

## **ADMINISTRATIVE PANEL DECISION**

Name Redacted and Melusine LLC v. Isaac Ewing / Ewing Social, Ewing Social, LLC

Case No. D2022-2596

### **1. The Parties**

The Complainant is Name Redacted<sup>1</sup>, United States of America (“United States”) and Melusine LLC, United States, represented by Quiles Law LLP, United States.

The Respondent is Isaac Ewing / Ewing Social, Ewing Social, LLC, United States, self-represented.

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

The disputed domain name <xoael.com> (the “Domain Name”) is registered with CloudFlare, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 15, 2022. On July 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 2, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on August 3, 2022, providing the registrant and contact information disclosed by the Registrar and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 5, 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”).

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<sup>1</sup> The Complainant's representative has requested the redaction of the first Complainant's name from the Decision to protect personal information. The Panel agrees to this request, for reasons discussed further below.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 29, 2022. The Response was filed with the Center on August 20, 2022.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on August 24, 2022. The Panel finds that it was properly constituted. 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 individual Complainant, hereafter referred to as “Principal”, is a well-known content creator and social media influencer known to Internet users as “xoAeriel” and is also the sole and managing member of the Complainant Melusine, LLC (“Melusine”), “her personal services company”. The Complainant Melusine is a limited liability company organized under the laws of the State of California and headquartered in Hercules, California. According to the online database of the California Secretary of State, the company was first registered on October 20, 2020.

Principal posts photos and videos online, livestreams videos of herself, and participates in interactive live chat and video games on social media platforms such as Twitch, YouTube, OnlyFans, Twitter, Instagram, Fansly, and Reddit, typically creating dedicated channels or communities. Some of these are on a paid subscription basis, while others encourage cash donations from fans or followers. (The Complaint refers to Principal as a “social media influencer” but does not indicate whether they are also paid by sponsors for promoting commercial products in her content.) The Complainants sell merchandise such as clothing, calendars, and coffee mugs printed with images of Principal on a website at “www.xoaeriel.net”, with the tagline, “Getting cute quality products to viewers and fans!”

The Complainant Principal also asserts common law rights in the mark XOAERIAL which “began accruing” in March 2020 “when she first began to provide entertainment services online through a Twitch.tv account utilizing the mark as the account name and experienced near-immediate success in said business”. The Complaint attaches analytics reports showing that between Complainant Principal’s first Twitch livestream with the XOAERIEL mark on March 15, 2020, and the registration of the Domain Name on April 30, 2020, Principal’s gained over 38,000 followers, with over 300,000 live views totaling more than 1,382,000 minutes of her livestream watched. Her Twitch account now has more than 255,000 followers. The Complainant Principal advertises and performs on other social media accounts that she established in March 2020, with similar rapid success. By April 2020, her Tweets routinely drew over 20,000 impressions each (she now has more than 73,000 followers on Twitter). Principal launched an Instagram account as well in March 2020 and was frequently attracting more than 1,000 “likes” per post by April 2020; she now has more than 97,000 followers on that site. Each of these sites displays the XOAERIEL mark and links to other Complainant sites, including the merchandising site at “www.xoaeriel.net” (registered on June 24, 2020).

The Complainant Principal has managed her online business and its associated XOAERIEL mark through her wholly owned Melusine company after establishing the company in October 2020. Melusine applied for trademark registration of XOAERIEL on January 25, 2021. The Complainant Melusine holds United States Trademark Registration Number 6769356 for XOAERIEL as a standard character mark, registered on June 21, 2022, claiming first use in commerce on February 20, 2020, in connection with “live-streaming of video game play, chat, video journals, and vlogs” and pre-recorded video segments.

