



NATIONAL ARBITRATION FORUM

DECISION

United Services Automobile Association v. Oleg Savchenko d/b/a Software Rocket Ltd.
Claim Number: FA0711001105728

PARTIES

Complainant is **United Services Automobile Association** ("Complainant"), represented by **Monica R. Talley**, of **Finnegan Henderson Farabow Garrett & Dunner L.L.P.**, 901 New York Avenue NW, Washington, DC 20001. Respondent is **Oleg Savchenko d/b/a Software Rocket Ltd.** ("Respondent"), Tverskaya Sreet 3 Kv 25, Moscow 125319 Russian Federation.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue are <**usaa-insurance.net**> and <**auto-insurance-usaa-a.info**>, registered with **Direct Information Pvt Ltd d/b/a Publicdomainregistry.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 November 1, 2007; the National Arbitration Forum received a hard copy of the Complaint on November 2, 2007.

On November 1, 2007, Direct Information Pvt Ltd d/b/a Publicdomainregistry.com confirmed by e-mail to the National Arbitration Forum that the <**usaa-insurance.net**> and <**auto-insurance-usaa-a.info**> domain names are registered with Direct Information Pvt Ltd d/b/a Publicdomainregistry.com and that Respondent is the current registrant of the names. Direct Information Pvt Ltd d/b/a Publicdomainregistry.com has verified that Respondent is bound by the Direct Information Pvt Ltd d/b/a Publicdomainregistry.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 November 9, 2007, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of November 29, 2007 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@usaa-insurance.net and postmaster@auto-insurance-usaa-a.info by e-mail.

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

On December 5, 2007, 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 names be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

BACKGROUND FACTS

A. USAA and its Services and Products

1. USAA was founded in 1922 in San Antonio, Texas by 25 officers in the U.S. Army who banded together to insure each other's Model-T Fords. Since that time, USAA has grown into a Fortune 200 financial services company that has approximately 5,600,000 members. USAA continues to be headquartered in Texas, and employs approximately 22,000 employees.

2. USAA offers a wide array of services and products to its members, all of whom have or have had a direct or familial connection to the United States Armed Forces and over half of whom have served in the military. USAA's members are located throughout the United States and overseas.

3. USAA offers a variety of services and products to its members. USAA primarily offers insurance services (including annuities, automobile, homeowner, whole life and term life, renters, and personal property insurance) and financial services (such as banking, credit card, brokerage, and financial planning).

4. USAA owns the trademark and trade name USAA, and its rights in the USAA mark and name date back to at least as early as 1927.

5. USAA has achieved considerable commercial success under the USAA mark and name. For example, USAA has approximately \$96,100,000,000 in owned and managed assets.

6. Since its adoption of the USAA name and trademark in 1927, USAA has spent many millions of dollars advertising, marketing, and promoting its USAA branded services through a variety of national media, including, billboard, the Internet, direct mail, and print advertisements.

7. USAA has won numerous awards as a company and as an employer. For example, USAA has received the highest possible financial strength ratings from Standard & Poor's, A.M. Best, and Moodys's. USAA has also received customer satisfaction awards from J.D. Power and Associates in recognition of USAA's performance in the insurance and financial services fields, and it consistently receives the highest ratings on J.D. Power Consumer Center's surveys. In addition, USAA was ranked first by BusinessWeek in its list of "Customer Service Champs" in 2007. In recognition of USAA's quality as an employer, USAA was named on *Working Mother's* list of "100 Best Companies for Working Mothers" eight times between 1996 and 2005, and was named on *Computerworld's* "100 Best Places to Work in IT" six times between 1999 and 2005. USAA was also named on Latina Style's list of 50 best employers for Hispanic women in 2001 through 2005. In addition, USAA currently ranks 5th on G.I. Jobs "Top 25 Most Military Friendly Employers."

8. USAA promotes its products and services under the USAA mark on the Internet, and has used its USAA.COM website as a worldwide information and distribution channel for its business for many years.

9. Having been widely promoted among members of the U.S. military since at least as early as 1927, USAA's mark and name USAA symbolize the significant goodwill associated with USAA, and are property rights of incalculable value.

