



## NATIONAL ARBITRATION FORUM

### DECISION

UnitedHealth Group Incorporated v. SMVS Consultancy Privacy Limited  
Claim Number: FA0907001275517

#### PARTIES

Complainant is **UnitedHealth Group Incorporated** ("Complainant"), represented by **Timothy M. Kenny**, of **Fulbright & Jaworski**, Minnesota, USA. Respondent is **SMVS Consultancy Privacy Limited** ("Respondent"), India.

#### REGISTRAR AND DISPUTED DOMAIN NAME

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

#### 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 July 23, 2009; the National Arbitration Forum received a hard copy of the Complaint on July 24, 2009.

On July 24, 2009, Directi Internet Solutions Pvt. Ltd. d/b/a Publicd confirmed by e-mail to the National Arbitration Forum that the <**pacificareonline.com**> domain name is registered with Directi Internet Solutions Pvt. Ltd. d/b/a Publicd and that Respondent is the current registrant of the name. Directi Internet Solutions Pvt. Ltd. d/b/a Publicd has verified that Respondent is bound by the Directi Internet Solutions Pvt. Ltd. d/b/a Publicd 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 4, 2009, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of August 24, 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@pacificareonline.com by e-mail.

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

On August 31, 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:

[a.] The Domain Name [pacificareonline.com](http://pacificareonline.com) is identical to the PACIFICARE Marks in which UnitedHealth has trademark rights worldwide.

[i] UnitedHealth has rights in its trademarks.

UnitedHealth is an innovative leader in the health and well-being industry. Comprised of a highly diversified family of companies offering services in the health and well-being industry, UnitedHealth serves approximately 70 million Americans and has revenues exceeding \$71.5 billion annually. UnitedHealth is ranked 21st on *Fortune* magazine's 2007 *Fortune 500* list of America's largest corporations.

The PACIFICARE Marks have been used in commerce in connection with providing health care services since at least as early as 1978. In addition, UnitedHealth has registered and uses the domain name [pacificare.com](http://pacificare.com) in connection with the sale of its healthcare services on the Internet. This website has been in operation since 1995.

The PACIFICARE Marks have become highly valuable assets of UnitedHealth, representing substantial goodwill. The value of these assets has been cultivated as a result of UnitedHealth's continuous and exclusive use of the marks for many years, and because of UnitedHealth's efforts to promote the mark through the expenditure of substantial sums and careful control of the public perception of both the nature and quality of the goods provided in connection with the marks.

It is well established under the Policy that a complainant's registration of a mark with a federal authority establishes a prima facie case of the complainant's rights. *See, e.g., Delta Corporate Identity, Inc. and Delta Air Lines, Inc. v. dltaairlines.com and deltaairlines.com c/o Hanna El Hinn*, FA548217 (Nat. Arb. Forum Oct. 12, 2005), citing *Janus Int'l Holding Co. v. Rademacher*, D2002-0201 (WIPO Mar. 5, 2002) ("Panel decisions have held that registration of a mark is prima facie evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive."), and *Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) ("Registration of the NASAL-AIRE mark with the USPTO establishes Complainant's rights in the mark.").

[ii] The domain name pacificareonline.com is identical to the PACIFICARE Marks.

UnitedHealth has used its PACIFICARE trademark in commerce since at least 1978. As noted above, such long-standing and continuous use gives UnitedHealth exclusive rights in the PACIFICARE Marks.

ICANN panels have found that, where, as in this case, a domain name incorporates a distinctive mark in its entirety, it creates sufficient similarity between the mark and the domain name to render it confusingly similar. *See Lowen Corp. v. Henry Chan*, D2004-4030 (WIPO August 5, 2004) (finding that the domain name lowensigns.com is confusingly similar to LOWEN). Furthermore, the addition of a common or generic term following a trademark does nothing to reduce the domain name's confusing similarity. *See Wal-Mart Stores, Inc. v. Walsucks & Walmarket Puerto Rico*, D2000-0477 (WIPO July 20, 2000) ("The addition of a common or generic term following a trademark does not create a new or different mark in which respondent has rights."); *Parfums Christian Dior v. I Netpower, Inc.*, No. D2000-0022 (WIPO March 3, 2000) (finding that four domain names that added the descriptive words "fashion" or "cosmetics" after the trademark were confusingly similar to the trademark).

