

ADMINISTRATIVE PANEL DECISION

Yahoo! Inc. v. Whois Agent, Whois Privacy Protection Service, Inc. / Domain Vault, Domain Vault LLC
Case No. D2015-0500

1. The Parties

The Complainant is Yahoo! Inc. of Sunnyvale, California, United States of America (“United States”), represented by Katten Muchin Rosenman LLP, United States.

The Respondent is Whois Agent, Whois Privacy Protection Service, Inc. of Kirkland, Washington, United States / Domain Vault, Domain Vault LLC of Dallas, Texas, United States, represented by Mr. Gary Schepps.

2. The Domain Names and Registrar

The disputed domain name <friendsteryahoo.com> and <newyahoomessenger.com> are registered with Name.com LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 23, 2015. On March 23, 2015, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 24, 2015, the Registrar transmitted, by email to the Center, its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 25, 2015 which provided the registrant and contact information disclosed by the Registrar and invited the Complainant to submit an amendment to the Complaint. The Complainant then filed an amended Complaint later on the same day.

The Center verified that the Complaint together with the amended Complaint (hereinafter the “Complaint” will refer to just the amended Complaint or either the original or amended Complaint depending on the specific context) satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the

original and amended complaints, and that the proceedings commenced on March 27, 2015. In accordance with the Rules, paragraph 5(a), the due date for Response was April 16, 2015. The Respondent did not submit any response. Accordingly, the Center notified the parties of the Respondent's default on April 17, 2015. In response to the notification, the Respondent's authorized representative, Mr. Gary Schepps, filed an e-mail communication on April 17, 2015. Through that communication, Mr. Schepps stated that the Respondent Domain Vault LLC had not received a copy of the Complaint, and requested a 20-day extension to file its Response. On April 21, 2015, the Center responded, by e-mail, to Mr. Schepps providing a complete copy of the notification and original and amended complaints (with all exhibits) previously sent to the Respondent on March 27, 2015, and noted that if the Respondent wished to submit a late Response to the Complaint, the Center will bring that submission to the panel's attention (once appointed) and leave consideration of that submission to the sole discretion of the panel. Subsequently, the Complainant, objected to the Respondent's request through an e-mail the Complainant sent to the Center on April 24, 2015.

The Center appointed Peter L. Michaelson as the sole panelist in this matter on April 22, 2015. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

As reflected in the registration record for the disputed domain name in the Whois database (a copy of the records appears in Exhibit 1 to the Complaint), the disputed domain names <friendsteryahoo.com> and <newyahoomessenger.com> were registered on August 26, 2004 and August 31, 2004, respectively, and are set to expire on August 26, 2015 and August 31, 2015, respectively.

A. The Complainant's YAHOO! Marks

As indicated in the Complaint, the Complainant owns various United States trademark registrations for the mark YAHOO! in both block letters and stylized forms. The Complainant has provided, in Exhibit 11 to the Complaint, a list of a representative sample of its trademark registrations and copies of entries for these registrations from the publicly available online Trademark Electronic Search System ("TESS") provided by the United States Patent and Trademark Office, these registrations are typified by the following:

1. YAHOO! (block letters)
United States registration no.: 2,040,222
registered: February 25, 1997; filed: January 24, 1996

This mark is registered for use in connection with: "Computer software for searching and retrieving information, sites, and other resources on computer networks; computer software, namely, a directory of information, sites, and resources available on computer networks" in international class 9; "Books regarding computer networks and searching and retrieving information, sites, and other resources on computer networks" in international class 16; "Promoting the goods and services of others by placing advertisements and promotional displays in an electronic site accessed through computer networks" in international class 35; and "Computer services, namely, creating indexes of information, sites, and other resources available on computer networks; searching and retrieving information, sites, and other resources available on computer networks for others; providing an online link to news, weather, sports, current events, and reference materials" in international class 42. This mark claims a date of first use and first use in commerce in connection with the goods: in both classes 9 and 16 as of November 1, 1995; and for the services in classes 35 and 42 of August 1, 1995 and June 1, 1994, respectively.

