



NATIONAL ARBITRATION FORUM

DECISION

Triumph International Inc. v. TAAJ -----

PARTIES

Complainant is **Triumph International, Inc.** ("Complainant"), represented by **Joel R. Feldman** of **Greenberg Traurig, LLP**, Georgia, USA. Respondent is **TAAJ** ----- ("Respondent"), California, USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<teammichaeljackson.com>**, registered with **GoDaddy.com, Inc.**

PANEL

The undersigned certifies that he or she has acted independently and impartially and to the best of his or her knowledge has no known conflict in serving as Panelist in this proceeding.

Paul M. DeCicco as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on April 4, 2011; the National Arbitration Forum received payment on April 4, 2011.

On April 5, 2011, GoDaddy.com, Inc. confirmed by e-mail to the National Arbitration Forum that the **<teammichaeljackson.com>** domain name is registered with GoDaddy.com, Inc. and that Respondent is the current registrant of the name.

GoDaddy.com, Inc. has verified that Respondent is bound by the GoDaddy.com, Inc. registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On April 8, 2011, the Forum served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of April 28, 2011 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to postmaster@teammichaeljackson.com. Also on April 8, 2011, the Written Notice of the Complaint, notifying Respondent of the email addresses served and the deadline for a Response was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

A timely Response was received and determined to be complete on April 29, 2011. However, the Response was received with a file size over the 10mb limit, therefore the Response does not comply with ICANN Rule 5 (a) and/or the Annex to the Supplemental Rules. Notwithstanding the large file size the Panel elects to consider the Response as there is no apparent prejudice to Complainant relating to the procedurally oversized file.

Complainant's timely Additional Submission was received on May 3, 2011.

On May 3, 2011 pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Paul M. DeCicco as Panelist.

On May 9, 2011 the National Arbitration Forum received Respondent's timely Additional Submission which it transmitted it to the Panel on May 10, 2011.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant

Complainant contends as follows:

Complainant Triumph owns the MICHAEL JACKSON mark. Triumph has used the MICHAEL JACKSON mark since at least 1985 in connection with various goods and services, including, sound recordings and entertainment services. In addition, Triumph has used THE OFFICIAL ONLINE TEAM OF THE MICHAEL JACKSON ESTATE as a service mark for Internet fan sites since 2010.

When Michael Jackson died on June 25, 2009, ownership of Triumph transferred to Michael Jackson's Estate. For the purpose of disseminating official information on behalf of Michael Jackson's Estate, Triumph uses the phrase "The Official Online Team of the Michael Jackson Estate," through an authorized licensee, in connection with its online activities, such as social media.

Triumph's ownership of a federal trademark registration for MICHAEL JACKSON is sufficient, under the UDRP, to establish rights in the MICHAEL JACKSON mark.

Respondent's domain name is confusingly similar to Triumph's MICHAEL JACKSON mark because it contains Triumph's entire MICHAEL JACKSON mark and differs from Triumph's MICHAEL JACKSON mark only by the addition of the term "team."

Respondent's addition of the descriptive term "team" does not distinguish the domain name from Triumph's MICHAEL JACKSON mark. This is especially true because Triumph uses the term "TEAM" in connection with its own online presence.

The addition of the gTLD ".com" does not distinguish the at-issue domain name from Triumph's MICHAEL JACKSON mark.

The Respondent does not have any rights or legitimate interests in the at-issue domain name. Respondent cannot demonstrate any of the three scenarios under Policy ¶4(c).

First, Respondent is not using the Infringing Domain Name for the *bona fide* offering of goods or services. *Bona fide* means made in good faith; without fraud or deceit; sincere;

genuine. Therefore, the Respondent must not only be using the Infringing Domain Name, Respondent must be doing so in good faith and without fraud or deceit; otherwise Respondent's use is not *bona fide*. Respondent is using the Infringing Domain Name to sell viewing access to court transcripts. Because Respondent is collecting money in exchange for providing a service, this is a commercial transaction. And because Respondent is using Triumph's registered trademark for this commercial transaction, the commercial use is not a *bona fide* offering of goods or services.

