



NATIONAL
ARBITRATION
FORUM

DECISION

American Family Life Assurance Company of Columbus
v.
defaultdata.com a/k/a Brian Wick

Claim Number: FA0208000123896

PARTIES

Complainant is **American Family Life Assurance Company of Columbus**, Columbus, GA (“Complainant”) represented by **Wendy L. Robertson**, of **Alston & Bird, LLP**. Respondent is **defaultdata.com**, Denver, CO (“Respondent”) represented by **Brian Wick**.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**afacinsurance.com**> registered with **Network Solutions, Inc. (NSI)**.

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.

Mr. Peter L. Michaelson, Esq. as Panelist.

PROCEDURAL HISTORY

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”), available at <icann.org/services/udrp/udrp-policy-24oct99.htm>, which was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999, and approved on October 24, 1999, and in accordance with the ICANN Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”) as approved on October 24, 1999, as supplemented by the National Arbitration Forum Supplemental Rules for Uniform Domain Name Dispute Resolution Policy then in effect (“Supplemental Rules”).

Complainant submitted a Complaint, together with Exhibits A-C, to the National Arbitration Forum (“the Forum”) electronically on August 28, 2002; the Forum received a hard copy of the Complaint on September 3, 2002.

On August 30, 2002, Network Solutions, Inc. confirmed by e-mail to the Forum that the domain name <**aflacinsurance.com**> is registered with Network Solutions, Inc. and that the Respondent is the current registrant of the name. Network Solutions, Inc. has verified that Respondent is bound by the Network Solutions, 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 4, 2002, a Notification of Complaint and Commencement of Administrative Proceeding (the “Commencement Notification”), setting a deadline of September 24, 2002 by which the Respondent could file a Response to the Complaint, was transmitted to the 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@aflacinsurance.com by e-mail.

A timely Response, together with Exhibits A-E, was received and determined to be complete on September 13, 2002.

On September 26, 2002, pursuant to Complainant’s request to have the dispute decided by a single-member Panel, the Forum appointed Mr. Peter L. Michaelson, Esq. as Panelist and set a due date of October 10, 2002 to receive the decision from the Panel.

Due to an unavoidable time conflict, the Panel extended the due date for its decision to October 17, 2002.

RELIEF SOUGHT

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

PARTIES’ CONTENTIONS

A. Complainant

1. Confusing similarity/identity

Complainant contends that the disputed domain name is confusingly similar to Complainant’s AFLAC marks.

Complainant states the striking similarity between the disputed domain name and the Complainant’s AFLAC mark are immediately apparent. Specifically, Complainant states that the disputed domain name incorporates Complainant’s mark AFLAC to which the

descriptive word "insurance" has been appended. This word merely describes the services offered by Complainant.

Consequently, Complainant contends that consumers who see the disputed domain name <**afiacinsurance.com**> are almost certain to associate the disputed domain name with Complainant, AFLAC. In that regard, not only does appending the word "insurance" not serve to distinguish the disputed domain name from the mark AFLAC but rather it heightens potential confusion inasmuch as that word will confirm the erroneous impression to Internet users that the disputed domain name is connected, in some fashion, with Complainant and its insurance services.

Hence, Complainant concludes that the requirements of Policy ¶ 4(a)(i) are satisfied.

2. Rights and legitimate interests

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name.

First, Complainant contends that Respondent's registration and use of the disputed domain name is a blatant attempt to trade on the goodwill and fame associated with the mark AFLAC. In that regard, Complainant notes that Respondent registered that name more than eleven years after Complainant began using its mark AFLAC.

Furthermore, Complainant states that Respondent has no connection or affiliation with Complainant of any kind, nor has Respondent at any time received a license or consent, express or implied, to use the mark AFLAC in a domain name or in any other manner.

