors, engines, and machinery).

- d. Registration No. 1,911,472, first used June 1988, filed October 28, 1993, issued August 15, 1995, covering goods in International Class 25 (footwear).
- e. Registration No. 2,234,261, first used January 1990, filed March 23, 1998, issued March 23, 1999, covering goods in International Class 25 (apparel).

12. Caterpillar also owns the domain name CATERPILLAR.COM, which it registered on March 17, 1995.

13. Caterpillar's trademark rights in its CATERPILLAR mark and name, based on its trademark registrations and its common law rights acquired through use since 1904, long predate Respondent's registration of the Domain Name.

### **C. Respondent's Infringing Activities and Bad Faith Acts**

14. Respondent registered the Domain Name on November 29, 2005, more than a century after Caterpillar began using its CATERPILLAR mark and name, many decades after the CATERPILLAR mark became famous, and long after the effective date of Caterpillar's trademark registrations.

15. Respondent uses the Domain Name for a pay-per-click website displaying links for websites offering directly competing products. Respondent's website also displays an offer to sell the Domain Name for \$1,000, and provides a link to Sedo's website where Respondent's offer to sell the Domain Name is also advertised.

16. On February 15, 2006 and July 26, 2006, Complainant, through its undersigned counsel, sent Respondent a cease-and-desist letter demanding the transfer of the Domain Name. To date, Respondent has not responded to Complainant's demands.

17. Respondent has registered numerous other domain names comprised of well-known marks owned by third parties including, for example, the domain names REDCROSSBLOODDONATION.COM, REDCROSSFIRSTAIDKIT.COM, AMERICANREDCROSSCARDONATION.COM, NIKECROSSTRAININGSHOES.COM, GOOGLETOOLBARDOWNLOAD.COM, GOOGLETOOL.NET, GOOGLETOOL.ORG, BLUECROSSHEALTHINSURANCE.ORG, BLUECROSSHEALTHINSURANCE.NET, BLUECORSSBLUEHSIELDINSURANCE.NET, BLUESHIELDBLUECROSSOFCALIFORNIA.COM, INGERSOLLRANDAIRTOOL.COM, and NASCARSTORE.US.

### **THE DOMAIN NAME IS CONFUSINGLY SIMILAR TO COMPLAINANT'S MARK**

18. The domain name CATERPILLARCONSTRUCTIONEQUIPMENT.COM is confusingly similar to Complainant's CATERPILLAR mark because it is comprised of

Complainant's mark and the generic terms "construction" and "equipment." Combining Complainant's CATERPILLAR mark with generic terms is insufficient to distinguish the Domain Name from Complainant's mark, especially when the terms relate to Complainant's business. See, e.g., Caterpillar Inc. v. Spiral Matrix et al. (WIPO D2006-0808) (finding the domain names <caterpillarconstructionequipment.org>, <catapillerequipment.com>, and <caterpillarequipment.org> among others confusingly similar to Complainant's CATERPILLAR mark); Caterpillar Inc. v. Roam the Planet, Ltd. (WIPO D2000-0275) (finding the domain name <catmachines.com> confusingly similar to complainant's mark CAT and noting the addition of the word "machines" "reinforce[s] the association of the Complainant's trademark with its primary line of products."); Caterpillar Inc. v. Stephen R. Vine (NAF FA0104000097097) (finding the domain names <usedcat-auction.com>, <usedcaterpillarspecialistauction.com>, <catauctions.com>, and <usedcaterpillarspecialist.com> confusingly similar to Complainant's CATERPILLAR mark because "The mere addition of descriptive or generic words to a famous mark, however, does not eliminate the similarity between the domain name and the trademark.").

#### **RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN THE DOMAIN NAME**

19. Respondent's registration and use of the Domain Name for commercial pay-per-click websites advertising competing links does not constitute a *bona fide* offering of goods or services under the UDRP. Nor do Respondent's activities constitute a legitimate noncommercial or fair use of the Domain Name under the UDRP. See, e.g., Caterpillar Inc. v. Admin c/o Jucco Holdings (NAF FA0603000662210) (holding respondent's use of the domain name for a pay-per-click website featuring links to competing websites is not a bona fide offering of goods or services or a legitimate noncommercial or fair use under the UDRP); DoAll Company v. Titan Net c/o Titan (NAF FA0509000563640) (holding respondent's use of the disputed domain name for a search engine website featuring commercial links to various third-party websites, for which Respondent presumably receives referral fees, does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use under the UDRP); IndyMac Bank F.S.B. v. Yu Xiao (NAF FA0511000603023) (holding respondent's use of the domain name for a website featuring links to various websites, for which respondent presumably receives referral fees, is neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use under the UDRP); see also Caterpillar Inc. v. Spiral Matrix et al. (WIPO D2006-0808) (holding respondent had no legitimate interest in the domain names <caterpillarconstructionequipment.org>, <catapillerequipment.com>, and <caterpillarequipment.org> among others and noting "Where, as here, Complainant's marks and name are so well-known and so widely recognized, and have been used in the United States and 20 other countries for so many years, in the circumstances, there can be no legitimate rights or plausible use by [r]espondent.").

