



NATIONAL
ARBITRATION
FORUM

Savin Corporation)
 333 Ludlow Street)
 Stamford, CT 06902)
(Complainant))
)
 v.)
)
 savinsucks.com)
 76 Hawley Ave)
 Milford, CT 06460)
(Respondent))
 _____)

Domain Names In Dispute:
savinsucks.com

Case Number:
FA# 103982

RESPONSE

1. Respondent received a Notification of Complaint and Commencement of Administrative Proceeding on January 24, 2002. The Notification stated that Complainant had submitted a Complaint for decision in accordance with the Uniform Domain Name Dispute Resolution Policy, adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999 and approved by ICANN on October 24, 1999 (ICANN Policy), and the Rules for Uniform Domain Name Dispute Resolution Policy (ICANN Rules), adopted by ICANN on August 26, 1999 and approved by ICANN on October 24, 1999, and the National Arbitration Forum (NAF) Supplemental Rules (Supp. Rules). ICANN Rule 4.

2. RESPONDENT INFORMATION

- a. Name: **savinsucks.com / Peter W. Sachs, Esq.**
- b. Address: **129 Church Street, Suite 508, New Haven, CT 06510**
- c. Telephone: **203-821-2575**
- d. Fax: **203-821-2574**
- e. E-Mail: **psachs@iconn.net**

Respondent's has no authorized representative in the administrative proceeding. ICANN Rule 5(b)(ii). The Respondent's preferred method for communications directed to Respondent in the administrative proceeding: ICANN Rule 5(b)(iii).

Electronic-Only Material

- a. Method: **email**
- b. Address: **psachs@iconn.net**
- c. Contact: **Peter Sachs**

Material Including Hard Copy

- a. Method: **fax**
- b. Address/Fax: **203-821-2574**
- c. Contact: **Peter Sachs**

Respondent chooses to have this dispute heard before a three-member administrative panel as stated in Complainant's Complaint. ICANN Rule 5(b)(iv). Respondent selects as its candidates for panelist:

- **Ms. Dana Haviland**
- **Mr. R. Glen Ayers**
- **Mr. David Sorkin**

3. RESPONSE TO FACTUAL AND LEGAL ALLEGATIONS MADE IN COMPLAINT

This Response specifically responds to the statements and allegations contained in the Complaint and includes any and all bases for Respondent to retain registration and use of the disputed domain name. ICANN Rule 5(b)(i).

- a. **The Respondent's domain name, "SAVINSUCKS.COM" is neither identical, nor confusingly similar to Complainant's trademark.**

Complainant has not alleged that Respondent's domain name is "identical" to Complainant's trademark. Rather, Complainant has alleged that Respondent's domain name is "confusingly similar" to Complainant's trademark. Complainant first claims "SAVINSUCKS.COM" is "confusingly similar" because it contains Complainant's trademark "SAVIN." The decisions Complainant has cited¹ in support of this proposition are distinguishable from this proceeding. Most of the domain names at issue in the cited decisions had been registered by "cybersquatters," with the intent to profit from a subsequent sale of the name. Complainant has not alleged, nor could it truthfully allege that Respondent is a "cybersquatter." Therefore, any decision in which "cyber squatting" was found is distinguishable from this proceeding. Furthermore, the domain names at issue in the cited decisions did not criticize the complainants' trademarks. The Respondent's domain name does clearly criticize Complainant's trademark. The Policy was not intended to provide a quick and easy means of quashing criticism.

Complainant next alleges that Respondent's domain name is "confusingly similar" because it contains Complainant's trademark "SAVIN," plus the word "SUCKS." The decisions Complainant cites² in support of this proposition are again, distinguishable, because they also involved domains names that had been registered by "cybersquatters." Moreover, courts and panels have found that such use of the word "SUCKS" causes no confusion.

