



## NATIONAL ARBITRATION FORUM

### DECISION

3M Company v. Excellence Internet Services, Ltd. c/o Seth Young  
Claim Number: FA0608000771820

#### PARTIES

Complainant is **3M Company** ("Complainant"), represented by **Joel D. Leviton**, of **Fish & Richardson P.C.**, 60 South Sixth Street, Suite 3300, Minneapolis, MN 55402.  
Respondent is **Excellence Internet Services, Ltd. c/o Seth Young** ("Respondent"), HaAdmor Merozin 25/14, Jerusalem 93870, IL.

#### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**the-post-it-note.com**>, registered with **The Name It Corporation** d/b/a **Nameservices.net**.

#### PANEL

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

Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

#### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on August 7, 2006; the National Arbitration Forum received a hard copy of the Complaint on August 8, 2006.

On August 17, 2006, The Name It Corporation d/b/a Nameservices.net confirmed by e-mail to the National Arbitration Forum that the <**the-post-it-note.com**> domain name is registered with The Name It Corporation d/b/a Nameservices.net and that Respondent is the current registrant of the name. The Name It Corporation d/b/a Nameservices.net has verified that Respondent is bound by the The Name It Corporation d/b/a Nameservices.net 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 17, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of September 6, 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@the-post-it-note.com by e-mail.

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

On September 13, 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.

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:

3M Company, formerly known as Minnesota Mining and Manufacturing Company ("3M"), develops and markets innovative products and solutions that serve a diverse field of customers throughout the world. 3M introduced the now famous POST-IT brand of adhesive backed paper and stationery notes approximately thirty years ago. Since that time, 3M has used the POST-IT trademark in connection with a variety of products including, without limitation, note pads, printed notes, trays for holding stationery notes, adhesive tape, cover-up tape, tape flags, computer software, easel pads and paper, bulletin boards, and other such office supplies. As a result of 3M's widespread use and promotion of the POST-IT brand and the many high quality products sold thereunder, the POST-IT brand has become one the most well known and famous brands in the world.

3M sells its POST-IT® brand products on six continents in hundreds of countries worldwide. Through its 3M Israel subsidiary, 3M offers a wide array of products, including POST-IT® brand stationery and office related products, to the Israeli market – the location of Respondent.

3M is the owner of the eleven U.S. Trademark Registrations for marks comprising or containing POST-IT registered and used in connection with a wide variety of stationery and office related products including: Registration No. 1,046,353; Registration No. 1,198,694; Registration No. 1,208,297; Registration No. 1,284,295; Registration No.

1,935,381; Registration No. 2,012,212; Registration No. 2,371,084; Registration No. 2,372,832; Registration No. 2,402,722; Registration No. 2,402,723; and Registration No. 2,736,421. 3M's first U.S. registration for POST-IT – incontestable Registration No. 1,046,353 – issued August 17, 1976.

3M also owns five trademark registrations for its POST-IT trademark in Israel (including one in Hebrew). Each of these registrations issued before Respondent registered *the-post-it-note.com* on August 22, 2005.

## **FACTUAL AND LEGAL GROUNDS**

Knowing of the fame of the POST-IT trademark, Respondent registered and is using the domain name *the-post-it-note.com* to generate advertising and click-through revenue. Respondent uses the domain name *the-post-it-note.com* in connection with the website he touts is a source for a full range of office supplies. In actuality, Respondent's website merely hosts a variety of links to and advertisements for third parties that sell stationery products and office supplies, many of which compete with 3M's supplies. Respondent is improperly using the renown of 3M's POST-IT trademark to operate an online clearinghouse for office supplies, which is nothing more than a series of links and advertisements that, when clicked, put money in Respondent's pocket.

