



NATIONAL ARBITRATION FORUM

DECISION

DirecTV, Inc. v. Future Movie Name
Claim Number: FA0911001296482

PARTIES

Complainant is **DirecTV, Inc.** ("Complainant"), represented by **Steven M. Levy**, Pennsylvania, USA. Respondent is **Future Movie Name** ("Respondent"), California, USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**diretv.com**>, registered with **Directnic, Ltd.**

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 November 30, 2009; the National Arbitration Forum received a hard copy of the Complaint on December 2, 2009.

On November 30, 2009, Directnic, Ltd confirmed by e-mail to the National Arbitration Forum that the <**diretv.com**> domain name is registered with Directnic, Ltd and that Respondent is the current registrant of the name. Directnic, Ltd has verified that Respondent is bound by the Directnic, 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 December 4, 2009, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of December 24, 2009 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@diretv.com by e-mail.

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

On January 4, 2010, 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 Complainant owns the DIRECTV Trademarks and makes extensive use of them such that they have become famous.

(a) Complainant Owns The Marks Complainant is the owner of the distinctive and well known DIRECTV trademark and its corresponding logo (the "Marks"). At least as early as 1994, Complainant commenced use of the Marks in connection with the delivery of high quality digital TV services and the distribution and installation of satellite TV dish receivers, tuning boxes and other products and services related to such TV services. Since that time, Complainant has continually used the Marks in commerce.

(b) The Marks Are Extensively Used, Promoted and Protected. Complainant is America's leading satellite TV service and its more than 16,000 employees offer 265+ digital channels to over 50 million viewers. The company provides access to quality programming delivered to homes, airports, hotels, restaurants, hospitals, office buildings, airplanes, automobiles and portable electronics. It offers the content of such famous networks as CNN, CNBC, Fox, HBO, ABC, CBS, NBC, ESPN, Discovery, Animal Planet and others, and its innovations in creating its own broadcast content have led to six Emmy® Awards. Complainant is also the exclusive US rights holder to TV sports packages such as NFL Sunday Ticket, NCAA Mega March Madness, and NASCAR Hot Pass.

Complainant extensively promotes its DIRECTV Marks through print, radio and, especially television advertising. Since 2006 it has become very well known for a series of TV commercials in which characters from popular movies and television shows break the "fourth wall" to tout the service's picture quality and the number of channels

available in high definition. Instead of using CGI the original actors normally reprise their roles on recreated sets, and resulting footage is mixed with the original scenes. These characters include Captain Kirk (William Shatner, Star Trek), Bill Harding (Bill Paxton, Twister) , The Economics Teacher (Ben Stein, Ferris Bueller's Day Off), Dr. Emmett Brown (Christopher Lloyd, Back to the Future), C.J. Parker (Pamela Anderson, Baywatch), Ellen Ripley (Sigourney Weaver, Aliens), Mini-Me (Verne Troyer, Austin Powers In Goldmember), The Girl in the Ferrari (Christie Brinkley, National Lampoon's Vacation), Daisy Duke (Jessica Simpson, The Dukes of Hazzard) and many others. Also in this series of commercials were sports stars Peyton Manning, Eli Manning, and Archie Manning promoting NFL Sunday Ticket, and Dale Earnhardt, Jr. promoting NASCAR Hot Pass. Famous cartoon characters have also been used in Complainant's ads, such as Scooby-Doo and the Mystery, Inc. gang. Complainant has also been awarded numerous J.D. Power's awards for residential cable and satellite TV customer satisfaction and came in at the top of the list in Michigan's American Customer Satisfaction Index many years in a row.

Complainant generates significant sales revenue as a result of the advertising and marketing it conducts on its <directv.com> website. Through its <directvinternational.com> domain, Complainant provides information to prospective customers in a number of different languages. As a result, the Marks serve to identify and indicate the source of Complainant's goods and services to the consuming public, and to distinguish its goods and services from those of others. As a result of Complainant's long usage and promotion of the Marks, they have become well-known to, and widely recognized by consumers.

