



NATIONAL ARBITRATION FORUM

DECISION

Peter Jerie v. Petr Burian a/k/a 1st Art Studio S.R.O.
Claim Number: FA0609000795430

PARTIES

Complainant is **Peter Jerie** (“Complainant”), represented by **Sean F. Heneghan**, 31 Reading Hill Avenue, Melrose, MA 02176. Respondent is **Petr Burian a/k/a 1st Art Studio s.r.o.** (“Respondent”), Rokytnicka 387/13, Praha 9 19700, CZ.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**sportlivescore.com**>, registered with **Computer Services Langenbach Gmbh d/b/a Joker.com**.

PANEL

The undersigned certifies that he or she has acted independently and impartially and to the best of his or her knowledge has no known conflict in serving as Panelist in this proceeding.

Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on September 12, 2006; the National Arbitration Forum received a hard copy of the Complaint on September 15, 2006.

On September 14, 2006, Computer Services Langenbach Gmbh d/b/a Joker.com confirmed by e-mail to the National Arbitration Forum that the <**sportlivescore.com**> domain name is registered with Computer Services Langenbach Gmbh d/b/a Joker.com and that the Respondent is the current registrant of the name. Computer Services Langenbach Gmbh d/b/a Joker.com has verified that Respondent is bound by the Computer Services Langenbach Gmbh d/b/a Joker.com registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy”).

On September 15, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the “Commencement Notification”), setting a deadline of October 5, 2006 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@sportlivescore.com by e-mail.

A Response was received on October 11, 2006 and determined to be deficient under Supplemental Rule 5(a) because it was received one day after the deadline for Response and was not in hard copy. Nevertheless, the Panel will consider the substance of this response. *See Bd. of Governors of the Univ. of Alberta v. Katz*, D2000-0378 (WIPO June 22, 2000) (finding that a panel may consider a response which was one day late, and received before a panelist was appointed and any consideration made); *see also Telstra Corp. v. Chu*, D2000-0423 (WIPO June 21, 2000) (finding that any weight to be given to the lateness of the response is solely in the discretion of the panelist).

A timely reply from Complainant was received on October 16, 2006.

On October 16, 2006, 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.

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant

Complainant, Peter Jerie, a citizen the Czech Republic, is the owner of the trademark LIVESCORE . The LIVESCORE trademark is used in connection with Complainant's on-line service at <livescore.com>, which provides Web users real-time scores for sporting events, including soccer, tennis and ice hockey. The LIVESCORE trademark has been used in connection with the cited on-line services since as early as 1998.

Complainant is also the owner of U.S. Trademark Registration No. 2,514,933 for the LIVESCORE trademark.

In addition, this Forum has recognized Complainant's rights in the LIVESCORE trademark in two previous UDRP proceedings. *See Peter Jerie v. Spiral Matrix a/k/a Kentech, Inc.*, FA 736632 (Nat. Arb. Forum Aug. 11, 2006); *Peter Jerie v. LaPorte Holdings, Inc.*, FA 381130 (Nat. Arb. Forum Feb. 24, 2005).

FACTUAL AND LEGAL GROUNDS

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

Respondent appears to have registered the confusingly similar domain name <**sportlivescore.com**> with the registrar CSL Computer Services Langenbach GmbH d/b/a Joker.com (hereinafter "Joker.com") on September 21, 2003, more five years after

Complainant had adopted and began using the LIVESCORE trademark for its services at <livescore.com>. The <**sportlivescore.com**> domain name has been used in connection with Respondent's own website, one that features services identical to, and that directly compete with, Complainant's services. Specifically, the website associated with the subject domain name provides Web users real-time scores for sporting events. Furthermore, <**sportlivescore.com**> features advertisement for at least one gaming entertainment service, namely *IOBet.com*. In addition, the <**sportlivescore.com**> venture claims several commercial gaming services, such as *AbsoluteOdds.com*, *BetExplorer.com* and *SportLink.cz*, as partners. Additional investigations show that Respondent is also associated with *LiveSport.cz*, a website that features the same content as that of <**sportlivescore.com**>, albeit in the Czech language.

In accordance with Complainant's usual practice for dealing with third parties it believes are attempting to trade on the name and good will of its valuable LIVESCORE trademark, Complainant's legal counsel sent a cease and desist letter to Respondent on April 24, 2006, giving notice to the Respondent that its registration and use of <**sportlivescore.com**> infringed and diluted the LIVESCORE mark. Complainant requested, among other things, that Respondent immediately cease all use of <**sportlivescore.com**> and begin an immediate transfer of the subject domain name. Complainant offered Respondent \$100 USD for the transfer of <**sportlivescore.com**>.

David Bruha, who identified himself as CEO of 1st ART Studio, emailed Complainant's counsel on April 25, 2006 stating that he had forwarded the April 24 communication to legal counsel and its customer.

On May 2, 2006, Complainant's counsel sent Mr Bruha a follow-up email, requesting clarification as to the ownership of the subject domain name.

Respondent's legal counsel responded on May 11, 2006 to Complainant's demand, claiming that Respondent is a provider of various Internet services, including web hosting and the "renting" of domain names. In addition, counsel admitted Respondent offers clients a WHOIS cloaking service, which hides the identity of its clients and is doing so in its association with <**sportlivescore.com**>. Respondent's counsel also argued that the use of "SPORT" in <**sportlivescore.com**> made the domain name distinguishable from Complainant's LIVESCORE trademark and declined to identify Respondent's client.

In light of counsel's admission that Respondent is hiding the identity of the registrant of the subject domain name, the Respondent's actions in connection with <**sportlivescore.com**> are obstructing the UDRP system. Complainant directs the Panel to a prior finding in *Dr. Ing. h.c. F. Porsche AG v. Domains by Proxy, Inc and Sabatino Andreoni*, D2003-0230 (WIPO May 16, 2003): "The [private registration service] cannot distance itself from the *mala fides* of the [hidden registrant]. If it chooses to act as a 'front' in these situations, it has to bear responsibility for what goes on behind it."

A. The Applicable Standards

Under Section 4(a) of the UDRP, an administrative proceeding resulting in the transfer of the domain name to the Complainant is required where (i) the domain name is identical or confusingly similar to the trademark in which the Complainant has rights, (ii) the domain name holder has no rights or legitimate interests in the domain name, and (iii) the domain name has been registered and is being used in bad faith.

Under Section 4(b)(iii) of the UDRP, registering or acquiring a domain name primarily for the purpose of disrupting the business of a competitor shall be evidence of bad faith registration and use of a domain name.

Under Section 4(b)(iv) of the UDRP, using a domain name to intentionally attract, for commercial gain, Internet users to a website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website, shall be evidence of bad faith registration and use of a domain name.

The facts and evidence presented in the Complaint will show all of these activities have occurred in the present case and that Respondent has intentionally, and in bad faith, registered the confusingly similar <sportlivescore.com>.

1. The Subject Domain Name Is Confusingly Similar To A Trademark In Which Complainant Has Rights

Complainant's <livescore.com> is one of the most popular websites worldwide for providing sports enthusiasts real-time soccer match scores. The LIVESCORE trademark has been used in connection with Complainant's services continuously since 1998. The service offered under the LIVESCORE trademark includes scores from over 100 soccer leagues that span 35 countries across Europe, South America and the United States, as well as international soccer competitions. Complainant's service also includes real time coverage of tennis and ice hockey competitions, with plans to expand <livescore.com>'s coverage for other sporting events, such as Formula 1 car racing, in the near future. Complainant's services are also available to the consuming public through WAP (Wireless Application Protocol) enabled mobile phone service or other WAP enabled devices.

