

ADMINISTRATIVE PANEL DECISION

The Chemours Company LLC v. Whols Agent, Domain Protection Services, Inc. / Gabriel Joseph, Clearer Technology
Case No. D2022-3013

1. The Parties

Complainant is The Chemours Company LLC, United States of America (“US”), represented by Bates & Bates LLC, US.

Respondent is Whols Agent, Domain Protection Services, Inc., US / Gabriel Joseph, Clearer Technology, US, represented by Envisage Law, US.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 16, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On that same date, 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 Complainant on August 17, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on August 24, 2022.

The Center verified that the Complaint together with the amendment to the 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 Respondent of the Complaint, and the proceedings commenced on August 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 20, 2022. The Response due date was extended to September 24, 2022, on request by Respondent. The Response was filed with the Center on September 23, 2022. On

September 29, 2022, Complainant filed a supplemental submission.

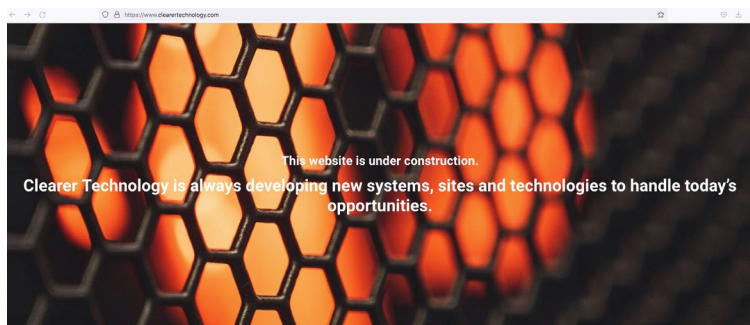
The Center appointed Christopher S. Gibson as the sole panelist in this matter on September 28, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

5. Factual Background

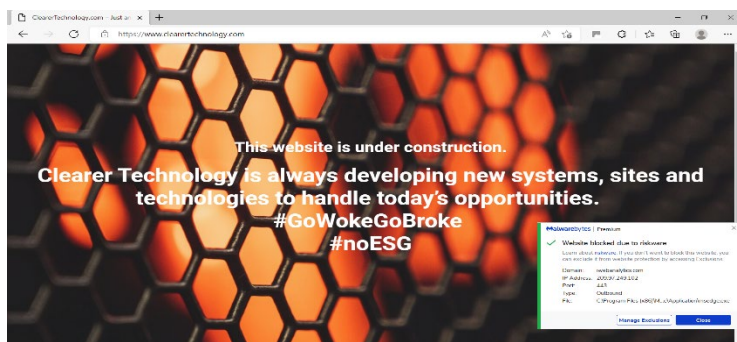
Complainant was founded in 2015 as a spin-off of E. I. du Pont de Nemours and Company. Complainant is the owner of the CHEMOURS trademark and has provided evidence of trademark registrations for the CHEMOURS mark in more than 40 countries and the European Union, and including three CHEMOURS marks registered in the US. The CHEMOURS trademark is a made-up fanciful mark: “chem” is a reference to chemistry and “ours” is a reference to those four letters as they appear in the E. I. du Pont de Nemours name. As a global chemical company, Complainant offers a wide range of chemical products throughout the world. In addition to its trademarks, Complainant owns over 25 domain names using the CHEMOURS mark, including <chemours.com>, as well as numerous country-level domain names. Complainant registered the <chemours.com> domain name on March 17, 2014.

The Domain Name was registered on August 8, 2022, and used a privacy service to conceal Respondent's identity. The Registrar identified the underlying registrant as Respondent Clearer Technology with the contact name Gabriel Joseph. Respondent has confirmed that Gabriel Joseph is an individual doing business as Clearer Technology.

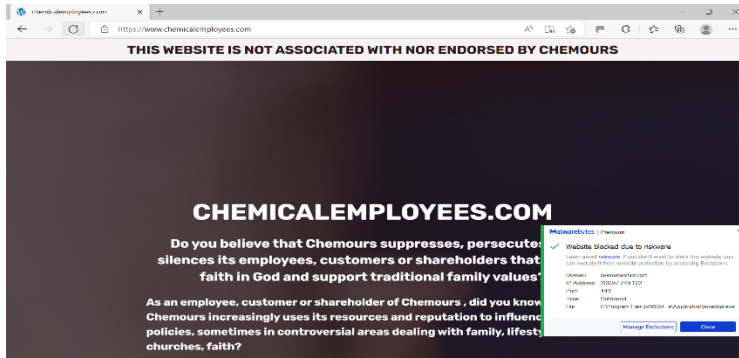
The record includes screen shots of the website to which the Domain Name resolved at the time of filing the Complaint. The Domain Name redirected to “www.clearer technology.com”, where the site appeared as follows:



The Panel visited the website at “www.clearer technology.com” to verify the content of the site. (See section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) (panelist may undertake limited factual research into matters of public record if useful to assess the merits and this may include visiting a website linked to the disputed domain name). The Panelist found that the site for Clearer Technology, which purports to be a company “developing new systems, sites and technologies to handle today’s opportunities” remains static and “under construction,” while the site also triggered the Panelist’s anti-virus software (See screen shot below – “Website blocked due to riskware” (i.e., software whose installation and execution poses a possible security risk)).



