

ADMINISTRATIVE PANEL DECISION

My Green Lab, Corp. v. Domain Administrator, See PrivacyGuardian.org /
Green Your Lab
Case No. D2022-1262

1. The Parties

The Complainant is My Green Lab, Corp., United States of America, represented by Lee & Hayes, United States of America (“United States”).

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States of America / Green Your Lab, Belgium, self represented.

2. The Domain Name and Registrar

The disputed domain name <greenyourlab.org> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 8, 2022. On April 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 12, 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 the Complainant on April 12, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on April 12, 2022.

The Center verified that the Complaint together with the amendment to the 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 the Respondent of the Complaint, and the proceedings commenced on April 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 4, 2022. The Response was filed with the Center on April 15, 2022.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on May 4, 2022. The Panel finds that it was properly constituted. 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

The Complainant is a California domestic nonprofit corporation that was registered on or about May 24, 2013. It is an organization committed to building a global culture of sustainability in science, including a worldwide standard for best practices in laboratory sustainability. The Complainant's activities have featured in science-focused media, including articles in "Science", and "Nature". The Complainant registered the domain name for its website, <mygreenlab.org> on March 14, 2013. Said website provides resources regarding waste, energy, water, and other topics. It also provides certification programs, and education resources.

The Complainant is the owner of United States Registered Trademark no. 4650297 for the word mark MY GREEN LAB, registered on December 2, 2014 in Classes 41 and 42. Said mark contains a disclaimer stating that no claim is made to the exclusive right to use "Green Lab" apart from the mark as shown.

The disputed domain name was registered on April 15, 2020. The Respondent is a volunteer-run free network involved in the green labs movement. The website associated with the disputed domain name is entitled "Green Your Lab | Network of Sustainable Science and Green Lab Enthusiasts". Said site states, "Green Lab is a movement encouraging research labs to become more sustainable [...] We help academic, industrial and research labs look at their lab practices and optimize for the smallest carbon footprint [...] Green Lab is a mentality of asking "Why?" and challenging the status quo".

According to a declaration by the Complainant's Chief Operations Officer, the Respondent's founder became an ambassador of the Complainant in October 2020 and used the Complainant's contact list in July 2021 to reach out to other members of the Complainant's ambassador network to beta-test the Respondent's network and website, claiming an affiliation between the two organizations.

The Complainant produces three messages from consumers who have been confused as to whether the Respondent has an affiliation with the Complainant, including an organization that the Complainant states was its largest funder at the time. Two of these messages contain emails apparently from the Respondent's founder dated July 19 and 20, 2021 respectively which state that said founder is working with the University of British Columbia to build "an international Green Labs community networking platform called "Green Your Lab". The email goes on to state, "We're partnering with My Green Lab, and we'd like to invite all of the Ambassadors for early access to our platform. We'd love for you to join us."

The declaration by the Complainant's Chief Operations Officer omits to mention that the Parties had been in discussion in April/May 2021, during which the Complainant's Chief Executive Officer emailed the Respondent's founder stating "[...] We have considered creating a similar network [to that of the Respondent] but perhaps we could just point people to yours and partner with your organization. [...] We are always excited to see more green lab initiatives gaining traction and look forward to supporting and partnering with your efforts." Following said email, the Respondent's founder says that meetings were held with the Complainant's principals in the context of which said founder believed that the Parties were working in partnership and that the Respondent was entitled to send certain emails to the Complainant's list.

The Complainant argues that there was no partnership between the Parties while the Respondent asserts that its claim to partnership was a misunderstanding arising from the said discussions.

5. Parties' Contentions

A. Complainant

The Complainant contends as follows:

Identical or confusingly similar

The disputed domain name incorporates a dominant feature of the Complainant's MY GREEN LAB mark in that it contains the terms "Green" and "Lab." The only differentiating term is the Respondent's substitution of the possessive adjective "my" for the possessive adjective "your," which does little, if anything, to alleviate confusion with the Complainant's mark. Said mark and the disputed domain name both contain three single-syllable words, which further contributes to confusion. On the website associated with the disputed domain name, the Respondent uses a similar color scheme, if not the same, and similar topics and icons. The Complainant has received numerous inquiries regarding false association between said website and that of the Complainant. While the Complainant has only received some inquiries, it is likely that there are numerous other confused consumers.

