

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**) approved by ICANN on October 30, 2009, 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 submit a Response to the Complaint until you have been formally Notified of the Complaint and Commencement of Administrative Proceedings by the Center. 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, including annexes, to you by e-mail as well as sending you hardcopy Written Notice by post and/or facsimile, as the case may be. You will then have 20 calendar days from the date of Commencement 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.icann.org/en/dndr/udrp/policy.htm>
- The **Rules** can be found at <http://www.icann.org/en/dndr/udrp/uniform-rules.htm>

- 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/supplemental/eudrp/>
- 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 an alternate e-mail address to which you would like (a) the Complaint, including Annexes 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 Rules.

Before the:

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

*G.W.H.C. – SERVIÇOS ONLINE
LTDA.*

AND

E-COMMERCE MEDIA GROUP
INFORMACAO E TECNOLOGIA
LTDA.

*AV. PAULISTA 287, 16º ANDAR –
SÃO PAULO/SP - BRAZIL*

01311-000

-v-

*EREAALSTATE.COM, BOX 810276,
DOMAIN LEASING DIVISION – BOCA
RATON/FL - USA*

Disputed Domain Name(s):

www.saveme.com

COMPLAINT

I. INTRODUCTION

[1.] This 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 30, 2009, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**).

II. THE PARTIES

A. THE COMPLAINANTS

[2.] The Complainants in this administrative proceeding are G.W.H.C. – Serviços Online Ltda. and E-Commerce Media Group Informação e Tecnologia Ltda.

[3.] The Complainants' contact details are:

Address: Av. Paulista 287, 16º Andar – São Paulo/SP – Brasil
Telephone: +55 (11) 3848-8700
Fax: +55 (11) 3848-8700
E-mail: rccruz@buscapecompany.com

[4.] The Complainants' authorized representative in this administrative proceeding is:

Marcio Mello Chaves (Annex III)

[5.] The Complainants' preferred method of communications directed to the Complainants' in this administrative proceeding is:

Electronic-only material

Method: e-mail
Address: mmchaves@almeidalaw.com.br
Contact: Marcio Mello Chaves
Address: Av. Brigadeiro Faria Lima, 16º Andar Torre Sul
São Paulo/SP - Brasil
Telephone: +55 (11) 2714-6900
Fax: +55 (11) 2714-6901

B. THE RESPONDENT

[6.] According to registrar DirectNIC database, the Respondent in this administrative proceeding is eRealState.com. Copies of the printout of the database search conducted on February 28, 2012 are provided as Annex I.

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

eRealEstate.com
Address: Box 810276
Domain Leasing Division
Telephone: +1 (561) 206-2201
Fax: +1 (561) 206-2201
E-mail: Mr800king@aol.com

Administrative Contact: Schwartz, Rick
Address: Box 810276 Boca Raton, FL 33481
Domain Leasing Division
Telephone: +1 (561) 206-2201
Fax: +1 (561) 206-2201
E-mail: domainking@gmail.com

III. THE DOMAIN NAME AND REGISTRAR

[8.] This dispute concerns the domain name(s) identified below:

www.saveme.com, registered in 08.22.1996

[9.] The registrar with which the domain name is registered is:

DirectNIC

Address:	DNC Holdings, Inc. 3500 N. Causeway Blvd. Suite 160 Metairie, LA 70002
Telephone:	+1 (877) 856-9598
Fax:	+1 (888) 564-7373
E-mail:	legal@directnic.com

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 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 II to this Complaint.

V. FACTS AND LEGAL GROUNDS

[11.] This is the Amended Complaint in reply to the communication sent on March 19, 2012 and serves to suppress the appointed deficiencies as well as to supply this Center and the Panel with additional factual grounds and evidence to the case occurred after filing the present Complaint.

[12.] As the panel will find within this Complaint, **this is not a typical case of cybersquatting.** It involves a more complex situation, yet foreseen on the UDRP Policy as subject to Complaint and accepted in this Center's growing jurisprudence, **where the Respondent is intentionally attracting, for commercial gain, self-exposure and unlawful actions Internet users to his website and other on-line locations, by using the confusion created with Complainants' brand, domains and businesses,** hiding these actions as "legitimate" uses.