In Lucent Technologies, Inc. v. LucentSucks.com, 95 F.Supp.2d 528 (E.D. Va. 2000), the court noted that "the average consumer would not confuse "lucentSucks.com" with a website sponsored by

¹ Trump, et al. v. Rafeli, Claim No. FA0110000100238 (Nat. Arb Forum Nov. 6, 2001); Trump v. Graham, Claim No. FA0110000100177 (Nat. Arb. Forum Nov. 2, 2001); Marriott Int'l, Inc. v. Nicewarner, Claim No. FA0109000099692 (Nat. Arb. Forum Nov. 1, 2001); State Farm Mut. Auto. Ins. Co. v. All Phase Builders, Claim No. FA0108000099608 (Nat. Arb. Forum Oct. 11, 2001); General Electric Co. v. Pars Int'l Computer, Inc., Case No. D2000-0368 (WIPO July 25, 2000).

² See Wal-Mart Stores Inc. v. McLeod, Case No. D2000-0662 (WIPO Sept 19, 2000), Diageo PLC v. Zuccarini, Case No. D2000-0996, (WIPO Oct. 22, 2000); Cabela's Inc. v. Cupcake Patrol, Claim No. FA 0006000095080 (Nat. Arb. Forum Aug. 29, 2000); Direct Line Group Ltd. V. Purge I.T., Case No. 2000-0583. (WIPO Aug. 13, 2000).

plaintiff." In Bally Total Fitness v. Faber, 29 F.Supp.2d 1161 (C.D. Cal. 1998), where the defendant had created a "Bally Sucks" website, the court held that the parties' marks were not similar, because the defendant's addition of the word "sucks" [to the plaintiff's trademark] was a major, rather than a "minor change."

In Lockheed Martin Corporation v. Dan Parisi, Case No. D2000-1015 (WIPO January 26, 2001) (domain names at issue: "lockheedsucks.com" and "lockheedmartinsucks.com."), the panel held that "[b]oth common sense and a reading of the plain language of the Policy support the view that a domain name combining a trademark with the word "sucks" or other language clearly indicating that the domain name is not affiliated with the trademark owner cannot be considered confusingly similar to the trademark." In Wal-Mart Stores, Inc. v. walmartcanadasucks.com, Case No. 2000-1104 (WIPO Nov. 23, 2000) the panel held "a reasonably prudent user would not mistake the walmartcanadasucks.com site for any of Wal-Mart's official sites." The Wal-Mart panel also expressed doubt as to whether "a domain name including "sucks" ever can be confusingly similar to a trademark to which "sucks" is appended."

Complainant next alleges that Respondent's domain name is "confusingly similar" because web users may be confused when they visit Respondent's website, if only to satisfy their curiosity. Complainant has admitted Respondent has no website, so no such "visits" could occur. For a web user's curiosity to be piqued at all, there would have to be an occurrence of "SAVINSUCKS.COM" on the World Wide Web for him to investigate. At this writing, the string "SAVINSUCKS.COM" does not appear in any Internet search engine despite the fact that it has been registered for over two years. See Respondent's Exhibit 1.

Indeed, the only way web users could even attempt to "visit" "SAVINSUCKS.COM" would be if they intentionally typed "SAVINSUCKS.COM" into their web browser. In that case, they would not be looking for "SAVIN," they would be looking for "SAVINSUCKS.COM." Complainant has not offered any evidence that web users looking for the "SAVIN" website instinctively type "SAVINSUCKS.COM" into their browsers.

Complainant next alleges Respondent's intentional registration of a domain name that contains another's valuable trademark weighs in favor of finding a "likelihood of confusion." Again, the cited decisions³ are distinguishable because they involved domains names registered by "cybersquatters."

Complainant next alleges, "[t]he registration and use of "SAVINSUCKS.COM" is likely to cause confusion among consumers familiar with the Savin Marks." First, Complainant has cited no source for the proposition that registration in and of itself can cause confusion. Second, Complainant has stated "Respondent does not actively use the domain name" but "[a]ny such [future] use would likely cause confusion among the Web users." Thus, Complainant admits that the Respondent's non-active "use" of the domain name causes no confusion with respect to Complainant's trademark.

