



**NATIONAL**  
**ARBITRATION**  
**FORUM**

**START-UP TRADEMARK OPPOSITION POLICY**

**DECISION**

Houston Insurance v. Blacker Media  
Claim Number: FA0208000117329

**PARTIES**

Complainant is **Houston Insurance**, Hyde Park, MA (“Complainant”) represented by **David J Houston**. Respondent is **Blacker Media**, Los Angeles, CA (“Respondent”) represented by **Ari Goldberger**, of **ESQwire.com Law Firm**.

**REGISTRAR AND DISPUTED DOMAIN NAME**

The domain name at issue is <**insurance.biz**>, registered with **Signature Domains**.

**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 Start-up Trademark Opposition Policy (“STOP” or “Policy”) available at <http://www.neulevel.biz/ardp/docs/stop.html>, which was adopted by NeuLevel, Inc. (“NeuLevel”), as the Registry Operator, and approved by Internet Corporation for Assigned Names and Numbers (ICANN) on May 11, 2001, and revised by NeuLevel on September 19, 2001; and in accordance with the Rules for STOP as adopted by NeuLevel and also approved by ICANN on May 11, 2001 (“STOP Rules”) and as supplemented by the National Arbitration Forum Start-up Trademark Opposition Policy for .BIZ “STOP” Supplemental Rules then in effect (“STOP Supplemental Rules”).

Complainant has standing to file a STOP Complaint, as it timely filed the required Intellectual Property (IP) Claim Form with NeuLevel. As an IP Claimant, Complainant

timely noted its intent to file a STOP Complaint against Respondent Blacker Media with NeuLevel and with the National Arbitration Forum (the "Forum").

Complainant submitted a Complaint to the Forum electronically on July 31, 2002; the Forum received a hard copy of the Complaint on August 5, 2002.

On August 5, 2002, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of August 26, 2002 by which Respondent could file a Response to the Complaint, was transmitted to Respondent in compliance with paragraph 2(a) of the STOP Rules.

A timely Response was received and determined to be complete on August 26, 2002.

On September 10, 2002, pursuant to STOP Rule 6(b), the Forum appointed Mr. Peter L. Michaelson, Esq., as the single Panelist.

### **RELIEF SOUGHT**

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

### **PARTIES' CONTENTIONS**

A. Complainant

1. Identity

Complainant contends that the disputed domain name <**insurance.biz**> is identical to the term "insurance" in which it claims common law trademark rights.

Specifically, Complainant states that it and its predecessor firms have used the term "insurance" as a common law service mark, in both its name and advertising for approximately 100 years. Complainant, serving as an insurance agent, provides insurance services to its customers.

Curiously, Complainant admits that the term "insurance" is a generic term and hence ineligible for registration as a mark by the US Patent and Trademark Office in either the principal or supplemental registers. Complainant cites to U.S. Department of Commerce, Patent and Trademark Office's Examination Guide NO. 2-99. Section V. Generic Refusals (*see* [www.uspto.gov/web/offices/tac/notices/guide299.htm](http://www.uspto.gov/web/offices/tac/notices/guide299.htm)).

Hence, Complainant concludes that, by virtue of its asserted common law rights and apparently in spite of the generic nature of the term "insurance", it has satisfied the requirements of paragraph 4(a)(i) of the Policy.

2. Rights and legitimate interests

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

Specifically, Complainant simply asserts, without more, that:

- (a) Respondent is neither the owner nor the beneficiary of a trade or service mark that is identical to the domain name subject of the Complaint; or
- (b) before any notice to Respondent of the dispute, Respondent did not use, or had no demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (c) Respondent has not been commonly known by the domain name, (as an individual, business, or other organization).

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

### 3. Bad faith use or registration

Complainant contends that Respondent's conduct evidences bad faith registration of the disputed domain name.

In particular, Complainant simply asserts, without more, that Respondent:

- (a) has registered the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant or to a competitor of Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the domain name; or
- (b) has registered the domain name in order to prevent Complainant from reflecting the mark in a corresponding domain name; or
- (c) has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (d) by using the domain name, has intentionally attempted to attract, for commercial gain, Internet users to Respondent's web site or other on-line location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site or location or of a product or service on Respondent's web site or location.