[13.] It is clear to the Complainants, as it will be to this Panel after the analysis of this case, that **the Complainants have legitimate rights to have the domain subject to this Complaint canceled** because:

- (i) **The domain name www.saveme.com is identical to the Complainants' trademark "SAVEME"** and a nearly identical typographic error to its popular portals saveme.com.br, registered and operating in Brazil and on other markets such as Argentina (saveme.ar), Colombia (saveme.co), Peru (saveme.pe), Chile (saveme.cl), Mexico (saveme.mx) and Venezuela (saveme.ve);
- (ii) **The domain has been used for many years as a parking page** and never for actually hosting a website, or using it in connection with a *bona fide* offering of goods or services, nor has ever been commonly known by the domain name or even making a legitimate non-commercial or fair use of the domain name;
- (iii) After Complainants' SAVEME Portal success, **the domain has been used to: direct internet users to a pornographic content website** causing undeniable damages to Complainants' image before its customers; **to a self-promoting website for the Respondent; to speculate the aftermarket value of the domain due to SAVE ME success and to pass as the Complainant itself displaying similar content, clearly showing his bad faith;**
- (iv) Respondent's bad faith in the **use of the domain name intentionally attempted to attract, for commercial gain, self-exposure and unlawful activities, Internet users to his web site or other on-line location due to the likelihood of confusion with the complainants' mark** is clearly defined in Article 4 (b)(iv)

as **evidence of the bad faith for the purposes of Paragraph 4(a)(iii) requirement.**

- (v) **Respondent's actions and uses given to the domain have violated Policy's Paragraph 2 (d) warranty given at the time of registration and renewal by knowingly using the domain name in violation of applicable laws, regulations and, by breaching such warranty, use in bad faith renders the registration in bad faith;**
- (vi) At last, the **Respondent has engaged in several reparable actions after being notified of this Complaint by posting and uploading unlawful (including unauthorized use of pictures), harmful, threatening, abusive, harassing, defamatory, slanderous, vulgar, obscene, libelous, invasive comments about the Complainants' and Complainants' Representative, serving only to demonstrate his bad faith and total disrespect towards the Parties, this procedure and the Arbitration Center itself.**

[14.] It is important to stress that **Complainants' sole interest in this procedure is to avoid having their customers misled to Respondent's websites due to the similarity of the domain names and being subject to Respondent's own will and undeniable unlawful and exploitive actions.** The uses given to the domain subject to this Complaint are damaging the brand's identity and bringing illegal profit to the Respondent and urging for the domain cancellation. Furthermore, eventual reverse domain hijacking allegations as anticipated by the Respondent must not be found due to the request for domain cancellation.

[15.] Those previously identified requirements displayed on item 4a(i), 4a(ii) and 4a(iii) of the ICANN Uniform Domain Name Dispute Resolution Policy are further explained in depth on the following terms, introduced by a brief background on the facts of this case and a description of recent relevant actions performed by the Respondent.

V.I. COMPLAINANTS' ACTIVITIES

- [16.] SAVE ME is one of the Complainants' (commonly known in Brazil for its most famous services "BuscaPé") many services that gathers in just one place advertisements from daily deals (also known as group or collective buying services) such as Groupon, Peixe Urbano, ClickOn, *et cetera*, from various countries it acts. As the name itself suggests, company's aim is to save its users money, efficiency and time, conducting searches and displaying daily offers from several collective buying services at once.
- [17.] Acting in several Latin American countries such as Argentina, Peru, Colombia, Venezuela and Mexico, SAVE ME has already wide prestige among Brazilian users where it has hundreds of thousands accesses monthly. The large acceptance is no different than other Buscapé Company's websites: it is one of the biggest e-commerce corporations in Latin America and is present in more than 20 countries worldwide, including USA, Spain, Argentina and Mexico, receiving over 20,000,000 visits and 5 million pageviews every month.
- [18.] Since the beginning of its activities in mid 2010, SAVE ME has been gaining a growing number of users, motivated by the pioneering and the exclusivity of the offered services, as well as by the spread of daily offers services. According to recent online statistics services Alexa.com, SAVE ME is already the 103rd most popular by website amongst Brazilian internet users (Annex IV).
- [19.] In addition to the ownership of the domain in the ".br" ccTLD, the Complainant has also several domains of the same SLD name in other ccTLD: www.saveme.ar, www.saveme.co, www.saveme.pe, www.saveme.cl, www.saveme.mx and www.saveme.ve (Annex III). The registration of these domains shows the reach of the Complainant's services, which are present in several Latin American countries.
- [20.] Besides the abovementioned domain names, the Complainants have also applied for the "SAVE ME" trademark registration on classes 35, 38 and 42 of the Nice Agreement (Annex VI). Since the application, trademark laws worldwide, such as Brazilian Law 9279/96¹, give owners the right to protect a trademark's reputation.

