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## Case Details for WIPO Case D2006-0046

### WIPO Case Summary

WIPO Case Number	D2006-0046
DDomain name(s)	cedrictheentertainer.com
Complainant	Cedric Kyles
Respondent	Domains by Proxy, Inc. /Asia Ventures, Inc.
Panelist	Brown, Neil
Decision Date	21-Mar-2006
Decision	<u>Transfer</u>

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## WIPO Arbitration and Mediation Center

### ADMINISTRATIVE PANEL DECISION

Cedric Kyles v. Domains by Proxy, Inc. /Asia Ventures, Inc.

Case No. D2006-0046

#### 1. The Parties

The Complainant is Cedric Kyles, United States of America, represented by Del, Shaw, Moonves, Tanaka & Finkelstein, United States of America.

The Respondent is Domains by Proxy, Inc. /Asia Ventures, Inc., Domain administrator, Scottsdale Arizona, United States of America and, Central Hong Kong, SAR of China.

#### 2. The Domain Name and Registrar

The disputed domain name <cedrictheentertainer.com> is registered with Nameview Inc.

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 11, 2006. On January 13, 2006, the Center transmitted by email to Nameview Inc. a request for registrar verification in connection with the domain name at issue. On January 23, 2006 Nameview Inc. transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the administrative, billing, and technical contact. The Center verified that the Complaint 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 Complaint, and the proceedings commenced on February 2, 2006. In accordance with the Rules, paragraph 5(a), the due date for Response was February 22, 2006. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 28, 2006.

The Center appointed The Honourable Neil Anthony Brown QC as the sole panelist in this matter on March 10, 2006. 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

The Complainant is a television and film actor, writer and producer who works under the names Cedric Kyles, Cedric and Cedric The Entertainer. He has a domain name <ceddybear.com> that resolves to his website described as The Official site of Cedric The Entertainer.

The Respondent or its predecessor registered the domain name on August 19, 2002.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant alleges that the contentious domain name <cedrictheentertainer.com> should no longer be registered in the name of the Respondent but that it should be transferred to the Complainant.

He contends in substance that this should be done because, within the meaning of paragraph 4 the Policy, the domain name is identical or confusingly similar to certain unregistered common law trademarks and service marks, the Respondent has no rights or legitimate interests in the domain name and the domain name has been registered and subsequently used in bad faith. The Complainant maintains that he can prove all three of these requirements and that the appropriate remedy is to transfer the domain name to himself.

In support of his case on the first of these three elements, the Complainant maintains that the domain name <cedrictheentertainer.com> is confusingly similar to the unregistered trademark or service mark that the Complainant has in his own name Cedric Kyles, in the name CEDRIC and in the name CEDRIC THE ENTERTAINER, all of which have been acquired through their use in his professional career as a television and film actor, writer and producer. He points to the identity between the expression <cedrictheentertainer.com> in the domain name and the expression CEDRIC THE ENTERTAINER as it appears in his professional work and promotions and also to the confusing similarity between the domain name and his own personal name, for the person invoked by the domain name is clearly a reference to him personally.

The Complainant then contends, to establish the second element, that the Respondent cannot have any rights or legitimate interests in respect of the domain name because it has been granted no licence or other rights to use CEDRIC THE ENTERTAINER or the Complainant's personal name as part of any domain name or for any other purpose. He also contends that the Respondent is a serial cybersquatter with a track record of many UDRP proceedings having been brought against it, which have been won by successive complainants.

Finally, the Complainant alleges that the domain name was registered and is being used in bad faith. The Complainant relies on all four grounds available under paragraph 4(b) of the Policy.

##### B. Respondent

The Respondent did not reply to the Complainant's contentions.

#### 6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

It is appropriate therefore to note the fact that the Respondent has not made a Response to the Complaint does not avoid

the necessity of examining the issues and of doing so in the light of the evidence. In fact, Paragraph 4 of the Policy expressly provides that in administrative proceedings '...the complainant bears the onus of proof' and it follows that, as the proceeding is a civil one, the standard of proof must be the balance of probabilities. The onus of proof clearly remains on the Complainant even where, as in the present case, the Respondent has not made a Response or put in a submission. That principle has been enunciated on many occasions by UDRP panels.

The Complainant must therefore establish all three of the elements specified in Paragraph 4(a) of the Policy on the balance of probabilities before an order can be made to transfer the domain name.

However, in the course of deciding whether that onus has been discharged, it is possible to draw inferences both from the evidence that has been submitted and, in appropriate cases, from silence. Indeed, Paragraph 14 of the Rules specifically provides that if a Party does not comply with its obligations, the Panel is still required to proceed to a decision, but it is also required to draw such inferences 'as it considers appropriate' from the non-compliance.

That being so, the Panel will now proceed to enquire if the Complainant has discharged the onus on him to prove each of the three elements specified in paragraph 4(a) of the Policy.

Those three elements, all of which must be proved, are:

- A. That the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- B. That the Respondent has no rights or legitimate interests in respect of the domain name; and
- C. That the domain name has been registered or subsequently used in bad faith.

The Panel will deal with each of these requirements in turn.

#### **A. Identical or Confusingly Similar**

The Complainant does not claim that the domain name is identical or confusingly similar to a registered trademark in which he has rights. He says, however, that by virtue of his standing as a well-known television and film actor and also as a writer and producer of television programs and motion pictures, he has trademark or service mark rights in his business and personal names which are unregistered or common law marks.

It is now well established that the Policy protects rights in unregistered trademarks: for example, see: *Bennett Coleman & Co. Ltd. v. Steven S. Lafwani*, WIPO Case No. D2000-0014 and *SeekAmerica Networks Inc. v. Tariq Masood*, WIPO Case No. D2000-0131.

What evidence, then, will a panel expect to find before it is able to conclude that the evidence establishes the existence of an unregistered trademark?

A convenient answer has been given to this question in a recent UDRP decision: *UK Betting PLC v. Oldfield*, WIPO Case No. D2005-0637 where the panelist observed that:

"Unregistered trade mark rights are rights to stop unauthorized third parties using a name or mark which is likely to lead to deception. In other words, they are common law rights in passing off.

To succeed in a passing off action one has to prove (*inter alia*) a reputation and goodwill in respect of the name or mark in question.... Accordingly, to demonstrate a reputation and goodwill in respect of a name as descriptive as "UK BETTING", the court will require details of trading such as length of trading under the name, volume of sales under the name, advertising expenditure in respect of the name, independent evidence from traders, customers, etc. . . . the relevant information can be provided in short form, but the Panel still needs to be satisfied that the relevant reputation and goodwill subsists in respect of the name or mark."

As another expression of what must be shown, see the recent decision in *Ticket Specialist Inc. v. hubshift*, FA. 575616 (Nat. Arb. Forum, December 5, 2005) where the three panelists said:

"...to succeed in a Complaint under the Policy in relation to an unregistered mark, it is necessary for Complainant to prove

that it has, through use, acquired secondary meaning, i.e. a reputation such that members of the public associate those goods or services solely with Complainant or its licensees. *British Heart Foundation v. Meyer*, AF-0957 (eResolution August 22, 2001) .

### The Complainant In Person

The first question is whether the Complainant can establish a trademark or service mark in his own name. If so, the question will then arise whether the domain name is identical to or confusingly similar to such trademark.

The initial question raises the contentious issue of whether a personal name that has not been registered as a trademark can ever constitute a common law trademark. The issue is contentious enough for it to be the subject of a series of UDRP decisions and an issue discussed in the valuable [WIPO Overview of WIPO Panel Views on Selected UDRP Questions](#).<sup>1</sup> The Overview summarises the current jurisprudence on this issue as follows:

"Consensus view: While the UDRP does not specifically protect personal names, in situations where an unregistered personal name is being used for trade or commerce, the complainant can establish common law trademark rights in the name. Reference can be made to the test required for the common law action of passing off. Personal names that have been trademarked are protected under the UDRP.

Relevant decisions:

- *Julia Fiona Roberts v. Russell Boyd* [D2000-0210](#) <juliaroberts.com>, Transfer;
- *Jeanette Winterson v. Mark Hogarth* [D2000-0235](#) <jeanettewinterson.com> among others, Transfer;
- *Dr. Michael Crichton v. In Stealth Mode* [D2002-0874](#) <michael-crichton.com>, Transfer.

