



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Pelmorex Communications Inc. v. weathernetwork

Case No. D2004-0898

1. The Parties

The Complainant is Pelmorex Communications Inc., Mississauga, Ontario, Canada, represented by Bereskin & Parr, Canada.

The Respondent is weathernetwork, Administrator Domain, Georgetown Grand Cayman GT, United Kingdom of Great Britain and Northern Ireland.

2. The Domain Name and Registrar

The disputed domain name <weathernetwork.com> is registered with Address Creation.

3. Procedural History

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy (the "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 Rules for Uniform Domain Name Dispute Resolution Policy (the "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 (the "Supplemental Rules").

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") in email form on October 28 2004, and in hard copy form on November 1, 2004, along with Annexes 1-21.

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 Complaint, the Center, in accordance with Paragraph 5 of the Supplemental Rules, determined whether that Complaint fully complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on October 29, 2004, the Center requested confirmation from the Registrar of information set forth in the Complaint relative to the disputed domain name; specifically, contact and registrant information for that domain name, as well as whether the Registrar received a copy of the Complaint from the Complainant. The Center also requested the Registrar to specify: (a) whether the Policy applies to the disputed domain name, (b) whether the registrant has submitted, in its registration agreement, to the jurisdiction at the location of the principal office of the registrar for court adjudication of disputes concerning or arising from the use of the domain name, (c) the language of the registration agreement, and (d) whether the domain name will remain "locked" during the proceeding.

Subsequently, on November 15, 2004, the Registrar provided its response to the Center through which the Registrar specified name and contact information pertinent to the disputed domain name, to the extent present in its WhoIS database, confirmed that Address Creation is the registrar of that name and stated that: it had received a copy of the Complaint, the Policy applied to the disputed domain name, the language of the underlying registration agreement for the name is English and the name was then held in an "active but restricted from being transferred" status. The Registrar also informed the Center that the Respondent, through the registration agreements, had submitted to the jurisdiction at the location of the principal office of the Registrar for court adjudication of disputes concerning or arising from the use the disputed domain name.

On November 16, 2004, 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, by courier, facsimile and email (the latter two without the Exhibits), to the Respondent. Specifically, the Center separately provided its notice along with the Complaint, by email, to the Respondent's domain name registrant, technical, administrative and zone contacts as set forth in the WhoIS record for the disputed domain name. 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), 2(b) and 4(a) of the Rules.

Hence, the notification to the Respondent having occurred on November 16, 2004, under Paragraph 4(c) of the Policy, this administrative proceeding is deemed to have commenced on that date.

Having reviewed the Complaint and all preceding and succeeding correspondence between the Center and the Registrar, 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 6, 2004, to file its Response with the Center and serve a copy of the Response on the Complainant.

As of December 7, 2004, the Center had not received a substantive Response to the Complaint from the Respondent; hence, the Center, in an email letter dated December 7, 2004, notified the Complainant and Respondent of the default of the Respondent.

Accordingly, pursuant to the Rules and Supplemental Rules, by e-mail letter dated

December 13, 2004, the Center contacted the undersigned, Mr. Peter L. Michaelson, requesting his service as a Sole Panelist for this dispute. Subsequently, 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 December 14, 2004, notified the parties of the appointment of Mr. Michaelson as sole panelist.

Based on the deadline set forth in Paragraph 15 of the Rules, a decision was to be issued by the Panel to the Center on or before December 28, 2004.

This dispute concerns one domain name, specifically: <weathernetwork.com>.

The language of this proceeding is English.

4. Factual Background

A copy of the WhoIS registration records for the disputed domain name appears in Annex 1 to the Complaint. As indicated on these records, the Respondent registered the disputed domain name on May 13, 2002.

A. Complainant's "WEATHER NETWORK" Marks

The Complainant owns various trademark registrations, both in Canada and in Europe, for the its marks that contain the term "THE WEATHER NETWORK", either by itself, or with another term or logo, (collectively the "WEATHER NETWORK" Marks) and on which this dispute is based. In Annex 4 to the Complaint, the Complainant has provided copies of its registrations. They are as follows:

- (a) THE WEATHER NETWORK (stylized with logo)
Canadian registration 449,541; registered November 3, 1995

This mark was registered for use in connection with "operation of a television broadcasting service providing weather forecasts, weather information, and weather related information such as road, ski, air quality, ultraviolet and environmental reports", with use of the mark with these services commencing in Canada on September 1, 1988, and "provision of weather forecasts, weather and weather related information to clients", with first use of the mark with these latter services commencing in Canada as of May 1, 1990.

