

**IN THE MATTER OF A COMPLAINT PURSUANT TO THE
CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY**

Domain Name: <mtv.ca>

Complainant: Viacom International Inc.

Registrant: Harvey Ross Enterprises, Ltd.

Registrar: CanReg.com

Panellists: Patrick Flaherty, W. A. Derry Millar and James E. Redmond Q.C., FCI Arb

Service Provider: British Columbia International Commercial Arbitration Centre

DECISION

Parties

The Complainant is Viacom International Inc. a company with its principal place of business in New York City, New York, USA. The Registrant is Harvey Ross Enterprises, Ltd., a company with its principal place of business in Oakville, Ontario, Canada.

Domain Name and Registrar

The domain name that is the subject of this proceeding is <mtv.ca> (the “Domain Name”). The Registrar of the Domain Names is CanReg.com, of Richmond, British Columbia, Canada.

Procedural History

This is a proceeding under the CIRA Domain Name Dispute Resolution Policy, adopted by the Canadian Internet Registration Authority and posted on the CIRA website on November 29, 2001 (the “Policy”) and the CIRA Domain Name Dispute Resolution Rules, version 1.1 (the “Rules”). By registering the domain name with the Registrar, the Registrant agreed to the resolution of certain disputes pursuant to the Policy and Rules.

The history of this proceeding, according to the information provided by the dispute resolution service provider, British Columbia International Commercial Arbitration Centre (“BCICAC”), is as follows:

- a) On June 20, 2003, the Complainant filed a complaint regarding the Domain Name with BCICAC.
- b) On July 11, 2003, having determined that the complaint was in administrative compliance with the requirements of the Policy and the Rules, BCICAC delivered a copy of the complaint to the Registrant.
- c) The Registrant requested an extension of time in which to deliver its Response and an extension was granted by the BCICAC to August 11, 2003 pursuant to Rule 5.4.

- d) On August 11, 2003, the Registrant delivered its response to BCICAC.
- e) The response delivered was determined by the BCICAC not to comply with the requirements of the Policy and Rules. On August 11, 2003 the BCICAC advised the Registrant that it had until August 25, 2003 to deliver a response in compliance with the Policy and Rules.
- f) The registrant delivered a compliant Response as of August 25, 2003.
- g) Both the complaint and the response were filed in English, which is the language of this proceeding in accordance with paragraph 10.1 of the Rules.
- h) On September 26, 2003, in accordance with paragraph 6 of the Rules and considering the nominees of the parties, BCICAC appointed a three-person Panel comprised of Messrs. Patrick Flaherty, W. A. Derry Millar and James E. Redmond, Q.C., FCI Arb. Mr. Flaherty was named as Chair of the Panel.
- i) Each of the Panellists have delivered to BCICAC the required Statement of Impartiality and Independence, as required by paragraph 7 of the Rules.
- j) Absent exceptional circumstances, the Panel was required to deliver its decision on October 17, 2003.

The Panel finds that it was properly constituted and appointed in accordance with the Policy and the Rules. Based upon the information provided by BCICAC, the Panel finds that all technical requirements for the commencement and maintenance of this proceeding were met. The Complainant was represented by legal counsel throughout this proceeding. The Respondent was not represented by legal counsel before the Panel.

Background

The Panel proceeds on the basis of the following facts set forth below as established in the evidence submitted by the parties.

The Complainant, through its division MTV Networks, operates several television programming services including “MTV: Music Television” (“MTV”). MTV’s programming is available in multiple countries, including in Canada pursuant to license agreements it has with third parties. In addition, MTV (either directly or through its licensees) has an extensive presence on the Internet through multiple websites accessed through top-level domain names in multiple countries. In Canada, the Complainant holds the registration for <mtvcanada.com> which resolves to its licensee’s Canada-focused website.

