



NATIONAL ARBITRATION FORUM

DECISION

Electronic Arts Inc. v. Abstract Holdings International LTD / Sherene Blackett

Claim Number: FA1111001415905

PARTIES

Complainant is **Electronic Arts Inc.** (“Complainant”), represented by **Eugene M. Pak of Wendel, Rosen, Black & Dean, LLP**, California, USA. Respondent is **Abstract Holdings International LTD / Sherene Blackett** (“Respondent”), represented by **Zak Muscovitch of The Muscovitch Law Firm**, Canada.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<ssx.com>**, registered with **Moniker Online Services, Inc.**

PANEL

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

Ms. Diane Thilly Cabell, Sir Ian Barker, and R. Glen Ayers served as Panelists.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on November 16, 2011; the National Arbitration Forum received payment on November 16, 2011.

On November 17, 2011, Moniker Online Services, Inc. confirmed by e-mail to the National Arbitration Forum that the <ssx.com> domain name is registered with Moniker Online Services, Inc. and that Respondent is the current registrant of the name. Moniker Online Services, Inc. has verified that Respondent is bound by the Moniker Online Services, 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 November 18, 2011, the Forum served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of December 8, 2011 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@ssx.com. Also on November 18, 2011, the Written Notice of the Complaint, notifying Respondent of the email 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 December 9, 2011.

A timely Additional Submission was submitted by Complainant and determined to be compliant on December 13, 2011.

Respondent submitted an Additional Submission, which was determined to be compliant on December 19, 2011.

On December 19, 2011, pursuant to Complainant's request to have the dispute decided by a three-member Panel, the National Arbitration Forum appointed Ms. Diane Thilly Cabell, Sir Ian Barker, and R. Glen Ayers as Panelists.

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. Complainant

Complainant, Electronic Arts, Inc. ("EA"), asserts that it holds a registered Trademark, "SSX," which was registered with the USPTO on October 4, 2005, and had previously been registered in other countries including France and Germany and has been subsequently registered as a European Community Trademark. The mark has been in use since 2000; it is used in connection with a computer game known as SSX.

EA asserts that the mark is well known and extensively used. It asserts that the Respondent's domain name, <ssx.com>, is obviously identical to the registered mark.

Complainant also states that Respondent has no rights or legitimate interests in the domain name. Respondent apparently acquired the domain name eleven years after first use and six years after the USPTO registration. EA states that Respondent is trading off of the good will generated by EA's mark; that Respondent is not known by the name "SSX;" and that Respondent hold no license from EA.

As to bad faith, EA asserts registration and use in "bad faith." EA has shown that Respondent's home page offers this name for sale. EA also asserts that Respondent has used the domain name to attract Internet users for Respondent's gain.

EA asserts that the very registration of an domain name identical to a mark is bad faith; that the registration is a clear attempt to “steal” the good will created by EA. EA shows that links from the domain name lead to sites that relate to computer gaming.

B. Respondent

Respondent begins by denying any bad faith registration. Respondent first registered this domain name in connection with the acquisition of a number of “generic three-letter acronyms.” While Respondent admits that there may have been some “arguable ‘bad faith use”, it asserts that this was “temporary and inadvertent” and lasted for a little over a month. (Respondent actually purchased the domain name; the name has been owed by a number of different entities.)

The domain name was allegedly registered on March 2, 2000, which is earlier than the first use of the mark. Therefore, Respondent argues, the registration could not have been in bad faith. Respondent acquired the name along with many others in October of 2011. Respondent does not appear to have renewed the registration of the name since its acquisition.

Respondent admits that it did not search the portfolio of names for potential conflicts with trademark registrations. However, the name had been registered for many years; no one had objected. It then parked the name with a parking company; thereafter, advertisements were automatically generated by Google.

Respondent had no intent to compete with or utilize EA’s mark. It did not run any add with intent to utilize the EA mark’s “good will.” It did offer to sell the mark, but the offer was not directed to EA.

Respondent continues to recite facts supporting its good faith (or lack of bad faith) and facts supporting the lack of any diligence by EA to protect its mark.

