

EXHIBIT 2

Before the:

**WORLD INTELLECTUAL PROPERTY ORGANIZATION
ARBITRATION AND MEDIATION CENTER**

Union Square Partnership, Inc. and
Union Square Partnership District
Management Association, Inc.
4 Irving Place, Room 1148S
New York, NY 10003,

Complainants,

-v-

unionsquarepartnership.org Private
Registrant and
unionsquarepartnership.com Private
Registrant,

Respondents.

Case No: D2008-1234

Disputed Domain Names:

www.unionsquarepartnership.org
www.unionsquarepartnerhsip.com

RESPONSE TO COMPLAINT

I. Introduction

1. This is a case about political speech. Complainants are, in essence, an organization advocating a pro-business agenda. Respondents, who are in no way business competitors of Complainants, believe Complainants are advocating changes to the Union Square neighborhood that would destroy the neighborhood's character.

2. As one prong of a multifaceted campaign seeking to publicize their concerns, Respondents created a website parodying Complainants' website. The parody site, which is entirely noncommercial, directly criticizes Complainants' activities, and for that reason cannot be misunderstood by a reasonable person to be Complainants' speech.

3. Under these circumstances, granting the relief Complainants seek would do nothing to further the goals underlying the Uniform Dispute Resolution Policy (“Policy”), but would merely squelch political speech critical of Complainants’ activities. Transfer of the disputed names should be denied.

II. Factual Background

4. Respondents created a website that was hosted at the disputed domain names¹ that is a parody of Complainants’ website.

5. By their parody, Respondents seek to raise awareness of their concerns about Complainants’ activities, which Respondents believe will harm the character of the Union Square neighborhood.

6. Respondents’ website is classic political speech, and their goals are wholly noncommercial. The parody site includes neither advertising nor other forms of revenue generation.

7. Respondents are not business competitors of Complainants, or anyone else.

8. Because the disputed website is a parody, it by necessity mimics certain elements of Complainants’ website. Leaving aside purely nominative or functional text, the text of the website is of Respondents’ own creation.

9. Indeed, the text of the website directly criticizes Union Square Partnership’s work.

10. The logo on the disputed website, while obviously and deliberately modeled on the USP logo, it is not a mere “cop[y]” (*see* Compl. ¶ 47) of the USP logo. Respondents’ version of the logo incorporates quotation marks around the word

¹ Access to the website is currently disabled. (*See* Resp. ¶¶ 62–66, *infra*; Compl. ¶ 29.)

“partnership,” to call into question whether Union Square Partnership should truly be considered a partnership that is acting in the best interests of Union Square.

11. The layout and color scheme is similar² to that of USP’s website, and the parody site does include functional link text (*e.g.*, “About Us,” “News & Events”) and contact information for USP that is the same as on the USP website. This mimicry, however, arises from decision to use parody as the form of political commentary in this instance.

12. Although Complainants assert that “photography” of the USP website has been copied (Compl. ¶ 25), the Complaint later clarifies that only one small, thumbnail image corresponds with an image on the USP website (*see id.* ¶ 51). Visually, that thumbnail image is dwarfed by the much larger image at the top of the disputed website, which Complainants do not even try to claim was copied from their site. (*See Annex to Compl., Exh. G.*)

13. Complainants assert that the disputed domain names were not available when they tried to acquire them prior to 2007, and that they also were not available “subsequently.” (Compl. ¶ 23.) That is not accurate, as the domain names were available when Respondents registered them.

14. Respondents deny that USP has established that it owns rights in the mark at issue.

15. Respondents deny that they have no rights or legitimate interest in the disputed domain names.

16. Respondents deny that the disputed domain names were registered in bad

² The colors used are not identical.

faith or that they are being used in bad faith.

III. Response to Statements and Allegations Made in Complaint
(Policy ¶ 4(a)–(c); Rules ¶ 5)

17. Respondents hereby respond to the statements and allegations in the Complaint and respectfully request the Administrative Panel (“Panel”) to deny the remedies requested by the Complainants.

