



## **WIPO Arbitration and Mediation Center**

### **ADMINISTRATIVE PANEL DECISION**

#### **Park Place Entertainment Corporation v. Bowno**

**Case No. D2001-1410**

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

The Complainant is Park Place Entertainment Corporation, a corporation of the State of Delaware, 3930 Howard Hughes Parkway, 4th Floor, Las Vegas, Nevada 89109, U.S.A.

The Respondent is Bowno, 1300 Jarry, Read Dear, Alberta In0 1a3 U.S.A.

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

The contested domain name is <ballysatlanticcity.com>.

The Registrar is Tucows, Inc. (Tucows), 96 Mowat Avenue, Toronto, Ontario M6K 3M1, Canada.

#### **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 and 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") in e-mail form on November 28, 2001, and in hard-copy form with Annexes A-K on December 3, 2001, along with the appropriate payment.

The Complainant's attorney, stated that he separately served, on November 28, 2001, by e-mail, a copy of the Complaint together with a copy of the cover sheet but without

exhibits, on both the Respondent and the Registrar, and, on the same day and together with a copy of the Exhibits, by courier on both the Respondent and the Registrar.

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 30, 2001, the Center requested confirmation from Tucows of information set forth in the Complaint relative to the contested domain name; specifically, contact and registrant information for that domain name, as well as whether Tucows received a copy of the Complaint from the Complainant. The Center also requested Tucows to specify: (a) whether the ICANN Policy applies to the contested domain name, (b) the current status of that domain name, (c) the language of the registration agreement, and (d) whether, through the registration agreement, the registrant has submitted to the jurisdiction at the location of the principal office of the Registrar for court adjudication of disputes concerning or arising from use of the contested domain name.

Collectively, on November 30, 2001, and December 3, 2001, Tucows provided its response to the Center through which Tucows confirmed its receipt of the Complaint, provided contact information pertinent to the contested domain name from its WHOIS database, confirmed that Tucows is the registrar of that name, stated that the Policy is in effect for the contested domain name, stated that the language of the registration agreement is English, and stated that the domain name was then in a "hold" status.

On December 4, 2001, the Center notified the Respondent of the filing of the Complaint, including an indication that the Center was forwarding a complete copy of the Complaint, both in e-mail and in hard-copy form, via courier, to the Respondent (with the latter method forwarding a copy of all the annexes as well). Since the Respondent, having specified its location as being in Alberta which, in spite of the contact information which the Respondent provided and as noted in the Registrar's WHOIS database, was believed to be located in Canada and not the United States, the Center forwarded separate hard-copies of the Complaint, together with the Annexes, to the Respondent's address (to the extent the Respondent provided it to the Registrar and as evidenced in the WHOIS database) in the US and in Canada. The Complaint, and its accompanying documents, and all subsequent communications associated therewith were provided in the preferred manner and to the addresses as mandated by paragraphs 2(a), 2(b) and 4(a) of the Rules. The courier (Federal Express), through its letter dated December 11, 2001, returned both courier shipments which the Center had sent the Respondent as lacking a sufficiently complete address for delivery and requested correction of the addresses. In that regard, the courier expressed its uncertainty as to whether "Alberta" was to refer, in Canada, to a village or province.

Hence, the notification to the Respondent having occurred on December 4, 2001, 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 Tucows, 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 24, 2001, to file its response with the Center and serve a copy of the response on the Complainant.

As of December 24, 2001, the Center had not received any response to the Complaint from the Respondent; hence, the Center, in an e-mail letter dated December 27, 2001, notified the Complainant and the Respondent of the default of the Respondent.

Accordingly, pursuant to the Rules and Supplemental Rules, by letter dated on December 27, 2001 and sent by e-mail on January 11, 2002, the Center contacted the undersigned, Mr. Peter L. Michaelson, Esq., requesting his service as a sole panelist for this dispute. Subsequently, on January 11, 2002, 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 15, 2002, notified the parties of the appointment of Mr. Michaelson as the sole 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 29, 2002.

The language of this proceeding is English.

