

## **ADMINISTRATIVE PANEL DECISION**

Fusion Packaging, L.P. v. John Huckeba / Howard Huckeba at Fusion Logistics

Case No. D2013-1077

### **1. The Parties**

The Complainant is Fusion Packaging, L.P. of Dallas, Texas, United States of America, represented by Dykema Gossett PLLC, United States of America.

The Respondent is John Huckeba of Redondo Beach, California, United States of America / Howard Huckeba at Fusion Logistics of Dallas, Texas, United States of America, United States of America, internally represented.

### **2. The Domain Name and Registrar**

The disputed domain name <fusionpackaging.com> is registered with GoDaddy.com, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 13, 2013. On June 14, 2013, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 14, 2013, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing its contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 24, 2013. In accordance with the Rules, paragraph 5(a), the due date for Response was July 14, 2013.

On July 10, 2013, an individual named Christopher J. Snead, presenting himself as "General Counsel for the Fusion Partners, LLC doing business as Fusion Logistics", sent an email communication to the Center and requested that all further communication to the Respondent be addressed to him. Later the same day, the

Center acknowledged receipt of that communication and requested Mr. Snead to identify himself, explain his relationship, if any, to the Respondent and provide information sufficient to establish the legitimacy of his request/submission in the context of the present proceeding. In a subsequent email communication sent to the Center on July 15, 2013, Mr. Snead identified himself at the General Counsel for Fusion Partners, LLC which does business as Fusion Logistics and further stated that "Howard Huckleba is employed as our Director of Technology. Mr. Huckleba was directed to purchase the disputed domain name on behalf of the company with company funds and has requested that I handle this complaint on his behalf." Later on July 15, 2013, an individual named Howard Huckleba acknowledged, via an email communication sent to the Center, the statements made by Mr. Snead. On July 17, 2013, the Center acknowledged receipt of the July 15 email communications from Messrs. Snead and Huckleba and clarified that it is the role of the Panel on appointment to make any substantive assessment on the identity of the Respondent. The Center noted in its acknowledgement that the email address used by Mr. Huckleba differed from that on the Registrar's record and also that a response to the Complaint was due on July 14, 2013.

On July 18, 2013, Mr. Snead sent another email communication to the Center through which he requested confirmation of the "method and date that written notice of the Complaint was forwarded to Respondent by the Center". Mr. Snead claimed that the only copy of the Complaint received by Mr. Huckleba was from counsel for the Complainant. He then stated that he needed the information in order to file a Response, regardless of whether that Response would be untimely. Mr. Huckleba, in an email sent to the Center on July 18, 2013, acknowledged the statements made by Mr. Snead in his July 18 communication. The Center sent such confirmation the same day.

On July 24, 2013, Mr. Snead requested the Center to provide him "with documentation (return of service, receipt or other documentation) and contact information for the courier service used evidencing that Mr. Huckleba was served with the Written Notice on June 24, 2013" as "Mr. Huckleba denies receipt". Further, Mr. Snead noted that Mr. Huckleba "did not receive electronic notice to the email address... (although it may have ended up in his junk mail which is purged after two weeks". The Center replied to Mr. Snead on July 25, 2013 and provided the tracking report from the courier and the courier tracking number and, through a separate email communication on the same day, a copy of the "Notification of Complaint and Commencement of Administrative Proceeding" in this proceeding.

Later on the same day, Mr. Snead sent a further email communication to the Center stating that the tracking report indicates that delivery was attempt on Mr. Huckleba on June 26, 27 and 28, 2013 and contained various notations of "Shipment on hold" and ultimately "Shipper contacted" on July 10, 2013. Mr. Snead further stated that the Written Notice, sent under the tracking number provided by the Center, was never served on Mr. Huckleba. Mr. Snead requested that the Center bring this non-delivery information to the attention of the Panel once it is appointed.

To date, no substantive response to the Complaint has been filed. The only communications that occurred between the Respondent, specifically from Mr. Snead and Mr. Huckleba, and the Center are those specifically described above.

The Center appointed Peter L. Michaelson as the sole panelist in this matter on July 30, 2013. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

##### **A. Disputed Domain Name Registration**

As reflected in the registration record for the disputed domain name in the Registrar's Whois database (a copy of that record appears in Annex B to the Complaint) and confirmed by the Registrar, the disputed domain name was created on October 17, 2010 and registered to the Respondent on June 23, 2011, and is

set to expire on October 17, 2014.

