WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

KCTS Television Inc. v. Get-on-the-Web Limited

Case No. D2001-0154

1. The Parties

The Complainant is KCTS Television Inc., a Washington non-profit corporation with its principal place of business at Seattle, Washington, U.S.A. The Complainant is represented by Lynne E Graybeal, of Perkins Coie LLP, attorneys of Seattle, Washington, USA.

The Respondent is Get-on-the-Web Limited, a United Kingdom corporation with its principal place of business in Greenford, Middlesex, U.K. The Respondent is represented by Joanne Ashley of Sprecher Grier Halbertstam, Solicitors of London, U.K.

2. The Domain Name and Registrar

The domain name at issue is <kcts.com>. The domain name is registered with Internet Names Worldwide, a division of Melbourne IT Limited of Melbourne, Australia ("the Registrar").

3. Procedural History

The Complaint submitted by KCTS Television Inc. was received on January 27, 2001, (electronic version) and January 30, 2001, (hard copy) by the World Intellectual Property Organization and Mediation Center ("WIPO Center").

On February 7, 2001, a request for Registrar verification was transmitted by the WIPO Center to the Registrar, requesting it to:

- Confirm that a copy of the Complaint had been sent to it by the Complainant as requested by WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy ("Supplemental Rules"), paragraph 4(b).

- Confirm that the domain name at issue is registered with the Registrar.

- Confirm that the person identified as the Respondent is the current registrant of the domain name.

- Provide full contact details, i.e., postal address(es), telephone number(s), facsimile number(s), email address(es), available in the Registrar's WHOIS database for the registrant of the disputed domain name, the technical contact, the administrative contact and the building contact for the domain name.

- Confirm that the Uniform Domain Name Dispute Resolution Policy ("UDRP") was in effect.

- Indicate the current status of the domain name.

By email dated February 7, 2001, the Registrar advised WIPO Center as follows:

- It had received a copy of the Complaint from the Complainant.

- It is the Registrar of the domain name registration <kcts.com>.

- The Respondent is shown as the "current registrant" of the domain name at the above address.

- The administrative contact is Paul Westley of the same address.

- The domain name registration <kcts.com> is currently in 'licensed' status.

The Registrar has currently incorporated in its agreements the Uniform Domain Name Dispute Resolution Policy adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN").

The advice from the Registrar that the domain name in question is in 'licensed status' indicates the Respondent has not requested that the domain name at issue be deleted from the domain name database. The Respondent has not sought to terminate the agreement with the Registrar. Accordingly, the Respondent is bound by the provisions of the Registrar's Domain Name Dispute Resolution Policy, i.e., the ICANN Policy. The Respondent has not challenged the jurisdiction of the Panel.

Having verified that the Complaint satisfied the formal requirements of the Uniform Policy and the Uniform Rules, the WIPO Center on February 12, 2001, transmitted by post-courier and by email a notification of the Complaint and Commencement of Administrative Proceedings to the Respondent. A copy of the Amended Complaint was also emailed to the Registrar and ICANN.

The Respondent was advised that a Response to the Complaint was required within 20 calendar days. The Respondent was also advised that any Response should be communicated, in accordance with the Rules, by four sets of hard copy and by email. A Response was filed by the Respondent on March 1, 2001 (electronic) and March 8, 2001 (hard copy).

The Respondent elected to have its Complaint resolved by a three-person panel. The parties have duly paid the amounts required of them to the WIPO Center.

On March 7, 2001 (electronic) and March 12, 2001 (hard copy) the Complainant sought leave to file a Reply. This was followed by several communications between WIPO Center and the parties on the same topic. The Panel has determined not to admit the Reply from the Complainant or any further material from the Respondent. The Panel finds the issues sufficiently covered in the documents filed and declines to admit any further pleadings.

WIPO Center invited the Honorable Sir Ian Barker QC of Auckland, New Zealand to serve as Presiding Panelist in the case. It invited Mr Richard W. Page of the Page Law Firm, San Diego, California, U.S.A. and Professor David E. Sorkin of the John Marshall Law School, Chicago, Illinois, U.S.A., to be Panelists. It transmitted to each of them a statement of acceptance and requested a declaration of impartiality and independence.

