



## NATIONAL ARBITRATION FORUM

### DECISION

Expedia Inc. v. Ola Oyedepo  
Claim Number: FA0905001260764

#### PARTIES

Complainant is **Expedia Inc.** ("Complainant"), represented by **Nathan E Ferguson**, of **Wilson Sonsini Goodrich & Rosati**, California, USA. Respondent is **Ola Oyedepo** ("Respondent"), England.

#### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**expedeatravels.com**>, registered with **Directi Internet Solutions Pvt. Ltd. d/b/a Publicdomainregistry.com**.

#### 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 May 1, 2009; the National Arbitration Forum received a hard copy of the Complaint on May 4, 2009.

On May 5, 2009, Directi Internet Solutions Pvt. Ltd. d/b/a Publicdomainregistry.com confirmed by e-mail to the National Arbitration Forum that the <**expedeatravels.com**> domain name is registered with Directi Internet Solutions Pvt. Ltd. d/b/a Publicdomainregistry.com and that Respondent is the current registrant of the name. Directi Internet Solutions Pvt. Ltd. d/b/a Publicdomainregistry.com has verified that Respondent is bound by the Directi Internet Solutions Pvt. Ltd. d/b/a Publicdomainregistry.com 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 May 7, 2009, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of May 27, 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@expedeatravels.com by e-mail.

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

On June 4, 2009, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

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

#### **RELIEF SOUGHT**

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

#### **PARTIES' CONTENTIONS**

A. Complainant makes the following assertions:

Expedia's trademark information is summarized as follows:

Since at least as early as October 1996, Expedia and its predecessors have been using the inherently distinctive mark EXPEDIA, as well as EXPEDIA.COM (collectively the "EXPEDIA Mark") on or in connection with a wide variety of goods and services, most notably online travel services provided through Expedia's websites, including providing access to airline, hotel and rental car reservations for destinations in the United States and around the world. More specifically, the goods and services offered by Expedia under its EXPEDIA Mark include, but are not limited to: providing travel information over the Internet; on-line retail services featuring travel-related goods and services; making airline, hotel, resort, cruise and car reservations and bookings; on-line sale of tickets to entertainment and sporting events; on-line sale of entrance passes to entertainment, cultural and educational venues; providing bulletin board and chat room services over the Internet; stationery, desk sets, calendars and greeting cards; clothing such as shirts, sweaters, jackets, bathrobes and coats; a variety of travel-related merchandise; customer loyalty services and customer club services; and business consulting and management services in the field of travel (the "EXPEDIA goods and services").

Expedia owns numerous valid and subsisting registrations and applications for the EXPEDIA Mark worldwide. The EXPEDIA Mark was first used and registered by Expedia's predecessor-in-interest, Microsoft Corporation, and was duly assigned by

Microsoft Corporation to Expedia. These assignments have been recorded with the U.S. Patent and Trademark Office.

## **FACTUAL AND LEGAL GROUNDS**

### **A. Expedia's Trademark**

1. Expedia, headquartered in Bellevue, Washington in the United States, is a world-wide leader in online travel services. Expedia was founded and incorporated in 1996. Expedia does business primarily over the Internet.

Long prior to the Respondent's registration of the Infringing Domain Name, Expedia adopted, and has continuously used since that adoption, the inherently distinctive EXPEDIA Mark for the EXPEDIA goods and services described above, in the United States and around the world.

Expedia has invested many millions of dollars in advertising and promoting the EXPEDIA Mark and has sold or licensed many hundreds of millions of dollars in its EXPEDIA goods and services under the EXPEDIA Mark, including travel-related goods and services. In 2007 alone, Expedia spent over \$538 million on advertising.

Since as early as 1996, Expedia has used and developed substantial goodwill in the EXPEDIA trademark. As such, the mark has become closely associated with Expedia. Expedia's primary website is accessed at <[www.expedia.com](http://www.expedia.com)>.

