

Before the:

NATIONAL ARBITRATION FORUM

Director's Choice, LLP)	
10701 Upland Ave.)	
Lubbock, Texas 79424)	
)	
Complainant,)	Disputed Domain Name:
)	
HELP.org Domain Administrator)	directorschoice.com
HELP.org, LLC)	
PO Box 1860)	NAF Case No. _____
Ocean City, New Jersey 08226)	
)	
Respondent.)	
_____)	

COMPLAINT IN ACCORDANCE WITH THE UNIFORM DOMAIN NAMES DISPUTE RESOLUTION POLICY

I. Introduction

1. The Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (UDRP), provided as Exhibit 1, adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999 and approved by ICANN on October 24, 1999, and the Rules for Uniform Domain Name Dispute Resolution Policy (UDRP Rules), with an effective date of March 1, 2010, and the National Arbitration Forum (FORUM) Supplemental Rules (Supp. Rules). UDRP Rule 3(b)(i). See also Exhibit 1(a).

II. The Parties

A. The Complainant

2. The Complainant in this administrative proceeding is Director's Choice, LLP (hereinafter "Complainant"). Complainant is a Limited Liability Partnership organized in the State of Texas.

3. The Complainant's contact details are as follows:

Name:	Director's Choice, LLP
Address:	10701 Upland Ave. Lubbock, Texas 79424
Telephone:	(806)687-0862
E-mail:	jlocke@directorschoice.travel

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

Representative: Matthew H. Swyers, Esq.
Address: The Trademark Company, PLLC
344 Maple Ave W, PMB 151
Vienna, VA 22180
Telephone: (800) 906-8626 x100
Facsimile: (270) 477-4574
E-mail: mswers@TheTrademarkCompany.com

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

Electronic-only material

Method: e-mail
Address: mswers@TheTrademarkCompany.com
Contact: Matthew H. Swyers

Material including hardcopy

Method: Courier
Address: The Trademark Company, PLLC
344 Maple Ave W, PMB 151
Vienna, VA 22180
Facsimile: (270) 477-4574
Contact: Matthew H. Swyers

B. Respondent

6. According to Whois.com's *Whois* database, the Respondent in this administrative proceeding is HELP.org Domain Administrator, HELP.org, LLC with a principal place of business located at PO Box 1860, Ocean City, New Jersey 08226 (hereinafter "Respondent"). A copy of the printout of the database search conducted on November 17, 2014 is provided as Exhibit 2.
7. All information known to Complainant regarding how to contact the Respondent is as follows:

Registrant: HELP.org Domain Administrator
HELP.org, LLC
Whois Address: PO Box 1860
Ocean City, New Jersey 08226
Whois Telephone: 1-(609)-398-3301
Whois E-Mail: whois1212@HELP.org

III. The Domain Name and Registrar

8. This dispute concerns the Domain Name directorschoice.com (the “**Domain Name**”).
9. The registrar with whom the Domain Name is registered is:

Name: Tu cows Domains Inc.
Registrant Affairs Office
Address: 96 Mowat Avenue
Toronto, Ontario M6K 3M1
Canada
E-Mail(s): domainabuse@tu cows.com
Telephone: 1-(416)-535-0123

IV. Jurisdictional Basis for the Administrative Proceeding

10. This dispute is properly within the scope of the Policy, and the Administrative Panel has jurisdiction to decide the dispute. The Domain Name was registered on March 7, 2000. The Registration Agreement and/or Terms of Service, pursuant to which the Domain Name are registered, incorporate the Policy. A copy of the Registration Agreement and/or Terms of Service is attached as Exhibit 3. The Respondent agreed to be bound by the Policy of the Registration Agreement and/or Terms of Service. Moreover, a copy of the Policy incorporated into the Registration Agreement to which Respondent agreed to be bound is posted on the registrar’s web site. A copy of the Registration Agreement and/or Terms of Service may also be located on its website www.opensrs.com/docs/contracts/exhibita.htm. The incorporated Policy mandates the terms and conditions in connection with a dispute between a registrant and third parties over the registration and use of an Internet domain name registered by a registrant. The Policy specifically requires the Respondent to submit to a mandatory administrative proceeding in the event that a third party asserts that Respondent’s Domain Name infringes on a third party’s trademark or service mark.
11. In addition, in accordance with the aforementioned Paragraph of the Policy, Respondent is required to submit to a mandatory administrative proceeding because:
- (1) The Domain Name is identical or confusingly similar to Complainant’s Marks: DIRECTOR’S CHOICE and DIRECTOR’S CHOICE TOUR & TRAVEL and Design in which Complainant has prior rights;

- (2) The Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (3) The Domain Name was registered and is being used in bad faith.

