

## ADMINISTRATIVE PANEL DECISION

Sourcis, INC. v. Name Redacted  
Case No. D2023-3581

### 1. The Parties

Complainant is Sourcis, INC., United States of America, represented by Rothschild & Associates LLC, United States of America (“United States”).

Respondent is Name Redacted.<sup>1</sup>

### 2. The Domain Name and Registrar

The disputed domain name <mexico-bariatric-center-warning.com> (hereinafter “Domain Name”) is registered with Dynadot, LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 24, 2023. On August 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed Domain Name. On August 25, 2023, 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 (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to Complainant on August 28, 2023, 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 the same day.

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”).

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<sup>1</sup> Due to the reasons explained in the decision, the Panel has redacted the Respondent’s name from said decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on September 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 26, 2023. The Response was filed with the Center on September 10, 2023.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on October 9, 2023. 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.

### **Panel Order**

The Panel became aware of the decision in *Sourcis, Inc. v. Name Redacted*, WIPO Case No. [D2023-2433](#). Although it appeared that the prior WIPO Case No. [D2023-2433](#) case involved the same parties and overlapping issues, neither party included in their pleadings in the present case any information about any prior proceedings or the *Sourcis, Inc. v. Name Redacted*, WIPO Case No. [D2023-2433](#), decision. Moreover, because Respondent's identity was redacted in the WIPO Case No. [D2023-2433](#) decision, the Panel issued an order requesting that the parties advise whether the parties in the two case were identical. The Panel also requested that if that was the case, the Parties may consent to disclosure of the entire WIPO Case No. [D2023-2433](#) case file to the current Panelist.

Both Parties responded to the Panel Order. Complainant advised that the current and prior Respondents were "related" and Respondent advised that it is identical to Respondent in the WIPO Case No. [D2023-2433](#) case (despite some slight differences in the names as reported by the registrar). Both Parties consented to the disclosure of the prior WIPO Case No. [D2023-2433](#) case file to the current Panel. Accordingly, the Panel finds that the Parties are essentially identical (or are acting in accord with those prior Parties) in the two cases. The Panel has considered the content of the WIPO Case No. [D2023-2433](#) case file when making the decision in this case.

### **4. Factual Background**

Complainant is a company based in California, United States that operates the Mexico Bariatric Center, a bariatric surgery clinic in Mexico.

Complainant owns United States Trademark Registration No. 5,610,986 for MEXICO BARIATRIC CENTER (the "Mark"), registered on November 20, 2018 for services in class 44, claiming a date of first use of September 10, 2012. The registration disclaims rights to "Bariatric Center". Complainant also claims ownership of United States Trademark Registration No. 4,512,884 for the same mark MEXICO BARIATRIC CENTER, registered on the supplemental register on April 8, 2014 for services in class 44, claiming a date of first use of September 10, 2012.

Respondent is an individual who states that it has had experience with bariatric surgery in Mexico and registered the Domain Name and publishes on the associated website commentary and information that criticizes Complainant's bariatric services.

Complainant has filed two complaints against Respondent pursuant to the Policy. The instant proceeding is the second case under the Policy.

On April 1, 2023, Respondent registered two domain names: <mexico-bariatric-center-dr-gutierrez.com>, and <mexico-bariatric.com>. On April 4, Respondent registered a third domain name: <sourcis-inc.com>. On the websites associated with these domain names, Respondent published commentary that was critical of Complainant's business practices and low-quality service.

On June 6, 2023, Complainant filed its first complaint under the Policy against Respondent seeking transfer of the above three domain names.

On June 9, 2023, while the first proceeding was pending, Respondent registered the Domain Name at issue in this proceeding: <mexico-bariatric-center-warning.com>. The addition of the term “warning” to the Domain Name differentiates it from the domain names at issue in the first case and this is a key factor in the outcome of this, the second, case.

The new “warning” Domain Name, which is the subject of this proceeding, resolved to a website that, like the earlier websites, displayed commentary critical of Complainant’s services. On the websites associated with the “warning” Domain Name, Respondent published commentary (some of it from third party reviews) that was critical of Complainant’s business, including allegations that Complainant failed to return deposits; that Complainant’s facility was unsanitary; and that Complainant’s nurses were not sufficiently competent.

