



NATIONAL ARBITRATION FORUM

DECISION

The Weather Underground, Inc. v. Navigation Catalyst Systems, Inc
 Claim Number: FA0808001221002

PARTIES

Complainant is **The Weather Underground, Inc.** (“Complainant”), represented by **Brian A. Hall**, Michigan, USA. Respondent is **Navigation Catalyst Systems, Inc** (“Respondent”), California, USA.

REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are <qwunderground.com>, <swunderground.com>, <wundertground.com>, <wunederground.com>, <wunnderground.com>, <winderground.com>, <wumnderground.com>, <wundeerground.com>, <wunderfround.com>, <wundergtound.com>, <wundergroundr.com>, <undergroundweather.com>, <undegroundweather.com>, <undergoundweather.com>, <undergroudweather.com>, <undergroundwaether.com>, <undergroundwweather.com>, <undergrounweather.com>, <watherunderground.com>, <weaherunderground.com>, <weahterunderground.com>, <weartherunderground.com>, <weatehrunderground.com>, <weatgerunderground.com>, <weathernunderground.com>, <weatherunbderground.com>, <weatherundergound.net>, <weatherundergruind.com>, <weatherunderground.com>, <weatherunderground.com>, <weatherundergrounf.com>, <weatherunderround.com>, <weatherundergrpound.com>, <weatherundewrground.com>, <weatherundreground.com>, <weathrunderground.com>, <weatherunferground.com>, <wewaterunderground.com>, <wetaherunderground.com>, <wweatherunderground.com>, and <wwwund.com>, registered with **Basic Fusion, Inc.**

PANEL

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

The Honorable Charles K. McCotter, Jr. (Ret.) as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on August 18, 2008; the National Arbitration Forum received a hard copy of the Complaint on August 19, 2008.

On August 25, 2008, Basic Fusion, Inc. confirmed by e-mail to the National Arbitration Forum that the <qwunderground.com>, <swunderground.com>, <wundertground.com>, <wunederground.com>, <wunnderground.com>, <winderground.com>, <wumnderground.com>, <wundeerground.com>, <wunderfround.com>, <wundergtound.com>, <wundergroundr.com>, <undergroundweather.com>, <undegroundweather.com>, <undergoundweather.com>, <undergroudweather.com>,

<undergroundwaether.com>, <undergroundwweather.com>, <undergrounweather.com>, <watherunderground.com>, <weaetherunderground.com>, <weahterunderground.com>, <weartherunderground.com>, <weatehrunderground.com>, <weatgerunderground.com>, <weathernunderground.com>, <weatherunbderground.com>, <weatherunderground.net>, <weatherundergriund.com>, <weatherundergroundind.com>, <weatherundergroundd.com>, <weatherundergrounf.com>, <weatherunderround.com>, <weatherundergrpound.com>, <weatherundewrground.com>, <weatherundreground.com>, <weathrunderground.com>, <weatherunferground.com>, <wewaterunderground.com>, <wetaherunderground.com>, <wwetherunderground.com>, and <wwwund.com> domain names are registered with Basic Fusion, Inc. and that Respondent is the current registrant of the names. Basic Fusion, Inc. has verified that Respondent is bound by the Basic Fusion, 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 September 2, 2008, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of September 22, 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@qwunderground.com, postmaster@swunderground.com, postmaster@udergroundweather.com, postmaster@undegroundweather.com, postmaster@undergroundweather.com, postmaster@undergroudweather.com, postmaster@undergroundwaether.com, postmaster@undergroundwweather.com, postmaster@undergrounweather.com, postmaster@watherunderground.com, postmaster@weaetherunderground.com, postmaster@weahterunderground.com, postmaster@weartherunderground.com, postmaster@weatehrunderground.com, postmaster@weatgerunderground.com, postmaster@weathernunderground.com, postmaster@weatherunbderground.com, postmaster@weatherunderground.net, postmaster@weatherundergriund.com, postmaster@weatherundergroundind.com, postmaster@weatherundergroundd.com, postmaster@weatherundergrounf.com, postmaster@weatherunderround.com, postmaster@weatherundergrpound.com, postmaster@weatherundewrground.com, postmaster@weatherundreground.com, postmaster@weathrunderground.com, postmaster@weatherunferground.com, postmaster@wewaterunderground.com, postmaster@wetaherunderground.com, postmaster@wundertground.com, postmaster@wunederground.com, postmaster@wunnderground.com, postmaster@wwetherunderground.com, postmaster@winderground.com, postmaster@wumderground.com, postmaster@wundeerground.com, postmaster@wunderfround.com, postmaster@wundergtound.com, postmaster@wundergroundr.com, and postmaster@wwwund.com by e-mail.

