

COMPLAINT TRANSMITTAL COVERSHEET

Attached is a Complaint that has been filed against you with the World Intellectual Property Organization (**WIPO**) Arbitration and Mediation Center (the **Center**) pursuant to the Uniform Domain Name Dispute Resolution Policy (the **Policy**) approved by the Internet Corporation for Assigned Names and Numbers (**ICANN**) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the **Rules**), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**).

The Policy is incorporated by reference into your Registration Agreement with the Registrar(s) of your domain name(s), in accordance with which you are required to submit to a mandatory administrative proceeding in the event that a third party (a **Complainant**) submits a complaint to a dispute resolution service provider, such as the Center, concerning a domain name that you have registered. You will find the name and contact details of the Complainant, as well as the domain name(s) that is/are the subject of the Complaint in the document that accompanies this Coversheet.

You have no duty to act at this time. Once the Center has checked the Complaint to determine that it satisfies the formal requirements of the Policy, the Rules and the Supplemental Rules, it will forward an official copy of the Complaint to you. You will then have 20 calendar days within which to submit a Response to the Complaint in accordance with the Rules and Supplemental Rules to the Center and the Complainant. You may represent yourself or seek the assistance of legal counsel to represent you in the administrative proceeding.

- The **Policy** can be found at <http://www.wipo.int/amc/en/domains/rules/>
- The **Rules** can be found at <http://www.wipo.int/amc/en/domains/rules/>
- The **Supplemental Rules**, as well as other information concerning the resolution of domain name disputes can be found at <http://www.wipo.int/amc/en/domains/rules/>
- A **model Response** can be found at <http://www.wipo.int/amc/en/domains/respondent/index.html>

Alternatively, you may contact the Center to obtain any of the above documents. The Center can be contacted in Geneva, Switzerland by telephone at +41 22 338 8247, by fax at +41 22 740 3700 or by e-mail at domain.disputes@wipo.int.

You are kindly requested to contact the Center to provide the contact details to which you would like (a) the official version of the Complaint and (b) other communications in the administrative proceeding to be sent.

A copy of this Complaint has also been sent to the Registrar(s) with which the domain name(s) that is/are the subject of the Complaint is/are registered.

By submitting this Complaint to the Center the Complainant hereby agrees to abide and be bound by the provisions of the Policy, Rules and Supplemental Rule

Before the:

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

INTERNATIONAL ASSOCIATION)
OF MACHINISTS &)
AEROSPACE WORKERS)
9000 Machinists Place)
Upper Marlboro, MD 20772) www.iam933.net
)
v.)
)
Private, Registration IAM933.NET)
Domains By Proxy, Inc.)
Domains By Proxy.com)
15111N. Hayden Rd. Ste. 160)
PMB 353,)
Scottsdale, AZ 85260)
_____)

SECOND AMENDED COMPLAINT

(Rules, para.3(b))

I. Introduction

1. This Amended Complaint is hereby submitted for decision in accordance with the Uniform Domain name Dispute Resolution Policy (the **Policy**), approved by the Internet Corporation for Assigned Names and Numbers (**ICANN**) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the **Rules**), approved by ICANN on October 24, 1999 and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**).

II. The Parties

A. The Complainant

(Rules, para. 3(b)(ii) and (iii))

2. The Complainant in this administrative proceeding is the International Association of Machinists & Aerospace Workers. Complainant is an unincorporated association having a principal place of business at 9000 Machinists Place, Upper Marlboro, MD, 20772.

3. The Complainant's contact details are:

Address: 9000 Machinists Place.
Upper Marlboro, MD 20772

Telephone: (301) 967-4510

Fax: (301) 967-4594

E-mail: ccorson@iamaw.org

4. The Complainant's authorized representative in this administrative proceeding is:

Christopher Corson
International Association of Machinists
& Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20722
Ph.: (301) 967-4510
Fax: (301) 967-4594
E-mail: ccorson@iamaw.org

Robert J. Kenney, Esq.
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 E
Falls Church, VA 22042
Phone: (703) 205-8000
Fax: (703) 205-8050
E-mail: rjk@bskb.com

5. The Complainant's preferred method of communications directed to the Complainant in this administrative proceeding is:

Electronic-only material:

Method: e-mail
Address: rjk@bskb.com
Contact: Robert J. Kenney, Esq.

Material including hardcopy

Method: Facsimile
Fax: (703) 205-8050
Contact: Robert J. Kenney, Esq.