Thus, Complainant concludes that this Respondent has registered or used the disputed domain name in bad faith contrary to paragraph 4(a)(3) of the Policy.

## B. Respondent

### 1. Identity

The crux of Respondent's position is that Complainant's purported mark in the term "insurance", as Complainant currently uses that term, is generic and hence not susceptible of conferring any enforceable trademark rights, under the Policy, on Complainant.

In that regard, Respondent states that the principle that generic marks provide no enforceable rights is well-established under the Policy, citing to *National Bus. Furniture v. BDG Mktg.*, FA 112588 (Nat. Arb. Forum July 5, 2002), where the Panel stated: "Complainant presents no evidence of any kind for the proposition that it has trademark or service mark rights in the word FURNITURE . . . Indeed, Complainant could not present such evidence. The word, FURNITURE, is a common generic word in the English language."

Furthermore, Respondent points to *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189 (1985), where the United States Supreme Court recognized that "A mark that is a common descriptive name of an article is referred to as a generic mark. A generic term is one that refers to the genus of which a particular product is a species".

Hence, Respondent concludes that in the absence of any trademark rights in the term "insurance", Complainant has failed to satisfy paragraph 4(a)(i) of the Policy and thus has no rights against a domain name that identically includes that term.

## 2. Rights and legitimate interests

Respondent contends that, contrary to Complainant's position, Respondent does have rights and legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy.

Specifically and first, Respondent argues that since Complainant has only parroted the various elements of paragraph 4(c) of the Policy in the Complaint without providing any evidence to support its contentions under that paragraph, Complainant has simply failed to show any basis on which Respondent lacks a right or legitimate interest in the disputed domain name.

Second, Respondent states that it has a legitimate interest because it registered the disputed domain name for use in conjunction with a bona fide web site to provide insurance information and resources, and it launched a preliminary site on June 28, 2002, prior to having received notice of this proceeding.

In particular, Respondent states that under the Policy, a legitimate interest is established under paragraph 4(c)(ii) where, as here, the domain name is registered in connection with "demonstrable preparations to use" it in connection with a "bona fide offering of goods or services." In that regard, Respondent is using the disputed domain name in connection with a web site about insurance, and it has developed a preliminary site. Respondent

contends that this is sufficient to establish its legitimate interest in the name under the Policy. In that regard, Respondent points to, *inter alia*, *Am. Greetings Corp. & Those Characters From Cleveland, Inc. v. Richard Mackessy*, FA 109374 (Nat. Arb. Forum May 22, 2002), where a Respondent had provided handwritten notebook entries and screen shots of its proposed web site and the Panel held that this established Respondent's interest. Relying on precedent established under the UDRP, the Panel explained that "[e]ven perfunctory preparations have been held to suffice to establish a legitimate interest."

Respondent also states that its legitimate interest is not diminished because its web site is not resolvable through the disputed domain name <insurance.biz> -- which it asserts is expected given that the name remains on hold by the registry during the pendency of the STOP process.

Lastly, Respondent asserts that inasmuch as the term "insurance" is a common word in the dictionary, that fact also weighs heavily in favor of Respondent for the reason that Complainant cannot claim exclusive rights to a common word. Respondent states that its search on the Internet search engine Google for the word "insurance" yielded 27.8 million third-party web pages. A finding of multiple third-party results on the Google search engine has been expressly recognized in *Gene Logic, Inc. v. Cho Kyu Bock*, FA103042 (Nat. Arb. Forum Mar. 4, 2002), which is a STOP proceeding, as "a good test of genericness or descriptive terms." Moreover, Respondent states that over 1,800 pending and active third-party trademark registrations exist which incorporate the word "insurance" and which are all unaffiliated with Complainant. There are over 2,000 third-party Internet domain names containing that word. In view of the fact that the term "insurance" is a common word, Respondent concludes by stating that under the Policy, registration of a domain name incorporating merely a common word or term to use for a business, as here, establishes a Respondent's legitimate interest. *Citing to, e.g., Rusconi Editore S.p.A. v. FreeView Publ'g, Inc.*, D2001-0875 (WIPO Oct. 10, 2001); *Gen. Mach. Prods Co. v. Prime Domains*, FA 92531 (Nat. Arb. Forum Jan. 26, 2000); *Car Toys, Inc. v. Informa Unlimited, Inc.*, FA 93682 (Nat. Arb. Forum Mar. 20, 2000) and *First American Funds, Inc. v. Ult.Search, Inc.*, D2000-1840 (WIPO April 20, 2001), Respondent states that several Panels have observed:

