Decision for dispute CAC-UDRP-108424

Case number	CAC-UDRP-108424
Time of filing	2026-02-23 18:19:01
Domain names	upgrow.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Upgrow Inc

Respondent

Name	Dragos Banan

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns a United States federal trademark registration for “UPGROW”, Reg. No. 7,944,073, registered September 16, 2025. The registration reflects first use and use in commerce as of July 1, 2018.

Complainant has also operated under the corporate name Upgrow Inc. since at least August 30, 2018, as shown by its California Secretary of State filing reflecting a name change to Upgrow Inc., under Entity No. C4093321.

FACTUAL BACKGROUND

The disputed domain name <upgrow.com> was registered in 2010 and acquired by the Respondent on July 10, 2023.

The Complainant operates a digital marketing business under the name “Upgrow” and owns a United States trademark registration for UPGROW, registered in 2025, with a claimed first use date of 2018.

The Respondent operates a website at the disputed domain offering Instagram growth-related services.

PARTIES CONTENTIONS

COMPLAINANT

Factual and Legal Grounds

In the Complaint, the Complainant grounds its case in both registered and unregistered trademark rights, as well as its established business identity. It relies primarily on its United States federal trademark registration for the mark “**UPGROW**”, registered on September 16, 2025, for digital marketing and related services. Although this registration post-dates the Respondent’s acquisition of the disputed domain name, the Complainant emphasizes that the mark reflects commercial use dating back to July 1, 2018.

Accordingly, the Complainant argues that its trademark rights, while formally registered later, are rooted in earlier and continuous use.

In addition to registered rights, the Complainant asserts unregistered, common law trademark rights arising from sustained commercial use of the "UPGROW" mark since at least 2018. It maintains that this use has generated recognition and goodwill in the marketplace, thereby establishing protectable rights independent of formal registration.

The Complainant further relies on its trade name and corporate identity, noting that it has operated under the name **Upgrow Inc.** since at least August 30, 2018. This reinforces its claim to rights in the "UPGROW" designation as both a trademark and a business identifier.

With respect to territorial scope, the Complainant argues that its rights are valid in the jurisdiction of the Respondent, namely the United States. As per the Complainants' evidence, this is supported by its US federal trademark registration and the identification of the Respondent, following registrar verification, as an individual located in Delaware. The Complainant therefore contends that its rights are fully enforceable against the Respondent.

Although the trademark registration formally post-dates the Respondent's acquisition of the domain name in July 2023, the Complainant stresses that its underlying common law rights predate that acquisition by several years. It characterizes the Respondent's acquisition of the domain as occurring after the Complainant's rights had already arisen and become established in the marketplace.

Legal Grounds

Turning to the UDRP elements, the Complainant first argues that the disputed domain name <upgrow.com> is identical to its "UPGROW" mark. It notes that the generic top-level domain ".com" is to be disregarded for purposes of comparison, leaving the disputed domain name identical in all material respects to the mark.

Second, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent has never been authorized, licensed, or otherwise permitted to use the "UPGROW" mark, nor is the Respondent commonly known by that name. The Complainant further argues that the Respondent's use of the disputed domain name has not been bona fide. Instead, the Complainant asserts, archived evidence demonstrates that the Respondent used the website to impersonate the Complainant, including by listing the Complainant's founders as executives and referencing the Complainant's Inc. 5000 recognition. Such conduct, in the Complainant's view, is inherently deceptive and cannot give rise to any legitimate interest.

The Complainant also points to the Respondent's use of privacy or proxy registration services as an additional factor supporting the absence of legitimate interests, particularly when combined with evidence of impersonation and misleading conduct. It further highlights evidence of consumer confusion, including misdirected e-mails from customers seeking refunds or cancellations, as proof that the Respondent's conduct has diverted consumers and tarnished the Complainant's mark.