1 Article 130. To the trademark owner or to the depositor is also guaranteed the right to:
(...)
III – ensure its material integrity or reputation.

- [21.] Despite not being granted due to Brazil Trademark Office's enormous backlog in analyzing trademark applications, Complainants' mark's notoriety reaches not only Brazil but also several Latin American countries and evidences its use throughout Latin America.
- [22.] On this regard, this Arbitration Center has decided in several cases that the lack of registration is not an obstacle to granting the transfer of domains. As it has been previously decided on case D2004-0322²:

*Complainant has not registered the name THE IDEA LEAGUE as a trademark, therefore the questions arise as to (i) **whether the Policy applies to unregistered trademarks** and (ii) whether the mark at issue has acquired sufficient distinctiveness through use and promotion to identify the source of this particular service with Complainant.*

*With regard to the first question, it is undisputed and accepted practice, that paragraph 4(a)(i) of the Policy refers merely to a "trademark or service mark" in which the complainant has rights, and does not expressly limit the application of the Policy to a registered trademark or service mark. Further, the WIPO Final Report on the Internet Domain Name Process (The Management of Internet Names and Address: Intellectual Property Issues, April 1999), from which the Policy is derived, **does not distinguish between registered and unregistered trademarks and service marks in the context of abusive registration of domain names. It is therefore open to conclude that the Policy is applicable to unregistered trademarks and service marks.***

Therefore, in the Panel's view, the fact that in this case Complainant has no registered trademark or service mark for THE IDEA LEAGUE does not preclude a finding that it has established trademark or service mark rights in that name for the purpose of the Rules. Indeed, a fundamental principle of trademark law is that

2 Imperial College v. Christophe Dessimoz.

rights in a trademark can be acquired through use, and such rights exist even though the trademark may not be registered.

*With regard to the second question (whether Complainant has common law trademark rights in the name THE IDEA LEAGUE), the Panel notices that common law trademark and service mark rights exist when a party proves that **there is enough goodwill and reputation in and to a name and sufficient association of the same with the party itself**, no matter how strong or weak those trademark and service mark rights may be.*

[23.] Complainants' multinational notoriety and actions taken towards protecting its trademark assure its rights as widely recognized and accepted by this Center. The objective to this proceeding is no other than to protect the companies' most important assets: (i) their domains, to avoid misled customers to other websites; and (ii) their brand's reputation from the abusive misdirection of Complainants' customers to pornographic content websites and useless pay-per-click parking pages. Both activities have been and are being conducted by the Respondent as we will see in further details.

V.II. RESPONDENT'S ACTIVITIES

[24.] As admitted at its own website (Annex VII) eRealState.com has more than 6,000 Internet domains. Respondent's supposed activities are "*the purchase and the "electronic real estate development"*" of its domains.

[25.] The eRealState company **is just one of the several enterprises through which the Respondent uses to hide himself from his activities and mostly, from legitimate brand owners harassed by his cybersquatting activities**. Respondent uses many of its domains, including the one subject to this Complaint, for pay-per-click domain parking (Annex VIII) to profit from diverted consumers and to sell domain addresses for exorbitant prices to legit trademark and business owners struggling to recover their brand's identities online.

