

## **ADMINISTRATIVE PANEL DECISION**

Roman Polanski v. Matan Uziel

Case No. D2022-4360

### **1. The Parties**

The Complainant is Roman Polanski, France, represented by Delphine Meillet, France.

The Respondent is Matan Uziel, Israel, represented by The GigaLaw Firm, Douglas M. Isenberg, United States of America (“United States”).

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

The disputed domain name <imetpolanski.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 16, 2022. On November 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 18, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 21, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amended Complaint. The Complainant filed an amended Complaint on November 22, 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 the proceedings commenced on November 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2022. The Respondent requested the automatic extension pursuant to paragraph 5(b) of the Rules. The Center granted the automatic extension to December 17, 2022 and notified the Parties thereof. The Response was filed with the Center on December 16, 2022.

The Center appointed Warwick A. Rothnie, Marie-Emmanuelle Haas, and Brian J. Winterfeldt as panelists in this matter on January 12, 2023. 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 Complainant is a film director, actor, and writer. His career spans at least six decades since at least 1962.

Notable films the Complainant has directed include *Knife in the Water* (1962), which received a nomination for an Academy Award, *Rosemary's Baby* (1968), which received an Academy Award, *Chinatown* (1974), which received 11 Academy Award nominations and was awarded one, *Tess* (1979), which received 6 Academy Award nominations and was awarded three, *Pirates* (2002), which received seven Academy Award notifications and was also awarded three. His most recent films have been *An Officer and a Spy* (2019) and *The Palace* (2023).

In all, the Complainant's films have received 28 Academy Award nominations, being the winner eight times; 27 BAFTA nominations, with six awards and 19 Golden Globe nominations, winning seven times. The Complainant has also been awarded five Best Director awards through France's Cesar Awards for his films *Tess*, *The Pianist* (2002), *i* (2010), and *Venus in Fur* (2013). This is the most Best Director Cesars awarded to a single director.

In 1969, the Complainant's then wife, Sharon Tate, was murdered with four others by followers of Charles Manson.

In 1977, the Complainant was arrested in the United States and charged with unlawful sex with a minor. The Complainant pleaded guilty, but fled before being sentenced. He remains wanted by the United States criminal justice system.

Since that time a number of women have come forward alleging that the Complainant sexually abused them. The Complainant denies these allegations and says he has never been prosecuted, let alone convicted, in relation to any of these allegations.

A film directed by the Complainant, *D'après une histoire vraie* had its premiere at the Cannes Film Festival in May 2017. It subsequently featured in three further film festivals in Switzerland, Brazil, and Bulgaria early in October 2017 before its commercial release in Paris, France on October 30, 2017.

The disputed domain name was registered on October 31, 2017.

Since at least November 3, 2017, it has resolved to a website.

The website is headed "Silence is the Enemy". It referred to the (then) recent allegations against Harvey Weinstein and then notes that another "famously infamous man of the movies is again in the spotlight". The website then explained that the Complainant appeared on October 30, 2017 at *La Cinémathèque Française* as the guest of honour for the launch of a month long retrospective of his oeuvre.

Initially, the website then stated that two named women had recently come forward to make allegations against him. The text included hyperlinks to press reports of the allegations. This text was shortly after replaced with text linking to the allegations against the Complainant by five or six women.

Then, the website set out some paragraphs including quotes allegedly made by the Complainant. The website then continued:

“We can’t bear the thought of another woman’s or girl’s innocence taken away by him. Age and prison time do not cure pedophilia. Polanski has a long history of rampant sexual abuse.

We want to hear your stories about Roman Polanski and other predatory men who have been using their positions of power and influence to sexually abuse and harass women.

This site is dedicated for all the other victims of Roman Polanski, who were afraid to tell what happened years ago — but now, can tell their story knowing that it will not go unheard and will be shared to give others courage around the globe to put Roman Polanski in jail where he belongs.

This unspeakable behavior towards women has to stop. All tips, once verified will be sent to law enforcement authorities and with permission will be shared anonymously on this site.”

Provision was then made for the submission of information.

After a description about the mission of those behind the website and a further call to action, the website included a “Donate Here” link. This link links through to the Respondent’s Real Women Real Stories Patreon account. Over time, there have been 89 subscribers who have donated to this account.