- (b) THE WEATHER NETWORK (block letters)
Canadian registration 478,515; registered July 15, 1997

This mark was registered for use in connection with "operation of a television broadcasting service providing weather forecasts, weather information, and weather related information such as road, ski, air quality, ultraviolet and environmental reports", with use of the mark with these services commencing in Canada at least as early as 1989, and "provision of weather forecasts, weather and weather related information to clients" with first use of the mark with these latter services commencing in Canada on May 1, 1990.

- (c) THE WEATHER NETWORK and MétéoMédia (stylized with logo)
Canadian registration 505,853; registered December 22, 1998

This mark was registered for use in connection with “operation of a television broadcasting service providing weather forecasts, weather information, and weather related information such as road, ski, air quality, ultraviolet and environmental reports”, and “provision of weather forecasts, weather information and weather related information to clients by means of prerecorded audio recordings, printed reports, telephone, facsimile transmission, internet, or on-line computer services”, with first use of the mark in conjunction with all these services commencing in Canada on June 1, 1996.

- (d) THE WEATHER NETWORK (stylized with logo)
European (CTM) registration 1201649; registered August 18, 2000

This mark was registered for use in connection with “prerecorded audio discs, prerecorded video discs; hats, t-shirts and belts; and radio, television and internet broadcasting services”.

By virtue of having used its “THE WEATHER NETWORK” mark since 1988, in conjunction with its weather-related services, the Complainant also claims common law rights in that mark under Canadian trademark law. The Complainant has provided, in Annex 5, copies of certain of its current promotional materials that bear this mark.

B. The Parties and their Activities

The Complainant is a wholly-owned subsidiary of Pelmorex Inc, the parent company that owns and operates the broadcasting license for the network “The Weather Network” and its French sister television network, “MétéoMédia”. These two networks are Canada’s only English and French specialty channels devoted to the weather. Pelmorex Inc., itself and through its subsidiaries, including the Complainant, offer a wide range of weather-related products, services and multimedia applications to a number of consumer and commercial entities. The Complainant is the leading Canadian-based weather forecast provider. The Complainant also provides international weather forecasts for, among other areas, the United States, Asia, Europe and the Caribbean (with its Caribbean forecasts including the Grand Caymans where the Respondent is located) and consequently has international exposure in all of those areas.

The television network “The Weather Network” and its French sister network “MétéoMédia”, deliver weather information to viewers 24 hours a day, 365 days a year, with local forecasts broadcast every ten minutes on the 10s, and reach 8.6 million households representing 94 percent of all Canadian cable and satellite subscribers, making those networks among the most widely distributed television services in Canada. In December 2003, The Weather Network was ranked Number 1 with Canadians for best weather forecasts.

In addition to television, the Complainant’s weather forecasting services are available at web sites accessible through <theweathernetwork.com> and <thewearthernetwork.ca>. The Complainant’s site receives a monthly average of 38 million page views and 2.2 million unique (non-duplicated individual) users and is apparently rather popular in Canada.

The Complainant’s sister-company Pelmorex Media Inc., and also a wholly-owned subsidiary of Pelmorex Inc., owns several other domain names, specifically: <theweathernetwork.ca>, <theweathernetwork.info> and <weathernetwork.ca>, all of which are actively in use and re-direct Internet users to the Complainant’s web site at

“theweathernetwork.com”.

The Complainant has acquired a reputable position in the marketplace in the weather forecast industry -- as indicated in a copy of a press article provided in Annex 10 the Complaint -- and continues to be a significant player in that industry both in Canada and internationally. The Complainant’s advertising revenue from its “www.theweathernetwork.com” web site is significant, and for the 2004 fiscal year (ending in August 2004) amounted to approximately two million Canadian dollars.