[26.] Respondent's repressive conduct was subject to several Complaints, especially with the famous "sucks" cases and has already been ruled against by this Center due to his activities with domain containing trademark names leading to pornographic material. This reprehensible conduct and recognized cybersquatting activities were also strongly stressed on Case No. D2001-0213 where it was stated:

*Mr Schwartz has received publicity as a result of the large number of domain names that he has acquired and sold. **According to an article in The Business Journal, more than half of the domain names owned by Mr. Schwartz are "dirty".** They include such generic names as <dick.com>, <orgy.com>, <porno.com>, <ass.com> and <horny.com>. Mr. Schwartz has also a group of domain names incorporating famous trademarks with the word "SUCKS" appended to them. These include, for example, <cbs-sucks.com>, <bellatlantic-sucks.com>, <gm-sucks.com>, <mci-sucks.com>, <motel6sucks.com> and <nbcsportsucks.com>. (...) Clicking through to these sites, the viewer sees very explicit pornographic pictures (...) **The Panel has no difficulty in finding bad faith registration and use. Respondent has shown a cynical pattern of dealing in domain names with apparent attempt to embarrass the owners of internationally known marks. The fact that Internet users are diverted to the Respondent's sites is evidence of bad faith. That would be so even if the sites were non-pornographic.***

[27.] As we will see below, Respondent's background lucrative activities widely recognized as inappropriate as mentioned above, have caused and have been causing serious damages to Complainants' business and their customers who are misled to websites other than the one they are really looking for. Furthermore, his recent unlawful actions against the Complainants' and Representatives after receiving notice of this Complaint are even more reprehensible, as we will see in details on item V.IV below.

V.III. CONFUSION CREATED BY THE DISPUTED DOMAIN, RESULTANT RESPONDENT'S PROFITS AND DAMAGES CAUSED TO THE COMPLAINANTS

- [28.] Along with the widely known fame the Respondent has in the Domain Name business, **this case surely shows his real intentions towards all domain names he registered.** The best use given to the saveme.com domain since its registration in 1996 has been for pay-per-click parking pages, demonstrating his lack of interest in the exploration of the name "SAVEME" for the past 16 years.
- [29.] It is undeniable the confusion caused by Respondent's domain to Complainants' customers, since the disputed domain is a simple typographic error to Complainants' domains. As we can see in recent online statistics presented on Annex IX, 100% of the *saveme.com* visitors go to the Complainant's real website after realizing the confusion made.
- [30.] Of course the Respondent is quite satisfied with the confusion created. After all, the proposes of the disputed domain have been mostly (i) to generate profit from mislead consumers through pay-per-click ads and (ii) to profit from the domain sale for an enormous amount after knowing of the Complainant's success
- [31.] At last, due to the Complainants' known success, other uses given by the Respondent have also affected negatively and directly Complainants activities. Mislead SAVE ME customers browsing for its daily offers search services ended up being driven to a pornographic website, causing undeniable damages to the company's image with the bad-publicity generated through social media networks such as Twitter (Annex V). His damaging actions did not stop there as he started performing several unlawful acts towards the Complainants and the Complainants' Representatives, as explained on items V.IV and V.A. bellow

V.IV. RESPONDENT'S UNLAWFUL ACTIONS TOWARDS THE COMPLAINANTS AND REPRESENTATIVES

- [32.] Besides acting in absolute bad faith by using the domain name to benefit from diverted SAVE ME customers to pornographic websites and passing off pay-per-click parking pages, **Responded has engaged in several unlawful and reparable actions**

(Annex XI) after being notified of this Complaint in a clear and publicly admitted attempt to force case withdrawal.

- [33.] Acting with the despicable manner through which he is widely known in cyberspace as well as by this Center, just after receiving the notification of the Complaint filed Respondent started posting and uploading unlawful, harmful, threatening, abusive, harassing, defamatory, slanderous, vulgar, obscene, libelous, invasive comments about the Complainants' and Complainants' Representatives, including unauthorized use of SAVE ME's partner and founder's and Representative's pictures which clearly violates copyrights to such images (Annex XI).
- [34.] **Respondent has even had the audacity to resolve several pornographic domains to Complainants' Representative's law firm website, publicly admitting it in his own blog** (Annex XI) by stating: *"Let the fun begin. I am forwarding some very special domain names to this guys linkedin page within a few hours. Let the world know what a legal "Whore" looks like."* Respondent's actions on this regard have been resulting in massive accesses to Complainants' Representatives' servers, damaging their images and activities.
- [35.] Such conduct **serves only to demonstrate his bad faith and total disrespect towards this Center and the present procedure and his sense of impunity.** Nevertheless, the Complainants' rest in the good-judgment of this Panel to prevent similar cases from happening not only by the Respondent, but by bad faith domainers all around the world.
- [36.] After giving this introduction to the case and reporting the illegal activities conducted by the Respondent, this Complaint will proceed with the analysis of the UDRP requirements which it is based on and urges this Panel determines the domain cancellation.

