



NATIONAL ARBITRATION FORUM

DECISION

Devitt Insurance Services Limited v. Randall Stevens
Claim Number: FA0904001257387

PARTIES

Complainant is **Devitt Insurance Services Limited** ("Complainant"), represented by **James A. Thomas**, of **Troutman Sanders LLP**, North Carolina, USA. Respondent is **Randall Stevens** ("Respondent"), Lebanon.

REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are <**devittinsurace.com**> and <**wwwdevittinsurance.com**>, registered with **Dynadot, LLC**.

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 April 13, 2009; the National Arbitration Forum received a hard copy of the Complaint on April 14, 2009.

On April 14, 2009, Dynadot, LLC confirmed by e-mail to the National Arbitration Forum that the <**devittinsurace.com**> and <**wwwdevittinsurance.com**> domain names are registered with Dynadot, LLC and that Respondent is the current registrant of the names. Dynadot, LLC has verified that Respondent is bound by the Dynadot, LLC 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 April 15, 2009, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of May 5, 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@devittinsurace.com and postmaster@wwwdevittinsurance.com by e-mail.

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

On May 8, 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 names be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

The trademark on which this Complaint is based is "**DEVITT.**" Complainant Devitt Insurance Services Limited offers a wide range of insurance products and services, including motorcycle, car and home insurance, to customers throughout the United Kingdom. Complainant employs over 220 employees and insures over 130,000 customers. Acquired by The Royal Bank of Scotland Group plc ("RBS") in 2003, Complainant is part of the fifth-largest financial services group in the world.

Complainant's parent company, RBS, is one of the world's leading financial services providers. In addition to its strong UK presence, RBS has offices elsewhere in Europe, Asia and the United States. RBS operates a number of brands worldwide and offers a wide range of financial products and services, including online banking services, to both individual and institutional investors.

Complainant holds several trademark registrations for its "DEVITT" mark which date as far back as 2006 with the UK Intellectual Property Office ("UKIPO") and with the EU Office for Harmonization in the Internal Market ("OHIM").

Complainant, both individually and through its parent company, RBS, owns domain name registrations featuring the well-known "DEVITT" mark, including <devittinsurance.com> (registered 06 May 2003), which resolves to Complainant's website.

As the foregoing indicates, and by virtue of Complainant's established and well-known presence in the insurance marketplace and Complainant's significant commitment to the

marketing and advertising of its “DEVITT” mark, Complainant has built up substantial goodwill in and rights to this mark.

FACTUAL AND LEGAL GROUNDS

This Complaint is based on the following factual and legal grounds:

- a. The Domain Names are identical or confusingly similar to trademarks or service marks in which the Complainant has rights.

The Domain Names are confusingly similar to Complainant’s mark “DEVITT” because each fully incorporates Complainant’s mark, along with additional components that do not serve to distinguish the domain name from Complainant’s mark. Specifically, with regard to the domain name <wwwdevittinsurance.com>, Respondent has simply added the letters “www” and the generic or descriptive term “insurance” to Complainant’s mark “DEVITT.” Similarly, in the domain name <devittinsurace.com>, Respondent has merely added the term “insurace,” which appears to be a slight misspelling of the generic or descriptive term “insurance.” In each instance, Respondent has added a top-level domain name extension to Complainant’s mark. Yet none of these additions make the Domain Names distinct from Complainant’s mark. Complainant’s “DEVITT” mark is the dominant and distinctive element of the Domain Names, and the Domain Names strongly convey the impression of sponsorship by or association with Complainant. Indeed, Respondent appears to have chosen the Domain Names for that very reason. Therefore, the Domain Names are confusingly similar to Complainant’s mark.