Following the filing of the Complaint, as indicated by Respondent, the Domain Name was redirected away from the site at “www.clearer-technology.com” to a site linked to the Domain Name at <chemicalemployees.com>. Further, as indicated by Respondent, the content of the site linked to the Domain Name was changed following the filing of the Complaint. Respondent has provided evidence of the current content at the site. The Panel sought to verify that content of the site linked to the Domain Name and visited the site. The following content appeared along with the indication from the Panelist’s anti-virus software: “Website blocked due to riskware” (i.e., software whose installation and execution poses a possible security risk).



This newly posted website provides critical views on Complainant and views on social issues such as LGBTQ rights, abortion, free speech, freedom of religion, and then posits a list of eight questions, with the following statement: “If you answer ‘yes’ to any of these questions, please click the ‘Contact Us’ link below to tell us about yourself, where you work, what you have experienced or seen, and to let us know how we may follow-up with you regarding these rights.” The website provided a “Contact Us” link.

The parties have brought to the Panelist’s attention that Respondent has been a party in three prior disputes involving domain names that Respondent registered. In two cases, the panels ordered that the domain names be transferred to the complainant, while in the other case Respondent prevailed.

- *Boehringer Ingelheim Pharma GmbH & Co.KG v. Clearer Technology*, CAC No. 104652 (July 22, 2022) (<boehringeremployees.com> and <boehringeringelheimemployees.com>, domain names transferred)

- *Bank of America Corporation v. Clearer Technology/Gabriel Joseph*, FA2207002002927 (FORUM August 16, 2022) (<bankofameriicaemployees.com> and <boaemployees.com>, domain names transferred)

- *Leidos, Inc. v. Gabriel Joseph/Clearer Technology*, FA2207002005102 (FORUM September 8, 2022) (<leidosemployees.com>, complaint denied).

Respondent indicates that for the two cases where the domain names were ordered to be transferred to the complainant, Respondent has initiated litigation in the US courts:

- *Joseph Holdings, LLC, d/b/a Clearer Technology, et al. v. Boehringer Ingelheim Pharma GmbH & Co.KG*, 1:22-cv-01948 (Dist. Colo. 2022)

- *Joseph Holdings, LLC, d/b/a Clearer Technology, et al. v. Bank of America Corporation*, 1:22-cv-02216 (Dist. Colo. 2022)

5. Parties' Contentions

A. Complainant

(i) Identical or confusingly similar

Complainant claims the Domain Name is confusingly similar to, tarnishes and dilutes Complainant's CHEMOURS trademarks. Complainant states Respondent's Domain Name incorporates the CHEMOURS mark in its entirety and is confusingly similar to the mark. The inclusion of the word "employees" in the Domain Name does nothing to alleviate confusing similarity. Accordingly, Complainant contends the Panel should find that Complainant has proven the first element of the Policy.

(ii) Rights or legitimate interests

Complainant contends that Respondent has no rights or legitimate interests with respect to the Domain Name. Although the website linked to the Domain Name is currently active, Complainant asserts there is no non-infringing use Respondent can make of the Domain Name. Complainant has not authorized, licensed, or otherwise permitted Respondent to use its CHEMOURS trademark, and Complainant does not have any type of business relationship with Respondent.

Complainant states that previous panels have found that a respondent has no legitimate interest when, like here, the respondent's use of a domain name falsely suggests affiliation with the trademark owner. Respondent registered the Domain Name on August 8, 2022, over 8 years after Complainant registered its <chemours.com> domain name in March 2014. Although the confusingly similar Domain Name is active, Complainant emphasizes Respondent has no legitimate interest in it because the Domain Name fully incorporates Complainant's CHEMOURS trademark. This is particularly true given that CHEMOURS is a made-up word mark. Complainant has not authorized, licensed or otherwise permitted Respondent to use its CHEMOURS mark, and Complainant does not have any type of business relationship with Respondent.

(iii) Registered and used in bad faith

Complainant contends that Respondent registered the confusingly similar Domain Name in bad faith, as evidenced by the fact that Respondent: (i) is using Complainant's well-known CHEMOURS trademark in its entirety, (ii) has hidden its true identity, and (iii) is attempting to tradeoff on the goodwill Complainant has established in its CHEMOURS mark.

Complainant argues that previous panels have found that a domain name is registered in bad faith when, like here, Respondent has hidden its identity and Complainant has an established and well-known trademark. Complainant states that Respondent, whose identity is hidden, is not making legitimate use of the confusingly similar Domain Name. It is not possible to conceive of any plausible actual or contemplated active use of the Domain Name by Respondent that would not be illegitimate, disruptive to Complainant's business, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of Complainant's rights under trademark law. Further, Complainant asserts that prior UDRP panels have held that the use of a domain name may constitute bad faith when used for purposes such as sending deceptive emails (e.g., to obtain sensitive or confidential personal information), phishing, soliciting payment for fraudulent invoices, identity theft, or malware distribution.