A. CUSTOMER (INTERNET USERS) CONFUSION BETWEEN DOMAIN NAMES

- [37.] The confusion between the domains owned by the Complainant and the domain subject to this procedure is obvious since they have the same SLD (Second-Level

Domain) name, differentiated only by the ccTLD (Country-Level Domain). Complainants' brand SAVE ME is registered in several ccTLD and is identical to Respondent's domain subject to this Complaint.

[38.] The internet user mislead in this common case of mistype is even more evident as we analyze the origin of the Respondent domain's visits, originated mostly from Brazil. This fact was **also publicly accepted by the Respondent on his weblog when posting the illegal content exposed on item V.IV above.**

[39.] Just two weeks after a series of marketing initiatives promoted by the Complainant in Latin America, it was possible to see a considerable leap in saveme.com's ranking position at the Alexa.com statistics. **According to statistics site Alexa.com, from the time the SAVE ME services started (Annex IX) almost 43% of visits originated from Brazil,** where the Complainant's domain has immense prestige amongst internet users due to its highly known services and **a market completely strange to the Respondent as admitted by himself on his blog (Annex XI).** Recently, that number has almost doubled, reaching 81.4% of Brazilian visitors who have absolutely no knowledge of the Respondent or his business whatsoever.

[40.] The domain that once was not among the millionth most visited sites in the world currently holds the position 539,969 of the global ranking. In Brazil, the increase is even higher, jumping from 40,905 to 13,905, clearly demonstrating the benefit achieved by the Respondent from the actions promoted by the Complainant.

[41.] Moreover, as previously mentioned and found on Annex IX, **all accesses (100%) to the disputed domain (downstream) went to SAVE ME's real website after realizing the mistake they have made.** The confusion between the Respondent's domain and the Complainants' brand and other domains are, therefore, undeniable.

B. ABSENCE OF RIGHTS AND LEGITIMATE INTERESTS BY THE RESPONDENT

[42.] It is clear that the Respondent does not have any right or legitimate interest in relation to the domain name subject of this Complaint since any products or services nearly

related to SAVE ME are being or have been offered by the Respondent except with the clear bad faith use given further explained on item C of this Complaint.

- [43.] As in other transactions of this kind made by the Respondent's companies, **the said domain has been maintained in order to benefit from mislead internet users, enhance its value and sell it for a higher price, exploring legitimate internet companies operating in good faith on the effective promotion and supply of goods and services**, in a despicable practice which clearly undermines the development of the internet.
- [44.] The lack of legitimate interest in the name of the domain becomes even more evident when we analyze the content changing related to it. Respondent's change of content varied from (i) parking pages, (ii) pornographic website; (iii) a self promoting webpage and (iv) pay-per-click parking page with links to daily offer services passing of as the Complainants', confirms the lack of legitimate use of the domain or the "saveme" name.
- [45.] This Center has ruled on similar cases for supposed *bona fide* use (Case No. D2000-0079:

*This panel need not consider whether or not CFR's use of the disputed domain name was "bona fide", because **it suffices to consider the respondent's subsequent use**. The respondent stated that it wished to use the domain name for an adult sex site (Complaint, Annex G). While (as the respondent correctly points out) many adult sex sites are perfectly legal and constitute bona fide offerings of goods or services, **the use of somebody else's trademark as a domain name** (or even as a meta-tag) clearly **does not constitute a "bona fide" offering** of goods or services when the web site owner has no registered or common law rights to the mark, **since the only reason to use the trademark as a domain name** or meta-tag **is to attract customers who were not looking for an adult sex site, but were instead looking for the products or services associated with the trademark. Such use of a trademark can create customer confusion or dilution of the mark, which is precisely what trademark laws are meant to prevent. And actions that create, or tend to create, violations of the law can hardly be considered to be "bona fide"**.*

[46.] Furthermore, any supposed *bona fide* use which might be alleged by the Respondent from parking the domain is barred by the unfair advantage obtained by him from mislead users, as it has been decided on Case No D2009-1390:

By using the domain name that incorporates Complainant's mark Respondent may well be able to generate more search hits for its own website, but this mainly appears to suggest that Respondent is seeking to take unfair advantage of Complainant's goodwill in its mark.