Complainant's website at <livescore.com> is one of the most active sports entertainment sites on the Internet. According to statistics obtained by Complainant from the Web information website <alexa.com>, <livescore.com> ranks as the fourth most visited website under the Soccer category and the in the top ten sites under the Sports category. Complainant's website registered in excess of 400 million page views in the month of April 2006, as well as 9,336,525 'unique visitors' for the same month.

By virtue of the quality of its services and eight years of continuous use and extensive advertising and promotion, the LIVESCORE trademark is well known to, and well regarded by, the consuming public. Complainant has firmly established common law

rights in LIVESCORE through widespread and continuous use of the mark since as early as 1998. *See Great Plains Metromall, LLC v. Creach*, FA 97044 (Nat. Arb. Forum May 18, 2001) (finding that the UDRP does not require “that a trademark be registered by a governmental authority for such rights to exist”).

Complainant has also established additional rights in the trademark LIVESCORE in association with its services through its registration on the Principal Register of the U.S. Patent & Trademark Office (hereinafter “USPTO”) on December 4, 2001. Such evidence of trademark registration with a government authority proves Complainant’s rights in the LIVESCORE mark. *See Janus Int’l Holding Co. v. Rademacher*, D2002-0201 (WIPO Mar. 5, 2002) (finding that 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).

Additionally, in light of Complainant’s clear rights in the cited trademark and, pursuant to the authority of the USPTO, Respondent was placed on constructive notice of Complainant’s rights to LIVESCORE and those rights clearly preceded Respondent’s registration of <**sportlivescore.com**>. *See Vivid Video, Inc. v. Michele Dinoia*, FA 155465 (Nat. Arb. Forum May 27, 2003) (“First, both the marks are registered on the Principal Register of the U.S. Patent and Trademark Office. Such registration gives Respondent at least constructive knowledge of Complainant’s interests in marks that are confusingly similar and identical to the <vividtv.com> domain name.”); *see also Koninklijke KPN N.V. v. Telepathy Inc.*, D2001-0217 (WIPO May 7, 2001) (finding that the UDRP does not require that the mark be registered in the country in which a Respondent operates. It is sufficient that a Complainant can demonstrate a mark in some jurisdiction).

Finally, this Forum has recognized Complainant’s rights in its LIVESCORE trademark in two previous proceedings under the UDRP, namely *Peter Jerie v. Spiral Matrix a/k/a Kentech, Inc.*, FA 736632 (Nat. Arb. Forum Aug. 11, 2006) and *Peter Jerie v. LaPorte Holdings, Inc.*, FA 381130 (Nat. Arb. Forum Feb. 24, 2005).

Turning to the subject domain name, <**sportlivescore.com**> is virtually identical and clearly confusingly similar to Complainant’s LIVESCORE trademark. Specifically, the subject domain name is confusingly similar because it fully incorporates Complainant’s senior trademark in its entirety and deviates from the mark only with the addition of the generic and/or descriptive term “SPORT” and the inclusion of the non-distinctive element “.COM”.

There is a long line of Panel decisions that have found that the mere addition of a generic and/or descriptive word to a registered trademark does not negate the confusing similarity of a Respondent’s domain name pursuant to Policy ¶4(a)(i). *See L.L. Bean, Inc. v. ShopStarNetwork*, FA 95404 (Nat. Arb. Forum Sept. 14, 2000) (finding that combining the generic word “shop” with Complainant’s registered mark “llbean” does not circumvent Complainant’s rights in the mark nor avoid the confusing similarity aspect of

the ICANN Policy); *see also* *Space Imaging LLC v. Brownell*, AF-0298 (eResolution Sept. 22, 2000) (finding confusing similarity where Respondent's domain name combines Complainant's mark with a generic term that has an obvious relationship to Complainant's business); *see also* *Christie's Inc. v. Tiffany's Jewelry Auction, Inc.*, D2001-0075 (WIPO Mar. 6, 2001) (finding that <christiesauction.com> is confusingly similar to Complainant's mark since it merely adds the word "auction" used in its generic sense).

Furthermore, when used in the context of identical services, <sportlivescore.com> is clearly confusingly similar to Complainant's LIVESCORE trademark. *See Treeforms, Inc. v. Cayne Indus. Sales Corp.*, FA 95856 (Nat. Arb. Forum Dec. 18, 2000) (finding that confusion would result when Web users, intending to access Complainant's website, think that an affiliation of some sort exists between the Complainant and Respondent, when in fact, no such relationship would exist). Complainant and Respondent offer identical services in the same market, namely real-time scores for sporting events accessed online, so clearly the Panel can infer Respondent had actual knowledge of the LIVESCORE mark.

Finally, the addition of the top-level domain name .COM is irrelevant to the identical/confusingly similar analysis under Policy ¶4(a)(i). *See Rollerblade, Inc. v. McCrady*, D2000-0429 (WIPO June 25, 2000) (finding that the top level of the domain name such as ".net" or ".com" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar); *see also* *Busy Body, Inc. v. Fitness Outlet Inc.*, D2000-0127 (WIPO Apr. 22, 2000) (finding that the addition of a top-level domain is without legal significance); *see also* *Hannover Ruckversicherungs-AG v. Ryu*, FA 102724 (NAF Jan. 7, 2001) (finding <hannoverre.com> to be identical to HANNOVER RE, "as spaces are impermissible in domain names and a generic top-level domain such as '.com' or '.net' is required in domain names").

The Panel must conclude: (1) that Respondent registered and has used <sportlivescore.com> to take advantage of Complainant's reputation and goodwill in the LIVESCORE trademark; and (2) that the subject domain name is likely to confuse Complainant's customers and potential customers into believing that there is some affiliation, connection, sponsorship, approval or association between the Respondent and Complainant when, in fact, none exists, and that is precisely the intent of the Respondent.

Thus, Section 4(a)(i) of the UDRP is satisfied.

2. Respondent Has No Rights Or Legitimate Interests In The Domain Name

Respondent has wholly incorporated Complainant's LIVESCORE trademark in <sportlivescore.com> to offer sports enthusiasts online access to real-time scores for sporting events. Respondent's service is identical to Complainant's popular service, the latter of which has been offered since 1998. Hence, Respondent has no legitimate rights or interests in the subject domain name.

Before notification of the dispute with Complainant, Respondent had neither used nor made any demonstrable preparations to use <**sportlivescore.com**> or a corresponding name in connection with a *bona fide* offering of goods or services or in a legitimate, non-commercial, fair use manner. Indeed, in light of the clearly commercial use of <**sportlivescore.com**>, it would be impossible for Respondent to argue any non-commercial usage of the subject domain name when, in fact, it has been used for Respondent's own commercial benefit.

