



NATIONAL ARBITRATION FORUM

DECISION

Zappos.com, Inc. v. RENATA Svensdotter
Claim Number: FA0601000624407

PARTIES

Complainant is **Zappos.com, Inc.** ("Complainant"), represented by **Seán F. Heneghan**, 31 Reading Hill Avenue, Melrose, MA 02176. Respondent is **RENATA Svensdotter** ("Respondent"), 400 Ball Park Ln, Lubbock, TX 79401.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**zapposshoes.com**>, registered with **Enom, 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 January 10, 2006; the National Arbitration Forum received a hard copy of the Complaint on January 13, 2006.

On January 10, 2006, Enom, Inc. confirmed by e-mail to the National Arbitration Forum that the <**zapposshoes.com**> domain name is registered with Enom, Inc. and that Respondent is the current registrant of the name. Enom, Inc. has verified that Respondent is bound by the Enom, 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 January 13, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of February 2, 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@zapposshoes.com by e-mail.

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

On February 8, 2006, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the National Arbitration Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

Respondent Renata Svendsdotter (hereinafter "Respondent") apparently registered the confusingly similar domain name *ZAPPOSSHOES.COM* with the registrar eNom, Inc. on January 16, 2002, more than two years after Complainant had adopted and began using the *ZAPPOS.COM* trademark. Respondent is currently using the *ZAPPOSSHOES.COM* domain name in connection with the website of a direct competitor of Complainant's services.

Specifically, *ZAPPOSSHOES.COM* initially directs a consumer to Complainant's website at *Zappos.com*. However, the subject domain name then triggers a 'popup' browser to *Shoes.com* when a consumer clicks on any link within *Zappos.com* or when the consumer attempts to exit from *Zappos.com*. The services at *Shoes.com* are identical to Complainant's services, namely it is an online retail store specializing in footwear.

In order to increase its presence on the Internet and its on-line sales, the Complainant, along with its partner, Commission Junction, has established and implemented its 'Associates Program' (also called an affiliate program). In late summer of 2005 Complainant learned that the *ZAPPOSSHOES.COM* domain name had been registered with Commission Junction as an affiliate member identified as "affiliate pid 1489224" and that affiliate commissions were being paid. In general, an affiliate program is an agreement between two e-commerce websites whereby the owner of one e-commerce site (the "affiliate") advertises and provides a link to another e-commerce website. The affiliate is paid a commission for every sale that is made by someone the affiliate refers to the other e-commerce website. The Complainant's affiliate program permits owners of e-commerce websites to provide a link to the *Zappos.com* site in the form of a banner advertisement or text link. If a customer of the e-commerce site were to click on the link to *Zappos.com* and purchase a product from the website, the affiliate will be compensated an agreed-upon sum.

Upon the discovery of *ZAPPOSSHOES.COM*, Zappos engaged the expertise of Ben Edelman, well-known Web researcher, to investigate the usage of the subject domain name. Mr.

Endelman's research report confirmed that the subject domain name immediately redirected a Web user to *Zappos.com* via a Commission Junction tracking link and then engaged a popup Web browser launching to *Shoes.com* when the user clicked on any link within *Zappos.com* or attempted to exit *Zappos.com*.

Complainant never authorized Respondent's use of Complainant's trademark in a domain name nor is Respondent a distributor of Complainant's services. In fact, it is a breach of Complainant's affiliate program agreement for an affiliate to register a domain name that is confusingly similar to Complainant's trademarks and use said domain in connection with the affiliate program. Complainant communicated with Commission Junction to remove the *ZAPPOSSHOES.COM* from the affiliate program and confirmation of said removal was received on October 13, 2005.

In addition, and in accordance with Complainant's usual practice regarding third parties it believes are attempting to trade on the name and good will of its valuable ZAPPOS.COM trademark, Complainant's legal counsel sent a cease and desist letter to Respondent on September 21, 2005, giving notice that Respondent's registration and use of *ZAPPOSSHOES.COM* infringed and diluted its ZAPPOS.COM mark. Complainant requested, among other things, that Respondent immediately cease all use of the domain name and begin an immediate transfer of the domain names.

When the Respondent did not respond to the September 21 letter and the subject domain name remained active, Complainant sent another communication on October 26, 2005, noting also that Respondent's registration and use of *ZAPPOSSHOES.COM* is in violation of Complainant's affiliate program.

Respondent did not respond to the October 26 communication either and the infringing domain name is still active at the time of the filing of this Complaint. Furthermore, both hard copies of the demand letters were returned to Complainant's counsel's office because they were undeliverable.

