



## NATIONAL ARBITRATION FORUM

### DECISION

Baltimore Orioles, L.P., d/b/a The Baltimore Orioles Baseball Club v. Nevis Domains  
Claim Number: FA0605000707606

#### PARTIES

Complainant is **Baltimore Orioles, L.P.**, d/b/a **The Baltimore Orioles Baseball Club** ("Complainant"), represented by **Lee M. Goldsmith**, of **MLB Advanced Media, L.P.**, 75 Ninth Avenue, 5th Floor, New York, NY 10011. Respondent is **Nevis Domains** ("Respondent"), P.O. Box 626, Charlestown, Nevis 00000, KN.

#### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**baltimoreorioles.com**>, registered with **Moniker Online Services, 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.

Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

#### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on May 16, 2006; the National Arbitration Forum received a hard copy of the Complaint on May 17, 2006.

On May 18, 2006, Moniker Online Services, Inc. confirmed by e-mail to the National Arbitration Forum that the <**baltimoreorioles.com**> domain name is registered with Moniker Online Services, Inc. and that Respondent is the current registrant of the name. Moniker Online Services, Inc. has verified that Respondent is bound by the Moniker Online Services, 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 May 24, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of June 13, 2006 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@baltimoreorioles.com by e-mail.

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

On June 16, 2006, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Houston Putnam Lowry, Chartered Arbitrator, 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:

##### **The Baltimore Orioles Baseball Club and the BALTIMORE ORIOLES Marks**

1. For more than half of a century, Complainant and/or its predecessors have owned and operated the Major League Baseball club known as the Baltimore Orioles (the "Baltimore Orioles"). The Baltimore Orioles is a professional sports team that is well-known throughout the world. It has won three World Series championships, including the 1983 World Series championship, and numerous American League pennants and division titles. Many great and famous Major League Baseball players are known for their accomplishments while playing for the Baltimore Orioles including such legends as Cal Ripken, Jr., Brooks Robinson, Frank Robinson, Eddie Murray and Jim Palmer.
2. Since decades prior to Respondent's registration of <baltimoreorioles.com>, the Baltimore Orioles have used, and continue to use today, the famous and distinctive BALTIMORE ORIOLES names and trademarks alone or with other elements (the "BALTIMORE ORIOLES Marks") to identify the baseball club, its baseball games and exhibition services, and related goods and services associated with the Baltimore Orioles. The Baltimore Orioles own numerous federal registrations for the BALTIMORE ORIOLES Marks.
3. Through MLB Advanced Media, L.P. ("MLBAM"), the Internet and interactive media company of Major League Baseball, and Major League Baseball Properties, Inc. ("MLBP"), the licensing agent responsible for certain enforcement and protection of the trademarks of the Major League Baseball Clubs (including, without limitation, the Baltimore Orioles), Complainant has

licensed hundreds of entities to use the BALTIMORE ORIOLES Marks on or in connection with a wide variety of goods and services. As a result of those licensing efforts, over just the last ten (10) years the combined wholesale sales of Baltimore Orioles merchandise have exceeded millions of dollars in the United States and Canada alone.

4. The BALTIMORE ORIOLES Marks also have been licensed by the Baltimore Orioles, MLBAM and MLBP, respectively, in connection with local and/or national sponsorship promotions, to well-known corporate entities spanning numerous industries including, for example, MasterCard, Coca-Cola, Budweiser and Bank of America, to name just a few. These sponsorship agreements account for millions of dollars in revenue for the Baltimore Orioles, MLBP and/or MLBAM, in addition to widespread use and promotion of the Baltimore Orioles in connection with various products or services bearing the BALTIMORE ORIOLES Marks.

5. Each year, millions of fans attend Baltimore Orioles baseball games at the Baltimore Orioles home ballpark in Baltimore, Maryland (Oriole Park at Camden Yards), and millions more attend Baltimore Orioles baseball games when the Baltimore Orioles play at other Major League Baseball parks throughout North America. Millions more fans regularly enjoy Baltimore Orioles baseball games transmitted through radio and television broadcasts and via the Internet or other interactive media.

