



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

HRB Innovations Inc., Express Tax Service Inc. v. Calvin Brown

Case No. D2008-1072

1. The Parties

The Complainant is HRB Innovations Inc. of Freeport, Bahamas and Express Tax Service Inc. of Kansas City, Missouri, United States of America, both represented by Berkowitz Oliver Williams Shaw & Eisenbrandt LLP also of the United States.

The Respondent is Calvin Brown of Rowlett, Texas, United States of America.

2. The Domain Names and Registrar

The disputed domain names <expresstaxfranchise.com>, <hrblockfranchiseforsale.com>, <hrblockfranchiseinformation.com>, <hrblockfranchiseopportunities.com>, <hrblockfranchises.com>, <hrblockfranchisesforsale.com>, <hrblocktaxfranchise.com> and <taxfranchisehrblock.com> are all registered with GoDaddy.com, Inc.

3. Procedural History

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy”), which was adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on August 26, 1999, and approved on October 24, 1999, and in accordance with the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) as approved on October 24, 1999, and the World Intellectual Property Organization (“WIPO”) Supplemental Rules for Uniform Domain Name Dispute Resolution Policy in effect as of December 1, 1999 (the “Supplemental Rules”).

The Complaint, with accompanying Annexes 1-10, was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 14, 2008.

Pursuant to paragraph 4(d) of the Policy, the Complainant selected the Center as the ICANN approved administrative dispute resolution service provider to administer this

proceeding. Through the Complaint, the Complainant requested a single-member panel.

After receiving the original Complaint, the Center, in accordance with paragraph 5 of the Supplemental Rules, verified that the Complaint complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on July 15, 2008, the Center requested confirmation from the Registrar as to whether the Registrar received a copy of the Complaint from the Complainant and to confirm contact and registrant information set forth in the Complaint relative to each of the disputed domain names. The Center also requested the Registrar to specify, for each such name:

- (a) whether the Policy applies to the name,
- (b) whether the registrant has submitted, in its registration agreement, to the jurisdiction at the location of the principal office of the registrar for court adjudication of disputes concerning or arising from the use of the name,
- (c) the language of the registration agreement, and
- (d) whether the name will remain “locked” during the proceeding.

Subsequently, on July 15, 2008, the Registrar provided its response to the Center through which it specified name and contact information pertinent to each of the disputed domain names to the extent, as it then existed, in its WhoIs database. Specifically, the Registrar, through its response, stated that it had not received a copy of the Complaint and that the Respondent was listed as the registrant for each of the names. The response further indicated that, for each of the names:

- (a) the Policy applies to the name,
- (b) GoDaddy.com is the registrar,
- (c) the Registrant submitted to the jurisdiction of the courts at the location of the principal office of the Registrar,
- (d) the registration agreement is in English and
- (e) the name will remain locked during the proceeding.

The Center verified that the Complaint satisfied the formal requirements of the Policy, the Rules and the Supplemental Rules.

On July 28, 2008, the Center formally notified the Respondent of the filing of the Complaint, including an indication that the Center was forwarding a complete copy of the Complaint to that Respondent, together with all its exhibits, by post or courier and by email. The Complaint and its accompanying documents, and all subsequent communications associated therewith, were provided in the preferred manners and to the addresses as mandated by paragraphs 2(a), 2(b) and 4(a) of the Rules.

Hence, the notification to the Respondent having occurred on July 28, 2008, under paragraph 4(c) of the Rules, this administrative proceeding is deemed to have commenced on that date.

Having reviewed the Complaint and all the correspondence, including that between the Center and the Registrar, the Panel agrees with the determination of the Center that the

Complaint and its handling met the requirements of the Rules and the Supplemental Rules.

The Respondent was then provided with a 20 calendar day period, expiring on August 17, 2008, to file its Response with the Center and the Complainant.

As of August 17, 2008, the Center had not received a formal Response to the Complaint from the Respondent; hence, the Center, in an email letter dated August 19, 2008, notified the Respondent of its default.