B. Complainant's Trademark Holdings

10. USAA has continuously used USAA as a trade name, trademark, and service mark since 1927.

11. In addition to its common law rights, USAA owns numerous registrations for the USAA mark and variations thereof, including the following representative registrations:

- a. Registration No. 806,520 for the mark USAA (block letters), first used May 15, 1927, filed March 1, 1965, issued March 29, 1966, covering services in International Class 36 (insurance services).
- b. Registration No. 1,712,134 for the mark USAA (block letters), first used May 15, 1927, filed November 1, 1991, issued September 1, 1992, covering services in International Classes 35 (discount buying agency services), 36 (insurance services and financial services), 39 (automobile leasing services and travel agency services), and 42 (nursing home services and health care services).
- c. Registration No. 927,536 for the mark USAA and Design, first used June 12, 1970, filed September 21, 1970, issued January 18, 1972, covering services in International Class 36 (insurance services).
- d. Registration No. 2,341,954 for the mark USAA (block letters), first used November 11, 1998, filed October 13, 1998, issued April 11, 2000, covering services in International Class 35 (online advertising services).
- e. Registration No. 2,396,376 for the mark USAA and Design, first used November 11, 1998, filed October 13, 1998, issued August 17, 1999, covering services in International Class 35 (online advertising services).
- f. Registration No. 2,423,168 for the mark USAA and Design, first used June 1999, filed November 16, 1999, issued January 23, 2001, covering services in International Classes 35 (online advertising services) and 36 (insurance services, financial services, investment services, banking services, and real estate services).

12. USAA also owns the domain name USAA .COM, which it registered on December 2, 1994.

13. USAA's trademark rights in its USAA mark and name, based on its trademark registrations and its common law rights acquired through use since 1927, long predate Respondent's registration of the Domain Names.

C. Respondent's Infringing Activities and Bad Faith Acts

14. Respondent registered the Domain Names in May 2007, long after Complainant began using its USAA mark, after Complainant registered its mark in the U.S. (and elsewhere), and after Complainant's USAA mark became famous.

15. Respondent uses the domain name USAA-INSURANCE.NET for a commercial website prominently displaying, without Complainant's authorization, Complainant's federally registered design trademark, USAA WE KNOW WHAT IT MEANS TO SERVE. INSURANCE, INVESTMENTS, BANKING, MEMBER SERVICES, on nearly every page.

The primary focus of Respondent's website is the display of numerous pay-per-click advertisements for websites offering directly competing insurance services and other commercial websites. Respondent's website also displays numerous USAA-formative categories (e.g., "USAA General Information," "USAA Auto Insurance"), the purpose of which is undoubtedly to increase search engine prominence through repetition of USAA's mark and name rather than to provide information about USAA and its USAA services.

16. The advertisements displayed on Respondent's websites associated with the Domain Names are provided by Google, as shown by the "Ads by Google" link displayed above the advertisements. The "Ads by Google" link connects to Google's web page describing its AdSense program that serves ads to website owners and pays commissions to them when Internet users click on those ads.

17. Respondent is currently using the domain name AUTO-INSURANCE-USAA-A.INFO for an "index page" that displays no content.

18. On May 25, 2007, Complainant sent Respondent a cease-and-desist letter demanding the transfer of the domain name USAA-INSURANCE.NET. To date, Respondent has not responded to Complainant's demands. Complainant subsequently discovered Respondent's registration of the second domain name AUTO-INSURANCE-USAA-A.INFO.

19. On June 14, 2007, Complainant sent Respondent's ISP requesting the removal of Respondent's website, but did not receive a response.

20. Respondent has registered at least two additional domain names incorporating trademarks owned by third parties, specifically, <allstate-insurance-a.info> and <safeco-auto-insurance.info>, which are comprised of the marks ALLSTATE and SAFECO, respectively. Respondent uses the <safeco-auto-insurance.info> domain names for a website similar to his USAA-INSURANCE.NET website that displays Safeco's logo and advertisements for competing services.