"Where the domain name and trademark in question are generic—and in particular where they comprise no more than a single, short, common word—the rights/interests inquiry is more likely to favor the domain name owner. The ICANN UDRP Policy is very narrow in scope; it covers only clear cases of "cybersquatting" and "cyberpiracy," not every dispute that might arise over a domain name. *See, e.g.,* Second Staff Report on Implementation Documents for the Uniform Dispute Resolution UDRP Policy (Oct. 24, 1999)."

Consequently, Respondent closes by stating that it does have rights and legitimate interests to the disputed domain name under paragraph 4(a)(ii) of the Policy.

### 3. Bad faith use or registration

Respondent contends that it has neither used nor registered the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy.

Specifically, with respect to the bad faith factors enumerated in paragraph 4(c) of the Policy, Respondent contends that there is absolutely no evidence of record that the disputed domain name was registered with the intent to sell it to Complainant, to disrupt Complainant's business, to prevent Complainant from registering its trademark in a domain name or to confuse its consumers. Simply stated, Complainant has proffered no evidence of bad faith registration or use at all.

Further, Complainant states that where domain names incorporate mere common terms – as is the case here - it does not constitute bad faith to register them, despite having received IP claims under the Policy. In that regard, Respondent cites to, *inter alia*, *Pivotal Corp. v. Pivotal Servs. Ltd.*, FA 112602 (Nat. Arb. Forum June 24, 2002), in which a panel held that no bad faith occurred where mark was a “single common word” despite “notice of Complainant’s IP rights.”

Thus, Respondent concludes by stating that inasmuch as the Complainant failed to prove any bad faith registration or use on the part of Complainant, Complaint must be denied.

## FINDINGS

### A. Complainant's mark

The term “Insurance” standing alone has not been federally registered by Complainant as a trademark or service mark for use with "insurance services" and given its generic nature, as recognized by Complainant, is not susceptible of registration.

Hence, to the extent this term conveys any exclusivity at all as a service mark, the extent of those rights, if any, must be determined under common law.

### B. Complainant and Respondent’s activities

Complainant's current trade name is "Houston Insurance". Complainant, serving as an insurance agent, provides various lines of insurance services to its customers. Complainant and its predecessor firms have used term "insurance" in both its tradename and in advertising for approximately 100 years.

On July 31, 2002, Complainant timely filed its STOP Complaint (ticket number 1685P58Nc1, challenge priority 6) with the Forum to challenge the registration of the disputed domain name, and to which a Response has been timely filed.

As indicated in a declaration of Mr. Joshua Blacker -- principal of Respondent and an entrepreneur (a copy of this declaration appears in Exhibit 1 to the Response), Respondent registered the disputed domain name for use with a web site about insurance simply because that name incorporates the common word "insurance." Furthermore, as stated in the Blacker declaration, that web site is part of Respondent's "Consumer Network Family" of sites. An initial version of the <insurance.biz> web site is linked from Respondent's web site at <consumernetwork.biz>. This initial web site was published June 28, 2002, prior to Respondent having received any notice of this proceeding. The site will be hosted through the disputed domain name upon successful resolution of the present dispute. A hard-copy print-out of the homepage of the intended, <insurance.biz>, site appears in Exhibit 2 to the Response.

The common word "insurance" is subject to substantial third party use unaffiliated with Complainant. A search on the Internet search engine Google for the word "insurance" yielded 27.8 million third party web pages that are unaffiliated with Complainant (a first page of Google results appears in Exhibit 3 to the Response). Further, there are over 1,800 pending and active third party trademark registrations, which incorporate "insurance" (a hard-copy of the first page of the search reports generated by the web-based and publicly accessible Trademark Electronic Search Service (TESS) available from the United States Patent and Trademark Office appears in Exhibit 4 to the Response). Further, there are over 2,000 third party ".com" domain names alone which contain the common word "insurance." (a copy of a print-out from <namedroppers.com> web site showing the first 25 results of domain names containing the term "insurance" appears in Exhibit 5 to the Response).

