

## **ADMINISTRATIVE PANEL DECISION**

Software in the Public Interest, Inc., The Debian Project, and Debian.ch v. IT Manager, Free Software Contributors Association  
Case No. D2022-1524

### **1. The Parties**

The Complainants are Software in the Public Interest, Inc., United States of America (“United States”) (the “First Complainant”); The Debian Project (the “Second Complainant”); and Debian.ch, Switzerland (the “Third Complainant”), all represented by Charles Fussell & Co LLP, United Kingdom.

The Respondent is IT Manager, Free Software Contributors Association, Switzerland.

### **2. The Domain Name and Registrar**

The disputed domain name <debian.community> is registered with EuroDNS S.A. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 27, 2022. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 29, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent and contact information in the Complaint. On May 2, 2022, the Complainants filed a revised version of the Complaint with the Center. On May 3, 2022, the Respondent sent a communication to the Center requesting documents relating to this proceeding. On May 6, 2022, the Center sent a reply to the Respondent. On May 9, 2022, the Center sent a request for amendment and/or clarification to the Complainants. The Complainants filed an amended Complaint on May 19, 2022.

Between May 10, 2022 and May 24, 2022, the Center received multiple communications from an individual that the Complainants allege is the controlling mind and alter ego of the Respondent. In his communications, the individual denied that he was the registrant and objected to the use of his personal data. The Center sent an email communication to him in reply on May 24, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint and amended Complaint, and the proceedings commenced on May 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2022.

On June 7, 2022, the Center received a Facsimile communication from the Respondent attaching a copy of an email that the Respondent had sent on May 23, 2022 but which had not been received by the Center. In the email dated June 7, 2022, the Respondent cited paragraph 5(b) and (e) of the Rules and requested an extension of time until August 31, 2022 to file the Response. On June 10, 2022, the Center sent an email communication to the Respondent regarding the procedures to request an extension of time. On June 11, 2022, a Response was filed. On June 17, 2022, a revised Response was filed. On June 21, 2022, the Complainants made an unsolicited supplement filing. On June 22, 2022, the Respondent objected to the Complainants' supplemental filing. On June 24, 2022, the Complainants filed a further supplemental filing. On June 30, 2022, a further revised Response was filed. On the following day, the Respondent replied to the Complainants' further supplemental filing.

The Center appointed Matthew Kennedy, Clive Duncan Thorne, and Oleksiy Stolyarenko as panelists in this matter on July 5, 2022. The Panel finds that it was properly constituted. Each member of the Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The First Complainant is a non-profit corporation registered in 1997 in the State of New York, United States, to act as the fiscal sponsor for organizations that develop open-source software and hardware. Its mission is to handle the non-technical administrative tasks of open-source projects so that these projects do not need to operate their own legal entity. It acts as the fiscal sponsor of the Second Complainant, an unincorporated association of individuals who volunteer their time and effort to produce the free operating system named "Debian". The Second Complainant's organizational structure for formal decision-making is described in the Debian Constitution which refers to developers, the project leader, delegates, and others. The Second Complainant operates through local associations in different countries, one of which is the Third Complainant, a non-profit association established under the Swiss Civil Code. According to its articles of association, the Third Complainant is the official representative of the Second Complainant and holds assets on behalf of the Second Complainant in Switzerland and Liechtenstein. The First Complainant holds multiple trademark registrations including the following:

- United States trademark registration number 2301362 for DEBIAN, registered on December 21, 1999, specifying computer utility and operating system software in class 9, with a claim of first use in commerce on August 1, 1993;
- International trademark registration number 1084122 for DEBIAN, registered on June 20, 2011, specifying computer utility and operating system software in class 9, designating multiple jurisdictions, including China, the European Union, Japan, and the United Kingdom; and
- United States trademark registration number 4587367 for DEBIAN and device (the "DEBIAN and swirl mark"), registered on August 19, 2014, specifying computer operating systems and computer utility programs in class 9, with a claim of first use in commerce on June 25, 1999.

