

Anonymized decision for dispute CAC-UDRP-107143

Case number	CAC-UDRP-107143
Time of filing	2024-12-12 07:35:36
Domain names	lemeilleur.com, le-meilleur.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	[REDACTED]
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Respondents

Organization	Info
Organization	PTB Media Ltd

Respondent representative

Organization	Ankur Raheja (Cylaw Solutions)
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OTHER LEGAL PROCEEDINGS

#The identification of the Complainant was temporarily hidden due to claimed identity theft. The identity will remain hidden during the pending investigation.#

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

IDENTIFICATION OF RIGHTS

The Complainant claims ownership of a US trademark registration "LE MEILLEUR", Serial Number 98864499, with the claimed registration date of August 31, 2024, in respect of some goods in class 24, including "bed sheets, pillowcases and bed linen".

The Complainant submitted as one of the annexes to the complaint a document that appears to be a USPTO record for the mark "LE MEILLEUR" that contained the following information:

- Serial Number 98864499;
- application date - November 20, 2020; and
- registration date - November 22, 2024.

In its supplemental submissions the Complainant admitted that the mark above was an application rather than registration and instead claimed common law trademark rights in the terms "LE MEILLEUR".

FACTUAL BACKGROUND

The Complainant filed this complaint in respect of the two disputed domain names owned by two different registrants. Both registrants submitted their responses and they are represented by different counsel.

The registrant of <lemeilleur.com> is represented by Ankur Raheja (Cylaw Solutions).

The registrant of <le-meilleur.com> is represented by ESQwire.com, P.C.

For the reasons explained below the Panel denies Complainant's request to conduct this proceeding in respect of both disputed domain names and this proceeding is conducted only in respect of the disputed domain name <lemeilleur.com>.

The complaint is denied without prejudice in respect of the disputed domain name <le-meilleur.com> and the proceeding in respect of this disputed domain name is terminated.

The Complainant can file a separate new complaint in respect of the disputed domain name <le-meilleur.com>.

Therefore, the Panel does not consider any arguments made by parties in respect of the <le-meilleur.com> disputed domain name and referring to the Respondent the Panel will only mean the Respondent of the disputed domain name <lemeilleur.com>.

The disputed domain name herein means only <lemeilleur.com>.

The Respondent is represented by Ankur Raheja (Cylaw Solutions).

The disputed domain name was registered on November 20, 2001.

The disputed domain name consists of the words that mean "The Best" in French.

The disputed domain name is not actively used on the date of this decision. The disputed domain name was previously offered for sale to the general public.

The Complainant relies on its claimed US trademark registration referred to above and claims that all the UDRP elements are present.

The Respondent denies the Complainant's claims and requests finding of Reverse Domain Name Hijacking (RNDH).

Both Parties filed unsolicited supplemental submissions after the complaint and the response were filed.

The Panel issued a notice to Parties on January 21, 2025 and stated it would not accept any further submissions from either of the Parties and should the Panel need any further information, it would issue a Procedural Order in accordance with Rule 12.

Parties contentions are summarized below.

PARTIES CONTENTIONS

COMPLAINANT'S CONTENTIONS

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant claims that it is the owner of a US trademark registration "Le Meilleur" referred to above and registered on August 31, 2024. The Complainant claims that the disputed domain name is confusingly similar to its registered trademark.

The Complainant alleges that it previously submitted successful take down notices to social media platforms - "Instagram" and "Facebook" and to "SEDO" based on its trademark rights.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant alleges that the Respondent is neither affiliated with nor authorized by the Complainant to use its trademark or any variations thereof. The Respondent has no prior relationship with the Complainant or any legitimate basis for claiming rights to the disputed domain name.

The Complainant claims that the disputed domain name is not being used for any legitimate business purpose. According to the Complainant, it appears to be used in bad faith, "such as redirecting traffic, hosting infringing content, or remaining inactive".

The Complainant claims that the Respondent's use of the disputed domain name is misleading and unfairly exploits the goodwill and reputation of the Complainant's mark.

The Complainant alleges that the Respondent's actions "indicate an intent to profit from or disrupt" the brand's legitimate operations and

that the Respondent registered the disputed domain name "solely to capitalize on trademark's reputation, prevent the Complainant from using it, or sell it at an inflated price".

