



Energizer Brands, LLC)
 533 Maryville University Drive)
 St. Louis, MO, 63141,)
)
Complainant)
)
 v.)
)
 Paradise Products/ Paradise Products Inc.)
 Suite 1301, 13F, ING TOWER)
 308 Des Voeux Road Central)
 Hong Kong, Hong Kong 999077)
 CN)
)
Respondent)
)

Domain Names In Dispute:
 autoenergizers.com
 autoenergiser.com
 autoenergisers.com
 528autoenergiser.com
 528autoenergisers.com

**COMPLAINT IN ACCORDANCE WITH
 THE UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY**

[1.] This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (UDRP), adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999 and approved by ICANN on October 24, 1999, and the Rules for Uniform Domain Name Dispute Resolution Policy (UDRP Rules), with an effective date of July 31, 2015, and the FORUM’s Supplemental Rules (Supp. Rules). UDRP Rule 3(b)(i).

[2.] **COMPLAINANT INFORMATION**

- [a.] Name: Energizer Brands, LLC
- [b.] Address: 533 Maryville University Drive
St. Louis, Missouri, 63141
- [c.] Telephone: 314-985-2166
- [d.] Fax: 314-985-2232
- [e.] E-Mail: KateA.Dugan@energizer.com

[3.] **COMPLAINANT AUTHORIZED REPRESENTATIVE, IF ANY**

- [a.] Name: John Gary Maynard, III
- [b.] Address: 951 East Byrd Street

Riverfront Plaza, East Tower
Richmond, VA 23219
[c.] Telephone: 804-788-8772
[d.] Fax: 804-344-7999
[e.] E-Mail: jgmaynard@hunton.com

UDRP Rule 3(b)(ii).

Complainant's preferred contact person for correspondence relating to this case:

[a.] Contact Name(s): John Gary Maynard, III
[b.] Contact Emails(s): jgmaynard@hunton.com

The Complainant chooses to have this dispute heard before a (check one):
X *single-member administrative panel*; _____ *three-member administrative panel*].
UDRP Rule 3(b)(iv).

[4.] RESPONDENT INFORMATION

[a.] Name: Paradise Products / Paradise Products Inc.
[b.] Address: Suite 1301, 13F, ING TOWER
308 Des Voeux Road Central
Hong Kong, Hong Kong 999077
China
[c.] Telephone: +1.8600000000
[d.] Fax: +1.5555555555
[e.] E-Mail: paradiseproducts@hush.com

[5.] RESPONDENT AUTHORIZED REPRESENTATIVE, IF KNOWN

[6.] DISPUTED DOMAIN NAME(S)

[a.] The following domain name is the subject of this Complaint: UDRP Rule 3(b)(vi).

Autoenergizers.com
Autoenergiser.com
Autoenergisers.com
528autoenergiser.com
528autoenergisers.com

[b.] Registrar Information: UDRP Rule 3(b)(vii).

[i.] Registrar's Name: eNom, Inc.
[ii.] Registrar Address: 5808 Lake Washington Blvd NE, Suite 300
Kirkland, WA 98003
United States
[iii.] Telephone Number: +1.425.274.4500
[iv.] E-Mail Address: legal@enom.com

[c.] Trademark/Service Mark Information: UDRP Rule 3(b)(viii).

Complainant, either directly or via one of its wholly-owned subsidiaries, owns over 1,900 pending applications or registrations for the ENERGIZER mark all over the world and in the United States.

For example, as indicated in the chart below, Complainant owns registrations in the United States for the ENERGIZER mark. Complainant provides electrical and scientific apparatus, environmental control apparatus, lubricants and fuels, machinery, hand tools, jewelry, leather goods, housewares and glass, clothing, and toys and sporting goods under these registrations. See Attachment 1 to Exhibit A.

| MARK | REG NO. | GOODS/SERVICES |
|----------------------------------|---------|--|
| ENERGIZER | 3929054 | Solar panels (Int. Cl. 11) |
| ENERGIZER | 4067455 | Solar cells, and battery chargers incorporating solar cells and solar panels for the generation of electricity (Int. Cl. 9) |
| ENERGIZER | 4603110 | Surge protectors; uninterruptible electrical power supplies (Int. Cl. 9) |
| ENERGIZER | 3333645 | Electric night lights (Int. Cl. 11) |
| ENERGIZER | 3130493 | Shaving products, namely razors and razor blades (Int. Cl. 8) |
| ENERGIZER | 2742019 | Battery chargers, not for use with solar energy cells (Int. Cl. 9) |
| ENERGIZER | 3431003 | Lapel pins (Int. Cl. 14) |
| ENERGIZER | 3790800 | Electric and battery-powered power stations, namely, portable battery jump chargers (Int. Cl. 9) |
| ENERGIZER | 3791120 | Air compressors (Int. Cl. 7) |
| ENERGIZER | 3555173 | Radios (Int. Cl. 9) |
| ENERGIZER | 3385214 | Fuel cells (Int. Cl. 9) |
| ENERGIZER | 2601049 | Screensavers (Int. Cl. 9) |
| ENERGIZER | 2601052 | Plush toys (Int. Cl. 28) |
| ENERGIZER & BEAM OF LIGHT W/TAIL | 2449582 | Battery-powered lights (Int. Cl. 11) |
| ENERGIZER AND SIDE BEAMS | 3851260 | Batteries and battery chargers (Int. Cl. 9) |
| ENERGIZER | 1502902 | Batteries (Int. Cl. 9) |
| ENERGIZER | 2500464 | Flashlights (Int. Cl. 11) |
| ENERGIZER | 2601047 | Mugs (Int. Cl. 21) |
| ENERGIZER | 4629189 | Electric generators (Int. Cl. 7) |
| ENERGIZER | 4455298 | Computer cables; audio cables; video cables (Int. Cl. 9) |
| ENERGIZER | 4347019 | Computer storage devices, namely, solid state memory cartridges sold blank or carrying data-compression software, flash drives, flash media cards (Int. Cl. 9) |
| ENERGIZER | 3823121 | Jumper cables (Int. Cl. 9) |
| ENERGIZER | 2957357 | Light bulbs (Int. Cl. 11) |
| ENERGIZER | 3357933 | Power supply connectors and adaptors for use with portable electronic devices (Int. Cl. 9) |
| ENERGIZER AND ENERGY BEAM | 3808386 | Flashlights; lanterns (Int. Cl. 11) |

