



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

**RESPONDENT'S SUR-REPLY TO  
COMPLAINANT'S ADDITIONAL SUBMISSION**

1. This Sur-Reply is hereby submitted in response to Complainant's Additional Submission filed February 19, 2002, and in support of Respondent's Response, filed February 19, 2002, in the above-captioned proceeding, 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 3(b)(i).

2. **RESPONDENT INFORMATION**

Respondent's contact information remains the same as identified in the Complaint.

3. **RESPONDENT SUR-REPLY TO COMPLAINANT'S ARGUMENT**

**A. Complainant's submissions of additional written statements and documents are untimely and should not be considered.**

Supplemental Rule 7 of the Forum's Supplemental Rules permits the submission of additional written statements and documents "within five (5) calendar days after the date the Response was submitted or the last date the Response was due to be submitted to the Forum, whichever occurs first." (Emphasis added.) Supp. Rule 7 also states "[e]ach submission must be timely

received by the Forum.” (Emphasis added.) Complainant submitted its additional written statements and documents on February 19, 2002, seven calendar days after Respondent filed his Response on February 12, 2002.

Moreover, the Forum’s **Instructions<sup>1</sup> For Filing An Additional Submission Under Forum Supplemental Rule 7** states, in relevant part,

Additional submissions must be received by the Forum within five (5) calendar days after the Response was submitted or the last day the Response was due, *whichever occurs first*. Additional submissions received after the five (5) day deadline will not be considered timely. (Emphasis in original.); and

A submission will be considered timely only if it is received in its entirety (submission, attachments, and payment) by the Forum prior to midnight on the fifth calendar day. If the submission, attachments, or payment are not all received by midnight of the fifth calendar day, the additional submission will not be considered complete. (Emphasis in original.)

Of course, under ICANN Rule 10(d), the Panel “may use its discretion in determining whether to consider any incomplete additional submissions.” In this proceeding, the Panel should not exercise its discretion in Complainant’s favor for the following additional reasons:

First, Supp. Rule 7 was specifically revised to clarify<sup>2</sup> the number of days permitted for additional submissions. The revised version<sup>3</sup> specifically changed the unit of measurement in the time calculation from (5) business days to (5) calendar days. See Respondent’s Exhibit 1. Since the Forum’s intention was to clarify the time limits, the Forum clearly intended that all of the days of the week be included within the time period calculation. The Complainant simply failed to file its Additional Submissions within the time period.

Second, Complainant states that Monday, February 18, 2002 was "a recognized holiday by most, if not all, federal courts and administrative agencies." See Respondent’s Exhibit 2 (Email from Complainant’s Counsel to the Forum, dated February 20, 2002, requesting reconsideration of timeliness of additional submissions). While this may be true at the federal level, the Forum does not recognize that date as a work holiday. Indeed the Forum sent a message to Complainant on President’s Day, Monday, February 18, 2002, requesting a reply. See Respondent’s Exhibit 3 (“CC” of email from the Forum to Complainant’s counsel, dated February 18, 2002, notifying Complainant that the Forum had not received its “strikeouts” and requesting same.) The Forum obviously was ready, willing and able to conduct business on President’s Day. The Complainant was not.

Third, Complainant is not appearing *pro se* in this proceeding. Indeed, experienced counsel represents it. Complainant’s counsel is a firm consisting of some 89 attorneys. The firm has offices in New York, Philadelphia, Washington, Chicago and Newark. It also has a vast support staff. Respondent has no attorneys and no staff to assist him, and he operates a small business on

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<sup>1</sup> See <http://www.arbitration-forum.com/domains/UDRP/addition.asp>

<sup>2</sup> The only comments the Respondent has found regarding this change to Supp. Rule 7 appears on the Forum's website. In an October 10, 2001 press release, entitled "FORUM ANNOUNCES UDRP RULE CHANGES," the Assistant Director of Arbitration for the Forum said, "the changes involve clarifications of time limits and fee refunds. Although the changes affect a relatively small number of cases, they will enhance the fairness of the procedure in those cases." (See <http://www.arbforum.com/about/newsDetail.asp?ID=47>)

<sup>3</sup> The version of Rule 7 in effect at the time Complainant initiated this proceeding became effective October 15, 2001.

a full-time basis. Yet, his Response was filed one day prior to the required filing date. Given the resources that are readily available to Complainant's counsel, it should not be extended a courtesy that is normally granted only to *pro se* respondents.

