



## NATIONAL ARBITRATION FORUM

### DECISION

Green Flag Limited v. Domain Admin c/o Dynadot Privacy  
Claim Number: FA0902001249915

#### PARTIES

Complainant is **Green Flag Limited** ("Complainant"), represented by **James A. Thomas**, North Carolina, USA. Respondent is **Domain Admin c/o Dynadot Privacy** ("Respondent"), California, USA.

#### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**greenflaginsurance.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 February 27, 2009; the National Arbitration Forum received a hard copy of the Complaint on February 27, 2009.

On March 9, 2009, Dynadot, LLC confirmed by e-mail to the National Arbitration Forum that the <**greenflaginsurance.com**> domain name is registered with Dynadot, LLC and that Respondent is the current registrant of the name. 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 March 12, 2009, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of April 1, 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@greenflaginsurance.com by e-mail.

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

On April 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 name be transferred from Respondent to Complainant.

### **PARTIES' CONTENTIONS**

A. Complainant makes the following assertions:

The trademark on which this complaint is based is "GREEN FLAG" (also sometimes referred to as "Complainant's Mark"). Complainant, Green Flag Limited, was founded in 1971 as "National Breakdown," as a recovery service for stranded motorists. Re-named "Green Flag" in 1994, Complainant offers vehicle breakdown cover insurance, as well as personal cover insurance, to over five million customers across the United Kingdom and in Europe. Additionally, Complainant is part of The Royal Bank of Scotland Group plc ("RBS"), one of the leading financial services providers in the world. With offices in numerous countries on six continents, and more than 140,000 employees, RBS offers a wide range of financial products and services, including consumer, commercial lending and insurance services.

Complainant holds numerous trademark registrations for its "GREEN FLAG" mark. Complainant's Mark has been registered with the United Kingdom Intellectual Property Office ("UKIPO") since February 1993 and the EU Office for Harmonization in the Internal Market ("OHIM") since December 1999. Complainant uses its "GREEN FLAG" mark in promoting and providing breakdown and personal cover insurance in the United Kingdom and Europe.

An important component of Complainant's business is to provide customers with the ability to purchase insurance coverage over the Internet and obtain information about Complainant's services. Complainant, through its parent company RBS, owns several domain name registrations that feature its well-known "GREEN FLAG" mark, including <greenflag.com> and <greenflag3.com>, both of which resolve to Complainant's main website. Complainant utilizes these domain names in connection with the promotion and operation of its business as well as a medium to provide online support to its customers.

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 "GREEN FLAG" 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 Name is identical to a trademark or service mark in which Complainant has rights.**

The Domain Name is confusingly similar to Complainant's Mark because it fully incorporates Complainant's Mark, and merely adds the generic or descriptive word "insurance," followed by a the top-level domain name extension, ".com," which does not make the Domain Name distinct. Complainant's Mark is the dominant and distinctive element of the Domain Name, and the Domain Name strongly conveys the impression of sponsorship by or association with Complainant. Indeed, Respondent appears to have chosen the Domain Name for that very reason, which makes the Domain Name 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 and a generic top-level domain name extension, remains confusingly similar to the other party's mark. As referenced above, Complainant's business centers around offering vehicle breakdown cover insurance, as well as personal cover insurance, to customers through the Internet. Indeed, the National Arbitration Forum has specifically held that the addition of the generic or descriptive term "insurance" 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"). 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, Respondent's addition of the term "insurance," to Complainant's Mark does not distinguish the Domain Name, but rather only adds to the confusion given the connection between the generic term "insurance" and Complainant's insurance services. In addition, the generic top-level domain name extension ".com" 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”).

Additionally, Respondent’s use of the confusingly similar Domain Name 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 Name to redirect to a website that displays links to various providers of insurance products and services. Respondent’s use of the Domain Name 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 Name to redirect Internet users to a website displaying links for insurance products and services increases the likelihood of consumer confusion.

In light of the foregoing, Complainant respectfully asserts that it has met its burden of establishing that the Domain Name is identical or confusingly similar to Complainant’s Mark.