6. For decades, the BALTIMORE ORIOLES Marks also have been marketed and promoted extensively in major magazines and newspapers, on the Internet, and via television and radio, and have been the subject of extensive unsolicited media coverage, not only in the greater Baltimore, Maryland area, but also internationally by media such as ESPN, FOX, CNN, *Sports Illustrated* and countless other news and sports networks and publications. In addition to this extensive media coverage, Complainant spends millions of dollars annually on various types of advertising for the goods and services identified by the BALTIMORE ORIOLES Marks.

7. Not surprisingly, the BALTIMORE ORIOLES Marks are an essential part of Complainant's ability to conduct business, run promotions and foster goodwill on the Internet. Through its agents MLBAM and MLBP, Complainant owns numerous domain names that consist of or contain the BALTIMORE ORIOLES Marks, including: baltimore-orioles.com; baltimore-orioles.net; baltimore-orioles.org; baltimoreorioles.biz; baltimoreorioles.ca; baltimoreorioles.info; baltimoreorioles.us; baltimoreoriolesbaseball.net; baltimoreoriolesfanclub.com; baltimoreoriolesticket.com; baltimoreoriolestickets.com; goorioles.net; oriolepark.com; orioleparkparties.com; orioles.ca; orioles.cn; orioles.com; orioles.info; orioles.net; orioles.us; orioles1.com; oriolesbaseball.info; oriolesbaseball.net; oriolesmvp.com; oriolesticket.com; oriolestickets.info; oriolestickets.org; thebaltimoreorioles.net; theorioles.biz; theorioles.ca; theorioles.com; theorioles.net; theorioleslive.com; orioles.es; orioles.tw; orioles.tv; losoriole.com; oriolesenespanol.com; oriolesshop.com; oriolesstore.com; oriolesteam.com; oriolestv.com.

8. Through MLBAM, a majority of the above-referenced domain names connect directly to the Official Website of the Baltimore Orioles, which is maintained at the following Internet URL: <http://baltimore.orioles.mlb.com> (the "Official Club Website"). This extensive and

distinctive website is a highly valuable asset which has received many millions of visitors in each of the past several years. On and through the Official Club Website, the Baltimore Orioles promotes its goods and services by providing club-related information, selling tickets to Baltimore Orioles baseball games, and selling licensed merchandise bearing the BALTIMORE ORIOLES Marks, including jerseys, caps, t-shirts, sweatshirts, jackets, baseball cards, memorabilia, collectibles, gifts, toys, books, photographs, videos and DVDs, among many other items. Apart from news and editorial content and game tickets and merchandise, the Official Club Website also offers audio and video streaming of Baltimore Orioles baseball game action, on-line message boards, screen savers, and fantasy baseball and other interactive games, all relating to the Baltimore Orioles.

9. The BALTIMORE ORIOLES Marks have enjoyed fame and distinctiveness since long before Respondent's registration of the <baltimoreorioles.com> domain name. As a result of the extensive sales, advertising, and promotion of goods and services branded by the BALTIMORE ORIOLES Marks discussed above, Complainant has created enormous goodwill in the BALTIMORE ORIOLES Marks, which is of great value to the Baltimore Orioles.

#### **Respondent's Registration and Use of <baltimoreorioles.com>**

10. Upon information and belief, in or around 2005, the <baltimoreorioles.com> domain name (the "Domain Name"), which is identical or confusingly similar to a number of the BALTIMORE ORIOLES Marks, was registered by Respondent with Moniker Online Services.

11. Respondent has used <baltimoreorioles.com> to connect to a website ("Respondent's Website") listing third-party commercial hyperlinks purportedly relating to the Baltimore Orioles and its goods and services. Respondent's Website includes numerous commercial links using the BALTIMORE ORIOLES Marks and purporting to sell or resell Baltimore Orioles game tickets under headings like "Baltimore Orioles Tickets" (stubhub.com), "Baltimore Orioles Tickets -- Stage Front" (orioles-tickets.com), "2006 Baltimore Orioles Tickets" (sportstickets.com), "Baltimore Orioles MLB Tickets" (ticketsnow.com), "Orioles Baseball Tickets – Free FedEx" (showmetickets.com), and "Baltimore Orioles Tickets For Less" (findanyticket.com). Each of these ticket resale operations is without authorization from Complainant or MLBAM, and the Domain Name diverts consumers from the authorized marketplace for such transactions to occur on the Official Club Website. Respondent's Website also contains numerous other commercial links similarly using the BALTIMORE ORIOLES Marks to divert customers away from the official shop on the Official Club Website and instead to locations with headings like "Baltimore Orioles Products Galore" (fansedge.com), "Baltimore Orioles Products – Home Teams" (hometeams.com), "MLB Gear – Orioles" (fastballfanatics.com), "Baltimore Orioles Memorabilia" (prosportsmemorabilia.com). As of the present date, all of the commercial links on Respondent's Website relate solely to the Baltimore Orioles; there is no other content on Respondent's Website.