Appropriating Complainant's trademark to promote a competing service is not a *bona fide* offering of a good or service pursuant to Policy ¶4(c)(i) or a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶4(c)(iii). *See Clear Channel Commc'ns, Inc. v. Beaty Enters.*, FA 135008 (Nat. Arb. Forum Jan. 2, 2003) (finding that the respondent, as a competitor of the complainant, had no rights or legitimate interests in a domain name that utilized the complainant's mark for its competing website); *see also Computerized Sec. Sys., Inc. v. Hu*, FA 157321 (Nat. Arb. Forum Jun. 23, 2003) (holding that Respondent's appropriation of Complainant's mark to market products that compete with Complainant's goods does not constitute a bona fide offering of goods or services); *see also MBS Computers Ltd. v. Workman*, FA 96632 (Nat. Arb. Forum Mar. 16, 2001) (finding no rights or legitimate interests when Respondent is using a domain name identical to Complainant's mark and is offering similar services).

Furthermore, Respondent is not commonly known, either as an individual, business or organization, by the SPORTLIVESCORE or <**sportlivescore.com**> names. *See Tercent Inc. v. Lee Yi*, FA 139720 (Nat. Arb. Forum Feb. 10, 2003) (stating "nothing in Respondent's WHOIS information implies that Respondent is 'commonly known by' the disputed domain name" as one factor in determining that Policy ¶4(c)(ii) does not apply); *see also Broadcomm Corp. v. Intellifone Corp.*, FA 96356 (Nat. Arb. Forum Feb. 5, 2001) (finding no rights or legitimate interests because Respondent is not commonly known as the disputed domain name or using the domain name in connection with a legitimate or fair use). Complainant further notes that the WHOIS information for the subject domain name lists "1st ART Studio s.r.o" as the registrant and there is no evidence suggesting that Respondent is commonly known by the SPORTLIVESCORE or <**sportlivescore.com**> names.

Complainant states that there is no affiliation, association or business relationship of any kind with Respondent and Complainant has not licensed or authorized Respondent to use the LIVESCORE trademark in any manner. *See Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where Respondent was not commonly known by the mark and never applied for a license or permission from Complainant to use the trademarked name). In fact, Complainant and Respondent are direct competitors, offering sports enthusiasts online access to real-time scores for sporting events. Given Complainant's long established use of the

LIVESCORE mark in the same market before Respondent began to offer identical services, Respondent cannot claim to be commonly known by <**sportlivescore.com**>.

The Panel should note that there is, in fact, a substantial likelihood that Complainant's trademark LIVESCORE and the goodwill associated therewith, was the reason Respondent registered <**sportlivescore.com**>. Sizeable user traffic is generated from websites associated with widely known marks, and it appears that Respondent sought to take advantage of this circumstance. Misguided Web users seeking Complainant's website may be confronted with the subject domain name and a reasonable Web user would assume that <**sportlivescore.com**> is somehow connected to Complainant's well-established <livescore.com>.

Finally, Respondent is not making a non-commercial or fair use of the subject domain name. The website associated with <**sportlivescore.com**> has been commercial in nature and the subject domain name has been operated for the financial benefit of the Respondent. Specifically, the <**sportlivescore.com**> website includes advertising and links to the venture's partners, most of which are commercial gaming websites. Respondent has used <**sportlivescore.com**> to direct Internet users to a website used to market services that are virtually identical to, and directly compete with, Complainant's services. The use of a confusingly similar domain name in order to divert Internet users interested in Complainant's service to a competing website is not a use in connection with a *bona fide* offering of goods or services pursuant to Section 4(c)(i), or a legitimate noncommercial or fair use pursuant to Section 4(c)(iii). *See N. Coast Med., Inc. v. Allegro Med.*, FA 95541 (Nat. Arb. Forum Oct. 2, 2000) (finding no *bona fide* use where Respondent used the domain name to divert Internet users to its competing website); *see also Ticketmaster Corp. v. DiscoverNet, Inc.*, Case No. D2001-0252 (WIPO Apr. 9, 2001) (finding no rights or legitimate interests where Respondent generated commercial gain by intentionally and misleadingly diverting users away from the Complainant's site to a competing website).

Thus, Respondent has no legitimate interests in <**sportlivescore.com**>, as legitimate interests are defined in Section 4(c)(i)-(iii) of the UDRP and, therefore, the second element of the Complaint under Section 4(a)(ii) of the UDRP is also satisfied.

3. The Domain Name Has Been Registered And Is Being Used In Bad Faith

Respondent has registered and is using the confusingly similar domain name <**sportlivescore.com**> in bad faith under Sections 4(b)(iii) and (iv) of the UDRP.

Respondent appears to have registered on September 21, 2003, long after Complainant had adopted, used and registered the LIVESCORE trademark. The Respondent is using <**sportlivescore.com**> in connection with its own website, in direct competition with Complainant's services. In addition, <**sportlivescore.com**> features advertisement for at least one gaming entertainment service, namely *10Bet.com*. Furthermore, listed partners

to the <**sportlivescore.com**> venture include commercial gaming services such as *AbsoluteOdds.com*, *BetExplorer.com* and *SportLink.cz*.

After Complainant learned of the registration and use of <**sportlivescore.com**>, legal counsel sent Respondent a demand letter requesting that it (1) cease using the subject domain name and (2) transfer the domain to Complainant. Complainant, against its usual policy of not paying third parties who have registered infringing domains, offered to compensate Respondent for any transfer fees associated with <**sportlivescore.com**>. Respondent's only substantive reply was to claim the subject domain name is distinct from Complainant's LIVESCORE mark because of the addition of the term "SPORT."

There is an obvious likelihood that Respondent was well aware of Complainant's federally protected LIVESCORE mark because Complainant's trademark had been in use for more than five years prior to Respondent's registration of <**sportlivescore.com**>. The fact that Respondent is using the site for its own real-time sports score service is more evidence that not only did Respondent know of Complainant's rights in the LIVESCORE mark, but it purposefully took advantage of them. *See Digi Int'l v. DDI Sys.*, FA 124506 (Nat. Arb. Forum Oct. 24, 2002) ("there is a legal presumption of bad faith, when Respondent reasonably should have been aware of Complainant's trademarks, actually or constructively"); *see also Am. Online Inc. v. Shenzhen JZT Computer Software Co.*, D2000-0809 (WIPO Sept. 6, 2000) (finding that <*gameicq.com*> and <*gameicq.net*> are obviously connected with services provided with the world-wide business of ICQ and that the use of the domain names by someone with no connection to the product suggests opportunistic bad faith); *see also Harrods Ltd. v. Harrod's Closet* D2001-1027 (WIPO Sept. 28, 2001) (finding that where a mark is so obviously connected with well-known products, its very use by someone with no connection to these products can evidence opportunistic bad faith).

Addressing the Section 4(b)(iii), Respondent is functioning as a competitor of Complainant by offering identical services in the same channel of trade associated with Complainant's LIVESCORE mark. Such unauthorized offering of services in connection with <**sportlivescore.com**> is evidence that Respondent registered and is using the disputed domain name in bad faith under 4(b)(iii) by registering the name primarily to disrupt Complainant's business, which is in competition with Respondent's services. *See Surface Protection Indus., Inc. v. Webposters*, D2000-1613 (WIPO Feb. 5, 2001) (finding that, given the competitive relationship between Complainant and Respondent, Respondent likely registered the contested domain name with the intent to disrupt Complainant's business and create user confusion); *see also S. Exposure v. S. Exposure, Inc.*, FA 94864 (Nat. Arb. Forum July 18, 2000) (finding Respondent acted in bad faith by attracting Internet users to a website that competes with Complainant's business).