Third, the Complainant argues that the disputed domain name was registered and is being used in bad faith. It emphasizes that the Respondent acquired the disputed domain name on or about July 10, 2023, and that such acquisition constitutes a new registration under UDRP principles. At that time, the Complainant asserts, the Complainant's rights were already in existence through prior use.

The Complainant submits that the Respondent's subsequent use of the disputed domain name demonstrates bad faith, particularly through the operation of a commercial website branded "UpGrow" that created a likelihood of confusion with the Complainant's mark, reinforced by historical evidence of impersonation and the misuse of the Complainant's reputation and publicity.

Additional indicia of bad faith, according to the Complainant, include the Respondent's failure to respond to a cease-and-desist letter sent in April 2024, the continued receipt of misdirected customer communications evidencing ongoing confusion, and the use of privacy masking to obscure the Respondent's identity. Taken together, these factors are said to satisfy the cumulative requirement of bad faith registration and use under the Policy.

The Complainant concludes the Complaint by requesting the transfer of the disputed domain name, asserting that all three elements of the Policy have been met.

First Supplemental Filing

In its First Supplemental Filing, the Complainant seeks to correct and rebut specific factual assertions made by the Respondent, while reinforcing the strength and priority of its rights.

The Complainant's primary argument in this filing is that it had already established strong common law trademark rights well before the Respondent's acquisition of the disputed domain name in July 2023. It elaborates on the extent of its reputation, citing continuous use since 2018, as well as significant industry recognition. This includes back-to-back rankings on the Inc. 5000 list in 2022 and 2023, regional recognition as a fast-growing company, and designation as a Google Premier Partner. These achievements are presented as evidence of substantial secondary meaning and national recognition, thereby undermining any suggestion that the Complainant's rights were nascent or insignificant at the relevant time.

The Complainant also directly seeks to rebut the Respondent's claim that any infringing content on the website was the result of inadvertent "AI scraping." It argues that the use of specific names and identities of the Complainant's founders cannot plausibly be attributed to accidental automated processes, but instead reflects deliberate targeting. The Complainant further contends that, given its prominence in the industry, it is implausible that the Respondent was unaware of its existence, thereby supporting a finding

of constructive knowledge.

In addition, the Complainant provides further evidence of harm, including documented instances of consumer confusion occurring during the period when the impersonating content was active. It also highlights what it characterizes as deceptive business practices by the Respondent, including the use of a false San Francisco address and an unregistered business entity name, which it argues were intended to trade on the Complainant's reputation and geographic credibility.

The filing also addresses the Respondent's allegation of Reverse Domain Name Hijacking (RDNH). The Complainant rejects this characterization, asserting that its actions are a legitimate effort to protect its brand against documented impersonation and fraudulent conduct. It reinforces this point by noting that even the prior owner of the disputed domain name allegedly identified the Respondent's behavior as identity theft.

The Complainant concludes this filing by reiterating that the Respondent's conduct cannot constitute a bona fide offering of goods or services and by maintaining its request for transfer of the disputed domain name.

Second Supplemental Filing

In its Second Supplemental Filing, the Complainant narrows its focus to rebutting the Respondent's reliance on purported "press coverage" as evidence of legitimacy and reputation.

The Complainant argues that the materials submitted by the Respondent as press coverage are of limited evidentiary value, as they consist largely of republished or non-independent content. It specifically points to a Yahoo News item cited by the Respondent, noting that it lists the Complainant's own San Francisco business address as the contact address for the Respondent. The Complainant submits that this overlap is not coincidental, but rather indicative of further misrepresentation and an attempt to appropriate the Complainant's identity.

This misuse of the Complainant's address is presented as directly relevant to the UDRP analysis. The Complainant argues that it undermines any claim by the Respondent to rights or legitimate interests, while simultaneously reinforcing a finding of bad faith through the use of misleading identity markers likely to cause confusion as to source or affiliation.

