

## **ADMINISTRATIVE PANEL DECISION**

Family Policy Foundation v. John Skinner  
Case No. D2024-0098

### **1. The Parties**

Complainant is Family Policy Foundation, United States of America (“United States”), represented by Barth Law LLC, United States.

Respondent is John Skinner, United States, represented by Motsnyi Legal, Serbia.

### **2. The Domain Name and Registrar**

The disputed domain name <familypolicyfoundation.org> (the “Domain Name”) is registered with Amazon Registrar, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 10, 2024. On January 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 17, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Identity Protect Ltd.) and contact information in the Complaint. The Center sent an email communication to Complainant on January 18, 2024 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed the amendments to the Complaint on January 19 and 26, 2024.

The Center verified that the Complaint together with the amendments 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 Respondent of the Complaint, and the proceedings commenced on January 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 18, 2024. The Response was filed with the Center on February 16, 2024.

The Center appointed Christopher S. Gibson, Andrew D. S. Lothian, and Richard Hill as panelists in this matter on March 1, 2024. 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 nonprofit organization incorporated in Colorado, recognized as a 501(c)(3) charitable organization by the United States Internal Revenue Service (“IRS”). Complainant has been in existence since January 2014, initially under the name “CL Foundation.” That name was changed in July 2016 to “Family Policy Foundation.” Complainant states it operates for religious, charitable, and educational purposes, and its activities include educational programs and materials provided through the Internet, postal mail, and in physical venues across the United States, including the Statesmen Academy launched in 2016. The Statesmen Academy provides current and prospective legislators with training, mentorship, support, and coordination for Christ-centered public service. Complainant states that recently it has developed and implemented the School Board Academy, an Internet-based program to train current and prospective school board members for service that honors God, protects children, and preserves parents’ rights, and the Social Conservative Academy, an Internet-based course on grassroots activism.

Complainant indicates that it is a separate legal entity from a sister organization named the “Family Policy Alliance,” another nonprofit corporation incorporated in Colorado. Family Policy Alliance is an IRS 501(c)(4) social welfare organization. Complainant indicates that the two organizations share employees, office space, and certain administrative functions pursuant to a contractual arrangement, but each operates its own programs, submits its own corporate and tax filings, maintains its own trademarks, and communicates to donors, email recipients, other constituents, and the general public. The organizations maintain a shared website, but Complainant submits their programs are on separate webpages that are branded with the respective organization’s name and logo.

Complainant’s word mark, FAMILY POLICY FOUNDATION, was registered with the United States Patent and Trademark Office (“USPTO”) on its Supplemental Register under registration no. 5038145 on September 6, 2016, with a date of first use in commerce listed as March 24, 2016. The mark is registered in class 35 for “[p]ublic advocacy to promote public awareness of the benefits of religious liberty, marriage and family, and the sanctity of life for our nation; providing on-line information, namely, commentary in the field of public policy; and providing business support staff services for non-profit entities that advance biblical citizenship through equipping statesmen, promoting public policy, amplifying the voice of pro-family Americans and strengthening an effective alliance of state-based policy allies.” The registration states “[n]o claim is made to the exclusive right to use the following apart from the mark as shown: ‘FOUNDATION’.” Complainant states that for informational purposes only, in February 2023 the USPTO accepted Complainant’s Section 8 Declaration of Use and/or Excusable Nonuse of Mark in Commerce.

In response to Complainant’s initial application, the USPTO sent an Office Action letter dated November 4, 2015 to Complainant’s legal counsel, which stated in relevant part:

“the Registration is refused because the applied-for mark merely describes a feature of applicant’s goods and/or services....

.....

Specifically, the mark is merely descriptive of a feature of applicant’s goods and services, namely, an organization, or foundation, that distributes publications and information in on-line format and provides services such as lobbying services, all of which relate to family policy issues, which is the subject matter of applicant’s services.

In support of the refusal, the examining attorney submits and relies on the following online dictionary definitions wherein ‘family’ is defined as ‘a group consisting of parents and children living together in a household’ and ‘policy’ is defined as ‘a course or principle of action adopted or proposed by a government, party, business, or individual’ and ‘foundation’ is defined as ‘an organization that provides money for things such as medical research or for a charity.’”

The Office Action letter advised that if Complainant wished to amend its application to seek registration on the Supplemental Register, “applicant will be required to disclaim ‘FOUNDATION’ because such wording appears to be generic in the context of applicant’s goods and/or services.”

At the time of Complainant's application to the USPTO in July 2015 and later when the amendment was filed in April 2016, Complainant's name had not yet been changed from CL Foundation to Family Policy Foundation. Complainant's attorney filing the documents listed the owner of the mark as Paul Weber, Complainant's then-Chief Executive Officer. Consequently, Mr. Weber was listed as the owner when the mark was registered in September 2016. In May 2021, Mr. Weber assigned his entire interest in the mark to Complainant after having left Complainant's employment. Complainant claims at all times from the first use of the mark until the assignment in May 2021, Complainant (Mr. Weber's employer) was the beneficial owner of the mark and Complainant had Mr. Weber's permission to use it. Respondent has not contested these statements concerning Complainant's beneficial ownership prior to May 2021.

Complainant owns the following four domain names, each of which consists of the name "family policy foundation" registered in a different generic Top-Level Domain ("gTLD"):

- <familypolicyfoundation.com>, registered on October 25, 2016. This domain name currently re-directs to a website located at "https://familypolicyalliance.com/statesmenacademy/about-us-fpaf/". The webpage displays a logo for the Family Policy Foundation, but also displays more prominently the name and logo for the "Family Policy Alliance Foundation", and states in small script that "Family Policy Alliance Foundation is a trade name of Family Policy Foundation, a 501(c)(3) organization."
- <familypolicyfoundation.net>, registered on January 7, 2022. This domain name is linked to a site at "https://training.familypolicyfoundation.com/," which displays the logo of the Family Policy Alliance Foundation.
- <familypolicyfoundation.info> registered on March 23, 2022. This domain name is linked to a parked website with apparent pay-per-click ("PPC") links and a note that the site is under construction.
- <familypolicyfoundation.biz>, registered on March 23, 2022. This domain name is linked to a site parked website with apparent PPC links and a note that the site is under construction.

Respondent is a software developer residing in the United States. Respondent states that he is a member of the LGBTQ community and is materially harmed by laws which deny or abridge LGBTQ civil rights. Therefore, he wishes to criticize organizations that bring about such laws. Respondent contends that Complainant's activities bring about laws that abridge LGBTQ civil rights by training politicians to create such laws. The Domain Name was registered by Respondent on April 7, 2020, and renewed on March 9, 2023. The Domain Name is linked to a website that criticizes Complainant's organization. It is undisputed between the parties that there is no commercial activity on Respondent's site.