12. Upon information and belief, Respondent has never used the Domain Name to operate a website for any legitimate business purpose, but instead solely to divert consumers to Respondent's Website for personal gain. Upon information and belief, Respondent generates

revenue by entering into “pay for performance” arrangements with one or more third parties who pay Respondent for hosting the baseball-related commercial links that they provide. Upon information and belief, the more Internet users who enter the disputed domain name, <baltimoreorioles.com>, visit Respondent’s Website, and click on the associated commercial links, the greater the revenues generated by Respondent. Upon information and belief, therefore, the value of the <baltimoreorioles.com> domain name to Respondent is directly related to the fame of the BALTIMORE ORIOLES Marks and Internet users’ interest in the goods and services of the Baltimore Orioles.

13. Representatives of MLBAM have sent communications to Respondent regarding its improper registration and use of the <baltimoreorioles.com> domain name. To date Respondent has neither responded nor indicated any willingness to transfer the Domain Name to MLBAM as authorized agent for Complainant.

To preserve its rights in the BALTIMORE ORIOLES Marks, Complainant hereby files this Complaint on the following legal grounds:

**I. The <baltimoreorioles.com> Domain Name is Identical to Trademarks and Service Marks in which the Baltimore Orioles Baseball Club Has Rights**

14. Respondent’s <baltimoreorioles.com> domain name is identical or confusingly similar to a number of Complainant’s BALTIMORE ORIOLES Marks, which include the famous and distinctive protected word mark: BALTIMORE ORIOLES. Respondent uses in its Domain Name the BALTIMORE ORIOLES word mark – *exactly and in its entirety* – merely adding the generic top-level domain “.com” thereto. It is well-settled that the addition of a top-level domain to a protected word mark (such as, for instance, the name of a famous professional sports team) will not avoid confusion. *See, e.g., Houston McLane Company, Inc. d/b/a The Houston Astros Baseball Club v. Nevis Domains LLC*, FA 650935 (NAF Apr.10, 2006) (respondent’s <houstonastros.com> domain name is identical and confusingly similar to HOUSTON ASTROS trademark owned by Major League Baseball Club; ordering transfer); *Chicago White Sox, Ltd. d/b/a The Chicago White Sox Baseball Club v. Hong Kong Names LLC*, FA 642531 (NAF Apr. 10, 2006) (respondent’s <chicagowhitesox.com> domain name is identical and confusingly similar to CHICAGO WHITE SOX trademark owned by Major League Baseball Club; ordering transfer); *Atlanta National League Baseball Club, Inc. v. Braves Cleaning Service et al.*, FA 319615 (NAF Oct. 28, 2004) (addition of gTLD “.com” to complainant’s famous BRAVES trademark owned by Major League Baseball Club the Atlanta Braves “is irrelevant and does not negate the identical nature of the domain name”; ordering transfer); *NFL Properties, Inc. v. BBC Ab*, D2000-0147 (WIPO April 22, 2000) (respondent’s <carolinapanthers.com> domain name is identical and confusingly similar to CAROLINA PANTHERS trademark owned by member club of National Football League; ordering transfer); *NBA Properties, Inc. v. Rick Godwin*, D2004-0983 (WIPO Jan. 15, 2005) (respondent’s <houstonrockets.com> and <newjerseynets.com> domain names are identical and confusingly similar to HOUSTON ROCKETS and NEW JERSEY NETS trademarks owned by member clubs of National Basketball Association; ordering transfer); *NBA Properties, Inc. v. Ituralde-Kasmir, Inc.*, D2000-1620 (WIPO Feb. 6, 2001) (respondent’s <washingtonwizards.com> domain name is identical and confusingly

