

Decision for dispute CAC-UDRP-103567

Case number	CAC-UDRP-103567
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Domain names	One.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	One.com Group AB
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Complainant representative

Organization	Advokat Lisbet Andersen
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Respondent

Name	Stan N
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Respondent representative

Organization	Cylaw Solutions
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of the trademark and name One.com.

The Complainant has an extensive portfolio of registered trademarks for the word mark including EUTM registration no. 8427635, applied for on 15 July 2009 and granted on 8 March 2010 in classes 35 and 42 and the logo mark EUTM registration no. 18205917, applied for on 6 March 2020 and granted on 14 July 2020.

The Complainant is also the proprietor of international trademark registrations such as WIPO application no. 1014001 in classes 35 and 42 for the word mark, applied for on 17 July 2009 and granted in CH - CN - JP - NO - RU - TR - US. It also has WIPO applications no. 1555288 is the logo mark registered on 20 August 2020. As well as WIPO no. 991705 for the word and

additional word elements, and registered in AG-AM-AT-AU-AZ-BQ-BT-BW-BX-CH-CU-CW-DE-EM-GB-GE-IR-IS-KE-KP-KR-LI-LS-MA-MC-ME-MG-MK-MN-MZ-NA-NO-OM-RU-SE-SG-SL-SM-SX-SZ-TR-VN-ZM.

Finally, it has various national marks, including Danish registrations nos. VR 2007 01333 for a logo mark with the word element being the word mark and additional elements in stylised form, applied for on 28 November 2006 and registered on 10 May 2007. It also has VR 2009 01800, the word mark applied for on 26 March 2009 and registered in June 2009.

For many years, the Complainant's trademark One.com and variations thereof has been registered and protected and used in a large number of countries for services in connection with internet domain names and webhosting. That use started in 2002.

FACTUAL BACKGROUND

The Complainant's registered company name is One.com Group AB which is a group company of the registered Danish company One.com A/S. The ISP, One.com, has provided easy online access to millions of customers since One.com A/S was incorporated/registered in 2006.

One.com does business internationally under the One.com brand.

The Complainant uses the domain <one.com> for its business.

According to the Whois results, the disputed domain name <One.com> was registered on 13 July 2020 by the Respondent. It is showing as for sale online for \$33221.20 as a pop up on a Whois Site. That offer and amount may be automatically generated. It also seems to be for sale on <Dan.com> but that site asks for an offer. Neither of those may have anything to do with the Respondent.

We do know that the parties corresponded and on 12 February 2021 the Respondent answered the cease and desist and demand for transfer with the following words:

"...only now had a chance to see your message since it ended up in spam. You can pass these two options to your 'Client': a. Offer price and buy it out without wasting time and resources for legal battle (and then eventually losing it) b. Start a UDRP claim, I'm in no rush and have resources to defend my name, 'very similar' is a weak argument and I had experiences in past, so in both cases I'm pretty confident. Either I get a deal, or I get a win under my belt which only adds value to credibility to the name. Regards.."

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant says the disputed domain name <One.com> is virtually identical to the Complainant's brand name, business identifier, domain name and trademark One.com, the only difference being that the initial letter O has been replaced by the numeral 0 (zero). This is a kind of typosquatting which gives rise to a significant risk of confusion among the public. Moreover, the disputed domain name can easily be connected with phishing attempts based on the obvious visual similarity.

The disputed domain name at issue is not being used actively, and appears to be subject to domain parking. It appears that the domain name has been put up for sale at a very substantial overprice.

Based on the above, the Complainant submits that the Respondent cannot have any rights or legitimate interest in the domain name <One.com>.

The Complainant submits that the domain name <One.com> is registered in bad faith, because it is a typoquatting of the Complainant's domain name one.com, and it is virtually identical to the Complainant's brand, trademark and business identifier.

The domain name <One.com> does not appear to be in use for any legitimate purposes, indeed it is not used for anything related to the content of the domain name, but seems only to be parked until sold.

On behalf of the Complainant, a cease and desist letter was sent to the Respondent on 4 February 2021. An anonymous reply by email was received on 12 February 2021 from the Respondent's email address, suggesting that the Complainant could buy

the domain name. The price tag of USD 33,221.20 for the domain name, and the Respondent's reply, mean it must be concluded that the Respondent has registered the domain name in bad faith.

The Complainant submits that the Respondent's registration of the domain name <0ne.com> is contrary to the Complainant's rights in several respects, cf. also above. The domain name <0ne.com> is an obvious typosquatting of the Complainant's domain name one.com which has been registered since 1992. The domain name <0ne.com> is virtually identical and confusingly similar to the Complainant's brand, business identifier and trademark. The Respondent's lack of use of the domain name for any purpose related to the name, and moreover, the putting up for sale of the domain name at a substantial overprice suggest that the Respondent does not have any rights or legitimate interest in the domain name. The domain name may be used for phishing attempts as it will be virtually impossible for internet users to tell the difference, for example in an email address.

The Complainant respectfully submits that the domain name should be transferred to the Complainant according to applicable UDRP rules.

RESPONDENT:

The Respondent is the owner of the disputed domain name <0ne.com> since 17 July 2020, after he won the disputed domain at an auction at DropCatch.com for \$2305, after competitive bidding. The Respondent's complete name is Stanislav Nikolskyi and has been provided in short in WHOIS as Stan N., while the address has been correctly provided. Respondent is normally known as Stan or even called as Stas in the local language.

The Respondent has been dealing in cryptocurrency for the last many years, having multiple significant investments in crypto (some of them are in excess of \$1M by today's crypto rates). Due to his interest in crypto, he holds many Crypto related domain names including the keyword - Token, Coin, BitCoin, Bit, Block and few short four letter ".com" domain names Further, an agreement in evidence of Respondent's Cryptocurrency dealings has been annexed with the Response, which has his residence address.

It is highly important to understand that though use of alphanumeric characters is common in Crypto, but more specifically Crypto Blockchain - Ethereum, has all their wallets starting from 0x - it is 42 characters long. See transactions from Respondent's Ethereum Wallet submitted in evidence. That is, the ETH wallet address always starts with '0' (numeric) and 'X' (alphabet), so zero (0) is the most commonly used starting number in crypto space. Respondent's Ethereum address starts with 0x34e2cb7513a... is displayed at opensea.io profile.

The Respondent has been using email ID lendex0@ftml.net since last many years. See the evidence submitted as to this use. Further, the Respondent's various social media accounts have the following username, all ending with zero ('0'), referring to him as 'Crypto Space Astronaut':

a) Twitter @Lendex0 -> <https://twitter.com/>

b) LinkedIn -> <https://www.linkedin.com/>

c) Angel.co -> <https://angel.co/> (Listed as an Angel Investor)

d) Opensea.io Account - Lendex0

e) Telegram username @Lendex0

The Respondent is active online and has eyed on many crypto currency domains in domain name aftermarket. The acquisition of the disputed domain <0ne.com> by Respondent for \$2,305, as it is a short, brandable, alpha-numeric (starting with 0), while it was not having any kind of knowledge of Complainant.

The Respondent further submit that as an experienced Internet user, he has neither check nor will ever check for short domain names like <one.com, two.com, three.com, the.com, and.com, xxx.com, xyz.com, lqr.com> and so on, as it is understood that

three letter domain names (either dictionary words or other random combinations) are already registered mostly since last two decades and are highly valuable. A. Domain name is neither identical nor confusingly similar to protected mark for the following reasons:

Legal

A. Domain name is neither identical nor confusingly similar to protected mark for the following reasons:

1. The Respondent submits that the Complainant's trademark contains three letters 'O', 'N', 'E' along with the gTLD '.com', while the disputed domain consists of digit '0', followed by letters 'N' and 'E'. Therefore, neither both have phonetic similarity, nor any search for the keywords contained in the disputed domain provide any results for the Trademark registered by the Complainant. While the UDRP Policy is not for trademark dilution matters, as UDRP is not court!

2. The decision in ADITO Software GmbH v. Domain Admin, Mrs. Jello LLC, WIPO D2008-1771, stated: "descriptive marks are entitled to very limited protection and 'small differences' are sufficient to establish the lack of confusing similarity". Further, in Lumena s-ka zo.o. v. Express Ventures LTD, FORUMForum FA94375 (2000) finding generic words are incapable of distinguishing one provider from another that trademark protection is denied them.

3. Submissions have already been provided on the legitimate rights the Respondent has due to his interest in the cryptocurrency field. Moreover, it is not uncommon to find various domain names or brands using 'One.' And not exactly 'one' or other combination of alphanumeric characters for creating words like 'tw0' or 'thre3' or 't3n'. Otherwise, a simple trademark search in the global Trademark database for the keywords as contained in the disputed domain '0ne', shows various other third parties having registered trademark for the said combination.

4. It is denied that <0ne.com> is identical to one.com or that it is matter of cybersquatting. Respondent has never made any use of the domain name but just parked the same for sale, as speculating in domain names is held to be legitimate interests under the UDRP Policy. If the Complainant is so serious about Cybersquatting, why didn't they file a simultaneous domain dispute over <on3.com> or <ome.com> as well? Further, it has been very clearly laid down in SK Lubricants Americas v. Andrea Sabatini [WIPO # D2015-1566 <ZIC.com>], that "no one party is likely to be able to claim monopoly on the use of the acronym in all fields of activity."

5. In various courts, it has been held the more generic the choice of terms the greater their capacity for attracting multiple associations. It follows that multiplicity weakens the argument for infringement. See Entrepreneur Media, Inc. v. Smith, 279 F.3d 1135, 1147 (9th Cir. 2002), wherein it was also held that in the Internet context, consumers are aware that domain names for different websites are quite often similar, because of the need for language economy, and that very small differences matter".

6. It is denied that in any case the trademark registrations of the Complainant cover 'domain names', as registration for 'One.com' is only under class 35 and 42, while domain names are covered under class 45. Please see the evidence or try searching for keyword 'domain' at <http://euipo.europa.eu/> to observe the annexed results. Class 45 covers domain name registration and any advisory / consultancy related thereto. Therefore, Complainant's claims are totally false, as some of the registration certificate reads as "Business assistance relating to domain names", that is business assistance has been covered and not exactly Domain Names.