Previous administrative panels and arbitrators have repeatedly concluded that a domain name that appropriates another party’s trademark with only slight variations, such as the addition of a generic or descriptive term (or a misspelling of the same) and a generic top-level domain name extension remains confusingly similar to the other party’s mark. As referenced above, Complainant’s business centers on offering insurance-related goods and services. Respondent has either added the term “insurance” or “insurace” to Complainant’s mark “DEVITT” in each of the disputed domain names. The National Arbitration Forum has specifically held that the addition of the generic or descriptive term “insurance” to a trademark does not make distinct an otherwise confusingly similar domain name. *See Churchill Insurance Company Limited v Neil Charlton*, FA 912281 (Nat. Arb. Forum Mar. 12, 2007) (finding the domain name <churchhill-insurance.com> confusingly similar to the complainant’s “CHURCHILL” mark because the “extra addition” of the term “insurance” “failed to sufficiently differentiate the disputed domain name from the mark”); *see also Churchill Insurance Co. Ltd. and Direct Line Insurance plc v. New Alphabet Ltd.*, (holding that the addition of the term “insuranc,” a misspelling of the generic or descriptive term “insurance,” to the complainant’s “CHURCHILL” mark did not sufficiently distinguish the disputed domain name <churchillinsurancclaims.com> for purposes of ICANN Policy). In fact, “[a] general rule under [ICANN] Policy ¶4(a)(i) is that a domain name is confusingly similar to a third-party mark where the domain name fully incorporates the mark and simply adds additional words that correspond to the goods or services offered by the third party under the mark.” *Sony Kabushiki Kaisha v. 0-0 Adult Video Corp.*, FA 475214 (Nat. Arb. Forum June 27, 2005) (finding the domain names <sonycdplayer.com>, <sonyreceiver.com>, and

<sonyremote.com> confusingly similar to the complainant's "SONY" mark). Thus, neither Respondent's addition of the term "insurance" to complainant's "DEVITT" mark in the domain name <wwwdevittinsurance.com>, nor the addition of the misspelled term "insurace" in the domain name <devittinsurace.com> serves to distinguish the Domain Names. Indeed, such additions to Complainant's mark only add to the confusion given the connection between the term "insurance" and Complainant's insurance services. In addition, the generic top-level domain name extension ".com" in each disputed domain name is irrelevant to the analysis of confusing similarity. *See Gardline Surveys Ltd. v. Domain Fin. Ltd.*, FA 153545 (Nat. Arb. Forum May 27, 2003) ("The addition of a top-level domain is irrelevant when establishing whether or not a mark is identical or confusingly similar, because top-level domains are a required element of every domain name").

Further, Respondent's domain name <wwwdevittinsurance.com> contains Complainant's "DEVITT" mark in its entirety and merely adds the letters "www," a common abbreviation for "world wide web." Previous panels have found that the addition of the letters "www" to a mark fails to distinguish a domain name from the mark, especially given that these letters (along with a period), typically precede a domain name. *See Bank of Am. Corp. v. InterMos*, FA 95092 (Nat. Arb. Forum Aug. 1, 2000) (finding the respondent's domain name <wwwbankofamerica.com> confusingly similar to the complainant's trademark "BANK OF AMERICA" because 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 Ameriprise Financial, Inc. v. Bao Shui Chen*, FA 1075406, (Nat. Arb. Forum Oct. 29, 2007) (finding the respondent's domain name <wwwameriprise.com> confusingly similar to the complainant's "AMERIPRISE" mark because it merely adds the "www" prefix to the mark).

Finally, Respondent's use of the confusingly similar Domain Names to redirect Internet users to a directory site with links to insurance products and services similar to Complainant's products and services further increases the likelihood of confusion. Respondent is using the Domain Names to redirect to websites that display links to various providers of insurance products and services. Respondent's use of the Domain Names in this manner increases the likelihood of consumer confusion by causing consumers to mistakenly believe they have reached a website sponsored by or associated with the Complainant. *See Cancer Treatment Ctrs. of Am., Inc. v. Chan*, Case. No. D2003-0611 (WIPO Sept. 18, 2003) (holding that the respondent's use of the domain names (<cancercenterofamerica.com> and <cancertreatmentcenterofamerica.com>) to display search results for cancer treatment centers increased the likelihood that an Internet user would mistakenly believe the respondent's websites were associated with the complainant). Accordingly, Respondent's use of the Domain Names to redirect to websites displaying links for insurance products and services increases the likelihood of consumer confusion by causing consumers to believe mistakenly that Respondent's website is associated with Complainant.

