



NATIONAL ARBITRATION FORUM

DECISION

Time Warner Inc. v. Epic House Productions Inc.
Claim Number: FA0804001179365

PARTIES

Complainant is **Time Warner Inc.** ("Complainant"), represented by **James R. Davis**, of **Arent Fox PLLC**, Washington D.C., USA. Respondent is **Epic House Productions Inc** ("Respondent"), New York, USA.

REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are <**timewarnermediagroup.com**>, <**timewarnerenterprise.com**>, <**timewarnerentertainment.com**>, <**1800cnnnews.com**>, <**cnnliveupdate.com**>, <**andersoncooper360update.com**>, <**larryking360.com**>, <**larrykingupdate.com**> and <**situationroomupdate.com**>, registered with **Godaddy.com, Inc.**

PANEL

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

Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on April 22, 2008; the National Arbitration Forum received a hard copy of the Complaint on April 23, 2008.

On April 22, 2008, Godaddy.com, Inc. confirmed by e-mail to the National Arbitration Forum that the <**timewarnermediagroup.com**>, <**timewarnerenterprise.com**>, <**timewarnerentertainment.com**>, <**1800cnnnews.com**>, <**cnnliveupdate.com**>, <**andersoncooper360update.com**>, <**larryking360.com**>, <**larrykingupdate.com**> and <**situationroomupdate.com**> domain names are registered with Godaddy.com, Inc. and that Respondent is the current registrant of the names. Godaddy.com, Inc. has verified that Respondent is bound by the Godaddy.com, Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On April 25, 2008, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of May 15, 2008 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@timewarnermediagroup.com, postmaster@timewarnerenterprise.com, postmaster@timewarnerentertainment.com, postmaster@1800cnnnews.com, postmaster@cnnliveupdate.com, postmaster@andersoncooper360update.com, postmaster@larryking360.com, postmaster@larrykingupdate.com and postmaster@situationroomupdate.com by e-mail.

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

On May 22, 2008, 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 names be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

FACTUAL AND LEGAL GROUNDS

This Complaint is based on the following factual and legal grounds:

1. Complainant Time Warner Inc., itself and through its subsidiaries and affiliates (collectively "Time Warner") owns all rights, title and interest in and to a family of marks that incorporate, in whole or in part, TIME WARNER, CNN, ANDERSON COOPER 360, LARRY KING LIVE and THE SITUATION ROOM (collectively the "TIME WARNER Marks"), including the following United States federal trademark registrations:
 - **TIME WARNER** (U.S. trademark Reg. No. 1816474, issued on January 11, 1994, for cable television broadcasting services);

- **TIME WARNER AUDIO BOOKS and Design** (U.S. trademark Reg. No. 1931702, issued on October 31, 1995, for prerecorded audio cassette tapes and compact discs and printed material packaged therewith featuring the arts, literature, lifestyles, fitness, business and topics of general interest);
- **TIME WARNER** (U.S. trademark Reg. No. 1940977, issued on December 12, 1995, for prerecorded audio cassette tapes featuring the arts, literature, lifestyles, fitness, music, and topics of general interest);
- **TIME WARNER CABLE PAYXPRESS and Design** (U.S. trademark Reg. No. 2370458, issued on July 25, 2000, for cable television transmission services and pay-per-view television transmission services featuring alternative billing and payment options);
- **TIME WARNER CABLE and Design** (U.S. trademark Reg. No. 2775146, issued on October 21, 2003, for cable television broadcasting services; broadcast and telecommunications services provided via a cable platform, namely, analog and digital video, cable modem service, interactive television, television on demand, personal video recording, telephony and related services);
- **TIME WARNER CENTER** (U.S. trademark Reg. No. 2971049, issued on July 19, 2005, for real estate management and leasing services for commercial and business offices, retail shopping facilities, restaurants, cultural, educational, entertainment and broadcast facilities);
- **TIME WARNER AUDIOBOOKS and Design** (U.S. trademark Reg. No. 3250715, issued on June 12, 2007, for pre-recorded audio cassette tapes and compact discs, and printed instructional materials packaged and sold therewith, featuring the arts, literature, lifestyles, fitness, business and topics of general interest; pre-recorded audio, video, text and graphics all downloadable via the Internet, all in the nature of book content featuring arts, literature, lifestyle, fitness, business and topics of general interest, held in electronic personal computers and handheld wireless devices);
- **CNN** (U.S. trademark Reg. No. 1597839, issued on May 22, 1990, for cable and television broadcasting services);
- **CNN** (U.S. trademark Reg. No. 2903197, issued on November 16, 2004, for cable television broadcasting, cable radio broadcasting, television broadcasting, radio broadcasting and broadcasting programs via a global computer network);
- **CNN AIRPORT NETWORK and Design** (U.S. trademark Reg. No. 1922470, issued on September 26, 1995, for television broadcasting services, broadcast via satellite to video monitors located in airports); and