Complainant also owns registrations for the ENERGIZER mark in more than one hundred and fifty countries, including Canada, Mexico, Germany, Austria, India, Colombia and Chile. The services for these registrations include banking and financial services. As a further example, see Attachment 2 to Exhibit A.

| Mark | Country | Reg. No. | Goods/Services |
|------------------|------------------------|------------|--|
| ENERGIZER | Barbados | 81/21882 | All types of batteries, including for automobiles (Int. Cl. 09) |
| ENERGIZER | Bolivia | 135557-C | Batteries of all types, including automobile, and battery chargers (Int. Cl. 09) |
| ENERGIZER MAX | Colombia | 296356 | Batteries, automobile batteries (Int. Cl. 09) |
| ENERGIZER | Costa Rica | 165681 | All types of batteries, including for automobiles (Int. Cl. 09) |
| ENERGIZER MAX | Costa Rica | 164143 | Batteries, including automobile (Int. Cl. 09) |
| ENERGIZER | Fiji | 230/2007 | Dry cell and automobile batteries (Int. Cl. 09) |
| ENERGIZER | Haiti | 237/151 | All types of batteries, including for automobiles (Int. Cl. 09) |
| ENERGIZER | Honduras | 116286 | All types of batteries, including for automobiles. (Int. Cl. 09) |
| ENERGIZER | Mexico | 845585 | Starters and alternators for vehicles (Int. Cl. 07) |
| ENERGIZER | New Zealand | 710695 | Batteries; automobile batteries; vehicle batteries (Int. Cl. 09) |
| ENERGIZER | Afghanistan | 6996 | Batteries; Flashlights (Int. Cl. 09; 11) |
| ENERGIZER | Albania | 1041586 | Mobile phone accessories, especially chargers, retractable USB cords, car inverters/converters and plug adaptors (Int. Cl. 09) |
| ENERGIZER | Antigua and Barbuda | 5065 | Batteries, electric dry cells, wet cells and chargers (Int. Cl. 09) |
| ENERGIZER | Argentina | 2629477 | Solar cells; solar batteries; solar panels (Int. Cl. 09) |
| ENERGIZER | Aruba | 16612 | Batteries (Int. Cl. 09) |
| ENERGIZER | Austria | 692243 | Batteries (Int. Cl. 09) |
| ENERGIZER | Bahamas | 17915 | Electric dry cells, wet cells, batteries and chargers (Int. Cl. 08) |
| ENERGIZER | Bahrain | 12375 | Flashlights and bulbs (Int. Cl. 11) |
| ENERGIZER | Bangladesh | 16134 | Electric dry cells and batteries (Int. Cl. 09) |
| ENERGIZER | Belize | 3053.05 | Rechargeable batteries, battery charges and uninterruptible power supplies (UPS) (Int. Cl. 09) |
| ENERGIZER | Benelux | 692243 | Batteries (Int. Cl. 09) |
| ENERGIZER | Bermuda | 27319 | ELECTRIC DRY CELLS, WET CELLS, BATTERIES & CHARGERS (Int. Cl. 09) |
| ENERGIZER | Cambodia | KH/2573/93 | Batteries, dry cells (Int. Cl. 09) |
| ENERGIZER | Canada | TMA684267 | Power supply connectors and adaptors for use with portable electronic devices |
| ENERGIZER | Canada | TMA809317 | Solar panels |
| ENERGIZER | Chile | 1163334 | Dry cells and batteries (Int. Cl. 09) |
| ENERGIZER | Cuba | 2005-0388 | Batteries (Int. Cl. 09) |
| ENERGIZER | Cyprus, Republic of | 30809 | Batteries (Int. Cl. 09) |
| ENERGIZER | Dominica | 23/97 | Batteries, electric dry cells, wet cells and chargers |