20. Respondent is not and has not been commonly known by the Domain Name.

## **RESPONDENT'S BAD FAITH UNDER SECTION 4(B) OF THE UDRP**

21. Respondent's registration and use of the Domain Name meet the bad faith element set forth in Section 4(b)(iv) of the UDRP. Specifically, Respondent uses the Domain Name to intentionally attract, for commercial gain, Internet users to his pay-per-click website by creating a likelihood of confusion with Complainant and its CATERPILLAR mark as to the source, sponsorship, affiliation, and/or endorsement of Respondent's website and the competing links advertised on Respondent's website. See, e.g., Caterpillar Inc. v. Admin c/o Jucco Holdings (NAF FA0603000662210) (holding respondent's use of the domain name <catatwork.com> for a pay-per-click website displaying competing links constitutes bad faith because "[r]espondent is taking advantage of the confusion between Complainant and itself for its own commercial gain."); Caterpillar Inc. v. Center for Ban on Drugs (NAF FA0603000661437) (holding respondent's use of the domain name <caterpillar.com> for advertising commissions constitutes bad faith pursuant to Section 4(b)(iv)); Capital One Financial Corporation v. LaPorte Holdings, Inc. (NAF FA0502000417712) (holding respondent's use of the disputed CAPITAL ONE-formative domain names for pay-per-click websites constitutes bad faith and holding "[r]espondent is profiting from the unauthorized use of [c]omplainant's registered mark in its domain names. Such infringement is what the Policy was intended to remedy and is evidence of bad faith registration and use under Policy ¶4(b)(iv).").

22. Respondent's registration and use of the Domain Name meet the bad faith element set forth in Section 4(b)(iii) of the UDRP. Specifically, Respondent disrupts Complainant's business and unfairly competes with Complainant by using the Domain Name for a commercial pay-per-click website advertising links for competing products. See, e.g., WeddingChannel.com, Inc. v. Albert Jackson (NAF FA0405000273990) (holding respondent's registration of a domain name confusingly similar to complainant's mark and use of that name to direct Internet users to a commercial website advertising services similar to complainant's constitutes bad faith pursuant to Section 4(b)(iii) of the UDRP); DaimlerChrysler Corp. v. Kentech, Inc. (NAF FA0501000410056) (holding respondent's use of the domain name for websites displaying links to complainant's competitors constitutes bad faith).

23. Respondent's registration and use of the Domain Name meet the bad faith element set forth in Section 4(b)(i) of the UDRP because Respondent registered the Domain Name to sell, rent, or otherwise transfer it for valuable consideration in excess of his documented out-of-pocket expenses. As shown above in Paragraph 27, Respondent offers to sell the Domain Name for a profit on his website associated with the Domain Name and on Sedo.com's website. See, e.g., Sanofi-Aventis v. Helois Lab (WIPO D2005-0607) (finding bad faith in respondent's offer to sell the disputed domain name on its website associated with the domain name via a "Buy this domain" link); Federal Home Loan Mortgage Corporation v. Suren Deep (NAF FA0304000154102) (finding bad faith in respondent's offer to sell the domain name freddiemac.info because "[r]espondent uses the disputed domain name for a website that advertises [r]espondent's offer to sell its rights in the domain name. Such registration and use, for the purpose of

exploiting a famous mark in the hopes of commercial gain, is conduct explicitly proscribed by the Policy.”).

24. Respondent’s registration and use of the Domain Name constitute bad faith pursuant to Section 4(b)(ii) of the UDRP because as shown above in Paragraph 29, Respondent has a bad-faith pattern of registering trademark-related domain names. See, e.g., IndyMac Bank F.S.B. v. Domain Owner a/k/a Lee Wigod (NAF FA0303000150814) (finding bad faith pursuant to Section 4(b)(ii) in respondent’s registration of three trademark-related domain names); General Electric Company v. Normina Anstalt a/k/a Igor Fyodorov (WIPO D2000-0452) (finding bad faith in the respondent’s registration of three trademark-related domain names).