In light of the foregoing, Complainant respectfully asserts that it has met its burden of establishing that the Domain Names are identical or confusingly similar to Complainant's "DEVITT" mark.

- b. The Respondent has no rights to or legitimate interests in the Domain Names that are the subject of this Complaint.

Respondent has no rights to or legitimate interests in the Domain Names. Any value the Domain Names may have is derived solely by the incorporation of Complainant's "DEVITT" mark. See *Am. West Airlines v. N. Am. Leasing, LLC*, FA 0232956 (Nat. Arb. Forum Mar. 18, 2004) (finding that the domain names, including <americawestacations.com>, had value only on account of the incorporation of the complainant's mark "AMERICA WEST", which the respondent had utilized without authorization by the complainant). Moreover, Complainant has not licensed or otherwise authorized Respondent to use its "DEVITT" mark, or any variations thereof. Respondent registered both Domain Names on October 29, 2008, over 3 years after Complainant first registered its "DEVITT" mark.

Under the ICANN Policy, when the Complainant has demonstrated rights in a domain name, the burden shifts to the respondent to prove that it has rights in the name. ICANN Policy ¶4(c)(i)–(iii) provides three situations under which a respondent would have rights in a domain name:

- (i) before any notice to you of the dispute, your use of, or 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; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Respondent cannot establish any of these situations and, therefore, cannot demonstrate any rights or legitimate interests in the Domain Names.

Specifically, Respondent's use of confusingly similar Domain Names to misdirect Internet users to a website displaying various commercial links, including links to the very types of services offered by Complainant under the "DEVITT" mark, is not a bona fide offering of goods or services or a legitimate non-commercial or fair use of the Domain Names. For example, Respondent's websites provide links entitled "Cheap Auto Insurance," "Auto Insurance Quotes," and "Online Auto Insurance Quote" in direct correlation to Complainant's insurance-related products and services. Upon clicking these links, Internet users are redirected to the web pages of companies providing services in competition with Complainant, as well as websites containing additional advertising and links to websites of competing service providers. Thus, it appears that Respondent is capitalizing on Complainant's well-known mark by attracting Internet users, including Complainant's current and prospective customers, to its website and redirecting them to Complainant's competitors, presumably in exchange for "click-through" fees.

Such use does not constitute 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). See *National Westminster Bank plc v. 121 Internet c/o Direct Communication*, FA 0671023 (Nat. Arb. Forum May 16, 2006) (holding that the domain name <natwest.net> was confusingly similar to the complainant's NATWEST mark, and the respondent's use of the domain name to divert Internet users to the respondent's own website containing links to the complainant's direct competitors was not a bona fide offering of goods or services under Policy ¶4(c)(i) or a legitimate noncommercial or fair use under Policy ¶4(c)(iii)); *Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 0180704 (Nat. Arb. Forum Sept. 30, 2003) ("Respondent's demonstrated intent to divert Internet users seeking Complainant's website to a website of Respondent and for Respondent's benefit is not a bona fide offering of goods or services under Policy ¶4(c)(i) and it is not a legitimate noncommercial or fair use under Policy ¶4(c)(iii)."); *WeddingChannel.com Inc. v. Vasiliev*, FA 156716 (Nat. Arb. Forum June 12, 2003) (finding that the respondent's use of the disputed domain name to redirect Internet users to websites unrelated to the complainant's mark, including websites where the respondent presumably receives a referral fee for each misdirected Internet user, was not a bona fide offering of goods or services as contemplated by the Policy); *TM Acquisition Corp. v. Sign Guards*, FA 0132439 (Nat. Arb. Forum Dec. 31, 2002) (finding the respondent lacked rights or legitimate interests in several domain names, including <century21alaska.com>, where "Respondent appropriated Complainant's CENTURY 21 mark and used it to redirect Internet users to a website that hosts links to websites offering products in competition with Complainant. Respondent's diversionary uses alone would deny it the protections of Policy ¶4(c)(i) and (iii); Respondent's diversion to websites of Complainant's competitors only reinforces this conclusion").