Rights or legitimate interests

The Respondent cannot meet any of the situations enumerated in paragraph 4(c) of the Policy that would indicate a legitimate interest in the disputed domain name. The offering of goods and services in association with an infringing trademark use does not constitute a *bona fide* offering of goods and services within the meaning of paragraph 4(c)(i) of the Policy. Use of the disputed domain name to sell competing goods is not a *bona fide* offering of goods. No rights or legitimate interests should be found where the Respondent has generated commercial gain by intentionally and misleadingly diverting users away from the Complainant's site to a competing website.

The Respondent registered the disputed domain name only one month after its founder became one of the Complainant's ambassadors, such that the Respondent was already well aware of the Complainant, its services and website. The disputed domain name directs users to a website that provides services that are in direct competition with the Complainant. It also utilizes similar links and similar green beaker icons.

The Respondent cannot demonstrate that it has rights or legitimate interests in the disputed domain name because its choice of a confusingly similar domain name in connection with services in direct competition with the Complainant cannot be considered a *bona fide* use. There is also no indication that the Respondent was commonly known by the disputed domain name. Instead, the evidence establishes that it was created to trade off the goodwill of the Complainant.

Registered and used in bad faith

The Respondent registered the disputed domain name in bad faith for the purpose of misleading Internet users as to source, sponsorship, affiliation or endorsement of the Respondent's website by means of initial confusion, in accordance with paragraph 4(b) of the Policy. The Respondent had actual knowledge of the Complainant's mark before registering the disputed domain name. Such actual knowledge can evince bad faith under the Policy. The Respondent's founder was one of the Complainant's ambassadors only a month prior to Green Your Lab's creation.

The evidence establishes that the Respondent solicited the Complainant's clients and falsely asserted that the Respondent was associated with the Complainant in order to commandeer such clients and trade off the Complainant's goodwill. The disputed domain name is confusingly similar to the Complainant's registered trademark and directs users to a website that provides services that are in direct competition with the Complainant, utilizing similar links and icons. The Complainant has consequently received messages from a number of consumers who were confused as to whether the Respondent is somehow affiliated with or sponsored by the Complainant.

B. Respondent

The Respondent contends as follows:

Identical or confusingly similar

There has been no confusion due to the Respondent's name or the disputed domain name. The confusion evidenced by the Complainant arises from emails that were sent out due to a miscommunication between the Parties as they engaged in partnership discussions. The Respondent legitimately believed that the Parties were forming a partnership and that the Respondent had permission to send out emails to this effect to the Complainant's contact list.

In April/May 2021, the Complainant's Chief Executive reached out to the Respondent stating that it had considered creating a similar network but perhaps could just point people to that of the Respondent and partner with it. The Respondent's personnel attended a meeting with the Complainant's Chief Executive and a colleague to discuss a partnership. The Respondent believed the meeting went well and that a partnership was in progress. The Respondent attended a meeting on July 16, 2022 [*sic* - the Panel notes that this is a typographical error for 2021] with the colleague of the Complainant's Chief Executive in which said colleague encouraged everyone to use the Complainant's email list to contact the Complainant's other ambassadors. The Respondent suggested emailing a link to said ambassadors to sign up to the Respondent's network which was greeted with a positive response from the Complainant and the said emails were sent four days later. The Complainant's Chief Executive clarified that there was a misunderstanding and the Respondent apologized and continues to apologize for such. It immediately ceased sending out any further emails to the email list and never again indicated that there was any type of partnership between the Parties. The Complainant's evidence of confusion shows confusion due to the said emails stating that there was a partnership and not confusion regarding the Respondent's name or the disputed domain name.

The Complainant's trademark contains a disclaimer stating that it is not entitled to exclusive use of the words "Green Lab" and covers Classes 41 and 42, while the Respondent is a community network that does not fall under those classes and does not offer the same services. The Respondent's target audience are PhD educated scientists who are unlikely to be confused. The look and feel of the Parties' sites do not appear similar. There was no intention to mimic the Complainant's site. The Respondent does not use the same layout, fonts or color schemes, and employs a dark-colored background while the Complainant's site uses a white background with black text. The allegedly confusing similarity of the websites does not present the main page of the Complainant's site but a non-prominent internal page, which must be clicked to expand it, and which is not cause for confusion. The three pillars of green lab sustainability are energy, waste and water. The waste data point was obtained from a "Nature" journal paper while the energy and water data were measured in the Respondent's labs. The comparison is not with offices, as with the Complainant's data, but a comparative non-research campus. The green beaker is a very common icon used to describe green labs. In the Respondent's case, the image used was the first stock image in search results. In a spirit of compromise, the Respondent has ceased use of such logo, only using it to illustrate green chemistry or green labs in general.