The above trademark registrations (the "DEBIAN marks") remain current. The First Complainant has also registered the domain name <debian.org> that resolves to a website which describes Debian as both a community and a free operating system. The website prominently displays the DEBIAN mark and the DEBIAN and swirl mark. The copyright notice on that website claims ownership in the name of the First Complainant and others.

The Respondent is an incorporated association and its contact person is IT Manager. The Respondent has registered the domain name <fscontributors.org> that it uses in connection with a website that displays brief information about its mission, values, and contact details over a banner photograph taken at the 2017

Debian Conference. The Respondent submits that it is composed of genuine volunteers and that its legal form and the obscure information about its controllers is a parody of the Complainants.

The disputed domain name was created on October 23, 2019. In the Registrar's public Whois database, the Respondent's name currently appears as the registrant while its contact details are redacted for privacy. In the Registrar's private Whois database, the Respondent's contact address is incomplete and its contact telephone number is manifestly false. The disputed domain name resolves to a website titled "Debian Community News" that prominently displays the following notice:

"Debian is a trademark of Software in the Public Interest, Inc (SPI). Debian Community News is not affiliated with SPI and we do not claim to speak for SPI. We are independent volunteers and we seek to publish information in the public interest. We publish information about Debian."

The website publishes blogposts critical of Debian and persons associated with it. The website does not promote a rival product and it displays no advertising.

On November 17, 2021, the Complainants issued a statement on the <debian.org> website regarding an individual who was a former Debian developer. The statement replied to posts that had been made on websites regarding Debian and its community members, and it clarified that the former Debian developer was no longer associated with Debian. On April 5, 2022, the Complainants' legal representative sent a cease-and-desist letter to the former Debian developer.

After the Complaint was filed, the Software Freedom Institute SA filed an application on May 14, 2022 for Swiss trademark registration number 782335 for DEBIAN, which was registered on June 8, 2022, specifying computer software and hardware in class 9. That trademark registration remains current. According to evidence provided by the Complainants, the former Debian developer is a director of the Software Freedom Institute SA.

## **5. Parties' Contentions**

### **A. Complainants**

The disputed domain name is confusingly similar to the Complainants' DEBIAN word mark and identical to the DEBIAN and swirl logo mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The alter ego or controlling mind of the Respondent is a person who ceased to be a Debian developer in 2018. His use of the DEBIAN marks is expressly prohibited by the Debian Trademark Policy version 2.0 (2013), which prohibits use of the marks in a misleading or false manner or in a manner that disparages Debian, such as untruthful advertising. That policy also prohibits use of the Debian trademarks without prior permission in any way that suggests an affiliation with, or endorsement by, the Debian project or community, if the same is not true; use of a name that is confusingly similar to Debian trademarks; and use of the Debian trademark in a domain name, with or without commercial intent. Neither the Respondent nor its alter ego nor anyone else ever sought the Complainants' permission to use the disputed domain name. There is no evidence that the Respondent is using or preparing to use the disputed domain name in connection with any offering of goods or services. The Respondent has not been commonly known by the disputed domain name. While the Respondent's use of the disputed domain name as a purported criticism site is noncommercial, it is entirely illegitimate as its posts contain vicious, false, and defamatory attacks on Debian developers, delegates, and the project leader and infringes their privacy rights. The Respondent's use of the disputed domain name is intended to tarnish the DEBIAN marks and has that effect. The use of the disputed domain name is not fair use as it creates an impermissible risk of confusion with the DEBIAN word mark through impersonation. The addition of the word "community" suggests authorization by, or affiliation with, the Second or Third Complainant or the Debian Community. The Respondent could not reasonably believe the posts on its site. Only once Internet users begin reading the posts do they realize they have been misled to

a criticism site.

The disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name with full knowledge of the existence of the Complainants and of the goodwill and reputation in the DEBIAN marks. The knowledge of the former Debian developer behind the Respondent can be attributed to the Respondent. The disputed domain name is intentionally designed to masquerade as an official domain name of the Complainants. The Respondent's use of the disputed domain name is intended to tarnish the DEBIAN marks.

The Complainants request that the disputed domain name be transferred to the Second Complainant.

## **B. Respondent**

The Respondent agrees that the disputed domain name includes the word "Debian" which is part of the Complainant's United States trademark but similarity, on its own, does not automatically prohibit use of a trademark in a domain name. The Respondent is based in Switzerland where the Complainant's trademark rights do not apply. Since the DEBIAN trademark was registered in 1999, there have been conflicts about how the First Complainant monopolized the trademark and funds of the Second Complainant. Persons with a prior copyright interest in the Debian software did not wholeheartedly consent to the First Complainant's registration and could apply for cancellation of the trademark registration. The Complainants may not have rights in the trademark at all. Their request to combine all three Complainants as the "Debian community" obfuscates the fact that the trademark has been owned by a sub-group of the authors.

The Respondent has rights and legitimate interests in respect of the disputed domain name. The owner of the Swiss trademark registration for DEBIAN, has confirmed that volunteers can use the trademark in domain names and websites. A former Debian project leader wrote an email in 1998 offering to place the trademark in the public domain and Debian volunteers were encouraged to use the DEBIAN mark. At least one member of the Respondent association is a co-author of Debian. The software identified by the DEBIAN trademark is predominantly subject to copyright. Persons identified as Debian developers in the Debian Constitution have made intellectual property contributions to the software since 1993, prior to the grant of the trademark in 1998. The Debian Constitution has never required developers to waive or assign their copyright to the Complainants. All are co-authors of a copyrighted work identified as DEBIAN. The rights of co-authors cannot be extinguished by other co-authors. The co-authors' rights are at least as significant as those in *Religious Technology Center v. Freie Zone E. V.*, WIPO Case No. [D2000-0410](#). Any of the co-authors can exercise their rights personally or by forming their own rival association. The anonymity of the Respondent's members does not diminish their rights. The right of the Respondent to represent the interests of authors of anonymous or pseudonymous works is protected by Article 15(3) of the Berne Convention for the Protection of Literary and Artistic Works (1971). Even during the process of registering the DEBIAN trademark in 1998, multiple co-authors of Debian software were asserting that they should have an equal status with respect to the trademark and work title. The Respondent does not claim that its rights are exclusive nor that its rights entitle one co-author to impede the rights of other co-authors.

As regards fair use, the DEBIAN trademark is only registered with respect to goods in class 9; the trademark registration does not mention a "Community". The Respondent's news site is non-profit, it does not seek any financial contributions or personal information, it displays no advertising, it does not pass off any product as a substitute for Debian software; it does not pass itself off as a community or official spokesperson; it uses the term "community" to refer to the broadest possible audience, including all authors and users of Debian software who are readers of the site. It is common practice for journals and blogs that focus on a particular theme to incorporate that theme into their name even when they are operating an independent and critical review of the theme. The public is well aware that the names of independent journals and publications are constructed in this manner. The Respondent's website has always had a disclaimer informing people that it is independent of the First Complainant. As in *Religious Technology Center v. Freie Zone E. V.*, *supra*, it is entirely possible for people to independently follow the principles and beliefs in the Debian Free Software Guidelines and Debian Social Contract, producing software that runs on a Debian system, without interacting with the people who control the trademark. This is inherent in the nature of open-source software as all the

source code is shared publicly; anybody can pick it up and continue developing it. The Guidelines state “no discrimination against persons or groups”, meaning that unofficial and independent Debian developers are free to engage in Debian-related activities. The term “community” is used to solicit contributions from volunteers who are not voting members and may be censored in some way; if they wish to contribute to the Respondent’s news site, that is not impersonation at all.