## **5. Parties' Contentions**

### **A. Complainant**

#### **(i) Identical or confusingly similar**

Complainant contends that it has rights in the FAMILY POLICY FOUNDATION service mark because: (i) the mark had acquired distinctiveness or secondary meaning prior to Respondent's registration of the Domain Name in April 2020 and its distinctiveness has continued to the present; (ii) in the alternative, Complainant had common law trademark rights in the mark prior to Respondent's registration of the Domain Name and its common law rights have continued to the present; and (iii) in the alternative to (i) and (ii), the mark had acquired distinctiveness or secondary meaning as of April 2021 due to Complainant having engaged in the substantially exclusive and continuous use of the mark for at least five years by that date, and its distinctiveness has continued to the present. Complainant also says it plans to file an application with the USPTO to have its service mark placed on the Principal Register on the grounds that Complainant has engaged in the substantially exclusive and continuous use of the mark in commerce for at least five years, resulting in the mark having acquired distinctiveness and secondary meaning.

Complainant acknowledges that under WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.2, a complainant relying on a trademark registration listed on the USPTO's Supplemental Register must show secondary meaning to establish rights in the mark under the Policy because such registration does not by itself provide evidence of distinctiveness. Complainant asserts that section 1.2 of [WIPO Overview 3.0](#) does not define "secondary meaning," and presumably that term, also referred to as "acquired distinctiveness," has the same meaning as given to it under United States trademark law. Complainant submits that the USPTO's Trademark Manual of Examining Procedure ("TMEP"), section 1212, states "[t]he purpose and significance of secondary meaning may be described as follows: 'A term which is descriptive...may, through usage by one producer with reference to his product, acquire a special significance so that to the consuming public the word has come to mean that the product is produced by that particular manufacturer. This is what is known as secondary meaning. The crux of the secondary meaning doctrine is that the mark comes to identify not only the goods but the source of those goods.'" Complainant maintains that section 1.2 (and its sub-sections) of [WIPO Overview 3.0](#) do not address the evidence necessary to show "secondary meaning." Under United States trademark law "acquired distinctiveness/secondary meaning" can be established by evidence including affidavits, declarations, depositions, or other appropriate evidence showing the duration, extent, and nature of the applicant's use of a mark in commerce, advertising expenditures, letters, or statements from the trade and/or public, or other evidence tending to show that the mark distinguishes the goods or services.

Complainant refers to [WIPO Overview 3.0](#), section 1.1.1, which states that the term "trademark or service mark" as used in the Policy encompasses common law marks. Section 1.3 states that to establish common law trademark rights, a complainant must show that its mark "has become a distinctive identifier which consumers associate with the complainant's goods and/or services." Section 1.3 further explains that "[r]elevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys." Complainant states these factors are non-exclusive, and some pertain more to for-profits than nonprofits like Complainant.

Complainant contends that the evidence and the sworn statement by its secretary and chief of staff establish that prior to Respondent's registration of the Domain Name on April 7, 2020, Complainant's service mark had acquired distinctiveness or secondary meaning, thereby allowing Complainant to rely on its trademark registration, or in the alternative, Complainant had common law trademark rights in the mark. Complainant states that since March 2016, it has used the mark in emails, webpages, print materials, social media posts, videos, banners, and other communications with consumers of its services, like-minded organizations, governmental entities, and the general public. Additionally, similar communications by Complainant's former state organizations occasionally contained the mark. Complainant contends that as a result of these communications for several years going back to before April 2020, consumers of Complainant's services and those of its state organizations, as well as other organizations and the general public, have associated the FAMILY POLICY FOUNDATION mark with Complainant and its services.

As early as November 2016, Complainant states it was providing notification that it was claiming trademark rights in its mark, as Complainant frequently included the common law trademark symbol "TM", and later the USPTO's registration symbol "®", as a subscript or superscript immediately following the mark. Complainant states that beginning in 2016 when Complainant adopted the name Family Policy Foundation and continuing each year, Complainant disseminated emails displaying its mark to over 100,000 distinct email addresses. For example, on April 1, 2020, only seven days before Respondent registered the Domain Name, Complainant sent an email containing the mark to 144,241 email addresses. Complainant's claims that emails sent from 2016 to April 2020 establish that over 100,000 persons periodically received an email displaying the mark as an identifier of Complainant's services. In particular, between 2016 and 2019 Complainant mailed fundraising letters containing the mark to current donors, some lapsed donors, and prospective donors. Complainant's October 2016 fundraising letter was sent to 29,980 recipients, while an April 2019 fundraising letter was sent to 13,376 recipients.

Complainant states it has been using the mark on its webpages to identify its services since at least September 2017, if not earlier. Complainant's Statesmen Academy webpages going back to September 2017 contained the common law trademark symbol "TM" as a subscript adjacent to Complainant's mark. Beginning in 2017 and continuing each year, Complainant states it disseminated on its own or in conjunction with Family Policy Alliance a print newsletter, the "Connection," that contained its mark. Complainant's newsletters in the fall of 2017, 2018, and 2019 averaged 21,542 recipients. Complainant also posted videos on YouTube between October 2016 and March 2020 that displayed its mark along with the common law trademark symbol "TM" as a subscript. Beginning in 2016, Complainant distributed a brochure, created in conjunction with Family Policy Alliance, to Complainant's donors, prospective donors, and others, and made the brochure available during certain events. There is a panel in the brochure on which Complainant's mark is depicted along with the common law trademark symbol "TM" as a subscript.

Beginning in 2016 and continuing until 2021 Complainant states it created and operated state-based organizations in Georgia, Idaho, Kansas, New Jersey, New Mexico, North Dakota, and Wyoming. These organizations were operated by Complainant as "DBA's" ("doing business as") pursuant to each state's laws, and their services focused on the particular state. All of their names began with Complainant's name followed by the state's name. For example, Complainant's organization in Georgia was named "Family Policy Foundation of Georgia."

Complainant's states its programs and activities are funded by charitable donations and grants from individuals, businesses, and foundations across the United States. Complainant makes appeals in all 50 states to donors and to the general public through email, webpages, mail, and other means, and has donors in all 50 states and some United States territories. As a nonprofit, Complainant files an annual Form 990 informational tax return with the IRS, and its most recent filing reflects contributions and grants totaling almost USD 2.4 million during the fiscal year ending September 30, 2022. On April 1, 2020, a few days before Respondent's registration of the Domain Name on April 7, 2020, Complainant states it had 10,343 active donors. Further, Complainant states that national organizations that rate charities recognize Complainant's mark as the source and distinctive identifier of the services Complainant provides. Complainant states that the charity evaluators Charity Navigator, Candid/GuideStar, and ProPublica's Nonprofit Explorer all regard Complainant's mark as being associated with Complainant and its services. Additionally, Complainant asserts that Cause IQ, a website that provides information about nonprofits to help companies grow their nonprofit client base, recognizes Complainant's mark.

