

Annex 4.1

November 6, 2012

Mr. Fadi Chehadé
ICANN President & CEO
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

RE: Public Comments Regarding New gTLD Applications by Directi-Controlled Applicants: 1-1289-59455 <.app>; 1-1054-95858 <.baby>; 1-1053-59307 <.bank>; 1-1661-34613 <.blog>; 1-1064-17982 <.chat>; 1-1066-67099 <.city>; 1-1068-4952 <.click>; 1-1056-93782 <.deals>; 1-1060-13366 <.doctor>; 1-1049-60075 <.home>; 1-1061-73671 <.host>; 1-1286-14385 <.hosting>; 1-1059-97519 <.hotel>; 1-1063-32835 <.insurance>; 1-1055-21389 <.law>; 1-1065-49761 <.loans>; 1-1290-2671 <.movie>; 1-1058-25065 <.music>; 1-1057-44086 <.news>; 1-1073-19391 <.one>; 1-1070-97873 <.online>; 1-1069-35959 <.ping>; 1-1067-89443 <.play>; 1-1062-36956 <.press>; 1-1051-32260 <.shop>; 1-1048-46315 <.site>; 1-1072-65736 <.space>; 1-1052-82517 <.store>; 1-956-26846 <.web>; 1-1050-30871 <.website>; and 1-1071-58353 <.world>

Dear Mr. Chehadé:

We represent the applicant companies for the new gTLDs noted above and are responding to the Karsten Manufacturing Corporation's ("Karsten") letter from counsel Paul D. McGrady, Jr. dated September 26, 2012 (*Exhibit A*). In general, Karsten takes the position that the Radix Companies¹ - which each separately applied for the gTLD registries noted above ("Radix Applicants") - should be disqualified from consideration as a registry owner under Applicant Guidebook Sections 1.2.1(m) (pattern of cybersquatting) and 1.2.1 (o) (good faith effort to disclose relevant information).

ICANN has a challenging goal implementing the application process under the Applicant Guidebook for new gTLDs. Part of that challenge is distinguishing legitimate comments from those filed for self-serving or improper purposes. In order to navigate these rules, ICANN must apply the plain language of the Guidebook, which the Radix applicants have complied with in full.

¹ Each application included a separate company owned by Radix as Registrant and related to the specific gTLD. For instance, Radix formed an entity dotPing, Inc. to apply for <.ping>.

November 6, 2012

Page 2 of 7

A. Background Information Concerning <.ping>.

Karsten has failed to disclose, and apparently wishes to conceal, key background information directly relevant to Karsten's September 26, 2012, letter to ICANN ("Sept 26 Letter.") While a response by the Radix Applicants to the Sept 26 Letter is not technically required, the Radix Applicants believe it is important to clarify the record and correct blatant misrepresentations by Karsten and its attorney.

Karsten conspicuously fails to acknowledge in its Sept 26 Letter that Radix subsidiary dotPing, Inc. ("dotPing") and Karsten have filed competing applications to run the registry for <.ping>. Karsten also fails to disclose correspondence between the parties wherein Karsten seeks to extort dotPing into withdrawing its competing application for the <.ping> registry.

Radix Applicant dotPing filed its <.ping> application as a general registry relying on the dictionary definition of word 'ping.' The word "ping" is defined at www.dictionary.com as noted in this link <http://dictionary.reference.com/browse/ping?s=t>. Paragraph 18(a) of dotPing's application clearly states:

The .Ping Registry's mission is to serve as a refreshing and exciting new namespace for the Internet users of the world. .Ping is for everyone - from individuals to large conglomerate businesses, from universities to entertainment houses, from bloggers to social networks and everything in between.

'Ping' is a word that is synonymous with quick, short instant messages, chat conversations, emails, notifications and so on. As a verb, ping means 'to get the attention of' or 'to check for the presence of' another party online. The word is easily associated with energy, pep and exclamation. Even for segments of the general population, who may not associate with the meaning, it is yet a catchy, likeable onomatopoeic word which makes it an exciting, fun, brandable and memorable TLD to have for anyone at all.

'Ping' being a generic word, a website on this TLD would not stand for anything as do the existing gTLDs. .com is for companies, .biz is for businesses, .org is for organizations, and ccTLDs are for specific countries. .Ping does not categorize, identify or restrict the entity's website, nor comes with any preconception of meaning.

November 6, 2012

Page 3 of 7

Karsten filed an application for <.ping> as a branded 'closed' gTLD for use only by Karsten.² It does not appear either party knew the other party would seek to operate a <.ping> gTLD. Both companies legitimately filed their applications, creating a string contention and possible auction as specifically provided in the Guidebook and contemplated by ICANN.

Section 1.1.2.10 of the Applicant Guidebook states: "Applicants are encouraged to resolve string contentions among themselves prior to the string resolution stage." dotPing sent an email to Karsten as a competing applicant for the <.ping> registry to meet during ICANN's Prague meeting. During the meeting in Prague, Radix founder and CEO Bhavin Turakhia met with Karsten's attorney, Mr. McGrady, and discussed the possibility of pulling all golf related domains from the registry, the possibility of an ICANN auction and the community discussions concerning possible private auctions. Mr. Turakhia made it clear that Radix had no issue putting a system in place to protect Karsten's trademark rights related to Ping golf clubs if Radix should be awarded the <.ping> registry by ICANN. Mr. McGrady appeared receptive to exploring options.

Instead, Mr. McGrady sent a threat letter to Radix dated August 8, 2012 grossly misrepresenting the conversation in Prague and essentially taking the unsupportable position that Karsten has global word-wide rights in the word "ping" irrespective of market or proposed use.³ Rather than participate in the process encouraged by ICANN, Karsten through its counsel has attempted to extort Radix into withdrawing its <.ping> application. Mr. McGrady's August 8 letter threatened:

Karsten is preparing to post this letter and the attached public comments for each of your applications, not just .ping, prior to the end of the public comment period. Once filed, this letter and the public comments will also be sent to the ICANN Board and Senior Staff. Further, as you know, Karsten may seek relief from the courts, through ICANN's various processes, and through raising awareness of your activities within the ICANN community generally. Karsten will pursue all appropriate means to ensure that all of your applications are rejected. We are writing to provide you with a one-time opportunity to withdraw your abusive application for .ping. If you provide

² Paragraph 18(a) of Karsten's application states: "the registry will be closed to registrants who do not have a formal, written trademark license agreement from KMC, PRP's parent company which owns the PING name and mark ..."