Accordingly, pursuant to the Rules and Supplemental Rules, by email letter dated August 22, 2008, the Center contacted the undersigned, Mr. Peter L. Michaelson, Esq., requesting his service as a Sole Panelist for this dispute. Subsequently, on August 22, 2008, Mr. Michaelson accepted and returned, by email attachment to the Center, a fully executed Statement of Acceptance and Declaration of Impartiality and Independence. The Center, through an email letter dated August 26, 2008, notified the Parties of the appointment of Mr. Michaelson as sole Panelist.

Based on the deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to the Center on or before September 9, 2008.

This dispute concerns eight domain names, specifically: <expresstaxfranchise.com>, <hrblockfranchiseforsale.com>, <hrblockfranchiseinformation.com>, <hrblockfranchiseopportunities.com>, <hrblockfranchises.com>, <hrblockfranchisesforsale.com>, <hrblocktaxfranchise.com> and <taxfranchisehrblock.com>.

The language of this proceeding is English.

4. Factual Background

As indicated in the WhoIs registration record provided in Annex 2 to the Complaint, the disputed domain names was registered as follows: <expresstaxfranchise.com>, <hrblockfranchiseopportunities.com> and <hrblocktaxfranchise.com> all on June 9, 2008; <taxfranchisehrblock.com> on June 10, 2008; <hrblockfranchiseinformation.com> on June 11, 2008; and <hrblockfranchiseforsale.com>, <hrblockfranchises.com> and <hrblockfranchisesforsale.com> all on June 15, 2008.

A. The Complainant's marks

The Complainant owns various US and counterpart foreign trademark registrations for the marks H & R BLOCK and EXPRESS TAX, in block letters, stylized and/or with a logo. The Complainant has provided, in Exhibit 4 to the Complaint, copies of records for its US registrations from the publicly accessible on-line Trademark Electronic Search System (TESS) provided by the US Patent and Trademark Office (PTO). Pertinent details of some of those registrations are as follows:

1. H & R BLOCK (with logo)
United States registration 2,533,014; registered: January 22, 2002

This mark is registered for use in connection with "preparation of tax returns for others" in international class 35. The record indicates that both first use and first use in

commerce of this mark, when used in conjunction with this service, commenced as of November 6, 2000.

2. H &R BLOCK (block letters)
United States registration 3,338,962; registered: November 20, 2007

This mark is registered for use in connection with “preparation of tax returns for others” in international class 35; “stock broker services, financial planning services, banking services, and mortgage services, namely mortgage banking, mortgage lending, mortgage brokering and mortgage servicing”, all in international class 36; and “conducting classes and courses in preparation of tax returns” in international class 41. The record indicates that both first use and first use in commerce of this mark, when used in conjunction with: the service in class 35 commenced as of December 31, 1956; the services in class 36 commenced as of March 31, 2000; and the service in class 41 commenced as of September 15, 1964.

3. EXPRESS TAX (block letters)
United States registration 1,556,044; registered: September 12, 1989

This mark is registered for use in connection with “preparation of income tax returns” in international class 35. The record indicates that both first use and first use in commerce of this mark, when used in conjunction with this service, commenced as of January 6, 1987.

B. The Complainant

The H&R Block family of companies, which is a public corporation listed on the New York Stock Exchange and with which the Complainant is affiliated, collectively makes up one of the largest, if not the largest, provider of individual consumer income tax return preparation services in the US and also provides tax services internationally. The Complainant provides its tax return preparation service to consumers through office locations operated by the H&R Block corporate family and/or their franchisees, and through use of proprietary tax preparation software. Other entities within that corporate family also provide personal financial advising and banking services.

The Complainant, itself and through direct and indirect licensees, has used and owned the marks for at least 20 years in connection with providing its various services. Over those years, the Complainant has expended considerable effort and made extensive expenditures to market its various services under the marks. As a result of those efforts as well as unsolicited media coverage of the Complainants’ services and word-of-mouth, the marks have come to be recognized and relied upon by the trade and the public as identifying the Complainant and its services, and as distinguishing both from other entities and the services they provide.

