



## **WIPO Arbitration and Mediation Center**

### **ADMINISTRATIVE PANEL DECISION**

**College Summit, Inc.**

**v.**

**Yarmouth Educational Consultants, Inc.**

**Case No. D2000-1575**

#### **1. The Parties**

The Complainant is College Summit, Inc., a non-profit corporation of the District of Columbia, 2390 Champlain Street, N.W., Suite A, Washington, D.C. 20009, USA.

The Respondent is Yarmouth Educational Consultants, Inc., a corporation of the State of Maine, 251 Main Street, Yarmouth Maine 04096, USA.

#### **2. The Domain Names and Registrar**

Contested Domain Names: <collegesummit.com> and <collegenetsummit.com>

The Registrar is Network Solutions, Inc. (NSI), 505 Huntmar Drive, Herndon, Virginia 20170, USA.

#### **3. Procedural History**

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy"), which was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999 and approved on October 24, 1999 and in accordance with the ICANN Rules for Uniform Domain Name Dispute Resolution Policy ("Rules") as approved on October 24, 1999 as supplemented by the World Intellectual Property Organization Supplemental Rules for Uniform Domain Name Dispute Resolution Policy in effect as of December 1, 1999 ("Supplemental Rules").

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") by e-mail on November 15, 2000 and in hard copy, with Annexes A-H (though the contents of Annex D were missing in the copies of the Complaint filed with the Center and also supplied to the Panel), as well as the appropriate payment on November 16, 2000. The Complainant's attorney, Ms. Rhonda Cunningham Holmes, states that on November 14, 2000 she served a copy of the Complaint on the Respondent, by overnight courier, facsimile and email and, in accordance with the

methods set forth in paragraph 2(a) of the Rules; and, on the same date, also provided a copy of the Complaint to the Registrar, NSI.

The Center acknowledged receipt of the Complaint by email dated November 21, 2000 to the Complainant's attorney.

Pursuant to paragraph 4(d) of the Policy, the Complainant selected the Center as the ICANN approved administrative dispute resolution service provider to administer this proceeding. Through the Complaint, the Complainant requested a single member panel.

After receiving the original Complaint, the Center, in accordance with paragraph 5 of the Supplemental Rules, determined whether the Complaint fully complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on November 27, 2000 the Center requested confirmation from NSI of information set forth in the Complaint relative to both contested domain names; specifically, contact and registrant information for each contested domain name, as well as whether NSI received a copy of the Complaint from the Complainant. The Center also requested NSI to specify: (a) whether the ICANN Policy applies to each of the contested domain names, and (b) the current status of each of those domain names. On December 1, 2000 NSI provided its response to the Center through which NSI provided contact information pertinent to each of the contested domain names from its WHOIS database, confirmed that NSI is the registrar of each of the two contested domain names, stated that the Policy is in effect (through Network Solutions' version 5.0 registration agreement) for each of the contested domain names, and that each of these domain names was then in an "active" status. The Center completed its review of the Complaint on December 4, 2000.

On December 4, 2000 the Center notified the Respondent of the filing of the Complaint, including providing a complete copy of the Complaint, with an explanatory cover sheet, to the Respondent, by email and in hardcopy form by post/courier (the latter including a copy of the Annexes supplied by the Complainant). The Complaint, and its accompanying documents, and all subsequent communications associated therewith were provided in the preferred manners and to the addresses as mandated by paragraphs 2(a) and 4(a) of the Rules.

Hence, the notification to the Respondent having occurred on December 4, 2000 under paragraph 4(c) of the ICANN Policy, this administrative proceeding is deemed to have commenced on that date.

Having reviewed the Complaint and succeeding correspondence between the Center and NSI, in detail, the Panel agrees with the determination of the Center that the Complaint and its handling met the requirements of the Rules and the Supplemental Rules.

The Respondent was then provided with a 20 calendar day period, expiring on December 23, 2000 to file its response with the Center and serve a copy of the response on the Complainant.