The Complainant is the owner of multiple trade-marks registered in Canada and elsewhere that contain or comprise the element of “MTV”. In Canada, its trade-marks registered in the Canadian Intellectual Property Office (“CIPO”) include: “MTV” (TMA 398,119) registered May 15, 1992; “MTV’S THE HEAD” (TMA 533,688) registered September 27, 2000; and a graphic design for “MTV/MUSIC TELEVISION” (TMA 398,120) registered May 15, 1992.

The Registrant is owned and operated by two individuals who reside in Ontario: Scott Yellan and Todd MacDougall. Its current business is the solicitation and promotion of Canadian accommodation services to travellers outside of Canada.

The Registrant registered the disputed Domain Name on November 8, 2000. By letter dated July 22, 2001 (received July 24, 2001), the Complainant gave notice to the Registrant of the Complainant’s

objection to the registration of <mtv.ca>, asserting that it infringed upon the Complainant's trade-marks and demanding that the Registrant transfer the Domain Name to it.

The Registrant's use of the Domain Name has varied. From the time of registration until about July 29, 2001, the homepage accessible at <mtv.ca> was the Registrar's default page advising the site could be uploaded. Thereafter, <mtv.ca> resolved to the Registrant's website. That site consists of two web pages including three photographs (two of which are identical), text that identifies it as the site of "MT Vacations", a notice that "This site is NOT represented by and/or affiliated with MTV Networks", a statement that "We are currently under construction but will be up and running soon", and a textbox which invites one to "Enter your email address to be notified".

There is no relationship between the Complainant and Registrant. Further, the Registrant has not been licensed to use or been otherwise authorized to use the Complainant's marks in "MTV".

Positions of the Parties

The Complainant seeks an order requiring the Domain Name be transferred to it on the following bases:

- (a) The Domain Name is confusingly similar to marks in which the Complainant had rights prior to the date of registration of the Domain Name. In particular:
 1. the Complainant is the owner of trade-marks registered in the CIPO containing or comprised of the element "MTV";
 2. such marks were obtained by the Complainant in advance of the registration of the Domain Name; and
 3. the operative aspect of the Domain Name ("MTV") is identical to a trade-mark owned by the Complainant (TMA 398,119) and includes elements of its other trademarks such that the Domain Name "so nearly resembles" the Complainant's trademarks that a person would likely mistake it for the Complainant's trademark or trademarks.
- (b) The Registrant has no legitimate interest in the Domain Name because: (i) the Domain Name does not contain a mark in which the Registrant has used in good faith, but rather, any use of the Domain Name has in fact been a contrived attempt to legitimize an otherwise illegitimate registration; (ii) the Registrant has not used the Domain Name in good faith in association with wares, services or businesses in respect of which the Domain Name is descriptive or generic names; (iii) the Domain Name does not constitute the Registrant's legal or other names; and (iv) the Domain Name does not constitute geographic names or the location of the Registrant's non-commercial activity or business.
- (c) The Registrant registered the Domain Name in bad faith because it did so to prevent the Complainant from registering its trade-marks as a domain name and it has engaged in a pattern of registrations designed to do the same.

The Registrant admits that the Domain Name is "confusingly similar" to the trade-marks owned by the Complainant. As described above, certain of those marks were registered in the CIPO office in advance of the registration of the Domain Name in issue. However, the Registrant seeks to have the complaint dismissed on the basis that:

- (a) The Registrant has a legitimate interest in the Domain Name on some or all of the following grounds: (i) it is in "the business of solicitation, promotion and sale of accommodation services and has equated the acronym MTV to describe MT Vacations,

and not Music Television; (ii) MT Vacations is in reference to “Melanie and Todd’s Vacations”, with Todd being one of the principals of the Registrant and Melanie being his spouse and the Domain Name was registered “to serve to represent Melanie and Todd’s Vacations; (iii) currently MT Vacations, through its website, is intended to provide “an online public forum for individuals to exchange travel information and promote specifics about Canadian travel destinations”; and, (v) the longer term goals of the Registrant are to use the Domain Name and MT Vacations website to provide travel related services or products at such time as it has the financial ability to develop and operate such business.

