

## **ADMINISTRATIVE PANEL DECISION**

Mediant, Stichting voor Geestelijke Gezondheidszorg Oost- en Midden Twente v. Stacey Robinson, Mediant Communications Inc.  
Case No. D2024-3333

### **1. The Parties**

The Complainant is Mediant, Stichting voor Geestelijke Gezondheidszorg Oost- en Midden Twente, Netherlands (Kingdom of the), represented by Clairfort Lawyers, Netherlands (Kingdom of the).

The Respondent is Stacey Robinson, CRO, Mediant Communications Inc., United States of America ("United States"), represented by Sidley Austin LLP, United States.

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

The disputed domain name <mediant.online> is registered with Gandi SAS (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 14, 2024. On August 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 14, 2024, 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 (unidentified Respondent) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 15, 2024, 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 amended Complaint on August 19, 2024.

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 August 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2024. The Response was filed with the Center on September 13, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on September 20, 2024. 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 Dutch non-profit organization active in the field of mental health, offering help, advice, and guidance to people with mental health needs. The Complainant uses the domain name <mediant.nl> for its website, which domain name was registered on December 30, 1998. That date is also the date of the Complainant's incorporation.

The Complainant is the owner of several registered trademarks for, or including, the mark MEdIANT. For example, the Complainant is the owner of Benelux Registered Trademark Number 696781 for the word mark MEdIANT, filed and registered with effect from February 2, 2001 in Classes 16, 35, 41, 42, and 44.

The disputed domain name was registered on April 4, 2016. A historic screenshot taken by the Respondent from the Internet Archive "Wayback Machine", dated July 16, 2022, shows that at that date the website associated with the disputed domain name pointed to a parking page featuring hyperlinks under the heading "Related Searches" consisting of items such as "Media Solutions", "Advertising Solutions", and "Digital Marketing". A screenshot taken by the Complainant on July 25, 2024, shows that at that date the website associated with the disputed domain name displayed hyperlinks in the Dutch language under the heading "Relevante zoekopdrachten" ("Relevant Searches") consisting of the items "Psychologie Hulp", "Psychologische Hulp", and "Vacatures Zwolle") ("Psychology Help", "Psychological Help", and "Zwolle Vacancies").

The Respondent and holder of the disputed domain name has a longstanding association with a Delaware, United States, corporation named Mediant Communications Inc. Said corporation was first formed as a limited liability company named Mediant Communications LLC on September 6, 2002. The Respondent was jointly Chief Technology Officer and Chief Information Security Officer, and latterly Chief Information Security Officer, of said company/corporation between 2008 and 2023. On March 1, 2023, affiliates of an entity named BetaNXT, Inc. acquired said corporation, and the Respondent now holds the position of Chief Risk Officer of BetaNXT, Inc.

The Respondent asserts that Mediant Communications Inc. should be treated as the Respondent, or beneficial owner of the disputed domain name in this administrative proceeding because the disputed domain name is being held by the Respondent in accordance with its employment agreement.<sup>1</sup>

Mediant Communications Inc. provides investor communications technology and technology-enabled solutions to banks, brokers, corporations, funds, and investment managers. It has used the mark MEdIANT since 2002, and operated under the domain name <mediantonline.com>, registered on September 7, 2002, from 2002 to 2007.<sup>2</sup> It is the owner of a variety of registered trademarks for, or including, the mark MEdIANT. For example, it is the owner of United States Registered Trademark Number 5543569 for the word mark MEdIANT, registered on August 21, 2018 in Classes 9, 16, 35, 39, 41, and 42 featuring first use in commerce claims all dated 2002. The domain name <mediantcommunications.com> was registered on its behalf on October 20, 2005, and a family of domain names featuring the MEdIANT mark have been registered on its behalf in more recent years, including <mediant.engineering>, <mediant.network>, <mediant.services>, <mediant.support>, <mediant.systems>, <mediantdemo.com>, and <mediantinc.com>.

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<sup>1</sup>Redacted documents relating to the Respondent's terms of employment were produced by the Respondent showing the basis upon which the Respondent might hold its employer's intellectual property.

<sup>2</sup>An entry from the Internet Archive "Wayback Machine" produced by the Respondent in respect of the website associated with the domain name <mediantonline.com> dated November 25, 2002, features the heading "Mediant Communications / Creating the Infrastructure for Global Financial Communications in the 21<sup>st</sup> Century" and link buttons titled "ABOUT MEdIANT" and "CONTACT MEdIANT", together with a copyright notice "© 2002 Mediant Communications".

“Mediant” is a dictionary word which is both a noun and an adjective. It has a meaning in musical theory which derives from post-classical Latin “medians”, participle of *mediare*, meaning “to be in the middle”.