On November 21, 2000 email correspondence occurred from the Respondent to the Complainant, followed on December 7, 2000 with e-mail correspondence from the Respondent to the Center, and on December 19, 2000 from the Complainant's attorney, Ms. Holmes, to the Center.

As of December 27, 2000 the Center had not received a substantive response to the Complaint from the Respondent; hence, the Center, in an email letter dated December 27, 2000 notified the Complainant and Respondent of the default of the Respondent..

Accordingly, pursuant to the Rules and Supplemental Rules, on January 3, 2001, the Center contacted the undersigned, Mr. Peter L. Michaelson, Esq., requesting his service as a sole panelist for this dispute. On the same day, Mr. Michaelson accepted and returned, by facsimile to the Center, a fully executed Statement of Acceptance and Declaration of Impartiality and Independence. The Center, through an e-mail letter dated January 5, 2001 notified the parties of the appointment of Mr. Michaelson as the panelist.

Based on deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to the Center on or before January 18, 2001.

This dispute concerns two domain names, specifically <collegesummit.com> and <collegenetsummit.com>.

The language of this proceeding is English.

#### **4. Factual Background**

Inasmuch as the Respondent, Yarmouth Educational Consultants, Inc., has failed to substantively respond to the Complaint as required by the Policy and Rules, all the factual representations alleged by the Complainant, College Summit, Inc., will be accepted as undisputed. For convenience of the reader, factual allegations from the Complaint are reproduced below.

The Complainant currently owns a single valid and subsisting U.S. service mark registration for the term "COLLEGE SUMMIT", in block letters on which this dispute is based. The Complainant uses its mark, the details of which are indicated immediately below, in connection with specific educational services. In Annex C to the Complaint, the Complainant has provided a copy of the registration for this mark, as well as a listing providing an abbreviated prosecution history and other related information for this mark from the US Patent and Trademark Office web server.

COLLEGE SUMMIT (block letters)

US registration 2,216,220; registered January 5, 1999

This service mark was registered, for use in connection with: "educational services, namely conducting workshops in the field of college admissions, and distributing curriculum materials in connection therewith", in international class 41. This mark claims first use and first use in inter-state commerce of January 31, 1995.

The Complainant states that it has registered and utilizes its <collegesummit.org> web site to inform Internet users of various programs it offers for college admissions assistance. The Complainant registered its <collegesummit.org> domain name on November 13, 1998 and has used that domain name ever since in connection with the educational services it provides. A copy of the WHOIS registration record for this domain name appears in Annex A to the Complaint.

Further, the Complainant states that it has operated its not-for-profit organization in the educational services arena for almost 10 years, and, over those years, has raised significant funding from corporate and foundation sponsors to support its programs and outreach efforts, and has expanded its network of relationships with colleges and universities throughout the United States to more than 35 program partners. The Complainant states that, through its efforts and those of its program partners, it reaches thousands of students, throughout the United States, via numerous high schools and youth agencies. In that regard, the Complainant states that it has appeared on various radio, television, and on-line news programs and in numerous newspaper articles. As a result of these high-profile activities and national exposure, Complainant states that it is well known within the educational services community.

As indicated in the registration records also submitted in Annex A to the Complaint, the Respondent registered the contested "collegesummit.com" domain name on July 29, 1999. The Complainant states that this occurred over six years after the Complainant began operating under the its mark COLLEGE SUMMIT, over six months after that mark was registered, and over eight months after the Complainant began using its "collegesummit.org" domain name.

In addition, the Complainant states that the Respondent contracts with colleges and universities to host on-line college fairs and chat sessions for students. The Respondent, so says the Complainant, has targeted several of the same colleges and universities with which the Complainant has established partnering relationships. In that regard, the Complainant states that the Respondent's job fairs have included students ranging from, e.g., Maryland, Michigan, Ohio, Montana, Nevada, Hawaii, Florida, New Mexico, and Pennsylvania.