Respondent registered <**sportlivescore.com**> more than five years after Complainant adopted and began using LIVESCORE in connection with providing Web users real-time scores for sporting events. Moreover, when registering the subject domain name, Respondent was clearly aware of the existence of Complainant and its trademark rights,

given that the only difference between <**sportlivescore.com**> and Complainant's LIVESCORE mark is the generic and/or descriptive term "sport," which is directly related to Complainant's services.

Turning to the Section 4(b)(iv) claim, Respondent has registered and is using the subject domain names in bad faith as he attempts to attract, for commercial gain, Web users to an online service that competes directly with Complainant's real-time sports scores service at <livescore.com>. By selecting and using a domain name that is confusingly similar to Complainant's trademark in order to direct users to a website that offers services that compete with Complainant's services, Respondent has acted in bad faith within the meaning of Policy ¶ 4(b)(iv). *See Computerized Sec. Sys., Inc. v. Hu*, FA 157321 (Nat. Arb. Forum June 23, 2003) (finding that Respondent's use of the <saflock.com> domain name to offer goods competing with Complainant's illustrates Respondent's bad faith registration and use of the domain name pursuant to Section 4(b)(iv)); *see also Identigene, Inc. v. Genetest Lab.*, D2000-1100 (WIPO Nov. 30, 2000) (finding bad faith where Respondent's use of the disputed domain to resolve to a website where similar services are offered is likely to confuse the user into believing that Complainant is the source of or is sponsoring the services offered at the site); *see also TM Acquisition Corp. v. Carrol*, FA 97035 (Nat. Arb. Forum May 14, 2001) (finding bad faith where Respondent used the disputed domain name, for commercial gain, to intentionally attract users to a direct competitor of Complainant).

Finally, Respondent registered <**sportlivescore.com**> with constructive or actual knowledge of Complainant's rights in the LIVESCORE trademark. Due to Complainant's registration of the mark with the USPTO, constructive knowledge is conferred onto Respondent. *See Orange Glo Int'l v. Blume*, FA 118313 (Nat. Arb. Forum Oct. 4, 2002) ("Complainant's OXICLEAN mark is listed on the Principal Register of the USPTO, a status that confers constructive notice on those seeking to register or use the mark or any confusingly similar variation thereof."); *see also Victoria's Cyber Secret Ltd. v. V Secret Catalogue, Inc.*, 161 F.Supp.2d 1339, 1349 (S.D.Fla. 2001) (noting that "a Principal Register registration [of a trademark or service mark] is constructive notice of a claim of ownership so as to eliminate any defense of good faith adoption" pursuant to 15 U.S.C. § 1072). Moreover, because of the similarity between the content of Respondent's website and the business in which Complainant engages, the Panel should infer that Respondent has actual knowledge of Complainant's rights in the LIVESCORE trademark. Registration of confusingly similar domain names despite constructive or actual knowledge is bad faith registration and use pursuant 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"); *see also Samsonite Corp. v. Colony Holding*, FA 94313 (Nat. Arb. Forum Apr. 17, 2000) (finding that evidence of bad faith includes actual or constructive knowledge of a commonly known mark at the time of registration).

Conclusion

Clearly, Respondent's activities prove that the registration and use of <**sportlivescore.com**> is in bad faith, as such registration and use is defined in Sections 4(b) (iii) and (iv) of the UDRP, and therefore the third and final element of the Complaint under Section 4(a)(iii) of the UDRP is satisfied.

Based on the foregoing, Complainant submits that the evidence shows that the <**sportlivescore.com**> domain name is confusingly similar to the LIVESCORE trademark in which Complainant has senior rights; the Respondent has no rights or legitimate interests in the domain name; and <**sportlivescore.com**> has been registered and is being used in bad faith by Respondent. Accordingly, Complainant requests that the Panel require Respondent to transfer the subject domain name to Complainant, which holds rights in the LIVESCORE trademark. A decision by this Panel to preserve the status quo would serve only to reward Respondent for engaging in bad faith and unlawful conduct with respect to the domain name registration, and would encourage others like Respondent to do the same.

B. Respondent

This statement is provided in reaction to the associated Complaint subject of which is the domain name <**sportlivescore.com**>, in accordance with "Uniformed [sic] Domain-Name Dispute-Resolution Policy" (UDRP), accepted by "Internet Corporation for Assigned Names and Numbers" (hereinafter "ICANN") on 26-th August 1999 and approved by Internet Corporation for Assigned Names and Numbers on 24-th October 1999 (hereinafter "ICANN-UDRP Policy"), and in accordance with "Rules for Uniform Domain Name Dispute Resolution Policy" (RUDRP), accepted by ICANN on 26-th August 1999 and approved by ICANN on 24-th October 1999 (hereinafter "ICANN-RUDRP Rules"), and in accordance with the National Arbitration Forum Supplemental Rules (hereinafter "NAF", "NAF Rules") of the ICANN-RUDRP Procedure Rules.

IN GENERAL

[1] Complaint is based on incorrect basis of facts and legal basis. Appellee does not dispute the fact that there exists a certain competitive relation between Appellee and Appellant, or more precisely that their services directly compete with each other, but rejects the fact that the very registration and use of the subject domain name resulted or might result in creation of an unlawful situation. Appellee considers Complaint as unreasonable and believes that Complaint serves only as an instrument of competitive struggle between the competitors and therefore proposes its dismissal.

[2] The Company of Appellee has been acting in the Czech Republic for several years, providing a range of Internet services, particularly in the field of web design, graphic design, Internet advertising and web hosting, as well as provision of space for web presentations and similar Internet projects. The main focus of Company is therefore

especially creation of web presentations and Internet applications (eg. e-business, Internet banking etc.) with the option of securing the operation on own servers with a high guarantee of accessibility. All these services are offered and provided on the basis of demonstrable legal relationship, fully in accordance with the applicable regulations of the Czech Republic and the European Union. Company has only two partners, the first being Mr. Peter Burian, the second Mr. David Brůha. The second named person acts also as the director of Company. Company has no tax arrears, no action is nor has ever so far been brought against it, no arbitration proceedings were conducted against it in the past.

One of the services provided by Company is lease of domain names within which, in addition to standard services in the form of web hosting and servehosting, also lease of a domain to the company's customer is provided in such manner that the customer has maximum comfort and does not have to deal with the associated administrative problems. This service is implemented on the basis of a special written agreement which regulates the mutual rights and obligations connected with the regulation of the exclusive use (lease) of the domain name as other asset value of its kind as well as some other questions. Such agreement is concluded fully in accordance with the provisions of Art. 269 (2) of the Commercial Code. The customer has then the exclusive right to use the domain and right for its possible transfer or transition. Lessor is obliged to transfer the domain to Lessee on the basis of Lessee's order within 14 days at the latest. Lessee undertakes to use the domain and services operated thereunder only in accordance with the applicable legal regulations of the Czech Republic, international agreements by which the Czech Republic is bound and in accordance with good manners. On the basis of this agreement the company's customer is de facto in identical situation as the owner of the domain name in spite of not being the owner (holder) de jure. The identity of such customer then remains on principle secret.

The real operator of the domain <**sportlivescore.com**> is a Czech company LiveSport s.r.o. for which Appellee technically secures the operation of the whole project, in accordance with and on the basis of this agreement. The company LiveSport s.r.o. expressed its approval with releasing this fact and adds its opinion of this Complaint.

[3] The Plaintiff's description of the factual process in Complaint is not based on truth, at least in the following points.