³ In the industry, companies that take such an extreme and unsupportable view of trademark rights are often seen as 'trademark bullies' using threats, intimidation and frivolous lawsuits to secure rights beyond what is provided by law.

November 6, 2012

Page 4 of 7

evidence of your irrevocable withdrawal of your .ping application no later than 12 pm (noon) central time on Friday, August 10, 2012, Karsten will forebear filing its public comments. However, should you fail to do so, Karsten will take appropriate steps to protect its interests. (*Exhibit B*).

On September 26, 2012, the last day of the comment period, Radix filed a gTLD comment under the heading "Threat of defamatory comment" noting that an unnamed competing applicant was threatening to misuse the comment and objection process to avoid competing for the <.ping> registry. <goo.gl/0SEll>. On that same day, Paul McGrady submitted seven (7) separate comments and posting a link to the Sept 26 Letter to ICANN, making good on his threat to post misinformation about the Radix Applicants if they refused to withdraw their <.ping> application.

Karsten's tactics are well known having filed over 80 US federal court lawsuits in United States. In the UDRP case *Karsten Manufacturing Corporation v. Pingify Networks Inc.*, Claim Number: FA0811001232823, Karsten made the same extreme arguments made in its Sept 26 Letter including its overly broad view of its own trademark rights and its attack on privacy services for domain registrants, all of which were rejected by a 3 member NAF arbitration panel. (*Exhibit C*).

Karsten's comments to ICANN are meant to intimidate and bully Radix to withdrawing an otherwise legitimate application for <.ping>. Karsten's goal is to improperly preclude competition for the <.ping> registry by knowingly making misrepresentations to ICANN about Radix, publically posting that those misrepresentations and attempting to create leverage by attacking all of Radix' gTLD applications beyond the string contention for <.ping>.

B. Applicant Guidebook Section 1.2.1(m)

Under the Eligibility section of the Guidebook, only corporations, organizations and institutions are eligible to apply for a new gTLDs. Individuals, sole proprietorships and unformed companies are ineligible. The application form requires applicants to provide information on the legal establishment of the applying entity, as well as the identification of directors, officers, partners, and major shareholders of that entity. Background screening at both the entity level and the individual level are conducted.

In the absence of exceptional circumstances, applications from any entity with or including any individual with convictions or decisions of certain types are to be automatically disqualified from the program including:

November 6, 2012

Page 5 of 7

- 1.2.1(m): has been involved in a pattern of adverse, final decisions indicating that the applicant or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), the AntiCybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or **was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard** under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern. (Emphasis Added).
- 1.2.1 (o): fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).

The “Applicant”, both for the applying entity and individuals “named in the application” for dotPing, is included in Paragraph 11 of the Application as follows:

11. Name(s) and position(s) of all directors

Brijesh Joshi Director & GM
Vishal Manjalani Director & VP

11. Name(s) and position(s) of all officers and partners

Bhavin Turakhia Founder
Brijesh Joshi Director & GM
Nमित Merchant General Manager
Vishal Manjalani Director & VP

11. Name(s) and position(s) of all shareholders holding at least 15% of shares
Radix FZC

Neither the applicant nor the individuals named in the applications have any adverse UDRP or ACPA decisions against them. None of them have ever been found to have engaged in cybersquatting, or reverse domain name hijacking or bad faith or reckless disregard under any definitions or under any legislation.

Despite the clear language of 1.2.1(m), Karsten argues without legal support that dotPing, and all the Radix applicants have violated this clause, and thus should be disqualified.

November 6, 2012

Page 6 of 7

Section 1.2.1 of the Applicant Guidebook extends beyond the company itself by including “applicant or individual named in application.” There is no mention of “related” or “affiliated” companies in the Guidebook related to disqualification of applicants, or otherwise supporting Karsten’s contrived argument.

If ICANN had wanted to extend Section 1.2.1(m) beyond the entity applicant and persons named in the application (presumably the people listed in paragraph 11), it could have easily done so. ICANN clearly choose not to do so. ICANN can’t now re-write the rules after collecting applicant fees, in the middle of application process. PrivacyProtect.org is not named anywhere in the application and is certainly not the Applicant or owner of Applicant. It is legally impossible to adopt the construction proposed by Karsten without creating tremendous liability and uncertainty within the ICANN process. Contract principles will no doubt control the interpretation of the Guidebook in each instance.

Karsten’s next argument that all the Radix applicants and specifically dotPing violated Guidebook Section 1.2.1 (o) by failing to disclose UDRP proceedings where privacyprotect.org was names as a UDRP Respondent is frivolous. PrivacyProtect.org is not the gTLD applicant under the Guidebook, or a named party in the application. Hence there has been no violation of the Guidebook Section 1.2.1 (o) either.

We reiterate that Radix and all the applicant companies have complied with every aspect of the Applicant Guidebook whilst filing its applications, and therefore cannot be disqualified from the new gTLD Program without creating tremendous liability and confusion at this stage of the program.

Conclusion

Karsten threatened to send a comment to ICANN, publish its comments publically and attack all of Radix’ applications if dotPing did not withdraw its single application for <.ping>. When dotPing and Radix refused to be bullied, Karsten’s counsel executed the prior threat, and misrepresented the facts in an attempt to create additional leverage.

ICANN should review carefully letters like the one sent by Karsten’s lawyer, which are clearly contrived and sent for the improper purpose of precluding the very competition ICANN sought to invite. It is clear that Karsten is simply trying to game the system and that its concerns over the Radix applicants are contrived. Credibility is the real issue here. Karsten’s willingness to make material misrepresentations to ICANN in order to try and force the Radix companies to withdraw the single <.ping> application should not be lost on anyone.

November 6, 2012

Page 7 of 7

Radix and dotPing remain available to answer your questions.

Very truly yours,

Traverse Legal, PLC

A handwritten signature in black ink, appearing to be 'ES', written in a cursive style.