In light of the facts discussed above, it is abundantly clear that Respondent clearly registered and has used the *ZAPPOSSHOES.COM* domain name in bad faith under UDRP.

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, and (iii) the domain has been registered and is being used in bad faith.

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

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

1. The Subject Domain Name Is Confusingly Similar To Trademarks In Which Complainant Has Senior Rights

Complainant was founded in June 1999 and has since become one of the most successful retail services on the Internet. Complainant's *Zappos.com* website features dress, casual and athletic shoes for men and women and a wide selection of styles from each brand of footwear in every size, width, and color. Included among the more than 300 brands of shoes are Dr. Martens, Birkenstock, Clarks, Steve Madden, Ecco, Timberland and New Balance. *Zappos.com* provides access to millions of pairs of shoes and enjoys the highest ranking of any 'pure-play' footwear retailer online. Complainant's website also includes feature name brand accessories, including handbags, purses and wallets. Indeed, the *Zappos.com* website was recently named as one of the "Top 50 Websites of 2005" by *Internet Retailer* magazine.

Complainant has generated over \$200 million in sales since its inception, and has shipped shoes to well over 15,000 cities across the United States. Through the Internet and other media, Complainant has invested substantially in advertising and additional promotion of its services offered under the cited trademarks, which now includes a multi-million dollar yearly budget. Complainant uses a variety of advertising methods, including ad placement in magazines and its successful affiliate partnership with Commission Junction.

By virtue of the quality of its services, several years of continuous use, and extensive advertising and promotion, the ZAPPOS.COM trademark is well known to, and well regarded by, the consuming public. Complainant has established clear senior common law trademark rights in ZAPPOS.COM for the purposes of the UDRP by the continuous use of the mark in commerce since July 1999. *See British Broadcasting Corp. v. Renteria*, D2000-0050 (WIPO Mar. 23, 2000) [noting that the UDRP "does not distinguish between registered and unregistered trademarks and service marks in the context of abusive registration of domain names" and applying the UDRP to "unregistered trademarks and service marks"]; *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].

Complainant has also established additional rights in ZAPPOS.COM through its registrations on the Principal Register of the U.S. Patent & Trademark Office that incorporate the marks, namely U.S. Registration Nos. 2,963,312, 2,791,052, 2,691,842 and 2,747,104. This evidence of trademark registrations proves Complainant's rights in the cited trademarks. *See The Men's Wearhouse, Inc. v. Brian Wick*, FA 117861 (NAF Sept. 16 2002) ("Under U.S. trademark law, registered marks hold a presumption that they are inherently distinctive and have acquired secondary meaning").

Finally, this Forum has recognized Complainant's rights in its ZAPPOS.COM trademark in four previous UDRP proceedings (*Zappos.com, Inc. v. AAA Marketing World*, FA 528209 (NAF September 20, 2005); *Zappos.com, Inc. v. WhoisGuard Protected*, FA 408128 (NAF March 17, 2005); *Zappos.com, Inc. v. Turvill Consultants*, FA 404546 (NAF February 28, 2005); and *Zappos.com, Inc. v. Turvill Consultants Ltd.*, FA 227655 (NAF March 4, 2004).

Turning to the subject domain name, *ZAPPOSSHOES.COM* is nearly identical - and clearly confusingly similar to - Complainant's ZAPPOS.COM trademark. Specifically, *ZAPPOSSHOES.COM* is confusingly similar because it includes Complainant's mark and deviates from it only with the addition of the generic or descriptive term "SHOES". There is a long line of Panel decisions that have found that the mere addition of a generic or descriptive word to a trademark does not negate the confusing similarity of 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 registered mark "llbean" does not circumvent Complainant's rights in the mark nor avoid the confusing similarity aspect of the ICANN Policy]; see also *Space Imaging LLC v. Brownell*, AF-0298 (eResolution Sept. 22, 2000) [finding confusing similarity where Respondent's domain name combines Complainant's mark with a generic term that has an obvious relationship to Complainant's business].