| Mark | Country | Reg. No. | Goods/Services |
|-----------|----------------------------|--------------|--|
| | | | (Int. Cl. 09) |
| ENERGIZER | Dominican Republic | 46376 | Electric bulbs; Batteries (Int. Cl. 07; 09) |
| ENERGIZER | Ecuador | 3363-84 | Electric dry cells and batteries (Int. Cl. 09) |
| ENERGIZER | El Salvador | 146 | Batteries (Int. Cl. 09) |
| ENERGIZER | Estonia | 17760 | Flashlights (Int. Cl. 11) |
| ENERGIZER | Ethiopia | 3491 | Batteries (Int. Cl. 09) |
| ENERGIZER | European Community | 8866212 | Solar batteries, cells and panels. (Int. Cl. 09) |
| ENERGIZER | Finland | 810968 | Razors and razor blades (Int. Cl. 08) |
| ENERGIZER | France | 692243 | Batteries (Int. Cl. 09) |
| ENERGIZER | Gaza District | 6798 | Batteries (Int. Cl. 09) |
| ENERGIZER | Germany | 2064105 | Electric lights and flares, especially flashlights, and parts thereof (Int. Cl. 11) |
| ENERGIZER | Greece | 72389 | Electric dry elements and batteries. (Int. Cl. 09) |
| ENERGIZER | Guatemala | 141916 | Rechargeable batteries, battery chargers and UPS (uninterruptible power supplies) (Int. Cl. 09) |
| ENERGIZER | Guyana | 15131A | Electric dry cells, wet cells, batteries and chargers thereof and all other goods in Class 9 (Int. Cl. 09) |
| ENERGIZER | Hong Kong | 1989B1911 | Electric dry cells and batteries (Int. Cl. 09) |
| ENERGIZER | Indonesia | IDM000054205 | Batteries (Int. Cl. 09) |
| ENERGIZER | Iran (Islamic Republic of) | 138953 | Batteries (Int. Cl. 09) |
| ENERGIZER | Israel | 49407 | Electric dry cells and batteries (Int. Cl. 09) |
| ENERGIZER | Italy | 692243 | Batteries (Int. Cl. 09) |
| ENERGIZER | Jamaica | B30102 | Electric dry cells, wet cells, batteries and chargers therefor (Int. Cl. 09) |
| ENERGIZER | Japan | 5304447 | Solar cells; solar batteries and solar panels (Int. Cl. 09) |
| ENERGIZER | Jordan | 18981 | Electric dry cells and batteries (Int. Cl. 09) |
| ENERGIZER | Kenya | 26991 | Electric dry cells and batteries (Int. Cl. 09) |
| ENERGIZER | Korea, Republic of | 72087 | Dry cell, wet cell, storage battery (Int. Cl. 39) |
| ENERGIZER | Kuwait | 22395 | Electric dry cells and batteries (Int. Cl. 09) |
| ENERGIZER | Laos | 6688 | Batteries, dry cells and all other goods in class 9 (Int. Cl. 09) |
| ENERGIZER | Latvia | M33622 | Apparatus for signal lighting, electric flashlights (Int. Cl. 11) |
| ENERGIZER | Lebanon | 132999 | Electric dry cells and batteries (Int. Cl. 09) |
| ENERGIZER | Lesotho | LSM/99/00561 | Batteries (Int. Cl. 09) |
| ENERGIZER | Lithuania | 23387 | Lighting equipment (Int. Cl. 11) |
| ENERGIZER | Madagascar | 2134 | All goods in International Class 9; All goods in International Class 11 |
| ENERGIZER | Malawi | 454/2002 | Batteries (Int. Cl. 09) |
| ENERGIZER | Malaya | M/85232 | Electric dry cells and batteries (Int. Cl. 09) |
| ENERGIZER | Malaysia | 95/10411 | Batteries (Int. Cl. 09) |
| ENERGIZER | Malta | 50441 | Batteries, battery chargers (Int. Cl. 09) |
| ENERGIZER | Monaco | 692243 | Batteries (Int. Cl. 09) |
| ENERGIZER | Montserrat | 1675 | Batteries (Int. Cl. 08) |

| Mark | Country | Reg. No. | Goods/Services |
|-----------|----------------------|------------------------|--|
| ENERGIZER | Mozambique | 3472/2000 | Batteries (Int. Cl. 09) |
| ENERGIZER | Myanmar | 1527/1980 | Electric dry cells and batteries (Int. Cl. 09) |
| ENERGIZER | Nicaragua | 60547 LM | Batteries (Int. Cl. 09) |
| ENERGIZER | Oman | 12097 | Batteries (Int. Cl. 09) |
| ENERGIZER | Pakistan | 187700 | Batteries (Int. Cl. 09) |
| ENERGIZER | Panama | 13656701 | Flashlights (Int. Cl. 11) |
| ENERGIZER | Paraguay | 404110 | Solar cells; solar batteries; solar panels (Int. Cl. 09) |
| ENERGIZER | Peru | 37246 | Batteries. (Int. Cl. 09) |
| ENERGIZER | Philippines | PH/4/1981/0 0032672 | Alkaline batteries (Int. Cl. 09) |
| ENERGIZER | Poland | 103114 | Batteries; Apparatus for lighting (flashlights, lamps, lanterns and parts thereof) (Int. Cl. 09; 11) |
| ENERGIZER | Qatar | 57384 | Solar cells, solar batteries and solar panels (Int. Cl. 09) |
| ENERGIZER | Russian Federation | 1041586 | Mobile phone accessories, especially chargers, retractable USB cords, car inverters/converters and plug adaptors (Int. Cl. 09) |
| ENERGIZER | Samoa | 5173 | All batteries, including auto & marine (Int. Cl. 09) |
| ENERGIZER | Saudi Arabia | 1147/38 | Solar cells, solar batteries and solar panels (Int. Cl. 09) |
| ENERGIZER | Singapore | T06/10153I | Flashlights (Int. Cl. 11) |
| ENERGIZER | South Africa | 2007/05815 | Batteries (Int. Cl. 09) |
| ENERGIZER | Sri Lanka | 42101 | ELECTRIC DRY CELLS AND BATTERIES (Int. Cl. 09) |
| ENERGIZER | St. Kitts and Nevis | 4526 | BATTERIES, ELECTRIC DRY CELLS WET CELLS AND CHARGERS (Int. Cl. 08) |
| ENERGIZER | Sudan | 18955 | Electric dry cells and batteries (Int. Cl. 09) |
| ENERGIZER | Suriname | 21978 | Solar cells; solar batteries; solar panels. (Int. Cl. 09) |
| ENERGIZER | Sweden | 307041 | Electric batteries and dry batteries; Torch, signal lights being hand-held lights and their accessories namely bulbs (Int. Cl. 09; 11) |
| ENERGIZER | Switzerland | 596878 | Solar batteries (Int. Cl. 09) |
| ENERGIZER | Syria | 124255 | Apparatus for lighting, flashlights, torches, lanterns, electric lamps, bulbs and apparatus for heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes (Int. Cl. 11) |
| ENERGIZER | Taiwan | 1076477 | Batteries, vehicle batteries (Int. Cl. 09) |
| ENERGIZER | Thailand | Kor 191318 | Vehicle batteries (Int. Cl. 09) |
| ENERGIZER | Tonga | 1494 | Batteries (Int. Cl. 09) |
| ENERGIZER | Tunisia | EE010182 | Electric dry batteries and storage batteries (Int. Cl. 09) |
| ENERGIZER | Turkey | 200927786 | Solar cells; solar batteries; Solar panels (Int. Cl. 09; 11) |
| ENERGIZER | United Arab Emirates | 154881 | Solar cells; solar batteries; solar panels (Int. Cl. 09) |
| ENERGIZER | United Kingdom | 2003071 | Batteries; Torches (Int. Cl. 09; 11) |

These registrations establish Complainant's rights to the ENERGIZER mark under ¶4(a)(i) of ICANN's Uniform Domain Dispute Resolution Policy (the "Policy"). See *State Farm Mutual Automobile Insurance Company v. shilei*, FA1623634 (Nat. Arb. Forum July 14, 2015) (concluding that "Complainant has rights in the STATE FARM

mark through its registration with the USPTO.”); *see also Metropolitan Life Ins. Co. v. Bonds*, FA 873143 (Nat. Arb. Forum Feb. 16, 2007) (finding that a trademark registration adequately demonstrates a complainant’s rights in a mark under Policy ¶ 4(a)(i)).