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

A copy of the WHOIS registration record for the contested domain name appears in Annex A to the Complaint. As indicated on this record, the Respondent registered this name with Tucows on May 27, 2001.

##### **A. The "BALLY'S" Marks**

The Complainant owns numerous United States trademark registrations for the mark "BALLY'S" on which this dispute is partially based (collectively the "BALLY'S" registrations). The Complainant has provided, in Annex G to the Complaint, copies of the registration certificates for some of these marks, of which the following three United States registrations are illustrative. All of these registrations are active and have become incontestable, and predate the registration of the contested domain name.

###### **1) BALLY'S (block letters)**

US registration 1,581,959; registered February 6, 1990

This trademark was registered for use in connection with: "Video and pinball game arcade services" in international class 41. This mark claims first use and first use in inter-state commerce of January 1, 1983.

###### **2) BALLY'S (block letters)**

US registration 1,523,910; registered February 7, 1989

This trademark was registered for use in connection with: "Hotel services" in

international class 42. This mark claims first use and first use in inter-state commerce of December 13, 1979.

3) BALLY'S (block letters)

US registration 1,515,843; registered December 6, 1988

This trademark was registered for use in connection with: "Casino services" in international class 41. This mark claims first use and first use in inter-state commerce of December 13, 1979.

## **B. The Complainant and its Activities**

The Complainant provides gaming services, hotel services, and entertainment services through operation of its "BALLY'S" casinos and hotels, one of which is located in Atlantic City, New Jersey, US and is known as "BALLY'S ATLANTIC CITY" (the "Casino"). The Complainant uses its "BALLY'S" registrations and the term "BALLY'S ATLANTIC CITY" (collectively the "Marks") to designate and promote its casino/hotel services. The Complainant states that the Marks are firmly associated with the Complainant.

The "BALLY'S" casino and hotel in Atlantic City opened in 1979. That casino/hotel was originally known as "BALLY'S PARK PLACE", but on or about April 1, 2001, its name was changed to "BALLY'S ATLANTIC CITY". The Complainant began using the name and mark "BALLY'S ATLANTIC CITY" on banners on its Atlantic City casino/hotel and in advertising for that particular casino/hotel on or about April 1, 2001. Since that time, the Complainant has been using the "BALLY'S ATLANTIC CITY" name and mark in brochures, pamphlets and advertisements that appeared in various periodicals.

Since January 2001, in excess of 650,000 people have stayed at the Complainant's casino/hotel in Atlantic City. Further, millions more have visited the Complainant's Atlantic City casino/hotel each year but without staying overnight. Consequently, the "BALLY'S ATLANTIC CITY" casino/hotel has enjoyed and continues to enjoy considerable success. That Casino has also received a high level of publicity and commendation from various sources. The Complainant has provided representative samples of, specifically directory listings for this Casino, in Annex C to the Complaint. The Complainant also operates popular casino/hotels under the "BALLY'S" mark in Las Vegas, Nevada; New Orleans, Louisiana; and Tunica, Mississippi.

Since on or about January 1, 2000, the Complainant has had a presence on the Internet in the form of a website devoted to the Casino at <ballysac.com>. The Complainant has provided a copy of a UWHOIS printout dated October 19, 2001, for the domain name <ballysac.com> in Annex D to the Complaint. A printout of a home page of that website, i.e., <ballysac.com/main.htm>, has been provided in Annex E to the Complaint. A printout of a page from that website relating to gaming activities, i.e., <ballyac.com/gaming.htm>, has been provided in Annex F to the Complaint. That website has continuously displayed the "BALLY'S" mark since January 1, 2000, and has continuously displayed the "BALLY'S ATLANTIC CITY" mark since on or about April 1, 2001. From January 2000, through September 2001, there were 1,391,088 visits to that website.

As a result of the Complainant's efforts, the Marks have gained wide recognition and have become very well-known prior to the Respondent's registration of the contested domain name on May 27, 2001.

### **C. The Respondent and its Activities**

The Respondent is using the contested domain name for a gambling portal that offers numerous links and banner advertisements to gambling websites, gambling cash-giveaways, and the like. Copies of printouts from the Respondent's <ballysatlanticcity.com> website are provided in Annexes H and I to the Complaint.