Lastly, as stated in the Blacker declaration, Respondent has never offered to sell the disputed domain name to Complainant or any party, and has no intention of doing so. Furthermore, Respondent, as indicated in the Blacker declaration, did not intend to disrupt Complainant's business, confuse users, or prevent Complainant from reflecting its mark in a corresponding domain name.

## **DISCUSSION**

Paragraph 15(a) of the STOP 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 STOP Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be transferred:

- (1) the domain name is identical to a trademark or service mark in which the Complainant has rights; and
- (2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered or is being used in bad faith.

Substantial commonality exists between the ICANN policies governing both the Uniform Domain Name Dispute Resolution Policy (“UDRP”) and STOP proceedings. While numerous STOP decisions having been rendered to date, a far larger corpus of several thousand UDRP decisions currently exists and which provides very useful guidance for many of the same issues that arise under STOP. Hence, the Panel, where appropriate and pursuant to paragraph 15(a) of the STOP Rules, will exercise its discretion and rely on relevant UDRP decisions as applicable precedent here.

Identity/Complainant's rights in its mark

Under the STOP proceedings, a STOP Complaint may only be filed when the domain name in dispute is identical to a trademark or service mark for which a Complainant has registered an Intellectual Property (“IP”) claim form. Therefore, every STOP proceeding necessarily involves a disputed domain name that is identical to a trademark or service mark in which a Complainant asserts rights. The existence of the “.biz” generic top-level domain (“gTLD”) in the disputed domain name is not a factor for purposes of determining that a disputed domain name is not identical to the mark in which Complainant asserts rights.

Numerous 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.*, FA 95560 (Nat. Arb. Forum, Nov. 2, 2000), 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., *The Paris Pages v. Wooho T&C Ltd. d/b/a/ RGNAMES.COM and Youngmi Park*, FA 110763 (Nat. Arb. Forum July 10, 2002); *Frampton v. Frampton Enters., Inc.*, D2002-0141 (WIPO Apr. 17, 2002); *Am. Online, Inc. v. Deep d/b/a Buddy USA Inc.*, FA 96795 (Nat. Arb. Forum, May 14, 2001); *Missing Children Minnesota v. Run Yell Tell, Ltd.*, FA 95825 (Nat. Arb. Forum, Nov. 20, 2000); *Mike Warner 2001 v. Larson*, FA 95746 (Nat. Arb. Forum Nov. 5, 2000); *CMG Worldwide Inc. v. Page*, FA 95641 (Nat. Arb. Forum, Nov. 8, 2000); *Home Props. v. SMSOnline*, FA 95639 (Nat. Arb. Forum Nov. 2, 2000); and *Bridal Rings Co. v. Yemenian*, FA 95608 (Nat. Arb. Forum Oct. 26, 2000). Furthermore, the Panel in *United States Postal Service v. Consumer Info. Org.*, FA 95757 (Nat. Arb. Forum Nov. 27, 2000), 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*, AF-0536 (eResolution, Dec. 11, 2000), the Panel recognized: “It is well established that a complainant need not own a registered trademark to invoke the policy. It is sufficient that a complainant have rights in an unregistered trademark.” In that regard, see also *Sand Hill Wholesale of Ohio v. Hatton*, FA 95970 (Nat. Arb. Forum Dec. 18, 2000); see also *David Taylor Cadillac/Buick Co. v. Spider Works, Ltd.*, FA 95832

(Nat. Arb. Forum Nov. 30, 2000); *see similarly Am. Home Prods. Corp. v. Healthy Futures*, D2000-0454 (WIPO Aug. 3, 2000); *Cho Yong Pil v. ImageLand, Inc.*, D2000-0229 (WIPO May 10, 2000); *SeekAm. Networks, Inc. v. Masood*, D2000-0131 (WIPO Apr. 13, 2000); and *Bennett Coleman & Co. v. Lalwani*; and *Bennett Coleman & Co. v. Long Distance Tel. Co.*, D2000-0014 and 2000-0015 (WIPO Mar. 11, 2000).

