



NATIONAL ARBITRATION FORUM

DECISION

Hewlett-Packard Development Company, L.P. and Hewlett-Packard Company v. Wu Wenbing
Claim Number: FA0911001294944

PARTIES

Complainant is **Hewlett-Packard Development Company, L.P. and Hewlett-Packard Company** ("Complainant"), represented by **James F. Struthers**, of **Richard Law Group, Inc.**, Texas, USA. Respondent is **Wu Wenbing** ("Respondent"), China.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<hpdrivers.org>**, registered with **Name.com, 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 November 17, 2009; the National Arbitration Forum received a hard copy of the Complaint on November 18, 2009.

On November 18, 2009, Name.com, LLC confirmed by e-mail to the National Arbitration Forum that the **<hpdrivers.org>** domain name is registered with Name.com, LLC and that Respondent is the current registrant of the name. Name.com, LLC has verified that Respondent is bound by the Name.com, 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 November 25, 2009, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of December 15, 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@hpdrivers.org by e-mail.

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

On December 23, 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:

TRADEMARK/SERVICE MARK INFORMATION

The terms "HP" and "Complainant," as used herein, include all licensees and predecessors in interest.

Founded in 1939, HP is among the world's largest IT companies, ranking ninth on the 2009 Fortune 500, and reporting total revenue of \$118.4 billion for fiscal 2008. HP has approximately 321,000 employees and serves more than a billion customers in 170 countries on six continents. *Id.* HP ships 48 million PC units annually and is No. 1 globally in desktop PC and notebook sales. *Id.* HP is No. 1 globally in inkjet and laser printers, and ink and laser supplies, and ships more than 1 million printers a week. *Id.* HP is also ranked as the world's sixth largest software company.

HP uses numerous trademarks in connection with its goods and services, including but not limited to the trademark "HP." HP began using the HP trademark at least as early as 1941. HP has invested tremendous resources in promoting this trademark over the last 70 years. As a result, the HP trademark has become famous. In fact, the HP trademark is consistently recognized as being among the world's most valuable brands. *See* Interbrand's Best Global Brands rankings from 2004 and 2009.

The HP trademark has been found by previous panelists of the National Arbitration Forum to be famous and distinctive. *See e.g. Hewlett-Packard Co. v. Mike Rayne*, FA0110000101465 (Nat. Arb. Forum Dec. 17, 2001)(finding that HEWLETT PACKARD and HP are "famous trademarks"); *Hewlett-Packard Co. v. Homepage Organisation*, FA 94446 (Nat. Arb. Forum May 11, 2000) (finding that the HP trademark is "famous and distinctive"); *Hewlett-Packard Co.*

v. Kim Yong Hwan, FA 95358 (Nat. Arb. Forum Sept. 7, 2000) (noting that “Complainant’s mark ‘HP’ is famous and distinctive, and, thus, is entitled to the higher protection afforded it by law”); *Hewlett-Packard Co. v. Compu-D International Inc.*, FA 99660 (Nat. Arb. Forum Oct. 5, 2001) (“Over the last sixty years HP has become a famous and distinctive mark due to Complainant’s promotional efforts.”); and *Hewlett-Packard Co. v. Skip Zwahlen*, FA 99755 (Nat. Arb. Forum Oct 24, 2001) (finding that HP is recognized in the United States and throughout the world as distinctly designating products originating with Complainant).

HP has registered “HP” in the U.S. and internationally. For example, U.S. Registration No. 1,116,835 for HP issued on April 24, 1979 and covers, among other things, computers and “programs for computers.” U.S. Registration No. 1,840,215 for HP issued on June 21, 1994 and covers, among other things, computers and computer software. These and other registrations for the HP trademark issued well prior to the registration date for the disputed domain name.

HP owns the domain name <hp.com> and uses this domain name to offer computer-related goods and services, including software drivers, under the HP trademark.

FACTUAL AND LEGAL GROUNDS

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

A. CONFUSINGLY SIMILAR DOMAIN NAME

The disputed domain name is confusingly similar to Complainant’s HP trademark which was used by Complainant and registered as a trademark well before Respondent registered the disputed domain name.