Expedia's business achievements are widely recognized. Expedia has been featured in articles printed by prominent periodicals, including *Wall Street Journal*, *New York Times*, *USA Today*, *Forbes*, *SmartMoney* and *Travel & Leisure*. Expedia has also been featured on prominent U.S. television programs such as CNN, and various NBC, ABC and Fox news affiliates.

In addition to its inherent distinctiveness, and as a result of Expedia's extensive marketing efforts, substantial sales and the resulting success of its EXPEDIA goods and services, the EXPEDIA Mark has become famous and represents extraordinarily valuable goodwill owned by Expedia.

### **B. Respondent's Registration and Use of the Infringing Domain Name**

1. Respondent registered the Infringing Domain Name on or about December 11, 2007.

2. The website located at the Infringing Domain Name advertises travel-related services that parallel those of Expedia, including the booking of flights, accommodations and car rentals.

C. The Infringing Domain Name Is Confusingly Similar to the EXPEDIA Mark

1. The Infringing Domain Name is a close misspelling of the EXPEDIA Mark coupled with a generic term that describes Expedia's business. The Infringing Domain Name <EXPEDEATRAVEL.COM> merely replaces the "I" in EXPEDIA with an "E" adds the word "TRAVEL." The substitution of the "E" for an "I" could easily be typed by Internet users by mistake. The misspelling of Expedia's well-known trademark leads to the probability that Internet users will believe that Respondent or the Infringing Domain Name are somehow affiliated with Expedia. Previous panels have consistently held that misspellings of another's trademark are not sufficient to avoid confusion. *See Enterprise Rent-A-Car, Co. v. Marketing Total SA*, Case No. FA 843582 (NAF Dec. 29, 2006) (finding that "the mere substitution of one letter in Respondent's domain name does not sufficiently distinguish the [infringing] domain name from the ENTERPRISE mark"); *Amazon.com, Inc. v. . . . c/o Jason Banks*, Case No. FA 785586 (NAF Oct. 11, 2006) (finding infringing domain name, <amazoj.com> was "clearly similar" to complainant's trademark where respondent had simply omitted one letter from the AMAZON trademark and substituted another); *Expedia, Inc. v. Kyunghwa Park*, Case No. FA 669287 (NAF May 10, 2006) (finding that the infringing "domain name is confusingly similar to Complainant's EXPEDIA mark because it includes a mere misspelling of the mark, which replaces the letter 'e' with the letter 'a.'"); *The Neiman Marcus Group, Inc. v. Peter Carrington and Party Night, Inc.*, Case No. FA 135019 (NAF Jan. 15, 2003) (finding that respondent's transposition of two letters in complainant's trademark was an example of typosquatting and resulted in a domain name that was confusingly similar to complainant's mark). Likewise, the addition of the term "TRAVEL" is not likely to distinguish the Infringing Domain from Expedia's mark or domain, because "TRAVEL" describes Expedia's business. Accordingly, the Infringing Domain Name and Respondent are likely to be confused with Expedia and its EXPEDIA Mark.

2. Because the Infringing Domain Name is confusingly similar to the EXPEDIA Mark, Expedia satisfies ICANN Policy ¶4(a)(i).

D. Respondent Has No Rights or Legitimate Interests in the Infringing Domain Name

1. Expedia has not licensed or otherwise permitted Respondent to use the EXPEDIA Mark or to apply for or use any domain name incorporating the mark. *See Telstra Corp. Ltd. v. Nuclear Marshmallows*, Case No. D2000-0003 (WIPO Feb. 13, 2000) (respondent had no rights or legitimate interests to use domain name because respondent was not licensed or otherwise permitted to use complainant's trademark); *Alta Vista Company v. Jean-Daniel Gamache*, Case No. FA 95249 (NAF Aug. 17, 2000) (respondent was not licensed to use complainant's mark and therefore had no rights or legitimate interests in the domain name).

2. Respondent's misspelling of the EXPEDIA Mark in the Infringing Domain Name is not "nominative" in that it is not an unavoidable use of the trademark to identify the goods or services that Respondent offers on its websites. *See Six Continents Hotels, Inc. v. Hotel Partners of Richmond*, Case No. D2003-0222 (WIPO May 14, 2003) (finding that the use of the complainant's HOLIDAY INN mark in the domain name <holidayinnhotelreservations.com> was not nominative fair use because it was not an unavoidable and necessary use of a mark to identify respondent's services).