## **B. The Complainant**

The Complainant, in operation since July 2004, is a Texas limited liability partnership comprising, as its general partner, Fusion Packaging, Inc. (FPI), a Texas Corporation with its headquarters in Dallas, Texas, United States. FPI operates various facilities around the world.

FPI designs and manufactures a wide array of luxury packaging products for its customers in the beauty industry. FPI has expertise in market research, merchandising, brand design and product development and provides, to its customers, the following design services: structural package design, rapid prototyping, logo creation, brand strategy, graphic design and photography; and the following engineering services: product/package compatibility, product pump-through testing, strokes to prime, evacuation percentage, line trial evaluations and field technician services. FPI has a reputation in its industry for producing high quality products and has been awarded recognized awards in the industry, including: Packaging Design Award, Institute of Packaging, professionals AmeriStar Award, World Packaging Organization WorldStar Award, Supplier of the Year; and, Best Places to Work, Dallas 100<sup>TM</sup> (Fastest Growing Privately held Companies in Dallas/Fort Worth) (2010, 2011, 2012).

FPI owns the trade name and service mark FUSION PACKAGING and its domain name <fusionpkg.com> both of which it has continuously used since at least November 15, 2006. The Complainant has provided, in Annex C to the Complaint, copies of illustrative materials bearing its trade name and mark.

Through the Complainant's efforts since mid-November 2006, its trade name and mark have become widely recognized and known to its packaging customers to the point where the Complainant has established considerable good will in both its name and mark. The Complainant claims common law trademark rights in its both trade name and mark.

Presently, the Complaint has no registered marks though it has two pending US trademark applications 85/635,394 and 85/635,388 (copies of which appear in Annex A to the Complaint) for two marks with common design elements, each incorporating the term "fusionpkg" (as neither of these marks is relevant here, they will not be discussed any further).

## **5. Parties' Contentions**

### **A. Complainant**

#### **(i) Identical or Confusingly Similar**

The Complainant contends that the disputed domain name is identical and confusingly similar to the Complainant's common law mark FUSION PACKING as the name fully incorporates that mark.

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

#### **(ii) Rights or Legitimate Interests**

The Complainant contends that, for various reasons, the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

Specifically, the Respondent is not and has never been authorized by the Complainant to register and use the FUSION PACKAGING name and mark or the disputed domain name. Moreover, there is no affiliation between the Complainant and the Respondent.

In addition, the Respondent is not using that name in connection with a *bona fide* offering of goods and services, or either a noncommercial or fair use. Rather, the content appearing on the Respondent's website (a copy of the home page appears in Annex E to the Complaint) consists of a series of links which redirect Internet users to foreign language third-party websites outside the United States which promote moving services having nothing to do with the Complainant.

Further, the Respondent is not commonly known by the term "fusion packaging". The Respondent is John Huckeba who does not conduct business under the trade name or mark FUSION PACKAGING.

### **(iii) Registered and Used in Bad Faith**

The Complainant contends that, for various reasons, the Respondent has registered and is using the disputed domain name in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

Specifically, the Respondent in registering and retaining the name is preventing the Complainant from registering and using a domain name identical to the Complainant's company name and, as such, is disrupting the Complainant's business.

Further, the Respondent is intentionally using the name to create a likelihood of confusion in the minds of Internet users as to source, sponsorship, affiliation or endorsement between his website and the Complainant -- while in actuality no such relationship exists between the parties -- through which Internet traffic is driven, through the Respondent's website, to third-party websites which have nothing to do with the Complainant. By doing so, the Respondent is financially benefiting himself to the detriment of the Complainant.

Inasmuch as the Respondent registered the disputed domain name more than four years after the Complainant adopted and started using its FUSION PACKAGING mark, it is rather likely that the Respondent was well aware of the Complainant and its mark at the time he registered the disputed domain name and commenced using that domain name to the Complainant's detriment.

## **B. Respondent**

The Respondent did not file any formal Response to the contentions raised in the Complaint.