Principal’s name has been redacted in this Decision. The Policy, paragraph 4(j) provides that “[a]ll decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision”. The Panel has determined to redact the name of the Complainant “Principal” in this case because counsel for the Complainants has documented instances of stalking, invasions of privacy, and threatened violence by aggressive “fans” of other similarly situated

individuals with a popular online streaming presence once their real-life identity was discovered. Counsel pointed as well to an intemperate email sent by the Respondent Mr. Ewing in the course of this proceeding, addressed to the Center as well as to the Complainant Principal and referring to the Complainant's counsel, which read in part as follows:

"My domain xoaeriel.com will change into a gay pornographic research website overnight if you persist. I have no issue with shining a very unflattering perspective on your pathetic [sic] and possibly dangerous firm - who knows, maybe we should look into pedophilia and have that associated with you. The possibilities are f[\*\*\*\*\*] endless. You and [Principal] need to accept you've lost, you know you can't take this domain from me, you will never get my domain and I'm not warning either of you again. F\*\*\* off, you both are losers."

The Panel finds in these circumstances that this is an "exceptional case" that warrants redaction of the individual Complainant's name and that this will not impair the Panel's ability to articulate the rationale for the Decision in its published form.

The Registrar reports that the Domain Name was registered on April 30, 2020, by the Respondent Ewing Social, listing the organization as Ewing Social, LLC of Dover, Delaware, United States with an email address in the domain <ewingsocial.com>. That domain name is associated with a website advertising the website and mobile app development services of Ewing Social, LLC. The online database of the Delaware Division of Corporations shows that Ewing Social, LLC is a Delaware limited liability company formed in July 2020. It appears that the Respondent Isaac Ewing, with a postal address in the State of Texas, United States, is associated with Ewing Social, LLC, although the Response filed by Mr. Ewing does not explain whether he is the sole member and manager or has some other role in the company. However, Mr. Ewing corresponded with the Complainants and the Center and then filed the Response, which refers to his registration and use of the Domain Name in the first person. The Panel accordingly refers the Respondents collectively as "the Respondent".

Screenshots available from the Internet Archive's Wayback Machine show that the landing page associated with the Domain Name displayed only a contact email address. After the Complainant's May 2022 demand letter discussed below, this contact page for "XO Aerial" was revised to add a fine-print disclaimer: "Not affiliated to anyone or anything in any way and any similarity is purely coincidence." At the time of this Decision, the Domain Name resolves to a landing page with an "under construction" message.

The Complaint includes screenshots of messages posted in the Complainant Principal's Instagram account. On July 15, 2020, the Respondent Mr. Ewing sent the Complainant Principal a message reading in part as follows:

"i'm isaac. we've never met but i bought xoaeriel.com and i'm working on building you a site. long story short, your email is [redacted] and i setup [redacted] to forward to you ... my email is [redacted] if you need anything. i'll forward you your login details and stuff if you're interested...."

The Complainant Principal replied on the same day, rejecting the Respondent's unsolicited proposal:

"i was wondering who bought that

You should go scam someone else. I'm not interested in your racket. Nor that website."

On November 10, 2020, the Respondent Mr. Ewing sent another message to Principal via Instagram:

"hey, so i tried to put this off until i finished your site but they don't want to wait. there's two people that want to sponsor you and one will pay regardless of any sales you help with. below are links to them, if you're cool with then [sic], and each pays once a month so i'll pay you twice a month because who wants to wait that long ... also there's this guy that keeps emailing you and the last two emails were pictures of a gun with him aying [sic] something about 'this is how i rape you', since i'm not you, i can't file anything so i need you to help me

file an investigation ...”

The Complainant Principal dismissed the offer as before:

“Can you stop contacting me? I’m not interested in scams ...”

The Respondent Mr. Ewing persisted, furnishing a taxpayer identification number for his company to support his credibility. The Complainant Principal nevertheless suggested that what he was doing was “illegal” and trying to “extort” her.

On April 1, 2021, the Complainant Principal initiated a new round of communications with Mr. Ewing by sending this message to him through her Instagram account:

“How do I go about getting my website from you? Or do I need to have my lawyer do it.”