When the Complainant first became aware of the disputed domain name, its counsel conducted a search of WhoIS records, through CheckDomain.com, for the corresponding registration record. This search revealed, as indicated in the registration record provided in Annex 2 to the Complaint, that the registrant’s name was Modern Limited – Cayman Web Development (“Modern Limited”). This registrant was a respondent in various other domain name disputes, including, for example: *WeddingChannel.com Inc. v. Modern Limited – Cayman Web Development*, FA271153 (National Arbitration Forum, September 9, 2004), *Microsoft Corporation v. Modern Limited – Cayman Web Development*, WIPO Case No. D2003-0919 (January 13, 2004); *Caesars Entertainment, Inc. v. Modern Limited – Cayman Web Development*, WIPO Case No. D2004-0267 (May 28, 2004); *Societe des Hotels Meridien v. Modern Limited – Cayman Web Development*, WIPO Case No. D2004-0321 (June 14, 2004), *The Fresh Market, Inc. v. Modern Limited-Cayman Web Development a/k/a/ Cayman Trademark Trust*, Claim Number FA0310000203205 (December 4, 2003) and *TM Acquisition Corp. v. Sign Guards*, FA132439 (National Arbitration Forum, December 31, 2002).

The Complainant has provided, in Annex 14 to the Complaint, a hard-copy printout of the homepage of the Respondent’s “www.weathernetwork.com” web site as it appeared on February 6, 2004, and as obtained from the <http://web.archive.org> web site (which provides an archive of web pages).

On July 22, 2004, counsel for the Complainant sent a letter (a copy of which appears in Annex 15 to the Complaint), by email, to the original registrant of the disputed domain name, Modern Limited, based on the contact information then provided through counsel’s WhoIS search. Through the letter, the Complainant requested that the Respondent agree to promptly transfer the disputed domain name to the Complainant. The Complainant’s counsel received no response. On August 17, 2004, Counsel sent a follow-up letter (a copy of which appears in Annex 16 to the Complaint) to the Respondent indicating that: (a) it had not received any response to its prior letter, and (b) would proceed with preparing a UDRP complaint against Modern Limited. Counsel failed to receive any response to this letter as well.

Subsequent to the date on which the Respondent received the Complainant’s July 22nd letter, the Respondent changed the home page of its web site accessible at <weathernetwork.com>, from that which was indicated in Annex 14 to the Complaint, to one (a hard-copy printout of which appears in Annex 17 to the Complaint) which, at first glance, appears to provide weather forecasts by listing icons on its home page captioned “Local Weather”, “Weather Forecast”, “Weather”, “Weather Network” and “Weather Channel”. On close inspection, none of these icons directly leads to weather forecast information. Instead, these icons link to advertisements for third party services and to other web sites, some of those sites are weather-related (e.g. “Yahoo! Weather” and “CNN.com Weather”, several of which are competitors of the Complainant) and others, such as sites for hotel reservations or holiday package reservation services, are not. The Respondent’s web site provides no information about the weather despite the

fact that the disputed domain name contains the terms “weather” and “network”, and the icon titles denote weather-related information.

While preparing the Complaint, the Complainant’s counsel checked the status of the registration of the disputed domain name on the WhoIS database from WebNames.ca. Through doing so, counsel discovered that the registration (see Annex 1) then appeared in the name of “weathernetwork”, located in Georgetown, Grand Cayman. However, despite the change in name, the fax number of record had not changed and was still the same fax number as originally recorded when the registration appeared under the name Modern Limited. Hence, while the registrant’s name of record changed, the disputed domain name did not actually appear to have changed ownership.

5. Parties’ Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant contends that the disputed domain name is confusingly similar to the Complainant’s “WEATHER NETWORK” Marks.

Specifically, the Complainant states that this name is nearly, if not completely, identical in appearance, sound, and meaning to the Complainant’s “WEATHER NETWORK” Marks. Specifically, the name contains all of the distinctive word elements of the Marks, namely the combination of the words “weather network”, and excludes only the non-distinctive part of the Complainant’s trademark, namely the generic word “the”.

Further, the Complainant contends that the disputed domain name is confusing similar to the Complainant’s “WEATHER NETWORK” Marks, particularly in light of the nature of the Respondent’s services offered through its web site. In that regard, the Respondent is using the name in association with, among other aspects, on-line weather-related services. These are services which the Complainant has offered and continues to offer in association with its “WEATHER NETWORK” Marks and related domain names well prior to the registration of the disputed domain name.

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

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

First, the Complainant contends that the Respondent’s interest in the name is merely to exploit the goodwill inherent in the Complainant’s Marks by attracting Internet users to the Respondent’s web site at “www.weathernetwork.com” and by doing so obtain advertising revenue by posting links to other sites.