Second, Respondent is not commonly known by the name "Michael Jackson." The WHOIS information shows that Respondent's name is Taaj ----- . As a result, Respondent does not have a right to use the name "Michael Jackson" by virtue of his or her name. In addition, Triumph has not granted Respondent permission to use the domain name. Respondent is not part of the "Michael Jackson team."

Third, Respondent is not using the at-issue domain name for a noncommercial use. Rather, as stated above, Respondent is currently using the domain name, *inter alia*, to request that website visitors send money to Respondent through Paypal. This is a commercial use, and the request for money is prominent and pervasive throughout the website. The fact that Respondent has used the term "donations" does not change the commercial nature of the transaction. Respondent is not a charity.

Thus, Respondent has no rights or legitimate interests in the domain name and is therefore not entitled to retain ownership of the at-issue domain name in light of Triumph's well-established trademark rights in the MICHAEL JACKSON mark.

Respondent registered and is using the domain name in bad faith in violation of UDRP ¶ 4(a)(iii). Under UDRP ¶ 4(b)(iii), if by using the at-issue domain name, Respondent intentionally attempts to attract, for commercial gain, Internet users to his or her website by falsely suggesting a connection to Triumph or Michael Jackson, this intent is evidence of bad faith.

The "Michael Jackson" portion of the <**teammichaeljackson.com**> domain name refers to the iconic musician, who is the subject of the federal trademark applications and registration owned by Triumph. Therefore, it is clear that when Respondent registered the domain name, Respondent was aware of Triumph's trademark rights in the MICHAEL JACKSON mark. And Respondent continues to use the domain name, which contains the entire MICHAEL JACKSON mark, to attract Internet users to his or her web site and to prominently promote his or her economic interest of collecting "donations" in exchange for posting court transcripts.

Triumph recognizes Respondent's legal right to develop a website that posts legal transcripts or documents. But Respondent cannot use a domain name containing Triumph's registered MICHAEL JACKSON trademark for this purpose. This is especially true because the addition of the word "team" to "Michael Jackson" to create the domain name <**teammichaeljackson.com**> further suggests that the at-issue domain name is connected to Triumph and Michael Jackson. In other words,

<**teammichaeljackson.com**> is a domain name that falsely suggests to consumers that the website is part of the Michael Jackson team. It is not.

To the extent that Respondent is attempting to pass the at-issue domain name off as a legitimate website by using Triumph's MICHAEL JACKSON trademark and photographs

and videos of Michael Jackson, this conduct is prohibited by UDRP ¶ 4(b)(iv) and is evidence of Respondent's bad-faith use and registration of the domain name.

Respondent's use of the at-issue domain name suggests to consumers that the at-issue domain name and web site are affiliated with Triumph. They are not.

Triumph is in no way affiliated with Respondent and does not approve of his or her operation of the Infringing Domain Name.

Triumph has established a *prima facie* case that Respondent registered and is using the Infringing Domain Name in bad faith. Because Triumph has established rights in the MICHAEL JACKSON mark and Respondent does not, the UDRP dictates that the at-issue domain name be transferred from Respondent to Triumph.

B. Respondent

Respondent contends as follows:

Heal The World Foundation (HTWF) jointly owns the MICHAEL JACKSON mark. They have not filed a complaint against Respondent. HTW owns 180 service marks. HTWF is owned by a separate entity other than the complainant.

Respondent is not using **<teammichaeljackson.com>** in connection with Michael Jackson's products or services; not selling or advertising Music CD's Videos etc. Respondent is only providing local up to-date news, reporting on the three Michael Jackson related trials. The domain name did not infringe on any service marks. In a case cited by the Complainant, respondent redirected its site to the Complainant site and sold the same items, Respondent has not done this, and this case is completely different from the case cited.