Upon discovery by the Complainant of the Respondent's web site reachable through the contested domain name "collegesummit.com", Complainant's counsel, Ms. Barbara Friedman, sent a cease and desist letter (a copy of which appears in Annex E to the Complaint) dated October 26, 1999 to the Respondent, informing Respondent of the Complainant's federal registration of its COLLEGE SUMMIT mark and its exclusive right to use the mark in connection with the services noted in the service mark registration. In spite of this letter, on December 24, 1999, the Respondent registered, as indicated in the registration records appearing in Annex A, the contested domain name "collegenetsummit.com".

After receiving the Complaint and in an email dated December 7, 2000 to Ms. Holmes and to the Center, the Respondent stated:

"For the last three months, our plans have been to end all use of collegesummit.com (which at this point is almost nonexistent) on December 31, 2000. ... Beginning January 1, 2001, collegenetsummit.com will only be used to bounce visitors to a new site. There will be no reference to collegesummit or college netsummit on the site. And, on June 1, 2001 collegenetsummit will no longer bounce to the new site."

In a subsequent email on the same date also to Ms. Holmes and to the Center, the Respondent stated:

"As for College NetSummit, I am in the process of reaching an agreement to transfer collegenetsummit.com to another company at their request, and done

outside of litigation, so you will have to resolve that issue with them."

The Panel infers from the Complaint that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the COLLEGE SUMMIT mark in a domain name or in any other manner.

## **5. Parties' Contentions**

### **A. Complainant**

#### **1. Similarity**

The Complainant takes the position that each of the contested domain names is identical or nearly so to its mark COLLEGE SUMMIT so as to likely confuse Internet users who may believe they are doing business with Complainant or with an entity whose services are endorsed by, sponsored by, or affiliated with Complainant; hence, satisfying the confusing similarity requirement in paragraph 4(a) of the Policy.

Specifically, the Complainant contends that each of the contested domain names is identical or virtually identical to the COLLEGE SUMMIT mark in terms of appearance, sound and meaning. As to the differences therebetween, the Complainant asserts that substituting a different top level domain, here ".com" for ".org", is insufficient to eliminate the likelihood of confusion between the Complainant's web site and the Respondent's web site for the reason that these sites provide similar services to identical consumer markets. Furthermore, the Complainant contends that the Respondent's addition of the word "net" to the contested <collegesummit.com> domain name (to form "collegenetsummit.com") is a minor alteration that is insufficient to alleviate likely confusion to the Complainant's mark COLLEGE SUMMIT.

Moreover, the Complainant asserts that, since the Respondent's <collegesummit.com> site automatically transfers its visitors directly to the Respondent's <collegenetsummit.com> site, Internet users are not even required to type in the word "net" in order to access Respondent's site, thus increasing the likelihood of confusion.

Hence, the Complainant concludes that each of the contested domain names is confusingly similar to the Complainant's mark COLLEGE SUMMIT under paragraph 4(a) of the Policy.

#### **2. Legitimacy**

The Complainant contends, that the Respondent have no rights or legitimate interest in either of the two contested domain names.

Specifically, the Complainant contends that:

- (a) since the Respondent operates under its name Yarmouth Educational Consultants Inc., it is neither known by nor does it conduct its business under the COLLEGE SUMMIT mark or a name that is similar to the COLLEGE SUMMIT mark; and
- (b) as the Panel views inferentially, the Respondent is not affiliated with the

Complainant and have not received any permission or consent from the Complainant to use the mark COLLEGE SUMMIT.

In that regard, the Complainant asserts that the Respondent is known by and operates under the business name of Yarmouth Educational Consultants, Inc., not the COLLEGE SUMMIT mark. As evidence of this, the Complainant points to a Dun & Bradstreet (D&B) Report on the Respondent and appearing in Annex F. The Complainant asserts that the Respondent's only use of the mark COLLEGE SUMMIT is as part of its domain name with this use starting more than six years after Complainant began using its mark and more than eight months after Complainant registered its domain name.