All Panelists duly advised acceptance and forwarded to the WIPO Center a statement of impartiality and independence. The Panel finds that the Administrative Panel was properly constituted in accordance with the Rules and the Supplemental Rules.

On April 2, 2001, WIPO Center forwarded to the Panel by courier the relevant submissions and the record. In terms of Rule 15(b), in the absence of exceptional circumstances, the Panel is required to forward its decision by April 17, 2001. However, because of communication difficulties and Easter holidays, the decision date has been extended to April 24, 2001.

The Panel has independently determined and agrees with the assessment of WIPO Center that the Complaint meets the formal requirements of the Rules for Uniform Domain Name Dispute Resolution Policy as approved by ICANN on October 24, 1999, ("the Rules") and the Supplemental Rules.

The language of the administrative proceeding is English, being the language of the registration agreement.

4. Factual Background

The Complainant is the owner of U.S. Trademark for KCTS (Registration No. 2,205,564), for which it acquired federal trademark registrations on November 24, 1998, based on a date of first use of October 21, 1959. Searches obtained by the Respondent show that the Complainant's mark is not registered in the United Kingdom or the European Union.

The Complainant is also the owner of domain name registrations for <kcts.org> and <kcts.net>, registered on October 28, 1994 and March 13, 2000, respectively.

The Complainant is a non-profit, Seattle-based public television broadcasting company, with a mission to improve the quality of life in various communities. Its market size is the twelfth largest in the United States, with a total audience reach of 2.1 million weekly.

Among public television stations nationwide, it is the fourth largest in the USA and Canada.

The Complainant has shown travel-related programs highlighting locations throughout the United States, Canada, and parts of the United Kingdom and the European Union, including Northern Ireland as part of a series called *Over*. The Complainant is the owner of trademark registrations throughout the European Union for the OVER trademark.

The Complainant is a local broadcaster of British Broadcasting Company (BBC) programs and regularly features other programming related to the United Kingdom. In the United States, its average week of all programming is some 168 hours of regional broadcasting per week. Of this 168 hours, 11.9% comprises programs produced by entities located in the United Kingdom. Such programming includes the following: *All Creatures Great and Small, ExxonMobil Masterpiece, Robot Wars, Waiting for God, Teletubbies, Mystery!, Lovejoy, Fawlty Towers, A Fine Romance, To The Manor Born*.

In addition to broadcasting programs regionally, the Complainant produces educational and documentary programs, which are licensed to third party broadcasters and distributors for international distribution, (including in the U.K.), in the television, home video, educational and other media markets.

An internet search for the term "KCTS", using a major search engine located at www.google.com, yielded 11,100 results. Looking to the first 300 hits of the 795 hits available, a substantial number of the hits referred to Complainant and its business.

Respondent claims to have registered the disputed domain name in connection with a planned project for a website about tourist facilities in Kensington and Chelsea, London. The registration was undertaken through Internetters Limited ("Internetters"), an appointed reseller of the Registrar.

Although Internetters has the same directors as Respondent, it is a separate company. The two companies were registered on different dates, June 11, 1998 and October 6, 1998 respectively. Internetters has registered more than 40,000 domain names for its clients since 1998. Its clients include major companies such as Lloyds TSB (a major U.K.-based bank) and Warner Music. Internetters also provides email and website hosting services and currently hosts over 1,500 websites on its ten web servers. It has seven staff and offices in Greenford, West London, U.K.

Respondent has registered a number of domain names for intended use in relation to various internet services, primarily in the leisure, travel and employment sectors.

Respondent's directors have two other active companies. Surf3 Limited is an internet access provider with over 5,000 regular users. Internet Domain Names Limited has registered a number of generic domain names for future development (including some of those listed in Annex O to the Complaint, e.g. 24-shop.net, flats2rent.com). These other companies all use Internetters' offices for a postal messages' services.

Following its registration of the disputed domain name, Respondent uploaded a temporary "under construction" web page, containing links to Internetters' website for anyone interested in registering a new domain name.

On March 8, 2000 Respondent received a letter from Complainant's attorney dated March 2, 2000.

The letter concentrated on the (now abandoned) suggestion that Respondent had colluded with a previous registrant to buy the domain name. It demanded that Respondent transfer the domain name to Complainant, regardless of Respondent's intended use, on the ground that "KCTS" was so distinctive that the registration of the domain name was in itself bad faith.