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant's submissions on the bad faith element can be summarized as follows:

- The Respondent is utilizing the disputed domain name for the purposes unrelated to the Complainant's mark and such conduct is prohibited as it impedes the owner's exercise of TM rights;
- The Respondent disregarded the Complainant's attempts to communicate and Complainant's offers to sell the disputed domain name on October 26, 2024 and October 29, 2024 at a price of 1,200 USD and 2,100 USD respectively;
- The Complainant alleges that the Respondent "re-registered and transferred the domain to Gabia, Inc." (registrar) after the Complainant's communication in October 2024, "to evade legal communication and prosecution";
- The Complainant claims financial loss of "over 2 (two) million USD in CARR (Committed Annual Recurring Revenue)";
- The Complainant alleges that the Respondent's conduct not only harms the distinctiveness and value of its brand "built for over five (5) years", but also leads to significant consumer confusion;
- The Complainant claims the Respondent's actions violate US federal laws.

RESPONDENT'S CONTENTIONS

COMPLAINANT HAS NO TRADEMARK RIGHTS IN THE TERMS "LE MEILLEUR"

The Respondent states that the Complainant does not have trademark rights as it fabricated a USPTO trademark record.

The Respondent highlights that the alleged trademark is only an application filed on November 20, 2024 and the document provided by the Complainant in support of its registered trademark rights in the US does not indicate any Registration Number as it was never registered.

The Respondent provides its own record from the USPTO database in support of his submissions.

The Respondent also emphasizes that the Complainant provided fabricated evidence of its alleged trademark rights to third parties (e.g. "SEDO").

RESPONDENT HAS RIGHTS / A LEGITIMATE INTEREST IN RESPECT OF THE DISPUTED DOMAIN NAME

The Respondent submits that he was the first person to register the disputed domain name back in November 2001 and he was not aware of any relevant trademark rights. The disputed domain name is a phrase in French that means "The Best".

The Respondent claims that he is a domain name investor and the disputed domain name represented an investment for him as a valuable domain name corresponding to a common/popular phrase in French that could be attractive to numerous potential buyers.

The Respondent refers to "WIPO Overview 3.0", sec. 2.1 and numerous UDRP decisions that recognize the rights or legitimate interests of domain name investors.

The Respondent states that he registered the disputed domain name as part of its similar investment strategy of acquiring common, brandable and combined domain names and did not target the Complainant. Moreover, the Respondent asserts that he could not have targeted the Complainant since the Complainant's company was only created in 2023 (the Respondent provides details of Complainant's incorporation with the incorporation date of August 02, 2023). The Complainant only filed its US trademark application on November 20, 2024.

The Respondent submits a declaration in support of his contentions.

Therefore, the Respondent claims that he has a legitimate interest in respect of the disputed domain name.

THE DISPUTED DOMAIN NAME WAS NOT REGISTERED AND/ OR USED IN BAD FAITH

The Respondent submits that bad faith registration was chronologically impossible and that he could not have had any intent targeted at the Complainant's mark back in 2001, when the Complainant filed its US application only in November 2024.

The Respondent refers to both "WIPO Overview 3.0" and UDRP decisions that confirm that in general, when a domain name has been registered before the trademark of the complainant, the registration of the domain name is not in bad faith because the registrant of the domain name could not have contemplated the complainant's trademark.

The Respondent registered the disputed domain name because of its attractiveness as a common French phrase "The Best".

There is no proof of actual knowledge and targeting by the Respondent of the Complainant and its alleged mark.

The Respondent addresses the Complainant's allegations as to its attempted communication with the Respondent and its two attempts to purchase the disputed domain name at a price of 1,200 USD and 2,100 USD (October 26 and October 29, 2024).

The Respondent did not solicit any offers from the Complainant, it was the Complainant that contacted the Respondent, made offers and claimed to have trademark rights in various jurisdictions, including South Korea. The Respondent submits that this UDRP action is

a result of the Complainant's dissatisfaction with the Respondent's lack of response to its offers.

The Respondent also claims that the Complainant's other allegations of bad faith use are unfounded. In particular, the Respondent submits that he did not transfer the disputed domain name to another registrar, as claimed by the Complainant and other claims of the Complainant are mere allegations without any evidence.

REVERSE DOMAIN NAME HIJACKING (RDNH)

The Respondent submits that this complaint constitutes Reverse Domain Name Hijacking per UDRP Rule 15(e).

The Respondent's arguments in support of its RDNH claims can be summarized as follows:

- The Respondent alleges that the complaint was filed after the Complainant failed to purchase the disputed domain name and this is a classic "Plan B" case;
- The disputed domain name registration predates Complainant's filing of a trademark application by 23 (twenty three) years;
- The disputed domain name consists of common terms;
- The Complainant appears to be professionally represented;
- The Complainant made misleading claims and provided fabricated evidence.

