



NATIONAL ARBITRATION FORUM

DECISION

Immaculata University v. Private Registrations Aktien Gesellschaft
Claim Number: FA0908001278462

PARTIES

Complainant is **Immaculata University** ("Complainant"), represented by **Sandra A. Jeskie**, of **DUANE MORRIS LLP**, Pennsylvania, USA. Respondent is **Private Registrations Aktien Gesellschaft** ("Respondent"), Saint Vincent and the Grenadines.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**immaculata.org**>, registered with **Network Solutions 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 August 7, 2009; the National Arbitration Forum received a hard copy of the Complaint on August 10, 2009.

On August 10, 2009, Network Solutions LLC confirmed by e-mail to the National Arbitration Forum that the <**immaculata.org**> domain name is registered with Network Solutions LLC and that Respondent is the current registrant of the name. Network Solutions LLC has verified that Respondent is bound by the Network Solutions 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 August 12, 2009, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of September 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@immaculata.org by e-mail.

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

On September 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 complaint is based on the common law trademark IMMACULATA.

The Complainant, which is referred to as Immaculata University, is a private university founded in 1920. It is a Catholic coeducational institution offering undergraduate and graduate studies. Founded originally as Villa Maria College, the institution was granted a college charter in 1920. In 1929, the name was formally changed to Immaculata College. In June 2002, Immaculata College received confirmation of university status and effective August 2002, the college became known as Immaculata University. Immaculata has been recognized as outstanding among peer institutions for the active role of faculty in counseling and guidance. On-line courses extend the geographic range and scope of the university. *Id.* It now has faculty consisting of approximately 100 full-time faculty augmented by a part time adjunct faculty.

Since February 1996, the Complainant has owned the domain name <immaculata.edu> which incorporates the IMMACULATA mark. The Complainant uses, and intends to continue using, the IMMACULATA mark and the <immaculata.edu> domain for its educational services, marketed throughout the world.

FACTUAL AND LEGAL GROUNDS

This Complaint is based on the following factual and legal grounds: ICANN Rule 3(b)(ix).

(a) **The Domain Name Is Identical Or Confusingly Similar To A Service Mark In Which The Complainant Has Rights**

Through extensive and long-standing use of the mark in commerce, Complainant has established secondary meaning in the mark sufficient to confer common law rights pursuant to Policy ¶4(a)(i). Specifically, Complainant has demonstrated continuous and widespread use of the IMMACULATA mark in commerce for ninety (90) years—using the IMMACULATA mark since 1929 and <immaculata.edu> since February 28, 1996.

Complainant maintains a continuous presence in the higher education field and notably, there are nearly ninety (90) years of Complainant's alumni using the IMMACULATA mark in connection with their degree conferral and subsequent employment. *See Southern California University for Professional Studies, Inc. v. Wan*, FA 1258605 (Nat. Arb. Forum June 9, 2009) (holding that the complainant had demonstrated common law rights in a mark through continuous use of the mark in connection with educational services for thirty years); *Ass'n of Tex. Prof'l Educators, Inc. v. Salvia Corp.*, FA 685104 (Nat. Arb. Forum May 31, 2006) (holding that the complainant had demonstrated common law rights in the ATPE mark through continuous use of the mark in connection with educational services for over twenty-five years); *Institute for Int'l Educ. of Students v. Int'l Educ. Servs.*, FA 95845 (Nat. Arb. Forum Nov. 30, 2000) (holding that the complainant had demonstrated common law rights in a mark through continuous use in connection with its study abroad programs for over five decades).

A governmental trademark registration is not necessary to establish rights under Policy ¶4(a)(i) if Complainant can establish common law rights in the mark. *Southern California University for Professional Studies, Inc. v. Wan*, FA 1258605 (Nat. Arb. Forum June 9, 2009); *see also Artistic Pursuit LLC v. calcuttawebdevelopers.com*, FA 894477 (Nat. Arb. Forum Mar. 8, 2007) (finding that Policy ¶4(a)(i) does not require a trademark registration if a complainant can establish common law rights in its mark); *see also British Broad. Corp. v. Renteria*, D2000-0050 (WIPO Mar. 23, 2000) (noting that the Policy “does not distinguish between registered and unregistered trademarks and service marks in the context of abusive registration of domain names” and applying the Policy to “unregistered trademarks and service marks”).