At the top of a home page of the Respondent's "BALLY'S ATLANTIC CITY" website, a heading "Bally's Atlantic City" appears. Directly beneath that heading, the following paragraph appears -- as indicated by the copy of the Respondent's home page provided in Annexes H and I:

"Towering over Atlantic City's world-famous Board walk, Ballys Atlantic City truly is a dazzling destination with an inviting array of activities, award-winning restaurants, an action-filled casino open 24 hours a day, and home to The Wild Wild West Casino and Coyote Kate's Slot Parlor. From east to west, it's the ultimate place to stay and play!\* Indulge in our version of America the Beautiful... with the loosest slot machines, the greatest variety of video poker, and the highest table games limits on Blackjack, Mini Baccarat, Craps, Poker and Roulette. Bally's Atlantic City partially stands on the site of the former Marlborough and Blenheim Hotels. The Dennis Hotel, an historic structure which dates back to 1860, has been completely restored and exists today as the hotel portion of Bally's Atlantic City. Guests are offered the choice between traditional accommodations in the hotel section and more contemporary rooms and suites in Bally's Hotel Tower."

According to the Complainant, this paragraph actually refers to and describes the Complainant's "BALLY'S ATLANTIC CITY" casino/hotel. In that regard, the first two sentences of that paragraph are identical to the text on a home page, i.e., <ballysac.com/main.htm>, of the Complainant's website, i.e., <ballysac.com>, devoted to its "BALLY'S ATLANTIC CITY" casino/hotel. A copy of that home page is provided in Annex E to the Complaint. The last three sentences of that paragraph are identical to text appearing on a page of the Complainant's <ballysac.com> website relating to accommodations, i.e., <ballysac.com/accom.htm>. A printout of that web page has been provided in Annex J to the Complaint.

If an Internet user clicks on the link "Wild Wild West Casino and Coyote Kate's Slot Parlor" in the above paragraph on the Respondent's home page, the user is then taken to <ballysac.com/wild\_west.htm>, which is a web page, on the Complainant's website, describing THE WILD WILD WEST CASINO and COYOTE KATE'S SLOT PARLOR. Those are casinos that are part of the Complainant's "BALLY'S ATLANTIC CITY" casino/hotel. A printout of the <ballysac.com/wild\_west.htm> web page has been provided in Annex K to the Complaint.

As indicated in the print-out in Annex I, the Respondent's website contains several banners with links to other gambling websites. The Complainant states that, on information and belief, the Respondent receives a fee each time an Internet user clicks on one of those links and is taken to one of those other gambling websites.

As shown in the printout from the WHOIS database (see Annex A), the Respondent has provided an address for itself and its contacts that purports to be in Alberta and in the US; however, the province of Alberta is situated in Canada. The address which the Respondent provided for itself and its contacts purports to be in "Read Dear, Alberta." There is no town called "Read Dear" in Alberta, although there is a town called "Red Deer" in Alberta. The Respondent has provided a postal code for its technical contact (110 1n0) that is different from the zip code it has provided for itself and its administrative and billing contacts (1n0 1a3), even though the street address for itself and all three contacts is the same.

The Respondent provided as the telephone number for its administrative and billing contacts: 654-999-0987. However, the Complainant states that, according to directory assistance, there is no such area code as 654. The Respondent also provided as the telephone number for the technical contact: 616-999-2134. The Complainant states that, according to directory assistance, while the area code 616 is in Michigan, there are no phone numbers beginning with 999 in area code 616.

The Respondent's name and the last name of the administrative and billing contact is Bowno, but the last name of the technical contact is Bwono. The administrative and billing contact is given as Terry Bowno with an e-mail address of [jarry@bigheads.ca](mailto:jarry@bigheads.ca) while the technical contact is given as Barry Bwono with an e-mail address of [jerry@bigheads.ca](mailto:jerry@bigheads.ca).

## **5. Parties' Contentions**

### **A. The Complainant**

#### **i. Similarity**

The Complainant takes the position that the contested domain name contains the Complainant's registered mark "BALLY'S" and combines that mark with the location of one of the Complainant's casino/hotels.

