

<i>Hijacker Corp.</i>	)	
1300 S. Crooked St.	)	
Big Town, CA 90001	)	
<b>(Complainant)</b>	)	<b>Domain Name in Dispute</b>
	)	<i>WritingSample.com</i>
	)	
v.	)	
	)	<b>Case Number:</b>
<i>Writer’s Business LLC</i>	)	FA21-1234-09876
9000 Honest Ave.	)	
Enterprise, CA 91002	)	
<b>(Respondent)</b>	)	
_____	)	

**RESPONSE FOR WRITER’S BUSINESS**

This is the Response of Writer’s Business LLC (“Respondent”) to the Complaint in the above referenced Uniform Domain Name Dispute Resolution Policy (“UDRP”) Proceeding. Respondent received a Written Notice of Complaint and Commencement of Administrative Proceeding on October 5, 2021. The time to respond was extended from October 25, 2021, to October 29, 2021.

**RESPONDENT INFORMATION**

Name: Writer’s Business LLC  
 Address: 9000 Honest Ave. Enterprise, CA 91002  
 Telephone: 555-900-2324  
 Fax: 555-900-2526  
 E-Mail: [fiction@writingsample.com](mailto:fiction@writingsample.com)

**AUTHORIZED REPRESENTATIVE / PREFERRED CONTACT**

Respondent’s authorized representative and preferred contact in this case is:

Name: David M. Kleiman  
 Address: KLEIMAN LAW  
 3835 E. Thousand Oaks Blvd. Ste. R233  
 Thousand Oaks, CA 91362  
 Telephone: 818-484-3256  
 E-Mail: [david@dkpls.com](mailto:david@dkpls.com) (the preferred method of communication)

## RESPONDENT PANEL SELECTION / NOMINEES

The Respondent chooses to have this dispute heard before a (check one):

\_\_\_\_\_ *single-member panel*; **X** *three-member panel*.

Respondent nominates the following WIPO approved UDRP panelists:

Nominee	Contact
John Doe	<a href="mailto:John@ADR-4-U.com">John@ADR-4-U.com</a>
Sam Smith	<a href="mailto:S.Smith@UDRP-Panelists.com">S.Smith@UDRP-Panelists.com</a>
Dolly Franklin	<a href="mailto:Dolly@domain-disputes.com">Dolly@domain-disputes.com</a>

## RESPONSE TO ALLEGATIONS IN COMPLAINT

This case is a flagrant effort by Complainant to reverse domain name hijack Respondent's "WritingSample.com" domain. The jurisdiction of a UDRP panel is strictly limited to addressing the issue of "cybersquatting". Cybersquatting requires that a domain name have been both registered and used in bad faith by a respondent. The Respondent is clearly not a "cybersquatter", and the Complainant represented by legal counsel in this matter knew this when commencing this proceeding.

What the undisputed evidence in this case shows is that Respondent acquired the "WritingSample.com" domain name on February 12, 2019, prior to any alleged use by Complainant of the term "Writing Sample". Complainant was informed of this fact prior to this proceeding. The undisputed evidence also shows that prior to any communications with Complainant the Respondent developed and operated a bona fide online store at WritingSample.com selling goods for paper pads, calligraphy pens, and fine inks. Complainant was aware of this when commencing this proceeding. It is also undisputed that it was Complainant who initiated communications with Respondent, and that it was Complainant who requested that Respondent provide Complainant with a proposal for the sale of "WritingSample.com".

A UDRP proceeding is not a forum for resolving disputed allegations of trademark infringement by Complainant against Respondent, arbitrating the fair value of the "WritingSample.com" domain name legitimately acquired by Respondent, or remedying the Complainant's failure to secure the domain name "WritingSample.com" before Respondent did at a time when the Complainant

concedes it had no trademark rights in the term “Writing Sample”. A UDRP proceeding is strictly limited to correcting cases of “cybersquatting”.

No party represented by legal counsel could reasonably believe that, on the undisputed facts here, a case of cybersquatting could be proven against Respondent with respect to “WritingSample.com” and the Complainant. The Complainant has abused the UDRP process to harass Respondent and try to steal for itself the “WritingSample.com” domain name.