**b. Respondent has no rights or legitimate interests in respect of the Domain Name.**

Respondent has no right to or legitimate interest in the Domain Name. Complainant has not licensed or otherwise authorized Respondent to use Complainant’s “GREEN FLAG” mark, or any variation thereof, in the Domain Name or otherwise. Any value the Domain Name may have is derived solely by the incorporation of Complainant’s Mark. *See Am. West Airlines v. N. Am. Leasing, LLC*, FA 0232956 (Nat. Arb. Forum Mar. 18, 2004) (finding that the domain names, including <americawestvacations.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). Respondent registered the Domain Name on August 29, 2008. This was over fifteen (15) years after Complainant first registered the “GREEN FLAG” mark in 1993.

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 Name.

Respondent's use of the Domain Name to misdirect Internet users to a directory website featuring links to other websites, particularly to the websites of Complainant's competitors, does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use under ICANN Policy. For example, Respondent's website provided links entitled "Car Insurance Quote" and "GEICO Car Insurance," in direct correlation to Complainant's insurance coverage services. By clicking these links, Internet users were redirected to the web pages of companies providing services in competition with Complainant, as well as websites containing further advertising for and links to the websites of competing insurance providers. Thus, it appears that Respondent attempted to capitalize 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 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)."); *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.")

Nor does it appear that Respondent has ever been commonly known by "greenflaginsurance," "Green Flag Insurance" or the Domain Name. *See ICANN Policy*

¶4(c)(ii). To the contrary, Respondent registered the Domain Name under the name “Domain Admin c/o Dynadot Privacy,” which has no genuine relation to the mark “GREEN FLAG” or Complainant. This constitutes further evidence that the Respondent is not commonly known by the Domain Name. *See, e.g., Wells Fargo & Co. v. Onlyne Corp. Services II, Inc.* FA 198969 (Nat. Arb. Forum Nov. 17, 2003) (“Given the WHOIS contact information for the disputed domain [name], one can infer that Respondent ... is not commonly known by the name ‘welsfargo’ in any derivation.”)

Finally, the Domain Name displayed the following at the top of the website to which it resolved: “[t]his domain may be for sale by its owner!” Respondent’s offer to sell the Domain Name is therefore further evidence that Respondent lacks rights and legitimate interests in the Domain Names under Policy ¶4(a)(ii). *See LD Products, Inc. v. Hubert Herr c/o Unternehmensberatung*, FA 1223933 (Nat. Arb. Forum Oct. 28, 2008) (holding, with respect to the respondent’s offer to sell the disputed domain name soon after its registration, that “Respondent’s willingness to part with the disputed domain name is evidence of a lack of rights or legitimate interests under Policy ¶4(a)(ii).”); *Turner Entertainment Co. v. David Fagle*, FA 0440216 (Nat. Arb. Forum May 2, 2005) (finding, given complainant’s rights in the mark “THE REAL GILLIGAN’S ISLAND”, that “[r]espondent’s offer to sell the domain name registration is evidence that Respondent lacks rights and legitimate interests in the <therealgilligansisland.com> domain name pursuant to Policy ¶4(a)(ii)”).

In light of the foregoing, Complainant respectfully asserts that it has met its burden of proving that Respondent has no rights or legitimate interests in respect to the Domain Name.

**c. The Domain Name was registered and is being used in bad faith.**

Complainant’s “GREEN FLAG” mark is a registered trademark and well-known in the United Kingdom and Europe. Based on the fame of Complainant’s Mark, the fact that Respondent chose a Domain Name which identically incorporates Complainant’s Mark, and the fact that Respondent used the Domain Name 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 Name was and is in bad faith.

Further, Respondent’s use of the Domain Name to divert Internet users to its directory/link site constitutes registration and use primarily for the purpose of disrupting Complainant’s business 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 constituted registration and use in bad faith under Policy ¶4(b)(iii). FA 1212874 (Nat. Arb. Forum Aug. 8, 2008). According to the Panel, such use "clearly disrupts Complainant's business as it encourages Internet users to conduct business with Complainant's competitors." *Id.* 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 Name to redirect Internet users to a website displaying links related to vehicle insurance coverage in competition with Complainant 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 *State Farm Mutual Auto. Ins. Co. v. Jackson*, FA 314119 (Nat. Arb. Forum Sept. 28, 2004), where the respondent used the domain name <www.statefarminsurance.com> to operate a website that provided links to insurance websites which competed with the complainant State Farm, the panel inferred that the respondent was using 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). In the present case, as in *State Farm*, Respondent likely used the Domain Name to attract Complainant's customers to its website for its own commercial gain and therefore, has acted in bad faith under Policy ¶4(b)(iv).