[47.] Finally, and in accordance with 3(b)(ix)(2), Respondent should be considered as having no rights or legitimate interests in respect of the domain name since: (i) there is no evidence of the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services before any notice to the Respondent of the dispute; (ii) the Respondent, neither as an individual or business, has ever been commonly known by the domain name; and (iii) the Respondent is not making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

[48.] Therefore, it is undeniable the absolute absence of any legitimate interests by the Respondent in the referred domain for the purposes of Paragraph 3(b)(ix)(2) of the Policy.

C. RESPONDENT'S BAD FAITH

[49.] As previously mentioned above, it is important to stress that **the sole purpose of this Complaint is to avoid having SAVE ME customers mislead to the Respondent's websites**, which have caused and are causing severe damages to the Complainants business **due to Respondents bad faith conducts**. In addition, **recent actions previously informed performed by the Respondent showing the absolute lack of respect for this Complaint highlights his bad faith towards the entire UDRP procedure.**

[50.] Also, as stated in the introduction of this Complaint, this is not a typical case of cybersquatting **mainly because the Respondent intends to shield himself in the fact that the domain has been previously registered.** That fact alone cannot prevent Complainants from seeking remedy from this Panel simply because **UDRP Policy and WIPO jurisprudence provide enough grounds for to this Complaint to be accepted** as we will see bellow.

[51.] First, Policy states on Article 4 (b)(iv) that shall be evidence of the registration and use of a domain name in bad faith for the purposes of Paragraph 4(a)(iii), if found by the Panel to be present the use of the domain name intentionally attempted to attract, for commercial gain, Internet users to Respondent's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site or location or of a product or service on Respondent's web site or location.

[52.] Such provision lefts clear the first bad faith intentions the Respondent had when resolving the domain name to a pornographic website and later to a pay-per-click parking page with advertisements (links) from daily offer services passing off as Complainants' SAVE ME.

[53.] Second, in the landmark decision *Telstra Corporation Limited v. Nuclear Marshmallows*, (Case D2000-0003), this Center has found that **even certain facts and circumstances "passive use" of a domain name could constitute bad faith use.** As under the Telstra analysis and following decisions³, **bad faith registration can occur without regard to the state of mind of the registrant at the time of registration, if the domain name is subsequently used to trade on the goodwill of the mark holder,** just as bad faith use can occur without regard to the fact that the domain name at issue has not been or has been only passively used.

[54.] In this same sense, Case D2009-0786 Panel went further to state that:

*"This (Section 2 of the Policy) provision not only imposes a duty on the part of the registrant to conduct an investigation at the time of registration, but also **includes***

³ WIPO Case D2009-0786.

a representation and warranty by the registrant that it will not now or in the future use the domain name in violation of any laws or regulations. This effectively imposes on the registrant a continuing duty to ensure that the domain name is not used in violation of another's rights and clearly covers intellectual property rights and the laws protecting them, including copyright and trademark. This representation and warranty is not limited to the moment at which the registrant registers the domain name; rather, it extends to any use of the domain name in the future. This obligation is an integral part of the Policy, and it cannot be ignored. **A party can register or acquire a domain name in good faith, yet use the domain name in the future in such a way that the representations and warranties that the registrant made as of the time of registration are violated. If a party uses the domain name in the future so as to call into question the party's compliance with the party's representations and warranties, there may be retroactive bad faith registration.**

[55.] In that regard, just as in the Telstra analysis of passive use, the analysis of the facts and circumstances of this case will necessarily depend on whether the future use of a domain name constitutes retroactive bad faith registration, **urging the Panel to examine them in order to find evidence of bad faith use regardless of the existence of bad faith in the registration of the domain name.**

[56.] This position has been expressly accepted as relevant in WIPO's Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (WIPO Overview 2.0, March 31, 2011) where it states when dealing with the third UDRP Element (UDRP paragraph 4(a)(iii)):