Respondent requests that the complaint in this case be denied, and that the panel make a formal finding that Complainant has abused the UDRP process and engaged in efforts at reverse domain name hijacking.

#### **A. THE ELEMENTS OF CYBERSQUATTING ARE NOT PRESENT**

To establish a case of cybersquatting under the UDRP the Complainant in this case has the burden of proving ALL the following elements:

(i) “WritingSample.com” is identical or confusingly similar to a trademark or service mark in which the complainant has rights; *and*

(ii) Writer’s Business has no rights or legitimate interests in respect of “WritingSample.com”; *and*

(iii) “WritingSample.com” was registered AND is being used in bad faith.

See UDRP Policy 4(a)

On this record the Complainant clearly fails to meet its burden.

##### **i. The Complainant Has Not Proven That It Has Trademark Rights**

The governing Policy requires that in this case the Complainant must prove that the “WritingSample.com” domain name of Respondent is identical to or confusingly similar to a trademark or service mark in which the Complainant has rights.

Respondent does not dispute that the “WritingSample.com” domain acquired by Respondent on February 12, 2019, is identical to the term “Writing Sample” of

Complainant's later acquired U.S. trademark registration. However, respondent contends that Complainant's trademark registration by itself is not sufficient proof in this case that Complainant has trademark rights in the term "Writing Sample".

Nowhere in the UDRP Policy is there a *per se* rule that a trademark registration by itself is always sufficient to prove a Complainant has trademark rights. As a matter of law, a U.S. trademark registration does not establish trademark rights, but only gives rise to a rebuttable presumption of trademark rights. See 15 U.S.C. § 1057(b). Of course, that legal presumption may be relied upon as evidence of trademark rights in a UDRP proceeding if left unchallenged. However, because the Policy requires proof of trademark rights, any evidence offered by a respondent to rebut the presumption arising from registration should be considered by the panel. If the undisputed evidence shows that, more likely than not, the mark in the registration certificate is invalid, then the presumption of trademark rights represented by the trademark registration should vanish.

Federal registration in itself does not mean that [the registrant] can necessarily survive summary judgment solely on the basis of its registration. "[A]ssuming the defendant can demonstrate through law, undisputed facts, or a combination thereof that the mark is invalid, the evidentiary bubble [created by the federal registration] bursts and the plaintiff cannot survive summary judgment. In the face of sufficient and undisputed facts demonstrating [invalidity], the registration loses its evidentiary significance."

*Zobmondo Entertainment, LLC v. Falls Media, LLC*,  
602 F. 3d 1108, 1115 (9<sup>th</sup> Cir. 2010)

Here, the undisputed facts show that Complainant did not use the term "Writing Sample" before May 30, 2019. The undisputed facts also show that Respondent was publicly using "WritingSample" social media accounts in connection with the sale of writing products as of January 2019. See Respondent Annex Exhibit A - Declaration of Writer's Business Owner ¶ 7-9 at RG\_004-005 and Respondent Annex Exhibits A-2, A-4 & A-5 at RG\_015-023. The undisputed facts also show that a business called "Writing Sample Services" was also publicly using the term "Writing Sample" in connection with writing goods and services well before May 30, 2019. See evidence of "Writing Sample Services" business, Respondent Annex Exhibit D – Declaration of David Kleiman ¶ 2-3 at RG\_070 and Respondent Annex Exhibits D-1 and D-2 at RG\_073-081. Complainant was

informed of these specific facts well before this proceeding but submitted no evidence to dispute such publicly available facts. See Respondent Annex Exhibit D-6 footnote 1 at RG\_106.