Complainant's long and extensive use of the IMMACULATA mark and the <immaculata.edu> domain has resulted in established goodwill in the mark which has been widely recognized by others as a source indicator for Complainant's educational services. The mark is distinctive and has also acquired secondary meaning. *See Red Star Int'l LLC d/b/a Red Star Travel v. GTR Travel*, FA 167921 (Nat. Arb. Forum Aug. 25, 2003) (holding that Complainant established rights in the RED STAR TRAVEL mark through proof of secondary meaning associated with that mark in connection with its widespread and continuous use of the mark); *S.A. Bendheim Co., Inc. v. Hollander Glass*, FA 142318 (Nat. Arb. Forum March 13, 2003) (holding that Complainant established rights in the RESTORATION GLASS mark through proof of secondary meaning associated with the mark); *Tuxedos By Rose v. Nunez*, FA 95248 (Nat. Arb. Forum Aug.

17, 2000) (finding common law rights in a mark where its use was continuous and ongoing, and secondary meaning was established); *see also British Broad. Corp. v. Renteria*, D2000-0050 (WIPO Mar. 23, 2000) (noting that the Policy “does not distinguish between registered and unregistered trademarks and service marks in the context of abusive registration of domain names” and applying the Policy to “unregistered trademarks and service marks”). Complainant’s marks have sufficient association with the Complainant such that common law trademark rights exist.

The domain name <immaculata.org> is identical or confusingly similar to the IMMACULATA mark and Complainant’s <immaculata.edu> domain. The domain name <immaculata.org> incorporates Complainant’s IMMACULATA mark in its entirety. Respondent was not authorized or licensed to use the IMMACULATA mark or name for any purpose.

The addition of the generic top-level domain name “.org” is irrelevant for the purposes of a Policy ¶4(a)(i) analysis. *Southern California University for Professional Studies, Inc. v. Wan*, FA 1258605 (Nat. Arb. Forum June 9, 2009) (“The addition of the generic top-level domain name ‘.info’ is irrelevant for the purposes of a Policy ¶4(a)(i) analysis”); *see also Board of Regents, The Univ. of Tex. Sys. v. Whois Protection c/o Whois Protection Serv. LLC*, FA 1227979 (Nat. Arb. Forum Nov. 17, 2008) (holding that adding a generic top-level domain “is irrelevant under Policy ¶4”); *Nev. State Bank v. Modern Ltd. – Cayman Web Dev.*, FA 204063 (Nat. Arb. Forum Dec. 6, 2003) (“It has been established that the addition of a generic top-level domain is irrelevant when considering whether a domain name is identical or confusingly similar under the Policy.”); *see also 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.”).

Respondent’s <immaculata.org> domain name, registered in January 12, 2000, is identical and confusingly similar to Complainant’s IMMACULATA mark.

(b) The Respondent Has No Rights Or Legitimate Interest With Respect To The Domain Name In Dispute

Respondent has no rights to Complainant’s mark. The evidence is overwhelming that Respondent’s use of the domain name was done intentionally to divert Complainant’s customers to Respondent’s own site for commercial gain and there is therefore no legitimate noncommercial, or fair use of the disputed domain pursuant to Policy ¶4(c)(iii). *Bd. of Regents, The Univ. of Tex. Sys. v. n/a c/o Richard Jones*, FA 1227980 (Nov. 24, 2008) (finding no rights in mark where respondent maintained web pages from disputed domain names that contain Complainant’s marks and feature links to third-party websites offering services that compete with Complainant’s business); *see also Southern Cal. Univ. for Prof. Studies, Inc.*, FA 1258605, *supra* (finding no rights in mark where

respondent was using disputed domain name to fraudulently host a website purporting pass self off as claimant and offer educational services).

The WHOIS information lists Respondent as “Private Registrations Aktien Gesellschaft.” Complainant never authorized Respondent to use the IMMACULATA mark. Nor is there anything to suggest Respondent is commonly known by the <immaculata.org> domain name. *See Southern California University for Professional Studies, Inc. v. Wan*, FA 1258605 (Nat. Arb. Forum June 9, 2009) (concluding that the respondent was not commonly known by the <scups-edu.info> domain name under Policy ¶4(c)(ii) based on the WHOIS information and other evidence in the record); *M. Shanken Commc’ns v. WORLDTRAVELERSONLINE.COM*, FA 740335 (Nat. Arb. Forum Aug. 3, 2006) (finding that the respondent was not commonly known by the <cigaraficionada.com> domain name under Policy ¶4(c)(ii) based on the WHOIS information and other evidence in the record); *see also Coppertown Drive-Thru 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).