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

On September 30, 2008, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed the Honorable Charles K. McCotter, Jr. (Ret.) as Panelist.

On October 10, 2008, Respondent submitted an untimely Response indicating that it "was not aware of complainant's trademarks" and "agreed to transfer over all domains in dispute." The Panel, in its discretion, will consider Respondent's Response.

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."

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

1. Respondent's <qwunderground.com>, <swunderground.com>, <wundertground.com>, <wunederground.com>, <wunnderground.com>, <winderground.com>, <wumnderground.com>, <wundeerground.com>, <wunderfround.com>, <wundergtound.com>, and <wundergroundr.com> domain names are confusingly similar to Complainant's WUNDERGROUND.COM mark; Respondent's <uergroundweather.com>, <undergroundweather.com>, <undergoundweather.com>, <undergroudweather.com>, <undergroundwaether.com>, <undergroundwweather.com>, <undergrounweather.com>, <watherunderground.com>, <weaherunderground.com>, <weahterunderground.com>, <weartherunderground.com>, <weatehrunderground.com>, <weatgerunderground.com>, <weathernunderground.com>, <weatherunbderground.com>, <weatherundergound.net>, <weatherundergriund.com>, <weatherundergrouind.com>, <weatherundergroundd.com>, <weatherundergrounf.com>, <weatherunderround.com>, <weatherundergrpound.com>, <weatherundewrground.com>, <weatherundreground.com>, <weathrunderground.com>, <weatherunferground.com>, <wewaterunderground.com>, <wetaherunderground.com>, and <wweatherunderground.com> domain names are confusingly similar to Complainant's THE WEATHER UNDERGROUND mark; and Respondent's <wwwund.com> domain name is confusingly similar to Complainant's WUND.COM mark.
2. Respondent does not have any rights or legitimate interests in the <qwunderground.com>, <swunderground.com>, <wundertground.com>, <wunederground.com>, <wunnderground.com>, <winderground.com>, <wumnderground.com>, <wundeerground.com>, <wunderfround.com>, <wundergtound.com>, <wundergroundr.com>, <uergroundweather.com>, <undergroundweather.com>, <undergoundweather.com>, <undergroudweather.com>, <undergroundwaether.com>, <undergroundwweather.com>, <undergrounweather.com>, <watherunderground.com>, <weaherunderground.com>, <weahterunderground.com>, <weartherunderground.com>, <weatehrunderground.com>, <weatgerunderground.com>, <weathernunderground.com>, <weatherunbderground.com>, <weatherundergound.net>, <weatherundergriund.com>, <weatherundergrouind.com>, <weatherundergroundd.com>, <weatherundergrounf.com>, <weatherunderround.com>, <weatherundergrpound.com>, <weatherundewrground.com>, <weatherundreground.com>.

<weatherundreground.com>, <weathrunderground.com>, <weatherunferground.com>, <wewaterunderground.com>, <wetaherunderground.com>, <wweatherunderground.com>, and <wwwund.com> domain names.