[7.] **FACTUAL AND LEGAL GROUNDS**

This Complaint is based on the following factual and legal grounds: UDRP Rule 3(b)(ix).

[a.] Complainant has legitimate rights to the ENERGIZER mark, and the disputed domain name is identical or confusingly similar to Complainant’s trademark. UDRP Policy ¶ 4(a)(i); *See also Haas Automation, Inc. v. Josh Butz*, FA1429189 (Nat. Arb. Forum March 23, 2012) (“Based on prior UDRP decisions holding that USPTO trademark registrations are conclusive proof of rights in a mark...the Panel holds that Complainant has proven it owns rights to the HAAS AUTOMATION mark for the purposes of Policy ¶ 4(a)(i).”); *Capital One Financial Corp. v. MGA Enterprises Limited*, FA1467312 (Nat. Arb. Forum December 10, 2012) (finding that Complainant has rights in the CAPITAL ONE trademark under Policy ¶ 4(a)(i) by reason of its registration of the mark with a national trademark authority-- the USPTO); *Capital One Financial Corp. v. Above.com Domain Privacy*, FA1463496 (Nat. Arb. Forum October 23, 2012) (finding that Complainant demonstrated its rights in the CAPITAL ONE mark under Policy ¶ 4(a)(i) by showing it registered such mark with the USPTO as well as other recognized trademark registries worldwide); and *Capital One Financial Corp. v. Paydayloanz.com*, FA1463493 (Nat. Arb. Forum October 22, 2012) (finding that “Complainant secured rights in its CAPITAL ONE mark through its various global trademark registrations, pursuant to Policy ¶ 4(a) (i). These rights exist regardless of where the Respondent resides.”)

Complainant, Energizer Brands, LLC, (“Energizer”) is one of the world’s leading battery manufacturers, and markets and distributes some of the most recognizable and valuable brands in its industry, including ENERGIZER®, which has been in use for sixty years. Complainant has consistently used the ENERGIZER mark to promote its goods and services since its inception.

Respondent’s disputed domain name <autoenergizers.com> is confusingly similar to Complainant’s ENERGIZER trademark because Respondent’s domain name contains Complainant’s mark in its entirety and simply adds an “s” to the end of Complainant’s full trademark and the generic term “auto,” which directly relates to Complainant’s business. Moreover, the pluralization of Complainant’s trademark as well as the additions of the generic term “auto,” and the gTLD, “.com” to a domain name are insufficient to distinguish a disputed domain name and a mark. Additionally, Respondent’s disputed domain names, <autoenergiser.com>, <autoenergisers.com>, <528autoenergiser.com>, and <528autoenergisers.com> are confusingly similar to Complainant’s ENERGIZER trademark because Respondent’s domain names contain simple misspellings or typographical errors that an Internet user might make when typing in Complainant’s mark, and add the generic terms “528,” which is a part number for a specialty battery, and “auto,” which directly relate to Complainant’s business. A simple misspelling and typo of Complainant’s mark does not sufficiently distinguish a disputed domain name and a mark. *See State Farm Mutual Automobile Insurance Company v. shilei*, FA1623634 (Nat. Arb. Forum July 14, 2015) (finding that “Respondent’s

<statefarmdrivesafeandsave.com> domain name is confusingly similar to Complainant's STATE FARM mark because it is differentiated by only the additions of the words 'drive,' 'safe,' 'and,' and 'save,' and the gTLD '.com.'"); *see also Capital One Financial Corp. v. Capital funding*, FA 1579521 (Nat. Arb. Forum October 16, 2014) (finding that "the inclusion of the term 'fund' adds to any confusion since it is suggestive of activity within the scope of the CAPITAL ONE mark."); *see also Capital One Financial Corp. v. CW Inc.*, FA 1527001 (Nat. Arb. Forum November 25, 2013) (concluding that "the at-issue domain name is confusingly similar to Complainant's CAPITAL ONE trademark" and that "the addition of 'rewards' to Complainant's mark only serves to increase confusion between the domain name and the mark since the term suggests Complainant's credit card business which may feature a rewards program."); *see also Capital One Financial Corp. v. Domain Admin / Whois Privacy Corp.*, FA 1582803 (Nat. Arb. Forum November 13, 2014) (finding that "the descriptive phrase 'auto loan' as included in [the <capitaloneautoloan.org>] domain name enhances the confusing similarity of the domain name."); *see also Wells Fargo & Company v. Pinnacle Management Group, Inc.*, FA1272346 (Nat. Arb. Forum August 18, 2009) (finding that "the addition of the generic top-level domain (gTLD)" ".com" also does not sufficiently distinguish the disputed domain name from Complainant's mark as a top-level domain is a required element of all Internet domain names."); *see also Capital One Financial Corp. v. Domain Manager / GV LLC*, FA 1586094 (Nat. Arb. Forum December 9, 2014) (finding that the "<capitalones.com> domain name and CAPITAL ONE mark are confusingly similar..." because "[s]imply adding an 's' to Respondent's domain name does not adequately distinguish it from Complainant's mark."); *see also Guinness UDV N. Am., Inc. v. Dallas Internet Servs.*, D2001-1055 (WIPO Dec. 12, 2001) (finding the <smirnof.com> domain name confusingly similar to the complainant's SMIRNOFF mark because merely removing the letter "f" from the mark was insignificant); *see also Capital One Financial Corp. v. Zhichao Yang*, FA 1473336 (Nat. Arb. Forum January 9, 2013) (finding that "Respondent's disputed domain names are confusingly similar to Complainant's CAPITAL ONE mark because the domain names are merely typographical errors of the mark, which do not sufficiently distinguish the disputed domain name from Complainant's mark."); *see also Marriott Int'l, Inc. v. Seocho*, FA 149187 (Nat. Arb. Forum Apr. 28, 2003) (finding that the respondent's <marrriott.com> domain name was confusingly similar to the complainant's MARRIOTT mark).. UDRP Rule 3(b)(ix)(1); UDRP Policy ¶ 4(a)(i).