However: The name in question should be actually used in trade or commerce to establish unregistered trademark rights. Merely having a famous name (such as a businessman, or religious leader) is not necessarily sufficient to show unregistered trademark rights.

Relevant decisions:

- *Israel Harold Asper v. Communication X Inc.* [WIPO Case No. D2001-0540](#) <izzyasper.com> among others, Denied
- *Chinmoy Kumar Ghose v. ICDSOFT.COM and Maria Sliwa* [WIPO Case No. D2003-0248](#) <gurusrichinmoy.com>, <aboutsrichinmoy.com>, Transfer."

From this summary it may be deduced that the consensus view among UDRP panelists is that a complainant may show that his or her personal name has taken on such a cachet that it has become a trademark, but that to succeed in doing so the complainant will have to show that the name has actually been used in trade or commerce. It will instantly be seen that this is a considerable hurdle to vault and that the reason why some cases have failed to establish trademark rights in a personal name is that the evidence has shown only that the name is famous and not that it has been used in trade or commerce.

A recent decision that illustrates this dichotomy is *Hillary Rodham Clinton v. Michele Dinoia a/k/a SZK.COM*, File No. FA0502000414641, (NAF March 18, 2005) where it was held that Senator Clinton had common law trademark rights in her own name, not simply because she was famous, for that would not have got her over the hurdle, but because she was also, as the panelist said, "a best-selling author (who) has written four novels including, *It Takes a Village: and Other Lessons Children Teach Us*, which was published in 1996 and has sold 622,000 copies, and "Living History," which has sold 1.68 million hard copies and 525,000 paperbacks since its 2003 publication." In other words, her name had been used to sell books written in her capacity as an author.

Likewise, in *Nick Cannon v. Modern Limited - Cayman Web Development*, [WIPO Case No. D2005-0757](#), it was held that the complainant had trademark rights in his own name because he could rely on "... his movie experience (six films, from 2002 to 2005) and his extensive career as an actor, writer, producer, and musical composer and performer under his name since the 1980s... The Panel verified the number of appearances of the Complainant's name "Nick Cannon" on <google.com> on August 21, 2005, and at least one hundred thousand appearances of the Complainant's name were observed. The Panel finds that the Complainant has demonstrated substantial use of the name "Nick Cannon" in association with his professional career and consequently enjoys common law trademark rights in "Nick Cannon". The

evidence, as well as the representations of the Complainants, is consistent with UDRP decisions cited by the Complainants; see *Julia Fiona Roberts v. Russell Boyd*, WIPO Case No. D2000-0210; *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. D2000-1415."

That being so, the question is whether the facts in the present case show that the Complainant's name has become well known through its use in trade and commerce.

Material that is publicly available on the Internet shows that the Complainant is now becoming more famous under the name CEDRIC THE ENTERTAINER or CEDRIC than under his actual name. Details of this trend will be given when the Panel considers if the Complainant also has a trademark in the name CEDRIC THE ENTERTAINER.

He is, nevertheless, still well known in the entertainment world by his actual name CEDRIC KYLES and on other occasions simply by the name CEDRIC and it is clear that he has built his successful career on both of those names.

Either as CEDRIC KYLES or as CEDRIC, he has certainly achieved fame. He is principally described in the public material as an Afro American actor and comedian who has branched out into other areas of the entertainment industry and who has clearly achieved prominence and success.

He started his career as a comedian, won several awards and comedy contests and performed at various comedy clubs throughout the United States of America. He then moved into feature films and acted in many, notably *Big Momma's House* and has clearly achieved considerable prominence in that field, not only because of his own skills but also because the films in which he has acted have starred such prominent actors as John Travolta, George Clooney, Jim Carrey, Tommy Lee Jones and *Whoopee Goldberg*. He has also appeared extensively in television and achieved considerable renown when appearing in a commercial for Bud Light Beer, said to have been seen by 144 million people. He has produced his own shows and has been active and prominent in other areas of the entertainment industry.

The Panel's assessment of the totality of the material available to it is that the Complainant is, as claimed, '...a well known television and film actor, as well as a writer and producer of television programs and motion pictures'.

The same material also shows that the Complainant's name can fairly be described as famous and that it has been used in commercial entertainment and hence in trade and commerce.

Accordingly, he meets the tests set out in other UDRP cases of not only being famous, but of having become so as the result of working in trade and commerce, which he has done in many branches of the entertainment industry. In other words his name has achieved prominence and he has used it for commercial purposes in trade and commerce. Moreover, his name has become associated in the public mind with the services that he provides.

The Panel therefore concludes that the Complainant has acquired trademark rights in his own name both as CEDRIC KYLES and CEDRIC.

The Panel also finds that although the contentious domain name is not identical to the trademark CEDRIC KYLES or to the alternative trademark CEDRIC, it is nevertheless confusingly similar to both of them.

This is so because an objective bystander would instantly appreciate that the 'cedric' referred to in the domain name <cedrictheentertainer.com> is the CEDRIC KYLES or the CEDRIC who is so well known as an entertainer. This is an illustration of the well established principle, expressed in *Museum of Science v. Asia Ventures, Inc.*, WIPO Case No. D2003-0691, that '...when a domain name wholly incorporates a complainant's mark and adds a generic word, that is sufficient to establish confusing similarity for the purposes of the Policy.' Thus, in the present case, the domain name has incorporated the whole of the Complainant's mark CEDRIC and added the generic expression 'the entertainer', being the exact field in which the Complainant conducts his business. The domain name is therefore similar to the two trademarks, for <cedrictheentertainer.com> is a clear invocation of both Cedric Kyles and the Cedric who is the entertainer of that name.

The domain name is also confusingly similar to both marks, because the domain name and any use of it in a website would be assumed by an objective bystander to be a reference to the website of the Complainant.

Finally, the addition of the generic Top Level Domain suffix, '.com' to the domain name is disregarded for the purposes of determining similarity; for example, see *Foundation Le Corbusier v. Mercado M.*, WIPO Case No. D2004-0723 and *Gerd Petrik v. Johnny Carpela*, WIPO Case No. D2004-1043.



The domain name is therefore in every sense confusingly similar to the trademarks and the Complainant has made out the first requirement under paragraph 4 of the Policy with respect to the trademarks in his own name.

### **Cedric The Entertainer**

In addition to the foregoing, a further question arises whether the Complainant also has an unregistered or common law trademark in the name CEDRIC THE ENTERTAINER. If he does, the domain name is clearly identical to that trademark, as it embodies all of those words and no others.

In this regard, the panel finds that the Complainant has an unregistered or common law trademark in the name CEDRIC THE ENTERTAINER. That is so for the following reasons.

First, there is no doubt that CEDRIC THE ENTERTAINER has become the stage name and the *alter ego* of the Complainant. For instance, a Google search conducted by the Panel has revealed a long series of references to the Complainant by the name CEDRIC THE ENTERTAINER, even to the extent that on some occasions he is referred to, not by his real name at all, but exclusively as CEDRIC THE ENTERTAINER. One website, "www.imdb.com", which prides itself on being 'Earth's Biggest Movie Database' is meticulous enough to state that the Complainant is also known specifically as Cedric 'The Entertainer' and Cedric 'the Entertainer'. Accordingly, the Panel is satisfied that CEDRIC THE ENTERTAINER is the *nom de plume* and stage name of the Complainant and that for purposes of his work in the entertainment industry it has virtually become his own name and his *alter ego*. When the public sees references to it, they could not but assume that these are references to the Complainant.

Secondly, it is clear that the name CEDRIC THE ENTERTAINER has become a well known trade name promoting goods and services that are for sale and that the Complainant conducts a business of providing a broad range of entertainment services under that name. Thus, the website referred to above, "www.imdb.com", gives CEDRIC THE ENTERTAINER credits for appearances in 27 films, either released or in various stages of production, 7 as producer, the writer of one, significantly entitled 'Cedric the Entertainer Presents' and 48 appearances as himself on television shows such as 'The Late Show With David Letterman'. Further facts confirm the public renown of the Complainant under his *alter ego* CEDRIC THE ENTERTAINER as well as under his actual name: thus, under the former name, 22 of his films are for sale on DVD through Amazon.com and one of his films, Big Momma's House, has acquired an international reputation and is known in Germany as Big Mamas Haus.