Moreover, it can be inferred that Respondent has profited through referral fees by diverting Internet users seeking Complainant's services to competitors' websites. See *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"). Thus, Respondent was likely 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.

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

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

## FINDINGS

Complainant, Green Flag Limited, was founded in 1971 as a recovery service for stranded motorists. Complainant was re-branded in 1994 as “Green Flag” and has provided personal insurance as well as vehicle break-down insurance for over five million customers across the United Kingdom and Europe. Complainant has registered its GREEN FLAG mark with the United Kingdom Intellectual Property Office (“UKIPO”) (Reg. No. 1,467,163 issued February 19, 1993) as well as with the European Union Office for Harmonization in the Internal Market (“OHIM”) (Reg. No. 861,955 issued December 16, 1999).

Respondent registered the <**greenflaginsurance.com**> domain name on August 29, 2008. The disputed domain name currently resolves to a website displaying click-through advertising for third party web sites.

## 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's trademark registrations for the GREEN FLAG mark with the UKIPO and OHIM each confer upon Complainant sufficient rights in the mark under Policy ¶4(a)(i). *See Thermo Electron Corp. v. Xu*, FA 713851 (Nat. Arb. Forum July 12, 2006) (holding that the complainants established rights in marks because the marks were registered with a trademark authority); *see also Royal Bank of Scot. Group plc, Direct Line Ins. plc, & Privilege Ins. Co. Ltd. v. Demand Domains, c/o C.S.C.*, FA 714952 (Nat. Arb. Forum August 2, 2006) (holding that registration of the PRIVILEGE mark with the United Kingdom trademark authority sufficiently established the complainant's rights in the mark under the Policy).

Respondent's <**greenflaginsurance.com**> domain name differs from Complainant's GREEN FLAG mark in the following manners: (1) the space in the mark is omitted; (2) the generic top-level domain ".com" has been added; and (3) the descriptive term "insurance" has been added. The Panel notes the removal of spaces and the addition of a top-level domain name are not (and cannot be) material to a Policy ¶4(a)(i) analysis. *See Bond & Co. Jewelers, Inc. v. Tex. Int'l Prop. Assocs.*, FA 937650 (Nat. Arb. Forum Apr. 30, 2007) (finding that the elimination of spaces between terms and the addition of a gTLD do not establish distinctiveness from the complainant's mark under Policy ¶4(a)(i)). Moreover, the addition of the word "insurance," which aptly depicts Complainant's insurance operation, tends to heighten the confusing similarity. *See, e.g., Vance Int'l, Inc. v. Abend*, FA 970871 (Nat. Arb. Forum June 8, 2007) (finding that by adding the term "security" to the complainant's VANCE mark, which described the complainant's business, the respondent "very significantly increased" the likelihood of confusion with the complainant's mark). Therefore, the Panel finds the disputed domain name is confusingly similar to Complainant's mark under Policy ¶4(a)(i).

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

### **Rights or Legitimate Interests**

Complainant has alleged Respondent lacks rights and legitimate interests in the disputed domain name. Based upon the allegations made in the Complaint, the Panel finds Complainant has established a *prima facie* case pursuant to Policy ¶4(a)(ii), shifting the burden of proof to Respondent. Since Respondent has not responded to the Complaint, the Panel may presume Respondent lacks rights and legitimate interests in the disputed domain name pursuant to Policy ¶4(a)(ii). However, the Panel in its discretion chooses to examine the record to determine whether Respondent has any rights or legitimate interests pursuant to the factors outlined in Policy ¶4(c). *See AOL LLC v. Gerberg*, FA 780200 (Nat. Arb. Forum Sept. 25, 2006) ("Complainant must make a *prima facie*

showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interest in the subject domain names.”); *see also Hanna-Barbera Prods., 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); *see also Broadcom Corp. v. Ibecom PLC*, FA 361190 (Nat. Arb. Forum Dec. 22, 2004) (“Respondent’s failure to respond to the Complaint functions as an implicit admission that [Respondent] lacks rights and legitimate interests in the disputed domain name. It also allows the Panel to accept all reasonable allegations set forth...as true.”).