3. Respondent registered and used the <qwunderground.com>, <swunderground.com>, <wundertground.com>, <wunederground.com>, <wunnderground.com>, <winderground.com>, <wumderground.com>, <wundeerground.com>, <wunderfround.com>, <wundergtound.com>, <wundergroundr.com>, <udergroundweather.com>, <undegroundweather.com>, <undergroundweather.com>, <undergroudweather.com>, <undergroundwaether.com>, <undergroundwweather.com>, <undergrounweather.com>, <watherunderground.com>, <weaherunderground.com>, <weahterunderground.com>, <weartherunderground.com>, <weatehrunderground.com>, <weatgerunderground.com>, <weathernunderground.com>, <weatherunbderground.com>, <weatherundergound.net>, <weatherundergriund.com>, <weatherundergrouind.com>, <weatherundergroumd.com>, <weatherundergrounf.com>, <weatherunderround.com>, <weatherundergrpound.com>, <weatherundewrground.com>, <weatherundreground.com>, <weathrunderground.com>, <weatherunferground.com>, <wewaterunderground.com>, <wetaherunderground.com>, <wweatherunderground.com>, and <wwwund.com> domain names in bad faith.

B. Respondent has agreed to transfer over all the disputed domain names.

FINDINGS

Complainant provides online weather services under the THE WEATHER UNDERGROUND, WUNDERGROUND.COM, and WUND.COM marks. Complainant registered the THE WEATHER UNDERGROUND mark with the United States Patent and Trademark Office (“USPTO”) on December 7, 1999 (Reg. No. 2,297,683). Complainant registered the WUNDERGROUND.COM mark with the USPTO on February 29, 2000 (Reg. No. 2,324,272). Complainant has used the THE WEATHER UNDERGROUND and WUNDERGROUND.COM marks continuously in commerce since at least 1995, when Complainant started offering real-time weather condition reporting to users around the world. Complainant has used the WUND.COM mark continuously in commerce to market its weather services since at least May 29, 2003, when it registered the mark as a domain name. The website at <wund.com> is now used by over 108,000 people each month.

Respondent registered the disputed domain names between the dates of July 6, 2004, and January 15, 2008. Respondent maintains websites at the disputed domain names that features links to websites offering the services of Complainant’s competitors.

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." 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

The Panel finds that Complainant has established rights in the THE WEATHER UNDERGROUND and WUNDERGROUND.COM marks for purposes of Policy ¶ 4(a)(i) through its trademark registrations with the USPTO. *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 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.").

Complainant contends that it has established common law rights in the WUND.COM mark pursuant to Policy ¶ 4(a)(i). Complainant registered "WUND.COM" as a domain name on May 29, 2003, and has used that domain name to bring its weather condition reporting services to Internet customers continuously for over five years. The Panel finds that Complainant's use of the WUND.COM mark has given that mark secondary meaning and therefore has established Complainant's common law rights in that mark pursuant to Policy ¶ 4(a)(i). *See Tuxedos By Rose v. Nunez*, FA 95248 (Nat. Arb. Forum Aug. 17, 2000) (finding common law rights in a mark where its use was continuous and ongoing, and secondary meaning was established); *see also S.A. Bendheim Co., Inc. v. Hollander Glass*, FA 142318 (Nat. Arb. Forum Mar. 13, 2003) (holding that the complainant established rights in the descriptive RESTORATION GLASS mark through proof of secondary meaning associated with the mark).

Complainant contends that Respondent's <qwunderground.com>, <swunderground.com>, <wundertground.com>, <wunederground.com>, <wunnderground.com>, <winderground.com>, <wumnderground.com>, <wundeerground.com>, <wunderfround.com>, <wundergtound.com>, and <wundergroundr.com> domain names are confusingly similar to its WUNDERGROUND.COM mark. These disputed domain names differ from Complainant's WUNDERGROUND.COM mark in two main ways: (1) either a letter has been added to the mark, or the mark has been misspelled; and (2) the generic top-level domain ("gTLD") ".com" has been added. Neither the addition of a letter to a mark nor the misspelling of a mark sufficiently distinguish a domain name from an incorporated mark for the purposes of Policy ¶ 4(a)(i). The addition of a gTLD also does not reduce the likelihood of confusion between the domain name and the mark because every domain name must contain a gTLD. The Panel finds that Internet visitors are still likely to confuse these disputed domain names with Complainant's WUNDERGROUND.COM mark despite these changes, and that Respondent's <qwunderground.com>, <swunderground.com>, <wundertground.com>, <wunederground.com>, <wunnderground.com>, <winderground.com>, <wumnderground.com>, <wundeerground.com>, <wunderfround.com>, <wundergtound.com>, and <wundergroundr.com> domain names are therefore not sufficiently distinguished from Complainant's WUNDERGROUND.COM mark pursuant to Policy ¶ 4(a)(i). *See Am.Online, Inc. v. Avrasya Yayincilik Danismanlik Ltd.*, FA 93679 (Nat. Arb. Forum Mar. 16, 2000) (finding that the respondent's domain name, <americanonline.com>, is confusingly similar to the complainant's famous AMERICA ONLINE mark); *see also Toronto-Dominion Bank v. Karpachev*, D2000-1571 (WIPO Jan. 15, 2001) (finding that the domain names