As regards tarnishment, “tarnish” is a very general term that could include just about any critical comment. The goal of the Respondent’s website is to improve transparency, which has a tendency to reveal inconvenient truths that may tarnish a trademark. The website is not trying to destroy the mark so that people will use an alternative product; it is tarnishing the mark in the hope of making it better. The authors of the blogs on the Respondent’s website use Debian software to edit it and the photos and videos and publish them on a Debian web server. If the trademark has been used to tarnish other parties, then the aggrieved parties should be able to use the trademark in their rebuttal. If a trademark owner engages in tarnishing, it considers tarnishing to be a legitimate business practice. The Debian Social Contract, paragraph 3, states that “We will not hide problems”, which is a consent to tarnishing based on legitimate criticism. The trademark has already been tarnished by the behavior of the Complainants and their attacks on volunteers. The Respondent’s website is not a revenge website; it is a right of reply. The Respondent does not sell a competing solution that would benefit from tarnishing the DEBIAN trademark. It hopes negative statements made about volunteers will be retracted and erased.

The disputed domain name was not registered and is not being used in bad faith. The Respondent’s site publishes inconvenient truths, which is not bad faith. The Complainants have consented to critical publications in the Debian Social Contract, which invites people to publish evidence of concerns with Debian software and organization behavior. Controversial content must be seen in context; to strangers the Respondent’s website may appear disturbing but it is entirely proportional when placed side-by-side with the Complainant’s private mailing list, website, and social media. A right of reply is not bad faith. The DEBIAN trademark, website, and infrastructure were used to shame volunteers in 2016; the disputed domain name was registered only later in 2019, when other attempts to communicate with the leadership failed. The DEBIAN trademark itself is used in bad faith and the Respondent’s website simply reflect the way that Debian oligarchs treat volunteers. People who live in glass houses should not throw stones.

## **6. Discussion and Findings**

### **6.1 Procedural Issues**

#### **A. Filing of the Response**

The Respondent alleges that the Center has blacklisted the Respondent in an attempt to frustrate the filing of the Response before the due date. However, the Panel notes that (i) the Center has safely received multiple emails from the Respondent during this proceeding; (ii) the email in question was received safely at the Center as a Facsimile from the Respondent on June 7, 2022; and (iii) the earlier email did not address the due date for the Response. The Respondent’s later email requested an extension by over 11 weeks due to the non-delivery of the earlier email, and the summer court holidays in Geneva. The Center replied to the Respondent, recalling that paragraph 5(b) of the Rules provides for an automatic extension of four calendar days, if expressly requested, and that the Respondent would need to file a motivated request if it sought a longer extension under paragraph 5(e) of the Rules. The Respondent did not file such a request and the Panel sees no reason that would have justified such a long extension. In any event, the Respondent filed the original Response before the due date. In these circumstances, the Panel considers that the Respondent was given a fair opportunity to present its case in accordance with paragraph 10(b) of the Rules.

The Panel notes that there are three versions of the Response. The original Response was filed on June 11, 2022, two days before the due date, but the revised Response was filed on June 17, 2022 and a further revised Response was filed on June 30, 2022, both after the due date. Although they are very lengthy, the section that responds specifically to the statements and allegations contained in the Complaint complies with

the word limit in paragraph 11(b) of the Supplemental Rules; while the majority of the Response makes a claim of harassment under paragraph 15(e) of the Rules, for which there is no word limit. However, the Panel notes that all three versions are submitted with a certification followed by the mark of an anonymous “Volunteer”, whereas paragraph 5(c)(viii) of the Rules requires the certification of the Response to be followed by the signature of the Respondent or its authorized representative. In view of this circumstance, the Panel finds that the Respondent has failed to submit a formal Response in accordance with the Rules. Nevertheless, in accordance with its powers under paragraph 10(a) of the Rules, the Panel will consider the merits of the timely original Response *de bene esse*. This decision causes no unfairness to the Respondent as its arguments addressing the three substantive elements in paragraph 4(a) of the Policy remained essentially unchanged in the later versions.