This case is different than *Miller Brewing Co. v. Miller Family*, FA 104177 (Nat. Arb. Forum Apr. 15, 2002). In that case the exact name was used; Respondent has not used the exact name. Respondent wanted to acquire TeamMichael but it was not available, the next best option was TeamMichaelJackson. *Gardline Surveys Ltd. v. Domain Fin. Ltd.*, FA 153545 (Nat. Arb. Forum May 27, 2003) is dissimilar since in that case the respondent had the exact same name. Respondent's website is used to inform people about certain court cases relevant to Michael Jackson.

Respondent was (1) using the domain name in connection with a *bona fide* activity; (2) has been commonly known by the domain name; and (3) makes a legitimate noncommercial or fair use of the domain name, without intent for commercial gain.

TeamMichael is Respondent's user name on Facebook and has had 5000 friends. Respondent's name on Twitter is TeamMichael777.

Respondent is not using this domain name for commercial use. When this site was originally published, the domain registered there had no intentions of asking for contributions. After putting up a donations button, Respondent had a change of heart regarding donations and stopped accepting them. There was and are no "Selling" services from this site.

Respondent is not commonly known as "Michael Jackson" but is recognized as Team Michael in the social networking sites. As a Michael Jackson researcher who provides up to date accurate information to hundreds of thousands of fans around the world.

Respondent has immediately placed a disclaimer on the site so that there will be no confusion.

Complainant is complaining about use of "team" Michael Jackson. Complainant's representatives are in direct contact with many doing the same. They have NOT filed complaint against them.

Complainant Triumph abandoned many of Michael Trademarks in 1997 right up until August 2009. Some of them are still dead.

C. Additional Submissions

Complainant contends in its Additional Submission as follows:

Respondent has not refuted Triumph's evidence of: (1) Triumph's rights in the MICHAEL JACKSON mark; (2) the similarity of MICHAEL JACKSON and the **<teammichaeljackson.com>** domain name; (3) Respondent's lack of rights in the MICHAEL JACKSON mark; and (4) Respondent's bad-faith intent.

Respondent's allegation that "Heal the World Foundation jointly owns the MICHAEL JACKSON mark" is not only irrelevant, it is completely false. The allegation is not relevant because even if MICHAEL JACKSON was a trademark of other entities, this fact would not prevent Triumph from invoking its rights in the mark. The allegation is false because Heal the World Foundation does not own any rights in the MICHAEL JACKSON mark.

It is the combination of "Michael" and "Jackson" that Triumph objects to in this proceeding, not the isolated use of "Michael" or "MJ." Twitter user names are not subject to the Policy. Finally, evidence of third-party uses of a mark does not defeat Complainant's rights in its registered mark.

Under the Policy, the addition of "team" to a federally-registered trademark does not negate confusing similarity. This is because the word "team" is either generic or descriptive, not source identifying. Therefore, using "Team Michael Jackson" is tantamount to using "Michael Jackson" in the eyes of consumers.

Respondent has failed to meet her burden of showing that she has legitimate rights or interests in the **<teammichaeljackson.com>** domain name. Although Respondent has presented evidence that she is known as "TeamMichael777" on the social networking site Twitter.com and "TeamMichael" on the social networking site Facebook.com, "Team Michael" and "TeamMichael777" are substantially different than "Team Michael Jackson." Respondent admits that she is not commonly known as "Michael Jackson." Respondent argues that her site is not commercial because: (1) she did not originally intend to ask for money; (2) she refunded one of two donations she received; and (3) after receiving the Complaint, she removed requests for donations from her website. Complainant took affirmative steps to solicit payments from website users. Furthermore, although Respondent alleges that she "[forgot] to remove the donations button which [she has] now removed," pleas for "donations" remain on her website.