7. It is highly surprising that the Complainant thinks that Respondent's <0ne.com> violates their rights, while it never thought so, when domain name 0nergi.com was hosted on their servers, see the evidence and the historical record for the domain name which evidences the fact that the domain name registered on 21 December 2019 was registered and also hosted with Complainant's one.com. That is, the most powerful evidence of that acceptance of the said combination comes from the Complainant itself as confession. Similarly, in the UDRP matter of Walkaway Canada Incorporated v. Marchex Sales, Inc / Brendan Hight [FORUMForum 1387536].

B. Respondent has rights and/or legitimate interest in the domain name:

1. The Complainant denies that the Respondent has any rights or legitimate interest in the disputed domain name. However, for a Complainant to meet this part of the three-part test, the Panel must find that the Respondent has “a total lack of any right or legitimate interest”; not merely that the Complainant has purported “better” right or legitimate interest. A finding that the Complainant has “better” legitimate interest is clearly insufficient. As was confirmed in *Borges, S.A., v. James English* (WIPO D2007-0477).

2. The Respondent is a reputed IT professional, an Angel Investor, and is also referred to as Cryptospace Astronaut on his social media profiles, and has multiple significant investments in crypto and also owns various crypto / bitcoin related domain names. The factual grounds provided above, accompanied with annexures, clearly evident that Respondent is ‘Pro Crypto’ be it his investments, social media (Twitter, LinkedIn), emails and other profiles.

3. The Respondent has provided details as to one of the most usable Crypto Blockchain - Ethereum, which has all their wallets starting from 0x - it is 42 characters (alphanumeric) long, but always starts with 0 and X, so ‘0’ (numeric zero) is the mostly commonly used number in crypto space. Further, the Respondent already has various social media accounts and other profiles with the username lendex0, having numeric ‘0’ at the end. Further, it is common for the Respondent to provide passwords as ‘OneThr33’, or ‘OneP@ss’, that is a combination of alphanumerics, for good security practices.

4. The Respondent commonly uses alphanumeric combinations and hence his registration of the disputed domain name, which includes numeric ‘zero’ initially as well like ETH Wallet address. Further, it is interesting to note that the following combinations of domain names have already been registered by third parties and some of them are in use.

- a) on3.com (Created on 1996-01-06) [One.com active]
- b) tw0.com (Created on 1999-05-20)
- c) thre3.com (Created on 2002-03-21) [Three.com active]
- d) thr3e.com (Created on 2004-12-23)
- e) f0ur.com (Created on 2015-08-10)
- f) f1ve.com (Created on 2004-06-23) [Five.com active]
- g) fiv3.com (Created on 2018-09-12)
- h) s1x.com (Created on 2004-09-22)
- i) s3ven.com (Created on 2015-04-06)
- j) sev3n.com (Created on 2018-05-18) [seven.com active]
- k) e1ght.com (Created on 2018-06-27)
- l) 3ight.com (Created on 2009-10-27)
- m) n1ne.com (Created on 2005-03-02) [nine.com active]
- n) nin3.com (Created on 2004-07-21)
- o) t3n.com (Created on 1999-11-09)

5. Though the registration date of the disputed domain name is quite recent, it was previously registered since 1999. See the historical record submitted in evidence. In the matter of *GWG Holdings, Inc. v. Jeff Burgar, Alberta Hot Rods* [WIPO D2016-1420], it was upheld that the registration of the disputed domain was permissible on first-come, first served basis, and such registration establishes the Respondent’s legitimate interest, provided the disputed domain name was not registered with trademark in mind.

6. The Respondent strongly believes that no party could claim exclusive rights to the disputed domain <One.com> and believes there are many possible valid uses and references. Specifically, the evidence shows various similar trademarks registered the world over and up to 500 domain names registered starting with ‘One.’ See also various uses by developed websites including ‘One.se’ (Sweden’s ccTLD) and social media handles. The Respondent has never checked or ever visited 3L domain names or other similar combinations because there is always an assumption that these are already registered, especially in .coms and most of them are on sale. The Respondent is highly surprised to see that <one.com> is a developed website.

7. The Respondent is domain name investor as well and already owns many short, brandable and crypto related domain names and many impartial panels of legal experts have upheld such business strategies and domain investing generally. See *Aurelon B.V. v. Abdul Basit Makrani*, [WIPO D2017-1679], it was held that speculating in domain names is a lawful business model

regardless whether the domain names correspond to marks as long as the proof establishes either 1) respondents have rights or legitimate interests in the domain name; or 2) complainants are unable to prove bad faith registration and use. In *iEnterprises, Holdings, LLC V Private Domain* [ADR.eu - CAC 103374; ICRM.COM], “Respondent is domain name investor, and it is known fact that dictionary words and acronyms are generally considered valuable assets. Previous panels have also recognized this high inherent value (see, by way of example, WIPO D2018-0738, *Dynamic Visual Technologies (Pty) Ltd. vs. Direct Privacy, Savvy Investments, LLC*)”.

8. The Respondent registered the disputed domain recently as part of his similar investment strategy of acquiring meaningful and generic / brandable domain names that would serve well as online addresses. The Respondent selected the disputed domain name because it is a commonly used term in varied fields by numerous businesses around the world and it expected the disputed domain to be of interest to potential customers having similar brand name, looking to establish an online presence. But the Respondent had no knowledge of the Complainant or its registered trademarks. There may not be specific provision under the UDRP Policy as to trading in domain names but it is very well covered under the Nominet Policy for the .UK (Clause 8.4 - Trading in domain names for profit, and holding large portfolio of domain names, are of themselves lawful activities) or like the Domain Name Commission for .NZ (Clause - 6.4. Trading in Domain Names for profit, and holding a large portfolio of Domain Names, are of themselves lawful activities).

9. In *Allocation Network v. Steve Gregory* [WIPO D2000 0016] (“Allocation”), it was laid down that the use of disputed domain names for the purpose of their sale may in certain circumstances give rise to rights or legitimate interests in respect of those domain names within the meaning of paragraph 4(c)(i) of the Policy (i.e. as bona fide offering of goods or services). In *Deep Focus v. Abstract Holdings International* [WIPO D2018-0518]: “The Panel accepts that, where party legitimately registers domain name comprising commonplace or dictionary elements for sale, without intent to target the trademark of an existing trademark owner, then that offer for sale can give rise to rights or legitimate interests in the domain name as bona fide offering of goods or services for the purposes of paragraph 4(c)(i) of the Policy”.

10. The Respondent also own the following short / crypto / brandable domain names:

- a) Aupq.com
- b) Alibitcoin.com
- c) Adstoken.com
- d) AllCrypto.net
- e) Bitcoinpubs.com
- f) Byvt.com
- g) Bwbe.com
- h) Crypto2.com

11. Para 2.10 of the WIPO overview 3.0 provides that: “Panels have assessed cases involving common phrases (whether spelled out or numerical) corresponding in whole or in part to numbers (e.g., 24/7 or 365) in similar manner as dictionary terms. Panels also tend to look at factors such as the status and fame of the relevant mark and whether respondent has registered and legitimately used other domain names containing dictionary words or phrases in connection with the respective dictionary meaning.” In the matter of *Fresenius Kabi S.A. v. Domain Manager, EWEB Development, Inc.* [WIPO D2018-0491], it was held in favor of respondent as to Legitimate Interests... as much is clear from the numerous examples provided by respondent of the use of these or similar names as business names, trademarks and domain names by parties other than complainant. Respondent is in the business of inter alia trading in domain names and claims to have registered the disputed domain, as being of potential interest to customers wishing to offer nutrition-related services online.”

12. As to similar legitimate interests, the Respondent has in the disputed domain name, a highly valuable alphanumeric combination and not a random one. In many cases, it has been held that as long as the domain has been registered because of its attraction as a generic word, and not because of their value as trademarks, this is a permitted business model, under the Policy. It has been very well established in various UDRP decisions as to three letter acronyms - *ALO.com* [WIPO D2017-0650] and *AVK.com* [Annex XII (b) - ADR.eu Case no 102848].

13. In *General Machine Products Company, Inc. v. Prime Domains (a/k/a Telepathy, Inc.)*, it was held General Machines'

trademark was not fanciful or arbitrary, and there was no evidence to establish either fame or strong secondary meaning in its mark such that consumers are likely to associate craftwork.com only with General Machines. [FORUMForum FA0001000092531]. Similarly here, Complainant has provided no evidence of secondary meaning it has in the generic term 'One' and doesn't even own social media handles @one at Twitter or Facebook.

C. The Domain Name has not been registered and used in Bad Faith:

1. In order to prove bad faith registration, it must be shown that the Respondent registered the Domain Name not because of it being brandable / short / acronym but rather specifically because it corresponded to a protected trademark. This reflects the intent required in the Policy, as the Panel stated in *Ancien Restaurant Chartier v. Tucows.com Co* [WIPO D2008-0272]. Further, in the matter of *DME Company LLC v. unknown unknown / DME Online Services, Ltd.* [Claim Number: FA1711001759818], it is equally clear, however, that both bad faith use and registration must be proven in order for the Complainant to prevail.

2. Respondent reiterates in all the circumstances that it was not targeting Complainant's trademark when it registered the disputed domain and says that Complainant has provided no evidence that it did so. Rather, Respondent submits that the domain name has been registered due to the interest of Respondent in Crypto related domain names, while Respondent has never heard of Complainant till he discovered the notice in his Inbox.

3. It is important to mention that the trademark search for 'One' will never provide reference to Complainant, while Respondent is not expected to search for keywords with domain name extension (as normally it is disregarded in the first clause of UDRP policy). And even search for 'one' or even 'one.com' provides search results related to numerous other Trademark Holders, see Annex VII. That is, the Respondent could not in any case would have discovered about the Complainant. In *Clearwater Systems, Inc. v. Glenn*, WIPO D2014-0878, it was laid down "although knowledge and targeting of Complainant may be proven inferentially, it will not be presumed merely from Complainant's ownership of similar or identical registered marks."