## **B. Unsolicited Supplemental Filings**

The Complainants made an unsolicited supplemental filing on June 21, 2022. On the following day, the Respondent objected to the Complainant’s supplemental filing. On June 24, 2022, the Complainants filed a further unsolicited supplemental filing reiterating the point made in its prior filing. On July 1, 2022, the Respondent replied to the Complainants’ further supplemental filing repeating much information contained in the further revised Response that it had filed the previous day.

Paragraph 10(c) of the Rules requires the Panel to ensure that the administrative proceeding takes place with due expedition. Paragraph 10(d) of the Rules also provides that “[t]he Panel shall determine the admissibility, relevance, materiality and weight of the evidence”. Although paragraph 12 of the Rules empowers the Panel, in its sole discretion, to request further statements or documents from either of the Parties, this does not preclude the Panel from accepting unsolicited filings. See *Delikommat Betriebsverpflegung Gesellschaft m.b.H. v. Alexander Lehner*, WIPO Case No. [D2001-1447](#).

In the present case, the Complainants’ unsolicited supplemental filings both seek to address a single piece of evidence in the Response regarding a Swiss trademark registration for DEBIAN. While that trademark registration is new evidence, in the sense that it did not exist at the time when the original Complaint was filed, the Panel is able to observe the filing date and registration date on the face of the evidence itself. Accordingly, the Panel sees no need to accept the Complainants’ unsolicited supplemental filings. Given that the Respondent’s unsolicited supplemental filings seek to respond to the Complainants’ unsolicited supplemental filings, there is no basis to accept them either.

## **C. Consolidation: Multiple Complainants**

The Complaint was filed by three complainants against a single respondent. The Complainants request consolidation of their complaints, claiming that they have a common grievance on the basis of a shared interest in each of the DEBIAN trademarks; and because they form part of a single entity, which is the Debian Community. It also submits that consolidation would not be inequitable.

The Respondent opposes the request for consolidation of the complaints. It notes that the First and Third Complainants are non-profit organizations domiciled in the United States and Switzerland, respectively, whereas the Second Complainant is an association of individuals not incorporated anywhere. Where a Party is unincorporated, it is appropriate to identify by name each of the association’s individuals, or at least the individual who is giving instructions. The First Complainant’s website explains that associated projects do not become part of the First Complainant. All three Complainants appear to have an overlapping membership body.

The Panel considers that multiple legal persons or entities can bring complaints against a respondent where (i) they have a common grievance against the respondent; and (ii) it would be equitable and procedurally efficient to permit the consolidation of their complaints. A “common grievance” may be based on a common legal interest in the trademark rights on which their complaints are based; where they form part of a single entity; or in certain circumstances regarding an established association and its individual members. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”),

section 4.11.1.

In the present case, the First Complainant is the registered proprietor of the DEBIAN marks. Its “www.debian.org” website states that the DEBIAN marks are managed by the Second Complainant which confirms this arrangement in the Debian Trademark Policy. The Third Complainant has authority to hold assets for the Second Complainant and the “www.debian.org” website lists the Third Complainant as a licensee of the DEBIAN word mark. The fact that the Second Complainant is an unincorporated association is not an obstacle to filing a complaint under the Policy. See, for example, *National Hockey League v. W S, WIS INC*, WIPO Case No. [D2021-0328](#).

Accordingly, the Panel finds that the Complainants have a common grievance against the disputed domain name registrant and that it is efficient to permit the consolidation of their complaints. The Panel sees no reason why consolidation would be inequitable to any Party as the Complainants plead the same arguments regarding a single disputed domain name and they have the same authorized representative.

Therefore, the Panel decides to consolidate the complaints brought by the three Complainants, who are referred to below collectively as “the Complainant” except as otherwise indicated.

#### **D. In-Person Hearing**

The Respondent purports to invite the Panel to the 2022 Debian Conference, if the Panel wishes to conduct an in-person hearing. The Respondent recalls that, according to the Debian Diversity Statement, “everyone is welcome”.