- (b) The Registrant did not register the Domain Name in bad faith, in particular to prevent the Complainant from doing so nor has it engaged in a pattern of registering other domain names to prevent persons who have rights in trademarks from registering them as domain names. The Registrant asserts that at the time it registered the Domain Name it was unaware of the rights in marks of the Complainant which are confusingly similar to the Domain Name. It further contends that it intends to use the Domain Name to promote its travel services at such time in the future as it has the financial ability to do so and having regard to its overall business plan. While it has registered other domain names which include marks of other parties, it did so in good faith with a *bona fide* intention of using those domain names in connection with its business plan over time.

Discussion and Findings

A. Procedural and Other Matters

The Complainant is entitled to avail itself of the CIRA Policy as the complaint relates to trademarks registered in the Canadian Intellectual Property Office that it owns.¹ In addition, the Complainant satisfies the CIRA Canadian Presence Requirement for Registrants (Version 1.3 - Effective Date: June 5, 2003)² in that the disputed Domain Name includes the exact word component of a trade-mark registered in Canada owned by the Complainant.

The Registrant satisfies the CIRA Canadian Presence Requirement for Registrants³ as it is a company incorporated pursuant to the laws of the Province of Ontario.

B. The Policy

As has been observed by Panels in other decisions,⁴ the Policy applies only to disputes involving alleged bad faith registration of domain names in the dot-ca country code top level domain. The Policy, therefore, does not apply to all forms of dispute between trade-mark owners and domain name registrants. The Policy, therefore, is limited to situations in which a complainant asserts:

¹ Section 1.4

² Section 2(q)

³ Section 2(d)

⁴ *Cheap Tickets and Travel Inc. v. E-mail.ca Inc.* (January 31, 2003) BCICAC, Decision 4a

- (a) the registrant's dot-ca domain name is “Confusingly Similar” (as defined in Policy paragraph 3.4) to a “Mark” (as defined in Policy paragraph 3.2) in which the complainant had “Rights” (as defined in Policy paragraph 3.3) prior to the date of registration of the domain name and continues to have such “Rights”;
- (b) the registrant has no legitimate interest in the domain name as described in Policy paragraph 3.6; and
- (c) the registrant has registered the domain name in bad faith as described in Policy paragraph 3.7.⁵

The onus of proof regarding these three required elements is also prescribed in the Policy. The complainant must:

- (a) prove, on a balance of probabilities, that the registrant's dot-ca domain name is “Confusingly Similar” to a “Mark” in which the complainant had “Rights” prior to the date of registration of the domain name and continues to have such “Rights”;
- (b) prove, on the balance of probabilities, that the registrant has registered the domain name in bad faith as described in Policy paragraph 3.7; and,
- (c) provide some evidence that the registrant has no legitimate interest in the domain name as described in Policy paragraph 3.6.

Even if a complainant proves (a) and (b) and provides some evidence of (c), the registrant will succeed in the proceeding if the registrant proves, on a balance of probabilities, that the registrant has a legitimate interest in the domain name as described in Policy paragraph 3.6.⁶

C. Confusing Similarity Between Domain Name and The Complainant’s Marks

The Complainant must prove, on a balance of probabilities, that the Domain Name is “Confusingly Similar” to a “Mark” in which the Complainant had “Rights” prior to the date of registration of the Domain Name and continues to have such “Rights” within the meaning of the Policy. As referred to above, the Registrant has admitted that the Domain Name is confusingly similar to the trademarks owned by the Complainant. Certain of those trademarks were registered in the CIPO prior to the date of the registration of the Domain Name on November 8, 2000 (including TMA 398,191 for “MTV” registered May 15, 1992; TMA 533,688 for “MTV’s THE HEAD” registered September 27, 2000; and, TMA 398,120 for MTV/MUSIC TELEVISION Design registered May 15, 1992). Accordingly, the Panel finds that the first requirement of the Policy has been established.