[b.] The Respondent should be considered as having no rights or legitimate interests in respect of the domain names that are the subject to this Complaint. UDRP Rule 3(b)(ix)(2); UDRP Policy ¶ 4(a)(ii).

Respondent is not commonly known by the disputed domain names. The WHOIS information for the disputed domain name does not reflect that Respondent is commonly known by the disputed domain name. *See Exhibit B*. Complainant has never authorized Respondent to use its ENERGIZER trademark, much less use the mark as a domain name, and Respondent is not a licensee of Complainant. *See Exhibit A*. Such evidence is sufficient to establish a respondent's lack of rights to the disputed domain name. *See Capital One Financial Corp. v. Ryan G Foo / PPA Media Services*, FA 1544064 (March 25, 2014) (finding that "there is no basis in the record for a finding that Respondent is known by the disputed domain name under Policy ¶ 4(c)(ii)" since "[t]he WHOIS information lists 'Ryan G Foo' of 'PPA Media Services' as the registrant of record."); *see*

also *Capital One Financial Corp. v. CW Inc.*, FA 1527001 (Nat. Arb. Forum November 25, 2013) (concluding that “Respondent is not commonly known by the <capitalonerewards.com> domain name” and finding that “there is no evidence that tends to prove that, notwithstanding the WHOIS record, Respondent is otherwise commonly known by the at-issue domain name”); see also *Coppertown Drive-Thru Sys., LLC v. Snowden*, FA 715089 (Nat. Arb. Forum July 17, 2006 (concluding that the respondent was not commonly known by the <coppertown.com> domain name where there was no evidence in the record, including the WHOIS information, suggesting that the respondent was commonly known by the disputed domain name); see *Capital One Financial Corp. v. PPA Media Services / Ryan G. Foo*, FA 485206 (Nat. Arb. Forum April 1, 2013) (concluding that “Respondent has not been commonly known by the disputed domain name so as to have demonstrated that it has rights to or legitimate interests in the domain name within the contemplation of Policy ¶ 4(c)(ii).”); see also *Capital One Financial Corp. v. MGA Enterprises Ltd.*, FA 467312 (Nat. Arb. Forum December 10, 2012) (finding that “the WHOIS information for the contested domain name identifies the registrant only as ‘mga enterprises limited,’ which does not resemble the domain name.” And concluding that “Respondent has not been commonly known by the disputed domain name so as to have demonstrated that it has rights to or legitimate interests in it under Policy ¶ 4(c)(ii).”).

Respondent’s lack of rights or legitimate interests in the disputed domain names <528autoenergiser.com>, and <528autoenergisers.com> is further evidenced by Respondent’s failure to use the disputed domain name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. The disputed domain name redirects Internet users seeking Complainant’s website to Respondent’s actual website, <528orgonegenerators.com>, presumably for Respondent’s pecuniary gain. See Exhibit C. Such use is not a bona fide offering of goods or services under Policy ¶4(c)(i) and it is not a legitimate noncommercial or fair use under Policy ¶4(c)(iii). See *Waterlefe Community Development District and Waterlefe Master Property Owners Association, Inc. v. Roy Hunter*, FA1455368 (Nat. Arb. Forum August 27, 2012) (finding that respondent lacks rights and legitimate interests in the domain name because “it is not legitimate to use a domain name that fully incorporates the Complainant’s registered trademarks to re-direct Internet users to [his] website.”); see also *Capital One Financial Corp. v. Brian Gelinis / Omni Management Group, LLC*, FA1612148 (Nat. Arb. Forum May 6, 2015) (concluding that “...Respondent’s use of the disputed domain names is neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use, in that each of the domain names redirects Internet users seeking Complainant’s website to Respondent’s website, which offers bankruptcy consulting services, presumably for Respondent’s financial gain.”); see also *Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 0180704 (Nat. Arb. Forum Sept. 30, 2003) (“Respondent’s demonstrated intent to divert Internet users seeking Complainant’s website to a website of Respondent and for Respondent’s benefit is not a bona fide offering of goods or services under Policy ¶4(c)(i) and it is not a legitimate noncommercial or fair use under Policy ¶4(c)(iii).”); *Capital One Financial Corporation and Capital One Bank v. Spider Webs, LTD.*, FA 0098830 (Nat. Arb. Forum Sept. 28, 2001) (“Respondent is intentionally attempting to divert Internet consumers to its own site, and such use is not a bona fide use under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶ 4(c)(iii).”) (citing *Toronto-Dominion Bank v. Karpachev*, D2000-1571 (WIPO Jan. 15, 2001) (finding no rights or legitimate interests where Respondent

diverted Complainant's customers to his websites)); *see Capital One Financial Corporation v. Chris Cabrera*, FA 0591389 (Nat. Arb. Forum Dec. 19, 2005) (finding that use of the Complainant's trademark to sell other goods and services is "neither a bona fide offering of a good or service pursuant to Policy ¶4(c)(i) nor a legitimate non-commercial or fair use pursuant to Policy ¶4(c)(iii)" (citing *Nike, Inc. v. Dias*, FA 0135016 (Nat. Arb. Forum Jan. 7, 2002) (finding no bona fide offering of goods or services where the respondent used the complainant's mark without authorization to attract Internet users to its website, which offered both the complainant's products and those of the complainant's competitors)).