Finally, in March 2023 Complainant held its first-ever Social Conservative Policy Conference known as "SoConCon." Complainant acknowledges that for this event it primarily used a recently registered trade name, Family Policy Alliance Foundation, but its webpages promoting the event and its solicitation of sponsorships for the event included a statement explaining that Family Policy Alliance Foundation is a trade name for Complainant. Complainant alleges that, showing their recognition of Complainant's mark as a distinctive identifier of Complainant and its services, several nationally known public policy organizations purchased sponsorships for the event, and two current United States Senators and the former Secretary of Education were speakers.

Complainant recognizes that the Domain Name directs to a criticism website created by Respondent. The site displays Complainant's mark on its webpages and its content reflects that Respondent was aware of Complainant along with it being a charity. Each webpage ends with "[t]hey [Complainant] probably should have registered this domain name, but they didn't. This website has been made in their honor." Complainant asserts Respondent was aware of Complainant's use of its name and mark as a source identifier of its services and there is no doubt as to why Respondent selected the Domain Name for its criticism site.

Finally, turning to the identical or confusingly similar requirement of the Policy, Complainant contends that the Domain Name is identical to Complainant's service mark except for its gTLD.

(ii) Rights or legitimate interests

Complainant states it does not know who Respondent is, has never authorized Respondent to use Complainant's mark, and is not aware of any evidence indicating that before notice to Respondent of this dispute, Respondent used, or was making preparations to use, the Domain Name in connection with a bona fide offering of goods or services. Further, to Complainant's knowledge, Respondent has never been commonly known by the Domain Name.

Complainant contends Respondent is not making a legitimate noncommercial or fair use of the Domain Name. According to [WIPO Overview 3.0](#), section 2.5, "[f]undamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner." Section 2.5.1 further provides that "[g]enerally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation." In the instant case, Respondent's Domain Name is identical to Complainant's service mark except for the gTLD, and even the gTLD, ".org," reinforces the implied affiliation as it was originally intended for nonprofit organizations like Complainant and is commonly used by many nonprofits.

Complainant observes the Domain Name links to Respondent's website, which appears to be a purported criticism site. Under [WIPO Overview 3.0](#), section 2.6.1, "[t]o support fair use under UDRP paragraph 4(c)(iii), the respondent's criticism must be genuine and noncommercial." Further, section 2.6.2 states that "[p]anels find that even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark (i.e., <trademark.tld> (including typos)); even where such a domain name is used in relation to genuine noncommercial free speech, panels tend to find that this creates an impermissible risk of user confusion through impersonation."

Complainant contends that while Respondent's criticism is noncommercial, it is neither genuine nor legitimate. While Complainant accepts that the Panel's should not decide issues of legal defamation, it asserts that Respondent's site, in labeling Complainant a "fake charitable organization" (in the first sentence on its home page) and a "fake charity" (in the footer on each page), goes well beyond the bounds of genuine and legitimate criticism. All Respondent had to do to determine if Complainant is a genuine charity was to spend a few minutes checking records easily accessible on the Internet from the IRS, the state of Colorado, and the national charity evaluators. All of them would have shown that Complainant is not a fake charity. The Panel does not need to delve into issues of defamation to reach the conclusion that Respondent's criticism is neither genuine nor legitimate.

Even if Respondent's criticism is considered to be genuine and legitimate, Respondent's registration and continuing use of the Domain Name identical to Complainant's service mark is a classic case of impermissible impersonation. Complainant refers to a previous UDRP case in which the panel stated, among other things, that the consensus view is that even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark, because this creates an impermissible risk of user confusion through impersonation.

(iii) Registered and used in bad faith

Complainant states that [WIPO Overview 3.0](#), section 3.1, notes that the bad faith scenarios described in paragraph 4(b) of the Policy are non-exclusive, and that where a complainant cannot demonstrate the application of one of those scenarios, the complainant's burden can still be satisfied by "evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the complainant's trademark." Section 3.2.1 lists several factors panels may take into account in assessing registration in bad faith, including "the nature of the domain name," "the chosen top-level domain," "the content of any website to which the domain name directs," "a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name," and "other indicia generally suggesting that the respondent had somehow targeted the complainant."

Complainant urges that Respondent's website leaves no doubt that Respondent targeted Complainant and intentionally misappropriated Complainant's mark in the Domain Name. Respondent's bad faith is evidenced in the statement on each webpage that "[t]hey probably should have registered this domain name, but they didn't. This website has been made in their honor." When faced with a clear-cut case of impersonation arising from a respondent's registration and use of a domain name identical to the complainant's trademark, Complainant states UDRP several panels have concluded that such registration and use constitute bad faith.

## **B. Respondent**

### **(i) Identical or confusingly similar**

While Respondent does not contest the issue of identity or confusing similarity with respect to the Domain Name, Respondent contends that Complainant does not have standing in this case because Complainant does not have trademark rights. In particular, Respondent emphasizes that (i) Complainant only has a service mark registered on the USPTO Supplemental Register; (ii) Complainant fails to prove common law trademark rights for the reasons explained below; and (iii) targeting per se does not establish common law trademark rights in the absence of other evidence.

Respondent observes that Complainant itself accepts that a registration on the USPTO Supplemental Register is not sufficient to establish trademark rights for purposes of the Policy. As provided in [WIPO Overview 3.0](#), section 1.2.2:

"Complainants relying on trademark registrations listed solely on the USPTO Supplemental Register are expected to show secondary meaning in order to establish trademark rights under the Policy because under US law a supplemental registration does not by itself provide evidence of distinctiveness to support trademark rights."

Respondent therefore claims that Complainant's service mark registered on the Supplemental Register should be disregarded because it does not establish trademark rights. While Complainant claims that it plans to "file an application with the USPTO to have its service mark placed on the Principal Register," Respondent responds that any future plans of Complainant are irrelevant for purposes of this case.

Respondent asserts that Complainant has failed to show any common law (unregistered) trademark rights sufficient for purposes of the Policy. According to section 1.3 of [WIPO Overview 3.0](#), to establish common law trademark rights a complainant

"must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. Relevant evidence demonstrating such acquired distinctiveness (secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys" and "conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning."

