



NATIONAL ARBITRATION FORUM

DECISION

Enterprise Rent-A-Car Company v. T B a/k/a Growthstrategies
Claim Number: FA0609000809736

PARTIES

Complainant is **Enterprise Rent-A-Car Company** ("Complainant"), represented by **Vicki L. Little**, of **Schultz & Little, L.L.P.**, 640 Cepi Drive, Suite A, Chesterfield, MO 63005-1221. Respondent is **T B a/k/a Growthstrategies** ("Respondent"), S 12, Saltsjobaden 13344 Sweden.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**enterprisecarrental.biz**>, registered with **Registerfly.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 29, 2006; the National Arbitration Forum received a hard copy of the Complaint on October 2, 2006.

On October 10, 2006, Registerfly.com, Inc. confirmed by e-mail to the National Arbitration Forum that the <**enterprisecarrental.biz**> domain name is registered with Registerfly.com, Inc. and that Respondent is the current registrant of the name. Registerfly.com, Inc. has verified that Respondent is bound by the Registerfly.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 October 11, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of October 31, 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@enterprisecarrental.biz by e-mail.

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

On November 3, 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:

Complainant owns all right, title and interest in, to and under the following registrations and marks, among others, including, but not limited to, all goodwill associated therewith:

MARK	REG. NO.	REG. DATE	SERVICES
Enterprise	1,343,167	June 18, 1985	Automotive fleet management services; automotive repair services; short-term rental and leasing of automobiles and trucks; automotive dealership services
E Enterprise	2,052,192	April 15, 1997	Vehicle rental and leasing services; automobile dealership services
Enterprise Rent-A-Car	2,371,192	July 25, 2000	Vehicle rental and leasing services, and reservation services for the rental and

			leasing of vehicles
E Enterprise rent-a-car	2,010,244	October 22, 1996	Vehicle rental and leasing services
E Enterprise rent-a-car	2,010,245	October 22, 1996	Vehicle rental and leasing services
E Enterprise rent-a-car truck	2,532,725	January 22, 2002	Vehicle rental and leasing services, and reservation services for the rental and leasing of vehicles
E Enterprise car sales	2,052,193	April 15, 1997	Automobile dealership services
E Enterprise 1 800 car sales	2,192,909	September 29, 1998	Automobile dealership services
E Enterprise 1 800 car sales	2,152,554	April 21, 1998	Automobile dealership services
E Enterprise	2,190,147	September 22, 1998	Automobile fleet management services; automobile repair services; short-term rental services of automobiles and trucks; automobile leasing services; automobile dealership services
E Enterprise fleet services	2,010,290	October 22, 1996	Automobile repair services; automobile dealership services

Complainant also has the following trademark registrations in Sweden, where Respondent is located:

MARK	REG. NO.	DATE ISSUED
e & design	347 164	6/29/01
e & design	257005	3/31/94
e Enterprise	330 639	3/26/99
ECAR	346 826	6/08/01
Wrapped car design	346 825	6/08/01
e Enterprise	374859	9/16/05

These trademarks, together with those listed above for the U.S., are hereinafter collectively referred to as the "Enterprise Marks" or "Marks."

In addition, Complainant properly registered the domain name <enterpriserentacar.com> on August 20, 1996, and the domain name <enterprise.com> on June 1, 1998, both with Network Solutions, Inc.

FACTUAL AND LEGAL GROUNDS

This Complaint is based upon, *inter alia*, the following facts and legal grounds (ICANN Rule (b)(ix)):

A. Respondent's Domain Name Is Confusingly Similar to Complainant's Marks.

(ICANN Rule 3(b)(ix)(1); ICANN Policy ¶4(a)(ii).)

Complainant, Enterprise Rent-A-Car Company, has registered its Marks in connection with vehicle rental, leasing and sales services, and those Marks have been used since 1985. Complainant has spent much time and many resources promoting its business under the Enterprise Marks, and has developed substantial goodwill in connection with that business and the associated Marks. The Enterprise Marks are famous and distinctive, and the public has come to associate them closely with Complainant and its business. Complainant has also registered and used its domain names <enterpriserentacar.com> and <enterprise.com> in order further to promote its business and goodwill. Complainant has thus established rights in the Enterprise Marks. *See Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (NAF Feb. 18, 2004) (registration of mark with USPTO establishes complainant's rights in the mark); *Men's Wearhouse, Inc. v. Wick*, FA 117861 (NAF Sept. 16, 2002) ("Under U.S. trademark law, registered marks hold a presumption that they are inherently distinctive and have acquired a secondary meaning."); *Janus Int'l Holding Co. v. Rademacher*, D2002-0201 (WIPO March 5, 2002) (registration of a mark is *prima facie* evidence of validity, and that creates a rebuttable presumption that the mark is inherently distinctive).

