



DECISION

Energizer Brands, LLC v. PARADISE PRODUCTS / PARADISE PRODUCTS INC
Claim Number: FA1512001652913

PARTIES

Complainant is **Energizer Brands, LLC** (“Complainant”), represented by **John Gary Maynard**, Virginia, USA. Respondent is **Paradise Products / Paradise Products Inc / Leonard G. Horowitz** (“Respondent”).

REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are:

<autoenergizers.com>;

<autoenergiser.com>;

<autoenergisers.com>;

<528autoenergiser.com> and;

<528autoenergisers.com>

(the “Domain Names”), registered with **eNom, Inc.**

PANEL

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

Clive Elliott QC, as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the FORUM electronically on December 17, 2015; the FORUM received payment on December 17, 2015.

On December 18, 2015, eNom, Inc. confirmed by e-mail to the FORUM that the <autoenergizers.com>, <autoenergiser.com>, <autoenergisers.com>, <528autoenergiser.com>, and <528autoenergisers.com> Domain Names are registered with eNom, Inc. and that Respondent is the current registrant of the Names. eNom, Inc. has verified that Respondent is bound by the eNom, Inc. registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy”).

On December 21, 2015, the FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of January 11, 2016 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to postmaster@autoenergizers.com, postmaster@autoenergiser.com, postmaster@autoenergisers.com, postmaster@528autoenergiser.com, and postmaster@528autoenergisers.com. Also on December 21, 2015, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

A timely Response was received and determined to be complete on January 6, 2016.

Complainant submitted a timely Additional Submission, which was received by the FORUM and determined to be complete on January 11, 2016.

Respondent submitted a timely Additional Submission, which was received by the FORUM and determined to be complete on January 12, 2016.

On January 14, 2016, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the FORUM appointed Clive Elliott QC as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the FORUM has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2.

RELIEF SOUGHT

Complainant requests that the Domain Names be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant

Complainant states that it, either directly or via one of its wholly-owned subsidiaries,

owns over 1,900 registrations or pending applications for the ENERGIZER mark worldwide, including the United States. It provides electrical and scientific apparatus, environmental control apparatus, lubricants and fuels, machinery, hand tools, jewelry, leather goods, housewares and glass, clothing, and toys and sporting goods under these registrations.

Complainant states that it also owns registrations for banking and financial services for the ENERGIZER mark in more than 150 countries, including Canada, Mexico, Germany, Austria, India, Colombia and Chile.

Complainant contends that it is one of the world's leading battery manufacturers, and it markets and distributes some of the most recognizable and valuable brands in its industry, including ENERGIZER®, which has been in use for sixty years. It states that it has consistently used the ENERGIZER mark to promote its goods and services since its inception and therefore has legitimate rights to the ENERGIZER mark.

Complainant asserts that the Domain Names are identical or confusingly similar to its ENERGIZER mark, because:

1. <autoenergizers.com> contains Complainant's mark in its entirety with the addition of an "s" at the end and the generic term "auto"; and
2. <autoenergiser.com>, <autoenergisers.com>, <528autoenergiser.com>, and <528autoenergisers.com> all contain simple misspellings or typographical errors that an Internet user might make when typing in Complainant's mark, plus add the generic term "528" (which is a part number for a specialty battery) and the term "auto".

Complainant contends that from a search of WHOIS, Respondent is not commonly known by any of the Domain Names, nor has Respondent ever been a licensee of Complainant, or authorized to be able to use Complainant's ENERGIZER trademark.

Complainant argues that Respondent's lack of rights or legitimate interests in the domain names <528autoenergiser.com>, and <528autoenergisers.com> is further evidenced by Respondent's failure to use the domain names in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. It is said the domain names redirect Internet users seeking Complainant's website to

Respondent's actual website, <528orgonegenerators.com>.

Complainant further argues that Respondent's lack of rights or legitimate interests in the domain names, <autoenergizer.com>, <autoenergiser.com>, <autoenergisers.com>, is further evidenced by Respondent's failure to use the domain names in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. It is said that Respondent's domain names each houses a website displaying a search engine and "related links."