The Complainant also has an active presence on the Internet, which includes websites at two domain names owned by Complainant, specifically: <hrblock.com> and <expresstaxservice.com>.

C. The Respondent

The Respondent competes with the Complainant.

When an Internet user enters any of the disputed domain names into his(her)

browser, that user is not directed to a website specifically associated with that name but rather is diverted to the Respondent's website located at <taxpreparationbusinessopportunity.com>. That latter site, hard-copy printouts of screen-shots of its home page appear in Annex 7 to the Complaint, contains information about the Respondent's competing tax business, Small Business Financial Management Group, Inc. ("SBFMG"). This website solicits Internet users to open a competing business through the Respondent's tax services company and its SBFMG program.

However, fee information and other details about that program are posted on the Respondent's SBFMG homepage at the domain name <ownasbfmgfranchise.com>. Hard-copy printouts of Screenshots of various pages from the <ownasbfmgfranchise.com> site, together with a printout of the WhoIs search results showing the Respondent's registration of that particular domain name, appear in Annex 8 to the Complaint. That site reveals that the Respondent charges its clients "an 8% royalty on the income you earn" with its motivation being to "build [his SBFMG] brand" to "create one of the largest, best, most reputable accounting firms in the U.S."

The Respondent, in addition to its SBFMG website, also operates other websites, reached through other domain names registered by the Respondent, that compete with the Complainant. In that regard, see hard-copy screen-shots of the home page of a website located at the domain name <prosperityadvice.com> which appear in Annex 9 to the Complaint.

D. Interactions between the parties

After the Complainant discovered the Respondent's use of the disputed domain names through a reverse "WhoIs" search, the Complainant sent, by an email message dated June 13, 2008, a cease and desist demand to the Respondent (a copy of all the correspondence between the parties appears in Annex 10 to the Complaint).

Subsequently, on the same date, the Respondent responded to the Complainant. In his message, the Respondent failed to state that he would cease his activities and requested legal authority for the Complainant's position. After further email correspondence between the parties, the Respondent, in an email message dated June 17, 2008 to the Complainant, contended that "no violation is present".

On June 23, 2008, the Complainant sent a second cease and desist demand, this time via a letter sent by email and postal mail, to the Respondent. Through that letter, the Complainant demanded that the Respondent cease use of the disputed domain names and indicate as such to the Complainant within a 10-day period, otherwise the Complainant would initiate a "UDRP arbitration proceeding" against the Respondent. Later that day, the Respondent replied to that letter by an e-mail message through which the Respondent again declined the Complainant's demand and stated "we will expect for your [sic] to begin the UDRP arbitration proceeding."

The Respondent followed his June 26th email message with a letter of the same date to the Complainant. Through that letter, the Respondent again refused the Complainant's demand and also stated that the Respondent's sole motivation in using the names, which point to a website that "offers a business opportunity", is to provide, as "a free service to the public" without "profit/commercial gain motive", an "economic development initiative" by "simply giving back to the community, using our knowledge to help empower others by owning their own tax business".

Thereafter, the Complainant initiated the present proceeding.

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 Complainant's marks.

Specifically, the Complainant states that each such name merely includes one of the Complainant's marks along with a generic term, such as "tax" and "franchise(s)", which is related to the Complainant's business.

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

(ii) Rights or Legitimate Interests

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

First, Complainant states that it has never authorized the Respondent to use any of the Complainant's marks.

Second, the Complainant alleges that the Respondent is not commonly known by any of the domain names inasmuch as the Respondent's business name does not incorporate the words "H&R Block" or "Express Tax", nor given the Complainant's marks, could the Respondent be so known or even conduct any legitimate business activities under any of those names or for that matter under any name that includes any of those marks.

(iii) Registered and Used in Bad Faith

Lastly, the Complainant contends that the Respondent registered and is now using each of the disputed domain names in bad faith under paragraph 4(a)(iii) of the Policy.