Complainant's DIRECTV marks are aggressively protected through registration and enforcement. Amongst others, Complainant owns United States Federal Trademark Registrations for the Marks as follows:

Mark	Goods and Services	Reg. No.	Reg. Date
DIRECTV	IC 009. US 021 023 026 036 038. G & S: Telecommunications products, namely, receivers, receiver modules, decoder boxes, satellite dishes, remote controllers, video display devices, namely, television sets and video monitors, antennas, computer controlling hardware and software for use in the aforementioned goods, installation kits primarily comprising cables, phone cords, cable ties, cable clips, ground wire, phone adapters, and parts for the aforesaid goods, and accessories, namely, telephone jacks, chimney mounts, surge protectors, all for use in the direct-to-home satellite broadcasting industry. FIRST USE: 19981001. FIRST USE IN COMMERCE: 19981001	2503432	6-Nov-2001

	<p>IC 016. US 002 005 022 023 029 037 038 050. G & S: Cardboard floor display units for merchandising products, instruction manuals for use in connection with direct-to-home satellite equipment and services, magazines, brochures, books, and printed programming guides in the field of direct-to-home satellite services, writing paper, binders, posters, note pads, pens, pencils, address books, appointment books, book marks, stationery boxes, calendars, gift cards, decals, desk sets, diaries, stationery-type portfolios, bumper stickers. FIRST USE: 19940617. FIRST USE IN COMMERCE: 19940617</p> <p>IC 025. US 022 039. G & S: Clothing, namely, shirts, golf shirts, jackets, wind-resistant jackets, sweatshirts, t-shirts, caps, and hats. FIRST USE: 19940617. FIRST USE IN COMMERCE: 19940617</p>		
DIRECTV	<p>IC 009. US 021 023 026 036 038. G & S: Telecommunications products, namely, receivers, receiver module, modulators, transmitters, multiplexers, decoder boxes, [data processors, integrated circuits,] set-top boxes primarily comprised of a receiver and circuitry, computer controlling hardware and software for use in the aforementioned goods, satellite dishes, remote controllers, video display devices, namely, television sets, [video projectors, and video monitors,] antennas, installation kits primarily comprising cables, phone cords, cable ties, cable clips, ground wire, phone adapters, and parts for the aforesaid goods, video distribution equipment, namely, [amplifiers, pre-amplifiers, block signal converters,] routers, [electrical switches,] encoders, decoders, and accessories, namely, telephone jacks, chimney mounts, surge protectors, cables, connectors and fittings all for use in the direct-to-home satellite broadcasting industry. FIRST USE: 19940617. FIRST USE IN COMMERCE: 19940617</p> <p>IC 025. US 022 039. G & S: Clothing, namely, shirts, golf shirts, jackets, wind-resistant jackets, sweatshirts, t-shirts, caps, hats, sweaters, sweat pants, sleepwear, shorts, rainwear [, wrist bands].</p>	2698197	18-Mar-2003

	<p>FIRST USE: 19940617. FIRST USE IN COMMERCE: 19940617</p> <p>IC 038. US 100 101 104. G & S: Satellite television broadcasting services, broadcasting programs via a global computer network, providing and processing interactive access to information via an electronic communication network, [electronic mail services,] electronic transmission of messages and data, pay-per-view transmission services, delivery of messages by electronic transmission; [video broadcasting and messaging services,] video-on-demand transmission services, providing multiple-user access to a global computer information network. FIRST USE: 19940617. FIRST USE IN COMMERCE: 19940617</p> <p>IC 041. US 100 101 107. G & S: Television programming and production services, programming on a global computer network, distribution of television programs for others, providing on-line interactive computer databases of information in the fields of entertainment news, financial news, current events, sports, and providing on-line interactive computer databases of information on satellite television programming lists and schedules of others. FIRST USE: 19940617. FIRST USE IN COMMERCE: 19940617</p>		
DIRECTV (Logo)	<p>IC 009. US 021 023 026 036 038. G & S: Telecommunications products, namely, receivers, receiver modules, decoder boxes, satellite dishes; remote controllers; video display devices, namely, television sets and video monitors, antennas, computer controlling hardware and software for use in the aforementioned goods, installation kits primarily comprising cables, phone cords, cable ties, cable clips, ground wire, phone adapters, and parts for the aforesaid goods, and accessories, namely, telephone jacks, chimney mounts, surge protectors, all for use in the direct-to-home satellite broadcasting industry, decorative refrigerator magnets, calculators. FIRST USE: 19981001. FIRST USE IN COMMERCE: 19981001</p>	2939061	12-Apr-2005
DIRECTV (Logo)	<p>IC 042. US 100 101. G & S: Computer data information services, namely, providing online databases featuring general and local news and</p>	2820253	2-Mar-2004