THE DOMAIN NAMES ARE CONFUSINGLY SIMILAR TO COMPLAINANT'S MARK

21. The domain names USAA-INSURANCE.NET and AUTO-INSURANCE-USAA-A.INFO are confusingly similar to Complainant's USAA mark because each incorporates Complainant's mark in its entirety with a generic term(s) or letter ("insurance," "auto," and/or the letter "a"). Combining a trademark with generic terms and/or single letters is not sufficient to distinguish domain names from the mark at issue, particularly when, as in this case, the generic terms relate to Complainant's business. See, e.g., Kabushiki Kaisha Toshiba d/b/a Toshiba Corporation v. Selavy Media (NAF FA0608000781838) (finding the domain name <toshibatoner.com> confusingly similar to complainant's TOSHIBA mark because "the mere addition of a term describing an aspect of [c]omplainant's business, namely printers and related accessories, is not a distinguishing difference."); Nortel Networks Limited v. Buymebuye.com, Inc. (NAF FA0604000671847) (finding the domain names <nortelphones.com> and <norstarphones.com> confusingly similar to complainant's NORTEL and NORSTAR marks

because “the addition of generic terms, particularly those with a direct connection to [c]omplainant’s business, fails to sufficiently distinguish [r]espondent’s domain names from [c]omplainant’s marks pursuant to Policy ¶4(a)(i).”); Bridgestone Corporation v. Horoshiy (WIPO D2004-0795) (finding the domain name <bridgestonegolf.com> confusingly similar to complainant’s BRIDGESTONE mark and holding the conjunction of complainant’s mark with the non-distinctive term “golf” increases “the likelihood of confusion, since [c]omplainant actually uses the subject mark in connection with golf, and has done so for quite some time.”).

RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN THE DOMAIN NAMES

22. Respondent clearly has no rights or legitimate interest in the Domain Names for the following reasons.

23. First, Respondent has no intellectual property rights in Complainant’s USAA mark.

24. Second, Respondent is not and has not been commonly known by USAA or the Domain Names.

25. Third, Respondent’s registration, use and/or intended use of the Domain Names for commercial websites displaying advertisements for websites offering competing services and other commercial websites does not constitute a *bona fide* offering of goods or services under the UDRP. Nor do Respondent’s activities constitute a legitimate noncommercial or fair use of the Domain Names under the UDRP. See, e.g., Verizon Trademark Services, LLC v. NA a/k/a NA DomainDevelopments.com (NAF FA0512000616307) (holding respondent’s use of the domain name <verizoncenter.com> for a website featuring links to competing products and services is not a bona fide offering of goods or services or a legitimate noncommercial or fair use of the domain name); IndyMac Bank F.S.B. v. Yu Xiao (NAF FA0511000603023) (holding respondent’s use of the disputed domain name for a website featuring links to various competing and non-competing commercial websites, for which respondent presumably receives referral fees, is neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use under the UDRP). Caterpillar, Inc. v. Admin c/o Jucco Holdings (NAF FA0603000662210) (holding respondent’s use of the domain name <catatwork.com> for a website featuring links to websites for which respondent receives click-through fees in exchange for diverting Internet users to these other websites is not a bona fide offering of goods or services or a legitimate noncommercial or fair use).

RESPONDENT’S BAD FAITH UNDER SECTION 4(B) OF THE UDRP

26. Respondent’s registration and use of the Domain Names squarely meets the grounds of bad faith outlined in the UDRP, as well as additional grounds of bad faith defined in previous UDRP decisions.

27. First, Respondent’s activities meet the bad faith element set forth in Section 4(b)(iv) of the UDRP. Specifically, Respondent uses and/or intends to use the Domain Names to

intentionally attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with Complainant and its federally registered USAA mark as to the source, sponsorship, affiliation, and/or endorsement of Respondent's website and the competing services advertised on Respondent's website. See, e.g., Capital One Financial Corporation v. LaPorte Holdings, Inc. (NAF FA0502000417712) (holding respondent's use of the disputed CAPITAL ONE-formative domain names for pay-per-click websites constitutes bad faith and holding "[r]espondent is profiting from the unauthorized use of [c]omplainant's registered mark in its domain names. Such infringement is what the Policy was intended to remedy and is evidence of bad faith registration and use under Policy ¶4(b)(iv)."); IndyMac Bank F.S.B. v. Unasi Inc. (NAF FA0507000514785) (holding respondent's use of the disputed domain names for various commercial websites using a series of hyperlinks for which respondent presumably receives referral fees constitutes bad faith); United States Postal Service v. Rocky Production (NAF FA0604000679542) (holding respondent's use of the disputed domain names for a website displaying links to various third party websites for which respondent receives click-through fees constitutes bad faith pursuant to Section 4(b)(iv) of the UDRP).