In addition, Complainant contends that, given its numerous service mark registrations for its mark AFLAC and as a result of its prior extensive sales, promotion, and advertising of its insurance services, Respondent was on notice of Complainant's exclusive rights in its mark AFLAC at the time Respondent registered the disputed domain name. Further, Complainant states that Respondent admits to having actual knowledge of Complainant's trademark rights and that it registered and is using the disputed domain name because "Internet users will perceive the Domain Name to be 'a possible electronic address to an Established business (i.e., AFLAC)'".

Furthermore, Complainant contends, that any defenses that Respondent puts forth regarding its use of the disputed domain name in connection with a web site that provides "parody" (and hence is Constitutionally protected) and therefore a legitimate, noncommercial fair use is apparently misplaced. Specifically, Complainant states that Respondent's web site does not comment on or criticize Complainant or its services in any way. Rather, as reported by Complainant, that site contains nonsensical messages that reference Senator Strom Thurmond and President George W. Bush. Given this, Complainant asserts, via citing to, e.g., *Dr. Seuss Enters. v. Penguin Books USA* 109 F.3d

1394 (9th Cir. 1997) and *Elvis Presley Enters. v. Capece* 141 F.3d 188, that appropriation of a trademark for the purpose of satirizing or poking fun at something other than the product or company symbolized by the trademark is not a parody and is not protected free speech under the First Amendment to the US Constitution.

Moreover, Complainant points out that various prior ICANN panels have held there to be no parody with regard to the same or virtually identical content posted by this particular Respondent to the Internet under domain names that include the famous marks of others, citing to: *Preston Gates & Ellis, LLP v. Defaultdata.com and Brian Wick*, D2001-1381 (WIPO Feb. 13, 2002) (rejecting Respondent's argument that his use of Complainant's domain name was fair use because Respondent's use interfered in "substantially too great a way with the legitimate rights of the service mark holders to control the use of their name to conduct business" and that "by registering a multitude of service marks as domain names, Respondent goes beyond the reasonable or fair use of a mark to make a statement and into unreasonably or unfairly interfering with the legally recognized interests of others"); see also *Hunton & Williams v. Am. Distribution Sys., Inc.*, D2000-0501 (WIPO Aug. 1, 2000); see also *Adams and Reese LLP v. Am. Distribution Sys. Inc. d/b/a Defaultdata.com*, FA102860 (Nat. Arb. Forum Feb. 6, 2002); and *Brandon Dunes L.P. v. DefaultData.com*, D2000-0431 (WIPO July 13, 2000).

Thus, Complainant concludes that Respondent cannot demonstrate any rights or legitimate interests in the disputed domain name pursuant to Policy ¶ 4(a)(ii).

3. Bad faith use and registration

Complainant contends that Respondent registered and is using the disputed domain name in bad faith in violation of the Policy.

First, Complainant contends that Respondent's actions violate Policy ¶ 4(b)(i). Specifically, here Complainant points to Respondent's admission that it registered the disputed domain name as a "possible electronic address" for Complainant through which that Internet users who seek Complainant's web site will do so using that name. Hence, Respondent plainly recognized, at the time it registered that name, that that name would have real economic value to Complainant -- value which Complainant acknowledges.

Complainant further notes that Respondent is a seasoned domain name registrant. As such, Respondent knew that it could not register the disputed domain name and then offer to sell that name to Complainant without being found guilty of bad faith. It also knew that it could not passively hold the disputed domain name without risking the same result. Respondent therefore attempted to make its motives for registering the disputed domain name appear legitimate by causing that name to re-direct Internet users to Respondent's "free speech flyer." However, that flyer has nothing to do with Complainant. In particular, that flyer does not mention Complainant, nor does that flyer in any way comment upon or criticize Complainant, Complainant's services, or the insurance

industry in general. Hence, Complainant contends that distributing this flyer was plainly not Respondent's true motivation for registering the disputed domain name. In that regard, Complainant alleges that Respondent certainly did not spend its "hard earned money to register the <afiacinsurance.com> domain name, or the dozens of other domain names" it has registered that include the well-known marks of others, merely to re-direct users to its web flyer. Complainant asserts that Respondent's true motivation is to block Complainant and other trademark owners from registering or using a corresponding domain name which Respondent has registered until the party that owns the mark first pays Respondent to transfer that name. Hence, Complainant contends that this conduct constitutes bad faith registration and use in violation of Policy ¶ 4(b)(i).