Assuming, arguendo that the Panel decides to accept Complainant's untimely Additional Submissions, the Respondent submits the following:

**B. Respondent's domain name is not confusingly similar to Complainant's trademark.**

Respondent provided not one, but two arguments in support of the contention that the decisions Complainant cited in its Complaint are not controlling precedent. Complainant misunderstands the very purpose of the UDRP. The decisions Complainant cited are distinguishable because they contain different, relevant facts from those in this proceeding.

First, those decisions involved domains registered by cybersquatters. In several of the cited decisions, the domain names were obviously identical or confusingly similar. But they were also registered by cybersquatters. While Complainant claims the fact that Respondents is not a cybersquatter "does not shed any light on the issues of the case,"<sup>4</sup> many decisions clearly state otherwise. "The UDRP process is intended to deal with clear cases of cybersquatting." EBSCO Industries Inc v. Cotton Cordell Fishuntravel Inc., Claim Number: FA0111000101571 (NAF December 21, 2001). *See also* NCAA v. Randy Pitkin, et al., Case No. D2000-0903 (WIPO March 9, 2001);<sup>5</sup> Goldline International, Inc. v. Gold Line, Case No. D2000-1151 (WIPO January 4, 2001);<sup>6</sup> J. Crew International, Inc. v. crew.com, Case No. D2000-0054 (WIPO April 20, 2000).<sup>7</sup> Broadcom Corporation v. Michael Becker, Claim Number: FA0108000098819 (NAF Oct. 22, 2001)<sup>8</sup>

Moreover, "in defining 'identical or confusingly similar,' . . . the term must be construed in the light of the purpose of the Policy: 'to prevent the extortionate behavior commonly known as 'cybersquatting,''" Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party, Case No. D2000-1415 (WIPO January 23, 2001). Since Complainant did not, could not, and understandably has not alleged that Respondent is a cybersquatter, any decision where cybersquatting was found is automatically distinguishable.

Second, none of those decisions involved domains names that criticized the trademark. This, too, is a significant fact in distinguishing the decisions cited, and it is important to note that Complainant has failed to rebut this argument. Panels have found that domain names that contain both the complainant's trademark and a word or words criticizing that mark are not confusingly similar. In Sears, Roebuck and Co. v. Hanna Law Office, Case No. D2000-0669 (WIPO Dated: September 8, 2000) the panel did find "confusing similarity" because the domain name "searsroebuck.com" did not contain a "communicative message or expression of Respondent's right to air its negative opinions about Complainant."

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<sup>4</sup> See Complainant's Additional Submission at 1.

<sup>5</sup> "The ICANN Policy is directed to cybersquatting, e.g., the types of activities set forth in paragraph 4 (b)-registering the domain name not for potential use by the registrant, but rather to sell to another or intentionally creating likelihood of confusion." NCAA v. Randy Pitkin, et al. *supra*

<sup>6</sup> "The Policy is designed to prevent abusive cybersquatting." Goldline, *supra*.

<sup>7</sup> "The ICANN policy is very narrow in scope; covers only clear cases of "cybersquatting" and "cyber piracy," and does not cover every dispute that might rise over domain names." J. Crew, *supra*

<sup>8</sup> "[T]he Policy exists precisely to provide a cost-effective method to allow injured parties to recover cyberquatted domain names..." Broadcom, *supra*

The Panel further noted that “[i]f Respondent truly wanted to promote a “Sears, Roebuck sucks” website . . . it would have used the domain name “searsroebucksucks.com” or a similar name that *on its face immediately conveyed the purpose or subject matter of the site.*” (Emphasis added) *See also Compaignie de Saint Gobain v. Com-Union Corp.*, Case No. D2000-0020 (WIPO March 14, 2000). (Domain name was confusingly similar where it solely consisted of Complainant’s trademark and therefore did not adequately reflect both the object and independent nature of its site.) (Emphasis added.) Respondent’s domain name does, on its face, immediately convey its criticism of Complainant. It says it “sucks.” Therefore, any decision where the domain name itself did not criticize the complainant’s mark is also automatically distinguishable.

Moreover, “[t]he ICANN domain name proceedings were intended to provide a swift and inexpensive remedy for cybersquatting, not to provide trademark holders with 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).