- **THE SITUATION ROOM** (U.S. trademark Reg. No. 3197588, issued on January 9, 2007, with a first use date of August 2005, for news and entertainment services, namely, a continuing program series in the field of news and information focusing on homeland security, politics and national and world affairs provided through cable and broadcast television and radio; computer services, namely, providing on-line news reports in the field of news and information focusing on homeland security, politics and national and world affairs).

See also, e.g., Time Warner, Inc. v. Collazo, FA 338464 (Nat. Arb. Forum Nov. 29, 2004).

2. Time Warner also owns common law rights to the marks ANDERSON COOPER 360 and LARRY KING LIVE, and uses those marks in connection with award-winning news shows that are shown on the cable network CNN.
3. Time Warner owns and uses numerous domain names, including <timewarner.com> and <cnn.com>, in connection with providing a wide variety of services on the Internet. The TIME WARNER Marks are used extensively throughout Time Warner's extensive network of Web sites, which are a significant method of promoting Time Warner and its services. As a result, consumers associate TIME WARNER, CNN, THE SITUATION ROOM, ANDERSON COOPER 360 and LARRY KING LIVE, when used in a domain name and on the Internet, with Time Warner's products and services.
4. Long before Respondent's registration and use of the infringing domain names <timewarnermediagroup.com>, <timewarnerenterprise.com>, <timewarnerentertainment.com>, <1800cnnnews.com>, <cnnliveupdate.com>, <andersoncooper360update.com>, <larryking360.com>, <larrykingupdate.com> and <situationroomupdate.com> (the "Disputed Domains"), Time Warner adopted and began using its TIME WARNER Marks in connection with, among other things, a wide variety of entertainment-related goods and services, and Internet-related goods and services. The distinctive TIME WARNER Marks are used and promoted over the Internet and through traditional media. Time Warner has used its famous and distinctive marks continuously and extensively in interstate commerce in connection with the advertising and sale of its goods and services.
5. Time Warner is a leading media and entertainment company, whose businesses include interactive services, cable systems, filmed entertainment, television networks and publishing. The company has invested substantial sums of money in developing and marketing its products, services and world-famous marks.
6. Time Warner is a Fortune 500 company. Each day its services are accessed and utilized by millions of subscribers and users around the world.
7. The TIME WARNER Marks have been and continue to be widely publicized through substantial advertising. Many millions of dollars have been spent in connection with

such advertising, which has been disseminated through network and cable television programs, radio broadcasts, and in print media including newspapers and periodicals.