Respondent's lack of rights or legitimate interests in the disputed domain names, <autoenergizer.com>¹, <autoenergiser.com>, <autoenergisers.com>, is further evidenced by Respondent's failure to use the disputed domain names in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Respondent's disputed domain names each houses a website displaying a search engine and "related links." *See Exhibit C*. Specifically, Respondent's websites provide links to Complainant's own business as well as some of Complainant's competitors. One reaches these pages by simply typing in the name of one of Complainant's competitors in the search engine, or by clicking on any of the "related links" depicted on the page. Such actions are sufficient to establish that Respondent's actions are not in connection with a *bona fide* offering of goods or services. *See Capital One Financial Corp. v. shilei*, FA1620200 (Nat. Arb. Forum June 18, 2015) (concluding that "[t]he Respondent presumably attempts to profit through click-through fees; therefore, there can logically be no 'noncommercial or fair use' pursuant to Policy ¶ 4(c)(iii)."); *see also Capital One Financial Corp. v. DN Manager / Whois-Privacy.Net Ltd*, FA 1583409 (Nat. Arb. Forum November 24, 2014) (finding that Respondent's use of the <capitalonebnk.com> domain name is neither a Policy ¶ 4(c)(i) *bona fide* offering of goods or services nor a Policy ¶ 4(c)(iii) legitimate noncommercial or fair use" because "using a confusingly similar domain name to display links in competition with the complainant's services is not a use which falls within Policy ¶¶ 4(c)(i) 4(c)(iii)."); *see also Capital One Financial Corp. v. Ryan G Foo / PPA Media Services*, FA 1544064 (Nat. Arb. Forum March 25, 2014) (finding that "Respondent's use of the domain name to host competing and related hyperlinks is neither a Policy ¶ 4(c)(i) *bona fide* offering of goods or services, nor a Policy ¶ 4(c)(iii) legitimate noncommercial or fair use."); *see also Capital One Financial Corp. v. CW Inc.*, FA 1527001 (Nat. Arb. Forum November 25, 2013) (finding that Respondent's use of the domain name to provide "links to other financial institutions, some of which may compete with Complainant" is neither a "*bona fide* offering of goods or services, nor a Policy ¶ 4(c)(iii) legitimate noncommercial or fair use."); *see also Capital One Financial Corp. v. Bin G Glu / G Design*, FA 1542631 (March 20, 2014) (finding that "Respondent has no rights to or legitimate interests in the disputed domain name..." and that "Respondent is not using the <capiitalone.com> domain name in

¹ Respondent's disputed domain name, <autoenergizers.com>, originally redirected internet users to Respondent's actual website, <528revolution.com>; however, following correspondence with Respondent, he removed the redirect and now appears to be passively holding the domain to prevent Complainant from registering the disputed domain. *See Attachment 1 to Exhibit C*. *See also Insubuy, Inc. v. Genetic Researches Community*, FA1464188 (Nat. Arb. Forum Nov. 6, 2012) (finding bad faith where Respondent was "...merely passively holding the disputed domain name, despite the presence of content on the apparently static resolving website[]]" and noting that "there is no resolving web site now, which strengthens Complainant's argument Respondent is merely holding the domain name passively."

connection with a Policy ¶ 4(c)(i) bona fide offering of goods or services or a Policy ¶ 4(c)(iii) legitimate noncommercial or fair use.”); *see also Expedia, Inc. v. Compaid*, FA520654 (Nat. Arb. Forum August 30, 2005) (finding that the respondent’s use of the <expediate.com> domain name to redirect Internet users to a website featuring links to travel services that competed with the complainant was not a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i) nor a legitimate noncommercial use or fair use pursuant to Policy ¶ 4(c)(iii)); *see Capital One Financial Corp. v. Privacy Ltd. Disclosed Agent for YOLAPT*, FA 487712 (Nat. Arb. Forum April 8, 2013) (finding that Respondent’s use of the <capitalonecreditcard.com> domain name to present site visitors with a variety of links to third parties “is neither a Policy ¶ 4(c)(i) *bona fide* offering of goods or services, nor a Policy ¶ 4(c)(iii) legitimate noncommercial or fair use.”); *see Capital One Financial Corp. v. DCH*, FA 487835 (Nat. Arb. Forum April 9, 2013) (finding that the use of “a disputed domain name solely to display competing hyperlinks does not demonstrate a *bona fide* offering or a legitimate noncommercial or fair use.”).

Additionally, Respondent’s lack of rights and legitimate interests in the <autoenergizers.com> domain is further evidenced by Respondent’s offer to sell the domain name to Complainant. On October 27, 2015, a representative of Complainant sent a Cease and Desist letter to Len Horowitz, (whose name is prominently displayed throughout the <528revolution.com> domain), respectfully requesting that he cease displaying the ENERGIZER trademark and transfer the disputed <autoenergizers.com> domain to Complainant. *See Exhibit D.* Dr. Horowitz responded that same day stating that Complainant “...would be best served by purchasing our interests in the aforementioned domain and product [he] has pioneered, anticipating broader distribution and advertising in the coming months. This may be a good time for [Complainant] to negotiate a buyout or partial buyout.” *See Exhibit D.* He continues, and proposes that Complainant “...also consider a buyout and collaboration wherein [Respondent’s] line of orgone generator products could be *redesigned* to accommodate ‘Energizer’ battery power, thus expanding [Complainant’s] sales and even markets which is [Complainant’s] agency’s intention.” *See Exhibit D.* In Respondent’s December 16, 2015 Response to Complainant’s November 24, 2015 letter, Respondent demands an offer for the purchase of the disputed <autoenergizers.com> domain. Respondent’s letter states “[f]or efficiency, economy, and justice, you will submit to me a reasonable offer to purchase my ‘autoenergizers.com’ domain...” *See Exhibits F and G.* Respondent’s willingness to sell his disputed domain name to Complainant establishes Respondent’s lack of rights and legitimate interests in the domain name. *See State Farm Mutual Automobile Insurance Company v. shilei*, FA1623634 (Nat. Arb. Forum July 14, 2015) (finding that “...Respondent lacks rights and legitimate interests in the <statefarmdrivesafeandsave.com> domain name under Policy ¶ 4(a)(ii)” because “Respondent has offered the domain for sale to Complainant.”) (*citing Williams-Sonoma, Inc. v. Fees*, FA937704 (Nat. Arb. Forum Apr. 25, 2007) (“concluding that a respondent’s willingness to sell a domain name to the complainant suggests that a respondent has no rights or legitimate interests in that domain name under Policy ¶ 4(a)(ii)”)); *see also Haas Automation, Inc. v. Josh Butz*, FA1429189 (Nat. Arb. Forum March 23, 2012) (concluding that “...such an offer to sell the domain name indicates that Respondent lacks rights and legitimate interests in the <usedhascnmachine.com> domain name under Policy ¶ 4(a)(ii).”).