## **5. Parties’ Contentions**

### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical to the Complainant’s mark, and that to its understanding, the term has no dictionary meaning in any language. The Complainant adds that the disputed domain name is identical to its domain name <mediant.nl>, noting that the addition of the suffix “.online” has no significance when comparing the disputed domain name and the mark. The Complainant asserts that where a domain name incorporates the entirety of a trademark, it will normally be considered confusingly similar.

The Complainant submits that the Respondent has no rights or legitimate interests with respect to the disputed domain name, adding that the Complainant is not acquainted with the Respondent, that the Respondent is not affiliated in any way with the Complainant, that the Complainant had never authorized the Respondent to use its **MEDIANT** mark, that there are no indications that the Respondent has been commonly known by the disputed domain name, at least in Europe, that there is no evidence that the Respondent has used or prepared to use the disputed domain name in connection with a bona fide offering of goods or services, and that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, as it directs solely to a website in the Dutch language hosting Pay-Per-Click (“PPC”) advertising links leading to Dutch websites that compete with the Complainant. The Complainant asserts that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering of goods or services where such links compete with or capitalize on the reputation and goodwill of the Complainant’s mark or otherwise mislead Internet users, adding that “mediant” is an invented term and not a dictionary word, meaning it could not be used legitimately for such links.

The Complainant contends that the Respondent was well aware of the Complainant and/or its marks when it registered the disputed domain name, adding that the Complainant’s mark was well-established when the disputed domain name was registered. It asserts that a simple search in the Google search engine reveals many references on the first page that would have made the Respondent aware of the Complainant and that, as the term “mediant” has no meaning in Dutch or any other language as far as the Complainant is aware, the sole reason for registering the disputed domain name was opportunistic bad faith to take advantage of the Complainant’s reputation. It notes that the disputed domain name is identical to the Complainant’s mark and submits that the Respondent misleadingly diverts consumers to its website thereby, while the suffix “.online” increases the confusion because the Complainant offers online mental healthcare services. This is of concern to the Complainant because the targeted Internet users are a vulnerable group. The disputed domain name is asserted to be deceptive, as it anticipates, relies upon, and profits from Internet users’ confusion. The Complainant concludes that the Respondent creates a likelihood of confusion to profit from PPC links to the Complainant’s competitors, which has been found to constitute bad faith in previous cases under the Policy.

### **B. Respondent**

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Respondent acknowledges that the Complainant has Benelux trademarks for **MEDIANT** and related trademarks, adding that the Respondent also owns **MEDIANT** trademarks in its jurisdiction in respect of different goods and services from those of the Complainant. The Respondent submits that the disputed domain name is identical to the Respondent’s trademarks and is similar to the Respondent’s family of

domain names incorporating its MEDIANT mark, adding that the Parties have co-existed for 22 years, and that the Respondent has acquired valuable rights and goodwill in the MEDIANT mark through use in connection with a bona fide offering of goods and services since the Respondent was formed in September 2002. The fact that the Respondent did not apply for its registered mark until 2017 has no bearing on the rights acquired in said mark. The Respondent did not need the Complainant's authority to register the disputed domain name. The Complainant does not have a monopoly on the MEDIANT mark, and its rights are limited to mental health services. The Respondent has an equal right to use the term. The Complainant has not proved that the disputed domain name is confusingly similar to the Complainant's marks as it has presented no corresponding evidence of consumer confusion.

Panels under the Policy may find that a Respondent's trademark registration corresponding to the domain name concerned will support a finding of rights or legitimate interests under the Policy unless such registration was obtained primarily to circumvent the application of the Policy. The Respondent has a bona fide business and a legitimate good faith purpose for adopting its MEDIANT mark. The Respondent would gain nothing from the Complainant's brand recognition in the Netherlands (Kingdom of the) for mental health services. The Respondent obtained trademark registrations in jurisdictions where it does business and has not attempted to circumvent the application of the Policy. It is undisputed that the Respondent engages in the field of technology enabled investor communications under the brand name MEDIANT which demonstrates a legitimate interest in the disputed domain name.

The Respondent's family of domain names are appropriately linked to investor communications subject matter, so it is apparent that the disputed domain name was directed in error. The Respondent has attempted to redirect the disputed domain name to its affiliated company website but has been blocked by the institution of this Complaint.

The Respondent did not register the disputed domain name in bad faith to target the Complainant. The Respondent operates in a different line of business in a different geographic area, and the Parties have co-existed for 22 years without awareness of one another or evidence of consumer confusion. In a Google search for "mediant" only a few results surface for the Complainant while the first search results are for the Respondent's webpages. The Complainant has provided no evidence that its marks are used where the Respondent's marks are used, and the Complainant has not alleged that the Respondent has used the Complainant's mark in the Netherlands (Kingdom of the). The term "online" has been known to the Respondent's consumers via the domain name <mediantonline.com> from 2002.