8. Sales under the TIME WARNER Marks have been substantial. The general public has come to associate the TIME WARNER Marks with products and services of a high and uniform quality.
9. Because of these substantial advertising expenditures and sales, the distinctive TIME WARNER Marks have become famous among members of the purchasing public.
10. In January and February, 2007, long after Time Warner's adoption and first use of its TIME WARNER Marks, Respondent registered the Disputed Domains with a bad faith intent to profit from the registration and use of the domain names. Respondent's actions are a clear and blatant violation of Time Warner's intellectual property rights, and part of a substantial pattern of cybersquatting. Respondent's bad faith actions demonstrate an utter disregard and contempt for Time Warner's legal rights and ICANN's Uniform Domain Name Dispute Resolution Policy.
11. The Disputed Domains are nearly identical and confusingly similar to the TIME WARNER Marks. Consumer confusion is particularly likely because the domain names wholly incorporate the TIME WARNER Marks, and are differentiated from those marks only by the addition of words like "update" and "enterprise." Respondent carefully chose the Disputed Domains to create the false impression that Time Warner endorses or is affiliated with Respondent or its Web site.
12. Respondent registered and uses the Disputed Domains with a bad faith intent to capitalize on the goodwill associated with the TIME WARNER Marks.
13. Respondent has no rights or legitimate interests in the Disputed Domains. Respondent is not licensed or authorized to use the TIME WARNER Marks, and Respondent (Epic House Productions) is not named or commonly known as any of the TIME WARNER Marks. The following is evidence of Respondent's bad faith registration and use of the domain names:
 - (a) Respondent's bad faith registration of the Disputed Domains is evidenced by the fact that Respondent registered all the domain names over a two month period in January and February, 2007, long after the TIME WARNER Marks had become famous. Respondent is deemed to at least have had constructive knowledge of Time Warner's rights in its registered TIME WARNER Marks by virtue of the federal trademark registrations that were in existence when Respondent registered the Disputed Domains. *See Time Warner, Inc. v. Little*, FA 464815 (Nat. Arb. Forum June 8, 2005). Given Time Warner's enormous size and global reputation, and the distinctive qualities of the TIME WARNER Marks, it is inconceivable to think that Respondent did not have actual knowledge of Time Warner and its marks when Respondent registered the Disputed Domains. Respondent therefore

registered the Disputed Domains in bad faith in violation of Paragraph 4(a)(iii) of the UDRP.

- (b) Respondent's bad faith use of the Disputed Domains is shown by the commercial Web sites that Respondent operates in connection with the domain names. Specifically, Respondent has used, and continues to use, the Disputed Domains to link to commercial eBay pages, some of which offered to sell the Disputed Domains and other domain names that infringe upon famous third party marks. This commercial use of, and offer to sell, the Disputed Domains violates Paragraphs 4(b)(i), (iii) and (iv) of the UDRP.
- (c) In an attempt to settle this matter amicably, Time Warner sent Respondent a letter on March 5, 2008, objecting to Respondent's unauthorized registration and use of the Disputed Domains, and requesting a transfer of the domain names. Time Warner's in-house counsel thereafter spoke with Respondent via telephone, during which time Respondent refused to transfer the Disputed Domains unless Time Warner paid a premium for the domains. Time Warner therefore had no choice but to file this UDRP to protect its valuable intellectual property.
- (d) Respondent also has engaged in a pattern of cybersquatting. In addition to the Disputed Domains, Respondent owns and uses several other domain names that infringe upon third party trademarks, including <cocacolaclotthing.com>, <americanidolupdate.com>, and <britneyspearsclotthing.com>. This pattern of cybersquatting is a violation of Paragraph 4(b)(ii) of the UDRP and demonstrates Respondent's bad faith intent to profit off the registration and use of the Disputed Domains.
- (e) Based upon (1) the fame of the TIME WARNER Marks; (2) Time Warner's federal trademark registrations; (3) Respondent's commercial use and offers to sell the Disputed Domains; and (4) Respondent's pattern of cybersquatting, Respondent cannot in good faith claim that it had no knowledge of Time Warner's rights in its famous TIME WARNER Marks. Furthermore, Respondent cannot claim in good faith that it made a legitimate noncommercial or fair use of the subject domain names, or that Respondent is commonly known as any of the TIME WARNER Marks.

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

C. Complainant's Supplemental Material.

The Panel requested Complainant identify the owner of each trademark and either confirm it was authorized to represent the named trademark owner(s) or make the named trademark owner(s) a party to this proceeding. On June 5, 2008, Complaint confirmed all

trademarks were owned either by it or Cable News Network. Complainant is authorized to bring suit on behalf of Cable News Network (which is one of Complainant's subsidiaries).