Complainant alleges that Respondent's websites provide links to Complainant's own business as well as some of Complainant's competitors. One reaches these pages by typing in the name of one of Complainant's competitors in the search engine, or by clicking on any of the "related links" depicted on the page. It is contended that such actions are sufficient to establish that Respondent's actions are not in connection with a *bona fide* offering of goods or services.

Respondent's domain name, <autoenergizers.com>, originally redirected internet users to Respondent's actual website, <528revolution.com>; however, following correspondence with Respondent, the re-direction has been removed and Respondent now appears to be passively holding the domain to prevent Complainant from registering the domain name.

Additionally, it is contended that Respondent's lack of rights and legitimate interests in the <autoenergizers.com> domain is further evidenced by Respondent's offer to sell the domain name to Complainant. On October 27, 2015, a representative of Complainant sent a cease and desist letter to Len Horowitz, (whose name is prominently displayed throughout the <528revolution.com> domain), requesting that he cease displaying the ENERGIZER trademark and transfer the <autoenergizers.com> Domain to Complainant.

Respondent responded that same day stating that effectively Complainant could and should purchase the domain name. When Complainant did not agree to buy the domain name, Respondent went out and registered the four additional domain names that are also the subject of this dispute. It is argued that Respondent's bad faith registration and use of the Domain Names is evident from Respondent's actions.

Complainant contends that Respondent's willingness to sell the domain name to Complainant establishes Respondent's lack of rights and legitimate interests in the

domain name.

It is submitted that Respondent is disrupting Complainant's business and intentionally attracts Internet users to Respondent's website by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website.

Complainant further contends that Respondent is using domain names, <autoenergizer.com>, <autoenergiser.com>, and <autoenergisers.com> to divert Internet customers seeking Complainant's website to directory websites and commercial search engines that display third-party links to Complainant's competitors.

B. Respondent

Respondent states that Dr Leonard Horowitz, who can for all intents and purposes be treated as Respondent, is domiciled in California and is an investigative journalist, professional whistleblower, consumer protection activist, and businessman whose commercial interests include a global peace initiative featuring "528" frequency music and therapeutic resonance devices including the product at issue "528 AUTO ENERGIZERS."

Respondent states the he is also the holder of two related trademarks featuring the brand "LOVE 528", as well as being the co-developer of the "528LOVERevolution".

Respondent asserts he is the co-creator of multiple non-profit, ecclesiastical / spiritual, humanitarian services including <528Records.com> and the 528 Radio Network. In addition, he researches, formulates, develops, manufactures, and brands a line of natural health and nutritional products, including "528 SuperFood."

Respondent states that since November 2011 he has sold a line of large and small pyramid-shaped inventions he advertises as "528 Orgone Generators" through <528OrgoneGenerators.com>, and <528Revolution.com>. One such device allegedly "automatically" generates an electro-magnetic field of energy through a 528nm/Hz cured resonating natural crystal polymer matri is designed to attach to dashboards and back-panels in motor vehicles.

Respondent claims he holds two trademarks pursuant to “LOVE 528” energy products clearly visible on “528 AUTO ENERGIZERS” labels and advertising, and has rights and legitimate interests in the Domain Names as the inventor, manufacturer, and seller of “528 AUTO ENERGIZERS” sold through, inter alia, the <autoenergizers.com> Domain.

Respondent states he has been using the product name “528 AUTO ENERGIZERS” in commerce since 2013 and an alternate name “528 Orgone Generators” since 2011. Such usage is said to be based on a 1998 copyrighted text pursuant to “528” energy technology. Respondent says he secured <autoenergizers.com> in September 2015 to expand sales of “528 AUTO ENERGIZERS” in the automotive industry. All of the above is said to be prior to Complainant’s cease and desist letter on October 27, 2015.

Respondent acknowledges that he has not been commonly known by the Domain Names per se, but claims he is commonly known to be associated with “528” products and services that all involve the electromagnetic energy frequencies of “528”, all of which are unrelated to batteries or Complainant’s properties.

Respondent asserts that the Domain Names have been properly and legally registered and used in commerce and denies that he is cyber-squatting, but rather claims that Complainant is reverse domain name-hijacking and has filed this Complaint in bad faith.