In the first place it is not true that the Appellee's attorney replied to Plaintiff's enquiry on 11-th May 2006 in such manner as to refuse expressly in the answer, among other things, to identify Appellee's customer. The Appellee's attorney only referred to the existing Agreement between Appellee and the company Livesport s.r.o. (real operator), subject of which is among other things also confidentiality agreement.

In this respect it is also untrue that the attorney admitted that Appellee concealed the identity of the person which has the subject domain name registered, the attorney only outlined the legal nature of the service where Appellee is the registered subject, however Lessee, or more precisely the actual operator is the Appellee's customer.

Domain names mentioned by Plaintiff in Complaint (such as eg. betexplorer.com, etc.) represent basically a similar regime of cooperation between Appellee and the company Livesport s.r.o. as is the case on the basis of the Agreement of Lease of the domain sportlivescore.com, while these domains are also registered in the Appellee's name. Such procedure can be regarded as being in accordance with ICANN-UDRP Policy, which does not prohibit directly or indirectly such lease of domain names in any of its provisions.

However, Appellee is of course aware of the fact that a private registration person which Appellee indisputably is, acts in these situations instead of its client and bears also full responsibility.

As for Plaintiff's contention that the domain name has been registered and is used in bad faith

[1] Appellee points out the fact that Plaintiff in its Complaint failed to prove that the subject domain name was registered and used on the part of Appellee in bad faith. Plaintiff only claims, or more precisely indirectly deduces that it is highly probable that Appellee was well aware of the fact that Plaintiff had a federally protected trademark LIVESCORE, since the trademark was used by Plaintiff as back as more than five years prior to the registration of the Appellee's domain name <sportlivescore.com>. However, Appellee was not aware and in view of the territorial nature of its business activity even could not be aware of this fact. Therefore, this contention was not proved by Plaintiff in Complaint in any way.

The fact that Appellee uses the subject domain name apart from other things also for services offering immediate results of sports matches cannot of itself lead to the conclusion that Appellee not only knew about the Plaintiff's rights to the LIVESCORE trademark, but that it even used it purposefully, as Plaintiff incorrectly claims in its Complaint. Arbitration awards in the cases cited by Plaintiff, in the case *Digi Int'l v. DDI Sys.*, FA 124506 (Nat. Arb. Forum October 24, 2002) ("legal assumption of bad faith is given, if Appellee should have been reasonably aware, directly or indirectly, of the existence of Plaintiff's trademarks"); see also *Am. Online Inc. v. Shenzhen JZT Computer Software Co.*, D2000-0809 (WIPO September 6, 2000) (from which it follows that the domain name <gameicq.com> and the domain name <gameicq.net> are obviously connected with ICQ providing services and that the use of the domain names by someone who is in no connection with this product testifies to opportunistic bad faith); see also *Harrods Ltd. v. Harrod's Closet* D2001-1027 (WIPO September 28, 2001) (from which it follows that if someone uses a trademark associated with well-known products and this person is in no connection with such products, it may be the case of opportunistic bad faith), cannot be therefore applied for the reason of completely different factual process.

[2] Similarly untrue is the Plaintiff's claim regarding the interpretation of par. 4(b)(iii) where Plaintiff purposefully presumes that "such offer of services in connection with the domain name <**sportlivescore.com**> is a proof of the fact that Appellee registered and is using the contentious domain name in bad faith according to par. 4(b)(iii) by registering the domain name primarily for the purpose of disruption of the business activity of Plaintiff who competes with the Appellee's services. However, Plaintiff does not back up this presumption with anything, and therefore awards in the cases *Surface Protection Indus., Inc. v. Webposters*, D2000-1613 (WIPO February 5, 2001) and *S. Exposure versus S. Exposure, Inc.*, FA 94864 (Nat. Arb. Forum July 18, 2000) cannot be applied neither.

Plaintiff makes another untrue and in its Complaint unproved contention when it claims that Appellee "was clearly aware of the existence of Plaintiff and its rights to the trademark since the only difference between the domain name <**sportlivescore.com**> and the Plaintiff's LIVESCORE trademark is in the general and/or descriptive term "sport" which is directly related to Plaintiff's services. In similarly untrue manner is drawn up the Plaintiff's claim that "Appellee registered the domain name <**sportlivescore.com**> with indirect or direct knowledge of the existence of Plaintiff's rights to the LIVESCORE trademark." However, such claims cannot be regarded as reasonable and even Plaintiff itself does state reasons for such assumption.

[3] At the moment of the registration (or immediately afterwards), Appellee was not directly or indirectly aware of the existence of the LIVESCORE trademark, while this fact is not even being proved by Plaintiff, only claimed. The Panel should conclude in this respect that the subject domain name was not registered nor used in bad faith.

As for the Plaintiff's contention that Appellee has no rights to nor justified interest in the given domain name

[1] Appellee registered the subject domain name properly and in accordance with the rules and is in business through this domain name and designation from the moment of the registration of this domain name. This domain name is on the basis of the subject Agreement duly and in accordance with the legal regulations used by Appellee's customer (LiveSport s.r.o.) which is focused on operation of sports-oriented Internet pages by which it creates its own prosperous project which is free from any parasitic conduct from the beginning.

It is therefore not true nor has it been proved by Plaintiff that Appellee incorporated the Plaintiff's LIVESCORE trademark into the domain name <**sportlivescore.com**> (see contention above).

Appellee has therefore all legitimate rights to the given domain name, including justified interest consisting in honest business activity.

[2] Appellee indeed uses the subject domain name commercially, but does so on the basis of Rules, in accordance with the legal regulations and in an honest manner.

[3] For the above mentioned reasons the Panel should conclude that Appellee has justified interest in the domain name <sportlivescore.com>, in the manner as follows from the definition of justified interest in Par. 4(c)(i)-(iii) of ICANN-UDRP Policy.

As for the contention that in case of the subject domain name there is a danger of creation of confusion with the Plaintiff's trademark

[1] The content of the subject domain name <sportlivescore.com> belongs indisputably to the most frequently visited Internet pages which offer immediate results of sports matches to sports fans. The <sportlivescore.com> project, no matter how shortly operated, is graphics-, color- and content-wise clearly distinguishable from the <livescore.com> project). The sequence of letters "sport" better captures the general focus of this project, which is focused on a wide range of sports events (not only soccer, etc.), and in the context of the whole portfolio of this project is sufficiently qualified for distinguishing services of Company or the customer, on the one hand and services of Plaintiff operated under the domain name <livescore.com> on the other hand.

[2] As for the general question of confusability of the Plaintiff's domain with the Appellee's domain, and therefore the general distinguishing capacity of the sequence of letters "sport," one has to point out the existence of a certain different approach of the average Internet user who uses both Plaintiff's and Appellee's services (on the one hand) and the average consumer (on the other hand). In Appellee's opinion every "average" Internet user (and therefore also every potential visitor of Appellee's or Plaintiff's pages) must be aware of the importance of every letter, digit and symbol in the designation of any address in the Internet web, and therefore also of the necessity of absolutely correct use of a certain domain name for displaying the web pages expressly requested by himself/herself. With consent to this reasoning it cannot be definitely concluded that the use of the sequence of letters "sport" in the subject domain name <sportlivescore.com> would confuse these "average" Internet users to such a degree as not to be able to distinguish Plaintiff's and Appellee's services.