Respondent cited *Bloomberg L.P. v. Secaucus Group*, No. FA0104000097077 (NAF June 7, 2001) in support of the proposition that free speech for criticism and commentary demonstrates a right or legitimate interest in a domain name. As regards confusion, the *Bloomberg* decision held that there was a likelihood of confusion when Internet users type “Bloomberg” into a search engine and find “michaelbloombergsucks.com” in addition to the complainant’s website. Respondent has provided evidence of there being no occurrence of the string “SAVINSUCKS.COM” in any search engine. (See Response at Exhibit 1) Complainant, itself, has made it abundantly clear in its own pleadings that Respondent has no website associated with “SAVINSUCKS.COM.”<sup>9</sup> Thus, *Bloomberg* is distinguishable for purposes of determining whether Respondent’s domain name is confusingly similar to Complainant’s trademark.

Despite Complainant’s impression, Respondent certainly understands the facts and procedural history of *Lucent Technologies, Inc. v. Lucentucks.com*, 95 F. Supp.2d 528 (E.D. Va 2000) and *Lockheed Martin Corp. v. Parisi*, Case No. D2000-1015 (WIPO Jan. 26, 2001). While the *Lucent* court may have erred in its parenthetical description of *Bally*, and the Lockheed panel may have erred by using the *Lucent* court’s faulty description, their reliance upon *Bally* was proper nonetheless.

Contrary to Complainant’s conclusion, the *Bally* court did consider the use of the word “sucks” in a domain name. It stated, “[E]ven if Faber did use the mark as part of a larger domain name, such as “ballysucks.com”, this would not necessarily be a violation as a matter of law.” 29 F. Supp., at 1165. It also stated “no reasonably prudent Internet user would believe that “Ballysucks.com” is the official Bally site or is sponsored by *Bally*.” *Id.* Thus, in reaching their decisions regarding the use of the word “sucks” in a domain name, both the *Lucent* court and the *Lockheed* panel correctly relied upon *Bally*.

Complainant should be precluded from claiming federal case law is not controlling. Complainant itself has relied upon federal case law in its pleadings. The fact that *Bally* was not decided under ICANN Policy does not negate its usefulness to UDRP panels. A search of the ICANN database reveals 33 decisions that discuss the case. UDRP decisions are governed by the terms of the Policy, but “reference by analogy may be made to principles of U.S. law.” *Bridge-stone Firestone, Inc. v. Myers*, D2000-0190 (WIPO July 6, 2000), Case No. D2000-0190 (WIPO

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<sup>9</sup> “Respondent has never used the domain name savinsucks.com in connection with any web site.” *Additional Submission* at 3; “...Respondent has not linked savinsucks.com to any web site...” *Id.* at 4.

July 6, 2000). As in Bridgestone, both Complainant and Respondent here are U.S. entities, and both parties have cited U.S. law in their submissions.

Complainant attempts to distinguish walmartcanadasucks.com because the Respondent in this proceeding has no website. Respondent submits that since the panel in that decision found that **having** a website with a critical domain name is not confusing, they likely would have found that not having a website at all, but simply registering a critical domain name is not confusing either. Complainant then cites Dixons Group PLC v. Purge I.T., Case No. D2000-0584 (WIPO Aug. 13, 2000) for the proposition that a “sucks” name is likely to cause confusion among Internet users whose first language is not English. Following the Dixon panel’s reasoning, Respondent submits that foreign language users, namely Koreans, would likely to be equally confused by the Complainant’s own domain name, “SAVIN.COM.” Korean users may very well be looking for “SAVIN.NET,” a website associated with a Korean company that is unrelated to Complainant.

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

### **C. Respondent has rights or legitimate interests in the domain name.**

Respondent has presented ample evidence of a bona fide interest. Respondent has a First Amendment right to register “SAVINSUCKS.COM.”

Contrary to Complainant’s conclusion, Respondent has clearly expressed his opinion and has criticized Complainant continuously since October 22, 1999. Respondent has done so through his domain name, which clearly states “Savin sucks.” Since Respondent specifically registered “SAVINSUCKS.COM” it is also clear his intent was to criticize Complainant. As Complainant has reminded us, the walmartcanadasucks.com panel stated, “the domain name itself signifies its “critical purpose.” Respondent concurs. Respondent’s domain name itself signifies its “critical purpose.” Therefore, Respondent does have a legitimate interest in the domain name.