FINDINGS

Complainant, Time Warner, Inc., is a media and entertainment company that provides interactive services, cable systems, filmed entertainment, television networks and publishing. Complainant registered its TIME WARNER mark with the United States Patent and Trademark Office ("USPTO") on January 11, 1994 (Reg. No. 1,816,474). Cable News Network registered its CNN mark with the USPTO on May 22, 1990 (Reg. No. 1,397,839). Complainant is authorized to bring this proceeding for the benefit of Cable News Network (its subsidiary). Additionally, Cable News Network filed an application for its THE SITUATION ROOM mark with the USPTO on June 6, 2005 and the mark was registered January 9, 2007 (Reg. No. 3,197,588). Cable News Network also has two news shows entitled ANDERSON COOPER 360 and LARRY KING LIVE. Complainant and its subsidiaries have expended substantial amounts advertising for and has generated substantial revenues from these shows.

Respondent registered the disputed domain names between January 4, 2007 and January 15, 2007. Respondent is using the disputed domain names to link to commercial eBay web pages that offer various goods for sale. Some of these eBay pages resolving from the disputed domain names offer the disputed domain names and other domain names for sale.

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 (or its subsidiary) have registered its TIME WARNER, CNN and THE SITUATION ROOM marks with the USPTO (Reg. Nos. 1,816,474; 1,397,839 and 3,197,588). The USPTO issued the registration for Complainant's subsidiary's THE SITUATION ROOM mark after Respondent registered the <situationroomupdate.com> domain name. However, upon the USPTO's registration of Complainant's THE SITUATION ROOM mark, the Panel finds Complainant's rights in the mark date back to the application date of June 6, 2005, several years before Respondent's registration of the disputed domain name. Therefore, the Panel finds Complainant (and/or its subsidiary, Cable News Network) have sufficiently established rights in its TIME WARNER CNN and THE SITUATION ROOM marks pursuant to Policy ¶4(a)(i). See *U.S. Office of Pers. Mgmt. v. MS Tech. Inc.*, FA 198898 (Nat. Arb. Forum Dec. 9, 2003) (“[O]nce the USPTO has made a determination that a mark is registrable, by so issuing a registration, as indeed was the case here, an ICANN panel is not empowered to nor should it disturb that determination.”); 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.”); see also *Thompson v. Zimmer*, FA 190625 (Nat. Arb. Forum Oct. 27, 2003) (“As Complainant's trademark application was subsequently approved by the U.S. Patent and Trademark Office, the relevant date for showing ‘rights’ in the mark for the purposes of Policy ¶4(a)(i) dates back to Complainant's filing date.”).

Additionally, Complainant alleges common law rights in its ANDERSON COOPER 360 and LARRY KING LIVE marks (by the through its subsidiary, Cable News Network). The Panel finds it is not necessary for Complainant to register these marks to establish rights in them under Policy ¶4(a)(i). See *SeekAmerica Networks Inc. v. Masood*, D2000-0131 (WIPO Apr. 13, 2000) (finding that the Rules do not require that the complainant's trademark or service mark be registered by a government authority or agency for such rights to exist); see also *British Broad. Corp. v. Renteria*, D2000-0050 (WIPO Mar. 23, 2000) (noting that the Policy “does not distinguish between registered and unregistered trademarks and service marks in the context of abusive registration of domain names” and applying the Policy to “unregistered trademarks and service marks”).