Visitors to the <immaculata.org> website see a picture of what appears to be a group students sitting on a college campus. To the left and right of that picture are the following links under the heading “Choose a topic . . .”: “Immaculata University,” “University Degree,” “College Application,” “Graduate Studies,” “Continuing Education,” “Scholarship For Students,” “Online Colleges,” “University Admission,” “Executive Mba Degree”, and “Accredited University.” *Id.* Respondent is obviously referring to Complainant’s educational offerings. When visitors click one of these links, however, they are taken to another webpage under the <immaculata.org> domain, which contains another series of links to third-party websites offering various competing services. *Id.* Presumably, Respondent receives a financial benefit when visitors click through to these third-party websites. These actions are not a bona fide offering of services, nor an example of legitimate non-commercial or fair use under Policy ¶4(c)(i) and (iii). *Bd. of Regents, The Univ. of Tex. Sys. v. n/a c/o Richard Jones*, FA 1227980 (Nov. 24, 2008) (maintaining web pages from disputed domain names that contain Complainant’s marks and feature links to third-party websites offering services that compete with Complainant’s business for which respondent commercially benefits from these links through the receipt of “click-through” fees “is neither a bona fide offering of goods or services under Policy ¶4(c)(i) nor a legitimate noncommercial or fair use under Policy ¶4(c)(iii)”; *see also Aqua Massage Int’l Inc v. Baron Stone Corporation*, FA 101514 (Nat. Arb. Forum Dec. 4, 2001) (finding no rights or legitimate interests where respondent diverted complainant’s customers to his websites); *Vapor Blast Mfg. Co. v. R & S Tech., Inc.*, FA 96577 (Nat. Arb. Forum Feb. 27, 2001) (finding that Respondent’s commercial use of the domain name to confuse and divert Internet traffic is not a legitimate use of the domain name).

Respondent has not acquired recognition or financial gain through the development of its website to promote a bona fide business that was separate from the selling of Complainant's services under Complainant's own name. To the contrary, Respondent has attempted to trade on Complainant's name, reputation and good will.

(c) The Domain Name Was Registered And Is Being Used In Bad Faith

Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site and services. The <immaculata.org> domain name was registered for the primary purpose of intentionally attracting, 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 that web site.

These actions clearly show that Respondent exhibited bad faith. See Policy ¶4(b)(iv) (when a domain name is used to intentionally attempt 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 [Respondent's] web site" it is an example of bad faith use and registration); *S. Cal. Univ. for Prof. Studies, Inc.*, FA 1258605, supra (finding that "profiting through the intentional attempt to attract Internet users to Respondent's website through the use of a domain name that is confusingly similar to Complainant's mark" constitutes bad faith registration and use); *Bd. of Regents, The Univ. of Tex. Sys.*, FA 1227980, supra (finding respondent's receipt of click-through fees from third-party advertisements "is an intentional use of the disputed domain names for commercial gain through a likelihood of confusion with Complainant's mark" and, thus evidence of bad faith); *Board of Regents, The Univ. of Tex. Sys.*, FA 1227979, supra (finding evidence of bad faith where "Respondent presumably receives commercial and monetary profit from displaying third-party advertisements on its corresponding website" and "Respondent's registration of a confusingly similar disputed domain name and subsequent usage of this website has therefore created a substantial likelihood of confusion regarding the source, affiliation, and endorsement of the disputed domain name and corresponding website")

The fact that Respondent has repeatedly engaged in the practice of registering domain names with the intent to benefit from other parties' marks is further evidence of bad faith. See *Leland Stanford Jr. Univ. v. Zedlar Transcription & Translation*, FA94970, Nat. Arb. Forum July 11, 2000) (finding evidence of bad faith where "Respondent has registered many domain names with intent to benefit from other parties' famous marks"). In this case, Respondent has registered over 28,000 domain names. Indeed, Respondent has previously been found to exhibited bad faith through practices identical to those at issue here. See *DatingDirect.com Ltd. v. Private Registrations Aktien Gesellschaft c/o Domain Admin*, FA 1227747 (Nat. Arb. Forum Nov. 24, 2008) (finding that Private Registrations Aktien Gesellschaft's confusingly similar domain name's use of hyperlinks to divert

Internet users for commercial benefit was “calculated to and does disrupt Complainant’s business and is evidence of bad faith registration and use”).