Respondent is not attempting to create any “new category” under the Policy. As explained in his Response, (and above), Respondent does have a legitimate interest in the domain name based upon his First Amendment rights. Complainant attempts to distinguish the decisions Respondent cited by arguing they involved domain names that led to “active” websites. It is important to note that there is no requirement, contractually or otherwise, that a domain owner “actively use” his domain name in association with a website. While the Panel in Bridgestone<sup>10</sup> did expressly state that “use of [a] Domain Name to designate a website for criticism and commentary” is a legitimate use, it did not state that using a domain name in that fashion was the only legitimate use.

Complainant argues that Kendall/Hunt Publishing Co. v. headhunterbob, Claim No. FA0111000102247 (NAF Jan. 14, 2002) should control this proceeding in determining whether Respondent has a legitimate interest in the domain name. It should first be noted that the respondent in Kendall did not submit any response to the complaint. Respondent here has responded to the Complaint, the untimely Additional Submissions and every other correspondence from the Complainant.

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<sup>10</sup> Bridgestone-Firestone, Inc. v. Myers, Case No. D2000-0190 (WIPO July 6, 2000).

The majority in Kendall stated, “[s]ince Respondent did not favour the Panel with any reason for registration of the name, and in view of Respondent’s failure to reply, the Panel accepts Complainant’s allegations that Respondent *acted to disparage*.” (Emphasis added.) The Kendall panel concluded “the evidence establishe[d] an *intent to tarnish Kendall/Hunt in some fashion* and to disrupt its business.” (Emphasis added.) With all due respect to the Kendall panel, Respondent submits that it erred when it found Respondent’s non-commercial use was not a “fair use” since its purpose was to “*tarnish the Complainant’s trademark or service mark*.”

The “tarnishment” the Kendall panel found was not the type the drafters of the Policy intended to address. Note 2 to the Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy (24 October 1999) specifically states,

In view of the comments, one detail of the policy's language should be emphasized. Several commentators indicated that the concept of "tarnishment" in paragraph 4(c)(iii) might be misunderstood by those not familiar with United States law or might otherwise be applied inappropriately to noncommercial uses of parody names and the like. Staff is not convinced this is the case, but in any event wishes to point out that "*tarnishment*" in paragraph 4(c)(iii) is limited to acts done with intent to commercially gain. Staff intends to take steps to publicize this point. See <http://www.icann.org/udrp/udrp-second-staff-report-24oct99.htm> (Emphasis added)

There was no evidence that the respondent in Kendall had any intent to commercially gain anything by its acts. In fact, the Kendall panel clearly stated, “the site is not being operated for commercial gain.” Yet it found “an intent to tarnish” nonetheless. It should also be noted that the dissenting panelist in Kendall also believed that the domain name was neither confusingly similar, nor registered and used in bad faith.

For the reasons stated herein and in his Response, Respondent does have a legitimate First Amendment interest in criticizing the Complainant through the use of a critical domain name.

#### **D. Respondent’s domain name has not been registered in bad faith and is not being used in bad faith.**

It should first be noted that Complainant has used the heading “**Respondent Has Registered The Domain Name In Bad Faith.**” The Policy, of course, requires registration in bad faith and use in bad faith. By failing to offer any further evidence that Respondent both registered and used the name in bad faith, Complainant fails to meet its burden of proof.

Complainant again questions the significance of Respondent’s non-cybersquatter status. It fails to comprehend that the “[t]he Policy exists precisely to provide a cost-effective method to allow injured parties to recover cyberquatted domain names.” See Broadcom, supra. Complainant has effectively made the decision for the Panel that Respondent is not a “cybersquatter” by failing to allege in its Complaint that he is.

Complainant should be precluded from claiming harassment on the part of Respondent when it, in fact, has been the harasser. Complainant was first to contact Respondent and it did so with a cease and desist letter. For over two years Complainant has repeatedly attempted to acquire Respondent’s domain name through the threat of litigation. The tenor of Respondent’s correspondence and telephone conversations are in response to those repeated threats. The Respondent encouraged Complainant to bring legal action if it felt that Respondent’s legal claims were wrong. Respondent registered “ANDERSONKILLSUCKS.COM,” not only for possible use in a future

website to criticize the firm, but because he has the clear right to do so under the First Amendment of the U.S. Constitution.