4. Complainant has provided no reasons or explanation as to why or how Respondent could have known of Complainant or its asserted rights. Actual knowledge of the Complainant and its mark must exist for finding of bad faith. In the matter of *The Way International, Inc. v. Diamond Peters*, WIPO D2003-0264; "As to constructive knowledge, the Panel takes the view that there is no place for such concept under the Policy. The essence of the complaint is an allegation of bad faith, targeted at the Complainant. For that bad faith to be present, the Respondent must have actual knowledge of the existence of Complainant, the trademark owner. If the registrant is unaware of the existence of the trademark owner, how can he sensibly be regarded as having any bad faith intentions directed at Complainant? If the existence of trademark registration was sufficient to give Respondent knowledge, thousands of innocent domain name registrants would, in the view of the Panel, be brought into the frame quite wrongly!!!

5. Further, it is absurd to call this matter of typosquatting, because else the domain names like *three.com v thre3.com*, *box.com v b0x.com* (for sale), *mom.com v m0m.com* (for sale), *lol.com v l0l.com* (for sale), *ten v. t3n.com* (for sale), *four.com v f0ur.com* (for sale), *toy.com v t0y.com* (for sale), could never co-exist with different owners. Other than this Complainant, no one has ever filed UDRP on such a combination as it is normal for such combinations to co-exist in the domain name space. While various Annexes provided by the Respondent evident that it is quite common to use such a combination:

- a) A simple google search.
- b) A Global Trademark Database search.
- c) A domain name search for domains starting with 'One'
- d) Developed websites or social media handles using the said combination.

6. In the matter of *Canned Foods, Inc v. Ult. Search Inc.* (FORUM FA96320) it was held "a Trademark that equally describes businesses conducted by many other people is not a protectable term". In the matter of *HSM Argentina S.A. v. Vertical Axis, Inc.* WIPO Case D2007-0017 (WIPO, May 1, 2007) in which the Panel pointed out that evidence of third party use of terms identical to the trademark "mitigates against finding that Respondent knew specifically of Complainant or its mark when the disputed domain was registered". This is particularly so where the terms "may have a number of potential associations, unconnected with Complainant."

7. The evidence also contains the search from the global trademark database for 'one' showing numerous results. In such cases of generic terms, there is an even greater onus on Complainant to present compelling evidence of secondary meaning or distinctiveness, when there are various other entities using the similar mark. Some entities had registered the exact same mark 'one.com' showing use since earlier to Complainant under different classes. In cases involving marks that are solely generic terms, which are not inherently distinctive, there is greater onus on Complainant to present evidence of secondary meaning. Further, in the matter of Transportes AEROMAR S.A. SE C.V. v. Aeromar, Inc., it was held, If Complainant fails to produce evidence of its reputation as it existed at the time Respondent registered the Domain Name, the inference must be that it had none [WIPO D2010-0098].

8. It is submitted that One is just similar to 3 letter domain name, subject to many interpretations, that is the reason we find various registered Trademarks / Domain Names using the said combination. It is further pertinent to note that the Ethereum wallet of Respondent is at: <https://etherscan.io/> showing over 2,000 transactions he had. This clearly evidences how often Respondent transacts through Ethereum and frequently uses the alphanumeric combinations starting with numeric '0' and only this what he had in mind at the time of registration of the disputed domain. (It is humbly requested to the Panelist that Respondent's Ethereum Wallet address should not be quoted in the decision).

9. In the matter of DME Company LLC v. unknown unknown / DME Online Services, Ltd. [Claim Number: FA1711001759818], as Respondent points out in DME.com matter, Complainant's mark is just three letters, susceptible of many meanings and interpretations. In Greencycle, Inc. v. Gail Loos/Ingenious Marketing, FA 1553841 (Forum May 2014) ("the predominant viewpoint of UDRP panelists has been to reject that argument and insist on respondent's actual knowledge of complainant's trademark rights"), Jet Marques v. Vertical Axis, Inc., D2006-0250 (WIPO May 26, 2006) (a finding of bad faith registration requires that respondent registered the domain name with Complainant's trademark in mind), Futureworld Consultancy Pty Ltd v. Online Advice, D2003-0297 (WIPO July 18, 2003) ("There is no evidence, whatsoever, that Respondent registered the domain name with Complainant in mind or that she even had heard, or should have heard of Complainant"). The Complainant has the burden of proof, and it submitted no proper evidence of its fame or reputation in terms of said UDRP precedents in relevant jurisdiction of Ukraine.

10. The Respondent did not register the disputed domain name, with Complainant's Trademark in mind, rather he had no knowledge of Complainant or its trademark at the time of registration of the disputed domain name, as explained above. Further, it is denied that Respondent intended to sell the domain name to Complainant, because never any outbound of the domain names has been done by Respondent. While it was Complainant who tried to threaten Respondent, so that he may hand over the valuable domain name for Free, while he paid approx \$2.3k for the disputed domain name.

11. Before proceeding further, it is important to note that the reference as to sale of the disputed domain being listed for \$33,221.20 is denied by Respondent, as it may have been the result of any listing by previous owner or the owners at WHO.IS can better explain. That is the reason the said listing at <https://who.is/> links nowhere, but is just a dead link!!! And for the same reason, no further information or screenshot of the landing page ahead has been annexed by Complainant in its evidence.

12. Further, it is also pertinent to note the content of Complainant's notice, where Complainant stated 'I assume that you are familiar with my client and its business under the one.com brand, while the domain name is not being used... and up for sale at an excessive price'. Referring the same as unjustified and requiring the Respondent to immediately transfer the domain name else they would file a complaint with the service provider under the UDRP rules.

13. Now it is important to ponder why the Complainant served a notice, what rights of Complainant were violated, the answer is simply 'None'. But unnecessary, based upon untrue statements / assumptions, they were trying to threaten Respondent for a domain name in which he had legitimate rights and he never did any outbound for the domain name but it was just parked for sale. While para 3.3 of WIPO overview 3.0 provides for various factors that need to be considered in relation to passive holding of domain name, it is not per se Bad faith.

14. In response, the Respondent did ask Complainant to make the offer, when he states 'Offer price and buy it out'. That is, the Response was just an immediate reaction to the notice with false claims and threats contained therein, due to following reasons:

- a) Firstly, it was the Complainant's attorney who first approached Respondent and referred to the domain name being on sale.
- b) The Complainant's attorney assumed that Respondent had 'knowledge of Complainant and threatened legal consequences'.
- c) Moreover, Complainant's attorney asked Respondent 'to hand over the valuable domain name for free.'
- d) While Respondent had legitimate interests in the domain name due to crypto background had already spent over \$2.3k in acquiring the domain name.

15. Further, it is denied that the late response was sent anonymously, the notice was sent to the WHOIS Email Address and was responded from the same email ID, while the correct WHOIS Information is visible publicly. Therefore, it is denied there has been an attempt to sell the domain name as Respondent has never indulged in any outbound for the domain name otherwise.

16. Now in another scenario even if it is assumed that Respondent asked the Complaint to make an offer, it could have been through email or the maximum, the Complainant could have visited the parking page at the disputed domain to make the offer. But here there has been neither any negotiations at all nor any offer price provided at the parking page, therefore any assumption to label it as an sale at an excessive price is totally denied in its entirety. Whereas, it is highly important to note that the UDRP allows domain registrants to recover his out of pocket expenses. Please refer to the exact wording of clause 4 (b) (i) of UDRP Policy, under which the Complainant is trying to allege Bad Faith.

17. Now it is very important to analyze the clause 4 (b)(i) into parts.

- a. The purpose: 'you have registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise'.

Explanation: Herein above the main purpose of the acquisition of the domain name has already been explained above in relation to crypto, while Respondent has never done any outbound for the domain name.

- b. Consideration: 'for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name'.

Explanation: Now this second part states that the consideration should be in excess of your documented out-of-pocket costs. So, it is quite important to understand that the documented out of pocket expenses costs directly related to the domain name, for Respondent herein, are \$2,305.

18. Further, Respondent had just asked them to make an offer but did not specify any amount, so an offer could have been a \$100 or \$1,000 offer, and who knows that may have been accepted by Respondent. And any such acceptance will still not be Bad Faith within the meaning of the said UDRP clause. That is, the Respondent did not quote any amount as this was firstly just a reaction to legal notice demanding transfer of the domain name and not an intention to sell to Complainant. In the second scenario, if the same is interpreted otherwise, the Respondent had the right to accept any amount till \$2,300, it was still covered under the policy as documented out of pocket expenses!!!

19. This is highly important to appreciate the beauty of the UDRP Policy clauses, it very well covers such circumstances, where the Respondent knows that he has legitimate interests and he has acquired the domain name for premium. But in any case, Respondent denies having intentions to sell it to Complainant, but it was just a reaction to Respondent unnecessary questioning his legitimate rights. In case of second scenario, this should be read along with para 3.1.1 of WIPO overview 3.0, which at the end reads: "where registrant has an independent right to or legitimate interest in domain name, an offer to sell that domain name would not be evidence of bad faith for purposes of the UDRP".

20. Further, Respondent already had due to his interest in crypto currency, while speculating in domain names in itself gives legitimate interest and Complainant was asked to make an offer and nothing was as such quoted. Respondent again denies listing the domain name for sale at any such price over \$33k as annexed by Complainant, referring to some third party website WHO.IS but unrelated facts are being mixed by Complainant in bid to mislead these proceedings and hijack the valuable domain name. Moreover, no bad faith use of the disputed domain has ever been made by the Respondent.

21. In the matter of Voys B.V., Voys United B.V. v. Thomas Zou [WIPO D2017-2136], wherein Complainant alleged that "The

domain name voys.com has never been used by Respondent after its registration. Since 2007, this domain name is even offered for sale... from this, it is evident that Respondent does not have legitimate interest in the domain name voys.com.” Panel held this to be an extraordinary statement. It incorrectly assumes that (1) non-use of domain name itself prevents the registrant from acquiring right or legitimate interest and (2) registration of domain name for no reason other than to sell it necessarily deprives the registrant of right or legitimate interest.