18. Respondents’ website is a parody—a classic form of criticism. “Like less ostensibly humorous forms of criticism, [parody] can provide social benefit, by shedding light on an earlier work, and, in the process, creating a new one.” *Campbell v. Acuff-Rose*, 510 U.S. 569, 579 (1994).³ A parody is “a literary or artistic work that imitates the characteristic style of an author or a work for comic effect or ridicule; a composition in prose or verse in which the characteristic turns of thought and phrase in an author or class of authors are imitated in such a way as to make them appear ridiculous.” *Id.* at 580 (quotation marks and footnotes omitted).

19. By its nature, then, the parody must mimic characteristics of the material being parodied. *Id.* at 580–81 (“Parody needs to mimic an original to make its point . . .”). Seizing on these similarities (and ignoring the obvious differences, such as the fact that Respondents’ website is sharply critical of the work done by Complainants), Complainants have asserted trademark-like claims, here, and copyright claims, in a notice under the Digital Millennium Copyright Act to Respondents’ domain name registrar and a lawsuit in U.S. federal court (*see* Resp. ¶¶ 62–66, *infra*) in an effort to take control of the disputed domain names and block Respondents from engaging in legitimate criticism protected by the First Amendment to the United States Constitution.

³ *Campbell* concerned a copyright claim, but the Court did not limit its statements concerning the nature and value of parody to copyright law.

20. On the merits, however, Complainants' claims fail. In these proceedings in particular, Complainants are required to demonstrate that *each* of the three elements set forth in paragraph 4(a)(i)–(iii) of the Policy apply. (Policy ¶ 4(a) (“the complainant must prove that each of these three elements are present”).)

21. The Complaint fails even to establish that a single one of these elements are met. For the many alternative and independently dispositive reasons described below, the Panel should deny Complainants' request for relief.

A. Complainants have not demonstrated that they have rights in the claimed mark “Union Square Partnership.” (Policy ¶ 4(a)(i))

22. Complainants have failed to establish that they have rights in the asserted mark, “Union Square Partnership.” That threshold failure precludes any relief.

23. To the extent that it identifies the first use in commerce of the mark at all, the Complaint suggests that it was not first used until September 2003. (*See* Compl. ¶¶ 13, 18.) The Union Square neighborhood, by way of contrast, long predates the USP mark. (*See id.* ¶ 13.)

24. The Complaint is long on facts related to the identity of the *neighborhood* (*see id.* ¶¶ 14, 15, 17), but short on facts establishing rights in the USP mark. Although the Complaint references an application pending before the United States Patent and Trademark Office, “pending applications do not establish any enforceable rights until registration issues.” *Amsec Enterprises, L.C. v. McCall*, WIPO Case No. D2001-0083.

25. Complainants are entities comprising a local development corporation and a business improvement district with an interest in the Union Square neighborhood. (*See* Compl. ¶ 13.) In other words, they purport to be a “partnership” concerned with Union Square. As such, Union Square Partnership is at best a descriptive mark. *See Gruner +*

Jahr USA Publ'g v. Meredith Corp., 991 F.2d 1072, 1076 (2d Cir. 1993) (descriptive mark is “one that tells something about a product, its qualities, ingredients or characteristics. It may point to a product’s intended purpose, its function or intended use, its size, or its merit.”). “Therefore, to establish common law rights, Complainant[s] must prove secondary meaning. Relevant evidence of secondary meaning includes length and amount of sales under the mark, the nature and extent of advertising, consumer surveys and media recognition.” *Amsec Enters.*, WIPO Case No. D2001-0083.

26. Although Complainants asserts their use of the mark has been “widespread” since 2003 (Compl. ¶ 18), sufficient details of that use have not been provided. For example, Complainants refer to advertising related to community events, but offer no details regarding how often these events occur, how much money has been spent on advertising, or how many people their marketing has reached. And the evidence Complainants cite as “most important[],” the use of their marks on their website, merely shows use, not the presence of secondary meaning.

27. Based on the Complainants’ failure to establish rights in the mark at issue, the Panel should deny transfer of the domains at issue.

B. Respondents are engaged in legitimate criticism of Complainants’ activities, and as such have legitimate interests in the disputed domain names.
(Policy ¶ 4(a)(ii))

28. The Policy expressly recognizes that a party has rights to and legitimate interests in a domain name if it is “making a legitimate noncommercial *or* fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.” (Policy ¶ 4(c)(iii) (emphasis added).) Here, Respondents’ use is both entirely noncommercial *and* fair.