As shown on the website, Respondent attempts to pass off its website, which is captioned with the large heading "The Post It Note," as a legitimate source for office supplies. A few clicks into the website, it becomes clear that Respondent is using *the-post-it-note.com* (not to mention the infringing Post It Note service mark) merely to host revenue-generating advertisements. For example, the left side of Respondent's website lists various product categories. *Id.* When an Internet user clicks on a product category link, the Internet user encounters a variety of links to third party sellers of office supply products. The [www.the-post-it-note.com](http://www.the-post-it-note.com) website indicates that the links are provided by Google's AdSense program. Respondent is paid by Google each time an Internet user clicks on a link provided by Google.

In addition to obtaining click-through revenue from the advertisements provided by Google, Respondent also directly sells advertisements for the [www.the-post-it-note.com](http://www.the-post-it-note.com) website. Respondent purchases banner advertisements and links on Respondent's website. Without question, the sole reason Respondent registered and is using *the-post-it-note.com* is to generate advertising revenue for Respondent by creating a likelihood of confusion with 3M's famous POST-IT trademark.

### **[a.] The Domain Name Registered By Respondent Is Identical and/or Confusingly Similar To a Mark In Which 3M Has Rights**

3M is the owner of U.S. common law rights in the POST-IT trademark based on its long and continuous use of the famous brand in connection with numerous stationery and office related products. In addition to its longstanding U.S. rights in the POST-IT

mark, 3M has been selling POST-IT products in Israel for more than twenty-five years, long before Respondent registered the *the-post-it-note.com* domain name in 2005.

As set forth above, 3M is the owner of eleven U.S. trademark registrations for marks comprising or containing POST-IT, six of which have become incontestable. An incontestable registration serves as “conclusive evidence of the validity of the registered mark and of registration of the mark, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the registered mark in commerce.” 15 U.S.C. § 1115 (b) (emphasis added). *See also Reed Elsevier Inc. v. Domain Deluxe*, FA 234414 (Nat. Arb. Forum March 18, 2004) (citing *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 196 (1985) to confirm that incontestable registrations are conclusive evidence of the registrant’s exclusive right to use the mark). 3M is also the owner of five registrations for its POST-IT trademark in Israel. Without question, 3M owns valuable rights in the famous POST-IT trademark.

The domain name *the-post-it-note.com* is comprised of 3M’s famous POST-IT trademark along with the non-distinctive term “the” and the generic term commonly used for the repositionable stationery notes 3M sells under the POST-IT brand. 3M describes many of its POST-IT products with the generic term “note” or “notes,” such as POST-IT notes, POST-IT note pads, and POST-IT Super Sticky Notes. A domain name comprised of a trademark, the generic name of a product sold under the trademark, and a generic top level domain name is confusingly similar to the trademark. *See United Services Automobile Association v. Michele Dinoia a/k/a SZK.com*, FA 497783 (Nat. Arb. Forum July 22, 2005) (“Respondent incorporates Complainant’s entire USAA mark with the addition of “insurance,” a generic term describing the business in which Complainant engages, and the generic top level domain ‘.com.’ Such minor changes fail to significantly distinguish Respondent’s domain name from Complainant’s USAA mark pursuant to Policy ¶4(a)(i).”). Section 4(a)(i) of the UDRP requiring that the domain names at issue be “identical or confusingly similar to a trademark or service mark in which the complainant has rights” is plainly satisfied.

**[b.] Respondent Has No Rights or Legitimate Interests In the Domain Name**

Respondent does not use the domain name in connection with a bona fide offering of goods or services; Respondent is not making a noncommercial fair use of the domain name; and Respondent has never been known as or referred to as The-Post-It-Note.

