



## **WIPO Arbitration and Mediation Center**

### **ADMINISTRATIVE PANEL DECISION**

**Viacom International, Inc. v. Matrix Management and T. Parrott**

**Case No. D2001-1442**

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

The Complainant is Viacom International, Inc. ("Viacom"), 1515 Broadway, New York, New York 10036, United States of America.

The Respondents are Matrix Management, c/o Creative Marketing, P. O. Box 30622, Long Beach, California 90853, and T. Parrott also at P. O. Box 30622, Long Beach, California 90853, United States of America.

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

The Contested Domain Name is <mtvvideos.com>.

The Registrar is Register.com, 575 Eighth Avenue, 11th Floor, New York, New York 10018, United States of America.

#### **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 ICANN 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 e-mail form on December 8, 2001 and in hard-copy form on December 11, 2001 with Annexes A-F and the appropriate payment,

The Complainant's attorney stated that he separately served, on December 8, 2001 and by e-mail, a copy of the Complaint itself together with a copy of the cover sheet, on the

Respondent Matrix Management and on the Registrar, and, by courier and with the annexes, on both Matrix Management 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 person 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 December 13, 2001, the Center requested confirmation from the Registrar 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 the Registrar received a copy of the Complaint from the Complainant. The Center also requested the Registrar to specify: (a) whether the ICANN Policy applies to the contested domain name, and (b) the current status of that domain name.

On December 13, 2001, the Registrar provided its response to the Center through which the Registrar provided contact information pertinent to the contested domain name from its WHOIS database, confirmed that Register.com is the registrar of that name, stated that the Policy is in effect for the domain name, stated that the language of the registration agreement is English, and stated that the domain name was then in an "active" status. The Registrar specifically informed the Center that T. Parrott was the current registrant of the domain name. The Center, in an e-mail dated December 18, 2001, requested the Registrar confirm whether Matrix Management or T. Parrott was then the current registrant of the contested domain name. Later that same day, the Registrar confirmed that, according to its records and given that a transfer of registrant was not properly effected by T. Parrott, the domain name remained with registrant T. Parrott. Matrix Management is the Administrative Contact for the contested domain name, with T. Parrott being its registrant, with both having the same address in Long Beach, California.

By e-mail dated December 27, 2001, the Center informed the Complainant that, according to the Registrant's records, T. Parrott and not Matrix Management was the current registrant of the contested domain name and consequently requested the Complainant to file an amendment to its Complaint listing T. Parrott as the Respondent. The Center forwarded contact details to the Complainant, by e-mail dated December 28, 2001, as provided by the Registrar.

Subsequently, the Complainant submitted the requested amendment to its Complaint to the Center by e-mail on December 29, 2001 and in hard-copy form on January 4, 2002,

On January 8, 2002, the Center notified both Respondents 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 hard-copy form, to the Respondents (with the latter method forwarding a copy of all the annexes as well). 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 January 8, 2002 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 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 January 28, 2002 to file its response with the Center and serve a copy of the response on the Complainant.

As of January 28, 2002, the Center had not received any response to the Complaint from either of the Respondents; hence, the Center, in an e-mail letter dated January 29, 2002, notified the Complainant and the Respondents of the default of the Respondents.

Accordingly, pursuant to the Rules and Supplemental Rules, by e-mail letter dated February 27, 2002, the Center contacted the undersigned, Mr. Peter L. Michaelson, Esq., requesting his service as a sole panelist for this dispute. Subsequently, on that date, 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 February 28, 2002, 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 March 14, 2002.

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

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 Register.com on November 29, 1999.

##### **A. MTV Marks**

The Complainant owns numerous United States and foreign trademark registrations (collectively in over 100 countries) for the mark "MTV" ("MTV" Marks) on which this dispute is based. Many of the United States registrations have become incontestable. The Complainant has provided, in Annex B to the Complaint, a hard-copy printout of corresponding records from the United States Patent and Trademark Office web server for its United States registrations. A small sample of the particularly pertinent registrations is listed as follows:

- a) MTV (block letters)  
US registration 1,985,017; registered July 9, 1996

This mark was registered for use in connection with: "Video recordings featuring music and television programming and sound recordings featuring music" in international class 9, "Television broadcasting" in international class 38, "Education and entertainment services, namely production and presentation of television news shows; sports events; fashion shows; game shows; animated shows; music shows; award

shows; and comedy shows before live audiences which are all broadcast live or taped for later broadcast; and production of radio programs" in International class 41, and "Disseminating information on news, entertainment, sports, fashion, music and comedy by providing consumers with multiple-user access to a global computer network" in International class 42. This mark claims first use and first use in inter-state commerce of April 13, 1981 for International classes 9, 38 and 41, and of June 22, 1994 for International class 42.