Respondent asserts that Complainant's alleged FAMILY POLICY FOUNDATION mark is descriptive as confirmed by USPTO's Office Action letter submitted in evidence, as well as the disclaimer of the word "foundation." In response to that Office Action letter, Complainant amended its application to seek registration on the USPTO Supplemental Register with an express disclaimer: "No claim is made to the exclusive right to use the following apart from the mark as shown: 'FOUNDATION'." Respondent claims the mark consists of solely descriptive terms and, therefore, Complainant has a greater onus to provide evidence of acquired distinctiveness and secondary meaning.

Respondent claims that all of the evidence provided by Complainant consists of conclusory allegations of Complainant's officer, screenshots of the Family Policy Alliance (not Family Policy Foundation) website, Complainant's internal email correspondence, letters providing information about various initiatives and programs by Complainant or the Family Policy Alliance, screenshots of YouTube videos on the YouTube channel of the Family Policy Alliance, and a brochure of Complainant or the Family Policy Alliance. Respondent claims that none of these establishes common law trademark rights. These are all materials made and generated by either Complainant or by the Family Policy Alliance. Respondent emphasizes that Complainant failed to provide any evidence of third parties' recognition, any proof of consumers' recognition, and any unsolicited publications and unsolicited media coverage. As regards email correspondence, Respondent notes that Complainant provided internal correspondence. These email messages are addressed to an officer of Complainant who signed the declaration, to a person who appears to be Complainant's employee, and to Complainant's legal counsel who filed the Complaint in this proceeding. This internal correspondence between Complainant's CEO and employees and associates of Complainant does not establish any service mark rights.

Respondent asserts that the other pieces of evidence only demonstrate Complainant's limited use of its name as the name of nonprofit corporation, but not as a trademark or service mark. The declaration contains only conclusory allegations that need to be supported by other evidence (i.e., the evidence represents Complainant's own materials (or materials of Family Policy Alliance) such as emails, screenshots of its own website, letters, the Connection brochure, screenshots of the YouTube channel of the Family Policy Alliance and the brochure "Unleash Biblical Citizenship"). Respondent notes that most of these materials discuss and promote programs and initiatives of Complainant or the Family Policy Alliance under different names such as "Statesmen Academy" and "Connection." Often, the source of such materials is unclear, i.e., whether it is prepared by Complainant or by the Family Policy Alliance. Respondent states all other pieces of evidence provided by Complainant in support of its alleged common law trademark rights simply confirm that Complainant is registered as a nonprofit corporation.

Respondent asserts that Complainant has failed to establish unregistered trademark rights and only provided evidence that the name Family Policy Foundation is a registered name of a nonprofit corporation. Respondent does not question that Complainant is a nonprofit corporation under the same name; however, Respondent claims that Complainant does not have any trademark rights in the name. If these materials establish common law rights as Complainant alleges, then any corporation (whether for-profit or nonprofit) would have unregistered trademark rights in its name (e.g., any corporation can provide internal email communication and internal letters, screenshots of its website, proof of corporate registration, IRS forms and similar evidence).

Respondent also claims common law trademark rights must be proven as confirmed by [WIPO Overview 3.0](#), and the mere fact of corporate registration and status is not enough. Complainant states the UDRP does not protect trade names, personal names and other names (including names of nonprofit organizations) as such, it only protects trademarks. This limitation is an integral part of the Policy and was confirmed by the Final Report of the WIPO Internet Domain Name Process ("WIPO Final Report"), paragraph 167: "The second limitation would define abusive registration by reference only to trademarks and service marks. Thus, registrations that violate trade names, geographical indications or personality rights would not be considered to fall within the definition of abusive registration for the purposes of the administrative procedure," and by "Report of the Second WIPO Internet Domain Name Process" ("WIPO Second Domain Name Report"), which did not extend the UDRP to names other than trademarks and services marks.

Respondent observes that Complainant also refers to its other domain names that include the terms "Family Policy Foundation." However, the domain names <familypolicyfoundation.info> and <familypolicyfoundation.biz> resolve to websites with PPC links and are not used in any way to promote Complainant's activities or name. The domain name <familypolicyfoundation.com> re-directs to a webpage at "https://familypolicyalliance.com/statesmen-academy/about-us-fpaf/", and the domain name <familypolicyfoundation.net> resolves to a website dedicated to the Statesmen Academy.



Respondent contends that even when the phrase Family Policy Foundation appears on any of the webpages and in materials provided by Complainant, such use is ancillary and other elements play more important role and take more visual space, e.g., “Statesmen Academy”. Respondent also questions why, if Complainant claims acquired distinctiveness or secondary meaning, and alleges exclusive and continuous use, its mark still remains on the USPTO’s Supplemental Register on the date of commencement of this case. Respondent notes that Complainant’s other mark, STATESMEN ACADEMY, is also on the USPTO Supplemental Register.

Respondent further contends that Complainant fails to provide evidence of its exclusive rights in the descriptive terms “Family Policy Foundation,” as its evidence is of only a limited nature. Respondent notes that the terms “family foundation” are used by other parties, for example, the third-party website at “www.familyfoundation.org,” which is an organization that seems to support views similar to those of Complainant, and the trademark registered on the USPTO Principal Register, SCHULTZ FAMILY FOUNDATION, where the elements “family” and “foundation” are disclaimed.

Finally, Respondent contends that targeting per se does not establish Complainant’s common law trademark rights. While Complainant argues that targeting may support its assertion of common law trademark rights and relies on section 1.3 of [WIPO Overview 3.0](#), Respondent argues targeting per se is insufficient to establish common law rights in the absence of other evidence. Respondent claims that since Complainant provided only limited evidence that cannot establish its unregistered trademark rights, targeting cannot substitute for the absence of proper evidence. Therefore, Complainant failed to establish the first element of the UDRP.

(ii) Rights or legitimate interests

Respondent states that he registered the Domain Name and created the linked website in a personal capacity, and not for any commercial purpose, and that he has a legitimate interest in the Domain Name under the Policy, since he is making a legitimate noncommercial use of it, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant’s name.

Respondent’s position is based on the (i) legislative history of the UDRP; (ii) the language of the Policy and application of the Policy to genuine criticism and free speech cases, as well as correct application of the “impersonation” test and “holistic” approach to free speech cases; and (iii) the fact that both parties are from the United States and Respondent has rights under the First Amendment to the United States Constitution.

