



NATIONAL ARBITRATION FORUM

DECISION

Seiko Epson Corporation and Epson America, Inc. v. Nat Networks
Claim Number: FA0608000783406

PARTIES

Complainants are **Seiko Epson Corporation** and **Epson America, Inc.** (collectively, "Complainant"), represented by **R. Parrish Freeman**, of **Workman Nydegger**, 1000 Eagle Gate Tower, 60 East South Temple, Salt Lake City, UT 84111. Respondent is **Nat Networks** ("Respondent"), 1768 46 St, Brooklyn, NY 11204.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**epsondeals.com**>, registered with **Melbourne It, Ltd.** d/b/a **Internet Names Worldwide**.

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 August 23, 2006; the National Arbitration Forum received a hard copy of the Complaint on August 24, 2006.

On August 23, 2006, Melbourne It, Ltd. d/b/a Internet Names Worldwide confirmed by e-mail to the National Arbitration Forum that the <**epsondeals.com**> domain name is registered with Melbourne It, Ltd. d/b/a Internet Names Worldwide and that Respondent is the current registrant of the name. Melbourne It, Ltd. d/b/a Internet Names Worldwide has verified that Respondent is bound by the Melbourne It, Ltd. d/b/a Internet Names Worldwide 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 August 30, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of September 19, 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@epsondeals.com by e-mail.

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

On September 25, 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:

Trademark/Service Mark Information: ICANN Rule 3(b)(viii).

The **EPSON** trademark is registered with the U.S. Patent and Trademark Office under the following Registration Numbers: (1) 1,134,004 for a term of 20 years from April 29, 1980, and renewed for 10 years on December 2, 2000, (2) 1,187,440 for a term of 20 years from January 26, 1982, and renewed for 10 years on March 5, 2002, (3) 1,917,610 for a term of 10 years from September 12, 1995, and renewed for 10 years on October 24, 2005, (4) 2,144,386 for a term of 10 years from March 17, 1998, and (5) 2,949,374 for a term of 10 years from May 10, 2005. Complainants are authorized to use and have used the **EPSON** trademark in connection with the following goods and services: (1) under Reg. No. 1,134,004, with line printers, printers, magnetic drums, marked card readers, paper tape punchers, paper tape readers, cash registers and parts thereof; (2) under Reg. No. 1,187,440, with liquid crystal display panels, used to provide digital and/or alphanumeric displays of information in electronic and electrical instruments (such as chorological) computers, calculators, testing instruments and signaling devices; (3) under Reg. No. 1,917,610, with printing presses; paper punching machines; blue printing machines; typewriters; industrial robots; plastic processing machines, namely injection molding machines; machine tools, namely mold-making NC machines, mold-making machining centers; mechanical presses; electric computing machines; cash registers and vending machines; (4) under Reg. No. 2,144,386, with ink, toner, filled ink cartridges and filled toner cartridges all for computer printers, word processors, and copy machines,

digital cameras; CD-ROMs featuring pre-recorded books in the field of business, amusement, education, translation and art; CD-ROM players; blank floppy discs; computer programs and software for controlling the operation of computer printers; personal computers; parts for all the aforesaid goods, ink ribbons and filled ink ribbon cassettes for computer printers, word processors and copy machines; printed matter, namely, books, manuals, catalogs, pamphlets, periodicals, all in the field of computers, computer peripherals and software; printing and copy paper, corrugated cardboard, cardboard boxes, paper bags, paper boxes, envelopes, stationery; electric, electronic and manual typewriters, check writing machines, paper shredders, and label printing machines; and (5) under Reg. No. 2,949,374, with ink ribbons and ink ribbon cassettes for computer printers, word processors and photocopiers; instruction manuals and operation manuals related to computer hardware, printers and software; printing paper; printed matter, namely, books, magazines and catalogs, all in the field of computers, digital cameras and liquid crystal projectors and their peripherals; adhesives for stationery or household purposes.