- b) MTV (block letters)  
US registration 1,955,606; registered February 13, 1996

This mark was registered for use in connection with: "Cable television broadcasting" in international class 38, and "Television and entertainment services, namely the television production of a broad spectrum of television programs including those which feature or are on the topics of music, entertainment, animation, current events, social issues, sports events, talent contests, concerts, comedy shows, situation comedies, games, awards, dances, news, style and fashion; and entertainment in the form of live concerts, talent contests, music and television award events, sports events, game events, events with speakers on various social and political topics, and exhibits with displays of entertainment memorabilia and products relating to style and fashion" in International class 41. This mark claims first use and first use in inter-state commerce of April 30, 1981 for both classes.

- c) MTV (block letters)  
US registration 1,386,644; registered march 18, 1986

This mark was registered for use in connection with: "Audio cassettes and tapes" in international class 9. This mark claims first use and first use in inter-state commerce of April 13, 1981.

- d) MTV (block letters)  
US registration 1,373,948; registered December 3, 1985

This mark was registered for use in connection with: "Clothing, namely T-shirts, sport shirts, sweat shirts, hats and shorts"" in international class 25. This mark claims first use and first use in inter-state commerce of June 30, 1981.

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

The Complainant, Viacom, through its wholly-owned division MTV Networks, operates several well-known television programming services. One of the best known is MTV: Music Television ("MTV"). The MTV programming service is a 24 hour-a-day, 7 day-a-week programming service that features primarily music-related programming including music videos, interviews, documentaries, entertainment information and news. Marks, including "MTV" in block letters, "MTV" in a stylized format, and "MTV: Music Television" in a stylized format are used to promote MTV and its programs and are associated with Complainant.

The MTV programming service first aired in 1981. The Complainant states that MTV has become so popular that it is seen 139 territories worldwide and in over 365 million households. In the United States alone, MTV reaches over 79 million domestic subscriber households. MTV enjoys a level of popular success that is virtually unparalleled in cable television history. MTV is recognized as a leader in the

entertainment industry and has received numerous awards and recognition of its achievements.

The Complainant advertises its MTV programming service on television, in newspapers and magazines, and on billboards and other outdoor advertising nationwide. It states that, in all advertisements, the MTV Marks are prominently shown and/or otherwise referenced.

Furthermore, the MTV Marks appear not only in off-channel advertising but also on-air at the beginning of all programs aired on the MTV channel. The MTV Marks are also seen on the set of many programs as well as in connection with station identifiers. In addition, the MTV Marks are, as the Complainant states, a core element of on-air commercials for the programming service.

Additionally, the Complainant uses the MTV Marks in connection with programs that MTV produces including, among others: "The MTV Video Music Awards," "MTV Movie Awards," "MTV Spring Break," and "MTV Unplugged."

The Complainant has spent hundreds of millions of dollars over the last 20 years in advertising and promoting its services and merchandise under the MTV Marks.

The Complainant has had a presence on the Internet since at least as early as 1994. In that regard, in 1995, the Complainant launched the website <www.mtv.com> which is consistently ranked as the number one music content site among teens aged 13-17. In 1999, that website averaged a monthly audience of 4,619,945 unique visitors; in the year 2000, with the average monthly audience then being 7,708,363.

Moreover, videos have been the mainstay of programming under the MTV Mark. When the MTV channel launched in 1981, its programming consisted solely of music videos – 24 hours a day, 7 days a week. Today, twenty years after its launch, music videos still account for the majority of programming on the MTV channel. Videos are so inextricably intertwined with Complainant and with the MTV Marks that, in 1984, Complainant established the "MTV Video Music Awards" – a special television program honoring artists whose music videos appear on the MTV programming service. The program is broadcast live each year on Complainant's MTV channel and features performances and appearances by musical artists, actors and other celebrities, in addition to the presentation of awards. The program reaches hundreds of millions of viewers every year in the United States and world-wide.