Respondent states that he is using the Domain Name for the sole purpose of genuine criticism and exercise of his free speech rights, and his use is noncommercial. Respondent contends the UDRP has a limited purpose and should not apply to genuine free speech cases. This is confirmed by legislative history of the UDRP as reflected in the WIPO Final Report and Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy (“ICANN Second Staff Report”). Paragraph 172 of WIPO Final Report makes clear that “[d]omain name registrations that are justified by legitimate free speech rights would likewise not be considered to be abusive.” The ICANN Second Staff Report confirms that “[e]xcept in cases involving ‘abusive registrations’ made with bad-faith intent to profit commercially from others’ trademarks (e.g., cybersquatting and cyberpiracy), the adopted policy leaves the resolution of disputes to the courts (or arbitrators where agreed by the parties) and calls for registrars not to disturb a registration until those courts decide.” Moreover, Respondent states that [WIPO Overview 3.0](#), sections 2.6 and 2.6.1, confirms that “UDRP jurisprudence recognizes that the use of a domain name for fair use such as noncommercial free speech, would in principle support a respondent’s claim to a legitimate interest under the Policy” and “[t]o support fair use under UDRP paragraph 4(c)(iii), the respondent’s criticism must be genuine and noncommercial.”

While Complainant argues that Respondent’s criticism is “neither genuine nor legitimate,” Respondent notes that it is not the Panel’s role to rule on whether the criticism is right or wrong. Respondent’s criticism in the present case is genuine and noncommercial. Respondent does not question the legal status of Complainant as a nonprofit corporation. By using the terms “Fake Charity,” Respondent is questioning Complainant’s

contribution to the public good, not the organization's standing under United States tax law. Respondent's website presents an opinion with enough substance to enable the recipient to understand what is being said. Respondent states his site's content makes no attempt to pose as Complainant; a reader will know that its author is not Complainant. It does not copy content, design, or look and feel of Complainant's site. The website contains a disclaimer which clarifies that the Domain Name was not registered by Complainant and suggests no affiliation with Complainant or the Family Policy Alliance. It is not obscene or defamatory. Respondent contends this type of speech receives the strongest protection under the First Amendment to the United States Constitution, to which both parties are subject, and the UDRP was not designed to prevent such use of a domain name.

Respondent also disagrees with Complainant's position that, because the Domain Name is identical to Complainant's alleged mark, Respondent is not entitled to defense under paragraph 4(c)(iii) of the Policy as it creates a risk of impermissible impersonation. Respondent states that any initial confusion is dispelled by visiting the website. Respondent notes that paragraph 4(c)(iii) of the Policy contains no limitation that "it does not apply to domain names identical to marks", e.g., "Except in the case of an exact match, you are making a legitimate noncommercial or fair use of the domain name." On the contrary, Respondent argues the Policy and all its provisions, including paragraph 4(c)(iii), apply to identical and confusingly similar domain names.

Respondent cites a previous UDRP case to support its view that there is no per se rule that the use of the exact trademark of another as a domain name for a legitimate website is not legitimate use. Further, Respondent acknowledges that while the impersonation test has support among some UDRP panels, it is not a blanket test and requires a nuanced application. A nuanced assessment of all the factors is required to assess whether the domain name and website at issue are likely to be seen as impersonating Complainant. Respondent contends this is also confirmed by [WIPO Overview 3.0](#), section 2.5.2, which requires assessment of overall facts and circumstances, in addition to looking at the domain name. Respondent submits that his use of the Domain Name establishes legitimate interests even under the impersonation test. In the present dispute it is clear that Respondent's site cannot be seen as impersonating Complainant. Respondent, citing another prior UDRP case, also suggests that a more holistic approach should be applied to free speech cases. See *Everytown for Gun Safety Action Fund, Inc. v. Contact Privacy Inc. Customer 1249561463 / Steve Coffman*, WIPO Case No. [D2022-0473](#) ("*Momsdemand*") ("The Panel believes the approach should be more holistic and focus on the totality of factors and should not necessarily be determined, at least for parties legitimately based in the United States, on one factor alone"). Respondent also submits that he created a website that would display an obvious criticism to both search engine and social media users by using HTML meta tags. This creates a search result/image that clearly represents a protest and makes it obvious to Internet users even before visiting the website that it is not Complainant's own site. Respondent urges that a holistic approach, which assesses the totality of factors in this case, supports Respondent's claim to a right or legitimate interest for the purposes of the second element of the Policy. In support, Respondent cites *Watch Tower Bible and Tract Society of Pennsylvania v. Vincent Moore*, Case No. [D2023-2034](#), which found in favor of Respondent in a free speech case stating that "the Panel finds that it would be readily apparent to Internet users (including Jehovah's Witnesses) upon visiting the Website that it is not the Complainant's website, but is rather a website critical of the Complainant. In all the circumstances, the Panel finds that a holistic approach assessing the totality of factors in this case supports the Respondent's claim to a right or legitimate interest for the purposes of the second element under paragraph 4(a) of the Policy".

In addition, Respondent points out that both he and Complainant are from the United States. Respondent notes that [WIPO Overview 3.0](#), in section 2.6.2, states that "[i]n certain cases involving parties exclusively from the United States, some panels applying First Amendment principles have found that even a domain name identical to a trademark used for a bona fide noncommercial criticism site may support a legitimate interest."

Based on the above, Respondent claims that he has a legitimate interest in respect of the Domain Name since he registered and is using it for genuine free speech and non-pretexual criticism under paragraph 4 (c)(iii) of the Policy.

(iii) Registered and used in bad faith

Respondent submits that the Policy was not designed to deal with genuine free speech and criticism cases, as its scope is limited to cases of cybersquatting, and there is no bad faith if Respondent's use is genuinely noncommercial free speech. Further, Respondent submits he did not register and is not using the Domain Name in bad faith as defined under even a strict "impersonation" approach.

Referring to the WIPO Final Report, paragraph 172, Respondent maintains that "[d]omain name registrations that are justified by legitimate free speech rights would likewise not be considered to be abusive."

Respondent argues that bad faith under the Policy means targeting with intent to profit commercially from the trademarks of respective owners. Respondent did not register and has never used the Domain Name for any commercial purpose. The sole reason for registration and use of the Domain Name is for criticism of Complainant and expressing Respondent's personal views about Complainant and its activities.

Complainant's bad faith arguments are based on targeting, alleged absence of rights or legitimate interest of Respondent and impersonation. Complainant, however, fails to appreciate that targeting per se does not indicate bad faith, every case of free speech and criticism involves targeting, yet it does not mean that Respondent acted in bad faith as required by the UDRP.

