Before the:

WORLD INTELLECTUAL PROPERTY ORGANIZATION
ARBITRATION AND MEDIATION CENTER

G.W.H.C. – SERVICOS ONLINE, LTDA
and
E-COMMERCE MEDIA GROUP
INFORMACAO E TECNOLOGIA, LTDA
Av. Paulista 287, 16 Andar –
Sao Paulo/SP – Brazil 01311-000

(Complainant)

SAVEME.COM

V.

EREALESTATE.COM
Box 810276
Boca Raton, FL 33487

(Respondent)

Case No.: D 2012-0498

RESPONSE IN ACCORDANCE WITH THE
UNIFORM DOMAIN NAME DISPUTE RESOLUTION
POLICY
I. Introduction

[1.] This Response is hereby submitted for decision in accordance with the Uniform Policy for Domain Name Dispute Resolution, adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999 (the Policy), the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN on October 24, 1999 (the Rules) and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the Supplemental Rules).

II. The Parties

A. The Respondent

[2.1] The Respondent in this administrative proceeding is EREALESTATE.COM

[2.2] The Respondent’s contact details are as follows:

Address: Box 810276
Boca Raton, FL 33487
Telephone: 561-206-2201
[2.3] The Respondent’s authorized representative in this administrative proceeding is:

Howard M. Neu, Esquire
Law Office of Howard M. Neu, P.A.
4839 S.W. Volunteer Road
Suite 512
Southwest Ranches, Florida 33330
Telephone: (954) 662-1816
Fax: (954) 337-2324
E-mail: howard@neulaw.com

[2.4] The Respondent’s preferred method of communications directed to the Respondent in the administrative proceeding is as follows:

Electronic-only material

   Method: e-mail
   Address: howard@neulaw.com
   Contact: Howard M. Neu

Material including hardcopy
III. **Other Legal Proceedings**

[3.1] Respondent knows of no other legal proceedings that have commenced or terminated in connection with or relating to the domain name that is subject to this response.

IV. **Factual and Legal Grounds in Opposition to Complaint**

[4.1] Respondent ERealestate.com is a Florida entity and is in the business of buying internet domains and developing them into active web sites. eRealestate.com is not in the business of selling domains. eRealestate.com is in the business of buying domains via hand registrations and via 3rd
parties on the aftermarket. Due to time and financial constraints, only a certain number of domains can be developed at any one time, so they are generally parked at reputable large monetizing companies, many of which are publicly owned, to obtain revenues while waiting to be developed. The purchase of Property.com for $750,000 around 2005 is now a full blown site and earns income and is growing. eRealesate.com has also repeated these creative deals with PunchBowl.com, Luv.com, eCruise.com, and is simply going to repeat the process many times.

The subject domain name, Saveme.com, was registered by Respondent on August 22, 1996. Thereafter, it has been used as a redirect to Respondent’s web site in 2000 (EXHIBIT A-1), and 2001 (EXHIBIT A-2), a redirect to Respondent’s Ubid.com web site in 2002 (EXHIBIT A-3), a redirect to Respondent’s web site in 2003 (EXHIBIT A-4), a redirect to Fabulous.com parking page in 2004 (EXHIBIT A-5), to Respondent’s landing page in 2005 (EXHIBIT A-6), 2006 (EXHIBIT A-7), to a parked page in 2007 (EXHIBIT A-8), to a
redirect to RicksBlog.com in 2012 to date (EXHIBIT A-9).

erealesate.com did not initiate the conversation regarding SaveMe.com. In fact, the Respondent was quite disinterested in the Complainant’s offers to purchase the domain name, to the point of not even answering their last offer of $50,000. That is not what somebody looking to sell a domain would be doing.

Complainant claims in paragraph [13] [i] of its Complaint that it has a trademark for “SAVEME”, but produces no evidence of such a trademark and, in fact, has none.

V. LEGAL ARGUMENT

[5.1] Complainant is unable to exhibit evidence of “bad faith” registration and use under the policy, paragraph 4(b)(i).

[5.2] Complainant is required pursuant to paragraph 4(a) of the Uniform Domain Name Dispute Resolution Policy to prove each of the following three (3) elements

1. That the domain is identical or confusingly similar to a trademark or service mark in which Complainant has rights.
2. That the domain holder has no “rights or legitimate interest in respect to the domain name” and
3. That the domain “has been registered and is being used in bad faith”.