In addition to airing music videos on the MTV channel, the Complainant has released, under the MTV Marks, nearly one hundred home videos for purchase and rental. Many of the home videos include programming originally aired on the MTV programming service. Prior to November 29, 1999, which is when the domain name at issue was registered, the Complainant had issued more than fifty home videos under the MTV Marks with over forty million dollars in sales. Copies of home video packaging that show the MTV Marks appear in Annex C to the Complaint.

The Complainant states that its MTV Marks are famous and that their fame has existed long prior to Respondent's registration of the contested domain name. In that regard, as shown by the illustrative articles provided in Annex D to the Complaint, MTV has been recognized by the media as changing television and as being among the most influential television channels. Moreover, in a December 13, 1999 article in *The New York Times*, MTV was named as one of the *100 "most powerful corporate, media and product brands in the 20<sup>th</sup> century."*

## **C. Respondents and their Activities**

On November 29, 1999, Respondent, presumably Respondent T. Parrott, registered the contested domain name <mtvvideos.com>. As of that date, the Complainant had been using its MTV Marks in the U.S. for almost 20 years.

In May 2000, the Complainant discovered the registration of <mtvvideos.com>. At that time, no use was being made of the domain name. On November 21, 2000, the Complainant sent a cease and desist demand letter to Respondent Matrix Management concerning the registration of that name. A copy of that cease and desist letter appears in Annex E to the Complaint. The Complainant never received a response to that letter.

Sometime after that demand letter was sent, Respondent Matrix Management posted a website resolvable through <mtvvideos.com>. Printouts of the home pages, of that website, dated May 3, 2001 and October 25, 2001 appear in Annex F to the Complaint. That website uses the heading "Matrix Travelers & Visitors Travel Videos." However, as is evident from the web site, no travel videos are being offered through that site. Instead, the owner of the contested domain name appears to be offering Internet users the opportunity to use the contested domain name to reach a home page that describes a web site or a business, and particularly one through which a user can advertise their own websites.

## **5. Parties' Contentions**

### **A. Complainant**

#### **i. Similarity**

The Complainant apparently takes the position that the contested domain name is confusingly similar to the MTV Marks. While the Complainant recognizes that the contested domain name includes the generic term "videos", the Complainant contends that the addition of this term does not distinguish the name from the MTV Marks. In that regard, the Complainant states that the addition of this term is likely to actually create confusion given the strong association between the MTV Marks and videos given that "videos" connotes and describes precisely goods and services that the Complainant currently offers under the MTV Mark. In support of its view, the Complainant cites to: *Viacom Int'l Inc. v. mtvmp3.com* WIPO Case no. D2001-0275, April 26, 2001 (noting that where a domain name in issue is readily recognizable as a combination of two components, one of which is Complainant's MTV mark, and the second is a generic term, the domain name would be found confusingly similar to Complainant's MTV trademark); *Guinness UDV North America v. Lewis* WIPO Case no. D2001-0621, August 3, 2001 (addition of a generic term that is obviously connected with complainant or its products creates a domain name that is confusingly similar to the trademark); and *Viacom Int'l Inc. v. Abraham Godong*, WIPO Case no. D2001-0603, July 9, 2001 (when a common noun added to a trademark coincides with and, in fact, connotes the goods and services provided under the trademark, confusing similarity "is inevitable").

Hence, the Complainant concludes that it has met the confusing similarity requirement in paragraph 4(a)(i) of the Policy.

#### **ii. Legitimacy**

The Complainant contends that, for several reasons, neither Respondent has any rights or legitimate interests in the contested domain name pursuant to paragraph 4(a)(ii) of the Policy.

In particular, the Complainant states that the contested domain name was registered after the Complainant had obtained various US trademark registrations for its MTV Marks, after those marks had become associated with the term “videos,” and after the Complainant had been extensively advertising its MTV marks throughout the United States.

The Complainant also states that no relationship exists between it and either Respondent through which that Respondent has any license, permission or authorization through which that Respondent could own or use the contested domain name, <mtvvideos.com>, which incorporates Complainant’s “MTV” mark. As such, any use of the contested domain name by either Respondent falsely suggests that an association or sponsorship exists between the Complainant and that Respondent when in actuality no such association or sponsorship exists at all.

Further, the Complainant contends there is no evidence to suggest that either Respondent is now or has ever been known by the name MTV. Indeed, as shown by the WHOIS record which appears in Annex A to the Complaint, one Respondent’s name is Matrix Management and/or CEO Marketing; MTV is not a acronym of Matrix Management.

