



NATIONAL ARBITRATION FORUM

DECISION

Victoria's Secret Stores Brand Management, Inc. v. PabloPalermao
Claim Number: FA0805001191651

PARTIES

Complainant is **Victoria's Secret Stores Brand Management, Inc.** ("Complainant"), represented by **Melise R. Blakeslee**, of **McDermott Will & Emery LLP**, Washington D.C., USA. Respondent is **PabloPalermao** ("Respondent"), Peru.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**victoriasecretangel.com**>, registered with **Moniker Online Services, Inc.**

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 May 19, 2008; the National Arbitration Forum received a hard copy of the Complaint on May 20, 2008.

On May 27, 2008, Moniker Online Services, Inc. confirmed by e-mail to the National Arbitration Forum that the <**victoriasecretangel.com**> domain name is registered with Moniker Online Services, Inc. and that Respondent is the current registrant of the name. Moniker Online Services, Inc. has verified that Respondent is bound by the Moniker Online Services, Inc. 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 June 3, 2008, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of June 23, 2008 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@victoriasecretangel.com by e-mail.

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

On June 25, 2008, 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:

1. This Complaint is based upon the famous trademark and service mark VICTORIA'S SECRET and variations thereof, which have been adopted and continually used in commerce by the Complainant, its licensees, and predecessors since at least as early as June 12, 1977 in connection with the sale of, *inter alia*, women's lingerie and other apparel, personal care and beauty products, swimwear, outerwear, and gift items.
2. Complainant uses the famous mark VICTORIA'S SECRET as the name of more than 1,000 Victoria's Secret retail stores located throughout the United States and more than 300 Victoria's Secret retail stores located in Canada which advertise, offer for sale and sell a wide range of items bearing the mark VICTORIA'S SECRET.
3. Additionally, Complainant uses the mark VICTORIA'S SECRET in conjunction with over 45 stand-alone "Victoria's Secret Beauty" retail stores located throughout the United States and over 410 "Victoria's Secret Beauty" retail locations located throughout the United States operating within or connected to Victoria's Secret lingerie stores.
4. Complainant also uses the mark VICTORIA'S SECRET in its worldwide advertising and sales of a wide range of items bearing the mark in connection with Complainant's print mail order catalogue and its e-commerce web site located at <victoriasssecret.com>.

5. In 2007, more than \$5 billion of merchandise was sold in connection with or bearing the mark VICTORIA'S SECRET. In addition, Complainant's prominent advertising campaign featuring its famous models has succeeded in catapulting the VICTORIA'S SECRET brand into the realm of one of the world's most recognized marks.
6. The mark VICTORIA'S SECRET, and variations thereof, are duly registered in the United States Patent and Trademark Office under nineteen (19) valid, subsisting and uncancelled registrations, and Complainant is the owner thereof by registration and/or assignment. Many of those registrations are incontestable. Additionally, Complainant has approximately thirty-three (33) applications pending before the United States Patent and Trademark Office that contain the mark VICTORIA'S SECRET and variations thereof.
7. The mark VICTORIA'S SECRET has been prominently used on the Internet since at least 1998, in connection with Complainant's goods at Complainant's website <victoriasecret.com>. The Complainant first registered this domain name on January 23, 1995. Additionally, the mark VICTORIA'S SECRET has been prominently used on the Internet in connection with the world-famous Victoria's Secret online fashion shows. In February 1999, Complainant launched the first live Internet fashion show, attracting a then-record 1.5 million reported web site visitors to a single live broadcast. This record was shattered on May 18, 2000, when more than 2 million people from over 140 countries viewed the second annual broadcast of the Victoria's Secret Internet fashion show, which prominently featured the mark VICTORIA'S SECRET. The brand has also been promoted since 2001 through the annual network television broadcast of the Victoria's Secret Fashion Show.
8. As a result of this widespread, long-time, continuous, and prominent use of the mark VICTORIA'S SECRET, the mark VICTORIA'S SECRET has acquired significant goodwill, wide public recognition, and fame as a means by which Complainant and its merchandise are known to the public and its source and origin are identified. *See V Secret Catalogue et al. v. Artco Inc.*, FA 94342 (Nat. Arb. Forum, May 9, 2000) (recognizing VICTORIA'S SECRET as a famous mark).