Since all of the decisions cited by Complainant are distinguishable from the present proceeding; since Complainant has not provided any evidence of actual confusion; and since Complainant's own admissions and statements show that there is no confusion, Complainant has failed to prove that "SAVINSUCKS.COM" is identical, or confusingly similar to Complainant's trademark.

b. Respondent has rights or legitimate interests in respect to the domain name, "SAVINSUCKS.COM"

³ Cabela's Inc. v. Cupcake Patrol, Claim No. FA 0006000095080 (Nat. Arb. Forum Aug. 29, 2000), Minnesota Min. and Mfg. Co. v. Taylor, 21 F.Supp.2d 1003 (D.Minn. 1998); Intermatic Inc. v. Toeppen, 947 F.Supp. 1227 (N.D.Ill. 1996).

Respondent has neither claimed any use of “SAVINSUCKS.COM” in connection with a bona fide offering of goods or services, nor has it claimed to be known by the domain name “SAVINSUCKS.COM.”

Complainant first claims that Respondent’s refusal to “enter into any agreement regarding any possible use of the domain name strongly suggests that Respondent will be using the domain name “SAVINSUCKS.COM” as a host name.” Respondent has no obligation to accept any settlement offer. His refusal to accept any such offer does not “strongly suggest” anything, nor does it have any bearing on whether he has rights or legitimate interests in respect to the domain name.

Complainant next cites Estée Lauder Inc. v. estelauder.com, estelauder.net and Jeff Hanna, Case No. D2000-0869 (WIPO Sept. 25, 2000) in support of the proposition that “free speech does not grant a registrant the right to use a domain name that is “confusingly similar” to complainant’s trademark.” The respondent’s domain name in Estée Lauder was nearly identical to complainant’s trademark. The Respondent’s domain name here is not even “confusingly similar.” The complainant in Estée Lauder “had also submitted considerable and largely unrefuted evidence of actual confusion.” Id. Complainant here has provided none. The Estée Lauder panel also found that Respondent had made a “deliberate attempt to attract or divert Internet users who make a common error or spelling mistake in their Internet search.” Respondent in this proceeding has made no use of his domain name and it appears in no search engine. See Respondent’s Exhibit 1.

Complainant next cites Backstage Fashion, Inc. v. Back Stage, Inc., Claim No. FA0109000100135 (Nat. Arb. Forum Nov. 5, 2001) in support of the proposition that “using a domain name containing Complainant’s mark to divert customers away from Complainant does not establish a bona fide fair use.” Again, Complainant admits that Respondent has no website associated with “SAVINSUCKS.COM, so he cannot have ever used his domain name to divert customers away from Complainant’s.

Complainant next claims, “Respondent has stated his intention to attract Web users’ attention to his domain name via the consumer recognition of the SAVIN mark.” Respondent has neither stated nor implied any such intention. By claiming he has, Complainant is intentionally misleading this Panel. Since the Exhibits cited contain no such statements or implications, Complainant’s allegation must be disregarded.

Paragraph 4(c) of the Policy reads “[a]ny of the following circumstances, in particular but without limitation . . . shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii). (Emphasis added). Paragraph 15(a) of the Rules provide that “The Panel must “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.” Since both Complainant and Respondent here are U.S. entities, and since both parties have cited U.S. law in their submissions, the Panel must deem applicable “the principles of law” found in the United States Constitution. See Bridgestone Firestone, Inc. v. Myers, D2000-0190 (WIPO July 6, 2000)

Complainant claims, “[the] Respondent has no right to use Complainant’s mark in order to attract Web users even if his intentions are to criticize.” (Emphasis added.) Although Complainant’s trademark rights are valid, they are nonetheless limited by the Respondent’s First Amendment rights. See L.L. Bean, Inc. v. Drake Publishers, Inc., 811 F.2d 26 (1st Cir.), cert. denied, 483 U.S. 1013, 107 S.Ct. 3254, 97 L.Ed.2d 753 (1987). Under the First Amendment of the United States Constitution,

Respondent has an unfettered right to hold or express his opinion that “Savin Sucks”-- through oral, written or electronic means via the registration of a domain name.

Complainant fails to acknowledge Bally Total Fitness Holding Corp. v. Faber, 29 F.Supp.2d 1161 (C.D. Cal. 1998), where the court held that defendant was exercising his right to publish critical commentary about Bally when he operated a “Bally Sucks” website. The Bally court found the defendant could not have expressed his opinion about Bally without making reference to the trademark “Bally.” Similarly, Respondent cannot express his opinion about “SAVIN” in his domain name without making reference to “SAVIN.”