Other information about the Complainant's activities is supplied by his own website "www.ceddybear.com" where, referring to himself interchangeably by his real name and his stage name CEDRIC THE ENTERTAINER, it is said that:

" Cedric has celebrated many career successes spanning television, live performances and film. Some notable accolades include nabbing THE AFTRA AWARD OF EXCELLENCE IN TELEVISION PROGRAMMING for his Fox Television series "CEDRIC THE ENTERTAINER PRESENTS..."; a record-breaking (4) consecutive NAACP Image Awards for "Outstanding Supporting Actor in a Comedy Series" for his portrayal of the lovable "Coach Cedric Robinson" on the WB's #1-rated "The Steve Harve Show", which ran for six seasons. His first comedy book, Grown-Ass Man, was released in January of 2002 and sold out across the country. In 2001, a viewing audience of over 144 million saw Cedric star in the Bud Light commercial that landed in the #1 spot during the Super Bowl broadcast (subsequently, USA Today dubbed him "Madison Avenue's Most Valuable Player"). And, in 1994, Cedric received THE RICHARD PRYOR COMIC OF THE YEAR AWARD from Black Entertainment Television for his ground-breaking work as host of Def Comedy Jam and BET's Comic View (1994-95 season).

Now helming his own production company, A BIRD AND A BEAR ENTERTAINMENT, Cedric will develop and produce feature films. JOHNSON FAMILY VACATION was the first feature under the new company.

As a philanthropist, Cedric founded THE CEDRIC 'THE ENTERTAINER' CHARITABLE FOUNDATION, which provides scholarships and outreach programs to enhance the lives of inner-city youth and their families in his hometown of St. Louis, Missouri. He plans to extend the foundation nationally'.

Putting all of this material together and measuring it against the various tests suggested in the UDRP decisions referred to above, it is clear that the Complainant has established a reputation and goodwill under the name CEDRIC THE ENTERTAINER as well as in respect of his personal name, that it is a distinctive name used for a commercial activity with a good deal of consumer support, that the Complainant clearly has a reputation and goodwill vested in the name and that the public automatically associate the services of CEDRIC THE ENTERTAINER with the Complainant and nobody else.

The Complainant has therefore made out his case that he is the owner of the unregistered trademark CEDRIC THE ENTERTAINER.

The domain name is clearly identical to that trademark, as it embodies all of the words in the trademark.

The Complainant has therefore also made out the first requirement under paragraph 4 of the Policy with respect to the trademark CEDRIC THE ENTERTAINER as well as under his personal name.

#### **B. Rights or Legitimate Interests**

The Panel's task in deciding if a registrant has any rights or legitimate interests in a domain name is made more difficult when the registrant is in default and does not make a Response or any other form of submission.

That is so in the present case, where the Respondent was given notice on February 2, 2006 that the administrative proceeding had been commenced and was served with a copy of the Complaint, which of course included the allegation that it had no rights or legitimate interests in the domain name <cedrictheentertainer.com>.

The Respondent was also given notice that it had until February 22, 2006, to send in its Response, that it would be in default if he did not do so and that, by virtue of Paragraph 14 of the Rules, the Panel might draw appropriate inferences from that default.

As the Respondent is in default, the Panel, after considering all of the evidence, draws the inference that the Respondent has no rights or legitimate interests in the domain name. It is appropriate to draw that inference because, first, if the Respondent had any such rights or interests, it was a simple matter to say what they were. Moreover, the substance of what has happened in this matter is that the Respondent has taken for its domain name the Complainant's business name and the name under which he earns his living, giving rise to the possible explanation that it did so for some deceptive purpose, an inference which is easy to draw against someone who takes another's name without consent. If there were, however, a more innocent or legitimate explanation for its conduct, which of course is also possible, the Respondent could have given it, but this it has failed to do.

In the absence of an innocent explanation for this conduct, as the Panel observed in *Pharmacia & Upjohn AB v. Dario H. Romero*, [WIPO Case No. D2000-1273](#), the Panel is entitled to draw inferences adverse to the Respondent's interests on that issue and to assume that 'any evidence of the Respondent would not have been in his favour'.

Moreover, the Complainant asserts in the Complaint that the Respondent has no rights or legitimate interests in the domain name, that the Respondent has not been granted a licence or other right to use the Complainant's name and that the Respondent has been registering other famous company and individual names. In the light of those matters and in the light of the registration itself, the Panel finds that the Complaint has made out a *prima facie* case on this element and the onus therefore falls on the Respondent to show that it has rights or legitimate interests in respect of the domain name; see: *Compagnie Generale des Matieres Nucleaires v. Greenpeace Int'l*, [WIPO Case No. D2001-0376](#). The Respondent had the opportunity to bring himself within paragraph 4(c) of the Policy which sets out several criteria, any one of which, if proved, 'is to be taken to demonstrate' the registrant's rights or legitimate interests in the domain name.

However, the Respondent has not endeavored to establish even one of the criteria set out in Paragraph 4(c) of the Policy, giving rise to the inevitable inference that it could not do so by credible evidence. The Respondent has therefore failed to discharge the onus on it.

Accordingly, the Complainant has made out his case on the second requirement.

#### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. Those circumstances are:

(i) circumstances indicating that [the respondent has] registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location.

The Complainant relies on all four of these criteria.

The contentious domain name does not resolve to a website and its use does not produce any result other than an error response. It is therefore difficult to draw conclusions from any overt act of the Respondent other than the registration of the domain name and the passive holding of it.

However, the Panel is not prevented by this inactivity on the part of the Respondent from reaching conclusions on this or any other issue. On the particular issue, the WIPO Overview (*supra*) suggests a useful approach:

'3.2 Can there be use in bad faith when the domain name is not actively used and the domain name holder has taken no active steps to sell the domain name or contact the trademark holder? (Passive holding)

Consensus view: The lack of active use of the domain name does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether respondent is acting in bad faith. Examples of circumstances that can indicate bad faith include complainant having a well-known trademark, no response to the complaint, concealment of identity and the impossibility of conceiving a good faith use of the domain name. Panels may draw inferences about whether the domain name was used in bad faith given the circumstances surrounding registration, and vice versa.

Relevant decisions:

*Telstra Corporation Limited v. Nuclear Marshmallows* WIPO Case No. D2000-0003 <telstra.org>, Transfer;

*Jupiters Limited v. Aaron Hall* WIPO Case No. D2000-0574 <jupiterscasino.com> and <jupiters-casino.com>, Transfer  
*Ladbroke Group Plc v. Sonoma International LDC* WIPO Case No. D2002-0131 <ladbrokepoker.com> among others, Transfer.'

In the present case, the Panel is faced with the facts, first, that the trademark CEDRIC THE ENTERTAINER is a unique, constructed name which is a well-known brand name associated with the Complainant, suggesting that it was chosen as a domain name to invoke the name and reputation of the Complainant. Secondly, this inference is strengthened by the fact that the Respondent has taken the name of the Complainant's own domain name, <ceddybear.com> and the name of his website, <CeddyBear.com> and used it as the Respondent's administrative, technical and billing contact, as in ceddybear.com@domainsbyproxy.com. Thirdly, the Respondent remained silent when put on notice that some explanation was being requested for the registration having been made. Fourthly, it is impossible to conceive of a good faith reason for the Respondent having registered the name. All of these facts lead to the conclusion that at least on the balance of probabilities, the Respondent registered the domain name in bad faith within the meaning of paragraph 4(b)(i),(ii) and (iii) and generally.

This conclusion is re-enforced by the fact that the Complainant is correct in saying that the Respondent is an established transgressor in this field and has been engaging in a pattern of conduct where it has registered prominent names of companies and individuals which the Panel must infer has been done for an improper purpose.