22. The Complainant has not produced any evidence of actual confusion of Internet users between its trademark and the disputed domain. the decision in *Webvan Group, Inc. v. Stan Atwood*, WIPO D2000-1512: “when the mark is relatively weak, non-distinctive term, courts have found that the scope of protection may be limited to the identical term and that the addition of other descriptive matter may avoid confusion”. That is, neither the domain name has been registered in bad faith nor it is used in bad faith. But a false complaint has been made by the Complainant against Respondent to harass and hijack the domain name. Hence, finding as to RDNH is quite necessary.

23. In *MEIRO PTE. LTD V. mustneed.com* [CAC Case No. 102663], Panel held that notwithstanding its awareness of well-established UDRP precedent, Complainant proceeded to bring the Complaint against Respondent, without any reasonable prospect of success under plain reading of the Policy. In such circumstances, the RDNH needs to be upheld.

SUPPLEMENTARY SUBMISSIONS BY BOTH PARTIES

The Complainant

I. The disputed domain name is confusingly similar to the Complainant’s protected mark

The Complainant respectfully submits that the first UDRP element as shown in the heading above has been established in the complaint. However, in view of the Response, the Complainant has the following further observations to make concerning the first element, namely, regarding (i) the confusing similarity, (ii) the exact wording of the Complainant’s mark, and (iii) the extent of its protection.

(i) The confusing similarity. There is no doubt that the domain name <One.com> is confusingly similar to the Complainant’s protected mark One.com. The initial letter “O” in the Complainant’s trademark has been re-placed by the number “0” (zero) in the domain name, leading to a very close similarity as the difference will easily go unnoticed. This is an obvious case of typosquatting. According to settled case law, the replacement of the letter “O” with the number “0” will lead to confusing similarity. Reference is made to the following decisions:

-ADR.eu Case No. 103037 regarding the domain name B0LL0RE.COM. The Panel found “that the disputed domain name is confusingly similar to the Complainant’s figurative trademark BOLLORÉ as it consists of a clear misspelling of the core of the Complainant’s trademark “bollaré”, where the two letters “o” have been replaced by the number “0” and the accent on the last letter “e” has been removed. As stated in a number of prior decisions rendered under the UDRP, these minor changes and the addition of the Top-Level Domain “.com” are not sufficient to prevent a finding of confusing similarity.”

-WIPO Case No. D2009-0395 regarding the domain name Oreck.com. The Panel found that the Complainant had rights in the mark ORECK through registration and extensive use, and stated that “The Domain Name differs materially from the ORECK mark only insofar as it replaces the initial letter “o” with the number “0.” The visual impression re-mains quite similar. The Panel finds the Domain Name to be confusingly similar to Complain-ant’s ORECK mark. See *The Nasdaq Stock Market, Inc. v. NSDAQ.COM, NASDQ.COM, and NA-SAQ.COM*, WIPO Case No. D2001-1492 (Feb. 27, 2002). Moreover, the Panel notes that, on the QWERTY keyboard, the letter “o” and the number “0” are adjacent. Accordingly, the Panel finds that Policy paragraph 4(a)(i) is satisfied.”

-WIPO Case No. D2016-0360 regarding the domain name ifc0.com. In this case, the Panel agreed with the complainant that the domain name was confusingly similar to the Complainant’s mark IFCO in that the disputed domain name has replaced the letter “O” in the registered mark IFCO with a “0”, and that it is a typical case of “typo squat-ting”.

-WIPO Case No. DCN2020-0028 regarding the domain name Osrnm.cn. The Panel found “that the disputed domain name is confusingly similar to the Complainant’s trademark OSRAM despite the replacement of the vowel “o” by the numeral “0” and the ad-dition of the ccTLD “.cn”.”

The above decisions represent a settled practice which is also reflected in WIPO Jurisprudential Overview 3.0, point 1.9, from which it appears that “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element” and “Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or

numbers used to look like letters)...". In view of the above, the confusing similarity is clear, and the Respondent's remarks about Crypto Blockchain and zero being "the most commonly used starting number in crypto space", and use of an email ID starting with "lindex0" are manifestly irrelevant. The Respondent's remarks concerning registration of the dissimilar domain name Onergi.com has no relevance to the present matter.

(ii) The exact wording of the Complainant's mark. As pointed out in the Complaint with annexes, the Complainant's name and trademark is One.com. Thus, the TLD ".com" must be taken into account together with the second-level portion of the domain name. Therefore, the comparison must be made between the whole trademark One.com and the whole domain name <One.com>. They are virtually identical. This approach is in accordance with case law, including ADR.eu Case No. 101125 - AD6.MEDIA, where the Hon. Neil Brown, QC, stated as follows regarding the gTLD: "There is nothing in the rules to say that it must never be taken into account where the gTLD underlines and emphasizes the confusing similarity between the domain name and the trademark. The Panel believes that in some cases, such as the present, it should be considered, especially where the presence of the new gTLD goes to make up a complete expression that is identical with a trademark." This approach is also reflected in WIPO Jurisprudential Overview 3.0, point 1.11.3, from which it appears that: "Where the applicable TLD and the second-level portion of the domain name in combination contain the relevant trademark, panels may consider the domain name in its entirety for purposes of assessing confusing similarity (e.g., for a hypothetical TLD ".mark" and a mark "TRADEMARK", the domain name <trade.mark> would be confusingly similar for UDRP standing purposes)."

(iii) The extent of the protection of One.com. The Complainant wants to point out that its trademark registrations filed as annexes to the complaint cover a large number of countries across the globe. Thus, the international trade-mark registration covers Antigua and Barbuda, Armenia, Austria, Australia, Azerbaijan, Bonaire, Sint Eustatius and Saba, Bhutan, Botswana, Benelux, Switzerland, Cuba, Curacao, Germany, the European Union, United Kingdom, Georgia, Iran, Iceland, Kenya, Democratic People's Republic of Korea, Republic of Korea, Liechtenstein, Lesotho, Morocco, Monaco, Montenegro, Madagascar, North Macedonia, Mongolia, Mozambique, Namibia, Norway, Oman, Russian Federation, Sweden, Singapore, Sierra Leone, San Marino, Sint Maarten, Eswatini, Turkey, Viet Nam, and Zambia. Other trademark registrations belonging to the Complainant and shown in evidence cover Denmark, China, Japan, United Kingdom, India and the USA. It is absolutely wrong when the Respondent points to/refers to "relevant jurisdiction of Ukraine" with regard to the assessment of the Complainant's trademark rights. Ukraine is not the relevant jurisdiction for the assessment, nor is any other individual country. Reference is made to WIPO Jurisprudential Overview 3.0, point 1.1.2: "Nothing in particular the global nature of the Internet and Domain Name System, the jurisdiction(s) where the trade-mark is valid is not considered relevant to panel assessment under the first element". Besides, the domain name <One.com> is under a generic top-level domain and not a country code TLD, and it is registered with a US registrar. To conclude, the Complainant has undoubtedly established the first UDRP element.

II. The Respondent does not have any rights or legitimate interest in the domain name

Under paragraph 4(a)(ii) of the UDRP, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. But by virtue of paragraph 4(c) of the Policy, it is open to a respondent to establish its rights or legitimate interests in a domain name. The applicable standard of proof is set out in WIPO Jurisprudential Overview 3.0, point 4.2, from which the following appears: "The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence"; some panels have also expressed this as an "on balance" standard. Under this standard, a party should demonstrate to a panel's satisfaction that it is more likely than not that a claimed fact is true." This is the standard of proof that should be applied. Contrary to this, the Respondent's definition of the standard of proof in its Response. "However, for Complainant to meet this part of the three-part test, the Panel must find that the Respondent has "a total lack of any right or legitimate interest"; not merely that Complainant has purported "better" right or legitimate interest" is completely out of line with established practice. The Complainant respectfully submits that the Complaint has made out a prima facie case that the Respondent has no rights or legitimate interests in the domain name. Therefore, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Reference is made to ADR.eu Case No. 101125 - AD6.MEDIA – where the Panel stated: "It is also well-established that a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests and that when such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP." Indeed, despite its comprehensive volume with many largely irrelevant annexes, the Response in this case has absolutely not succeeded in demonstrating rights or legitimate interests on the part of the Respondent, and therefore, the Complainant has satisfied paragraph 4(a)(ii). This is explained in further detail below. Under paragraph 4(c) of the Policy, it is open to the Respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing, e.g., use of the domain name in connection with a bona fide offering of goods or services; or that the Respondent is commonly known by the domain name, even without

trademark rights; or legitimate non-commercial or fair use of the domain name. The Respondent has shown none of the above. The Respondent's arguments regarding rights or legitimate interests center around some fluffy assumptions, partly about zero (0) being the most commonly used number in crypto space, and partly about the Complainant's trademark being generic or commonly used. As to the Respondent's crypto-related activities, it is manifestly untrustworthy that the mentioned use of 0 in crypto wallets or the Respondent's username "lindex0" should pave the way for an assumption that the Respondent has rights or legitimate interests in any and all domain names starting with 0. The Response absolutely fails to explain why the domain name at issue should have any particular relevance. It must be assumed that the Respondent is fully aware of the weakness of this argument, as the Respondent also tries to argue that the Complainant's trademark is descriptive and commonly used. However, this argument also fails, as the Complainant's trademark One.com is absolutely not descriptive. On the contrary, it is a fanciful and inherently distinctive trademark, which appears from the fact that the trademark has been registered as a word mark in many jurisdictions with no necessity to demonstrate prior fame, reputation or acquired secondary meaning anywhere. The trademark One.com has no dictionary meaning. It is strange to see that the Response includes more than ten references to the Complainant's trademark and the disputed domain name being generic, descriptive or commonly used. However, all the Respondent's statements to this effect are clearly wrong and will stay wrong, irrespective of how many times they are repeated. The Respondent's remarks about trademark classes and a search for "domain" appear to be a misunderstanding of the trademark classification system and the guiding nature of the class numbers - apart from being irrelevant. To sum up, the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the domain name. The Respondent has not rebutted this in any way by demonstrating rights or legitimate interests in the domain name. Consequently, the Complainant has established the second UDRP element.