RIGHTS

The Complainant **has not**, 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

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

I. Consolidation - proceeding against two different domain names owned by two different registrants

The Complainant requested the Panel to conduct this proceeding in respect of the two domain names.

The Complainant's arguments in support of one single proceeding in respect of both disputed domain names are the following:

- both disputed domain names are under common control;
- both disputed domain names were registered using similar methodologies, timing, and intent, indicating a coordinated effort by the same entity or closely connected entities;
- consolidation is required for the purpose of judicial economy and
- the disputed domain names appear to be part of a unified scheme to exploit Complainant's trademark, dilute its brand, or mislead consumers.

The Respondent objected to this request and the second Respondent in its response stated that it had no connection to the first Respondent . Both Respondents claim that they are not related and that they registered the disputed domain names independently and separately. Both Respondents are represented by different counsel.

The Panel carefully considered the arguments of the Parties.

Under Rule 3 (c) a complaint may relate to more than one domain name, **provided that the domain names are registered by the same domain name holder**.

Here, the disputed domain names are clearly not registered by the same holder.

At the same time the panel has the right to consolidate multiple domain name disputes in accordance with the Policy and the Rules at a request by a party under Rule 10 (e).

This Panel agrees with the proposition expressed in "**WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition**" ("WIPO Overview 3.0"), sec. 4.11.2 that in such cases UDRP panels "look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties" and to sec. 0.7 of "**UDRP Perspectives on Recent Jurisprudence**" as updated on January 15, 2025: "Consolidation of multiple domain name disputes may not be appropriate where the respondents are different parties such as when there is a response from one of the respondents".

Here both Respondents are different parties, both have different representatives and both responded and claimed that they were not related.

There is no evidence of common control and the fact that both disputed domain names were registered within a short time frame or on the same date, is insufficient, in particular taking into account that the disputed domain names represent a common phrase in French that may be attractive to different individuals and companies.

Therefore, the Complainant's request is denied and the complaint will be considered only in respect of the disputed domain name <lemeilleur.com>.

The Panel will not consider below any submissions and arguments relating to the domain name <le-meilleur.com>.

II. Request for language change

The language of the registration agreement is Korean. The Complainant requests to conduct this proceeding in English and the Respondent via his representative agrees. While the Respondent claims that he does not speak English, his representative can communicate in English.

Therefore, the request is granted and the Panel will conduct this proceeding in English.

III. Supplemental submissions by Parties

Both Parties filed supplemental submissions.

The Complainant filed its first additional submission on January 15, 2025 and claimed that "*the inclusion of this supplementary material within the initial submission was not feasible due to the comprehensive nature of the arguments presented*" and "*a significant portion of the evidence only became available after the initial submission*".

The Complainant's submissions on January 15, 2025 constitute over 40 (forty) pages and mostly represent arguments in support of its alleged common law trademark rights, contain numerous case citations in support of UDRP elements and rebuttal of the Respondent's response.

On January 20, 2025 the Respondent filed "Objection to the Complainant's "additional submissions" and in the alternative, "Additional Written Statement of the Respondent".

The Complainant filed another additional submission on January 20, 2025 titled "Major Issue in Hearsay Statements of Both Parties and Response to Mr. Ankur Raheja" to which the Respondent filed yet another supplemental submission titled "Further Response by the First Respondent" on January 20, 2025.

The Panel issued a notice to both Parties on January 21, 2025 and informed the Parties that it would not accept any further unsolicited supplemental submissions from either of the Parties.

The UDRP is a simplified procedure that consists of a complaint and a response. The Panel, at its sole discretion, may request further statements or documents from either of the Parties under Rule 12.

The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and the Rules and the Panel shall determine the admissibility, relevance, materiality and weight of the evidence, see 10 (a) and 10 (d) of the Rules.

This Panel agrees with the following statement in sec. 4.6 of WIPO Overview 3.0: "Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel...In all such cases, ***panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some "exceptional" circumstance***)."

The Panel does not find any exceptional circumstances in the present dispute. In particular, it notes the Complainant attempted to

submit a new claim in respect of its alleged trademark rights based on alleged long-term use of the terms "Le Meilleur", provided essentially a new complaint and also took this opportunity to provide a rebuttal of Respondent's response.

The Respondent's additional submissions were, in essence, a rebuttal of a rebuttal but also addressed some new arguments made by the Complainant.