The Respondent's conduct is recorded in the following UDRP decisions: *John Alden Life Insurance Company v. Asia Ventures*, WIPO Case No. D2005-0420, *AstraZeneca AB v. Asia Ventures, Inc.*, WIPO Case No. D2005-0264, *Pfizer Inc., v. Asia Ventures Inc.*, WIPO Case No. D2005-0256, *Dell Inc., aka Dell Computer Corporation v. Asia Ventures, Inc.*, WIPO Case No. D2004-0452, *Shabby Chic, Inc. v. Asia Ventures, Inc.* File No. FA0409000335486, (NAF November 22, 2004), *National Holistic Institute v. Asia Ventures, Inc.* File No. FA0503000433854, (NAF April 12, 2005), *San Diego County Credit Union v. Asia Ventures, Inc.*, File No. FA0503000444402 (NAF April 26, 2005), *DaimlerChrysler Corporation v. Asia Ventures, Inc.* File No. FA0504000453735 (NAF May 17, 2005), *Citigroup Inc. and Citigroup Global Markets, Inc. d/b/a Smith Barney v. Asia Ventures*, File No. FA0504000453926 (NAF May 19, 2005), *Wachovia Corporation v. Asia Ventures, Inc.*, File No. FA0505000473245 (NAF June 27, 2005), *Relix LLC v. Asia Ventures, Inc.* File No. FA0508000531576 (NAF September 27, 2005), *Maricopa County Community College District v. Asia Ventures, Inc.*, File No. FA0508000540758 (NAF September 28, 2005) and *Manatt, Phelps & Phillips, LLP v. Asia Ventures, Inc.*, File No. FA0511000598852 (NAF

December 29, 2005). Without going into detail, it can be said as a general proposition that these proceedings show a pattern of unmeritorious conduct by the Respondent. The panels in each of these proceedings found against the Respondent, leaving no doubt that it is a serial offender and that its registration of the domain name and any use that has been made of it since then has been in bad faith.

The Complainant has therefore made out its ground under paragraph 4(b) of the Policy and accordingly each of the grounds under paragraph 4 as a whole.

## 7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <cedrictheentertainer.com> be transferred to the Complainant.

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The Honourable Neil Anthony Brown QC  
Sole Panelist

Dated: March 21, 2006

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<sup>1</sup> <http://www.wipo.int/amc/en/domains/search/overview/index.html>

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v. )  
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(Respondent) )  
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**Case No. FA0709001075486**

**Domain Name in Dispute:**  
**brahmakumaris.info**

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

**EXHIBIT CC**

# Domain Name Dispute Proceedings and Decisions

[« New Search](#)

## Search Results for Domain Dispute Cases

Records 1 to 1 of 1

Case No.	Domain(s)	Case Name	Domain Policy	Commenced	Status	Decision Date
1000020	goldfishcreditcard.com	Goldfish Card Services Limited v M Connolly	UDRP	6/12/2007	<u>Transferred</u>	7/11/2007

Records 1 to 1 of 1

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**NATIONAL ARBITRATION FORUM**

**DECISION**

Goldfish Card Services Limited v. M Connolly  
Claim Number: FA0706001000020

**PARTIES**

Complainant is **Goldfish Card Services Limited** ("Complainant"), represented by **Baila H. Celedonia, of Cowan, Liebowitz & Latman, P.C.**, 1133 Avenue of the Americas, New York, NY 10036-6799. Respondent is **M Connolly** ("Respondent"), chapel house, skimmers bottom, redruth, comwall tr16 5dt, GB.

**REGISTRAR AND DISPUTED DOMAIN NAME**

The domain name at issue is <**goldfishcreditcard.com**>, registered with **Fabulous.com Pty Ltd.**

**PANEL**

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

Louis E. Condon as Panelist.

**PROCEDURAL HISTORY**

Complainant submitted a Complaint to the National Arbitration Forum electronically on June 6, 2007; the National Arbitration Forum received a hard copy of the Complaint on June 8, 2007.

On June 7, 2007, Fabulous.com Pty Ltd. confirmed by e-mail to the National Arbitration Forum that the <**goldfishcreditcard.com**> domain name is registered with Fabulous.com Pty Ltd. and that Respondent is the current registrant of the name. Fabulous.com Pty Ltd. has verified that Respondent is bound by the Fabulous.com Pty Ltd. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On June 12, 2007, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of July 2, 2007 by which Respondent could file a response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@goldfishcreditcard.com by e-mail.

Having received no response from Respondent, the National Arbitration Forum transmitted to the parties a Notification of Respondent Default.

On July 6, 2007, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Louis E. Condon as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the National Arbitration Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

#### **RELIEF SOUGHT**

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

#### **PARTIES' CONTENTIONS**

A. Complainant makes the following assertions:

1. Respondent's <**goldfishcreditcard.com**> domain name is confusingly similar to Complainant's GOLDFISH mark.
2. Respondent does not have any rights or legitimate interests in the <**goldfishcreditcard.com**> domain name.
3. Respondent registered and used the <**goldfishcreditcard.com**> domain name in bad faith.

B. Respondent failed to submit a Response in this proceeding.

#### **FINDINGS**

Complainant, Goldfish Card Services Limited, is a financial entity that was formerly known as Morgan Stanley Card Services Limited. Complainant and its predecessor-in-interest have been offering services under the GOLDFISH mark since at least 1996 in the United Kingdom. Complainant uses the GOLDFISH mark to offer various financial services and products, including credit cards, personal loans, insurance, and travel services. Complainant holds trademark registrations for the GOLDFISH mark with several trademark authorities, including the United Kingdom Intellectual Property Office ("UK IPO," formerly the United Kingdom Patent Office) (Reg. No. 2,100,862 issued February 4, 1998) and the European Community's Office for Harmonization in the Internal Market ("OHIM") (Reg. No. 494,120 issued February 5, 2001). Complainant also operates websites at various domain names incorporating the GOLDFISH mark, including the <**goldfish.com**>, <**goldfish.co.uk**>, <**goldfishcard.co.uk**> and <**goldfishcard.com**> domain names.

Respondent registered the <**goldfishcreditcard.com**> domain name on August 28, 2003. Respondent's disputed domain name resolves to a website that displays various hyperlinks to third-party websites in direct competition with Complainant.

#### **DISCUSSION**

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

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e),



14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See *Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

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

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

#### **Identical and/or Confusingly Similar**

Complainant asserts rights in the GOLDFISH mark by virtue of trademark registrations with various trademark authorities, including the UK IPO and OHIM. The Panel finds that Complainant's registration of the GOLDFISH mark with these authorities sufficiently conveys rights in the mark to Complainant for the purposes of Policy ¶ 4(a)(i). See *Royal Bank of Scot. Group plc v. TRB*, FA 622345 (Nat. Arb. Forum Feb. 22, 2006) ("The Panel accepts Complainant's registration of the THE ROYAL BANK OF SCOTLAND mark with the United Kingdom Patent Office as evidence of Complainant's rights in the mark pursuant to Policy ¶ 4(a)(i)."); see also *Orange Glo Int'l v. Roswell Int'l Ltd*, FA 440119 (Nat. Arb. Forum Apr. 21, 2005) (finding the complainant had established rights in the OXICLEAN mark by virtue of trademark registrations with entities including the Office for Harmonization in the Internal Market ("OHIM")).

The Panel finds that Respondent's <goldfishcreditcard.com> domain name is confusingly similar to Complainant's GOLDFISH mark under Policy ¶ 4(a)(i). The addition of the terms "credit" and "card," which have an obvious relationship to Complainant's mark, do not distinguish the disputed domain name from Complainant's mark. Moreover, 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. Accordingly, the <goldfishcreditcard.com> domain name is confusingly similar to Complainant's mark for the purposes of Policy ¶ 4(a)(i). See *Brown & Bigelow, Inc. v. Rodela*, FA 96466 (Nat. Arb. Forum Mar. 5, 2001) (finding that the <hoylecasino.net> domain name is confusingly similar to the complainant's HOYLE mark, and that the addition of "casino," a generic word describing the type of business in which the complainant is engaged, does not take the disputed domain name out of the realm of confusing similarity); see also *Gillette Co. v. RFK Assocs.*, FA 492867 (Nat. Arb. Forum July 28, 2005) (finding that the additions of the term "batteries," which described the complainant's products, and the generic top-level domain ".com" were insufficient to distinguish the respondent's <duracellbatteries.com> from the complainant's DURACELL mark).