The disputed domain name <hpdrivers.org> incorporates Complainant’s famous HP trademark in its entirety, adding only the generic term “drivers,” which means software used to operate computer hardware and is related to Complainant’s business, and the generic top level domain “.org.”

The mere addition of a generic, common term to Complainant’s HP trademark does not negate confusing similarity between Respondent’s domain name and Complainant’s mark, especially where the added term merely describes products Complainant provides under this mark. See *Hewlett-Packard Co. and Hewlett-Packard Dev. Co., L.P. v. Surya Tech. c/o Manoj Kumar Allakattu*, FA0708001059665 (Nat. Arb. Forum Oct. 2, 2007)(finding <hpsoftware.com> confusingly similar to Complainant’s HP trademark and noting that “addition of a term that relates to the business in which Complainant engages and the addition of the gTLD are not sufficient to differentiate a domain name from a known mark”); *Hewlett-Packard Co. v. Homepage Organisation*, FA0004000094446 (Nat. Arb. Forum May 11, 2000)(finding <hp.org> confusingly similar to the HP trademark and awarding transfer); *Hewlett-Packard Co. and Hewlett-Packard Dev. Co., L.P. v. HP Computer Services*, FA0412000373890 (Nat. Arb. Forum January 20, 2005)(finding <hpcomputerservices.com> confusingly similar to HP and awarding transfer); and *Abbott Laboratories v. Whois Service c/o Belize Domain WHOIS Service*,

FA0903001254682 (Nat. Arb. Forum May 14, 2009)(“the addition of a gTLD is irrelevant in distinguishing a disputed domain name from a registered mark”).

Microsoft Corporation v. Whois Privacy Protection Serv./Lee Xongwei, WIPO Case No. D2005-0642 (October 12, 2005) (“addition of the generic top-level domain ‘.com’ is irrelevant when determining whether a disputed domain name is confusingly similar to a protected mark”).

For the above reasons, the disputed domain name is confusingly similar to Complainant’s HP trademark.

B. NO RIGHTS OR LEGITIMATE INTERESTS IN DOMAIN NAME

Respondent has no rights or legitimate interests in the disputed domain name. Respondent is not commonly known by Complainant’s HP trademark, nor has Respondent used the disputed domain name in connection with a *bona fide* offering of goods and services or for a legitimate noncommercial or fair use.

WHOIS identifies Respondent as Wu Wenbing. Respondent is not commonly known by Complainant’s HP trademark. Respondent is not affiliated with Complainant in any way. Respondent is not licensed by Complainant to use Complainant’s HP trademark. Respondent is not an authorized vendor, supplier, or distributor of Complainant’s goods and services. *See Broadcom Corp. v. Ibecom PLC*, FA 361190 (Nat. Arb. Forum Dec. 22, 2004) (finding no rights or legitimate interests where there was nothing in the record to indicate that Respondent was commonly known by the domain name); and *Tercent Inc. v. Yi*, FA 139720 (Nat. Arb. Forum Feb. 10, 2003) (finding that the WHOIS information, and its failure to imply that Respondent is commonly known by the disputed domain name, is a factor in determining that Policy ¶4(c)(ii) does not apply).

The disputed domain name <hpdrivers.org> resolves to a site that promotes Driver Robot, a commercial software product offered by Blitware Technology, Inc. The home page is entitled “HP Drivers Download Center,” prominently features the famous HP corporate logo, and imitates HP trade dress. Clicking on the HP logo, or any of various other links and buttons, initiates download of Driver Robot software. Once installed, the software purports to identify outdated hardware drivers and then charges users to download them, even though most drivers are available from hardware manufacturers without charge. If a user does not pay Respondent’s fee, the software displays an alert icon in the system tray and an information balloon that imitates a security alert generated by Windows, leading users to believe that they are receiving an independent warning from the operating system rather than from Respondent’s software. Clicking on the alert icon will return users to Respondent’s payment page.