Paragraph 13 of the Rules provides that there shall be no in-person hearings, unless the Panel determines, in its sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the complaint. In the present case, the Panel sees no reason why an in-person hearing is necessary.

#### **E. Redaction of Decision**

The Respondent requests that this Decision redact all names and identifying details and refer to persons by their roles.

Paragraph 4(j) of the Policy provides that all decisions under the Policy will be published in full over the Internet, except when a panel determines in an exceptional case to redact portions of its decision. See also paragraph 16(b) of the Rules. In the present case, the Panel sees no exceptional circumstances, such as identity theft, that would justify redacting portions of this Decision. Nevertheless, the Panel notes that the former Debian developer to whom both Parties refer in their submissions (whether by name, photograph, former role, or otherwise) is not identified as a Party in the amended Complaint. The Panel sees no compelling reason to record the name of that person or other individuals in the Decision in order to reach its conclusions under the Policy.

#### **F. Request for remedy**

The Complaint requests that the disputed domain name be transferred to the Second Complainant. The Respondent objects to this request, submitting that the Second Complainant is a piece of software and that it is not clear how a piece of software can own its own domain name.

The Panel notes that, while the DEBIAN trademark is registered in respect of software, the Second Complainant is “The Debian Project”, which makes DEBIAN software available. Accordingly, the Panel considers the Respondent’s objection unfounded.

## 6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The burden of proof of each element is borne by the Complainant. Failure to prove any one element will result in rejection of the Complaint.

### A. Identical or Confusingly Similar

Based on the evidence submitted, the Panel finds that the Complainant has rights in the DEBIAN mark.

The disputed domain name wholly incorporates the DEBIAN mark as its operational element. Its only additional element is a generic Top-Level Domain (“gTLD”) extension (“community”) which, as a mere standard requirement of domain name registration, may be disregarded for the purposes of the comparison under the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), section 1.11.1. The extension may be relevant to other elements considered below.

The Respondent points out that the Complainant does not have a trademark registration for DEBIAN in Switzerland, where the Respondent is located. However, the Panel recalls that, due to the global nature of the Internet and Domain Name System, the jurisdictions where the Complainant’s trademark is valid is not relevant to the assessment under the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), section 1.1.

The Respondent submits that the Complainant’s United States trademark registration is vulnerable to cancellation due to a possible lack of prior consent to that registration by Debian developers. However, the Panel notes that the United States trademark registration was valid at the time when the Complaint was filed, and it remains valid. That is sufficient for the first element of paragraph 4(a) of the Policy. No application for trademark cancellation has been filed and the Panel has no authority to rule on such an application in any case.

Therefore, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service



mark at issue.

As regards the first circumstance set out above, the Respondent uses the disputed domain name to resolve to a website titled “Debian Community News”. It displays no advertising or links to websites for the Complainant’s competitors. The disputed domain name is not being used in connection with a *bona fide* offering of goods or services and there are no demonstrable preparations for it to do so.

As regards the second circumstance set out above, the Respondent is identified in the Registrar’s Whois database as “Free Software Contributors Association”, not the disputed domain name. There is no evidence that the Respondent has ever been commonly known by the disputed domain name.

As regards the third circumstance set out above, the disputed domain name is used in connection with a noncommercial criticism website. The Complainant submits that the Respondent’s use of the disputed domain name is not legitimate, nor fair use.

The Panel notes that the Complainant has not consented to the Respondent’s use of the DEBIAN mark in the disputed domain name. Although Debian is open-source software, the DEBIAN trademarks are made available on terms that require users to comply with the Debian Trademark Policy, which expressly prohibits use of the DEBIAN trademark in a domain name. Further, the Trademark Policy also prohibits use of the DEBIAN trademarks without prior permission in any way that suggests an affiliation with, or endorsement by, the Debian project or community, if the same is not true. The Respondent, which is very familiar with the Complainant, can be presumed to be aware of the Debian Trademark Policy.