The Complainant takes the position that by registering the contested domain names that are identical or virtually identical to Complainant's mark COLLEGE SUMMIT, without any other link between those names and the Respondent's commercial business, the Respondent is unfairly trading off the reputation of Complainant. Hence, the Complainant asserts that the Respondent's only interest in registering domain names that are identical or virtually identical to Complainant's mark is to illegitimately promote the Respondent's business by attracting to its web site viewers who would be attempting to reach the Complainant's web site, and by confusing those viewers into believing that Respondent's business is sponsored by or affiliated with Complainant, when, in fact, it is not.

Hence, the Complainant concludes that the Respondent cannot demonstrate any rights or legitimate interests in any of the contested domain names pursuant to paragraph 4(a) of the Policy.

### **3. Bad Faith**

The Complainant contends that the Respondent has registered and is now using each of the contested domain names in bad faith.

Specifically, the Complainant contends that the Respondent engages in a business in the same field as the Complainant and registered the domain names with clear knowledge of Complainant's prior use of its mark COLLEGE SUMMIT and prior establishment and use of its <collegesummit.org> domain name. Hence, the Complainant contends that the Respondent registered and uses the contested domain names with an intent to divert Internet users, particularly educators and students, from the Complainant's to the Respondent's web site and, in so doing, create confusion among those users.

The Complainant contends that, by virtue of the extensive national exposure it has received (copies of various articles and other media coverage appear in Annex G to the Complaint) and the Respondent's tenure and positions within the academic community, the Respondent obviously had prior knowledge of the Complainant and the Complainant's activities prior to adopting and using the contested domain names. Furthermore, by virtue of this exposure, the Complainant contends that many educational institutions (colleges, universities and others) are familiar with the Complainant and the services it renders under its mark, to the point where the Complainant is well known within the educational community.

The Complainant contends that since both it and the Respondent deal with colleges and universities in the admissions process and both contact those institutions, via the Internet, this type of communication exacerbates a likelihood that continued use by the Respondent of the contested domain names will cause further source confusion among

both educators and students as to whether they are working with the Complainant's or the Respondent's business. In that regard and as evidence of such confusion, the Complainant points to a letter it received (a copy of which appears in Annex H to the Complaint) from a student where that student attempted to make reference to the Complainant's web site, but had entered the Respondent's site and mistakenly attributed that site to the Complainant.

Furthermore, the Complainant asserts that, in spite of the cease and desist letter sent from the Complainant's counsel through which the Complainant notified the Respondent of the registered mark COLLEGE SUMMIT, the Respondent not only registered the contested domain name <collegenetsummit.com>, but also used the contested domain name <collegesummit.com> to redirect Internet users to the Respondent's web site addressable by the former contested domain name.

Therefore, the Complainant concludes that the Respondent's conduct in registering each of the contested domain names amounts to bad faith under paragraph 4(a) of the Policy.

## **B. Respondent**

The Respondent has not filed any substantive response to the allegations raised in the Complaint.

## **6. Discussion and Findings**

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed representations. In that regard and apart from judging this proceeding through mere default of the Respondent, the Panel makes the following specific findings:

### **1. Similarity**

#### **a. <collegesummit.com>**

No doubt exists whatsoever that, for all practical purposes, the contested domain name <collegesummit.com> is identical to the COLLEGE SUMMIT mark. The basic sole difference between the contested domain name and the registered COLLEGE SUMMIT mark is simply the inclusion of a generic top-level domain (gTLD), here ".com", in the former. This difference is so de minimus as to be inadequate to preclude any confusion from occurring.

In that regard, it is beyond question that confusion would likely arise when and if the Respondent, or any third-party not affiliated with the Complainant to which the Respondent were to transfer the contested domain name, were to start using the contested domain name in conjunction with goods and/or services similar to those of the Complainant.

Such confusion, should it occur, would undoubtedly cause Internet users intending to access the Complainant's website, but who reach a website, particularly the Respondent's, through the contested domain name, to think that an affiliation of some

sort exists between the Complainant and the Respondent or its third-party transferee, when, in fact, no such relationship would exist at all.