B. The Respondent
(Rules, para. 3(b)(v))

6. According to the Better-Whois.com database, the Respondent in this administrative proceeding is anonymous, and is designated as:

Gary Leatherman
1400 S. Brown Ave.
Tucson, AZ 85710

A copy of the printout of the database search conducted on August 29, 2008 is provided as Annex 1.

7. All information known to the Complainant regarding how to contact the Respondent is as follows:

Administrative Contact
Technical Contact
Billing Contact

Gary Leatherman
1400 S. Brown Ave.
Tucson, AZ 85710

III. Domain Name and Registrar
(Rules, para. 3(b)(vi) and (vii))

8. This dispute concerns the domain name identified below:

www.iam933.net

9. The registrar with whom the domain name is registered is:

GODADDY.COM, INC.
14455 N. Hayden Rd.
Suite 219
Scottsdale, AZ 85260

IV. Jurisdictional Basis for the Administrative Proceeding

(Rules, paras. 3(a), 3(b)(xv))

10. This dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The registration agreement, pursuant to which the domain name that is the subject of this Complaint is registered, incorporates the Policy. A true and correct copy of the domain name dispute policy that applies to the domain name in question is provided as Annex 2 to this Complaint.

V. Factual and Legal Grounds

(Policy, paras. 4(a), (b), (c); Rules, para. 3)

11. This Complaint is based on the following grounds:

A. The Domain Name is Confusingly Similar to Complainant's Marks

(Policy, para. 4(a)(i), Rules, paras. 3(b)(viii), (b)(ix)(1))

Complainant's Trademark Rights:

Complainant, International Association of Machinists and Aerospace Workers (IAM), was initially founded as a trade union in 1888, and held its first Machinist's convention in Georgia in 1889. Complainant first began using the mark IAM in connection with association services, namely, promoting the Interests of Machinists, and later Aerospace workers, in 1892, and has continuously used that mark since. The IAM represents more than 400,000 members who work in more than 350 classification or industries of the U.S. economy. Through its lengthy, continuous, and widespread use of the IAM mark since 1892, Complainant has established significant common law rights in its IAM mark.

Complainant received U.S. Trademark Registration No. 1,232,306 for the mark IAM for "association services, namely, promoting the interest of machinists and aerospace workers" on March 22, 1983. That registration was renewed on November 5, 2002, and is in full force and effect.

Complainant had also previously registered the mark INTERNATIONAL ASSOCIATION OF MACHINISTS AND AERO-SPACE WORKERS IAM under U.S. Registration No. 1,104,537 for "association services, namely, promoting the interests of machinists and aerospace workers on October 17, 1978. That registration was likewise renewed on January 25, 2008, and is in full force and effect.

In addition to relying on its registrations for the IAM Marks, Complainant asserts and relies upon its common law trademark rights in the IAM and IAM933 Marks. It is well established that under the Policy a domain name may be ordered transferred based on common law rights. The Complainant is not required to have registered the mark(s) in

issue. See, e.g., *Fujitsu Limited v. d, y, an*, 64 USPQ2d 1853, NAF Case No. 123924 (Oct. 25, 2002); *Mission KwaSizabantu v. Rost*, WIPO Case No. D2000-0279 (June 7, 2000); *CSA Int'l. v. Shannon*, WIPO Case No. D2000-0071 (March 24, 2000); *MatchNet PLC v. MAC Trading*, WIPO Case No. D2000-0205 (May 11, 2000). All that the Policy requires is “the fact that a certain combination of letters and/or numbers is recognizable as a trademark or service mark by a significant number of Internet users or consumers in general.” *ISL Marketing AG. v. The European Unique Resources Assoc. 2000 B.V.*, WIPO Case No. D2000-0203 (July 5, 2000); *Askonas Holt, Ltd. v. Webocracy*, WIPO Case No. D2000-0392 (July 3, 2000)(the Policy does not require that the trademark be registered in order to establish prior rights).

Local lodge 933 of the IAM was founded in 1952 to serve the Tuscon, Arizona area and has served its membership in that area under the IAM 933 name and mark since its inception. Through more than 50 years of extensive and continuous use of the IAM933 mark by the Complainant and its local lodge, Complainant has established significant and enforceable common law rights in and to the IAM933 mark.

In addition, Complainant registered the domain name iam933.org on September 19, 2002, and has used that domain name substantially continuously since that time to identify its website which provides valuable information to its local members.

Through Complainant’s continuous and extensive use in international commerce, the IAM and IAM933 Marks have achieved substantial goodwill.