2. YAHOO! (stylized)
United States registration no.: 2,040,691
registered: February 25, 1997; filed: April 24, 1996

This mark is registered for use in connection with: "computer services, namely, creating indexes of

information, sites, and other resources available on computer networks; searching and retrieving information, sites, and other resources available on computer networks for others; providing an online link to news, weather, sports, current events, and reference materials” in international class 42. This mark claims a date of first use and first use in commerce in connection with these services of January 2, 1996.

3. YAHOO! (block letters)
United States registration no.: 2,187,292
registered: September 8, 1998; filed: February 28, 1997

This mark is registered for use in connection with: “online computer services, namely, providing information regarding the goods and services of others in the nature of a buyers’ guide, by means of a global computer network”. This mark claims a date of first use and first use in commerce in connection with these services of September 22, 1997.

B. The Complainant

The Complainant is a global technology company that provides a wide array of products and services, many of them personalized—including search, content, and communications tools, on devices such as PCs, mobile devices, tablets, and TVs.

The Complainant primarily derives its income from advertising and search advertising. The Complainant annually serves advertisements for thousands of companies, including a majority of the “Fortune 100” advertisers. It also sells sponsorships, promotions and a wide array of other marketing services. Over the years, the Complainant has sold many billions of dollars’ worth of services and products under its mark YAHOO!. Illustratively, the Complainant’s revenues exceeded USD 4.9 Billion in both 2011 and 2012, and exceeded USD 4.68 Billion in 2013 (see excerpts from the Complainant’s 2013 annual report appearing in Exhibit 5 to the Complaint.)

The Complainant has offered search engine services and web directory services under its mark YAHOO! since its inception in 1994. The mark YAHOO! has been ranked by Interbrand as one of the top 100 global brands since at least as early as 1999. Excerpts from an Interbrand report, which valued the mark YAHOO! at USD 3.8 billion, appear in Exhibit 4 to the Complaint.

The Complainant provides other online information services, such as: YAHOO! NEWS, YAHOO! CELEBRITY, YAHOO! FOOD, YAHOO! BEAUTY, YAHOO! HEALTH, YAHOO! TECH, YAHOO! MUSIC, and YAHOO! SCREEN, which are destinations for content regarding news, celebrities, food, beauty, health, technology, music, and movies and TV programs, respectively. The Complainant also provides communications tools to its users, such as its YAHOO! MAIL service, which provides its users with e-mail and messaging, as well as integrated contacts and calendars; and its YAHOO! MESSENGER service, an instant messaging service that provides an interactive and personalized way for users to communicate on a real-time basis. The Complainant also offers various social media products and services under or in connection with its YAHOO! ANSWERS, FLICKR, and YAHOO! GROUPS services for user-generated content. These services allow users to create, share, and discover ideas, interests, and/or photography with the world.

As of September 2013, the Complainant had approximately 800,000,000 monthly users located in over 60 countries, regions and territories around the world. Its user offerings include its “www.yahoo.com” website in which a news carousel at the top of its home page receives 1,000,000,000 clicks monthly (a screen shot of the home page of the Complainant’s website and an article from TechCrunch regarding the Complainant’s user statistics appear in Exhibit 6 to the Complaint).

C. The Respondent’s use of the names

Starting least as early as 2005 and continuing to as late as 2013, the disputed domain names directed Internet users to the Respondent’s website which displayed commercial links to and advertisements for online search engines, instant messaging software, Internet chat platforms, and dating networks, and also included commercial links to Complainant’s competitors, and to various third-party website which did the

same. Printouts of archived images from DomainTools.com of the websites at <newyahoомessenger.com> from between September 14, 2005 and December 27, 2013, and at <friendsteryahoo.com> from between July 5, 2005 and July 21, 2013, appear in Exhibit 7 to the Complaint.

As of March 25, 2015, the date on which the amended Complaint was filed, the disputed domain names resolve or redirect Internet users to various third-party advertising websites which provide commercial links to social platforms, dating networks, technology publications, and multimedia-related goods and services, including commercial links to the Complainant's competitors. Printouts of representative sample of those websites as of November 21, 2014, including sponsored code and evidence of redirection, appear in Exhibit 10 to the Complaint.

The Respondent apparently received and continues to receive click-through revenues whenever an Internet user clicked on any of these links and also revenue from the advertisements and website redirection.