Respondent then proceeds to address each of the elements of the UDRP. As to “confusing similarity,” Respondent recites a long list of companies and entities that have registered the mark “SSX” in connection with products other than computer games, including registration with the USPTO. Another list of companies which use “SSX” without registration or in business follows the first list.

Respondent asserts that it does have a legitimate interest in the name SSX, because of the name’s generic nature. A better right may lie with EA, the mark holder; but a legitimate right to use can and does lie with others.

Respondent denies bad faith registration; it asserts that it was never aware of the EA mark or that it intended to do anything to interfere with EA’s business. Respondent believes that its business model is legitimate and not evidence of bad faith. The mere fact that the domain name is for sale is not relevant here; that is what Respondent does.

Respondent returns to a primary theme of its defense: The name has been registered for 12 years, but – until this filing – EA took no steps to assert the primacy of its mark.

Respondent concludes by suggesting that this proceeding be dismissed because the proceeding really relates to the issue of “*better’ or ‘superior’* rights”

C. Additional Submissions

Both parties submitted Additional Submissions.

COMPLAINANT'S ADDITIONAL SUBMISSION

Complainant EA timely filed an Additional Submission. Although Respondent objected to consideration of the Additional Submission, as discussed below, the Panel has determined to consider EA's second pleading. The Panel believes that this submission would not be acceptable under the WIPO rules; however, the more liberal interpretations rules of the NAF panels allow consideration of "twelve single-spaced pages in small font, of additional written submission, together with a two-page affidavit, and several more pages of exhibits." Quoting paragraph 2 of the Respondent's **Objection to Complainant's "Additional Statement"....**

In the Additional Submission, Complaint restates its prior allegations. In so doing, it repleads much of its case. It continues to insist that bad faith is shown by the "click through" revenues Respondent allegedly received. Complainant does admit that many marks are duplicated – e.g., DELTA is a mark held by an airline and by a faucet manufacturer. However, stress is placed upon the different businesses of the two mark holders.

The issue of "click through" revenue occupies several pages of the Additional Submission.

Complainant again asserts registration and use in bad faith. EA asserts that Respondent knew or should have known of its rights and asserts constructive notice. This is particularly true, says EA, when the business of Respondent is the bulk acquisition of names.

The EA second submission spends much effort on the issue of failure to police its mark, asserting, interestingly, that the prior holder of the name may have also engaged in bad faith exploitation of the good will of the EA mark.

RESPONDENT'S ADDITIONAL SUBMISSION

As indicated above, Respondent's **Objection to Complainant's "Additional Statement"**... is primarily an objection to the reply brief filed by EA. While this Panel has determined to allow the Additional Submission, the Panel agrees with Respondent that the pleading would not be allowed under the WIPO rules.

The Panel would take this opportunity to request parties to limit Additional Submissions in both length and scope. Complainant's Additional Submission is essentially a new action. While considered in this proceeding, these Panelists will, in the future, look very critically upon similar pleadings.

Respondent does go on to reply to the EA submission. It asserts that there is still no evidence that it attempted to target and exploit the "good will" associated with the EA mark. Respondent asserts that its "inadvertent" use of the domain name to link to computer gaming sites allows the Panel "to infer" that the registration was in "bad faith" as far as EA's mark is concerned rather than a part of a business plan involving acquisition of three-letter generic "acronyms" for resale.

Respondent goes on to attempt to rebut other allegations made in EA's additional submission. Of particular interest is the EA allegation that the SSX domain name was identified in the sales document as being sold for \$5,000 of the alleged total sales price for all names of \$200,000. From this, EA infers that the domain name was of particular interest to or value to Respondent. Respondent points out that all of the names were valued at \$5,000 apiece in the Purchase Agreement.

FINDINGS

Respondent does not dispute that the mark SSX and the domain name **<ssx.com>** are identical. However, “SSX” has been trademarked by a number of different entities. It is also used as an acronym for a number of entities and businesses.