[3] The domain name <sportlivescore.com>, is therefore not the same as nor identical with the Plaintiff's trademark, nor is it qualified for raising the danger of confusion, as claimed by Plaintiff. It is just the element, or more precisely word designation "sport" that sufficiently specifies the focus of the Appellee's project, from the very point of view of identicalness/confusability.

[4] The Panel should therefore rule that the domain name in question is not qualified for raising the danger of creating confusion of Plaintiff's customers as well as its potential customers.

C. Additional Submissions

Complainant Peter Jerie's Additional Submission to Respondent's Response is hereby submitted for consideration in accordance and the National Arbitration Forum ("NAF") Supplemental Rules ("Supp. Rules") and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999 and approved by ICANN on October 24, 1999 ("ICANN Policy"), and the Rules for Uniform Domain Name Dispute Resolution Policy ("ICANN Rules"), adopted by ICANN on August 26, 1999 and approved by ICANN on October 24, 1999.

First, regarding procedural issues in this matter, Complainant Peter Jerie (hereinafter "Complainant") asks that Respondent's Response be found to be untimely and that the Respondent be deemed to have defaulted. Respondent failed to submit its Response by the deadline set forth in accordance with ICANN Rule 5(a). Specifically, Respondent did not submit a hard copy version of the Response with the NAF by October 5, 2006. According to NAF's October 10, 2006 communication, it received the Response on October 10, 2006.

As was clearly stated in NAF's commencement notice for this proceeding issued to the parties on September 15, 2006:

"5. **Deadlines.** Within 20 days from the commencement date, the Forum must receive, a Response and all exhibits according to the requirements that are described in The Rules, Paragraph 5 and the Supplemental Rules. You must also serve these on the Complainant. Your Response *and exhibits* must be *received by the Forum* by **10/5/2006.**" (Emphasis added).

Because of Respondent's untimely response, five days after the clearly designated deadline, the finding of this proceeding has been unnecessarily delayed. Moreover, Respondent was clearly given notice as to the October 5, 2006 deadline and had ample opportunity to request to extend the period of time for the filing of the Response, as per ICANN Rule 5(d), but failed to do so.

Under ICANN Rules, the Panel may either choose to accept or decline to accept Respondent's Response in deciding the case. Ignoring or missing a deadline without an excuse or justification by the Respondent is not a minor or insignificant infraction to be overlooked in the procedural process. Respondent's excuses that it misunderstood the deadline date, despite clearly noticed in the Notice, and that the translation requirements extended the filing of the response are not valid, especially with the opportunity to request an extension. As was stated in *The Vanguard Group, Inc. v. IQ Management Corporation*, FA 328127 (Nat. Arb. Forum Oct. 28, 2004) in a similar procedural matter, "[t]o rule otherwise would make reasonable time limits meaningless."

On another procedural matter, Complainant believes Respondent's Response should also be found to be inadequate per NAF's Rules because the Response violates 5(b)(viii) of the Rules. Specifically, the Response does not include the required "complete and accurate" certification statement in conjunction with the signature of Respondent. This should be of particular concern due to the fact that Respondent has argued in the Response that it was not aware of Complainant's trademark rights, despite ample evidence that Respondent should have been well-aware of Complainant's rights in LIVESCORE. Given the fact that Respondent has been counsel by legal representative and the NAF website features a model Response that includes the "complete and accurate" certification, the Response has no excuse for neglecting this requirement.

To support Complainant's arguments, it directs the Panel to the procedural finding in *America Online, Inc. v. Quik-E Inc.*, D2001-1141 (WIPO Dec. 20, 2001), in which the Panel found Respondent's Response in default due to fact similar to those to the proceeding at hand:

However, since Katsis' email makes unsupported accusations that the Complaint contains factual inaccuracies, it is imperative that the certification requirements be met for the content of Katsis' email to be considered as a Response. Without the signed certification, this Panel is not willing to consider -- much less give weight to -- unsupported allegations. Accordingly, this Panel declines to accept Katsis' October 29th email as a response to the Complaint, and will consider Respondent to have defaulted.

In light of the above factors, Complaint requests that the Panel find the Response in default because Respondent failed to meet this second requirement as well.

Since the filing of the Complaint, the Complainant brings to the Panel's attention a new factor critical to the review of the facts in this proceeding. The website associated with the <**sportlivescore.com**> domain name is now named *FlashScore.com*. The content of the *FlashScore.com* website is identical to that of the <**sportlivescore.com**> site previously used by Respondent. The <flashscore.com> domain name had apparently been registered in the name of Respondent as recently as October 1, 2006. It now has been subsequently transferred to Martin Hajek of the Czech Republic, who, according to Respondent's documents, is a principal of LiveSport s.r.o.

In light of Respondent's change of use of the subject domain name after the filing of the Complaint, the Panel should infer that Respondent is already in preparation that it will be found to have registered and used <**sportlivescore.com**> and the subject domain will be ordered transferred to Complainant. Moreover, the fact that the website associated with the <**sportlivescore.com**> domain name is now <flashscore.com> begs the question as to why Respondent acquired and used the subject domain name in connection with real-time sports scores in the first place, but for its incorporation of the Complainant's well-known LIVESCORE trademark. Finally, the change of usage in the subject domain name is

additional evidence that the Respondent is not commonly known by the subject domain name, under ICANN Policy ¶4(c).

Complainant wishes to highlight two admissions by Respondent in the Response, namely it admits that it bears responsibility for the registration and use of the <**sportlivescore.com**> domain name as well as admitting that it is operating in competition of Complainant's <livescore.com> service.

Even with these admissions, Respondent has made the incredible claim that it was "not aware" of Complainant's rights in the LIVESCORE trademark when registering <**sportlivescore.com**>. Complainant has provided the Panel with a great deal of evidence of the LIVESCORE trademark's notoriety since 1998, through samples of its usage, partnerships with other entities, a trademark registration with a government agency and Web traffic measurements and rankings in connection with the mark and the <livescore.com> website, all of which were accrued long before the Respondent registered and began using <**sportlivescore.com**>. Both websites at issue vie for the same advertising clients and use many of the same sports information resources.

Furthermore, both Complainant's and Respondent's services offer score updates for soccer matches in the Czech Republic. In addition, the Czech-based betting and lottery company SAZKA operates the website <tipovani.cz>, which specializes in sport and sports betting and features links to real-time sport score services includes both <livescore.com> and <livesport.cz>. Finally, Respondent has identified its customer LiveSport s.p.a, which Respondent also operates the <livesport.cz> website, the Czech-language version of <**sportlivescore.com**>/<flashscore.com>.

Complainant has used the trademark notice symbol ® in connection with the LIVESCORE trademark upon its registration on December 4, 2001 to give formal notice to the public to the claim of trademark rights. Indeed, a simple check of the online database of the U.S. Patent & Trademark Office would have confirmed Complainant's rights in the well-known LIVESCORE mark. Respondent had constructive notice of the Complainant's mark rights and the registration and use of the disputed domain name to promote competing services, even if Respondent's highly dubious claim of a lack of knowledge is true, amounts to bad faith registration and use.

Moreover, additional online investigations show that Respondent acquired the <**sportlivescore.com**> domain name later than Complainant originally believed when it filed the Complaint. Printouts from the subject domain name's "history" at the <domaintools.com> website show that Milan Horak was owner of <**sportlivescore.com**> from August 24, 2004 to as late as November 16, 2005. In light of this evidence, it now appears that Respondent acquired the subject domain name some seven years after Complainant had adopted and began using the LIVESCORE trademark for its services at <livescore.com>.