Respondent replied on March 13, 2000, addressing in detail the points made by Complainant's attorneys and stating:

> "Without prejudice to our position, we have temporarily discontinued our use of the domain name, <kcts.com>, pending our discussions with you. However, we do not intend to transfer the domain name to your client, as we feel we have total rights to it. If you wish to pursue the matter further, we suggest your client appeals under the disputes policy, but we do feel that we have a very strong case."

Since there was no response to this letter, Respondent wrote again to Complainant's attorneys on April 24, 2000, stating that it would resume its original plans for the <kcts.com> website in 14 days if it heard nothing further. On April 27, 2000 Complainant's attorneys wrote to Respondent saying that they considered the matter to be a continuing issue, that they were collecting information in order to counsel Complainant, and that they would contact the Respondent again shortly.

On June 22, 2000, Complainant's attorneys wrote to Respondent stating that Complainant was "deferring any action … for the moment", but that they intended to continue monitoring the website on a weekly basis and would advise their client to take immediate action if the website became active.

On July 5, 2000, Respondent wrote to Complainant's attorneys stating that it would now be reverting to its original plans for the domain name, that these were in no way involved with broadcasting and that there should be no confusion with Complainant's website. Following this letter, Respondent uploaded a preliminary web page advertising a forthcoming Kensington and Chelsea tourism website.

Respondent heard nothing further from Complainant until receipt of the Complaint on January 30, 2001. In the meanwhile, Respondent had proceeded with its development, building up a list of 228 hotels and 507 restaurants (analyzed by type of cuisine) and a list of major tourist attractions. A database was constructed to enable easy searching of the website for hotels, restaurants and other attractions in Kensington and Chelsea. Long after the KCTS trademark had become well-known and famous and after Complainant's <kcts.org> domain name registration, Respondent registered the domain name

<kcts.com>. The only difference between the <kcts.com> domain name and the KCTS trademark is the suffix ".COM"; an irrelevant distinction that does not change the likelihood of confusion.

5. Parties' Contentions

Complainant:

(a) The domain name is identical to the Complainant's registered mark.

(b) Despite Complainant's efforts to persuade Respondent to refrain from making any unauthorized use of the Complainant's mark, Respondent has violated Complainant's rights and refused to disclose its intended use of the domain name. Respondent does not own any trademark applications or registrations for the mark KCTS, nor is Respondent itself commonly known by the name of KCTS.

(c) The nature of Respondent's business appears to be registering domain names for possible development and eventual sale to other parties. In April 2000, the domain name <kcts.com> was being held by Internetters for development and the domain name was valued by Internetters to be approximately £30,000. At that time, the second level portion of the domain name, KCTS, did not have any specific meaning for the Respondent. In fact, when an inquiry was made by an agent of Complainant, one of Respondent's employees speculated that the last two letters of KCTS might stand for "translation services". (This statement was made to an anonymous person and is challenged by Respondent.)

(d) On July 6, 2000, long after first being notified of Complainant's objection to its registration of the <kcts.com> domain name, Respondent set up a website at the <kcts.com> address advertising a putative "Kensington & Chelsea Tourist Sites". Up until July 6, 2000, there was no substantive site domain name.

(e) This use of the <kcts.com> domain name was initiated solely to evade an eventual allegation by complainant, in a proceeding such as this, that respondent had no legitimate right or interest in the <kcts.com> domain name.

(f) "KCTS" is not a commonly accepted abbreviation for "Kensington & Chelsea Tourism Sites" and "KC" is not commonly accepted as referring to "Kensington & Chelsea". Rather, according to THE OXFORD ENGLISH DICTIONARY (2d ed. Oxford University Press) as well as information from a local U.K. trademark agent, the only meanings ascribed to the abbreviation "KC" is "Kings Counsel", or "Kings College", or "kilocycle".

(g) Respondent's post hoc creation of a website uses an acronym cleverly cobbled together to fit the <kcts.com> domain name. Respondent's passive posting of an "Under Construction" site at the domain name up until its eleventh-hour post hoc creation of a website does not constitute demonstrable preparation to use a domain name in a legitimate way. See The McGraw-Hill Companies, Inc. v Juan Carlos Zamora Guadalupe, See WIPO Case No. D2000-0863.