Rights and legitimate interests

The Complainant has no exclusive claim over the words "green lab", the Respondent's offer of services is not covered by the Complainant's trademark, and the sophistication of the intended audience means that the Respondent is not infringing the Complainant's trademark. The Respondent's website and networking platform are excellent examples of *bona fide* use. The Respondent has been commonly known by the disputed domain name by virtue of its Twitter page which it has been using since 2019 and has over 1,000 followers. The Respondent is a free networking platform for lab scientists run completely by volunteers with no fees charged and no sponsorship funding. It is making a legitimate noncommercial use of the disputed domain name without intent for commercial gain misleadingly to divert consumers or tarnish the Complainant's trademark.

Registered and used in bad faith

The disputed domain name was not registered and is not being used in bad faith. It was not registered or acquired primarily to sell or transfer it to the Complainant or to a competitor thereof for valuable consideration in excess of the Respondent's out-of-pocket costs. It was not registered to prevent the Complainant from reflecting its mark in a corresponding domain name and the Complainant already owns such a domain name. The Parties are not competitors and the disputed domain name was not registered to disrupt the Complainant's business. The Respondent sees the Complainant not as a competitor but as a potential partner. The Respondent does not offer the same services as the Complainant and wishes the Complainant the very best in its business.

The disputed domain name was not registered in an intentional attempt to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website. It is in the best interests of the Parties to have separate identities. The Respondent is proud of its volunteer-run free network, which does not have interested party sponsorship. Being confused with the Complainant would be detrimental to the Respondent. The Respondent works hard to maintain its independence and to offer unbiased advice from one member to another. There was no bad faith in the sending of the emails complained of, only a miscommunication due to the Respondent's legitimate belief that the Parties were indeed forming a partnership. Upon clarification, the Respondent has ceased all such indications. The Parties are not in competition but are two like minded groups working towards a common goal of reducing the environmental impacts of science. The Respondent is supportive of the Complainant.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

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

A. Identical or Confusingly Similar

The first element analysis is usually conducted in two parts. First, the Complainant must demonstrate UDRP-relevant rights in a trademark. Secondly, the trademark concerned is compared to the disputed domain name, typically on a straightforward side-by-side basis, in order to assess identity or confusing similarity. In such comparison, the generic Top-Level Domain ("gTLD"), in this case, ".org", is typically disregarded on the basis that this is required in a domain name for technical reasons only. If the mark is noted to be identical to the disputed domain name, identity will generally be found and if it is otherwise recognizable in the disputed domain name, confusing similarity may be found.

The Panel finds that the Complainant has UDRP-relevant rights in its MY GREEN LAB registered trademark as described in the factual background section above. Said mark contains the disclaimer statement "No claim is made to the exclusive right to use "Green Lab" apart from the mark as shown." As the panel in *Minibar North America Inc. v. Ian Musk & GEMS Global Electronic Minibar Systems AS*, WIPO Case No. [D2005-0035](#) ("Minibar") noted, the fact that words incorporated into either a longer word trademark or in a device mark have been disclaimed does not necessarily mean that a finding of confusing similarity with a domain name using those words is not possible. The mark MY GREEN LAB features a possessive form that, taken as a whole, was found by its examiner to demonstrate the required distinctiveness (see also *Franchise Recruiters, Ltd. v. Franstaff, Inc.*, WIPO Case No. [D2000-1625](#), as discussed in Minibar, in which

the mark was “Franchise Recruiters Ltd”, the words Franchise and Recruiters were both disclaimed, yet the panel noted that these were each disclaimed standing alone, but together demonstrated the required distinctiveness. See also sections 1.10 and 1.2.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))).