28. Moreover, Respondent's unauthorized copying of Complainant's federally registered design trademark, USAA WE KNOW WHAT IT MEANS TO SERVE. INSURANCE, INVESTMENTS, BANKING, MEMBER SERVICES, on his website associated with the domain name USAA-INSURANCE.NET heightens the likelihood of confusion caused by Respondent's registration of the Domain Names, and constitutes further evidence of Respondent's bad faith. See, e.g., Kabushiki Kaisha Toshiba d/b/a Toshiba Corporation v. ICN-Toshiba (WIPO D2004-0941) (holding respondent's use of complainant's mark on its <icn-toshiba.com> website is a "hallmark" of bad faith because it is "calculated to create confusion or deception as to the existence of some connection by way of sponsorship, endorsement, sanction or control between the [c]omplainant and the website to which the disputed domain name resolves (see Paragraph 4(b)(iv) of the Policy)."); Yahoo! Inc. v. Andersson (NAF FA0403000250001) (holding respondent's copying of the distinctive features of complainant's logo on his website constituted bad faith); Johnson Financial Group, Inc. v. Janssen (NAF FA0311000214465) (holding "[R]espondent's attempt to pass itself off as [c]omplainant by copying graphics and text from [c]omplainant's website demonstrates [r]espondent's bad faith registration and use of the <johnsonsgroup.net> and <johnson-latin.com> domain names under Policy ¶4(a)(iii).").

29. Second, Respondent's registration and use of the Domain Names meet the bad faith element set forth in Section 4(b)(iii) of the UDRP because Respondent disrupts Complainant's business and unfairly competes with Complainant by using and/or intending to use the Domain Names for a commercial website featuring advertisements for websites advertising competing services. See, e.g., DaimlerChrysler Corp. v. Kentech, Inc. (NAF FA0501000410056) (holding respondent's use of the domain name for websites displaying links to complainant's competitors constitutes bad faith); TM Acquisition Corp. v. Gary Lam (NAF FA0405000280499) (holding respondent's use of the disputed domain name for a commercial web directory website linking users to competing services constituted bad faith pursuant to Section 4(b)(iii) of the UDRP).

30. Third, Respondent's registration of the Domain Names, together with his

registration of additional domain names incorporating third-party marks as shown above in Paragraph 32, constitutes a bad-faith pattern of registering trademark-related domain names pursuant to Section 4(b)(ii) of the UDRP. See, e.g., H-D Michigan Inc. v. Network Operations Center c/o Alberta Hot Rods (FA0604000671212) (holding respondent's registration of the domain names <harleydavidsonracing.com> and <harleydavidsonracers.com> constitutes bad faith pursuant to Section 4(b)(ii) because respondent owns other domain names that incorporate third parties' trademarks); Indymac Bank F.S.B. v. Berhard Fristch a/k/a FIFC SA (NAF FA0211000133762) (holding respondent registered the domain name <loanwerks.com> in bad faith because it "has demonstrated a pattern of conduct of registering trademark-related domain names."); Yahoo! Inc. v. Syrynix, Inc. and Hugh Hamilton (WIPO D2000-1675) (finding bad faith in respondent's registration of two domain names incorporating complainant's mark).