[5.3] It is difficult to know where to begin to respond to the Complainant’s improbable and improper claims that have required Respondent to expend funds to defend. The Complainant has no Trademark; while the Respondent registered the domain name SaveMe.com in 1996, which could not have been in “Bad Faith” pursuant to the Rules, the Complainant did not even exist until 2010 and registered the domain name SaveMe.com.br in 2010 and is attempting to use the UDRP Process to hijack the bigger and better domain name SaveMe.com on the spurious pretext of “unlawful and exploitive actions” of the Respondent. It is really a shame that the UDRP Reverse Hijacking Rules do not have more serious consequences for those, such as counsel for the Complainant, who know that they have no UDRP Action, but
bring it anyway on the hopes of stealing a domain name from the rightful owner. In fact, the Complainant KNEW that it was guilty of Reverse Domain Hijacking as stated in its paragraph [14].

[5.3] In the recent NAF case of Charon International Trading Limited v. Planet on Demand.com / Web Master Claim Number: FA1202001428769, the panel reasoned:

“Complainant’s trademark rights in its SNUGG mark date back to May 17, 2011. Respondent’s registration of the disputed domain name on September 14, 1999, predates Complainant’s rights in the SNUGG mark by over 11 years. There is no evidence presented that Complainant existed when the domain name was registered. Therefore, the Panel finds that Respondent did not register the disputed domain name in bad faith under Policy ¶ 4(a)(iii). See Telecom Italia S.p.A. v. NetGears LLC, FA 944807 (Nat. Arb. Forum May 16, 2007) (determining the respondent could not have registered or used the disputed domain name in bad faith where the respondent registered the disputed domain name before the complainant began using the mark); see also Aspen Grove, Inc. v. Aspen Grove, D2001-0798 (WIPO
Complainant has the burden of proof in order to make a *Prima Facie* case against Respondent, which the complainant has failed to do. Assuming arguendo that the Complainant has a Common Law Trademark that has somehow developed a secondary meaning, the Complainant must still show that the Respondent registered the domain in Bad Faith and has used the domain in Bad Faith for 16 years; that the Respondent knows or should know about the existence of this so-called Common Law Trademark in Brazil in order to USE the domain name in Bad Faith. This stretches credulity beyond belief.

Complainant alleges that parking a domain name with a major monetizing company is tantamount to cybersquatting. Though presumably educated at the WIPO Academy, counsel for Complainant has apparently not read a
myriad of cases decided by WIPO Panels holding that parking a domain name at a monetizing company is a *Bona fide* business use. In the May 3, 2010, National Arbitration Forum Decision of **CNRV, Inc. v. Vertical Axis, Inc.** FA0912001300901, the panel found:

“that Complainant has established a prima facie case but that Respondent has demonstrated a legitimate interest in the Domain Name on the basis that, although numerous panels have noted the lack of societal benefit offered by pay-per-click (“PPC”) landing pages of the type offered by Respondent, see, e.g., **mVisible Techs., Inc. v. Navigation Catalyst Systs., Inc.**, D2007-1141 (WIPO Nov. 30, 2007), panels also have recognized that domain names that are descriptive and are used solely in connection with PPC advertising keyed to the descriptive meaning of the domain name can constitute a legitimate interest for purposes of the policy. Cf. **Ustream.TV, Inc. v. Vertical Axis, Inc.**, D2008-0598 (WIPO July 29, 2008).

Here, “save” and “me” are dictionary words with a common meaning, and Respondent’s PPC landing page did appear to have advertising that is related to that dictionary meaning. Accordingly, use of the Domain Name in connection with this
PPC landing page gives rise to a legitimate interest under the Policy. See **Landmark Group v. DigiMedia.com, L.P., FA 285459** (Nat. Arb. Forum Aug. 6, 2004) (legitimate interest “[if] the domain names have been registered because of their attraction as dictionary words, and not because of their value as trademarks”); see also **Nat’l Trust for Historic Pres. v. Preston**, D2005-0424 (WIPO Aug. 10, 2005).

[5.6] Complainant either ingenuously or more likely, knowingly, states at paragraph [29] “It is undeniable the confusion caused by Respondent’s domain to complainant’s customers, since the disputed domain is a simple typographic error to complainant’s domains.” We are not sure how to respond to this ridiculous statement as it is so outrageous as to defy response. 15 years after Respondent registered **SaveMe.com**, Complainant registered **SaveMe.com.br**, using the country code TLD to divert traffic from Respondent’s domain. How can that possibly be a typographic error by either party?