The Respondent Mr. Ewing replied on April 2, 2021 as follows:

“well, you have two options, you can have your attorney talk to my attorneys or just my head of counsel. The second is set up a five minute call, i’ll pitch you my company and give you the gist of it, and you can decide if you’re interested or not. the domain is yours either way....”

The Complainant Principal declined, however:

“I’m not interested in working for your company unfortunately. I work for myself and don’t really need anyone to help

Especially how you went about the whole situation it just shows bad faith and business on your end”

The Complaint reports instances of third-party confusion arising from the Domain Name (which is identical to the Complainants’ domain name <xoael.net> apart from the top-level domain [“TLD”]). The record shows that in February 2022 a hotel where the Complainant Principal had been a guest sent her an email with an attached copy of her charges including partial credit card details. The hotel mistakenly sent the email to an address associated with the Domain Name. The Respondent Mr. Ewing forwarded it to the Complainant Principal via Instagram.

On May 31, 2022, counsel for the Complainants sent the Respondent Mr. Ewing a letter threatening litigation for trademark infringement and cybersquatting and demanding transfer of the Domain Name. The Respondent Mr. Ewing replied on June 5, 2022. The message reads in relevant part as follows:

“I tried to help your client and I know it’s clear in that message – I have no interest in competing with you ...

I’m not giving her my domain, I tried to give it to her for free, but now there’s no price that will convince me to transfer it to her.”

This proceeding followed.

## **5. Parties’ Contentions**

### **A. Complainants**

The Complainants assert that the Domain Name is identical to the registered and common law XOAERIAL mark in which the Complainants share an interest.

The Complainants contend that the Respondent has no rights or legitimate interests in the Domain Name. The Complainants state that they did not authorize the Respondent to register the Domain Name, and the Respondent has not used it for a *bona fide* commercial offering or legitimate noncommercial fair use. The Complainants argue that the Respondent's own messages make it clear that the Respondent acquired the Domain Name unilaterally without authorization, "with the intent to build and provide a website for Complainant". What the Respondent published, however, was only a contact page that directed messages to the Respondent, using a Domain Name that falsely suggested an association with the Complainant. This deceptive contact information is presumably how the Respondent received the business offers to which he referred in the November 2020 Instagram messages. The Complainants argue that the Respondent was angling to act as a business intermediary for the Complainant Principal, and "using a domain to commercially benefit from the notoriety and reputation of a complainant's trademark is not a legitimate use of a domain name". Moreover, they point out that the Respondent offered to give the Domain Name to the Complainant Principal "for free", and the Respondent repeated that offer asking only that Principal listen to his business "pitch". The Complainants suggest that this offer tacitly acknowledges the Respondent's lack of any rights or interests of his own in the Domain Name.

The Complainants argue that the Respondent had actual knowledge of the growing reputation associated with the Complainants' common law XOAERIEL mark and acted in bad faith by registering the Domain Name "to showcase his services to Complainant, seeking Complainant's approval to receive third party payments, and demanding to pitch his business to Complainant for the free transfer of the domain". The Complainant cites the Policy, paragraphs 4(b)(i) (acquiring a domain name for the primary purpose of selling it to a trademark owner – in this case, in exchange for an advantageous business relationship) and 4(b) (iv) (intentionally attempting to attract internet users for commercial gain by creating a likelihood of confusion with the Complainants' trademark). The Complainants also infer vindictive bad faith from the Respondent's subsequent messages stating an intent to withhold the Domain Name regardless of the Complainants' trademark claims and regardless of the price they might offer.

## **B. Respondent**

The Response begins tersely and includes no signed declaration or attachments:

"I'm not adding any documentation. I bought the domain. I own it. The end."

The Response itself is not signed with the required certification of completeness and accuracy (see Rule 5(c)(viii)). The Panel may take this into account in assessing the factual allegations in the Response, along with the lack of supporting documentation.