Respondent argues that he registered <autoenergizers.com> to sell his product “528 AUTO ENERGIZERS;” and more recently registered the other Domain Names to secure his interests and at least recover his documented out-of-pocket costs/investments, directly related to the Domain Names.

Respondent claims that Complainant lost its exclusive ENERGIZER trademark rights through “genericization” and/or “partial generitization,” especially in the pyramid energy device industry. Respondent also contends that ENERGIZER was a relatively weak trademark derived from the commonly used word “energize”, found in dictionaries as a verb, attached to the noun, “energizer.

Respondent notes that Complainant claimed in its pre filing correspondence of November 24, 2015 that the “Energizer 528” battery was named in 1997 “to identify the size of a particular battery . . .” and that in the Complaint it alleged it was a “*part number*”. Respondent points out that the “Energizer 528” Specifications Sheet, that

Respondent obtained online, does not identify the “part number” nor any “528” measurement as Complainant alleges.

Respondent also argues that Complainant has failed to present evidence of its use of “Energizer 528” predating Respondent’s 1998 “528” copyrighted materials.

C. Complainant’s Additional Submissions

Complainant states that it instituted this proceeding and made the requisite showing in the Complaint, but whilst the Complaint focused on the required elements, Respondent’s response raises a range of irrelevant issues.

Complainant reiterates that ENERGIZER is a famous and well-known trademark undoubtedly owned by Complainant. Complainant says Respondent submits irrelevant case law, arguments, and exhibits in an attempt to distract from the undisputed fact that Energizer owns the ENERGIZER trademark.

Moreover, it is pointed out that the ENERGIZER mark is not and will not become generic. For a mark to be generic, it must be synonymous with a general class of product. Complainant contends that because Respondent does not and cannot claim that this result has occurred (or ever could occur), the ENERGIZER marks are valid, enforceable and fully subsisting.

The Complaint showed that Respondent’s Domains are confusingly similar to the ENERGIZER mark. Respondent’s Domains include the entire ENERGIZER mark or phonetic equivalent, and the weight of the authority supports the position that adding generic terms such as “auto,” which relate to Complainant’s business, to Energizer’s mark, does not sufficiently distinguish a disputed domain name and a mark.

It is worth noting that not only did Respondent fail to present authority against the principle that addition of generic words to Complainant’s mark fails to sufficiently distinguish a disputed domain name, Respondent actually alleged that “auto” and “528” are both generic. Similarly, Respondent failed to address this confusion caused by typographical errors.

Complainant sufficiently established Respondent’s lack of legitimate right in the Complaint by showing that Respondent is not commonly known by the Domain

Names and Respondent admits that it is not known as the Domain Names.

Complainant argues that registering four additional Domain Names in the middle of an ongoing domain name dispute is nothing more than an attempt to coerce payment by Complainant, or increase the potential sales price and that this conduct is the very definition of bad faith.

Respondent apparently is attempting to sell the Domains to Energizer for approximately \$80,000.

Complainant is not a competitor of Respondent, except in the sense that Respondent is competing with Complainant to siphon off Complainant's consumers through typo-squatting, thereby trading on the goodwill established in the ENERGIZER mark. Complainant respectfully requests that the Panel not be distracted from the actual issue and the relevant legal standard.

D. Respondent's Additional Submissions

Respondent counters these arguments by saying Complainant's central argument of "consumer confusion" is reckless considering the genericization / abandonment of the ENERGIZER mark in the "pyramid energizer industry" and that none of Complainant's alleged 1900 ENERGIZER trademarks address the "pyramid energizer industry."

Complainant's reply diverts from addressing Complainant's terminal defect - its word mark "ENERGIZER" alone is contained in nearly every dictionary as the noun reflecting the verb to "energize." "Energizer" is used widely in common English language, and in the products industry in which ENERGIZER has *failed to enforce its mark*. That is, in the "Pyramid Energizer Industry" that widely advertises an array of energy devices called "energizers."

Respondent says that exhibits in the Response included ENERGIZER's "Spec Sheet" on the "Energizer 528" battery show that that designation is neither a "part number for a specialty battery;" nor a "measurement" of the battery size as previously represented in pre-Complaint correspondence and certainly not an "automobile" battery.