The Complainant also challenges the credibility of certain materials relied upon by the Respondent, including a BuzzFeed article dated 2018. It notes that this date predates the Respondent's acquisition of the disputed domain name by several years, creating a timeline inconsistency that calls into question the authenticity or relevance of the Respondent's claimed business history. Moreover, the Complainant emphasizes that the BuzzFeed content is explicitly identified as user-generated and not editorially vetted, further diminishing its probative value.

The Complainant concludes that the Respondent's reliance on such materials does not establish legitimacy, but instead reinforces the overall pattern of misleading and deceptive conduct. It maintains that this evidence further supports findings under both the "no rights or legitimate interests" and "bad faith" elements of the Policy.

Response

Factual Grounds

In the Response, the Respondent frames the dispute as a legitimate commercial disagreement rather than a case of cybersquatting, emphasizing the history of the disputed domain name and the independent development of its business.

The Respondent explains that the disputed domain name was originally created in 2010 by an unrelated third party and was never owned by the Complainant. Importantly, the Respondent highlights that the Complainant had an opportunity to purchase the disputed domain name in September 2018 for USD 12,000 but declined, choosing instead to operate under the domain name <upgrow.io>. This decision is presented as a critical factual element, as the Respondent argues that the Complainant cannot now attempt to obtain through the UDRP what it voluntarily chose not to acquire on the open market.

The Respondent acquired the disputed domain name on July 10, 2023 through a standard arm's-length transaction via Dan.com for USD 6,000. At the time of acquisition, there was no registered trademark for "UPGROW" anywhere in the world. The Respondent states that it selected the term "UpGrow" for its descriptive and aspirational qualities, combining two common English words to reflect the concept of growing a social media presence.

Following acquisition, the Respondent contends that it developed a substantial business operating from the disputed domain name. It describes this business as a B2C Instagram growth platform offering AI-powered subscription services to individual users and businesses. The Respondent provides evidence of scale and legitimacy, including over 100,000 customers, thousands of active subscribers, significant web traffic, and global reach across more than 100 countries. It further asserts that the business has achieved visibility in search engine results and has been referenced in various online publications.

A central factual distinction emphasized by the Respondent is that the Parties operate in fundamentally different markets. The Respondent characterizes its service as a B2C subscription-based platform for social media growth, whereas the Complainant operates a B2B digital marketing agency offering bespoke services, including SEO and PPC. The Respondent relies on the Complainant's own statements, acknowledging that the Parties are not direct competitors, arguing that this undermines any claim of intentional targeting.

The Respondent also addresses the issue of allegedly infringing website content. It acknowledges that during the initial development phase in late 2023, certain content appeared on the website that referenced individuals and materials associated with the Complainant. However, it attributes this to errors caused by AI-assisted development tools, which it claims mistakenly incorporated data from similarly named sources. The Respondent maintains that this content was temporary, inconsistent, and corrected before any notice from the Complainant, and therefore cannot support a finding of bad faith or intentional impersonation.

With respect to the cease-and-desist letter sent in April 2024, the Respondent argues that it overstated the Complainant's rights, as no registered trademark existed at that time. It further contends that the allegedly problematic content had already been removed prior to receipt of the letter, and that non-response to such a letter does not constitute evidence of bad faith.

The Respondent also challenges the consistency of the Complainant's rights narrative, pointing to discrepancies in claimed dates of first use and corporate identity. It argues that these inconsistencies undermine the credibility of the Complainant's assertion of prior rights.

Legal Grounds

1. Identical or Confusingly Similar

The Respondent does not contest that the disputed domain name is textually identical to the Complainant's mark for the purposes of the first UDRP element. However, it emphasizes that the term "UPGROW" is a descriptive combination of common English words, and argues that this inherent weakness is relevant when assessing the remaining elements, particularly rights or legitimate interests and bad faith.

2. Rights or Legitimate Interests

The Respondent argues that it has established rights and legitimate interests in the disputed domain name through its bona fide commercial use.