In addition, the Complainant contends that the Respondent has not used, or made demonstrable preparations to use the disputed domain name in conjunction with a *bona fide* offering of goods or services, or for a legitimate non-commercial use -- as evidenced by the “superficial” icons on its web site, nor does the Respondent appear to

have become commonly known by the name “Weather Network”. With respect to the any such *bona fide* usage, the Complainant contends that the Respondent is merely using the disputed domain name to confuse Internet users and, through doing so, obtain advertising revenue by re-directing Internet users, otherwise seeking the Complainant’s web site, to, among other sites, third-party web sites provided by the Complainant’s competitors. Hence, this use does not constitute preparations for a *bona fide* offering of goods or services through the disputed domain name. As to the latter, the Complainant states that, through searching conducted by its counsel (a copy of the results of which appear in Annex 18 to the Complaint and which were carried out on September 21, 2004, through the CD Name Search CD-ROM service), its counsel was unable to locate any trademark applications or registrations in Canada or the United States, by the Respondent, of the mark “WEATHER NETWORK”. The Canadian search merely lists the Complainant’s Canadian WEATHER NETWORK Marks.

The Complainant further contends that the Respondent has not become legitimately known as “weathernetwork“, and that the recent name change is merely an attempt to conceal the Respondent’s identity and its corresponding record of domain name disputes decided against Modern Limited (citing to, e.g., *Microsoft Corporation v. Modern Limited – Cayman Web Development*, WIPO Case No. D2003-0919, (January 13, 2004); *Caesars Entertainment, Inc. (“CEI“) v. Modern Limited – Cayman Web Development*, WIPO Case No. D2004-0267 (May 28, 2004); and *Societe des Hotels Meridien v. Modern Limited – Cayman Web Development*, WIPO Case No. D2004-0321 (June 14, 2004)). The Complainant states that:

“Modern Limited’s pattern of using and registering domain names which reflect well-known trademarks of others, without legitimate interest and in bad faith have been well documented. In one of many recent domain name decisions decided against Modern Limited, the original name of record on the Respondent’s registration of the Domain Name, the panelist stated: ‘The history of the Respondent does not show the registration of generic domain names which can be said to describe the business that the Respondent is in, but appears to indicate domain name speculation and exploitation for commercial gain on a grand scale.’: *The Fresh Market, Inc. v. Modern Limited-Cayman Web Development a/k/a/ Cayman Trademark Trust*, Claim Number FA0310000203205 (December 4, 2003).“

The Complainant also contends that the Respondent’s change of name from Modern Limited to “weathernetwork” does not reflect any legitimate interest but rather is a “mere attempt by an ‘experienced’ respondent of domain name dispute proceedings to evade the consistent findings against it“.

Additionally, the Complainant contends that the Respondent was unquestionably aware of the Complainant’s WEATHER NETWORK Marks and the Complainant’s rights therein.

Lastly, the Complainant states that the Respondent is not a licensee of the Complainant, and the Complainant has neither consented to nor authorized the Respondent’s use or display of the “WEATHER NETWORK” Marks in any manner.

(iii) Registered and Used in Bad Faith

The Complainant contends that, for various reasons, the Respondent has registered and is now using the disputed domain name in bad faith.

First, the Complainant contends that the Respondent has used and registered that name to cause user confusion with respect to the Complainant's WEATHER NETWORK Marks, and, by so doing, attract traffic to its own web site through which the Respondent obtains third-party advertising revenue and commercially benefits thereby. This, in turn, disrupts the Complainant's business and ultimately causes it injury.

The Complainant points to prior administrative panel decisions through which such conduct by this same Respondent has consistently and frequently been found to be neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use. See *WeddingChannel.com Inc. v. Modern Limited – Cayman Web Development*, cited *supra* (finding that the Respondent's use of <theweddingchannel.com> to redirect Internet users to a web site that features sponsored links offering the same types of wedding-related services that complainant offers did not constitute as a bona fide offering of goods or services), and *TM Acquisition Corp. v. Sign Guards*, also cited *supra* (finding that the Respondent's use of complainant's marks to divert Internet users to a web site which displayed a series of links, some of which were links to sites of complainant's competitors, was not a bona fide offering of goods or services).