## **6. Discussion and Findings**

### **A. Notification of Complaint; Default**

Paragraphs 2(a) and (b) of the Rules specify the modalities necessary to effectuate proper service of a complaint, and state, to the extent salient here:

#### **"2. Communications**

(a) When forwarding a complaint [...] to the Respondent, it shall be the Provider's responsibility to employ reasonably available means calculated to achieve actual notice to Respondent. Achieving actual notice, or employing the following measures to do so, shall discharge this responsibility:

(i) sending Written Notice of the complaint to all postal-mail and facsimile addresses (A) shown in the domain name's registration data in Registrar's Whois database for the registered domain-name holder, the technical contact, and the administrative contact and (B) supplied by Registrar to the Provider for the registration's billing contact; and

(ii) sending the complaint, including any annexes, in electronic form by e-mail to:

- (A) the e-mail addresses for those technical, administrative, and billing contacts;
- (B) postmaster@<the contested domain name>; and

(C) if the domain name (or “www.” followed by the domain name) resolves to an active web page (other than a generic page the Provider concludes is maintained by a registrar or ISP for parking domain-names registered by multiple domain-name holders), any e-mail address shown or e-mail links on that web page; and ...

(b) Except as provided in Paragraph 2(a), any written communication to Complainant or Respondent provided for under these Rules shall be made by the preferred means stated by the Complainant or Respondent, respectively ..., or in the absence of such specification

(i) by telecopy or facsimile transmission, with a confirmation of transmission; or

(ii) by postal or courier service, postage pre-paid and return receipt requested; or

(iii) electronically via the Internet, provided a record of its transmission is available.”

The Panel, upon reviewing the methods used by the Center in transmitting the Complaint as provided in the “Communications” section to the “Notification of Complaint and Commencement of Administrative Proceeding”, finds that the Center fully complied with paragraphs 2(a) and (b) of the Rules. Specifically, the Center sent the Notification, together with the Complaint and its attachments, to the Respondent John Huckleba’s email address as specified in the Registrar’s Whois record, and also sent a hardcopy version of the Written Notice by courier to the Respondent’s physical address as stated in the same record. As that record did not contain any facsimile number for the Respondent, the Center was unable to also forward the Complaint by facsimile to the Respondent.

The Panel observes, from the courier tracking report, that the courier attempted delivery to the Respondent of the Center’s hard-copy communication on three separate occasions: June 26, 27 and 28, 2013. For each attempt, the report noted that “Delivery attempted -- recipient not home”. Subsequently, the courier, reported by email dated July 3, 2013 to the Center, that the “consignee [Respondent John Huckleba] was absent when the driver attempted a delivery and does not reply to our calls and messages left on voice mail” and requested further instructions from the Center. The Center in an email dated July 4, 2013 to the courier again provided the Respondent’s contact information including his office telephone number, as set forth in the Registrar’s record. The courier then maintained the Center’s shipment “on hold” at its local facility which served the Respondent from June 28, 2013 through July 9, 2013 pending contact from the Respondent. As of July 10, 2013 the Respondent failed to contact the courier to retrieve the shipment. Accordingly, the courier abandoned all further efforts to deliver the shipment.

Paragraph 2 of the Rules does not require that a dispute resolution service provider (the Center here) take all steps which in each and every instance absolutely guarantee that a complaint will actually be served on a respondent. Rather, this rule specifies a procedure that sets forth reasonable measures, which, if followed by the provider, are likely to yield actual service.

Paragraph 2(a)(ii) of the Rules attempts to mitigate the effects of changed addresses, absent respondents and other potential defects in service that might otherwise arise by requiring the provider to simultaneously use different, redundant modalities (telecopy/facsimile, postal mail/courier, email) to effectuate actual service using the contact information supplied by the registrar. The Panel finds the clear intent and expectation of this rule is that even if a respondent changes or attempts to frustrate some of those contact modalities (e.g., changes his physical postal address and his telephone/facsimile number) and fails to suitably update his contact information with the registrar, he will not likely change or frustrate all those modalities (e.g. he will not have changed his email address and, accordingly, will still receive email through that address). As such, it is reasonable that actual service could still be effectuated. However, in practice, there can be no assurance in any given situation that any of these modalities will ultimately prove fruitful. Paragraph 2 of the Rules only requires that service be attempted through certain redundant modalities, not that any or all of them ultimately

succeed. The Center has fully complied with its obligations by having attempted service on the Respondent by the means specified under paragraph 2 of the Rules. Simply stated, the Center fully did what the Policy required it to do.