First, the Complainant alleges that the Respondent, with prior knowledge of the Complainant's marks, intentionally registered confusingly similar domain names, that each comprised one of those marks along with a generic term related to the Complainant's business, which was then used to redirect Internet traffic destined to the Complainant's website, to the Respondent's competing website instead - all to misappropriate Complainant's marks and their associated goodwill for the Respondent's ultimate benefit.

Second, the Complainant alleges that even if the Respondent's intent, as he expressed, in registering and using the names was truly noncommercial, nevertheless the Respondent's actions in intentionally using each of the names to divert Internet users to his competing website and thereby cause confusion reflect

bad faith. If the Respondent's purpose behind using the names was actually noncommercial and aimed at attracting Internet users in furtherance of that purpose, such as a website that provides critical comment and is addressed through a domain name that includes a trademark of an entity being criticized, then the Respondent should have selected domain names (e.g., <trademarksucks.gTLD>) which, on their face, specifically conveyed that purpose to an Internet user. Absent having done so here, the Respondent's conduct, in trading upon the Complainant's marks and their good will through registration and use of all the names, constitutes bad faith.

B. Respondent

The Respondent failed to file any Response to the contentions raised in the Complaint.

6. Discussion and Findings

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.

A. Identical or Confusingly Similar

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

From a simple comparison of each of the disputed domain names to the Complainant's marks, no doubt exists that each such name is confusingly similar to the marks.

The only differences between the disputed domain name and the mark H & R BLOCK or EXPRESS TAX are the addition of the generic words "franchise", "franchises", "information", "for sale", "opportunities", "tax", either individually or together, as either a prefix or a suffix to one of marks to form a composite term along with appending the gTLD (generic top level domain) ".com" to that term to form the name – with the last addition being totally irrelevant in assessing confusing similarity or identity under paragraph 4(a) of the Policy and thus ignored.

It is now very well-established in UDRP precedent, including numerous decisions previously rendered by this Panel, that a minor variation, such as adding short letter or number groups or even generic or highly descriptive words 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 one or more of the generic words, in the manners which the Respondent specifically did, to either the mark H & R BLOCK or EXPRESS TAX clearly resulted in such minor variations. See, e.g., *Dreamworks Animation, LLC v. Creahq, Mike Furlong*, WIPO Case No. D2008-0505 (May 28, 2008); *Marvel Manufacturing Company Inc. v. Koba Internet Sales, LP*, WIPO Case No. D2008-0265 (May 5, 2008); *MySpace, Inc. v. Edwin De Jesus, EDJ Associates Inc.*, WIPO Case No. D2007-1878 (March 12, 2008); *Blackrock, Inc. v. blackrockfinancialservices.com*, WIPO Case No. D2007-1627 (January 4, 2008); *F. Hoffmann-La Roche AG v. Transliner Consultants*, WIPO Case No. D2007-1359 (November 14, 2007); *National Football League v. Peter Blucher d/b/a BluTech Tickets*, WIPO Case No. D2007-1064

(September 24, 2007); *Toilets.com, Inc. v. Rons Porta Johns*, WIPO Case No. D2007-0952 (August 27, 2007); *Associated Bank Corp. v. Texas International Property Associates*, WIPO Case No. D2007-0334 (June 28, 2007); *Gerber Childrenswear Inc. v. David Webb*, WIPO Case No. D2007-0317 (April 24, 2007); *SPX Corp. v. Hevun Diversified Corp.*, NAF Case No. FA791657 (November 13, 2006); *Google Inc. v. Jennifer Burns*, NAF Case No. FA 726096 (August 16, 2006); *The Cheesecake Factory Inc. and The Cheesecake Factory Assets Co., LLC v. Say Cheesecake*, WIPO Case No. D2005-0766 (September 12, 2005); *Napster, Inc. v. Giovanni Vinscani*, WIPO Case No. D2005-0531 (July 19, 2005); *Caesars Entertainment, Inc. v. Nova Internet Inc.*, WIPO Case No. D2005-0411 (June 22, 2005); *Lockheed Martin Corporation v. The Skunkworx Custom Cycle*, WIPO Case No. D2004-0824 (January 18, 2005); *Lockheed Martin Corp. v. Deborah Teramani*, WIPO Case No. D2004-0836 (December 1, 2004) and *National Collegiate Athletic Assoc. v. Dusty Brown*, WIPO Case No. D2004-0491 (August 30, 2004); *Lane-Labs USA, Inc. v. Powell Productions*, NAF Case No. FA 155896 (July 1, 2003); and particularly *Cable News Network LP, LLP v. Elie Khouri d/b/a Channel News Network et al.*, NAF Case No. FA 117876 (December 16, 2002).