Given that Complainant has trademark rights in the distinctive, well-known "DEVITT" mark, any actual use by Respondent of the Domain Names would infringe on Complainant's trademark rights. As a matter of law, no use by Respondent of the Domain Names could be legitimate or used in connection with a *bona fide* offering of goods or services. See *Broadcom Corp. v. Ayers Int'l Group, Inc.*, FA 112562 (Nat. Arb. Forum July 24, 2002) (finding that "any actual use by Respondent of the disputed domain name would be an infringement of Complainant's statutory rights in its BROADCOM trademark"); see also *Deutsche Bank Aktiengesellschaft v New York TV Tickets Inc.*, WIPO Case No. D2001-1314 (Feb. 12, 2002) ("given the notoriety of the Complainant's Deutsche Bank Mark, any use which the Respondent would make of any domain name, as here, that incorporated the Complainant's Deutsche Bank Mark, or one confusingly similar thereto, would likely violate the exclusive trademark rights which the Complainant has long held in its mark"). Accordingly, Respondent will not be able to use the Domain Names in connection with a *bona fide* offering of goods or services under Policy ¶4(c)(i), or for a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii).

Finally, there is no indication that Respondent is commonly known by the names "devittinsurace," "wwwdevittinsurance," or either of the disputed domain names. See ICANN Policy ¶4(c)(ii). To the contrary, Respondent registered the Domain Names under the name "Randall Stevens," which has no apparent relation to Complainant's "DEVITT" mark or to Complainant. This constitutes further evidence that Respondent is not commonly known by the

Domain Names. See *Wells Fargo & Co. v. Onlyne Corp. Services II, Inc.* FA 0198969 (Nat. Arb. Forum Nov. 17, 2003) (“Given the WHOIS contact information for the disputed domain <wellsfargo.com>, one can infer that Respondent ... is not commonly known by the name ‘wellsfargo’ in any derivation”); *Nike, Inc. v. BargainName.com*, FA 0496731 (Nat. Arb. Forum August 2, 2005) (pointing out that the respondent had registered the domain name <nikezone.com> under the name “BargainName.com” and noting that based on the Whois contact information, one can infer that the respondent is not commonly known by the name).

Complainant respectfully asserts that it has met its burden of proving that Respondent has no rights or legitimate interests in respect to the Domain Names.

c. The Domain Names were registered and are being used in bad faith.

Complainant’s “DEVITT” mark is a registered trademark and well-known in the United Kingdom. Based on the fame of Complainant’s mark, the fact that Respondent chose Domain Names which identically incorporate Complainant’s mark, and the fact that Respondent used the Domain Names to redirect Internet users to a link site containing links to Complainant’s competitors, it is clear that Respondent had knowledge of Complainant’s mark and is attempting to take advantage of Complainant’s goodwill. See *Morgan Stanley v. Blog Network Int’l*, FA 0564204 (Nat. Arb. Forum Oct. 28, 2005) (stating, “[t]here is a legal presumption of bad faith, when Respondent reasonably should have been aware of Complainant’s trademarks, actually or constructively”); see also *Reed Elsevier Inc. v. Colan*, FA 0161469 (Nat. Arb. Forum Sept. 19, 2003) (finding bad faith by the respondent based solely on the fact that the respondent had constructive knowledge of the complainant’s registered trademark). Since Respondent had knowledge of Complainant’s mark, Respondent’s registration and continued holding of the Domain Names was and is in bad faith.

Further, Respondent’s use of the Domain Names to divert Internet users to its directory/link site primarily for the purpose of disrupting Complainant’s business constitutes registration and use in bad faith pursuant to Policy ¶4(b)(iii). In *National Westminster Bank plc v. [Registrant]*, the Panel found that the respondent’s registration and use of the disputed domain name to operate a website that promoted the complainant’s direct competitors with hyperlinks and advertisements “clearly disrupts Complainant’s business as it encourages Internet users to conduct business with Complainant’s competitors” and constituted registration and use in bad faith under Policy ¶4(b)(iii). FA 1212874 (Nat. Arb. Forum Aug. 8, 2008). See also *National Westminster Bank plc v. 121 Internet c/o Direct Communication*, FA 0671023 (Nat. Arb. Forum May 16, 2006) (finding that the respondent’s use of the disputed domain name to operate a website with links to the complainant’s competitors constituted evidence that the respondent registered the domain name “primarily to disrupt Complainant’s business in violation of Policy ¶4(b)(iii)”; *Red Hat, Inc. v. Haecke*, FA 0726010 (Nat. Arb. Forum July 24, 2006) (holding 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). Thus, Respondent’s use of the Domain Names to redirect Internet users to

a website displaying links related to insurance products and services in competition with Complainant for the purpose of disrupting Complainant's business constitutes bad faith registration and use under Policy ¶4(b)(iii).