similar to WASHINGTON WIZARDS trademarks owned by member club of National Basketball Association; ordering transfer); *Tottenham Hotspur plc v. Kirsch Securities Ltd.*, D2003-0363 (WIPO June 23, 2003) (respondent's <tottenhamhotspur.com> domain name is identical and confusingly similar to TOTTENHAM HOTSPUR trademarks owned by member club of English Premier League; ordering transfer).

## **II. Respondent Has No Rights to or Legitimate Interest in <baltimoreorioles.com>**

15. Upon information and belief, Respondent has never been commonly known as BALTIMORE ORIOLES, has not engaged in any legitimate business under the BALTIMORE ORIOLES name, is not a licensee of the Baltimore Orioles, MLBAM, MLBP or any of their respective licensees, and does not own any legitimate trademark rights in any BALTIMORE ORIOLES Marks or any mark that is identical, similar, or in any way related thereto. In fact, it would be impossible for Respondent to have any rights in the BALTIMORE ORIOLES Marks, since, given the famous nature of those marks, the BALTIMORE ORIOLES Marks are, and have been, since long prior to the registration of the Domain Name by Respondent, protected from such unauthorized third party use by numerous trademark registrations and common law rights. Accordingly, as Respondent has wrongfully acquired and exploited a domain name that corresponds *exactly* to Complainant's famous marks, and done so in order to take advantage of Complainant's goodwill, "it is virtually impossible to conceive of any plausible (actual or contemplated) active use of the domain name by Respondent that would not be illegitimate." *Victoria's Secret et al. v. Nebojsa Prijic*, FA 97023 (NAF May 25, 2001) (transferring <victoria-secret.com> to complainant trademark owner of famous VICTORIA'S SECRET mark). *See also Nike, Inc. v. B.B. de Boer*, D2000-1397 (WIPO Dec. 21, 2000) ("one would be hard pressed to find a person who may show a right or legitimate interest in a domain name containing complainant's trademark").

16. Respondent has not used <baltimoreorioles.com> in connection with any *bona fide* offering of goods and services. Respondent can offer no credible explanation for its selection and use of <baltimoreorioles.com> other than to knowingly infringe and trade upon the fame of Complainant's BALTIMORE ORIOLES Marks. In such circumstances, Respondent cannot be held to be using the Domain Name in connection with a *bona fide* offering of goods and services. Informative in this respect is the reasoning of the panel in *Ciccione v. Parisi et al.*, D2000-0847 (WIPO Oct. 12, 2000), which, upon recognizing intentional infringement similar to that present here, ordered that the disputed domain name, <madonna.com>, be transferred to the complainant musician and trademark owner:

We find instead that the name was selected and used by Respondent with the intent to attract for commercial gain Internet users to Respondent's web site by trading on the fame of Complainant's mark. We see no other plausible explanation for Respondent's conduct and conclude that use which intentionally trades on the fame of another can not [sic] constitute a 'bona fide' offering of goods and services. To conclude otherwise would mean that Respondent could rely on intentional infringement to demonstrate a legitimate interest, an interpretation that is obviously contrary to the intent of the Policy.

*See also Yahoo! Inc. v. Cupcakes et al.*, D2000-0777 (WIPO Oct. 2, 2000) (finding no *bona fide* offering of goods and/or services where respondents were making “a bad faith effort to trade upon and take advantage of Complainant’ trademarks, reputation and valuable interests”).