Respondent uses *the-post-it-note.com* to attract Internet users to Respondent’s commercial website that is laden with revenue-generating advertisements and links. Using a domain name containing another party’s trademark to operate a portal website that generates advertising and click-through revenue is not a bona fide offering of goods or services, or a noncommercial fair use of the domain name. *See Elsevier B.V. v. Domain Deluxe*, FA 237520 (Nat. Arb. Forum March 24, 2004) (“Respondent uses the disputed domain name to host a portal website that’s principal purpose is to generate revenue via the use of advertisements....[S]uch an enterprise qualifies as neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the

disputed domain name.”). *See also Herbalife Int’l of Am., Inc. v. Beamline*, FA 592343 (Nat. Arb. Forum Dec. 27, 2005) (“The Panel presumes that respondent receives click-through fees for hosting links to competing websites at the disputed domain name and finds that Respondent’s use of a domain name that is confusingly similar to Complainant’s mark is not a use in connection with a bona fide offering of goods or services....”).

In addition, while Respondent purports to be operating a so-called business in connection with the infringing and diluting “The Post It Note” designation, Respondent is not commonly known as “The-Post-It-Note.” The whois record for *the-post-it-note.com* lists Respondent’s name as “Seth Young.” Failure of the whois record to imply that Respondent is commonly known as “The-Post-It-Note” suggests that Respondent is not known by this designation. *See Tercent Inc. v. Yi*, FA 139720 (Nat. Arb. Forum Feb. 10, 2003). In addition, the terms and conditions portion of the *www.the-post-it-note.com* website indicates that a company named Excellence Internet Services is the creator of the *www.the-post-it-note.com* website, and apparently the registrar has advised the National Arbitration Forum that Seth Young registered the domain name at issue on behalf of Excellence Internet Services, Ltd. Excellence Internet Services, Ltd. operates a website at *www.excellenceweb.com*, which identifies the company’s address as the same address listed for the Respondent on the whois record for the *post-it-note.com* domain name. Clearly, the Respondent is not commonly known by the infringing and diluting name “The-Post-It-Note.” Indeed, Respondent only uses that designation to trade on the goodwill of the famous POST-IT mark and to cause a likelihood of confusion.

Given the foregoing, it is apparent that Respondent has no legitimate interests in *the-post-it-note.com*, as legitimate interests are defined in Sections 4(c)(i)-(iii) of the UDRP. As such, 3M has satisfied the second element of its complaint under the Policy Section 4(a)(ii).

**[c.] Respondent Registered and Is Using the Domain Name In Bad Faith**

**1. Respondent Is Attempting to Attract for Commercial Gain Internet Users to Its Website by Creating a Likelihood of Confusion**

Using a domain name comprised of another’s mark for the purpose of providing links to third party commercial websites constitutes bad faith. *The Leather Factory, Inc. v. Virtual Sky*, FA 611781 (Nat. Arb. Forum Feb. 1, 2006) (finding bad faith registration and use because “Respondent is using the disputed domain name to provide links to third parties offering commercial products and services...similar to those provided by Complainant.”); *Hyatt Corp. v. Unasi Inc.*, FA 545021 (Nat. Arb. Forum Oct. 3, 2005) (“The Panel infers that Respondent receives click-through fees for diverting Internet users to competing websites...Respondent’s use of the disputed domain names constitutes bad faith registration and use pursuant to Policy ¶4(b)(iv).”).

Here, Respondent uses a domain name comprised of the famous POST-IT trademark to attract Internet users to his website for commercial gain. Once at Respondent's website, Internet users are lead to believe that the website is affiliated with the famous POST-IT brand given that the website is captioned with the name "The Post It Note." Then, Internet users are directed to commercial websites that sell various stationary and office supply products, many of which compete with POST-IT brand products.