Additionally, ICANN policy dictates that bad faith can be established by evidence demonstrating that “by using the domain name, [Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [Respondent's] web site. . . , 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 [Respondent's] web site or location.” ICANN Policy ¶4(b)(iv) (Emphasis added). In *Delta Corp. Identity, Inc. and Delta Air Lines, Inc. v. U21 Comm., Inc.*, FA 582987 (Nat. Arb. Forum Dec. 9, 2005), the respondent registered and used <deltaairlines.net> to operate a commercial website which linked Internet users to some of Complainant Delta Airlines' competitors in the airline travel business. The panel found that the respondent likely profited through referral fees for diverting Internet users to competitors' websites and held that the respondent's “use of Complainant's registered DELTA mark to attract Complainant's customers to Complainant's competitors via Respondent's directory website for Respondent's financial gain [wa]s evidence that Respondent registered and used the disputed domain name in bad faith under Policy ¶4(b)(iv).” Similarly, in *State Farm Mutual Auto. Ins. Co. v. Jackson*, FA 314119 (Nat. Arb. Forum Sept. 28, 2004), where the respondent used the domain name <wwwstatefarminsurance.com> to operate a website that provided links to insurance websites which competed with Complainant State Farm, the panel inferred that the respondent used the confusingly similar domain name for commercial gain and concluded that the respondent registered and used the domain name in bad faith pursuant to Policy ¶4(b)(iv). *State Farm Mutual Auto. Ins. Co. v. Unasi, Inc.*, FA 521055 (Nat. Arb. Forum Aug. 29, 2005) (inferring that the respondent received click-through fees for diverting Internet users searching for the complainant to the complainant's competitors, and finding that the respondent registered and used the disputed domain names in bad faith pursuant to Policy ¶4(b)(iv) where the respondent's registered domain names contained confusingly similar versions of the complainant's well-known mark “STATE FARM”). In the present case, Respondent is exploiting Complainant's famous name and mark to divert Complainant's customers or prospective customers away from Complainant's site and to the sites of its competitors for Respondent's own commercial gain and therefore has acted in bad faith under Policy ¶4(b)(iv).

For these reasons, Complainant respectfully asserts that it has met its burden of proving that the Domain Names were registered and are being used in bad faith.

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

FINDINGS

Complainant, Devitt Insurance Services Limited, is an insurance company that provides its customers with a wide range of insurance products throughout the United Kingdom. Complainant owns a trademark registration with the Office for Harmonization in the Internal Market (“OHIM”) for the DEVITT mark (Reg. No. 4,277,166 issued April 13, 2006).

Respondent registered the disputed domain names on October 29, 2008. Respondent's disputed domain names resolve to websites displaying third-party links to websites 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 has established rights in the DEVITT mark for purposes of Policy ¶4(a)(i) through its trademark registration with the OHIM. *See Metro. Life Ins. Co. v. Bonds*, FA 873143 (Nat. Arb. Forum Feb. 16, 2007) (finding that a trademark registration adequately demonstrates a complainant's rights in a mark under Policy ¶4(a)(i)); *see also Thermo Electron Corp. v. Xu*, FA 713851 (Nat. Arb. Forum July 12, 2006) (finding that the complainants had established rights in marks where the marks were registered with a trademark authority).