V. Factual and Legal Grounds

12. This Complaint is based on the following grounds:

A. Service Marks and Rights on which the Complaint is Based.

Complainant has established exclusive rights to the Service Mark: DIRECTOR'S CHOICE (hereinafter "Complainant's Mark") through its continuous and extensive use of Complainant's Mark since at least as early as April 1997 used in connection with Complainant's Services, namely, "arranging travel tours for music organizations; organization of travel," (hereinafter "Complainant's Services").

At its infancy, Complainant's company name was Director's Choice, Inc. and was referred to by Complainant's clientele as Director's Choice, DC Festivals, Director's Choice Tour & Travel, Advantage Tours, DC Advantage Tours, and Choice Music Events. The initial goal of Complainant was to provide performance and travel opportunities with the student/director's educational requirements as a priority. Soon after launching the company in 1997, Complainant received a significant amount of direct input from well-respected band, choir and orchestra directors across the southwest United States, including, but not limited to, Texas, New Mexico, and Arizona. Complainant began hosting contests and assisting with travel needs, totally from the director's perspective, in the spring of 1997. Over the next decade, Complainant worked with thousands of music programs travelling across the continental United States, Hawaii and Europe. During this time, Complainant also offered performance opportunities in Dallas, San Antonio, Houston, South Padre Island, New Orleans, Branson, Durango, Beaver Creek, Los Angeles, San Francisco, Honolulu and Orlando. By the close of the decade, Complainant had become a full service tour operator while producing numerous proprietary concert events. Complainant continues to provide its travel and performance services to music educators, bands, choir groups and other customers across the United States.

On or about July 14, 2014 Complainant filed a Federal Trademark Application to register its Service Mark DIRECTOR'S CHOICE for use in connection with Complainant's Services, namely, arranging travel tours for music organizations; organization of travel in International

Class 39. The application to register the Complainant's Service Mark: DIRECTOR'S CHOICE was assigned Application Serial No. 86/336,351. Complainant's Application for Complainant's Mark claims a date of first use in commerce in April 1997 (*See Exhibit 4*).

Moreover, on or about July 14, 2014 Complainant filed a Federal Trademark Application to register its Service Mark: DIRECTOR'S CHOICE TOUR & TRAVEL and Design (collectively, with Complainant's Mark above referred to as "Complainant's Marks") for use in connection with Complainant's Services, namely, "arranging travel tours for music organizations; organization of travel" ("Complainant's Services") in International Class 39 and claims a date of first use in commerce in April 1997. The application to register the Complainant's Mark DIRECTOR'S CHOICE TOUR & TRAVEL and Design was assigned Application Serial No. 86/336,439. (*See Exhibit 5*)

Furthermore, on or about October 30, 2005 Complainant registered the Domain Name directorschoicetourandtravel.com to market and sell Complainant's Services provided under Complainant's Marks (*see Exhibit 6*). A search of the Internet Archives shows the Complainant's domain name: directorschoicetourandtravel.com in use and bearing Complainant's Marks as early April 2, 2006 (*See Exhibit 7*). As stated hereinabove, Complainant incorporated its business under the company name Director's Choice, Inc. in the State of Texas on or about November 6, 1996. Complainant converted said entity into Director's Choice, LLP in the State of Texas on or about December 17, 2002 (*See Exhibits 8 and 9*). Complainant's use of Complainant's Marks in commerce is further evidenced by the attached business invoice dated January 31, 1998 and dated marketing materials distributed in 1998 (*See Exhibits 10 and 11*).

By virtue of Complainant's prior use of Complainant's Marks as set forth above, Complainant's rights in the marks originated at least as early as April 1997 as verified by the date of first use claimed on its applications. Complainant, through its extensive use of its marks, has developed a widespread reputation and enjoys a high degree of recognition with the general public. Complainant's Marks have acquired considerable distinctiveness due to Complainant's longstanding use of the same, considerable business advertising expenditures and significant annual sales. Based on the foregoing, it is respectfully submitted that Complainant has acquired exclusive rights in Complainant's Marks.

