



NATIONAL ARBITRATION FORUM

DECISION

Peter Jerie v. Spiral Matrix a/k/a Kentech, Inc.
Claim Number: FA0606000736632

PARTIES

Complainant is **Peter Jerie** (“Complainant”), represented by **Sean F. Heneghan**, 31 Reading Hill Avenue, Melrose, MA 02176. Respondent is **Spiral Matrix a/k/a Kentech, Inc.** (“Respondent”), 1st Floor Muya House, Kenyatta Ave., P.O. Box 4276-30100, Eldoret, KE 30100, KE.

REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are <waplivescore.com>, <livescoretennis.com>, <livescorecc.com>, <livescorecz.com>, <livescoregr.com>, <livescorenba.com>, <livescoresoccer.com>, <espnlivescore.com>, <czlivescore.com>, <comlivescore.com>, <soccerlivescores.com>, <wwwlivescores.com> and <cclivescore.com> registered with **Intercosmos Media Group, Inc.** d/b/a **Directnic.com**; <livvescore.com>, registered with **Domain Contender, Llc.**

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 June 22, 2006; the National Arbitration Forum received a hard copy of the Complaint on June 26, 2006.

On June 23, 2006, Intercosmos Media Group, Inc. d/b/a Directnic.com confirmed by e-mail to the National Arbitration Forum that the <waplivescore.com>, <livescoretennis.com>, <livescorecc.com>, <livescorecz.com>, <livescoregr.com>, <livescorenba.com>, <livescoresoccer.com>, <espnlivescore.com>, <czlivescore.com>, <comlivescore.com>, <soccerlivescores.com>, <wwwlivescores.com> and <cclivescore.com> domain names are registered with Intercosmos Media Group, Inc. d/b/a Directnic.com and that Respondent is the current registrant of the names. Intercosmos Media Group, Inc. d/b/a Directnic.com has verified that Respondent is bound by the Intercosmos Media Group, Inc. d/b/a Directnic.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 June 23, 2006 Domain Contender, Llc confirmed by e-mail to the National Arbitration Forum that the <livvescore.com> domain name is registered with Domain Contender, Llc and that Respondent is the current registrant of the name. Domain Contender, Llc has verified that Respondent is bound by the Domain Contender, Llc 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 July 3, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of July 24, 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@waplivescore.com, postmaster@livescoretennis.com, postmaster@livescorecc.com, postmaster@livescorecz.com, postmaster@livescoregr.com, postmaster@livescorenba.com, postmaster@livescoresoccer.com, postmaster@espnlivescore.com, postmaster@czlivescore.com, postmaster@comlivescore.com, postmaster@livvescore.com, postmaster@soccerlivescores.com, postmaster@cclivescore.com and postmaster@wwwlivescores.com by e-mail.

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

On July 28, 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 <waplivescore.com>, <livescoretennis.com>, <livescorecc.com>, <livescorecz.com>, <livescoregr.com>, <livescoresoccer.com>, <czlivescore.com>, <comlivescore.com>, <soccerlivescores.com>,

<**wwwlivescores.com**>, <**livescore.com**> and <**cclivescore.com**> domain names be transferred from Respondent to Complainant.

Complainant requests that the <**espnlivescore.com**> and <**livescorenba.com**> domain names be cancelled.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

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

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

This Forum has also recognized Complainant's rights in LIVESCORE in a previous UDRP proceeding (see *Peter Jerie v. LaPorte Holdings, Inc.*, FA 381130 (NAF Feb. 24, 2005)).