III. The domain name(s) has been registered and is being used in bad faith. The Complainant has demonstrated on the balance of probabilities that the disputed domain name was registered and is being used in bad faith. According to settled case law, it is not necessary for this finding that the domain name has been used in connection with an active website. Reference is made to ADR.eu Case No. 103037 - BOLL0RE.COM, where the Panel stated: "The disputed domain name has not been used in connection with an active web site, i.e. has been passively held. As established in a number of prior cases, the concept of "bad faith use" in paragraph 4(b) of the Policy includes not only positive action but also passive holding, especially in cases of domain name registrations corresponding to distinctive and well-known trademarks; see i.a. the landmark case Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003" Another, more striking aspect is that the Respondent claims that he was not aware of the Complainant's trademark and has deliberately chosen not to make any searches. Thus, according, "Respondent further submits that as an experienced Internet user, he has neither checked nor will ever check for short domain names like one.com...." which is also supported by the Respondent's declaration to this effect. Of course, the Respondent cannot reasonably assume that short domain names are per se exempt from being in conflict with trademarks belonging to third parties. It is a fact that the Complainant's trademark is One.com. It is seven characters long including the dot, and so it is not particularly short. There is no reason to assume that the Complainant's trademark should be too short to be entitled to proper protection in the same way as any other trademark consisting of seven characters. The Respondent's reference in point C.6. to a trademark search for 'one' showing numerous results, does not contradict a proper trademark protection. Indeed, any search for the first three letters of a trademark may reveal numerous results that may or may not be relevant. As an "experienced Internet user" and "reputed IT professional", there is no credibility to the Respondent's claim that he did not know of the Complainant's trademark. Even if this were true - which must be considered highly unlikely - it will still not bring the Respondent out of his bad faith. Thus, a deliberate choice not to make searches will amount to wilful blindness and render the Respondent responsible for the abusive domain name registration. Reference is made to WIPO Jurisprudential Overview 3.0, point 3.2.3, regarding wilful blindness: "Panels have held that especially domainers undertaking bulk purchases or automated registrations have an affirmative obligation to avoid the registration of trademark-abusive domain names. Panelists will look to the facts of the case to determine whether such respondent has undertaken good faith efforts to screen such registrations against readily-available online databases to avoid the registration of trademark-abusive domain names." Especially in the case at hand, where the Respondent claims to be a professional and owns many domain names there is no excuse whatsoever for refusing to make searches for short domain names. The Respondent has explicitly admitted wilful blindness by stating that he has deliberately chosen not to make any prior search. Now the Response shows how easily the Respondent could find the Complainant's trademark as well as the Complainant's and domain name. So, the Respondent has shown that simple searches would reveal the relevant information. Against this backdrop, it is clear that the remarks in the Response: "Actual knowledge of the Complainant and its mark must exist for finding of bad faith" and "For that bad faith to be present, the Respondent must have actual knowledge of the existence of Complainant, the trademark owner" are simply wrong and contrary to practice. In addition to admitting wilful blindness, the Respondent has also admitted its intention to sell the domain name to customers with

competing brands, cf. the Response where it is stated that the Respondent "expected the disputed domain to be of interest to potential customers having similar brand name, looking to establish an online presence." Registration of a domain name with an intention to sell it to the complainant or a competitor is one of the four circumstances set out in Paragraph 4(b) of the Policy, any one of which circumstances is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive.

Regarding offers to sell, the following appears from WIPO Jurisprudential Overview 3.0, point 3.1.1: "Taking the above scenarios into account, panels have generally found that where a registrant has an independent right to or legitimate interest in a domain name, an offer to sell that domain name would not be evidence of bad faith for purposes of the UDRP, irrespective of which party solicits the prospective sale. This also includes "generalized" offers to sell, including those on a third-party platform." However, in the case at hand, it has been demonstrated that the Respondent has no right or legitimate interest in the domain name, and therefore the offer to sell the domain name indicates bad faith. As a professional, the Respondent's intention to sell the domain name to interested customers as part of its business clearly suggests that such sale would be at a profit. This can also be seen from point B.8 of the Response, where the Respondent states "Respondent registered the disputed domain recently as part of its similar investment strategy...". This can only mean that the Respondent acquired the domain name as part of its business, and with intended profit. This is further substantiated by the email from the Respondent in reply to the Complainant's warning letter, inviting the Complainant to "Offer price and buy it out" and going on to say "Either I make a deal...". The Respondent's wording can only be understood to mean that he wanted to make a profit, which is further accentuated by the price tag of more than USD 33,000 for the domain name as shown in the evidence. The Respondent was fully aware of the fact that the domain name was for sale at an excessive price as this was mentioned in the warning letter. The Respondent's argumentation regarding the offering for sale, including that an offer could have been USD 100 or 1,000 is highly unconvincing. In addition, it appears explicitly from the above that the Respondent has never intended to use the disputed domain name in relation with an offer of goods and/or services. In the Response it is mentioned that "[t]hrough the registration date of the disputed domain is quite recent, it was previously registered since 1999". The Complainant would like to point out that the relevant date of registration of the domain name for the purpose of the case at hand is 13 July 2020 when the Respondent acquired the domain name. As set out in WIPO Jurisprudential Overview 3.0, point 3.9, "the transfer of a domain name registration from a third party to the respondent is not a renewal and the date on which the current registrant acquired the domain name is the date a panel will consider in assessing bad faith." It is a fact that the Complainant's trademark is "One.com", that is seven characters including the dot. To sum up, in view of the facts, and especially that the Respondent has explicitly admitted, 1) its wilful blindness, 2) its intention to sell the domain name to a customer with a similar brand at a profit, and 3) that it has no intention to use the domain name for a bona fide offer of goods and services, the third UDRP element has been established beyond any doubt. There is no reason whatsoever to consider Reverse Domain Name Hijacking. It is respectfully requested that the domain name should be transferred to the Complainant.

Respondent

On or about 27 March, the Respondent made the following additional submissions.

The Complainant has come up with a detailed additional submission on the 11th day. The basic fact remains the Respondent in fact has huge interests and investment in crypto currency. The relevant facts with supporting evidence and notarized declaration have been provided in terms of Ukraine Law. The disputed domain name is a three-character alpha-numeric domain name <One.com>. It has been held that such domain names are available to register on a first-come-first-serve basis, given there are numerous similar domain names already registered as cited in the initial response. See HJT Biler ApS v. Really Useful Domains Ltd, Stephen Wilde CAC Case No.: 06987 <hjt.eu>. Similarly in Berggren Oy Ab v. Telepathy, Inc., CAC Case No 100558; <LGG.com>, it was held that the first to register a domain name incorporating the three letters "LGG" might have had a legitimate interest in such domain names. In a very recent decision of CI95.com before WIPO, the Panel also noted that the domain name is short and consists of two letters and two numbers (CI95). Short domain names are generally desirable regardless of their trademark value. CI 95, LLC v. Nijiang 2017, WIPO D2021-0208; March 2021. On the same lines, the UDRP expert/guru Mr Gerald M. Levine puts in the book - "Domain Name Arbitration, Second Edition, Pg 464: The value of domain names composed of generic elements is measured by the potential number of businesses interested in acquiring them. "Selling or leasing non source identifying combinations in widespread use in a descriptive sense" is a bona-fide offering of goods. Two or three letter domain names are "extremely prized." The Policy is not "interpret[ed] . . . to mean that a mere offer for sale of the domain name for a large sum of money is, of itself, proof of cybersquatting." The Complainant is clearly trying to mix two different scenarios, in order to mislead these proceedings:

(i) The right of the Respondent to sell of the domain name at any price in terms of UDRP precedents to anyone interested in Crypto, given the fact that potential number of businesses could be interested to acquire the same. This gives the legitimate interest to the Respondent;

(ii) The Respondent just reacted to a cease and desist notice (mainly a threat) and asked the Complainant to make an offer. Though the Respondent had the right to sell off, up to his documented out of pocket expenses. Moreover, even in literal terms, it was not an offer for an active sale, which is evident from the fact neither anything was quoted by the Respondent nor the Complainant emailed back with any offer. Both understood that the Response was just an immediate reaction and nothing more.

Further in *Primal Quest, LLC v. Gabriel Salas*, WIPO D2005-1083, the Panel held that the sale of domain names consisting of common terms, without some indication of bad faith, is neither unlawful nor evidence of cybersquatting. *General Machine Products Company, Inc. v. Prime Domains (a/k/a Telepathy, Inc.)*, FORUM Claim No. FA 92531 (January 26, 2000); *Allocation Network GmbH v. Steve Gregory*, WIPO Case No. D2000-0016 (March 24, 2000); see also *Etam plc v. Alberta Hot Rods*, WIPO Case No. D2000-1654 (January 31, 2001); WIPO Decision Overview 2.2 ("If a respondent is using a generic word... to profit from the generic value of the word without intending to take advantage of complainant's rights in that word, then it has a legitimate interest"). While in *NTI CADCENTER A/S v. Domain Admin, Ashanti plc Limited*, CAC Case No 101591; *NTI.COM*, the Panel stated that, three letter marks have, in general, low distinctiveness. The evidence already provided with the Response, proves beyond any doubt that the Respondent had registered the domain name, due to his interest in crypto / ethereum, wherein all wallet addresses start with numeric '0'. Further, the Respondent very commonly uses numeric '0' in username (@LENDEX0) at various websites including Twitter, LinkedIn, Angel.co, Email service - ftml.net and so on. Further, he also owns other short and crypto related domain names. While there are numerous domain names already registered that start with 'One' and also various Trademarks are Registered with similar keywords: 'One.' That is, the Respondent just had these factors in mind, while he registered the disputed domain name and did not, in any way, violate the UDRP Policy. Under UDRP Policy, a finding of bad faith registration requires that respondent registered the domain name with Complainant's trademark in mind, *Jet Marques v. Vertical Axis, Inc.*, WIPO D2006-0250, and there is no evidence, whatsoever, that Respondent registered the domain name with Complainant in mind or that she even had heard, or should have heard of Complainant, *Futureworld Consultancy Pty Ltd v. Online Advice* WIPO D2003-0297. Specific Response to additional submission/observations is as follows:

I. The domain name is confusingly similar to the Complainant's protected mark

It is denied that the first element has been established in the Complaint, else the Complainant may not have repeated the arguments again. In fact the Complainant did not make a prima-facie complaint, so it is trying to cover up the things here.