Complainant also fails to acknowledge several UDRP decisions that concur with Bally. See Bloomberg L. P. v. Secaucus Group, Claim Number: FA0104000097077 (Nat. Arb. Forum June 7, 2001); (The exercise of free speech for criticism and commentary also demonstrates a right or legitimate interest in the domain name.); Bosley Medical Group and Bosley Medical Institute, Inc. v. Michael Kremer, Case No. D2000-1647 (WIPO February 28, 2001) (Respondent’s use of domain name “bosleymedical.com” as a consumer commentary site was clearly fair use.); Wal-Mart Stores, Inc. v. walmartcanadasucks.com, D2000-1104 (WIPO Nov. 23, 2000) (Respondent has rights and legitimate interests to use the domain name walmartcanadasucks.com as a forum for criticism of the complainant); Compusa Management Company v. Customized Computer Training, Claim Number: FA0006000095082 (Nat. Arb. Forum August 17, 2000) (Respondent’s First Amendment right to offer criticism of the goods and services provided by Complainant via the domain names “stop-compusa.com” and “bancompusa.com” are as legitimate as any commercial activity.); Bridgestone Firestone, Inc. v. Myers, D2000-0190 (WIPO July 6, 2000) (Respondent has free speech rights and legitimate First Amendment interests in the domain name “bridgestone-firestone.net.”);

Respondent also has a legitimate interest in preserving the freedom of expression for others. Respondent is an attorney and advocate for Constitutional rights with respect to the Internet. He has testified at the request of the ACLU before a Congressional Panel on "4th Amendment Issues Raised by the FBI’s ‘Carnivore’ Program." See <http://www.house.gov/judiciary/sach0724.htm>. Respondent consults to other attorneys and provides commentary to the media on Constitutional issues with respect to the Internet. Respondent has appeared in national newspaper and magazine articles, as well as in radio and television newscasts.

For the aforementioned reasons, Respondent is making a legitimate noncommercial and fair use of the domain name, without intent of commercial gain to misleadingly divert consumers, or to tarnish the trademark or service mark at issue. Therefore, Respondent does have rights or legitimate interests in respect of the domain name “SAVINSUCKS.COM.”

c. “SAVINSUCKS.COM” was not registered in bad faith and is not being used in bad faith.

Complainant has failed to prove that the Respondent’s domain name has been registered and is being used in bad faith. Complainant has made no allegations nor offered any evidence pursuant to any of the four examples in Paragraph 4(b) as evidence of registration and use in bad faith. Instead, Complainant alleges other “evidence” of bad faith as it is entitled to do “without limitation” in accordance with Paragraph 4(b).

“The general principle taught by precedents seems to be that, when a –SUCKS domain name has been registered for the main purpose of making money, it has been registered in bad faith, while when the purpose was really to provide criticism, political or otherwise, a finding of bad faith would

not be appropriate.” Caixa d’Estalvis y Pensions de Barcelona (“La Caixa”) v. Namezero.com, Case No. D2001-0360 (WIPO May 3, 2001). Complainant has not alleged, nor could it truthfully allege that Respondent is a “cybersquatter.”

Complainant first offers the Respondent’s failure to use the domain name in a bona fide manner as evidence of bad faith. There is no requirement, contractual or otherwise that a domain name be “used” in association with any particular type of “server.” Thousands, if not millions of domain names are not “used” in association with any servers. Indeed, Complainant itself holds several domain names passively.⁴

Complainant cites McNeil, for the proposition that “failure to make any bona fide use of a registered domain name, that contains another’s trademark, is evidence of bad faith registration and use of that domain name.” In McNeil, the respondent registered the domain name “TYLENOL.ORG,” but never used it. The Panel held that by holding the domain name passively, the respondent prevented the complainant from registering and using the name itself. McNeil Consumer Brands, Case No. D2000-0612 (WIPO Aug. 3, 2000). That decision is distinguishable from this matter. The respondent in McNeil had registered Complainant’s exact trademark “TYLENOL,” and no more. Thus, complainant could not register its exact trademark. Respondent here has not registered Complainant’s exact trademark “SAVIN,” alone. Therefore, Complainant is not preventing Complainant from registering its exact trademark. In fact, Complainant already owns the “.COM” version of the domain name, which contains no more than its exact trademark.⁵