It is also well-settled that the addition of a generic top-level domain, such as ".com," is irrelevant in determining similarity of Respondent's Pacificareonline.com domain to UnitedHealth's PACIFICARE Marks. *See, e.g., Delta Corporate Identity, Inc. and Delta Air Lines, Inc. v. Busy Body, Inc. v. Fitness Outlet Inc.*, D2000-0127 (WIPO Apr. 22, 2000) ("[t]he addition of the generic top-level domain (gTLD) name '.com' is . . . without legal significance since use of a gTLD is required of domain name registrants"); *See also, Thomas B. Hudson v. Ted Machi & Associates*, Claim No. FA133759 (Nat. Arb. Forum Jan. 21, 2003).

In this case, the pacificareonline.com domain name is identical to the PACIFICARE Marks. The domain name differs from the PACIFICARE Marks by only by the addition of the highly descriptive term "online," which merely indicates that the domain name points to a web site, and the top-level domain, .com.

[b.] Respondent Has No Rights or Legitimate Interests in the Domain Name at Issue.

Once Complainant makes a prima facie case in support of its allegations, the burden shifts to Respondent to show that it does have rights or legitimate interests. *See, e.g., Tejon Ranchcorp and Tejon Ranch Co. v. J & L Enterprises*, FA524749 (Nat. Arb. Forum September 20, 2005), citing *Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (where complainant asserted that respondent has no rights or legitimate interests with respect to domain name, respondent must come forward with concrete evidence rebutting this assertion because this information is “uniquely within the knowledge and control of the respondent.”), and *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.”).

Moreover, Respondent must show it has rights or legitimate interest in respect of the domain name at issue by “concrete evidence.” *See Kate Spade, LLC v. Darmstadter Designs*, No. D2001-1384 (WIPO Jan. 3, 2002) citing UDRP Policy 4(c). “Concrete evidence” requires more than personal assertions; it requires documents or third party declarations in support of such assertions. *Id.* A failure to produce such concrete evidence entitles a panel to conclude that the respondent has no such rights or legitimate interests. *Id.*

From the evidence discussed below, it is clear that Respondent has no rights or legitimate interest in the pacificareonline.com domain name.

[i] Respondent has no relationship with UnitedHealth.

Respondent has no relationship, affiliation, connection, endorsement or association with UnitedHealth. Respondent has never requested or received any authorization, permission or license from UnitedHealth to use the PACIFICARE Marks in any way.

[ii] Respondent has never been commonly known by the domain name pacificareonline.com or by the PACIFICARE Marks and has never acquired any trademark rights in the same.

There is no evidence in the WhoIs information to suggest that Respondent is known by the pacificareonline.com domain name. Respondent has no relationship, association, affiliation, connection or endorsement with UnitedHealth. Given UnitedHealth’s long-time and extensive world-wide rights in the PACIFICARE Marks in connection with health-related services, Respondent cannot have rights in the pacificareonline.com domain name or the PACIFICARE Marks, particularly in connection with health and insurance-related goods and services.

[iii] Respondent has not used the domain name in good faith and in connection with a bona fide offering of goods or services.

Respondent’s use for commercial gain of a domain name that is identical to the PACIFICARE Marks to direct Internet users interested in UnitedHealth’s products and services to a website which offers similar goods and services in competition with UnitedHealth is not a legitimate noncommercial or fair use of the domain name. *See Vapor Blast Mfg. Co. v. R & S Tech., Inc.*, FA 96577 (Nat. Arb. Forum Feb. 27, 2001) (respondent’s commercial use of the domain name to confuse and divert Internet traffic is not a legitimate use of the domain name); *see also State*

*Farm Mut. Auto. Ins. Co. v. LaFaive*, FA 95407 (Nat. Arb. Forum Sept. 27, 2000) (“[U]nauthorized providing of information and services under a mark owned by a third party cannot be said to be the bona fide offering of goods or services.”)