31. Respondent's registration and nonuse, i.e. "passive holding," of the domain name AUTO-INSURANCE-USAA-A.INFO is in bad faith because (1) that Domain Name incorporates Complainant's USAA mark in its entirety, (2) there is no conceivable use of the Domain Name by Respondent that would be legitimate, and (4) the most likely use of that Domain Name would be for a website similar to Respondent's USAA-INSURANCE.NET website, which would infringe Complainant's rights. See, e.g., H-D Michigan, Inc. v. TT&R et al. (NAF FA0209000126650) (finding respondent's passive holding of the domain name <harleydavidsons-r-us.com> in bad faith because respondent's bad-faith registration and use of additional domain names permits the inference that any future use of the passively-held domain name would be in bad faith and because the Panel could not imagine a circumstance where respondent could use that domain name in good faith); Indymac Bank F.S.B. v. Jim Hogan (NAF FA0312000220042) (holding respondent's passive holding of the domain names is in bad faith and stating "The Panel will not wait until the domain names have actually been used before finding bad faith because it is inconceivable that [r]espondent could use the domain names in a manner that would not infringe upon [c]omplainant's mark and given [r]espondent's prior [activities].").

32. Because Complainant's USAA mark is federally registered, and because Respondent's website copies Complainant's federally registered design trademark, USAA WE KNOW WHAT IT MEANS TO SERVE. INSURANCE, INVESTMENTS, BANKING, MEMBER SERVICES, there is no question that Respondent had knowledge of USAA's trademark rights when he registered the Domain Names. By registering the Domain Names with knowledge of Complainant's rights in its USAA mark, Respondent acted in bad faith. See, e.g., Kabushiki Kaisha Toshiba d/b/a Toshiba Corporation v. Marko Tusla d/b/a Toshiba-Club.com (WIPO D2004-1066) (holding respondent registered the domain name <toshiba-club.com> in bad faith because "registration of the complainant's well-known [TOSHIBA] mark as a domain name could not have been for any plausible reason other than to trade on the goodwill of the trade mark owner" and noting "Registration of a domain name with knowledge of the trademark owner's rights has been consistently found to constitute bad faith under the Policy."); Verizon Trademark Services, LLC v. NA a/k/a NA DomainDevelopments.com (NAF FA0512000616307) ("[R]espondent registered the contested domain name [verizoncenter.com] with at least constructive knowledge of [c]omplainant's rights in the VERIZON mark by virtue of [c]omplainant's prior filing for registration of that mark with the United States Patent and Trademark Office. Registration of a confusingly similar domain name despite such constructive

knowledge evidences bad faith registration and use of the domain name pursuant to Policy ¶4(a)(iii).”); Compaq Information Technologies Group, L.P. v. Express Technology, Inc. (NAF FA0201000104186) (finding the respondent registered the domain name in bad faith because it was on notice of the complainant’s rights).

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

FINDINGS

Complainant, United Services Automobile Association, is the owner of the trademark USAA. Complainant has utilized the USAA mark in connection with insurance services and financial services since as early as 1927. Complainant owns several registrations with the United States Patent and Trademark Office (“USPTO”) for its USAA mark. (such as Reg. No. 806,520 – issued March 29, 1966 and Reg. No. 2,423,168 – issued January 23, 2001). Complainant registered the domain name <USAA.com> on December 2, 1994.

Respondent registered the disputed domain names <**usaa-insurance.net**> and <**auto-insurance-usaa-a.info**> on May 14, 2007 and May 5, 2007 respectively. Currently the domain name <**usaa-insurance.net**> resolves to a website entitled “USAA We know what it means to serve.” that provides links to Complainant’s competitor’s products. The <**auto-insurance-usaa-a.info**> domain name resolves to an “index page” that displays no content.

DISCUSSION

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

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

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

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

- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

Complainant has established rights in the USAA mark. Complainant holds several United States trademark registrations for the USAA mark. The Panel finds Complainant's registration with the USPTO sufficient for finding rights to the mark pursuant to Policy ¶4(a)(i). *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 Trip Network Inc. v. Alviara*, FA 914943 (Nat. Arb. Forum Mar. 27, 2007) (finding that the complainant's federal trademark registrations for the CHEAPTICKETS and CHEAPTICKETS.COM marks were adequate to establish its rights in the mark pursuant to Policy ¶4(a)(i)).