29. The disputed sites are noncommercial. They do not contain advertising, or even a request for donations. Thus, “there is no evidence in the record to suggest that Respondent[s]’ use is not ‘legitimate,’ such as use of a criticism site as a mere pretext for cybersquatting.” *Howard Jarvis Taxpayers Association v. McCauley*, WIPO Case No. D2004-0014 (“*HJTA*”).⁴

30. Indeed, Complainants have not even tried to allege that Respondents’ use is commercial.

31. But more fundamentally, Respondents are engaged in fair use. As in *HJTA, supra*, Respondents’ website in the present case is “a classic criticism site.” The website is entirely devoted to a political parody of Complainants’ site, as part of a broader effort to raise public awareness of and resistance to Complainants’ development activities.

32. The content makes it plain that the site is not the USP’s official website, noting “Corruption has its modern look,” decrying a restaurant development effort as “a corrupt process,” and declaring that USP’s modus operandi is to “defy logic so brazenly that ordinary citizens looking on won’t ask questions.” (*See Annex to Compl., Exh. G.*) Respondents are exercising rights protected to them under the First Amendment to the United States Constitution. *See HJTA*, WIPO Case No. D2004-0014.

33. Respondents have a legitimate right to use the disputed domain names to host a website critical of Complainants. “[T]he weight of authority [in UDRP proceedings] suggests that a consensus is emerging that trademark.TLD domain names

⁴ Compare *Rolex Watch U.S.A., Inc. v. Spider Webs, Ltd.*, WIPO Case No. D2001-0398 (although site was allegedly a legitimate discussion site, the respondent was an admitted domain name speculator)

[i.e., domain names consisting of a mark followed by a top-level domain such as .com or .org], when used for U.S.-based criticism sites, can constitute a legitimate interest, especially if there are not other indicia of bad faith.” *HJTA*, WIPO Case No. D2004-0014.⁵

34. This is consistent with case law from the United States federal courts.⁶ See, e.g., *Utah Lighthouse Ministry v. Foundation for Apologetic Information and Research*, 527 F.3d1045 (10th Cir. 2008) (parody site that was hosted at several domain names, including ones that incorporated the plaintiff’s mark, did not violate the Lanham Act or the Anti-Cybersquatting Protection Act); *Lamparello v. Falwell*, 420 F.3d 309 (4th Cir. 2005) (reversing injunction concerning gripe site at www.falwell.com); *TMI, Inc. v. Maxwell*, 368 F.3d 433 (5th Cir. 2004) (defendant’s non-commercial criticism, at trendmakerhome.com website, of plaintiff’s TrendMaker Home houses is not actionable cybersquatting); *Lucas Nursery & Landscaping v. Grosse*, 359 F.3d 806 (6th Cir. 2004) (refusing to order transfer of lucasnursery.com); *Northland Insurance Co. v. Blaylock*, 115 F. Supp. 2d 1108, 1120 (D. Minn. 2000) (denying preliminary injunction blocking criticism site at www.northlandinsurance.com); *Bihari v. Gross*, 119 F. Supp. 2d 309,

⁵ See also *Bridgestone Firestone, Inc. v. Myers*, WIPO Case No. D2000-0190; *TMP Worldwide Inc. v. Potter*, WIPO Case No. D2000-0536 (refusing to transfer tmpworldwide.net and tmpworldwide.org domain names where domains hosted true criticism sites); *Bosley Medical Group v. Kremer*, WIPO Case No. D2000-1647; *Pensacola Christian Coll. v. Gage*, WIPO Case No. FA101314 (NAF 2001); *Action Instruments, Inc. v. Technology Associates*, WIPO Case No. D2003-0024.

⁶ The Panel should apply “principles of law that it deems applicable.” (Rules ¶ 15(a).) Both Complainants and Respondents are in the United States, and the mark at issue concerns a geographic region in the United States. As such, the Panel should “look to rules and principles of law set out in decisions of the courts of the United States.” *Home Interiors & Gifts, Inc. v. Home Interiors*, D2000-0010; see also *HJTA*, WIPO Case No. D2004-0014.