Complainant's subsidiary's Cable News Network has established common law rights in the ANDERSON COOPER 360 and LARRY KING LIVE marks which it uses to operate cable news shows. Complainant's subsidiary's ANDERSON COOPER 360 mark is used to market a news program that has aired since November 2005 and has won multiple national awards including three Emmy awards. Complainant's subsidiary's LARRY

KING LIVE mark is used to market another news program which has aired since 1985 and has also won multiple national awards. Complainant and its subsidiary have expended substantial amounts of money advertising these marks and have generated substantial revenues from them. Complainant and its subsidiary also maintain several web pages promoting these marks on its <cnn.com> domain name. Therefore, the Panel finds Complainant has sufficiently established rights in its ANDERSON COOPER mark dating back to November 2005 and its LARRY KING LIVE mark dating back to 1985 pursuant to Policy ¶4(a)(i). *See Tuxedos By Rose v. Nunez*, FA 95248 (Nat. Arb. Forum Aug. 17, 2000) (finding common law rights in a mark where its use was continuous and ongoing, and secondary meaning was established); *see also BroadcastAmerica.com, Inc. v. Quo*, DTV2000-0001 (WIPO Oct. 4, 2000) (finding that the complainant has common law rights in BROADCASTAMERICA.COM, given extensive use of that mark to identify the complainant as the source of broadcast services over the Internet, and evidence that there is wide recognition with the BROADCASTAMERICA.COM mark among Internet users as to the source of broadcast services).

Respondent's <**timewarnermediagroup.com**>, <**timewarnerenterprise.com**> and <**timewarnerentertainment.com**> each incorporate Complainant's TIME WARNER mark with a generic term or terms and the generic top-level domain ("gTLD") ".com." The additions of generic terms and a top-level domain do not sufficiently distinguish the disputed domain names from Complainant's TIME WARNER mark. The Panel finds these disputed domain names are confusingly similar to Complainant's TIME WARNER mark pursuant to Policy ¶4(a)(i). *See Arthur Guinness Son & Co. (Dublin) Ltd. v. Healy/BOSTH*, D2001-0026 (WIPO Mar. 23, 2001) (finding confusing similarity where the domain name in dispute contains the identical mark of the complainant combined with a generic word or term); *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 . . .").

Respondent's <**1800cnnnews.com**> and <**cnnliveupdate.com**> domain names combine Complainant's subsidiary's CNN mark with generic terms or numbers and the gTLD ".com." The addition of generic terms and/or numerals and a top-level domain do not distinguish Respondent's disputed domain names from Complainant's subsidiary's CNN mark. The Panel finds these disputed domain names are confusingly similar to Complainant's subsidiary's CNN mark pursuant to Policy ¶4(a)(i). *See Magnum Piering, Inc. v. Mudjacks*, D2000-1525 (WIPO Jan. 29, 2001) (finding that the generic term "INC" does not change the confusing similarity); *see also Am. Online, Inc. v. Fu*, D2000-1374 (WIPO Dec. 11, 2000) (finding that adding the suffixes "502" and "520" to the ICQ trademark does little to reduce the potential for confusion); *see also Isleworth Land Co. v. Lost in Space, SA*, FA 117330 (Nat. Arb. Forum Sept. 27, 2002) ("[I]t is a well established principle that generic top-level domains are irrelevant when conducting a Policy ¶4(a)(i) analysis.").

Respondent's <**andersoncooper360update.com**> domain name merely incorporates Complainant's subsidiary's ANDERSON COOPER 360 mark with the addition of the descriptive term "update," which describes part of Complainant's subsidiary's news show and a top-level domain. Consequently, the Panel finds Respondent's disputed domain name is confusingly similar to Complainant's subsidiary's mark pursuant to Policy ¶4(a)(i). *See Space Imaging LLC v. Brownell*, AF-0298 (eResolution Sept. 22, 2000) (finding confusing similarity where the respondent's domain name combines the complainant's mark with a generic term that has an obvious relationship to the complainant's business); *see also Rollerblade, Inc. v. McCrady*, D2000-0429 (WIPO June 25, 2000) (finding that the top level of the domain name such as ".net" or ".com" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar).