In sum, it stretches credulity to claim that a business that planned to offer services that are identical to Complainant's well-known online real-time sports scores service would be unaware of Complainant's rights in the long-used LIVESCORE mark. As stated by the Panel in *Candela Corporation v. Orion*, FA 104191 (Nat. Arb. Forum Apr. 1, 2002):

The Respondent rests a great deal on the alleged failures of proof offered by the Complainant. While it is completely appropriate to demand that a Complainant make a showing substantiating its case, it is also required that a Respondent make its claims supportable and its case credible. In the instant arbitration the Respondent has utterly failed to support its somewhat far fetched assertions with any convincing evidence.

Given the circumstances, it is too much for the Panel to accept that it was a mere coincidence that Respondent selected <**sportlivescore.com**> without knowledge of or reference to Complainant's name or rights. The totality of the circumstances makes it evident that Respondent had knowledge of Complainant's interests in the LIVESCORE mark when it registered the subject domain name. *See FNAC v. SZK.com*, D2004-0413 (WIPO July 26, 2004) (bad faith established by knowledge of Complainant's trademark which can be inferred from fame of the trademark); *see also Muppet Holding Company LLC v. Brown* FA 518373 (NAF Aug. 26, 2005) (fame of Complainant's mark, its registration with the USPTO and the obvious link between Complainant's mark and the content of Respondent's website all suggest that Respondent had both actual and constructive knowledge of Complainant's rights in the mark).

Respondent also claims that "in view of the territorial nature of its business activity" it could not be aware of Complainant's trademark rights. This charge flies in the face of the nature of both Complainant and Respondent's services. Both are Web-based services, with little to no territorial constrictions as to access by customers and both can be accessed from throughout the world. Furthermore, both websites feature access to real-time soccer match scores from throughout the world. It stands to reason that soccer fans from across the world, in a variety of territories would not be constrained from accessing either service.

Next, the Panel should find that Complainant has made a *prima facie* case in support of its allegations that Respondent has no rights or legitimate interests in <**sportlivescore.com**> and that Respondent has failed in its Response to show that it does have rights or legitimate interests pursuant to Policy ¶4(a)(ii). In particular, Respondent cannot show that it used domain before Complainant's adoption of LIVESCORE and cannot show it is making a noncommercial or fair use of the subject domain name. On the contrary, Respondent has admitted to a "competitive relation" between its commercial services and Complainant's service. Furthermore, in light of the change of the domain name's usage in connection with the <flashscore.com> website, it still cannot show that Respondent is commonly known by the name <**sportlivescore.com**>. Complainant reiterates that it has not licensed or authorized Respondent to use the LIVESCORE

trademark in any manner and states there is no affiliation, association or business relationship of any kind with Respondent and Complainant.

Complainant further notes that while Respondent has filed documents with regards to its business relationship between itself and LiveSport s.r.o. under Czech law, in no way do these documents show legitimate use of <**sportlivescore.com**> under the UDRP. The Panel should find that Respondent has appropriated Complainant's trademark to create competition, which is neither a *bona fide* offering of services pursuant to Policy ¶4(c)(i) nor a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii).

With regard to Respondent's claim that <**sportlivescore.com**> and LIVESCORE are not confusingly similar, most of its arguments point to the "look and feel" of the respective websites (e.g. colors, graphics etc.). However, this analysis has little to no bearing on whether a domain name is confusingly similar to a party's trademark under a UDRP analysis. In fact, precedent under UDRP proceedings shows that these factors are irrelevant. *See A & F Trademark, Inc. and Abercrombie & Fitch Stores, Inc. v. Justin Jorgensen*, D2001-0900 (WIPO Sept. 19, 2001) ("For purposes of the first element of UDRP, the comparison between a domain name and a trademark is made without reference to the content of the web site.").

However, as stated in the Complaint, there is a large volume of UDRP precedent that clearly state that the mere addition of a generic and/or descriptive word to a registered trademark does not negate the confusing similarity of a Respondent's domain name pursuant to Policy ¶4(a)(i). *See Bank of America Corporation v. Chris Glenn*, FA 296608 (Nat. Arb. Forum Aug. 27, 2004) (finding that the addition of term "sport" to the trademark BANK OF AMERICA did not differentiate the mark from the subject domain name); *see also Autovillage.com Inc. v. Enthusiast World, Inc.*, D2003-0738 (WIPO Nov. 29, 2003) (The addition of the term "sport" to Complainant's TRUCKWORLD trademark did not create a distinctive mark capable of overcoming a claim of confusing similarity); *see also Donald J. Trump and Trump Hotels & Casino Resorts Inc v. David Hames*, FA 102803 (Nat. Arb. Forum Jan. 23, 2002) (The addition of generic term "sports" to the TRUMP trademark did not create a distinctive mark capable of overcoming a claim of confusing similarity).

Hence, Respondent's arguments that try to distinguish <**sportlivescore.com**> and LIVESCORE clearly fail. Thus, Complainant has clearly shown (i) the domain name <**sportlivescore.com**> is identical or confusingly similar to the LIVESCORE trademark in which the Complainant has rights and Complainant has met the requirements under Policy ¶4(a)(i).

In regards to Respondent's claim that it did not refuse to identify its customer in its May 11, 2006 communication, the fact of the matter is that it never identified LiveSport s.r.o. as the customer/business partner in connection with the subject domain name until it did so in the Response, despite Complainant's request in its May 2, 2006 communication to Respondent.

Finally, with regards to the bad faith registration and use claims, nowhere does Respondent explain how it actually came to the decision to chose a domain name that incorporates Complainant's mark, especially in light of the fact that its customer/business partner is LiveSport s.r.o. and the sister site is <livesport.cz>. Respondent never explains why, with all the variations the English language affords, it happened to choose a domain name that incorporates the terms "LIVESCORE" and addition of the term "SPORT" in connection with a service that is identical to Complainant's service. Given the obvious overlap of the respective services, the Panel must conclude that Respondent chose to capitalize on the goodwill associated with the well-known LIVESCORE mark for its own commercial service. Respondent's switch after the filing of the Complaint to the current use of the <flashscore.com> further begs the question. Thus, the evidence establishes bad faith registration and use of <**sportlivescore.com**> by Respondent pursuant to Policy ¶4(a)(iii).

Clearly, Respondent is using the disputed domain name to benefit from Complainant's goodwill in its well-known LIVESCORE trademark. In light of the weight of evidence produced by Complainant in support of its burden of proof, i.e., that Respondent owns a domain name identical or confusing similar to a mark in which Complainant has rights, that Respondent has no rights or legitimate interests in respect of the domain name, and that Respondent registered and is using the domain name in bad faith, and the veritable dearth of evidence supplied by Respondent in its Response, the Panel must reject Respondent's claim of having a right or legitimate interest in respect of <**sportlivescore.com**> a finding of bad faith in registration and use of the subject domain name pursuant to the UDRP.

FINDINGS

Based upon the allegations in the complaint and reply, and in light of Respondent's failure to certify his statements as true, the Panel finds the following:

- (1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (2) the 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.

DISCUSSION

Paragraph 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (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."