It is fundamental to U.S. trademark law that the junior user of a mark does not acquire trademark rights over more senior users of the mark on account of getting a trademark registration certificate. See e.g., *Brookfield Communications v. West Coast Entertainment*, 174 F. 3d 1036, 1047 (9<sup>th</sup> Cir. 1999). The undisputed facts here show that both Respondent and the business “Writing Sample Services” were using the term “Writing Sample” online in connection with the same types of goods listed in Complainant’s trademark registration before Complainant ever allegedly was. Accordingly, the undisputed facts here prove that it is more likely than not that the term “Writing Sample” is not inherently distinctive to Complainant in connection with the goods listed in the certificate, and the presumption arising from the registration certificate must therefore be considered rebutted. See *Zobmondo Entertainment, LLC v. Falls Media, LLC*, 602 F. 3d 1108, 1114 (9<sup>th</sup> Cir. 2010)(The burden is preponderance of the evidence to rebut the registration presumption)

Without the presumption of trademark rights arising from the registration certificate, the burden remains on Complainant to have provided other evidence showing that the term “Writing Sample” has acquired distinctiveness with respect to Complainant, and so gives rise to Complainant having trademark rights in the term.

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning....

See Section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition

The Complainant has submitted no evidence of acquired distinctiveness with its complaint. The complaint contains only conclusory rhetoric alleging that Complainant's later use of "Writing Sample" has "become well recognized by consumers". Conclusory rhetoric unsupported by specific evidence does not suffice. *Id.* This is especially so when no evidence, or even argument, contradicts the undisputed facts of record showing that "Writing Sample" was being used online by others, including Respondent, prior to Complainant for the same type of goods.

In a UDRP proceeding the decision is to be based solely on the statements and documents of record. See UDRP Rule 15(a). Complainant, represented by legal counsel, presumably knew this when preparing and filing its complaint. Yet the Complainant chose when filing its complaint to rely exclusively on just the rebuttable legal presumption arising from a registration certificate. A trademark registration Complainant knew was only filed for and obtained after others had been using the term "Writing Sample" in connection with the same types of goods.

Accordingly, with the undisputed facts rebutting the trademark registration presumption, and no evidence of acquired distinctiveness, Complainant has failed to prove it has trademark rights in "Writing Sample" as is required under the Policy.

ii. **Respondent Clearly Has Legitimate Interests In "WritingSample.com".**

The governing Policy requires that in this case the Complainant must prove that Respondent has no rights or legitimate interests in respect of the "WritingSample.com" domain name. Policy 4(a)(ii).

For purposes of Policy 4(a)(ii), if before any notice to Respondent of the dispute, the evidence shows that Respondent made use of, or demonstrable preparations to use, the "WritingSample.com" domain name in connection with a bona fide offering of goods or services, this "**shall demonstrate** [Respondent's] rights or legitimate interests to the domain name". Policy 4(c)(i) (emphasis added).

The domain "WritingSample.com" was acquired by Respondent for substantial consideration on or about February 12, 2019, and for the purpose of a planned online store that would sell paper pads, calligraphy pens, and fine ink. See Respondent Annex Exhibit A ¶ 8-9 at RG\_005 and Respondent Annex Exhibit A-5 at RG\_023; See also Respondent Annex Exhibit B - ¶ 2 at RG\_067-068; See also

Respondent Annex Exhibit C - ¶ 2 at RG\_064-065. Prior to the first communication from Complainant on April 1, 2021, Respondent had invested nearly twenty-five thousand dollars (\$25,000) and at least twenty-seven hundred (2700) hours of labor in the conception, development, creation, and promotion of its online store at “WritingSample.com” for the sale of goods for paper pads, calligraphy pens, and fine ink. See e.g., Respondent Annex Exhibit A ¶ 10-14 & 16 and Respondent Annex Exhibits A-5 through A-8 at RG\_022-062. The online store Respondent had developed and launched on January 2, 2021, at “WritingSample.com” offered nearly two-thousand products for sale. Declaration of Small Business Owner ¶ 13 at RG\_007. See examples of products for sale on WritingSample.com at Respondent Annex Exhibit A-7 at RG\_027-055

Accordingly, the evidence is unequivocal and undisputed that prior to receiving notice on April 1, 2021, from Complainant of a dispute, substantial preparations had been made by Respondent to use “WritingSample.com”, and Respondent did use “WritingSample.com”, in connection with a bona fide offering of goods. Thus, Respondent has demonstrated its rights and legitimate interests to its “WritingSample.com” domain name. Policy 4(c)(i).