While appreciating that the bad faith scenarios provided in paragraph 4(b) of the Policy are non-exclusive, Respondent maintains that this case does not involve bad faith because Respondent is not a cybersquatter. Respondent's behavior does not fall within any scenarios provided in paragraph 4(b) of the Policy, or within any other possible bad faith scenario considering the notion of cybersquatting as reflected in the legislative history of the UDRP. Further, Respondent claims Complainant incorrectly relies on impersonation test in arguing Respondent's bad faith. Respondent claims that Complainant misinterprets the bad faith element as it seems to suggest that in every case where domain name is an exact match of Complainant's mark, there is bad faith. Citing a prior UDRP case, Respondent asserts that a panel's finding under the impersonation test does not itself prove bad faith; all that the impersonation test shows is that the respondent had no rights or legitimate interests in the disputed domain name, while the complainant must still come forward with evidence to show that the respondent registered and used the domain name in bad faith. Whether a potentially misleading domain name supports a finding of bad faith is a fact-specific inquiry, and non-pretexual criticism is not prohibited by the Policy.

In the present case, Respondent argues that all of the facts demonstrate Respondent uses the Domain Name for non-pretexual criticism and free speech. Respondent claims that his behavior does not fall within bad faith registration and use as envisaged by the Policy, that he has a legitimate interest in respect of the Domain Name used for genuine free speech and criticism, and that interpreting the Policy otherwise will unjustifiably enlarge scope of the Policy. In support, Respondent cites several UDRP cases, including *Equality Charter School, Inc. v. Mona Davids / A Happy DreamHost Customer*, Case No. [D2011-1226](#): "The Panel reiterates that it is in the nature of noncommercial free speech or criticism that negative statements may be made about a trademark holder's concern. If negative commentary were a touchstone of bad faith, then in every UDRP decision recognizing a fair use right supported by protest or criticism, the respondent registering the disputed domain name to launch the commentary would be found to have registered in bad faith".

## 6. Discussion and Findings

In order to succeed on its Complaint, Complainant must demonstrate that the three elements set forth in paragraph 4(a) of the Policy have been satisfied. These elements are that:

- (i) the Domain Name registered by Respondent 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 Domain Name; and

(iii) Respondent has registered and is using the Domain Name in bad faith.

### **A. Identical or Confusingly Similar**

Under the first element of the Policy, the Panel must determine whether the Domain Name is identical or confusingly similar to a trademark in which Complainant has rights. The analysis under this element typically involves two steps. First, a panel must determine whether the complainant possesses rights in a trademark for purposes of the Policy. Second, when a panel determines that the complainant possesses such rights, the panel will compare the relevant mark with the disputed domain name in order to assess whether there is identity or confusing similarity.

Here, Respondent does not dispute that the Domain Name is “identical or confusingly similar” to Complainant’s asserted FAMILY POLICY FOUNDATION mark; however, Respondent has mounted a serious challenge on the issue of whether Complainant has rights in that mark for purposes of the Policy.

Both parties recognize that although Complainant has registered its mark on the USPTO’s Supplemental Register, this “does not by itself provide evidence of distinctiveness to support trademark rights,” and Complainant is therefore “expected to show secondary meaning in order to establish trademark rights.” See [WIPO Overview 3.0](#), section 1.2.2. For reasons explained below, the Panel considers that Complainant’s claimed FAMILY POLICY FOUNDATION mark, on its own, is descriptive and lacking in distinctiveness with respect to the services for which Complainant has indicated its use. In particular, the Panel takes note of the assessment provided in the USPTO’s Office Action letter dated November 4, 2015, where Complainant’s initial trademark application was rejected because (i) the mark was considered “merely descriptive of a feature of applicant’s goods and services, namely, an organization, or foundation, that distributes publications and information in on-line format and provides services such as lobbying services, all of which relate to family policy issues, which is the subject matter of applicant’s services,” and (ii) the term “foundation” (which was subsequently disclaimed by Complainant) is generic (i.e., meaning that no matter how much effort and money is expended to secure public recognition, one cannot deprive others of the right to use the generic term in their name or for their products or services).

Accordingly, in order to establish rights in its claimed mark for purposes of the Policy, Complainant must show that its descriptive mark (with a disclaimed generic element for the word “foundation”) has acquired distinctiveness through use or that Complainant has otherwise acquired common law trademark rights for purposes of the Policy. And as stated in relevant part in [WIPO Overview 3.0](#), section 1.3, for marks that are comprised solely of descriptive terms, there is a greater onus on a complainant to present evidence of acquired distinctiveness and secondary meaning:

“To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services.

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.

....

Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. *In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning.* (italics added).

In making the assessment of whether Complainant has rights in a trademark for purposes of the Policy, there is also the related issue of timing. Complainant has contended that it has rights in the FAMILY POLICY FOUNDATION service mark because the mark had acquired distinctiveness or secondary meaning, or Complainant had otherwise established common law rights in it, *prior* to Respondent's registration of the Domain Name in April 2020 and that its distinctiveness has continued to the present. Complainant's arguments on this point, with a focus on showing acquired rights by the date the Domain Name was registered, are possibly made with a view to the third element of the Policy. [WIPO Overview 3.0](#), section 1.1.3, provides guidance on the timing issue, stating in relevant part that "[w]hile the UDRP makes no specific reference to the date on which the holder of the trademark or service mark acquired its rights, such rights must be in existence at the time the complaint is filed." The same section adds, however, that "[w]here a domain name has been registered *before* a complainant has acquired trademark rights, only in exceptional cases would a complainant be able to prove a respondent's bad faith" (italics added). Section 3.8.1 provides guidance to the same effect, stating in relevant part that "where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent."

Here, the Panel has carefully reviewed the evidence and arguments submitted by both parties. The Panel determines that whether the temporal focus is on the date the Domain Name was registered in April 2020 (i.e., relevant to the assessment of bad faith registration), or the date the Complaint was filed, Complainant has failed to establish trademark rights for purposes of the Policy.

Reviewing the record in this case, it is somewhat unusual because, although Complainant has adduced evidence, much of it involves internal or outward communications made by Complainant, and there is very little evidence of any degree of third-party or public recognition concerning Complainant's mark (such as proof of consumer recognition, or unsolicited media coverage or third-party publications) as a distinctive identifier of Complainant's services. Indeed, based on the evidence presented, the Panel has found no appreciable recognition of Complainant's mark as a distinctive identifier of its services by the relevant segment of the public. Moreover, this finding is bolstered because some of the evidence introduced by Complainant would appear to undermine its arguments that its mark has become a distinctive identifier, or that Complainant has otherwise acquired common law rights. In particular, this evidence indicates that Complainant has been inconsistent in the use of its mark, having frequently offered services in combination with, or under the very similar name of a closely aligned sister organization, the Family Policy Alliance, which is an organization that Complainant has confirmed is a separate legal entity. It is to be noted that the first two words of these organizations' names are identical, while the third word in Complainant's name, "foundation," has been disclaimed as generic. The approach taken by these two organizations (e.g., sharing a website and a YouTube channel, both of which are named for the Family Policy Alliance, and not Complainant, as well as sharing other publications), undermines Complainant's claim that, through use, its descriptive name has become distinctive or acquired secondary meaning such that the public would see the services as being offered by Complainant, and not by the similarly named Family Policy Alliance.