Furthermore, when used in the context of virtually identical services, *ZAPPOSSHOES.COM* is clearly confusingly similar to Complainant's ZAPPOS.COM mark. Respondent is currently using *ZAPPOSSHOES.COM* in connection with *Zappos.com* as well as with a website that offers services that directly compete with Complainant, namely *Shoes.com*. There is, in fact, a substantial likelihood that Complainant's trademark ZAPPOS.COM, and the goodwill associated therewith, was the reason Respondent registered *ZAPPOSSHOES.COM*. Sizeable traffic is generated from sites associated with widely known marks, and it appears that Respondent sought to take advantage of this circumstance. Misguided consumers seeking Complainant's website may be confronted with *Shoes.com*, which offer services virtually identical as those offered by Complainant. In addition, the disputed domain name is so confusingly similar that a reasonable Internet user would assume that *ZAPPOSSHOES.COM* is somehow connected to Complainant's well-established mark. See *Treeforms, Inc. v. Cayne Indus. Sales Corp.*, FA 95856 (NAF Dec. 18, 2000) [finding that confusion would result when Web users, intending to access Complainant's website, think that an affiliation of some sort exists between the Complainant and Respondent, when in fact, no such relationship would exist].

Clearly, the obvious similarity of the subject domain name with Complainant's senior trademark make it evident that *ZAPPOSSHOES.COM* is confusingly similar to the long used ZAPPOS.COM mark 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 Name

Respondent has no legitimate rights or interests in *ZAPPOSSHOES.COM* because Respondent has neither used, nor has made any demonstrable preparations to use, the subject domain name or corresponding name 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 *ZAPPOSSHOES.COM* to direct Internet users to *Zappos.com* but also using the domain name to trigger another Web browser opening to *Shoes.com*, the website of one of Complainant's competitors.

Respondent's attempt to profit from the goodwill Complainant has built up around ZAPPOS.COM 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). The use of confusingly similar domain names in order to divert Internet users interested in Complainant's services to a direct competitor's website is not a use in connection with a bona fide offering of goods or services pursuant to Policy ¶4(c)(i), or a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii). *See N. Coast Med., Inc. v. Allegro Med.*, FA 95541 (NAF Oct. 2, 2000) [finding no bona fide use where Respondent used the domain name to divert Internet users to its competing website]; *see also Ticketmaster Corp. v. DiscoverNet, Inc.*, Case No. D2001-0252 (WIPO Apr. 9, 2001) [finding no rights or legitimate interests where Respondent generated commercial gain by intentionally and misleadingly diverting users away from the Complainant's site to a competing website].

Respondent is not commonly known, either as an individual, business or organization, by the names ZAPPOS SHOES and/or ZAPPOSSHOES.COM. *See Broadcomm Corp. v. Intellifone Corp.*, FA 96356 (NAF February 5, 2001) [finding no rights or legitimate interests because Respondent is not commonly known as the disputed domain name or is using the domain name in connection with a legitimate or fair use]. Complainant notes that Respondent's WHOIS information lists itself as "Renata Svendsdotter" and nowhere in the contact information is there any other reference to any of the name or domain, 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].

Finally, other than Respondent's misuse of Complainant's affiliate program, Complainant states that it has no known proper affiliation, association, or business relationship of any kind with Respondent and Complainant has not licensed or authorized Respondent to use the ZAPPOS.COM mark in connection with a domain name. *See Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) [finding no rights or legitimate interest where Respondent was not commonly known by the mark and never applied for a license or permission from Complainant to use the trademarked name].

In fact, it is a breach of Complainant's affiliate program agreement for an affiliate to register a domain name that is confusingly similar to Complainant's trademarks and use said domain in connection with the affiliate program. Complainant's affiliate program only allows a member to use a hyperlink on a website to direct Web users to Complainant's *Zappos.com* website. Hence, when it learned of ZAPPOSSHOES.COM being enrolled in its affiliate program, Complainant terminated the membership.

Respondent took advantage of this fact with its membership in Complainant's affiliates program, receiving a commission from Complainant each time an Internet user purchased a product via ZAPPOSSHOES.COM. Such use is not a bona fide offering of goods or services pursuant to Policy ¶4(c)(i) and it is not a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶4(c)(iii). *See Deluxe Corp. v. Dallas Internet*, FA 105216 (NAF April 10, 2002) [finding Respondent had no rights or legitimate interests pursuant to Policy ¶4(a)(ii) where it used the domain name <deluxeform.com> to redirect users to Complainant's <deluxeforms.com> domain name and to receive a commission from Complainant through its affiliate program]; *see also Gorstew Ltd. v. Carribean Tours & Cruises*, FA 94927 (NAF July 28, 2000) [finding that Respondent's use of the disputed domain name to sell the services of Complainant or to attract customers to Complainant, presumably for which Respondents would

be paid a fee, is classic trademark infringement, even if the result of same is that some revenue flows to Complainant, the owner of the marks].