Complainant next offers Respondent’s “passive use” as evidence of bad faith, citing Telstra Corporation Limited v. Nuclear Marshmallows, Case No. D2000-0265 (WIPO Feb. 18, 2000). Respondent believes the concept of “passive use” in Telstra is ill-conceived. It should also be noted that the respondent in Telstra never filed a response. Under Telstra, “passive use” of a domain name means not using it in connection with any Internet services, such as the web. If one registers a domain name and associates his domain name with an Internet service he uses it “actively.” If one registers a domain name and does no more, he uses it “passively.” Thus, the phrase “passive use” becomes synonymous with the word “registration,” and not synonymous with the word “use.” Therefore, in accordance with the standard rules of statutory construction, the phrase “registration and use” in Paragraph 4(b) of the Policy cannot logically be interpreted as meaning “registration and passive use.”

Although Respondent believes the concept of “passive use” is flawed, his domain name falls within the exception of its Telstra test nonetheless. The Telstra panel held that “passive holding” amounts to “use in bad faith” when “it is not possible to conceive of any plausible actual or contemplated active use of the domain name by Respondent that would not be illegitimate.” It is very possible to conceive of several “plausible and legitimate” active uses for “SAVINSUCKS.COM,” including consumer commentary, which is “speech protected by the First Amendment.” Bally, supra at 1167. Thus, the Respondent’s “passive holding” of “SAVINSUCKS.COM” fits well within Telstra’s exception for domain names that do have possible “plausible and legitimate” active uses. See also Alitalia –Linee Aeree Italiane S.p.A v. Colour Digital, D2000-1260 (WIPO Nov. 23, 2000)

The Telstra panel also held that the complainant must prove that the respondent both registered the domain name in bad faith and used the domain name in bad faith. Thus, for bad faith to exist here, Respondent (1) must be using the domain name in bad faith; and (2) Respondent must have had

⁴ Complainant is the registrant for SAVINCOPIER.COM, SAVINCOPIERS.COM, SAVINFAX.COM, SAVINELECTRONICS.COM and SAVINSUPPLIES.COM, all of which they hold passively.

⁵ Complainant is the registrant for “SAVIN.COM.” The domain name “SAVIN.NET” is registered to a Korean company. The domain name “SAVIN.ORG” is registered to Neil Savin, a private citizen of England.

the intent to use the domain name in bad faith at the time he registered it. Complainant admits that Respondent is not “actively using” the domain name, and the Respondent’s “passive use” falls within the “plausible and legitimate” exception of Telstra. Complainant offers the following “evidence” of malicious intent:

“ . . . at the time Respondent was an attorney employed by Anderson Kill & Olick, Complainant was a client of the firm. Thus, Respondent’s malicious intent in registering both savinsucks.com and andersonkillsucks.com is clear.”

Clear? The fact that Respondent was, seven years ago one of several hundred attorneys employed by Complainant’s counsel’s firm is entirely irrelevant as to the question of whether Respondent registered “SAVINSUCKS.COM” in bad faith two years ago (5 years after resigning from the firm) and has used it in bad faith at some point during the past two years. Since Complainant offers no relevant evidence that Respondent had any bad faith intent at the time he registered “SAVINSUCKS.COM,” the Telstra test has not been met and bad faith cannot be found.

Complainant next offers the Respondent’s refusal to agree to a settlement offer as evidence of bad faith. Since Respondent had no obligation to accept any settlement offer, his refusal to settle has no bearing on whether the Respondent’s domain name was registered and is being used in bad faith.

Complainant next offers several unsubstantiated allegations of “harassment” on the part of Respondent as evidence of bad faith. Purchasing a domain name that may be used, if used at all, for “consumer commentary” is not “harassment.” Refusing to comply with a “cease and desist” letter is not “harassment.” Using citations of legal precedent in response to “cease and desist” letters is not “harassment.” Respondent legally purchased a domain name and has abided by all of the terms and conditions of the Registrar’s Registration Agreement. Respondent has done nothing to harass Complainant.