[c.] The disputed domain names should be considered as having been registered and being used in bad faith. UDRP Rule 3(b)(ix)(3); UDRP Policy ¶ 4(a)(iii).

Respondent is using the disputed domain names, <528autoenergiser.com>, and <528autoenergisers.com> to divert Internet customers seeking Complainant's website to Respondent's business. Respondent's disputed domain name auto-redirects to Respondent's actual domain, <528orgonegenerators.com>. This domain houses a website seeking to sell homeopathic remedies. See Exhibit C. This use results in a disruption of Complainant's business and intentionally attracts Internet users to Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website. Respondent is benefiting from the valuable goodwill that Complainant has established in its mark and such actions are sufficient to establish the bad faith requirement. See *Capital One Financial Corp. v. Brian Gelinias / Omni Management Group, LLC*, FA1612148 (Nat. Arb. Forum May 6, 2015) (finding that "...Respondent's use of the disputed...domain names, as alleged in the Complaint, disrupts Complainant's business. Under Policy ¶ 4(b)(iii), this stands as proof of Respondent's bad faith in the registration and use of the domain names...[and] Respondent's employment of the contested...domain names as alleged in the Complaint, presumably for its commercial gain, creates confusion among Internet users as to the possibility of Complainant's association with the domain names and their resolving website. Under Policy ¶ 4(b)(iv), this too demonstrates Respondent's bad faith in the registration and use of the domain names."); see also *Capital One Financial Corporation and Capital One Bank v. Spider Webs, LTD.*, FA 0098830 (Nat. Arb. Forum Sept. 28, 2001) ("There is evidence of bad faith pursuant to Policy ¶ 4(b)(iv) because Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of the website and services."); *Capital One Financial Corporation v. Chris Cabrera*, FA 0591389 (Nat. Arb. Forum Dec. 19, 2005) (finding use of Complainant's trademark to sell Respondent's goods and services "is evidence of bad faith registration and use pursuant to Policy ¶4(b)(iii)") (citing *Caterpillar Inc. v. Vine*, FA 0097097 (Nat. Arb. Forum June 22, 2001) ("Respondent registered each of the disputed domain names in order to gain customers and to disrupt Complainant's business of authorizing dealers to sell its CATERPILLAR equipment.")); see *Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 0180704 (Nat. Arb. Forum Sept. 30, 2003) ("Respondent's registration and use of a domain name, despite actual or constructive knowledge of Complainant's rights in the mark contained in its entirety within the domain name, demonstrates Respondent's bad faith registration and use pursuant to Policy ¶ 4(a)(iii)."); see *Nike, Inc. v. Dias*, FA 0135016 (Nat. Arb. Forum Jan. 7, 2002) ("In choosing to register a domain name which incorporates the NIKE mark in its entirety, and then capitalizing on the likelihood of confusion that would result from associating itself with the mark, Respondent registered and used the infringing domain name in bad faith under Policy ¶ 4(b)(iv).") (citing *Perot Sys. Corp. v. Perot.net*, FA 95312 (Nat. Arb. Forum Aug. 29, 2000) (finding bad faith where the domain name in question is obviously connected with Complainant's well-known marks, thus creating a likelihood of confusion strictly for commercial gain)).

Respondent is using the disputed domain names, <autoenergizer.com>, <autoenergiser.com>, and <autoenergisers.com> to divert Internet customers seeking Complainant's website to directory websites and a commercial search engines that

display third-party links to Complainant's competitors. These disputed domain names house websites with a search engine and directory. See Exhibit C. Specifically, Respondent's websites provide links to Complainant's own business as well as some of Complainant's competitors. One reaches these pages by simply typing in the name of one of Complainant's competitors in the search engine, or by clicking on any of the links depicted on the page. This use results in a disruption of Complainant's business and intentionally attracts Internet users to Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website. Respondent is benefiting from the valuable goodwill that Complainant has established in its mark and such actions are sufficient to establish the bad faith requirement. See *Capital One Financial Corp. v. DN Manager / Whois-Privacy.Net Ltd*, FA 1583409 (Nat. Arb. Forum November 24, 2014) (finding that "Respondent registered and uses the disputed domain name in bad faith under Policy ¶4(b)(iii)" since the at-issue website "features links to competing third-party websites to attract Internet users to Respondent's website by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the <capitalonebnk.com> domain name. Respondent is presumably commercially benefiting from the valuable goodwill Complainant has established in its CAPITAL ONE marks."); see also *Capital One Financial Corp. v. CW Inc.*, FA 1527001 (Nat. Arb. Forum November 25, 2013) (finding that "since the domain name addresses a website offering links to Complainant's competitors and since it appears that Respondent intends to profit from the good faith associated with Complainant's mark, the relevant circumstances indicate that Respondent is attempting to attract, for commercial gain, Internet users to the <capitalonerewards.com> website by creating a likelihood of confusion between Complainant's CAPITAL ONE mark and the at-issue domain name."); see also *Capital One Financial Corp. v. shilei*, FA1620200 (Nat. Arb. Forum June 18, 2015) (concluding that "[t]he Respondent has engaged in bad faith use and registration of the disputed domain name[]" because "...Respondent's use of the disputed domain name disrupts Complainant's business by diverting Internet customers seeking Complainant's website...[and] Respondent uses pay-per-click hyperlinks on its resolving website, which redirect users to various third-party websites...the use of hyperlinks to disrupt and compete with a complainant's business is evidence of bad faith under Policy ¶ 4(b)(iii)."); see also *Capital One Financial Corp. v. Ryan G Foo / PPA Media Services*, FA 1544064 (Nat. Arb. Forum March 25, 2014) (finding that "Respondent acted in bad faith under Policy ¶ 4(b)(iii)" and that "Respondent demonstrates bad faith commercial disruption as Respondent uses the disputed domain name for hyperlinks to services competing with those offered under Complainant's CAPITAL ONE mark."); see also *Red Hat, Inc. v. Haecke*, FA 726010 (Nat. Arb. Forum July 24, 2006) (finding that the respondent engaged in bad faith registration and use pursuant to Policy ¶ 4(b)(iii) by using the disputed domain names to operate a commercial search engine with links to products of the complainant and to complainant's competitors, as well as diverting Internet users to several other domain names.); see also *Capital One Financial Corp. v. MGA Enterprises Ltd.*, FA 467312 (Nat. Arb. Forum December 10, 2012) (finding that "Respondent's use of the disputed domain name in the manner described in the Complaint disrupts Complainant's business, and therefore demonstrates that Respondent both registered and uses the domain name in bad faith under Policy ¶4(b)(iii)."); see also *Capital One Financial Corp. v. Above.com Domain Privacy*, FA 1550011 (Nat. Arb. Forum April 25, 2014) (concluding that "Respondent is using the <mycapitalonebank.com> domain name to display a search engine and links related to the goods and services offered by