Furthermore, societal naming conventions for Internet sites have evolved to the point where a member of the public seeking information on the Internet for a source identified by a particular mark will most likely start a search by simply forming a domain name constituted by that mark followed by a very common top generic level domain (gTLD), such as ".com" and then enter that name into his(her) browser and see what results. Web site owners, recognizing a need to simplify and facilitate user navigation to their sites increasingly reflect their marks in their domain names. See *Playboy Enterprises International, Inc. v. Hector Rodriguez* D2000-1016 (WIPO November 8, 2000).

Therefore, the Panel recognizes that an ordinary Internet user familiar with the Complainant's services provided under its mark COLLEGE SUMMIT and who seeks information on those services, would, in all likelihood, first think to form a domain name by simply concatenating the words "college" and "summit" together followed by any one of several well known gTLDs, such as ".com" or ".org". Under the facts of the present case, upon entering the URL having the "collegesummit" domain with the ".org" gTLD into the browser, the user would be transported to the Complainant's web site; however, entering the same domain but with the ".com" gTLD leads the user to an entirely different web site that of the Respondent which has absolutely no relationship or affiliation with the Complaint; hence, very likely causing that user to be confused as to source.

The Panel is very mindful of not imposing unreasonable, excessive and unfair burdens on Internet users. The Panel believes that such a burden would arise if such a user, in seeking to reach a desired website, were required to correctly discriminate between several plausible gTLDs by remembering and then entering just that one specific gTLD to use (i.e., whether it is ".org" or ".com" or ".net") for reaching that site, and where, should (s)he enter the wrong gTLD that user would be transported to an unrelated website that engenders source confusion.

Were this Panel to permit a party, such as the Respondent here and one which is unrelated to a trademark owner (or its licensee), to incorporate its trademark as a formative element of a URL but with a different gTLD (such as here ".com") from that which the trademark owner utilizes in a domain name for its own site (such as here ".org"), the Panel would be implicitly permitting increased source confusion and trademark dilution to occur. Proper recognition of trademark rights imposes a duty not only on this Panel, but also others like it, to remain ever vigilant against such intrusions on trademark rights intrusions that, if not thwarted in their infancy, would only intensify as additional gTLDs become available, to the detriment of trademark owners and their licensees, and certainly to Internet users. See *MSNBC Cable, LLC v. Tsys.com* D2000-1204 (WIPO December 8, 2000).

Therefore, the Panel finds that the contested domain name <collegesummit.com> sufficiently resembles the Complainant's mark COLLEGE SUMMIT as to cause confusion.

**b. <collegenetsummit.com>**

No doubt exists that the domain name in question, while not absolutely identical to the Complainant's registered mark, COLLEGE SUMMIT, is clearly sufficiently similar to

it as to cause a likelihood of confusion to arise on the part of the relevant consumers of the Complainant and those who were to view the disputed domain name, when and if the Respondent, or any third-party not affiliated with the Complainant to which the Respondent were to transfer the disputed domain name, were to start using the domain name. Such confusion, should it occur, would undoubtedly cause consumers to think that an affiliation exists between the Complainant and the Respondent or its third-party transferee, when, in fact, no such affiliation would exist at all.

The basic differences between the Complainant's mark and this contested domain name are the incorporation of the word "net" between the words "COLLEGE" and "SUMMIT", and inclusion of a gTLD (.com) in the latter.

The Panel views that for confusing similarity to occur between a domain name and a mark, identity, ignoring de minimus differences of the type, i.e., the inclusion of a gTLD, discussed immediately above, is not necessary.

All that is necessary is that the domain name misappropriate sufficient textual components from the mark such that an ordinary Internet user who is familiar with the goods or services distributed under the mark would upon seeing the domain name likely think that owing to the visual and/or phonetic similarity between the mark and the domain name that an affiliation exists between the site identified by that domain name and the owner or licensed user of the mark.