In addition, at least since March 2023 (as acknowledged by Complainant and confirmed by the Internet Archive's Wayback Machine, which was relied upon by Complainant), Complainant introduced a new trade name into the mix, the "Family Policy Alliance Foundation," which appears to be a (confusing) amalgamation of Complainant's name and the name of the Family Policy Alliance. For example, the about page on the Family Policy Alliance website currently states that the "Family Policy Alliance (FPA) and Family Policy Alliance Foundation (FPAF) are Christian ministries that defend faith and protect families by organizing, educating and mobilizing the social conservative movement in America." This departure to a new name cuts against any distinctiveness that might have accrued as to Complainant's various claimed marks (and the public presentation of the new trade name signals a potential move toward abandonment of Complainant's mark). Complainant has stated that it and the Family Policy Alliance are separate organizations and that, in particular, they maintain their own trademarks and communications. <sup>1</sup> However, the joint and/or inconsistent

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<sup>1</sup>As noted above, Complainant has confirmed that the Family Policy Alliance is a separate legal entity, while stating the two organizations share employees, office space and certain administrative functions. At the same time, Complainant states "each entity operates its own programs, submits its own corporate and tax filings, maintains its own trademarks, and communicates to its donors,

approach that has been taken by them in presenting their materials and services to the public undermine Complainant's arguments that its mark has acquired secondary meaning and/or has become a distinctive identifier of its services (as distinguished from those of the Family Policy Alliance or the more recently promoted Family Policy Alliance Foundation).

Respondent has emphasized that Complainant has provided little evidence of third-party recognition of its name to demonstrate distinctiveness and secondary meaning. Instead, the materials (e.g., emails and fundraising letters) presented are either internal communications or outward communications from Complainant itself. While there have been a lot of communications sent out, the Panel is provided with no evidence as to whether this has given rise to much in the way of public recognition. Further, recognition by the IRS, or by organizations that list non-profit entities, does not provide any substantial evidence of distinctiveness or secondary meaning – the registered name of a non-profit organization does not, without more, demonstrate trademark rights. And, as noted above, some of these materials present the name of the Family Policy Alliance, or the Family Policy Alliance in conjunction with Complainant's name, or present the new name, the Family Policy Alliance Foundation, which combines both names.

For example, the brochure that Complainant has submitted in evidence appears to be a brochure of the Family Policy Alliance, with that name appearing prominently at the beginning and at the end of the brochure. It also refers to "our Family Policy Council allies," and in a section for donations references both Complainant and the Family Policy Alliance. To donate, one is given the choice to go to the website of the Family Policy Alliance at "FamilyPolicyAlliance.com/donate" or to send a check and indicate whether the donation is to the Family Policy Alliance (non-tax deductible) or the Family Policy Foundation (tax deductible). This joint brochure with the similarly named organizations undercuts Complainant's claim that its mark, through use, has become a distinctive identifier of Complainant. While Complainant argues that donations would not have been made to it without a recognition of its name as a trademark, it is not clear that these donations from the public are viewed as being submitted to Complainant, or to the Family Policy Alliance, or to the Statesmen Academy, which is another mark used by Complainant (and registered on the USPTO's Supplemental Register). Similarly, the samples from the Connection newsletter referenced by Complainant show that it is sometimes branded with only Complainant's mark, and at other times jointly branded with the Complainant's mark and the mark of the Family Policy Alliance (for example, the most recent newsletter from the fall of 2023). Moreover, Complainant has referred to having created and operated state-based organizations that begin with Complainant's name followed by the state's name. Complainant used the example of the organization in Georgia, stating it was named the "Family Policy Foundation of Georgia." The Panel did a Google search for this name and instead found reference, on the Family Policy Alliance website, only to the "Family Policy *Alliance* of Georgia" (italics added), which states that this "Georgia-based organization was founded by the national Family Policy Alliance - based in Colorado Springs, CO."<sup>2</sup>

Complainant has also provided five samples of screenshots for YouTube videos. Each screenshot shows a time during the video when the FAMILY POLICY FOUNDATION mark appears visible to the viewer. The Panel observes, however, that these videos are all on a YouTube channel branded for the Family Policy Alliance, not Complainant. Although the channel has just more than 6,000 subscribers, these are subscribers to the Family Policy Alliance's YouTube channel, not to Complainant's YouTube channel. Moreover, when looking at the actual number of views for each video (which can be observed), the figure is substantially less than the number of subscribers to the Family Policy Alliance's channel.

Complainant has also stated that it began using its mark on its webpages to identify its services since at least September 2017. Complainant has provided evidence of screenshots of what it describes as Complainant's webpages from 2017 to 2024, as captured by the Internet Archive's Wayback Machine.

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email recipients, other constituents, and the general public," but that "the organizations maintain a shared website," and "their programs are on separate web pages that are branded with the respective organization's name and logo."

<sup>2</sup> On the topic of a panel conducting such independent research of publicly available sources, see section 4.8 of the [WIPO Overview 3.0](#).

Of the samples submitted by Complainant, three show screenshots captured before the Domain Name was registered in April 2020, with the earliest dating from September 2017. All of the screenshots show a particular webpage located on the Family Policy Alliance's website, at <familypolicyalliance.com>, which is a domain name owned by the Family Policy Alliance. Once a user arrives at the Family Policy Alliance site, the main page is branded with the Family Policy Alliance's name and mark, not with Complainant's ("Family Policy Foundation") mark. A user would need to click on a particular link on that main page to be further directed to a page (such as the page for the Statesman Academy) to see Complainant's mark. This remains the case today, although now (as noted above) these pages also introduce the new name, the Family Policy Alliance Foundation. Moreover, using the Wayback Machine to capture a view of the webpage for the Statesman Academy from April 3, 2020, four days before Respondent registered the Domain Name, the webpage was branded with the Family Policy Alliance logo, not Complainant's mark. This does not support Complainant's claim that its mark had acquired distinctiveness, or otherwise achieved common law trademark rights, by the time the Domain Name was registered in April 2020.