(h) Respondent's registration of the <kcts.com> domain name indicates bad faith. The mark KCTS is a well-known mark in, among other countries, the United States and Europe, including the United Kingdom. Complainant's registration of the domain name <kcts.org> in 1994 substantially pre-dates Respondent's 1999 registration of the domain name. It is reasonable to conclude that Respondent had constructive notice of Complainant's presence and prior rights in the KCTS mark. Prior to the dispute, there is no evidence to indicate that Respondent was previously known by the domain name or was associated with it in any way. While in its March 13 letter Respondent states it was "using the domain name for a project we are developing", no explanation was given for the choice by Respondent of the distinctive acronym of KCTS.

(i) Respondent's use of the <kcts.com> domain name indicates bad faith as evidenced by its passive and inactive use of the <kcts.com> domain name via the "Under Construction" website posting and then its post hoc creation of a questionable website after having received notice by Complainant that it disagreed with Respondent's registration of the domain name.

(j) Respondent has intentionally attempted to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with a Complainant's mark as to the source, sponsorship or affiliation of the website.

Respondent registered the domain name primarily for the purpose of disrupting Complainant's business.

(k) An inference of bad faith is supported by the Respondent's "failure for a substantial period of time to make good faith use of the domain name for its business". Mary-Lynn Mondich and American Vintage Wine Biscuits, Inc. v. Shane Brown, doing business as Big Daddy's Antiques, WIPO Case No. D2000-0004 (WIPO). Respondent's about-face from inactivity to presentation of a website the title of which conveniently and not coincidentally incorporates the abbreviation "KCTS' suggests bad faith use of the domain name. seeLusomundo – Sociedade Gestora de Parcipaçoes Sociais, S.A. and Lusomundo Audiovisuais, S.A. v. Inmosoria and Andrés Ceballos Moscoso, WIPO Case No. D2000-0523.

(l) The use made by Respondent of the <kcts.com> domain name is likely to cause confusion with the services offered by Complainant which has invested considerable amounts of money in the KCTS trademark not only in the United States but also in the United Kingdom. Arbitrary arrangements of letters, like KCTS, have generally been given a wide scope of protection, based on the premise that it is more difficult to remember a series of arbitrarily arranged letters than it is to remember words, figures, phrases, or syllables. See Textron, Inc. v Maquinas Agricolas "Jacto" S.A., 215 U.S.P.Q. 162 (T.T.A.B. 1982). This difficulty of remembering multiple-letter marks makes the likelihood of confusion between such marks, when similar, more probable. See Edison Bros. Stores, Inc. v Brutting E.B. Sport-International GmbH, 230 U.S.P.Q. 530 (T.T.A.B. 1986). Of particular importance in this case is the strong association between the .COM gTLD of <kcts.com> and the U.S. travel market, into which Respondent appears to be attempting to tap by advertising businesses and

sights within Kensington and Chelsea. It is reasonable to conclude that internet users associate the .COM gTLD with U.S. based markets and companies. Respondent's use and registration of <kcts.com>, in particular, when used in connection with travel information about businesses and sites within Kensington and Chelsea, creates even further grounds for confusion.

(m) On April 26, 2000, Respondent was the recorded owner of at least 50 domain names. Other acronym domain names owned by Respondent include, <hv.com>, <pvfc.net>, <bcfc.net>, and <stfc.net>. On April 26, 2000, the websites for <stfc.net> and <bcfc.net> contained notices disclaiming association with certain entities bearing the same acronym as STCF and BCFC. For example, the <stcf.net> site states:

<stcf.net> is not connected with shrewsbury town football club or swindon town football club. <stcf.net> is also not connected with any Star Trek Fan Club. Shrewsbury Town Football Club web site may be found at [provides link]. Swindon Town Football Club website may be found at [provides link].

This statement evidences Respondent's knowledge that domain names consisting of acronyms are susceptible to creating public confusion. At no time did Respondent volunteer or suggest that a similar notice or disclaimer be placed on the <kcts.com> website. To date, no such disclaimer on the <kcts.com> website exists.