The Respondent asserts that the Complainants created the trademark "in bad faith" "with the express intent of using it as justification in this claim", arguing that "[t]he respondent purchased the domain before the complainant created their fictitious story, so this is a massive waste of everyone's time". The Respondent "owns many domains and all of them, without exception, contain alphabetical characters that overlap with the repugnant simple trademark". The Respondent suggests that these are speculative investments, and the Complainants are trying to take unfair advantage of the fact that the Respondent's investment in the Domain Name has paid off:

"The claimant is simply trying to steal the immensely valuable .com TLD domain as it is of course the standard TLD for any domain. The domain was purchased before any person or entity established or asserted value to the characters that compose the domain name. Since the respondent has invested hundreds of thousands into the domain, the only logical conclusion is the complainant is trying to steal the immensely valuable TLD for that reason alone. Their secondary actions are simply to own the most common and popular domain TLD. The complainant is desperately trying to steal the .com TLD because of the meteoric value that the respondent has achieved (i.e. the same as when you invest in a stock prior to an IPO, it's purely speculation – same as this domain)."

The Respondent denies any intent to exploit the Complainants' trademark:

"The trademark has nothing to do with the domain name, it's purely coincidence at best. Otherwise, why not trademark all words then obliterate everyone in existence for infringing on this newly polished – cash-grab intellectual property."

The Respondent treats the Domain Name with its ".com" TLD as the "standard" and most valuable form of the "xoaeriel" string and characterizes any version with another TLD, such as the Complainants' domain name <xoaeriel.net>, as a "CNAME" (a canonical name record typically used only as an alias or redirect to another domain name). The Respondent "acknowledges that the claimant has [the Respondent's] permission to use variants of the domain purchased such as the TLD .net version. The respondent finds that acceptable and submits that is the only amicable outcome that they will allow".

The Respondent does not specifically contest the Complainants' trademark claims but remarks that "[t]here is a litany of variations that can invalidate the trademark claim". To refute the claim that the Domain Name is identical or confusingly similar to the Complainants' mark, the Respondent argues at length that the characters in the string comprising the Domain Name could refer to many things, such as the variables "x" and "o" as used in mathematics and computer science, and "there is no way to prove nor disprove the respondent's intent". "Perhaps the respondent is a huge proponent of the font Arial but due to respondent being tragically afflicted with dyslexia, misspelled the domain." The Respondent concludes that in any event its ownership of the Domain Name cannot be characterized as "domain squatting" because the Respondent never intended to sell the Domain Name and because the Domain Name "was purchased before the blatant cash-grab domain claim".

The Respondent declined to complete the sections of the Response on rights and legitimate interests and on bad faith, remarking only that this would be "a waste of time".

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) the respondent has no rights or legitimate interests in respect of the domain name; and (iii) the domain name has been registered and is being used in bad faith. Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

### **6.1 Preliminary Matter: Consolidation and Multiple Parties**

The Policy, paragraph 4(f), allows either Party to request the consolidation of multiple disputes before a single panel, as the Complainants have done here. The Rules, paragraph 10(e) also generally give UDRP panels the authority to consolidate multiple domain name disputes.

In assessing whether a complaint may be filed by multiple complainants, as in this proceeding, UDRP panels consider whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.1. Similarly, where there are multiple respondents (which is also the case here), panels consider whether "(i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties" (*id.*). Procedural efficiency is also a consideration in consolidation scenarios.

The Complainant Principal allegedly began to establish common law trademark rights in XOAERIEL before forming the Complainant Melusine as a limited liability company that subsequently managed those rights and

also then applied for, and obtained, registration of the XOAERIEL trademark. The Complainant Principal remains the owner of the Complainant Melusine, and both are represented by the same counsel in this proceeding. The Panel finds it equitable and efficient to include both Complainants' claims in this proceeding, and the Respondent has not objected.