Accordingly, Complainant has failed its burden on this element as well.

iii. **There Is No Proof of Bad Faith by Respondent**

The governing Policy requires that in this case the Complainant must prove that Respondent registered AND used its “WritingSample.com” domain name in bad faith. Policy 4(a)(iii).

Where a domain name has been registered before a complainant has acquired trademark rights, only in exceptional cases would a complainant be able to prove a respondent’s bad faith.

WIPO Overview 3.0 §1.1.3.

The undisputed evidence shows that Respondent acquired the domain “WritingSample.com” on February 12, 2019. See Respondent Annex Exhibit A - ¶ 8-9 at RG\_005 and Respondent Annex Exhibit A-5 at RG\_023 (February 12, 2019, receipt for acquisition of “WritingSample.com”). There is no allegation or evidence that Complainant had made any use or acquired any trademark rights in the term “Writing Sample” as of February 12, 2019. Complainant’s own trademark

registration states a first use by it of “Writing Sample” of May 30, 2019. See Respondent Annex Exhibit D-4 at RG\_086.

At the time Respondent acquired the domain “WritingSample.com” it was already publicly using “WritingSample” on social media and acquired the domain for the purpose of creating a planned online store that would sell paper pads, calligraphy pens and fine inks for writing enthusiasts. See Respondent Annex Exhibit A - ¶ 7-9 at RG\_004-005 and Respondent Annex Exhibits A-2, A-4 & A-5 at RG\_015-023. See also Respondent Annex Exhibit B - ¶ 2 at RG\_067-068; See also Respondent Annex Exhibit C - ¶ 2 at RG\_064-065. Prior to the first communication from Complainant on April 1, 2021, Respondent had no knowledge of anyone claiming to have trademark rights in the term “Writing Sample”. *Id.* Respondent did not acquire the domain “WritingSample.com”, or use it, with the intention of selling the domain to someone else. *Id.* Respondent had no intention of using “WritingSample.com” to redirect website traffic from anyone else. *Id.* Respondent acquired the domain name “WritingSample.com” in good faith for the sole purpose of using it for Respondent’s planned online store. *Id.*

With absolutely no evidence of Respondent having registered “WritingSample.com” in bad faith, Complainant resorts to relying entirely on baseless accusations concerning events which took place after Respondent’s registration.

First, even if *arguendo* there was evidence that the Respondent’s actions after the registration had been done in bad faith, this would still not establish the required separate bad faith registration of the domain:

The requirement that the disputed domain name “has been registered and is being used” in bad faith is a conjunctive requirement, meaning that both of these elements must be proven by the Complainant. While attempts have historically been made to imply retroactive bad faith in certain cases, current UDRP jurisprudence is clear that no such approach is permissible and that the respondent must be[] shown to have known of, and to have targeted, the complainant’s trademark at the date of registration of the disputed domain name

*Reboxed Limited v. Adesoji Adeyemi*, WIPO Case No. D2021-0886. See also WIPO Overview 3.0 §3.2.1.

Second, there is no evidence proving a bad faith use of “WritingSample.com” by Respondent after it had acquired the domain.

Just because Complainant has alleged that Respondent’s use of “WritingSample.com” was an infringement of its trademark rights does not automatically make it so or prove that such alleged infringement was done in bad faith. The jurisdiction of a UDRP panel does not extend to resolving disputed issue of trademark infringement. The jurisdiction of a UDRP panel is strictly limited to determining if bad faith registration AND use of a Complainant’s established trademark rights has been proven.

With respect to allegations of trademark infringement, if the undisputed facts show a genuine good faith dispute by Respondent about the infringement of alleged trademark rights, then this should suffice to preclude a finding that Respondent acted in bad faith concerning alleged trademark infringement. Here the undisputed facts of (i) prior usage by Respondent of the term “Writing Sample”, (ii) that prior to March 25, 2021, Respondent had no awareness of Complainant’s alleged trademark rights, and (iii) that Respondent ceased the allegedly infringing conduct when it received notice, show there was no bad faith on the part of the Respondent. See Respondent Annex Exhibit D-6 at RG\_105 and Respondent Annex Exhibit A - ¶ 17-18 at RG\_009-010.