	information to specific geographic areas. FIRST USE: 20001000. FIRST USE IN COMMERCE: 20001000		
DIRECTV (Logo)	IC 025. US 022 039. G & S: Clothing, namely, shirts, golf shirts, jackets, wind-resistant jackets, sweatshirts, t-shirts, caps, and hats. FIRST USE: 19940617. FIRST USE IN COMMERCE: 19940617	2628178	1-Oct-2002
DIRECTV 2PC	IC 009. US 021 023 026 036 038. G & S: Downloadable computer software for providing access to audio and visual content. FIRST USE: 20081022. FIRST USE IN COMMERCE: 20081022	3598467	31-Mar-2009

2. Respondent is a known cybersquatter. In a prior dispute against the Respondent, *Bloomberg L.P. v. Future Movie Name*, NAF Claim No. FA0212000139664, the Panel found that “Respondent has established a pattern of registering infringing domain names with the intention of diverting ensnared Internet users to a commercial website.” Similarly, in this dispute, Respondent’s registration of the <diretv.com> violates the Policy.

(a) The <diretv.com> domain is identical or confusingly similar to the Marks under Policy ¶4(a)(i). Respondent’s domain <diretv.com> is confusingly similar, on its face, to Complainant’s registered DIRECTV trademarks. Searchers will likely be confused into believing that there is a connection of source, sponsorship, affiliation or endorsement between Complainant and Respondent by Respondent’s use of the domain name <diretv.com>.

It has been held, in decisions too numerous to mention, that a minor misspelling of a Complainant’s trademark, or the addition of generic or other words creates a confusingly similar domain name. In *DIRECTV, Inc v. Digi Real Estate Foundation*, NAF Claim No. FA0702000914942 the Panel found that “Respondent’s <dirrectv.com>, <durectv.com>, <dorecttv.com>, and <dishdirectv.com> domain names are all confusingly similar to Complainant’s DIRECTV mark pursuant to Policy ¶4(a)(i), because Respondent’s domain names each contain Complainant’s mark in its entirety or are simply a misspelled variation of the DIRECTV mark.” In relation to a different domain owned by respondent, the Panel went on to hold that “Respondent’s <dishdirectv.com> domain name contains Complainant’s mark in its entirety and adds the generic word ‘dish.’ Prefixing ‘directv’ with the generic word ‘dish’ does not prevent a finding of confusingly similarity under Policy ¶4(a)(i).” The Panel held that all of the domains at issue are “likely to cause confusion among customers searching for Complainant’s goods and services.” Similarly, in *Brownells, Inc. v. Texas International Property Associates*, WIPO Case No. D2007-1211, the respondent used a minor misspelling of the complainant’s trademark leading the panel to find that “Respondent has chosen the Domain Name precisely to attract users

who mistype the name of the complainant's website." *Id.* See also, *Christie's Inc. v. Tiffany's Jewelry Auction, Inc.*, WIPO Case No. D2001-0075 (finding that the domain name <christiesauction.com> is confusingly similar to the complainant's mark since it merely adds the word "auction" used in its generic sense).

Similarly to the above-cited decisions, the Respondent in the present dispute initially attracts searchers to its website by using an identical or confusingly similar copy of the Marks, thereby making visitors to its website think that they are being linked to Complainant's site. As reasoned in *Athanasios*, even if searchers discover they are not at Complainant's site, searchers may be led to believe that Complainant endorsed, sponsored or affiliated themselves with the good and services offered at the <diretv.com> website. Similar to the facts in *Athanasios*, Respondent uses the Marks in its site's domain name as well as in the title and body of its website. It only makes sense that if searchers see the Marks listed in the body of the <diretv.com> web page and numerous links to other goods and services are also listed on that page, searchers will be confused and led to believe that, even if the goods and services are not those of Complainant, they are at least affiliated with, endorsed or sponsored by Complainant. This is apparent because the Marks are clearly used on the web page.