Enrico Schaefer
Attorney at Law
enrico@traverselegal.com

ES/cad

EXHIBIT A

(letter only)

Paul D. McGrady, Jr.
Tel 312.558.5963
Fax 312.558.5700
pmcgrady@winston.com

September 26, 2012

VIA FEDERAL EXPRESS

Mr. Fadi Chehade
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Re: Public Comments Regarding New gTLD Applications by Directi-Controlled Applicants: 1-1289-59455 <.app>; 1-1054-95858 <.baby>; 1-1053-59307 <.bank>; 1-1661-34613 <.blog>; 1-1064-17982 <.chat>; 1-1066-67099 <.city>; 1-1068-4952 <.click>; 1-1056-93782 <.deals>; 1-1060-13366 <.doctor>; 1-1049-60075 <.home>; 1-1061-73671 <.host>; 1-1286-14385 <.hosting>; 1-1059-97519 <.hotel>; 1-1063-32835 <.insurance>; 1-1055-21389 <.law>; 1-1065-49761 <.loans>; 1-1290-2671 <.movie>; 1-1058-25065 <.music>; 1-1057-44086 <.news>; 1-1073-19391 <.one>; 1-1070-97873 <.online>; 1-1069-35959 <.ping>; 1-1067-89443 <.play>; 1-1062-36956 <.press>; 1-1051-32260 <.shop>; 1-1048-46315 <.site>; 1-1072-65736 <.space>; 1-1052-82517 <.store>; 1-956-26846 <.web>; 1-1050-30871 <.website>; and 1-1071-58353 <.world>

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LONDON
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WASHINGTON, D.C.

Dear Mr. Chehade:

We represent Karsten Manufacturing Corporation, the owner of the famous PING trademark and the parent company of the applicant which has filed App. No. 1-1833-90242 to run the <.ping> registry. We are writing concerning the thinly veiled attempt by Directi, which has formed new entities to apply for thirty-one new gTLDs, to make an end-run around the ICANN's clearly stated applicant requirements. Specifically, we draw ICANN's attention to the above-referenced applications (each an "Application") filed by a newly-formed company (each a "NewCo"). Research into publicly available documents has

confirmed that each NewCo (with the exception of the NewCo applicant entity for .web¹) is controlled by Bhavin Turakhia, an individual who also controls Directi, whose service “PrivacyProtect.org” has been the losing Respondent in more than *sixty* recent Uniform Domain Name Dispute Resolution Policy (“UDRP”) proceedings.

Given the significant fiduciary and legal responsibilities associated with operating a gTLD, ICANN has established a set of requirements in the “gTLD Applicant Guidebook” (“Guidebook”) that, absent “extraordinary circumstances,” forbid applicants with a history of adverse UDRP decisions from applying for new gTLDs. Each of Bhavin Turakhia’s applications thus raise two simple questions:

1. Should a party who has been the named respondent in dozens of adverse UDRP decisions be permitted to thwart the Guidebook’s prohibitions by forming new companies to serve as the applicant entity for a new gTLD?
2. Is providing a “privacy service” whereby the service provider does not disclose customer information even when a UDRP is filed against a customer’s domain name an “extraordinary” circumstance such that an exception to the Guidebook’s applicant restrictions should be granted?

For the reasons outlined in detail herein, it is clear that the answer to both questions presented is unequivocally “no.” Any applicant who has engaged in a pattern of disqualifying activities under the Guidebook’s policies cannot evade ICANN’s well-reasoned process by simply filing new gTLD applications through a newly formed company they control. Simply put, each Application referenced above and each NewCo must be automatically disqualified.

I. The Applicant

Each Application must be disqualified because each NewCo was founded or is otherwise controlled by Mr. Bhavin Turakhia, an individual who controls a company that has been the losing respondent in dozens of UDRP proceedings. As detailed in each Application, NewCo “is a wholly owned subsidiary within the Directi Group” (“Directi”). Indeed, each Application makes clear that NewCo intends to “outsource[] our Abuse and Compliance functions to the Directi Group and our Abuse and Compliance desk will be staffed as a cost center by [Directi].” Mr. Bhavin Turakhia controls both NewCo (as evidenced by each Application) and Directi, as evidenced by the

¹ While the NewCo applicant entity for the .web application (DotWeb Inc.) does not list Bhavin Turakhia as the founder of DotWeb Inc., NewCo’s Application for .web states that DotWeb Inc. is a “wholly owned subsidiary” of Directi. Because Bhavin Turakhia controls Directi, which in turn holds DotWeb Inc., the fact that Bhavin Turakhia is not listed as the founder of DotWeb Inc. does not impact the analysis. DotWeb Inc., like all of the other NewCos, should be disqualified as a gTLD applicant for the reasons outlined herein.

true and correct copy of a Capital IQ report identifying Directi's officers attached hereto as Exhibit 1.

As reported in the *Washington Post* article attached hereto as Exhibit 2 and as confirmed by Directi in the blog post attached hereto as Exhibit 3, Directi is also the owner of a service called PrivacyProtect.org. As detailed herein, PrivacyProtect.org has lost dozens of UDRP proceedings in the past several years. At bottom, PrivacyProtect.org and NewCo are all under the common control of Mr. Bhavin Turakhia. Because Bhavin Turakhia's company has been the named respondent in dozens of adverse UDRP decisions, any company under Mr. Turakhia's control is an ineligible applicant for a new gTLD. Directi, each NewCo, and PrivacyProtect.org are all collectively referred to herein as "Applicant," because all of these entities are under the common control of Bhavin Turakhia.

There is little doubt from Directi's own public statement that all of the mentioned activities are run as a "group." For example, in an article written by Applicant titled, "Directi Group Applies for Thirty-one Top-Level Domain Strings in the ICANN Process," Applicant states:

"Directi Group, a global leader in Internet products and Web services, today announced its ambitious effort to secure Top-Level Domains (TLDs) under ICANN's program to expand the Internet's addressing system. Under its new brand – Radix – Directi has committed over \$30 million on the application of 31 strings comprising several generic and mass market names."

See Directi Group Applies for Thirty-one Top-Level Domain Strings in the ICANN Process, RADIX, May 31, 2012, <http://radixregistry.com/radix-applies-for-31-strings-newgtlds.php> (a copy of which is attached hereto as Exhibit 4).

Any argument by Applicant that it should be allowed to form a separate entity to apply for a new gTLD in order to avoid its history of adverse UDRP decisions is unavailing. It is clear that the Guidebook does not permit formation of new entities in order to thwart the consensus of the ICANN community.