Second, Complainant contends that the Respondent's conduct also violates Policy ¶ 4(b)(ii). Specifically, Complainant alleges that, in light of the fame and notoriety of the mark AFLAC and Respondent's prior conduct (which Respondent admitted) in registering many domain names containing notorious marks owned by various third parties, it is inconceivable that Respondent could have registered the disputed domain name without knowledge of Complainant's rights in its mark and without knowledge that Respondent's registration of that name would block Complainant from owning a corresponding domain name registration. Moreover, Complainant states that Respondent has admitted to having knowledge of Complainant and its rights and to having registered and used the disputed domain name to divert Internet traffic destined for Complainant's web site to Respondent's site. As to those third parties, Complainant noted that Respondent has admitted to using the corresponding domain names, which contain their marks and which Respondent has registered, to also divert traffic to Respondent's web site in much the same fashion as Respondent is diverting traffic away from Complainant's site.

B. The Respondent

1. Confusing similarity/identity

Respondent does not contest and, in fact, admits that the disputed domain name is similar to the mark AFLAC of Complainant and, as such, Internet users who enter that name would expect to "find a website sponsored by the Complainant."

Respondent admits that it has registered Internet addresses similar to the names of hundreds of firms, including Complainant. It has apparently done so to ensure that those visitors who seek any of the sites of those firms will be exposed to Respondent's "Internet speech project" through which it provides, what Respondent believes to be, a Constitutionally protected free speech forum through which "established businesses" are subjected to critical public speech.

In that regard, Respondent expressly states, in its Response:

"Although AFLACInsurance.com is part of my Internet speech project, 'AFLAC' is a household name that carries the same status and recognition as a celebrity, such as Bruce Springsteen or a Clorox, Ralph Lauren Polo or Kleenex – everybody has seen and heard the AFLAC duck on TV. Anybody looking for the Complainant keys AFLAC into their browser. The word "Insurance" adds nothing to what people already know the Complainant's 'AFLAC' mark to be. In fact, anybody keying AFLACInsurance.com into their browser is more of an inquiring mind – wondering if someone other than the Complainant is operating a website there, such as my Consumer Protection speech forum – maybe AFLAC is covering all bases before the next ENRON or Qwest Communications.

...

Anybody driving down the Information Super-highway wanting to go to AFLACInsurance.com might expect to find a website sponsored by the Complainant. This is exactly why I reserved AFLACInsurance.com – so speech can be heard."

Moreover, as best understood by the Panel, Respondent views the disputed domain name as nothing more than an "electronic business address" which apparently should be freely available to anyone to register and use in furtherance the exercise of their rights to free speech under the US Constitution.

2. Rights and legitimate interests

Respondent apparently contends that it has rights and legitimate interests in the disputed domain name inasmuch as it has registered and is using that name as an address to its web site through which Respondent provides what it views as being Constitutionally protected critical public speech, hence a "bona fide use".

3. Bad Faith

Respondent contends that its activities do not amount to bad faith use and registration. Rather than setting forth a specific argument, Respondent "will pass" on this element of the Policy apparently, as best understood by the Panel, as being moot in view of Respondent's belief that it has rights and legitimate interests in the disputed domain name.

FINDINGS

In the Complaint, a copy of the WHOIS registration record for the disputed domain name appears in Exhibit A-1, and a global registry service (grs) record, which identifies the registrar, appears in Exhibit A-2. Together these records indicate that Respondent registered that name with NSI on August 13, 2001.