3. Furthermore, the Respondent's use of the Infringing Domain Name to attract Internet users to a website that directly competes with Expedia is not a legitimate noncommercial or fair use of the domain name. *See Nat'l Ass'n of Prof'l Baseball Leagues v. Zuccarini*, Case No. D2002-1011 (WIPO Jan. 21, 2003).

4. Based on its lack of rights in the EXPEDIA Mark and lack of affiliation with Expedia, Respondent does not have rights or a legitimate interest in the Infringing Domain Name under ICANN Policy ¶4(a)(ii).

E. Respondent Registered and Is Using the Infringing Domain Name in Bad Faith

1. Respondent registered the Infringing Domain Name long after Expedia adopted, used, and applied to register its EXPEDIA Mark. Based on the fame of the EXPEDIA Mark, Respondent necessarily has had actual knowledge of Expedia's rights.

2. In addition to actual knowledge, Respondent has had constructive notice of Expedia's trademark rights in the EXPEDIA Mark as a result of Expedia's trademark registrations. *See Popular Enterprises, LLC v. Sung-a Jang*, Case No. FA 811921 (NAF Nov. 16, 2006) (finding that a "registration with the USPTO sufficiently establishes [complainant's] rights in" a mark); *Zagat Survey, LLC v. Friedmans Constr. Inc.*, Case No. FA 210304 (NAF Jan. 2, 2004) (finding that respondent had constructive knowledge of complainant's rights based on complainant's U.S. trademark registration and that respondent's registration of the infringing domain name, which was confusingly thereto, constituted bad faith); *Koninklijke KPN N.V. v. Telepathy, Inc.*, D2001-0217 (WIPO May 7, 2001) (finding that the Policy does not require that the mark be registered in the country in which the respondent operates; therefore it is sufficient that the complainant can demonstrate a mark in some jurisdiction).

3. Respondent therefore registered the Infringing Domain Name to take advantage of the value and goodwill associated with the EXPEDIA Mark, which constitutes bad faith. *Ticketmaster Corp. v. Spider Web Design, Inc.*, Case No. D2000-1551 (WIPO Feb. 4, 2001) ("[a]ctual or constructive knowledge of [complainant's] rights in the [t]rademarks is a factor supporting bad faith"); *see also Pavillion Agency, Inc. v. Greenhouse Agency Ltd.*, Case No. D2000-1221 (WIPO Dec. 4, 2000) (finding that respondent's domain names to be "so obviously connected" to the complainant that "use or registration by anyone other than [complainants] suggests 'opportunistic bad faith'").

4. Respondent is engaged in a practice known as typosquatting, which has been recognized by UDRP panels as a bad faith use of a domain name. *See Zuccarini*, D2002-1011 (Typosquatting “is the intentional misspelling of words with intent to intercept and siphon off traffic from its intended destination, by preying on Internauts who make common typing errors. Typosquatting is inherently parasitic and of itself evidence of bad faith.”).

5. Respondent is using the Infringing Domain Name to compete with Expedia. This type of use has been recognized as bad faith uses in violation of ICANN Policy ¶4(b)(iv). *See Fossil, Inc. v. wwwfossil-watch.org c/o Hostmaster*, Case No. FA 335513 (NAF Nov. 9, 2004) (finding bad faith where respondent attempted to profit from the fame of complainant’s trademark by attracting Internet traffic to his website); *Nokia Corp. v. Nokia Ringtones & Logos Hotline*, Case No. D2001-1101 (WIPO Oct. 18, 2001) (finding that respondent’s use of the NOKIA mark in its domain name to sell products compatible with both Nokia and competing phones showed that “[r]espondent has intentionally used the goodwill of [complainant’s] trademark to create traffic to his website”); *Mariah Boats, Inc. v. Shoreline Marina, LLC*, Case No. FA 094392 (NAF May 5, 2000) (finding that respondent’s use of complainant’s mark to sell competitive products was in bad faith).