Moreover, the Complainant states that the Respondents exhibited a lack of legitimate rights and interests by having established their web site only after they received a cease and desist demand letter from the Complainant, hence after having received actual notice of the Complainant's trademark rights in its MTV Marks.

Further, the Complainant contends that even assuming that the web site was created before either Respondent received the demand letter, i.e., before it had notice of this dispute, either Respondent's use of the contested domain name still does not create any legitimate rights or interest, inasmuch as such use would not be “bona fide” under paragraph 4(c)(i) of the Policy. Citing to *Ciccone v. Parisi*, WIPO Case no. D2000-0847, October 12, 2000, which held that use which intentionally trades on the fame of another cannot constitute a “bona fide” offering of goods or services, the Complainant contends that “*to conclude otherwise would mean that a Respondent could rely on intentional infringement to demonstrate a legitimate interest, an interpretation that is obviously contrary to the intent of the Policy.*” With that view in mind, the Complainant takes the position that the Respondents took the Complainant’s MTV mark as its domain name and added the term “videos” to it which is a term inextricably related to the goods and services provided by the Complainant under the MTV Marks. The Respondents' website resolvable by the <mtvvideos.com> domain name is not offering videos. Instead, it is trading on the fame of the MTV Marks to sell space to consumers who may be interested in advertising their websites. The space is valuable because it is linked to the MTV mark; the <mtvvideos.com> domain name is likely to draw Internet users who believe that <mtvvideos.com> is the website of Complainant. When one looks at the WHOIS search result which appears in Annex A to the Complaint, it is evident that Respondent created the name “Matrix Travelers & Visitors” in an attempt to justify using Complainant’s MTV Mark. However, it is clear that the use of “Matrix Travelers & Visitors” is nothing but a ruse because, *inter alia*, travel videos are not and have never been offered at the website. Clearly, <mtvvideos.com> does not describe the business of the Respondents, and does not

describe goods or services available at their website. Consequently, neither Respondent can claim bona fide rights or legitimate interests in the contested domain name.

Lastly, the Complainant contends that inasmuch as its MTV Marks are venerable and distinctive and the Respondents were on constructive (if not actual) notice of the MTV Marks, the Respondents, by having chosen a domain name that is so similar to the Complainant's marks, can not demonstrate any legitimate interest in the domain names particularly given the likelihood that they chose in an effort to create confusion detrimental to the Complainant.

Thus, the Complainant concludes that the Respondents have no 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, also for various reasons, the Respondents have registered and are now using the contested domain name in bad faith.

In particular, the Complainant contends the Respondents' very act of incorporating the Complainant's trademark MTV into the contested domain name evinces bad faith.

Further, the Complainant contends that the Respondents' lack of response to the Complainant's cease and desist demand letter additionally evidences bad faith. In effect, the Respondents were given an opportunity to explain why they registered the contested domain name and their plans for using that name. By failing to respond, the Respondents in effect have admitted that there was no bona fide reason for registering that name, they have no legitimate rights or interests in that domain name and that the name was registered and is being used in bad faith.

Also, the Complainant contends that the Respondents' bad faith is also shown by the fact that the contested domain name is "*so obviously connected with the Complainant*" that its very use by someone who has no connection therewith suggests "opportunistic bad faith". In that regard, the Complainant states that the MTV marks are so famous that the Respondents had to have known about them. As such, registration of a name which incorporates the MTV mark without any color of title or justification is proof of bad faith on the Respondents' part.

Further, the Complainant contends that Internet users are likely to believe that <mtvvideos.com> connects to a website associated with or sponsored by the Complainant. By using the Complainant's marks as their domain name, the Respondents are attempting to create an association with Complainant and to usurp Complainant's goodwill. Hence, the Complainant contends that since the ultimate effect of any use of <mtvvideos.com> by the Respondents would be to cause confusion with the Complainant, then the Respondents' use and registration of the domain name must be considered to be in bad faith.

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

### **B. Respondents**

Neither Respondent has 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 either of the Respondents 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 Respondents, the Panel makes the following specific findings.

### i. Similarity

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

In that regard, the contested domain name includes the Complainant's registered mark "MTV" which has clearly acquired requisite secondary meaning and distinctiveness as a result of the Complainant's apparently continuous and rather extensive use since 1981 and particularly in conjunction with its music video products and entertainment services.