However, not all unregistered terms qualify for common law trademark protection.

Though common law marks are sufficient to trigger the Policy, nevertheless for an unregistered term to acquire common law trademark status, that term, as used in commerce by its owner, must have acquired, through its use, an appropriate level of distinctiveness such that the term has acquired sufficient secondary meaning in the mind of the relevant consuming public. Generic terms, when used in a manner consistent with their common meaning, are simply incapable of ever acquiring distinctiveness or there through appropriate secondary meaning. *See, e.g., Nat. Bus. Furniture v. BDG Mktg.*, FA 112588 (Nat. Arb. Forum July 5, 2002); *Discount Tire Co. v. Jeff Tezer Enters.*, FA 112506 (Nat. Arb. Forum July 1, 2002); *Eugene E. Pettinelli v. Postel Servs., Inc.*, FA 112600 (Nat. Arb. Forum June 25, 2002); *The Boots Co. Plc v. Challenge Servs. (CSI)*, DBIZ2002-00096 (WIPO June 18, 2002); and *fabric.com v. LinZan Song*, FA 109701 (Nat. Arb. Forum June 1, 2002).

In that regard, § 2.02 of Gilson, Trademark Protection and Practice (© 1996, Matthew Bender) states:

"A generic name ... is the name of a particular genus or class of things or member of such a class. It is denominative in character, is ordinarily a noun and it answers the questions 'What is it?' or 'What do you call it?'. Thus, 'piano' is the generic name for one member of a class of keyboard instruments. ... A generic name may be a dictionary term and an established part of the English language. Such names, like 'clarinet' and 'trumpet', are free for the public to use. No one can appropriate such a name as his trademark. For one reason, no one could sustain the enormous burden of showing that the public associates the name exclusively with him. A common descriptive or generic name is thus virtually impossible to remove from the public domain, and no amount of advertising or other evidence of secondary meaning is likely to succeed."

"Insurance" is clearly such a generic term. Its dictionary definition, as given on page 594 of Webster's New Collegiate Dictionary (© 1980, G & C Merriam Company) and of which judicial notice is taken, includes: "the action or process of insuring, the state of being insured, the business of insuring persons or property, coverage by contract whereby one party undertakes to indemnify or guarantee another against loss by a specified contingency or peril".

Here, there is absolutely no question that Complainant is using the term "insurance" in a manner entirely consistent with its dictionary meaning, and hence in its generic sense, as

a name of a class of services which Complainant currently offers (and has done so for the past 100 years): insuring its customers against peril. In fact, Complainant has totally failed to adduce any proof whatsoever that it uses this term in any other manner.

This Panel finds that it is immaterial whether Complainant has used the term in that manner for one month, one year, ten years or, as here, approximately 100 years. A generic term, when used in its generic sense -- as Complainant does, will never attain common law trademark status regardless of the longevity of its prior use. That term is simply incapable and will never be capable of ever distinguishing the services (in terms of, e.g., their source, origin or quality) which Complainant offers under that term from the same or similar services offered by another. No amount of advertising or secondary meaning (though Complainant has shown absolutely none of either here) will suffice to overcome the generic nature of the term, as understood by the public.

To the extent that Complainant owns common law trademark rights, those rights likely reside in its complete tradename "Houston Insurance" but clearly not in the term "insurance" standing alone. However, the Complainant did not challenge the domain name <houstoninsurance.biz> based on its common law mark HOUSTON INSURANCE. Rather, it challenged the domain name <**insurance.biz**> based on common law rights it asserts it has in the term "insurance". However, to successfully do so, as threshold matter, it must have trademark rights in the term "insurance", rights which here it clearly does not and can never obtain.

Since Complainant has no such rights in the term "insurance" and is incapable of ever acquiring any such rights, based on its current usage of that term, Complainant has failed to satisfy paragraph 4(a)(i) of the Policy. As such, Complainant has failed to meet its burden under the Policy; hence its request for relief must be denied.