The footer of the webpage included links to the Respondent’s “Real Women Real Stories” YouTube account, Facebook page, and Twitter account.

In December 2017, the Complainant commenced defamation proceedings against the Respondent in Israel at least partly arising from the allegations made against the Complainant through the website to which the disputed domain name resolves. After the Complainant’s application to be excused from cross-examination failed, the proceeding was dismissed and the Complainant was ordered to pay the Respondent’s costs.

In 2018, the Academy of Motion Picture Arts voted to revoke the Complainant’s membership.

Over time, there have been some changes to the website, which the disputed domain name resolves to although the central thrust has largely remained the same. For example, some links to media articles discussing the disclosures on the website have been added, a photo of a younger Complainant has been replaced with a more recent photo and a video of the claims by another actress have been added.

The actress in the video subsequently gave an interview, which was also posted as a video on YouTube, in which she stated that she wished she had never spoken out as a result of the personal and professional toll she has suffered. However, the interview makes it clear that she did not retract her allegations. In addition, one of the women first named on the Respondent’s website subsequently stated on Twitter that she had been repeatedly harassed by the Respondent to provide a video-ed interview of her claims.

The Respondent appears to have been variously a high tech entrepreneur, a hedge fund manager, an art collector, and now describes himself as an executive producer, an investigative journalist, and a former modelling agent. The article about him on Wikipedia claims his documentary films have grossed more than USD 50 million worldwide.

He founded the Real Women Real Stories YouTube channel in March 2016 (although prior to that, the channel had different names).

The description of the channel says the channel “enables women to raise their voice on what they feel needs attention”. There is a very large number of videos on the channel. Many of them, but not all, describe claims of a sexual abuse nature. When the Complaint was submitted, this channel had 213,000 subscribers and some 59 million views.

In an interview published online in “L’Obs”, the Respondent admitted he had posted on Twitter offering USD 20,000 for a “tip” strong enough to incriminate the Complainant. The Respondent also admitted that he did

not have the funds himself to pay that amount but claimed, if the information were sufficiently compelling, he would be able to get it funded. In the interview, the Respondent also claimed that the testimonials he had received had all been unpaid.

## 5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Paragraph 15(a) of the Rules directs the Panel to decide the 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.

### A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has not provided evidence of any registered rights. Instead, the Complainant relies on his fame particularly as a film director. The Respondent disputes that the Complainant has any such rights.

The Policy does not explicitly provide standing based on personal names. Merely having a famous name is not sufficient. Where the name has not been registered as a trademark, it is necessary to show by evidence that the name has been used as a trademark-like identifier in trade or commerce. See e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.5 and, in relation to proving rights in an unregistered trademark, section 1.3.

The Complaint does not set out conventional examples of how the Complainant has used his name in a trademark-like sense or the revenues generated by its use or advertising and promotional expenditures in promoting it.

The Panel recognises, however, that it is conventional for the director of films of the kind made by the Complainant to be identified by name in the credits and the Panel infers that has occurred in this case, most likely under his full name.

The number of films the Complainant has made over his long career and the large number of prestigious awards he has received, including Academy Awards and Cesar awards, demonstrate an international reputation in his name.

The Respondent contends that, as a director, this reputation has not been acquired in trade or commerce and distinguishes the decision in *Gene Kelly Image Trust v. BWI Domain Manager*, WIPO Case No. [D2008-0342](#) on the basis that Mr. Kelly was an actor, not a director.

That is not correct as the decision in that case itself describes Mr. Kelly as “a dancer, choreographer, actor, and movie director”. In any event, the identity of the director of a motion picture is often an important selling point for the film, as is often the case for the principal actors. The services of such directors are highly sought after. The public’s reception of films made by such directors affects the films they are offered, the budgets and the fees they may command. As with Mr. Kelly in the *Gene Kelly Image Trust v. BWI Domain Manager, supra*, the Panel considers this kind of usage qualifies as sufficient use in connection with trade or commerce in the provision of goods or services for the purposes of the Policy. The Complainant plies his trade as a film director (at least) under his own name and has, as the Respondent accepts, established an international reputation in his name.