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

Furthermore, concatenating the term "videos" to the Complainant's mark "MTV" to form the contested domain name does not dispel any such confusion, rather it likely exacerbates it. In view of the Complainant's extensive, prolonged and continuing activities in promoting its video based products and services from which the Complainant has developed a considerable reputation through which its MTV mark has acquired requisite fame, this Panel clearly finds that any Internet user familiar with the Complainant -- which probably encompasses a considerable number of such users as well as that of the population in general -- and when confronted with the domain name <mtvvideos.com> would very likely, if not reflexively think, that this name and there through either or both of the Respondents were affiliated in some fashion with the Complainant -- when, in fact, no such relationship exists. In fact, it is rather inconceivable to this Panel that any such user would likely think otherwise. See, e.g., *Park Place Entertainment Corporation v. Bowno*, WIPO Case no. D2001-1410, January 9, 002); *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); *American Home Products Corp. v. Malgioglio* WIPO Case no. D2000-1602, 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* WIPO Case no. D2000-1463, 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).

Therefore, the Panel finds that the contested domain name <mtvvideos.com> sufficiently resembles the Complainant's MTV Marks as to cause confusion; hence, the

Complainant has shown sufficient similarity between these 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 "MTV" Marks. Furthermore, by virtue of the registration of these marks, some of which having attained incontestability, 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 ever make such a claim.

The simple reason is that the contested domain name includes the Complainant's mark "MTV" under which the Complainant provides its music video products and entertainment services and has been doing since 1981, now over 20 years. The Complainant has apparently never authorized either of the Respondents to utilize any of its marks, nor does the Complainant have any relationship or association whatsoever with that Respondent. Hence, any use to which either of the Respondents were to put of any of the "MTV" Marks, including "MTVVIDEOS" (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 neither Respondent is now and has ever been commonly known by the mark "MTV", the Respondents' actions are in direct contravention of paragraph 4(c)(ii) of the Policy. See, e.g., *Park Place Entertainment Corporation v. Bowno*, cited *supra*; *Jones Apparel Group, Inc. v. Robin Sousa*, WIPO Case no. D2001-1308, December 21, 2001; *America Online, Inc. v. Curtis Wood*, WIPO Case no. D2001-0555, June 13, 2001; *Treeforms, Inc. v. Cayne Industrial Sales, Corp.* cited *supra*; *MSNBC Cable, LLC v. Tsys.com*, WIPO Case no. D2000-1204, December 8, 2000; and *Cabletron Systems, Inc. v. DLS Enterprises*, WIPO Case no. D2000-0571, August 18, 2000.

Further, it is eminently clear to this Panel that the Respondents, in using the contested domain name that incorporates the Complainant's registered "MTV" mark, are intentionally seeking to exploit user confusion by diverting Internet users away from the Complainant's site to the Respondents' own website for the latter's own benefit, i.e., by selling space to consumers who may be interested in advertising their websites on the Respondents' site. If this was not the case, why else would the Respondents have chosen a domain name that contains such a well-known mark, particularly when the Respondents, through their site, do not offer any video products, let alone music videos? The Panel cannot think of any justifiable reason. This directly contravenes paragraph 4(c)(iii) of the Policy.

In light of the above findings, the Panel is not persuaded that either of the Respondents 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 neither of the Respondents has any 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 Respondents' actions constitute bad faith registration and use of the contested domain name.

It is indisputable to this Panel that the Respondents were fully aware of the Complainant's MTV Marks, since those marks had been in existence and very widespread use commencing some 18 years prior to the date, November 29, 1999, on which the Respondents registered the contested domain name.

There can be no question that the Respondents, knowing the widespread consumer recognition inherent in the Complainant's mark MTV but having absolutely no association, relationship or affiliation whatsoever with the Complainant, clearly chose to include this mark in the contested domain name with a goal of creating opportunities, to commercially benefit themselves, arising out of the inevitable user confusion that would flow from concurrent use by the Complainant of its MTV Marks and by the Respondents of the contested domain name. The Panel views such opportunistic registration of the contested domain name as indicative of bad faith registration and the subsequent use of that domain name by the Respondents in an effort to attain such benefit as bad faith use, both collectively actionable under paragraph 4(b)(iv) of the Policy. See, e.g., *Novus Credit Services Inc. v. Personal*, WIPO Case no. D2000-1158, November 29, 2000 and *Guinness UDV North America v. Lewis*, cited *supra*.

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 <mtvvideos.com>, is ordered transferred to the Complainant.

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Peter L. Michaelson, Esq.  
Sole Panelist

Dated: March 11, 2002