B. The Domain Name is virtually identical to Complainant's Mark.

The Respondent's use of the Domain Name directorschoice.com is confusingly similar to the Complainant's Mark, DIRECTOR'S CHOICE in that the Domain Name consists of the identical terms as Complainant's Mark.

Respondent's registration and/or use of Complainant's mark as a Domain Name creates what the Ninth Circuit has labeled "initial interest confusion." See Brookfield Comm., Inc. v. West Coast Entm't Corp., 174 F.3d 1036, 1062-63. This occurs when Internet users enter the trademark or service mark as the Domain Name expecting to arrive at owner of that trademark or service mark's website. When users arrive at the site, they are often confused, even if only momentarily, by the infringer's website. Thus, when Internet users type in the virtually identical name of Complainant's Service Mark "DIRECTOR'S CHOICE" in any number of the available search engines they cannot help but be confused, if only briefly, by Respondent's misuse of Complainant's mark as indexed by those search engines.

C. The Respondent has no rights or legitimate interest with respect to the Domain Name.

Since as early as April 1997, Complainant has used Complainant's Marks throughout the United States to identify its services. Respondent did not register the Domain Name directorschoice.com until March 7, 2000, (See Exhibit 2) which is nearly three (3) years after Complainant's began using Complainant's Mark in commerce. Under these circumstances Respondent cannot claim or show any rights to the Domain Name that is superior to Complainant's rights in Complainant's Marks as evidenced by Complainant's longstanding and continuous prior use.

Additionally, Respondent has no legitimate interest in the Domain Name. Respondent has not used the Domain Name for a bona fide offering of goods or services, or for a legitimate noncommercial or fair use. Respondent is not commonly known by the domain name: directorschoice.com, and Complainant has not given Respondent permission to use its marks in any way. Additionally, the WHOIS information on file for the domain name at issue does not indicate that Respondent is commonly known by the disputed domain name (see Exhibit 2).

Moreover, Respondent's intention to sell the Domain Name to a third party as evidenced by the offer for purchase posted to the homepage of the domain is further evidence of Respondent's lack of right to or legitimate interest in the Domain Name. (See Exhibits 12 and 13)

The PNC Financial Services Group, Inc. v. BrianThaoms c/o Featured on CNN.com-Over 1.5 Million Hits Daily, NAF Claim No. FA495474 (holding respondent's offer to sell the domain name is evidence that respondent lacks rights and legitimate interests in the domain name); State Farm Mutual Automobile Insurance Company v. Transure Enterprise Ltd c/o Host Master, NAF Claim No. FA1176762 (holding respondent's offer to sell the domain name <statefarmretires.com> is “evidence that [r]espondent lacks all rights and legitimate interests in the disputed domain name pursuant to Policy ¶ 4(a)(ii).”).

D. The Domain Name was registered and used in bad faith

Respondent registered and is using the Domain Name in bad faith. Specifically, Respondent registered the domain name with the intention of selling it to the trademark holder for a profit and/or to the highest bidder. Additionally, Respondent's inactive holding of the disputed domain name for nearly fifteen (15) years constitutes bad faith registration and use under Policy ¶ 4(a)(iii) in and of itself.

Bad faith is found “where the defendant adopted its mark with the intention of capitalizing on plaintiff's goodwill and any confusion between his and the senior user's product.” Lang vs. Retirement Living Publishing Co., 949 F.2d 576, 583 (2d Cir. 1991). As such, Respondent capitalizes on Complainant's goodwill by using Complainant's Mark to lure unsuspecting Internet users to its site when the said users are searching for Complainant's services. Registering a Domain Name with knowledge of another company's rights in the name, and with intention to divert traffic is evidence of bad faith. Digital Spy Limited v. Moniker Privacy Services and Express Corporation, WIPO Case No. D2007-0160.

Redirecting Internet traffic to a Respondent's web page falls within the scope of paragraph 4(b) (iv) of the Policy where by using a Domain Name the respondent intentionally attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's marks as to the source, sponsorship, affiliation, or endorsement of respondent's website. Vodafone Group, Plc v. Phone-Express, WIPO Case No. D2004-0505. *See also* State of Wisconsin v. Pro-Life Domains, Inc., WIPO Case No. D2003-0432 (Using a party's name to redirect Internet users to an unrelated commercial site for profit is recognized under the Policy as evidence of bad faith registration and use. Policy, Paragraph 4(b) (iv)); Waste Management, Inc. v. Recycle Now, Inc., WIPO Case Number D2002-0828 (Use of Complainant's mark to redirect web traffic is a strong indication of bad faith).