<tdwatergouse.com> and <dwaterhouse.com> are virtually identical to the complainant's TD WATERHOUSE name and mark); *see also 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.”).

Complainant contends that Respondent's <udergroundweather.com>, <undergroundweather.com>, <undergoundweather.com>, <undergroudweather.com>, <undergroundwaether.com>, <undergroundwweather.com>, <undergrounweather.com>, <watherunderground.com>, <weaherunderground.com>, <weahterunderground.com>, <weartherunderground.com>, <weatehrunderground.com>, <weatgerunderground.com>, <weahternunderground.com>, <weahterunbderground.com>, <weahterunderground.net>, <weahterundergriund.com>, <weahterundergrouind.com>, <weahterunderground.com>, <weahterundergrounf.com>, <weahterunderround.com>, <weahterundergrpound.com>, <weahterundewrground.com>, <weahterundreground.com>, <weahterunderground.com>, <weahterunferground.com>, <wewatherunderground.com>, <wetaherunderground.com>, and <wweatherunderground.com> are confusingly similar to its THE WEATHER UNDERGROUND mark. These disputed domain names differs from Complainant's THE WEATHER UNDERGROUND mark in two main ways: (1) either a letter has been added to the mark, a letter has been removed from the mark, or the mark has been misspelled; and (2) the generic top-level domain (“gTLD”) “.com” has been added. Neither the addition of a letter to a mark, the removal of a letter from a mark, nor the misspelling of a mark sufficiently distinguish a domain name from an incorporated mark for the purposes of Policy ¶ 4(a)(i). The addition of a gTLD also does not reduce the likelihood of confusion between the domain name and the mark because every domain name must contain a gTLD. Because the likelihood that Internet visitors will confuse these disputed domain names with Complainant's THE WEATHER UNDERGROUND mark is not eliminated or diminished by these changes, the Panel finds that Respondent's <udergroundweather.com>, <undergroundweather.com>, <undergoundweather.com>, <undergroudweather.com>, <undergroundwaether.com>, <undergroundwweather.com>, <undergrounweather.com>, <watherunderground.com>, <weaherunderground.com>, <weahterunderground.com>, <weartherunderground.com>, <weatehrunderground.com>, <weatgerunderground.com>, <weahternunderground.com>, <weahterunbderground.com>, <weahterunderground.net>, <weahterundergriund.com>, <weahterundergrouind.com>, <weahterunderground.com>, <weahterundergrounf.com>, <weahterunderround.com>, <weahterundergrpound.com>, <weahterundewrground.com>, <weahterundreground.com>, <weahterunderground.com>, <weahterunferground.com>, <wewatherunderground.com>, <wetaherunderground.com>, and <wweatherunderground.com> domain names are not sufficiently distinguished from Complainant's THE WEATHER UNDERGROUND mark pursuant to Policy ¶ 4(a)(i). *See Am. Online, Inc. v. Tencent Commc'ns Corp.*, FA 93668 (Nat. Arb. Forum Mar. 21, 2000) (finding that <oicq.net> and <oicq.com> are confusingly similar to the complainant's mark, ICQ); *see also Google Inc. v. Jon G.*, FA 106084 (Nat. Arb. Forum Apr. 26, 2002) (finding <googel.com> to be confusingly similar to the complainant's GOOGLE mark and noting that “[t]he transposition of two letters does not create a distinct mark capable of overcoming a claim of confusing similarity, as the result reflects a very probable typographical error”); *see also Hewlett-Packard Co. v. Zuccarini*, FA 94454 (Nat. Arb. Forum May 30, 2000) (finding the domain name <hewlitpackard.com> to be identical or confusingly similar to the complainant's HEWLETT-PACKARD mark); *see also 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.”).