The fact that the Respondent has inadvertently hosted PPC links on the disputed domain name for a short period is insufficient to warrant a finding of bad faith under the Policy. The Respondent did not select the disputed domain name to free ride on the Complainant's trademark, and there is no evidence of Internet user confusion or association of the Respondent's services with those of the Complainant. The fact that the Respondent's other domain names direct to its financial communication services is clear evidence that no pattern of cybersquatting exists.

## **6. Discussion and Findings**

### **A. Preliminary issue: Identity of the Respondent**

Paragraph 1 of the Rules defines the Respondent as "the holder of a domain-name registration against which a complaint is initiated". The Panel nevertheless has discretion to substitute or join another entity as a respondent by way of its general powers as set out in paragraph 10(a) of the Rules.

In the present case, the Respondent has demonstrated to the Panel's satisfaction that the named holder of the disputed domain name holds it on behalf of Mediant Communications Inc. pursuant to the terms of its employment, and consequently that Mediant Communications Inc. has an underlying beneficial interest in the disputed domain name. The Response has been prepared on behalf of that corporation. The Panel therefore joins Mediant Communications Inc. as the Respondent in this proceeding. The named holder of the disputed domain name is retained as a Respondent for the purposes of continuity in order to ensure that

the Registrar may transfer the disputed domain name to the Complainant if this is ordered. For convenience, unless the context dictates otherwise, the Panel will refer to both entities constituting the Respondent as “the Respondent” in the remainder of this Decision.

## **B. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Respondent acknowledged the existence of the Complainant’s MEDIAN mark and did not deny its identity with the Second-Level Domain of the disputed domain name. Insofar as the Respondent’s additional points on this topic are concerned, these may be relevant to the second and third element assessments under the Policy, but they are not relevant to the first element assessment. In particular, issues such as the strength of the complainant’s mark or the respondent’s intent to provide its own legitimate offering of goods or services without trading off the complainant’s reputation are decided under the second and third elements. Panels view the first element as a threshold test concerning a trademark owner’s standing to file a UDRP complaint, i.e., to ascertain whether there is a sufficient nexus to assess the principles captured in the second and third elements. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

## **C. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case under the second element, based upon its submissions that the Respondent is not affiliated in any way with the Complainant, that the Complainant has never authorized the Respondent to use its MEDIAN mark, that there are no indications that the Respondent has been commonly known by the disputed domain name (at least in Europe), that there is no evidence that the Respondent has used or prepared to use the disputed domain name in connection with a bona fide offering of goods or services, and that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, which directs to a website hosting PPC links targeting the Complainant in the Dutch language.

The Panel therefore turns to the Respondent’s case in rebuttal. In essence, the Respondent offers to prove that it is a bona fide trading entity that has been trading under the MEDIAN mark for almost as long as the Complainant in an unrelated field, and that the Parties have been co-existing as such for a period of 22

years. The Respondent shows that it was incorporated in September 2002 under a corresponding name, and that it used a corresponding domain name also containing the MEDIANT mark (and the word “online”) that was registered at about the same time. The Panel is satisfied that the Respondent has produced credible evidence which, as a whole, establishes that the Respondent, as a business, has been commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy.

[WIPO Overview 3.0](#), section 2.3.

Furthermore, before any notice to the Respondent of the dispute, it has used a name corresponding to the disputed domain name in connection with a bona fide offering of goods and services in terms of paragraph 4(c)(i) of the Policy as demonstrated by evidence of credible investment in website development, and bona fide use of related domain names. [WIPO Overview 3.0](#), section 2.2. The existence of the Respondent’s registered trademark MEDIANT is also relevant, in particular because the circumstances do not suggest that such mark was obtained primarily to circumvent the application of the UDRP or otherwise prevent the complainant’s exercise of its rights (even if only in a particular jurisdiction) notably as such trademark was registered before the filing of the Complaint. In this regard, there are no circumstances indicating pretext.

[WIPO Overview 3.0](#), section 2.12.2.

While the above analysis indicates that the Respondent may have rights and legitimate interests in the disputed domain name arising from its business name and its assertion of a proposed use for its own business purposes, the Respondent’s evidence could be said to be somewhat tainted in the present case by the Respondent’s actual use of the disputed domain name to display PPC advertising links which compete with or capitalize on the reputation and goodwill of the Complainant’s mark, and are therefore likely to confuse Internet users. [WIPO Overview 3.0](#), section 2.9. This could not be described as a use arising from the legitimate co-existence of the Parties and their respective rights as the Respondent contends, and might be regarded as an indicium of cybersquatting. To support a claim to rights or legitimate interests under the Policy, the use of a disputed domain name must in any event not be abusive of third-party trademark rights.

[WIPO Overview 3.0](#), section 2.15.