Comparing the mark to the disputed domain name, it may be seen that each contains three words of three syllables, and each includes a possessive form, as noted by the Complainant. Both also use the words “green” and “lab”. The Panel asks itself however whether these similarities are enough to render the disputed domain name confusingly similar to the mark. In other words, is the mark recognizable in the disputed domain name by virtue of the identified similarities? The Panel doubts that this is so, particularly given that two of the similar elements, if taken together, constitute a disclaimed term and the other is a different form of possessive.

In any event, the Panel considers that there are significant differences between the Complainant’s mark and the disputed domain name. In the first place, the Panel perceives the Complainant’s mark as being focused on its first word, the possessive adjective “my”, which is used to reference “my” green lab (as opposed to someone else’s green lab). While there is also a possessive adjective present in the disputed domain name, it is in a different form, namely “your” rather than “my”, and it does not bear the same emphasis. The focus in the disputed domain name is on its first word, “green”, which is the imperative form of what the Panel believes to be a now colloquially accepted use of the verb “to green”, meaning to make planet-friendly and sustainable. By contrast, the Complainant’s mark uses the word “green” in a different form, namely as an adjective to describe the “lab”.

Furthermore, conceptually speaking, the “lab” referenced in the disputed domain name has not yet been made green (in the sustainable sense) unless or until the reader acts upon the imperative verb to “green your lab”. This runs contrary to the position in MY GREEN LAB, which evidently refers to “my” [already] “green lab”. Consequently, although the words “green” and “lab” feature in both the disputed domain name and the Complainant’s mark, they are deployed in quite different ways and are perceived differently. Accordingly, on the side-by-side comparison approach together with a conceptual analysis, the Panel identifies some similarities in the words themselves taken individually but doubts that these would be sufficient to give rise to a finding of confusing similarity within the meaning of the Policy. When the mark and disputed domain name are each perceived as a whole, the differences in emphasis and grammatical form seem to the Panel to restrict the recognizability of the Complainant’s mark in the disputed domain name.

Both of the Parties seek to discuss extraneous matters in the context of the comparison process, namely the alleged similarity in website content and the alleged instances of actual confusion. Section 1.15 of the [WIPO Overview 3.0](#) deals with the relevance of website content to the question of identity or confusing similarity and notes that the content of the website associated with the domain name is usually disregarded by panels when assessing confusing similarity under the first element unless it appears from such content *prima facie* that the respondent seeks to target a trademark through the disputed domain name. That is not the case here. Both of the Parties’ website content inevitably deals with and discusses the concept of “green lab” that is the subject of the disclaimer in the Complainant’s mark, so a degree of similarity is to be expected and the content itself does not support the notion that the Respondent is seeking to target the Complainant’s trademark directly. Section 1.15 of the [WIPO Overview 3.0](#) goes on to note that such content will often bear on assessment of the second and third elements, namely whether there may be legitimate co-existence or fair use, or an intent to create user confusion, and the Panel will discuss it further in that context.

With regard to the instances of actual confusion, these are also typically not factored into the Panel’s analysis under the first element of the Policy, where the comparison process is conducted on the more objective basis described above. In any event, the Panel notes that the alleged actual confusion in this particular case arises out of the Respondent’s communications described in the factual background section and not directly as a result of any perception of similarity between the disputed domain name and the Complainant’s MY GREEN LAB mark.

Although the Panel has expressed doubts that the disputed domain name would be confusingly similar to the Complainant's mark, in light of the Panel's finding under the second and third elements of the Policy, as discussed below, it is unnecessary for the Panel to reach a definitive conclusion on the first element analysis.

B. Rights or Legitimate Interests

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

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

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

The consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. In the current proceeding, the Panel finds that the Complainant has established the requisite *prima facie* case based on its submissions that the Respondent cannot meet any of the situations described in paragraph 4(c) of the Policy, that the Respondent is not making a *bona fide* offering of goods or services because it is in competition with the Complainant, and that the Respondent has generated commercial gain by intentionally and misleadingly diverting users away from the Complainant's site to a competing website which utilizes similar links and green beaker icons. The Complainant also asserts that there is no indication that the Respondent has been commonly known by the disputed domain name.