Further, Complainant is particularly concerned as Respondent, in bad faith, appears to have registered the confusingly similar Domain Name for the purpose of spoofing and has linked it to an alleged "technology" company's website, located at "www.clearertechnology.com," further increasing chances of consumer confusion because Complainant is a global chemical company. Complainant states that, upon information and belief, it is likely that Respondent will use the Domain Name as a spoofing website to impersonate Complainant and to potentially facilitate activity in deceiving the consuming public into thinking Respondent has a relationship with Complainant.

Accordingly, Complainant requests that this Panel transfer the confusingly similar Domain Name to Complainant so that Complainant can make legitimate use of it.

B. Respondent

(i) Identical or confusingly similar

Respondent contends that although the Domain Name contains Complainant's CHEMOURS mark in its entirety and the word "employees," the Domain Name will not cause confusion and should not be considered confusingly similar. Respondent states that while Complainant applies a test of confusing similarity confined to a comparison of the Domain Name and Complainant's marks, US law should be applied in this case, because both parties have business operations in the US and any further litigation concerning the Domain Name would be heard in a US court applying US law.

Respondent states that Complainant is a US corporation with headquarters in Wilmington, Delaware, and Respondent is a US individual located in Virginia. Respondent claims that prior panels have determined that in proceedings in which both parties are located in the US, it is appropriate to consider principles of US law. Complainant claims that in the context of US trademark law, when marks are confusingly similar, the analysis incorporates the use of the marks. Respondent states that the current landing page of the Domain Name provides information to Complainant's employees and does not appear to be affiliated with Complainant. The landing page states "THIS WEBSITE IS NOT ASSOCIATED WITH NOR ENDORSED BY CHEMOURS." The landing page for the Domain Name looks nothing like Complainant's website. The Domain Name differentiates from Complainant's mark by automatically forwarding to <chemicalemployees.com>. Further, the landing page is critical of Complainant and seeks to elicit information that is contrary to Complainant's interests.

Thus, viewing the Domain Name in the context of the corresponding website, Respondent contends that the viewing public would not likely be confused into believing that the site was associated with or endorsed by Complainant and, therefore, the Domain Name is not confusingly similar to Complainant's mark.

(ii) Rights or legitimate interests

Respondent states that the Policy, at paragraph 4(c)(iii), provides that rights or legitimate interests may be demonstrated by showing that 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." Respondent asserts that, as stated on the current webpage linked to the Domain Name, Respondent is not associated with or endorsed by Complainant, but does engage in noncommercial criticism and commentary of Complainant.

Respondent states that it registered the Domain Name on August 8, 2022, and Complainant filed this case on August 16, 2022, prior to Respondent's posting of its intended landing page for the Domain Name. Respondent contends that the evidence submitted by Complainant, which was attached to the Complaint, contains a screen shot of the landing page of the Domain Name that is not an accurate depiction of the current landing page, nor an accurate depiction of Respondent's intended use for the Domain Name. Respondent states that since the Complaint was filed, Respondent launched the intended webpage linked to the Domain Name.

Respondent asserts that it is located in the US and registered the Domain Name using Complainant's business name, plus the dictionary word "employees," for the purpose of commenting on Complainant's policies and to inform and elicit information regarding employment discrimination and to inquire if employees of certain companies are interested in forming a union. Respondent claims that its registration and use of the Domain Name is a fair use and legitimate and protected free speech, commenting on the social policy of businesses and seeking information regarding businesses operating in the US with policies that may violate provisions of the law or where employees are not protected by a collective bargaining agreement or union. Respondent states that this is speech protected by the First Amendment to the US Constitution.

Respondent claims its use of Complainant's marks in the Domain Name is a nominative fair use to identify the company that is the subject of the site. Respondent alleges Complainant is involved in multiple lawsuits regarding the safety of its products and environmental record. Respondent contends US courts have said that individuals who would like to criticize or engage in commentary must be able to use the trademark owner's marks in order to identify the owner as the subject of the criticism or commentary. Respondent asserts that criticism sites are protected by the US First Amendment and Lanham Act when they are used noncommercially and for genuine purposes. Respondent's right to free speech should be protected with regards to the Domain Name. Further, Respondent's site does not evidence an intent to "tarnish the trademark or service mark at issue." While critical of Complainant, Respondent's site is not the classic form of "tarnishment," for example a site associating the mark with unrelated unwholesome activities such as illegal drugs, violence, or adult entertainment and sexual activity.

Respondent states that it makes a legitimate, genuine and noncommercial use of the Domain Name as a site to provide information and genuinely critique Complainant's social activism, and that UDRP panels regularly deny complaints directed against genuine, noncommercial websites designed to legitimately criticize or provide information, particularly where the dispute involves US parties.