The Panel notes that notwithstanding the admission of “confusing similarity”, the Registrant (in support of its submissions regarding the “legitimate use” requirement) has advanced arguments to the effect that consumers could not confuse “MTV”, as it used in relation to Music Television by the Complainant, with “MTV”, as it purports to use it in relation to travel, accommodations and vacations. In this context, the Registrant asserts that “MTV” is generic and could equally connote in the mind of a consumer “Music Television” or, for example, “Melanie and Todd’s Vacations”, “Multi Terrain Vehicle” or “Mississauga TV”.

The Registrant’s submission in this regard is really in the nature of a collateral attack on its admission of “confusing similarity”. Moreover, and in any event, the Panel finds the Registrant’s position to be

⁵ Policy paragraph 3.1.

⁶ Policy paragraph 4.1

unpersuasive given the nature of the Policy. For the purpose of construing “confusing similarity” between the domain name and the complainant’s mark, the Policy draws a distinction between rights in a mark registered in CIPO before the date the domain name was registered and common law rights in a mark acquired through use by the complainant. With the former, a complainant need not demonstrate distinctiveness or use to establish “rights” in a mark which is alleged to be confusingly similar to the domain name.⁷ The registration of the mark in CIPO is sufficient in and of itself to establish such “rights” within the meaning of the Policy. The Registrant’s assertion that the MTV mark is not distinctive, therefore, does not, detract from the fact that the Complainant has “rights” (within the meaning of paragraphs 3.3.(b) and 3.2(c)) in the “MTV” mark.

In any event, even apart from the admission of confusing similarity by the Registrant, the Panel is of the view that a person would likely mistake the Domain Name for the Complainant’s trade-marks. In this regard, the operative aspect of the Domain Name (“MTV”) is identical to one trademark owned by the Complainant (TMA 398,119) and includes elements of its other trademarks as described previously. We agree with the submission of the Complainant that in these circumstances the Domain Name “so nearly resembles” the Complainant’s trade-marks that confusion would ensue.

In coming to its decision in this respect the Panel notes that the Registrant has put in evidence the fact that it has received to date 489 requests for information relating to the eventual launch of its <mtv.ca> website. These are requests which were made by persons visiting the site who entered their email address in the text box on the website to be notified of the launch of the site. The Panel does not accept, as seems to be asserted by the Registrant, that this comprises evidence that the Domain Name is not confusingly similar with the Complainant’s marks in the minds of the consumer. That people have requested notification about the launch of the MT Vacations’ site says nothing about why they visited <mtv.ca> in the first instance. Nor, in any event, has the Registrant provided any information about the total number of people who have visited the site as compared to the 489 who have apparently requested they be notified about the launch of the site relating to MT Vacations. The number of persons who have requested notification of the launch of the <mtv.ca> site, therefore, does not lead to the conclusion asserted by the Registrant.

D. No Legitimate Interest in the Domain Name

As described above, the Complainant must provide “some evidence” that the Registrant has no legitimate interest in the Domain Name, as described in Policy paragraph 3.6. If the Complainant satisfies this evidentiary burden, the onus shifts to the Registrant to prove on a balance of probabilities that the Registrant has a legitimate interest in the challenged domain name.

Policy paragraph 3.6 sets forth an exhaustive list of criteria for determining whether a registrant has a legitimate interest in a domain name. It provides as follows:

The Registrant has a legitimate interest in a domain name if, and only if, before the receipt by the Registrant of notice from or on behalf of the Complainant that a Complaint was submitted:

- (a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;*
- (b) the Registrant used the domain name in Canada in good faith in association with any wares, services or business and the domain name was clearly descriptive in Canada in the English or French language of: (i) the character or quality of the wares, services or business; (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or (iii) the place of origin of the wares, services or business;*

⁷ Policy paragraphs 3.2(c), 3.3(b) and 3.4

- (c) *the Registrant used the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language;*
- (d) *the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;*
- (e) *the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or*
- (f) *the domain name was the geographical name of the location of the Registrant's non-commercial activity or place of business.*

In paragraphs 3.6 (b), (c), and (d) "use" by the Registrant includes, but is not limited to, use to identify a web site.