The Complainant having made out the requisite *prima facie* case, the burden of production shifts to the Respondent to bring forth evidence of any rights or legitimate interests which it might have in the disputed domain name. The Respondent's case focuses on the fact that the Complainant has no exclusive rights in respect of the words "green lab", and that the Respondent's network services are not within the scope of the Complainant's mark and constitute *bona fide* use. The Respondent also asserts that it has been commonly known by the disputed domain name, as evidenced by its Twitter page, operational since 2019, and submits that it is making a legitimate noncommercial use of the disputed domain name without intent for commercial gain misleadingly to divert consumers or tarnish the Complainant's trademark. In particular, the Respondent argues that its email to the Complainant's mailing list merely resulted from a miscommunication between the Parties and was not tied to any attempt to use the disputed domain name in a misleading fashion.

The Panel is satisfied that the Respondent is using the disputed domain name in connection with an offering of services on a noncommercial basis and that it commenced such use before notice to it of the dispute. The offering comprises a discussion forum, best practices database, networking/seminars and various collaborations surrounding green labs. The question for the Panel is whether the intent behind this offering and the selection of the disputed domain name itself was to take unfair advantage of and to benefit unfairly from confusion with the Complainant's mark. If so, the services could not be described as *bona fide* within the meaning of paragraph 4(c)(i) of the Policy.

The Panel considers that the Respondent is making a *bona fide* offering of services in the circumstances of this case. The Respondent does make use of the term “green lab” in its materials but this use is descriptive and thus was disclaimed in the Complainant’s mark. Objectively viewed, there are differences between the Complainant’s mark and the disputed domain name, as noted in the preceding section, which reduce the likelihood of confusion. There does not appear to have been any deliberate intent on the Respondent’s part to cause confusion and indeed the Panel doubts that any confusion would have arisen, were it not for the emails which the Respondent appears to have mistakenly sent to the Complainant’s mailing list. Any such confusion appears to have revolved around whether the Respondent had the authority to describe itself as being in partnership with the Complainant rather than whether the Respondent’s organization name or the disputed domain name itself suggested an affiliation with, or amounted to an impersonation of, the Complainant.

In addition to the Panel’s own impression that the Respondent’s service was intended to co-exist legitimately with that of the Complainant, it should not be overlooked that the Complainant itself did not, at least at first, see the Respondent’s activities as anything other than complementary to its own. In an email between the Parties, the Complainant’s Chief Executive described the Respondent’s offering as having “great potential for collaboration” as opposed to seeing the disputed domain name (to which said email was addressed) as either confusing, misleading or attempting to take unfair advantage of the repute of the Complainant or its mark. Likewise, in communication with one of the allegedly confused consumers via the “LinkedIn” network, a colleague of the Complainant’s Chief Executive Officer noted that “Green your lab is a legitimate organization and you may find their resources useful” while adding that the Complainant’s interest related more to the issue of the claimed partnership between the Parties. The Panel considers that both the email and the “LinkedIn” exchange are important evidence which is generally supportive of the notion that there was a lack of cybersquatting intent on the part of the Respondent (see the discussion in section 2.2 of the [WIPO Overview 3.0](#)). In the circumstances of the present case, the Respondent’s action in seeking a potential noncommercial collaboration in an area of mutual interest, namely the “green labs” movement does not strike the Panel as being the action of a typical cybersquatter.

The Complainant’s real concern, that the Respondent used its mailing list without permission in order to announce a partnership that did not exist, has been plausibly explained by the Respondent as arising from a misunderstanding or miscommunication. The confusion that resulted from that mailing is relatively straightforward to correct and, according to the Respondent, has been corrected and never repeated. There are no other instances on the record suggesting that the Parties have been confused with one another, whether because of alleged similarities in the disputed domain name or otherwise.

Turning to the question of whether the Respondent has been commonly known by the disputed domain name, the Panel first notes that the Complainant has misstated the timeline in its submissions on rights and legitimate interests to a material degree. The Complainant asserts that the disputed domain name was registered one month after the Respondent became one of the Complainant’s ambassadors (paragraph 33 of the Complaint). This might have suggested to the Panel that the Respondent’s interaction with the Complainant’s was part of a deliberate plan to commence an association with the Complainant before the Respondent was commonly known as “Green Your Lab” and, having established such association, to register the disputed domain name in order to take unfair advantage of it. In fact, the disputed domain name was registered on April 15, 2020. According to the Complainant (paragraph 9 of the Complaint) the Respondent did not become one of the Complainant’s ambassadors until on or about October of 2020. Contrary to the Complainant’s assertion, therefore, by the time that the Respondent became one of the Complainant’s ambassadors, the disputed domain name had been in existence for some six months. Furthermore, by that date, the Respondent’s Twitter account in the name of @GreenYourLab had been in existence for a year, as the Respondent points out.