The website located at [pacificareonline.com](http://pacificareonline.com) is a directory website providing a listing of hyperlinks which lead to popular categories for health care and insurance-related products, including the sites of UnitedHealth’s competitors.<sup>1</sup> When a searcher reaches the [pacificareonline.com](http://pacificareonline.com) site, and clicks on many of the links, he or she is connected immediately to the web site of one of UnitedHealth’s competitors or is immediately provided with another list of links which lead to UnitedHealth’s competitors. Upon information and belief, Respondent receives compensation each time a searcher clicks on one of these search links, which constitutes use of the domain for commercial gain. Respondent’s use of the [pacificareonline.com](http://pacificareonline.com) domain name is also commercial because the various companies linked to the directory site benefit from the subsequent interest and purchases resulting from those searches. ICANN panels have held that there only needs to be commercial gain sought by *some* party for the use to be commercial. *See Athanasios D2000-0923* (finding that “[I]t is enough that commercial gain is being sought for someone” for a use to be commercial). Respondent’s use cannot be characterized as fair use. *See id.* (finding that Respondent’s use “could in no way be characterized as fair, because consumers would think that they were visiting a site of the Complainants until they found that instead they were in a directory which would do the Complainants potential harm”).

Furthermore, Respondent’s use of the domain name is not legitimate because it diverts UnitedHealth’s customers and potential customers to Respondent’s website and then to the web sites of UnitedHealth’s competitors. *See Focus Do It All Group v. Athanasios Sermbizis*, D2000-0923 (WIPO October 6, 2000) (finding that Respondent’s domain name which linked visitors to a directory of regional competitors was not a legitimate use). *See also Homer, TLC Inc. v. Kang*, FA573872 (Nat. Arb. Forum Nov. 22, 2005) (“Respondent’s use of ‘a’ domain name that is identical to Complainant’s mark to divert Internet users to third-party websites for Respondent’s own commercial gain does not constitute a *bona fide* offering . . . or a legitimate noncommercial or fair use . . .”).

Such use of UnitedHealth’s trademarks is clearly confusing and deceptive to consumers. As such, Respondent’s website at [pacificareonline.com](http://pacificareonline.com) is not used or maintained in good faith and in connection with a bona fide offering of goods or services.

[c.] Respondent Registered and Used the Domain Name in Bad Faith.

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<sup>1</sup> As noted above, when a searcher types in the domain name [pacificareonline.com](http://pacificareonline.com), the searcher is brought to a directory web page. On July 21, 2009, there were over a dozen links on the [pacificareonline.com](http://pacificareonline.com) web page that offered searches and further directories of links for health care and insurance-related services (examples include links to “PacificSource Health Plan,” “eHealthInsurance.com,” “PacifiCare Online,” “Pacific Health Insurance” and others). If a searcher clicks on many of these links he or she will get another list of links which includes links to several companies offering goods and services related to UnitedHealth’s. These links include links to the websites of numerous of UnitedHealth’s competitors.

There are three pieces of evidence that show Respondent had knowledge of UnitedHealth's trademark rights, yet proceeded to register and use the Pacificareonline.com domain in bad faith: (1) Respondent used UnitedHealth's trademark in its domain name to sell goods in direct competition with UnitedHealth; (2) Respondent is deemed to have constructive knowledge of UnitedHealth's trademark rights at the time Respondent registered and began using the pacificareonline.com domain in light of UnitedHealth's numerous U.S. trademark applications and registrations for the PACIFICARE Marks, and (3) Respondent had actual knowledge of UnitedHealth's trademark rights after receiving several letters from UnitedHealth providing details of UnitedHealth's numerous trademark applications, registrations and common law rights.

Respondent is using the pacificareonline.com domain name, which is identical to the PACIFICARE Marks, to direct Internet users to a commercial website featuring goods and services that compete with UnitedHealth. Such use is clear evidence of bad faith registration and use. *See, e.g., Society for the Promotion of Japanese Animation v. In Stealth Mode*, citing *S. Exposure v. S. Exposure, Inc.*, FA 94864 (Nat. Arb. Forum July 18, 2000) (respondent acted in bad faith by attracting Internet users to website that competes with complainant's business), and *Puckett v. Miller*, D2000-0297 (WIPO June 12, 2000) (respondent diverted business from complainant to competing website in violation of Policy ¶4(b)(iii)). Furthermore, it is clear that Respondent registered the disputed domain name the PACIFICARE Marks in mind in light of the obvious link between UnitedHealth and the both the content of the website and the goods and services offered for sale thereon. *See MIVA, Inc. v. WhoIs Privacy Inc.*, citing *Pfizer, Inc. v. Suger*, D2002-0187 (WIPO Apr. 24, 2002) (because link between complainant's mark and content advertised on respondent's website obvious, respondent "must have known about the Complainant's mark when it registered the subject domain name.").