Since no substantive Response has been filed to the Complaint, despite notice having demonstratively being made as evidenced by the Respondent's communications, this matter will now proceed as in the case of a default. As such, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual representations.

## **B. Identical or Confusingly Similar**

The Panel finds that the disputed domain name is identical to the Complainant's FUSION PACKAGING mark.

As a general matter, the Policy does not contain any restriction whatsoever that specifically limits its reach to only registered marks. Therefore, given the apparent inclusive nature of the Policy, whether the Complainant has rights to an unregistered mark and hence standing under the Policy, can lie with national trademark law. For a general, though succinct, discussion what typically needs to be shown for a complainant to successfully assert common law or unregistered trademark rights under the Policy, see paragraph 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition. In the present case, the Panel also finds it relevant to have regard to United States trademark law in particular, see paragraph 15(a) of the Rules. Under United States law which would likely apply in any litigation between these parties, rights accrue in unregistered, so-called "common law", marks as a result of usage, though limited by geographic and product/service markets in which the mark is used. As evidence of this, one need turn no further than to Section 43 of the Lanham Act (15 U.S.C. §1125(a)) which states, in pertinent part: "Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof ... (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person ... shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act."

Consequently, numerous UDRP panels including this one, when faced with unregistered marks, have upheld their protectable status in the United States under the Policy. In that regard, when faced with this issue, the panel in *Brooklyn Institute of Arts and Sciences v. Fantastic Sites, Inc.*, NAF Claim No. 0095560 held: "ICANN dispute resolution policy is "broad in scope" in that" the reference to a trademark or service mark" in which the complainant has rights "means that ownership of a registered mark is not required-unregistered or common law trademark or service mark rights will suffice" to support a domain name complaint under the policy." See, e.g., *Amy Stran v. EzDomainSearch.com*, *Juan Curtis*, WIPO Case No. D2011-1710; *Maria Bartiromo v. "Maria Bartiromo" and Dave Walton*, WIPO Case No. D2007-0242; *Animals for Advertising, Inc. v. Cathryn Long*, WIPO Case No. D2007-0049; *William M. Krings v. Hugo Hernandez*, WIPO Case No. D2006-0237; *Sound Unseen, Ltd.*; *Apple Bottoms, LLC*; and *Cornell Haynes p/k/a "Nelly" v. Patrick Vanderhorst*, WIPO Case No. D2005-0636; *True Blue Productions, Inc. v. Chris Hoffman*, WIPO Case No. D2004-0930; *AT&T Corp. v. Roman Abreu d/b/a Smartalk Wireless*, WIPO Case No. D2002-0605; *Peter Frampton v. Frampton Enterprises, Inc.*, WIPO Case No. D2002-0141; *America Online, Inc. v. John Deep d/b/a Buddy USA Inc.*, NAF Claim No. 0096795; *Missing Children Minnesota v. Run Yell Tell, Ltd.*, NAF Claim No. 0095825; *Mark Warner 2001 v. Mike Larson*, NAF Claim No. 0095746; *CMG Worldwide, Inc. v. Naughtya Page*, NAF Claim No. 0095641; *Home Properties v. SMS Online*, NAF Claim No. 0095639; and *Bridal Rings Company v. Abert Yemenian/Albert Yemenian*, NAF Claim No. 0095608. Furthermore, the panel in *United States Postal Service v. Consumer Information Organization*, NAF Claim No. 0095757 held: "The UDRP does not discriminate between registered and unregistered marks." In *Exario Network Inc. v. THE DOMAIN NAME YOU HAVE ENTERED IS FOR SALE*, eResolution Case No. AF-0536, the panel recognized: "It is by now well-established that a complainant need not own a registered trademark in order to invoke the Policy. It is sufficient that a complainant have rights in an unregistered, common law trademark." In that regard, also see *Sand Hill Wholesale of Ohio v. Chris Hatton d/b/a Sand Hill Wholesale Ceder Lod Furniture*, NAF Claim No. 0095970, and *David Taylor Cadillac/Buick Co. v. Spider Webs, Ltd.*,

NAF Claim No. 0095832. Similarly, see *American Home Products Corporation v. Healthy Futures*, WIPO Case No. D2000-0454; *Cho Yong Pil v. ImageLand, Inc.*, WIPO Case No. D2000-0229; *SeekAmerica Networks, Inc. v. Tariq Masood and Solo Signs*, WIPO Case No. D2000-0131; and *Bennett Coleman & Co. Ltd. v. Steven S Lalwani and Bennett Coleman & Co. Ltd. v. Long Distance Telephone Company*, WIPO Case No. D2000-0014 and D2000-0015.