6. The combination of Respondent’s actual and constructive knowledge of Expedia’s prior rights and the fame of the EXPEDIA Mark; attempts to take advantage of the goodwill associated with Expedia’s famous EXPEDIA Mark; typosquatting; use of the Infringing Domain Name to compete with and disrupt Expedia’s business; and efforts to conceal its identity all demonstrate Respondent’s bad faith registration and use of the Infringing Domain Name under ICANN Policy ¶4(a)(iii).

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

After the time to submit a response had passed, a third party tried to appear in the proceeding and asked for additional time to respond to the complaint. This request was denied because the third party was not the registered owner of the domain name at issue.

## **FINDINGS**

Complainant, Expedia Inc, operates an online travel reservation website and holds multiple registrations of the EXPEDIA mark with the United States Patent and Trademark Office (“USPTO”) (i.e., Reg. No. 2,220,719 issued Jan. 26, 1999).

Respondent registered the <**expedeatravels.com**> domain name on December 11, 2007. The disputed domain name resolves to a website that offers flight, accommodation, and car rental reservation services in direct 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, by registering its EXPEDIA mark with the USPTO, has established rights in the mark pursuant to Policy ¶4(a)(i). *See Expedia, Inc. v. Tan*, FA 991075 (Nat. Arb. Forum June 29, 2007) ("As the [complainant's] mark is registered with the USPTO, [the] complainant has met the requirements of Policy ¶4(a)(i)."); *see also AOL LLC v. Interrante*, FA 681239 (Nat. Arb. Forum May 23, 2006) (finding that where the complainant had submitted evidence of its registration with the USPTO, "such evidence establishes complainant's rights in the mark pursuant to Policy ¶4(a)(i).").

The <**expedeatravels.com**> domain name consists of a misspelling of Complainant's EXPEDIA mark, replacing "i" with "e", the generic word "travels," and the generic top-level domain (gTLD) ".com." The Panel finds that the misspelled "expedea" is phonetically identical to Complainant's EXPEDIA mark, the word "travels" has an obvious relationship to Complainant's business, and gTLD is irrelevant. Therefore, the Panel finds the <**expedeatravels.com**> domain name is confusingly similar to Complainant's EXPEDIA mark pursuant to Policy ¶4(a)(i). *See Isleworth Land Co. v.*

*Lost in Space, SA*, FA 117330 (Nat. Arb. Forum Sept. 27, 2002) (“[I]t is a well established principle that generic top-level domains are irrelevant when conducting a Policy ¶4(a)(i) analysis.”); *see also Vivendi Universal Games, Inc. v. Cupcake Patrol*, FA 196245 (Nat. Arb. Forum Oct. 31, 2003) (“Respondent's <blizzerd.com> domain name is confusingly similar to Complainant's BLIZZARD mark. The replacement of the letter 'a' in Complainant's BLIZZARD mark with the letter 'e' creates a domain name that is phonetically identical and confusingly similar to Complainant's mark.”); *see also 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.”).

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

### **Rights or Legitimate Interests**

Pursuant to Policy ¶4(a)(ii), Complainant must first establish a *prima facie* case Respondent has no rights or legitimate interests in the <expedetravels.com> domain name. If the Panel finds Complainant’s allegations establish such a *prima facie* case, the burden shifts to Respondent to show it has rights or a legitimate interests in the disputed domain name pursuant to the guidelines in Policy ¶4(c). The Panel finds Complainant’s allegations are sufficient to establish a *prima facie* case Respondent has no rights or legitimate interests in the <expedetravels.com> domain name pursuant to Policy ¶4(a)(ii). Since no response was submitted in this case, the Panel may presume that Respondent has no rights or legitimate interests in the <expedetravels.com> domain name. However, the Panel will still examine the record in consideration of the factors listed in Policy ¶4(c). *See Domtar, Inc. v. Theriault.*, FA 1089426 (Nat. Arb. Forum Jan. 4, 2008) (“It is well established that, once a complainant has made out a *prima facie* case in support of its allegations, the burden shifts to respondent to show that it does have rights or legitimate interests pursuant to paragraph 4(a)(ii) of the Policy.”); *see also G.D. Searle v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002) (“Because Complainant’s Submission constitutes a *prima facie* case under the Policy, the burden effectively shifts to Respondent. Respondent’s failure to respond means that Respondent has not presented any circumstances that would promote its rights or legitimate interests in the subject domain name under Policy ¶4(a)(ii).”).