The legitimate interest criteria set forth in Policy paragraphs 3.6(a), (b), (c), and (d) are satisfied only if the registrant's use was in "good faith", a term which is not defined by the Policy. The Panel notes that "good faith" as used in Policy paragraph 3.6 is not necessarily the opposite of "Bad Faith" as defined in Policy paragraph 3.7.

The Complainant contends that none of the legitimate interest criteria set forth in Policy paragraph 3.6 are applicable to the Registrant and argues that a number of factors, when considered in concert suggest that the Registrant did not register the Domain Name in good faith. None of the grounds set out in Policy paragraph 3.6 that establish legitimate interest are specifically relied upon by the Registrant. The Registrant does submit, however, that it lacks the financial wherewithal to invest in the concurrent development of all the Domain Names that it presently owns and asserts that it has spent a great deal of time and money establishing relationships with certain parties in an effort to start its business.

The Complainant has satisfied its burden pursuant to Policy paragraph 4.1 (c) as it has provided some evidence that the Registrant does not satisfy any criteria listed in Policy paragraph 3.6. In this respect, the Domain Name, <mtv.ca> was not actively being used by the Registrant before it received notice from the Complainant of its objection to the registration. In fact, the Complainant's evidence shows, and the Registrant appears to accept, that there was no use at all by the Registrant prior to receiving the Complainant's correspondence taking issue with the registration of the Domain Name. Rather, the Domain Name simply resolved to the Registrar's default page indicating that the Registrant could upload its website. Only days after receipt of the Complainant's correspondence did <mtv.ca> become associated with the Registrant's current website, which is comprised of two modest web pages, that as noted above, has been inactive for over two years.

The Panel finds that notwithstanding the Registrant's submissions, it has failed to establish any "legitimate interest" of the Domain Name as provided for in the Policy. While the Registrant has not specifically relied on any of the subparagraphs of the Policy in support of its assertion that it has and is using the Domain Name in good faith, a review of Policy paragraph 3.6 indicates that only subparagraphs (b) and (c) are potentially applicable. In this regard, the Registrant asserts that it has used the Domain Name to identify a website (its current MT Vacations site which, as described above, remains under construction) and that once it has the financial wherewithal it will begin operating a site that will offer travel related services and products.

Based on the uncontradicted evidence adduced by the Complainant, however, the Panel finds there was no use at all of the Domain Name by the Registrant in advance of receipt of the letter of complaint from the Complainant. Rather, as previously described, the Domain Name resolved to the Registrar's homepage in advance of the receipt by the Registrant of the letter of complaint.

Nor in any event does the Panel accept the Registrant's position that its current use of the Domain Name (that resolves to its MT Vacations "under construction" website) combined with its expressed intention to use the Domain Name in the future comprise a "legitimate interest" under the Policy. It is possible "legitimate interest" may be found under Policy 3.6(b) or (c) absent the operation of a fully functional website identified by the Domain Name. This is because domain name registrants cannot always be expected to make immediate legitimate use of domain names since preparation is required to launch websites. The Policy should be interpreted, therefore, to allow for some period that is reasonable under the circumstances between the time of registration of a domain name and the commencement of its intended legitimate use. However, as has been observed by other Panels, the Policy should not be interpreted to authorize a registrant to "park" on a domain name for some indefinite or extended period of time simply on the basis that it will be used for a business to be carried on in the future.⁸ Accordingly, only where the registrant puts forward persuasive evidence of a *bona fide* intention to use the website in connection with the offering of wares, services or in connection with a business should "legitimate interest" be found in such circumstances. The kind of evidence necessary to demonstrate preparation to make legitimate use will of course depend on the context, but it must, at a minimum, show that a registrant has taken steps with a view to commence operation of the website and explain the delay in doing so at the time of the complaint.