Moreover, by including the generic terms, particularly singly and in the combinations which the Respondent did, such as “franchiseforsale”, “franchiseinformation”, “franchiseopportunities” and “franchise” with the Complainant’s mark H & R BLOCK or EXPRESS TAX to form a corresponding disputed domain name, the potential for user confusion is likely to be exacerbated, not reduced. In that regard, one of the primary services which the Complainant offers is income tax return preparation through its various franchised locations, with the Complainant evidently seeking out prospective franchisees to expand the number of such locations. Consequently, those Internet users who seek information on those specific services and particularly an opportunity to establish, own and then operate such a franchise location to offer those services to the public may very well be quite likely, given current naming conventions on the Internet used in fashioning domain names, to form, as a corresponding domain name, either one of the Complainant’s marks H & R BLOCK or EXPRESS TAX immediately followed by the word “franchise”, or either of the composite terms “franchiseinformation” or “franchiseopportunities”, or the like and finally concluding with “.com” for a website associated with the Complainant and providing pertinent franchise information. Rather than reaching the Complainant’s website, as would be expected from entry of such a name into a browser, each of those users would instead be directed to the Respondent’s website through which that user would be offered business opportunities from the Respondent that apparently directly compete with those of the Complainant and which the Complainant markets under either of those marks. Merely through the use of any of these names, those users would very likely be deceived into thinking that the Respondent’s website and the services and information offered there through are somehow affiliated, related to or sponsored by the Complainant — when, in fact, they are not. See *Dreamworks* and *MySpace*, both cited *supra*. Inasmuch as such confusion would inevitably occur prior to any of those users actually reaching the Respondent’s home page, i.e., so-called “initial interest confusion”, disclaimers, certainly including that which the Respondent employs, would be totally ineffective to remediate it for the simple reason that the confusion would arise before that user reaches the site and sees the disclaimer.

Thus, the Panel finds that here each of disputed domain names tends to aggravate, rather than ameliorate, user confusion and does so to the Respondent’s ultimate benefit. Specifically, in the first instance, that benefit could encompass increased web traffic to the Respondent’s website through user diversion away from the Complainant’s site. Of

far greater concern is the eventual result that the Respondent, along with other users who as a result of such diversion ultimately transacts with the Respondent, would likely gain considerable pecuniary and/or non-pecuniary benefit, which each such individual would not otherwise receive, due to business having been diverted away from the Complainant by virtue of each of those users who decides, after seeing franchise and other business opportunity information presented on the Respondent's website, to transact with the Respondent rather than the Complainant. Such a decision would ultimately deny the Complainant revenue, e.g., additional franchise fees, and non-monetary benefits, such as enhanced goodwill by increased market penetration, which would have otherwise flowed to it had each such user, but for being diverted to the Respondent's website and having transacted with the Respondent, elected to transact with the Complainant and ultimately establish a franchise location for the Complainant instead. In this Panel's view, this ultimate result, predicated on the ability of each of the disputed domain names to establish significant initial interest confusion, is the very likely the reason why the Respondent intentionally chose and then registered each of the disputed domain names in the first place.