Confusing similarity. It is denied that there could be any confusing similarity between the Complainant's mark / domain and the disputed domain name in the virtual world or that this is a matter of typo-squatting. See *Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1147 (9th Cir. 2002), wherein it was also held that in the Internet context, consumers are aware that domain names for different websites are quite often similar, because of the need for language economy, and that very small differences matter". Even WIPO considers the small similarities as irrelevant that is why it has even allowed new gTLDs both for .photo (Donuts) and .photos (Uniregistry) and there are many more such examples. Similar position was upheld in the matter of *Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Justus Woolworth*, FORUM FA2102001932685; 25 March 2021, wherein, the Complaint for 'Skechers' mark was denied for <sechzapatos.online> (wherein Zapatos means Shoes in Spanish). While the UDRP references provided by the Complainant are misleading as none of them is a generic or descriptive word but distinctive words like Bollore, Nasdaq, Oreck, IFCO, Osram and hence not applicable here. As already provided, never any generic mark / domain owners have filed UDRP complaints over tw0.com, thre3.com, f0ur.com and so on. Therefore, no similar references are available. But it is important to understand that Complainant uses its mark ONE in descriptive sense on it's website, when it refers as follows:

- (i) "Build your dream online Website tools, hosting, and personalised email all in 'one' plan."
- (ii) "If you have more than 'one domain' under the same login."
- (iii) "Most of our customers want to use DNS to redirect their visitors from 'one domain' to another."
- (iv) "If you currently have more than 10 add-on domains and only 'one domain' with webspace."

- (v) "To get you started, all our plans include 'one free domain' for a whole year."
- (vi) "Shared hosting is a web hosting service where many websites share 'one' server - like a hotel with several guests."
- (vii) "Grow your business online with our one-stop solution to build a stunning website."

Indeed, the decision in ADITO Software GmbH v. Domain Admin, Mrs. Jello LLC, WIPO D2008-1771, stated: "descriptive / generic marks are entitled to very limited protection and 'small differences' are sufficient to establish the lack of confusing similarity". Even while allowing registration of Trademark for Booking.com, the US Supreme Court noted that the existence of a 'Booking.com' trademark does not restrict the registration of similar generic marks like 'carbooking.com' or 'flightbooking.com' and so on. In the matter of UPWORK INC. v. Sunny Kumar, CAC Case No. 101294; upworkcrack.com; it was held that "if you select a highly descriptive mark, you cannot expect any exclusivity in common words and terms with information values that many traders will want to use. The online registers show many using marks including the word work... No evidence of sales/income or advertisements and advertising spend was provided, nor any evidence of hits or unique visitor numbers... So while there are some registered rights, the rights are weak". There is a huge difference between the disputed domain name and the registered mark of the Complainant, as never a search for 'One' or 'One.com' will give any results for Complainant's mark. In a recent decision pronounced on 15 January 2021 as to My Gameroom LLC v. Domain Admin / Facebook, Inc., FORUM 1923613, it was said that "Under Policy clause 4(a)(i), where a mark is generic / descriptive, small differences between a mark and a disputed domain name may be the omission of dominant elements that differentiate a disputed domain name that contains other parts of a mark. See Tire Discounters, Inc. v. TireDiscounter.com, FORUM 679485 ("Because the mark is merely descriptive, small differences matter. In the Internet context, consumers are aware that domain names for different websites are often quite similar and that small differences matter."). The Respondent argues that Complainant's reference to its marks as "the GAMEROOM marks" is misleading and ignores that Complainant's actual marks are "MY GAMEROOM", an important pronoun that should be considered a dominant part of the mark and is left out of the disputed domain name. The Panel here finds that the disputed domain is not identical to Complainant's registered marks under Policy clause 4(a)(i)." That is the reason, Ukraine Trademark search has a registered trademark as ONECOM, who also has a presence online in Ukraine at onecom.ua and onecom.com.ua. While the Complainant has no such presence in Ukraine. The Complainant's physical presence as per their "Contact Us" page very clearly reads, various locations at "Sweden, Denmark, Dubai, France, Germany, India, Italy, Netherlands, Philippines, Spain, United Kingdom and United States." see here - <https://www.one.com/> Therefore, the information as to interest the Respondent has in Crypto Currency is highly relevant as the main reason for registration of the disputed domain name but smartly the Complainant is trying to refer to the same under Trademark clause. Further, it is also relevant to note that on the one hand the Complainant allows a domain name Onergi.com to be registered and hosted on its server and also recently allowed registration of <onecome-starter.online>, see here: <https://www.whois.com/> And the following two as on date are hosted on it's server, which start with 'ONECOM': (i) <onecome-starter.online> 9/17/2020 ns01.one.com: (ii) onecompk.com, 11/8/2005 ns01.one.com. On the other hand, it files a misleading UDRP complaint alleging violation of it's rights, in a bid to hijack a valuable domain name. The terms of Complainant's website read: "On ordering a domain, the buyer/cardholder must declare that the person registering accepts that use of the domain name does not violate the name or trademark rights of third parties or otherwise be considered to contravene legislation" see here: <https://www.one.com/> .That is, the Complainant does not allow a domain name that may violate rights of any party, while Onergi.com was allowed registration in 2019 and <onecome-starter.online> in 2020, this in itself proves that the disputed domain name as well, does not violate any rights of the Complainant. They had already made up the mind to file these UDRP, while they served a Cease and Desist notice to the Respondent. But unnecessary arguments have been put forward in a bid to mislead and cause harassment to the Respondent. As already argued the most credible evidence of this accepted descriptive meaning in the industry comes from the Complainant's own services allowing registration of Onergi.com and <onecome-starter.online>, otherwise upon it's website, the Complainant has repeatedly used the term "one" and "one domain" in a descriptive sense, as provided above.

C. The exact wording of the Complainant's mark. The Complaint insists upon it's complete mark - 'one.com' but the important questions are below. (i) How could an Internet user know that the Complainant has any rights in One.com, when no reference as to trademark registration has been provided upon its homepage or otherwise cannot be located ? (ii) How could a layman could have imagined that someone got Trademark registration including the extension and he needs to search for extension as well ? (iii) Why would someone registering a domain name with the keyword 'One' ever search for the generic word 'one' in any Trademark database and/or with extension ? (iv) 'One' being a generic word, cannot be exclusive to any one individual or organization. Similarly 'One.com' is also in use by numerous businesses, (France Telecom was first to Trademark One.com in

October 1998).

C. The extent of the protection of One.com. The Complainant lists specific countries where it has trademark registrations for the mark 'One.com'. And goes on to add that Ukraine is not a relevant jurisdiction for assessment but it is quite relevant as a Domain owner is subject to the jurisdiction from where he operates and it is well established that the UDRP does not require a respondent to conduct trademark searches in every country of the world. See *FreedomCard, Inc. v. Mr. Taeho Kim*, No. D2001-1320 (WIPO Jan. 20, 2002) ("no basis for inferring, that Respondent, in Korea, was aware, or should be deemed to have been aware, of Complainant or its U.S. trademark prior to the registration of the disputed domain name"); *John Fairfax Pub., Pty v. Domain Names 4U* [WIPO D2000-1403] (no bad faith registration on part of U.S respondent not on notice of Australian trademark). The Ukraine Trademark database already has registration for one (numerous), onecom and more similar marks. Further, a layman like the Respondent is not supposed to be aware of other Trademark databases, such as WIPO Global database. Furthermore, the contact page of the Complainant's website also evidences the fact that it has neither any physical presence in Ukraine, nor have any online presence on one.ua or One.ua or onecom.ua. In any case, the global trademark database has numerous other references to exact similar Trademarks as 'one.com'. In the matter of *Lada Váľková v. Guillaume Pousaz*, CAC Case No. 101013; *MAXIMIZE.COM*, it was laid down that: "Descriptive common words are in theory un-registerable as completely lacking in inherent distinctiveness. Trade marks are badges of origin –they indicate the undertaking or business responsible for the quality of the goods/services –and therefore enable consumers to distinguish the goods and services of different undertakings and repeat purchases. Therefore marks cannot be registered that lack either inherent or acquired distinctiveness or are descriptive of the goods and services—as they do not indicate origin. There is also a public interest underlying this prohibition, in that no trader should be able to acquire exclusive rights to words other traders might wish to use, such as terms with purely informational values. Consumers are not easily confused by such terms as they understand they are common ordinary terms, employed by many undertakings, with a low degree of distinctiveness. It is also clear in this case that there are many other users of marks and signs containing the term Maximize and the term is a common dictionary word available to all in its common meaning. We note also that common law jurisdictions tend to show a great deal of tolerance for similarity when marks are highly descriptive and even if such rights could be made out, they would be unlikely to be enforceable in passing –off."

II. The Respondent does not have any rights or legitimate interest in the domain name. It is denied that the Complainant was able to make a prima-facie complaint, otherwise there was no need for any additional arguments on the part of the Complainant. Whereas the Respondent has proved beyond any doubt the legitimate interests it has in the disputed domain name. It is denied that legitimate interests are restricted to the clauses as referred by the Complainant. In the matter of *Voys B.V., Voys United B.V. v. Thomas Zou*, WIPO D2017-2136, wherein Complainant alleged that "The domain name voys.com has never been used by Respondent after its registration. Since 2007, this domain name is even offered for sale... from this, it is evident that Respondent does not have a legitimate interest in the domain name voys.com." Panel held this to be an extraordinary statement. It incorrectly assumes that: (i) non-use of a domain name of itself prevents the registrant from acquiring a right or legitimate interest, and (ii) registration of a domain name for no reason other than to sell it necessarily deprives the registrant of a right or legitimate interest. The WIPO Jurisprudential Overview 3.0 at Section 2.10.2 states that "for a respondent to have rights or legitimate interests in a domain name comprising an acronym, the respondent's evidence supporting its explanation for its registration (and any use) of the domain name should indicate a credible and legitimate intent which does not capitalize on the reputation and goodwill inherent in the complainant's mark". Also at Section 2.1, the WIPO Jurisprudential Overview 3.0 states as follows: "Over the course of many UDRP cases, panels have acknowledged further grounds which, while not codified in the UDRP as such, would establish respondent rights or legitimate interests in a domain name. For example, generally speaking, panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be bona fide and is not per se illegitimate under the UDRP". The same has been upheld in the matter of *AVK.com, AVK Holding A/S v. Best Web Limited* - CAC Case No 102848. Similarly, it has been established in various other UDRP precedents as follows. In *Allocation Network v. Steve Gregory*, WIPO D2000 0016, ("Allocation"), it was laid down that the use of domain names for the purpose of their sale may in certain circumstances give rise to rights or legitimate interests in respect of those domain names within the meaning of paragraph 4(c)(i) of the Policy (i.e. as bona fide offering of goods or services). In *Deep Focus v. Abstract Holdings International*, WIPO D2018-0518,: "The Panel accepts that, where party legitimately registers domain name comprising commonplace or dictionary elements for sale, without intent to target the trademark of an existing trademark owner, then that offer for sale can give rise to rights or legitimate interests in the domain name as bona-fide offering of goods or services for the purposes of paragraph 4(c)(i) of the Policy". Further, in *Fresenius Kabi v. Domain Manager*, WIPO