EA has made a *prima facie* case under UDRP Policy ¶ 4(a)(i), and Respondent has not disputed this issue.

While Respondent has shown that the domain name, **<ssx.com>**, was registered before the initial use of the SSX mark, prior registration is not relevant to any inquiry under Policy ¶ 4(a)(i).

As to rights in the name, EA has presented only a partial *prima facie* showing, under Policy ¶ 4(a)(ii). Respondent is neither commonly known by the name “SSX” nor is it a licensee of EA. Respondent has shown that it purchased the domain name without knowledge of any interest of EA. The registration of the domain name predated the first use of the mark, SSX, by EA. EA had taken no steps to police the use of its mark, as a domain name, for at least a decade.

Respondent has also shown that its business model involves the purchase and sale of domain names like **<ssx.com>** -- domain names containing letters which are generic acronyms. EA has presented no evidence that Respondent knew of the existence of its trademark rights – or of the trade mark rights of any of the other holders of the mark SSX.

Therefore, even if EA has established a *bona fide* claim under Policy ¶ 4(a)(ii), Respondent has rebutted the *prima facie* case by showing that it acquired rights in the name by the purchase of the pre-existing domain name.

EA has not established a *prima facie* case of bad faith. The EA allegations of bad faith in part are based upon the lack of due diligence conducted by retailers of domain names like Respondent. EA would seem to require that entities like Respondent conduct an international search for relatively obscure trademarks in order to determine whether a name is a registered mark. The Panel is not willing to go so far, as discussed below.

Still, and particularly in this case, the Respondent is treading on thin ice. A fair reading of its pleadings reveals that Respondent made absolutely no attempt to examine its purchases for domain names which were also trademarks. Again, here, at least one “generic” string of three letters has been trademarked and is perhaps a common law mark of a number of business and other entities in a number of lines of business all around the world. Given the ease of searches using the common tools of the Internet, how much is it to ask of a retailer like Respondent to do a little extra work?

The facts here, however, show no bad faith under Policy ¶ 4(a)(iii), which refers to both registration and use in bad faith. First, although Respondent argues that the registration cannot have been in bad faith, for the registration pre-dated the first use and the issuance of the trademark, this is simply incorrect. Purchase in bulk of domain names is generally considered a new registration for purpose the UDRP.

However, there is no evidence of bad faith registration by Respondent; and, as noted above, because the inference of bad faith registration from lack of diligence is simply not enough, in this case.

The next issue, use in bad faith, is also shown. Respondent has attempted to rebut the allegations concerning use to generate “click through” income, and has

shown that such use was inadvertent. The Panel also finds that this “inadvertent” use is still in bad faith. Respondent has taken little or no responsibility to police its own operations. It did not investigate the existence of competing interests in the form of marks, which it could have easily done. Had it done so, it could easily have avoided any use in bad faith. Respondent’s failure to take any responsibility for the registration and then use is not what the Panel would expect of a domain name merchant of this size and sophistication.

There is not sufficient evidence, in these facts, of the registration and use of the name in bad faith that is not rebutted by Respondent’s submissions.

DISCUSSION

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

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

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

Identical and/or Confusingly Similar

Complainant, Electronic Arts Inc., has rights in its SSX mark under Policy ¶ 4(a)(i). Complainant provides a table of its trademark registrations for its SSX

mark with the United States Patent and Trademark Office (“USPTO”), the European Union’s Office for Harmonization of the Internal Market (“OHIM”), and many others. Complainant also provided copies of its trademark registrations. *See Google, Inc. v. DktBot.org*, FA 286993 (Nat. Arb. Forum Aug. 4, 2004) (finding that the complainant had established rights in the GOOGLE mark through its holding of numerous trademark registrations around the world); *see also Honeywell Int’l Inc. v. r9.net*, FA 445594 (Nat. Arb. Forum May 23, 2005) (finding the complainant’s numerous registrations for its HONEYWELL mark throughout the world sufficient to establish the complainant’s rights in the mark under the Policy ¶ 4(a)(i)); *see also Koninklijke KPN N.V. v. Telepathy Inc.*, D2001-0217 (WIPO May 7, 2001) (finding that the Policy does not require that the mark be registered in the country in which the respondent operates; therefore it is sufficient that the complainant can demonstrate a mark in some jurisdiction); *see also Williams-Sonoma, Inc. v. Fees*, FA 937704 (Nat. Arb. Forum Apr. 25, 2007) (finding that it is irrelevant whether the complainant has registered its trademark in the country of the respondent’s residence).