Respondent need not show any use of his domain name beyond his legitimate noncommercial or fair use of the domain name. As previously explained, the domain name itself is commentary. *Nomen est omen*. Complainant has apparently misread the Response. Respondent's assertion that his "commentary" is protected First Amendment speech is completely supported by the decisions he cited in his Response. Moreover, Respondent did not cite Alitalia-Linee Aeree Italiane S.p.A. v. Colour Digital, D2000-1260 (WIPO Nov. 23, 2000) in support of the proposition that "commentary" is protected First Amendment speech. Respondent cited that decision in support of his contention that his domain name falls within Telstra's exception for domain names that do have possible "plausible and legitimate" active uses.

Although most panels have supported Telstra, at least one has not and another has questioned it. The panel in Smart Design LLC v. Carolyn Hughes, Case No. D2000-0993 (WIPO October 18, 2000) stated, "[i]f and to the extent that previous Panels have held that mere non-use constitutes bad faith use and can therefore be construed as meaning that the registrant has no legitimate interest in the name in question, this Panel feels unable to follow that line of authority. In the Panel's view, the Policy is designed to deal with a relatively narrow and straightforward category of case, namely cybersquatting." The Alitalia panel also termed Telstra's extension of "bad faith" to "passive use" as "dangerous." Alitalia, supra.

Respondent's assertion that the domain name was deactivated is not erroneous. The Registrar itself acknowledges it deactivated the domain name "SAVINSUCKS.COM" on December 23, 2001. See Respondent Exhibit 4. (Email from Registrar to the Respondent, dated February 22, 2002, verifying deactivation date.) The mere existence of a domain name in the WHOIS database does not answer the question of whether it is "active." While the expiration date listed in the WHOIS database record sheds some light on its status, the Complainant should have properly requested the official status of the domain name by contacting the Legal Department at Network Solutions, as the respondent did, rather than by simply emailing the general Customer Service Department.

That another party could not have registered the domain name during that period does not mean it was "active." It simply means that the Registrar (Network Solutions) should have, but did not release the domain name for registration by the general public in a timely manner.<sup>11</sup> That, of course, is not the Respondent's fault. Respondent, and Respondent alone was able to renew the registration because of the Registrar's error. Respondent renewed the registration of "SAVINSUCKS.COM" on January 23, 2002, one day before this proceeding was commenced and one day after the Forum rejected Complainant's initial deficient complaint.

**E. Complainant's claim for transfer of the domain name is being made in bad faith with the intent to deprive Respondent of a domain name in which Complainant has no rights and should be found to be an abuse of these administrative proceedings under Paragraph 15(e) of the Rules.**

Complainant's claims against Respondent are all grounded in decisions that are factually distinguishable from the instant proceeding and are not supported by the ICANN Policy. Respon-

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<sup>11</sup> It should be noted that Network Solutions practice of not releasing expired domain names to the general public on a timely basis has been the subject of litigation. See "NSI Commandeers Deadbeat Domains," at <http://www.wired.com/news/print/0,1294,37191,00.html>.

dent's argument that Complainant's claims are brought in bad faith or are meant to harass Respondent are fully supported by the evidence provided.

Respondent correctly stated in his letters to Complainant's counsel that there was nothing that he or his client can do to prevent Respondent from owning the domain name because he had done nothing illegal. Respondent requested that Complainant proceed with an action against him if it believed that Respondent was incorrect. Respondent stated that it had registered "ANDERSONKILLSUCKS.COM" because he had the right under the First Amendment of the U.S. Constitution to criticize Complainant's law firm in a domain name.

None of Respondent's correspondence is evidence of any "intent to harass" Complainant. Complainant takes issue with Respondent having contacted its client directly. Both Complainant and Respondent are Connecticut residents. Complainant is fully aware of the fact that the Connecticut Supreme Court has held that an attorney who is also the party in an action is permitted to contact the opposing party, even if he is represented by counsel. See Pinsky v. Statewide Grievance Committee, et al., 216 Conn. 228; 578 A.2d 1075 (Conn. 1990). (Holding there was no violation of Rule 4.2 of the Rules of Professional Conduct when the defendant who was also an attorney contacted the represented opposing party directly.)

Complainant's counsel characterizes the substance of Respondent's January 24, 2002 telephone conversation with his client as "completely imagined" or "fabricated." Respondent did not even offer that conversation as evidence in its Response because it would have been hearsay. Respondent offered its February 2, 2002 email as evidence of Respondent having placed Complainant on express notice that any attempt to prosecute this matter would be abusive and would constitute reverse domain name hijacking.