A. Complainant's AFLAC marks

Complainant owns federal registrations for various marks that include the term AFLAC and, for three of those marks, has provided, in Exhibit B to the Complaint, copies of the registration certificates, as issued by the United States Patent and Trademark Office (PTO).

- 1) AFLAC American Family Life Insurance Company with design (stylized)
US registration 1,747,403; registered January 19, 1993

This service mark was registered for use in connection with: "multiple line insurance underwriting services" in international class 36. This mark claims first use and first use in inter-state commerce of January 3, 1989.

- 2) AFLAC with design (stylized)
US registration 1,679,644; registered March 17, 1992

This service mark was registered for use in connection with: "multiple line insurance underwriting services" in international class 36. This mark claims first use and first use in inter-state commerce of January 3, 1989.

- 3) AFLAC (block letters)
US registration 1,570,222; registered December 5, 1989;
renewed December 5, 1999

This service mark was registered for use in connection with: "multiple line insurance underwriting services" in international class 36. This mark claims first use and first use in inter-state commerce of January 3, 1989.

B. Complainant and its activities

Complainant is a leading provider of supplemental life and health insurance. Complainant, a Fortune 500 company, insures more than forty million individuals worldwide. At year-end 2001, Complainant had total assets of \$37 billion and annual revenues of more than \$9.6 billion. Complainant has a presence in all 50 U.S. states through a network of more than 42,000 licensed agents.

Since at least as early as 1989, Complainant has continuously and exclusively used the mark AFLAC throughout the United States to identify its provision of insurance services.

Complainant engages in substantial national advertising, promotional and marketing activities each year to promote the AFLAC brand name and the insurance products and services it sells thereunder. Since December 1999, these efforts have included an overwhelmingly successful series of "AFLAC Duck" television and accompanying print commercials. The commercials, which feature a white duck that quacks AFLAC whenever the subject of supplemental insurance arises in conversation, have been

broadcast on each of the major free and cable television networks during some of the networks' most popular programming, including the evening news programs on ABC, NBC and CBS; CNN's *Larry King Live*; Major League Baseball games; NCAA football games; and the French Open and Wimbledon tennis championships. Print advertising featuring the "AFLAC Duck" has also appeared in such well-known national publications as *Forbes* and *Business Week*.

On average over the past five years, Complainant has spent more than \$34.9 million annually to advertise and promote its services under the mark AFLAC. Thousands of independent AFLAC agents, with Complainant's authorization, have further enhanced Complainant's promotional efforts through the purchase of yellow page listings and advertisements in every large and medium sized city in the United States. Each of these listings and advertisements prominently display the mark AFLAC.

Complainant supports its offline advertising and promotional efforts with a sophisticated web site operated under the domain name <aflac.com>. This site provides a broad range of information to current and prospective customers, investors, and agents about Complainant and its many services. Complainant also owns and uses two other domain names that include the mark AFLAC. The <aflac.com> web site averages more than 460,000 hits per month, making it a heavily trafficked site on the Internet.

C. Respondent and its activities

Respondent is currently using the disputed domain name to re-direct Internet users to its web site located at <defaultdata.com/websites/parodybank/default.asp?domain=aflacinsurance.com>. The top of the home page of that site contains a statement that the site is a "free speech flyer" protected by the First Amendment and that the site is being "passed out at a possible electronic *address* to an Established business (no different than free speech at a physical address to a business) and this 'free speech flyer' attempts a U.S.A. Constitutionally granted free speech parody" (emphasis in original) (a copy of that page is provided in Exhibit 3 of the Declaration of Ms. Wendy Robertson which itself appears in Exhibit A to the Complaint). The site contains photographs and random statements about Strom Thurmond. The site also includes an image of President George W. Bush portrayed as a superhero with the accompanying text "There's a NEW George W. in town!!" The site does not contain any commentary about, or criticism of, Complainant or its services.