"Irrespective of whether the domain name was registered before the relevant trademark was registered or acquired, a small number of panels have begun to consider the effect of the requirement of paragraph 2 of the UDRP, which states: "By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that . . . (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to

*determine whether your domain name registration infringes or violates someone else's rights." **Some panels have regarded this as a warranty at the time of registration that the domain name will not be used in bad faith, finding that, by breaching such warranty, use in bad faith may render the registration in bad faith. Other panels have looked at the totality of the circumstances in assessing "registration and use in bad faith," as a unitary concept, given that some of the circumstances listed as evidence of bad faith registration and use in paragraph 4(b) of the UDRP appear to discuss only use and not registration***".

- [57.] Based on the history of the Respondent, records of the domain use after the SAVE ME launch in 2011 and on the new factual grounds, the certain profits generated and sought by the diversion of SAVE ME customers to pornographic, self-promoting websites, pay-per-click parking pages and finally to his own blog containing unlawful comments about the Complainants' and Complainants' Representative, clearly demonstrate Respondent's bad faith use.
- [58.] The purpose of making profit and taking advantage from traffic coming from the Complainant's services began shortly after the release of the "SAVE ME" services and extensive marketing activities of the Complainants in Latin America when Respondent updated the content of the domain to redirect customers to a pornographic website, both profiting from the mislead and damaging the Complainants' image with their customers (Annex V).
- [59.] Respondent's bad faith is also demonstrated through **the offering prices for the domain**. As we can see in the emails sent by the Respondent, after the growing popularity of the SAVE ME services the Respondent mentioned a "**six figure**" price tag as a starting point to negotiate the domain (Annex X), expressly stating that the domain would not be sold, "**not even for US\$ 100k**".
- [60.] On this regard, it is important to mention the reason why Complainants opted to avoid exposing themselves to the Respondent. First of all, Respondent is highly known in the domain negotiation business, including by his "Domain King" nickname, **and which also includes an open history of unethical and bad taste behavior towards**

anyone approaching his domains as recognized by this Center on Case No. D2001-0213.

- [61.] Second, **his knowledge of the high profits made through mislead SAVE ME customers and the great expectation towards selling the domain to an internationally known company as the Complainants´** surely demanded Complainants to approaching the Respondent through their Representative **in order to prevent jeopardizing this Complaint success by selling or transferring the domain to another party (cyberflight) or pretending to give the domain a fair use.**
- [62.] Furthermore, **one is not likely to believe that the Respondent didn´t know back than he was dealing with a company such as SAVE ME after being offered US\$ 50,000 dollars for the domain to settle the issue (Annex X), nor not having time to make a small fraction research of the one he did of Complainants´ and Complainants´ Representative after formally receiving this Complaint.** Any basic web search back than would have retrieved Complainants´ SAVE ME business and thus, make possible for the Respondent to identify a possible legitimate party interested in the domain and clearly shows his use in bad faith.
- [63.] Later and clearly aware of the Complainants´ SAVE ME services success and aware of the interest in the domain, the Respondent made a content update to the domain **to include a self-promoting website for the “domainer” activity,** which was later changed to a regular pay-per-click parking page. Despite being already considered as used in bad faith, the Respondent changed the domain´s content to host a **pay-per-click parking page with daily offers advertisements (Annex VIII), not only continuing to profit from mislead SAVE ME customers looking for the Complainants´ webpage but nearly passing of as the Complainants themselves!**
- [64.] **Nowadays, Respondent´s bad faith is absurd and undeniable since the domain subject to this Complaint is currently resolved to his own blog and containing unlawful (including unauthorized use of pictures of Complaint´s partner and Representative in clear image rights and copyright violation),** harmful, threatening, abusive, harassing, defamatory, slanderous, vulgar, obscene and invasive content about the Complainants´ and Complainants´ Representative.