D. Interactions between the parties

Shortly after learning of the disputed domain names, the Complainant on October 8, 2014 contacted the Respondent, by separate e-mails (copies of which appear in Exhibit 8 to the Complaint) at the addresses provided in the Whois database, and objected to the Respondent's uses of the names and demanded their transfer.

On October 10, 2014, the Complainant received an e-mail response (a copy of which appears in Exhibit 9 to the Complaint) from Mr. Schepps. In the response, Mr. Schepps claimed that the names "were set up to their current pages by the United States Federal District Court through a Federal Receiver" and stated that "[o]nce current litigation is concluded and control is released from the Federal Court's imposed pages, I believe your concerns will be alleviated." The Complainant, after having investigated, Mr. Schepps' legal and factual allegations, found no evidence establishing that the Respondent's assets, including the disputed domain names, are subject to control of any court or receiver, that the purported receivership is still in effect or that either of the names is within scope of any receivership order.

On March 23, 2015, the Complainant filed the present Complaint.

5. Parties' Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant contends that each of the disputed domain names is confusingly similar to the YAHOO! Marks.

Specifically, each of the disputed domain name contains the term "YAHOO" from the Complainant marks (*i.e.*, without the exclamation point) to which the word "friendster" has been prepended to the term to form disputed domain name <friendsteryahoo.com> and the word "new" and "messenger" have been respectively prepended and appended to form the disputed domain name <newyahoомessenger.com>. Each of these words is incapable of adding sufficient distinctiveness whatsoever to the resulting domain name to mitigate any resulting user confusion between the name and the Complainant's marks.

Further, the Complainant contends that the Respondent's omission of the exclamation point after the term YAHOO is inconsequential inasmuch as a domain name cannot contain an exclamation point and that this term is an overwhelmingly dominant and striking portion of its marks thus implying that the exclamation point adds effectively little, if any, distinctiveness to each of the marks and correlatively its omission has a similar effect.

The Complainant also contends that Internet users are likely to become confused when they see the disputed domain names and their respective websites. The Complainant's YAHOO! brand has an extensive

reputation with respect to services related to social platforms, including chat and instant messaging services, technology, and multimedia broadcasting on its websites. Accordingly, those users will therefore believe that the disputed domain names and their associated websites are approved of, sponsored by or otherwise associated with the Complainant and its services when, in fact, they are not.

(ii) Rights or Legitimate Interests

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

First, the Respondent is not and has not been commonly known by the YAHOO! Marks or anything resembling either of the disputed domain names. The Respondent is identified as "Domain Vault / Domain Vault LLC" in the Whois database. This name bears no similarity to either of the disputed domain names. Moreover, given the international fame of the mark YAHOO!, the Respondent could not be known by either of the names.

Second, the Complainant has not authorized Respondent to use any of the YAHOO! Marks.

Third, the Respondent's use of the disputed domain names, each of which includes the term YAHOO, in resolving to various websites with commercial links to social platforms, dating networks, technology publications, and multimedia-related goods and services, particularly including commercial links to Complainant's competitors, does not constitute a *bona fide* offering of goods or services or a noncommercial fair use under, respectively, paragraphs 4(c)(i) and 4(c)(iii) of the Policy.

(iii) Registered and Used in Bad Faith

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

The Respondent was well aware of the Complainant's mark YAHOO!, the Complainant's exclusive rights in that mark and the mark's reputation when the Respondent registered the names as that mark was registered by the Complainant and acquired worldwide fame well before Respondent registered both of the disputed domain names during August 2004.

The Respondent, by registering the names, each of which contains the term YAHOO, and then using those names to resolve or redirect Internet users to various third-party websites, including some at which services were offered by the Complainant's competitors, for commercial gain (obtained through monetized links, redirection and advertising fees), intentionally did so to create a likelihood of confusion, to attract or divert those users to those websites, for its own commercial gain.

Lastly, the Respondent's deliberate efforts to obfuscate its identity and the status of the disputed domain names through a privacy service further reflects bad faith registration and use of the names.

B. Respondent

In view of the lack of a Response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual representations.

6. Discussion and Findings

A. Notice

On April 17, 2015, one day after the response period expired, Mr. Schepps, acting on behalf of the Respondent, requested a 20-day extension of time for the Respondent to file its Response. Mr. Schepps

claimed that the Respondent did not receive a copy of the Complaint.