The only evidence put forward by the Registrant of its intention to use the Domain Name in issue here is a single page undated block diagram which purports to show the interrelation between its registered domain names, including <mtv.ca>. The Panel finds that this does not meet the burden of establishing a *bona fide* intention of using the Domain Name as contemplated by the Policy. The Registrant has not put forward any evidence that its other businesses are in fact operative, when it intends to begin operating its travel business with use of the Domain Name or when its website at <mtv.ca> will in fact be constructed and operational. The absence of any such evidence, coupled with the fact that its website has been under construction for in excess of two years, leads to the conclusion that there is no legitimate interest in the Domain name.

E. Bad Faith Registration

Policy paragraph 4.1 requires the Complainant to prove, on a balance of probabilities, that the Registrant registered the Domain Name in bad faith, as described in Policy paragraph 3.7. "Bad faith" within the meaning of the Policy is a term of art, and is not intended to apply to distasteful conduct that might constitute bad faith in the ordinary sense of the term.⁹ The Policy (paragraph 3.7) sets forth an exhaustive list of criteria for determining whether a registrant registered a domain name in "bad faith" as follows:

For the purposes of paragraph 3.1(c), a Registrant will be considered to have registered a domain name in bad faith if, and only if:

- (a) the Registrant registered the domain name, or acquired the Registration, primarily for the purpose of selling, renting, licensing or otherwise transferring the Registration to the Complainant, or the Complainant's licensor or licensee of the Mark, or to a competitor of the Complainant or the licensee or licensor for valuable consideration in excess of the Registrant's actual costs in registering the domain name, or acquiring the Registration;*
- (b) the Registrant registered the domain name or acquired the Registration in order to prevent the Complainant, or the Complainant's licensor or licensee of the Mark, from registering the Mark as a domain name, provided that the Registrant, alone or in concert with one or more additional persons has engaged in a pattern*

⁸ *Great Pacific Industries Inc. v. Ghalib Dhalla*, (April 21, 2003) BCICAC Dispute No. 9

⁹ *Government of Canada v. David Bedford and Abundance Consulting* (May 27, 2003) BCICAC, Dispute No. 11

of registering domain names in order to prevent persons who have Rights in Marks from registering the Marks as domain names; or

- (c) *the Registrant registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of the Complainant, or the Complainant's licensor or licensee of the Mark, who is a competitor of the Registrant.*

The registrant's purpose in registering a domain name may be determined by common sense inferences from the registrant's conduct and other surrounding circumstances.¹⁰ This is because rarely will a complainant have direct evidence of the purpose for registration.

The Complainant relies upon Policy paragraph 3.7 (b) in support of its assertion that the Registrant has acted in bad faith in registering the Domain Name. With respect to the Registrant's intention in registering the Domain Name, among other things, it points to the following as evidence that lead to the inference of bad faith:

- a) the Registrant's website has been inactive for more than two years;
- b) the Registrant had actual or at least constructive knowledge of the Complainant's rights in the domain name when registered given the prevalence and extensive reputation in Canada;
- c) the Registrant registered multiple domain names on the same day including the Domain Name in issue; and
- d) the multiple domain names registered by the Registrant were unrelated.

The Complainant has also put forward substantial evidence that the Registrant has engaged in a pattern of domain name registrations which appear intended to prevent others from registering such domain names. In this respect, as of May 6, 2003 the Registrant was the owner of sixty-eight Domain Name registrations, including twelve Domain Names (apart from <mtv.ca>) that contain, or are comprised of trade-marks that are the subject of Canadian applications for or registrations of trade-marks owned by third parties. These are set out in Appendix A. Further, with the exception of <mtv.ca>, as of May 22, 2003, all of the domain names registered by the Registrant which contain the trade-marks of third parties do not resolve to active websites, but rather to the Registrar's default web page.