Respondent’s Registration of a Confusingly Similar Domain Name:

The domain name which is the subject of this Complaint is www.iam933.net, which was registered by Respondent on November 16, 2007, well after the Complainant’s established rights in its IAM and IAM933 Marks. The www.iam933.net website is specifically directed to recruiting IAM local members to petition to decertify the local union, i.e., to criticize the union and to ultimately, decertify it.

This domain name is identical or virtually identical to the Complainant’s registered IAM and IAM933 marks. As previous UDRP decisions have repeatedly stated, the addition of the generic top-level <.com> domain (or, in this case, .net) to the end of the domain name does not diminish the nearly identical nature of iam933.net. It is well established that the top-level domain is part of the Internet address and does not add source-identifying significance. See *Bang & Olufsen a/s v. Unasi Inc.*, WIPO Case No. D2005-0728 (Sept. 7, 2005)(noting that the .com suffix “does not distinguish the domain names at issue from complainant’s mark”); see also *Visit America, Inc. v. Visit America*, NAF Case No. 95093 (Aug. 14, 2000); *Deutsche Welle v. Diamond Ware Ltd.*, WIPO Case No. D2000-1202 (Jan. 2, 2001)(stating “[f]or the purposes of paragraph 4(a)(i) of the Policy, the ‘.com’ element may be ignored”); see also, e.g., *Nissan Motor Co. v. Nissan Computer Corp.*, 204 F.R.D. 460, 466-67 (C.D. Cal 2001)(“[A]ny permutations one may derive from adding a top-level domain...to the second-level domain ‘nissan’ are

indistinguishable as a matter of law”). Thus, iam933.net is, for any legal purpose, identical to Complainant’s IAM and IAM933 marks.

B. The Respondent Has No Rights or Legitimate Interests in the Domain Name.

(Policy, para. 4(a)(ii), Rules, para. 3(b)(ix)(2))

Under the Policy, a respondent is generally considered to have no right or legitimate interest in a domain name if (a) the respondent does not use, or undertake demonstrable preparations to use, the domain name in connection with a bona fide offering of goods and services, (b) the respondent is not commonly known by the domain name, and (c) the respondent is not making a legitimate noncommercial or fair use of the domain name. Policy ¶4(c).

In the present case, it is clear that the Respondent has no rights or legitimate interests in the domain name in issue. While Complainant concedes that the Respondent has a right to establish a website for the purpose of legitimate criticism and commentary, it may not do so via a domain name that hides this purpose with the specific goal of misdirecting users to that website under the mistaken belief that it is affiliated with the Complainant. The Respondent’s domain name makes no indication whatsoever that it is a criticism or commentary website. Rather, Respondent chose a domain name that is identical to the Complainant’s established trademarks, and simply adds the “.net” gTLD.

It has been held that “in the absence or unusual circumstances, it will be rare that a party that chooses for its domain name the exact trade mark of the Complainant will succeed in retaining the name. *See, The Royal Bank of Scotland Group plc v. natwestfraud.com and Umang Malhotra*; D2001-0212; *Britannia Building Society v. Britannia Fraud Prevention*; D2001-0505; and *Compagnie de Saint Gobain v. Com-Union Corp.*; D2000-0020. In the last of these listed cases, Panel found that:

“The issue at hand is, however, not as Respondent seems to contend, the freedom of speech and expression but the mere choice of the domain name used to exercise this inalienable freedom of speech and expression.

When registering the Domain Name, Respondent knowingly chose a name which is identical and limited to the trademark of Complainant and which is identical to the domain name registered by Complainant in the .com gTLD.

Respondent could have chosen a domain name adequately reflecting both the object and independent nature of its site, as evidenced today by thousands of domain names.

By failing to do so, and by knowingly choosing a domain name which solely consists of Complainant’s trademark, Respondent has intentionally created a situation which is at odds with the legal rights and obligations of the parties.”

Based on these findings, the Panel concluded that the Complainant had proven paragraph 4(a)(ii) of the policy.

The decision of the panel in *The Leonard Cheshire Foundation v. Paul Anthony Darke*; Case No. D2001-0131 is also instructive. In that case, the Respondent had registered the domain name www.leonard-cheshire.com, apparently for the purpose of criticism of the Respondent. With respect to the issue of whether the Respondent had a right or legitimate interest in that domain name under Paragraph 4(a)(ii) of the Policy, the Panel concluded that:

“The Respondent has no rights or legitimate interests in the disputed domain name because he adopted it after he was well aware of Complainant’s name, trademark and service mark, and had no intention of using the domain name otherwise than as a reference to the Complainant. The suffix “.com” does not give him proprietary rights.