Complainant offered its USPTO trademark registration that lists Complainant’s first-use date as October 17, 2000.

Respondent’s <ssx.com> domain name is identical to Complainant’s SSX mark. The only difference between the disputed domain name and Complainant’s SSX mark is the addition of the generic top-level domain (“gTLD”) “.com.” The addition of a gTLD is irrelevant to a Policy ¶ 4(a)(i) analysis. Clearly, the <ssx.com> domain name is identical to Complainant’s SSX mark for the purposes of Policy ¶ 4(a)(i). *See Pomellato S.p.A v. Tonetti*, D2000-0493 (WIPO July 7, 2000) (finding <pomellato.com> identical to the complainant’s mark because the generic top-level domain (gTLD) “.com” after the name POMELLATO is not relevant); *see also SCOLA v. Wick*, FA 1115109 (Nat. Arb. Forum Feb. 1, 2008) (concluding that “the domain name at issue is identical to

[the] complainant's SCOLA mark, as the only alteration to the mark is the addition of the generic top-level domain ".com.").

Registration of the <ssx.com> domain name predates Complainant's rights in the mark. This is not relevant under Policy ¶ 4(a)(i). This portion of the Policy considers only whether Complainant has rights in the mark and whether the disputed domain name is identical or confusingly similar to Complainant's mark. *See AB Svenska Spel v. Zacharov*, D2003-0527 (WIPO Oct. 2, 2003) (holding that the UDRP does not require a complainant to have registered its trademark prior to the respondent's registration of the domain name under Policy ¶ 4(a)(i) but may prevent a finding of bad faith under Policy ¶ 4(a)(iii)); *see also Clear!Blue Holdings, L.L.C. v. NaviSite, Inc.*, FA 888071 (Nat. Arb. Forum Mar. 5, 2007) ("Although the domain name in dispute was first registered in 1996, four years before Complainant's alleged first use of the mark, the Panel finds that Complainant can still establish rights in the CLEAR BLUE marks under Policy ¶ 4(a)(i).").

The <ssx.com> domain name is comprised of a common and generic term. Respondent asserts that such a generic term cannot be found to be identical to Complainant's mark. The Panel finds that such a determination is not necessary under Policy ¶ 4(a)(i); this portion of the Policy considers only whether Complainant has rights in the mark and whether the disputed domain name is identical or confusingly similar to Complainant's mark. *See Precious Puppies of Florida, Inc. v. kc*, FA 1028247 (Nat. Arb. Forum Aug. 10, 2007) (examining Respondent's generic terms arguments only under Policy ¶ 4(a)(ii) and Policy ¶ 4(a)(iii) and not under Policy ¶ 4(a)(i)); *see also Vitello v. Castello*, FA 159460 (Nat. Arb. Forum July 1, 2003) (finding that the respondent's disputed domain name was identical to complainant's mark under Policy ¶ 4(a)(i), but later determining the issue of whether the disputed domain name was comprised of generic terms under Policy ¶¶ 4(a)(ii) and 4(a)(iii)).

Rights or Legitimate Interests

Complainant has not established a *prima facie* case in support of its arguments that Respondent lacks rights and legitimate interests under Policy ¶ 4(a)(ii). *See Terminal Supply, Inc. v. HI-LINE ELECTRIC*, FA 746752 (Nat. Arb. Forum Aug. 24, 2006) (holding that the complainant did not satisfactorily meet its burden and as a result found that the respondent had rights and legitimate interests in the domain name under UDRP ¶ 4(a)(ii)); *see also Workshop Way, Inc. v. Harnage*, FA 739879 (Nat. Arb. Forum Aug. 9, 2006) (finding that the respondent overcame the complainant's burden by showing it was making a *bona fide* offering of goods or services at the disputed domain name).