Respondent:

(a) Respondent's use of the domain name is not liable to cause confusion with Complainant. Respondent's website about Kensington & Chelsea Tourism Sites is obviously not connected with Complainant's television station. There is no evidence of any confusion actually occurring. Respondent has no intention to confuse. Complainant did not suggest a disclaimer at any time before the Complaint. Respondent has now included a disclaimer.

(b) Respondent's registration of <kcts.com> does not prevent Complainant from using suitable domain names. Complainant is already using <kcts.org> and the recently registered <kcts.net>, which are suitable for a public television station.

(c) "KCTS" is not unique to Complainant. In addition to Respondent there are a number of other acronyms for this combination of four letters.

(d) Complainant does not have registered trademarks in the U.K. or elsewhere in Europe. Nor has Complainant proved that it has unregistered trademark rights. There is no evidence of any use by the Complainant of the name "KCTS" in the U.K. On the contrary, the evidence indicates that Complainant is not known to the U.K. public under this name.

(e) The domain name <kcts.com> is not *identical* to Complainant's U.S. mark "KCTS".

(f) Under principles of U.K. law, the same as E.U. law, the mark is not confusingly similar.

(g) The "dispute" in the second criterion of the Policy refers to the particular dispute which is the subject of the Complaint. In this case, an initial dispute between the parties, whether Respondent's registration of the domain name was **per se** offensive, was closed by Complainant's attorneys' letter of June 22, 2000. Respondent's first notice of the dispute specified in the Complaint was when it received the Complaint on January 30, 2001. By that date, Respondent had used and made demonstrable preparations to use the domain name in connection with its bona fide service of providing information about tourist sites in Kensington and Chelsea. By that date, Respondent's activity was not limited to posting an "Under Construction" page. Accordingly, Respondent has demonstrated a right to and legitimate interest in the domain name in accordance with the Policy.

(h) Complainant's bad faith allegations are countered thus:

(i) Complainant's allegations that mark KCTS is well-known in Europe including the U.K. and that Respondent must have known of it is contrary to all the evidence.

(ii) Inactive use of a domain is not in itself bad faith. There was no major delay between Respondent's registration of the domain name on December 3, 1999 and its receipt of Complainant's letter of March 2, 2000, as a result of which, Respondent placed its development on hold. Following receipt of Complainant's letter of June 22, 2000, stating that Complainant was "deferring any action", Respondent proceeded with its development, placing an advertisement of the proposed site and establishing its database.

(iii) No reasonable person would suppose that Respondent's website in London is connected or affiliated with Complainant's television station in Washington State.

(iv) Respondent could not have intended to cause confusion with Complainant at the date of registration since it did not know of Complainant's existence. Complainant is required to prove that **both** the registration **and** the use of the domain name by Respondent have been in bad faith.

(v) Respondent did not know of Complainant's existence. The cases cited by Complainant concerned activities of direct competitors who obviously knew of the complainant.

(vi) Internetters is a separate company which has registered over 40,000 domain names in the ordinary course of its business as a domain name registration agent. Most of the domain names in Annex O to the Complaint are generic. None of the domain names in Annex O is or has been the subject of any complaint.

(vii) Domain names were registered for and used by Surf3 Limited, an internet access provider, for free internet access services. "FC" is commonly used in the U.K. as an abbreviation for "football club". Surf3 Limited did not believe that there was any likelihood of confusion but wished to exclude this

possibility. By contrast, "ts" is not used in the U.K. as an abbreviation for "television stations" nor (so far as the Respondent is aware) is it used in this way in the U.S. Such use would be inconsistent with Respondent's contention that KCTS is "arbitrary". Respondent has now placed a disclaimer on the <kcts.com> website.

(viii) Those with the funds and inclination to support a public television channel are likely to be able to find Complainant's website at <kcts.org> (which is presumably advertised on its programs etc. and is most suitable for a "non-profit" organization) or <kcts.net>. Complainant's contention is inconsistent with its attorneys' letter of June 22, 2000.

Analysis with reference to the Policy and Rules

Admissibility of Annex L to Complaint

Before considering the substantive issues, Respondent addressed the admissibility of Annex L to the Complaint, said at paragraph 26 of the Complaint to be an "Investigation Report". In accordance with paragraph 10(d) of the Rules, the Panel must determine the admissibility, relevance, materiality and weight of the evidence. The Respondent's submissions for excluding this evidence are:

(i) Annex L does not identify either the individual who wrote it or his/her company or firm (if any). No address is given. The heading appears to have been blanked out. No justification is given for this anonymity. It is in principle unfair to admit anonymous evidence.