Further, the Complainant asserts above that the Respondent was very likely already aware of the Complainant's "WEATHER NETWORK" Marks prior to registering (or accepting the registration from Modern Limited of) the disputed domain name. In that regard, the Complainant's counsel, through its July 22nd letter to the Respondent, formally placed the Respondent, or its predecessor-in-title, on notice of the Complainant's trademark rights and objections.

Lastly, the Complainant contends that the Respondent registered the disputed domain name in order to prevent the Complainant from reflecting its mark in a corresponding domain name and also appears to have engaged in a pattern of such conduct.

Therefore, the Complainant concludes that the Respondent's conduct constitutes bad faith registration and use under paragraph 4(a)(iii) of the Policy.

B. Respondent

The Respondent failed to file any 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.

A. Identical or Confusingly Similar

Without question, the Panel finds that confusion is likely to arise as a result of the Respondent's use of the disputed domain name.

No doubt exists that the disputed domain name is, for all practical purposes, identical to the Complainant's mark "THE WEATHER NETWORK". The difference between the

name and that mark is simply the deletion of the article “the“ from the mark with the formative portion of the mark, i.e. the term “WEATHER NETWORK”, then being followed by the generic top level domain (gTLD) “.com” These differences are so utterly de minimus as to have absolutely no affect whatsoever on ameliorating any user confusion that results and will continue to result from any use which the Respondent makes of that name as an address of its web site. See, e.g., *Lane-Labs USA, Inc. v. Powell Productions*, NAF Case No. FA 155896 (July 1, 2003).

Moreover, this outcome is accentuated inasmuch as the Complainant owns and actively uses the domain names <theweathernetwork.com>, <theweathernetwork.ca>, <theweathernetwork.info> and <weathernetwork.ca>, all of which, like the disputed domain name, include the term “weathernetwork“.

Hence, it is quite foreseeable, given widely known naming conventions currently in use on the Internet, that those Internet users, particularly in Canada, who seek on-line weather-related information from the Complainant may well be inclined, if only out of sheer inadvertence, to form a domain name containing the formative portions of the Complainant’s mark, i.e. “weathernetwork”, followed by the widely used gTLD for commercial web sites “.com“ but without the prefatory article “THE”, hence resulting in the name <weathernetwork.com>. Given that the Complainant actively provides such information through its site named <theweathernetwork.com>, it simply stands to reason that those users who enter the former name would fully expect to reach the Complainant’s site addressed by the latter name.

However, by doing so, those users would instead be directed to the Respondent’s site but nevertheless likely think that an affiliation of some sort exists between the Complainant and the Respondent, when, in fact, no such relationship would exist at all. See, e.g., *National Collegiate Athletic Association v. Dusty Brown*, WIPO Case No. D2004-0491 (August 30, 2004); *Cable News Network LP, LLP v. Elie Khouri d/b/a Channel News Network et al.* NAF Case.No. FA117876 (December 16, 2002); *Leiner Health Services Corp. v. ESJ Nutritional Products*, NAF Case No. FA173362 (September 16, 2003); *Am. Family Life Assurance Company of Columbus v. defaultdata.com*, NAF Case No. FA 123896 (October 14, 2002); *AT&T Corp. v. Roman Abreu d/b/a Smartalk Wireless*, WIPO Case No. D2002-0605 (September 11, 2002); *Pfizer Inc. v. Order Viagra Online*, WIPO Case No. D2002-0366 (July 11, 2002); *L.F.P., Inc. v. B and J Props.*, NAF Case No. FA 109697 (May 30, 2002); *Frampton v. Frampton Enters, Inc.*, WIPO Case No. D2002-0141 (April 17, 2002); *Spence-Chapin Servs. to Families and Children v. Wynman*, NAF Case No. FA 100492 (December 10, 2001); *MPL Communications v. LOVEARTH.net*, NAF Case No. FA 97086 (June 4, 2001); *Meijer, Inc. v. Porksandwich Web Servs.*, NAF Case No. FA 97186 (July 6, 2001); *MPL Communications v. IWebAddress.com*, NAF Case No. FA 97092 (June 4, 2001); *Am. Home Prods. Corp. v. Malgioglio*, WIPO Case No. D2000-1602 (February 19, 2001); *Surface Prot. Indus., Inc. v. The Webposters*, WIPO Case No. D2000-1613 (February 5, 2001); *Dollar Fin. Group, Inc. v. VQM NET*, NAF Case No. FA 96101 (January 25, 2001); *eBAY Inc. v. G L Liadis Computing, Ltd.*, WIPO Case No. D2000-1463 (January 10, 2001); *Treeforms, Inc. v. Cayne Indus. Sales Corp.*, NAF Case No. FA 95856 (December 18, 2000); and *The Pep Boys Manny, Moe and Jack of CA v. E-Commerce Today, Ltd.*, eResolution Case No. AF-0145 (May 3, 2000).