E. Free Expression Consideration.

Respondents have, on occasion, asserted First Amendment or other free expression defenses claiming that the use of the plaintiff's trademark is constitutionally protected when used to communicate a non-commercial message. *See generally* Planned Parenthood Fed'n of America, Inc. v. Bucci, 1997 WL 133313 *1440 (S.D.N.Y.) (defendant in Domain Names suit unsuccessfully asserted First Amendment defense). It is true that trademark law does not curtail or prohibit the exercise of the First Amendment right to free speech. However, a respondent's use or uses of the a complainant's mark or marks are entitled to First Amendment protection only when such use is part of a communicative message, not when respondent's marks are used to identify the source of a product or service. Planned Parenthood, 1997 WL at *1440 (S.D.N.Y.); Yankee Publ'g, Inc. v. News Am. Publ'g, Inc., 809 F.Supp. 267, 275 (S.D.N.Y. 1992). By using Complainant's Mark as a Domain Name, Respondent identifies the website as being the product, or forum, of Complainant. Thus Respondent's use of the domain name is not part of a communicative message and is therefore not protected by the First Amendment or other principles of free expression.

F. Summary.

Respondent has knowingly infringed upon Complainant's rights in Complainant's Marks DIRECTOR'S CHOICE and DIRECTOR'S CHOICE TOUR & TRAVEL and Design by registering and using the same as a domain name for the purpose of diverting unsuspecting Internet users from Complainant's website to the website of the Respondent. Respondent deceives Internet users who intend to access Complainant's site into believing that the services offered by Respondent are in some manner associated, sponsored, or affiliated with those related comments offered by the Complainant. Moreover, to the extent that Internet users realize after being redirected by the Domain Name to the website located at directorschoice.com that said website is not affiliated with Complainant, injury in the form of initial interest confusion has already occurred. For these reasons the Domain Name should be transferred to the Complainant.

VI. Remedies Requested

13. In accordance with Paragraph 40(b) of the Policy, for the reasons described in Section V above, the Complainant requests the Administrative Panel appointed in this administrative proceeding issue a decision that directorschoice.com be transferred to Complainant: Director's Choice LLP.

VII. Administrative Panel

14. The Complainant elects to have the dispute decided by a single-member Administrative panel.

VIII. Mutual Jurisdiction

15. In accordance with Paragraph 4(k), the Complainant agrees to submit, only with respect to any challenge that may be made by the Respondent to a decision by the Administrative Panel to transfer or cancel the Domain Name that is subject of this Complaint, to the jurisdiction of the courts where Respondent is located as shown by the address given for the Domain Name holder in Go Daddy's *Whois* database at the time of this submission. That address is: PO BOX 1860, Ocean City, New Jersey 08226.

IX. Other Legal Proceedings

16. No other legal proceedings have been commenced or terminated in connection with or relating to the Domain Name that is the subject of the Complaint.

X. Communications

17. In accordance with Paragraph 3(b)(xii) of the Rules a copy of this Complaint, together with the cover sheet as prescribed by Paragraph 2(b) of the Rules has been sent or transmitted to the Respondent on November 18, 2014 via email.

18. Pursuant to Supp. Rule 4(e)(i) Complainant certifies that a copy of this Complaint has been sent or transmitted to the concerned registrar[s] on November 18, 2014 via email.

XI. Payment

19. As required by the Rules and Supplemental Rules, payment in the amount of \$1,300.00 (United States Dollars) has been made by credit card by and through the National Arbitration Forum's online payment gateway.

XII. Certification

20. The Complainant agrees that its claim 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 dispute-resolution provider and panelists, except in the case of deliberate wrongdoing (b) the concerned registrar, (c) the registry administrator, (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 the 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,

By: /Matthew H. Swyers/

Matthew H. Swyers, Esq.
The Trademark Company, PLLC
344 Maple Avenue West Ste. 151
Vienna, VA 22180
(800) 906-8626 x100
mswyers@TheTrademarkCompany.com