The Respondent refers to correspondence from 1998 regarding the possibility of placing the Complainant’s DEBIAN trademark in the public domain and submits that developers were encouraged to use it. However, the Respondent provides no evidence that any decision was ever taken to place the mark in the public domain. While one objective of the DEBIAN Trademark Policy is to encourage use and adoption of DEBIAN trademarks, another is to clarify proper usage of DEBIAN trademarks by third parties, with which the Respondent does not comply.

The Panel notes that the disputed domain name is identical to the DEBIAN mark, which carries a high risk of implied affiliation with the Complainant. The disputed domain name combines the mark with the gTLD extension “.community”. Given that the Complainant prominently describes Debian on its homepage as a “community” and not just an operating system, this gTLD suffix actually reinforces the false impression that the disputed domain name will resolve to a site operated or endorsed by, or affiliated with, the Complainant. The disputed domain name contains no critical or other terms to dispel or qualify that false impression. While the website contains a prominent disclaimer of any association with the First Complainant, it is only after Internet users reach the Respondent’s site that they read that disclaimer, by which time the disputed domain name has misleadingly diverted them to the site.

The Respondent advances a wider definition of the Debian “community” that would include gagged Debian developers. However, while the Debian Diversity Statement provides that “Everyone is welcome”, the Respondent does not demonstrate that any other Internet users would understand the disputed domain name, including the gTLD suffix, in the wider sense that it advances. In any case, the Parties agree that the individual referred to in section 4 above is no longer a Debian developer, although they disagree as to the reasons why, and there is no evidence that the Respondent is part of the Debian community.

The Complainant also alleges that the Respondent’s use is illegitimate because it contains defamatory attacks on people associated with Debian. The Respondent replies that publishing inconvenient truths is not bad faith. The Panel recalls that UDRP panels are not in a position to make definitive rulings on allegations of defamation, which is a matter better suited to court proceedings. See *Britannia Building Society v. Britannia Fraud Prevention*, WIPO Case No. [D2001-0505](#). However, the Complainant alleges that the Respondent’s use of the disputed domain name is intended to tarnish the DEBIAN marks and has that effect. The Panel notes that the safe harbor in paragraph 4(c)(iii) of the Policy for legitimate noncommercial or fair use does not extend to use with an intent to tarnish the trademark at issue. In the Panel’s view, a website

that even partly intends to tarnish a trademark does not benefit from that provision. For the reasons set out in section 6.2C below, the Panel finds that the Respondent is using the disputed domain name with an intent to tarnish the DEBIAN mark.

The Respondent submits that it uses the trademark DEBIAN with the consent of the Software Freedom Institute SA, owner of the Swiss trademark registration. However, the Panel notes that that trademark registration did not exist at the time when the Complaint was filed. Accordingly, that trademark does not create any rights for the Respondent for the purposes of the second element of paragraph 4(a) of the Policy.

The Respondent claims a legitimate interest by virtue of copyright in the DEBIAN software. The Panel notes that the Respondent does not explain how the exclusive economic rights of a copyright owner, or the moral rights of an author of a work to be identified as such, would entitle it to register a trademark in the disputed domain name. Unlike the circumstances in *Religious Technology Center v. Freie Zone E. V.*, *supra* the Respondent in the present case is not using the disputed domain name to disseminate information about its copyright work. The Panel confirms that this finding does not imply that it has taken any view of the ownership of copyright in DEBIAN software. Indeed, it is unable to do so on the evidence before it.

The Respondent claims a right of reply to criticisms published by the Complainant regarding a former Debian developer. It suffices for the Panel to note that any such right of reply does not justify the Respondent's use of a disputed domain name identical to the DEBIAN mark with an intention to tarnish the DEBIAN mark. The Panel confirms that nothing in this Decision prevents the Respondent from exercising its right to express legitimate noncommercial or fair use criticism, just not through a domain name identical or confusingly similar to a trademark.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith but these circumstances are not exhaustive.