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

FINDINGS

Complainant Immaculata University is a Pennsylvanian private Catholic university, which was founded in 1920 as “Villa Maria College.” In 1929, Complainant was renamed to “Immaculata College,” and in June 2002, was renamed again to “Immaculata University” upon receiving university status. Complainant has operated under the IMMACULATA mark for ninety years. Complainant has received recognition for its faculty, and employs over 100 full-time faculty members. Complainant has further owned and operated the <immaculata.edu> domain name since February 1996.

Respondent, Private Registrations Aktien Gesellschaft, registered the disputed domain name on January 12, 2000. The disputed domain name resolves to a website that displays advertisements and links to other competing educational institutions.

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

Complainant has not submitted evidence of a trademark registration for its IMMACULATA mark with any governmental trademark authority. However, the Panel finds Complainant need not submit such evidence so long as Complainant can demonstrate common law rights in the IMMACULATA mark through a showing of sufficient secondary meaning under Policy ¶4(a)(i). *See British Broad. Corp. v. Renteria*, D2000-0050 (WIPO Mar. 23, 2000) (noting that the Policy “does not distinguish between registered and unregistered trademarks and service marks in the context of abusive registration of domain names” and applying the Policy to “unregistered trademarks and service marks”); *see also Hiatt v. personal fan & official site builders : we build great sites*, FA 881460 (Nat. Arb. Forum Feb. 21, 2007) (“[R]egistration with a trademark authority is unnecessary under Policy ¶4(a)(i) in instances where a mark has gained secondary meaning through extensive commercial use and common law rights have been established”).

Complainant asserted its use of the IMMACULATA mark through the following: (1) the operation as either Immaculata College or Immaculata University over the past 90 years, and evidence corroborating such use; (2) the receipt of recognition for its faculty and employment of over 100 full-time faculty members; and (3) the operation of the <immaculata.edu> domain name since February 1996. The Panel finds such long-standing use in commerce evidences Respondent’s secondary meaning in the IMMACULATA mark sufficient to engender common law rights in the mark under Policy ¶4(a)(i). *See Fishtech, Inc. v. Rossiter*, FA 92976 (Nat. Arb. Forum Mar. 10, 2000) (finding that the complainant has common law rights in the mark FISHTECH that it has used since 1982); *see also BroadcastAmerica.com, Inc. v. Quo*, DTV2000-0001 (WIPO Oct. 4, 2000) (finding that the complainant has common law rights in BROADCASTAMERICA.COM, given extensive use of that mark to identify the complainant as the source of broadcast services over the Internet, and evidence that there is wide recognition with the BROADCASTAMERICA.COM mark among Internet users as to the source of broadcast services).

The <immaculata.org> domain name contains Complainant’s IMMACULATA mark while merely adding the generic top-level domain “.org.” Because every domain name requires a top-level domain, such an addition is irrelevant under the Policy. Therefore, the Panel finds the <immaculata.org> domain name is identical to Complainant’s IMMACULATA mark under Policy ¶4(a)(i). *See Sea World, Inc. v. JMXTRADE.com*, FA 872052 (Nat. Arb. Forum Feb. 12, 2007) (“[Since] [t]he top-level gTLD is merely a functional element required of every domain name, the <shamu.org> domain name is identical to the SHAMU mark under a Policy ¶4(a)(i).”); *see also 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.”).