The Panel finds that Policy ¶ 4(a)(i) has been satisfied.

#### **Rights or Legitimate Interests**

Complainant must establish a *prima facie* case that Respondent lacks rights and legitimate interests in the <**goldfishcreditcard.com**> domain name under the requirements of Policy ¶ 4(a)(ii). The Panel finds that Complainant has met this burden, and accordingly, the burden is shifted to Respondent to put forth evidence that it possesses rights or legitimate interests in the disputed domain name under Policy ¶ 4(c). See *Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (holding that once the complainant asserts that the respondent has no rights or legitimate interests with respect to the domain, the burden shifts to the respondent to provide “concrete evidence that it has rights to or legitimate interests in the domain name at issue”); see also *Woolworths plc. v. Anderson*, D2000-1113 (WIPO Oct. 10, 2000) (finding that, absent evidence of preparation to use the domain name for a legitimate purpose, the burden of proof lies with the respondent to demonstrate that it has rights or legitimate interests).

Although Respondent’s failure to respond allows for the Panel to assume that Respondent lacks rights and legitimate interests in the disputed domain name, the Panel chooses to examine all evidence before it to determine whether Respondent has rights or legitimate interests in the <**goldfishcreditcard.com**> domain name under any of the aspects of Policy ¶ 4(c). See *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) (“[Rule 14(b)] expressly provide[s] that the Panel ‘shall draw such inferences’ from the Respondent’s failure to comply with the rules ‘as it considers appropriate.’”); see also *Eroski, So. Coop. v. Getdomains Ishowflat Ltd.*, D2003-0209 (WIPO July 28, 2003) (“It can be inferred that by defaulting Respondent showed nothing else but an absolute lack of interest on the domain name.”).

Respondent’s WHOIS information does not indicate that Respondent is commonly known by the <**goldfishcreditcard.com**> domain name, and there is no other information in the record to indicate that Respondent is or has ever been known by the disputed domain name. Moreover, Complainant asserts that Respondent is not authorized to use Complainant’s GOLDFISH mark and that Respondent is not associated with Complainant in any way. In *Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000), the panel found no rights or legitimate interests where the respondent was not commonly known by the mark and had never applied for a license or permission from the complainant to use the trademarked name. See *RMO, Inc. v. Burbridge*, FA 96949 (Nat. Arb. Forum May 16, 2001) (interpreting Policy ¶ 4(c)(ii) “to require a showing that one has been commonly known by the domain name prior to registration of the domain name to prevail”). Accordingly, the Panel finds that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii).

The evidence presented shows that Respondent is using the disputed domain name to host a website that displays hyperlinks to third-party websites in direct competition with Complainant, presumably for Respondent’s own commercial benefit through the accrual of click-through fees. Such use of the <**goldfishcreditcard.com**> domain name, which is confusingly similar to Complainant’s GOLDFISH mark, is neither a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) nor a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii). See *Charles Letts & Co. v. Citipublications*, FA 692150 (Nat. Arb. Forum July 17, 2006) (finding that the respondent’s use of a domain name that was confusingly similar to the complainant’s mark to display links to the complainant’s competitors did not constitute a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i), or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii)); see also *MSNBC Cable, LLC v. Tsysys.com*, D2000-1204 (WIPO Dec. 8, 2000) (finding no rights or legitimate interests in the famous MSNBC mark where the respondent attempted to profit using the complainant’s mark by redirecting Internet traffic to its own website).

The Panel finds that Policy ¶ 4(a)(ii) has been satisfied.

### Registration and Use in Bad Faith

Respondent's use of the <goldfishcreditcard.com> domain name to redirect Internet users attempting to locate Complainant's website to Respondent's own website, where hyperlinks to third-party websites in direct competition with Complainant are displayed, constitutes a disruption of Complainant's business and is evidence of bad faith registration and use under Policy ¶ 4(b)(iii). See *EBAY, Inc. v. MEODesigns*, D2000-1368 (WIPO Dec. 15, 2000) (finding that the respondent registered and used the domain name <ebay.com> in bad faith where the respondent has used the domain name to promote competing auction sites); see also *Puckett, Individually v. Miller*, D2000-0297 (WIPO June 12, 2000) (finding that the respondent has diverted business from the complainant to a competitor's website in violation of Policy ¶ 4(b)(iii)).

Additionally, the use of the disputed domain name to display hyperlinks to third-party competitors of Complainant indicates that Respondent registered the <goldfishcreditcard.com> domain name to commercially gain from a likelihood of confusion between the disputed domain name and corresponding website and Complainant's affiliation with the disputed domain name and website. Accordingly, the Panel finds bad faith registration and use under Policy ¶ 4(b)(iv). See *Zee TV USA, Inc. v. Siddiqi*, FA 721969 (Nat. Arb. Forum July 18, 2006) (finding that the respondent engaged in bad faith registration and use by using a domain name that was confusingly similar to the complainant's mark to offer links to third-party websites that offered services similar to those offered by the complainant); see also *TM Acquisition Corp. v. Warren*, FA 204147 (Nat. Arb. Forum Dec. 8, 2003) ("Although Complainant's principal website is <century21.com>, many Internet users are likely to use search engines to find Complainant's website, only to be misled to Respondent's website at the <century21realty.biz> domain name, which features links for competing real estate websites. Therefore, it is likely that Internet users seeking Complainant's website, but who end up at Respondent's website, will be confused as to the source, sponsorship, affiliation or endorsement of Respondent's website.").

The Panel finds that Policy ¶ 4(a)(iii) has been satisfied.

### **DECISION**

Complainant having established all three elements required under the ICANN Policy, the Panel concludes that relief should be **GRANTED**.

Accordingly, it is Ordered that the <goldfishcreditcard.com> domain name be **TRANSFERRED** from Respondent to Complainant.

Louis E. Condon, Panelist  
Dated: July 11, 2007

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**NATIONAL ARBITRATION FORUM**

# Domain Name Dispute Proceedings and Decisions

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## Search Results for Domain Dispute Cases

Records 1 to 1 of 1

Case No.	Domain(s)	Case Name	Domain Policy	Commenced	Status	Decision Date
190626	neimanskills.com,neimanskills.org	The Neiman Marcus Group, Inc. and NM Nevada Trust v Compassion Over Killing	UDRP	8/28/2003	<u>Transferred</u>	10/7/2003

Records 1 to 1 of 1

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## DECISION

The Neiman Marcus Group, Inc. and NM Nevada Trust v. Compassion Over Killing  
Claim Number: FA0308000190626

### PARTIES

Complainants are The Neiman Marcus Group, Inc. and NM Nevada Trust, Dallas, TX ("Complainant") represented by David J. Steele, of Christie, Parker & Hale LLP. Respondent is Compassion Over Killing, Washington, DC ("Respondent").

### REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are <neimanskills.com> and <neimanskills.org>, registered with Gkg.Net, Inc.

### PANEL

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

Sandra Franklin as Panelist.

### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum (the "Forum") electronically on August 26, 2003; the Forum received a hard copy of the Complaint on August 27, 2003.

On August 28, 2003, Gkg.Net, Inc. confirmed by e-mail to the Forum that the domain names <neimanskills.com> and <neimanskills.org> are registered with Gkg.Net, Inc. and that Respondent is the current registrant of the names. Gkg.Net, Inc. has verified that Respondent is bound by the Gkg.Net, Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On August 28, 2003, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of September 17, 2003 by which Respondent could file a Response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@neimanskills.com and postmaster@neimanskills.org by e-mail.

Having received no Response from Respondent, using the same contact details and methods as were used for the Commencement Notification, the Forum transmitted to the parties a Notification of Respondent Default.

On September 26, 2003, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the Forum appointed Sandra Franklin as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any Response from Respondent.