The expression “commonly known by” is usually interpreted by panels under the Policy as meaning that the respondent must have been commonly known by at least some other people than those responsible for the disputed domain name prior to its registration. Equally, the adoption of such name must be unconnected with and wholly independent from any reference to the complainant. Appropriate evidence may include sustained examples of secondary material such as websites or blogs, news articles, and correspondence

with independent third parties along with whether there is a general lack of other *indicia* of cybersquatting (see section 2.3 of the [WIPO Overview 3.0](#)). Panels also sometimes look at how a respondent has described itself on the Whois record.

Here, as noted above, there is evidence that the Respondent joined the Twitter network as “@GreenYourLab” in October 2019, some six months before it registered the disputed domain name on April 15, 2020. It has since built up some 1,000 followers. It is reasonable to infer that the Respondent is commonly known by such followers as “Green Your Lab”. While this could not be described as a sustained example of secondary material, it is nevertheless reasonably indicative of the fact that the Respondent had an online existence as “Green Your Lab” independently of the disputed domain name well before its registration. Contrary to the Complainant’s submission, as discussed above, according to the evidence submitted, the Respondent’s online existence began prior to and was independent of its dealings with the Complainant. Given the true timeline, the registration of the disputed domain name does not appear to be accompanied by any *indicia* of cybersquatting in the circumstances of the present case. Finally, it should be noted that the Respondent has described itself as “Green Your Lab” in the initial two fields on the Whois entry for the registrant of the disputed domain name, which the Panel presumes to be the “name” and “organization” fields.

The Panel therefore turns to consider the question of the Respondent’s alleged legitimate fair use of the disputed domain name for noncommercial purposes. The core factors typically considered by panels under the Policy are the nature of the disputed domain name, any relevant circumstances beyond the disputed domain name itself and the nature of any commercial activity for which the disputed domain name may be being used (see section 2.5 of the [WIPO Overview 3.0](#)). In the present case, the disputed domain name is not identical to the Complainant’s trademark, nor does it consist of such mark plus an additional term. The mark is not clearly recognizable in the disputed domain name and although the words “green” and “lab” are included, those words are typically descriptive of sustainable laboratory practices and appear in a different context from the Complainant’s mark, using the word “green” as a verb. These differences, more fully described in the first element assessment above, mean that in the Panel’s view that the disputed domain name does not carry a high risk of implied affiliation with the Complainant’s mark.

Turning to circumstances beyond the disputed domain name, the overall facts of the case support a claimed fair use for legitimate purposes (as noted originally by the Complainant’s colleague in the “LinkedIn” correspondence) and not a pretext for commercial gain or other purposes necessarily inhering to the Respondent’s benefit. There is a genuine connection between the Respondent’s website content and the descriptive imperative to “green your lab”. While the Complainant argues that the Respondent’s use of a green flask device is confusing, the Respondent plausibly argues that this device is so universal that it is found in stock images for a “green lab”. It does not exclusively reference the Complainant’s activities. Similarly, the Parties’ website content and look and feel do not suggest that the Respondent has set out to confuse visitors into thinking that they are visiting the Complainant’s website. There is a certain amount of overlap of subject matter and use of similar colors, predominantly green, but this is not surprising given that the Parties are both engaged in aspects of the “green labs” movement.

Finally, turning to the question of commercial activity, the Panel finds that the use of the disputed domain name is not a pretext for tarnishment of the Complainant’s mark or for commercial gain. The Respondent’s website content appears to be noncommercial in nature. While certain of the Complainant’s affiliates were apparently misled regarding the Respondent’s email communication, this related to the question of whether the Parties were going into partnership with one another. There is no evidence that the recipients were confused by the disputed domain name itself as to the source or sponsorship of the Respondent’s website. Indeed, the fact that the partnership itself may have been questioned by such recipients suggests that the two entities were separately perceived and that the disputed domain name itself did not promote any confusion. There is no suggestion from this material, for example, that the disputed domain name itself promoted any confusion.