The Panel, from reviewing the record, notes that the following events occurred:

- a) On March 24, 2015, the Center sent an e-mail to the Registrar to verify the registrant information, including that the registrant was "Whois Agent/ Whois Privacy Protection Service, Inc."
- b) On the following day, March 25, 2015, the Registrar responded and, inasmuch as the registrant listed in the verification request and the Registrant's Whois database was a privacy screen, identified the actual registrant as "Domain Vault LLC" and provided contact information as supplied by that registrant and as contained in the Registrar's registration records.
- c) With the corrected registrant information, the Center subsequently on March 25, 2015 invited the Complainant to amend its complaint accordingly, which the Complainant subsequently did on that date.
- d) On March 27, 2015, the Center then notified the Respondent directly by e-mail of the proceeding by forwarding a copy of the written "Notification of the Complaint and Commencement of the Administrative Proceeding" along with a copy of the original and amended Complaints and all their exhibits. As part of its notification process, the Center also sent separate copies of the written notification by courier to the Respondent and also sent each of the Respondent's administrative, technical and billing contacts the written notification and the original and amended Complaints and their exhibits in the same manner. Throughout this process, the Center used the contact information for the Respondent provided by the Registrar. In addition hereto, the Center sent a copy of the "Notification of the Complaint and Commencement of the Administrative Proceeding" along with a copy of the original and amended Complaints and all their exhibits to the e-mail address used by Mr. Schepps as shown in Exhibit 9.

The Panel finds that this notice provided by the Center fully complied with the dictates of paragraph 2(a) of the Rules and thus the Center properly discharged all its obligations under the Rules to provide proper notice to the Respondent of this proceeding. To the extent the Respondent did not receive notice of this proceeding in a timely fashion, any such delay is likely due to the Respondent's own fault in providing to the Registrar what may be defective contact information. However, the Panel observes that Mr. Schepps' communication of April 17, 2015 includes a copy of the Center's written "Notification of the Respondent's Default" which it sent just earlier that same day. Accordingly, it stands to reason that the written notification of the commencement of the proceeding together with the original and amended Complaints which were sent by e-mail, also reached the Respondent the day they were sent by the Center, thus reflecting that, in all likelihood, timely notice was actually achieved.

Accordingly, as the notice was proper, the Panel denies the Respondent's request for an extension and will not withdraw the Respondent's default.

Similarly, see, *Yahoo! Inc. v. Domain Vault / Domain Vault LLC.*, WIPO Case No. D2014-1830, in which the respondent there (which is the same Respondent here) made a request there (essentially the same as here) for a 20-day extension to file a response claiming that the Center violated the Rules regarding notification of the proceeding. As the notification provided by the Center there fully complied with Rule 2(a), the Center did not provide the respondent with any additional time to file a response and thus did not withdraw the respondent's default.

B. Identical or Confusingly Similar

The Panel finds that each of the disputed domain names is confusingly similar to the Complainant's mark YAHOO!.

From a simple comparison of each disputed domain name to the Complainant's mark YAHOO!, no doubt exists that the disputed domain name is confusingly similar to the Complainant's mark. The primary difference between the disputed domain name and the mark is addition of very common and even generic

English-language words, either before (“friendster”) or both before and after the term YAHOO (“new” and “messenger”) along with, secondarily, appending the generic Top-Level Domain (“gTLD”) “.com” to form the disputed domain names, with the last addition being irrelevant in assessing confusing similarity or identity under paragraph 4(a)(i) of the Policy and thus ignored. The Panel views the omission of the exclamation point in the Complainant’s mark YAHOO! from each of the disputed domain names – apart from the fact that it is a prohibited character in a domain name – as inconsequential, if not completely *de minimus*, as the overwhelmingly dominant portion of the mark and the term through which the Complainant has acquired its reputation, through its marks, is the term YAHOO itself.