Service Marks: The **EPSON** service mark is registered with the U.S. Patent and Trademark Office under the following Registration Numbers: (1) 2,090,289 for a term of 10 years from August 26, 1997, and (2) 2,266,760 for a term of 10 years from August 3, 1999. Complainants are authorized to use and have used the **EPSON** service mark in connection with the following goods and services: (1) under Reg. No. 2,090,289, with leasing of computers, central processor units and peripheral equipment (including electronic circuits, magnetic disks and magnetic tapes with computer programs), designing, programming and updating of computer programs; and (2) under Reg. No. 2,266,760, with installation, maintenance and repair of computers, printers and related goods therewith, namely, word processors, displays, modems, monitors, keyboards, scanners, digital cameras, facsimile machines, copy machines and TV receivers.

FACTUAL AND LEGAL GROUNDS

[a.] BACKGROUND FACTS

Complainant Seiko Epson Corporation (“Seiko Epson”) is a multinational manufacturer of, and world leader in, the design, production, and distribution of high technology products, including printers, scanners, digital cameras, and video projectors. Seiko Epson’s products are designed for a wide range of consumers in small and large businesses, government offices and home offices.

Seiko Epson has registered the **EPSON** trademark with the U.S. Patent and Trademark Office under Registration Numbers 1,134,004, 1,187,440, 1,917,610, 2,144,386, and 2,949,374. Seiko Epson has also registered the **EPSON** service mark with the U.S. Patent and Trademark Office under Registration Numbers 2,090,289 and 2,266,760. Finally, Seiko Epson has registered the **EPSON** trademark with CIPO under

Registration Numbers TMA289441, TMA314420, TMA399624, TMA401411, TMA416898 and TMA494456.

Complainant Epson America, Inc. (“Epson America”) is the North and Latin American sales, marketing, and customer service subsidiary of Seiko Epson. Epson America is responsible for the sale and distribution of **EPSON** brand computer products, printer products, and other peripheral devices and electronic components in various countries throughout North America, Central America, and South America. Epson America is a licensee of the **EPSON** trademark and service mark for the distribution and sale of products and services offered throughout North America, Central America, and South America, including printers, scanners, digital cameras, video projectors, and supplies for these products.

Complainants Seiko Epson and Epson America have been using the **EPSON** trademark and service mark in the United States, Canada and around the world for more than 30 years and have invested substantially in the trademark and service mark associated with the goods and services marketed under the **EPSON** brand name. As a result, the **EPSON** trademarks and service marks, together with Complainants’ names and reputation, have become synonymous with quality products such as printers, scanners, digital cameras, video projectors, and supplies for these products, including replacement ink cartridges. Complainants have built up considerable goodwill in the minds of consumers in connection with the **EPSON** trademarks and service marks.

Complainants have not licensed or otherwise permitted Respondent to use the **EPSON** trademarks or any of their other trademarks or to register or use the “epsondeals.com” domain name (the “Domain Name”) or any other domain names incorporating any of their marks.

The website “epsondeals.com” (“Domain Name”) is currently nothing more than a single page website having links to websites of companies offering to sell domain names or hosting services.

On February 10, 2006, March 2, 2006, April 12, 2006, and May 1, 2006 Complainants sent cease-and-desist letters to Nat Networks. In all above-referenced correspondence, Complainants indicated that if Respondent did not cease use of the Domain Names, legal action would be pursued. Despite all of the above, Respondent has failed or refused to contact Epson regarding this matter.

Complainants contend that: (1) Respondent has registered the Domain Name, which is identical and/or confusingly similar to the **EPSON** trademark and service mark in which Complainants have rights, (2) Respondent has no rights or legitimate interests in the Domain Name, and (3) Respondent has registered and is using the Domain Name in bad faith.

[b.] **THE DOMAIN NAME IS IDENTICAL AND/OR CONFUSINGLY SIMILAR TO THE EPSON TRADEMARK AND SERVICE MARK IN WHICH COMPLAINANTS HAVE RIGHTS.**

The Domain Name is identical and/or confusingly similar to the **EPSON** trademark and service mark. As an initial matter, the Domain Name is comprised primarily of the **EPSON** mark. Although the Domain Name adds the term “deals,” this difference is inconsequential. See *Seiko Epson Corp. v. Eyecon Marketing, Inc.*, FA0512000609195 (NAF January 23, 2006) (finding the domain name “epsoncartridges.com,” which incorporates **EPSON** as a prominent part thereof, is confusingly similar to Complainants’ trademark **EPSON**).; see also *Seiko Epson Corp. v. JIT Consulting*, FA0008000095476 (NAF October 20, 2000) (finding the domain name “epsondirect.com,” which incorporates **EPSON** as a prominent part thereof, is confusingly similar to Complainants’ trademark **EPSON**).