Respondent's domain name <enterprisecarrental.biz> is confusingly similar to Complainant's registered and common law Enterprise Marks listed above, and to Complainant's domain names <enterpriserentacar.com> and <enterprise.com>. Respondent's domain name incorporates both Complainant's famous Marks and a specific reference to Complainant's car rental business. These facts establish confusing similarity. *See See Enterprise Rent-A-Car Company v. Drivitaway.com a/k/a Stacy Ratner*, FA 192578 (NAF Oct. 22, 2003) (domain name <enterprisecarauctions.com> found to be confusingly similar to Complainant's name and marks); *Enterprise Rent-A-Car Company v. Dotsan*, FA 114349 (NAF July 9, 2002) (confusing similarity found where disputed domain name included both Complainant's trademarked name and reference to Complainant's business); *Brown & Bigelow, Inc. v. Rodela*, FA 96466 (NAF March 5, 2001) (finding confusing similarity where domain name used complainant's business name and a reference to the type of business conducted); *Ohio Lottery Comm'n v. John Barbera*, FA 96571 (NAF March 1, 2001) (domain name that included mark and reference to Complainant's business was confusingly similar); *Space Imaging, LLC v.*

Brownwell, AF-0298 (eRes Sept. 22, 2000) (finding confusing similarity where domain name included reference to complainant's business); *Fossil, Inc. v. NAS*, FA 92525 (NAF Feb. 23, 2000) (finding confusing similarity where domain name included complainant's mark and reference to complainant's business).

In this case, the confusion caused by Respondent's use of a domain name that completely incorporates Complainant's famous name is compounded by the fact that the web-site associated with Respondent's domain name provides direct links to the web-sites of Complainant's rental-car competitors. Because of the confusing similarity between Complainant's own Marks and the disputed domain name, there is a substantial risk that members of the public will associate the disputed domain name and the associated web-site and links with Complainant's business and will incorrectly identify Complainant as the source of the information provided. Complainant is not related in any way to Respondent or its web-site. *Cf. Fossil, Inc. v. NAS*, FA 92525 (NAF Feb. 23, 2000); *Ohio Lottery Commission v. John Barbera*, FA 96571 (NAF March 1, 2001); *Caterpillar Inc. v. Roam the Planet*, D2000-0275 (WIPO March 25, 2000).

B. Respondent Has No Legitimate Rights or Interests in Complainant's Marks or in the Disputed Domain Name.

(ICANN Rule 3(b)(ix)(2); ICANN Policy ¶4(a)(ii).)

Respondent has no legitimate rights or interests in either the Enterprise Marks or the disputed domain name.

1. Respondent is not associated in any way with Complainant and has never been authorized or licensed to use Complainant's valuable, famous and distinctive Enterprise Marks.
2. On information and belief, aside from Respondent's illegal registration and use of the <enterprisecarrental.biz> domain name, Respondent does not do business as "Enterprise."
3. Respondent is not making a legitimate non-commercial use of the domain name.
4. The disputed domain name was first registered to Respondent on September 1, 2006, more than twenty years after Complainant's first registration of an Enterprise Mark, ten (10) years after Complainant registered the domain name <enterpriserentacar.com>, and eight (8) years after Complainant registered the domain name <enterprise.com>. Complainant's Swedish trademark registrations also significantly pre-date Respondent's registrations of the disputed domain names.

Based on these facts, Respondent has no legitimate rights or interests in the disputed domain name. *See Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO March 14, 2000) (finding no rights or legitimate interest where the

respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name); *Charles Jourdan Holding AG v. AAIM*, D 2000-0403 (WIPO June 27, 2000) (finding no rights or legitimate interests where: (1) the respondent was not licensed by the complainant; (2) the complainant's prior rights to the domain names preceded the respondent's registration; and (3) the respondent was not commonly known by the name in question).

C. Respondent Has Registered and Used the Disputed Domain Name in Bad Faith.

(ICANN Rule 3(b)(ix)(3); ICANN Policy ¶4(a)(iii).)

Respondent has registered and used the disputed domain name, <enterprisecarrental.biz>, in bad faith. It is clear from the domain name itself, its confusing similarity to Complainant's famous Marks, and Respondent's use of it in connection with links to car rental services, that Respondent was aware of Complainant's famous Marks and of Complainant's business before registering the domain name. These facts by themselves demonstrate Respondent's bad faith. See *Enterprise Rent-A-Car Company v. Moe Malakouti*, FA 125370 (NAF Dec. 2, 2002) (registration of an infringing domain name when the respondent has actual or constructive notice of complainant's mark evidences bad faith); *Reed Elsevier, Inc. & Reed Elsevier Properties, Inc. v. Andrew Christodoulou*, FA 97321 (NAF June 26, 2001) (the obvious fame of complainant's mark evidences Respondent's bad faith); *Hannover Ruckversicherungsgesellschaft*, FA 102724 (NAF Jan. 7, 2001) (respondent's intentional selection of a domain name that wholly incorporated complainant's famous mark evidences bad faith).