II. Grounds On Which The Complaint is Made

A. The Domain Name is Confusingly Similar to Complainant's Mark

1. Respondent's registered Domain Name, <victoriasecretangel.com>, is confusingly similar to Complainant's mark VICTORIA'S SECRET and the domain name used by Complainant in connection with the legitimate sale of products bearing the mark VICTORIA'S SECRET, namely <victoriasecret.com>.

2. The Domain Name <**victoriasecretangel.com**> incorporates Complainant's mark in its entirety and merely adds a word (i.e. "Angel"), which is also associated with Complainant's brand. The only difference between Respondent's Domain Name and Complainant's VICTORIA'S SECRET mark is that the Registrant has added the English word "angel." By registering a domain name that merely adds the word "angel" to the famous mark VICTORIA'S SECRET, Respondent creates a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Domain Name and the web site to which it resolves. See *V Secret Catalogue, Inc. v. Admin c/o LaPorte Holdings*, FA 467778 (Nat. Arb. Forum, June 13, 2005) (finding <surf.victoriasecret.com> and victoriasecretfashion.com confusingly similar to the VICTORIA'S SECRET mark); *V Secret Catalogue, Inc. v. Wig Distributions*, FA 301727 (Nat. Arb. Forum, Sept. 7, 2004) (finding victoriasecretrethair.com confusingly similar to the VICTORIA'S SECRET mark); *V Secret Catalogue, Inc. v. Oro en Arias S.A.*, FA 301730 (Nat. Arb. Forum, Sept. 7, 2004) (finding victoriasecret poker.com confusingly similar to the VICTORIA'S SECRET mark).
3. This likelihood of confusion is heightened by the fact that Respondent is trading off of other of Complainant's famous brands, as Complainant owns a federal trademark registration for the mark ANGELS BY VICTORIA'S SECRET, Registration No. 2,168,500. Complainant sells many different styles of products under the "Angel's By Victoria's Secret" lingerie line. Moreover, Complainant uses the word "angel" in many of the style names for such products, including styles such as "Angels Air™," and "Dream Angels™."
4. Additionally, Complainant owns three pending federal trademark registrations for marks incorporating the word "angels," namely, VICTORIA'S SECRET ANGELS, VICTORIA'S SECRET SEXY ANGELS, and DREAM ANGELS BY VICTORIA'S SECRET. The Domain Name <**victoriasecretangel.com**> incorporates Complainant's VICTORIA'S SECRET ANGELS mark almost identically, except for the fact that Respondent's Domain Name omits the letter "s" after the word "Victoria," reading "Victoria Secret Angel," as opposed to Complainant's "Victoria's Secret Angel."
5. By registering a domain name that adds an element from Complainant's other brands to the famous mark VICTORIA'S SECRET, Respondent creates a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Domain Name and the web site to which it resolves.
6. Because Complainant sells genuine merchandise under its famous VICTORIA'S SECRET mark at its e-commerce website located at <victoriasecret.com> and Complainant possesses trademark rights in several variations of the mark that include the word "angel," Consumers seeking genuine VICTORIA'S SECRET

brand products are likely to be deceived into believing that the Domain Name is, in fact, Complainant's official e-commerce web site or a legitimately affiliated web site.

7. As a result, it is highly unlikely – if not impossible – that Respondent's Domain Name will not cause confusion, mistake, and misleadingly divert Internet users trying to locate Complainant's official site, or those looking for legitimate affiliated sites.