Moreover, the term “deals” is descriptive and non-distinctive. Appropriating an entire mark and adding to it descriptive or non-distinctive matter does not eliminate the similarity or likelihood of confusion between the marks. See J. THOMAS MCCARTHY, 3 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 23:50, AT 23-109 (4th ED. 1992); see also *International Organization for Standardization v. International Supplier Operations Audit Services*, D2002-0460 (WIPO July 9, 2002) (finding a domain name incorporating complainant’s trademark and the term “quality” to be confusingly similar); *Seiko Epson Corp. and Epson America, Inc. v. Distribution Purchasing and Logistics Corp.*, FA 94219 (Nat. Arb. Forum April 5, 2000) (finding “epsonstore.com” to be “identical to and/or confusingly similar to Complainant’s registered trademarks”); see also *Treeforms, Inc. v. Cayne Indus. Sales Corp.*, FA 95856 (Nat. Arb. Forum Dec. 18, 2000). Therefore, Respondent’s addition of a descriptive, generic or non-distinctive word to the **EPSON** mark does not avoid the similarity or likelihood of confusion between the Domain Name and the **EPSON** trademarks and service marks.

Finally, Respondent’s use of the **EPSON** mark, and the term “deals” suggests to consumers that Respondent is an authorized licensee and and/or affiliated with Complainant, which it is not. This suggestion that Respondent is affiliated with Complainant confuses consumers into believing that the Respondent’s sites are somehow sponsored by or affiliated with Complainants’ business. See *PACCAR, Inc. v. Telescan Tech., L.L.C.*, 319 F.3d 243, 254 (6th Cir. 2003) (finding a likelihood of confusion and intent to confuse consumers by suggesting sponsorship or affiliation where alleged infringer included plaintiff’s trademark in domain name and elsewhere on its site).

For these reasons, this Panel should find that the Domain Name is identical and/or confusingly similar to Complainants’ **EPSON** trademark and service mark.

[c.] **RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN THE DOMAIN NAME.**

Respondent has no rights or legitimate interests in the Domain Name. First, Respondent is neither a licensee of Complainants' nor is it otherwise authorized to use the **EPSON** mark or any of Complainants' other marks in a domain name. Accordingly, Respondent was not authorized by Complainants to register the Domain Name nor was it authorized to run an active web site at a domain incorporating Complainants' **EPSON** mark.

Further, Respondent could not possibly contend that it is commonly known by or identified with the Domain Name. **EPSON** is an invented word and has no meaning other than to serve as a source identifier for Complainant Seiko Epson and its subsidiaries, as well as the products manufactured and/or sold by them. Respondent's name, Nat Networks, is not even remotely similar to the Domain Name. *See* ICANN Policy ¶4(c)(ii); *Seiko Epson Corp. v. Price-less Inkjet Cartridge Co.*, FA 096849 (Nat. Arb. Forum May 2, 2001), citing, *inter alia*, *Compagnie de Saint Gobain v. Com-Union Corp.*, D200-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where Respondent was not commonly known by the mark and never applied for a license or permission from Complainant to use the trademarked name); *Gallup, Inc. v. Amish Country Store*, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) (same).

[d.] **RESPONDENT HAS REGISTERED AND IS USING THE DOMAIN NAME IN BAD FAITH.**

Respondent is engaged in bad faith use of the Domain Name to attract Epson consumers to its web site through the use of the **EPSON** trademark. At the time Respondent registered and began using the Domain Name, Respondent was well aware of Complainants' trademarks. First, **EPSON** trademarks and service marks are registered under multiple registrations, and there is no trademark or service mark registered or used by third parties that is similar to the **EPSON** mark. Indeed, Complainants have been using the **EPSON** marks in the United States, Canada and around the world for more than 30 years. The **EPSON** trademarks and service marks, together with Seiko Epson and Epson America's names and reputation, have become synonymous with quality products, including ink, printers and related supplies. Complainants have therefore built up considerable goodwill in the minds of consumers with their **EPSON** marks.