The Panel finds no evidence in the record suggesting Respondent is commonly known by the <expedetravels.com> domain name. Complainant asserts Respondent has no license or agreement with Complainant authorizing Respondent to use the EXPEDIA mark, and the WHOIS information identifies Respondent as “Ola Oyedepo.” Thus, Respondent has not established rights or legitimate interests in the disputed domain name under Policy ¶4(c)(ii). *See Tercent Inc. v. Lee Yi*, FA 139720 (Nat. Arb. Forum Feb. 10, 2003) (stating “nothing in Respondent’s WHOIS information implies that Respondent is ‘commonly known by’ the disputed domain name” as one factor in determining that Policy ¶4(c)(ii) does not apply); *see also Am. W. Airlines, Inc. v. Paik*, FA 206396 (Nat.

Arb. Forum Dec. 22, 2003) (“Respondent has registered the domain name under the name ‘Ilyoup Paik a/k/a David Sanders.’ Given the WHOIS domain name registration information, Respondent is not commonly known by the [<awvacations.com>] domain name.”).

Respondent is using the disputed domain name to resolve to a commercial website offering travel services which directly compete with Complainant’s services. Respondent’s use of a domain name that is confusingly similar to Complainant’s EXPEDIA mark to redirect Internet users to a competing website is not a *bona fide* offering of goods or services under Policy ¶(4)(c)(i), nor is it a legitimate noncommercial or fair use under Policy ¶(4)(c)(iii). See *Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 180704 (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).”); 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 Complainant has satisfied Policy ¶(4)(a)(ii).

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

Respondent’s use of Complainant’s EXPEDIA mark in the <expedeatravels.com> domain name to redirect Internet users to a competing travel reservation services website suggests that Respondent registered the disputed domain name intending to disrupt Complainant’s business. The Panel finds this is evidence of bad faith registration and use under Policy ¶(4)(b)(iii) based upon the evidence presented. 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).”).

Under Policy ¶(4)(b)(iv), Respondent is acting in bad faith when using a confusingly similar domain name to attract Internet users for commercial gain. In this case, Respondent is using the <expedeatravels.com> domain name to attract users to a competing travel-services website. The Panel finds the disputed domain name is capable of creating a likelihood of confusion with Complainant’s mark and Respondent has sought to profit from this confusion through a commercial, travel services website. The

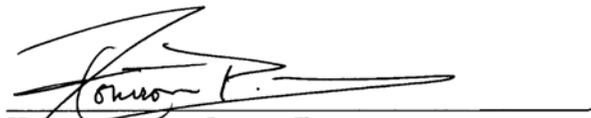
Panel finds Respondent registered and used the disputed domain name in bad faith pursuant to Policy ¶4(b)(iv). *See Computerized Sec. Sys., Inc. v. Hu*, FA 157321 (Nat. Arb. Forum June 23, 2003) (finding that the respondent's use of the <saflock.com> domain name to offer goods competing with the complainant's illustrates the respondent's bad faith registration and use of the domain name, evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv)); *see also Identigene, Inc. v. Genetest Labs.*, D2000-1100 (WIPO Nov. 30, 2000) (finding bad faith where the respondent's use of the domain name at issue to resolve to a website where similar services are offered to Internet users is likely to confuse the user into believing that the complainant is the source of or is sponsoring the services offered at the site).

The Panel finds 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 <**expedetravels.com**> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.  
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist  
Dated: June 26, 2009

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**NATIONAL ARBITRATION FORUM**