In addition, Respondent is deemed to have constructive knowledge of UnitedHealth's rights in the PACIFICARE Marks pursuant to multiple federal U.S. trademark registrations and applications for the PACIFICARE Marks. "There is a legal presumption of bad faith when [Respondent] reasonably should have been aware of Complainant's trademarks, actually or constructively." *See Digi Int'l v. DDI Sys.*, FA 124506 (Nat. Arb. Forum Oct. 24, 2002); *see also Thomas B. Hudson v. Ted Machi & Associates*, Claim No. FA133759 (Nat. Arb. Forum Jan., 2003) ("Respondent must be held to be on constructive notice of Complainant's service mark . . ."); *Assante Holdings, Inc. v. Kevin Baker*, Claim No. FA109384 (Nat. Arb. Forum May 20, 2002) ("Respondent was on notice as to Complainant's rights in its PERSONAL CFO mark when it registered the disputed domain name because Complainant's mark is on the Principal Register of the United States Patent and Trademark Office. Registration of the disputed domain name despite this notice is evidence of bad faith registration."). *C-Line Products, Inc. v. Ralco Consulting c/o Robert Lebeaux*, Claim No. FA187608 (Nat. Arb. Forum Oct. 20, 2003) ("Respondent was put on constructive notice of Complainant's rights in the C-LINE mark prior to Respondent's registration of the c-line.com domain name by virtue of Complainant's federal registrations of its mark. Thus, it is found and determined that Respondent registered the disputed domain name in bad faith pursuant to Policy Paragraph 4(a)(iii)."); 15 U.S.C. § 1072.

Finally, Respondent had actual knowledge of UnitedHealth's rights in its PACIFICARE Marks based on two letters Respondent received from UnitedHealth. The letters, dated March 11, 2009

and July 13, 2009, provided Respondent with details regarding UnitedHealth's extensive rights in the PACIFICARE Marks, set forth the ways in which Respondents registration and use of the pacificareonline.com domain name infringed upon those rights, and demanded that Respondent remove the infringing content and transfer the domain to UnitedHealth. Despite Respondents' actual knowledge of UnitedHealth's trademark rights, Respondent continues to operate the infringing website at pacificareonline.com. Such use clearly exemplifies bad faith.

Any use by Respondent of the PACIFICARE Marks, even as a domain name, is an infringement of UnitedHealth's long-held rights under trademark law. As the panelist in *C-Line Products, Inc. v. Ralco Consulting c/o Robert Lebeaux* pointedly noted, a potential domain name registrant

“would be well-advised to heed the oft-repeated admonition, such as that of Scott W. Pink, in his treatise, *The Internet & E-Commerce Legal Handbook* (2001), where at page 110, he states: ‘Once you have decided on the TLDs and ccTLDs, you will want to select the second level of the domain, the words that signify your unique address. In doing so, you should first conduct both a domain name search to make sure the particular domain is available as well as a trademark search to make sure your choice of a domain name does not potentially infringe on another person or entity's trademark rights.’ *C-Line Products, Inc. v. Ralco Consulting c/o Robert Lebeaux*, Claim No. FA187608 (Nat. Arb. Forum October 20, 2003) (Emphasis supplied).

Simply put, Respondent knew of UnitedHealth's rights in the PACIFICARE Marks. Its registration and use of the pacificareonline.com domain name, despite having such knowledge, indicates bad faith. Therefore, UnitedHealth has established that Respondent registered and used the domain name in bad faith.

[d.] UnitedHealth is Entitled to the Relief Sought.

