

ADMINISTRATIVE PANEL DECISION

Ryan Kavanaugh v. Proxy Protection LLC, Proxy Protection LLC / Love Ostlund cunow, web10media AB
Case No. D2022-0056

1. The Parties

Complainant is Ryan Kavanaugh, United States of America (“United States”), represented by Novian & Novian LLP, United States.

Respondent is Proxy Protection LLC, Proxy Protection LLC, United States / Love Ostlund cunow, web10media AB, Sweden, represented by Fox Rothschild LLP, United States.

2. The Domain Name and Registrar

The disputed domain name <doesryankavanaughlooklikeharveyweinstein.com> is registered with DreamHost, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 6, 2022. On January 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 8, 2022, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on January 13, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. On the same day, the Center also informed Complainant that the Complaint was administratively deficient. Complainant filed an amended Complaint on January 19, 2022.

The Center verified that the Complaint, together with the amended Complaint, satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on January 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 10, 2022. The Response was filed with the Center February 10, 2022.

The Center appointed Brian J. Winterfeldt, Debra J. Stanek, and Andrew Bridges as panelists in this matter on March 18, 2022. The Panel finds that it was properly constituted. Each member of the Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

Complainant is a natural person residing in Los Angeles, California, the United States. Complainant is a film financier and film and television producer whose name RYAN KAVANAUGH (Complainant's "Mark") appears in the Internet Movie Database in connection with a number of films and TV series for which Complainant was a producer or executive producer. Complainant registered the domain name <rkavanaugh.com> on February 19, 2020 and used it in connection with Complainant's personal website at "http://www.rkavanaugh.com" ("Complainant's Website"). Complainant's Website details Complainant's involvement in film and TV production and philanthropic and entrepreneurial pursuits, includes promotional images of films Complainant has worked on, lists Complainant's awards, and features links to news articles about Complainant. On November 15, 2021, Complainant filed a use-based trademark application with the Principal Register of the United States Patent and Trademark Office for Complainant's Mark, namely, Serial No. 97125566, in connection with "Entertainment services, namely, producing movies, television programs, and internet media content" in International Class 42, with an alleged first use in commerce date of May 18, 2004, for which Complainant submitted a specimen consisting of a 2010 film poster showing Complainant was credited as one of several executive producers on the film *MacGruber*.

Respondent is a Swedish entity and agent for Ted Entertainment, Inc. ("TEI"), based in Los Angeles, California, the United States. TEI produces the H3 Podcast, which has criticized Complainant.

The disputed domain name was registered on October 16, 2021 and resolves to a website ("Respondent's Website") that features pejorative, critical statements about Complainant and compares Complainant to Harvey Weinstein, an American film producer convicted for sex crimes.¹ The home page of Respondent's Website includes banners asking "Does Ryan Kavanaugh Look Like Harvey Weinstein?", which is effectively identical to the disputed domain name. It also includes a pie chart with results from a poll that posed the question, a statement summarizing the poll ("We asked 10,600 internet users if they thought Ryan Kavanaugh and Harvey Weinstein looked alike. The outcome was SHOCKING."), images merging photographs of Complainant and Harvey Weinstein, statements detailing aspects of Complainant's personal and professional history, including his personal and professional association with Harvey Weinstein, and statements on and links to news articles from publications such as *The New York Times*, *Deadline*, and *Variety* detailing Complainant's purported arrest for drunk driving in October 2008, Complainant's purported involvement in a Ponzi scheme as alleged by a third party in 2019, and other incidents purportedly involving Complainant.

The home page of Respondent's Website also includes a link to a "Game" webpage that features an interactive game scoring users based on their ability to identify whether particular blurred photographic images are those of Complainant or Harvey Weinstein. Respondent's Website also includes another link to an "Articles" which appears incomplete and features a "Placeholder Article" header with "lorem ipsum" placeholder text, and, further down on the bottom right, the header "Livestream", and a link to a YouTube video. The YouTube video is an episode of the H3 Podcast featuring criticism of Complainant and discussion of news articles featuring Complainant. Respondent's Website also includes a link to a "Statement" webpage with various statements on a purported lawsuit launched by Complainant against the website owner and other pejorative statements criticizing Complainant directly, such as "Ryan Kavanaugh is a business elite who is used to suing, harassing and breaking the law with no consequences. He wields the

¹ Printouts of Respondent's Website were included in the record. The Panel has reviewed Respondent's Website pursuant to [WIPO Overview 3.0](#), section 4.8, which notes a panel may undertake limited factual research if it would consider such information useful to assessing the case merits, including visiting the website linked to the disputed domain name.

legal system like a malignant tyrant, uses it to silence his critics, and now to stifle fair use, something we on youtube should all care about.” At the bottom of the “Statement” webpage, Respondent urges visitors to “Help the cause - share this statement.”