Respondent is in the business of buying and selling generic domain names. Respondent purchased the <ssx.com> domain name on October 5, 2011 as a part of a portfolio of generic domain names. Respondent paid \$200,000 for the portfolio and provided a copy of the agreement as proof. The buying and selling of generic domain names is a *bona fide* offering of goods under Policy ¶ 4(c)(i).

Respondent has established rights in the <ssx.com> domain name pursuant to Policy ¶ 4(c)(i). *See Franklin Mint Fed. Credit Union v. GNO, Inc.*, FA 860527 (Nat. Arb. Forum Mar. 9, 2007) (concluding that the respondent had rights or legitimate interests in the <fmcu.com> domain name because it was a generic domain name reseller who owned numerous four-letter domain names); *see also Fifty Plus Media Corp. v. Digital Income, Inc.*, FA 94924 (Nat. Arb. Forum July 17, 2000) (finding that the complainant failed to prove that the respondent had no rights in the domain name and had registered and used the domain name in bad faith where the respondent is an Internet business which deals in selling or leasing descriptive/generic domain names). The disputed domain name was

parked with Google, and Google provided the hyperlinks found on the resolving website. Respondent has shown that it did not intend to host competing hyperlinks and that it was not responsible for the content of the resolving website. Respondent has shown that the competing hyperlinks were quickly removed. Respondent was responsible, even under these facts, for the competing hyperlinks, for it made no attempt to police the use of its domain name, not having investigated competing rights upon acquisition. *Compare Spiliadis v. Androulidakis*, FA 1072907 (Nat. Arb. Forum Oct. 17, 2007) (accepting the respondent's explanation that it did not know until receiving a cease and desist letter from the complainant that its registrar "had posted unauthorized third party links on the website and that when it discovered this fact it was 'shocked,' demanded that they be removed and when they were not removed, [the] respondent changed its registrar.").

The domain name, **<ssx.com>**, is comprised of common or generic letters. Complainant clearly does not have an exclusive monopoly on the term. The number of other persons or entities holding identical if non-competing marks and the number of other users with rights in the name are clear evidence of the limited ownership claims of the Complainant. Respondent has established rights or legitimate interests in the disputed domain name pursuant to Policy ¶ 4(a)(ii). *See Kaleidoscope Imaging, Inc. v. V Entm't*, FA 203207 (Nat. Arb. Forum Jan. 5, 2004) (finding that the respondent was using the <kaleidoscope.com> domain name for a *bona fide* offering of goods or services because the term was "generic" and respondent was using the disputed domain name as a search tool for Internet users interested in kaleidoscopes); *see also Qwest Commc'ns Int'l v. QC Publ'g Grp., Inc.*, FA 286032 (Nat. Arb. Forum July 23, 2004) ("Complainant's rights in the QWEST mark are limited to its application to the telecommunications industry," where a variety of other businesses used the mark in unrelated fields). *See also Telephone and Data Systems, Inc. v. Protected Domain Services*, WIPO Case No. D2011-0435 (May 10, 2011) ("Respondent has set forth a

potentially legitimate interest ..., and ... Complainant has been unable to prove that such interest is illegitimate. ...”).

Registration and Use in Bad Faith

Finding that Respondent has an un rebutted “potential” interest in the domain name, it is not necessary to discuss bad faith, but the Panel chooses to do so. In a case like this one, where there is no attempt to “target” Complainant’s interest in Complainant’s mark to capitalize on the good will associated with a three-letter mark, widely used by others, the subsequent use for “click-through” revenue is not enough. *See Dinah, S.L. v. WebQuest.com Inc.*, WIPO Case No. D2005-0573 (August 25, 2005), and *Telephone and Data Systems, Inc. v. Protected Domain Services*, WIPO Case No. D2011-0435 (May 10, 2011), both of which are directly on point.