FACTUAL AND LEGAL GROUNDS

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

Spiral Matrix registered *WAPLIVESCORE.COM* on November 24, 2005, *LIVESCORENBA.COM* and *LIVESCORETENNIS.COM* on November 5, 2005, *LIVESCOREGR.COM* on January 7, 2006, *CCLIVESCORE.COM* on July 18, 2005 and *WWWLIVESCORES.COM* on January 21, 2006 with the registrar Intercosmos Media Group, Inc. d/b/a Directnic.com (hereinafter "Directnic"). Kentech, Inc. (hereinafter "Kentech") registered *LIVVSCORE.COM* on December 17, 2005 with registrar Intercosmos Media Group, Inc. d/b/a Domain Contender. NOLDC, Inc. (hereinafter "NOLDC") registered *LIVESCORESOCCER.COM* on July 11, 2005; *LIVESCORECC.COM* on June 21, 2005, *LIVESCORECZ.COM* on June 13, 2005, *CZLIVESCORE.COM* and *ESPNLIVESCORE.COM* on July 31, 2005, *COMLIVESCORE.COM* on July 18, 2005, and *SOCCKERLIVESCORES.COM* on July 20, 2005 with the registrar Directnic. All of the subject domain names were registered more than seven years after Complainant had adopted and began using the LIVESCORE trademark.

Complainant notes that in the June 27, 2006 communication issued by NAF, NOLDC has verified that Spiral Matrix is the actual registrant of the domain names listed as registered to NOLDC.

Complainant must address a procedural matter regarding the cited registrants. ICANN Rules provide that a "complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder" *See Rules, para. 3(c)*. Previous Panels under the UDRP have recognized that a Complainant would be faced with an "unjustifiable economic burden" if it was required to bring several separate administrative proceedings, "and that it would be a burden on the administrative process" to require it to

duplicate its effort in the same case. In this proceeding, the Panel will find that registrants for the subject domains, Spiral Matrix and Kentech, are one and the same.

As Complainant has determined through its investigations, there are a number of factors that link the entities.

First, Complainant notes that the subject domain names are all being used in the exact manner, namely directing Web users to a "pay-per-click" search service.

Next, according to the WHOIS database information for the domain names registered by Spiral Matrix and Kentech, both of the entities using the identical mailing address, namely 1st Floor Muya House, Kenyatta Ave., P.O.BOX 4276-30100, Eldoret, KE 30100.

In addition, both entities have been named together in UDRP decisions, namely *Tandy Leather Company, Inc. v. Kentech, Inc. a/k/a Spiral Matrix a/k/a Domain Master*, FA 701183 (NAF June 16, 2006); *Société des Hôtels Meridien v. Spiral Matrix/Kentech Inc.*, Case No. D2005-1196 (WIPO Dec. 31, 2005).

Finally, according to its website, NOLDC offers a service that allows domain name registrants to hide their identities, which arguably hinders ICANN's WHOIS system. Because the domain names registered in the name of NOLDC are being used in an identical manner as those registered by Spiral Matrix/Kentech, it can be inferred that the latter is using the former's cloaking service. Given the circumstances, it is clear the cited parties have a shared business interest so that it is appropriate to consolidate the parties as a single Respondent.

The Panel should find that it would place an unjustifiable economic burden on the Complainant to require it to initiate separate administrative proceedings for the respective subject domain names and that it would be a burden on the administrative process to require duplication of effort, in this context of this case. Both Spiral Matrix and Kentech shall hereinafter be referred to as "Respondent", except as is otherwise necessary for the sake of clarity.

Turning to the substantive facts of the matter, Respondent has been using the subject domain names primarily to misdirect Internet users to a pay-per-click search service that features a search directory page includes links, under the titles such as *Football, Soccer, World Cup 2006* and *Tennis*, which direct a user to other services, some of which may compete with Complainant's services and/or its advertisers.

Complainant's research also indicates that Respondent has a history of acquiring domain names that incorporate third party trademarks and using said domains to misdirect Internet traffic to commercial websites. Specifically, both Spiral Matrix and Kentech have been found to have registered and used domain names in bad faith in numerous prior Panel decisions under the UDRP on activity virtually identical to those in the case at hand. Complainant includes citations and copies of UDRP decisions for the Panel's reference: (see *United Service Organizations v. Spiral Matrix*, FA 671249 (NAF May 10, 2006); *F. Hoffmann-La Roche AG v. Spiral Matrix*, Case No. D2006-0326 (WIPO May 10, 2006); *Whitney National Bank v. Spiral Matrix*, FA 657206 (NAF April 27, 2006); *PRL USA Holdings, Inc. v. Spiral Matrix*, Case No. D2006-0189 (WIPO March 22, 2006); *Expedia, Inc. v. Spiral Matrix*, FA 637951 (NAF March 15, 2006); and see Exhibit M; *Target Brands, Inc. v. Kentech, Inc.* FA 697861 (NAF June 16, 2006); *Dermalogica, Inc. and The International Dermal Institute, Inc. v. Kentech, Inc. a/k/a Domain*

Master, FA 649549 (NAF April 4, 2006) and *Unilever N.V. v. Kentech, Inc.*, Case No. D2005-1021 (WIPO Dec. 12, 2005).