The Panel further observes that Complainant has referred to the four domain names that it currently owns, each of which consists of the name "family policy foundation" registered in a different gTLD. The Panel used the Wayback Machine, which Complainant itself referenced, to observe any records for Complainant's domain name, <familypolicyfoundation.com>. There was only one webpage captured before April 2020 (when the Domain Name was registered), with the date of August 8, 2018, as compared to thousands of captures of webpages for the website of the Family Policy Alliance. The Wayback Machine showed that when Complainant's domain name was entered, the user was redirected to the main page of the Family Policy Alliance – branded with the Family Policy Alliance's name and mark – with no mention of the Family Policy Foundation. The same result occurs for the Wayback Machine's single capture of the webpage for Complainant's <familypolicyfoundation.com> domain name during 2021 – captured on December 1, 2021, more than a year after the Domain Name was registered – it redirects to the home page of the Family Policy Alliance.

On a similar note, entering Complainant's domain name <familypolicyfoundation.com> now results in this domain name re-directing to a webpage on the Family Policy Alliance website, at "familypolicyalliance.com/statesmenacademy/about-us-fpaf/". The webpage prominently displays the name and logo for the "Family Policy Alliance Foundation," and indicates in small script that this is the trade name of Family Policy Foundation. The Family Policy Foundation logo is also present on the page, but as Respondent has indicated, such use is ancillary and the other elements play more important role and take more visual space. At a minimum, the previous and current webpages create confusion as to the source of services and materials, i.e., whether they are from the Family Policy Alliance, Complainant, or now the recently promoted Family Policy Alliance Foundation, and they undercut Complainant's contention that its descriptive mark has acquired a special significance so as to identify Complainant and its services. Complainant has acknowledged that it shares the same website with the Family Policy Alliance; however, this causes confusion as to source of services and materials and the intended recipient of donations, particularly for a descriptive name that is substantially similar to the name of the Family Policy Alliance. In addition, the Panel found that the top search result of a Google search for Complainant's name, "family policy foundation," lists the Family Policy Alliance and its website at the domain name <familypolicyalliance.com>, not a website or webpage for Complainant.

Complainant's three other domain names – <familypolicyfoundation.net>, <familypolicyfoundation.info>, and <familypolicyfoundation.biz> – were registered in January and March 2022, respectively, after Respondent registered the Domain Name in April 2020. Two of them – <familypolicyfoundation.info> and <familypolicyfoundation.biz> – are linked to parked websites with apparent PPC links and a note that the site is under construction. They are not used to promote Complainant's name or services. The domain name <familypolicyfoundation.net>, registered on January 7, 2022, is linked to a site at "https://training.familypolicyfoundation.com/", which displays the logo of the Family Policy Alliance Foundation, not Complainant's name, and provides information about the Statesman Academy, with virtually no indications of Complainant's mark.

Complainant also submits that per [WIPO Overview 3.0](#), section 1.3, the fact of Respondent targeting Complainant (which is clear based on usage of “Family Policy Foundation” in the Domain Name and on Respondent’s website) supports Complainant’s assertion that its mark has achieved significance as a source identifier. That same section, however, notes that the strength of the claimed mark remains a relevant consideration. The Panel also observes that [WIPO Overview 3.0](#), section 1.15, suggests that the website content is usually disregarded under the first element, and that where it is taken into account, this would be to confirm confusing similarity where a trademark is being targeted. This case presents a complex and unusual scenario, and while it is clear that Respondent is targeting Complainant, as explained above, it is also the case that Complainant has not established the requisite foundation for purposes of the first element; in the face of the lack of adequate evidence – which along with the manner in which the claimed mark is used is self-contradictory at that – the Panel is moreover reluctant to ascribe such foundation in the face of the prosecution history (including Office Action and disclaimer) of the claimed mark. See also *CEMEX UK Operations Ltd. v. Privacy Service Provided by Withheld for Privacy ehf / Cargo Logistics Transportation Services, Cargo Logistics Transportation Services; South Coast Shipping Company, South Coast Shipping Company; and Cargo Logistics, Cargo Logistics Transportation Services*, WIPO Case No. [D2022-1445](#) (in a case where there was otherwise a lack of sufficient evidence of unregistered trademark rights, the fact that the respondent had targeted the complainant’s mark “[c]ould not constitute the sole evidence of unregistered rights”).

In addition, Complainant has referenced the USPTO’s TMEP, section 1212, for guidance on “secondary meaning.” Even assuming the Panel should apply that United States standard, as compared to the guidance provided in [WIPO Overview 3.0](#), section 1.3 (noted above), it does not help Complainant’s case. Section 1212 states that a descriptive term may “acquire a special significance so that to the consuming public the word has come to mean that the product is produced by that particular manufacturer....The crux of the secondary meaning doctrine is that the mark comes to identify not only the goods but the source of those goods.” Here, having reviewed all of the evidence, given the method and nature of many of Complainant’s materials and communications, often made jointly or through the website and YouTube channel of the Family Policy Alliance, and introducing a new name (Family Policy Alliance Foundation) that is a combination of Complainant’s name with the name of the Family Policy Alliance, it is not clear whether the services referenced are those of Complainant, its sister organization the Family Policy Alliance, or both, or those of a newly promoted Family Policy Alliance Foundation. Use of these multiple names and joint presentations undercuts Complainant argument that its name has acquired a special significance to demonstrate distinctiveness or secondary meaning.

Finally, Respondent has also provided evidence of an organization called The Family Foundation, with a website at the domain name <familyfoundation.org>, which is located in the United States and promotes policies similar to those promoted by Complainant. Normally, such third-party usage might not carry much weight under the first element, but given the descriptiveness of Complainant’s mark, and the joint or inconsistent use of its name, and related names by Complainant and the separate but closely aligned Family Policy Alliance, this further supports the Panel’s finding that Complainant has not established trademark rights for purposes of the Policy.

In conclusion, in view of all of the evidence and on the balance of the probabilities, the Panel concludes that the first element of the Policy has not been established.

## **B. Rights or Legitimate Interests and Registered and Used in Bad Faith**

Recognizing that the requirements of paragraph 4(a) of the Policy are conjunctive, and that as a consequence, the failure of Complainant to establish the first element of the Policy will result in failure of the Complaint, the Panel (as a matter of judicial economy) makes no finding in this case in connection with the second and third elements under the Policy.



## 7. Decision

For the foregoing reasons, the Complaint is denied.

*/Christopher S. Gibson/*  
**Christopher S. Gibson**  
Presiding Panelist

*/Andrew D. S. Lothian/*  
**Andrew D. S. Lothian**  
Panelist

*/Richard Hill /*  
**Richard Hill**  
Panelist  
Date: March 27, 2024