[65.] **The Respondent has even had the audacity to resolve several pornographic domains to Complainant's Representative's law firm website, publicly admitting in own blog** (Annex XI) by stating: "Let the fun begin. I am forwarding some very special domain names to this guys linkedin page within a few hours. Let the world know what a legal "Whore" looks like." Even if one is eventually taken to believe that the previous uses given to the domain name by the Respondent after Complainants began activities did not constitute bad faith, **his activities towards the Complainants and Representatives after receiving notice of this Complaint are crystal clear examples of the bad faith use of the domain name.**

[66.] This is what this complaint is all about. **Every single one of the Respondent's actions show his bad faith:** Users willing to enjoy SAVE ME's services for daily offers from all ages end up surprised by (i) pornographic images and videos; (ii) pay-per-click parking pages with advertisements to daily offer services; and finally, (iii) redirecting the domain to his own blog and posting the unlawful content against the Complainants' and Complainants' Representative, clearly indicating his knowledge and intention to profit from mislead customers and to cause undeniable material and moral damages to the Complainants', confirming his obvious bad faith, **urging for the domain cancellation** to prevent further damages to the Complainants and to serve as an example to other bad faith domainers.

VI. Remedies Requested

[67.] In accordance with Paragraph 4(i) of the Policy, for the reasons described in Section VI above, the Complainants request the Administrative Panel appointed in this administrative procedure **to cancel** the saveme.com domain name.

VII. Administrative Panel

[68.] The Complainant elects to have the dispute decided by a *three-member* Administrative Panel.

[69.] The Complainant appoints the following panelists in order of preference for the *three-member* Administrative Panel mentioned above:

(i) Mr. Rodrigo Azevedo:

Telephone: +55 51 3027 8700

Email: rodrigo.azevedo@silveiro.com.br

(ii) Alvaro Loureiro Oliveira

Telephone: +55 21 553 1811

E-mail: aloureirooliveira@dannemann.com.br

(iii) Luiz Edgard Montauray Pimenta

Telephone: +55 21 2524 0510 / Fax: +55-21 2240 1524

E-mail: luiz@montauray.com.br

VIII. Mutual Jurisdiction

[70.] 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 cancel the domain name that is the subject of this Complaint, to the jurisdiction of the courts of *Metairie, LA, United States of America*.

IX. Communications

[71.] A copy of this Complaint Amendment, together with the cover sheet as prescribed by the Supplemental Rules, has been sent to the Respondent on *March 23, 2012 by email on the addresses described on item II of this Complaint*.

[72.] A copy of this Complaint has been sent or transmitted to the concerned registrar on *March 23, 2012 by email on the addresses described on item II of this Complaint*.

[73.] This Complaint is submitted to the Center in *electronic form*, including its 11 Annexes, in the appropriate format.

X. Payment

[74.] As required by the Rules and Supplemental Rules, payment in the amount of *USD 4,000.00* has been made by *credit card*.

XI. Certification

[75.] 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, (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.

[76.] 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,

Marcio Mello Chaves

On behalf of

G.W.H.C. SERVIÇOS ONLINE LTDA. and

E-COMMERCE MEDIA GROUP INFORMACAO E TECNOLOGIA LTDA.

Date: March 23, 2012.

XII. LIST OF ANNEXES

ANNEX I:

SAVEME.COM DIRECTNIC WHOIS

ANNEX II:

UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY

ANNEX III:

COMPLAINANTS POWER OF ATTORNEY

SAVE ME DOMAIN NAMES (WHOIS)

SAVE ME WEBSITES

ANNEX IV:

ALEXA.COM STATISTICS – SAVEME.COM.BR

ANNEX V:

SAVE ME'S CUSTOMERS REACTIONS IN SOCIAL NETWORKS – TWITTER

ANNEX VI:

SAVE ME TRADEMARK APPLICATION AT BRAZILIAN TRADEMARK OFFICE – INPI

ANNEX VII:

EREALSTATE.COM WEBSITE

ANNEX VIII:

SAVEME.COM PARKING PAGE

ANNEX IX:

ALEXA.COM STATISTICS – SAVEME.COM ON SAVEME SERVICES LAUNCH

ALEXA.COM STATISTICS – SAVEME.COM

ALEXA.COM STATISTICS – SAVEME.COM TRAFFIC DESTINATION

ANNEX X:

E-MAILS EXCHANGED WITH THE RESPONDENT

ANNEX XI:

RESPONDENT'S PERSONAL BLOG AND OTHER INTERNET MEDIA POSTINGS