Because the site is commercial in nature and because Respondent's commercial use of the MICHAEL JACKSON mark is infringing rather than *bona fide*, Respondent cannot avail herself of Policy ¶ 4(c)(i) or 4(c)(iii).

Even if the Panel finds that Respondent's site is not commercial in nature, Respondent is still not entitled, under the Policy, to use the domain name

<teammichaeljackson.com> for a website providing information about Michael Jackson, regardless of whether it is a criticism site (of Triumph and the Estate) or a fan

site (of Michael Jackson). The presence of non-commercial speech does not give Respondent carte blanche to use a domain name containing Triumph's MICHAEL JACKSON mark.

Triumph does not dispute Respondent's right to operate a website that provides the type of information that Respondent is providing on **<teammichaeljackson.com>**, provided that Respondent does not otherwise infringe Triumph's copyright or trademark rights or engage in libel or defamation. Rather, Triumph disputes Respondent's right to use **<teammichaeljackson.com>**, a domain name that is confusingly similar to the MICHAEL JACKSON mark, to operate such a website.

The right to express one's views is not the same as the right to use another's name to identify one's self as the source of the views. One may be perfectly free to express his or her views about the quality or characteristics of the reporting of the New York Times or Time Magazine. That does not, however, translate into a right to identify one's self as the New York Times or Time Magazine.

Although Respondent alleges that she is not attempting to mislead or confuse Internet users, the available evidence directly contradicts her allegations. Respondent is engaging in an overall scheme to mislead or confuse Internet users into believing that Respondent is a member of Michael Jackson's "team." This is evident from her use of Michael Jackson's picture and the name "Team Michael" throughout Facebook and Twitter to drive traffic to her website.

Internet users will likely visit Respondent's **<teammichaeljackson.com>** site to learn more about the MICHAEL JACKSON brand. Prominently displayed on Respondent's website is the phrase "JOHN BRANCA HAS [NOW] RESORTED TO ATTACKING MICHAEL." Underneath that is a statement that "THIS IMAGE OF MICHAEL HAD TO BE REMOVED DUE TO COMPLAINT BY JOHN BRANCA!" While Internet users may immediately realize that Respondent's site is critical of John Branca and therefore a criticism site, they will not immediately understand the connection between the criticism and the MICHAEL JACKSON trademark. This is especially true because the website, by suggesting that John Branca has attacked Michael Jackson, is creating consumer confusion regarding the ownership of the MICHAEL JACKSON trademark and Respondent's right to use the mark. When use of a trademark within a domain name is confusing, it ceases to be a fair use.

In reality, many, if not most, site visitors will not immediately know that John Branca is the President and CEO of Triumph (the MICHAEL JACKSON trademark owner) and the Co-Executor of Michael Jackson's Estate. Rather, Internet users will likely believe based on the information initially provided on **<teammichaeljackson.com>**, that the website is connected to Michael Jackson and that John Branca is not connected to Michael Jackson. As a result, the disclaimer will simply lure site visitors further into Respondent's website, and help Respondent to promote her agenda. Because the connection between John Branca and the MICHAEL JACKSON trademark is not widely known, nor self-evident, Respondent cannot avail herself of Policy ¶ 4(c)(iii).

In this proceeding, the bad-faith element is inextricably linked with Respondent's lack of rights to use **<teammichaeljackson.com>** as a domain name for a fan site or criticism site. Based on the content that appears on **<teammichaeljackson.com>**, Respondent certainly registered her domain name based on the connection between the domain name and the world-famous entertainer Michael Jackson. Under Policy ¶ 4(b)(iii),

Respondent has registered <teammichaeljackson.com> in bad faith if she registered the domain name primarily for the purpose of disrupting the business of a competitor. Triumph and Respondent are both in the business of providing information about the world-famous entertainer Michael Jackson. Triumph is the official source of this information because Triumph is the owner of the federally-registered MICHAEL JACKSON mark. But Respondent registered and uses the <teammichaeljackson.com> domain name in the hopes that Internet users will use <teammichaeljackson.com> as their source of information about Michael Jackson. As a result, Respondent's actions are in bad faith under the Policy.