Hence, the Complainant contends that Internet users are likely to believe that the contested domain name, which the Respondent is using to resolve to a website devoted to gambling, is related to, associated with, or authorized by the Complainant, when, in fact, no such relationship exists. The Complainant contends that the Respondent registered the contested domain name precisely because of its association, in the minds of Internet users, with the Complainant's "BALLY'S ATLANTIC CITY" mark; thus causing user confusion as to source, sponsorship, affiliation or endorsement between the Respondent's website and the Complainant; hence, satisfying the confusing similarity requirement in paragraph 4(a)(i) of the Policy.

#### **ii. Legitimacy**

The Complainant contends that the Respondent has no rights or legitimate interests in the contested domain name pursuant to paragraph 4(a)(ii) of the Policy.

Specifically, the Complainant contends that the Respondent cannot claim or show any rights to the contested domain name that are superior to the Complainant's rights in the Marks, as evidenced by the Complainant's prior and well-known use. Nor, as the Complainant contends, can the Respondent demonstrate that it was unaware of the

Marks at the time the Respondent registered the contested domain name.

Furthermore, the Complainant contends that the Respondent has no rights of its own in the term "BALLY'S ATLANTIC CITY", since the Respondent's use of that term is clearly intended to refer to the Complainant's casino/hotel operating under that name.

The Complainant also contends that the Respondent is not commonly known by the contested domain name -- particularly since the Respondent's website clearly refers to the Complainant's casino/hotel of the same name.

Moreover, the Complainant implicitly states that there is no relationship between the Complainant and the Respondent that would give rise to any license, permission, or authorization by which the Respondent could own or use any of the Marks.

Hence, Internet users, who reach the Respondent's website and in view of the fame associated with the Complainant's "BALLY'S ATLANTIC CITY" and the "BALLY'S" Marks, would inevitably believe that this site was maintained by, sponsored by, affiliated with, or endorsed by the Complainant -- when no such connection exists between the parties.

Thus, the Complainant concludes that the Respondent has rights or legitimate interests in the contested domain name pursuant to paragraph 4(a)(ii) of the Policy.

### **iii. Bad Faith**

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

Specifically, the Complainant contends that the only reason why the Respondent wanted to use the contested domain name ---which the Respondent registered well after the Complainant had established rights in the Marks for casino services --- for a gambling website was because it knew of the Complainant's famous "BALLY'S ATLANTIC CITY" mark and wanted to use that mark in its domain name in order to cause user confusion and, by so doing, divert web traffic away from the Complainant's site to its own gambling website. In that regard, the Complainant further contends that the Respondent is securing revenue (what it commonly known as "click-through" revenue), as a result of those users who visit its site, hence financially benefiting from the diversion.

Thus, the Complainant contends that the Respondent's registration and use of the contested domain name evidence bad faith in violation of paragraph 4(b)(iv) of the Policy.

The Complainant also contends that the Respondent's bad faith is shown by the Respondent having provided erroneous contact information to the Registrar in an apparent effort to maintain the Respondent's identity and location in secrecy, hence preventing the Respondent from being identified or found.

Therefore, the Complainant concludes that the Respondent's conduct in registering and using the contested domain name constitute bad faith registration and use under paragraph 4(a)(iii) of the Policy.

## **B. The 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.

### **i. Similarity**

The Panel finds that confusion would likely arise as a result of the Respondent's current use of the contested domain name.

In that regard, the contested domain name includes the Complainant's registered mark "BALLYS" which has clearly acquired requisite secondary meaning and distinctiveness as a result of the Complainant's apparently continuous and rather extensive use since 1979 in conjunction with its hotel and casino services.

There can be no question here that the contested domain name, by virtue of its inclusion of the term "BALLYS", as currently used by the Respondent or by a third-party to which the Respondent might transfer that name, will likely cause user confusion.