25. Given the fame of the CATERPILLAR mark and Respondent’s use of the Domain Name for a website displaying competing links, there is no question that Respondent had knowledge of Complainant’s rights in its CATERPILLAR mark when he registered the Domain Name. By registering the Domain Name with knowledge of Complainant’s rights in its CATERPILLAR mark, Respondent acted in bad faith. See, e.g., Compaq Information Technologies Group, L.P. v. Express Technology, Inc. (NAF FA0201000104186) (finding the respondent registered the domain name in bad faith because it was on notice of the complainant’s rights); Yahoo! Inc. v. Kelvin Pham (NAF FA0204000109699) (finding the respondent registered the domain name in bad faith because it was on notice of the complainant’s rights).

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

## **FINDINGS**

Complainant, Caterpillar Inc., is a leading manufacturer of a wide variety of construction and mining equipment, diesel and natural gas engines, and industrial gas turbines. Complainant has continuously used the CATERPILLAR mark since 1904 in connection with its equipment products. Complainant also sells footwear and apparel bearing the CATERPILLAR mark, and was recently ranked by Interbrand as one of the “Top 100 Brands,” valued at more than \$4.5 billion. In 2005, Complainant generated sales revenue of over \$36 billion worldwide.

Complainant holds numerous trademark registrations for the CATERPILLAR mark with the United States Patent and Trademark Office (“USPTO”) (Reg. No. 85,816 issued March 19, 1912; Reg. No. 85,748 issued March 12, 1912; Reg. No. 345,499 issued April 27, 1937; Reg. No. 1,911,472 issued August 15, 1995; Reg. No. 2,234,261 issued March 23, 1999).

Respondent’s <**caterpillarconstructionequipment.com**> domain name, which it registered on November 28, 2005, resolves to a website with commercial links to Complainant’s competitors and a link to a website where Respondent is offering to sell the disputed domain name for \$1,000.

## 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 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's numerous trademark registrations for the CATERPILLAR mark sufficiently demonstrate its rights in the mark pursuant to Policy ¶4(a)(i). *See Microsoft Corp. v. Burkes*, FA 652743 (Nat. Arb. Forum Apr. 17, 2006) ("Complainant has established rights in the MICROSOFT mark through registration of the mark with the USPTO."); *see also Thermo Electron Corp et al. v. Xu*, FA 713851 (Nat. Arb. Forum July 12, 2006) (holding that the complainants established rights in marks because the marks were registered with a trademark authority).

The <**caterpillarconstructionequipment.com**> domain name contains Complainant's entire registered CATERPILLAR mark combined with two terms describing a component of Complainant's business. In *Reed Elsevier Inc. & Reed Elsevier Properties Inc. v. Christodoulou*, FA 97321 (Nat. Arb. Forum June 26, 2001), the panel found that the <legallexis.com> and <legallexus.com> domain names were confusingly similar to Complainant's LEXIS mark because the term "legal" describes the type of services Complainant offers under the LEXIS mark. In this case as well, Respondent's mere addition of two terms describing Complainant's business does not sufficiently distinguish the disputed domain name from Complainant's mark. The Panel finds the contested

domain name to be confusingly similar to the mark under Policy ¶4(a)(i). *See Disney v. McSherry*, FA 154589 (Nat. Arb. Forum June 17, 2003) (finding the <disneyvacationvillas.com> domain name to be confusingly similar to Complainant's DISNEY mark because it incorporated Complainant's entire famous mark and merely added two terms to it);

The Panel concludes Complainant has satisfied Policy ¶4(a)(i).

### **Rights or Legitimate Interests**

Complainant alleges Respondent lacks rights and legitimate interests in the <caterpillarconstructionequipment.com> domain name. Complainant must first make a *prima facie* case in support of its allegations, and then the burden shifts to Respondent to show it does have rights or legitimate interests pursuant to Policy ¶4(a)(ii). *See Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that, under certain circumstances, the mere assertion by the complainant that the respondent has no right or legitimate interest is sufficient to shift the burden of proof to the respondent to demonstrate that such a right or legitimate interest does exist); *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).”).

Respondent’s failure to answer the Complaint raises a presumption Respondent has no rights or legitimate interests in the <caterpillarconstructionequipment.com> domain name. *See Branco do Brasil S.A. v. Sync Tech.*, D2000-0727 (WIPO Sept. 1, 2000) (“By its default, Respondent has not contested the allegation . . . that the Respondent lacks any rights or legitimate interests in the domain name. The Panel thus assumes that there was no other reason for the Respondent having registered <bancodobrasil.com> but the presumably known existence of the Complainant’s mark BANCO DO BRASIL”); *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). The Panel will nevertheless examine the record to determine if Respondent has rights or legitimate interests under Policy ¶4(c).