Under the pseudonyms "American Distribution Systems, Inc." and "Defaultdata.com", Respondent has routinely registered trademarks and service marks of others as domain names and then used each of those names to re-direct Internet users to Respondent's "free speech flyer site." In that regard, see *Hunton & Williams v. Am. Distribution Sys., Inc.*, D2000-0501 (WIPO Aug. 1, 2000). Other domain names which Respondent has registered include, e.g.,: <alliedwasteindustries.com>, <budweiserbrewery.com>, <capitalonefinancial.com>, <cedarssinai.com>, <circuitcitystores.com>,

<coorsbrewingcompany.com>, <deanfood.com>, <first-union.com>, <hiltonhotel.com>, <krogerfoods.com>, <publixsupermarket.com>, <reynoldstobacco.com>, <sara-lee.com>, and <winndixiestores.com>. Respondent's registration of all of these other names is reflected in copies of hard-copy printouts from the WHOIS database also provided in Exhibit 3 to the Robertson Declaration.

DISCUSSION

Paragraph 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (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 the 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 the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (2) the 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 confusion is likely to arise as a result of the Respondent's use of disputed domain name.

In that regard, the disputed domain name includes Complainant's registered mark AFLAC, which, as a result of its continuous use since 1989, has clearly acquired requisite secondary meaning and distinctiveness well prior to Respondent's registration of the disputed domain name in August 2001.

There can be no question here that the disputed domain name, by virtue of its inclusion of the term AFLAC, as by Respondent or by a third-party to which Respondent might transfer that name, is likely to cause user confusion.

Such confusion would undoubtedly cause Internet users intending to access Complainant's website, but who reach a website through the disputed domain name, to think that an affiliation of some sort exists between Complainant and Respondent or its third-party transferee, when, in fact, no such relationship would exist at all. *See, e.g., AT&T Corp. v. Roman Abreu d/b/a Smartalk Wireless*, D2002-0605 (WIPO Sept. 11, 2002); *Pfizer Inc. v. Order Viagra Online*, D2002-0366 (WIPO July 11, 2002); *L.F.P., Inc. v. B and J Props.*, FA109697 (Nat. Arb. Forum May 30, 2002); *Peter Frampton v. Frampton Enters, Inc.*, D2002-0141 (WIPO April 17, 2002); *Spence-Chapin Servs. to Families and Children v. Stanley Wynman*, FA100492 (Nat. Arb. Forum Dec. 10, 2001);

MPL Communications v LOVEARTH.net, FA 97086 (Nat. Arb. Forum June 4, 2001); *Meijer, Inc. v. Porksandwich Web Servs.*, FA 97186 (Nat. Arb. Forum July 6, 2001); *MPL Communications v IWebAddress.com*, FA 97092 (Nat. Arb. Forum June 4, 2001); *Am. Home Prods. Corp. v. Malgioglio*, D2000-1602 (WIPO Feb. 19, 2001); *Surface Prot. Indus., Inc. v. The Webposters*, D2000-1613 (WIPO Feb. 5, 2001); *Dollar Fin. Group, Inc. v VQM NET*, FA 96101 (Nat. Arb. Forum Jan. 25, 2001); *eBAY Inc. v. G L Liadis Computing, Ltd.*, D2000-1463 (WIPO Jan. 10, 2001); *Treeforms, Inc. v. Cayne Indus. Sales Corp.*, FA 95856 (Nat. Arb. Forum Dec. 18, 2000); *see also The Pep Boys Manny, Moe and Jack of California v. E-Commerce Today, Ltd.*, AF-0145 (eResolution May 3, 2000).

It is simply inconceivable to the Panel, given the long-term use by Complainant of its mark AFLAC and the resulting widespread public recognition attained by that mark both taken in view of Complainant's activities in providing its insurance services under its AFLAC marks and the extensive promotion that Complainant provided of its mark AFLAC, that an Internet user familiar with the mark AFLAC would think that a web site accessible by **<aflicinsurance.com>** was not affiliated in some manner with Complainant. In fact, Respondent conceded as much.