Respondent indicates that in another similar domain name dispute in which it was involved with an almost identical website, a UDRP panel denied transfer of the Domain Name. *Leidos, Inc. v. Gabriel Joseph/Clearer Technology, supra*. For these reasons, Respondent concludes that the second element of the Policy is not made out.

(iii) Registered and used in bad faith

Respondent contends that Complainant fails to prove that the Domain Name was registered or is being used in bad faith. While Complainant alleges that Respondent has hidden its identity and believes Respondent intends to spoof Complainant's website, Respondent states that Gabriel Joseph is an individual doing business as Clearer Technology. Respondent created a generic landing website while the intended site was under construction to avoid the issues of the pay-per-click default landing page of the Registrar. It then launched the intended non-commercial critique website. Respondent's purpose for the Domain Name is to provide Complainant's employees with information regarding their rights. Additionally, Respondent claims it does not intend to attract users with Complainant's marks, as evidenced by not appearing on any search engine, but merely to use Complainant's mark to identify the subject of the criticism and commentary in which the website provides.

Respondent claims it has not intended to impersonate or create the image that it is connected with Complainant. Respondent's use of a forwarding site provides further distance from Complainant's mark. Respondent claims it is not benefiting financially from any web traffic to the Domain Name. Respondent is attempting to draw attention to Complainant's social activism on controversial topics, far afield from Complainant's commercial services.

Respondent states Complainant has not presented evidence that Respondent registered the Domain Name for the purpose of selling or transferring the registration to Complainant, and Respondent does not intend to do so. Respondent's purpose is to inform Complainant's employees, and Respondent is in no way profiting from the Domain Name. When a respondent has rights and legitimate interest in the disputed domain name, such as through a criticism website, the registration of the name is not in bad faith. Respondent states the most recent case to address these nearly identical circumstances found Respondent's actions were not in bad faith and denied the complaint. See *Leidos, Inc. v. Gabriel Joseph/Clearer Technology, supra*. For the foregoing reasons, Respondent has not registered the Domain Name in bad faith.

C. Complainant's Supplemental Filing

In view of the changes to the content linked to the Domain Name, Complainant contends that Respondent's use of the Domain Name should not be considered under the first element of the UDRP, citing section 1.15 of the [WIPO Overview 3.0](#) and the prior case involving Respondent, *Boehringer Ingelheim Pharma GmbH &*

Co.KG v. Clearer Technology, supra. Complainant contends that like in the present case, the prominent portion of the Domain Name is the CHEMOURS trademark, and Complainant and Respondent are referring to that same mark. Thus, the Panel should disregard the website content of the Domain Name and find that the Domain Name is confusingly similar to Complainant's CHEMOURS mark.

Further, Complainant contends that Respondent cannot alter its website after commencement of the administrative proceedings to demonstrate rights or legitimate interests in the Domain Name. Referring to section 2.11 of [WIPO Overview 3.0](#) and the *Boehringer* case *supra*, Complainant contends that the Panel's assessment of the three elements under that UDRP should be made based on the circumstances when the Complaint was filed, and any material changes related to the Domain Name should be disregarded. Complainant claims that, similar to the circumstances here, Respondent altered the web content for the disputed domain name in the *Boehringer* case subsequent to the filing of the complaint. Here, Respondent redirected the Domain Name from "www.clearertechnology.com" to another site, as acknowledged by Respondent.

Furthermore, Complainant claims it is Respondent's common practice to attempt to change its website during the UDRP proceedings against it in an illegitimate attempt to negate bad faith and raise a First Amendment argument, citing *Bank of America Corporation v. Clearer Technology/Gabriel Joseph, supra*. Based on the above, Complainant urges the Panel should find that Respondent lacks rights or a legitimate interest in the Domain Name.

Finally, Complainant argues that Respondent should not be permitted to retain the Domain Name as Respondent is a serial bad faith registrant of domain names, and that registering a domain name similar to a well-known brand with actual knowledge constitutes registration in bad faith. Respondent has confirmed in its Response that it had actual knowledge of Complainant. Importantly, Respondent has an established a pattern and practice of registering domain names that incorporate well-known third-party trademarks in their entirety without authorization and in bad faith. *Bank of America Corporation v. Clearer Technology/Gabriel Joseph, supra*.

Based on the foregoing, Complainant requests the Panel deny the remedies requested by Respondent and transfer the Domain Name to Complainant so it can make legitimate use of the Domain Name as part of its CHEMOURS brand.

6. Discussion and Findings

In order to succeed on its Complaint, Complainant must demonstrate that the three elements set forth in paragraph 4(a) of the Policy have been satisfied. Those elements are as follows:

- (i) the Domain Name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) Respondent has registered and is using the Domain Name in bad faith.