First, it submits that it has used the disputed domain name in connection with a genuine offering of goods and services prior to any notice of the dispute. The Respondent describes its platform as a substantial and operational business with significant customer engagement, distinguishing it from passive holding or speculative use.

Second, the Respondent claims that it is commonly known by the name "UpGrow" within its market segment. It points to search engine results and user traffic as evidence that the term is associated with its services in the context of Instagram growth.

Third, the Respondent contends that the temporary content errors during the launch phase do not negate its legitimate interests. It characterizes these errors as brief, unintentional, and corrected well before any formal dispute arose. It further argues that there was no commercial incentive to impersonate the Complainant, given the differences in their respective markets and customer bases.

3. No Bad Faith Registration or Use

The Respondent strongly contests the allegation of bad faith, addressing both registration and use.

On the issue of registration, the Respondent relies on what it terms the "chronological barrier." It argues that because it acquired the disputed domain name in July 2023, and the Complainant's trademark was not registered until September 2025, it could not have registered the disputed domain name in bad faith with respect to rights that did not yet exist. It cites UDRP principles stating that bad faith registration cannot be established where the complainant's rights post-date the acquisition of the disputed domain name.

The Respondent further argues that even the Complainant's alleged common law rights are insufficient, as they relate to a descriptive term and are not supported by evidence of acquired distinctiveness such as consumer surveys, advertising expenditure, or widespread recognition.

The Respondent also emphasizes that it had no knowledge of the Complainant at the time of acquisition and selected the disputed domain name solely for its descriptive value. It reiterates that the Parties operate in different markets, making it implausible that the Respondent targeted the Complainant.

On the issue of use, the Respondent maintains that its continuous operation of a legitimate business is inconsistent with bad faith. It disputes the evidentiary value of alleged consumer confusion, arguing that the e-mails cited by the Complainant are from its own customers and reflect the coexistence of two businesses using a common descriptive term, rather than intentional confusion.

The Respondent also dismisses other indicia of bad faith cited by the Complainant. It argues that the use of privacy registration services is standard practice and not indicative of wrongdoing, and that failure to respond to a cease-and-desist letter does not establish bad faith.

Finally, the Respondent contends that the narrow exception for targeting nascent rights does not apply, as there is no evidence of insider knowledge, prior relationship, or exceptional circumstances suggesting awareness of the Complainant.

Characterization of the Dispute

The Respondent frames the case as a legitimate concurrent-use dispute between two independent businesses using a descriptive term in different markets. It argues that such disputes fall outside the intended scope of the Policy, which is designed to address clear cases of cybersquatting rather than complex commercial conflicts.

Reverse Domain Name Hijacking (RDNH)

A central component of the Response is the request for a finding of Reverse Domain Name Hijacking. The Respondent argues that the Complainant filed the Complaint in bad faith, despite knowing that it could not establish the required elements.

It presents a detailed chronology to support this claim, highlighting that the Complainant declined to purchase the domain in 2018, that the Respondent acquired it before any trademark rights existed, and that the Complainant only sought trademark registration after the Respondent had developed its business. The Respondent characterizes the Complaint as an attempt to use the Policy as a means of acquiring a domain name that the Complainant previously chose not to purchase.

Respondent First Supplemental Filing

In its supplemental filing, the Respondent primarily raises a procedural objection, arguing that the Complainant's additional submission should be excluded because it introduces evidence that was available at the time of the original Complaint. The Respondent contends that allowing such supplementation would unfairly permit the Complainant to cure deficiencies in its case after reviewing the Response.

Substantively, the Respondent reiterates that the Complainant has failed to establish common law trademark rights. It argues that evidence of business success, such as rankings and press releases, does not demonstrate acquired distinctiveness in a descriptive term. The Respondent emphasizes the absence of key evidence such as consumer surveys or market studies linking the term "UPGROW" exclusively to the Complainant.