Respondent's <**larryking360.com**> and <**larrykingupdate.com**> domain names incorporate Complainant's LARRY KING LIVE mark with the deletion of "live," the addition of a generic term or set of numerals and the addition of the gTLD ".com." The Panel finds these alterations do not sufficiently distinguish Respondent's disputed domain name from Complainant's mark and thus are confusingly similar pursuant to Policy ¶4(a)(i). *See Am. Eagle Outfitters, Inc. v. Admin*, FA 473826 (Nat. Arb. Forum June 22, 2005) (finding the <americaneaglestores.com> domain name to be confusingly similar to the complainant's AMERICAN EAGLE OUTFITTERS mark); *see also PG&E Corp. v. Anderson*, D2000-1264 (WIPO Nov. 22, 2000) (finding that "Respondent does not by adding the common descriptive or generic terms 'corp', 'corporation' and '2000' following 'PGE', create new or different marks in which it has rights or legitimate interests, nor does it alter the underlying [PG&E] mark held by Complainant"); *see also Gardline Surveys Ltd. v. Domain Fin. Ltd.*, FA 153545 (Nat. Arb. Forum May 27, 2003) ("The addition of a top-level domain is irrelevant when establishing whether or not a mark is identical or confusingly similar, because top-level domains are a required element of every domain name.").

Respondent's <**situationroomupdate.com**> domain name incorporates Complainant's subsidiary's THE SITUATION ROOM mark with the deletion of the word "the" and the additions of the generic or descriptive term "update," and the gTLD ".com." These alterations do not detract from the dominant feature of Complainant's subsidiary's mark and thus the Panel finds this disputed domain name is confusingly similar to Complainant's THE SITUATION ROOM mark pursuant to Policy ¶4(a)(i). *See Body Shop Int'l PLC v. CPIC NET*, D2000-1214 (WIPO Nov. 26, 2000) (finding that the domain name <bodyshopdigital.com> is confusingly similar to the complainant's THE BODY SHOP trademark); *see also Nev. State Bank v. Modern Ltd. – Cayman Web Dev.*, FA 204063 (Nat. Arb. Forum Dec. 6, 2003) ("It has been established that the addition of a generic top-level domain is irrelevant when considering whether a domain name is identical or confusingly similar under the Policy.").

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

Rights or Legitimate Interests

Complainant has alleged Respondent does not possess rights or legitimate interests in the disputed domain names. Complainant must present a *prima facie* case to support these allegations before the burden shifts to Respondent to prove it does have rights or legitimate interests in the disputed domain names. The Panel finds Complainant has presented an adequate *prima facie* case to support its allegations and Respondent has failed to respond to these proceedings. This Panel concludes Respondent does not possess rights or legitimate interests in the disputed domain names.

Out of an abundance of caution and to remove any unnecessary doubt, the Panel will examine the record and determine if Respondent has rights or legitimate interests in the disputed domain names pursuant to Policy ¶4(c). *See Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (holding that once the complainant asserts that the respondent has no rights or legitimate interests with respect to the domain, the burden shifts to the respondent to provide “concrete evidence that it has rights to or legitimate interests in the domain name at issue”); *see also Broadcom Corp. v. Ibecom PLC*, FA 361190 (Nat. Arb. Forum Dec. 22, 2004) (“Respondent’s failure to respond to the Complaint functions as an implicit admission that [Respondent] lacks rights and legitimate interests in the disputed domain name. It also allows the Panel to accept all reasonable allegations set forth...as true.”).

Respondent’s disputed domain names all link to eBay web pages which offer various goods for sale. The Panel finds Respondent’s use of the disputed domain names to sell the disputed domain names and otherwise commercially benefit from Complainant’s mark is not a *bona fide* offering of goods or service pursuant to Policy ¶4(c)(i), or a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii). *See 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).”); *see also Golden Bear Int’l, Inc. v. Kangdeock-ho*, FA 190644 (Nat. Arb. Forum Oct. 17, 2003) (“Respondent’s use of a domain name confusingly similar to Complainant’s mark to divert Internet users to websites unrelated to Complainant’s business does not represent a bona fide offering of goods or services under Policy ¶4(c)(i) or a legitimate noncommercial or fair use under Policy ¶4(c)(iii).”).