The fact the Mr. Heinsohn informed his counsel by email that he never made any such statements to Respondent could simply indicate that Complainant is willing to lie to his counsel. Mr. Heinsohn knows quite well that the words I attributed to him in that conversation were his exact words. It is, of course, in his best interest not to alienate his counsel. Furthermore, Mr. Heinsohn's email stated, "This is beginning to follow the plot of a Steven King novel." That Complainant's counsel claims this sentence means Respondent is "a tormentor akin to a malevolent character in a Stephen King novel" or that it is evidence of "bad faith" is sheer hyperbole. Complainant's counsel apparently misreads King as well.

Again, Respondent has clearly expressed his opinion and has criticized Complainant continuously since October 22, 1999. He has done so through his domain name, which clearly states "Savin sucks." Moreover, one need only read Complainant's exhibits to see that Complainant's counsel has made "repeated, untrue statements" in violation of the certification on its Complaint. Respondent again submits that Complainant has failed to prove that the Respondent's domain name has been registered and is being used in bad faith.

For the aforementioned reasons, and for the reasons set forth in his Response, Respondent respectfully requests that the Administrative Panel deny the remedy requested by Complainant and further requests that the Panel make a finding of reverse domain-name hijacking pursuant to ICANN Rule 15(e)

#### 4. 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.

**5. CERTIFICATION**

Respondent certifies that the information contained in this Additional Submission 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,

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Peter W. Sachs, Esq.  
February 24, 2002

## Schedule of Exhibits

- Exhibit 1. Supplemental Rule 7 (Effective October 15, 2001)**
- Exhibit 2. Email from Complainant's Counsel to the Forum, dated February 20, 2002, requesting reconsideration of timeliness of additional submissions.**
- Exhibit 3. "CC" of email from the Forum to Complainant's counsel, dated February 18, 2002, notifying Complainant that the Forum had not received its "strike-outs" and requesting same.**
- Exhibit 4. Email from Registrar to Respondent, dated February 22, verifying Registrar deactivated domain name "SAVINSUCKS.COM on December 23, 2001.**

# **EXHIBITS**

**THE NATIONAL ARBITRATION FORUM'S SUPPLEMENTAL RULES TO  
ICANN'S UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY**

**Rule 7. (Effective October 15, 2001)**

**Submission of other Written Statements and Documents;  
No Amendment to the Complaint**

- a. A party may submit additional written statements and documents to the Forum and the opposing party(s) within five (5) **calendar days** after the date the Response was submitted or the last date the Response was due to be submitted to the Forum, whichever occurs first.
- b. **Each submission must:**
  - i. **be timely received by the Forum;**
  - ii. be accompanied by an additional submission fee of \$250;
  - iii. include proof of service of these submissions upon the opposing party(s);
  - iv. be submitted in either hard copy or electronic form.
- c. The opposing party may respond, in hard copy or electronic form, to an additional submission filed in accordance with Supplemental Rule 7(a); such response must be submitted to the Forum and the opposing party(s) within five (5) calendar days after the date the additional submission was submitted.
- d. Additional submissions and responses to additional submissions may not amend the original Complaint or Response.

**Exhibit 2. Email from Complainant's Counsel to the Forum, dated February 20, 2002, requesting reconsideration of timeliness of additional submissions.**

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Daniel J. Healy, Esq.  
(202)218-0048  
dhealy@andersonkill.com

February 20, 2002

VIA EMAIL AND FACSIMILE 866-743-4517

Ms. Michelle Hultman  
Case Coordinator  
National Arbitration Forum

Re: Savin Corporation v. savinsucks.com  
Case No. FA0201000103982

Dear Ms. Hultman:

This letter addresses the email correspondence between yourself and Peter Sachs today concerning the filing deadline for Complainant's Additional Submission in the above-referenced proceeding.

We are aware that your position regarding the five day filing deadline for the Complainant's Additional Submission is that the submission was due Monday, February 18, 2002, six days after the filing of the Response. Your calculation is based on a Tuesday, February 12, 2002 filing date for the Response, plus the five days permitted for filing an additional submission (i.e., Sunday, February 17, 2002) and plus one day to move the date to the next Monday, February 18, 2002.

We are aware that the National Arbitration Forum ("NAF") moves such filing dates, when they fall on a weekend day, to the next business day. You had explained this practice to us when we had called you two weeks ago to ask about the NAF's policy with regard to deadlines falling on weekends as it pertained to another proceeding before the NAF. We are not aware that such practice is provided in the NAF Supplemental Rules. We also understand that there is no published list of holidays recognized by the NAF.