As further support that UnitedHealth has rights in the PACIFICARE Marks, that the domain name pacificareonline.com is confusingly similar to the PACIFICARE Marks and that the Respondent's particular use of the domain name pacificareonline.com is use in bad faith, UnitedHealth notes that it has succeeded in at least eleven other UDRP proceedings under very similar circumstances. See *UnitedHealth Group Incorporated v. Bill Wichert*, FA011756 (NAF July 30, 2007), *UnitedHealth Group Incorporated v. Kim Sun Woo*, FA12066 (NAF July 30, 2007), *UnitedHealth Group Incorporated v. Mohammed Aenul Hassan*, FA947081 (NAF May 17, 2007); *UnitedHealth Group Incorporated v. WhoIsGuard Protected*, FA944200 (NAF May 9, 2007); *UnitedHealth Group v. Hong Kong Names LLC*, FA935205 (NAF April 26, 2007); *UnitedHealth Group Incorporated v. Silmaril Ltd.*, FA919451 (NAF April 9, 2007); *UnitedHealth Group Incorporated v. S. Vostaya*, FA1011743 (NAF Aug. 1, 2007); *UnitedHealth Group Incorporated v. St. Kits Registry*, FA1138704 (NAF March 5, 2008); *UnitedHealth Group Incorporated v. UnitedHealth Group*, FA1141068 (NAF March 6, 2008); *UnitedHealth Group Incorporated v. M. Morgan*, FA1152594 (NAF April 11, 2008); *UnitedHealth Group Incorporated v. Consumer Choice Group Services*, FA1257952 (NAF May 29, 2009).

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

## **FINDINGS**

Complainant, UnitedHealth Group Incorporated, is a leader in the health and well-being industry. Complainant uses the PACIFICARE mark, which is registered with the United States Patent and Trademark Office (“USPTO”) (Reg. No. 1,323,908 issued March 5, 1985), in connection with the provision of its health care services.

Respondent registered the <**pacificareonline.com**> domain name on April 3, 2007. The disputed domain name resolves to a website displaying advertisements and click-through links that further resolve to the websites of Complainant’s competitors in the health care industry.

## **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 established rights in the PACIFICARE mark under Policy ¶4(a)(i) based on Complainant's registration of the mark with the USPTO (Reg. No. 1,323,908 issued March 5, 1985). Furthermore, it is not necessary under the Policy for Complainant to have registered its PACIFICARE mark in the country of Respondent's residence. *See Williams-Sonoma, Inc. v. Fees*, FA 937704 (Nat. Arb. Forum Apr. 25, 2007) (finding that it is irrelevant whether the complainant has registered its trademark in the country of the respondent's residence); *see also Reebok Int'l Ltd. v. Santos*, FA 565685 (Nat. Arb. Forum Dec. 21, 2005) (finding trademark registration with the USPTO was adequate to establish rights pursuant to Policy ¶4(a)(i)).

Respondent's <**pacificareonline.com**> domain name is confusingly similar to Complainant's PACIFICARE mark pursuant to Policy ¶4(a)(i). The disputed domain name incorporates Complainant's entire PACIFICARE mark with the mere addition of the generic term "online" and the affixation of the generic top-level domain ".com." The Panel concludes these alterations are insufficient to negate a finding of confusing similarity under Policy ¶4(a)(i). Therefore, the Panel finds Respondent's <**pacificareonline.com**> domain name is confusingly similar to Complainant's PACIFICARE mark under Policy ¶4(a)(i). *See Arthur Guinness Son & Co. (Dublin) Ltd. v. Healy/BOSTH*, D2001-0026 (WIPO Mar. 23, 2001) (finding confusing similarity where the domain name in dispute contains the identical mark of the complainant combined with a generic word or term); *see also Reese v. Morgan*, FA 917029 (Nat. Arb. Forum Apr. 5, 2007) (finding that the mere addition of the generic top-level domain ".com" is insufficient to differentiate a disputed domain name from a mark).

Complainant has satisfied Policy ¶4(a)(i).