B. Respondent Has No Rights or Legitimate Interest in the Domain Name

1. Respondent is using the Domain Name for a web site that promotes commercial sites, some which offer goods that compete with Complainant's goods. The Domain Name currently resolves to a web site that provides various sponsored click-through links to third party web sites, some of which offer competing products, e.g. "American Eagle: Shop for our new Paige Cotton Bra & get Free Shipping with your order!"
2. The web site located at the Domain Name is not owned, affiliated with, or endorsed by Complainant. Respondent is neither affiliated with, nor has it been licensed or permitted to use, the VICTORIA'S SECRET mark or any domain names incorporating the mark. None of the linked websites are affiliated with, sponsored or endorsed by Complainant. Therefore, Respondent's Domain Name infringes upon and dilutes Complainant's famous VICTORIA'S SECRET mark.
3. Complainant sent a cease and desist letter via e-mail and certified mail to Respondent on August 10, 2006, informing it that the registration and use of the Domain Name <**victoriasecretangel.com**> infringed upon and was dilutive of Complainant's mark and further constituted unfair competition, false advertising, and passing off, as well as a violation of the Anticybersquatting Consumer Protection Act. In this letter, Complainant further requested that Respondent immediately cease using the Domain Name and assign all rights in the Domain Name to Complainant. *Id.* Complainant received no response from Respondent.
4. Respondent is using the Domain Name to divert Internet traffic from the legitimate VICTORIA'S SECRET web site or legitimate affiliated sites. Particularly when the trademark at issue is famous, as is Complainant's VICTORIA'S SECRET mark, it is presumed that the registrant of the domain name at issue is commercially benefiting and trading off of the goodwill of the trademark owner. *Nat'l Rifle Assoc. of Am. v. Future Media Architects, Inc.*, (Nat. Arb. Forum Oct. 13, 2006). This is precisely the sort of use made by Respondent. Moreover, Respondent's use of the Domain Name to run click-through links or to redirect users to sponsored web sites does not qualify as a *bona fide* offering of goods and services, and it is presumed that the registrant

received compensation for each misdirected user. *See e.g., Calcar, Inc. v. Future Media Architects, Inc.*, FA 1080147 (Nat. Arb. Forum Nov. 6, 2007); *Nat'l Rifle Assoc. of Am. v. Future Media Architects, Inc.*, FA 781430 (Nat. Arb. Forum Oct. 13, 2006); *Wedding Channel.com, Inc. v. Vasiliev*, FA 156716 (Nat. Arb. Forum June 12, 2003). In short, Respondent has never used and cannot possibly use the Domain Name in connection with a *bona fide* offering of goods or services. *See* Policy, 4(c)(i).

5. Further, on information and belief, Respondent is not commonly known by the Domain Name, either as a business, individual, or other organization. *See* Policy, 4(c)(ii). Respondent's true name is not ascertainable at this time because Respondent is shielded by an anonymous domain registration service that allows consumers to register domain names privately. Nothing in Respondent's WHOIS information, however, implies that Respondent is "commonly known" by the Domain Name. *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). Additionally, Respondent registered the Domain Name almost twenty-five (25) years after Complainant had begun using its VICTORIA'S SECRET mark and approximately ten (10) years after Complainant had registered the domain name <victoriasecret.com> for its e-commerce website. *Charles Jourdan Holding AG v. AAIM*, D2000-0403 (WIPO June 27, 2000) (finding no rights or legitimate interests where (1) the respondent is not a licensee of the complainant; (2) the complainant's prior rights in the domain name precede the respondent's registration; (3) the respondent is not commonly known by the domain name in question).
6. Respondent is not making a legitimate noncommercial or fair use of the Domain Name. On information and belief, the sole reason Respondent has chosen the <victoriasecretangel.com> domain name is to misleadingly divert Internet traffic from Complainant's web site to Respondent's for commercial gain. *See* Policy, 4(c)(iii).

C. The Domain Name Was Registered And Is Being Used In Bad Faith

1. Respondent is using the Domain Name to operate a website featuring links to third party commercial sites, some of which offer products in competition with Complainant's products. Therefore, Respondent's use constitutes bad faith registration and use pursuant to Policy 4(b)(iii) because it may be inferred that Respondent is collecting referral fees for each misdirected Internet user linked to a competitor's website. *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.’”).