Given that common law trademark rights in the United States suffice for purposes of invoking paragraph 4(a)(i) of the Policy, the inquiry shifts to whether the Complainant had acquired common law trademark rights in its FUSION PACKAGING mark. The Complainant's use of its mark in connection with its products and services back to at least November 2006 - which is approximately four years prior to the date (October 17, 2010) when the disputed domain name was created, and continues unabated to the present. In light of the facts of record - all of which are undisputed - the evidence of the Complainant's use of its mark during those intervening four years and the wide recognition and reputation in its industry and the significant goodwill it established in its mark during that time through its various commercial activities persuades the Panel that the mark has acquired distinctiveness and requisite secondary meaning as a source indicator of the Complainant. Hence, the Panel accepts the Complainant's allegation that it has acquired common law trademark rights in its FUSION PACKAGING mark. As such, for purposes of this proceeding the Panel finds those common law rights not only have requisite priority over the Respondent's rights but also are continuing.

Since, as a predicate, the Panel has found that the Complainant has common law rights in the mark FUSION PACKAGING, then no doubt exists that the disputed domain name is, for all practical purposes, identical to that mark. The difference between the name and that mark is merely the appending of a generic Top-Level Domain ("gTLD") ".com" to the mark -- which is irrelevant for purposes of assessing confusing similarity or identity under paragraph 4(a) of the Policy and thus ignored.

Therefore, the Panel finds that the disputed domain name <fusionpackaging.com> sufficiently resembles the Complainant's mark FUSION PACKAGING as to cause confusion. Hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

### **C. Rights or Legitimate Interests**

Based on the evidence of record here, the Panel finds that no basis exists which would appear to legitimize a claim by the Respondent to the disputed domain name under paragraph 4(c) of the Policy.

While the Respondent uses the name to resolve to an operational website, that site solely contains links to third-party sites which offer services that bear no relation to those offered by the Complainant. The disputed domain name is identical to the Complainant's FUSION PACKAGING mark and, as such, is illicitly being used by the Respondent to suggest to Internet users that a relationship exists, whether through source, affiliation or sponsorship between the Complainant and the Respondent's site - when in actuality one does not exist at all. The purpose in doing so - which is undisputed - is apparently to inflate the amount of web traffic that would otherwise flow to the Respondent's site. Offering goods and services under such a false pretext is not *bona fide*. Consequently, the Respondent cannot claim the safe harbor protection of paragraph 4(c)(i) of the Policy, *i.e.*, that he used or made demonstrable preparations to use any of those names in conjunction with a *bona fide* offering of goods or services before he received notice of the present dispute.

Further, the Complainant has never authorized the Respondent to utilize the Complainant's FUSION PACKAGING mark nor does the Complainant apparently have any relationship or association whatsoever with the Respondent. As such, any use to which the Respondent were to put the Complainant's mark or one confusingly similar thereto in connection with identical or even similar goods and services to those currently provided by the Complainant, in circumstances as are present here, may violate the exclusive trademark rights now residing with the Complainant. See, *e.g.*, *National Westminster Bank plc v. natrest bkss*, WIPO Case No. D2012-1708; *Amy Stran*, cited *supra*; *Tommy Bahama Group, Inc. v. Berno Group International*, WIPO Case No. D2012-0531; *Space Needle LLC v. Erik Olson*, WIPO Case No. D2011-0931; *Burberry*