The Panel finds therefore that the Complainant has sufficiently demonstrated rights in at least his name “Roman Polanski” as an unregistered trademark.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademark. This test is narrower than and thus different to the question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is conventional to disregard the generic Top Level Domain (“gTLD”) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the “.com” gTLD, the disputed domain name consists of the Complainant’s surname and the term “i met”. As this requirement under the Policy is essentially a standing requirement, the addition of the term “i met” does not preclude a finding of confusing similarity if the Complainant’s trademark remains visually and aurally recognisable within the disputed domain name. See e.g., [WIPO Overview 3.0](#), section 1.8.

“Polanski” is a surname and so could be used by anyone with that name. However, the Complaint includes evidence that there are less than 2,000 people around the world with that surname. It is therefore far from common in contrast to, say, surnames like “Smith”, “Jones”, “Chan”, or “Nguyen”. Moreover, having regard to the Complainant’s international reputation, the Panel considers it very likely that a substantial section of the public would infer the “Polanski” who was met was the Complainant.

If there were any doubt about this, it would be appropriate to refer to the content of the Respondent’s website to confirm whether or not the Complainant or his trademark was being targeted. See e.g., [WIPO Overview 3.0](#), section 1.15. Plainly, that is the case here. The whole point of the website is to target the Complainant.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

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

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (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.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name well after the Complainant began using his trademark and, plainly, with the knowledge that the name signified the Complainant.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

At least arguably, the disputed domain name is not being used in connection with an offer of goods or services. Rather, it purports to be more in the nature of a "whistleblower" or criticism site.

The Final Report of the WIPO Internet Domain Name Process, April 30, 1999 at paragraph 172 explained the rationale that led to paragraph 4(c)(iii) of the Policy:

"Domain name registrations that are justified by legitimate free speech rights or by legitimate non-commercial considerations would likewise not be considered to be abusive."

[WIPO Overview 3.0](#), sections 2.5 and 2.6 set out a number of factors, which panels have taken into account in assessing a claim to fair use. It is important to bear in mind that these are factors or considerations and do not exhaustively define what qualifies as "fair use" for the purposes of the Policy. The over-arching issue is whether the domain name and its use qualify as fair use or legitimate noncommercial activity.

The first factor usually considered is the nature of the use being made of the disputed domain name:

- (i) whether the domain name has been registered and is used genuinely for the purpose of criticizing the mark owner;

The Complainant contends that the Respondent cannot claim the benefit of paragraph 4(c)(iii) because (summarising):

- (1) it was registered and is being used to tarnish the Complainant's reputation; and
- (2) it was created and is being used for commercial purposes.

The Complainant points out that the website to which the disputed domain name resolves accuses the Complainant of being a sexual predator and contends the website relays “anonymous testimonies from unidentified persons, except for” [one person] whom the Complainant contends subsequently dissociated herself from the practice.

It is not correct that the website relays “anonymous testimonies from unidentified persons, except for” [one person]. In its first form, both of the initial accusers were identified. Subsequent accusations, if the sources were not identified on the website, were at least identifiable from the links to the online media reports. Also, while it is true the person identified in the Complaint did dissociate herself from public accusations, the text of the tweet in question reads:

“If you’re a victim of sexual assault by Roman Polanski do not come forward publicly at all. Get a top notch attorney and let them handle everything.”

That can hardly be seen as exonerating the Complainant.

As the Response points out, and even a number of the media articles included in the Complaint confirm, the Complainant’s conviction and numerous of the allegations against him were already in the public domain and the subject of media reports before the disputed domain name was registered. Before the disputed domain name was registered, a number of publications including *Salon*, the *Telegraph*, and the *Daily Mail* had already labelled the Complainant a “predator”. The Complaint even acknowledges the Complainant is known worldwide for the allegations against him.

At the purely factual level, therefore, it is very difficult to characterise the website to which the disputed domain name resolves as tarnishing the Complainant’s reputation.

More importantly, it cannot be an objection to a criticism or grievance or whistleblower site merely that the contents are alleged to tarnish the reputation of the trademark owner. The point of such a site, if genuinely for that purpose, is to expose some (claimed) shortcoming of or wrongdoing by or grievance against the trademark owner. The objective being to expose the wrong-ness of the repute associated with the trademark.