While Respondent states it is not seeking commercial gain, Respondent's actions must logically be assumed to benefit Respondent. Although persons looking for Complainant's commercial website who reach Respondent's website will likely realize that they have not reached Complainant's website, those users may be influenced by Respondent's website and decide to not go to their intended destination of Complainant's website. Respondent has thus used the domain name to intentionally attract users to its website by creating a likelihood of confusion with Complainant's marks to the commercial detriment of Complainant. Accordingly, the Panel should find that Respondent's registration and use of the domain name to be in bad faith. Even if Respondent is not seeking commercial gain through her website, she is trying to attract users to her website by using a domain name that communicates association with Michael Jackson. Therefore, Respondent's use of the domain name is a bad-faith use. Panels have consistently held that disclaimers similar to Respondent's disclaimer do not negate bad faith.

Respondent contends in her Additional Submission as follows:

Many users on twitter have the exact name Michael Jackson as domain names. Respondent is not offering the exact same products as Complainant but offers a FREE service.

Heal the World Foundation is very much related to the present Heal the World Foundation, and Michael Jackson trademarks. Heal the World Foundations has owned these marks much longer then claimant, and have no problem with Respondent's use of the name TeamMichaelJackson.

Respondent's work is related to Michael Jackson. This is evident by her acquiring the domain name <teammichaeljackson.com>. Respondent is "TeamMichaelJackson" and has many causes dedicated to Michael. Respondent is team Michael.

FINDINGS

Complainant has rights in the at-issue domain name because of its registrations with the United States Patent and Trademark Office.

The domain was registered subsequent to the Complainant having demonstrated rights in the domain name.

Respondent's website referenced by the at-issue domain name is not commercial in nature.

The at-issue website has not been shown to be illegitimate in character.

There has been no convincing showing that Respondent had or has any intent to direct internet traffic away from Complainant, disrupt complainant's business, or otherwise cause harm to Complainant's trademark.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

The at-issue domain name is confusingly similar to a trademark in which Complainant has rights.

Complainant provides proof of numerous trademark registrations with the United States Patent and Trademark Office ("USPTO") for its MICHAEL JACKSON mark (e.g., Reg. No. 1,908,209 issued August 1, 1995). Thereby, Complainant demonstrates that it has rights in a mark pursuant to Policy ¶(a)(i). See *Miller Brewing Co. v. Miller Family*, FA 104177 (Nat. Arb. Forum Apr. 15, 2002) (finding that the complainant had established rights to the MILLER TIME mark through its federal trademark registrations); see also *Trip Network Inc. v. Alviara*, FA 914943 (Nat. Arb. Forum Mar. 27, 2007) (finding that the complainant's federal trademark registrations for the CHEAPTICKETS and CHEAPTICKETS.COM marks were adequate to establish its rights in the mark pursuant to Policy ¶ 4(a)(i)).

The at-issue domain name is confusingly similar to Complainant's mark because the domain name contains Complainant's entire MICHAEL JACKSON mark appended to the term TEAM. The addition of the term TEAM is insufficient to distinguish the domain name from the Complainant's MICHAEL JACKSON mark for the purposes of Policy ¶4(a)(i). See *U.S. News & World Report, Inc. v. Zhongqi*, FA 917070 (Nat. Arb. Forum Apr. 9, 2007) ("Elimination of punctuation and the space between the words of Complainant's mark, as well as the addition of a gTLD does not sufficiently distinguish the disputed domain name from the mark pursuant to Policy ¶ 4(a)(i).") see also *Arthur Guinness Son & Co. (Dublin) Ltd. v. Healy/BOSTH*, D2001-0026 (WIPO Mar. 23, 2001) (finding confusing similarity where the domain name in dispute contains the identical mark of the complainant combined with a generic word or term);

Rights or Legitimate Interests

Respondent demonstrates rights or interest in respect of the at-issue domain name.

Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii) and then the burden, in effect, shifts to Respondent to show that she does have rights or legitimate interests. See *Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006). Complainant contends that Respondent is not commonly known by the <teammichaeljackson> domain name. WHOIS information identifies Respondent as an entity other than TEAM MICHAEL JACKSON. Furthermore, Respondent is not authorized to register or use Complainant's MICHAEL JACKSON mark. See *Tercent Inc. v. Lee Yi*, FA 139720 (Nat. Arb. Forum Feb. 10, 2003) (stating "nothing in Respondent's WHOIS information implies that Respondent is 'commonly known by' the disputed domain name" as one factor in determining that Policy ¶ 4(c)(ii) does not apply); see also *Braun Corp. v. Loney*, FA 699652 (Nat. Arb. Forum July 7, 2006) (concluding that the respondent was not commonly known by the disputed domain names where the WHOIS information, as well as all other information in the record, gave no indication that the respondent was commonly known by the disputed domain names, and the complainant had not authorized the respondent to register a domain name containing its registered mark). Therefore, Complainant satisfies its slight initial burden regarding Respondent's lack of rights and interests in the disputed domain name.

Although Respondent suggests that she is commonly known by the domain name in her Additional Submission, in her Response she makes referenced to the fact that she is commonly known as "TEAM MICHAEL" and that the MICHAEL being referenced is Michael Jackson. Even though the MICHAEL in the middle of TEAM and dot COM may have been intended to refer to MICHAEL JACKSON, the two phrases are not equivalent for the purpose of the POLICY. There is thus no convincing evidence in the record, which might lead the Panel to hold that Respondent was known by the name TEAM MICHAEL JACKSON prior to her registration and use of the at-issue domain name. As such Policy ¶4(c)(ii) is inapplicable.

The Panel next considers that applicability of Policy ¶4(c)(iii) as a mechanism for demonstrating rights and interests in respect of the domain name. Under paragraph 4(c)(iii) a respondent demonstrates rights in the domain name upon a showing that:

(iii) [Respondent is] making a **legitimate noncommercial** or fair use of the domain name, **without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark** or service mark at issue.

Policy ¶4(c)(iii) (emphasis added)

Complainant argues that Respondent's at-issue website is commercial and so Policy ¶4(c)(iii) does not apply. Complainant's assertion is grounded solely because Respondent has, at times during the pendency of her website, requested donations. According to Complainant this practice is sufficient to characterize the website as commercial for the purposes of the Policy and since the website is commercial Policy ¶4(c)(iii) does not apply.

On the other hand, Respondent asserts, and Complainant concurs, that the website offers Court documents in connection with three trials relating to Michael Jackson's estate and does so without charge. Respondent admits that she has asked for donations to assist with her out of pocket costs, but says she no longer asks for

donations. Respondent states that she is not making commercial use of the <teammichaeljackson.com> domain name.

Receiving donations is not commonly understood to be a touchstone for commercial activity. Indeed, if such were the case then every human endeavor where one voluntary contributes (or donates) to the direct benefit of another would be considered commercial. Under Complainant's broadly encompassing definition of commercial the implication arises that if any benefit is received, the benefited activity related to the beneficiary *is* commercial. Under this view, to make an extreme example for illustration, an accident victim's request for help from a passerby renders the accident a commercial activity. Such a definition of "commercial" would, as a practical matter, render the term meaningless.

The Panel thus applies the more common definition of "commercial" meaning as having to do with commerce, where commerce is the exchange of goods, production or property of any kind; the buying selling or exchange of articles, to the instant proceeding. See *Black's Law Dictionary* (5th), pp. 244, 245. Receiving or soliciting donations, without more, is not consistent with this definition.