5. Parties’ Contentions

A. Complainant

Complainant asserts he has consistently used Complainant’s Mark in connection with “Entertainment services, namely, producing movies, television programs, and internet media content”, and refers to The Internet Movie Database, which lists dozens of screen credits where Complainant worked as a producer or executive producer in film and television, and Complainant’s use of Complainant’s Mark on Complainant’s Website. Complainant alleges that the disputed domain name is confusingly similar to Complainant’s Mark because it reproduces Complainant’s Mark in its entirety along with numerous negative terms. Complainant asserts that the majority view is that a domain name containing a service mark and a negative are confusingly similar to the service mark.

Complainant further alleges that Respondent has no rights or legitimate interests in the disputed domain name. Complainant points to three alternate views that panels sometimes take to resolve issues of rights and legitimate interests, and concludes that Respondent cannot be found to have rights or legitimate interests in the disputed domain name under any of these views. According to Complainant, under the first view, the commercial nature of Respondent’s Website creates an entertainment enterprise competing with Complainant. Complainant argues Respondent was likely hired to make Respondent’s Website and earns money from TEI, which in turn generates revenue from a monetized YouTube video on Respondent’s Website, namely an episode of the H3 Podcast. Complainant argues that by clicking on the link to the YouTube video, users engage in a commercial transaction for services competing with those of Complainant. Complainant argues Respondent and TEI have no legitimate rights to disparage Complainant’s Mark to promote their own competing entertainment services. Complainant also argues in a “second set of cases” that the disputed domain name conveys an association with Complainant’s Mark based on the confusingly similar domain name, and similarities between Complainant’s personal website and Respondent’s website, namely, their use of WordPress designed websites with white backgrounds, prominent images of Complainant at the top of a scrolling window, and biographical information and news relating to Complainant. Complainant argues that Respondent is Swedish and that a third set of cases regarding fair and noncommercial website content are irrelevant as they apply only where the complainant and respondent are both American.²

Lastly, Complainant argues that Respondent registered and is using the disputed domain name in bad faith. Complainant contends Respondent registered the disputed domain name to disrupt the business of a competitor, namely Complainant. According to Complainant, Respondent disparaged Complainant to direct users away from Complainant’s personal website describing his entertainment services to TEI’s content, as demonstrated by data showing TEI consistently gaining video views and subscribers over six months, thus increasing TEI’s revenue at the expense of Complainant. Complainant goes on to allege that third-party webpage analysis (provided in the Annexes to the Complaint and amended Complaint) show Respondent’s Website reached approximately 14,900 users organically per month, and another 5,000 users reaching Respondent’s Website from paid advertisements, causing Respondent’s Website to obtain twice as many viewers as Complainant’s Website. Complainant describes Respondent as one of several “competitor websites for describing the Complainant’s services” and concludes that “[r]edirecting traffic to websites that provide lies for the purpose of commercial gain violates the policy”.

B. Respondent

Respondent contends that the disputed domain name is not confusingly similar to Complainant’s Mark.

² Complainant did not specify which UDRP decisions comprise this “third set of cases”.

Respondent argues the disputed domain name poses a question for discussion and commentary, namely “Does Ryan Kavanaugh Look Like Harvey Weinstein?” Respondent argues the words added to Complainant’s Mark in the disputed domain name are not clearly negative language, unlike the word “sucks” in cases cited by Complainant. Respondent argues the added words create a different appearance, sound, meaning and overall commercial impression from Complainant’s Mark, and are unlikely to confuse users into believing the disputed domain name is associated with Complainant.