The first case was decided on July 12, 2023. *Sourcis, Inc. v. Name Redacted*, WIPO Case No. [D2023-2433](#). The Panel found plausible Respondent’s explanation that the intent was to offer criticism of Complainant’s services. The Panel also observed that Complainant had failed to provide any evidence that Respondent was engaged in commercial activity and found that “it is more likely than not that Respondent is indeed engaging in what he or she believes to be genuine public information campaign that is entirely noncommercial.” The Panel also found that Respondent’s criticism did not constitute tarnishment under the Policy.

The prior Panel nonetheless rejected the fair use defense with respect to both the <mexico-bariatric-center-dr-gutierrez.com> and the <sourcis-inc.com> domain names. The prior Panel ruled that neither of these domain names “alerts the Internet user to the fact that it is associated with a site critical of Complainant” Similarly, in discussing the <mexico-bariatric-center-dr-gutierrez.com> domain name, the prior Panel observed that the issue was “whether Respondent’s use of Complainant’s marks in the disputed domain names, *without qualifying or derogatory terms* that would alert Internet users, amounts to a legitimate noncommercial fair use of Complainant’s marks” (*italics added*). Given the absence of derogatory or qualifying terms in these two domain names, the Panel found that there was an impermissible risk of impersonation and, accordingly, rejected the fair use defense as to these domain names.

The prior Panel ruled in Respondent’s favor with respect to the <mexico-bariatric.com> domain name, finding that, because the domain name was “sufficiently general and descriptive,” it “does not create an association with Complainant – and here is noted that parts of the relevant mark are disclaimed.”

On August 24, 2023, Complainant filed the complaint in this action challenging the newer “warning” Domain Name, largely repeating allegations made in the prior action.

## **5. Parties’ Contentions**

### **A. Complainant**

Based on a comparison of the complaint in this case and the complaint in the prior *Sourcis, Inc. v. Name Redacted*, WIPO Case No. [D2013-2433](#) case, it appears that Complainant has repeated the allegations it previously made with respect to the <mexico-bariatric-center-dr-gutierrez.com> domain name. There are no new arguments and no new evidence. Complainant’s contentions may be summarized as follows:

Under the first element, Complainant states that Respondent’s domain names are confusingly similar insofar as “Mexico- Bariatric-Center-Warning” conveys the same meaning to a typical consumer as “Mexico Bariatric Center”, and a typical consumer will believe that the website is controlled and endorsed by Complainant. Further, the content of websites infringes on various United States trademark registrations and Copyright owned by Complainant, and contain content that is defamatory and libelous to the Complainant.

Complainant experiences actual consumer confusion to Complainant's detriment on a daily basis. Moreover, in some instances, Respondent's website contains information that is directly lifted from Complainant's website. Complainant believes that all of Respondent's actions are taken with the intention of damaging Complainant's reputation and redirecting business to other competitors in the marketplace.

Under the second element, Complainant contends that Respondent has no rights or legitimate interests because the Domain Name directly infringes Complainant's Mark in order to steal business from Complainant and create consumer confusion in the marketplace.

Under the third element, Complainant parrots the language of the Policy, contending that the Domain Name was registered primarily for the purpose of disrupting the business of a competitor. By using the Domain Name, Respondent intentionally attempted to attract for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site or location or of a product or service on Respondent's website or location. Respondent has misused Complainant's Mark, content, and products for the purpose of disrupting Complainant's business, and attracting commercial gain for Respondent.

## **B. Respondent**

Respondent is a natural person, is not a company or any other commercial entity, and is not affiliated with any bariatric commercial entity. Respondent apparently has experience with people who underwent bariatric surgery in Mexico and was involved with an attempt to obtain surgery from Complainant. Respondent is not (based on the record before the Panel) a competitor of Complainant but is providing information about several bariatric facilities in Mexico based on research and experience, including information about Complainant.

Respondent does not deny that the Domain Name was registered for the purpose of criticizing Complainant.

Respondent's website clearly states that it is not affiliated with Complainant nor any other bariatric surgery provider in Mexico. At the bottom of each page is a conspicuous disclaimer that trademarks are the property of the respective owners, and that the use of a trademark does not imply endorsement.

The Domain Name includes the "warning" identifier to make it obvious that Respondent's website is not affiliated with Complainant. While Respondent could have used the "sucks" identifier to match many similar domains heard under the UDRP, Respondent did not feel it to be appropriate to use such a negative term. If it is determined that it is necessary under the Policy to use such terms, Respondent would be willing to add "sucks" or similar negative terms to Complainant's names in order to comply with the rules for the purpose of publishing the criticism.