Respondent's <**devittinsurance.com**> and <**wwwdevittinsurance.com**> domain names are confusingly similar to Complainant's DEVITT mark pursuant to Policy ¶4(a)(i). Respondent's <**devittinsurance.com**> domain name contains Complainant's mark in its entirety, adds a misspelled version of the generic term "insurance," and adds the generic

top-level domain (“gTLD”) “.com.” Respondent’s <wwwdevittinsurance.com> domain name also contains Complainant’s DEVITT mark, adds the generic term “insurance,” adds the prefix “www,” and adds the gTLD “.com.” The Panel finds a disputed domain name that adds a generic term with an obvious relationship to Complainant’s business to Complainant’s mark, even if the generic term is misspelled, creates a confusing similarity between the disputed domain name and the registered mark. *See Kohler Co. v. Curley*, FA 890812 (Nat. Arb. Forum Mar. 5, 2007) (finding confusing similarity where <kohlerbaths.com>, the disputed domain name, contained the complainant’s mark in its entirety adding “the descriptive term ‘baths,’ which is an obvious allusion to complainant’s business.”); *see also Dow Jones & Co., Inc. v. Powerclick, Inc.*, D2000-1259 (WIPO Dec. 1, 2000) (holding that the deliberate introduction of errors or changes, such as the addition of a fourth “w” or the omission of periods or other such “generic” typos do not change respondent’s infringement on a core trademark held by the complainant). In addition, the Panel finds the addition of “www” and a gTLD fail to distinguish the disputed domain name from Complainant’s registered mark. *See Bank of Am. Corp. v. InterMos*, FA 95092 (Nat. Arb. Forum Aug. 1, 2000) (finding that the respondent’s domain name <wwwbankofamerica.com> is confusingly similar to the complainant’s registered trademark BANK OF AMERICA because 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 Rollerblade, Inc. v. McCrady*, D2000-0429 (WIPO June 25, 2000) (finding that the top level of the domain name such as “.net” or “.com” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar). Therefore, the Panel finds Respondent’s disputed domain names are confusingly similar to Complainant’s DEVITT 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 disputed domain names. If Complainant makes a *prima facie* case in support of its allegations, the burden shifts to Respondent to prove that rights and legitimate interests exist pursuant to Policy ¶4(a)(ii). The Panel finds Complainant has established a *prima facie* case. *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.”).

Respondent is neither commonly known by, nor licensed to register, the disputed domain names. Respondent's WHOIS information identifies Respondent as "Randall Stevens." The Panel finds Respondent is not commonly known by the disputed domain names. Therefore, pursuant to Policy ¶4(c)(ii), Respondent lacks rights and legitimate interests in the disputed domain names. *See M. Shanken Commc'ns v. WORLDTRAVELERSONLINE.COM*, FA 740335 (Nat. Arb. Forum Aug. 3, 2006) (finding that the respondent was not commonly known by the <cigaraficionada.com> domain name under Policy ¶4(c)(ii) based on the WHOIS information and other evidence in the record); *see also Coppertown Drive-Thru Sys., LLC v. Snowden*, FA 715089 (Nat. Arb. Forum July 17, 2006) (concluding that the respondent was not commonly known by the <coppertown.com> domain name where there was no evidence in the record, including the WHOIS information, suggesting that the respondent was commonly known by the disputed domain name).

Respondent is using the disputed domain names to display links advertising third-party websites, some of which are in competition with Complainant. The Panel infers Respondent is using the disputed domain names 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).

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

Registration and Use in Bad Faith

The Panel finds Respondent's use of the disputed domain names to disrupt the business of Complainant by offering links to competitors is 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 <eebay.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).").

In addition, Respondent is using the disputed domain names to intentionally divert Internet users to the associated websites, which display third-party links to competing websites. In cases such as this, the Panel assumes Respondent is collecting click-through fees and attempting to profit by creating a likelihood of confusion between Complainant's mark and the disputed domain names. The Panel finds Respondent's use of the disputed domain names is 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 Univ. of Houston Sys. v. Salvia Corp.*, FA 637920 (Nat. Arb. Forum Mar. 21, 2006) ("Respondent is using the disputed domain name to operate a website which features links to competing and non-competing commercial websites from which Respondent presumably receives referral fees. Such use for Respondent's own commercial gain is evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv).").

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 <**devittinsurace.com**> and <**wwwdevittinsurance.com**> domain names be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: May 21, 2009

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