With respect to a test for "confusing similarity", § 5.01[3], page 5-15 of J. Gilson, et al, Trademark Protection and Practice (© 1996, Matthew Bender & Co., Inc.) states:

"When one trademark is said to be 'confusingly similar to another', it is so similar to the other that, when it is used on products the purchasing public is likely to be confused. The term [confusingly similar] is simply another way to express the fact that confusion is likely. "

In assessing whether sufficient similarity exists between two marks, Gilson, at § 5.02[1], states: "If a word trademark sounds similar to the plaintiff's mark courts often find likelihood of confusion, especially if the associated product is typically ordered orally. Visual similarity frequently causes confusion if there is sufficient resemblance in overall appearance." In its seminal decision on the issue, *In re E.I. du Pont de Nemours & Co.* 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973) , the U.S. Court of Customs and Patent Appeals (predecessor to the U.S. Court of Appeals for the Federal Circuit), in its definitive listing of factors to assess in determining whether likelihood of confusion exists or not, enumerated as its first factor: "(1) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression."

In phonetically and visually viewing the contested domain "collegenetsummit" as a whole, as it must be in assessing its similarity to a mark, the Panel believes that the inclusion of the term "net" into the contested domain name does not render that name sufficiently dissimilar to the mark, COLLEGE SUMMIT, as to preclude confusion of Internet users.

Therefore, the Panel finds that the contested domain name <collegenetsummit> sufficiently resembles the Complainant's mark COLLEGE SUMMIT as to cause confusion.

Such confusion, should it occur, would undoubtedly cause Internet users intending to access the Complainant's website, but who reach the Respondent's website through either of the contested domain names, to think that an affiliation of some sort exists between the Complainant and the Respondent or its third-party transferee, when, in fact, no such relationship would exist at all. *See The Pep Boys Manny, Moe and Jack of California v. E-Commerce Today, Ltd.* AF-0145 (eResolution May 3, 2000).

As such, the Panel finds that sufficient similarity exists under paragraph 4(a)(i) of the Policy for each of the contested domain names.

## **2. Illegitimacy**

Based on its federal trademark registration, the Complainant has acquired exclusive rights to use its mark COLLEGE SUMMIT. Furthermore, by virtue of the registration of this mark, the US PTO has implicitly recognized that this mark has acquired appropriate secondary meaning in the marketplace.

The Respondent has yet to provide any basis that would legitimize any claim it has to either of the contested domain names. In fact, it is extremely unlikely that the Respondent can even make such a claim.

The simple reason is that each of the contested domain names includes the Complainant's mark COLLEGE SUMMIT under which the Complainant renders its services and has been doing so for some time. The Complainant has never authorized the Respondent to utilize the mark COLLEGE SUMMIT, nor does the Complainant have any relationship or association whatsoever with the Respondent. Hence, any use to which the Respondent was to put of the COLLEGE SUMMIT mark in connection with the services listed in the corresponding registration would directly violate the exclusive trademark rights now residing in the Complainant.

In light of the above findings, the Panel is not persuaded that the Respondent has any or, based on current facts provided to the Panel, is likely to acquire any legitimate interests in either of the contested domain names, whether on a commercial or non-commercial basis.

In that regard, the Panel finds that the Respondent's efforts in registering the <collegesummit.com> domain name and then using it, as a means to direct Internet users to Respondent's website, addressable through the other contested domain name <collegenetsummit>, does not constitute, under paragraph 4(c) of the Policy, a legitimate non-commercial or fair use without any intent to misleadingly divert consumers or tarnish the trademark or service mark at issue. In fact, the Panel believes such use constitutes just the opposite. Specifically, this use unmistakably evinces in the Panel's view a blatant desire on the part of the Respondent to misleadingly divert Internet users, to the Respondent's site, who clearly attempt to reach the Complainant's site, but have mistakenly entered the gTLD ".com" in lieu of ".org", and/or thus tarnish the Complainant's registered service mark.