(ii) Annex L refers to an attempted entrapment by way of a telephone conversation with Mr Westley which must have been carried out before the date of the letter, April 14, 2000, but which was not notified to Respondent until it was sent the Complaint on January 30, 2001. Such evidence is highly unsatisfactory where the person sought to be trapped is not informed immediately afterwards so as to be able to make his own contemporaneous record – see, for example, the English trademark cases Fox's Glacier Mints v Joblings (1932) 49 RPC 352, FW Hampshire v General Kaputine Syndicate (1930) 47 RPC 437 at 443-444, and the panel decision in WIPO Case No. D2000-0459 dELiA*s Properties, Inc. v. JUSTFORKIDS.COM et al. ("third party statement purportedly supporting Complainant's assertion of bad faith is unsubstantiated and does not provide a sufficient basis for a finding of bad faith").

The Panel considers the Annex should have been signed with some indication of the identity and profession of the author (e.g. lawyer, licensed private investigator). Likewise, the market survey presented by the Respondent is open to criticism in that it contains the names and signatories of numerous persons but no addresses. Those of whom enquiries were made said that KCTS meant nothing to them. The survey was confined to West London. The Panel finds neither this survey nor Annex L to be of great assistance.

6. Discussion and Findings

To qualify for cancellation or transfer, a Complainant must prove each element of paragraph 4(a) of the Policy, namely:

(i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the domain names; and

(iii) the disputed domain names have been registered and are being used in bad faith.

In the Panel's view, the disputed domain name <kcts.com> is identical to the Complainant's registered mark, KCTS. Numerous WIPO cases have shown:

(a) that the .com additive does not count when making the evaluation

(b) that it does not matter for the purpose of paragraph 4(a)(i) of the Policy, that the mark is registered in a country other than that of the Respondent's place of business.

The Complainant gave the Respondent no rights or legitimate interests in the disputed domain name. That finding can sometimes be sufficient for the Complainant to discharge the initial evidential burden. Paragraph 4(a)(ii) of the Policy indicates that a Respondent can demonstrate rights or legitimate interests in the domain name. Thus:

(i) before any notice to you of the dispute, your use of or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods and services; or

(ii) you (as an individual, business or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly direct customers or to tarnish the trademark or service mark at issue.

The Panel is not convinced by the Respondent's strained construct of the letters KCTS to fit into the name Kensington & Chelsea Tourist Sites. The site was developed after the Respondent knew of the Complainant's unhappiness at the Respondent's use of the letters KCTS in a website.

However, the Panel finds it difficult to infer that Respondent knew of the Complainant at the date of registration of the name on December 3, 1999. Representatives of the Respondent have sworn affidavits that they first heard of the Complainant when Complainant's attorneys wrote to them on March 2, 2000. The Panel is not in a position to decide whether this assertion is correct, but notes that this Respondent has produced sworn affidavits instead of the bald assertions that are frequently made by Respondents. Only a

Court of competent jurisdiction can make such a decision whether this assertion is correct, after seeing and hearing the witnesses.

Nor can it be inferred that the call sign/mark of a public television station operating in the US Northwest and in British Columbia would or should be known to persons in London, England. Clearly, a TV brand such as CNN, ABC or NBC might enjoy such worldwide recognition, but not the Complainant's call sign. The fact that some of its travel programmes are shown in the United Kingdom as part of a series called 'Over' cannot help the Complainant establish a common law mark of a sort that was likely to be known to a domain name registrant in London in December 1999.

The Panel has carefully perused the evidence and finds insufficient material to justify an inference of bad faith registration. Hence, Complainant has failed to meet its burden of proof to establish bad faith.

Accordingly, the Panel does not find the third criterion proved.

7. Decision

For the foregoing reasons, the Panel decides that the Complaint be rejected.

Hon. Sir Ian Barker QC
Presiding Panelist

Richard W. Page
Panelist

David E. Sorkin
Panelist

Dated: April 20, 2001