Respondent argues Complainant has failed to show Respondent lacks a legitimate interest in the disputed domain name. Respondent argues it is making a legitimate fair use of the disputed domain name to ask a question that is both noncommercial in nature and protected by the First Amendment to the United States Constitution and federal United States case law, including the *Rogers* test developed from *Rogers v. Grimaldi*, 875 F.2d 994 (2nd Cir. 1989). Respondent contends that Respondent’s Website is an expressive work that is purely speech and does not offer goods or services for sale. Respondent claims none of the content at Respondent’s website is misleading, and users would not think Complainant sponsors the website. Respondent asserts that the YouTube video Complainant mentions is not on the home page of Respondent’s website, but further down on the “Articles” page of Respondent’s website, and only generates incidental revenue through Google advertisements on the third-party website youtube.com. Respondent asserts that it does not compete with Complainant in the sense understood by the Policy, as Respondent does not provide television and film production services, which Complainant does. Respondent argues that it does not and cannot have intended to misleadingly divert consumers because Respondent and Complainant are not competitors, do not offer the same services, and do not attract the same consumers. Respondent also argues its use is fair use for free speech purposes such as commentary and criticism, not tarnishment, and that a UDRP proceeding is not an appropriate forum for ascertaining the truthfulness of the allegations on Respondent’s website, as would be necessary in a legal action for defamation.

Respondent also alleges Complainant failed to prove Respondent registered and used the disputed domain name in bad faith. Respondent states it is not Complainant’s competitor because it does not offer goods or services competing with Complainant’s services, and therefore Respondent cannot have registered the disputed domain name for the purpose of disrupting the business of a competitor under the Policy, paragraph 4(b)(iii). Respondent asserts that it is unlikely anyone could confuse the source of Respondent’s Website and Complainant has failed to show Respondent intentionally diverted users to Respondent’s Website by creating a likelihood of confusion with Complainant’s Mark. Respondent criticizes Complainant’s reliance on a third-party’s webpage analysis, and states Complainant cited no authority that found bad faith on the part of a domain name owner due to the success of its website traffic. Respondent asserts that “a website that functions for the exercise of free speech by its nature cannot operate with bad faith intent” and that prior UDRP decisions established that registration and use of a domain name for noncommercial commentary or criticism is a legitimate exercise of free speech. Respondent concludes that the Policy is designed to prevent abusive cybersquatting, but under United States law, the Policy cannot insulate trademark holders from commentary or critical views when such views are without intent for commercial gain. To do otherwise, Respondent says, would “undercut the free and orderly exchange of ideas that the First Amendment seeks to promote” and therefore Complainant’s Complaint must fail.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, Complainant must demonstrate rights in Complainant's Mark and establish that the disputed domain name is identical or confusingly similar to Complainant's Mark. The Panel did not agree as to whether the disputed domain name, which incorporates Complainant's Mark in its entirety, was confusingly similar to Complainant's Mark. A majority of the Panel, comprised of panelists Andrew Bridges and Debra Stanek, would find that the additional elements ("does" before and "look", "like", and "Harvey Weinstein" after) forming a complete interrogative sentence, resulted in a very different overall visual and aural impression that was not confusingly similar to Complainant's Mark. One member of the Panel, Brian Winterfeldt, would find that the addition of these other terms would not negate a finding of confusing similarity because Complainant's Mark is recognizable within the disputed domain name. See [WIPO Overview 3.0](#), section 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."). Panelists Andrew Bridges and Debra Stanek believe that the quoted statement in the non-binding WIPO Overview is overbroad, particularly as applied to the facts of this case, noting that each case must be decided according to its own facts. The panelists agree in reading confusing similarity (which does not require bad faith) as an essential element of paragraph 4(a)(i) and as distinct from the no-legitimate-rights and bad-faith criteria that paragraphs 4(a)(ii) and 4(a)(iii) contain.

Because the Panel unanimously found Complainant did not meet its burden under Policy paragraphs 4(a)(ii) and 4(a)(iii), as discussed in paragraphs 6.B and 6.C of this decision, the difference among the Panelists with regard to Policy paragraph 4(a)(i) does not affect the outcome here. The Panel notes that under the Policy, Complainant must prove each of the three elements, and Complainant's failure to meet its burden under Policy paragraphs 4(a)(ii) and 4(a)(iii) dooms the Complaint.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, Complainant must make at least a *prima facie* case that Respondent possesses no rights or legitimate interests in the disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once Complainant makes such a *prima facie* showing, the burden of production shifts to Respondent, though the burden of proof always remains on Complainant. If Respondent fails to come forward with evidence showing rights or legitimate interests, Complainant will have sustained its burden under the second element of the UDRP. See [WIPO Overview 3.0](#), section 2.1.

Paragraph 4(c) of the Policy lists the ways that Respondent may demonstrate rights or legitimate interests in the domain name:

- (i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the 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.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name. See [WIPO Overview 3.0](#), sections 2.1, 2.2, 2.3, 2.4, and 2.5.