2. Upon information and belief, Respondent registered the Domain Name with the intent to attract Internet users to its web site for commercial gain by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s web site, thereby misleadingly diverting Internet traffic from Complainant’s web site to Respondent’s for commercial gain. *See* Policy, 4(b)(iv). Again, upon misleadingly diverting internet traffic to its own web site, Respondent runs click-through links and redirect users to sponsored web sites for a commercial gain and therefore, exploits and trades off of the reputation and goodwill of Complainant’s famous VICTORIA’S SECRET mark.
3. It is inconceivable that Respondent was not aware of Complainant’s famous trademark VICTORIA’S SECRET when Respondent registered the Domain Name. *See V Secret Catalogue, Inc. v. PM Websites*, FA 94652 (Nat. Arb. Forum, June 8, 2000) (VICTORIA’S SECRET mark has acquired significant goodwill, wide public recognition and fame). Given the fame of the VICTORIA’S SECRET trademark, there is no reason for Respondent to have registered the Domain Name other than to trade off of the reputation and goodwill of Complainant’s famous VICTORIA’S SECRET mark. *See Charles Jorden Holding AG v. AAIM*, D2000-0403 (WIPO, June 27, 2000) (finding that the domain name in question is “so obviously connected with the Complainant and its products that its very use by someone with no connection with the Complainant suggests opportunistic bad faith.”); *see also Nat’l Rifle Assoc. of Am. v. Future Media Architects, Inc.* (Nat. Arb. Forum Oct. 13, 2006). At a minimum, the existence of Complainant’s numerous trademark registrations charged Respondent with constructive knowledge of those registered marks. *See* 15 U.S.C. § 1072; *see also Encyclopedia Britannica, Inc. v. Shedon.com*, D2000-0755 (WIPO, September 6, 2000). Therefore, Respondent clearly registered and used the Domain Name in bad faith. *See* Policy, 4(b)(iv).
4. In addition, Respondent’s registration of the Domain Name violates the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 43(d), et seq.

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

FINDINGS

Complainant currently holds registrations of the VICTORIA’S SECRET mark with the United States Patent and Trademark Office (“USPTO”) for various retail products including clothing, household goods, and cosmetics (Reg. No. 1,146,199 issued Jan. 20, 1981). Many of the lingerie product lines sold under this mark use “angel” to describe a particular style or line of lingerie.

Respondent's <**victoriasecretangel.com**> domain name was registered on April 15, 2005. It currently resolves to a website providing various links to third-parties, many of whom offer products in competition with those sold under the VICTORIA'S SECRET mark.

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 sufficiently established its rights in the VICTORIA'S SECRET mark through registration with the USPTO pursuant to Policy ¶4(a)(i). *See Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) ("Registration of the NASAL-AIRE mark with the USPTO establishes Complainant's rights in the mark."); *see also U.S. Office of Pers. Mgmt. v. MS Tech. Inc.*, FA 198898 (Nat. Arb. Forum Dec. 9, 2003) ("[O]nce the USPTO has made a determination that a mark is registrable, by so issuing a registration, as indeed was the case here, an ICANN panel is not empowered to nor should it disturb that determination.").

The <**victoriasecretangel.com**> domain name contains the VICTORIA'S SECRET mark in its entirety omitting the apostrophe, the letter "s" and the space between VICTORIA'S and SECRET. It then includes the descriptive phrase "angel" which corresponds to the branding terminology used to identify particular styles or lines of products sold under the VICTORIA'S SECRET mark. Finally, the disputed domain name incorporates the generic top-level domain ("gTLD") ".com." It is well-established that the inclusion of a gTLD and the omissions of punctuation, letters and spaces do not sufficiently distinguish a disputed domain name. Furthermore, the addition of descriptive words that only further identify specific products sold under a specified mark will not negate a finding of confusing similarity.