17. Here, as noted, there can be no doubt that Respondent has intentionally infringed and sought to profit from Complainant’s famous and distinctive BALTIMORE ORIOLES Marks. Respondent’s Website evidences as much by offering, as its sole and entire content, lists of hyperlinks purportedly relating to Baltimore Orioles tickets and merchandise. In using the Domain Name in this fashion, Respondent has sought to misleadingly divert users from the Official Club Website – and has done so with the intent to derive commercial gain from the goodwill associated with Complainant’s famous and distinctive trademarks. It is well-settled that such improper and unauthorized exploitation of Complainant’s trademark rights neither constitutes a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use. *See Ameristar Casinos, Inc. v. Szk.com*, FA 161281 (NAF July 23, 2003) (respondent’s use of domain name identical to complainant’s trademark to display a series of hyperlinks to related services did not qualify as either a *bona fide* offering of goods and services or a legitimate noncommercial or fair use); *Tercent Inc. v. Lee Yi*, FA 139720 (NAF Feb. 10, 2003) (use of disputed domain name featuring only series of hyperlinks and banner advertisement neither equates to *bona fide* offering of goods and/or services nor legitimate noncommercial or fair use); *see also Downey Communications, Inc. v. Modern Limited-Cayman Web Development*, FA 260657 (NAF June 28, 2004) (business model of registering domain names similar to trademarks to create website of click-through links is not a *bona fide* offering of goods and services).

18. In sum, Respondent is using Complainant’s famous and distinctive BALTIMORE ORIOLES Marks to divert customers to Respondent’s Website for its own commercial gain. Such intentional deception evidences bad faith, and belies any suggestion by Respondent that it may claim rights to or legitimate interest in <baltimoreorioles.com>. *Chicago White Sox, Ltd. v. Hong Kong Names LLC*, FA 642531 (NAF Apr. 10, 2006) (“Respondent’s use of a domain name that is identical to Complainant’s CHICAGO WHITE SOX mark to redirect Internet users interested in Complainant’s products to a website that offers Complainant’s merchandise and game tickets without Complainant’s authorization is not a use in connection with a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i) and it is not a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶4(c)(iii).”); *Houston McLane Company, Inc. v. Nevis Domains LLC*, FA 650935 (NAF Apr. 10, 2006) (Respondent is utilizing a domain name that is identical to Complainant’s [HOUSTON ASTROS] mark to mislead Internet users seeking tickets, merchandise, or information through Complainant’s registered website to Respondent’s website. Therefore, Respondent’s use of the disputed domain name does 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).”); *Atlanta National League Baseball Club, Inc. v. Braves Cleaning Service et al.*, FA 319615 (NAF Oct. 28, 2004) (“Respondent’s use of a domain name identical to Complainant’s well-known BRAVES mark to redirect Internet users to Respondent’s commercial website is not a use in connection with a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i) or a legitimate noncommercial or fair use of the domain name

pursuant to Policy ¶4(c)(iii).”).

### **III. <baltimoreorioles.com> Was Registered and Is Being Used in Bad Faith**

19. As detailed above, there can be no doubt that Respondent purposefully chose a domain name identical to the BALTIMORE ORIOLES Marks so as to capitalize on the fame and goodwill of the Baltimore Orioles, an entity with which Respondent has no affiliation or association. Bad faith has routinely been found where, as here, a party’s famous trademark is registered as a domain name by a company having no connection with that party or its products. *See, e.g., Donna Karan Studio v. Donn*, D2001-0587 (WIPO June 27, 2001) (finding bad faith where respondent had actual knowledge of complainant’s mark before registering disputed domain name); *Nutrexpa S.A. v. Louisiana’s Cola & Cacao Distributions*, D2000-1370 (WIPO Jan. 18, 2001) (domain name registered in bad faith where complainant’s mark “COLA CAO is such a well-known trademark that it would have been impossible for any Registrant to ignore its existence altogether and register it in good faith”); *Chanel, Inc. v. Buybeauty.com*, D2000-1126 (WIPO Nov. 22, 2000) (“Given that Respondent has no connection with Complainant ... the very fact that Respondent has registered <buychanel.com> establishes bad faith use and registration”); *Guerlain S.A. v. SL, Blancel Web*, D2000-1191 (WIPO Nov. 21, 2000) (respondent’s incorporation of famous trademark GUERLAIN into <missguerlain.com> domain name “cannot be the result of mere coincidence but suggest[s] opportunistic bad faith”); *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, D2000-0163 (WIPO May 1, 2000) (finding bad faith where domain name (<veuveclicquot.org>) “is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith”).