Complainant contends that Respondent's <wwwund.com> domain name is confusingly similar to

its WUND.COM mark. The <wwwund.com> domain name differs from Complainant's WUND.COM mark in two ways: (1) the letters "WW" have been added to the beginning of the mark; and (2) the generic top-level domain ("gTLD") ".com" has been added. Adding letters to a mark does not sufficiently distinguish a domain name from an incorporated mark for the purposes of Policy ¶ 4(a)(i). The addition of a gTLD also does not reduce the likelihood of confusion between the domain name and the mark because every domain name must contain a gTLD. The Panel finds that, because the likelihood that Internet visitors will confuse the <wwwund.com> domain name with Complainant's WUND.COM mark is not eliminated or diminished by these changes, Respondent's <wwwund.com> domain name is not sufficiently distinguished from Complainant's WUND.COM mark pursuant to Policy ¶ 4(a)(i). See *Victoria's Secret v. Zuccarini*, FA 95762 (Nat. Arb. Forum Nov. 18, 2000) (finding that, by misspelling words and adding letters to words, a respondent does not create a distinct mark but nevertheless renders the domain name confusingly similar to the complainant's marks); see also *Kelson Physician Partners, Inc. v. Mason*, CPR003 (CPR 2000) (finding that <kelsonmd.com> is identical or confusingly similar to the complainant's federally registered service mark, KELSON); see also *Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1146 (9th Cir. 2002) ("Internet users searching for a company's Web site often assume, as a rule of thumb, that the domain name of a particular company will be the company name or trademark followed by '.com.'").

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

Rights or Legitimate Interests

Complainant contends that Respondent lacks all rights and legitimate interests in the disputed domain names. Under Policy ¶ 4(a)(ii), after the complainant makes a *prima facie* case against the respondent, the respondent then has the burden of showing evidence that it does have rights and legitimate interests in the disputed domain name. Complainant has made a *prima facie* case under Policy ¶ 4(a)(ii). See *Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (holding that 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").

Complainant contends that Respondent is not commonly known by the disputed domain names nor has it ever been the owner or licensee of Complainant's marks. The WHOIS record for the disputed domain name lists Respondent as "Navigation Catalyst Systems, Inc." Because Respondent is not identified as any variant on any of Complainant's marks and has failed to show any evidence contrary to Complainant's contentions, the Panel finds that Respondent is not commonly known by the disputed domain names pursuant to Policy ¶ 4(c)(ii). See *Am. Online, Inc. v. World Photo Video & Imaging Corp.*, FA 109031 (Nat. Arb. Forum May 13, 2002) (finding that the respondent was not commonly known by <aolcamera.com> or <aolcameras.com> because the respondent was doing business as "Sunset Camera" and "World Photo Video & Imaging Corp."); see also *RMO, Inc. v. Burbridge*, FA 96949 (Nat. Arb. Forum May 16, 2001) (interpreting Policy ¶ 4(c)(ii) "to require a showing that one has been commonly known by the domain name prior to registration of the domain name to prevail").

Respondent maintains websites at the disputed domain names that features links to websites offering the services of Complainant's competitors. The Panel finds that this use of the disputed domain names is neither a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) nor a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii). See *Wells Fargo & Co. v. Party Night Inc.* FA 144647 (Nat. Arb. Forum Mar. 18, 2003) (holding that the respondent's use of "confusingly similar derivatives of Complainant's WELLS FARGO mark to divert Internet users

to websites featuring pop-up advertisements” was not a *bona fide* offering of goods or services); *see also Golden Bear Int’l, Inc. v. Kangdeock-ho*, FA 190644 (Nat. Arb. Forum Oct. 17, 2003) (“Respondent’s use of a domain name confusingly similar to Complainant’s mark to divert Internet users to websites unrelated to Complainant’s business does not represent a bona fide offering of goods or services under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii).”).