D2018-0491, it was held that the Respondent is in the business of inter alia trading in domains and claims to have registered the disputed domain, combining the commonplace prefix "nutri-" with the dictionary word "home", as being of potential interest to customers wishing to offer nutrition-related services online. It provides evidence of other "nutri-" related domain names that it registered in the same year as the disputed domain name or in the preceding two years. The Panel accepts that, where a party legitimately registers a domain name comprising commonplace or dictionary elements nature for sale, without intent to target the trademark of an existing trademark owner, then that offer for sale can give rise to rights or legitimate interests in the domain name as a bona fide offering for the purposes of paragraph 4(c)(i) of the Policy. The above is good enough to prove legitimate interests on the part of the Respondent. Otherwise also various facts as to knowledge of the Respondent as to Crypto Currency and dealing in Ethereum on frequent basis wherein the crypto wallet addresses start with numeric '0', accompanied with various Annexes, prima facie prove existence of legitimate interests on the part of the Respondent. The facts are further supported by a notarized declaration. It is denied that any irrelevant Annexes or any irrelevant information has been provided with the Response but all are highly relevant to understand the mind of a 'crypto space astronaut'. Rather the Complainant is trying to mislead the proceedings by making false and misleading statements. It is also denied that the Complainant's trademark is not descriptive when dealing in .com domain name registration and as Complainant very frequently uses keyword 'one domain' on its website, therefore mark 'one.com' is descriptive of its services offering 'one .com domain name'. Otherwise, there are numerous trademarks for "one.com" in WIPO Global Trademark database and the Complainant has no exclusive rights to it. See the registered mark ONECOM in the Ukraine. It is also highly relevant that further the Complainant has falsely tried to show that its Trademark Registration covers Domain Names, but class 35 and 42 does not cover the same, as already provided under the Response with proper references.

III. The domain name(s) has been registered and is being used in bad faith. It is denied that the domain name has been registered or being used in Bad Faith. At the outset the Respondent highly objects to false and vexatious arguments by the Complainant, wherein again and again the Complainant refers to some non-existent listing of domain name for \$33k. The Response clearly shows that the previous owner had name servers pointed to SEDO.com. Hence the earlier submissions that: (i) The domain name may have been listed by the previous owner on various platforms. (ii) There is also a possibility that the Complainant has got the same created in a bid to show false bad faith against the Respondent, hence the knowledge ! (iii) The Respondent has no idea about the said reference being made on WHO.IS and in case it is / was an active listing, why no screenshot has been provided by the Complainant ? (iv) As the said link does not resolve, how come anyone could make an offer in the first place and further the Complainant's assumption as to an excessive price in its legal notice is without any legal basis (as argued now under additional submissions). (v) The Respondent just asked the Complainant to make an offer, which was mainly a result of a reaction of legal threat, issued by the Complainant. (vi) The Respondent neither quoted any amount nor asked the Complainant to visit any website to make any offer, the same is evident from the email communication. But unnecessary presumptions are being drawn by the Complainant, as they had a weak Complaint otherwise. (vii) In any case, Complainant was the first to email the Respondent, else the Respondent did not make any outbound for the domain name to anyone. (viii) The service of Cease and Desist notice also evidences that the Complainant already had made the mind to sue the Respondent under UDRP, while the email response was later action on the part of the Respondent. (ix) The Respondent never attempted any active sale but just tried to shoo away the Complainant, as Respondent understands that selling the domain name, over and above the out of pocket expenses to a Trademark Holder is not allowed. (x) In case, the Complainant was aware of any excessive price or intention to make profits on the part of the Respondent, why didn't they communicate further ? The above very well proves that the Domain Name was never registered with a motive to sell to the Complainant. See Novartis AG v. Negotiation Matters Inc., CAC Case No. 103013; NOVARTISPODCAST.COM, where there were similar circumstances. In its response, Respondent had proposed 2 options: sell the disputed domain name to the Complainant for an out-of-pocket expense or let the disputed domain name expire. The Complainant followed up on 24 January 2020, intending to accept the first option: "Kindly inform us the amount of the out-of-pocket costs." The Respondent replied on 7 February 2020 stating the "out - of-pocket expense" of "\$12 plus attorney's fees." For the record, the panel was not in agreement that the Complainant can rely for Bad Faith on Respondent's offer for in excess of out of pocket costs. It appears to the Panel that this rests on a very general discussion about any potential sale including provision for attorneys' fees. The identification of this as an option for resolving the dispute, by a lay person, did not offend the spirit of the rules in our view. We also would have preferred to have the correspondence itself than the selected quotes with the Complainant's "perspective." We do not find this or any other ground of Bad Faith made out. Complaint Rejected. Further, it has already been submitted as to the interest the Respondent has in Crypto and the main reason for the acquisition of the domain name. In brief:

- (i) The Ethereum Wallet address starting with '0x...', a 42 character alpha-numeric combination;
- (ii) The username "Lendex0" is used on various social profiles and as an email ID as well;
- (iii) Respondent conducts frequent Ethereum transactions, agreement in support already annexed;
- (iv) The other similar short and crypto related domain names he already holds, list already provided with the Response.

It is denied that passive holding of a domain name is Bad Faith. In the matter of *Veena Kumaravel v. Daegu Law Auction*, WIPO Case No. D2019-2508, it was stated that the Panel rejects Complainant's argument that Respondent's "passive holding" of the Domain Name amounts to bad faith. See *Sadig Alakbarov v. Yuxue Wang*, supra. In the circumstances of this case, where the Domain Name corresponds to a descriptive word and Respondent has not engaged in any activity that might be suggestive of bad faith (e.g., such as providing false contact details, targeting a distinctive well-known trademark, or a pattern of cybersquatting), Respondent's passive holding of the Domain Name is not evidence of bad faith. In the matter of *BGL Group Limited v. Freddie Clark*, CAC Case No. 100600; *comparethemarketcarinsuranceuk.com*, "the Panel in case no 100421 found the descriptiveness of the mark meant it could legitimately have many uses and also found a lack of bad faith in an inactive domain noting "Trademark rights are defined in scope, and do not give rise to transfer of generic or descriptive domains via the UDRP unless bad faith use of the domain is proved. Inactive non-use is clearly an insufficient indicator of bad faith; there must be something more. Therefore the complaint must be denied." The short domain names including acronyms are mostly exempt from being in conflict with Trademark in terms of UDRP precedents and WIPO overview 3.0. Further, it is a universal fact that none of the three letter .com domain names are available for hand registration but mostly are put up on sale. Even the Respondent's representative can give the said statement under an affidavit, if required. Even an article here at: <https://www.domainsmoke.com/> clearly reads: "Note: All LLL (3L) .com domain names have been registered, however some of these have buy-it-now prices across various domain aftermarket platforms". That is, it is a well-known fact among the domain owners community. It is denied that being a reputed professional, the Respondent is supposed to be aware of each and every trademark registered in this world. Further, as to the keywords as contained in the domain name, the concept of wilful blindness does not apply. There is neither any Trademark registered specifically in Ukraine by the Complainant nor any physical presence the Complainant has in Ukraine. Further the keywords as contained in the domain name are alphanumeric, so any attempt to search 'One' never gives any result for a dictionary word 'one'. While it has already been submitted that interest in Crypto Currency has led to the registration of the domain name by the Respondent, hence registration in good faith. The WIPO Overview 3.0, Para 3.2.3 does not apply here, as this was neither a bulk purchase nor it has been registered under any mistake but only due to the interest the Respondent has in Crypto. The Complainant claims to have rights in a seven character that covers domain name extension. But obviously any man of ordinary prudence will only check or verify for the keyword 'One' as contained in the domain name, that too, without the extension. The purpose of domain extension is required just for proper functioning of the domain name system only. Therefore, the concept of wilful blindness does not apply here, as no one could assume that someone may have a Trademark with the domain name extension. Moreover Ukraine Trademark database already has a registered keyword for the mark ONECOM (applied in 2016). In case, the Complainant was in any way active in Respondent's country, how does the said mark have been registered in Ukraine by a third party? The Complainant in a bid to mislead these proceedings is continuously making false statements, without any evidence or providing any reference to a UDRP precedent. It is true and holds good that actual knowledge of the Complainant and its mark exist for finding of Bad Faith. In the matter of *The Way International, Inc. v. Diamond Peters*, WIPO D2003-0264; "As to constructive knowledge, the Panel takes the view that there is no place for such concept under the Policy. The essence of the complaint is an allegation of bad faith, targeted at the Complainant. For that bad faith to be present, the Respondent must have actual knowledge of the existence of Complainant, the trademark owner. If the registrant is unaware of the existence of the trademark owner, how can he sensibly be regarded as having any bad faith intentions directed at Complainant? If the existence of trademark registration was sufficient to give Respondent knowledge, thousands of innocent domain name registrants would, in the view of the Panel, be brought into the frame quite wrongly. Of Course, the Respondent intends to sell the domain name to parties who may have interest in keyword 'One' and not dictionary word 'one'. But it is denied that the Respondent intended to offer to sell the domain name to the Complainant or its competitor over and above the out of pocket expenses. Rather it can be offered to prospective buyers who may be interested in a domain name for running a cryptocurrency based website, that is, what is meant by a similar brand that matches the keywords contained in the disputed domain name. In cyberspace, small differences matter due to limited / competing resources. It has already been submitted that there are approximately 500 domain names registered starting with the said alpha-numeric combination 'One' and Respondent is well aware to analyze / research to whom to sell or not, so as not to violate any rights. It is totally denied that the Complainant was asked for any specific amount or even directed to any third party platform, but has already submitted that it was just a