Based on the circumstances, it can only be inferred that Respondent registered the Domain Name for the purpose of attracting internet users to its website through the unlicensed use of Complainants' **EPSON** mark in the Domain Name. *See Seiko Epson Corp. et. al v. Registrant*, FA0602000644511 (Nat. Arb. Forum April 18, 2006) (holding that use of the disputed domain name to divert Internet users seeking Complainant's products to a website that displays links to unrelated content as bad faith); *Jellibeans, Inc. v. Skating Clubs of Georgia, Inc.*, 212 U.S.P.Q. 170, 176 (N.D. Ga. 1981), *aff'd*, 716 F.2d 833, 222 U.S.P.Q. 10 (11th Cir. 1983) (holding that intent to capitalize on plaintiff's brand may be proved by circumstantial evidence); *E. & J. Gallo Winery v. Gallo Cattle Co.*, 12 U.S.P.Q.2d 1657, 1674 (E.D. Cal. 1989), *modified & aff'd*, 955 F.2d 1327, 21 U.S.P.Q.2d 1824 (9th Cir. 1992), *amended*, 967 F.2d 1280 (9th Cir. 1992). Attracting

internet users to its website through the unlicensed use of Complainants' **EPSON** mark is evidence that Respondent has registered and is using the Domain Name in bad faith. *See Seiko Epson Corp. et. al v. Registrant*, FA0602000644511(Nat. Arb. Forum April 18, 2006) (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); Policy ¶4(b)(i)-(ii),(iv).

Respondent has nothing other than a one page website having links to websites selling domain name and web hosting services. Respondent uses the **EPSON** mark to attract customers looking for **EPSON** products, only to offer customers products or links to websites that are not authorized by or affiliated with Complainant. Given the fame of the **EPSON** mark there can be no question of Respondent's bad faith registration of the Domain Name. *See Reuters Ltd. v. Teletrust IPR Ltd.*, D2000-0471 (WIPO Sept. 8, 2000) (finding that the Respondent demonstrated bad faith where the Respondent was aware of the Complainant's famous mark when registering the domain name as well as aware of the deception and confusion that would inevitably follow if he used the domain names). Since Respondent has no apparent connection to the **EPSON** mark, there can be no dispute that Respondent is aware that (1) the **EPSON** mark is famous; (2) Respondent has no authority to use the **EPSON** mark; and (3) it is intentionally utilizing the **EPSON** mark to generate traffic for competing products.

Accordingly, this Panel should find that Respondent has registered and is using the Domain Name in bad faith.

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

FINDINGS

Complainant, Seiko Epson Corporation, is a worldwide leader in the printer technology industry. Complainant manufactures, promotes and distributes a wide variety of printer technology-related accessories under the EPSON mark, including printers, scanners, digital camera and video projectors. Complainant, Epson America, Inc., is the North American sales, marketing and customer service subsidiary of Seiko Epson Corporation. The Panel will hereinafter refer to both parties collectively as "Complainant."

Complainant has registered the EPSON mark with the United States Patent and Trademark Office ("USPTO") (Reg. No. 1,134,004 issued April 29, 1980; Reg. No. 1,187,440 issued January 26, 1982; Reg. No. 1,917,610 issued September 12, 1995; Reg. No. 2,144,386 issued March 17, 1998; Reg. No. 2,949,374 issued May 10, 2005).

Respondent's <**epsondeals.com**> domain name, which was registered on January 15, 2006, resolves to a web page with sponsored links to third-party websites selling domain names and offering hosting services.

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

Because Complainant has registered the EPSON mark with the USPTO, the Panel finds Complainant has established 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 Paisley Park Enters. v. Lawson*, FA 384834 (Nat. Arb. Forum Feb. 1, 2005) (finding that the complainant had established rights in the PAISLEY PARK mark under Policy ¶4(a)(i) through registration of the mark with the USPTO).