Complainant argues that the 18-months it took Respondent to launch its “WritingSample.com” store is somehow evidence of Respondent’s bad faith. However, there was no deadline in the law for Respondent to make use of its legitimately acquired domain name. Respondent has also provided a good faith reason for the time it took: With less than a handful of employees running all its operations it was difficult for Respondent to find the time. See Respondent Annex Exhibit A ¶ 10 at RG\_005-006. The Complainant has no evidence that this credible explanation by Respondent is untrue.

Complainant argues that somehow Respondent’s closing the “WritingSample.com” store after receiving the April 1, 2021, cease-and-desist letter should be construed as evidence of Respondent’s bad faith. This is baseless, and just further shows that Complainant’s true motivation was not stopping any alleged trademark infringement, but instead on acquiring the domain “WritingSample.com” for itself.

Respondent is a small family business. Given Respondent’s limited resources, and the demands of its other business operations, Respondent is not obligated to reopen the store ever, let alone on Complainant’s timetable, simply to

risk incurring further inconvenience and expense on account of Complainant's allegations of trademark infringement. Respondent has provided testimony establishing its good faith reasons for having not yet reopened the store. See Respondent Annex Exhibit A - ¶ 18 at RG\_009-010.

With respect to the alleged unreasonableness of Respondent's sale proposal, the jurisdiction of the UDRP panel does not extend to being the arbiter of what constitutes a fair price or terms for the transfer between parties of a legitimately acquired domain name.

It is not disputed that on February 12, 2019, when Respondent acquired the "WritingSample.com" domain name, the Complainant did not have any alleged trademark rights in the term "Writing Sample". See Respondent Annex Exhibit D-4 at RG\_086. The Respondent has also provided evidence that at the time it had acquired the "WritingSample.com" domain name it was already using "WritingSample" on social media, and that it acquired the "WritingSample.com" domain for purposes of opening an online store. See Respondent Annex Exhibit A ¶ 8-9 at RG\_005 and Respondent Annex Exhibit A-5 at RG\_023; See also Respondent Annex Exhibit B ¶ 2 at RG\_067-068; See also Respondent Annex Exhibit C ¶ 2 at RG\_064-065. Respondent has also provided declaration testimony establishing that it had no intention of selling the domain to anyone else. *Id.*

Accordingly, there is no evidence of circumstances that would permit a UDRP panel to conclude bad faith merely because of what Respondent's asking price for the domain name was in response to a request for a proposal to sell the asset. There is on the other hand undisputed evidence that, prior to any communications with the Complainant, the Respondent invested thousands of dollars and hours in the conception, development, and promotion of the "WritingSample.com" store, and that Respondent had hopes and expectations for the store to be profitable for Respondent over the long term. See Respondent Annex Exhibit A ¶ 8-16 at RG\_005-009.

There is a vast range of prices that domain names sell for. Some have reportedly sold for as much as \$345 million. See e.g., Respondent Annex Exhibits D-13 and D-14 at RG\_132-148. It is not at all uncommon for domain names to be sold for hundreds of thousands, or even millions, of dollars. *Id.* The valuation of any asset for purposes of sale can be complex.

The Respondent has provided evidence through testimony that its sale proposal was arrived at in good faith and believed by it to be reasonable. The evidence shows that respondent considered the investment Respondent had made,

its expected returns, and the value being offered to Complainant when making its proposal. See Respondent Annex Exhibit A ¶ 21 at RG\_010. These are all legitimate considerations in valuing an asset for sale. The evidence also shows that it is Complainant who solicited the sale proposal from Respondent for the sale of the domain. See Respondent Annex Exhibits D-5 through D12. The fact that Complainant did not agree with the proposal received in response to its request is not evidence of any bad faith on the part of Respondent.