(b) Respondent has no rights or legitimate interest in the domain name <diretv.com> Under Policy ¶4(a)(ii). Section 4(c) of the Policy sets out certain circumstances which, if proven by the evidence presented, may demonstrate Respondent's rights or legitimate interests to the <diretv.com> domain. None of these circumstances apply to Respondent in the present dispute.

Respondent's actions are not a *bona fide* offering of goods or services under Policy ¶4(c)(i). Through the use of a classic pay-per-click website, Respondent's domain name diverts Complainant's customers and potential customers to Respondent's pay-per-click website and then to many websites which are not associated with Complainant. ICANN panels have found that leading consumers who are searching for a particular business, to a site where the same or similar services provided by others are listed, is not a *bona fide* use. *Homer, TLC Inc. v. Kang*, NAF Case No. FA573872 ("Respondent's use of domain name that is identical to Complainant's mark to divert Internet users to third-party websites for Respondent's own commercial gain does not constitute a *bona fide* offering ... or a legitimate noncommercial or fair use ...").

Respondent is not commonly known by the <diretv.com> and so its actions do not fall within Policy ¶4(c)(ii). Upon information and belief, Respondent is not commonly known by the name "DIRECTV" nor does Respondent operate a business or other organization under this mark or name and does not own any trademark or service mark rights in the DIRECTV name. See, *Dell Inc. v. George Dell and Dell Net Solutions*, WIPO Case No. D2004-0512 (Regarding the domain <dellnetsolutions.com> "there is no evidence that the Respondents' business has been commonly known by that name. Further, the Respondents added terms to the surname to create the disputed domain name.")

Respondent is not making a legitimate noncommercial or fair use of the <diretv.com> domain without intent for commercial gain, and so its actions do not fall within Policy ¶4(c)(iii). Instead, Respondent is using the domain name to confuse and misleadingly divert consumers, or to tarnish the Marks. In *Dr. Ing. h.c. F. Porsche AG v. Limex, LLC*, WIPO Case No. D2003-0649 the Panel noted that “The 3 domain names in issue use the PORSCHE trademark to attract potential customers to the generic [auto] loan business.” The Panel held that such use, in a domain name, of one manufacturer’s trademark to offer products or services relating to goods sold under that trademark and also other manufacturer’s trademarks did not constitute a legitimate or fair use of the domain. *Id.*

Further, in *Focus Do It All Group v. Athanasios Sermbizis*, WIPO Case No. D2000-0923 the Panel found that respondent’s use “could in no way be characterized as fair, because consumers would think that they were visiting a site of the Complainant until they found that instead they were in a directory which would do the Complainant potential harm”. Here, searchers for Complainant’s DIRECTV goods and services, who used the domain name <diretv.com>, would be confused and think they were visiting a site of the Complainant’s until they discovered that they were in a directory of links to competitors and other goods and services. Such use cannot be considered fair. See, *Mpire Corporation v. Michael Frey*, WIPO Case No. D2009-0258 (“While the intention to earn click-through-revenue is not in itself illegitimate, the use of a domain name that is deceptively similar to a trademark to obtain click-through-revenue is found to be bad faith use. See for instance *L’Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc.* WIPO Case No. D2005-0623.”)

Lastly, Respondent’s use has tarnished and diluted the Marks. Respondent has diminished consumers’ capacity to associate the Marks with the quality products offered under the Marks by Complainant by using the Marks in association with a directory site which provides links to numerous products and services not associated with or related to Complainant’s quality branded products. Respondent’s use creates the very real risk that Complainant’s trademarks are not only being associated with numerous products and services not related to Complainant’s branded products, but also to products and services linked to a directory site over which Complainant has no quality control.

(c) Respondent Registered The Domain In Bad Faith Under Policy ¶4(a)(iii). The Policy clearly explains that bad faith can be found where a Respondent, by using a domain name, intentionally attempts to attract, for commercial gain, Internet searchers to its website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location. See Policy ¶4(b)(iv). In the above-mentioned UDRP decision against Respondent, *Bloomberg L.P. v. Future Movie Name*, the Panel specifically found that “Respondent’s bad faith use of the domain name is evidenced by its pattern of infringing behavior.”