Therefore, *ZAPPOSSHOES.COM*, because it was registered and is used to misdirect Internet users to a third party commercial website that features competing services and not in connection with any bona fide business, is not legitimately used for the provision of any goods and services.

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

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

a. The Respondent's Registration of the Domain Name was in Bad Faith

Respondent has registered the *ZAPPOSSHOES.COM* domain name in bad faith because the domain name's purpose is to intercept Internet users intending to access Complainant's *Zappos.com* website and attempt to divert such traffic to a third party commercial website that is operated by a competing services, namely *Shoes.com*.

These users may have engaged *Shoes.com* via *ZAPPOSSHOES.COM* on the mistaken belief that the domain name was connected to Complainant. Such use is evidence of bad faith under Section 4(b)(iv) under the UDRP. *See Perot Sys. Corp. v. Perot.net*, FA 95312 (NAF Aug. 29, 2000) [finding bad faith where the domain name in question is obviously connected with Complainant's well-known marks, thus creating a likelihood of confusion strictly for commercial gain]; *see also G.D. Searle & Co. v. Celebrex Drugstore*, FA 123933 (NAF Nov. 21, 2002) [finding that Respondent registered and used the domain name in bad faith pursuant to Section 4(b)(iv) under the UDRP because Respondent was using the confusingly similar domain to attract Internet users to its commercial website]; *see also Computerized Sec. Sys., Inc. v. Hu*, FA 157321 (NAF June 23, 2003) [finding that Respondent's use of the <saflock.com> domain name to offer goods competing with Complainant's illustrates Respondent's bad faith registration and use of the domain name pursuant to Section 4(b)(iv)].

Respondent appears to have registered *ZAPPOSSHOES.COM* on January 16, 2002, more than two years after Complainant had adopted and began using the *ZAPPOS.COM* trademark. Moreover, when registering the subject domain name, 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 trademark is the addition of the generic or descriptive term "SHOES".

Respondent is using the *ZAPPOSSHOES.COM* domain name to direct Web users to *Zappos.com* and then uses HTML code to instruct a *Shoes.com* popup page to appear when a user clicks anywhere within the *Zappos.com* page. This usage fosters a likelihood of confusion as to the source of sponsorship of Respondent's *ZAPPOSSHOES.COM* and/or the *Shoes.com* website. In using this likelihood of confusion to earn a commission from Complainant's affiliates program, Respondent registered and used the disputed domain name in bad faith pursuant to Policy ¶4(b)(iv). *See Deluxe Corp. v. Dallas Internet*, FA 105216 (NAF April 10, 2002) [finding

Respondent registered and used the <deluxeform.com> domain name in bad faith pursuant to Policy ¶4(b)(iv) by redirecting its users to Complainant's <deluxeforms.com> domain name, thus receiving a commission from Complainant through its affiliate program]; *see also The Sports Auth. Mich., Inc. v. Internet Hosting*, FA 124516 (NAF Nov. 4, 2002) [stating that, "Redirecting Internet users attempting to reach a complainant's website in order to gain a profit off of a complainant is one example of bad faith use and registration under the Policy"].

Through its unauthorized association with the Complainant as an affiliate, the Respondent clearly was aware of the Complainant's mark and business. Respondent registered a domain name that use the Complainant's mark and differs from it only through including the word "SHOES". Therefore, Respondent's registration and use of *ZAPPOSSHOES.COM* is in violation of Complainant's affiliate program, which has been found by Panelists to be evidence of bad faith registration and use. *See The Sportsman's Guide, Inc. v. JoyRide*, Case No. D2003-0153 (WIPO May 19, 2003) [Respondent's bad faith in registering the disputed domain names is also evidenced by its apparent breach of the agreement with Commission Junction by adopting domains which were unquestionably confusingly similar to the Complainant's mark]

Furthermore, Complainant notes that the hard copies of the September 21 and October 26 demand letters mailed to the Respondent were returned to counsel for Complainant. The mailings were returned because the addressee, namely Respondent, was designated as "Undeliverable". It is readily apparent that Respondent has included false information in its registration information for *ZAPPOSSHOES.COM*. This activity has been found in previous Panel decisions, to be additional evidence of bad faith domain name registration. *See Mars, Incorporated v. RaveClub Berlin*, FA 97361 (NAF July 16, 2001) [Bad faith is further evidenced by the fact that Respondent provided false registration and contact information for infringing domains]; *see also Home Director, Inc. v. HomeDirector*, D2000-0111, (WIPO Apr. 11, 2000) [finding that providing false or misleading information in connection with the registration of the domain name is evidence of bad faith]. Here, Respondent's false information not only shows bad faith, it also shows a disregard for the UDRP and the entire domain name registration system.