This software is not authorized by Complainant. Complainant does not license others to reproduce or distribute its drivers using such means. Use of Complainant’s famous HP trademark in this domain name, and use of Complainant’s famous logo on the corresponding site, is calculated and likely to cause consumer confusion, in that consumers will believe that this software originates with HP, or that HP sponsors or endorses this product. In addition, the site

carries the legend “Copyright © HPDrivers.org 2003-2009,” implying that Complainant is the author of the site content.

The use of a domain name that is confusingly similar to Complainant’s HP trademark to attract consumers to Respondent’s own website offering an unauthorized, commercial product is not a use in connection with a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i), or a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶4(c)(iii). See *Microsoft Corporation v. OzGrid Business Applications*, FA 314308 (Nat. Arb. Forum, October 6, 2004). See also *Nike, Inc. v. Dias*, FA 135016 (Nat. Arb. Forum, January 7, 2002) (finding no bona fide offering of goods or services where Respondent used Complainant’s mark without authorization to attract Internet users to its website); *MetroPCS v. Robertson* (finding no legitimate interest where the respondent made an “overt implication of affiliation with Complainant’s mark” but “apparently never attempted to acquire licenses or permission allowing it to wholly incorporate Complainant’s ... mark in its ... domain name”); and *Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 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).

Attempting to pass oneself off as a trademark holder is also not a legitimate use. See *Crow v. LOVEARTH.net*, FA203208 (Nat. Arb. Forum Nov. 28, 2003) (“It is neither a bona fide offerings [sic] of goods or services, nor an example of a legitimate noncommercial or fair use under Policy ¶¶4(c)(i) & (iii) when the holder of a domain name, confusingly similar to a registered mark, attempts to profit by passing itself off as Complainant”); and *Computerized Sec. Sys., Inc. v. Hu*, FA157321 (Nat. Arb. Forum June 23, 2003) (“Respondent’s appropriation of [Complainant’s] SAFLOK mark to market products that compete with Complainant’s goods does not constitute a bona fide offering of goods and services”). Respondent’s use cannot be viewed as a *bona fide* offering of goods or services since Respondent has taken Complainant’s trademarks without authorization in order to misleadingly and deceptively divert Internet users to its web site. At best, diverted users are merely sold unnecessary and unauthorized services. At worst, sensitive personal and financial information is put at risk.

For the above reasons, the Respondent has no rights or legitimate interests in the disputed domain name.

C. REGISTRATION AND USE IN BAD FAITH

Respondent registered the disputed domain name in bad faith.

At the time that Respondent registered the domain name, Complainant’s HP trademark was famous and familiar to countless consumers. It is abundantly clear that Respondent was not only familiar with Complainant’s HP trademark at the time of registration of the domain name, but intentionally adopted a name incorporating this famous trademark in order to create an association with Complainant and its products and services. Respondent’s registration of the disputed domain name with knowledge of Complainant’s rights is evidence of bad faith registration and use with regard to Policy ¶4(a)(iii). See *Digi Int’l v. DDI Sys.*, FA 124506 (Nat.

Arb. Forum Oct. 24, 2002) (holding that “there is a legal presumption of bad faith, when Respondent reasonably should have been aware of Complainant’s trademarks, actually or constructively”); *Microsoft Corporation v. Cedric Thompson*, Case No. D2004-1097 (WIPO, April 14, 2005)(“It is thus inconceivable to the Panel that [Respondent] is not familiar with the Complainant’s ubiquitous MICROSOFT computer products or that his placement of that trademark in the disputed domain name is coincidental”); *Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1148 (9th Cir. Feb. 11, 2002) (finding that “[w]here an alleged infringer chooses a mark he knows to be similar to another, one can infer an intent to confuse”); *Yahoo!, Inc. v. Ashby*, D2000-0241 (WIPO June 14, 2000)(finding that the fame of the YAHOO! mark negated any plausible explanation for Respondent’s registration of the <yahoventures.com> domain name); and *Exxon Mobil Corp. v. Fisher*, D2000-1412 (WIPO Dec. 18, 2000)(finding that Respondent had actual and constructive knowledge of Complainant’s EXXON mark given the worldwide prominence of the mark and thus Respondent registered the name in bad faith).