A. Supplemental Filing

Complainant filed a supplemental submission on September 29, 2022. Paragraph 12 of the UDRP Rules provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties that it may consider necessary to decide the case. Thus, unsolicited supplemental filings are generally discouraged by UDRP panelists, and "panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some 'exceptional' circumstance)". See section 4.6 of [WIPO Overview 3.0](#)

Here, in the Panel's view, Complainant has established exceptional circumstances for the admission of its supplemental filing. In particular, the Panel considers that following the filing of the Complaint, Respondent redirected the Domain Name away from the site at "www.cleartechnology.com" to a new website linked directly to the Domain Name at <chemicalemployees.com>. Further, the content of the site linked to the Domain Name was substantially changed. The Panel finds that Complainant could not reasonably have anticipated these changes. The supplemental filing is responsive to these changed circumstances and new disclosures, which became apparent only after the filing of the Complaint. Therefore, the Panel accepts Complainant's supplemental filing.

B. Identical or Confusingly Similar

The Panel determines that Complainant has demonstrated well-established rights in its distinctive and fanciful CHEMOURS trademark, through both extensive registration and widespread use in its commercial operations as a global chemical company. See *The American Automobile Association, Inc. v. PSI*, WIPO Case No. [D2008-1931](#) ("Prior panels have recognized that confusing similarity is generally established for purposes of the Policy where the disputed domain name incorporates the Complainant's trademark in its entirety[.]"); *Instagram, LLC v. Brian Breiter, Law Offices of Brian Breiter*, WIPO Case No. [D2022-2149](#).

The Panel further finds that the Domain Name is confusingly similar to Complainant's CHEMOURS mark. The Domain Name incorporates the distinctive CHEMOURS mark in its entirety, with the placement of this mark in the dominant position at the beginning of the relevant Domain Name, followed by the descriptive word "employees". The addition of the word "employees" does not prevent a finding of confusing similarity in this case. Numerous decisions make UDRP jurisprudence clear on this point – that the addition of other terms does not prevent a finding of confusing similarity. See WIPO Overview, section 1.7 ("where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."); see also *E2Interactive, Inc. v. Jennifer Hart / Donna Burton*, WIPO Case No. [D2017-1624](#) ("The only difference between Complainant's mark and the disputed domain name <onevanillagiftcard.com> is the addition of the common words "gift" and "card". Numerous previous UDRP decisions have held that the addition of a common word does not distinguish a disputed domain name from a complainant's mark or preclude a finding of confusing similarity.").

Respondent has invited the Panel to make an assessment under this first element of the Policy while applying principles of US trademark law. Respondent has also included references to US federal court cases (and US law) in support of its submissions under the second and third elements of the Policy in this case. Respondent refers to UDRP Rule 15(a), providing that 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". Further, in this connection, Respondent has indicated that it has taken steps following two prior UDRP decisions rendered against it by initiating litigation concerning the disputed domain names in the US federal courts, where Respondent presumably intends to assert US trademark or other US laws.

As a threshold matter, the Panel disagrees with Respondent's approach inviting an analysis of "confusingly similarity" under principles of US trademark law. First, Rule 15(a), cited by Respondent, provides that beyond applying the Policy and Rules, the issue of whether or not to apply "rules or principles of law" is left to the discretion of the relevant panelist. See *1066 Housing Association Ltd. v. Mr. D. Morgan*, WIPO Case No. [D2007-1461](#). Moreover, the wording of this rule does not actually refer to national law, instead referring to "rules and principles of law". Thus, as stated in *1066 Housing Association v. Mr. D. Morgan*, "[t]his appears to be a somewhat more abstract notion. It brings to mind the concept of "general principles of law" that is well known in many legal systems and which is also to be found in the Statute of the International Court of Justice. Therefore, this Panel would suggest that this provision provides scant basis upon which to import a principle that local law should apply where both parties are in the same state."

More broadly, the Panel is of the view, as expressed in a prior UDRP decision, that (outside the narrow question of the existence of trademark rights under the Policy's first element):

“the UDRP is intended to provide an international and uniform policy across all top-level domains for resolving disputes between trademarks owners and domain name registrants. As stated in *1066 Housing Association Ltd. v. Mr. D. Morgan*, WIPO Case No. [D2007-1461](#), an approach applying local rules ‘risks the UDRP fragmenting into a series of different systems, where the outcome to each case would depend upon where exactly the parties happened to reside.’ Moreover, as a policy matter, ‘the act of bringing local law into the assessment of the Policy when taken to its logical conclusion as a matter of practice undermines the ... goal of commercial certainty.’ *Id.* This point is further supported because the Policy, on the one hand, and local laws (and related procedures) as to cybersquatting and trademark infringement, on the other hand, are different in several important respects, such that a set of facts might conclusively establish trademark infringement under domestic law, yet not be considered bad faith registration and use under the Policy, and vice versa.”

Green Bay Packers, Inc. v. Moniker Privacy Services / Montgomery McMahon, WIPO Case No. [D2016-1455](#). As indicated above, the problem is that the Policy, which is intended for “uniform” and international application (as implied by its name), is different from the various national or local laws as to cybersquatting, trademark infringement and concepts of free speech. They do not do, and are not intended to do, the same thing. *Housing Association Ltd. v. Mr. D. Morgan, supra*.