It is quite clear that the sole purpose of the Respondent's website is to display revenue-generating links to and advertisements for purveyors of office supplies under the pretext that the website is somehow affiliated with the famous POST-IT brand. Respondent undoubtedly has acted and is acting in bad faith by capitalizing on the likelihood of confusion it is creating by using the famous POST-IT mark. *See Elsevier B.V. v. Domain Deluxe, supra* ("As Respondent is capitalizing on this likelihood of confusion with Complainant and its mark for commercial gain (via the use of revenue-generating advertisements) Respondent's activities evidence bad faith use and registration of the domain name pursuant to Policy ¶4(b)(iv)"). *Intel Corporation v. M. Macare a/k/a M. Macar*, FA 660685 (April 26, 2006) ("[T]he Panel infers that Respondent receives click-through fees for each consumer it diverts to these other websites[,] finds that Respondent is taking advantage of the confusing similarity between the domain names and Complainant's marks in order to profit from the goodwill associated with the marks, and holds that Respondent's registration and diversionary use of the disputed domain names constitutes bad faith under Policy ¶4(b)(iv)"). *See also Bank of America Corp. v. Out Island Props., Inc.*, FA 154531 (Nat. Arb. Forum June 3, 2003) ("[A] consumer searching for Complainant would become confused as to Complainant's affiliation with the resulting search engine website."). Accordingly, Respondent has registered and used the domain name in bad faith. *See* Policy ¶4(b)(iv).

## **2. Respondent's knowledge of the famous POST-IT mark is further evidence of bad faith**

"Registration of a domain name that is confusingly similar to a mark, despite knowledge of the mark holder's rights, is evidence of bad faith registration pursuant to Policy ¶4(a)(iii)." *Hugh Jackman v. Peter Sun*, FA 248716 (Nat. Arb. Forum May 10, 2004). *See also Digi Int'l v. DDI Sys.*, FA 124506 (Nat. Arb. Forum Oct. 24, 2002) ("[T]here is a legal presumption of bad faith, when Respondent reasonably should have been aware of Complainant's trademarks, actually or constructively."), *Eastman Kodak Co. v. Dionne Lamb*, FA 97644 (Nat. Arb. Forum July 17, 2001) ("Registering a domain name that the registrant knows belongs to someone else and that the registrant knows will confuse the users about the source or sponsorship of the domain name is bad faith.").

According to the whois record for *the-post-it-note.com*, Respondent is located in Israel. 3M has long sold its POST-IT® brand products in Israel, and the POST-IT trademark has been registered in Israel for many years. At a minimum,

Respondent should have known of the POST-IT trademark prior to registering the *the-post-it-note.com* domain name. More likely, given the renown of POST-IT® brand products, and the fact that Respondent uses *the-post-it-note.com* in connection with an ostensible office supplies website, Respondent was well aware of the famous POST-IT trademark prior to registering the domain name. Indeed, certain sponsored links that appear on Respondent's website refer to authentic POST-IT® brand products – with the federal registration symbol, which further advises Respondent of 3M's rights in the POST-IT trademark. Respondent's knowledge of 3M's rights in the well-known POST-IT trademark serves as further evidence of Respondent's bad faith registration and use of *the-post-it-note.com*.

Moreover, even in the highly unlikely event that Respondent did not have actual knowledge of 3M's rights when it registered the domain name, Respondent nonetheless was imparted with constructive knowledge of 3M's rights pursuant to 3M's federal trademark registrations. *See Victoria's Secret v. Sherry Hardin*, FA 96694 (Nat. Arb. Forum March 31, 2001) ("Registration with actual or constructive knowledge of Complainant's marks is evidence of bad faith."); 15 U.S.C. § 1072. At a minimum, Respondent had constructive knowledge of Respondent's rights in the POST-IT mark. As such, Respondent knew or should have known of 3M's rights, and such knowledge indicates bad faith. *See Marriott Int'l, Inc. v. John Marriot*, FA 94737 (Nat. Arb. Forum June 15, 2000) (finding bad faith because "Respondent knew or should have known that MARRIOTT was a mark of Complainant...."). Thus, Respondent registered and is using *the-post-it-note.com* in bad faith.

Evidence that Respondent registered and is using the domain name *the-post-it-note.com* in bad faith is plentiful. As such, the third and final element of 3M's Complaint is satisfied.

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

## **FINDINGS**

Complainant, 3M Company, develops and markets innovative products and solutions that serve a diverse field of customers through the world. Approximately thirty years ago, Complainant introduced the POST-IT® brand of adhesive backed paper and stationery notes. In connection with the marketing of these products, Complainant obtained a number of trademark registrations with the United States Patent and Trademark Office ("USPTO"), including the POST-IT mark (Reg. No. 1,046,353 issued August 17, 1976).