The Respondent has put forth no forth proof that would legitimize any possible use it is making or would make for each of the contested domain names. This is particular telling in view of the Respondent's statement in both of its December 7, 2000 emails to the effect that it: (a) expects to discontinue use of both of the contested domain names, though not completely until June 1, 2001 in the case of <collegenetsummit.com>, and (b) intends to transfer that particular domain name to another company, thus indicating

an intent to at least perpetuate (if not exacerbate) the problem which the Complainant now faces (depending on the nature of the particular entity, such as another competitor, to which that name would have been transferred). It is the Panel's unmistakable obligation to intervene, in situations like this where a party signals an intent to engage in future conduct, that, in the absence of such intervention, might well have deleterious effects on both Internet users and the goodwill associated with a trademark.

Furthermore, the Panel is cognizant of the heavy burden that would be placed on complainants if in support of their cases on illegitimacy each of those complainants were to be impressed with a burden of providing detailed proof of any lack of rights or legitimate interests on behalf of their respondents. Such a burden is particularly problematic given that the underlying facts more than not are in exclusive or near exclusive possession and control of the respondents, particularly if they have not in fact made publicly discernible use. As such, the Panel believes that where allegations of illegitimacy are made, particularly as here, when coupled with conduct of respondents that evidences bad faith, it is quite reasonable to shift the burden of proof to each such respondent to adequately show that its use of the contested domain name is legitimate, such as by showing that, in conjunction with the contested domain name, it is making a bona fide commercial offering of goods or services or preparations for such offerings, or non-commercial or fair use. Given the situation now facing the Panel, it is beyond question that the Respondent's conduct here falls far short of meeting this burden. *See Playboy Enterprises International, Inc. and MSNBC Cable, LLC, both cited infra.* Under the present facts, there is simply no proof whatsoever of any such usage.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in any of the contested domain names within paragraph 4(a)(ii) of the Policy.

### **3. Bad Faith**

The Panel is not persuaded that the Respondent chose either of the two contested domain names, both of which contain the Complainant's registered mark COLLEGE SUMMIT, for any reason other than as an attempt to intentionally attract Internet users, for commercial gain, to the Respondent's site by creating a likelihood of confusion with the Complainant's mark COLLEGE SUMMIT as to source, sponsorship, affiliation or endorsement of the Respondent's web site with the Complainant; when, in fact, no such relationship exists. If this was not the case, then what reason would the Respondent have to chose domain names that incorporated the Complainant's registered mark? The Panel believes none. This conduct directly contravenes paragraph 4(b)(iv) of the Policy.

Furthermore, the Panel firmly believes that the Respondent's willful conduct, of registering the contested domain name "collegenetsummit" after receiving notice of the Complainant's mark, also constitutes a pattern of conduct, particularly when viewed in the context of the Respondent's use of the contested domain name "collegesummit.com" to redirect Internet users to the Respondent's web site addressable by former domain name, falling with the strictures of paragraph 4(b)(ii) of the Policy.

Hence, the Panel finds that the Complainant has shown a sufficient basis to establish bad faith registration and use of each of the contested domain names under paragraph 4(a)(iii) of the Policy.

In this connection the Panel notes that in its opinion, the Respondent's actions in registering and now retaining the contested domain name also evince bad faith in violation of the Anti-Cybersquatting provisions of the Lanham Act (15 USC

§ 1125(d)(1) with various factors indicative of 'bad faith' given in 15 USC § 1125(d)(1)(B)(i) though limited by 15 USC § 1125(d)(1)(B)(ii).

Thus, the Panel concludes that the Complainant, even apart from default of the Respondent, has provided sufficient proof of its allegations to establish a prima facie case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

## **7. Decision**

In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the relief sought by the Complainant is hereby granted.

Both of the contested domain names, specifically <collegesummit.com> and <collegenetsummit.com>, are ordered transferred to the Complainant.

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Peter L. Michaelson, Esq.  
Sole Panelist

Dated: January 17, 2001