II. The gTLD Applicant Guidebook

The gTLD Applicant Guidebook ("Guidebook") governs how applicants may participate in the New Generic Top-Level Domain Program. One of the goals of the Guidebook is to provide protections for rights holders and to protect consumers from confusion. The Guidebook seeks to prevent cybersquatters from undermining ICANN by purposely using broad language to prohibit an applicant or individual named in the application from forming new companies to circumvent ICANN's policies. Thus, the Guidebook requires disclosure of any history of adverse UDRP decisions, and states:

“In the absence of exceptional circumstances, applications **from any entity with or including any individual** with convictions or decisions of the types listed in (a) – (m) below will be automatically disqualified from the program....

(m) has been involved in a pattern of adverse, final decisions indicating that the applicant or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern....

(o) fails to provide a good faith effort to disclose all relevant information relating to items (a) –(m).” (emphasis added).

In short, the Guidebook prohibits parties who have been involved in a pattern of adverse final decisions from participating in the new gTLD program.

As explained in detail below, Applicant has engaged in a pattern and practice of refusing to disclose customer information even after a UDRP is filed against a relevant domain name. This results in significant costs and burdens to legitimate rights holders and should foreclose any possibility that Applicant’s so-called “privacy service” offerings should be afforded “exceptional” status under the Guidebook’s clear and important applicant restrictions.

III. Argument

Directi’s PrivacyProtect.org has been the losing Respondent in at least 45 UDRP cases before the National Arbitration Forum (the “NAF”). Of those 45, more than 20 were decided in the last 12 months (well after publication of a version of the Guidebook prohibiting applications from parties with a pattern of adverse UDRP decisions). These decisions involved some of the world’s most well-known brands, including FORD, VICTORIA SECRET, METROPOLITAN LIFE, CITI, TARGET, ALLSTATE, DINERS CLUB, NORDSTROM, WALMART, and LOWES. Further, Applicant has been the subject of at least 16 adverse UDRP decisions issued by the World Intellectual Property Organization (“WIPO”). Copies of the 61 adverse NAF and WIPO Decisions against

Applicant are attached as Exhibits 5-65.² Despite Applicant's dismal record before WIPO and NAF, Applicant remains undeterred. As of the date hereof, well after the publication of the Guidebook, Applicant continues to appear as an email contact in the WHOIS information for domain names consisting of some of the most well-known brands in the world, including LOUIS VUITTON, MARRIOTT, NIKE, REEBOK, and CHANEL, which is consistent with its business model of shielding the identity of cybersquatters in order to enhance the sale of domain names. Copies of the relevant WHOIS records are attached hereto as Exhibit 66.

Each Application should be automatically rejected on the grounds that Applicant, through its various affiliated entities all under the common control of Bhavin Turakhia, has a documented pattern of adverse UDRP decisions against it.³ Additionally, each Application should be automatically rejected on the grounds that each NewCo (with the sole exception of the Application for .web as explained above) lists Bhavin Turakhia as its Founder in its Application. This is because Bhavin Turakhia also controls Directi, whose PrivacyProtect.org business has been the named respondent in dozens of adverse UDRP decisions. In fact, there are so many⁴ such decisions involving the bad-faith registration and use of some of the world's most well-known brands that ICANN would be irresponsible to place Applicant in charge of any new gTLD registries.

ICANN's policy development process resulted in the Guidebook and its objective standards for disqualifying applicants with a pattern of adverse UDRP decisions. In this case, Applicant may argue that the activities of its PrivacyProtect.org service should not result in disqualification under the Guidebook because PrivacyProtect.org is merely a service that allows third parties to register domain names on an anonymous basis. However, any purported altruistic aims expounded by Applicant are belied by the facts. Unlike many anonymous WHOIS service providers, PrivacyProtect.org fails to modify the WHOIS record to disclose accurate registrant information even after a UDRP is filed against a relevant domain name. As noted above, this means that PrivacyProtect.org is often the sole respondent in UDRP decisions concerning domain names registered through the service. Even if Applicant were to now claim that none of the dozens of UDRP decisions against it involved domain names that were not otherwise licensed to a customer, ICANN evaluators do not have the benefit of any legal discovery process, so

² PrivacyProtect.org is named in hundreds of WIPO decisions along side parties who engaged PrivacyProtect.org to provide false contact information to inhibit enforcement for their acts of cybersquatting. Although relevant, the more than 60 decisions naming PrivacyProtect.org alone are sufficient to establish "a pattern of adverse, final decisions indicating that the applicant or individual named in the application was engaged in cybersquatting."

³ Notably, irrespective of the existence of common control between the NewCo and Directi/PrivacyProtect.org, Applicant should be automatically disqualified because Applicant has confirmed in its application that Applicant intends to outsource its "Abuse and Compliance functions to the Directi," the owner of PrivacyProtect.org. This is the very definition of the fox guarding the henhouse.

there is no way for ICANN to verify any such claim. This is why ICANN has established objective standards by which to evaluate applications and applicants. At bottom, Applicant's decision to shield cybersquatters' identities, even during UDRP disputes, disqualifies it as an applicant because the result is an adverse pattern of decisions against Applicant that disqualifies Applicant under the Guidebook's objective, quantifiable standard.

To be sure, there are dozens of so-called "privacy service" providers, many of which attempt to operate in good faith to facilitate the dual benefits of providing anonymity to their clients but also ensuring disclosure when cybersquatters attempt to confuse or defraud consumers. These companies disclose their customers' information upon demand from aggrieved rights holders, or, at a minimum, upon the filing of a UDRP. Our client believes that Go Daddy may be one such company offering WHOIS proxy services in this manner, balancing both the interests of its customers and those of consumers who rely on trademarks for their purchasing decisions.