As such, the Panel finds that sufficient similarity exists under Policy ¶ 4(a)(i) between the disputed domain name and Complainant's AFLAC marks.

Rights or Legitimate Interests

Based on its federal trademark registrations, Complainant has acquired exclusive rights to use its AFLAC marks in connection with the services recited in those registrations. Furthermore, by virtue of the registration of these marks, the PTO has implicitly recognized that each such mark is distinctive and has acquired appropriate secondary meaning in the marketplace.

The Panel believes that Respondent has yet to provide any basis that would legitimize any claim it has to the disputed domain name. In fact, it is extremely unlikely that Respondent can even make such a claim.

The simple reason is that the disputed domain name contains Complainant's mark AFLAC under which Complainant provides its services. Furthermore, Complainant has never authorized Respondent to utilize any of its AFLAC marks, or a mark confusingly similar thereto, let alone in conjunction with the specific services which Complainant provides under any of those marks, nor does Complainant have any relationship or association whatsoever with Respondent.

Hence, any use to which Respondent were to put the mark AFLAC or a mark confusingly similar thereto, in connection with the insurance services presently provided by Complainant and set forth in any of Complainant's service mark registrations would directly violate the exclusive trademark rights now residing in Complainant. *See, e.g.,*

Pfizer Inc. v. Order Viagra Online, cited *supra*; see also *MPL Communications*, FA 97086 and FA 97092, cited *supra*; *Am. Online, Inc. v. Xianfeng Fu*, D2000-1374 (WIPO Dec. 11, 2000); see also *Treeforms, Inc. v. Cayne Ind. Sales Corp.*, cited *supra*.

Even apart from Respondent's concession, it is eminently clear to this Panel that Respondent, in choosing a domain name that at its essence completely incorporates Complainant's mark AFLAC and appends to it the generic term "insurance", not only has intentionally sought to create a confusingly similar name but also is opportunistically exploiting Internet user confusion by diverting, through re-direction and diversion, Internet users away from Complainant's site to Respondent's web site for the latter's own benefit.

Specifically, though Respondent argues that its "free speech flyer" web site constitutes parody or critical comment and as such Constitutionally protected free speech and implicitly by extension fair use under Policy ¶ 4(c)(iii), the Panel, upon examining the home page provided in the Robertson declaration, finds that that site is devoid of any mention of Complainant and/or its services. Hence, that site simply contains no such speech that at the outset would fall into any such constitutionally protected class. As such, the principal purpose which this Panel believes Respondent had in choosing the disputed domain name is simply to gain enhanced exposure for its web site, by the diversion of users who, upon entering the disputed domain name into their browsers would seek to reach a site provided by Complainant but in fact, and unbeknownst to those users, are then re-directed to Respondent's site -- users which Respondent would not attract but for having incorporated Complainant's mark AFLAC within the disputed domain name. In fact, Respondent acknowledges this indeed was its motivation.

Such parasitic use itself, which at its essence relies on instigating and exacerbating user confusion, cannot and does not constitute bona fide commercial or fair use sufficient to legitimize any rights and interests Respondent might have in the disputed domain name. See *Peter Frampton v. Frampton Enters., Inc.*, cited *supra*.

Moreover, the Panel is cognizant of the heavy burden that would be placed on complainants if in support of their cases on illegitimacy each of those complainants was to be impressed with a burden of providing detailed proof of any lack of rights or legitimate interests on behalf of their respondents. The Panel believes that where allegations of illegitimacy are made, particularly as here, when coupled with conduct of a respondent that evidences bad faith, it is quite reasonable to shift the burden of proof to that respondent to adequately show that its use of the disputed domain name is legitimate, such as by showing that, in conjunction with the disputed domain name, it is making a bona fide commercial offering of goods or services or preparations for such offerings, or non-commercial or fair use. Given the situation now facing the Panel, it is beyond question that Respondent's conduct here falls far short of meeting this burden -- particularly given that no facts have been proven to support such usage. See *Am. Home Prods. Corp. v. Malgioglio*, cited *supra*; *Surface Prot. Indus., Inc. v. The Webposters*,

cited *supra*; *College Summit, Inc. v. Yarmouth Educational Consultants, Inc.* D2000-1575 (WIPO Jan. 17, 2001); *MSNBC Cable, LLC v. Tsys.com*, D2000-1204 (WIPO Dec. 8, 2000); *see also Playboy Enters. Int'l, Inc.*, D2000-1016 (WIPO Nov. 7, 2000).