Even apart from the rights inherent in its U.S. trademark registrations, the Complainant owns common law rights in the mark "BALLY'S ATLANTIC CITY", under which the Complainant can also base its claim under the Policy. In that regard, paragraph 4(a) of the Policy does not restrict its reach only to registered marks, but, has now become a well-established principle through numerous panel decisions, also encompasses unregistered common law marks pursuant to national and/or state law that governs the recognition of those marks and the Respondent's actions in connection therewith. Such marks are indeed recognized and subject to protection under § 43 of the Lanham Act (15 U.S.C. §1125(a)) which states, in pertinent part: "Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce *any word, term, name, symbol, or device*, or any combination thereof ... (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person ... shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act." [emphasis added] See, e.g., *Meijer, Inc. v. Porksandwich Web Services* FA 97186 (Nat. Arb. Forum July 6, 2001), *MPL Communications v LOVEARTH.net* FA 97086 (Nat. Arb. Forum June 4, 2001); *MPL Communications v IWebAddress.com* FA 97092 (Nat. Arb. Forum June 4, 2001).

Given this, this Panel cannot conceive of any situation where such confusion would not likely arise as a result of the Respondent, or any third-party not affiliated with the Complainant to which the Respondent were to transfer the contested domain name, using that name in conjunction with casino/hotel services similar to those provided by the Complainant. In fact, the Respondent, in posting a website that identically copies

language from the Complainant's website and actively links to pages within the Complainant's website is clearly and intentionally causing and exploiting that very confusion for its own pecuniary gain.

Such confusion would undoubtedly cause Internet users intending to access the Complainant's website, but who reach a website 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. See *Meijer, Inc. v. Porksandwich Web Services*, cited supra, *MPL Communications v LOVEARTH.net* cited supra; *MPL Communications v IWebAddress.com* also cited supra; *American Home Products Corp. v. Malgioglio* D2000-1602 (WIPO February 19, 2001); *Surface Protection Industries, Inc. v. The Webposters* D2000-1613 (WIPO February 5, 2001); *Dollar Financial Group, Inc. v. VQM NET* FA 96101 (Nat. Arb. Forum January 25, 2001); *eBAY Inc. v. G L Liadis Computing, Ltd, and John L. Liadis* D2000-1463 (WIPO January 10, 2001); *Treeforms, Inc. v. Cayne Indus. Sales Corp.* FA 95856 (Nat. Arb. Forum December 18, 2000) and *The Pep Boys Manny, Moe and Jack of California v. E-Commerce Today, Ltd.* AF-0145 (eResolution May 3, 2000).

It is simply inconceivable to the Panel that an Internet user familiar with the Complainant and particularly its facility in Atlantic City, would think that a website accessible by <ballysatlanticcity.com> was not affiliated in some manner with the Complainant, particularly given the wide-spread notoriety of the Marks.

Therefore, the Panel finds that the contested domain name <balleysatlanticcity.com> sufficiently resembles the Complainant's Marks as to cause confusion; hence, the Complainant has shown sufficient similarity between the Marks and the contested domain name under paragraph 4(a)(i) of the Policy.

## **ii. Illegitimacy**

Based on its federal trademark registrations, the Complainant has acquired exclusive rights to use its "BALLY'S" marks. Furthermore, by virtue of the registration of these marks let alone their incontestable status, the US Patent and Trademark Office has implicitly recognized that each such 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 the contested domain name. In fact, it is extremely unlikely that the Respondent can even make such a claim.

The simple reason is that the contested domain name includes the Complainant's mark "BALLY'S" under which the Complainant provides its casino/hotel services and has been doing so for over 20 years. The Complainant has apparently never authorized the Respondent to utilize any of its marks, nor does the Complainant have any relationship or association whatsoever with the Respondent. Hence, any use to which the Respondent were to put of any of the "BALLY'S" marks, including "BALLY'S ATLANTIC CITY" (or the like) in connection with the services listed in any of the Complainant's registrations would directly violate the exclusive trademark rights now residing in the Complainant. Consequently, inasmuch as the Respondent is not now and has never been commonly known by the mark "BALLY'S", the Respondent is in direct contravention of paragraph 4(c)(ii) of the Policy. See, e.g., *Jones Apparel Group, Inc. v. Robin Sousa* D2001-1308 (WIPO December 21, 2001), *America Online,*

*Inc. v. Curtis Woods* D2001-0555 (WIPO June 13, 2001), *Treeforms, Inc. v. Cayne Industrial Sales, Corp.* cited *supra*, *MSNBC Cable, LLC v. Tsys.com* D2000-1204 (WIPO December 8, 2000), and *Cabletron Systems, Inc. v. DLS Enterprises* D2000-0571 (WIPO August 18, 2000).