Based upon the foregoing, the Panel finds the <**victoriasecretangel.com**> domain name is confusingly similar to Complainant's VICTORIA'S SECRET mark pursuant to Policy ¶4(a)(i). *See Isleworth Land Co. v. Lost in Space*, SA, FA 117330 (Nat. Arb. Forum Sept. 27, 2002) ("[I]t is a well established principle that generic top-level domains are irrelevant when conducting a Policy ¶4(a)(i) analysis."); *see also Gurney's Inn Resort & Spa Ltd. v. Whitney*, FA 140656 (Nat. Arb. Forum Feb. 19, 2003) ("Punctuation and spaces between words are not significant in determining the similarity of a domain name and a mark because punctuation and spaces are not reproducible in a domain name."); *see also Victoria's Secret v. Internet Inv. Firm Trust*, FA 94344 (Nat. Arb. Forum May 9, 2000) (finding the domain name <**victoriasecret.com**> to be confusingly similar to the complainant's trademark, VICTORIA'S SECRET); *see also Space Imaging LLC v. Brownell*, AF-0298 (eResolution Sept. 22, 2000) (finding confusing similarity where the respondent's domain name combines the complainant's mark with a generic term that has an obvious relationship to the complainant's business); *see also 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).

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

Rights or Legitimate Interests

Under Policy ¶4(a)(ii), Complainant must first establish a *prima facie* case that Respondent has no rights or legitimate interests in the <**victoriasecretangel.com**> domain name. *See VeriSign Inc. v. VeneSign C.A.*, D2000-0303 (WIPO June 28, 2000) ("Respondent's default, however, does not lead to an automatic ruling for Complainant. Complainant still must establish a *prima facie* case showing that under the Uniform Domain Name Dispute Resolution Policy it is entitled to a transfer of the domain name."). The Panel finds a *prima facie* case has been established and the burden is accordingly shifted to Respondent to affirmatively demonstrate that it does have rights or legitimate interests in the disputed domain name. *See 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.”); *see also Woolworths plc. v. Anderson*, D2000-1113 (WIPO Oct. 10, 2000) (finding that, absent evidence of preparation to use the domain name for a legitimate purpose, the burden of proof lies with the respondent to demonstrate that it has rights or legitimate interests).

In an abundance of caution, the Panel will expressly consider the elements listed under Policy ¶4(c) even though Respondent has not responded to the Complaint.

Nowhere in Respondent’s WHOIS information or elsewhere in the record does it indicate Respondent is or ever was commonly known by the <**victoriasecretangel.com**> domain name. Furthermore, Respondent has neither sought nor received permission to use the VICTORIA’S SECRET mark in any way. Pursuant to Policy ¶4(c)(ii), the Panel finds Complainant is not nor ever was commonly known by the disputed domain name. *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 Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name).

The <**victoriasecretangel.com**> domain name resolves to a links-driven page, featuring various links to third-parties, many of whom offer products in direct competition with those offered under Complainant’s VICTORIA’S SECRET mark. Presumably Respondent gets revenue from the “clicks” on these links. The Panel finds this activity does 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). *See TM Acquisition Corp. v. Sign Guards*, FA 132439 (Nat. Arb. Forum Dec. 31, 2002) (finding that the respondent’s diversionary use of the complainant’s marks to send Internet users to a website which displayed a series of links, some of which linked to the complainant’s competitors, was not a *bona fide* offering of goods or services); *see also 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).

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

Registration and Use in Bad Faith

Respondent’s <**victoriasecretangel.com**> domain name resolves to a web page displaying various links to third parties, many of whom offer products in direct competition with those offered under Complainant’s mark. Presumably Respondent gets

revenue from the “clicks” on these links. Therefore, the Panel finds Respondent registered and is using the disputed domain name in bad faith for the purpose of disrupting Complainant’s business pursuant to Policy ¶4(b)(iii). *See 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)); *see also 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).”).

The Panel presumes that Respondent is commercially benefiting from the use of such links through the accrual of click-through fees. As a result, the Panel finds this to be additional evidence Respondent registered and is using the <**victoriasecretangel.com**> domain name in bad faith pursuant to Policy ¶4(b)(iv). *See 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.’”); *see also Kmart v. Khan*, FA 127708 (Nat. Arb. Forum Nov. 22, 2002) (finding that if the respondent profits from its diversionary use of the complainant’s mark when the domain name resolves to commercial websites and the respondent fails to contest the complaint, it may be concluded that the respondent is using the domain name in bad faith pursuant to Policy ¶4(b)(iv)).

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

DECISION

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

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



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: July 9, 2008

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