Respondent’s <hpdrivers.org> web site is designed to appear to emanate from Complainant. The site prominently displays the HP Logo, and nothing on the home page suggests any other source or identity. The site draws in unwary consumers seeking to download Complainant’s free driver software, who are instead charged for an unauthorized and unsecure file download service. “This is precisely the sort of conduct that falls under Policy ¶4(b)(iv) and thus evidences Respondent’s bad faith registration and use of the disputed domain names.” *MetroPCS v. Robertson*. See also *Hunter Fan Co. v. MSS*, FA 98067 (Nat. Arb. Forum Aug. 23, 2001) (finding bad faith where the respondent used the disputed domain name to sell the complainant’s products without permission and mislead Internet users by implying that the respondent was affiliated with the complainant); *MidFirst Bank v. Adam Smith*, FA0907001274302 (Nat. Arb. Forum August 31, 2009)(use of the disputed domain name to pass oneself off as the Complainant constitutes bad faith registration and use of the domain name pursuant to Policy ¶4(b)(iv)); *Monsanto Co. v. Decepticons*, FA 101536 (Nat. Arb. Forum Dec. 18, 2001) (finding that a respondent's use of <monsantos.com> to misrepresent itself as a complainant and to provide misleading information to the public supported a finding of bad faith); and *DaimlerChrysler Corp. v. Bargman*, D2000-0222 (WIPO May 29, 2000) (finding that a respondent’s bad faith use of the title “Dodgevip.com Official Home Page” gave consumers the misimpression that the complainant endorsed and sponsored a respondent’s website).

Respondent’s deliberate misuse of Complainant’s HP mark to create a likelihood confusion and perpetrate fraud on the public is evidence of bad faith use and registration pursuant to Policy 4(a)(iii). See *Juno Online Servs., Inc. v. Nelson*, FA 241972 (Nat. Arb. Forum Mar. 29, 2004) (use of the disputed domain name for fraudulent purposes constituted bad faith); and *Hess Corp. v. GR*, FA 770909 (Nat. Arb. Forum Sept. 19, 2006) (finding that the respondent demonstrated bad faith registration and use where it fraudulently attempted to acquire the personal and financial information of Internet users through the use of a domain name confusingly similar to a competing mark). Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site by creating a likelihood of confusion with Complainant's HP trademark as to the source, sponsorship, affiliation, or endorsement of third party products and services. This constitutes bad faith under §4(b)(iv) of the Rules. See *V Secret Catalogue, Inc. v. Bryant Little*, FA 301728 (Nat. Arb. Forum Sept. 2, 2004).

Based on the foregoing, Respondent has registered and used the disputed domain name in bad faith.

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

FINDINGS

Complainant, Hewlett-Packard Development Company, L.P. and Hewlett-Packard Company, is the number one company in desktop personal computer (“PC”) and notebook sales. Complainant hold numerous registrations for its HP mark with many governmental trademark authorities throughout the world, including the State Intellectual Property Office of the People’s Republic of China (e.g. Reg. No. 1,330,533 issued November 7, 1999) and the United States Patent and Trademark Office (“USPTO”) (e.g., 1,116,835 issued April 24, 1979).

Respondent, Wu Wenbing, registered the <**hpdrivers.org**> domain name on July 30, 2009. The disputed domain name resolves to a website that promotes a commercial software product by using Complainant’s logo and imitates Complainant’s trade dress to induce Internet users to download the software. Once the software is downloaded it charges users to update hardware drivers, which are otherwise available for free from Complainant.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent’s failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) (“In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.”).