Here, Respondent intentionally used the Marks without consent from Complainant. Respondent was put on constructive notice of Complainant’s rights in the Marks through

Complainant Federal Trademark Applications and Registrations, most of which predate the creation date of <diretv.com>. See, *American Funds Distributors, Inc. v. Domain Administration Limited*, WIPO Case No. D2007-0950 (“the extensive prior use of that name and the fact that it comprises the dominant part of several U.S. registered trademarks provided constructive knowledge of the Complainant’s trademark rights....”). Therefore, Respondent knowingly and intentionally used the Marks in violation of Complainant’s rights in the Marks. Moreover, the content on Respondent’s website at <diretv.com> reveals that Respondent has actual knowledge of the Marks and Complainant’s goods associated with the mark and is purposefully trading on the Marks.

Respondent is obtaining commercial gain from its use of the <diretv.com> website. This is a directory or “pay-per-click” website providing a listing of hyperlinks, some of which lead to Complainant’s website and some to the websites of Complainant’s competitors. When a searcher reaches the <diretv.com> site, and clicks on one of the links, he or she is provided with another list of links to further websites, some of which lead to the sites of Complainant’s competitors. Upon information and belief, each time a searcher clicks on one of these search links, Respondent receives compensation from the various website owners who are linked through the <diretv.com> website. Most likely, Respondent receives compensation based upon the number of hits the website owners get from being linked to the directory site. See *AllianceBernstein LP v. Texas International Property Associates - NA NA*, WIPO Case No. D2008-1230, and *Brownells*, D2007-1211 (finding in similar cases that a respondent intentionally attempted to attract internet searchers for commercial gain).

In, *AllianceBernstein* the respondent registered the domain name <allaincebernstein.com>, which was almost identical to complainant’s ALLIANCEBERNSTEIN mark. The domain name led to a search directory website with links to third party vendors, including competitors of Complainant. *Id.* The Panel inferred that the respondent received click-thru fees by directing users to various commercial websites through these links and found that the respondent’s use was for commercial gain and was a bad faith use of the domain name under Policy ¶4(b)(iv). *Id.*

In *Brownells*, the respondent registered the domain name <brwonells.com>, which the panel found to be nearly identical to the complainant’s mark, with two of the letters in the mark reversed. *Brownells*, D2007-1211. The respondent’s website offered links to hunting equipment and related items. *Id.* The panel found that such listing of links were provided purely for respondent’s commercial gain. *Id.*

Here, Respondent’s generation of click-through fees from its operation of a pay-per-click site under the <diretv.com> domain alone constitutes commercial gain. See *AllianceBernstein*, D2008-1230. Moreover, similar to the facts in *Brownells* and *AllianceBernstein*, Respondent’s use of the domain name and website results in a commercial gain for others by placing links to competitors of Complainant and other individuals, groups or entities on its website. Just as commercial gain was sought for the respondents in the abovementioned cases, commercial gain was sought by Respondent

here for itself and the various website owners who were linked to the <diretv.com> web page. Respondent's use of the domain name is commercial because the various companies linked to the <diretv.com> directory site benefit from the subsequent interest and purchases of those searches. ICANN Panels have held that there only needs to be commercial gain sought by some party for the use to be commercial. See, *Focus Do It All Group v. Athanasios Sermbizis*, WIPO Case No. D2000-0923 (finding that "[I]t is enough that commercial gain is being sought for someone" for a use to be commercial).

Finally, as more fully set forth above, Respondent intentionally uses the Marks in its domain name to attract Internet searchers by creating a likelihood of confusion with Complainant's DIRECTV Marks. See, e.g., *DIRECTV, Inc v. Digi Real Estate Foundation*. Thus, all of the factors under Policy ¶4(b)(iv) strongly demonstrate that Respondent has registered and used the <diretv.com> domain in bad faith.

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

FINDINGS

Complainant, DirecTV, Inc., has used the DIRECTV mark since its founding in 1994. Complainant's satellite television service has over fifty million subscribers. On February 15, 1999, Complainant filed for a registration of the DIRECTV mark with the United States Patent and Trademark Office ("USPTO"). On November 6, 2001, the USPTO issued Complainant a registration of the DIRECTV mark (Reg. No. 2,503,432) for use in connection with its satellite television service.

Respondent registered the <**diretv.com**> domain name on December 5, 2000. The website resolving from the disputed domain name displays links to third-party websites, some of which directly compete with Complainant's business.