The evidence also shows that, prior to February 4, 2019, when Complainant allegedly purchased its domain “WritingSampleClassics.com”, the domain “WritingSample.com” was publicly being offered for sale as a premium domain name. See Respondent Annex Exhibit A ¶ 7 at RG\_004 and Respondent Annex Exhibit A-3 at RG\_019 (February 1, 2019, screen shot of “WritingSample.com” being offered for sale). Complainant presents no explanation or evidence as to why Complainant didn’t acquire “WritingSample.com” on or before February 4, 2019, in addition to “WritingSampleClassics.com”. It is highly unlikely that Complainant had been contemplating a “Writing Sample” branded online store as of February 4, 2019, but was oblivious to the status of the “WritingSample.com” domain. More likely is that Complainant was aware of “WritingSample.com” being owned by someone else, and being for sale, but just didn’t want to pay the asking price.

Accordingly, there is no evidence of bad faith by Respondent in either its acquisition or use “WritingSample.com”. The evidence unequivocally shows that by the time Complainant allegedly first used the term “Writing Sample” on May 1, 2019, the Respondent had taken the opportunity to acquire “WritingSample.com” in good faith for its own planned use, which had nothing to do with Complainant. The opportunity to acquire “WritingSample.com” had been available to Complainant. Complainant for its own reasons didn’t take it. A UDRP proceeding is not a forum for Complainant to now attempt to remedy its missed opportunity at the expense of Respondent.

## **B. THE COMPLAINANT HAS ABUSED THESE PROCEEDINGS IN AN ATTEMPT AT REVERSE DOMAIN NAME HIJACKING**

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.

## UDRP Rule 15(e).

Reverse Domain Name Hijacking [RDNH] means using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name.

## UDRP Rule 1 - Definitions.

Reasons articulated by panels for finding RDNH include:

- (i) Facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as the complainant’s lack of relevant trademark rights, clear knowledge of respondent rights or legitimate interests, or clear knowledge of a lack of respondent bad faith such as registration of the disputed domain name well before the complainant acquired trademark rights.
- (ii) Facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, including relevant facts on the website at the disputed domain name or readily available public sources such as the WhoIs database.
- (iii) Unreasonably ignoring established Policy precedent– except in limited circumstances which prima facie justify advancing an alternative legal argument.
- (iv) The provision of false evidence, or otherwise attempting to mislead the panel.
- (v) The provision of intentionally incomplete material evidence – often clarified by the respondent.
- (vi) The complainant’s failure to disclose that a case is a UDRP refiling.
- (vii) Filing the complaint after an unsuccessful attempt to acquire the disputed domain name from the respondent without a plausible legal basis.
- (viii) Basing a complaint on only the barest of allegations without any supporting evidence.

See e.g., *Damstra Technology Pty Ltd v. Domain Admin, Tucows.com Co.*  
WIPO Case No. D2021-0675

Many of the above established reasons for finding RDNH are present in this case.

First, when there is evidence showing that before any notice to a Respondent of a dispute, the Respondent made use of, or demonstrable preparations to use, its domain name in connection with a bona fide offering of goods or services this “**shall demonstrate** [Respondent’s] rights or legitimate interests to the domain name”. Policy 4(c)(i)(emphasis added).

The undisputed facts show that Complainant knew Respondent was engaged in the bona fide sale of goods through WritingSample.com prior to receiving any notice. Indeed, Complainant’s own April 1, 2021, cease-and-desist letter, expressly establishes that Complainant knew Respondent was using WritingSample.com to sell goods before receiving any notice from Complainant of a dispute:

***Hijacker recently became aware that Writer’s Business has been using “WritingSample” (“Infringing Mark”) to sell products*** such as paper pads, pens, and inks through the URL www.WritingSample.com and corresponding social media sites and accounts (“Infringing Social Media Accounts,” see Exhibit B). Screen shots of products offered through the “www.WritingSample.com” website and advertised on the Infringing Social Media Accounts are attached to this letter as Exhibit C.