Complainant next offers the Respondent’s registration of a domain name that contains its trademark as evidence of bad faith. Again, the decisions cited by Complainant involved domain names registered by “cybersquatters.” See Umbers & Toltec Scenic Railroad Commission v. Ravin, Claim No. FA0108000099599 (Nat. Arb. Forum Oct. 30, 2001); Trump v. Graham, Claim No. FA0110000100177 (Nat. Arb. Forum No. 2, 2001). Since Complainant has not alleged that Respondent is a “cybersquatter,” the decisions cited are distinguishable. Moreover, “An individual who wishes to engage in consumer commentary must have the full range of marks that the trademark owner has to identify the trademark owner as the object of the criticism.” See Bally, supra at 1165.

Complainant last offers Respondent’s registration of “ANDERSONKILLSUCKS.COM,” which contains Complainant’s counsel’s firm name, plus the word “sucks,” as evidence of bad faith. Respondent registered “ANDERSONKILLSUCKS.COM” in accordance with the same rights and legitimate interests he has to register “SAVINSUCKS.COM.” Respondent has a First Amendment right to register and use “ANDERSONKILLSUCKS.COM” for, if no other reason, consumer commentary. See Bally, supra.

Furthermore, the “pattern of conduct” component of Paragraph 4 (b) (ii) of the Policy refers to domains that are registered “in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name.” Complainant has not alleged that Respondent registered “SAVINSUCKS.COM” to prevent Complainant from registering it.

Lastly, Respondent could not have possibly “used” his domain name actively or “passively” at the time Complainant initiated this proceeding on January 22, 2002, because the domain name had been deactivated three months prior on October 22, 2001. See Complainant’s Exhibit 3. When a domain is in a “deactivated” state, the domain name holder cannot use in any way, shape or form. “When a domain name is deactivated, the Domain Name System (DNS) will no longer have the information needed to resolve the domain name to its corresponding Internet Protocol (IP) number(s), effectively disabling the domain name as a tool for locating the related computers or organizations.” See <http://www.netsol.com/cgi-bin/glossary/lookup?term=Deactivation>

4. OTHER LEGAL PROCEEDINGS

Respondent is not aware of any other proceedings commenced in connection with the domain name “SAVINSUCKS.COM.” ICANN Rule 3(b)(xi).

5. RESPONSE TRANSMISSION

Respondent asserts that a copy of the Response, as prescribed by NAF’s Supplemental Rules, has been sent or transmitted to Complainant, in accordance with ICANN Rule 2(b). ICANN Rule 5(b)(vii); NAF Supp. Rule 5.

6. Respondent respectfully requests that the Administrative Panel denies the remedy requested by Complainant and further request that the Panel make a finding of reverse domain-name hijacking pursuant to ICANN Rule 15(e).

Complainant has used the Policy in bad faith to attempt to deprive Respondent of a domain name in which Complainant has no rights. Therefore, the Complaint constitutes an abuse of these administrative proceedings and a finding of “Reverse Domain Name Hijacking” should be made pursuant to Paragraph 15(e) of the Rules.

In Goldline International, Inc. v. Gold Line, Case No. D2000-1151. (WIPO), the panel held that prior to filing its complaint, the complainant knew that the “[r]espondent’s registration and use of the domain name could not, under any fair interpretation of the facts, constitute bad faith. Not only would a reasonable investigation have revealed these weaknesses in any potential ICANN complaint, but also, Respondent put Complainant on express notice of these facts and that any further attempt to prosecute this matter would be abusive and would constitute reverse domain name “hijack[ing].”” Id.

Respondent in this proceeding put Complainant on express notice that registration and use of the domain name could not, under any fair interpretation of the facts, constitute bad faith, See Complainant’s Exhibit 4. Respondent also put Complainant on express notice that any attempt to prosecute this matter would be abusive and would constitute reverse domain name “hijack[ing].” See Respondent’s Exhibit 3. As the panel found in Goldline, the Panel here should also find that “[t]he Complainant’s decision to file its Complaint in the face of those facts was in bad faith. Accordingly, the Panel finds that Complainant has engaged in Reverse Domain Name Hijacking.” Id.