[5.7] None of the allegations contained in
paragraphs [33-36] are properly made to this tribunal, are prejudicial and not in accordance with the UDRP Rules or the WIPO Supplemental Rules.

[5.8] Normally, a complainant will allege that the Respondent’s domain name is confusingly similar to Complainant’s Trademark. But, seeing that the Complainant doesn’t have a trademark, either registered or common law, it alleges confusion in paragraphs [37-41] with its ccTLD. This is certainly a novel approach, but one that is not within the rules. It is logical that if the Complainant is going to advertise products from “Save Me”, that customers of those products will naturally go to SaveMe.com, and not SaveMe.com.br, especially if the user is not in Brazil. Thus, the confusion is intentionally generated by the Complainant in order to trade upon Respondent’s domain name.

[5.9] The only “bad faith” that can be absolutely proven in this case is that of the Complainant. At the time that Complainant registered SaveMe.com.br, it did so in bad faith, knowing that Respondent had been using SaveMe.com in
one way or another for over 15 years; had developed substantial traffic to the site; and Complainant wanted to steal that traffic for its own use, just like it now wants to steal the domain name for its own use.

[5.10] Complainant wrongfully alleges that the Respondent is acting in Bad Faith if the domain name is subsequently used to trade on the goodwill of the mark holder. Even if the Complainant had a mark (which it does not), a quick review of Complainant’s web site (EXHIBIT B) will show that there is absolutely no similarity whatsoever with Respondent’s web site and that Respondent does not sell any goods or services that could in any stretch of the imagination be considered trading on the Complainant’s goodwill.

[5.11] Complainant makes a number of libelous statements concerning alleged unethical and illegal conduct of Mr. Rick Schwartz, who is not a party to this action, but is a principal in Respondent corporation. None of these allegations are proper in a UDRP Action and will not be responded to here. Suffice it to say that a separate libel
action against the complainant is being seriously considered.

[5.12] A definitive discussion and ruling on what comprises Reverse Domain Hijacking was provided by the panel in Prime Pictures LLC v. DigiMedia.com L.P., Case No. D2010-1877.

“Reverse Domain Name Hijacking is defined in paragraph 1 of the Rules as “using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name.”

The application of that definition has been discussed in a number of cases. In Ville de Paris v. Salient Properties LLC, WIPO Case No. D2009-1279, the Panel observed:

“In Jazeera Space Channel TV Station v. AJ Publishing aka Aljazeera Publishing, WIPO Case No. D2005-0309, the majority of the three-member panel noted that the onus of proving that a complainant has acted in bad faith is on the Respondent, and that mere lack of success of the complaint is not of itself sufficient to constitute reverse domain name hijacking. The majority in Al Jazeera went on to note that:

‘Allegations of reverse domain name hijacking have been upheld in circumstances where a respondent’s use of a domain name could not, under any fair interpretation of the facts, have constituted bad faith, and where a reasonable investigation would have revealed the weaknesses in any potential complaint under the Policy (see Goldline International, Inc v. Gold Line, WIPO Case No. D2000-1151).
See also Deutsche Welle v. DiamondWare Limited, WIPO Case No. D2000-1202, where an allegation of reverse domain name hijacking was upheld in circumstances where the complainant knew that the respondent used the at-issue domain name as part of a *bona fide* business, and where the registration date of the at-issue domain name preceded the dates of the complainant’s relevant trademark registrations.

The three-member panel in Yell Limited v. Ultimate Search, WIPO Case No. D2005-0091 noted that whether a complainant should have appreciated at the outset that its complaint could not succeed, will often be an important consideration.””

This Panel considers that these observations accurately reflect the purpose of paragraph 15(e) of the Rules and the intention of those who framed and adopted the Rules in including this provision.

In the present case, the Complaint correctly identified that the Domain Name was registered in 1998. Given that the earliest date of any registration or use of the mark relied upon in the Complaint was in 2005, the registration of the Domain Name could not have been in bad faith on any interpretation of the facts and cases cited in the Complaint.

The Complainant is represented in this proceeding by legal counsel who has evidently examined the UDRP and a number of cases decided under it, which are cited in the Complaint. Any reasonable investigation would have revealed that there
was a fundamental weakness in the Complainant’s case, in that there was no basis in the Complaint and cases cited therein for alleging that the Domain Name was registered in bad faith. (See by contrast, the observations of the three-member panel in *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. D2010-0470.