Paragraph 4(a) of the Policy requires that the 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 the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (2) the 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 submitted evidence of a valid trademark registration for the LIVESCORE mark with the United States Patent and Trademark Office (Reg. No. 2,514,933 issued December 4, 2001). As a result, the Panel finds Complainant has sufficiently demonstrated its rights in the mark pursuant to Policy ¶4(a)(i). *See ESPN, Inc. v. MySportCenter.com*, FA 95326 (Nat. Arb. Forum Sept. 5, 2000) (concluding that the complainant demonstrated its rights in the SPORTSCENTER mark through its valid trademark registrations with the USPTO and similar offices around the world); *see also Microsoft Corp. v. Burkes*, FA 652743 (Nat. Arb. Forum Apr. 17, 2006) (“Complainant has established rights in the MICROSOFT mark through registration of the mark with the USPTO.”).

Respondent’s <**sportlivescore.com**> domain name incorporates Complainant’s entire LIVESCORE mark and simply adds the term “sport,” a term associated with Complainant’s business. Respondent’s addition of the term “sport” does not adequately differentiate the <**sportlivescore.com**> domain name from the LIVESCORE mark, which leads to a finding of confusing similarity under Policy ¶4(a)(i). *See Warner Bros. Entm’t Inc. v. Sadler*, FA 250236 (Nat. Arb. Forum May 19, 2004) (finding the addition of generic terms to Complainant’s HARRY POTTER mark in the respondent’s <shop4harrypotter.com> and <shopforharrypotter.com> domain names failed to alleviate the confusing similarity between the mark and the domain names); *see also Experian Info. Solutions, Inc. v. Credit Research, Inc.*, D2002-0095 (WIPO May 7, 2002) (finding that several domain names incorporating the complainant’s entire EXPERIAN mark and merely adding the term “credit” were confusingly similar to the complainant’s mark).

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

Rights or Legitimate Interests

Complainant alleges Respondent lacks rights and legitimate interests in the <**sportlivescore.com**> domain name. The Complainant must first make a *prima facie* case in support of its allegations, and then the burden shifts to Respondent to show it does

have rights or legitimate interests pursuant to Policy ¶4(a)(ii). See *Hanna-Barbera Productions, Inc. v. Entm't Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) (holding that the complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name); see also *AOL LLC v. Gerberg*, FA 780200 (Nat. Arb. Forum Sept. 25, 2006) (“Complainant must first make a *prima facie* showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interests in the subject domain names.”).

Respondent registered the domain name under the name “Petr Burian a/k/a 1st Art Studio S.R.O.,” and there is no other evidence in the record suggesting that Respondent is commonly known by the <**sportlivescore.com**> domain name.

Respondent suggests it holds this domain name essentially in trust for LiveSport, s.r.o. There are several problems with this assertion. First of all, it was not certified as being true. This means it accepted regarding its legal argument even though it was filed late, but the factual assertions contained in it must be disregarded.

Second, the owner of a domain name can assert on his rights to the domain name. He cannot assert the rights of third parties. See *YUM! Brands Inc. and KFC Corporation v. Ether Graphics a/k/a Andrew Gruner*, FA 212651 (Nat. Arb. Forum Jan. 2, 2004); see also *Mattel, Inc. v. KPF, Inc.*, FA 244073 (Nat. Arb. Forum Apr. 26, 2006). To hold otherwise would only encourage domain name registrants to assert the rights of previously unknown and unidentifiable people (and possibly even make up the existence of principals). This Panel declines to walk down that road.

Third, the WHOIS information does not substantiate this kind of ownership even if the name of the principal is undisclosed.

Fourth, and finally, even if LiveSport, s.r.o. exists and is Respondent’s undisclosed principal, that does not give Respondent rights to the <**sportlivescore.com**> domain name and marks. While the words are close, they are not so close as to be identical (nor even confusingly similar).

The Panel finds Respondent has not established rights or legitimate interests in the <**sportlivescore.com**> domain name pursuant to Policy ¶4(c)(ii). See *The 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 *Instron Corp. v. Kaner*, FA 768859 (Sept. 21, 2006) (finding that the respondent was not commonly known by the <shoredurometer.com> and <shoredurometer.com> domain

names because the WHOIS information listed Andrew Kaner c/o Electromatic a/k/a Electromatic Equip't as the registrant of the disputed domain name and there was no other evidence in the record to suggest that the respondent was commonly known by the domain names in dispute)

Furthermore, Respondent is using the <**sportlivescore.com**> domain name to redirect Internet users seeking Complainant's real-time sporting event scores to its own competing website offering similar services. The Panel finds Respondent has failed to use the disputed domain name 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) by diverting Internet users to a competing website for commercial gain. *See Glaxo Group Ltd. v. WWW Zban*, FA 203164 (Nat. Arb. Forum Dec. 1, 2003) (finding that the respondent was not using the domain name within the parameters of Policy ¶4(c)(i) or (iii) because the respondent used the domain name to take advantage of the complainant's mark by diverting Internet users to a competing commercial site); *see also Ultimate Elecs., Inc. v. Nichols*, FA 195683 (Nat. Arb. Forum Oct. 27, 2003) (finding that the respondent's "use of the domain name (and Complainant's mark) to sell products in competition with Complainant demonstrates neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the name").

The Panel concludes Complainant satisfied Policy ¶4(a)(ii).

Registration and Use in Bad Faith

By maintaining a website at the <**sportlivescore.com**> domain name that provides real-time sporting event scores in direct competition with Complainant, Respondent is disrupting Complainant's business. According to Respondent's own response, the WHOIS information for the domain name is not correct because it does not disclose the domain name is being held in trust. The Panel finds Respondent has registered and used the disputed domain name in bad faith pursuant to Policy ¶4(b)(iii). *See EthnicGrocer.com, Inc. v. Latingrocer.com*, FA 94384 (Nat. Arb. Forum July 7, 2000) (finding bad faith where the respondent's sites pass users through to the respondent's competing business); *see also Puckett, Individually v. Miller*, D2000-0297 (WIPO June 12, 2000) (finding that the respondent has diverted business from the complainant to a competitor's website in violation of Policy ¶4(b)(iii)).

Respondent has registered and is using the <**sportlivescore.com**> domain name to provide real-time sporting event scores in direct competition with Complainant. Respondent is diverting Internet users seeking Complainant's services to its own competing website and presumably profiting from such diversion, which constitutes bad faith registration and use under Policy ¶4(b)(iv). *See Dell Inc. v. Innervision Web Solutions*, FA 445601 (Nat. Arb. Forum May 23, 2005) (finding evidence of bad faith under Policy ¶4(b)(iv) where the respondent was using the <dellcomputerssuck.com> domain name to divert Internet users to respondent's website offering competing computer products and services); *see also Velv, LLC v. AAE*, FA 677922 (Nat. Arb.

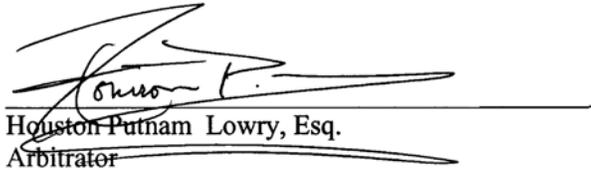
Forum May 25, 2006) (find that the respondent's use of the <arizonashuttle.net> domain name, which contained the complainant's ARIZONA SHUTTLE mark, to attract Internet traffic to Respondent's website offering competing travel services violated Policy ¶4(b)(iv)).

The Panel concludes Complainant 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 <**sportlivescore.com**> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: October 30, 2006