Respondent suggests that the real issue is reverse domain name hijacking. Respondent submits that Complainant did not controvert the assertion that ENERGIZER launched a consumer health products division that competes directly with Respondent and that Complainant's appetite to expand its markets is damaging Respondent.

FINDINGS

While Complainant's arguments have some merit, and Respondent's position is in certain respects questionable, for the reasons set out below on balance the complaint ultimately fails.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

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

Identical or Confusingly Similar: *Policy ¶ 4(a)(i).*

Complainant uses the ENERGIZER mark in connection with its electrical and scientific apparatus offerings. Complainant holds multiple trademark registrations with the likes of the USPTO (*e.g.*, Reg. No. 1,177,083, registered November 10, 1981). *See* Compl., at Attached Ex. A, p. 562. Complainant contends that its USPTO registration demonstrates its rights in its mark. Trademark registrations with the USPTO suffice to demonstrate Complainant's rights in its mark for the purposes of Policy ¶ 4(a)(i). *See Metro. Life Ins. Co. v. Bonds*, FA 873143 (Nat. Arb. Forum Feb. 16, 2007) (finding that a USPTO trademark

registration adequately demonstrates a complainant's rights in a mark under Policy ¶ 4(a)(i)). Accordingly, the Panel finds that Complainant has demonstrated its rights in its mark pursuant to Policy ¶ 4(a)(i).

Complainant argues that Respondent's <autoenergizers.com>, <autoenergiser.com>, <autoenergisers.com>, <528autoenergiser.com>, and <528autoenergisers.com> domain names are confusingly similar to the ENERGIZER mark as they all add the generic term "auto" and the gTLD ".com" to the fully incorporated ENERGIZER mark. Other differences include misspelling the mark by replacing the "z" with an "s," along with adding the number sequence "528" (an alleged part number for one of Complainant's products), and pluralizing the mark or the misspelled version of the mark.

Previous panels have agreed that the addition of generic terms and/or the gTLD ".com" are insufficient to differentiate a complainant's mark from a respondent's disputed domain name. *See Yahoo! Inc. v. Casino Yahoo, Inc.*, D2000-0660 (WIPO Aug. 24, 2000) (finding the domain name <casinoyahoo.com> is confusingly similar to the complainant's mark); *see also Countrywide Fin. Corp. v. Johnson & Sons Sys.*, FA 1073019 (Nat. Arb. Forum Oct. 24, 2007) (holding that the addition of the generic top-level domain ("gTLD") ".com" was irrelevant). Previous panels have also agreed that the misspelling of a complainant's mark and/or the addition of numbers do not serve to adequately distinguish a complainant's mark from a respondent's disputed domain name. *See Belkin Components v. Gallant*, FA 97075 (Nat. Arb. Forum May 29, 2001) (finding the <belken.com> domain name confusingly similar to the complainant's BELKIN mark because the name merely replaced the letter "i" in the complainant's mark with the letter "e"); *see also Am. Online, Inc. v. Fu*, D2000-1374 (WIPO Dec. 11, 2000) (finding that adding the suffixes "502" and "520" to the ICQ trademark does little to reduce the potential for confusion).

Finally, previous panels have found confusing similarity under Policy ¶ 4(a)(i) where a respondent added the letter "s" to a complainant's mark. *See T.R. World Gym-IP, LLC v. D'Addio*, FA 956501 (Nat. Arb. Forum May 22, 2007) (finding that the addition of the letter "s" to a registered trademark in a contested domain name is not enough to avoid a finding of confusing similarity under Policy ¶ 4(a)(i)).

The additions to the ENERGIZER mark in this case are more than trivial. Nevertheless, the standard for confusing similarity is not that high. Accordingly, the Panel finds that the Domain Names are confusingly similar to Complainant's mark under Policy ¶ 4(a)(i).

Rights and Legitimate Interests: *Policy ¶ 4(a)(ii).*

It is well established that Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the Domain Names under Policy ¶ 4(a)(ii), and then the burden shifts to Respondent to show it does have rights or legitimate interests. See *Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) (holding that the complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under UDRP ¶ 4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name).