### **Rights or Legitimate Interests**

Complainant has alleged Respondent does not have rights or legitimate interests in the <**pacificareonline.com**> domain name. Once Complainant makes a *prima facie* case in support of its allegations, the burden shifts to Respondent to prove that it does have rights or legitimate interests pursuant to Policy ¶4(a)(ii). *See AOL LLC v. Gerberg*, FA 780200 (Nat. Arb. Forum Sept. 25, 2006) (finding that if the complainant satisfies its *prima facie* burden, "then the burden shifts to the respondent to show that it does have rights or legitimate interest in the subject domain names."). The Panel finds Complainant has made a sufficient *prima facie* case. Due to Respondent's failure to respond to the Complaint, the Panel may assume Respondent does not have rights or legitimate interests in the disputed domain name. *See Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("[Rule 14(b)] expressly provide[s] that the Panel 'shall draw such inferences' from the Respondent's failure to comply with the rules 'as it considers appropriate.'"). However, the Panel will examine the record to determine whether Respondent has rights or legitimate interests in the <**pacificareonline.com**> domain name under Policy ¶4(c).

Respondent's <**pacificareonline.com**> domain name resolves to a website featuring advertisements and links relating to Complainant's competitors. The Panel infers

Respondent profits through the generation of click-through fees from the links to Complainant's competitors. Respondent's use of the disputed domain name is not in connection with a *bona fide* offering of goods or services under Policy ¶4(c)(i) or a legitimate noncommercial or fair use of the disputed domain name under Policy ¶4(c)(iii). *See 24 Hour Fitness USA, Inc. v. 24HourNames.com-Quality Domains For Sale*, FA 187429 (Nat. Arb. Forum Sep. 26, 2003) (holding that Respondent's use of the domain names to redirect Internet users to a website featuring advertisements and links to Complainant's competitors could not be considered a *bona fide* offering of goods or services or a legitimate noncommercial or fair use); *see also ALPITOUR S.p.A. v. Albloushi*, FA 888651 (Nat. Arb. Forum Feb. 26, 2007) (rejecting the respondent's contention of rights and legitimate interests in the <bravoclub.com> domain name because the respondent was merely using the domain name to operate a website containing links to various competing commercial websites, which the panel did not find to be 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 pursuant to Policy ¶4(c)(iii)).

Furthermore, Complainant contends Respondent is not commonly known by the <pacificareonline.com> domain name under Policy ¶4(c)(ii). The pertinent WHOIS information for the disputed domain name identifies the registrant as "SMVS Consultancy Private Limited," and there is no other evidence in the record to suggest that Respondent is otherwise commonly known by the <pacificareonline.com> domain name. The Panel concludes Respondent is not commonly known by the disputed domain name under Policy ¶4(c)(ii). *See Braun Corp. v. Loney*, FA 699652 (Nat. Arb. Forum July 7, 2006) (concluding that the respondent was not commonly known by the disputed domain names where the WHOIS information, as well as all other information in the record, gave no indication that the respondent was commonly known by the disputed domain names, and the complainant had not authorized the respondent to register a domain name containing its registered mark); *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 has satisfied Policy ¶4(a)(ii).

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

Respondent's <pacificareonline.com> domain name resolves to a website featuring links to Complainant's competitors. The confusingly similar disputed domain name likely attracts Internet users that are attempting to access Complainant's website. Those Internet users are unknowingly redirected to the websites of Complainant's competitors. Respondent's use of the confusingly similar <pacificareonline.com> domain name constitutes a disruption of Complainant's business, which is evidence of 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 St. Lawrence Univ. v. Nextnet Tech*, FA 881234 (Nat. Arb. Forum Feb. 21, 2007) ("This Panel concludes that by redirecting Internet users seeking information on Complainant's educational institution to competing websites, Respondent has engaged in bad faith registration and use pursuant to Policy ¶4(b)(iii).").

The Panel infers Respondent receives click-through fees from the use of the aforementioned hyperlinks. Respondent is attempting to profit by creating a likelihood of confusion as to Complainant's affiliation with the disputed domain name and the resolving website. Therefore, Respondent's use of the disputed domain name constitutes bad faith registration and use under Policy ¶4(b)(iv). *See Zee TV USA, Inc. v. Siddiqi*, FA 721969 (Nat. Arb. Forum July 18, 2006) (finding that the respondent engaged in bad faith registration and use by using a domain name that was confusingly similar to the complainant's mark to offer links to third-party websites that offered services similar to those offered by the complainant); *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).").

Complainant has satisfied Policy ¶4(a)(iii).

## DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <**pacificareonline.com**> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.  
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist  
Dated: Friday, September 4, 2009

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**NATIONAL ARBITRATION FORUM**