Similarly, while the Domain Name was registered in the name of the Respondents Ewing Social and Ewing Social, LLC, the Panel finds it equitable and efficient to include as a Party the individual Isaac Ewing, who appears to be the principal of Ewing Social, LLC and who claims to have registered the Domain Name. Mr. Ewing is the person who entered into correspondence with the Complainants and who filed the Response in this proceeding. None of the Parties have objected to his participation in this proceeding.

Hence, the Panel will proceed to a Decision with all of the Parties named above, to assure that those Parties with an interest in the Domain Name and relevant evidence are heard in the same proceeding.

## **6.2 Substantive Issues**

### **A. Identical or Confusingly Similar**

The first element of a UDRP complaint "functions primarily as a standing requirement" and entails "a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". [WIPO Overview 3.0](#), section 1.7. The Domain Name is identical to the Complainant Melusine's registered XOAERIEL mark and the Complainants' claimed common law XOAERIEL mark (discussed further below). (As usual, the Top-Level Domain ".com" is disregarded as a standard registration requirement. See *id.* section 1.11.1.)

For the Respondent's benefit, the Panel emphasizes that this element of the Complaint simply requires the Complainants to demonstrate that they hold a relevant trademark or service mark at the time of the proceeding. The Respondent's intentions are not relevant at this stage, and it is immaterial for this purpose whether the mark was established before or after the registration of the Domain Name. Those issues may be relevant to the second and third elements of the Complaint, as discussed further below.

The Panel concludes that the Complainants have established the first element of the Complaint.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

(i) before any notice to it of the dispute, 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; or

(ii) that the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial 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.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainants have established trademark rights, a lack of permissive use, and the Respondent's use of the Domain Names to date only to display a contact email address that has evidently misled some persons

to contact the Respondent who were attempting to communicate with the Complainant Principal. Thus, the Complainant has made a *prima facie* case, and the burden of production shifts to the Respondent.

The Respondent states that “[t]he .com TLD is under construction and has been for the past couple of years” and that the Respondent has “invested hundreds of thousands into the domain”. The unsigned Response, accompanied by no declaration or confirming documents, does not offer evidence to support these claims. They do not constitute proof of prior use or “demonstrable preparations” to use the Domain Name in connection with a *bona fide* offering of goods or services, nor in connection with a legitimate noncommercial fair use such as a fan site. See [WIPO Overview 3.0](#), sections 2.2 (demonstrable preparations for commercial use), 2.7 (fair use by fan sites).

The Respondent also says that the Domain Name is a speculative investment in a string that has proven valuable and that the Respondent has purchased “many” domain names that similarly “overlap” with the trademark (the Respondent does not cite these other domain names). According to the Respondent, it is only a “coincidence” that the Domain Name is identical to the Complainants’ mark. The Respondent mentions alternative reasons that “perhaps” explain why the Respondent chose the Domain Name, such as dyslexia or the use of the characters “x” and “o” in mathematics or scientific notation. But the Respondent suggests that this is unprovable and irrelevant, because the Domain Name was registered first, “before any person or entity established or asserted value to the characters that compose the domain name”. In short, the Respondent does not affirm any particular reason for selecting the Domain Name and merely suggests possibilities. As the Complainants observe, the fact that the Respondent offered the Domain Name to the Complainant Principal shortly after registering it strongly suggests that the Respondent had no interests in the Domain Name other than for its correlation with the Complainant’s mark.

The Panel finds that the Respondent has not met its burden of production to establish any plausible rights or legitimate interests in the Domain Name and concludes that the Complainant prevails on the second element of the Complaint.

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

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that “shall be evidence of the registration and use of a domain name in bad faith”, including the following to which the Complainants allude (in which “you” refers to the registrant of the domain name):

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location.”