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

The Panel finds Complainant has sufficiently established rights in the HP mark under Policy ¶4(a)(i) through its numerous registrations with many governmental trademark authorities throughout the world, including the State Intellectual Property Office of the People's Republic of China (*e.g.*, Reg. No. 1,330,533 issued November 7, 1999) and the United States Patent and Trademark Office ("USPTO") (*e.g.*, 1,116,835 issued April 24, 1979). *See Honeywell Int'l Inc. v. r9.net*, FA 445594 (Nat. Arb. Forum May 23, 2005) (finding the complainant's numerous registrations for its HONEYWELL mark throughout the world sufficient to establish the complainant's rights in the mark under the Policy ¶4(a)(i)); *see also Morgan Stanley v. Fitz-James*, FA 571918 (Nat. Arb. Forum Nov. 29, 2005) (finding from a preponderance of the evidence that the complainant had registered its mark with national trademark authorities, the Panel determined that "such registrations present a *prima facie* case of Complainant's rights in the mark for purposes of Policy ¶4(a)(i).").

Respondent's <hpdrivers.org> domain name contains Complainant's entire HP mark, adds the descriptive term "drivers," which describes a portion of Complainant's business, and adds the generic top-level domain ("gTLD") ".org." The Panel finds, as previous panels have, that none of these additions to Complainant's mark sufficiently distinguish the disputed domain name from Complainant's mark. *See Oki Data Ams., Inc. v. ASD, Inc.*, D2001-0903 (WIPO Nov. 6, 2001) ("[T]he fact that a domain name wholly incorporates a Complainant's registered mark is sufficient to establish identity [sic] or confusing similarity for purposes of the Policy despite the addition of other words to such marks"); *see also Allianz of Am. Corp. v. Bond*, FA 680624 (Nat. Arb. Forum June 2, 2006) (finding that the addition of the generic term "finance," which described the complainant's financial services business, as well as a gTLD, did not sufficiently distinguish the respondent's disputed domain name from the complainant's mark under Policy ¶4(a)(i)); *see also Trip Network Inc. v. Alviera*, FA 914943 (Nat. Arb. Forum Mar. 27, 2007) (concluding that the affixation of a gTLD to a domain name is irrelevant to a Policy ¶4(a)(i) analysis). Therefore, the Panel finds the <hpdrivers.org> domain name is confusingly similar to Complainant's HP mark under Policy ¶4(a)(i).

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

Rights or Legitimate Interests

Pursuant to Policy ¶4(a)(ii), Complainant must make a *prima facie* showing Respondent lacks rights and legitimate interests in the disputed domain name. Upon making such a

showing, the burden then shifts to Respondent and Respondent must establish that it has rights or legitimate interests in the disputed domain name. The Panel finds Complainant has sufficiently made its *prima facie* showing under Policy ¶4(a)(ii). The burden now shifts to Respondent, from whom no response was received. *See Swedish Match UK Ltd. v. Admin, Domain*, FA 873137 (Nat. Arb. Forum Feb. 13, 2007) (finding that once a *prima facie* case has been established by the complainant, the burden then shifts to the respondent to demonstrate its rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(c)); *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).”). Although Respondent has not alleged that it has rights or legitimate interests in the disputed domain name, the Panel elects to examine the record under Policy ¶4(c).

The WHOIS information for the <**hpdrivers.org**> domain name lists “Wu Wenbing” as the registrant, which does not indicate that Respondent is commonly known by the disputed domain name. Respondent has not provided any evidence to suggest Policy ¶4(c)(ii) applies in this case. Furthermore, Complainant alleges it has not licensed or otherwise authorized Respondent to use the HP mark. Therefore, the Panel finds Respondent is not commonly known by the <**hpdrivers.org**> domain name under Policy ¶4(c)(ii). *See Coppertown Drive-Thru Sys., LLC v. Snowden*, FA 715089 (Nat. Arb. Forum July 17, 2006) (concluding that the respondent was not commonly known by the <coppertown.com> domain name where there was no evidence in the record, including the WHOIS information, suggesting that the respondent was commonly known by the disputed domain name); *see also Reese v. Morgan*, FA 917029 (Nat. Arb. Forum Apr. 5, 2007) (concluding that the respondent was not commonly known by the <lilpunk.com> domain name as there was no evidence in the record showing that the respondent was commonly known by that domain name, including the WHOIS information as well as the complainant’s assertion that it did not authorize or license the respondent’s use of its mark in a domain name).