Therefore, the Panel finds that the disputed domain name sufficiently resembles the Complainant’s “WEATHER NETWORK” Marks as to cause confusion. Hence, the Complainant has shown sufficient similarity between its registered marks and the disputed domain name under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel believes that not only has the Respondent not provided any basis that would legitimize any claim it has to the disputed domain name, but also it is extremely unlikely that the Respondent could ever make such a claim.

The simple reason is that the disputed domain name contains the formative portion of the Complainant's mark "THE WEATHER NETWORK" under which the Complainant provides its services and has continuously so provided its services for several years prior to the date (May 13, 2002) on which the Respondent has registered the name. Furthermore, the Complainant has never authorized the Respondent to utilize that mark or a mark confusingly similar thereto in conjunction with the specific which the Complainant provides under its WEATHER NETWORK Marks, nor does the Complainant have any relationship or association whatsoever with the Respondent.

Hence, any use to which the Respondent were to put the mark "THE WEATHER NETWORK" or a mark confusingly similar thereto, in connection with weather-related services, as the Respondent appears to be doing, would directly violate the exclusive trademark rights now residing in the Complainant. See, e.g., *Sybase, Inc. v. Analytical Systems*, WIPO Case No. D2004-0360 (June 24, 2004); *Caesars World, Inc. and Park Place Entertainment Corporation v. Japan Nippon*, WIPO Case No. D2003-0615 (September 30, 2003); *Leiner Health Services Corp., AT&T Corp., and MPL Communications* FA 97086 and FA 97092, all cited *supra*; *Am. Online, Inc. v. Fu*, WIPO Case No. D2000-1374 (December 11, 2000); and *Treeforms, Inc.*, cited *supra*. Consequently, the Respondent could not legally acquire any public association between it and the name "WEATHER NETWORK", and hence could never be commonly known or recognized by that name and thus fall within paragraph 4(c)(ii) of the Policy.

Furthermore, the actions of the Respondent in using the disputed domain name by first opportunistically causing user confusion and then re-directing, for its own pecuniary advantage, Internet users to the Respondent's own competing web site, can never constitute either a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy or a fair use of the domain name under paragraph 4(c)(iii) of the Policy.

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

C. Registered and Used in Bad Faith

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

The Respondent has a well-documented history of repeatedly registering domain names that included third-party trademarks to which the Respondent had clearly no right or legitimate interest and then, through bad faith conduct, exploiting those names for its own benefit, through, e.g., causing user confusion and then re-direction to its own web site. See, e.g., *The Fresh Market, Inc., WeddingChannel.com Inc., and TM Acquisition Corp.*, all cited *supra*. The present case merely presents another, though only more current, instance in what clearly is a unrelenting and continuing pattern of illicit conduct which the Policy specifically targets as being bad faith under paragraph 4(b)(ii).

Clearly, the Respondent's acts -- as the Panel views them in the preceding section

above -- amounting to opportunistic exploitation of inevitable Internet user confusion for the Respondent's own pecuniary benefit and the Complainants' detriment, constitute, by their very illegality, bad faith under the general requirement of paragraph 4(a)(iii) of the Policy, as well disruption of the Complainant's business under paragraph 4(b)(iii) of the Policy. See, *Caesars World, Inc. and Park Place Entertainment Corporation v. Japan Nippon*, WIPO Case No. D2003-0615 (September 30, 2003)

Hence, the Panel views these actions as constituting bad faith registration and use in violation of paragraph 4(a)(iii), and also paragraphs 4(b)(ii) and 4(b)(iii) of the Policy.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations to establish a 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 disputed domain name, <weathernetwork.com>, is ordered transferred to the Complainant.

Peter L. Michaelson,
Sole Panelist

Dated: December 28, 2004