322 (S.D.N.Y. 2000) (denying preliminary injunction blocking criticism sites at www.bihari.com and www.bihariinteriors.com).

35. Finally, Respondents have acted “without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.” (Policy ¶ 4(c)(iii).) As noted, Complainants have not shown or even alleged (because they cannot) that Respondents have acted for commercial gain. As in *HJTA*, WIPO Case No. D2004-0014, “Respondent[s] activities appear to be directed towards non-commercial speech.”

36. The lack of intent for commercial gain renders it unnecessary to address whether Respondents seek misleadingly to divert or to tarnish. Paragraph 4(c)(iii) of the Policy does not close with a requirement that the respondent acted “without intent for commercial gain *and without the intent* to misleadingly divert consumers or to tarnish the trademark or service mark at issue.” Instead, it requires that the respondent acted “without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.” (Policy ¶ 4(c)(iii).) That is, one *with the intent for commercial gain* who misleadingly diverts or tarnishes is denied the ability to prove a legitimate interest under paragraph 4(c)(iii). Thus, one who acts without the intent for commercial gain need not also prove a lack of intent to misleadingly divert consumers or to tarnish. *Cf.* 15 U.S.C. § 1125(c)(4)(B) (under the Lanham Act, no cause of action for tarnishment where the defendant’s use is noncommercial).

37. Regardless, the Complaint fails to establish an intent “to misleadingly divert consumers or to tarnish the trademark or service mark at issue.” (Policy ¶ 4(c)(iii).) “[T]he concept of ‘misleadingly diverting consumers’ refers to the kind of

confusion that arises in a trademark infringement context when a competitor diverts consumers to its site and, potentially, diverts sales.” *HJTA*, WIPO Case No. D2004-0014. Criticizing an organization does not amount to competing. See *Vishwa Nirmala Dharma a.k.a. Sahaja Yoga v. Sahaja Yoga Ex-Members Network and SD Montford*, WIPO Case No. D2001-046 (“declin[ing] to accept the contention of the Complainant that the broad definition of ‘competitor’ will include not only commercial or business competitors, but anyone acting in opposition to another”); *Tribeca Film Center, Inc. v. Brusasco-Mackenzie*, WIPO Case No. D2000-1772. Moreover, as noted above, Respondents’ website makes it abundantly clear that it is not the official USP website. (Resp. ¶ 31, *supra*.)⁷

38. Nor are Respondents acting with the intent to tarnish. Tarnishment generally occurs when a mark is used in a context of sexual activity, obscenity or illegal activity. Compare *Starbucks Corp. v. Wolfe’s Borough Coffee, Inc.*, 559 F. Supp. 2d 472, 479–80 (S.D.N.Y. 2008) (“Charbucks” mark did not tarnish “Starbucks” mark) with *American Express Co. v. Vibra Approved Labs. Corp.*, 10 U.S.P.Q. 2d 2006 (S.D.N.Y. 1989) (finding tarnishment where derivative mark was used to sell condoms); *Hasbro, Inc. v. Internet Entertainment Group, Ltd.*, 40 U.S.P.Q. 2d 1479 (W.D. Wash. 1996) (adult entertainment site at candyland.com tarnishes “Candyland” mark for children’s games); *Kidman v. Zuccarini*, WIPO Case No. D2000-1415 (linking actress’s name to

⁷ The fact that Respondents adopted a layout and color scheme similar to that used on the official USP site is of no moment. As noted above, a parody must, by its nature, be evocative of that which it is parodying. Notwithstanding the similarity between a parody and the original, it is protected speech. See *L.L. Bean v. Drake Publishers Inc.*, 811 F.2d 26 (1st Cir. 1987) (noncommercial parody is protected by the First Amendment).

website selling adult entertainment tarnishes). Criticizing a mark holder's actions simply does not qualify as tarnishment. *HJTA*, WIPO Case No. D2004-0014.

39. As the Panel stated in *HJTA*,

The Policy is designed to prevent abusive cybersquatting, but under United States law, it cannot extend to insulating trademark holders from contrary and critical views when such views are legitimately expressed without an intention for commercial gain. That is true even if the critical views are unfair, overstated, or flat-out lies, and even if they are posted at trademark.TLD websites. Use of the Policy to provide such insulation may undermine freedom of discourse on the Internet and undercut the free and orderly exchange of ideas that the First Amendment seeks to promote.