The Respondent also expands on its explanation of the AI-related content errors, arguing that such errors are well-documented and common in AI-generated outputs, particularly where similar domain names exist. It submits that the Complainant's allegation of deliberate targeting is speculative and unsupported by technical evidence.

Additionally, the Respondent challenges specific pieces of evidence relied upon by the Complainant, including claims of consumer confusion and allegations of deceptive business practices. It argues that these claims are either unsupported, mischaracterized, or irrelevant to the UDRP criteria.

Overall, the supplemental filing reinforces the Respondent's position that it operates a legitimate business, that any alleged misconduct is either unfounded or immaterial, and that the Complaint lacks a proper legal basis.

Second Supplemental Filing

In its second supplemental filing, the Respondent again objects to the admissibility of the Complainant's additional submissions, characterizing them as a pattern of piecemeal litigation.

Addressing the substance, the Respondent argues that the new evidence does not cure the fundamental deficiencies in the Complaint. It maintains that the Complainant still fails to establish trademark rights, legitimate interests, or bad faith.

The Respondent specifically rebuts the Complainant's reliance on shared business addresses, arguing that the cited address is a coworking space used by multiple businesses and does not function as a unique identifier. It contends that sharing such an address cannot support an inference of bad faith or impersonation.

The Respondent also challenges the reliability of certain online publications cited by the Complainant, arguing that inconsistencies in dates or editorial status undermine their evidentiary value. It maintains that even if such materials are disregarded, the Complaint still fails on its merits.

Throughout this filing, the Respondent reiterates its central position: that the dispute concerns two independent businesses operating under a descriptive term, that the Complainant lacks enforceable rights in that term at the relevant time, and that there is no evidence of targeting or bad faith registration.

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 that the Respondent has 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 Complainant submitted two unsolicited supplemental filings following the filing of the Response, seeking to introduce additional evidence and arguments in support of its case. The Respondent objected to the admission of these filings and, in turn, submitted its own responsive supplemental communications addressing both procedural and substantive points.

Under WIPO Overview 3.1, paragraph 4.6, panels are vested with discretion to determine whether to admit unsolicited supplemental filings, taking into account whether such submissions address material new issues that could not reasonably have been anticipated at the time of the original pleadings.

In the present case, the Panel observes that the Complainant's supplemental filings largely consist of additional evidence and elaboration on arguments that were already within the Complainant's knowledge and control at the time of filing the Complaint. In particular, the Complainant seeks to reinforce its claims to common law trademark rights by relying on business rankings, press references, and other materials predating the Complaint. As reflected in the factual record, including the Complainant's own annexes relating to its operations since 2018 and its industry recognition prior to the Respondent's acquisition of the disputed domain name in July 2023, such materials could reasonably have been included in the original Complaint. To that extent, the supplemental filings appear to function as an attempt to cure evidentiary deficiencies identified in the Response, rather than to address genuinely new matters.

The Panel further notes that the Respondent's Response did not introduce fundamentally new legal theories or unexpected lines of argument. Rather, it focused on contesting the sufficiency of the Complainant's evidence in relation to the established elements of the Policy, particularly the existence of common law rights in a descriptive term, the Respondent's alleged lack of legitimate interests, and the absence of bad faith registration given the chronology of events. These are core issues inherent to any UDRP proceeding and, in light of the facts already known to the Complainant, such as the Respondent's acquisition date, the Complainant's own decision not to purchase the disputed domain name in 2018, and the timing of its trademark registration in 2025, the Panel considers that such challenges were reasonably foreseeable.

That said, the Panel acknowledges that certain portions of the Complainant's supplemental filings are directed at specific factual assertions made in the Response. These include, for example, the characterization of the Respondent's alleged press coverage, the explanation of website content and alleged impersonation, and factual disputes concerning identity markers such as business addresses. To this limited extent, the supplemental filings may be considered responsive in nature.