The fact that the web-site associated with Respondent's domain name is directly linked to other car rental sites is especially damaging. Due to the confusing similarity between the disputed domain name and Complainant's famous Marks, internet users seeking information regarding Complainant and its business are likely inadvertently to reach Respondent's web-site, and then be misdirected to a competing rental car business. Respondent obviously intended to gain advantage from this confusion in registering the domain name in the first place. Respondent's actions are damaging to Complainant and dilutive of its Marks, and they constitute bad faith. See ICANN Policy ¶4(b) (iv) (bad faith evidenced by registrant's use of domain name intentionally to attract internet users to web-site by creating a likelihood of confusion with complainant's mark as source of or affiliation with web-site); *Baccarat SA v. Web Domain Names*, Case No. D2006-0038 (WIPO Feb. 28, 2006); *Enterprise Rent-A-Car v. LaPorte Holdings, Inc.*, FA 417764 (NAF March 28, 2005) (panel found that this Respondent was intentionally creating a likelihood of confusion with Complainant's marks with respect to a different domain name in order to attract internet users to Respondent's site for its own commercial gain); *Enterprise Rent-A-Car Company v. Dotsan*, FA 114349 (NAF July 9, 2002) (bad faith demonstrated by respondent's use of confusingly similar name to attract consumers to a site that offers competing services); *Busy Body, Inc. v. Fitness Outlet, Inc.*, D2000-0127 (WIPO April 22, 2000) (bad faith shown by respondent's attempt to use famous name to

attract customers to same line of business); *Fossil Inc. v. NAS*, FA 92525 (NAF Feb. 23, 2000) (finding that the respondent acted in bad faith by registering the <fossilwarch.com> domain name and using it to sell watches when the respondent had not been authorized by the complainant to sell its goods).

Finally, given the nature of the domain name, which incorporates both Complainant's famous name and a specific reference to the car rental business, it is difficult to imagine a legitimate use to which Respondent could put the domain name. In these circumstances, the mere holding of a confusingly similar domain name constitutes bad faith. See *Nat'l Gold Buyers Ass'n, Inc. v. Pro Star Ltd. Partnership*, FA 97292 (NAF June 27, 2001) (respondent's holding of domain name demonstrates bad faith); *Reed Elsevier, Inc. & Reed Elsevier Properties, Inc. v. Andrew Christodoulou*, FA 97321 (NAF June 26, 2001) (respondent's holding, plus the obvious fame of complainant's mark, evidence bad faith); *Glimcher Holdings Ltd. Partnership v. NetPlus Communications, Inc.*, FA 97041 (NAF May 14, 2001) (bad faith demonstrated by fact that respondent could not have used domain name without infringing on complainant's rights).

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

FINDINGS

Complainant, Enterprise Rent-A-Car Company, has continuously used the ENTERPRISE mark in connection with vehicle rental, leasing and sales services since 1985.

Complainant operates websites at the <enterprise.com> and <enterpriserentacar.com> domain name.

Complainant holds a trademark registration with the United States Patent and Trademark Office ("USPTO") for the ENTERPRISE mark (Reg. No. 1,343,167 issued June 18, 1985).

Respondent registered the <enterprisecarrental.biz> domain name on September 1, 2006. Respondent is using the disputed domain name to maintain a commercial web directory of links to other rental car companies.

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 has registered the ENTERPRISE mark with the USPTO. The panel in *Microsoft Corp. v. Burkes*, FA 652743 (Nat. Arb. Forum Apr. 17, 2006) stated, "Complainant has established rights in the MICROSOFT mark through registration of the mark with the USPTO." In addition, the panel in *Paisley Park Enters. v. Lawson*, FA 384834 (Nat. Arb. Forum Feb. 1, 2005), also found that registration of a mark with the USPTO established a complainant's rights in a mark for purposes of Policy ¶4(a)(i). Consequently, the Panel finds Complainant's trademark registration for the ENTERPRISE mark to sufficiently establish its rights in the mark pursuant to Policy ¶4(a)(i).

Respondent has merely added the terms "car" and "rental," terms which describe Complainant's car rental business, to Complainant's ENTERPRISE mark in the <enterprisecarrental.biz> domain name. In *Parfums Christian Dior v. I Netpower, Inc.*, D2000-0022 (WIPO Mar. 3, 2000), the panel held that the respondent's four domain names were confusingly similar to the complainant's DIOR mark because each merely added a descriptive word such as "fashion" or "cosmetics," areas in which the complainant was highly successful. Likewise, Respondent's addition of terms describing Complainant's business renders the disputed domain names confusingly similar to the mark pursuant to Policy ¶4(a)(i). *See Am. Express Co. v. Buy Now*, FA 318783 (Nat. Arb. Forum Oct. 14, 2004) ("In the view of the Panel, the disputed domain names are confusingly similar to Complainant's AMERICAN EXPRESS and AMEX marks. Each disputed domain name contains the AMERICAN EXPRESS or AMEX marks in its entirety and merely adds nondistinctive, descriptive and generic terms, some of which describe Complainant's business.").