b. Respondent's Use Of The Domain Name Is In Bad Faith

Respondent is using the subject domain name in bad faith, as defined under Section 4(b)(iv) of the UDRP, as it attempts to attract, for commercial gain, Internet users to a competitor of Complainant. Respondent's *ZAPPOSSHOES.COM* initially directs a consumer to Complainant's website at *Zappos.com*. However, the subject domain name then triggers a 'popup' to the website *Shoes.com* when a consumer clicks on any link within *Zappos.com* or when the consumer attempts to exit from *Zappos.com*. The services at *Shoes.com* are identical to, and directly compete with, Complainant's services in that it is an online retail store specializing in footwear.

Respondent's actions in connection with *ZAPPOSSHOES.COM* attempt to divert traffic from the Complainant, thereby providing commercial gain to the Respondent through the assumed commissions the Respondent derives from the competitors. Furthermore, Respondent's actions in the present case clearly indicate a profit motive as all the content provided under the subject domain name is of a commercial nature. By selecting and using a domain name that is confusingly similar to the *ZAPPOS.COM* trademark, Respondent has acted in bad faith under the UDRP. *See ESPN, Inc. v. Ballerini*, FA 95410 (NAF Sept. 15, 2000) [finding bad faith where the Respondent linked the domain to another website and, presumably, Respondent received a

portion of the advertising revenue from site by directing Internet traffic to the site, thus using a domain to attract Internet users for commercial gain].

Moreover, by selecting and using a domain name that is confusingly similar to Complainant's mark to direct users to a website that offers *competing* online shoe sales services, Respondent has acted in bad faith well within the meaning of Policy ¶4(b)(iv). See *TM Acquisition Corp. v. Carrol*, FA 97035 (NAF May 14, 2001) [finding bad faith where Respondent used the disputed domain name, for commercial gain, to intentionally attract users to a direct competitor of Complainant]; 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, Zappos.com, Inc., has operated an online shoe store since 1999. Complainant uses its <zappos.com> domain name to sell a wide variety of dress, casual, and athletic shoes for men and women, including the New Balance, Ecco, Steve Madden, and Timberland brands. *Internet Retailer* magazine named Complainant's website one of the "Top 50 Websites of 2005."

Complaint has registered its ZAPPOS.COM mark with the United States Patent and Trademark Office ("USPTO") (Reg. No. 2,691,842; issued March 4, 2003, filed October 29, 1999). Complainant also holds three other trademark registrations on the ZAPPOS.COM mark (U.S. Reg. No. 2,747,104; issued August 5, 2003, filed November 20, 2001; U.S. Reg. No. 2,791,052; issued December 9, 2003, filed November 19, 2001; U.S. Reg. No. 2,963,312, issued June 21, 2005, filed February 24, 2004).

Respondent registered the <zapposshoes.com> domain name on January 16, 2002, more than two years after Complainant registered and began using the ZAPPOS.COM mark. Respondent is using the domain name to redirect Internet users to competing shoe-related websites.

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 ZAPPOS.COM mark through registration of the mark with the USPTO. *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 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 Planetary Soc'y v. Rosillo*, D2001-1228 (WIPO Feb. 12, 2002) (holding that the effective date of Complainant's trademark rights date back to the application's filing date); *see also Nat'l Abortion Fed'n v. Dom 4 Sale, Inc.*, FA 170643 (Nat. Arb. Forum Sept. 9, 2003) ("As Complainant's filing date for its valid registration of the NAF NATIONAL ABORTION FEDERATION mark on the Principal Register of the U.S. Patent and Trademark Office predates Respondent's registration of the disputed domain name by over a year, this registration is additional evidence of Complainant's rights in the mark.").

Respondent's <**zapposshoes.com**> domain name is confusingly similar to Complainant's ZAPPOS.COM mark pursuant to Policy ¶4(a)(i), because it includes Complainant's entire mark and merely adds the word "shoes," which relates to Complainant's business. *See 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 Marriott Int'l, Inc. v. Café au lait*, FA 93670, (Nat. Arb. Forum Mar. 13, 2000) (finding that the respondent's domain name <marriott-hotel.com> is confusingly similar to the complainant's MARRIOTT mark).