Moreover, a respondent indicating that it will bring a subsequent litigation in the US courts as a basis for applying US law should not influence the Panelist’s analysis. One of the cases referenced by Respondent where it was a party, *Boehringer Ingelheim Pharma GmbH & Co.KG v. Clearer Technology*, demonstrates the tension and concerns raised between applying the UDRP as a global and uniform policy, on the one hand, and a party seeking to have a UDRP panelist apply principles of national (US) law, on the other hand. In that case, the complainant, a German pharmaceutical company, Boehringer Ingelheim, relied on three international trademark registrations (registered through the WIPO Madrid system) that did not rely on or reference US law. The UDRP panelist in that case was a non-US national and applied the UDRP to find that Respondent had registered and used the disputed domain name in bad faith under the Policy. However, following that UDRP decision, Respondent has stated that it has filed a case in the US federal courts against the German company, where Respondent will presumably seek to rely on principles of US law. Of course, given that a German company is involved in that case and the trademarks relied upon by that company were non-US marks (and assuming personal jurisdiction and service of process against that foreign party can be established in the US court), it begs the question whether the US federal court will have to apply conflict of laws rules to determine whether US or German law should be applied to the issues in that litigation. See *e.g., Housing Association Ltd. v. Mr. D. Morgan, supra*. Even when the parties are from the same jurisdiction, as indicated above, the Policy and local laws as to cybersquatting and trademark infringement, among others, are different. As stated in *McMullan Bros Limited, Maxol Limited and Maxol Direct Limited Maxol Lubricants Limited, Maxol Oil Limited Maxol Direct Limited v. Web Names Ltd*, WIPO Case No. [D2004-0078](#):

“[t]o import a national rule simply because both parties come from the same jurisdiction may result in similar cases being decided [under the UDRP] in a different manner dependent upon geographical accident. This is a conclusion that this Panel finds inherently unattractive.”

For these reasons, the Panelist also disagrees with the view, relevant to the analysis below, that UDRP cases involving two parties, both of whom are located in the US, should provide the basis for the US single-country exception to the broader consensus view that national law should not be an element in determining “fair use” under the criteria set forth as to rights or legitimate interests under the second element of the Policy. Compare *Howard Jarvis Taxpayers Association v. Paul McCauley*, WIPO Case No. [D2004-0014](#); [WIPO Overview 3.0](#), section 2.6.2 (“In certain cases involving parties exclusively from the United States, some panels applying US First Amendment principles have found that even a domain name identical to a trademark used for a *bona fide* noncommercial criticism site may support a legitimate interest.”) but also note the subsequent decision in *Dover Downs Gaming & Entertainment, Inc. v. Domains By Proxy, LLC / Harold Carter Jr, Purlin Pal LLC*, WIPO Case No. [D2019-0633](#) stating “Despite efforts by a number of panels to find a common ground that would support that second view for cases with (only) United States parties and panelists, consensus has not formed around that approach; to the contrary, as noted above, many

stakeholders criticized that approach and declined to follow it. For that reason, the time has come to support the developing consensus around the impersonation test, even for cases, like the one here, between United States parties and with a United States panelist and where the location of mutual jurisdiction is in the United States. Significantly, the [WIPO Overview 3.0](#)'s impersonation test does not bar registrants from using a domain name that contains a trademark plus an additional, distinguishing term. Registrants remain free to select such a domain name so long as the domain name makes clear that the registrant is not affiliated with or authorized by the trademark holder. In the context of legitimate, noncommercial criticism websites, the most common examples of such domain names are those that append a derogatory term to the trademark name, e.g., <trademarksucks.tld>.”

With these considerations in mind, the Panel determines that for purposes of determining whether the Domain Name is confusingly similar to Complainant's CHEMOURS mark under the first element of paragraph 4(a) of the Policy, the test of identity or confusing similarity is confined to a comparison of the trademark and the disputed domain name. As stated in relevant part in [WIPO Overview 3.0](#), section 1.7:

“It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.”

As noted above, the Domain Name incorporates the distinctive CHEMOURS mark in its entirety, with the placement of this mark in the dominant position at the beginning of the Domain Name, followed by the word “employees,” which does not prevent a finding of confusing similarity. By contrast, the content of a website linked to the Domain Name may be relevant to an overall assessment of the merits under the second and third elements. See [WIPO Overview 3.0](#), sections 1.7 and 1.15.