reaction to the Respondent's email who had already made up their mind to file UDRP and was threatening the Respondent for no reasons. While the knowledge as to \$33k listing is totally denied. While the parked page at the disputed domain name does not have any price indicated and selling the domain name at any value is not Bad Faith, as speculating in domain names is legitimately allowed. In *Aurelon B.V. v. Abdul Basit Makrani*, WIPO D2017-1679, held that speculating in Domain Names is a lawful business model. What the Respondent is denying is neither he asked any amount from the Complainant nor referred them to any platform. Overall, it was just a reaction to the threat received from the Complainant and Respondent is not aware on what basis any excessive price was mentioned in the Cease and Desist notice, as it was lacking details and sounded more of an assumption to pressurize the Respondent. In any case, the price quoted at the website 'WHO.IS' as referred by the Complainant is not anything for which the Respondent has any kind of knowledge. Further, in *Vulf Records LLC v. Domain Admin*, FA1802001771089, the Panel found that Respondent's reselling of domains constitutes bona fide offering of goods or services. There may not be specific provision under the UDRP Policy as to trading in domain names but very well covered under Nominet Policy of .UK and the Domain Name Commission for .NZ. Therefore, it is totally denied that any such actions on behalf of the Respondent, establish bad faith under the Policy or any kind of confusion is being caused, but it is purely an attempt to not only reverse domain name hijacking but the Respondent's established business as well. The Complainant should have realized that it was obvious that this claim could not succeed, but instead of withdrawing it, pressed its case in its Additional Written Statement, thereby compounding its bad faith in bringing a futile Complaint (See for example, *Consuela, LLC v. Alberta Hot Rods*, FORUM 1504547, and *Avaya Inc. v. Avaya Electronics*, FORUM 487607).

In conclusion, this is a matter of legitimate interests that the Respondent has, due to his interest in crypto-currency and it is not a matter of typo-squatting. It is denied that 'One.com' and 'one.com' are anywhere identical in the virtual world. In cyber space small differences matter due to limited / competing resources. And numerous examples of existence of similar domain names like tw0.com, thre3.com, t3n.com and so on have already been provided under the Response. Further, there are numerous such domain names listed for sale. The interpretation of the Respondent's email is the subjective perspective of the Complainant and it is being distorted against the Respondent as Complainant has mala-fide intention to hijack the valuable domain name for free. Respondent's attempt to just shoo away the Complainant or seeking an active sale are two different things. If the Respondent was really seeking any outright sale, that too, at a higher price, the same would have been indicated in the email communication. Otherwise, if the Complainant is so confident that the Respondent would have offered for sale in thousands of dollars at a profit, then why didn't Complainant try to negotiate and helped themselves with better evidence of bad faith. The Respondent is very much aware that selling the domain name to a Trademark Holder is Bad Faith under the Policy, that is why he never attempted an active sale with the Complainant. For all of these reasons, Complainant's arguments lack merit, and Complainant's lack of credibility should not be ignored as they had already made up their mind to bring the proceedings under UDRP while they served the Respondent with a Cease and Desist notice. Respondent respectfully requests that the Panel find that Complainant has violated the basic legal principles and the Complaint be rejected with a ruling as to RDNH. While, it is pertinent to note that the Respondent has not been part of any UDRP proceedings before but unnecessary and false arguments have been presented by the Complainant in a bid to harass the Respondent. In *Vertex Pharmaceuticals Incorporated v. Ramzan Arif, Vertex Medical (pvt) Ltd.*, WIPO Case No. D2020-2334, it was held that the nature of the incorrect and misleading submission regarding the use of "vertex" in a medical context coupled with an apparent failure to investigate the Respondent and a failure to put forward documentary evidence which was relied upon in submissions is all the more concerning given that the Complainant is represented by counsel. In all of these circumstances, the Panel should find that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has not, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has not, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being

used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

On or about 14 March 2021, the Complainant indicated it was proposing to make additional submissions and then made those submissions on 25 March 2021. The Respondent initially submitted that these should be excluded on various grounds and then made its own supplemental submission.

The Panel has a very wide discretion on these issues and this Panel decided to allow both additional submissions. This is a highly contested case and it is better that the material be allowed and considered. That said, the Complainant filed a light complaint and effectively gave itself a reply. This is really unfair and puts the Respondent to extra work and costs and a disadvantage. That is to be discouraged and is unfortunate but it is still better to let the material in, in this case in the view of this Panel. The Respondent fully answered.

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain name is <0ne.com> and the Complainant's word mark is One.com.

The Complainant has a portfolio of international registrations, including word and figurative marks for One in classes 35 and 42. So the Complainant does have rights in a name or mark that is similar. Identity is a very strict test and is not met. There are then rights.

However, not all rights are the same. No-one can own a number or dictionary word to the exclusion of the rest of the world. They are inherently lacking in the distinctiveness required for trade mark law. Trade marks are badges of origin that enable the public to identify the goods and services of a trader so they can make a repeat purchase safe in the knowledge that the quality should be the same the second time around. An ordinary word or number cannot function in that way for obvious reasons. That is, unless they have what we call "acquired distinctiveness" or secondary meaning so that they are so famous that it is the brand that the relevant public bring to mind and not the dictionary term. That is not really possible with a number or a common word – so that in their original meaning, they remain the property of and available to, all. This forms the basis of the prohibition on descriptive and generic marks which recognises that many traders want to use descriptive terms for their informational values and that no one trader should be able to monopolise them. Those selecting such terms as marks have to tolerate confusion and the Policy reflects this by protecting such as fair or legitimate use. Furthermore, consumers are not easily confused by such terms as they understand they are common ordinary terms, employed by many undertakings, with a low degree of distinctiveness.

This is the point that the Respondent is making in the response –is if you select a common word or a number/highly descriptive mark, you cannot expect any exclusivity in it and small differences must be tolerated. See *Tire Discounters, Inc. v. TireDiscounter.com*, The Forum 679485 ("Because the mark is merely descriptive, small differences matter"). Indeed, the Respondent relies on the fact that the online registers show many using marks including the word "one" or the "0" character. It was submitted that there are approximately 500 domain names registered starting with the said alpha-numeric combination 'One.'

The Complainant relies on a number of cases where an o was replaced with a zero and complainants succeeded. But this is not a typosquatting case as many people can legitimately want to use a one domain or stylised one domain for perfectly valid reasons for informational purposes and without any intention to reference or leverage the Complainant and its reputation. Further, outside of its home country, the brand is not a household name globally, although in its core Scandinavian territory it may well be a well-known or a mark with a reputation. The Respondent notes for example that the Complainant does not own the registered mark in the Ukraine, where it is owned by a third party.

The Panel does not have the evidence necessary to make any finding on acquired distinctiveness nor is it the function of the

Panel, as we are concerned with the application of the Policy.

So while there are registered rights, the rights are in fact quite weak, not very distinctive and not exclusive.

Legitimate Use

The real issue in this case is whether the Respondent has a right/legitimate interest in use of the disputed domain name.

Under the UDRP (the Policy) at Paragraph 4(c) the Respondent can show any of:

- “(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate non-commercial 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.”

However, Paragraph 4(c) is not exhaustive and includes the language, “[a]ny of the following circumstances, in particular but without limitation...”

The disputed domain name itself was registered in 1999. Our focus however is the point of transfer/registration into the Respondent’s name when he became the owner, which is in July 2020. We must examine his knowledge and purposes under the Policy at that point.

The Respondent says he had his own reasons for wanting and buying the disputed domain name. He says numeric and small domains are inherently valuable and that is why he wanted it. He also explains that he uses a similar handle for his social media where his usernames all tend to include a zero in numeric form and that it stems from his professional interest in cryptocurrency etc. The disputed domain has not yet been used in connection with a website so this is a case of passive holding. This is not a typosquatting case however and the Panel finds the Respondent had his own reasons for wanting it, due to its inherent value and to use as part of his portfolio of handles or identifiers, which implicates use under Paragraph 4(c)(ii) of the Policy. Many will want to use a common word or number for their informational properties and this fair use is protected at law and by the Policy. This Panel finds that the Respondent had a legitimate right/interest in the disputed domain name.

Bad Faith

Where there is legitimate use, often for the same reasons there will be no Bad Faith. This is the case here but there are a few additional points to consider.

Under Paragraph 4(b) of the Policy, the following can evidence Bad Faith:

- “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Respondent, a Ukrainian national, said he acquired the disputed domain name in an auction when he purchased it as part of a package of domains. He said that he wanted it due to its own inherent value and not to free-ride on the reputation of the Complainant. This Panel finds that the Respondent’s evidence is entirely credible. This means he did not select it to block, disrupt or leverage an owner.

As to the offer to sell at an overvalue, in the exchange between the parties, he simply invited the Complainant to make him an offer if it wanted to purchase the disputed domain name. There is nothing wrong with that and no breach of the Policy unless it was acquired with “primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs”. As he did not have the relevant intention at the material time this will not apply. Nor are the online offers relevant as they are likely automated and were not put to the Complainant. The Panel does not find this head of the Policy made out.

As to passive holding, it is no longer the case that passive holding of a domain name is automatically Bad Faith. It is now a fact sensitive/context sensitive issue. In the circumstances of this case, where the disputed domain name is a common number in stylised form and inherently valuable and Respondent has not engaged in any activity that might be suggestive of Bad Faith (e.g., providing false contact details, targeting a distinctive well-known trademark, or a pattern of cybersquatting), Respondent’s passive holding of the disputed domain name is not evidence of Bad Faith.

This Panel finds that the Complainant has not made out its burden on Bad Faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

- 1. **ONE.COM:** Remaining with the Respondent

PANELLISTS

Name	Victoria McEvedy
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DATE OF PANEL DECISION 2021-03-31

Publish the Decision