Respondent's disputed domain names are confusingly similar to Complainant's USAA mark. The <usaa-insurance.net> disputed domain name includes the entirety of Complainant's mark, merely adding the generic term "insurance," which directly relates to Complainant's business, a hyphen and the generic top-level domain ("gTLD") ".net." The <auto-insurance-usaa-a.info> disputed domain name also includes the entirety of Complainant's mark, adding the generic terms "auto" and "insurance," both of which directly relate to Complainant's business, three hyphens, the letter "a," and the gTLD ".info." The Panel finds these alterations to an otherwise unchanged mark to be minor and insufficient to distinguish either of Respondent's domain names from Complainant's mark in any meaningful way for the purposes of Policy ¶4(a)(i) under the particular facts and circumstances of this case. *See Am. Int'l Group, Inc. v. Ling Shun Shing*, FA 206399 (Nat. Arb. Forum Dec. 15, 2003) (finding that the addition of the term "assurance," to the complainant's AIG mark failed to sufficiently differentiate the name from the mark under Policy ¶4(a)(i) because the appended term related directly to the complainant's business); *see also Victoria's Secret v. Zuccarini*, FA 95762 (Nat. Arb. Forum Nov. 18, 2000) (finding that, by misspelling words and adding letters to words, a respondent does not create a distinct mark but nevertheless renders the domain name confusingly similar to the complainant's marks); *see also Health Devices Corp. v. Aspen S T C*, FA 158254 (Nat. Arb. Forum July 1, 2003) ("[T]he addition of punctuation marks such as hyphens is irrelevant in the determination of confusing similarity pursuant to Policy ¶4(a)(i)."); *see also Trip Network Inc. v. Alviara*, FA 914943 (Nat. Arb. Forum Mar. 27, 2007) (concluding that the addition of a gTLD, whether it be ".com," ".net," ".biz," or ".org," is irrelevant to a Policy ¶4(a)(i) analysis).

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

Rights or Legitimate Interests

Where Complainant makes a *prima facie* case under Policy ¶4(a)(ii), the burden shifts to Respondent to set forth concrete evidence that it does possess rights to or legitimate interests in the disputed domain name. The Panel finds Complainant has established a *prima facie* case in the matter at hand. *See Compagnie Generale des Matieres Nucleaires v. Greenpeace Int'l*, D2001-0376 (WIPO May 14, 2001) (“Proving that the Respondent has no rights or legitimate interests in respect of the Domain Name requires the Complainant to prove a negative. For the purposes of this sub paragraph, however, it is sufficient for the Complainant to show a *prima facie* case and the burden of proof is then shifted on to the shoulders of Respondent. In those circumstances, the common approach is for respondents to seek to bring themselves within one of the examples of paragraph 4(c) or put forward some other reason why they can fairly be said to have a relevant right or legitimate interests in respect of the domain name in question.”); *see also Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (holding that, where the complainant has asserted that the respondent has no rights or legitimate interests with respect to the domain name, it is incumbent on the respondent to come forward with concrete evidence rebutting this assertion because this information is “uniquely within the knowledge and control of the respondent”).

Respondent has failed to submit a response to the Complaint. The Panel is entitled to presume Respondent lacks all rights and legitimate interests in the disputed domain names. *See G.D. Searle v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002) (“Respondent’s failure to respond means that Respondent has not presented any circumstances that would promote its rights or legitimate interests in the subject domain name under Policy ¶4(a)(ii).”); *see also 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 that Respondent lacks all rights and legitimate interests in the disputed domain name.”). Nonetheless, the Panel will examine the record to determine if Respondent has any rights or legitimate interests in either the <usaa-insurance.net> or <auto-insurance-usaa-a.info> domain name pursuant to Policy ¶4(c).

The disputed domain name, <usaa-insurance.net>, currently resolves to a website displaying Complainant’s marks and contains links to Complainant’s competitors. The Panel finds this to be neither a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i) nor a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii). *See eBay Inc. v. Hong*, D2000-1633 (WIPO Jan. 18, 2001) (stating that the respondent’s use of the complainant’s entire mark in domain names makes it difficult to infer a legitimate use); *see also Crow v. LOVEARTH.net*, FA 203208 (Nat. Arb. Forum Nov. 28, 2003) (“It is neither a *bona fide* offerings [sic] of goods or services, nor an example of a legitimate noncommercial or fair use under Policy ¶¶4(c)(i) & (iii) when the holder of a domain name, confusingly similar to a registered mark, attempts to profit by passing itself off as Complainant”); *see also Charles Letts & Co. v. Citipublications*, FA 692150 (Nat. Arb. Forum July 17, 2006) (finding that the respondent’s use of a domain name that was confusingly similar to the complainant’s mark to display links to the complainant’s competitors did not constitute a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i), nor a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii)).