There is nothing illegal or necessarily improper about providing such a so-called "privacy service." However, there are risks associated with such a business model. By making the choice to offer such a service and to operate the service in a manner that results in a multitude of adverse UDRP decisions against it, "PrivacyProtect.org" and its controlling and affiliated parties are foreclosed from applying for (directly or indirectly through newly-formed applicant entities) new gTLDs. Section 3.7.7.3 of the Registrar Accreditation Agreement makes it clear that, absent a prompt disclosure of underlying registrant information after receipt of reasonable evidence of actionable harm, the party appearing in the WHOIS "shall accept liability for harm caused...." While the Registrar Accreditation Agreement deals with registrar accreditation and not new gTLD applications and is making reference primarily to third-party harms, one of the other harms caused is to Applicant itself. Applicant must accept the harm it has caused itself as a result of PrivacyProtect.org's business model. By choosing to enhance its sales of domain names by providing the PrivacyProtect.org service and allowing itself to serve as the Respondent in dozens of adverse UDRP proceedings in order to shield its cybersquatting customers, Applicant has disqualified itself as a new gTLD applicant.

ICANN adopted the eligibility policies contained in the Guidebook for the express purpose of protecting consumers by helping to limit the likelihood of brand abuse. No exceptional circumstances can exist where an applicant has routinely engaged in activities that intentionally thwart the efforts of legitimate rights holders to protect their brands and the consumers who rely on them. Indeed, Applicant's practice of routinely losing UDRP disputes brought by owners of some of the world's most famous brands confirms that Applicant is the very type of entity that the applicant restrictions contained in the Guidebook were designed to disqualify. It is irrelevant whether Applicant was the underlying "true" registrant or was allowing itself to be the named Respondent in order to enhance the sale of domain names. The outcome is the same under a clear reading of the Guidebook.

By carefully drafting objective standards in the Guidebook, ICANN cast no judgment on the value of anonymous WHOIS services. Indeed, an owner of an anonymous WHOIS service could easily remain an eligible applicant for a new gTLD simply by disclosing the underlying registrant when faced with the UDRP complaint. However, Applicant decided to do business in a different way and have repeatedly elected to serve as the respondent in adverse UDRP proceedings. The Guidebook's objective standards simply provide no exception for Applicant's business model. Allowing Applicant to proceed would violate the unambiguous text of the Guidebook, undermine ICANN's credibility, and cast into doubt the legitimacy and fairness of the new gTLD application process.

IV. Conclusion

For the reasons outlined herein, ICANN should honor the **automatic disqualification** of each of the above-referenced Applications as required by the Guidebook. Automatic disqualification is the only action that ICANN can take to ensure a fair and level playing field, maintain the legitimacy of the Guidebook, and protect consumers from the most egregious brand abuses.

Sincerely,

WINSTON & STRAWN LLP



Paul D. McGrady, Jr.

cc: Mr. John Jeffery, ICANN General Counsel
Mr. Akram Atallah, ICANN Chief Operating Officer
Mr. Steve Crocker, Chairman of the Board of ICANN
Professor Alain Pellet, Independent Objector

EXHIBIT B

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August 8, 2012

VIA EMAIL: bhavin.t@directi.com

Bhavin Turakhia
Founder & CEO
DirectiPLEX,
Next to Andheri Subway,
Old Nagardas Road,
Andheri (East),
Mumbai, Maharashtra 400069
India

Dear Bhavin,

As you know, we represent Ping Registry Provider, Inc., an affiliate of Karsten Manufacturing Corporation, the owner of the famous PING mark (collectively, "Karsten"). As you admitted in our meeting on June 28, 2012, in Prague, you are well aware of Karsten's rights to its famous PING mark, both here in the United States and around the world. You also admitted that you are aware of Karsten's reputation for defending its brand against those who would abuse it.

Karsten believes your application for the .ping gTLD is an abusive application. This belief was reinforced in our meeting in Prague when you suggested that Karsten and Directi resolve the string contention by entering into a "private auction" through which you could be paid to withdraw your application. Additionally, your admission against interest that you believe you would be able to sell "millions" of second level domain name registrations in the .ping registry despite much lower COI calculations you claim you provided to ICANN indicates your application is also an abuse of the ICANN process.

In light of your organization's documented record of widespread cybersquatting through your PrivacyProtect.org division, none of your abusive behaviors are a surprise. What is a surprise is that you spent millions of dollars applying for new gTLD registries when you had to

Bhavin Turakhia
August 8, 2012
Page 2

know that your applications would be **automatically disqualified** under the clear terms of the Guidebook due to your easily identifiable pattern of adverse decisions under the UDRP.

Karsten is preparing to post this letter and the attached public comments for each of your applications, not just .ping, prior to the end of the public comment period. Once filed, this letter and the public comments will also be sent to the ICANN Board and Senior Staff. Further, as you know, Karsten may seek relief from the courts, through ICANN's various processes, and through raising awareness of your activities within the ICANN community generally. Karsten will pursue all appropriate means to ensure that all of your applications are rejected.

We are writing to provide you with a one-time opportunity to withdraw your abusive application for .ping. If you provide evidence of your irrevocable withdrawal of your .ping application no later than 12 pm (noon) central time on Friday, August 10, 2012, Karsten will forebear filing its public comments. However, should you fail to do so, Karsten will take appropriate steps to protect its interests.

This letter is written without prejudice to our client's rights, all of which are expressly reserved. You are hereby instructed to retain all documentation (including emails) related to this matter, including but not limited to all documents related to your applications for new gTLD registries and all documents related to your PrivacyProtect.org division.

We look forward to hearing from you.

Very truly yours,

WINSTON & STRAWN LLP



Paul D. McGrady, Jr.

PDM:rjl

EXHIBIT C



NATIONAL ARBITRATION FORUM

DECISION

Karsten Manufacturing Corporation v. Pingify Networks Inc.
 Claim Number: FA0811001232823

PARTIES

Complainant is **Karsten Manufacturing Corporation** (“Complainant”), represented by **John D. Titus**, of **The Cavanagh Law Firm**, Arizona, USA. Respondent is **Pingify Networks Inc.** (“Respondent”), represented by **Creston Froats**, British Columbia, Canada.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <ping.me>, registered with **GoDaddy.com, Inc.**

PANEL

The undersigned certify that they have acted independently and impartially and to the best of their knowledge have no known conflict in serving as Panelists in this proceeding.

Debrett G. Lyons, Calvin A. Hamilton and David S. Safran as Panelists.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on November 6, 2008; the National Arbitration Forum received a hard copy of the Complaint on November 6, 2008.

On November 7, 2008, GoDaddy.com, Inc. confirmed by e-mail to the National Arbitration Forum that the <ping.me> domain name is registered with GoDaddy.com, Inc. and that Respondent was the registrant of the name. GoDaddy.com, Inc. has verified that Respondent is bound by the GoDaddy.com, Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy”).