#### RELIEF SOUGHT

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

#### PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

1. Respondent's <neimanskills.com> and <neimanskills.org> domain names are confusingly similar to Complainant's NEIMAN MARCUS and NEIMANS marks.
2. Respondent does not have any rights or legitimate interests in the <neimanskills.com> and <neimanskills.org> domain names.
3. Respondent registered and used the <neimanskills.com> and <neimanskills.org> domain names in bad faith.

B. Respondent failed to submit a Response in this proceeding.

#### FINDINGS

Complainant, NM Nevada Trust, owns and licenses to Complainant, The Neiman Marcus Group, Inc., (collectively "Complainant") the Neiman Marcus trade name and the NEIMAN MARCUS trademark. Complainant's retail business was established in 1907 and has grown into a nationwide chain of thirty-five retail stores. Complainant also operates a worldwide mail order catalog business in conjunction with the NEIMAN MARCUS mark. Complainant holds several registrations for the NEIMAN MARCUS mark with the U.S. Patent and Trademark Office ("USPTO") including, Reg. Nos. 934,177 (registered May 16, 1972) and 1,593,195 (registered April 24, 1990). Complainant uses the <neimanmarcus.com> website in conjunction with its business.

Complainant claims that it has established common law rights in the NEIMANS mark through Complainant's use of the mark in commerce. Complainant uses the NEIMANS mark in conjunction with its toll free number, 1-800-NEIMANS, which is used for taking telephone orders and is widely promoted. When Internet users type the search word "Neimans" in the <google.com> search engine, the first listed hit is a link to Complainant's <neimanmarcus.com> website. Further proof of Complainant's secondary meaning in the NEIMANS mark is evidenced in Exhibit E of the Complaint which shows that Respondent's disputed domain names link to the <caft.org> website which criticizes Complainant and refers to boycotting NEIMANS.

Respondent registered the <neimanskills.com> and <neimanskills.org> domain names on August 29, 2001. Respondent uses the disputed domain names to misdirect Internet users searching for

Complainant's <neimanmarcus.com> website to Respondent's <neimancarcass.org> website. Respondent's <neimancarcass.org> website contains disparaging statements about Complainant and provides links to other websites that criticize Complainant. Not only do the websites criticize Complainant but the websites seek donations in support of animal rights organizations and they sell clothing.

## DISCUSSION

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

In view of Respondent's failure to submit a Response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules.

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

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

### Identical and/or Confusingly Similar

Complainant has established rights in the NEIMAN MARCUS mark through registration of the mark with the USPTO and Complainant's use of the mark in commerce. Complainant also has established common law rights in the NEIMANS mark through use of the mark in commerce. See *Janus Int'l Holding Co. v. Rademacher*, D2002-0201 (WIPO Mar. 5, 2002) (finding that Panel decisions have held that registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive. Respondent has the burden of refuting this assumption); see also *Bibbero Sys., Inc. v. Tseu & Assoc.*, FA 94416 (Nat. Arb. Forum May 9, 2000) (finding common law rights in the mark BIBBERO as Complainant, Bibbero Systems, Inc (Complainant owns a trademark for its full company name) had developed brand name recognition with the BIBBERO term by which Complainant is commonly known); see also *Smart Design LLC v. Hughes*, D2000-0993 (WIPO Oct. 18, 2000) (holding that ICANN Policy ¶ 4 (a)(i) does not require Complainant to demonstrate 'exclusive rights,' but only that Complainant has a bona fide basis for making the Complaint in the first place).

Respondent's <neimanskills.com> and <neimanskills.org> domain names are confusingly similar to Complainant's NEIMANS mark because the disputed domain names fully incorporate the mark and merely add the generic word "kills." Respondent's addition of the generic word "kills" and Respondent's variation of the generic top level domain name ".org" and ".com" are insufficient to circumvent the Panel from finding the domain names confusingly similar to the NEIMANS mark. See *Pfizer, Inc. v. Papol Suger*, D2002-0187 (WIPO Apr. 24, 2002) (finding that because the subject domain name incorporates the VIAGRA mark in its entirety, and deviates only by the addition of the word "bomb," the domain name is rendered confusingly similar to Complainant's mark); see also *Vivendi Universal v. Sallen*, D2001-1121 (WIPO Nov. 7, 2001) (finding the domain name <vivendiuniversalsucks.com> was confusingly similar to Complainant's VIVENDI UNIVERSAL mark, because Non-English speakers would associate the domain name with the owner of the



trademark); *see also* *Rollerblade, Inc. v. McCrady*, D2000-0429 (WIPO June 25, 2000) (finding that the top level of the domain name such as “.net” or “.com” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar).

Respondent’s omission of the MARCUS portion of Complainant’s mark and addition of the word “kills” is insufficient to avoid a finding of confusing similarity. *See Maple Leaf Sports & Entm’t Ltd. v. Toronto Maple Leafs!*, D2000-1510 (Jan. 24, 2001) (finding that the domain name <leafs.org> is confusingly similar to Complainant’s marks, where Complainant holds many trademarks that contain the term “LEAFS”); *see also* *Body Shop Int’l PLC v. CPIC NET*, D2000-1214 (WIPO Nov. 26, 2000) (finding that the domain name <bodyshopdigital.com> is confusingly similar to Complainant’s THE BODY SHOP trademark).

The Panel finds that Policy ¶ 4(a)(i) has been satisfied.

#### Rights or Legitimate Interests

The record fails to establish that Respondent was authorized or licensed to register or use domain names that incorporate Complainant’s marks. The WHOIS information for the <neimanskills.com> and <neimanskills.org> domain names fail to establish Respondent as one commonly known by the disputed domain names or by the NEIMANSKILLS.COM or NEIMANSKILLS.ORG marks. Therefore, the Panel concludes that Respondent lacks rights or legitimate interests in the disputed domain names pursuant to Policy ¶ 4(c)(ii). *See Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where Respondent was not commonly known by the mark and never applied for a license or permission from Complainant to use the trademarked name); *see also* *Tercent, Inc. v. Yi*, FA 139720 (Nat. Arb. Forum Feb. 10, 2003) (stating “nothing in Respondent’s WHOIS information implies that Respondent is ‘commonly known by’ the disputed domain name” as one factor in determining that Policy ¶ 4(c)(ii) does not apply).

In addition, Respondent’s use of the <neimanskills.com> and <neimanskills.org> domain names does not constitute a bona fide offering of goods or services pursuant to Policy ¶ 4(c)(i) nor a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii) because the disputed domain names fully incorporate the NEIMAN marks and may cause Internet user confusion as to whether the domain names are affiliated with or endorsed by Complainant. Respondent’s domain names make it likely that Internet users entering “Neiman” or “Neimans” into a search engine will find the <neimanskills.com> and <neimanskills.org> websites when searching for Complainant’s <neimanmarcus.com> website. Respondent’s domain names are sufficiently similar to Complainant’s marks such that the search engine results might confusingly list Respondent’s domain names when searching for Complainant’s marks. *See Weekley Homes, L.P. v. Fix My House Or Else?*, FA 96609 (Nat. Arb. Forum Apr. 18, 2001) (finding that establishment of a website containing criticism is not a legitimate use of the <davidweekleyhome.com> domain name because the disputed domain name is confusingly similar to Complainant’s DAVID WEEKLEY HOMES mark); *see also* *E. & J. Gallo Winery v. Hanna Law Firm*, D2000-0615 (WIPO Aug. 3, 2000) (finding that establishing a legitimate free speech/complaint site does not give rights to use a famous mark in its entirety); *see also* *Cabela’s Inc. v. Cupcake Patrol*, FA 95080 (Nat. Arb. Forum Aug. 29, 2000) (finding that Complainant, owner of the Federally registered trademark ‘Cabela’s,’ and user of the domain name <cabelas.com> was entitled to relief under UDRP against Respondent for the bad faith registration and use of the domain name <cabelassucks.com> because “by using Complainant’s marks in its domain names, Respondent makes it likely that Internet users entering “Cabela’s” into a search engine will find <cabelassucks.com> in addition to Complainant’s site <cabelas.com>.” Respondent’s domain name is sufficiently similar to Complainant’s marks that the

search engine results will confusingly list Respondent's domain name when searching for Complainant's mark).