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

The Panel finds Complainant has established rights in the DIRECTV mark under Policy ¶4(a)(i) by its registration of the mark with the USPTO (Reg. No. 2,503,432 filed Feb. 15, 1999, issued Nov. 6, 2001). The Panel further finds Complainant's rights in the mark date back to the filing date for the USPTO registration. *See Paisley Park Enters. v. Lawson*, FA 384834 (Nat. Arb. Forum Feb. 1, 2005) (finding that the complainant had established rights in the PAISLEY PARK mark under Policy ¶4(a)(i) through registration of the mark with the USPTO); *see also Phoenix Mortgage Corp. v. Toggas*, D2001-0101 (WIPO Mar. 30, 2001) ("The effective date of Complainant's federal rights is . . . the filing date of its issued registration. Although it might be possible to establish rights prior to that date based on use, Complainant has submitted insufficient evidence to prove common law rights before the filing date of its federal registration.").

Respondent's <diretv.com> domain name is confusingly similar to Complainant's DIRECTV mark because Respondent's domain name incorporates the dominant features of Complainant's mark, omitting one letter "c" and adding the generic top-level domain ".com." The Panel finds such a minor misspelling and the addition of a generic top-level domain does not negate the confusingly similar aspects of Respondent's domain name pursuant to Policy ¶4(a)(i). *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 Reuters Ltd. v. Global Net 2000, Inc.*, D2000-0441 (WIPO July 13, 2000) (finding that a domain name which differs by only one letter from a trademark has a greater tendency to be confusingly similar to the trademark where the trademark is highly distinctive); *see also State Farm Mut. Auto. Ins. Co. v. Try Harder & Co.*, FA 94730 (Nat. Arb. Forum June 15, 2000) (finding that the domain name <statfarm.com> is confusingly similar to the complainant's STATE FARM mark).

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

Rights or Legitimate Interests

Pursuant to Policy ¶4(a)(ii), Complainant must first establish a *prima facie* case that Respondent has no rights or legitimate interests in the <diretv.com> domain name. If

the Panel finds Complainant's allegations establish such a *prima facie* case, the burden shifts to Respondent to show it has rights or legitimate interests in the disputed domain name pursuant to the guidelines in Policy ¶4(c). The Panel finds Complainant's allegations are sufficient to establish a *prima facie* case Respondent has no rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(a)(ii). Since no response was submitted in this case, the Panel may presume Respondent has no rights or legitimate interests in the disputed domain name. However, the Panel will still examine the record in consideration of the factors listed in Policy ¶4(c). *See Domtar, Inc. v. Theriault.*, FA 1089426 (Nat. Arb. Forum Jan. 4, 2008) ("It is well established that, once a complainant has made out a *prima facie* case in support of its allegations, the burden shifts to respondent to show that it does have rights or legitimate interests pursuant to paragraph 4(a)(ii) of the Policy."); *see also 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).").

Complainant asserts Respondent has no license or agreement with Complainant authorizing Respondent to use its DIRECTV mark, and the WHOIS information identifies the registrant as "Future Movie Name." The Panel finds no evidence in the record suggesting Respondent is commonly known by the disputed domain name. Thus, the Panel finds Respondent is not commonly known by the <diretv.com> domain name and has therefore not established rights or legitimate interests in the disputed domain name under Policy ¶4(c)(ii). *See Tercent Inc. v. Lee 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); *see also Am. W. Airlines, Inc. v. Paik*, FA 206396 (Nat. Arb. Forum Dec. 22, 2003) ("Respondent has registered the domain name under the name 'Ilyoup Paik a/k/a David Sanders.' Given the WHOIS domain name registration information, Respondent is not commonly known by the [<awvacations.com>] domain name.").

Respondent's <diretv.com> domain name resolves to a website that offers links to third-party websites, some of which are competitors of Complainant. The Panel finds this use 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 disputed domain name pursuant to Policy ¶4(c)(iii). *See 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 Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 180704 (Nat. Arb. Forum Sept. 30, 2003) ("Respondent's demonstrated intent to divert Internet users seeking Complainant's website to a website of Respondent and for Respondent's

benefit is not a bona fide offering of goods or services under Policy ¶4(c)(i) and it is not a legitimate noncommercial or fair use under Policy ¶4(c)(iii).”).