The disputed domain name, <**auto-insurance-usaa-a.info**>, currently resolves to an “index page” that displays no content. The Panel also finds this to be neither a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i) nor a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii). *See Golden Bear Int’l, Inc. v. Kangdeock-ho*, FA 190644 (Nat. Arb. Forum Oct. 17, 2003) (“Respondent's use of a domain name confusingly similar to Complainant’s mark to divert Internet users to websites unrelated to Complainant's business does not represent a bona fide offering of goods or services under Policy ¶4(c)(i) or a legitimate noncommercial or fair use under Policy ¶4(c)(iii).”); *see also Computer Doctor Franchise Sys., Inc. v. Computer Doctor*, FA 95396 (Nat. Arb. Forum Sept. 8, 2000) (finding that the respondent’s website, which is blank but for links to other websites, is not a legitimate use of the domain names).

Respondent is not commonly known by either the <**usaa-insurance.net**> or <**auto-insurance-usaa-a.info**> domain name and is not authorized to use Complainant’s USAA mark in any way. Nowhere in Respondent’s WHOIS information or elsewhere in the record does it indicate Respondent is or ever was commonly known by either the <**usaa-insurance.net**> or <**auto-insurance-usaa-a.info**> domain name. Absent evidence suggesting otherwise, the Panel finds Respondent has not established rights to or legitimate interests in the domain names in accordance with Policy ¶4(c)(ii). *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 Wells Fargo & Co. v. Onlyne Corp. Services11, Inc.*, FA 198969 (Nat. Arb. Forum Nov. 17, 2003) (“Given the WHOIS contact information for the disputed domain [name], one can infer that Respondent, Onlyne Corporate Services11, is not commonly known by the name ‘welsfargo’ in any derivation.”).

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

Registration and Use in Bad Faith

Respondent currently utilizes the disputed domain name, <**usaa-insurance.net**>, to resolve to a website featuring links to third-party competitors of Complainant. The Panel finds such use establishes Respondent registered and is using the disputed domain name in bad faith pursuant to Policy ¶4(b)(iii). *See Disney Enters., Inc. v. Noel*, FA 198805 (Nat. Arb. Forum Nov. 11, 2003) (“Respondent registered a domain name confusingly similar to Complainant's mark to divert Internet users to a competitor's website. It is a reasonable inference that Respondent's purpose of registration and use was to either disrupt or create confusion for Complainant's business in bad faith pursuant to Policy ¶4(b)(iii) [and] (iv).”); *see also Tesco Pers. Fin. Ltd. v. Domain Mgmt. Servs.*, FA 877982 (Nat. Arb. Forum Feb. 13, 2007) (concluding that the use of a confusingly similar domain name to attract Internet users to a website containing commercial links to the websites of the complainant’s competitors represented bad faith registration and use under Policy ¶4(b)(iii)).

Respondent's website at the <**usaa-insurance.net**> domain name prominently and repeatedly features Complainant's mark. Respondent is presumed to be benefiting by collecting click-through fees from the links to third-party competitors of Complainant. The Panel finds the disputed domain name is capable of creating a likelihood of confusion with Complainant's mark (especially since it contains Complainant's registered trademarks as graphics). This is further evidence of Respondent's bad faith registration and use pursuant to Policy ¶4(b)(iv). See *H-D Michigan, Inc. v. Petersons Auto.*, FA 135608 (Nat. Arb. Forum Jan. 8, 2003) (finding that the disputed domain name was registered and used in bad faith pursuant to Policy ¶4(b)(iv) through the respondent's registration and use of the infringing domain name to intentionally attempt to attract Internet users to its fraudulent website by using the complainant's famous marks and likeness); see also *Target Brands, Inc. v. JK Internet Servs.*, FA 349108 (Nat. Arb. Forum Dec. 14, 2004) (finding bad faith because the respondent not only registered complainant's famous TARGET mark, but "reproduced... complainant's TARGET mark... [and] added complainant's distinctive red bull's eye [at the domain name]... to a point of being indistinguishable from the original."); see also *Am. Online, Inc. v. Miles*, FA 105890 (Nat. Arb. Forum May 31, 2002) ("Respondent is using the domain name at issue to resolve to a website at which Complainant's trademarks and logos are prominently displayed. Respondent has done this with full knowledge of Complainant's business and trademarks. The Panel finds that this conduct is that which is prohibited by Paragraph 4(b)(iv) of the Policy.").