*Limited v. Domain Admin*, WIPO Case No. D2009-0703; *Starline Publications, Inc. v. Unity*, WIPO Case No. D2008-1823; *HRB Innovations Inc., Express Tax Service Inc. v. Calvin Brown*, WIPO Case No. D2008-1072; *Dreamworks Animation, LLC v. Creahq, Mike Furlong*, WIPO Case No. D2008-0505; *MySpace, Inc. v. Edwin De Jesus, EDJ Associates Inc.*, WIPO Case No. D2007-1878; *BlackRock, Inc. v. blackrockfinancialservices.com*, WIPO Case No. D2007-1627; *F. Hoffmann-La Roche AG v. Transliner Consultants*, WIPO Case No. D2007-1359; *National Football League v. Peter Blucher d/b/a BluTech Tickets*, WIPO Case No. D2007-1064; *Toilets.com, Inc. v. Rons Porta Johns*, WIPO Case No. D2007-0952; *Associated Bank Corp. v. Texas International Property Associates*, WIPO Case No. D2007-0334; *GoDaddy.com, Inc. v. GoDaddysDomain.com, Clark Signs, Graham Clark*, WIPO Case No. D2007-0303; *Citgo Petroleum Corporation v. Richard Antinore*, WIPO Case No. D2006-1576; *New Destiny Internet Group, LLC and Xplor Media, Inc. v. SouthNetworks*, WIPO Case No. D2005-0884; *Pelmorex Communications Inc. v. weathernetwork*, WIPO Case No. D2004-0898; *Sybase, Inc. v. Analytical Systems*, WIPO Case No. D2004-0360; *Caesars World, Inc. and Park Place Entertainment Corporation v. Japan Nippon*, WIPO Case No. D2003-0615; *Leiner Health Services Corp. v. ESJ Nutritional Products*, NAF Claim No. 0173362; *MPL Communications, Limited et al v. 1WebAddress.com*, NAF Claim No. 0097092; *Treeforms, Inc. v. Cayne Industrial Sales, Corp.*, NAF Claim No. 0095856; and *America Online, Inc. v. Xianfeng Fu*, WIPO Case No. D2000-1374. Consequently, in this Panel's view, the Respondent could not legitimately acquire any public association between himself and the Complainant's FUSION PACKAGING mark or even any mark similar thereto, at least for the goods and services provided by the Complainant under that mark as well as those sufficiently related thereto to cause purchaser confusion.

Further, there is absolutely no evidence of record that the Respondent has ever been commonly known by the disputed domain name or more generally the mark FUSION PACKAGING. Nor could the Respondent likely ever become commonly known by that mark without possibly infringing on the exclusive common law trademark rights of the Complainant. This is so in light of the Complainant's exclusive trademark rights which date back to mid-November 2006 - which predate, by approximately four years, the October 2010 date on which the disputed domain name was created. See, e.g. *National Westminster, Tommy Bahama, Amy Stran, Space Needle, Burberry, Starline Publications, HRB Innovations Inc., MySpace and Treeforms, Inc.*, all cited *supra*. Hence, the Respondent does not fall within paragraph 4(c)(ii) of the Policy.

Lastly, there are no facts of record that appear to qualify the Respondent's actions as satisfying paragraph 4(c)(iii) of the Policy through showing the disputed domain name was used in a manner reflective of either a legitimate noncommercial or fair use.

As such, based on the evidence before the Panel, the Respondent does not fall within any of paragraphs 4(c)(i)-(iii) of the Policy and hence does not possess any rights or legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy.

#### **D. Registered and Used in Bad Faith**

The Panel finds that the Respondent's actions, with respect to the disputed domain name, constitute bad faith registration and use.

The Panel infers from the lack of any Response that, at the time the Respondent registered the name, he was already aware of the Complainant, its reputation and its trademark rights, and yet, in spite of that knowledge, intentionally registered the disputed domain name and subsequently used it to opportunistically exploit that reputation by creating a likelihood of confusion as to source, sponsorship, affiliation or endorsement between his website and the Complainant. As a result of that confusion, the Respondent drove increased traffic to his website and specifically to the third-party links listed thereon from which the Panel infers the Respondent derived a benefit, presumably financial in some form, at the expense of the Complainant.

Based on the facts of record and particularly the lack of any Response, the Panel sees no other reason why the Respondent, who has absolutely no connection with the Respondent, would have chosen to register and use the disputed domain name if he did not intend to use it as he has and obtain whatever benefit he



received from having done so.

Further, the Respondent in registering and retaining the name is preventing the Complainant from registering and using a domain name identical to its company name and, as such, is disrupting the Complainant's business.

Hence, the Panel concludes that the Respondent's registration and use of the name violated paragraphs 4(b)(iii) and 4(b)(iv) of the Policy and hence evidence bad faith under paragraph 4(a)(iii) of the Policy.

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

## **7. Decision**

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by the Complainant. The disputed domain name <fusionpackaging.com> is ordered to be transferred to the Complainant.

**Peter L. Michaelson**

Sole Panelist

Date: August 13, 2013