It is not the Panel’s role, nor within its capacity, to rule on whether the criticism is right or wrong; the question before the Panel is whether the disputed domain name is being genuinely used for a fair use purpose.

An example of tarnishment taking the domain name outside the scope of paragraph 4(c)(iii) is *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. [D2000-1415](#). In that case, the domain names encompassing the complainant’s name led users to websites which required the user to click through a number of pop-up ads to exit. The pop-up ads featured advertisements for sexually explicit services. The services being promoted were not services provided or endorsed by Ms. Kidman. Accordingly, the panel concluded:

“The use of domain names that incorporate or are confusingly similar to a famous person’s name strongly suggests an intent to divert users seeking information on that celebrity. *Cf. Shields*, 89 F. Supp. 2d at 639-40 (noting that Zuccarini had conceded a practice of selecting names ‘in an effort to divert Internet traffic to his sites’). Likewise, the sexual implications of the domain name <nicolekidmannude.com> and the sexually explicit advertisements to which it was connected threaten to tarnish Kidman’s mark. See *Rita Rudner*, WIPO Case No. [D2000-0581](#).”

In the present case, it may be argued that the Respondent through use of the disputed domain name is seeking to divert Internet users seeking information about the Complainant; on the other hand the composition of the disputed domain name itself suggests it is connected with someone other than the Complainant, *i.e.* with someone who met him.,

Turning to other factors that may be considered relevant:

- (ii) whether the registrant believes the criticism to be well-founded and lacks intent for commercial gain;

As noted above, the Complainant contends that the commercial nature of the Respondent's activities associated with the disputed domain name disqualify him from reliance on the defence.

First, the Complainant points out that the disputed domain name was registered shortly after the international commercial release in October 2017 of the Complainant's *D'après une histoire vraie* and so should be seen as an attempt to cash in on the reputational benefits that flow from that release. Secondly, the Complainant points to the "Donate" button soliciting Patreon subscriptions. Thirdly, the Complainant points to the links to the *Real Women Real Stories* YouTube channel which features paid advertising. Fourthly, the Complainant refers to the Respondent's tweeted offer of USD 20,000 for "tips" and his admission that he did not have the funds personally to pay that amount.

The Panel accepts that an attempt to cash in on the reputation associated with a trademark can disqualify reliance on fair use. That can be seen for example in the *Nicole Kidman* case *supra* invoked by the Complainant in which the respondent sought to use the fame of Ms. Kidman's name to generate pay-per-click revenues by requiring deceived users to click through a number of advertisements before they could exit the site – so-called mousetrapping. There was no connection between the services being advertised and Ms. Kidman.

As already noted, the present case is very different: on its face, the website appears to be seeking information about the Complainant with the intent of exposing claims of his alleged wrongdoing.

The evidence shows that the Patreon account – for the *Real Women Real Stories* – account did attract some limited funding from 89 subscribers. The evidence does not disclose how much the Respondent has earned from advertising on the YouTube channel. As the Complainant points out, however, the Respondent was aggrieved that steps taken by the Complainant with Google to block such advertising on the Respondent's channel did cost him advertising revenue.

In *Azimo Ltd. v. Vladimir Zubkov*, WIPO Case No. [D2016-2608](#), the panel accepted that the issue is whether the primary purpose of the website is the claimed fair use or it is really a pretext for commercial gain. The *Nicole Kidman* case, with the use of "mousetrapping", provides an example of the latter.

The Respondent says these funds were sought to fund the making of his films and maintenance of his websites. On balance, the Panel considers these practices do not disentitle the Respondent from claiming fair use in this case; in short, they do not appear to be a pretext for cybersquatting. First, the content of the website and for that matter the YouTube channel appear to be directly related to the claimed purpose. In addition, the *Real Women Real Stories* website contains a vast number of videos in which women appear to air their genuinely held grievances and experiences. The Panel does not consider it can dismiss the website or the YouTube channel as shams or mere pretexts.

The offer of a USD 20,000 payment suggests "chequebook journalism" and the admission that the Respondent does not personally have the money to pay it is troubling. They are not claims made on the website. Moreover, it is not clear from the "admission" relied on by the Complainant that the Respondent made the offer without a genuine belief the money would be found. The Respondent also denied that any of the testimonials on his sites had in fact been paid for and there is no evidence before the Panel contradicting that assertion.