In conclusion, the Panel finds that the Domain Name is confusingly similar to a trademark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy. Accordingly, Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, Complainant must prove that Respondent has no rights or legitimate interests in respect of the Domain Name. A complainant is normally required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Here, the Panel finds that Complainant has made out a *prima facie* case. Complainant has indicated that Respondent has no legitimate interest in the confusingly similar Domain Name because it fully incorporates Complainant's distinctive and well-established CHEMOURS trademark; that this is particularly true given that CHEMOURS is a made-up fanciful word mark; that Respondent has no legitimate interest when the Domain Name falsely suggests affiliation with the trademark owner; that Complainant has not authorized, licensed, or otherwise permitted Respondent to use the CHEMOURS trademark; that Complainant does not have any type of business relationship with the Respondent; that Respondent cannot alter its website after commencement of the administrative proceedings to demonstrate it has rights or a legitimate interest in the Domain Name, and that it is Respondent's common practice to attempt to change its website during proceedings against it in an attempt to negate bad faith and raise free speech defenses.

In response, Respondent relies on paragraph 4(c)(iii) of the Policy, that 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.” Respondent claims genuine and noncommercial use of the Domain Name for a website to critique Complainant's social activism, to educate

Complainant's employees and the general public of their civil rights and unionization rights under US law, and for the purpose of collecting information regarding whether Complainant has abused the rights of its employees or discriminated against them.

As an initial matter, the Panel observes that it appears Respondent has registered a collection of domain names in similar format (trademark + "employees.com"), targeting companies and their trademarks in diverse industries and different countries. See e.g., *Boehringer Ingelheim Pharma GmbH & Co.KG v. Clearer Technology, supra*, (<boehringeremployees.com> and <boehringeringelheimemployees.com>); *Bank of America Corporation v. Clearer Technology/Gabriel Joseph, supra* (<bankofameriicaemployees.com> and <boaemployees.com>); and *Leidos, Inc. v. Gabriel Joseph/Clearer Technology, supra* (<leidosemployees.com>). For some of the domain names in these cases, similar to this case, Respondent changed the website linked to the domain name after the filing of the complaint from a pay-per-click site to a website with criticism of the company targeted. Here, Respondent changed its webpage after the filing of the Complaint by redirecting the Domain Name away from the site at "www.clearertechnology.com" to a new site linked directly to the Domain Name containing critical views about Complainant and views on certain social issues, plus eight questions and inviting users to "Contact Us" to "tell us about yourself, where you work, what you have experienced or seen, and to let us know how we may follow-up with you regarding these rights."

While [WIPO Overview 3.0](#), section 2.11, indicates that panels tend to assess claimed respondent rights or legitimate interests in view of the circumstances prevailing at the time of the filing of the complaint, Respondent here has stated that (i) Complainant filed its Complaint only eight days after the Domain Name was registered, and (ii) Respondent shortly thereafter updated its webpage for the Domain Name. While under paragraph 4(a) of Rules, a domain name should remain "locked" to prevent cybersquatting during the pendency of UDRP proceedings, this lock does not prevent the ability of a respondent to update the content of the site linked to the disputed domain name.

The Panel determines that in the circumstances of this case, where Complainant filed its Complaint only eight days after Respondent registered the Domain Name, Respondent updating the webpage linked to the Domain Name *after* the filing of the Complaint does not preclude considering the content of that updated site. In assessing these issues, the Panel takes little notice of the substance of the views and critiques Respondent has presented on the updated site. Nonetheless, in order to make an assessment as to Respondent's claim of "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," the Panel must consider whether or not Respondent presents a "genuine" criticism and commentary site, and is not using the site merely as a pretext (e.g., to target Complainant's CHEMOURS mark, seek commercial advantage, disrupt Complainant's business, or for another illegitimate purpose such as phishing, identity theft, or malware distribution). Part of the focus in paragraph 4(c)(iii) is determining whether a respondent is making a "legitimate" noncommercial or fair use. Similarly, paragraph 4(c)(i) for commercial uses refers to a "*bona fide*" offering of goods or services. Thus, the Panel must confront this issue of genuineness as part of its analysis.

This same issue was raised in two of the three prior case involving Respondent. See *Boehringer Ingelheim Pharma GmbH & Co.KG v. Clearer Technology, supra* ("There is not sufficient evidence to convince the Panel that Respondent is genuinely providing non-commercial support to Complainant's employees."); *Bank of America Corporation v. Clearer Technology/Gabriel Joseph, supra* ("It is not necessary to reach a conclusion as to whether the Respondent's purported use or the Domain Name is genuine or a pretext created for the present proceedings"). By comparison, the Panel in *Leidos, Inc. v. Gabriel Joseph/Clearer Technology, supra*, stated the "central question in this case is whether Respondent's website *has the appearance* of being a genuine criticism site." The appearance of Respondent's site, alone, at least based on the record in the instant case, does not adequately answer the question. The concern here is that Respondent has provided absolutely no evidence, and the record contains no evidence, about Respondent itself (i.e., Clearer Technology and the named individual) and its business. There is little to explain why Respondent has registered a collection of domain names in similar format (trademark + "employees.com"), targeting companies and their trademarks in diverse industries and different countries. The apparent

website for Respondent's business, to which the Domain Name was originally linked, indicates that Clearer Technology is a company "developing new systems, sites and technologies to handle today's opportunities." Why then is this technology company registering domain names targeting various companies and their trademarks, while raising social issues and purportedly reaching out to the employees of these companies? The actual website at "www.clearer technology.com" remains a single static webpage that is "under construction" and triggered the Panelist's antivirus software. Thus, the Panelist has little if any information or *indicia* – other than Respondent's statements in its Response and the content of the updated website linked to the Domain Name, which also triggered the Panel's anti-malware protection – about Respondent and its purpose in registering the collection of disparate domain names, but with the common pattern targeting the well-established trademarks of companies in different countries.