Internet users may also be deceived by Respondent's domain names if they read the domain names as two separate words, i.e. "neiman" and "skills". The word "skills" added to the first part of Complainant's NEIMAN MARCUS mark might cause Internet users to mistakenly believe that the disputed domain names relate to Complainant's skills.

Furthermore, due to Respondent's failure to respond to the allegations of the Complaint, the Panel may presume that Respondent lacks rights or legitimate interests in the disputed domain names pursuant to Policy ¶ 4(a)(ii). See *Pavillion Agency, Inc. v. Greenhouse Agency Ltd.*, D2000-1221 (WIPO Dec. 4, 2000) (finding that Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the domain names); see also *Canadian Imperial Bank of Commerce v. D3M Virtual Reality, Inc.*, AF-0336 (eResolution Sept. 23, 2000) (finding no rights or legitimate interests where no such right or interest was immediately apparent to the Panel and Respondent did not come forward to suggest any right or interest it may have possessed).

The Panel finds that Policy ¶ 4(a)(ii) has been satisfied.

#### Registration and Use in Bad Faith

Respondent had actual knowledge of Complainant's rights in the NEIMANS and NEIMAN MARCUS marks because the disputed domain names fully incorporate the NEIMANS mark, the domain names link to websites that criticize Complainant, and the marks are recognized nationally and internationally. Registration of a domain name, despite knowledge of Complainant's rights, is evidence of bad faith registration pursuant to Policy ¶ 4(a)(iii). See *Digi Int'l, Inc. v. DDI Sys.*, FA 124506 (Nat. Arb. Forum Oct. 24, 2002) ("there is a legal presumption of bad faith, when Respondent reasonably should have been aware of Complainant's trademarks, actually or constructively"); see also *Paws, Inc. v. Odie*, FA 96206 (Nat. Arb. Forum Jan. 8, 2001) ("Given the uniqueness and the extreme international popularity of the [ODIE] mark, Respondent knew or should have known that registering the domain name in question would infringe upon the Complainant's goodwill").

Respondent's use of the <neimanskills.com> and <neimanskills.org> domain names constitutes bad faith because the domain names might misdirect Internet users searching for Complainant's <neimanmarcus.com> website to Respondent's <neimancarcass.org> website which criticizes Complainant. Respondent's diversionary tactic may cause Internet user confusion as to whether the disputed domain names or the <neimancarcass.com> website are endorsed by or affiliated with Complainant. See *Compagnie Generale des Matieres Nucleaires v. Greenpeace Int'l*, D2001-0376 (WIPO May 14, 2001) (stating that although Respondent's complaint website did not compete with Complainant or earn commercial gain, Respondent's appropriation of Complainant's trademark with a view to cause "damage and disruption to [Complainant] cannot be right, still less where the use of the Domain Name will trick internet users intending to visit the trademark owner's site into visiting the registrant's site" in holding that the disputed domain name was registered in bad faith); see also *Jenner & Block LLC v. Defaultdata.com*, FA 117310 (Nat. Arb. Forum Sept. 27, 2002) ("Respondent's argument that there is an inherent conflict between the Internet and the Constitutional right to free speech at the address to a business sounds impressive but is no more correct than the argument that there is a Constitutional right to intercept telephone calls to a business in order to speak to customers. Respondent's conduct is not the equivalent of exercising the right of free speech outside Complainant's business street address but of impermissibly blocking traffic to that street address"); see also *Mission KwaSizabantu v. Rost*, D2000-0279 (WIPO

June 7, 2000) (finding that Respondent registered the domain names <kwasizabantu.com>, <kwasizabantu.org>, and <kwasizabantu.net> in bad faith where Respondent published negative comments regarding Complainant's organization on the confusingly similar website).

The Panel finds that Policy ¶ 4(a)(iii) has been satisfied.

#### DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <neimanskills.com> and <neimanskills.org> domain names be **TRANSFERRED** from Respondent to Complainant, The Neiman Marcus Group, Inc.

Sandra Franklin, Panelist  
Dated: October 7, 2003

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NATIONAL ARBITRATION FORUM  
P. O. Box 50191  
Minneapolis, Minnesota 55405

**Brahma Kumaris World Spiritual Organization** )  
710 Marquis )  
San Antonio, Texas 78216 )  
(Complainant) )  
v. )  
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)  
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(Respondent) )  
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**Case No. FA0709001075486**

**Domain Name in Dispute:  
brahmakumaris.info**

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

**EXHIBIT EE**

# Domain Name Dispute Proceedings and Decisions

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## Search Results for Domain Dispute Cases

Records 1 to 1 of 1

Case No.	Domain(s)	Case Name	Domain Policy	Commenced	Status	Decision Date
384824	carruthstudios.com	Carruth Studio, Inc. v LaPorte Holdings, Inc.	UDRP	12/22/2004	<u>Transferred</u>	2/4/2005

Records 1 to 1 of 1

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## NATIONAL ARBITRATION FORUM

### DECISION

Carruth Studio, Inc. v. LaPorte Holdings, Inc.  
Claim Number: FA0412000384824

#### PARTIES

Complainant is Carruth Studio, Inc. ("Complainant"), represented by Gregg W. Emch, of MacMillan, Sobanski & Todd, LLC, One Maritime Plaza, Fourth Floor, 720 Water Street, Toledo, OH 43604. Respondent is LaPorte Holdings, Inc. ("Respondent"), 2202 S. Figueroa Street, Ste. 721, Los Angeles, CA 90023.

#### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <carruthstudios.com>, registered with Nameking.com, Inc.

#### PANEL

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

Sandra Franklin as Panelist.

#### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on December 16, 2004; the National Arbitration Forum received a hard copy of the Complaint on December 20, 2004.

On December 20, 2004, Nameking.com, Inc. confirmed by e-mail to the National Arbitration Forum that the domain name <carruthstudios.com> is registered with Nameking.com, Inc. and that Respondent is the current registrant of the name. Nameking.com, Inc. has verified that Respondent is bound by the Nameking.com, Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On December 22, 2004, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of January 11, 2005 by which Respondent could file a Response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@carruthstudios.com by e-mail.

Having received no Response from Respondent, using the same contact details and methods as were used for the Commencement Notification, the National Arbitration Forum transmitted to

the parties a Notification of Respondent Default.

On January 21, 2005, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Sandra Franklin as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the National Arbitration Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any Response from Respondent.

#### RELIEF SOUGHT

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

#### PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

1. Respondent's <carruthstudios.com> domain name is confusingly similar to Complainant's CARRUTH and CARRUTH STUDIO marks.
2. Respondent does not have any rights or legitimate interests in the <carruthstudios.com> domain name.
3. Respondent registered and used the <carruthstudios.com> domain name in bad faith.

B. Respondent failed to submit a Response in this proceeding.

#### FINDINGS

Complainant, Carruth Studio Inc., has been using the CARRUTH and CARRUTH STUDIO marks throughout the United States and internationally in conjunction with retail and wholesale services relating to artworks and house wares since as early as 1983.

Complainant has operated its main website at the <carruthstudio.com> domain name since 1998.

Respondent registered the <carruthstudios.com> domain name on December 6, 2003. Respondent is using the domain name to redirect Internet users to a website that appears to host a search engine and offers a variety of links to other websites. Some of these links lead to websites that are related to garden art and statues but also include websites for travel, leisure, weather, online banking and online shopping.

#### DISCUSSION

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

In view of Respondent's failure to submit a Response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules.

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

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

#### Identical and/or Confusingly Similar

Complainant asserts that it is the owner of the CARRUTH and CARRUTH STUDIO marks because it has operated under those marks in commerce since 1983. Additionally, the marks are reflected in Complainant's business name and website located at the <carruthstudio.com> domain name, which has been in operation since 1998. The Panel finds that Complainant has established common law rights in the marks through Complainant's use of the marks in commerce. See *British Broad. Corp. v. Renteria*, D2000-0050 (WIPO Mar. 23, 2000) noting that the Policy "does not distinguish between registered and unregistered trademarks and service marks in the context of abusive registration of domain names" and applying the Policy to "unregistered trademarks and service marks"; see also *Fishtech v. Rossiter*, FA 92976 (Nat. Arb. Forum Mar. 10, 2000) finding that Complainant has common law rights in the mark FISHTECH which it has used since 1982; see also *Nat'l Ass'n of Prof'l Baseball Leagues v. Zuccarini*, D2002-1011 (WIPO Jan. 21, 2003) finding that Complainant had provided evidence that it had valuable goodwill in the <minorleaguebaseball.com> domain name, establishing common law rights in the MINOR LEAGUE BASEBALL mark.