20. Given that Respondent’s Website itself explicitly highlights the Baltimore Orioles and operates only to display commercial links allegedly offering purported products and services relating to the Baltimore Orioles, Respondent had actual knowledge of the BALTIMORE ORIOLES Marks when it registered <baltimoreorioles.com>. This action compels the finding that Respondent is acting in bad faith. *See, e.g., Ciccone v. Parisi et al.*, D2000-0847 (WIPO Oct. 12, 2000) (transferring <madonna.com> to complainant as “[t]he only plausible explanation for Respondent’s actions appears to be an intentional effort to trade upon the fame of Complainant’s name and mark for commercial game”); *Tata Sons Ltd. v. Advanced Information Technology Ass’n*, D2000-0049 (WIPO April 4, 2000) (transferring <tata.org> to complainant as respondent was “obviously aware of the long-standing, enormous reputation of the name TATA” and “offered no explanation as to how it adopted the word TATA as a domain name.”); *Cellular One Group v. Paul Brien*, D2000-0028 (WIPO March 10, 2000) (where respondent had actual knowledge of complainant’s trademark and no legitimate interest in it, panel had “no alternative but to agree with Complainant that registration of the Domain Name was deliberately designed to trade on the goodwill in the Complainant’s trademarks and therefore was in bad faith”).

21. Further, Respondent also had constructive knowledge of the BALTIMORE ORIOLES Marks when it registered the Domain Name by virtue of Complainant’s numerous federal trademark registrations and long-standing and extensive uses. *See CCA Industries, Inc. v. Dailey*, D2000-0148 (WIPO April 26, 2000) (constructive notice found where domain name

confusingly similar to complainant's mark and mark registered prior to respondent's domain name). Indeed, a trademark search would clearly have revealed Complainant's prior rights in the BALTIMORE ORIOLES Marks. A legal presumption of bad faith exists "when Respondent reasonably should have been aware of Complainant's trademarks, actually or constructively." *Digi Int'l v. DDI Sys.*, FA 124506 (NAF Oct. 24, 2002); *see also Samsonite Corp. v. Colony Holding*, FA 94313 (NAF April 17, 2000) (finding that evidence of bad faith includes actual or constructive knowledge of a commonly known mark).

22. Respondent's knowledge of Complainant's prior and protected rights in the BALTIMORE ORIOLES Marks notwithstanding, Respondent has continued to use the identical Domain Name to attract, for its own financial benefit, users to Respondent's Website by creating a likelihood of confusion as to the potential existence of a relationship, affiliation or other endorsement between the Baltimore Orioles and Respondent. That likelihood of confusion, caused by Respondent's wrongful, bad faith use and registration of <baltimoreorioles.com> is further compounded by its display of numerous commercial links to various authorized and unauthorized sites (some of which feature unauthorized use of the BALTIMORE ORIOLES Marks) purporting to offer goods and services relating to the Baltimore Orioles. *See Park Place Entertainment Corp. v. Anything.com Ltd.*, D2002-0530 (WIPO Sept. 16, 2002) (use of <flamingo.com> domain name to create a likelihood of confusion and thereby divert users to website containing various links, including to reservation services authorized to make reservations at complainant's FLAMINGO hotels and casinos, for respondent's own commercial gain constitutes bad faith); *Chicago White Sox, Ltd. v. Hong Kong Names LLC*, FA 642531 (NAF Apr. 10, 2006) (use of <chicagowhitesox.com> to display links purporting to offer Chicago White Sox tickets and merchandise, and thereby diverting consumers, constituted registration and use in bad faith); *Houston McLane Company, Inc. v. Nevis Domains LLC*, FA 650935 (NAF Apr. 10, 2006) (use of <houstonastrors.com> to display links purporting to offer Houston Astros tickets and merchandise, and thereby diverting consumers, constituted registration and use in bad faith); *National Football League Properties, Inc. v. One Sex Entertainment Co.*, D2000-0118 (WIPO April 17, 2000) (use of <chargergirls.com> domain name to attract users for commercial gain by creating likelihood of confusion with San Diego Chargers club of National Football League constituted bad faith).