The Panel will consider the Respondent’s use of PPC advertising links further in its analysis of the third element of the Policy below. Given that the outcome of that analysis is determinative of the administrative proceeding, it is not necessary for the Panel to reach a definitive conclusion on the question of the Respondent’s rights and legitimate interests in respect of the disputed domain name under the second element of the Policy.

#### **D. Registered and Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent does not appear to have registered the disputed domain name with knowledge of, or intent to target, the Complainant’s mark. The Respondent itself has a longstanding association with the MEDIANT mark (prior to the Respondent’s registration of a corresponding registered trademark) in its own jurisdiction in connection with goods and services unrelated to those provided by the Complainant in its jurisdiction. Contrary to the Complainant’s assertion, “mediant” is a word in the English language derived from Latin, and there is every reason to believe that the Respondent came upon this name entirely independently of the Complainant’s use of the term. Its meaning, “in the middle”, is an apt choice for a provider of investor communications solutions such as the Respondent as much as it is for a provider of mental health advisory services such as the Complainant. There is no suggestion in the evidence before the Panel that when the Respondent adopted this name in 2002 it had any awareness of or intent to benefit from any goodwill associated with the Complainant or its mark.

Equally, there is no evidence that the Complainant’s mark had become so well-known that by the time when the disputed domain name was registered in 2016, that the Respondent must have been aware of and/or intended to target it. The Respondent’s Google search (albeit this appears to be contemporaneous and does not show the position as of 2016) lists the top entries as the Respondent’s business and the dictionary

meaning of the term “mediant” respectively, and does not feature an entry for the Complainant’s business until the thirteenth sub-page. On the evidence before it, the Panel finds that the disputed domain name was registered as part of a family of related domain names which the Respondent appears to have registered for its own business purposes and in accordance with its longstanding use of the MEDIANT mark (including the use of the term “online” in association therewith). The Panel accepts the Respondent’s assertion that it pointed these to content related to its business, with the accidental exception of the disputed domain name. Consequently, the Panel does not find that the disputed domain name was registered in bad faith.

Turning to the use of the disputed domain name, it is clear to the Panel that the associated website is targeting the Complainant’s rights via PPC links invoking the Complainant’s competitors, when viewed from the Complainant’s jurisdiction. The evidence also shows, however, that the only advertisements appearing when viewed from the Respondent’s jurisdiction are those related to its own field of activity. This suggests that the advertisements may be “geo-targeted”, whereby the location (or prior browsing history) of the Internet user is likely to be a factor in the advertisements returned. This supports the credibility of the Respondent’s assertion that the targeting of the Complainant’s rights by the PPC links was inadvertent and that it was genuinely unaware of such until the Complaint was filed.

Despite the Respondent’s alleged lack of awareness as to what the disputed domain name was resolving to in the Complainant’s location, a respondent cannot necessarily disclaim responsibility for content featuring “automatically” generated PPC links appearing on the website associated with its domain name. [WIPO Overview 3.0](#), section 3.5. Nevertheless, given the factual background in this particular case, and notably the fact that the Respondent’s other domain names either point to content relevant to its business or are inactive, the Panel finds on the balance of probabilities that the use of PPC links in this particular case bears a reasonable excuse that it was inadvertent and unintentional, the Respondent otherwise having a good faith basis for having registered the disputed domain name, and a lack of cybersquatting intent.<sup>3</sup> The Panel makes this finding in the expectation that the Respondent would remove the PPC links and will take reasonable steps not to publish further content targeting the Complainant’s co-existing rights in the MEDIANT mark, whether geo-targeted or otherwise.

Had the Complainant or its representatives attempted to communicate with the Respondent prior to filing the Complaint, the present administrative proceeding might have been avoided. Equally, had the Respondent refused to remove the content concerned upon receipt of such a communication, the position here might have been very different and may have cast a different light on the Respondent’s intentions in registering and using the disputed domain name.

The Panel finds the third element of the Policy has not been established and the Complaint fails.

## 7. Decision

For the foregoing reasons, the Complaint is denied.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: October 4, 2024

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<sup>3</sup>To verify that the content associated with the Respondent’s family of domain names did not target the Complainant (excepting the disputed domain name), the Panel visited the websites associated with the following domain names noted in the Response: <mediantonline.com> - registered September 7, 2002; <mediantcommunications.com> - registered October 20, 2005; <mediantinc.com> - registered November 8, 2016; <mediant.delivery> - registered December 6, 2018; <mediant.engineering> - registered December 6, 2018; <mediant.network> - registered December 6, 2018; <mediant.services> - registered December 6, 2018; <mediant.support> - registered December 6, 2018; <mediant.systems> - registered December 6, 2018; and <mediantdemo.com> - registered July 14, 2020. On the subject of the Panel performing its own research, such as consulting websites of domain names listed in the record, see the [WIPO Overview 3.0](#), section 4.8.