The disputed domain name was registered in 2019, long after the registration of the Complainant's DEBIAN trademark. The disputed domain name is identical to the trademark, which appears to be a coined name formed from the first syllables of the names "Debra Lynn" and "Ian Murdock". The Respondent's website is dedicated to blogposts about the Complainant. In these circumstances, it is clear that the Respondent had the Complainant and its DEBIAN trademark in mind when it registered the disputed domain name.

The disputed domain name is used in connection with a website titled "Debian Community News" that publishes posts critical of the Complainant. Although the stated aim of the Respondent's website is to provide information about Debian in the public interest, and much of the content appears to be fair use criticism outside the scope of the Policy, the evidence submitted by the Complainant shows that some posts present the DEBIAN mark together with information about a notorious sex cult, notorious sex offenders, and enslavement of women, and one post displays photographs of physical branding allegedly on victims' genital skin. The segues from information about the Complainant to this type of information are contrived and the scale of this information is not merely incidental on the website. In the Panel's view, these posts are deliberately intended to create a false association between the DEBIAN trademark and offensive phenomena and thereby tarnish the mark. See *Britannia Building Society v. Britannia Fraud Prevention*, *supra*, whose reasoning this Panel follows but on the evidence in the present case reaches a finding of bad faith.

The Respondent acknowledges that Debian Community News may appear "disturbing" to strangers. It submits that its site content is entirely proportional to the content of the Complainant's website but it tends to undercut that submission by inserting in the Response a photograph of an acid attack victim on the pretext that it is analogous to the mentality of negative statements made about a volunteer on the Complainant's

website. In any case, a right of reply does not justify tarnishment of a mark. The Respondent submits that its website is tarnishing the mark (albeit in some general sense) in the hope of making it better. While the Panel agrees that criticism can be constructive, some of the Respondent's posts are not mere criticism. The Respondent argues that the Complainant has consented to the tarnishment of its mark because it committed not to hide problems, and that if the trademark owner engages in tarnishing, it considers tarnishing to be a legitimate business practice. However, nothing in the Debian Social Contract or elsewhere indicates that the Complainant has ever consented to the type of false associations with its mark published by the Respondent on its website. The Respondent points out that the DEBIAN mark is registered only in respect of software. However, while the relevant posts attack members of the Complainant who make available DEBIAN software, rather than the software itself, these posts use the mark in combination with the disputed domain name in a way that intentionally seeks to create false associations with the mark itself.

In view of these circumstances, the Panel finds that the disputed domain name is being used with an intent to tarnish the DEBIAN mark. Accordingly, the Panel finds that the disputed domain name is being used in bad faith. See [WIPO Overview 3.0](#), section 3.12.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

#### **D. Alleged harassment of the Respondent**

Paragraph 15(e) of the Rules provides that if “after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”.

The Respondent alleges that this proceeding is a means of harassment to spread smears and defamation. It makes a lengthy submission describing an alleged culture of harassment. More specifically, it alleges that the Complaint was brought to remove critical content from the Internet; that the Complaint was brought four weeks after a former Debian developer published an open letter criticizing technology corporations' Codes of Conduct in order to intimidate and discredit him; and that the Complainant wrongly claims that he was expelled from the Debian Project in 2018 when their own evidence shows that he continued as a Debian maintainer after that date.

Given that the Panel has upheld the Complaint, the Panel declines to make a finding that it was brought in bad faith or constitutes an abuse of the administrative proceeding. The Panel does not make a finding of Reverse Domain Name Hijacking. The Panel confirms that it takes no position on the circumstances in which the individual referred to in section 4 above ceased to be a Debian developer.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <debian.community> be transferred to the Second Complainant, the Debian Project.

*/Matthew Kennedy/*

**Matthew Kennedy**

Presiding Panelist

*/Clive Duncan Thorne/*

**Clive Duncan Thorne**

Panelist

*/Oleksiy Stolyarenko/*

**Oleksiy Stolyarenko**

Panelist

Date: July 19, 2022