The <**hpdrivers.org**> domain name resolves to a website that promotes a commercial software product by using Complainant’s logo and imitates Complainant’s trade dress to induce Internet users to download the software. Once the software is downloaded it charges users to update hardware drivers, which are otherwise available for free from Complainant. The Panel finds this competing use is 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 Gardens Alive, Inc. v. D&S Linx*, FA 203126 (Nat. Arb. Forum Nov. 20, 2003) (finding that the respondent used a domain name for commercial benefit by diverting Internet users to a website that sold goods and services similar to those offered by the complainant and thus, was not using the name in connection with a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use); *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).

Moreover, the Panel finds Respondent is attempting to pass itself off as Complainant by imitating Complainant's logos and trade dress, which is further evidence that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶4(a)(ii). *See Mortgage Research Center LLC v. Miranda*, FA 993017 (Nat. Arb. Forum July 9, 2007) ("Because [the] respondent in this case is also attempting to pass itself off as [the] complainant, presumably for financial gain, the Panel finds the respondent is not using the <mortgageresearchcenter.org> domain name for 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 Am. Int'l Group, Inc. v. Busby*, FA 156251 (Nat. Arb. Forum May 30, 2003) (finding that the respondent attempts to pass itself off as the complainant online, which is blatant unauthorized use of the complainant's mark and is evidence that the respondent has no rights or legitimate interests in the disputed domain name).

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

Registration and Use in Bad Faith

Since Respondent registered the disputed domain name on July 30, 2009, the disputed domain name has resolved to a website that features a commercial software product that Internet users may download by using Complainant's logo and imitates Complainant's trade dress. Once the software is downloaded it charges users to update hardware drivers, which are otherwise available for free from Complainant. The Panel finds Respondent's use of the disputed domain name disrupts Complainant's business. The Panel further finds that such a disruption constitutes bad faith registration and use under Policy ¶4(b)(iii). *See Artistic Pursuit LLC v. calcuttawebdevelopers.com*, FA 894477 (Nat. Arb. Forum Mar. 8, 2007) (finding that the respondent's registration and use of the disputed domain name, which displayed a website virtually identical to the complainant's website, constituted bad faith pursuant to Policy ¶4(b)(iii)); *see also Ethnic Grocer.com, Inc. v. Unlimited Latin Flavors, Inc.*, FA 94385 (Nat. Arb. Forum July 7, 2000) (finding that the minor degree of variation from the complainant's marks suggests that the respondent, the complainant's competitor, registered the names primarily for the purpose of disrupting the complainant's business).

The Panel finds Respondent's attempt to pass itself off as Complainant is evidence of bad faith registration and use under Policy ¶4(b)(iv). *See Am. Online, Inc. v. Miles*, FA 105890 (Nat. Arb. Forum May 31, 2002) ("Respondent is using the domain name at issue to resolve to a website at which Complainant's trademarks and logos are prominently displayed. Respondent has done this with full knowledge of Complainant's business and trademarks. The Panel finds that this conduct is that which is prohibited by Paragraph 4(b)(iv) of the Policy."); *see also Target Brands, Inc. v. JK Internet Servs.*, FA 349108 (Nat. Arb. Forum Dec. 14, 2004) (finding bad faith because the respondent not only

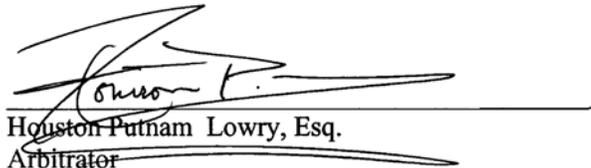
registered Complainant's famous TARGET mark, but "reproduced . . . Complainant's TARGET mark . . . [and] added Complainant's distinctive red bull's eye [at the domain name] . . . to a point of being indistinguishable from the original.').

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 <hpdrivers.org> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: December 31, 2009

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