With such limited evidence, the Panel declines, based on the record in this case, to decide whether Respondent's updated website linked to the Domain Name presents a genuine noncommercial criticism site, rather than being used as a pretext. This point is particularly important in this case, where the Domain Name itself strongly suggests an affiliation with Complainant, rather than including a word that might suggest a negative or critical connotation in regards to Complainant. See [WIPO Overview 3.0](#), section 2.5 ("Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry.") Here, although the Domain Name is not identical to Complainant's distinctive CHEMOURS mark, there is nonetheless an immediate potential for false association with the trademark owner and resulting confusion. In particular, the fanciful mark CHEMOURS is not used in common language or the marketplace by anyone or any other company, other than Complainant. The placement of the CHEMOURS mark in the first position, followed by the word "employees" raises the implication that the connected website is a site for Complainant's employees provided, authorized or sponsored by Complainant. See [WIPO Overview 3.0](#), section 2.5.1 ("Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner."). The Panel further observes that Respondent cited a US court case referring to the parody doctrine, but here the Domain Name comprised of Complainant's mark and the word "employees" plainly does not convey the second, contradictory message needed to establish a parody (*i.e.*, the message that the domain name is not related to CHEMOURS, and is a parody of CHEMOURS).

In this case, where the Panel (based on the record) is unable to find that Respondent has posted a genuine criticism site and the Domain Name is highly suggestive of affiliation with Complainant, the Panel is persuaded by the analysis in *Bank of America Corporation v. Clearer Technology/Gabriel Joseph, supra*, where the panel found in regards to two domain names that had been registered by Respondent and followed a similar pattern (comprised of a well-established trademark and the word "employees"):

"As each of the Domain Names contains the Complainant's marks (or an abbreviation of one of Complainant's marks) in its entirety and the descriptive word "employees", Respondent's intended use of the Domain Names would be impersonating the Complainant. While the intended content of the websites to be located at the Domain Names may enjoy protection, this does not extend to the creation of rights or a legitimate interest with respect to the Domain Names. There is clear authority under the Policy, which this Panel follows, that, regardless of the location of the respective parties, Respondent does not have the right to impersonate Complainant by wholly incorporating Complainant's trademark (or an abbreviation in the case of the <boaemployees.com> domain name) in a disputed domain name without the inclusion other *indicia* (such as a derogatory term) to make it clear that the domain name is unconnected to Complainant."

Therefore, in balancing the rights of Complainant in its distinctive CHEMOURS mark, and the right of Respondent to choose freely a domain name, the Panel concludes that Respondent has impermissibly taken advantage of Complainant's interests in its CHEMOURS mark.

Accordingly, for all of the above reasons, the Panel finds that Complainant has made a *prima facie* showing of Respondent's lack of rights or legitimate interests in respect of the Domain Name, which has not been sufficiently rebutted by Respondent. The Panel therefore finds that Complainant has established the second

element of the Policy in accordance with paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that Complainant demonstrate that Respondent registered and is using the Domain Names in bad faith. [WIPO Overview 3.0](#), section 3.1, states “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”.

For the reasons discussed under this and the preceding heading, the Panel considers that Respondent’s conduct in this case constitutes bad faith registration and use of the Domain Names within the meaning of paragraph 4(a)(iii) of the Policy. It is evident that Respondent was aware of Complainant and its CHEMOURS trademark, and targeted that mark when registering the Domain Name. Respondent has a pattern and practice of registering domain names that incorporate well-known third-party trademarks in their entirety without authorization. The Domain Name effectively impersonates or suggests sponsorship or endorsement by Complainant, the trademark owner. Without a sufficient *indicia* of the genuineness of Respondent’s updated website, plus Respondent using a privacy service to hide Respondent’s identity and other indications of concern, the Panel finds, on the balance of the probabilities, that Respondent has used the Domain Name in bad faith to unfairly take advantage of Complainant’s rights in its CHEMOURS trademark and disrupt Complainant’s business operations. See *Bank of America Corporation v. Clearer Technology/Gabriel Joseph, supra* (“Taking the Respondent’s submissions at their highest, the Panel finds that Respondent registered and uses the Domain Names in bad faith to create confusion with Complainant’s marks for by attempting to pass off as Complainant in order to disrupt Complainant’s business.”).

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, <chemoursemployees.com>, be transferred to Complainant.

/Christopher S. Gibson/

Christopher S. Gibson

Sole Panelist

Date: October 31, 2022