Respondent has registered the domain name under the name “Jonathan Phillips,” and there is no other evidence in the record suggesting Respondent is commonly known by the <caterpillarconstructionequipment.com> domain name. Consequently, Respondent has not established rights or legitimate interests in the <caterpillarconstructionequipment.com> domain name pursuant to Policy ¶4(c)(ii). *See G.D. Searle & Co. v. Cimock*, FA 126829 (Nat. Arb. Forum Nov. 13, 2003) (“Due to the fame of Complainant’s mark there must be strong evidence that Respondent is commonly known by the disputed domain name in order to find that Respondent has rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(c)(ii).

However, there is no evidence on record, and Respondent has not come forward with any proof to establish that it is commonly known as CELEBREXRX or <celebrexrx.com>.”); *see also Am. W. Airlines, Inc. v. Paik*, FA 206396 (Nat. Arb. Forum Dec. 22, 2003) (“Respondent has registered the domain name under the name ‘Ilyoup Paik a/k/a David Sanders.’ Given the WHOIS domain name registration information, Respondent is not commonly known by the [<awvacations.com>] domain name.”).

Respondent is using the <caterpillarconstructionequipment.com> domain name to redirect Internet users seeking information on Complainant’s products to a website displaying links to the products of Complainant’s competitors. In *Expedia, Inc. v. Compaid*, FA 520654 (Nat. Arb. Forum Aug. 30, 2005), the panel found the respondent’s use of a domain name to divert consumers to other travel websites that competed with the complainant was 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 pursuant to Policy ¶4(c)(iii). Because Respondent is using the disputed domain name in a similar fashion and likely profiting from its diversion of Internet users to competing websites, the Panel concludes that Respondent does not have rights or legitimate interests in the <caterpillarconstructionequipment.com> domain name pursuant to Policy ¶4(c)(i) or Policy ¶4(c)(iii). *See 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 concludes Complainant has satisfied Policy ¶4(a)(ii).

### **Registration and Use in Bad Faith**

Respondent’s website at the <caterpillarconstructionequipment.com> domain name contains a link to a website where the domain name is for sale for \$1,000. The Panel reasonably infers \$1,000 is substantially more than Respondent’s out-of-pocket domain name registration and maintenance costs. As a result, the Panel concludes Respondent’s offer to sell is indicative of bad faith registration and use according to Policy ¶4(b)(i). *See Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 180704 (Nat. Arb. Forum Sept. 30, 2003) (“Respondent’s general offer of the disputed domain name registration for sale establishes that the domain name was registered in bad faith under Policy ¶4(b)(i).”); *see also Banca Popolare Friuladria S.p.A. v. Zago*, D2000-0793 (WIPO Sept. 3, 2000) (finding bad faith where the respondent offered the domain names for sale).

Because Respondent is using the <caterpillarconstructionequipment.com> domain name to redirect Internet users to competing websites, the Panel finds Respondent has registered and is using the disputed domain name in order to disrupt Complainant’s business under the CATERPILLAR mark, which constitutes bad faith according to Policy ¶4(b)(iii). *See Marriott Int’l, Inc. v. MCM Tours, Inc.*, FA 444510 (Nat. Arb. Forum May 6, 2005) (“The Respondent is a travel agency and thus operates in the same business as

the Complainant. The parties can therefore be considered as competitors. The Panel thus finds that the Respondent registered the domain name primarily for the purpose of disrupting the business of a competitor, which constitutes evidence of registration and use in bad faith under Policy 4(b)(iii).”); *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).”).

The Panel also finds Respondent’s diversionary use of the <**caterpillarconstructionequipment.com**> domain name for commercial gain violates Policy ¶4(b)(iv), for by linking the domain name to a commercial links page and presumably earning click-through fees, Respondent is taking advantage of the confusing similarity between the disputed domain name and Complainant’s CATERPILLAR mark in order to profit from the goodwill associated with the mark. *See G.D. Searle & Co. v. Celebrex Drugstore*, FA 123933 (Nat. Arb. Forum Nov. 21, 2002) (finding that the respondent registered and used the domain name in bad faith pursuant to Policy ¶4(b)(iv) because the respondent was using the confusingly similar domain name to attract Internet users to its commercial website); *see also Toyota Motor Sales U.S.A. Inc. v. Clelland*, FA 198018 (Nat. Arb. Forum Nov. 10, 2003) (“Respondent used <land-cruiser.com> to advertise its business, which sold goods in competition with Complainant. This establishes bad faith as defined in Policy ¶4(b)(iv).”).

The Panel concludes Complainant has satisfied Policy ¶4(a)(iii).

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



\_\_\_\_\_  
Houston Putnam Lowry, Esq.  
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist  
Dated: December 5, 2006

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