In such circumstances, the Panel finds that supplemental submissions would defeat the intention of the UDRP which is to provide for expeditious and streamlined dispute resolution procedure. The Panel finds no exceptional circumstances that would justify the acceptance of supplemental submissions in this dispute.

The Panel, however, notes that some supplemental submissions made by both Parties are relevant for its RDNH analysis and the Panel takes them into account subject to its powers to "determine the admissibility, relevance, materiality and weight of the evidence" under 10 (d) of the Rules.

IV. Panel's own independent research

Given the nature of this proceeding and the contentions of both Parties the Panel conducted limited research under its powers granted to the Panel by Rule 10. In particular, the Panel checked the USPTO website to verify the alleged trademark rights of the Complainant and conducted its own searches for the terms "Le Meilleur". The Panel's own independent research supports its findings provided below in the Principal Reasons section.

PRINCIPAL REASONS FOR THE DECISION

A. Trademark rights of the Complainant and identical or confusingly similar

The Complainant alleges its trademark rights on the basis of a US trademark registration as provided above.

The Respondent brought to the Panel's attention and the Panel verified under its own independent research of the USPTO website that the Complainant actually has a pending US trademark application filed on November 20, 2024.

Therefore, the Complainant does not have trademark rights for the purpose of the Policy as it is well established that pending applications do not create trademark rights, see sec. 1.1.4 of WIPO Overview 3.0 and **CAC-UDRP-105436**: "*The Panel shares the view that unless a trademark application has proceeded to grant it does not constitute a trademark in which the Complainant has UDRP-relevant rights*".

The Complainant did not provide any evidence of its common law trademark in its original complaint and its amended complaint.

The Complainant provided some pictures of the products and its alleged mark but the nature of these pictures is unclear, there is no indication of source (e.g. product catalogue or something else?), date of publication (if any) or any other data and information that would allow to the Panel to make a conclusion that the mark was ever used in commerce.

In the additional submissions the Complainant tried to address this issue and claimed common law trademark rights admitting that it only has a pending US application on the date of filing of the complaint.

However, as explained above, the supplemental submissions were more of a rebuttal of the response and essentially a new complaint.

The Complainant did not provide any explanation for not providing common law trademark rights evidence in its original submissions.

What is more concerning for the Panel is that the Complainant clearly provided a fabricated record from the USPTO website with false information and made false statements as to its registered trademark rights.

For instance, the Complainant stated that "**On August 31, 2024, we have registered Le Meilleur (Serial Number # 98864499) with the United States Patent and Trademark Office (USPTO)**", a quote from the amended complaint submitted to the CAC.

Moreover, the Complainant provided as annexes to the complaint copies of its communication with "Instagram", "Gabia" and "Sedo" as well as with the Respondent prior to commencing this proceeding where it claimed US trademark rights with the registration date on August 31, 2024, (Serial Number # 98864499) or "***trademark rights in all major countries, including in the country that this domain was created (SK)***" (South Korea).

All these statements are false. The US trademark registration of the Complainant does not exist and there is no proof of registrations elsewhere including South Korea.

Therefore, the Complainant failed to establish that it has trademark rights for the purpose of the Policy.

While failure to establish one UDRP element is enough to deny the complaint, the Panel will proceed and examine the other two elements as they are relevant for the analysis of RDNH claims the Respondent.

B. Rights or legitimate interest

The Panel finds that the Respondent established its legitimate interest in respect of the disputed domain name.

The Respondent registered the disputed domain name back in November 20, 2001 as an attractive name consisting of a common phrase in French meaning "The Best".

First, the Panel finds that there was no evidence of any trademark rights of the Complainant at the time of registration of the disputed domain name (and there is no such evidence at the time of filing of this complaint) and the disputed domain name consists of common words in French language and as such can be considered attractive by many.

Second, where a domain name is descriptive or generic such as a dictionary word, the first person to register it in good faith is entitled to the domain name and this should be considered a "legitimate interest", in the absence of any evidence of targeting with intent to take unfair advantage of complainant's mark.

It is well-established that domain investors have legitimate interest and trading in domain names when done without intent to profit from other's trademarks can in and of itself, constitute a "legitimate interest" under the Policy, see WIPO Overview 3.0, sec. 2.1 and previous UDRP decisions supporting this view, e.g. **CAC-UDRP-106685** , **CAC-UDRP-106334**: "*The Respondent is a domainer which regularly registers domain names that include generic words for the purposes of selling them. Such business activities can be legitimate and are not in themselves a breach of the Policy, so long as they do not encroach on third parties' trade mark rights*" and "**Academy, Ltd. v. Ramesh Singh**", Forum FA2301002026883: "*Investing in common-word domain names is a perfectly legitimate business and can qualify as a bona fide offering of goods or services so long as the Respondent did not target a specific complainant or protected mark with a particular domain name...*"

As will be further discussed below the Respondent simply could not have targeted a non-existent trademark of the Complainant and a non-existing Complainant back in 2001.