Respondent argues that it has rights and legitimate interests in the Domain Names, asserting that it has been using the product name "528 AUTO ENERGIZERS" in commerce since 2013. See Resp., at Attached Ex. 3. Additionally, Respondent contends that it is commonly known by the "528" products and services. Finally, Respondent alleges that it conducts its legitimate business through its websites, thereby constituting a *bona fide* offering of goods and services per Policy ¶ 4(c)(i).

There appears to be some basis for the assertion by Respondent that he uses the terms 528 and "auto" to refer to 528 Orgone Generators and has used the product name "528 AUTO ENERGIZERS" in commerce since 2013 for various devices that automatically generates an electro-magnetic field of energy. It also appears that certain of these devices are adapted to attach to dashboards and back-panels in motor vehicles. Complainant does not appear to dispute this.

There is also some basis to Respondent's argument that the terms 528, auto and energizer are all relatively commonplace English words or terms. Further, Respondent is entitled to rely on the assertion that Complainant's word mark "ENERGIZER" alone is contained in many dictionaries as the noun reflecting the verb to "energize" and that "Energizer" is used in common English language. The Panel is of the view that notwithstanding Complainant's long-standing rights in relation to ENERGIZER in relation to batteries, it has not shown it has like rights and entitlement in relation to the use of the word in the so-called "Pyramid Energizer Industry" that advertises energy devices called "energizers."

While Respondent does not refute the presence of competing hyperlinks on the resolving webpages of the Domain Names he claims that he does not sell batteries or promote Complainant's products. Previous panels have agreed, in some cases, that the presence of competing hyperlinks on the resolving webpage of a respondent's disputed domain name constitutes a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i). See *INVESTools Inc v. KingWeb Inc.*, FA 598845 (Nat. Arb. Forum Jan. 9, 2006) (holding that

the respondent's use of the disputed domain name to operate a web directory with links to investment-related websites in competition with the complainant constituted a *bona fide* offering of goods or services within the meaning of Policy ¶ 4(c)(i).

Previous panels have also concluded that the use of a disputed domain name to host competing hyperlinks is a *bona fide* offering of goods or services where the terms of the disputed domain name were common and did not refer to a complainant or its products. *See Accetta v. Domain Admin*, FA 826565 (Nat. Arb. Forum Jan. 2, 2007) (finding the respondent's use of the disputed domain name to operate a pay-per-click search engine was a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i) because the terms of the disputed domain name were of common usage and did not refer to the complainant or its products).

In the present case, the Panel finds that on balance Complainant has failed to meet its burden of proof under Policy ¶ 4(c)(i) and that, therefore, Respondent's use of the Domain Names constitutes a *bona fide* offering of goods or services per Policy ¶ 4(c)(i).

Registration and Use in Bad Faith: Policy ¶ 4(a)(iii).

Complainant argues, with some justification, that Respondent has offered to sell the <autoenergizers.com> domain name to Complainant after receiving a cease and desist letter (Exhibit D), evincing Policy ¶ 4(b)(i) bad faith. Previous panels have found evidence of bad faith registration and use under Policy ¶ 4(b)(i) where a respondent attempted to sell its disputed domain name. *See Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 180704 (Nat. Arb. Forum Sept. 30, 2003) ("Respondent's general offer of the disputed domain name registration for sale establishes that the domain name was registered in bad faith under Policy ¶ 4(b)(i)."). This would thus entitle the Panel to find that Respondent has engaged in bad faith registration and use per Policy ¶ 4(b)(i).

It is common ground that when Complainant declined to buy the <autoenergizers.com> domain name, Respondent went out and registered the four additional domain names <autoenergiser.com>; <autoenergisers.com>; <528autoenergiser.com> and <528autoenergisers.com>. Complainant contends first that Respondent's willingness to sell the <autoenergizers.com> domain name to Complainant establishes Respondent's lack of rights and legitimate interests in the domain name. Secondly, it argues that registering four additional domain names in the middle of an ongoing domain

name dispute is nothing more than an attempt to coerce payment by Complainant, or increase the potential sales price and that this conduct is the very definition of bad faith. While the purchase price is not entirely clear, what is apparent is that was significant, and well in excess of the out-of-pocket registration expenses of Respondent.