On November 14, 2008, a Notification of Complaint and Commencement of Administrative Proceeding (the “Commencement Notification”), setting a deadline of December 4, 2008 by which Respondent could file a Response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent’s registration as technical, administrative and billing contacts, and to postmaster@ping.me by e-mail.

A timely Response was received and determined to be complete on December 3, 2008.

Complainant submitted an Additional Submission on December 19, 2008. Complainant’s Additional Submission is considered untimely and deficient pursuant to Supplemental Rule 7 since it was received after the deadline for submissions. The Panel has reconsidered that decision, as discussed below. Respondent also made Additional Submissions which were received in a timely manner.

On December 12, 2008, pursuant to Complainant’s request to have the dispute decided by a three-member Panel, the National Arbitration Forum appointed Debrett G. Lyons (chair), Calvin A. Hamilton and David Safran as Panelists.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES’ CONTENTIONS

A. Complainant

Complainant asserts trademark rights and alleges that the disputed domain name is identical to its trademark.

Complainant alleges that Respondent has no rights or legitimate interests in the disputed domain name.

Complainant alleges that Respondent registered and used the disputed domain name in bad faith.

The detail of the Complaint is considered in the Discussion which follows below.

B. Respondent

Respondent does not contest that Complainant has trademark rights or that the disputed domain name is confusingly similar to the trademark but denies it acted in bad faith and argues that it has a legitimate interest in the domain name.

The detail of the Response is considered in the Discussion which follows below.

C. Additional Submissions

Both parties made Additional Submissions which have been taken into account by the Panel and which are referred to as required in the Discussion which follows below.

FINDINGS

1. Complainant, along with its subsidiary company, Ping Inc., is a manufacturer of golfing equipment sold under the trademark PING.
2. The evidence shows that the trademark has been in use for almost 50 years and is well known to the golfing and sports community.
3. Complainant is the proprietor of many U.S. Federal trademark registrations including, for example, Reg. No. 704,552 for PING filed on September 3, 1959 and issued on September 20, 1960.
4. Complainant also has trademark registrations in Canada including Reg. No. 373,788 filed on December 28, 1988 and issued on September 28, 1990.
5. Respondent was incorporated in British Columbia, Canada, on March 10, 2008.
6. The disputed domain name was registered on August 17, 2008.
7. Respondent purchased the domain in a public auction for \$USD 12,500.
8. There is no relationship between the parties, nor prior to the Complaint had they been in contact with one another.

DISCUSSION

Paragraph 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) instructs this Panel to “decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Preliminary Procedural Issue 1: Deficient Additional Submissions

The National Arbitration Forum’s Supplemental Rule 7 permits supplemental submissions provided that they are: (a) accompanied by an appropriate filing fee and (b) timely filed. Complainant submitted out-of-time Additional Submissions and the National Arbitration Forum found non-compliance with Supplemental Rule 7.

In these circumstances the Panel has discretion whether to accept or reject those submissions.^[i] In this case, the Panel has accepted and given full consideration to Complainant’s Additional Submissions since Complainant gave a convincing reason for its failure to meet the due date and because the submissions are pertinent to the central matters at issue in this dispute. Moreover, the Panel considers that the Additional Submissions should be considered because Respondent reacted by filing its own (timely) Additional Submissions which can only be properly understood in the context of prior argument. Finally, Panel takes the view that the complexity of the dispute merits consideration of all submissions.^[ii]

Preliminary Procedural Issue 2: Identity of Respondent

Further to the Procedural History set out above, it is to be noted that on the date on which the Complaint was filed, November 6, 2008, the WHOIS information showed the domain name registrant as Domains By Proxy Inc. As originally filed, Complaint nominated Domains By Proxy Inc. as Respondent. After identification by the Registrar of Respondent and at the invitation of the National Arbitration Forum, the Complaint was amended to nominate the current Respondent.

Much of the argument from both sides centered on the question of who should be properly nominated as respondent. Complainant was determined to treat Domains By Proxy Inc. as the respondent, whilst Respondent argued that it was the correct entity. Whilst this Panel is aware that the facts here invite a number of questions concerning interpretation of the Policy which have engaged the close attention of other panels,^[iii] it is also conscious that the overriding intention of the Policy is to provide a practical alternative to court proceedings to combat abusive domain name registrations. Against that fact would stand the manifest fiction of investing a proxy service company with either good faith or bad faith intentions. This Panel takes the pragmatic view that if the identity of the beneficial owner of the domain name is known, can be readily identified, or is revealed by a registrar in response to a complaint, then it should be the named respondent and the case under the Policy should be made against that party.

The Panel finds that Respondent has been properly named.

Substantive Issues

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

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

Identical and/or Confusingly Similar

The Panel finds that Complainant has rights in the trademark acquired through registration, ^[iv] if not also through long term use, ^[v]

Complainant contends that the disputed domain name is legally identical to Complainant's trademark because it contains that mark in

its entirety and merely adds the ccTLD for Montenegro, “.me.” Applying the principles developed and now broadly accepted under the Policy, the Panel finds that the disputed domain is identical to the trademark. [vi]

The Panel has no hesitation in finding that Complainant has satisfied the first element of the Policy.

Rights or Legitimate Interests

In consequence of earlier findings, it is the rights or legitimate interests of the named Respondent which are under examination. That said, the Panel finds that the circumstances described in the Complaint [vii] are sufficient to constitute a *prima facie* showing by Complainant of absence of rights or legitimate interest in the disputed domain name and so shift the evidentiary burden to the Respondent to show that it does have rights or legitimate interests in that name. [viii]

Respondent’s key argument throughout its submissions is that it does have a legitimate interest in the disputed domain name (and so by extension can not have acted in bad faith).