Respondent registered the <**the-post-it-note.com**> domain name on August 22, 2005. The disputed domain name resolves to a website purporting to sell office supplies; however, the resulting website does nothing more than display a series of advertisements for the websites of third-party retailers of office supplies.

## 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 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**

Through registration of the POST-IT mark with the USPTO, Complainant has established rights in the mark. *See Vivendi Universal Games v. XBNetVentures Inc.*, FA 198803 (Nat. Arb. Forum Nov. 11, 2003) ("Complainant's federal trademark registrations establish Complainant's rights in the BLIZZARD mark."); *see also Men's Wearhouse, Inc. v. Wick*, FA 117861 (Nat. Arb. Forum Sept. 16, 2002) ("Under U.S. trademark law, registered marks hold a presumption that they are inherently distinctive [or] have acquired secondary meaning.").

Complainant contends the <**the-post-it-note.com**> domain name is confusingly similar to its POST-IT mark. The disputed domain name contains Complainant's POST-IT mark in its entirety, adds the article "the" and the term "note," which relates to Complainant's products, and inserts hyphens between the terms. The Panel finds the addition of "the," a common article, "note," a term that relates to Complainant's products, and the use of hyphens between the terms, fails to differentiate the disputed domain name from Complainant's mark for the purposes of Policy ¶4(a)(i). *See Harris N.A. v. Bazle*, FA 653596 (Nat. Arb. Forum Apr. 25, 2006) (finding that the addition of the article "the" does not sufficiently distinguish a domain name for the purposes of Policy ¶4(a)(i)); *see*

*also Quixtar Inv., Inc. v. Smithberger*, D2000-0138 (WIPO Apr. 19, 2000) (finding that because the domain name <quixtar-sign-up.com> incorporates in its entirety the complainant's distinctive mark, QUIXTAR, the domain name is confusingly similar); *see also Chernow Commc'ns, Inc. v. Kimball*, D2000-0119 (WIPO May 18, 2000) (holding "that the use or absence of punctuation marks, such as hyphens, does not alter the fact that a name is identical to a mark").

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

### **Rights or Legitimate Interests**

Complainant alleges Respondent has no rights or legitimate interests in the disputed domain name. Pursuant to Policy ¶4(a)(ii), Complainant has the initial burden of proof in establishing Respondent lacks rights and legitimate interests in the disputed domain name. Once Complainant establishes a *prima facie* case in support of its allegations, the burden then shifts to Respondent to show it does have rights or legitimate interests pursuant to Policy ¶4(a)(ii). *See Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that, under certain circumstances, the mere assertion by the complainant that the respondent has no right or legitimate interest is sufficient to shift the burden of proof to the respondent to demonstrate that such a right or legitimate interest does exist); *see also Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (once the complainant asserts that the respondent has no rights or legitimate interests with respect to the domain, the burden shifts to the respondent to provide "concrete evidence that it has rights to or legitimate interests in the domain name at issue"). The Panel finds Complainant has fulfilled its burden and will now make a determination as to whether Respondent has rights or legitimate interests pursuant to Policy ¶4(ii).

Respondent's failure to submit a Response in this proceeding raises a presumption Respondent lacks rights and legitimate interests in the disputed domain name. *See Am. Express Co. v. Fang Suhendro*, FA 129120 (Nat. Arb. Forum Dec. 30, 2002) ("[B]ased on Respondent's failure to respond, it is presumed Respondent lacks all rights and legitimate interests in the disputed domain name."); *see also BIC Deutschland GmbH & Co. KG v. Tweed*, D2000-0418 (WIPO June 20, 2000) ("By not submitting a response, Respondent has failed to invoke any circumstance which could demonstrate, pursuant to ¶4(c) of the Policy, any rights or legitimate interests in the domain name"). The Panel also chooses to examine the record to determine if Respondent has rights or legitimate interests under Policy ¶4(c).