Complainant. The Panel finds that this is disruptive, showing bad faith under Policy ¶4(b)(iii).”); *see also Capital One Financial Corp. v. Domain Admin*, FA 1555172 (Nat. Arb. Forum May 26, 2014) (finding bad faith under Policy ¶ 4(b)(iii) because “Respondent’s use of the disputed domain name to host advertisements for businesses that compete with Complainant illustrates the intent to confuse Internet users who may believe Complainant has some association with Respondent. Respondent no doubt profits from this confusion through advertising revenue.”); *see also Capital One Financial Corp. v. Ryan G Foo / PPA Media Services*, FA 1550718 (Nat. Arb. Forum April 30, 2014) (finding that “Respondent is using the disputed domain name to divert Internet customers seeking Complainant to its competing financial websites, disrupting Complainant’s business.”).

Furthermore, Respondent’s willingness to sell the disputed domain name, <autoenergizers.com> to Complainant after receiving Complainant’s Cease and Desist letter dated October 27, 2015, *See Exhibit D*, indicates bad faith registration under Policy ¶ 4(b)(i). *See State Farm Mutual Automobile Insurance Company v. shilei*, FA1623634 (Nat. Arb. Forum July 14, 2015) (concluding that “...an offer of sale from a respondent to a complainant suffices to show bad faith under Policy ¶ 4(b)(i).”); *see also Haas Automation, Inc. v. Josh Butz*, FA1429189 (Nat. Arb. Forum March 23, 2012) (finding that “...Respondent’s willingness and offer to see the disputed domain name indicates bad faith registration and use under Policy ¶ 4(b)(i).”).

In addition, Respondent registered the disputed domain names with a privacy service, further evidence that the domain was registered in bad faith. *See Capital One Financial Corp. v. PATRIC BAUER / VENTURE CAPITAL ONE GROUP*, FA 1599899 (Nat. Arb. Forum February 25, 2015) (finding bad faith registration where “Respondent registered the disputed domain name using a WHOIS privacy service. This Panel has repeatedly held this raises the rebuttable presumption of bad faith in the commercial context.”); *see also Capital One Financial Corp. v. DN Manager / Whois-Privacy.Net Ltd*, FA 1583409 (Nat. Arb. Forum November 24, 2014) (finding that registration of the disputed domain name using a privacy service “[i]n the commercial context...raises the rebuttable presumption of bad faith use and registration...[and] justifies a finding of bad faith registration and use.”); *see also Capital One Financial Corp. v. DCH*, FA 487835 (Nat. Arb. Forum April 9, 2013) (concluding that “the fact Respondent originally registered the domain name with a privacy service in a commercial context raises the rebuttable presumption of bad faith registration and use...That fact alone sufficiently demonstrates bad faith registration and use.”).

Finally, though not directly related to the instant dispute, Respondent’s bad faith is evidenced by his comments in an email dated November 11, 2015. *See Exhibit E*. There, Respondent accused Energizer of “contriving” evidence of confusion. But as detailed in Energizer’s response, Energizer did not “generate consumer confusion and the mixing-up of our brand names” by using the term 528 for the first time on November 7, 2015. Instead, Respondent created the consumer confusion by deliberately selecting and using the domain name autoenergizers.com and the product name 528 AUTO ENERGIZERS years after Energizer first made use of the mark ENERGIZER® and the term 528. Respondent’s strategy is to misrepresent the facts in hopes of bullying Energizer into purchasing a domain name for which Respondent has no legitimate rights. This is the epitome of bad faith. *See Exhibit F*.

[8.] **REMEDY SOUGHT**

The Complainant requests that the Panel issue a decision that the domain-name registration be transferred. UDRP Rule 3(b)(x); UDRP Policy ¶ 4(i).

[9.] **OTHER LEGAL PROCEEDINGS**

No other legal proceedings have been commenced or terminated in connection with or relating to the domain name that is the subject of the complaint, including previous UDRP cases involving the domain name at issue here. UDRP Rule 3(b)(xi).

[10.] **COMPLAINT TRANSMISSION**

The Complainant asserts that a copy of this Complaint, together with the cover sheet as prescribed by FORUM's Supplemental Rules, has been sent or transmitted to the Respondent (domain-name holder), in accordance with UDRP Rule 2(b) and to the Registrar(s) of the domain name(s), in accordance with FORUM Supp. Rule 4(e). UDRP Rule 3(b)(xii); FORUM Supp. Rule 4(c).

[11.] **MUTUAL JURISDICTION**

The Complainant will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to *[choose one jurisdiction]*:

X a) the location of the principal office of the concerned registrar or
b) where the Respondent is located, as shown by the address(es) given for the domain name holder in the Whois Database at the time of the submission of the Complaint to FORUM.
UDRP Rule 3(b)(xiii).

[12.] **CERTIFICATION**

Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain-name holder and waives all such claims and remedies against (a) the National Arbitration Forum and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator, and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.

Complainant certifies that the information contained in this Complaint is to the best of Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully Submitted,

/s/John Gary Maynard, III
John Gary Maynard, III
December 21, 2015