In sum, Respondent has been involved in a pattern of bad faith domain name registration and use and Respondent's conduct with regard to the subject domain names in the instant case serves as a classic example of the type of behavior the UDRP was instituted to remedy.

A. The Applicable Standards

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

Under Section 4(b)(ii) and (iv) of the UDRP respectively, registering a domain name primarily for the purpose of preventing a Complainant from reflecting its trademark, as well as registering a domain name to intentionally attract, for commercial gain, Internet users to a website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website, shall be evidence of bad faith registration and use of a domain name.

The facts and evidence will show Respondent has intentionally, and in bad faith, registered and is using as domain names the confusingly similar *WAPLIVESCORE.COM*, *LIVESCORETENNIS.COM*, *LIVESCORECC.COM*, *LIVESCORECZ.COM*, *LIVESCOREGR.COM*, *LIVESCORENBA.COM*, *ESPNLIVESCORE.COM*, *COMLIVESCORE.COM*, *CCLIVESCORE.COM*, *CZLIVESCORE.COM*, *LIVESCORESOCGER.COM*, *SOCGERLIVESCORES.COM*, *WWWLIVESCORES.COM* and *LIVVESCORE.COM*.

1. The Subject Domain Names Are Confusingly Similar To A Mark In Which Complainant Has Rights

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

Complainant's website at *LiveScore.com* is one of the most active sports entertainment sites on the Internet. According to statistics obtained by Complainant from *Alexa.com*, *LiveScore.com* ranks number one Internet site globally under the Soccer category and the number six site globally under the Sports category. Complainant's website registered in excess of 450 million page views in the month of April 2006, as well as 9,336,525 'unique visitors' for the same month.

By virtue of the quality of its services and eight years of continuous use and extensive advertising and promotion, the LIVESCORE trademark is well known to, and well regarded by, the consuming public. Complainant has firmly established common law rights in LIVESCORE through widespread and continuous use of the mark since as early as 1998; *see also Great Plains Metromall, LLC v. Creach*, FA 97044 (NAF May 18, 2001) [finding that the UDRP does not require “that a trademark be registered by a governmental authority for such rights to exist”].

Complainant has also established additional rights in the trademark LIVESCORE through its registration on the Principal Register of the U.S. Patent & Trademark Office, namely 2,514,933. Such evidence of trademark registration proves Complainant’s rights in the LIVESCORE mark. *See Janus Int’l Holding Co. v. Rademacher*, D2002-0201 (WIPO Mar. 5, 2002) [finding that Panel decisions have held that registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive].

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

Finally, this Forum has recognized Complainant’s rights in its LIVESCORE trademark in a previous proceeding under the UDRP.

Turning to the subject domain names, they are all nearly identical to - and confusingly similar to - Complainant’s senior LIVESCORE trademark. Specifically, virtually all of the subject domain names are confusingly similar because they incorporate LIVESCORE deviate from the mark only with the addition of generic or descriptive terms such as “soccer”, “tennis” and “wap”. There is a long line of Panel decisions that have found that the mere addition of a generic or descriptive word to a registered trademark does not negate the confusing similarity of a Respondent’s domain name pursuant to Policy ¶4(a)(i). *See L.L. Bean, Inc. v. ShopStarNetwork*, FA 95404 (NAF Sept. 14, 2000) [finding that combining the generic word “shop” with Complainant’s mark “llbean” does not circumvent Complainant’s rights in the mark nor avoid the confusing similarity aspect of the Policy]; *see also Space Imaging LLC v. Brownell*, AF-0298 (eResolution Sept. 22, 2000) [finding confusing similarity where Respondent’s domain name combines Complainant’s mark with a generic term that has an obvious relationship to Complainant’s business].