In the Complaint, Complainant contends Respondent is not commonly known by the disputed domain name. According to the WHOIS database, the listed registrant of the disputed domain name is "Excellence Internet Services, Ltd." Seth Young was also listed as a contact person. Without any evidence to suggest Respondent is known by the disputed domain name, the Panel must find Respondent does not satisfy the requirements of Policy ¶4(c)(ii). *See G.D. Searle & Co. v. Cimock*, FA 126829 (Nat. Arb. Forum Nov.

13, 2003) (“Due to the fame of Complainant’s mark there must be strong evidence that Respondent is commonly known by the disputed domain name in order to find that Respondent has rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(c)(ii). However, there is no evidence on record, and Respondent has not come forward with any proof to establish that it is commonly known as CELEBREXRX or <celebrexrx.com>.”); *see also Ian Schrager Hotels, L.L.C. v. Taylor*, FA 173369 (Nat. Arb. Forum Sept. 25, 2003) (finding that without demonstrable evidence to support the assertion that a respondent is commonly known by a domain name, the assertion must be rejected).

Complainant also asserts Respondent is not using the disputed domain name for a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Even though the disputed domain name resolves to a website that purports to offer office supplies for sale, the resulting website does nothing more than post advertisements for third-party retailers of office supplies, for which Respondent presumably receives click-through or referral fees.

The Panel finds Respondent’s use of the disputed domain name does not amount to a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii). *See Tercent Inc. v. Lee Yi*, FA 139720 (Nat. Arb. Forum Feb. 10, 2003) (holding that the respondent’s use of the disputed domain name to host a series of hyperlinks and a banner advertisement was neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the domain name); *see also WeddingChannel.com Inc. v. Vasiliev*, FA 156716 (Nat. Arb. Forum June 12, 2003) (finding that the respondent’s use of the disputed domain name to redirect Internet users to websites unrelated to the complainant’s mark, websites where the respondent presumably receives a referral fee for each misdirected Internet user, was not a *bona fide* offering of goods or services as contemplated by the Policy).

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

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

Complainant contends Respondent has registered and used the disputed domain name in bad faith. The use of a confusingly similar domain name to resolve to a website that advertises third-party websites that offer products similar to those of Complainant causes a likelihood of confusion as to Complainant’s sponsorship of or affiliation with the resulting website. Due to the nature of the resulting website, it can be reasonably presumed that Respondent is receiving commercial gain from click-through or referral fees from the advertisements contained on the website. Respondent is using Complainant’s registered trademark. The Panel finds Respondent’s actions evidence bad faith registration and use pursuant to Policy ¶4(b)(iv). *See Philip Morris Inc. v. r9.net*, D2003-0004 (WIPO Feb. 28, 2003) (finding that the respondent’s registration of an infringing domain name to redirect Internet users to banner advertisements constituted

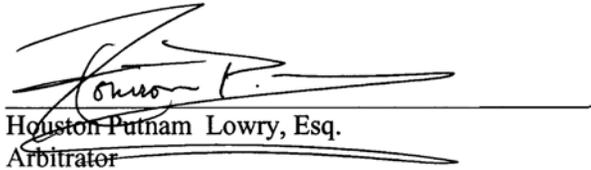
bad faith use of the domain name); *see also Associated Newspapers Ltd. v. Domain Manager*, FA 201976 (Nat. Arb. Forum Nov. 19, 2003) (“Respondent's prior use of the <mailonsunday.com> domain name is evidence of bad faith pursuant to Policy ¶4(b)(iv) because the domain name provided links to Complainant's competitors and Respondent presumably commercially benefited from the misleading domain name by receiving ‘click-through-fees.’”).

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

## **DECISION**

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

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



Houston Putnam Lowry, Esq.  
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist  
Dated: September 26, 2006