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

Rights or Legitimate Interests

Complainant has alleged Respondent does not have rights or legitimate interests in the <**zapposshoes.com**> domain name. Complainant has the initial burden of proof in asserting that Respondent has no rights or legitimate interests in the domain name. Once Complainant makes a *prima facie* case in support of its allegations, the burden then shifts to Respondent to show it does have rights or legitimate interests pursuant to Policy ¶4(a)(ii). See *Lush LTD v. Lush Environs*, FA 96217 (Nat. Arb. Forum Jan. 13, 2001) (finding that even when the respondent does file a response, the complainant must allege facts, which if true, would establish that the respondent does not have any rights or legitimate interests in the disputed domain name); see also *Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (once the complainant asserts that the respondent has no rights or legitimate interests with respect to the domain, the burden shifts to the respondent to provide “concrete evidence that it has rights to or legitimate interests in the domain name at issue”).

Respondent’s failure to answer the Complaint raises a presumption Respondent has no rights or legitimate interests in the <**zapposshoes.com**> domain name. See *Am. Express Co. v. Fang Suhendro*, FA 129120 (Nat. Arb. Forum Dec. 30, 2002) (“[B]ased on Respondent’s failure to respond, it is presumed that Respondent lacks all rights and legitimate interests in the disputed domain name.”); see also *Charles Jourdan Holding AG v. AAIM*, D2000-0403 (WIPO June 27, 2000) (finding it appropriate for the panel to draw adverse inferences from the respondent’s failure to reply to the complaint).

There is also no evidence in the record Respondent is commonly known by the <**zapposshoes.com**> domain name. Therefore, Respondent has not established rights or legitimate interests in the <**zapposshoes.com**> domain name pursuant to Policy ¶4(c)(ii). See *Gallup, Inc. v. Amish Country Store*, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) (finding that the respondent does not have rights in a domain name when the respondent is not known by the mark); 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.”).

Respondent is using the <**zapposshoes.com**> domain name (which is confusingly similar to Complainant’s ZAPPOS.COM mark) to misdirect Internet users to the websites of Complainant’s competitors. Such use of the disputed domain name for commercial gain does not constitute a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i), or a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶4(c)(iii). See *Coryn Group, Inc. v. Media Insight*, FA 198959 (Nat. Arb. Forum Dec. 5, 2003) (finding that the respondent was not using the domain names for a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use because the respondent used the names to divert Internet users to a website that offered services that competed with those offered by the complainant under its marks); 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 finds Policy ¶4(a)(ii) satisfied.

Registration and Use in Bad Faith

Respondent is using the <zapposshoes.com> domain name, which is confusingly similar to Complainant's ZAPPOS.COM mark, to redirect Internet users seeking Complainant's website to competing websites selling similar goods. Trying to contact Complainant's web site via a link results in a pop-up window involuntarily directing the visitor to a competitor's web site. Therefore, Respondent is taking advantage of the likelihood of confusion between Respondent's domain name and Complainant's mark and capitalizing on the goodwill associated with the mark through an electronic implementation of the old "bait and switch" tactic. The Panel finds such use constitutes bad faith registration and use pursuant to Policy ¶4(b)(iv). *See Computerized Sec. Sys., Inc. v. Hu*, FA 157321 (Nat. Arb. Forum June 23, 2003) (finding that the respondent's use of the <saflock.com> domain name to offer goods competing with the complainant's illustrates the respondent's bad faith registration and use of the domain name, evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv)); *see also Amazon.com, Inc. v. Shafir*, FA 196119 (Nat. Arb. Forum Nov. 10, 2003) ("As Respondent is using the domain name at issue in direct competition with Complainant, and giving the impression of being affiliated with or sponsored by Complainant, this circumstance qualifies as bad faith registration and use of the domain name pursuant to Policy ¶4(b)(iv).").

Respondent's whois contact information is false. The address does not exist (according to the United States Post Office, who returned two certified letters with the notation "no such address" and "no such post office in state named"). Providing false or misleading whois contact information creates a presumption of bad faith, *Agent Host v. Host Dot Com Investments*, AF-0343 (October 16, 2000), *The Procter & Gamble Company v. Hong Gil Dong*, FA572962 (Nat. Arb. Forum November 16, 2005), *Mattel, Inc. v. RanComp Ltd.*, FA579563 (Nat. Arb. Forum November 29, 2005) and *Delta Corporate Identity, Inc. and Delta Air Lines, Inc. v. Yong Li*, FA576550 (Nat. Arb. Forum November 28, 2005). This Panel elects to draw that conclusion.

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 <zapposshoes.com> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: February 22, 2006

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