23. In the event Internet consumers looking for the Official Club Website to make purchases are led to buy tickets or merchandise through the unauthorized hyperlinks on Respondent's Website, those purchases result in an unjust and improper financial gain for Respondent at Complainant's expense. Further, the reputation and goodwill of the Baltimore Orioles is inevitably placed at risk to the extent those third party sites employ business practices that are improper or otherwise not in accordance with the image or standards of the Baltimore Orioles. And even if users who (quite logically) type <baltimoreorioles.com> seeking to access the Official Club Website eventually *do* recognize that they are on the wrong website, the initial confusion of those consumers nonetheless results in wrongful benefits to Respondent and unfair injury to Complainant. Indeed, many panels have recognized that such "initial interest confusion" is sufficient to support a finding of bad faith under the UDRP. *See Sony Corp. v. Times Vision, Ltd.*, FA 895686 (NAF March 9, 2001) (recognizing the doctrine of initial interest confusion where respondent used complainant's mark as its domain name to draw consumers to

its site); *Harrods Limited v. Simon Harkin Travel*, D2004-0456 (WIPO Oct. 28, 2004) (citing cases on initial interest confusion).

24. Finally, Respondent's failure, as noted above, to act upon cease and desist communications from representatives of MLBAM further evidences its bad faith.

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

## FINDINGS

Complainant, Baltimore Orioles, L.P., operates the Baltimore Orioles Major League Baseball Club. Complainant holds trademark registrations with the United States Patent and Trademark Office ("USPTO") for the BALTIMORE ORIOLES mark (Reg. No. 1,831,753 issued April 19, 1994; Reg. No. 1,924,675 issued October 3, 1995).

Complainant uses its BALTIMORE ORIOLES mark in connection with its baseball club, baseball games and goods and services associated with Complainant. In conjunction with MLB Advanced Media, L.P. ("MLBAM"), Complainant has licensed hundreds of entities to use the BALTIMORE ORIOLES mark in connection with a wide variety of goods and services including everything from key chains, hats and t-shirts to toys and collectibles. The Official Website of Complainant is <baltimore.orioles.mlb.com> and is operated through MLBAM. Complainant owns numerous domain names, including but not limited to, <baltimore-orioles.com>, <baltimoreoriolestickets.com>, <baltimoreorioles.info> and <baltimoreorioles.us>, all of which connect directly to the Official Website. The Official Website provides club-related information, ticket sales and licensed merchandise.

Respondent registered the <baltimoreorioles.com> domain name on July 29, 2001. Without authorization from the Complainant, Respondent is using the disputed domain name to redirect Internet users to Respondent's website, which features links to third-party websites purporting to sell goods and services related to Complainant, particularly tickets to Complainant's baseball games. Presumably, Respondent receives pay-per-click referral fees for redirecting Internet users to these third-party websites.

## 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 has established rights in the BALTIMORE ORIOLES mark through registration of the mark with the USPTO. The Panel finds registration of the mark is sufficient to establish Complainant’s rights in the mark pursuant to Policy ¶4(a)(i). *See Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) (“Registration of the NASAL-AIRE mark with the USPTO establishes Complainant’s rights in the mark.”); *see also Men’s Wearhouse, Inc. v. Wick*, FA 117861 (Nat. Arb. Forum Sept. 16, 2002) (“Under U.S. trademark law, registered marks hold a presumption that they are inherently distinctive [or] have acquired secondary meaning.”).

Respondent’s <**baltimoreorioles.com**> domain name is identical to Complainant’s BALTIMORE ORIOLES mark because Respondent’s domain name uses Complainant’s mark in its entirety adding only the top-level domain “.com.” The Panel finds the disputed domain name is identical to Complainant’s mark pursuant to Policy ¶4(a)(i), despite the addition of a top-level domain. *See 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); *see also Busy Body, Inc. v. Fitness Outlet Inc.*, D2000-0127 (WIPO Apr. 22, 2000) (“[T]he addition of the generic top-level domain (gTLD) name ‘.com’ is . . . without legal significance since use of a gTLD is required of domain name registrants . . .”).