In accordance with established UDRP practice, the Panel therefore declines to admit the supplemental filings insofar as they seek to supplement or repair the original case presented in the Complaint. However, the Panel has exercised its discretion to consider them only insofar as they directly address specific factual matters raised in the Response.

Given the procedural context in which these materials were submitted, and the fact that they largely reiterate or expand upon evidence that could have been presented earlier, the Panel accords them reduced evidentiary weight in its overall assessment of the case.

Having addressed the procedural matter above, the Panel finds that all procedural requirements under the Policy and the Rules have been duly fulfilled. In the absence of any exceptional circumstances that would warrant delay or otherwise impede the proceedings, the Panel determines that it is properly constituted and may proceed to render its Decision.

PRINCIPAL REASONS FOR THE DECISION

1. **Identical or Confusingly Similar**

With respect to the first element of the Policy, the Panel finds that the Complainant has met the requisite standing threshold. The existence of a registered trademark for "UPGROW", and the identity between that mark and the disputed domain name, are not in dispute between the Parties. As consistently reflected in persuasive UDRP prior decisions, this element sets a relatively low bar, requiring only a straightforward comparison between the mark and the domain name. On that basis, the Panel is satisfied that paragraph 4(a)(i) of the Policy is fulfilled.

2. **Rights or Legitimate Interests**

Given the Panel's findings below, it is unnecessary for the Panel to consider the second element in paragraph 4(a) of the Policy.

3. Registered and Used in Bad Faith

Turning to the third element of the Policy, the Panel is required to determine whether the disputed domain name has been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii). This element is conjunctive in nature, and the burden rests squarely on the Complainant to establish both bad faith registration and bad faith use.

At the outset, the Panel must express reservations as to whether the present dispute falls squarely within the intended scope of the Policy. As reflected in paragraph 4.14.6 of the WIPO Overview 3.1, panels may decline to apply the Policy where a case is better characterized as a broader commercial or trademark dispute rather than a clear instance of cybersquatting. In the present matter, the record reveals two parties operating under the same trademark in what appear to be distinct, albeit adjacent, commercial spheres. The Complainant alleges fraudulent impersonation and deception, whereas the Respondent asserts that it operates a legitimate and independent business, selected for the descriptive qualities of the term at issue and without intent to target the Complainant.

The Panel notes that the extensive and successive unsolicited supplemental filings by both Parties underscore the complexity of the factual matrix and the contested nature of the allegations. The issues raised, ranging from alleged impersonation and consumer confusion to the nature and legitimacy of the Respondent's business operations, extend beyond the relatively narrow remit of the Policy. They touch upon questions of trademark scope, unfair competition, and factual disputes that would require evidentiary tools not available in these proceedings, such as witness examination, discovery, and cross-examination. In the Panel's view, a court of competent jurisdiction would be better equipped to assess these matters comprehensively.

Even if the Panel were to proceed to determine the case strictly within the framework of the Policy, it would not be satisfied that the Complainant has discharged its burden under paragraph 4(a)(iii). The chronology of events presents a significant obstacle to a finding of bad faith registration. The Respondent acquired the disputed domain name in July 2023, whereas the Complainant's registered trademark post-dates that acquisition. While the Complainant has sought to rely on alleged unregistered rights, the evidentiary record does not appear to convincingly establish that such rights had crystallized to a degree that would support a finding that the Respondent targeted the Complainant at the time of registration.

As to the allegations of fraudulent conduct and impersonation, the Panel is not persuaded that these have been substantiated to the level required under the Policy. The Respondent has provided an explanation, namely, that certain erroneous content appearing on its website during an early development phase was the result of automated or AI-generated processes and was subsequently corrected. While such an explanation may not be beyond question, it is not inherently implausible, particularly in light of the limited and conflicting evidence before the Panel. The Panel is mindful that it is not in a position to make definitive findings on such contested factual matters without the benefit of a more robust evidentiary record.