Respondent's <carruthstudios.com> domain name is confusingly similar to Complainant's CARRUTH and CARRUTH STUDIO marks because the domain name includes Complainant's marks and only deviates with the additions of the letter "s" and the top-level domain ".com." The mere addition of the letter "s" and top-level domain ".com" does not negate the confusingly similarity of Respondent's domain name pursuant to Policy ¶ 4(a)(i). See *Victoria's Secret v. Zuccarini*, FA 95762 (Nat. Arb. Forum Nov. 18, 2000) finding that, by misspelling words and adding letters to words, a Respondent does not create a distinct mark but nevertheless renders the domain name confusingly similar to Complainant's marks; see also *Nat'l Geographic Soc'y v. Stonybrook Invs.*, FA 96263 (Nat. Arb. Forum Jan. 11, 2001) finding that the domain name <nationalgeographics.com> was confusingly similar to Complainant's "National Geographic" mark; see also *Pomellato S.p.A v. Tonetti*, D2000-0493 (WIPO July 7, 2000) finding <pomellato.com> identical to Complainant's mark because the generic top-level domain (gTLD) ".com" after the name POMELLATO is not relevant; see also *Sony Kabushiki Kaisha v. Inja, Kil*, D2000-1409 (WIPO Dec. 9, 2000) finding that "[n]either the addition of an ordinary descriptive word . . . nor the suffix '.com' detract from the overall impression of the dominant part of the name in each case, namely the trademark SONY" and thus Policy ¶ 4(a)(i) is satisfied; see also *Victoria's Secret v. Hardin*, FA 96694 (Nat Arb. Forum Mar. 31, 2001) finding that the <bodybyvictoria.com> domain name is identical to Complainant's BODY BY VICTORIA mark.

Additionally, the omission of the space between "Carruth" and "Studio" in the disputed domain name does not sufficiently distinguish the domain name from Complainant's CARRUTH STUDIO mark. See *Hannover Ruckversicherungs-AG v. Ryu*, FA 102724 (Nat. Arb. Forum Jan. 7, 2001) finding <hannoverre.com> to be identical to HANNOVER RE, "as spaces are impermissible in domain names and a generic top-level domain such as '.com' or '.net' is required in domain names"; see also *Wembley Nat'l Stadium Ltd. v. Thomson*, D2000-1233 (WIPO Nov. 16, 2000)



finding that the domain name <wembleystadium.net> is identical to the WEMBLEY STADIUM mark; see also *Tech. Props., Inc. v. Burris*, FA 94424 (Nat. Arb. Forum May 9, 2000) finding that the domain name <radioshack.net> is identical to Complainant's mark, RADIO SHACK.

The Panel finds that Complainant fulfilled Policy ¶ 4(a)(i).

### Rights or Legitimate Interests

Complainant asserts that Respondent has no rights or legitimate interests in the <carruthstudios.com> domain name. Once Complainant establishes a *prima facie* case pursuant to Policy ¶ 4(a)(ii), the burden shifts to Respondent to show that it does have rights or legitimate interests in the disputed domain name. Due to Respondent's failure to respond to the Complaint, the Panel assumes that Respondent lacks rights and legitimate interests in the disputed domain name. See *G.D. Searle v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002) holding that where Complainant has asserted that Respondent has no rights or legitimate interests with respect to the domain name it is incumbent on Respondent to come forward with concrete evidence rebutting this assertion because this information is "uniquely within the knowledge and control of the respondent"; see also *Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) finding that under certain circumstances the mere assertion by Complainant that Respondent has no right or legitimate interest is sufficient to shift the burden of proof to Respondent to demonstrate that such a right or legitimate interest does exist; see also *Geocities v. Geocities.com*, D2000-0326 (WIPO June 19, 2000) finding bad faith where Respondent linked the domain name in question to websites displaying banner advertisements and pornographic material.

The Panel accepts all reasonable allegations and inferences in the Complaint as true because Complainant has made a *prima facie* showing and Respondent has not submitted a Response. See *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint."); see also *Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) holding that Respondent's failure to respond allows all reasonable inferences of fact in the allegations of the Complaint to be deemed true.

Respondent is using the <carruthstudios.com> domain name to mislead Internet users to a website that appears to host a search engine and provides links to garden and statue related products and services in addition to links related to travel, weather, online banking and online shopping. Respondent's use of a domain name confusingly similar to Complainant's CARRUTH and CARRUTH STUDIO marks to redirect Internet users interested in Complainant's products to a website hosting a search engine and offering links to websites unrelated to Complainant is not a use in connection with a bona fide offering of goods or services pursuant to Policy ¶ 4(c)(i) and is not a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶ 4(c)(iii). See *Bank of Am. Corp. v. Out Island Props., Inc.*, FA 154531 (Nat. Arb. Forum June 3, 2003) holding that Respondent's use of infringing domain names to direct Internet traffic to a search engine website that hosted pop-up advertisements was evidence that it lacked rights or legitimate interests in the domain name; see also *U.S. Franchise Sys., Inc. v. Howell*, FA 152457 (Nat. Arb. Forum May 6, 2003) holding that Respondent's use of Complainant's mark and the goodwill surrounding that mark as a means of attracting Internet users to an unrelated business was not a bona fide offering of goods or services.

Furthermore, Respondent has not offered any evidence to suggest that Respondent is commonly known by the <carruthstudios.com> domain name. Instead, it appears from the record that

Respondent is more commonly known as LaPorte Holdings, Inc. Therefore, Respondent has not established rights or legitimate interests in the disputed domain name pursuant to Policy ¶ 4(c)(ii). See *Gallup Inc. v. Amish Country Store*, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) finding that Respondent does not have rights in a domain name when Respondent is not known by the mark; see also *Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) finding no rights or legitimate interests where Respondent was not commonly known by the mark and never applied for a license or permission from Complainant to use the trademarked name; see also *Broadcom Corp. v. Intellifone Corp.*, FA 96356 (Nat. Arb. Forum Feb. 5, 2001) finding no rights or legitimate interests because Respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use.

The Panel finds that Complainant fulfilled Policy ¶ 4(a)(ii).

#### Registration and Use in Bad Faith

Respondent's <carruthstudios.com> domain name diverts Internet users searching under Complainant's CARRUTH and CARRUTH STUDIO marks to Respondent's website through the use of a domain name that is confusingly similar to Complainant's marks. The Panel infers that Respondent commercially benefits by receiving click-thru fees by directing Internet users to commercial websites through Respondent's website and search engine. Respondent's intentional registration of a domain name containing Complainant's marks evidences bad faith registration and use pursuant to Policy ¶ 4(b)(iv). See *Drs. Foster & Smith, Inc. v. Lalli*, FA 95284 (Nat. Arb. Forum Aug. 21, 2000) finding bad faith where Respondent directed Internet users seeking Complainant's site to its own website for commercial gain; see also *Kmart v. Khan*, FA 127708 (Nat. Arb. Forum Nov. 22, 2002) finding that if Respondent profits from its diversionary use of Complainant's mark when the domain name resolves to commercial websites and Respondent fails to contest the Complaint, it may be concluded that Respondent is using the domain name in bad faith pursuant to Policy ¶ 4(b)(iv); see also *Am. Online, Inc. v. Tencent Comm. Corp.*, FA 93668 (Nat. Arb. Forum Mar. 21, 2000) finding bad faith where Respondent registered and used an infringing domain name to attract users to a website sponsored by Respondent.

The Panel finds that Complainant fulfilled Policy ¶ 4(a)(iii).

#### DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be GRANTED.

Accordingly, it is Ordered that the <carruthstudios.com> domain name be TRANSFERRED from Respondent to Complainant.

Sandra Franklin, Panelist

Dated: February 4, 2005

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