Complainant has repeatedly and intentionally misrepresented the Respondent’s statements, and it has intentionally attempted to mislead the Panel through the use of its Exhibits. Complainant seems to rely on the Respondent’s statement in Complainant’s Exhibit 4 that reads: “*So the question becomes does Savin suck? I believe it does. That is my opinion and I may express it in any legal way I see fit, whether it be through verbal, written or electronic means.*” These three sentences clearly state the Respondent’s personal opinion of Complainant and his belief in his right to express his

opinion by saying “Savin sucks,” by writing “Savin sucks,” or by electronically registering “SAVINSUCKS.COM.”

Complainant claims:

- that in Complainant’s Exhibit 4, Respondent “*has stated that he intends to use it to harass Complainant.*”
- that in Complainant’s Exhibit 4, “*Respondent has stated his intent to express his negative opinion about Complainant ‘whether it be through verbal, written or electronic means.’*”
- that in Complainant’s Exhibits 3 and 4 the “*Respondent believes he can use the domain name registration system as a tool for harassing Complainant, by manipulating Complainant’s own trademark.*”
- that Respondent stated in Complainant’s Exhibit 4 that “[*h*is continued holding of the domain name is his way of harming Complainant, as stated by him.”
- that Respondent stated in Complainant’s Exhibit 4 that he “*has expressed his general intent to harass Complainant and to tarnish Complainant’s trademark.*”

Respondent made none of the aforementioned statements in any of Complainant’s Exhibits. Moreover, Respondent made no statement at all in Complainant’s Exhibit 3, as that exhibit is a letter from Complainant to the Respondent. Since Complainant has made repeated untrue statements in it’s Complaint regarding statements made by the Respondent, its certification (required under Rules 5(b)(vii)) was clearly untrue. As such, the Panel should make a finding of Reverse Domain Name Hijacking. G. A. Modefine S.A. v. A.R. Mani, Case No. D2001-0537 (WIPO July 20, 2001)

The domain name at issue had been deactivated on October 22, 2001 and Complainant initiated this proceeding on January 22, 2002. Complainant initiated this proceeding when it knew the domain name had already been deactivated. See page 2 of Complainant’s Exhibit 3. Moreover, at the time it initiated this proceeding, the Policy did not apply and the Panel lacked jurisdiction because a deactivated domain name cannot be transferred or cancelled. Complainant’s delay in bringing its claim supports a finding of Reverse Domain Name Hijacking. Smart Design LLC v. Hughes, Case No. D2000-0993 (WIPO October 18, 2000).

“The ICANN domain name proceedings were intended to provide a swift and inexpensive remedy for cybersquatting, not to provide trademark holders with a monopoly over every permutation of their marks in domain names or a weapon to employ against domain name registrants exercising legitimate free speech and fair use rights.” Bosley Medical Group and Bosley Medical Institute, Inc. v. Michael Kremer , Case No. D2000-1647 (WIPO February 28, 2001).

In filing its Complaint, Complainant’s counsel “took on the guise of a third rate back room lawyer and advanced arguments that were tortuously artificial in the extreme, reckless both as to as to the justification for making those arguments and the seriousness of the overall charge against the Respondent.” See Smart Design LLC v. Carolyn Hughes, Case No. D2000-0993 (WIPO Oct. 18, 2000). This supports a finding of Reverse Domain Name Hijacking pursuant to Paragraph 15(e) of the Rules.

Filing a complaint that has no valid legal basis, that intentionally misrepresents the facts and that seeks transfer of a domain name that had been deactivated at the time the Complaint was filed is “harassment.” Complainant initiated this proceeding “primarily to harass the domain-name holder.” Accordingly, the Panel should declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. Paragraph 15(e) of the Rules.

7. CERTIFICATION

Respondent certifies that the information contained in this Response is, to the best of Respondent's knowledge, complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully Submitted,

Peter W. Sachs, Esq.
February 11, 2002