Complainant has alleged Respondent is not commonly known by the disputed domain name, and Respondent is not authorized or otherwise permitted to use Complainant’s marks in any fashion. Respondent has not provided any contrary evidence to these assertions. The Panel also notes the WHOIS information lists Respondent as “Domain Admin c/o Dynadot Privacy,” which is a nominee registration. Without any controverting evidence, the Panel finds that Respondent is not commonly known by the disputed domain name under Policy ¶4(c)(ii). *See 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.”); *see also IndyMac Bank F.S.B. v. Eshback*, FA 830934 (Nat. Arb. Forum Dec. 7, 2006) (finding that the respondent failed to establish rights and legitimate interests in the *emitmortgage.com* domain name as the respondent was not authorized to register domain names featuring the complainant’s mark and failed to submit evidence of that it is commonly known by the disputed domain name).

Respondent’s disputed domain name resolves to a website that displays links for third party web sites. The Panel presumes Respondent receives some type of referral fee for the placement of these advertisements. The Panel finds Respondent has failed to make actual use or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services under Policy ¶4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii). *See Disney Enters., Inc. v. Kamble*, FA 918556 (Nat. Arb. Forum Mar. 27, 2007) (holding that the operation of a pay-per-click website at a confusingly similar domain name 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)); *see also Vance Int’l, Inc. v. Abend*, FA 970871 (Nat. Arb. Forum June 8, 2007) (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a *bona fide* offering of goods or services or a legitimate noncommercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees).

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

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

Respondent's disputed domain name resolves to a website that displays advertisements and links for third party web site. Internet users seeking Complainant would be diverted to this website and be confronted with such links (some of which may compete with Complainant to varying degrees). Such links will cause confusion and might well divert some of Complainant's potential customer to third party sites (which would disrupt Complainant's business). Complainant specifically claims the reason for the registration was to disrupt Complainant's business and this isn't refuted. The Panel finds Respondent has engaged in bad faith registration and use of the disputed domain name under Policy ¶4(b)(iii) through this disruption of Complainant's business.

As mentioned previously, the confusingly similar disputed domain name resolves to a pay-per-click website that promotes third party web sites. While these third party web sites do not appear to directly compete with Complainant, car insurance companies often offer breakdown insurance as an addendum to their policies (although Complainant's business seems to be broader than that). Respondent has created some confusion as to Complainant's source, endorsement, affiliation, and sponsorship of the disputed domain name and corresponding website. The Panel finds Respondent has engaged in bad faith registration and use under Policy ¶4(b)(iv). *See Metro. Life Ins. Co. v. Bonds*, FA 873143 (Nat. Arb. Forum Feb. 16, 2007) ("The Panel finds such use to constitute bad faith registration and use pursuant to Policy ¶4(b)(iv), because [r]espondent is taking advantage of the confusing similarity between the <metropolitanlife.us> domain name and Complainant's METLIFE mark in order to profit from the goodwill associated with the mark."); *see also MySpace, Inc. v. Myspace Bot*, FA 672161 (Nat. Arb. Forum May 19, 2006) (holding that the respondent registered and used the <myspacebot.com> domain name in bad faith by diverting Internet users seeking the complainant's website to its own website for commercial gain because the respondent likely profited from this diversion scheme).

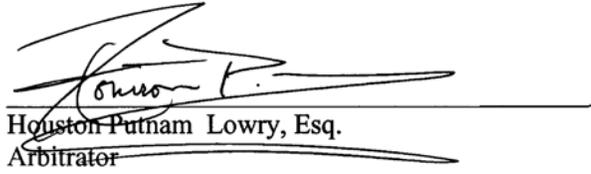
Respondent's use of a nominee to register the <**greenflaginsurance.com**> domain – a famous mark - suggests (in the absence of a response) the registration and use of the <**greenflaginsurance.com**> domain was not in good faith.

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



Houston Putnam Lowry, Esq.  
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist  
Dated: Friday, April 22, 2009

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

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

**NATIONAL ARBITRATION FORUM**