The disputed domain name, <**auto-insurance-usaa-a.info**>, currently resolves to an "index page" that displays no content. The Panel finds this "lack of use" to establish Respondent registered and is using the disputed domain name in bad faith pursuant to Policy ¶4(b)(iii). See *Phat Fashions, LLC v. Kruger*, FA 96193 (Nat. Arb. Forum Dec. 29, 2000) (finding bad faith under Policy ¶4(b)(iv) even though the respondent has not used the domain name because "it makes no sense whatever to wait until it actually 'uses' the name, when inevitably, when there is such use, it will create the confusion described in the Policy"); see also *Alitalia –Linee Aeree Italiane S.p.A v. Colour Digital*, D2000-1260 (WIPO Nov. 23, 2000) (finding bad faith where the respondent made no use of the domain name in question and there are no other indications that the respondent could have registered and used the domain name in question for any non-infringing purpose)

Complainant also Respondent registered the <**usaa-insurance.net**> and <**auto-insurance-usaa-a.info**> disputed domain names with either actual or constructive knowledge of Complainant's rights in its USPTO registered USAA mark. Respondent's websites prominently and repeatedly display its USAA marks and logos along with its trademarked phrase "USAA WE KNOW WHAT IT MEANS TO SERVE." The Panel finds Respondent has registered the disputed domain names with full knowledge of Complainant's business and trademarks. The Panel finds this conduct is further evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv). See *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.”) *see also Am. Online, Inc. v. Miles*, FA 105890 (Nat. Arb. Forum May 31, 2002) (“Respondent is using the domain name at issue to resolve to a website at which Complainant’s trademarks and logos are prominently displayed. Respondent has done this with full knowledge of Complainant’s business and trademarks. The Panel finds that this conduct is that which is prohibited by Paragraph 4(b)(iv) of the Policy.”).

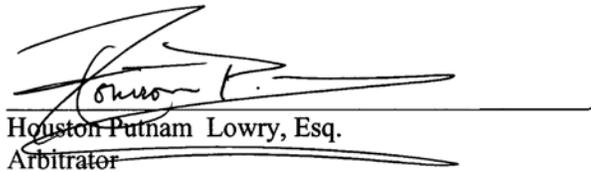
Respondent has registered several domain names incorporating third-party trademarks in bad faith. The Panel finds Respondent has engaged in a pattern of conduct indicative of bad faith pursuant to Policy ¶4(b)(ii). *See Philip Morris Inc. v. r9.net*, D2003-0004 (WIPO Feb. 28, 2003) (finding that the respondent’s previous registration of domain names such as <pillsbury.net>, <schlitz.net>, <biltmore.net> and <honeywell.net> and subsequent registration of the disputed <Marlboro.com> domain name evidenced bad faith registration and use pursuant to Policy ¶4(b)(ii)); *see also Armstrong Holdings, Inc. v. JAZ Assocs.*, FA 95234 (Nat. Arb. Forum Aug. 17, 2000) (finding that the respondent violated Policy ¶4(b)(ii) by registering multiple domain names that infringe upon others’ famous and registered trademarks); *see also Nabisco Brands Co. v. Patron Group, Inc.*, D2000-0032 (WIPO Feb. 23, 2000) (holding that registration of numerous domain names is one factor in determining registration and use in bad faith).

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 <**usaa-insurance.net**> and <**auto-insurance-usaa-a.info**> domain names be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: Friday, December 12, 2007

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