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

Rights or Legitimate Interests

Complainant claims Respondent has no rights or legitimate interests in the <**enterprisearrental.biz**> domain name. Complainant has the initial burden of proof in establishing that Respondent lacks rights or legitimate interests in the domain name. Once Complainant makes a *prima facie* case in support of its allegations, the burden then shifts to Respondent to show it does have rights or legitimate interests pursuant to Policy ¶4(a)(ii). See *Document Tech., Inc. v. Int’l Elec. Commc’ns Inc.*, D2000-0270 (WIPO Jun. 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 *Hanna-Barbera Productions, Inc. v. Entm’t Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) (holding that the complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name).

Respondent’s failure to answer the Complaint raises a presumption Respondent has no rights or legitimate interests in the disputed domain name. See *Bank of Am. Corp. v. McCall*, FA 135012 (Nat. Arb. Forum Dec. 31, 2002) (“Respondent’s failure to respond not only results in its failure to meet its burden, but also will be viewed as evidence itself that Respondent lacks rights and legitimate interests in the disputed domain name.”); see also *Canadian Imperial Bank of Commerce v. D3M Virtual Reality Inc.*, AF-0336 (eResolution Sept. 23, 2000) (finding no rights or legitimate interests where no such right or interest was immediately apparent to the panel and the respondent did not come forward to suggest any right or interest it may have possessed). However, the Panel will now examine the record to determine if Respondent has rights or legitimate interests under Policy ¶4(c).

Respondent is not commonly known by the <**enterprisearrental.biz**> domain name, because the WHOIS information lists “T B a/k/a Growthstrategies” as the registrant of the domain name, and there is no other evidence in the record suggesting Respondent is commonly known by the disputed domain name. Thus, Respondent has not established rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(c)(ii). 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 Systems, LLC v. Snowden*, FA 715089 (Nat. Arb. Forum Jul. 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 <enterprisecarrental.biz> domain name to operate a commercial web directory with links to websites offering car-related services, some of which are Complainant's competitors. Respondent is likely receiving click-through fees for each consumer it diverts to these websites and therefore, Respondent is not using the disputed domain name 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). See *Expedia, Inc. v. Compaid*, FA 520654 (Nat. Arb. Forum Aug. 30, 2005) (finding that the respondent's use of the <expediate.com> domain name to redirect Internet users to a website featuring links to travel services that competed with the complainant was not a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii)); see also *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, 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).

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

Registration and Use in Bad Faith

In addition, by redirecting Internet users seeking Complainant's car rental services to competing websites, Respondent has registered and used the <enterprisecarrental.biz> domain name in order to disrupt Complainant's business in violation of Policy ¶4(b)(iii). See *S. Exposure v. S. Exposure, Inc.*, FA 94864 (Nat. Arb. Forum July 18, 2000) (finding that the respondent registered the domain name in question to disrupt the business of the complainant, a competitor of the respondent); 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).").

Respondent's registration and use of the disputed domain name also constitutes bad faith under Policy ¶4(b)(iv), because Respondent is using the disputed domain name to operate a commercial website with links to Complainant's competitors in the car rental industry. In *Allianz of America Corp. v. Bond*, FA 680624 (Nat. Arb. Forum June 2, 2006), the panel found bad faith registration and use under Policy ¶4(b)(iv) where the respondent was diverting Internet users searching for the complainant to its own website and likely profiting from click-through fees. The Panel infers Respondent is also earning click-through fees for diverting Internet users to websites competing with Complainant. Accordingly, the Panel finds bad faith registration and use under Policy ¶4(b)(iv). See *G.D. Searle & Co. v. Celebrix Drugstore*, FA 123933 (Nat. Arb. Forum Nov. 21, 2002) (finding that the respondent registered and used the domain name in bad faith pursuant to

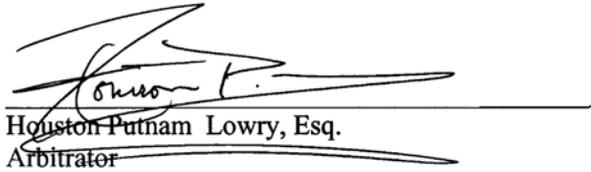
Policy ¶4(b)(iv) because the respondent was using the confusingly similar domain name to attract Internet users to its commercial website).

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 <**enterprisecarrental.biz**> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: November 17, 2006

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

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

NATIONAL ARBITRATION FORUM