In response, the Registrant asserts that it did not act in bad faith in registering the Domain Name in that:

- a) it had no knowledge of the Complainant's rights to "MTV" in Canada at the time it registered the Domain Name;
- b) it registered the Domain Name for the purpose of operating "MT Vacations" with reference to Melanie and Todd's vacations, and further as a play on words since the vacations it intended to offer would be anything but "empty" ("MT");
- c) it has posted a disclaimer on its website indicating it is not affiliated with the Complainant; and,
- d) while it has made multiple same day registrations of other domain names that include the marks of third parties, it has either transferred those registrations to those parties or has sought amicable resolution of any disputes with those third parties.

¹⁰ *CBC v. William Quon*, (April 8, 2003) BCICAC DCA 681-CIRA

The Panel finds that the Complainant has met its burden of proving on the balance of probabilities that the Registrant has acted in bad faith within the meaning of the Policy based on the evidence set forth above. In the face of this substantial circumstantial evidence of bad faith, the Registrant has failed to provide any reasonable or credible explanation as to why it registered the Domain Name in the first place. Its assertion that it did so in connection with “MT Vacations” is implausible insofar as it has never conducted any such business on the evidence. Moreover, its assertion that “MT” Vacations is a play on words is nonsensical. Moreover, the Registrant has failed to provide any tenable, explanation as to its numerous registrations of other domain names which are comprised of third parties marks. The clear inference to be drawn from that conduct, coupled with the registration of the Domain Name in issue, is that it was done so in bad faith with a view to preventing the Complainant from registering its trade-marks as a domain name.

Conclusion and Decision

The Complainant has proven, on a balance of probabilities, that the Domain Name is “Confusingly Similar” to a “Mark” in which the Complainant had “Rights” prior to the date of registration of the Domain Name and continues to have such “Rights”, as those terms are defined in the Policy. The Complainant has adduced some evidence that the Registrant has no legitimate interest in the Domain Name as described in paragraph 3.6. The Registrant has not proven, on a balance of probabilities, that it has a legitimate interest in the Domain Name, as described in paragraph 3.6. Further, the Complainant has proven, on a balance of probabilities, that the Registrant registered the Domain Name in bad faith as described in paragraph 3.7 of the Policy.

For these reasons, the complaint is successful and the Panel orders and directs that the registration of <mtv.ca> be transferred to the Complainant by the Registrar, Canreg.com.

Patrick Flaherty, W. A. Derry Millar and James E. Redmond, Q.C., FCI Arb

“Patrick Flaherty”

Patrick Flaherty
Chair

Date: October 15, 2003

APPENDIX A

List of Registrants Domain Name Registrations Which Contain Third Party Trade Marks

| Domain Name Registration | Registration Date | Trade-mark Owner |
|--------------------------|-------------------|--|
| chateaulaurier.ca | November 8, 2000 | Legacy Hotels Corporation |
| esquire.ca | November 8, 2000 | Hearst Communications Inc. |
| hustler.ca | November 8, 2000 | L.F.P., Inc. |
| leaftickets.ca | January 24, 2002 | Maple Leaf Sports & Entertainment Ltd. |
| marketwatch.ca | January 24, 2002 | London Life Insurance Company |
| muchmusic.ca | November 8, 2000 | CHUM Limited |
| nippon.ca | November 8, 2000 | Nippon Travel Agency Canada Ltd. |
| novotel.ca | November 8, 2000 | Accor Une Societe Anonyme |
| planethollywood.ca | November 8, 2000 | Planet Hollywood (Region Iv), Inc. |
| ritzcarlton.ca | November 8, 2000 | Marriott Hotels of Canada Ltd. |
| royalyork.ca | November 8, 2000 | Legacy Hotels Corporation |
| starwood.ca | November 8, 2000 | Starwood Capital Group L.L.C. |