The same principle applies here. Complainants should not be allowed to abuse the Policy in order to stifle criticism of their goals.

C. **Respondents did not register or use the domain names in bad faith.**
(Policy ¶ 4(a)(iii))

40. Even if Complainants demonstrated they have rights in the mark they claim *and* Respondents had no legitimate interest in the domain names, neither of which are the case, Complainants' demand for transfer of the domain name would be barred because Complainants have failed to show that the domain names were registered and used in "bad faith." (Policy ¶ 4(a)(iii).)

41. Complainants argue that "[t]he most compelling" evidence of bad faith here is that the disputed website "mimicked the design, layout, artwork, text, and photography of the Official USP Website." (Compl. ¶¶ 48–49; *see also* Compl. ¶¶ 50–54.) Leaving aside that the vast majority of the text on the disputed website is entirely original, Complainants argument appears to be, in essence, that there is some chance of confusion—that some visitors to the website might somehow conclude that a webpage that declares that USP's conduct is "corrupt" is the official USP website.

(Compl. ¶ 53.)

42. Respondents submit that such confusion is highly unlikely, given the actual content of the page. (*See* Resp. ¶ 31, *supra*.)

43. Further, even if any momentary confusion could theoretically occur, the absence of commercial intent negates bad faith. The Policy expressly provides that creating “a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location” can serve as evidence of bad faith only if the respondent has thereby intentionally attempted to attract Internet users “for commercial gain.” (Policy ¶ 4(b)(iv).)

44. Complainants’ argument, if accepted, would effectively excise the element of “commercial gain” from paragraph 4(b)(iv) of the Policy. If that were the intent of the drafters of the Policy, they could easily have left that language out themselves. Although Complainants correctly point out that the enumerated forms of evidence of bad faith in the Policy are not exhaustive, standard canons of construction militate against allowing Complainants to attempt to prove bad faith by proposing a new method of proving bad faith that merely takes a preexisting standard and eliminates part of what a complainant is required to demonstrate.

45. Alternatively, Complainants’ argument can be read to argue that bad faith can be shown where a respondent has engaged merely in conduct calculated to disrupt business activities. (Compl. ¶¶ 53, 55.) Again, however, this argument is a misleading and incomplete version of one of the expressly enumerated methods of proving bad faith, which states that if the respondent has registered the domain name “primarily for the

purpose of disrupting the business of a competitor,” that is evidence of bad faith. (Policy ¶ 4(b)(iii).) Complainants’ formulation—activities calculated to disrupt business—is Paragraph 4(b)(iii) of the Policy, minus the requirement of demonstrating that the respondent is the complainant’s “competitor.”

46. Just as Complainants should not be allowed to delete “for commercial gain” from paragraph 4(b)(iv), they should not be allowed to ignore the word “competitor” in paragraph 4(b)(iii). And it cannot be disputed that Respondents are not Complainants’ competitors. Consistent with the Policy’s deference to the exercise of free speech, past arbitral panel decisions demonstrate that one does not become a “competitor” of a business by speaking out against its actions.⁸

47. The sole authority Complainants rely upon to support that notion that confusion not for commercial gain, or business disruption by a noncompetitor, can nonetheless evidence bad faith is *Hollenbeck Youth Centre v. Rowland*, WIPO Case No. D2004-003. Notably, the respondent in that case did not appear, which means the case was decided solely based on the complainant’s submission.

48. *Hollenbeck* involved a domain name consisting solely of the complainant’s alleged trademark. The web site was registered to an individual who used it for personal attacks on the president of the Hollenbeck Youth Centre as well as strident

⁸ *Compusa Management Co. v. Customized Computer Training*, File No. FA0006000095082 (NAF 2000), (holding that respondent was not “competitor” of complainant merely because it published a noncommercial web site criticizing complainant); *Tribeca Film Center*, WIPO Case No. D2000-1772 (“[A] respondent can ‘disrupt[] the business of a competitor’ only if it offers goods or services that can compete with or rival the goods or services offered by the trademark owner. If Paragraph 4(b)(iii) were given the meaning advanced by Complainant, respondents would be found to have disrupted the business of competitors in far too many cases, and the Policy’s bad faith requirement would be diluted beyond recognition.”).

criticisms of the Centre, which is an apolitical, non-profit entity overseeing sports programs and toy giveaways for needy boys and girls and their families in Los Angeles. This is a far cry from the Union Square Partnership, which is an organization promoting a pro-business agenda in Manhattan. Unlike the present case, *Hollenbeck* did not involve core political speech.