Any reasonable person surfing the internet would understand that a company would not be criticizing itself nor giving warnings about itself. Therefore, the term "warning" is a clear indicator to a reasonable person that the website offers criticism of the company and is not endorsed by the company.

Respondent created the website for the sole purpose of educating the public. The information and the reviews on the websites were taken from publicly available sources, such as "Yelp" and "Google", or from Respondent's personal experience. Respondent put a lot of effort to confirm the accuracy of the data on the website and provided online contact forms for anyone to dispute the data or to provide additional data, all for the goal of educating the public.

Respondent has gained no monetary value from producing the website. Respondent has no agreement, contract, nor other obligation to report about any bariatric facility, and Respondent has belief in principles and justice.

Respondent is not a commercial entity and does not provide goods or services. Therefore, it cannot copy Complainant's goods or services, and it is not engaged in stealing business.

Respondent is not affiliated with any competitor of Complainant.

Respondent denies infringement of Complainant's trademarks and copyright and contends that Complainant does not identify any examples or evidence.

Complainant has not contacted Respondent to correct any of the information provided. Respondent has not taken any information from Complainant's website and the images used were taken from the public domain.

Respondent denies that there has been actual confusion and observes that Complainant did not identify any evidence to support the allegation.

Respondent asserts the rights and legitimate interests due to personal experience with bariatric treatment and the right to publish noncommercial reviews on bariatric facilities in Mexico under the First Amendment of the United States Constitution, and under United States Federal law.

## **6. Discussion and Findings**

### **6.1. Redaction of Respondent's Identity**

Paragraph 1 of the UDRP Rules defines the respondent as "the holder of a domain-name registration against which a complaint is initiated".

Paragraph 10(a) of the UDRP Rules states that "the Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules".

Respondent has requested that its name be redacted from the Decision to protect its privacy.

While it is not clear to the Panel that any exceptional circumstances exist to justify the normal presumption of including party names in posted decisions (as one example, owing to the UDRP criteria of a pattern of bad faith), given e.g., that Respondent seems to be advancing views on a matter generally (in addition to criticizing Complainant), the Panel is prepared to redact Respondent's name; notably, given that there has been a Response and, also, that in response the Panel Order Respondent confirmed that the Parties in this and the prior WIPO Case No. [D2023-2433](#) are identical. Accordingly, redaction will not inconvenience Complainant.

### **6.2 Substantive Discussion**

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

The Panel finds that Complainant has rights in the Mark by virtue of its United States Trademark Registration No. 5,610,986 for the Mark MEXICO BARIATRIC CENTER. The Panel also finds that the Domain Name is confusingly similar to the Mark. The addition of the term "warning" does not prevent a finding of confusing similarity under Policy paragraph 4(a)(1). A generic Top-Level Domain ("gTLD") such as ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a)(i) of the Policy.

## B. Rights or Legitimate Interests

Respondent concedes that it is not affiliated with or authorized by Complainant to use the Mark, thereby accepting the burden to produce evidence of its rights and legitimate interests in the Domain Name. This does not, however, change the burden of proof. Even to the extent the burden of production shifts, Complainant still has the burden to prove that Respondent does not have rights or legitimate interests in the Domain Name.

The Panel finds, based on a review of the submitted evidence, that the disputed domain name is being used to host a website that provides legitimate good faith criticism of Complainant's services. The Panel finds that Respondent's explanation of its intentions for the website is plausible, and that Complainant has not met its burden to prove that Respondent's use of the Domain Name for criticism is pretextual or commercial. This is not surprising as the prior [D2023-2433](#) panel made that same finding based on the same arguments and Complainant has not offered any new evidence.

The Panel shares the view of previous panels that criticism is not tarnishment. *Sources, Inc. v. Name Redacted*, WIPO Case No. [D2023-2433](#); See, for example, *Towers on the Park Condominium v. Paul Adao*, WIPO Case No. [D2012-1054](#). See also [WIPO Overview 3.0](#), section 2.6.1.

The Panel also finds that Respondent is not using the Domain Name for a commercial purpose. Complainant has not provided any argument or evidence to support its conclusory contention that Respondent is engaging in a commercial activity.

Complainant alleges that "Complainant believes that all of Respondent's actions are taken with the intention of damaging Complainant's reputation and redirecting business to other competitors in the marketplace" but Complainant does not articulate the basis this assertion or submit any evidence.

Similarly, Complainant asserts that Respondent uses the Domain Name "in order to steal business from Complainant and create consumer confusion in the marketplace," but, again, fails to develop the argument or offer any supporting evidence.