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

### **Rights or Legitimate Interests**

Complainant’s allegation Respondent lacks rights or legitimate interests in the <**baltimoreorioles.com**> domain name constitutes a *prima facie* case for purposes of this Panel. Once Complainant makes a *prima facie* case, the burden shifts to Respondent to prove it does have rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(a)(ii). Respondent’s failure to submit a Response may be evidence Respondent does not have rights or legitimate interests in the disputed domain name. *See G.D. Searle*

*v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002) (“Because Complainant’s Submission constitutes a *prima facie* case under the Policy, the burden effectively shifts to Respondent. Respondent’s failure to respond means that Respondent has not presented any circumstances that would promote its rights or legitimate interests in the subject domain name under Policy ¶4(a)(ii).”); *see also Charles Jourdan Holding AG v. AAIM*, D2000-0403 (WIPO June 27, 2000) (finding it appropriate for the panel to draw adverse inferences from the respondent’s failure to reply to the complaint). The Panel will evaluate the available evidence to determine whether or not Respondent has rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(c).

Respondent is using the <**baltimoreorioles.com**> domain name to redirect Internet users to Respondent’s website, which consists of unauthorized links to third-party websites offering goods and services related to Complainant. Respondent’s use of a domain name that is identical to Complainant’s BALTIMORE ORIOLES mark to redirect Internet users to Respondent’s website does not constitute a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i), or a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶4(c)(iii). *See eBay Inc. v. Hong*, D2000-1633 (WIPO Jan. 18, 2001) (stating that the respondent’s use of the complainant’s entire mark in domain names makes it difficult to infer a legitimate use); *see also TM Acquisition Corp. v. Sign Guards*, FA 132439 (Nat. Arb. Forum Dec. 31, 2002) (finding that the respondent’s diversionary use of the complainant’s marks to send Internet users to a website which displayed a series of links, some of which linked to the complainant’s competitors, was not a *bona fide* offering of goods or services); *see also DLJ Long Term Inv. Corp. v. BargainDomainNames.com*, FA 104580 (Nat. Arb. Forum Apr. 9, 2002) (“Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services because Respondent is using the domain name to divert Internet users to <visual.com>, where services that compete with Complainant are advertised.”).

In addition, there is no available evidence Respondent is commonly known by the <**baltimoreorioles.com**> domain name. Complainant asserts Respondent is not a licensee of Complainant or MLBAM, and has no other affiliation with Complainant that would justify Respondent’s use of the disputed domain name. The Panel finds Respondent has failed to establish rights or legitimate interests in the disputed domain name 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 the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name); *see also Victoria’s Secret v. Asdak*, FA 96542 (Nat. Arb. Forum Feb. 28, 2001) (“Given the Complainants’ established use of their famous VICTORIA’S SECRET marks it is unlikely that the Respondent is commonly known by either [the <victoriasecretcasino.com> or <victoriasecretcasino.net>] domain name.”).

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

### **Registration and Use in Bad Faith**

Respondent's <baltimoreorioles.com> domain name is identical to Complainant's BALTIMORE ORIOLES mark, potentially creating confusion for Internet users looking for Complainant's website. Because Respondent's domain name is identical to Complainant's mark Internet users may mistakenly believe Respondent is affiliated with, or sponsored by, Complainant. Respondent is taking advantage of this confusion to attract Internet users to its unauthorized website, featuring links to third-party websites, from which Respondent presumably receives pay-per-click referral fees. The Panel finds such use constitutes bad faith registration and use pursuant to Policy ¶4(b)(iv). *See AltaVista Co. v. Krotov*, D2000-1091 (WIPO Oct. 25, 2000) (finding bad faith under Policy ¶4(b)(iv) where the respondent's domain name resolved to a website that offered links to third-party websites that offered services similar to the complainant's services and merely took advantage of Internet user mistakes); *see also Am. Univ. v. Cook*, FA 208629 (Nat. Arb. Forum Dec. 22, 2003) ("Registration and use of a domain name that incorporates another's mark with the intent to deceive Internet users in regard to the source or affiliation of the domain name is evidence of bad faith.").

The Panel finds Complainant satisfied 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 <baltimoreorioles.com> domain name be **TRANSFERRED** from Respondent to Complainant.



\_\_\_\_\_  
Houston Putnam Lowry, Esq.  
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist  
Dated: Monday, June 29, 2006