Respondent has simply provided no valid reason why it could not provide whatever critical comment or parody it wanted through its site but without using Complainant's mark AFLAC in a domain name as an instrument for user diversion. Moreover, the illegitimacy of Respondent's interests is compounded by Respondent having registered and used domain names that include numerous third-party trademarks for implementing the same diversion.

In light of the above findings, the Panel is not persuaded that Respondent has any or, based on current facts provided to the Panel, is likely to acquire any rights or legitimate interests in the disputed domain name under any provision of paragraph 4(c) of the Policy.

Thus, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name within Policy ¶ 4(a)(ii).

Registration and Use in Bad Faith

The Panel firmly believes that Respondent's actions constitute bad faith registration and use of the disputed domain name.

When Respondent chose and registered the disputed domain name <**aflacinsurance.com**> on August 13, 2001, it had been fully aware of Complainant's mark AFLAC and particularly the widespread reputation which that mark had attained as a result of Complainant's substantial marketing efforts for its insurance services. In fact, it is just because of and to intentionally avail itself of that notoriety that Respondent selected and registered the disputed domain name that specifically included Complainant's mark AFLAC. Respondent even admitted as such, recognizing that its subsequent use of that mark in its domain name would effectively capture an increased number of Internet users, thus providing Respondent with a larger audience for its message than it would otherwise attain -- for a message that bore absolutely no relation to Complainant. Without question, Respondent's actions here in so registering the disputed domain name, with the intention of effectively misappropriating the goodwill of Complainant's mark for Respondent's own benefit, clearly constitutes bad faith registration.

Once Respondent registered the name, it then employed the name to intentionally divert and re-direct Internet users, who sought Complainant's web site, to Respondent's free speech site to which those users would be exposed to Respondent's critical comment and/or parody -- though none of its message bore any relation to Complainant. Given the omission of any reference to Complainant in Respondent's message, the use of

Complainant's mark as a vehicle, within the disputed domain name, to access that message falls well short of constituting Constitutionally protected speech.

Moreover and by its own admission -- even apart from the proof submitted by Complainant, Respondent registered a multitude of other domain names, each of which also included a well-known third party registered mark, all apparently without the approval of the corresponding owners of the marks. Respondent uses those resulting domain names to implement the exact same diversion and re-direction of Internet users, intent on reaching corresponding web sites of the owners of the marks, to Respondent's web site instead where those users are exposed to the same message as here. Hence, Respondent is opportunistically exploiting all such marks -- including the mark AFLAC of the present Complainant -- and the resulting user confusion for its own benefit by: (a) falsely suggesting that Respondent's message or Respondent itself is affiliated with, sponsored or sanctioned by each of those mark owners -- hence providing heightened credibility for Respondent and its message, and (b) attaining a significantly enhanced exposure for its message than Respondent would otherwise receive. Obviously those benefits confer value on Respondent: value to which it is clearly not entitled.

This conduct constitutes bad faith use under Policy ¶ 4(a)(iii).

Thus, the Panel concludes that Complainant has provided sufficient proof of its allegations to establish a prima facie case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

DECISION

In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the relief sought by the Complainant is hereby **GRANTED**.

The disputed domain name, namely <**aflacinsurance.com**>, is ordered **TRANSFERRED** to Complainant.

Peter L. Michaelson, Esq., Panelist
Dated: October 14, 2002