With regard to *LIVESCORENBA.COM* and *ESPNLIVESCORE.COM*, Respondent’s domain names are clearly confusingly similar to Complainant’s mark because they incorporate both Complainant’s and the well-known trademarks of others in the sports entertainment industry (see Exhibits H and J); *see also WeddingChannel.com Inc. v. NOLDC, Inc.* FA0408000310971 (NAF Sept. 21, 2004) [The MACY’S trademark added to a complainant’s WEDDING

CHANNEL and WEDDINGCHANNEL.COM marks within Respondent's domain name does not vanquish the confusing similarity that is created by the incorporation of the mark].

With regard to *LIVVESCORE.COM*, the domain name is nearly identical - and clearly confusingly similar to - the LIVESCORE trademark in that it differs only in the obvious typographical errors, namely, it includes an extra letter "v". There is a long line of Panel decisions that have found that, under the UDRP, slight variations of a well-known trademark do not create a distinct mark capable of overcoming a claim of confusing similarity because the resulting mark merely reflects a very probable typographical error. *See Sherman License Holdings, Limited v. Icedlt.com*, Case No. D2004-0713 (WIPO December 17, 2004) [Domain names <kaazar.com>, <karzaa.com> et al. are confusingly similar to the mark Complainant has rights].

Finally, the minor differences such as spaces and top-level domains are not sufficient to distinguish the subject domain names from the Complainant's trademark under Policy ¶4(a)(i). *See Hannover Ruckversicherungs-AG v. Ryu*, FA 102724 (NAF Jan. 7, 2001) [finding <hannoverre.com> to be identical to HANNOVER RE, "as spaces are impermissible in domain names and a generic top-level domain such as '.com' or '.net' is required in domain names"].

Clearly, the obvious similarity of the subject domain names with Complainant's senior LIVESCORE trademark, as well as Respondent's clear pattern of registering and using domains that are confusingly similar to third party trademarks, make it evident that the subject domain names are confusingly similar to LIVESCORE, as was intended by the Respondent. The Panel should conclude that Respondent registered and is using the confusingly similar subject domain names to take advantage of Complainant's reputation and goodwill in LIVESCORE. The subject domain names are likely to confuse Complainant's customers and potential customers into believing that there is some affiliation, connection, sponsorship, approval or association between the Respondent and Complainant when in fact none exists, and that is precisely the intent of the Respondent.

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

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

Respondent has no legitimate rights or interests in the subject domain names because Respondent has neither used, nor has made any demonstrable preparations to use, the subject domain names or corresponding names in connection with any bona fide offering of goods or services or in a legitimate, non-commercial, fair use manner.

On the contrary, Respondent is currently using the subject domain names to misdirect consumers attempting to access *LiveScore.com* to a page at a commercial "cost per click" search engine. Users are confronted with search results and a Web directory that displays a search box titled "Sponsored Links" and features categories such as *Football, Tennis, World Cup 2006, Scoreboard* and *Betting*. Hyperlinks at the website associated with the subject domain names direct Web users to third party website, including *FoxSports.com, ScoresandOdds.com* and *FantasyFanBase.com*. Respondent's attempt to profit from the goodwill Complainant has built up around the LIVESCORE mark does not evidence a bona fide offering of goods or services pursuant to Policy ¶4(c)(i), and cannot be considered to be a legitimate noncommercial or fair use of the domains pursuant to Policy ¶4(c)(iii). *See Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA

180704 (NAF Sept. 30, 2003) [“Respondent's demonstrated intent to divert Internet users seeking Complainant's website to a website of Respondent and for Respondent's benefit is not a bona fide offering of goods or services under Policy ¶4(c)(i) and it is not a legitimate noncommercial or fair use under Policy ¶4(c)(iii).”]; *see also WeddingChannel.com Inc. v. Vasiliev*, FA 156716 (NAF June 12, 2003) [finding that 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].