According to Complainant, Respondent lacks rights or legitimate interests in the disputed domain name because Respondent uses the disputed domain name for a commercial website that conveys an association

with Complainant to disparage Complainant's Mark and promotes Respondent's competing entertainment services. Respondent argues its use of the disputed domain name is for legitimate noncommercial or fair use without intent for commercial gain, namely, for a website containing protectable free speech and expression in the form of commentary on Complainant. The key question which must be answered therefore is whether Respondent is using the disputed domain name for genuine noncommercial free speech, and not as a pretext for cybersquatting or commercial activity to misleadingly divert Complainant's customers.

Certain domain names consisting of a trademark and additional terms impersonate a trademark owner or suggest sponsorship or endorsement by the trademark owner, such as domain names comprised of a complainant's trademark and additional terms "with an inherent Internet connotation" (e.g., <e-trademark.com>, <buy-trademark.com>, or <trademark.online>). On the other hand, certain domain names containing critical terms communicate that there is no such affiliation (e.g., <trademarksucks.com>). See [WIPO Overview 3.0](#), section 2.5.1.

The disputed domain name does not suggest ownership, sponsorship, affiliation, or endorsement by Complainant. The question the disputed domain name poses, "Does Ryan Kavanaugh look like Harvey Weinstein?" is implicitly critical of Complainant, in that it suggests the legitimacy of a comparison between Complainant and Harvey Weinstein, an infamous American film producer convicted of sex crimes. The disputed domain name asks, in effect, "Does [Complainant] resemble [a former film producer convicted of sex crimes]?" Internet users viewing the disputed domain name would understand it is not owned, sponsored, or endorsed by Complainant.

Beyond looking at the domain name itself, panels also examine circumstances beyond the disputed domain name itself to assess whether the record supports a claim of fair use. Here, the following factors used in prior UDRP proceedings to evaluate fair use are relevant: (i) the disputed domain name has been registered and is being used for legitimate purposes and not, on the evidence before the Panel, as a pretext for commercial gain or other such purposes inhering to the respondent's benefit; (ii) the respondent reasonably believes its use to be truthful and well-founded; (iii) it is clear to Internet users (the Panel would note that this requires some care and scrutiny) visiting the respondent's website that it is not operated by the complainant, and that there is no likelihood of actual confusion as to any connection between the complainant's trademark in the disputed domain name and the corresponding website content; (iv) the disputed domain name is not used to divert Internet users to a competitor of the complainant or otherwise attempt to obtain an unfair commercial advantage in the complainant's industry, and (v) the domain name registration and use by the respondent is consistent with a pattern of *bona fide* activity by the respondent. See [WIPO Overview 3.0](#), section 2.5.2. Whether a respondent's use of a domain name constitutes a legitimate fair use will depend on whether the corresponding website content *prima facie* supports the claimed purpose, such as commentary or criticism, is not misleading as to source or sponsorship, and is not a pretext for tarnishment or commercial gain. See [WIPO Overview 3.0](#), sections 2.5.3 and 2.6.

The Panel has not found any convincing evidence in the record that Respondent's Website is used for commercial gain or to mislead Internet users as to source or sponsorship, though it addresses Complainant's arguments on these points *infra*. Respondent's Website is by all appearances a genuine "gripe site" rife with noncommercial criticism of Complainant in various forms, including statements alleging Complainant was involved in a drunk driving incident and a Ponzi scheme, pejorative statements criticizing Complainant for supposedly stifling free speech rights exercised by his critics, and photographic composites of Complainant and Harvey Weinstein, accompanied by statements that they are visually similar individuals (implying that in Respondent's view, Complainant is as objectionable as Harvey Weinstein). While the Panel takes no position on whether Respondent's disparagement of Complainant is warranted, Respondent's use of the disputed domain name for noncommercial criticism of Complainant confers rights and legitimate interests in the disputed domain name under paragraph 4(c)(iii) of the Policy.