It has been observed by panelists in formative decisions that there is a necessary connection between the elements of legitimate rights, on the one hand, and bad faith, on the other. In particular, if it can be seen that a respondent has rights in a domain name, then it is generally difficult to assimilate that with a conclusion that the respondent had acted in bad faith. [ix]

Paragraph 4(c) of the Policy sets out certain circumstances which if found by the Panel to be proved demonstrate Respondent’s rights or legitimate interests in the domain name for the purposes of paragraph 4(a)(ii) of the Policy. Those sets of circumstances are not exhaustive and other instances of legitimate interests might be in evidence however it is logical to first test the present facts against those given circumstances. They are that:

- (i) before any notice to the domain name registrant of the dispute, the registrant used , or made demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the domain name registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the registrant has acquired no trademark or service mark rights; or
- (iii) the domain name registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Subparagraph 4(c)(ii) and (iii) have no direct application to the facts of this case. Subparagraph 4(c)(i) was argued by Respondent. Unlike the other scenarios, it requires a certain state of affairs to have existed before Respondent had any notice of the dispute. There is no evidence of pre-Complaint contact between the parties and so the relevant date is no earlier than November 14, 2008, the date on which Complaint was communicated to Respondent.

At various points in its submissions Complainant suggests that Respondent was on constructive notice of its rights, but for the purposes of paragraph 4(c)(i) of the Policy, the relevant determination is the date when Respondent first had any notice of the *dispute*. Imputed knowledge of Complainant's US or Canadian trademark registrations, for example, is not notice of the dispute. Imputed knowledge of Complainant's common law reputation is likewise not notice of the dispute. The question before the Panel is whether what was done by Respondent prior to November 14, 2008 amounted to use, or preparations for use, of the disputed domain name in connection with a *bona fide* offering of services.

[x] Earlier UDRP decisions have held that even perfunctory preparations for use might suffice. Some more recent cases have imposed a higher standard. What is clear is that paragraph 4(a)(ii) of the Policy refers to "rights" or "legitimate interests." The Panel takes the view that the draftsmen of the Policy used those two expressions deliberately, comprehending them to have different meanings. Subparagraph 4(c)(i) itself draws out that distinction by requiring either use of the domain name, or demonstrable preparations for its use, in such a way to reflect a design where the former gave rise to a "right" and the latter to a "legitimate interest."

Respondent alleges that it is a company still in a nascent state of business development. It was incorporated in Canada in March 2008 to develop and bring to market a core product, "Personal Internet Notification Gateway," with the acronym P.I.N.G. That product is a software program which notifies an Internet user of specific information in a timely fashion, otherwise known as "pings." In May 2008, Respondent filed a US provisional patent application for the product, the invention being named in the application papers as a Personal Internet Notification Gateway. Respondent also evidenced some rudimentary marketing materials and business plans.

Emergence of the ".me" ccTLD gave Respondent the opportunity to market the product under the name "Ping Me". Respondent purchased the domain name in a public auction for \$ USD 12,500 and as part of the 'sunrise' process for new ".me" domains during May 6 - 20, 2008.

Between purchase and Complaint, there was no developed website corresponding with the domain name. It was parked with the Registrar and, Complainant alleges, was driving pay-per-click revenue through links to competitors in business to Complainant.

Respondent sought to excuse that by stating that:

It is a fact that these advertisements are the result of Go Daddy using their own default landing page and opportunistically placing golf advertisements on it. These were not our advertisements, nor do we have a stake in them, nor did we request them.

Respondent reacted to receipt of the Complaint by promptly contacting the Registrar with a request that ads be turned off, to which the Registrar acceded.

There is no doubt that these combined facts sent mixed messages to the Panel. There is ample authority for the principle that a respondent can not abrogate responsibility for use of its domain name. Numerous prior decisions have, rightly in this Panel's view, held that there is bad faith use of a domain name if it is parked at a revenue driving website which trades on traffic drawn by the magnetism of a third party's trademark. The fact that links and advertising material might be added by the parking host and not by the domain name registrant itself has been held immaterial to the finding of bad faith use. Nor, for that matter, is bad faith use swept away by curative steps taken only after notice of a complaint.

The Panel would be at liberty to find that Respondent's use of the disputed domain name was not *bona fide* in terms of paragraph

4(c)(i) of the Policy. ^[xi] Nonetheless, the better view is that this conduct should form part of the complete equation which measures whether there were in fact preparations to use the domain name, or a name corresponding to the domain name, in connection with a *bona fide* offering of goods or services.

On a balance of the evidence, the Panel finds that the business being developed by Respondent prior to notice of the dispute was not a sham and would amount to a *bona fide* offering of goods or services. Furthermore, the Panel finds that prior to notice of the dispute, the preparatory steps taken by Respondent to establish that offering in connection with the name "Ping Me" were legitimate and of substance. The commitment in filing a US patent application speaks for itself, as does the fact that the name of the invention coincides directly with the acronym and, by coincidence, with the trademark. Bearing in mind the nature of Respondent's software product, it seems to the Panel that the ".me" domain name extension would be naturally desirable over others.

Against that landscape and in the face of a great many cases under this Policy where respondents have blatantly abused third party rights, the Panel is of the opinion that the bad faith use in this case should not disfigure Respondent's other actions.

The Panel finds that Complainant has not discharged its onus to show that Respondent has no legitimate interests in the disputed domain name and so decides that Complainant has failed to satisfy the second element in Paragraph 4(a) of the Policy.

Registration and Use in Bad Faith

For the reasons set out above, it is not necessary to reach a finding on this aspect of the Policy.

DECISION

Having failed to establish at least one of the three elements required under the ICANN Policy, the Panel concludes that relief shall be **DENIED.**

REVERSE DOMAIN NAME HIJACKING

Respondent contends Complainant is engaging in reverse domain name hijacking through its submission of this Complaint. Respondent asserts it purchased the disputed domain name in an online auction in which Complainant failed to participate. Respondent alleges Complainant is using the arbitration process in bad faith in an attempt to hijack the domain name.

The Panel cites with approval the case of *Koninklijke KPN N.V. v. Telepathy Inc.*, D2001-0217 (WIPO May 7, 2001), where it was said that to prevail on a claim of reverse domain name hijacking, Respondent must show that Complainant brought the claim in bad faith despite the knowledge that Respondent has an unassailable right or legitimate interest in the disputed domain name, or that Respondent lacks the requisite bad faith registration and use of the disputed domain name.

In *Smart Design LLC v. Hughes*, D2000-0993 (WIPO Oct. 18, 2000), the panel found that the complainant committed reverse domain name hijacking where it “advanced arguments that were tortuously artificial in the extreme, reckless both as to the justification for making those arguments and the seriousness of the overall charge against Respondent, who was manifestly no cybersquatter.” [xii] —

In this case, Complainant had no reason to be aware of Respondent’s start-up business. Indeed, Respondent admits that it had taken steps to maintain the confidentiality of its product until launch. There is no evidence of pre-Complaint correspondence between the parties which might suggest Complainant’s desire to attain the domain name from Respondent.