February 18, 2002, the date you state was the deadline for Complainant's Additional Submission, was Presidents' Day and was a recognized holiday by most, if not all, federal courts and administrative agencies. In fact, the U.S. District Court for the District of Minnesota, at 202 U.S. Courthouse, 300 S. 4<sup>th</sup> Street, Minneapolis, Minnesota, was closed in recognition of Presidents' Day on this past Monday. Similarly, the New York Stock Exchange, the U.S. Patent and Trademark Office, the U.S. District Court for the Southern District of New York and the U.S. District Court for the District of Connecticut, as well as most other federal courts, were all closed in recognition of this federal holiday.

Complainant's counsel intentionally filed the Complainant's Additional Submission on Tuesday, February 19, 2002, believing that to be the proper due date, based on Monday, February 18, 2002 being a federal holiday recognized by the judiciary system. Furthermore, we filed the submission by email, facsimile and sent via Federal Express for overnight delivery a hard copy of the Additional Submission to both you and to Respondent. We paid the NAF for the Additional Submission by credit card, as provided in the rules, by providing you with a credit card number over the telephone on February 19, 2002.

Also, your letter dated February 12, 2002, the same date Respondent's Response was marked filed, provided a five day response time, the same as the time limit for additional submissions, for Complainant to

strike two panelists from a list of five. You left a voicemail message for David A. Einhorn of our firm on Tuesday, February 19, 2002 requesting receipt of Complainant's panelist strikes by 1:00 a.m. February 20<sup>th</sup>. Based on that deadline, running for five days from the same date as the deadline for additional submissions,

and on the fact that Monday February 18<sup>th</sup> was a federal holiday, we believed that our five day deadline for both the Additional Submission and the response to your letter requesting panelist strikes extended to that date. Thus, Complainant's Additional Submission and panelist strikes were filed simultaneously.

Based on the foregoing, we respectfully submit that Complainant's filing of its Additional Submission on Tuesday, February 19, 2002, one day after a federal holiday, was reasonable and the panel determining the outcome of this proceeding should consider the important material covered in Complainant's Additional Submission.

We request that this correspondence be placed in the file to be delivered to the panelists deciding the outcome of this proceeding. Please feel free to contact me at the above-listed telephone number should you have any questions regarding this proceeding.

Very truly yours,

Daniel J. Healy

cc: Mr. Peter Sachs  
savinsucks.com  
76 Hawley Avenue  
Milford, CT 06460  
psachs@icomm.net

**Exhibit 3.** text of “CC” of email from the Forum to Complainant’s counsel, that Respondent received on February 18, 2002, notifying Complainant that the Forum had not received its “strikeouts” and requesting same. *(Note: The full header of this message was unavailable at time of writing but will be made available to the Panel upon request.)*

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Mr. Einhorn-

I have not yet received your two strikes from the list of five potential panel chairs in the above referenced matter. Please provide me with your two strikes at your earliest conveniences.

Thank you.

Michelle Hultman  
Case Coordinator  
National Arbitration Forum  
mhultman@arb-forum.com

**Exhibit 4. Email from Registrar to Respondent, dated February 22, verifying Registrar deactivated domain name "SAVINSUCKS.COM on December 23, 2001.**

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From: Resolution <resolution@netsol.com>  
To: "'Peter W. Sachs, Esq.'" <psachs@icomm.net>  
Subject: RE: Savin Corporation v. savinsucks.com - FA0201000103982  
Date: Fri, 22 Feb 2002 10:34:06 -0500

Mr. Sachs,

Thank you for providing us with the written request regarding the inquires below. In response to the inquiries, we state the following:

1. Did Network Solutions rightfully "deactivate" the domain name at any time after October 22, 2001 due to non-payment of the required annual fee?

**Ans: Our records reflect the domain name was deactivated on December 23, 2001.**

2. If Network Solutions did "deactivate" the domain name, on which date would DNS no longer have the information needed to resolve the domain name to its corresponding IP address?

**Ans: December 23, 2001**

Please ignore the voice mail message I left.

Sincerely,

Fred Cundiff  
UDRP Case Manager  
Legal Department, Dispute Administration  
Network Solutions, Inc., A VeriSign Company  
(01)703.948.4437