49. Moreover, *Hollenbeck* stands in stark contrast to a long line of WIPO decisions addressing the situation where the respondents register a domain name consisting solely of the complainant's trademark and the website is used for *bona fide*, non-commercial criticism. These cases are usefully set out and analyzed in *HJTA*, WIPO Case No. D2004-0014.

50. The *HTJA* panel explained that the adjudication of WIPO arbitrations “must be sensitive to . . . local law issues,” noting

the United States' robust speech tradition, which derives from the First Amendment to the United States Constitution, tends to tolerate more criticism than the laws of other countries. . . . In cases involving United States parties and/or panelists . . . a number of panels have ruled that the first Amendment does protect trademark.TLD domain names when they are used for legitimate criticism sites.

HJTA, WIPO Case No. D2004-0014.⁹ The panel went on to find that in cases not conforming to this pattern, there often were “indicia of bad faith that tended to suggest that criticism was not the respondent's primary motive.”¹⁰ *HTJA* acknowledges that the

⁹ See also footnote 5, *supra*, for authorities relied upon by *HJTA*.

¹⁰ See, e.g., *Council of American Survey Research Organizations (CASRO) v. Consumer Information Organization LLC*, WIPO Case No. D2002-0377 (ordering transfer where site was used to market products, respondent owned over 1200 domain names, and many of respondent's domain names incorporated famous marks); *New York Times Co. v. New York Internet Services*, WIPO Case No. D2000-1072 (ordering transfer of domain name newyorktimes.com where the site incorporated ads); *Estée Lauder, Inc. v. Estelauder.com, Estelauder.net, and Jeff Hanna*, WIPO Case No. D2000-0869 (ordering

emerging consensus was not without exception, as *Hollenbeck* demonstrates, but nevertheless concludes that, “In sum, although there has been a split even in the United States, in this Panel’s view, the weight of authority suggests that a consensus is emerging that trademark.TLD domain names, when used for U.S.-based criticism sites, can constitute a legitimate interest, especially if there are not other indicia of bad faith [T]his appears to be the emerging view in federal courts as well”

51. Finally, Complainants do not even attempt to argue that any of the Policy’s four specifically enumerated circumstances evidencing bad faith (Policy ¶ 4(b)(i)–(iv)) apply here—because they plainly do not.

52. Paragraph 4(b)(i) of the Policy requires, among other things, that the domain name was registered “primarily for the purpose of selling, renting, or otherwise transferring the domain name.” Respondents undisputed intentions are to exercise political protest, not to win financial gain.

53. Paragraph 4(b)(ii) of the Policy requires that the domain name was registered to block the mark owner from using the mark in its domain name, and that the complainant has engaged in a pattern of such conduct. Here, Complainants chose their own domain name long before Respondents registered the disputed domains. By its nature, paragraph 4(b)(ii) is aimed at respondents who prevent the speech of complainants, not, as here, respondents who are exercising their speech without disrupting complainants’ use of their chosen domain names.

transfer where, among other things, domains incorporated misspelling of the complainant’s trademark and the respondent reserved other domain names incorporating famous marks); *Rollerblade, Inc. v. McCrady*, WIPO Case No. D2000-0429 (ordering transfer where the respondent’s use of site for rollerblading photos was found to be pretextual and the respondent had sought to profit from the transfer of the domain name).

54. Respondents did not register the domain names to prevent Complainants from using them, but rather to use them for the exercise of political criticism.¹¹ Moreover, Complainants offer no evidence of a “pattern of such conduct.”¹²

55. Paragraph 4(b)(iii) and 4(b)(iv) fail for the reasons noted above, namely because the parties are not competitors, and Complainants did not act for commercial gain.