The point is also made very clearly in paragraph 3.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions that “Normally speaking, when a domain name is registered before a trademark right is established, the registration of the domain name was not in bad faith because the registrant could not have contemplated the complainant’s non-existent right.” Furthermore, on this point the UDRP reflects a widely applied principle of trademark and other laws, that priority generally prevails.

In the light of these observations, the Panel considers it unlikely that this deficiency was overlooked by the Complainant’s counsel and more probable that it was deliberately ignored in framing the Complaint. In all the circumstances, the Panel finds that the Complaint was brought in bad faith, in an attempt at Reverse Domain Name Hijacking.”

The facts in this case are almost identical. Here, the attorney for the Complainant knew that the domain could not have been registered in bad faith, that the Complainant has
no trademark, that no proof of common law trademark has been presented that would give rise to secondary meaning, and that because the Complainant’s offer to purchase the domain name for $50,000.00 was rejected by the Respondent, Complainant decided that it would try to get the domain name at a substantially lower cost by filing this UDRP Action. This is a classic case of Reverse Domain Hijacking.

**VI. Remedies Requested**

[6.1] Respondent respectfully requests that the complaint be dismissed forthwith and that the Complainant be found guilty of flagrant Reverse Domain Hijacking.

**VII. Administrative Panel**

[7.1] As the Complainant elected to have the dispute decided by a three member Administrative Panel.

Respondent submits the following names for panelist:

Hon. Neil Brown  
Owen Dixon Chambers|C/o Clerk Green  
Melbourne, VIC  
Richard Lyon
VIII. Communications

[8.1] Pursuant to paragraph 2(b) of the Rules, a copy of this response has been e-mailed to the Complainants at rccruz@buscapecompany.com and to Complainant’s counsel at mmchaves@almeidalaw.com.br.

IX. Certification

[10.1] Respondent certifies that the information contained in this response is to the best of Respondent’s 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 and reasonable argument.

Respectfully submitted,
Howard Neu, Esquire
Florida Bar No. 108689
Attorney for the Respondent
4839 S.W. Volunteer Road
Southwest Ranches, Florida 33330
(954) 662-1816

Date: April 23, 2012

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EXHIBIT A
eRealEstate.com is the home for over 3000 GREAT Domains! We have been BUYING effective and profitable domain names since 1995!
Our domains resolve here until the individual sites are built. We are becoming the LARGEST developer on the Web! Watch us grow!

Home of the

"Authority" for targeted traffic and domains on the Internet.
"The value of a hit is directly proportionate to the product or service you are selling"

What is the value of a hit if that hit produces a $20 million sale?

I bought my first domain in 1995 and it took until 1999 for my critics to stop laughing. Getting a good .com address was a unique opportunity in time.
I recognized that unique opportunity, acted on it and became passionate about putting a collection of domains together that remains unrivaled.
Welcome to eRealEstate.com: home of the Domain King and over 3300 domains in development!

Are you ready to hear a great internet success story? A story that is surprising if not stunning? A story that when you read it will expose you to a side of the net you never even knew existed? We are the largest developer on the net! Our sites already get over 50,000,000 annual UNIQUE visitors! Come on inside and I'll tell you why we have the most profitable projects on the net.

Have a GREAT domain to sell? email me here. We are the #1 buyer of domains in the world! Only Domains of interest will be responded to within 24 hours. All are CASH offers!

This month's erealestate.com purchases: Properties.com $58,275, Men.net $10,000, DirtyJokes.com (undisclosed)

Enter eRealEstate.com here and read the story!

Before entering eRealEstate.com, check out some of our developed sites!!
Looking for the Ubid.com Auction? Click Below
Head to head bidding wars. Go now

Try searching these popular categories.

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A-3
eRealEstate.com is the home of over 4000 GREAT Domains!
BUYING and developing electronic real estate since 1995.
The net's first site devoted to domains and their development.
Keep in mind most words here were written in 1996-1999!
We didn't get it all right.....but not a bad showing. We are likely the most efficient and profitable entity on the net.
Save Me

Associated Offers

- Garden Of The Gods Illinois
- Zeus Statue
- Goddess Statue
- About Ancient Greece
- Greek Roman
- Goddess Bra
- Ancient Art
- Greek Mythology Hera
- The Alphabet Versus The Goddess
- Roman Bust
- Area
- Athena Home Theater
- Greek Temple
EXHIBIT B