The <**epsondeals.com**> domain name wholly incorporates Complainant's registered EPSON mark (which is a "made up" word) and merely adds the common term "deals." The mere addition of a common term to Complainant's fanciful mark does not sufficiently differentiate the disputed domain name from the mark. Accordingly, the Panel determines the <**epsondeals.com**> domain name is confusingly similar to Complainant's EPSON mark under Policy ¶4(a)(i). *See Sony Kabushiki Kaisha v. Inja, Kil*, D2000-1409 (WIPO Dec. 9, 2000) (finding that "[n]either the addition of an ordinary descriptive word . . . nor the suffix '.com' detract from the overall impression of the dominant part of the name in each case, namely the trademark SONY" and thus Policy ¶4(a)(i) is satisfied); *see also L.L. Bean, Inc. v. ShopStarNetwork*, FA 95404 (Nat. Arb.

Forum Sept. 14, 2000) (finding that combining the generic word “shop” with the complainant’s registered mark “Ilbean” does not circumvent the complainant’s rights in the mark nor avoid the confusing similarity aspect of the ICANN Policy).

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

Rights or Legitimate Interests

Complainant alleges Respondent lacks rights and legitimate interests in the <epsondeals.com> domain name. Complainant must first make a *prima facie* case in support of its allegations, and then the burden shifts to the 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 <epsondeals.com> 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). The Panel will now 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 “Nat Networks,” and there is no other evidence in the record suggesting Respondent is commonly known by the <epsondeals.com> domain name. Consequently, Respondent has failed to demonstrate any rights or legitimate interests in the <epsondeals.com> domain name pursuant to Policy ¶4(c)(ii). See *Broadcom Corp. v. Intellifone Corp.*, FA 96356 (Nat. Arb. Forum Feb. 5, 2001) (finding no rights or legitimate interests because the respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use); see also *Gallup, Inc. v. Amish Country Store*, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) (finding that the respondent does not have rights in a domain name when the respondent is not known by the mark).

Respondent's website at the disputed domain name is simply a holding page with sponsored links to unrelated content. In *WeddingChannel.com Inc. v. Vasiliev*, FA 156716 (Nat. Arb. Forum June 12, 2003), the respondent registered the <weddingchanel.com> domain name and used it to redirect Internet users seeking Complainant's services under the WEDDING CHANNEL mark to unrelated third-party websites. The panel presumed respondent received referral fees for each misdirected Internet user and held respondent's "diversionary and commercial use" of the complainant's WEDDING CHANNEL mark 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). *Id.* In this case, Respondent's diversion of Internet users seeking information on Complainant's EPSON products and services to a wholly unrelated site for commercial gain 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 Seiko Kabushiki Kaisha v. CS into Tech*, FA 198795 (Nat. Arb. Forum Dec. 6, 2003) ("Diverting customers, who are looking for products relating to the famous SEIKO mark, to a website unrelated to the mark is not a bona fide offering of goods or services under Policy ¶4(c)(i), nor does it represent a noncommercial or fair use under Policy ¶4(c)(iii).").

The Panel holds Complainant has satisfied Policy ¶4(a)(ii).

Registration and Use in Bad Faith

Respondent is using the <epsondeals.com> domain name to maintain a website with sponsored links to content unrelated to Complainant. In *Drs. Foster & Smith, Inc. v. Lalli*, FA 95284 (Nat. Arb. Forum Aug. 21, 2000), the panel found the respondent's diversion of Internet users who were seeking the complainant's website to its own website for commercial gain created "a likelihood of confusion with the Complainant's mark as to the source, sponsorship, endorsement, or affiliation of its website" and, therefore, provided evidence of bad faith registration and use in violation of Policy ¶4(b)(iv). As Respondent is also redirecting Internet users seeking Complainant's products to other websites for commercial gain, presumably by earning "click-through" fees, Respondent has registered and is using the disputed domain name in bad faith according to Policy ¶4(b)(iv). *See Bank of Am. Fork v. Shen*, FA 699645 (Nat. Arb. Forum Jun. 11, 2006) (holding that the respondent's previous use of the <bankofamericanfork.com> domain name to maintain a web directory was evidence of bad faith because the respondent presumably commercially benefited by receiving click-through fees for diverting Internet users to third-party websites).

The Panel holds 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 <**epsondeals.com**> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: October 9, 2006