“Even if Respondent were making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain, his intent was, as he admitted, to damage the Leonard Cheshire Foundation. Since this is the equivalent to an intent to tarnish the trademark and service mark at issue, the Respondent cannot claim he has rights or legitimate interests to the domain name under paragraph 4(c)(iii) of the Policy.”

This reasoning was also followed in Case No. D2000-0467; (...the respondent obviously has the right to freely express his opinions. However this does not mean that his criticism may be effected through use of a website operating under a domain name that is identical or confusingly similar to the complainant’s trademarks); Case No. D2000-0071(“Respondents claim to rights and legitimate interests is essentially based on a claim to freedom of speech and, expression of opinion, but that right does not require the use of Complainant’s trade marks in the domain names for that purpose. A domain name is not merely an address, it is also a means of identification.”); Case No. D2000-0299(“...When an Internet user searches for Complainant’s mark, it will find Respondent’s website address. There is nothing in the domain name to indicate that the site is devoted to criticism of Complainant, even though this criticism is apparent upon visiting Respondent’s site. By using Complainant’s mark, Respondent diverts Internet traffic to is own site, thereby potentially depriving Complainant of visits by Internet users.”)

Complainant asserts that the same reasoning applies to an even greater degree in the present case. Respondent’s publicized goal is not simply to criticize or comment upon the IAM933, but to decertify that union, thereby putting it out of existence. While Respondent has a right to do so, the prior decisions under the Policy are clear that it may not do so by disguising itself as the Complainant in order to lure unsuspecting viewers to its criticism website.

In addition to the above, it is telling that the true identity of the Respondent, cannot be found in the owner or contact information for the registration of the domain name. Nor, prior to the registration of the www.iam933.net domain name, was the Respondent commonly known by the domain name or operating under that name.

Lastly, Respondent is not making a “legitimate noncommercial or fair use of the iam933.net 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). As stated above, Respondent fully incorporated the Complainant’s IAM933 Mark into the www.iam933.net domain name for the sole purpose of diverting Internet users from Complainant’s web site to Respondent’s criticism site. Such activities clearly constitute neither fair use nor non-commercial use. Due to the distinctive nature of Complainant’s IAM933 Mark, and the Respondent’s use of www.iam933.net to divert unsuspecting viewers to that criticism website, it is clear that Respondent has no legitimate rights or interests in the domain name.

C. The Domain Name Was Registered and is Being Used in Bad Faith

(Policy, paras. 4(a)(iii), 4(b); Rules, para. 3(b)(ix)(3))

Respondent has registered and used the www.iam933.net domain name in bad faith under ¶ 4(b) the Policy.

Under ¶ 4(b), a respondent has registered and used a domain name in bad faith if, *inter alia*,: (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name intentionally to attempt to attract, for commercial gain, Internet users to the respondent’s web site or other online location by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation or endorsement of the respondent’s site or of a product or service offered on the respondent’s site. Policy ¶ 4(b)(iii)(iv).

The registration and use of the www.iam933.net domain name by Respondent is clearly for the purpose of disrupting the business of the Complainant and to attempt to attract Internet users to the respondent’s web site by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation or endorsement of the respondent’s site.

Several prior Panel decisions are instructive on this issue. For example, in *Compagnie de Saint Gobain v. Comm-Union Corp*; Case No. D-2000-0020, the Panel found that the respondent’s use of the domain name www.saint-gobain.net for a criticism website was in bad faith, stating that:

“When registering the Domain Name, Respondent knowingly chose a name which is identical and limited to the trademark of Complainant and which is identical to the domain name registered by Complainant in the .com gTLD...

“Respondent could have chosen a domain name adequately reflecting both the object and independent nature of its site, as evidence today in thousands of domain names.

“By failing to do so, and by knowingly choosing a domain name which solely consists of Complainant’s trademark, Respondent has intentionally created a situation which is at odds with the legal right and obligations of the parties.”

The same conclusion was reached in *The Leonard Cheshire Foundation v. Paul Anthony Darke*; Case No. D2001-0131, referred to above. In that case, the Panel stated that:

“[i]n the Panel’s view the registration and use of an identical or confusingly similar domain name for the purpose of damaging the owner of the trademark to which it is confusingly similar or to which it is identical (and where the domain name does not itself indicate that it signifies parodic or critical purposes) constitutes bad faith within the meaning of the Policy.”