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

Rights or Legitimate Interests

Complainant has asserted that Respondent lacks rights and legitimate interests in the disputed domain name. Because Complainant has set forth a sufficient *prima facie* case, Respondent bears the burden of demonstrating that it does have rights or legitimate interests pursuant to Policy ¶4(a)(ii). *See Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that, under certain circumstances, the mere assertion by the complainant that the respondent has no right or legitimate interest is sufficient to shift the burden of proof to the respondent to demonstrate that such a right or legitimate interest does exist); *see also Compagnie Generale des Matieres Nucleaires v. Greenpeace Int'l*, D2001-0376 (WIPO May 14, 2001) (“Proving that the Respondent has no rights or legitimate interests in respect of the Domain Name requires the Complainant to prove a negative. For the purposes of this sub paragraph, however, it is sufficient for the Complainant to show a *prima facie* case and the burden of proof is then shifted on to the shoulders of Respondent. In those circumstances, the common approach is for respondents to seek to bring themselves within one of the examples of paragraph 4(c) or put forward some other reason why they can fairly be said to have a relevant right or legitimate interests in respect of the domain name in question.”).

Complainant contends Respondent has no rights to Complainant’s mark, and is only known in the WHOIS information as “Private Registrations Aktien Gesellschaft.” As there is no evidence in the record that would identify Respondent with the disputed domain name, other than mere ownership, the Panel consequently finds Respondent is not commonly known by the disputed domain name under Policy ¶4(c)(ii). *See M. Shanken Commc’ns v. WORLDTRAVELERSONLINE.COM*, FA 740335 (Nat. Arb. Forum Aug. 3, 2006) (finding that the respondent was not commonly known by the <cigaraficionada.com> domain name under Policy ¶4(c)(ii) based on the WHOIS information and other evidence in the record); *see also Coppertown Drive-Thru 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).

Complainant contends the disputed domain name resolves to a website that displays advertisements and links to other competing educational institutions. Complainant contends the display of these links to competing third parties is done for commercial gain, because Respondent obtains some sort of referral fee. The Panel agrees, given the lack of evidence to the contrary, and find Respondent has not engaged in 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 Am. Online, Inc. v. Tencent Commc’ns Corp.*, FA 93668 (Nat. Arb. Forum Mar. 21, 2000) (finding that use of the complainant’s mark “as a portal to suck surfers into a site sponsored by [the respondent] hardly seems legitimate”); *see also TM Acquisition Corp. v. Sign Guards*, FA 132439 (Nat. Arb. Forum Dec. 31, 2002)

(finding that the respondent's diversionary use of the complainant's marks to send Internet users to a website which displayed a series of links, some of which linked to the complainant's competitors, was not a *bona fide* offering of goods or services).

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

Registration and Use in Bad Faith

By offering competing links on the resolving website of the disputed domain name, the Panel infers Respondent intentionally sought to disrupt Complainant's business for its own benefit. Therefore, the Panel finds Respondent has engaged in bad faith registration and use under Policy ¶4(b)(iii). *See Tesco Pers. Fin. Ltd. v. Domain Mgmt. Servs.*, FA 877982 (Nat. Arb. Forum Feb. 13, 2007) (concluding that the use of a confusingly similar domain name to attract Internet users to a directory website containing commercial links to the websites of a complainant's competitors represents bad faith registration and use under Policy ¶4(b)(iii)); *see also David Hall Rare Coins v. Tex. Int'l Prop. Assocs.*, FA 915206 (Nat. Arb. Forum Apr. 9, 2007) (finding that the respondent registered and used the disputed domain name in bad faith pursuant to Policy ¶4(b)(iii) because respondent used the disputed domain name to advertise goods and services of complainant's competitors, thereby disrupting the complainant's business).

Finally, Respondent has utilized the disputed domain name for commercial reasons by displaying competitive click-through advertisements demonstrates Respondent's creation of a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the disputed domain name and resolving website. The Panel finds Respondent has engaged in bad faith registration and use under Policy ¶4(b)(iv) under the facts and circumstances of this case. *See Allianz of Am. Corp. v. Bond*, FA 680624 (Nat. Arb. Forum June 2, 2006) (finding bad faith registration and use under Policy ¶4(b)(iv) where the respondent was diverting Internet users searching for the complainant to its own website and likely profiting); *see also Univ. of Houston Sys. v. Salvia Corp.*, FA 637920 (Nat. Arb. Forum Mar. 21, 2006) ("Respondent is using the disputed domain name to operate a website which features links to competing and non-competing commercial websites from which Respondent presumably receives referral fees. Such use for Respondent's own commercial gain is evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv).").

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



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: September 21, 2009

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

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

NATIONAL ARBITRATION FORUM