Moreover, the evidence of alleged consumer confusion, while not irrelevant, does not in itself establish that the Respondent registered the disputed domain name with the Complainant in mind or with intent to exploit its rights. Rather, it may equally be indicative of two entities operating under the same fairly descriptive trademark, leading to incidental misdirected communications. This is an issue more appropriately addressed under principles of trademark coexistence or unfair competition than the cybersquatting analysis under the Policy.

In these circumstances, the Panel is not satisfied that the Respondent's conduct, as presented in the record, meets the threshold of bad faith registration and use required by the Policy. The case does not present the hallmarks of cybersquatting, such as opportunistic registration targeting a distinctive mark, or clear evidence of intent to capitalize on a complainant's reputation, but instead reflects a more nuanced and contested commercial dispute.

Accordingly, and for the foregoing reasons, the Panel finds that the Complaint fails under paragraph 4(a)(iii) of the Policy. More broadly, the Panel considers that the dispute exceeds the limited scope of the Policy and would be more appropriately resolved before a court of competent jurisdiction, where the factual and legal issues may be fully ventilated.

4. Reverse Domain Name Hijacking (RDNH)

The Panel does not consider that a finding of Reverse Domain Name Hijacking ("RDNH") is warranted in the circumstances of this case, notwithstanding its conclusion that the Complaint fails under the substantive elements of the Policy.

A finding of RDNH is reserved for cases in which a complainant is shown to have acted in bad faith in initiating the proceeding, for example by knowingly advancing a claim that is clearly unsustainable or by attempting to misuse the Policy as a tool of harassment or domain name acquisition. While the Complainant has ultimately not succeeded in establishing its case, the Panel is not persuaded that its conduct rises to that level.

In particular, the Panel considers that certain factual circumstances, as presented in the record, provided the Complainant with at least a colorable basis to bring the proceeding. The evidence indicates that, during the early period of the Respondent's use of the disputed domain name, content appeared on the associated website which incorrectly identified individuals connected with the Complainant as founders or personnel of the Respondent's business. Even if, as the Respondent submits, such content was the product of automated or AI-generated error and was subsequently corrected, its existence was capable of giving rise to a reasonable concern on the part of the Complainant regarding possible impersonation or misrepresentation.

Further, the Complainant has documented a number of communications from third parties, whether customers or prospective customers, apparently intended for the Respondent but directed instead to the Complainant. While the Panel has not treated these communications as determinative evidence of bad faith on the part of the Respondent, their volume and nature could reasonably have reinforced the Complainant's perception that confusion was occurring in the marketplace, and that the Respondent's activities warranted closer scrutiny.

The Panel also notes that concerns were raised by the prior registrant of the disputed domain name, which appear to have contributed to the Complainant's suspicions regarding the Respondent's use of the disputed domain name. Although such concerns ultimately do not establish the elements required under the Policy, they form part of the broader factual matrix that informed the Complainant's decision to proceed.

Finally, the Respondent did not reply to the Complainant's cease-and-desist communication. While it is well established that a failure to respond to such correspondence does not, in itself, constitute evidence of bad faith, it may, in certain circumstances, contribute to a complainant's perception that its concerns are not being addressed and that recourse to the Policy is appropriate.

Taking these factors together, the Panel is satisfied that the Complainant had a sufficient, albeit ultimately unpersuasive, basis for initiating the Complaint. The case does not present the kind of clear abuse of the administrative proceeding or knowing disregard of established Policy principles that would justify a finding of RDNH.

5. **Decision**

For the foregoing reasons, the Complaint is denied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **upgrow.com**: Remaining with the Respondent

PANELLISTS

Name	**Rodolfo Rivas Rea**
Name	**Andrew Lothian**
Name	**Mike Rodenbaugh**

DATE OF PANEL DECISION 2026-04-02

Publish the Decision