Respondent is not commonly known, either as an individual, business or organization, by any of the names incorporated with the subject domain names. *See Broadcomm Corp. v. Intellifone Corp.*, FA 96356 (NAF Feb. 5, 2001) [finding no rights or legitimate interests because Respondent is not commonly known as the disputed domain name or is using the domain in connection with a legitimate or fair use]. Complainant further notes that Respondent’s WHOIS information lists “Spiral Matrix”, “Kentech” or “NOLDC” but nowhere in the contact information is there any other reference to any of the names or subject domains, other than for the domain name itself. *See Tercent Inc. v. Lee Yi*, FA 139720 (NAF 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 (NAF 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.”].

Finally, Complainant states that it has no affiliation; association or business relationship of any kind with Respondent and Complainant has not licensed or authorized Respondent to use the LIVESCORE mark in any manner. *See Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) [finding no rights or legitimate interest where Respondent was not commonly known by the mark and never applied for a license or permission from Complainant to use the trademark].

Therefore, the subject domain names, because they are used solely to misdirect Internet users to a third party commercial website and not in connection with any bona fide business, are not legitimately used for the provision of any goods and services. Thus, Respondent has no legitimate interests in the subject domains, as legitimate interests are defined in Section 4(c)(i)-(iii) of the UDRP, and therefore the second element of Mr. Jerie’s Complaint under Section 4(a)(ii) of the UDRP is also satisfied.

3. The Subject Domain Names Have Been Registered And Are Being Used In Bad Faith

Respondent has registered and used the subject domain names in bad faith under Sections 4(b)(ii) and (iv) of the UDRP. The subject domain names all incorporate the long-used LIVESCORE trademark and are being used to intercept consumers intending to access Complainant’s *LiveScore.com* website and, instead, divert such users to a pay-per-click search website. The commercial search site features “Sponsored Links” under categories such as *Football, Tennis, World Cup 2006, Scoreboard* and *Betting*. The links direct Web users to third party websites, including *FoxSports.com, ScoresandOdds.com* and *FantasyFanBase.com*.

Respondent registered the subject domain names more than seven years after Complainant had adopted and began using the LIVESCORE trademark in connection with providing Web users real-time scores for sporting events. Moreover, when registering the subject domain names, Respondent was clearly aware of the existence of the Complainant and its trademark rights, given that the only difference between the subject domain names and Complainant's trademarks are generic and/or descriptive terms that are directly related to Complainant's services.

Moreover, the fact that Respondent has been using the domains for advertising online services that compete with Complainant's services is more evidence that not only did Respondent know of Complainant's rights in LIVESCORE, but it purposefully took advantage of them. *See Digi Int'l v. DDI Sys.*, FA 124506 (NAF Oct. 24, 2002) ["there is a legal presumption of bad faith, when Respondent reasonably should have been aware of Complainant's trademarks, actually or constructively"]; *see also Am. Online Inc. v. Shenzhen JZT Computer Software Co.*, D2000-0809 (WIPO Sept. 6, 2000) [finding that <gameicq.com> and <gameicq.net> are obviously connected with services provided with the world-wide business of ICQ and that the use of the domain names by someone with no connection to the product suggests opportunistic bad faith].

Addressing the Section 4(b)(ii) claim first, Respondent has registered and is using fourteen domain names that incorporate Complainant's trademark with a series of descriptive or generic words, actions that involve a pattern of conduct directed against the Complainant, stopping it from reflecting its trademark in corresponding domain names. Furthermore, Respondent has engaged in similar conduct with respect to registering domain names that are confusingly similar to the trademarks of third parties. A "pattern of conduct" as required in typically involves multiple domain names directed against multiple Complainants, but may involve multiple domain names directed against a single Complainant *See Telstra Corporation Limited v. Ozurls*, Case No. D2001-0046 (WIPO March 20, 2001) [Respondents' fifteen domain names involving Complainant's mark and a series of services, products, geographical descriptors, or generic words obviously involves a pattern of conduct directed against the Complainant under 4(b)(ii)]; *see also Armstrong Holdings, Inc. v. JAZ Assoc.*, FA 95234 (NAF Aug. 17, 2000) [finding that the Respondent violated Policy ¶4(b)(ii) by registering multiple domain names which infringe upon others' famous and registered trademarks]. Hence, Respondent's registration and use of the subject domain names is in bad faith under Section 4(b)(ii) of the UDRP.