The Panel regards the above conduct as material to the question of whether Respondent's actions could be characterised as in bad faith. The call is a very close one. In particular, the registration of the four additional domain names while the parties were in dispute is questionable and was arguably done as a means to retaliate against Complainant and up the asking price. Arguably this crossed the line into bad faith conduct. Nevertheless, after careful consideration and on balance, the Panel has reached the view that while Respondent might have acted unwisely in this regard, this dispute has to be assessed on its merits, rather than on the basis of which party has acted more ethically and honourably.

Further, Respondent is querulous and critical of Complainant and its legal representatives, its motives, evidence and arguments. These complaints do him no credit. Again, however, the Panel has endeavoured to put the rhetoric and point-scoring to one side and deal with this matter on its merits. Having done so, the Panel considers that Respondent should prevail on this issue, albeit by a slim margin.

Respondent contends that it has rights and legitimate interests in its domains and, therefore, it is using the domains in good faith under Policy ¶ 4(b). Past panels have agreed with Respondent's assertion that where a respondent has at least some rights and legitimate interests in a domain name, that this may point towards good faith registration and use. *See Lee Procurement Solutions Co. v. getLocalNews.com, Inc.*, FA 366270 (Nat. Arb. Forum Jan. 7, 2005) ("Respondent's rights and legitimate interests in the domain name pursuant to Policy ¶ 4(a)(ii), just manage to tip the balance towards a finding that there was no bad faith registration or use under Policy ¶ 4(a)(iii).").

Accordingly, in terms of final analysis the Panel concludes that Respondent has at least some rights and legitimate interests in the Domain Names and that Complainant has not established that Respondent registered and used the Domain Names in bad faith. To an extent that finding follows from the earlier finding that Respondent has at least some legitimate interest in the product name "528 AUTO ENERGIZERS" and "528" products and services and that these terms to some extent differentiate the parties and their goods, services and interests. Ultimately, Complainant does not meet its onus under Policy ¶ 4(a)(iii).

Reverse Domain Name Hijacking

If the Panel concludes that Complainant has satisfied Policy ¶ 4(a)(i), or any or all of the elements of Policy ¶ 4(a), it is entitled to find that Complainant has not engaged in reverse domain name hijacking. *See World Wrestling Fed'n Entm't, Inc. v. Ringside Collectibles*, D2000-1306 (WIPO Jan. 24, 2001) (“Because Complainant has satisfied [all of] the elements of the Policy, Respondent’s allegation of reverse domain name hijacking must fail”); *see also Gallup, Inc. v. PC+s.p.r.l.*, FA 190461 (Nat. Arb. Forum Dec. 2, 2003) (finding no reverse domain name hijacking where complainant prevailed on the “identical/confusingly similar” prong of the Policy).

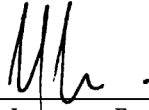
Even if the Panel should find that Complainant has failed to satisfy its burden under the Policy, this does not necessarily render a finding of reverse domain name hijacking on behalf of Complainant in bringing the instant claim. *See ECG European City Guide v. Woodell*, FA 183897 (Nat. Arb. Forum Oct. 14, 2003) (“Although the Panel has found that Complainant failed to satisfy its burden under the Policy, the Panel cannot conclude on that basis alone, that Complainant acted in bad faith.”); *see also Church in Houston v. Moran*, D2001-0683 (WIPO Aug. 2, 2001) (noting that a finding of reverse domain name hijacking requires bad faith on the complainant’s part, which was not proven because the complainant did not know and should not have known that one of the three elements in Policy ¶ 4(a) was absent).

In the present case the Panel is of the view that Complainant was entitled to bring this Complaint. Even though unsuccessful, Complainant satisfied the first ground under Policy ¶ 4(a)(i). There is no merit whatsoever in the strongly made allegations that Complainant has acted without basis or improperly in some way. For these reasons the allegations of reverse domain name hijacking are without basis and must fail.

DECISION

Having not established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **DENIED**.

Accordingly, it is Ordered that the <autoenergizers.com>, <autoenergiser.com>, <autoenergisers.com>, <528autoenergiser.com>, and <528autoenergisers.com> domain names **REMAIN WITH** Respondent.



CLIVE LINCOLN ELLIOTT, ESQ.

Clive Elliott QC, Panelist

Dated: February 2, 2016