The Panel finds, based on a review of the evidence and a balance of the probabilities, that Respondent's intention was to publish legitimate criticism. While Respondent does "recommend" other doctors, it does not itself offer competing services, so it is not accurate to suggest that Respondent seeks to "steal business from Complainant [ . . . ]".

Complainant should have anticipated that Respondent would contend that its website was noncommercial and that Respondent received no financial benefit from the use of the Domain Name. Respondent made the same argument in the prior case and the Panel in the WIPO Case No. [D2023-2433](#) decision expressly found that, "Complainant has not provided any evidence for its assertion that Respondent is engaging in a commercial activity and, on the minimal evidence provided by both Parties, it appears more likely than not that Respondent is indeed engaging in what he or she believes to be a genuine public information campaign that is entirely noncommercial." The Panel understands that principles of collateral estoppel are not applicable in proceedings under the Policy, but the Panel views with disfavor Complainant's repetition of arguments that the Prior Panel expressly rejected as unsupported by the evidence. Given that Complainant has submitted no evidence in this or the prior proceeding that would support a finding of a commercial motive, the Panel finds that in making "recommendations" for other doctors, Respondent is primarily engaging a public information campaign that is noncommercial, and – as is further discussed below – that the ancillary activity of a referral does not seem to be the sole purpose in the site, nor does it overtake the mostly critical content, nor is it clear that Respondent itself would somehow benefit financially or otherwise.

The Panel also finds that the inclusion of the word "warning" in the Domain Name is sufficient in the broader case circumstances to negate any risk of implied affiliation or impersonation. "Where the domain name is not identical to the complainant's trademark, but it comprises the mark plus a derogatory term (e.g., <trademarksucks.tld>), panels tend to find that the respondent has a legitimate interest in using the

trademark as part of the domain name of a criticism site if such use is prima facie noncommercial, genuinely fair, and not misleading or false.” [WIPO Overview 3.0](#), section 2.6.3.

Where the Domain Name includes a trademark plus an additional term, in this case “warning,” there may be a question about whether the additional term – viewed in light of the broader case circumstances such as the materials posted at the related website – is sufficient to prevent Internet visitors from perceiving affiliation or impersonation. Indeed, this is often the threshold issue in cases such as this.

Despite the criticality of this issue, Complainant says nothing about the connotations of the word “warning,” ignoring its burden to prove that Internet visitors would either mistakenly perceive affiliation, or – viewed in light of the broader case circumstances such as the materials posted at the related website – that the domain name and related website are a pretext for cybersquatting or other impermissible (commercial) gain. In fact, Complainant’s pleading here is a copy of its allegations against the domain name <mexico-bariatric-center-dr-gutierrez.com>, which was held to imply affiliation *primarily because* the challenged domain name did not include a derogatory or other qualifying term word that prevented the implication of affiliation. Even though the issue in this case is fundamentally different because of the addition of the word “warning”, Complainant merely repeats its prior argument, ignoring the key question, and failing to satisfy its burden of proof.

In contrast to Complainant’s failure to address the issue, Respondent’s asserts that Internet visitors would understand the inclusion of “warning” in the Domain Name as a signal that the associated website was not affiliated with Complainant and that this is supported by the critical materials hosted on the website. Complainant does not make a counter argument.

The Panel finds that, although the additional term “warning” is not as clear as derogatory terms like “sucks” to dispel the implication of affiliation (it could e.g., be used by a brand to signal a product recall), the term – viewed in light of the broader case circumstances – is sufficient to prevent a finding that Respondent intended to impersonate Complainant. The instant case is comparable to *Titan Enterprises (Qid) Ply Ltd v. Dale Cross / Contact Privacy Inc*, WIPO Case No. [D2015-2062](#), where the Panel found that including “beware of” as an “appendage” inserted into the disputed domain name before the complainant’s TITAN trademark “indicates that it is critical of the Complainant, is not attempting to impersonate the Complainant or misleadingly divert Internet users”.

Where there is doubt about the effectiveness of the extra word to preclude the perception of affiliation, it is appropriate to consider circumstances beyond the domain name itself, including whether the content of the associated website would indicate affiliation. [WIPO Overview 3.0](#), section 2.5.2. Having reviewed Respondent’s website, the Panel finds, based on a balance of probabilities, that it is highly unlikely that an Internet visitor would that that Respondent was impersonating Complainant. This finding is supported by three observations.

First, Respondent explicitly denies affiliation, advising visitors that It should be obvious – this website is not affiliated with the Mexico Bariatric Center.