Some of the eBay web pages resolving from Respondent’s disputed domain names offer the disputed domain names and other domain names for sale. The Panel finds Respondent’s advertised offer to sell the disputed domain names is further evidence Respondent lacks rights and legitimate interests in the disputed domain names pursuant to Policy ¶4(a)(ii). *See Mothers Against Drunk Driving v. Hyun-Jun Shin*, FA 154098 (Nat. Arb. Forum May 27, 2003) (holding that under the circumstances, the respondent’s apparent willingness to dispose of its rights in the disputed domain name suggested that it lacked rights or legitimate interests in the domain name); *see also Hewlett-Packard Co. v.*

High Performance Networks, Inc., FA 95083 (Nat. Arb. Forum July 31, 2000) (finding no rights or legitimate interests where the respondent registered the domain name with the intention of selling its rights).

Respondent is not commonly known by the disputed domain names. The WHOIS information lists Respondent as “Epic House Productions Inc.” The record does not indicate Respondent is commonly known by the disputed domain names. Neither Complainant nor its subsidiary have authorized Respondent to use the TIME WARNER, CNN, THE SITUATION ROOM, ANDERSON COOPER 360 or LARRY KING LIVE marks. The Panel finds Respondent is not commonly known by the disputed domain names pursuant to Policy ¶4(c)(ii). *See Gallup, Inc. v. Amish Country Store*, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) (finding that the respondent does not have rights in a domain name when the respondent is not known by the mark); *see also Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate 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).

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

Registration and Use in Bad Faith

Respondent has advertised its intention to sell the disputed domain names on some of the eBay web pages resolving from the disputed domain names. The Panel finds Respondent’s apparent willingness to sell the disputed domain names is evidence of bad faith registration and use pursuant to Policy ¶4(b)(i). *See Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 180704 (Nat. Arb. Forum Sept. 30, 2003) (“Respondent’s general offer of the disputed domain name registration for sale establishes that the domain name was registered in bad faith under Policy ¶4(b)(i).”); *see also Am. Online, Inc. v. Avrasya Yayincilik Danismanlik Ltd.*, FA 93679 (Nat. Arb. Forum Mar. 16, 2000) (finding bad faith where the respondent offered domain names for sale).

Respondent is using its confusingly similar domain names to link to eBay pages which offer goods for sale, including the disputed domain names. Respondent presumably profits from this use. Respondent’s uses of Complainant’s marks create a likelihood of confusion regarding the source of the content resolving from the disputed domain names. The Panel finds this use is an attempt by Respondent to profit from the goodwill associated with Complainant’s (and its subsidiary’s) marks. The Panel finds Respondent’s actions constitute bad faith registration and use pursuant to Policy ¶4(b)(iv). *See Bank of Am. Corp. v. Out Island Props., Inc.*, FA 154531 (Nat. Arb. Forum June 3, 2003) (stating that “[s]ince the disputed domain names contain entire versions of Complainant’s marks and are used for something completely unrelated to their descriptive quality, a consumer searching for Complainant would become confused as to Complainant’s affiliation with the resulting search engine website” in holding that the domain names were registered and used in bad faith pursuant to Policy ¶4(b)(iv)); *see*

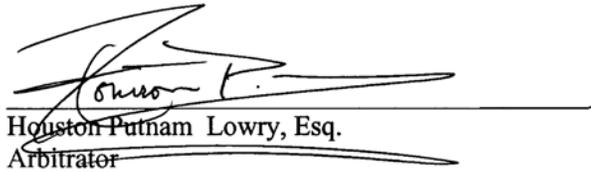
also Am. Univ. v. Cook, FA 208629 (Nat. Arb. Forum Dec. 22, 2003) (“Registration and use of a domain name that incorporates another's mark with the intent to deceive Internet users in regard to the source or affiliation of the domain name is evidence of bad faith.”).

The Panel find 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 <**timewarnermediagroup.com**>, <**timewarnerenterprise.com**>, <**timewarnerentertainment.com**>, <**1800cnnnews.com**>, <**cnnliveupdate.com**>, <**andersoncooper360update.com**>, <**larryking360.com**>, <**larrykingupdate.com**> and <**situationroomupdate.com**> domain names be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: June 17, 2008

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