Therefore, the Panel finds that each of the disputed domain names is confusingly similar to the Complainant's marks as to cause confusion; hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

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

The Complainant has never authorized the Respondent to utilize any of its marks or any mark confusingly similar thereto in conjunction with the services with which the Complainant uses that mark or for similar services, nor does the Complainant apparently have any relationship or association whatsoever with the Respondent. As such, any use to which the Respondent were to put either of the Complainant marks H & R BLOCK or EXPRESS TAX or one confusingly similar thereto in connection with the identical or even similar services to those currently provided by the Complainant, as recited in its trademark registrations, would violate the exclusive trademark rights now residing with the Complainant. See, e.g., *Dreamworks, MySpace, Blackrock, F. Hoffmann-La Roche AG, National Football League, Toilets.com, Inc., and Associated Bank*, all cited *supra*; *GoDaddy.com, Inc., v. GoDaddysDomain.com, Clark Signs, Graham Clark*, WIPO Case No. D2007-0303 (May 7, 2007); *Citgo Petroleum Corporation v. Richard Antinore*, WIPO Case No. D2006-1576 (March 14, 2007); *New Destiny Internet Group, LLC and Xplor Media, Inc. v. SouthNetworks*, WIPO Case No. D2005-0884 (October 14, 2005); *The Cheesecake Factory Inc., Napster and Caesars Entertainment, Inc.*, all cited *supra*; *Pelmorex Communications Inc. v. weathernetwork*, WIPO Case No. D2004-0898 (December 28, 2004); *Sybase, Inc. v. Analytical Systems*, WIPO Case No. D2004-0360 (June 24, 2004); *Caesars World, Inc. and Park Place Entertainment Corporation v. Japan Nippon*, WIPO Case No. D2003-0615 (September 30, 2003); *Leiner Health Services Corp. v. ESJ Nutritional Products*, NAF Case No. FA 173362 (September 16, 2003); *AT&T Corp. v. Roman Abreu d/b/a Smartalk Wireless*, cited *supra*; *MPL Communications, Limited et al v. IWebAddress.com*, NAF Case No. FA 97092 (June 4, 2001); *Treeforms, Inc. v. Cayne Industrial Sales, Corp.*, NAF Case No. FA 95856 (December 18, 2000); and *America Online, Inc. v. Xianfeng Fu*, WIPO Case No. D2000-1374 (December 11, 2000). Consequently, the Respondent could not legally acquire any public association between it and either of the marks

H & R BLOCK or EXPRESS TAX or one similar thereto, at least for the services rendered by the Complainant, or, broadly speaking, any service likely perceived by its users to be so similar and/or to emanate from or be related, in any fashion, to those then offered by the Complainant.

Further, there is absolutely no evidence of record that the Respondent has ever been commonly known by any of the disputed domain names or more generally either of the marks H & R BLOCK or EXPRESS TAX. Nor could the Respondent in this case ever become so known, in light of the Complainant's exclusive trademark rights, with first use of the mark H & R BLOCK dating back to at least December 1956 and that of the mark EXPRESS TAX dating back to January 1987 which is approximately 51 and 21 years respectively prior to the dates, June 9-15, 2008, on which the Respondent registered the disputed domain names and the extensive reputation and notoriety which the Complainant has gained in its marks during that time, without infringing on the exclusive trademark rights of the Complainant. Moreover, the Complainant's US registrations of its marks H & R BLOCK and EXPRESS TAX issued in January 2002 and September 1989, respectively, also occurred well prior to the June 9-15, 2008 registration period. See, e.g., *MySpace* and *Treeforms, Inc.*, both cited *supra*.

Hence, based on the evidence before the Panel, the Respondent does not fall within paragraph 4(c)(ii) of the Policy.

Moreover, since the Respondent's use of each of the disputed names, which in this Panel's view infringes the Complainant's trademark rights, can not constitute a *bona fide* offering of services and is unquestionably commercial in nature, e.g., leading to the formation of an ongoing business relationship with the Respondent - despite the Respondent's contrary contention as to the latter in its correspondence with the Complainant, the Respondent's conduct does not fall within paragraphs 4(c)(i) or 4(c)(iii) of the Policy either.