Complainant failed to meet the burden of proof of bad faith registration and use under Policy ¶ 4(a)(iii). *See Starwood Hotels & Resorts Worldwide, Inc. v. Samjo CellTech.Ltd*, FA 406512 (Nat. Arb. Forum Mar. 9, 2005) (finding that the complainant failed to establish that the respondent registered and used the disputed domain name in bad faith because mere assertions of bad faith are insufficient for a complainant to establish Policy ¶ 4(a)(iii); *see also Graman USA Inc. v. Shenzhen Graman Indus. Co.*, FA 133676 (Nat. Arb. Forum Jan. 16, 2003) (finding that general allegations of bad faith without supporting facts or specific examples do not supply a sufficient basis upon which the panel may conclude that the respondent acted in bad faith).

Certainly, and despite its protestations to the contrary, Respondent did register the domain name; the transfer of ownership in bulk constitutes a registration for purposes of the UDRP. *See Ticketmaster Corp. v. Global Access*, D2007-1921

(WIPO Feb. 2, 2008) (The relevant intent of the acquiring party is to be assessed as of the date of the acquisition of the portfolio or batch of names.)

Respondent has rights or legitimate interests in the <ssx.com> domain name pursuant to Policy ¶ 4(a)(ii); Respondent did not register or use the disputed domain name in bad faith pursuant to Policy ¶ 4(a)(iii). *See Lockheed Martin Corp. v. Skunkworx Custom Cycle*, D2004-0824 (WIPO Jan. 18, 2005) (finding that the issue of bad faith registration and use was moot once the panel found the respondent had rights or legitimate interests in the disputed domain name); *see also Vanguard Group Inc. v. Investors Fast Track*, FA 863257 (Nat. Arb. Forum Jan. 18, 2007) (“Because Respondent has rights and legitimate interests in the disputed domain name, his registration is not in bad faith.”).

Respondent has not registered or used the <ssx.com> domain name in bad faith; the Panel finds that Respondent has not violated any of the factors listed in Policy ¶ 4(b) or engaged in any other conduct that would constitute bad faith registration and use pursuant to Policy ¶ 4(a)(iii). *See Societe des Produits Nestle S.A. v. Pro Fiducia Treuhand AG*, D2001-0916 (WIPO Oct. 12, 2001) (finding that where the respondent has not attempted to sell the domain name for profit, has not engaged in a pattern of conduct depriving others of the ability to obtain domain names corresponding to their trademarks, is not a competitor of the complainant seeking to disrupt the complainant's business, and is not using the domain name to divert Internet users for commercial gain, lack of *bona fide* use on its own is insufficient to establish bad faith); *see also Starwood Hotels & Resorts Worldwide, Inc. v. Samjo CellTech.Ltd*, FA 406512 (Nat. Arb. Forum Mar. 9, 2005) (finding that the complainant failed to establish that respondent registered and used the disputed domain name in bad faith because mere assertions of bad faith are insufficient for a complainant to establish UDRP ¶ 4(a)(iii)).

Respondent never offered to sell the <ssx.com> domain name to Complainant. Respondent never targeted Complainant as a potential purchaser of the domain name. The offer to sell was automatically generated on the resolving website. Respondent would certainly have sold the name to Complainant, as Respondent would have sold to any person interested in purchasing the name, but it did not intend to sell the disputed domain name to Complainant. These facts do not show that Respondent registered or used the <ssx.com> domain name in bad faith under Policy ¶ 4(b)(i). *See Mark Warner 2001 v. Larson*, FA 95746 (Nat. Arb. Forum Nov. 15, 2000) (finding that considering or offering to sell a domain name is insufficient to amount to bad faith under the Policy; the domain name must be registered primarily for the purpose of selling it to the owner of a trademark for an amount in excess of out-of-pocket expenses); *see also JCM Germany GmbH v. McClatchey Jr.*, D2004-0538 (WIPO Sept. 17, 2004) (holding that the respondent did not violate Policy ¶ 4(b)(i) by attempting to sell the disputed domain name for profit because the respondent did not register the domain name with the intent to sell it to the complainant or one of its competitors. Moreover, Respondent, as a generic domain name reseller, did not register or use the disputed domain name in bad faith under Policy ¶ 4(b)(i); *see also John Fairfax Publ'n Pty Ltd v. Domain Names 4U*, D2000-1403 (WIPO Dec. 13, 2000) (finding legitimate interests and no bad faith registration where the respondent is a seller of generic domain names); *see also Lumena s-ka zo.o. v. Express Ventures LTD*, FA 94375 (Nat. Arb. Forum May 11, 2000) (finding no bad faith where the domain name involves a generic term, and there is no direct evidence that the respondent registered the domain name with the intent of capitalizing on the complainant's trademark interest).