56. In this context, the Panel must reject Complainants’ position that Respondents exhibited “bad faith” merely because the disputed domain names “give no indication that the user will be directed to a protest site as opposed to USP’s website” and there would be an adverse effect on the USP because Internet Users looking for USP’s website might end up on a website using parody and irony to criticize USP’s activities. The present case involves two United States parties in an entirely local dispute, and U.S. law and arbitral precedents in U.S. matters favor Respondents’ position. The potential

¹¹ The registration of even a domain name wholly consisting of a well-known celebrity name, for example, “brucespringsteen.com,” does not “prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name” as required by para. 4(b)(ii). *Bruce Springsteen v. Jeff Burgar and Bruce Springsteen Club*, WIPO Case No. D2000-1532 (holding that “brucespringsteen.net” was a “corresponding domain name” for the purpose of para. 4(b)(ii) and ruling out a finding of “bad faith”). “Even if Complainant were prevented from using its mark as a domain name in all gTLDs, such a result does not necessarily constitute bad faith by Respondent. Trademark rights are not coextensive with rights to a domain name and thus trademark holders do not have the absolute right to reflect their mark in a domain name.” *Goldberg & Osborne v. The Advisory Board Forum, Inc.*, WIPO Case No. D20001-0711.

¹² Past panels have held that a “pattern of conduct” can include multiple UDRP cases with similar fact patterns or a situation where the respondent has registered many domain names similar to known trademarks. *Telstra Corporation Limited v. Ozuris*, WIPO Case No. D2001-0046 (finding a pattern of conduct where respondent registered 15 domain names involving complainant’s mark). The registration of just two domain names in the same case is insufficient to show a “pattern of conduct.” *Home Interiors & Gifts, Inc. v. Home Interiors*, WIPO Case No. D2000-0010 (“The Panel does not believe that the registration of two domain names rises to the level of a pattern of conduct.”)

harms identified by Complainants are present in the numerous cases cited above and the consensus view is that they do not suffice to support transfer of the domain names.

IV. Communications

57. The contact information listed in paragraphs 7 and 8 of the Complaint for Respondents is accurate.

58. Respondents' authorized representative in this proceeding is:

Michael Kwun, Esq.
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110-1914
United States
Telephone: +1 415 436 9333 x136
Facsimile: +1 415 436 9993
E-mail: michael@eff.org

59. Respondents' preferred methods of communication directed to the Respondent in this proceeding are to the authorized representative noted in the previous paragraph, *i.e.*, for electronic-only material, email to Michael Kwun at michael@eff.org, and, for material including hard copy, facsimile to Michael Kwun at +1 415 436 9993 or delivery to the above-listed address.

60. A copy of this Response has been sent to Complainants, in accordance with paragraph 2(b) of the Policy.

V. Administrative Panel

61. Respondents do not object to having the dispute decided by a single-member Administrative Panel.

VI. Other Legal Proceedings Relating to the Domain Names

62. Complainants have previously, on July 1, 2008, sent a notice pursuant to the Digital Millennium Copyright Act to Respondents' domain name registrar, asserting

that the website at the disputed domain names violated their copyright in their own website.

63. In order to avail itself of the protections provided by the safe harbor provisions of the Digital Millennium Copyright Act, Respondents' domain name registrar on July 5, 2008 disabled access to the disputed website.

64. In response, on July 13, 2008, Savitri Durkee sent Respondents' registrar a counter-notice pursuant to 17 U.S.C. § 512(g)(2)(3).

65. In response to the counter-notice, on July 30, 2008, Complainants filed a copyright action in U.S. federal court against Durkee. *See Union Square Partnership, Inc. v. Savitri Durkee*, Case No. 08-cv-3101 (E.D.N.Y.).

66. As a result, access to the disputed website remains disabled. *See* 17 U.S.C. § 512(g)(2)(C).

VII. Certification

67. Respondents certify that the information contained in this Response is to the best of Respondents' knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in

this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith reasonable argument.

Date: 29 September 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael Kwun', written over a horizontal line.

Michael Kwun
ELECTRONIC FRONTIER FOUNDATION
454 Shotwell Street
San Francisco, CA 94110
Telephone: (415) 436-9333 x136
Facsimile: (415) 436-9993

Attorneys for Respondents