The Respondent’s best argument is that the Domain Name was registered on April 30, 2020, and the Complainants had no registered trademark until June 2022. “Subject to scenarios described in 3.8.2 below, where a respondent registers a domain name before the complainant’s trademark rights accrue, panels will not normally find bad faith on the part of the respondent.” [WIPO Overview 3.0](#), section 3.8.1.

There is substantial evidence on this record, however, that the Complainants’ common law trademark rights accrued much earlier. The trademark application claimed first commercial use in February 2020, and the record establishes that the Complainant Principal’s first Twitch livestream launched on March 15, 2020. Six weeks later, when the Domain Name was registered, that Twitch account had over 38,000 followers and registered over 300,000 live views. By that time, Principal’s Tweets regularly attracted over 20,000 impressions each, and her Instagram posts were receiving more than 1,000 “likes” each. All of these sites



were branded with the XOAERIEL mark. The Complainants' business was entirely online, so this swift growth in measurable fan engagement across multiple online platforms is highly relevant proof of the Complainant Principal's early brand recognition. See [WIPO Overview 3.0](#), section 1.3: "Particularly with regard to brands acquiring relatively rapid recognition due to a significant Internet presence, panels have also been considering factors such as the type and scope of market activities and the nature of the complainant's goods and/or services." The Panel concludes on this record that the Complainants' XOAERIEL mark had acquired distinctiveness in a relevant market (online gaming and live video streaming) by April 30, 2020, when the Respondent registered the Domain Name.

The Respondent does not deny prior awareness of the Complainant Principal, and the Respondent's conduct betrays his focus on her from the beginning. In his July 15, 2020, Instagram message to the Complainant Principal, six weeks after registering the Domain Name, the Respondent Mr. Ewing introduced himself and said, "i bought xoaeriel.com and i'm working on building you a site". He reported that he had already set up an email address and logon credentials for Principal. The Respondent published a landing page for the Domain Name with a contact email address, and Mr. Ewing said in his November 2020 Instagram messages that he had received business proposals from two parties, which he offered to intermediate for the Complainant Principal. He also said she had received threats (presumably through that email address), and he proposed to assist her with those. Later, he offered to give her the Domain Name "for free" if she would accept a call from him and listen to his "pitch". Later, after receiving the Complaint in this proceeding, the Respondent Mr. Ewing said he would not transfer the Domain Name for any price, and he threatened to use the Domain Name for a website with "gay pornographic research" if the Complainants "persist".

As discussed in the preceding section, the Panel does not find any of the Respondent's theoretical reasons for selecting the Domain Name (dyslexia or mathematical symbols) to be plausible. Nor is the Respondent's statement credible to the effect that it is merely coincidental that the Domain Name is identical to the distinctive XOAERIEL mark. Rather, given the Respondent's actual messages and conduct, it is more likely that the Respondent Mr. Ewing was aware of the Complainant Principal and sought to ingratiate himself with her and involve himself in her rapidly growing online business. The Respondent's attempts shortly after acquiring the Domain Name to build a website and establish email accounts for the Complainant Principal suggest that this was the Respondent's plan from the outset. The Panel finds that acquiring a Domain Name primarily for the purpose of transferring it to the trademark owner in exchange for an advantageous business relationship must be considered bad faith similar to the example in the Policy, paragraph 4(b)(i). Similarly, creating a contact page and misdirecting Internet users to the Respondent to present business propositions to the Complainants is parallel to the instance of bad faith described in the Policy, paragraph 4(b)(iv). Exposing the Complainant Principal to physical threats and compromised personal information through the misleading contact information, and the Respondent's own subsequent threat to post pornographic content associated with the Domain Name if the Complainants pursued this UDRP proceeding, tend to reinforce the inference of bad faith on the part of the Respondent.

The Panel concludes that the Complainant has established the third element of the Complaint, bad faith.

## **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 Domain Name, <xoaeriel.com>, be transferred to the Complainant.

*/W. Scott Blackmer/*

**W. Scott Blackmer**

Sole Panelist

Date: September 7, 2022.