The Panel does not consider these commercial aspects negate the Respondent's apparent belief that the criticisms of or grievances with the Complainant are genuine and, as already noted, they do not render the scenario to be a pretext for cybersquatting.



- (iii) whether it is immediately apparent to Internet users visiting the website at the domain name that it is not operated by the owner of the mark;

It appears most unlikely that someone arriving at the website to which the disputed domain name resolves would mistake it for a website operated by or with the approval of the Complainant.

- (iv) whether the respondent has refrained from registering all or most of the obvious domain names reasonably suitable for the owner of the mark;

The disputed domain name does include the Complainant's surname and, as the Panel has held in section 5A above is likely to be readily recognised as referencing the Complainant. As the Respondent points out, however:

"It must be self-evident that, in order to criticize a person or entity, one must use that person's or that entity's name. The question then is, to what extent can that name be used in a domain name for this purpose. It would be unreasonable for there to be a blanket rule against using that name, even as part of a domain name, and therefore to deny a person wanting to make a complaint in the public arena the most obvious and effective way of drawing attention to the subject matter of that complaint."

citing *Challenger Limited v. Sean Butler*, WIPO Case No. [D2014-0852](#).

The disputed domain name is not identical to the Complainant's name. Nor is it his full name. On the contrary, the Complainant's surname is prefaced by the phrase "i met". While there was a practice among some "tech minded" people at the start of this century to use the "i met [name].com" as a kind of calling card, the sense conveyed by such names is equally applicable to persons who have met the name person or persons. Accordingly, the risk of implied (mistaken) affiliation is reduced.

There is no evidence before the Panel that the Respondent has registered other domain names including some or all of the Complainant's name; nor of the names of other celebrities.

Accordingly, it cannot be said the Respondent has attempted to corner the market in the Complainant's name or block him from reflecting his name in an appropriate domain name.

- (v) whether where appropriate, a prominent and appropriate link is provided to the relevant trade mark owner's website; and

There is no link on the Respondent's website redirecting people actually seeking to contact the Complainant.

- (vi) whether where there is a likelihood that email intended for the complainant will use the domain name in issue, senders are alerted in an appropriate way that their emails have been misaddressed.

There is no evidence before the Panel of any practice the Respondent may have to alert senders about misaddressed emails. On the other hand, the form for submitting a comment or contacting the Respondent through the website is well down the page so that the likelihood of someone using it if they wished to contact the Complainant appears very low.

While the last two factors in particular tend against a finding of fair use, on balance the Panel finds that the Respondent has successfully demonstrated his website is for the purposes of criticism or "whistleblowing" and not a pretext for cybersquatting. Accordingly, the manner of use qualifies as fair use for the purposes of the Policy. Thus, the Complainant has failed to establish that the Respondent has no rights or legitimate interests in the disputed domain name.

Finally, the Panel notes the Complainant unsuccessfully pursued defamation proceedings against the Respondent on the basis, at least in part, of the website to which the disputed domain name resolves. Those proceedings did not proceed to an adjudication on the merits. While defamation proceedings do not

raise directly the same issues as arise under the Policy, the issues raised in that proceeding are nonetheless closely related to the issues ventilated in this proceeding. It is a source of considerable concern that the Complainant brought this proceeding notwithstanding the failure of his defamation proceedings against the Respondent and, more so, after several years' delay.

Accordingly, the Panel finds the Complainant has not established the second requirement under the Policy. The Complaint therefore must fail.

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

In light of the failure of the Complainant to satisfy the second requirement under the Policy, the Complaint must fail. Accordingly, the Panel will give only limited consideration to the third requirement.

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see *e.g.*, *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Given the conclusions reached in section 5B, it follows that the Panel finds that, on the record in this proceeding, the Respondent did not register the disputed domain name in bad faith. Further, the way the Respondent has used the disputed domain name does not constitute use in bad faith in terms of the Policy.

## **6. Decision**

For the foregoing reasons, the Complaint is denied.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Presiding Panelist

*/Marie-Emmanuelle Haas/*

**Marie-Emmanuelle Haas**

Panelist

*/Brian J. Winterfeldt/*

**Brian J. Winterfeldt**

Panelist

Date: January 26, 2023