In all of these circumstances, the Panel considers that the Respondent has rebutted the Complainant’s *prima facie* case that it has no rights or legitimate interests in the disputed domain name within the meaning of the

Policy. The Complainant has therefore failed to carry its burden in respect of paragraph 4(a)(ii) of the Policy and the Complaint therefore fails.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration 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 your documented out of pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

As the Complaint has failed on the second element analysis, it is not strictly necessary for the Panel to consider whether or not the disputed domain name has been registered and is being used in bad faith. Nevertheless, the Panel will briefly examine the issue for completeness.

The question of registration and use in bad faith in this particular case is closely tied to the issue of rights or legitimate interests as discussed in the second element analysis above. In other words, if the Respondent is found to have rights or legitimate interests in the disputed domain name in the context of a legitimate coexistence, it is very unlikely that it would be held to have unfairly targeted the Complainant’s rights in bad faith.

There is no reason to believe that disputed domain name was registered by the Respondent in the absence of any knowledge of the Complainant and/or its rights in the mark MY GREEN LAB. Such knowledge could readily be inferred from the fact that both of the Parties are actively engaged in the “green labs” movement and that the Complainant’s activities have previously been covered in scientific media. However, contrary to the Complainant’s position, it does not automatically follow from any such prior knowledge that the Respondent registered the disputed domain name in order to target the Complainant in an act of cybersquatting. The evidence before the Panel on the present record suggests otherwise.

The Respondent appears to have engaged in good faith in the legitimate activity of operating a noncommercial network for those interested in the “green labs” movement, commencing at least six months before the disputed domain name was registered. As far as the Panel can tell, this activity is not directly in competition with the Complainant but rather is complementary to the Complainant’s activities. There is some support to be found for that impression in the remarks made by the Complainant’s Chief Executive in his email to the Respondent’s founder, as previously discussed. The name in the disputed domain name does not appear to have been selected in order to cause confusion and any similarities arise from the fact that both Parties are engaged in the “green labs” movement, so are likely to use words such as “green” and “labs”, albeit in this case with the notable differences outlined in the first element discussion above.

The focus of the Complainant’s submissions on this topic relates to the apparent confusion caused by the Respondent’s use of the Complainant’s mailing list. As the Response asserts, and the Panel accepts, this

was not a deliberate attempt to solicit the Complainant's clients to a competitor organization but rather was an announcement of what the Respondent believed, albeit incorrectly, to be the beginnings of a working partnership between the Parties in furtherance of the "green labs" movement. The confusion that arose has apparently been contained and there is no evidence before the Panel that it has reoccurred. More importantly, the Panel finds that such confusion did not result from the nature of the disputed domain name itself or its alleged confusing similarity between it and the Complainant's mark. The Panel does not consider that the Respondent set out deliberately to generate confusion with the Complainant's mark by way of its choice of name in the disputed domain name. The Respondent's founder's approach to the Complainant to discuss a potential partnership in furtherance of mutual interests in the "green labs" movement does not strike the Panel as an act which was ancillary to cybersquatting in the circumstances of the present case.

As both Parties operate within this particular movement, they inevitably use similar expressions and iconography in their website content, including the use of the words "green" and "lab" or the phrase "green lab". There are some similarities in the Parties' names, but any such similarities are a consequence of the descriptive quality which they both have rather than being indicative of any bad faith intent on the part of the Respondent. Reviewing the facts and circumstances from the point of view of paragraph 4(b) of the Policy, the Panel does not consider that any of the examples of registration and use in bad faith there set out apply. Furthermore, the Panel has not identified any other *indicia* of cybersquatting on the present record which would give rise to a finding of registration and use in bad faith within the meaning of the Policy.

The Panel notes for the Parties' convenience that whether or not the use of the disputed domain name constitutes an infringement of the Complainant's registered trademark within the Complainant's jurisdiction is an issue beyond the scope of this proceeding. Although there may be some conceptual overlap, trademark infringement and abusive registration of domain names within the meaning of paragraph 4(a) of the Policy are not always the same thing (see *Delta Air Transport NV (trading as SN Brussels Airlines) v. Theodule De Souza*, WIPO Case No. [D2003-0372](#), and *1066 Housing Association Ltd. v. Mr. D. Morgan*, WIPO Case No. [D2007-1461](#)).

In all of the above circumstances, the Panel finds that the Complainant has failed to carry its burden in terms of paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

Andrew D. S. Lothian

Sole Panelist

Date: May 18, 2022