It is now very well-established in UDRP precedent, including numerous decisions previously rendered by this Panel, that a minor variation, such as adding a short letter or number group, or even generic or highly descriptive words, or geographic identifiers, such as a country name, to a mark, is usually insufficient in and of itself, when used in forming a domain name that results from modifying the mark, to confer requisite and sufficient distinctiveness to that name to avoid user confusion. Here, adding the words in the manner which the Respondent specifically did, to the term YAHOO clearly resulted in such a minor variation. See, e.g., *Cummins Inc. v. Jamie Lent*, WIPO Case No. D2015-0188; *Staatliche Porzellan-Manufaktur Meissen GmbH v. Buy Meissen*, WIPO Case No. D2013-1687; *Forideas Pty Limited v. Movember Organization*, WIPO Case No. D2013-1385; *AlgaeCal Inc. v. AlgaeCal Fraud*, WIPO Case No. D2013-1248; *General Motors LLC v. Carol Schadt*, WIPO Case No. D2012-2106; *National Westminster Bank plc v. Steve Mart*, WIPO Case No. D2012-1711; *Tommy Bahama Group, Inc. v. Berno Group International*, WIPO Case No. D2012-0531; *National Association of Realtors v. Hammerberg & Associates, Inc.*, WIPO Case No. D2012-0075; *Space Needle LLC v. Erik Olson*, WIPO Case No. D2011-0931; *Oakley, Inc. v. Kate Elsberry, Elsberry Castro*, WIPO Case No. D2009-1286; *Clearwire Legacy, LLC v. Leon Ganesh*, WIPO Case No. D2010-0148; *Burberry Limited v. Domain Admin*, WIPO Case No. D2009-0703; *Krispy Kreme Doughnuts, Inc. v. John Sharp*, WIPO Case No. D2009-0099; *MasterCard International Incorporated v. Global Prepaid*, WIPO Case No. D2008-2008; *HRB Innovations Inc., Express Tax Service Inc. v. Calvin Brown*, WIPO Case No. D2008-1072; *Dreamworks Animation, LLC v. Creahq, Mike Furlong*, WIPO Case No. D2008-0505; *Marvel Manufacturing Company Inc. v. Koba Internet Sales, LP*, WIPO Case No. D2008-0265; *MySpace, Inc. v. Edwin De Jesus, EDJ Associates Inc.*, WIPO Case No. D2007-1878; *BlackRock, Inc. v. blackrockfinancialservices.com*, WIPO Case No. D2007-1627; *F. Hoffmann-La Roche AG v. Transliner Consultants*, WIPO Case No. D2007-1359; *National Football League v. Peter Blucher d/b/a BluTech Tickets*, WIPO Case No. D2007-1064; *Toilets.com, Inc. v. Rons Porta Johns*, WIPO Case No. D2007-0952; *Associated Bank Corp. v. Texas International Property Associates*, WIPO Case No. D2007-0334; *Gerber Childrenswear Inc. v. David Webb*, WIPO Case No. D2007-0317; *SPX Corporation v. Hevun Diversified Corporation*, NAF Claim No. 791657; *Google Inc. v. Jennifer Burns*, NAF Claim No. 726096; *The Cheesecake Factory Inc. and The Cheesecake Factory Assets Co., LLC v. Say Cheesecake*, WIPO Case No. D2005-0766; *Napster, Inc. v. Giovanni Vinscani*, WIPO Case No. D2005-0531; *Caesars Entertainment, Inc. v. Nova Internet Inc.*, WIPO Case No. D2005-0411; *Lockheed Martin Corporation v. The Skunkworx Custom Cycle*, WIPO Case No. D2004-0824; *Lockheed Martin Corporation v. Deborah Teramani*, WIPO Case No. D2004-0836; *National Collegiate Athletic Association v. Dusty Brown*, WIPO Case No. D2004-0491.

Therefore, the Panel finds that each of the disputed domain names is confusingly similar to the Complainant’s YAHOO! Marks. Hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

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

The Complainant has never authorized the Respondent to utilize any of the YAHOO! Marks nor does the Complainant apparently have any relationship or association whatsoever with the Respondent.