Turning to the Section 4(b)(iv) claim, Respondent has registered and is using the subject domain names in bad faith as it attempts to attract, for commercial gain, Web users to a commercial search service that links to third party services that compete with, or are related to, Complainant's services at *LiveScore.com*. By selecting and using domain names that are confusingly similar to Complainant's mark to direct users to some websites that offer services related to Complainant's services, Respondent has acted in bad faith within the meaning of Policy ¶4(b)(iv). *See Associated Newspapers Ltd. v. Domain Manager*, FA 201976 (NAF Nov. 19, 2003) ["Respondent's 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 Identigene, Inc. v. Genetest Lab.*, D2000-1100 (WIPO Nov. 30, 2000) [finding bad faith where Respondent's use of the disputed domain to resolve to a website where similar services are offered is likely to confuse the user into believing that Complainant is the source of or is sponsoring the services offered at the site].

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

FINDINGS

Complainant, Peter Jerie, holds a registration with the United States Patent and Trademark Office ("USPTO") for the LIVESCORE mark. Complainant uses its LIVESCORE mark in connection with providing real-time scores for sports events, including soccer, tennis and ice hockey online. Complainant uses its LIVESCORE mark in its registered domain name <livescore.com>. Complainant uses its website at <livescore.com> to provide sports score services to Internet users.

Respondent registered the disputed domain names under two different identities: "Spiral Matrix" and "Kentech, Inc." However, despite the different registrant names, all of the disputed domain names were registered with identical contact information: 1st Floor Muya House Kenyatta, P.O. Box 4276-30100, Eldoret, Rift Valley, KE, +254-073-543-4737. Further, Spiral Matrix and Kentech, Inc. have been named together in previous UDRP disputes. Thus, it appears that Spiral Matrix and Kentech, Inc. are essentially one and the same for UDRP purposes and shall be referred to collectively as "Respondent." Respondent registered the <waplivescore.com>, <livescoretennis.com>, <livescorecc.com>, <livescorecz.com>, <livescoregr.com>, <livescorenba.com>, <livescoresoccer.com>,. <esplivescore.com>, <czlivescore.com>, <comlivescore.com>, <livescore.com>, <soccerlivescores.com>, <cclivescore.com> and <wwwlivescores.com> domain names between June 13, 2005 and January 21, 2006. Respondent is using the disputed domain names to redirect Internet users to Respondent's websites, which feature Internet search engine services and direct links to third-party websites. Some of the links to third-party websites are in direct competition with Complainant's business. Such links include "scoreboard," "football," "world cup 2006," and "picks." Other links are completely unrelated to Complainant's business, such as "travel," "lifestyle," "financial planning" and "real estate."

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.

Complainant did not specify the remedy it sought for <cclivescore.com>. In light of this ministerial defect, the Panel will assume Complainant wants the domain name transferred. Once the domain name is transferred, Complainant always has the option of directly canceling the domain name. This eliminates the chance the domain name will be improperly picked up by someone else than if the domain name was simply cancelled.

Identical and/or Confusingly Similar

Complainant has established rights in the LIVESCORE mark through registration of the mark with the USPTO. The Panel finds such registration is sufficient to establish rights in the mark, pursuant to Policy ¶4(a)(i). *See Janus Int’l Holding Co. v. Rademacher*, D2002-0201 (WIPO Mar. 5, 2002) (“Panel decisions have held that registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive.”); *see also 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.”).

Respondent’s <livescorecc.com>, <livescorecz.com>, <livesvoregr.com>, <cclifesocre.com> and <czlivescore.com> domain names are confusingly similar to Complainant’s LIVESCORE mark. The disputed domain names incorporate Complainant’s mark in its entirety, adding the geographic abbreviations “cc” for Cocos Islands, “cz” for Czech Republic and “gr” for Greece. The Panel finds the addition of geographic identifiers to Complainant’s mark does not overcome the confusing similarity between the disputed domain names and Complainant’s mark pursuant to Policy ¶4(a)(i). *See Oki Data Ams., Inc. v. ASD, Inc.*, D2001-0903 (WIPO Nov. 6, 2001) (“[T]he fact that a domain name wholly incorporates a Complainant’s registered mark is sufficient to establish identity [sic] or confusing similarity for purposes of the Policy despite the addition of other words to such marks.”); *see als Am. Online, Inc. v. Asian On-Line This Domain For Sale*, FA 94636 (Nat. Arb. Forum May 17, 2000) (finding that the domain names, which consist of “ao-l” and geographic location are confusingly similar to the complainant’s mark).