Likewise, in *Government Employees Insurance Company v. Julia Taylor*; Case No. D2001-0742, where the Respondent registered the domain name www.geicodirect.org for the purposes of criticism of the Complainant, who is commonly known as GEICO, and uses the name GEICO DIRECT, the Panel stated that:

“[t]here can be little doubt that Respondent has a right to develop a website whose purpose and intent is to criticize GEICO and its business practices, even when the domain name of the critical website includes a root which is identical to a trademark. See, e.g., *Wal-Mart Stores, Inc. v. wallmartcanadasucks.com*, WIPO Case No. D2000-1104. What Respondent may not do, however, is use a domain name identical to a registered trademark as a home for her campaign of criticism against the trademark owner...The right to express one’s views is not the same as the right to use another’s name to identify one’s self as the source of those views. One may be perfectly free to express his or her views about the quality or characteristics of the reporting of the New York Times or Times Magazine. That does not, however, translate into a right to identify one’s self as the New York Times or Times Magazine.” Citing *Monty and Pat Roberts v. Bill Keith*, WIPO Case No. D2000-0299.

In the present case, there is little question that the Respondent could have chosen any number of domain names which indicate to the viewer the true nature of its website. Instead, it chose to directly copy the Complainant’s trademark in order to dress itself up in the Complainant’s image to lure Internet users to its criticism site. Prior WIPO decisions have consistently held that this is clearly bad faith registration and use of the domain name and should not be countenanced.

VI. Remedies Requested

(Rules, para.3(b)(x))

12. In accordance with Paragraph 4(i) of the Policy, for the reasons described in Section V., above, Complainant requests that the Administrative Panel appointed in this administrative proceeding issue a decision that the iam933.net domain name be transferred to the Complainant.

VII. Administrative Panel

(Rules, para. 3(b)(iv))

13. The Complainant elects to have the dispute decided by a single-member Administrative Panel.

VIII. Mutual Jurisdiction

(Rules, para. 3(b)(xiii))

14. In accordance with Paragraph 3(b)(xiii) of the Rules, the Complainant will submit, with respect to any challenges that may be made by the Respondent to a decision by the Administrative Panel to transfer the domain name that is the subject of this Complaint, to the jurisdiction of the courts at the location of the principal office of the concerned registrar, GODADDY.COM, INC. 14455 N. Hayden Rd. Suite 219 Scottsdale, AZ 85260.

IX. Other Legal Proceedings

(Rules, para. 3(b)(xi))

15. Complainant confirms that it has neither commenced nor terminated any other legal proceedings in connection with the disputed domain name.

X. Communications

(Rules, para. 2(b), 3(b)(xii); Supplemental Rules, paras. 3, 4)

16. A copy of this Complaint, together with the cover sheet as prescribed by the Supplemental Rules, has been transmitted to the Respondent on September 3, 2008, by email to all email addresses listed in Paragraph 7, above and has been sent via courier service to the address listed in Paragraph 7, above.

17. A copy of this Complaint has been transmitted to the concerned registrar on September 3, 2008, by email to all email addresses listed in Paragraph 9, above and has been sent via courier service to the address listed in Paragraph 9, above.

18. This Complaint is submitted to the Center in electronic form (except to the extent not available for exhibits) and in four (4) sets together with the original.

XI. Payment

(Rules, para. 19; Supplemental Rules, Annex D)

19. As required by the Rules and Supplemental Rules, payment in the amount of \$1500.00 (Check No. 92566) was enclosed with the hard copies of the Original Complaint dated September 3, 2008.

XII. Certification

(Rules, para. 3(b)(xiv))

20. The Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain name holder and waives all such claims and remedies against (a) the WIPO Arbitration and Mediation Center and Panelists, except in the case of deliberate wrongdoing; (b) the concerned registrar; (c) the registry administrator; and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees and agents.

21. The Complainant certifies that the information contained in this Complaint is to the best of Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully Submitted,

Date: September 26, 2008

By: _____

Robert J. Kenney
Q. Rick Corrie
BIRCH, STEWART, KOLASCH
& BIRCH, LLP
8110 Gatehouse Road
Suite 100 E
Falls Church, VA 22042
(t) 703.205.8000
(f) 703.205.8050
rjk@bskb.com
qrc@bskb.com

Attorneys for Complainant
International Association of Machinists
& Aerospace Workers

CERTIFICATE OF SERVICE

I certify that on this 26th day of September, 2008, a copy of the foregoing document was sent to the following:

Respondent via first class mail with return receipt requested:

Gary Leatherman
1400 S. Brown Ave.
Tucson, AZ 85710

Registrar via first class mail:

GODADDY.COM, INC.
14455 N. Hayden Rd.
Suite 219
Scottsdale, AZ 85260

Tiffany C. Johnson