Second, it is obvious on the first page that the website is highly critical of Complainant. The first splash page advised visitors in large bold font:

“Before you give Mexico Bariatric Center a deposit  
Read this website about the possible dangers  
Do not lose money!”

The website continues for several pages offering a wide range of criticisms. For example, Respondent criticizes the cleanliness of Complainant’s facilities and complains about Complainant’s failure to return deposits. The Panel is persuaded that a visitor would understand that the website was not affiliated with Complainant. At the same time, the Panel notes that in the middle of the home page there is a link for “Recommended Locations” and the first critical text does not make clear who the aggrieved individual is (see



further discussion below): “Someone lost money by trusting Mexico Bariatric Center [...] This caused us to dig deeper and ask more questions, and when we found out that our suspicions are likely correct, it was already too late to get back the deposit.”

Third, the Panel observes that Respondent seems to reasonably believe its critiques are truthful and well-founded. Respondent declares on the website that, “This website contains only our opinions and speculations, based on the limited research we have conducted, and was created to be a service for the public. If you find any inaccurate information, please let us know.” Complainant asserts that Respondent’s website is “defamatory and libelous” but does not identify any specifically false or inaccurate information.

These observations persuade the Panel that a visitor would understand that Respondent’s criticism website is not affiliated with or impersonating Complainant.

The Panel finds that Complainant has failed to show that visitors would perceive affiliation or impersonation. The Panel’s also finds that the content of the website does not convey affiliation or impersonation. The website includes disclaimers, and the content is manifestly critical. Complainant has not identified any inaccurate factual assertions.

Again however, it is noted that Respondent has not confined itself to criticizing Complainant. Respondent has also identified “some Bariatric/ Weight Loss Centers in Mexico we Recommend,” explaining that:

“If you are on this site, you are probably interested in bariatric Surgery in Mexico and not in the US. We also are not listing places where the price quote was high (in our opinion). These are some Bariatric Centers we have researched, and they made a good impression on us. While we have not used the services in these locations, we will list them so you have a starting point for your own search. We did use Mexicali Bariatric Center (unrelated to Mexico Bariatric Center), so that recommendation is based on our experience.

We are not currently affiliated with any of these hospitals/surgical centers, though we would consider promoting them in the future only if we had the opportunity to fully investigate a location.”

Although neither Party has addressed the implications of this section of Respondent’s website, the [WIPO Overview 3.0](#), section 2.5.3 observes that generally “a respondent’s use of a complainant’s mark to redirect users (e.g., to a competing site) would not support a claim of rights or legitimate interests.” More generally, there are hundreds, perhaps thousands, of prior decisions that reject fair use or find bad faith because, in part, the respondent derives direct or indirect financial benefit from links to a competitor’s website. Given this, should the Panel reject Respondent’s right to criticize because Respondent also recommends some of Complainant’s competitors? For several reasons, the Panel concludes that the answer should be no. This case is different for several reasons.

First, Respondent is not “redirecting” Internet visitors. Visitors are not “automatically” sent to a competitor in any subversive manner. Respondent identifies other services and offers a link “so you have a starting point for your own search.” This is not a mere redirection but requires an active step by a user.

Second, Respondent is not (on the papers before the Panel) itself a competitor and has no discernible financial interest in the third-party competitors to which she links. This Panel and the prior Panel have both found that Respondent’s websites are noncommercial and the submitted evidence overwhelmingly supports the finding that Respondent does not receive a financial benefit from its website.

Finally, it is Complainant’s burden to select and support its contentions and it has not chosen to discuss the implications of Respondent identification of other bariatric weight loss centers.

For these reasons, the Panel finds that Respondent’s recommendation of other bariatric weight loss centers does not disqualify Respondent’s otherwise overwhelmingly critical site.



The Panel emphasizes two important caveats. First, Complainant's failure to offer meaningful argument or any supporting evidence is a critical factor in the Panel's decision. Second, if evidence surfaces that Respondent has engaged in commercial endorsements of Complainant's competitors, the Panel would consider allowing Complainant to refile a complaint, assuming it makes new arguments based on – and clearly supported by – new evidence. See [WIPO Overview 3.0](#), Section 4.18.

The Panel finds that Complainant has not satisfied Policy paragraph 4(a)(ii).

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

Given the finding above, there is no need to address bad faith registration and use.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Lawrence K. Nodine/*

**Lawrence K. Nodine**

Sole Panelist

Date: November 2, 2023