The record shows that the chief emphasis of Respondent's website is not to make a profit or otherwise to engage in commerce but rather to make available free of charge what Respondent believes to be interesting documents regarding Michael Jackson, in particularly documents concerning several Michael Jackson related litigations. Respondent's having once solicited donations does not make Respondent's use of the domain name commercial. Respondent's motivation appears to be out of her love for the pop icon rather than for any pecuniary gain. **There is nothing else in the record that might lead the Panel to conclude that the at-issue website is a commercial endeavor rather than simply the manifestation of a fan reporting what she feels is relevant and newsworthy regarding her idol.**

Complainant asserts in its Additional Submission that even if the at-issue website is non-commercial Respondent, in registering and using the domain name, intended to misleadingly divert consumers and to tarnish Complainant's trademark. The Panel disagrees. Respondent believably explains her motivation for registering the domain name and creating her website. And while some <teammichaeljackson.com> website visitors might be initially confused as to the website's source or sponsorship, there has been no showing of any significant actual confusion or the likelihood of such.

Any public confusion regarding the at-issue website that is above the background count of the general source confusion that exists in the normal course of browsing the Internet is hypothetical. Indeed, it may be fair to say that at least some <teammichaeljackson.com> visitors are likely to be initially confused because they expected that the site would relate to Michael Jackson the medical doctor, or Michael Jackson the CPA, but that confusion or confusion with the pop icon Michael Jackson does not indicate that it was Respondent's design to cause such confusion or mislead Internet users. Moreover as discussed above, there is no showing that Respondent intended to capitalize on any potential confusion between her domain name and Complainant's mark. Although the Panel cannot know what Respondent actually intended, there does not seem to be any convincing manifestations of ill intent when considering the totality of the record. While we may be tempted to impute ill intent from

the fact of the domain name's registration and similarity of the mark without more, in light of the underlying descriptive nature of the mark and the domain name we would be speculating in doing so.

The Panel thus finds for the purposes of Policy ¶4(c)(iii) that there is legitimate non-commercial use of the <teammichaeljackson.com> domain name and that there was and is no intent by Respondent to divert Complainant's customers or web traffic, or to tarnish its mark. Since the specific conditions set out under Policy ¶4(c)(iii) are shown to be present, Respondent demonstrates that she has legitimate rights and interest in the domain name pursuant to Policy ¶4(c)(iii). *Baja Marine Corp. v. Wheeler Techs., Inc.*, FA 96954 (Nat. Arb. Forum May 17, 2001) (finding that the respondent has rights and legitimate interests in the domain name where the respondent made a non-commercial use of the <bajaboats.com> domain name.).

Registration and Use in Bad Faith

Having determined that Respondent has rights in the <teammichaeljackson.com> domain name the issue of whether or not the domain name was registered and used in bad faith is moot. Complainant correctly points out that the Policy's "bad-faith element is inextricably linked with Respondent's lack of rights to use <teammichaeljackson.com> as a domain name for a fan site or criticism site." Therefore having found that Respondent has rights and interest to use the domain name in the manner that she has used it to-date, the Panel need not independently discuss the issue of bad faith registration and use. See *Lockheed Martin Corp. v. Skunkworx Custom Cycle*, D2004-0824 (WIPO Jan. 18, 2005) (finding that the issue of bad faith registration and use was moot once the panel found the respondent had rights or legitimate interests in the disputed domain name); see also *Vanguard Group Inc. v. Investors Fast Track*, FA 863257 (Nat. Arb. Forum Jan. 18, 2007) ("Because Respondent has rights and legitimate interests in the disputed domain name, his registration is not in bad faith.").

DECISION

Having failed to establish all three elements required under the ICANN Policy, the Panel concludes that relief shall be **DENIED**.

Accordingly, it is Ordered that the <teammichaeljackson.com> domain name **REMAIN WITH** Respondent.

Paul M. DeCicco, Panelist

Dated: May 17, 2011