The least benign motives that could be ascribed to Complainant are that it made no visible attempt to identify the beneficial owner of the domain name and that it relentlessly pursued its case to treat the proxy service company as respondent for transparently tactical reasons. Nonetheless, having regard to the authorities the Panel finds that this is not an instance of reverse domain name hijacking because Complainant brought this action in the belief that it has rights to the domain name.

Debrett G. Lyons

Calvin A. Hamilton

David S. Safran

Panelists

Dated: January 5, 2009

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NATIONAL ARBITRATION FORUM

[i] *See for example SuNyx Surface Nanotechnologies GmbH v. Primmer*, D2002-0968 (WIPO Jan. 20, 2003) (the panel choosing not to consider either complainant's or respondent's additional submissions that were received late where neither set out any new facts or other circumstances that would justify the late submission); *see also Am. Airlines Inc. v. WebWide Internet Commc'n GmbH*, FA 112518 (Nat. Arb. Forum June 13, 2002) (deciding to accept both the complainant's and the respondent's second additional submissions, despite the fact that they did not comply with Forum Supplemental Rule 7).

[ii] *See generally Reichert, Inc. v. Leonard*, FA 672010 (Nat. Arb. Forum May 24, 2006); *Deep Foods, Inc. v. Jamnruke, LLC*, FA 648190 (Nat. Arb. Forum Apr. 10, 2006); *Pierret v. Sierra Tech. Group, LLC*, FA 472135 (Nat. Arb. Forum July 1, 2005); *Am. Online, Inc. v. Mites*, FA 105890 (Nat. Arb. Forum May 31, 2002).

[iii] *See Padberg v. Eurobox Ltd.*, D2007-1886 (WIPO Mar. 10, 2008); *see also Baylor Univ. v. Domains By Proxy Inc.*, FA1145651 (Nat. Arb. Forum May 26, 2008).

[iv] It is noted that Reg. No. 704,552 stands in the name of Karsten Solheim and not Complainant, however for the purposes of establishing rights, there are sufficient later registrations in the correct name to satisfy this requirement.

- [v] See *State Farm Mut. Auto. Ins. Co. v. Malain*, FA 705262 (Nat. Arb. Forum June 19, 2006) (“Complainant’s registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy ¶ 4(a)(i).”); see also *Mothers Against Drunk Driving v. phix*, FA 174052 (Nat. Arb. Forum Sept. 25, 2003) (finding that the complainant’s registration of the MADD mark with the United States Patent and Trademark Office establishes the complainant’s rights in the mark for purposes of Policy ¶ 4(a)(i)).
- [vi] See for example *Rollerblade, Inc. v. McCrady*, D2000-0429 (WIPO June 25, 2000) (finding that the top level of the domain name such as “.net” or “.com” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar); see also *Isteworth Land Co. v. Lost in Space, SA*, FA 117330 (Nat. Arb. Forum Sept. 27, 2002) (stating that “[I]t is a well established principle that generic top-level domains are irrelevant when conducting a Policy ¶ 4(a)(i) analysis.”); see also *Gardline Surveys Ltd. v. Domain Fin. Ltd.*, FA 153545 (Nat. Arb. Forum May 27, 2003) (stating that “The addition of a top-level domain is irrelevant when establishing whether or not a mark is identical or confusingly similar, because top-level domains are a required element of every domain name.”).
- [vii] Complainant contends Respondent is not commonly known by the <ping.me> domain name. Complainant states it has not authorized Respondent to use its PING mark in any manner, and that Respondent is commonly known as “Pingify Network, Inc.” and not “Ping.”
- [viii] See *Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000).
- [ix] See *Lockheed Martin Corp. v. Skamborx Custom Cycle*, D2004-0824 (WIPO Jan. 18, 2005) (finding that the issue of bad faith registration and use was moot once the panel found the respondent had rights or legitimate interests in the disputed domain name); see also *Yanguard Group Inc. v. Investors Fast Track*, FA 863257 (Nat. Arb. Forum Jan. 18, 2007) (“Because Respondent has rights and legitimate interests in the disputed domain name, his registration is not in bad faith.”).
- [x] See *Shirmax Retail Ltd. v. CES Marketing Group, Inc.*, AF-0104 (eResolution Mar. 20, 2000); see also *Lumena s-ka so.o. v. Express Ventures Ltd.*, FA 94375 (Nat. Arb. Forum May 11, 2000); see also *Royal Bank of Canada v. Xross*, AF-0133 (eResolution Feb. 29, 2000).
- [xi] See for example *TM Acquisition Corp. v. Sign Guards*, FA 132439 (Nat. Arb. Forum Dec. 31, 2002) (finding that the respondent’s diversionary use of the complainant’s marks to send Internet users to a website which displayed a series of links, some of which linked to the complainant’s competitors, was not a *bona fide* offering of goods or services); see also *Computerized Sec. Sys., Inc. v. Hu*, FA 157321 (Nat. Arb. Forum June 23, 2003) (“Respondent’s appropriation of [Complainant’s] SAFLOK mark to market products that compete with Complainant’s goods does not constitute a *bona fide* offering of goods and services.”).
- [xii] See also *Church in Houston v. Moran*, D2001-0683 (WIPO Aug. 2, 2001) (noting that a finding of reverse domain name hijacking requires bad faith on the complainant’s part, which was not proven because the complainant did not know and should not have known that one of the three elements in Policy ¶ 4(a) was absent); see also *Mirama Enters. Inc. v. NJDomains, Abuse Contact: abuse@mail.com*, FA 588486 (Nat. Arb. Forum Jan. 16, 2006) (finding that complainant has engaged in reverse domain name hijacking where the complainant commenced the proceeding despite possessing knowledge of the respondent’s rights in the disputed domain name); see also *Watson Pharm., Inc. v. WhoisGuard*, FA 588321 (Nat. Arb. Forum Dec. 19, 2005) (rejecting the respondent’s assertion of

reverse domain name hijacking argument because there was no evidence that the complainant was using the Policy other than to declare its rights.).