Respondent has made a number of arguments opining on the applicability of United States law. The Panel notes that the UDRP Rules, paragraph 15(a) allow the Panel to look to relevant national law, stating, "[i]n some limited cases such as where the parties share a common nationality and the import of a specific national law concept is particularly germane to an issue in dispute, panels have applied national law

principles in assessing the UDRP elements. In such cases, panels have often noted in the applicable UDRP decision the fact that the laws of a particular jurisdiction (possibly that elected by the complainant under UDRP paragraph 4(k)) may well govern any subsequent court case.” [WIPO Overview 3.0](#), section 4.15. Though Respondent is at first glance a Swedish entity, Complainant identified Respondent as an employee of TEI, and TEI is an American entity based in Los Angeles, California, the United States. Complainant also elected as the mutual jurisdiction the courts at the location of the principal office of the Registrar, which is in Brea, California, the United States. Accordingly, it is the Panel’s view that United States law is relevant and applicable.³ Even if United States law did not apply in this matter, Respondent’s use of the disputed domain name for a noncommercial criticism site is protected under the Policy.

Complainant cites several UDRP decisions to support its argument that Respondent’s criticism of Complainant does not give rise to rights or legitimate interests, but Complainant’s citations are inapposite on the facts of the instant case. Complainant cites *Wal-Mart Stores, Inc. v. Walsucks and Walmarket Puerto Rico*, WIPO Case No. [D2000-0477](#) for the proposition that Respondent has no legitimate rights to disparage the Mark in order to promote its own services. But in that case, the panel found respondent lacked rights and legitimate interests in the subject domain names because the respondent registered domain names containing the complainant’s mark and demanded monetary compensation from the complainant for doing so, circumstances which are not present here. Complainant also cites *Skattedirektoratet v. Eivind Nag*, WIPO Case No. [D2000-1314](#), *Myer Stores Limited v. Mr. David John Singh*, WIPO Case No. [D2001-0763](#), and *Triodos Bank NV v. Ashley Dobbs*, WIPO Case No. [D2002-0776](#) for the proposition that Respondent does not have a right to criticize Complainant because the disputed domain name is confusingly similar to Complainant’s Mark or conveys an association with Complainant’s Mark. The cases Complainant cites all concern domain names identical to complainants’ marks with either no added terms or the added term “online” (in the case of *Myer Stores*) and thus suggested an affiliation with the complainants. Here, by contrast, the disputed domain name contains additional critical terms that make it clear to users that it is unlikely to be owned, sponsored, or endorsed by Complainant. See, e.g., *Audacia Capital (Ireland) Plc v. Domain Admin, Whois Privacy Corp*, WIPO Case No. [D2021-2286](#) (denying transfer of <audaciabondscam.com>, but transferring <audaciabond.com> and <investinaudacia.com> to the complainant); *Royal Institution of Chartered Surveyors v. Martin Rushton*, WIPO Case No. [D2016-0951](#) (denying transfer of <rics-corruption.com>, but transferring <ricsfrance.com> to the complainant).

Complainant also argues that Respondent generates revenue from Respondent’s Website and competes with Complainant in the field of entertainment services based on a link to a YouTube video of the H3 Podcast on Respondent’s Website. Complainant argues the YouTube video generates revenue from hundreds of thousands of views, but the YouTube video contains critical commentary on Complainant consistent with the Respondent’s goal to criticize Complainant elsewhere on Respondent’s Website, and is not prominently displayed on Respondent’s Website. In the Panel’s view, the YouTube video link evinces only a minimal, incidental degree of commercial activity, and Respondent’s Website is mainly dedicated to noncommercial criticism. See, e.g., [WIPO Overview 3.0](#), section 2.6.3 (stating that where a domain name is used for noncommercial, fair criticism that is not misleading or false, “Some panels have found in such cases that a limited degree of incidental commercial activity may be permissible in certain circumstances (e.g., as “fundraising” to offset registration or hosting costs associated with the domain name and website).”). Regarding Complainant’s allegation that the YouTube video on Respondent’s Website shows Respondent competes with Complainant, Complainant has not alleged he offers entertainment services in the form of video commentary. Nor has Complainant furnished evidence that Respondent’s Website competes with

³ Under United States law, Respondent’s use of the disputed domain name for a noncommercial website criticizing Complainant would likely not be considered trademark infringement or cybersquatting. See, e.g., *Lamparello v. Falwell*, 420 F.3d 309 (4th Cir. 2005) (finding the defendant’s use of a domain name near identical to the plaintiff’s name for a noncommercial gripe site did not infringe the plaintiff’s trademark rights and was not cybersquatting because users would not be confused into believing the plaintiff authorized the website); *Nissan Motor Co. v. Nissan Computer Corp.*, 378 F.3d 1002 (9th Cir. 2004) (holding an injunction violated the First Amendment to the United States Constitution when it enjoined the defendant from placing links to websites disparaging the plaintiff); *Concierge Auctions LLC v. Registration Private, Domains By Proxy, LLC / Wesley Donehue, Donehue Direct*, WIPO Case No. [D2020-1020](#) (finding respondent’s use of a domain name containing the word “scam” for a website criticizing the complainant satisfied the three-part nominative fair use test developed by the Ninth Circuit Court of Appeals).