Respondent has shown that it is a generic domain name buyer and seller. Respondent purchased the disputed domain name as part of a portfolio of generic domain names. This is a legitimate use of the disputed domain name, and does not show that Respondent registered or used the <ssx.com> domain

name in bad faith pursuant to Policy ¶ 4(b)(iv). *See Schering AG v. Metagen GmbH*, D2000-0728 (WIPO Sept. 11, 2000) (finding that the respondent did not register or use the domain name <metagen.com> in bad faith where the respondent registered the domain name in connection with a fair business interest and no likelihood of confusion was created); *see also Mule Lighting, Inc. v. CPA*, FA 95558 (Nat. Arb. Forum Oct. 17, 2000) (finding no bad faith where the respondent has an active website that has been in use for two years and where there was no intent to cause confusion with the complainant's website and business). Moreover, Respondent contends that it parked the <ssx.com> domain name with Google and that Google is responsible for the competing hyperlinks. Respondent alleges that the resolving website was only supposed to contain generic hyperlinks and not competing hyperlinks. The Panel finds that Respondent is not responsible for the content of the resolving website and, therefore, could not have registered the <ssx.com> domain name in bad faith under Policy ¶ 4(a)(iii). *See Tomsten Inc. v. Registrant [7281]*, FA 925448 (Nat. Arb. Forum Apr. 20, 2007) (finding the respondent's parking of <archivers.com> domain name to advertise goods and services chosen from "the broadest generic meaning of the word 'archivers' rather than choosing goods and services offered by [the] complainant" thus the panel was unable to draw the conclusion that the respondent had shown any intention of diverting Internet traffic from the complainant to the firms promoted by the advertisements and links).

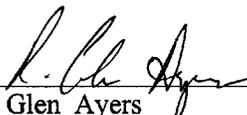
The <ssx.com> domain name is comprised entirely of a common term that has many meanings apart from use in Complainant's SSX mark, including registration as a mark by other businesses and use of the term as a business name or acronym. Respondent is free to register a domain name consisting of common terms; this domain name contains such common terms. Respondent did not register or use the <ssx.com> domain name in bad faith under Policy ¶ 4(a)(iii). *See Zero Int'l Holding v. Beyonet Servs.*, D2000-0161 (WIPO May 12, 2000) ("Common words and descriptive terms are legitimately subject to registration as

domain names on a 'first-come, first-served' basis."); *see also Target Brands, Inc. v. Eastwind Group*, FA 267475 (Nat. Arb. Forum July 9, 2004) (holding that the respondent's registration and use of the <target.org> domain name was not in bad faith because the complainant's TARGET mark is a generic term); *see also Miller Brewing Co. v. Hong*, FA 192732 (Nat. Arb. Forum Dec. 8, 2003) (finding that because the respondent was using the <highlife.com> domain name, a generic phrase, in connection with a search engine, the respondent did not register and was not using the disputed domain name in bad faith).

DECISION

Having failed to establish all three elements required under the ICANN Policy, the Panel concludes that relief shall be **DENIED**.

Accordingly, it is Ordered that the <ssx.com> domain name **REMAIN WITH** Respondent.



Honorable R. Glen Ayers
Arbitrator

R. Glen Ayers, Chair
Ms. Diane Thilly Cabell
Sir Ian Barker

Dated: January 4, 2012