Additionally, typosquatting occurs when a respondent purposefully includes typographical errors in the mark portion of a disputed domain name to divert Internet users who commit those typographical errors. The disputed domain name takes advantage of Internet users who mistype Complainant’s DIRECTV mark. The Panel finds Respondent engaged in typosquatting by misspelling Complainant’s mark in the <diretv.com> domain name under the facts and circumstances of this case. This is further evidence Respondent does not have rights or legitimate interests in the disputed domain name pursuant to Policy ¶4(a)(ii). See *LTD Commodities LLC v. Party Night, Inc.*, FA 165155 (Nat. Arb. Forum Aug. 14, 2003) (finding that the <lttdcommadities.com>, <lttdcommmodities.com>, and <lttdcommodaties.com> domain names were intentional misspellings of the complainant's LTD COMMODITIES mark and this “‘typosquatting’ is evidence that Respondent lacks rights or legitimate interests in the disputed domain names”); see also *IndyMac Bank F.S.B. v. Ebeyer*, FA 175292 (Nat. Arb. Forum Sept. 19, 2003) (finding that the respondent lacked rights and legitimate interests in the disputed domain names because it “engaged in the practice of typosquatting by taking advantage of Internet users who attempt to access Complainant's <indymac.com> website but mistakenly misspell Complainant's mark by typing the letter ‘x’ instead of the letter ‘c’”).

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

Registration and Use in Bad Faith

Respondent is using the <diretv.com> domain name, which was registered on December 5, 2000, to redirect Internet users to Respondent’s website that features links to third-party sites. Some of these links directly compete with Complainant’s satellite television business. The Panel finds such use constitutes disruption and is evidence of bad faith registration and use pursuant to Policy ¶4(b)(iii). See *S. Exposure v. S. Exposure, Inc.*, FA 94864 (Nat. Arb. Forum July 18, 2000) (finding the respondent acted in bad faith by attracting Internet users to a website that competes with the complainant’s business); see also *Disney Enters., Inc. v. Noel*, FA 198805 (Nat. Arb. Forum Nov. 11, 2003) (“Respondent registered a domain name confusingly similar to Complainant's mark to divert Internet users to a competitor's website. It is a reasonable inference that Respondent's purpose of registration and use was to either disrupt or create confusion for Complainant's business in bad faith pursuant to Policy ¶4(b)(iii) [and] (iv).”).

The Panel infers Respondent receives click-through fees for diverting Internet users to third-party websites. Because Respondent’s domain name is confusingly similar to Complainant’s DIRECTV mark, Internet users accessing Respondent’s disputed domain name may become confused as to Complainant’s affiliation with the resulting website. Thus, Respondent’s use of the <diretv.com> domain name constitutes bad faith registration and use pursuant to Policy ¶4(b)(iv). See *G.D. Searle & Co. v. Celebrix*

Drugstore, FA 123933 (Nat. Arb. Forum Nov. 21, 2002) (finding that the respondent registered and used the domain name in bad faith pursuant to Policy ¶4(b)(iv) because the respondent was using the confusingly similar domain name to attract Internet users to its commercial website); *see also 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).

The Panel finds Respondent's typosquatting (as determined under the facts and circumstances of this case) is evidence Respondent registered and is using the <**diretv.com**> domain name in bad faith pursuant to Policy ¶4(a)(iii). *See Zone Labs, Inc. v. Zuccarini*, FA 190613 (Nat. Arb. Forum Oct. 15, 2003) ("Respondent's registration and use of [the <zonelarm.com> domain name] that capitalizes on the typographical error of an Internet user is considered typosquatting. Typosquatting, itself is evidence of bad faith registration and use pursuant to Policy ¶4(a)(iii)."); *see also K.R. USA, INC. v. SO SO DOMAINS*, FA 180624 (Nat. Arb. Forum Sept. 18, 2003) (finding that the respondent's registration and use of the <philadelphiaenquirer.com> and <tallahassedemocrat.com> domain names capitalized on the typographical error of Internet users seeking the complainant's THE PHILADELPHIA INQUIRER and TALLAHASSEE DEMOCRAT marks, evincing typosquatting and bad faith pursuant to Policy ¶4(a)(iii)).

Finally, Respondent appears to have engaged in a pattern of typosquatting registrations.

The Panel finds Policy ¶4(a)(iii) 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 <**diretv.com**> domain name be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: Monday, January 15, 2010

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