See April 1, 2021, Hijacker Letter - Respondent Annex Exhibit D-5 at RG\_089 (emphasis added)

Complainant’s baseless allegation in the complaint that “upon information and belief . . . the WritingSample.com online store . . . was a bad faith attempt to garner the attention of Complainant. . .” is just far-fetched rhetoric wholly unsupported by, and indeed flatly contradicted by, the undisputed evidence. For Complainant, who is represented by counsel, such unsupported speculative “upon information and belief” rhetoric could not have formed a reasonable basis to question the bona fide nature of Respondent’s known use of “WritingSample.com” to sell goods. See e.g., *HSIL Limited, Somany Home Innovation v. GOTW Hostmaster*, WIPO Case No. D2020-3416 (A complainant which is represented by

counsel is held to higher standard). Accordingly, the evidence clearly shows that Complainant had no reason to believe it could possibly succeed in establishing that Respondent had no rights or legitimate interests in “WritingSample.com”, and thus no basis to believe its complaint had any merit or could prevail. See Policy 4(a)(ii) and 4(c)(i).

The Complaint here was also filed only after an unsuccessful attempt by Complainant to acquire “WritingSample.com” from Respondent. The Complainant also, without any apparent justification, provided the panel with only a partial record of the correspondence between the parties concerning Complainant’s unsuccessful attempt to acquire “WritingSample.com”. Specifically, the Complainant failed to provide the correspondence showing that Complainant asked Respondent *twice* for a sale proposal and then failed to provide the correspondence between the parties occurring after its receipt of the proposal. This correspondence was material evidence concerning the good faith of the Respondent, and the bad faith of the Complainant. See Respondent Annex Exhibits D-9, D-11 & D-12 at RG\_111-131.

The Complaint was also filed on only the barest of allegations without any supporting evidence of bad faith by Respondent. From the allegations it appears the entire Complaint is based on allegations of “information and belief” that Respondent had acquired “WritingSample.com” after Complainant acquired trademark rights in “Writing Sample”. Complainant had no evidence to support such a belief, which was flatly contradicted by the facts repeatedly communicated to Complainant about “WritingSample.com” having been acquired by Respondent on February 12, 2019.

The Complaint is also rife with misleading statements. For example, the complaint makes repeated statements about Complainant’s mark “WRITING SAMPLE” being “well-known”. There is no evidence that Complainant’s alleged use of the mark “WRITING SAMPLE”, which allegedly began only on May 1, 2019, has become “well-known”. The Complainant also repeatedly misrepresents communications between the parties: For example, at page 5 of the complaint it is falsely stated that Complainant “requested evidence of Respondent’s alleged prior use of the WRITING SAMPLE Mark”. Complainant never made such a request. Complainant only asserted that evidence wasn’t provided sufficient for it to believe Respondent, despite the citations to public sources provided by Respondent. The Complainant also falsely states that it “requested Respondent to provide a reasonable proposed monetary sum”, when in fact Complainant requested a “purchase proposal”. *Id.* Complainant’s allegations trying to characterize the purchase proposal, *which Complainant requested*, as being an “overt indication of

Respondent’s intention to extort money from Complainant” has no evidentiary basis and is highly misleading in view of the actual and complete correspondence between the parties.

The only reasonable conclusion to be reached from the record before the panel is that Complainant commenced this proceeding knowing there was no merit or reasonable basis to prevail. It is an obvious attempt by a large corporate Complainant to harass a small family business in an attempt to hijack the legitimately acquired “WritingSample.com” domain away from Respondent. There is no evidence of bad faith by Respondent in the registration and use of its “WritingSample.com” domain, but there is ample evidence of the Complainant’s bad faith in its dealings with Respondent and in commencing this proceeding.

Respondent therefore requests that, in denying the complaint, the panel also make the declaration required by the rules in its decision that the complaint here was brought in bad faith as part of an attempt by Complainant at reverse domain hijacking and constitutes an abuse of the administrative proceeding.

**OTHER LEGAL PROCEEDINGS**

Respondent is aware of no other legal proceedings.

**RESPONSE TRANSMISSION**

The Respondent asserts that a copy of the Response, as prescribed by FORUM’s Supplemental Rules, has been sent or transmitted to the Complainant, in accordance with Rule 2(b); Rule 5(c)(vii); and FORUM Supp. Rule 5.

**CERTIFICATION**

Respondent certifies that the information contained in this Response is to the best of Respondent’s knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Date: \_\_\_\_\_

\_\_\_\_\_

David M. Kleiman