The record before the Panel is simply devoid of any evidence which proves that the Respondent actually acquired any recognition in its marketplace to become commonly known by either of the disputed domain

names, a name similar to either of them or more generally the term “YAHOO”. Given the exclusive trademark rights that reside in the Complainant and the reputation and fame now inherent in its YAHOO! Marks, the Respondent could never legitimately acquire any public association between its business and the mark YAHOO! or even any mark similar thereto, at least for the goods and services provided by the Complainant under its marks. This is so in light of the Complainant’s exclusive trademark rights which date back to June 1994 and the fame and reputation which those marks have since acquired – which predate, by a decade, the dates in August 2004 when the Respondent registered the disputed domain names. See, e.g., *Cummins, Staatliche Porzellan-Manufaktur Meissen GmbH, Forideas, National Westminster, Tommy Bahama, Space Needle, Oakley, Burberry, HRB Innovations and MySpace*, all cited *supra*; and *General Motors LLC v. Carol Schadt*, WIPO Case No. D2012-2106. As such, the Respondent could never likely become commonly known by either of the disputed domain names or the mark YAHOO!, for any of the services it provides which are either identical to or sufficiently similar to those listed on the Complainant’s trademark registrations, without infringing on the exclusive trademark rights of the Complainant. Hence, the Respondent does not fall within paragraph 4(c)(ii) of the Policy.

There can simply be no question that the Respondent was well aware of the Complainant, its mark YAHOO! and the Complainant’s exclusive rights in that mark, and the reputation and fame of that mark when the Respondent registered the disputed domain names. Yet, in spite of that knowledge, the Respondent intentionally registered the domain names, each of which contains the term YAHOO, and used them as addresses of websites which provided links to various services, including from sources competing with the Complainant. Thus, the Respondent is using the disputed domain names and exploiting the reputation and goodwill inherent in the Complainant’s mark YAHOO! without the Complainant’s permission, authority or consent to promote the sale of third-party competitive goods. Offering goods in this fashion, as the Respondent has done and continues to do, by illicitly exploiting the reputation and goodwill of a rights-holder’s mark is not a *bona fide* offer within the meaning of paragraph 4(c)(i) of the Policy.

Lastly, as the Respondent’s use of the disputed domain names is commercial in nature, this use does not constitute either a noncommercial or fair use under paragraph 4(c)(iii) of the Policy.

As such, based on the evidence presently before the Panel, the Respondent does not fall within any of paragraphs 4(c)(i)(iii) of the Policy. Also, there is simply no evidence that the Respondent has acquired, through any other means, any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel concludes that the Respondent has no rights or legitimate interests in either of the disputed domain names within paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

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

It is indisputable that the Respondent was well aware of the Complainant, its reputation, its mark YAHOO! and the exclusive rights which the Complainant had in that mark when the Respondent registered the disputed domain names. Yet, in spite of that knowledge and in the absence of any authority to do so from the Complainant, the Respondent intentionally chose and registered the disputed domain names containing the term YAHOO for its potential to cause confusion with that mark. Relying on that confusion, the Respondent used those names to direct Internet users to its own websites or, via re-direction, to various third-party websites, including some at which services were offered by the Complainant’s competitors, for the Respondent’s own commercial gain obtained through, e.g., click-through links on these sites, redirection and advertising fees.

Hence, the Panel concludes that the Respondent’s registration and use of the disputed domain name fall within the bad faith provision of paragraphs 4(a)(iii) and 4(b)(iv) of the Policy.

Further, the Respondent’s representative, while claiming in his October 10, 2014 e-mail correspondence to the Complainant that the names were subject to a federal court receivership thus implicitly asserting that the names were controlled by the receivership and could not be transferred during the pendency of the

receivership, offered absolutely no evidence that such a receivership actually existed. Hence, the Panel infers that, in all likelihood, had such a receivership existed, Mr. Schepps would have attached to his correspondence a copy of a court order or other official document confirming the receivership. He did not. Moreover, the Complainant, through its own research efforts, was unable to uncover any federal court order which established such a receivership. Thus, it would appear to the Panel that Mr. Schepps' claim is false and was intentionally made to deceive the Complainant into believing that such a receivership did, in fact, exist, when it did not. By doing so, the Respondent attempted to exert pressure on the Complainant to refrain it from taking any further action which, under the Policy it was entitled to do, against the Respondent regarding the names by suggesting, for which the Respondent has no valid basis to do, that the Complainant would interfere with a judicially sanctioned proceeding.

Such claims involving the disputed domain names reflect bad faith under the general provisions of paragraph 4(b) of the Policy.

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

7. Decision

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

Peter L. Michaelson

Sole Panelist

Date: May 5, 2015