Respondent’s <espnlivescore.com>, <livescorenba.com>, <livescoretennis.com> and <livescoresoccer.com> domain names are confusingly similar to Complainant’s

LIVESCORE mark. The disputed domain names combine Complainant's mark in its entirety with descriptive terms that relate to complainant's business. "ESPN" and "NBA" not only describe sports and sports score related entities, they are also registered marks in their own right. The terms "soccer" and "tennis" both describe sports whose scores Complainant tracks. The Panel finds the addition of terms descriptive of Complainant's business to Complainant's mark does not overcome the confusing similarity between the disputed domain names and Complainant's mark pursuant to Policy ¶4(a)(i). See *G.D. Searle & Co. v. Paramount Mktg.*, FA 118307 (Nat. Arb. Forum Sept. 27, 2002) (holding that the addition of other well-known pharmaceutical drug brand names to the <viagra-xenical-propecia-meridia-bontril-phentermine-celebrex.com> domain name does not diminish the capacity of the disputed domain name to confuse Internet users, but actually "adds to the potential to confuse"); 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).

Respondent's <comlivescore.com>, <wwwlivescores.com> and <livescore.com> domain names are confusingly similar to Complainant's LIVESCORE mark. The disputed domain names are common typos or misspellings of Complainant's mark. Two names include "com" and "www," mimicking typing errors that commonly occur when typing a domain name. The third disputed domain name adds an additional letter "v" to the middle of Complainant's mark, and the second disputed domain name adds the letter "s" at the end of Complainant's mark. The Panel finds that combining Complainant's mark with common typing errors and adding extra letters does not overcome the confusing similarity between the disputed domain names and Complainant's mark pursuant to Policy ¶4(a)(i). See *Bank of Am. Corp. v. InterMos*, FA 95092 (Nat. Arb. Forum Aug. 1, 2000) (finding that the respondent's domain name <wwwbankofamerica.com> is confusingly similar to the complainant's registered trademark BANK OF AMERICA because it "takes advantage of a typing error (eliminating the period between the www and the domain name) that users commonly make when searching on the Internet"); 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).

Respondent's <waplivescore.com> domain name is confusingly similar to Complainant's LIVESCORE mark. The disputed domain name incorporates Complainant's mark in its entirety and adds the abbreviation "wap," which stands for "wireless application protocol." Wireless application protocol is the technology used to transmit websites to mobile devices. Complainant's website includes a link to <wap.livescore.com>, which Complainant uses to operate a website informing its customers about its WAP services. The Panel finds that Respondent's use of an abbreviation that describes and element of Complainant's business with Complainant's mark creates a confusingly similar domain name pursuant to Policy ¶4(a)(i). See *Elder Mfg. Co., Inc. v. Recker*, FA 98414 (Nat. Arb. Forum Sept. 10, 2001) ("In the matter at

bar it is beyond refute that Respondent's domain names are virtually identical, and thus confusingly similar to Elder's trademarks. Any superficial differences between the domain names and the Elder trademarks are de minimus and of no legal consequence"); *see also Brown & Bigelow, Inc. v. Rodela*, FA 96466 (Nat. Arb. Forum Mar. 5, 2001) (finding that the <hoylecasino.net> domain name is confusingly similar to the complainant's HOYLE mark, and that the addition of "casino," a generic word describing the type of business in which the complainant is engaged, does not take the disputed domain name out of the realm of confusing similarity).