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

Registration and Use in Bad Faith

Complainant contends that Respondent is diverting Internet customers from Complainant’s website to Respondent’s websites that resolve from the disputed domain name, through the confusion caused by the similarity between Complainant’s marks and the disputed domain names. Complainant also contends that Respondent intentionally disrupted Complainant’s business by diverting confused customers to Complainant’s competitors. The Panel finds that Respondent’s use of the disputed domain names disrupts Complainant’s business, and is evidence of registration and use in bad faith pursuant to Policy ¶ 4(b)(iii). *See Travant Solutions, Inc. v. Cole*, FA 203177 (Nat. Arb. Forum Dec. 6, 2003) (“Respondent registered and used the domain name in bad faith, pursuant to Policy ¶ 4(b)(iii), because it is operating on behalf of a competitor of Complainant . . .”); *see also EthnicGrocer.com, Inc. v. Latingrocer.com*, FA 94384 (Nat. Arb. Forum July 7, 2000) (finding bad faith where the respondent’s sites pass users through to the respondent’s competing business).

Complainant also contends that through both click-through fees and the competing services that Respondent is advertising, Respondent is gaining commercially from this diversion. Because Respondent is intentionally using the disputed domain names for commercial gain through a likelihood of confusion with Complainant’s mark, the Panel finds that, pursuant to Policy ¶ 4(b)(iv), Respondent’s use of the disputed domain names is also evidence of registration and use in bad faith. *See 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)); *see also TM Acquisition Corp. v. Warren*, FA 204147 (Nat. Arb. Forum Dec. 8, 2003) (“Although Complainant’s principal website is <century21.com>, many Internet users are likely to use search engines to find Complainant’s website, only to be misled to Respondent’s website at the <century21realty.biz> domain name, which features links for competing real estate websites. Therefore, it is likely that Internet users seeking Complainant’s website, but who end up at Respondent’s website, will be confused as to the source, sponsorship, affiliation or endorsement of Respondent’s website.”); *see also Drs. Foster & Smith, Inc. v. Lalli*, FA 95284 (Nat. Arb. Forum Aug. 21, 2000) (finding bad faith where the respondent directed Internet users seeking the complainant’s site to its own website for commercial gain).

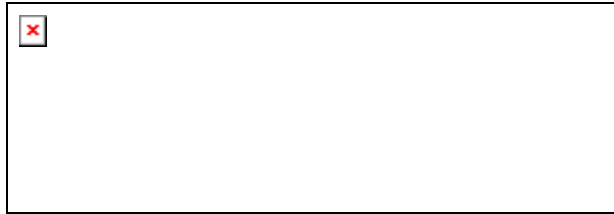
The Panel finds that Policy ¶ 4(a)(iii) has been satisfied.

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 <qwunderground.com>, <swunderground.com>, <wundertground.com>, <wunederground.com>, <wunnderground.com> ,

<winderground.com>, <wunderground.com>, <wundeerground.com>, <wunderfound.com>, <wundergtound.com>, <wundergroundr.com>, <undergroundweather.com>, <undegroundweather.com>, <undergoundweather.com>, <undergroudweather.com>, <undergroundwaether.com>, <undergroundwweather.com>, <undergrounweather.com>, <watherunderground.com>, <weaherunderground.com>, <weahterunderground.com>, <weartherunderground.com>, <weatehrunderground.com>, <weatgerunderground.com>, <weathernunderground.com>, <weatherunbderground.com>, <weatherunderground.net>, <weatherundergriund.com>, <weatherundergrouind.com>, <weatherundergroundm.com>, <weatherundergrounf.com>, <weatherunderround.com>, <weatherundergrpound.com>, <weatherundewrground.com>, <weatherundreground.com>, <weathrunderground.com>, <weatherunferground.com>, <wewaterunderground.com>, <wetaherunderground.com>, <wweatherunderground.com>, and <wwwund.com> domain names be **TRANSFERRED** from Respondent to Complainant.



The Honorable Charles K. McCotter, Jr. (Ret.), Panelist
Dated: October 13, 2008

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