Further, it is eminently clear to this Panel that the Respondent, in using the contested domain name that incorporates verbatim the name of the Complainant's well-known casino/hotel in Atlantic City, let alone the Complainant's registered "BALLY'S" mark, is intentionally seeking to exploit user confusion by diverting Internet users away from the Complainant's site to its own website for its own pecuniary gain. This gain is in the form of so-called "click through" or other similar revenue measured by a number of user visits. This directly contravenes paragraph 4(c)(iii) of the Policy.

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 rights or legitimate interests in the contested domain name under any provision of paragraph 4(c) of the Policy.

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

### **iii. Bad Faith**

The Panel firmly believes that the Respondent's actions constitute bad faith registration and use of the contested domain name.

Internet site naming conventions are such that it is very plausible to contemplate that Internet users who seek the Complainant's casino/hotel, particularly those who have seen the Complainant's common law mark, would form a domain name from its BALLY'S ATLANTIC CITY mark.

Specifically, this Panel believes that it is highly likely that those users would simply form a domain name by appending a top level domain, e.g., <.com>, to the Complainant's common law mark "BALLY'S ATLANTIC CITY" to form <ballysatlanticcity.com> (which happens to be the contested domain name) and then enter that name into his(her) browser to reach what those users would expect to be the Complainant's website. The Respondent, presumably anticipating such user proclivity, intentionally chose that name as the address for its competing complaint site. As a result, those users intent on reaching the Complainant's site are instead diverted, through no fault of their own, to the Respondent's casino site through which the Respondent gains "click-through" revenue as a result of each such user. Moreover, any of these users may then decide either not to go to the Complainant's website or not to do business with the Complainant. There can be no doubt of the Respondent's calculated intent to cause user confusion and, by doing so, injure the Complainant's casino/hotel business by diverting those users away from doing business with the Complainant for the Respondent's own financial benefit. See *Meijer, Inc. v. Porksandwich Web Services*, cited *supra*.

In the Panel's mind, these actions are sufficient to establish bad faith registration and use of the contested domain name under the paragraph 4(b)(iv) of the Policy.

Furthermore, an obligation exists on each domain name registrant, under its registration agreement, to not only provide its registrar with current, complete and accurate contact

information but also to update that information to reflect any subsequent changes in order that the information, accessible through the WhoIs database, is always current, complete and accurate. Such an obligation was directly imposed on the present Registrant by virtue of paragraph 3 of its registration agreement, a complete copy of which is provided in Exhibit B to the Complaint. The underlying reason for this obligation is quite simple: a complainant needs a current, complete and accurate address at which it can serve a domain name registrant with legal process and the only way to obtain such an address is from the registrant itself.

This Panel will not tolerate any action by a domain name registrant through which that registrant intentionally provides its registrar with erroneous contact information and makes no attempt thereafter to correct it. The Panel views such action as a deliberate, continuing attempt calculated to conceal that registrant's identity and location, and thereby frustrate service of process -- which amounts to nothing less than a naked attempt to obstruct application of the Policy.

Here, the Respondent clearly exhibited such conduct by having initially provided the Registrar with what is patently erroneous and incomplete contact information and apparently then having totally failed to make any subsequent attempt whatsoever to correct that information. Consequently, the Panel finds that such actions, which constitute a direct breach of the registration agreement with that breach continuing as long as the Registrant failed to take any corrective action, clearly evince bad faith registration and use under the general bad faith provisions of paragraph 4(a)(iii) of the Policy.

Thus, the Panel concludes that the Complainant 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**

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel now grants the relief sought by the Complainant.

The contested domain name, specifically <ballysatlanticcity.com>, is ordered transferred to the Complainant.

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Peter L. Michaelson, Esq.  
Sole Panelist

Dated: January 29, 2002