Complainant's film and TV production services.

Complainant also asserts that similarities between Respondent's Website and Complainant's Website, namely white backgrounds, images of Complainant, and biographical information and news on Complainant convey an association with Complainant's Mark. The Panel disagrees. The similarities Complainant cites between Complainant's website and Respondent's Website are superficial at best, and could feasibly be shared by many websites criticizing or commenting on Complainant. Several of the news articles on Respondent's Website from sources such as *The New York Times*, *Deadline*, and *Variety* share these characteristics.

Accordingly, Complainant has failed to meet his burden of proving Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. To facilitate an assessment of whether this has occurred, and bearing in mind that the burden of proof rests with the complainant, UDRP paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

Complaints alleging the types of conduct described in UDRP paragraph 4(b) should be supported by arguments and available evidence such as dated screenshots of the website to which the disputed domain name resolves or correspondence between the parties. Panels have held that wholly unsupported conclusory allegations may not be sufficient to support a complainant's case. However, UDRP panels have been prepared in appropriate cases to draw inferences concerning a respondent's bad faith intent from the relevant facts and circumstances.

Furthermore, given that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative, even where a complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the complainant's trademark would also satisfy the complainant's burden. [WIPO Overview 3.0](#), section 3.1.

Complainant argues that Respondent registered and uses the disputed domain name in bad faith to disrupt Complainant's entertainment services business. According to Complainant, Respondent is one of several "competitor websites for describing the Complainant's services". The Panel does not agree with Complainant's expansive definition of "competitor". A "competitor" is a commercial or business competitor or "a person who acts in opposition to another" for commercial gain, rather than legitimate noncommercial

criticism. [WIPO Overview 3.0](#), section 3.1.3. As described above, the Panel has found Respondent's Website is used for noncommercial, legitimate criticism of Complainant protected by the Policy and United States law. Complainant's assertion that Respondent's website is being used in bad faith to compete for "describing the Complainant's services" is accordingly not sound. If the Panel were to follow Complainant's logic, journalists, critics, satirists, and comedians may see their online commentary on Complainant quashed as "competing" with Complainant for describing Complainant's services.

Complainant also states that "[r]edirecting traffic to websites that provide lies for the purpose of commercial gain violates the policy." The Panel is unconvinced by Complainant's argument that users reaching Respondent's Website are necessarily those that would otherwise have visited Complainant's website. Internet users visiting Respondent's Website are unlikely to have been potential customers of Complainant who might avail themselves of Complainant's services. Complainant objects that Respondent receives thousands of users from paid advertisements, but Complainant's evidence is thin.⁴ Moreover, even by Complainant's own account, the majority of users reaching Respondent's Website are from organic Internet traffic. Complainant complains that Respondent's Website receives twice as many viewers as Complainant's Website, but Complainant has not shown that such popularity resulted from bad faith on Respondent's part. For example, Complainant has not provided evidence sufficient to show that Internet traffic flowing to Respondent's Website was a result of any deceptive attempt to confuse users into believing the disputed domain name or Respondent's Website are owned, sponsored, or endorsed by Complainant.

Complainant implies Respondent has defamed Complainant or tarnished Complainant's Mark via "lies" on Respondent's Website. But Complainant has not identified which statements made by Respondent on the website are "lies" or evidenced that any content at Respondent's website is defamatory. Moreover, it is beyond the Panel's ability and the scope of the Policy to evaluate whether any content on Respondent's Website is defamatory, and such an evaluation is best left to a court of competent jurisdiction.

Accordingly, Complainant has failed to meet his burden of demonstrating that the disputed domain name was registered and is being used in bad faith.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Brian J. Winterfeldt/
Brian J. Winterfeldt
Presiding Panelist

/Debra J. Stanek/
Debra J. Stanek
Panelist

/Andrew Bridges/
Andrew Bridges
Panelist
Date: April 15, 2022

⁴ Complainant's evidence on this point appears incomplete. Section C of the Complaint and paragraph 24 of the amended Complaint mention "paid ads such as the one shown below" but no image of a paid advertisement appears anywhere on that page.