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

C. Registered and Used in Bad Faith

The Panel finds that the Respondent's actions, with respect to each of the disputed domain names, constitutes bad faith registration and use.

The Panel believes that the Respondent was well aware of the Complainant and its marks H & R BLOCK and EXPRESS TAX when the Respondent registered the each of the disputed domain names. Yet, in spite of that knowledge, the Respondent intentionally chose and registered each name to opportunistically exploit its potential to generate user confusion for the Respondent's eventual benefit. Given the widespread worldwide notoriety and reputation which the Complainant's marks had garnered by then, it is simply inconceivable that the Respondent had no such prior knowledge of those marks - particular considering that the Respondent intentionally placed, on its website, content which offers business opportunities which directly compete with Complainant's services and those furnished through the Complainant's franchisees.

This view is further supported by the facts and the Panel's findings that: (a) the Respondent's site presented such business opportunities competitive with those of the Complainant and/or its licensees, to those, of the Respondent's Internet visitors, who were intent on reaching what they thought to be a site associated with the Complainant

but instead were diverted, by virtue of each of the disputed domain names, to the Respondent's site, and (b) the Respondent derived benefit, certainly through increased web traffic, but also possibly ultimately pecuniary and non-pecuniary from each such user that choose, as a result of the diversion, to transact with the Respondent rather than the Complainant. Given the lack of any response, the Panel infers that generating such benefit predicated on such confusion - and which the Respondent would not otherwise attain - was the Respondent's ultimate goal when it registered and subsequently used each name as it did.

The Respondent, in its June 26 letter to the Complainant, states that its service offerings, made through its website and as addressed by each of the disputed domain names, was simply "giving back to the community by empower other by owning their own tax business" and as such entirely free and hence noncommercial, thus precluding any finding of bad faith. This Panel strongly disagrees. Regardless of whatever benefit the Respondent receives - and ultimately he is indeed benefiting in some fashion - even assuming it is not pecuniary as the Respondent asserts, nevertheless that benefit is predicated on intentional opportunistic exploitation of the potential of each of the disputed domain names to cause initial interest confusion. See, e.g., *Dreamworks*, *MySpace* and *F. Hoffmann-La Roche AG*, all cited *supra*. Because the exploitation has, as its goal, effectuating a commercial transaction, here being franchising or otherwise contracting with an Internet user to operate a location of the Respondent's business, the use of each of the names is plainly commercial in nature, even though - giving the Respondent the benefit of the doubt - the Respondent himself may have received no direct monetary return there from.

It is precisely that exploitation resulting from the confusion which, at its roots, trades on, leverages from and injures the goodwill of the Complainant's marks to the Complainant's detriment and the Respondent's benefit, that constitutes bad faith. Of course, this could well have been avoided had the Respondent used different domain names that clearly conveyed his intention of offering tax return preparation franchises to Internet users but did not employ any of the Complainant's marks in doing so -- but he purposefully had not. Hence, it seems reasonable for this Panel to infer, particularly given the lack of any Response, that the Respondent knew that he stood to benefit far more, as a result of the engendering user confusion by misappropriating the goodwill in those marks, from intentionally choosing and then using each of the domain names in the manner he did than he would have received otherwise -- and that is exactly the reason why he did so.

Consequently, the Panel concludes that the Respondent's conduct with respect to each of the disputed domain names constitutes bad faith use and registration under paragraph 4(b)(iii) and alternatively the general bad faith proscription in paragraph 4(b), and hence also under paragraph 4(a)(iii) of the Policy.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations, with respect to each of 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.

All the disputed domain names, <expresstaxfranchise.com>, <hrblockfranchiseforsale.com>, <hrblockfranchiseinformation.com>, <hrblockfranchiseopportunities.com>, <hrblockfranchises.com>, <hrblockfranchisesforsale.com>, <hrblocktaxfranchise.com> and <taxfranchisehrblock.com>, are ordered transferred to the Complainant.

Peter L. Michaelson, Esq.
Sole Panelist

Dated: September 4, 2008