#### Respondent's Rights or Legitimate Interests

The Panel's inquiry now turns under the Policy to assessing whether Respondent has rights and legitimate interests in the disputed domain name. If Respondent has such rights and legitimate interests, then, under paragraph 4(a)(ii) of the Policy, the Panel must dismiss the Complaint and permit no subsequent challenges, as against Respondent, to the disputed domain name. Alternatively, if Respondent does not possess any rights or legitimate interests, the Panel then also dismisses the Complaint but permits subsequent challenges to the name.

Simply stated, Respondent has rights and legitimate interests to the disputed domain name under paragraph 4(c)(ii) of the Policy. This paragraph states that rights and legitimate interests inhere in a Respondent if before any notice to Respondent of the dispute, that Respondent has made use of, or made "demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services".

It is eminently clear to this Panel that Respondent's undisputed activities here, which are fully described above, in building its site, with which it intended to use the disputed domain name, precede the date on which it could have received notice of this dispute.

Furthermore, having a working site resolvable through the contested domain name is not necessary -- and in fact was frustrated not through any actions of Respondent but rather by the registry through its actions in placing that name has been on a "hold" status since the commencement of the STOP process and maintaining that status until the entire STOP process is concluded. This Panel finds that Respondent's intentions and its subsequent actions, which are manifested through its actual construction of its web site, even though that site is currently accessible through a different domain name, are more than sufficient to constitute "demonstrable preparation" under paragraph 4(c)(ii) of the Policy.

Therefore, Respondent has satisfied paragraph 4(c)(ii) of the Policy and thus has rights and legitimate interests in the disputed domain name. Accordingly, no further STOP challenges will be permitted to this name and as against Respondent.

#### Registration or Use in Bad Faith

In view of the above findings, there is no need for the Panel to address the issue of whether Respondent either registered or used the disputed domain name in bad faith.

#### Reverse Domain Name Hijacking

Unquestionably, Complainant was misguided and mistaken in bringing its complaint. That much is clear from Complainant's total failure of proof and Complainant's own admission that the term "insurance" in which it purports to claim trademark rights is generic.

Nevertheless, under paragraph 1 of the Stop Rules, "reverse domain name hijacking" is defined as "using the Policy in *bad faith* to attempt to deprive a registered domain name holder of a domain name" [emphasis added].

Making a mistake, in and of itself without more, is simply not enough to reflect bad faith. More is needed. In this Panel's view, to constitute "bad faith", a Complainant's conduct must be sufficiently egregious towards a Respondent. What constitutes such conduct in any one instance is ill-defined at best and thus must be left, under a factual assessment, to a case-by-case determination. Nevertheless, a mistaken view on the part of a Complainant, without more, simply does not suffice.

For example, bad faith likely exists where a Complainant, in knowing disregard of a Respondent's unassailable right or legitimate interest in a contested domain name, or of a

clear lack of bad faith use and registration of that name, or even of a sufficient likelihood that Respondent possesses a legitimate interest in the name, nevertheless proceeds to file its Complaint or generally speaking, as more succinctly stated: deliberately abuses the process. In that regard, *see, e.g.: Mohawk Brands, Inc. v. iSMER*, DBIZ2002-00242 (WIPO July 10, 2002) *citing to Sydney Opera House Trust v. Tilynx Pty. Ltd.*, D2000-1224 (WIPO Oct. 31, 2000); *see also Goldline Int'l, Inc. v. Gold Line*, D2000-1151 (WIPO Jan. 2, 2001) and *SmartDesign LLC v. Hughes*, D2000-0993 (WIPO Oct. 18, 2000).

Given the limited record before it, the Panel finds that Complainant's actions here simply do not rise to the level of being so egregious as to evince bad faith necessary to support a finding of reverse domain name hijacking.

#### **DECISION**

In accordance with paragraphs 10 of the Policy and 15 of the STOP Rules:

- (a) the relief sought by Complainant is hereby **DENIED**; and
- (b) inasmuch as Complainant, contrary to its assertions, does not have any rights in the INSURANCE mark, the Complaint is hereby **DISMISSED**.

Further, inasmuch as the Panel finds that Respondent does have rights and legitimate interests in the disputed domain name, the Panel orders that subsequent STOP challenges to this domain name, as against this Respondent, will **NOT** be permitted.

Peter L. Michaelson, Esq., Panelist  
Dated: September 20, 2002