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

Rights or Legitimate Interests

Complainant asserts Respondent lacks rights or legitimate interests in the disputed domain names. Complainant's assertion constitutes a *prima facie* case and shifts the burden to Respondent to demonstrate it does have rights or legitimate interests in the disputed domain names pursuant to Policy ¶4(a)(ii). The Panel may view Respondent's failure to submit a Response as evidence that Respondent does not have rights or legitimate interests. The Panel will review the available evidence in order to ascertain whether or not Respondent has rights or legitimate interests in the disputed domain names as outlined in Policy ¶4(c). *See G.D. Searle v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002) ("Because Complainant's Submission constitutes a *prima facie* case under the Policy, the burden effectively shifts to Respondent. 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.").

Respondent is using the disputed domain names to redirect Internet users to Respondent's websites, which feature generic Internet search engines and links to third-party websites, some of which are in direct competition with Complainant, while others are wholly unrelated. Presumably, the Internet search engines and third-party links generate pay-per-click referral fees for Respondent. The Panel finds such use is neither a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i), nor a legitimate noncommercial 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 24 Hour Fitness USA, Inc. v. 24HourNames.com-Quality Domains For Sale*, FA 187429 (Nat. Arb. Forum Sep. 26, 2003) (holding that Respondent's use of the <24hrsfitness.com>, <24-hourfitness.com> and <24hoursfitness.com> domain names to redirect Internet users to a website featuring advertisements and links to Complainant's competitors could not be considered a *bona fide* offering of goods or services or a legitimate noncommercial or fair use).

Complainant asserts, and there is no evidence to the contrary, Respondent is not commonly known by the disputed domain names. Respondent's WHOIS information identifies Respondent as "Spiral Matrix" or "Kentech, Inc." which in no way resembles any of the disputed domain names. Complainant further asserts that Respondent is not sponsored by or affiliated with Complainant and Respondent has no permission or authorization to use Complainant's mark in a domain name. Based on the available evidence, the Panel finds Respondent is not commonly known by the disputed domain names and thus lacks rights or legitimate interests pursuant to 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 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 Panel finds Policy ¶4(a)(ii) satisfied.

Registration and Use in Bad Faith

Respondent is using its domain names, all confusingly similar to Complainant's LIVESCORE mark to redirect Internet users to Respondent's websites. Respondent's websites feature generic Internet search engines and links to third party websites, many offering sports score services in direct competition with Complainant. The Panel finds Respondent's use of confusingly similar domain names to divert Internet users to its websites which further redirect Internet users to the websites of Complainant's competitors disrupts Complainant's business and is evidence of bad faith registration and use 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 S. Exposure v. S. Exposure, Inc.*, FA 94864 (Nat. Arb. Forum July 18, 2000) (finding the respondent acted in bad faith by attracting Internet users to a website that competes with the complainant's business).

Respondent's domain names are confusingly similar to Complainant's LIVESCORE mark. The disputed domain names include Complainant's mark, either in its entirety, or with minor misspelling, plus geographic abbreviations or terms descriptive of Complainant's business. Because of these confusing similarities, Internet users seeking Complainant's online business can be mistakenly attracted to Respondent's websites, and may also mistakenly believe that Respondent's websites are sponsored by or affiliated with Complainant. Respondent is capitalizing on this confusion by filling its websites with generic Internet search engines and links to third-party websites, all of which presumably generate income for Respondent. The Panel finds Respondent's use of confusingly similar domain names to redirect Internet users to Respondent's websites, for

Respondent's financial gain is evidence of bad faith registration and use 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 AltaVista Co. v. Krotov*, D2000-1091 (WIPO Oct. 25, 2000) (finding bad faith under Policy ¶4(b)(iv) where the respondent's domain name resolved to a website that offered links to third-party websites that offered services similar to the complainant's services and merely took advantage of Internet user mistakes).

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 <waplivescore.com>, <livescoretennis.com>, <livescorecc.com>, <livescorecz.com>, <livescoregr.com>, <livescoresoccer.com>, <czlivescore.com>, <comlivescore.com>, <soccerlivescores.com>, <wwwlivescores.com>, <livvescore.com> and <cclivescore.com> domain names be **TRANSFERRED** from Respondent to Complainant.

Accordingly, it is Ordered that the <espnlivescore.com> and <livescorenba.com> domain names be **CANCELLED**.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: August 11, 2006