Therefore, the Panel finds that the Respondent proved its legitimate interest under 4 (c) of the UDRP and the Complainant failed to establish the second element.

C. Bad faith registration and use

The Panel agrees with the view expressed in WIPO Overview 3.0 that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see sec. 3.1). Targeting with intent to take unfair advantage of the complainant's mark is important in establishing bad faith.

It is also well-accepted that where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent (see sec. 3.8 of WIPO Overview 3.0).

The disputed domain name was registered back in 2001 and the Complainant's company was incorporated only in 2023.

There is no evidence of targeting and the Respondent could not have had the Complainant in mind in 2001. Moreover, as explained above, the Complainant does not have any trademark rights and there is no evidence of reputation of the Complainant's alleged mark.

All of the Complainant's arguments on the bad faith element are allegations unsupported by any evidence.

Therefore, the Complainant failed to establish the third element of the UDRP

Reverse Domain Name Hijacking

Under Rule 15 (e) if after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

It is well established that the mere lack of success of a complaint is not itself sufficient for a finding of RDNH (see sec. 4.16 of WIPO Overview 3.0). The Panel notes that some complaints may be weak but filed in an honest belief of complainant's rights, in particular in cases when complainants are not professionally represented.

Here the Complainant does not have a representative and it appears that the complaint is filed *pro se* and it is signed by Complainant's CEO.

However, this is not an excuse in the circumstances of this dispute. RDNH can take many forms, including "Plan B" (after failing to buy a domain name), fatally weak cases and cases where a complainant brought a complaint despite the fact that it knew or ought to have known that it could not succeed (see sec. 4.2 of "UDRP Perspectives", updated on January 15, 2025).

WIPO Overview 3.0 also provides some reasons for finding RDNH, including:

i) complainant's lack of relevant trademark rights, ii) unreasonably ignoring established Policy precedent notably as captured in WIPO Overview, iii) the provision of false evidence, or otherwise attempting to mislead the panel, iv) filing the complaint after an unsuccessful attempt to acquire the disputed domain name from the respondent without a plausible legal basis and v) basing a complaint on only the barest of allegations without any supporting evidence (see sec. 4.16).

The present complaint "ticks" many RDNH boxes:

- the complaint was filed despite lack of trademark rights and the Complainant was aware of its lack of trademark rights;
- the complaint ignores UDRP case law and WIPO Overview 3.0;

- the Complainant provided false evidence and attempted to mislead the Panel. Moreover, in its supplemental submissions the Complainant actually accepted the fact that it did not have trademark rights but nevertheless tried to re-argue its case and provide other arguments, e.g. by changing its narrative as to the date of its first use. The complaint also contained misleading and inaccurate statements (e.g. alleged change of the registrar by the Respondent). The Complainant provided earlier communication with third parties, including "Instagram" and "Sedo" that relied on non-existent trademark rights and fabricated evidence and false statements;
- the complaint was filed after an unsuccessful attempt to acquire the disputed domain name from the Respondent. Moreover, the Complainant only filed a US trademark application on November 20, 2024 after its unsuccessful attempts to purchase the disputed domain name from the Respondent in October 2024;
- the complaint is based on allegations without any proof, in particular the Complainant did not provide any evidence of its alleged mark's reputation and use in commerce;
- the Complainant failed to establish any UDRP element in this proceeding;
- in its supplemental submissions the Complainant tried to re-argue its case, allege common law trademark rights and provide other additional arguments. However, as was pointed out by the Respondent, some of the case citations provided by the Complainant in its first supplemental submission were simply incorrect (case name did not match a case number) and there was a reference to a non-existent UDRP decision: **WIPO Arbitration and Mediation Center - Colorado Secretary of State (WIPO Case No. D2022-XXXX)**. The Panel is not sure whether the Complainant used any artificial intelligence (AI) tools to create additional arguments or if there was something else. However, this, in the Panel's view, is another evidence of abuse of proceeding.

The Panel finds that this complaint was brought in bad faith and constitutes an abuse of the administrative proceeding (**Reverse Domain Name Hijacking**).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

PANELLISTS

Name	Igor Motsnyi
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DATE OF PANEL DECISION	2025-01-27
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Publish the Decision
