

**WORLD INTELLECTUAL PROPERTY ORGANIZATION
ARBITRATION AND MEDIATION CENTER**

DHL Operations, B.V.
DHL International, GmbH

Complainants

WIPO Case No. D2010-0016

Disputed Domain Name:

mydhl.com

v.

Eric J. White

Respondent

**RESPONDENT'S OBJECTION TO COMPLAINANT'S SECOND SUPPLEMENTAL
FILING / MOTION FOR LEAVE TO RESPOND**

The Complainant in this action has provided yet another supplemental filing for the Panel's consideration. This action and the manner it was conducted, without leave from the Panel or notice to the Respondent, is improper under the UDRP. Respondent seeks for the Complainant's filing to be disallowed or, in the alternative, for the Panel to grant leave for the Respondent to provide his own supplemental filing. The reasoning for this is already dealt with in the Respondent's last filing, and need not be repeated here.

However, there is a very compelling reason to admit this limited rebuttal: The Complainant has lodged a very serious accusation – that the Respondent has deliberately submitted fabrications to the Panel. This demands a response.

In the event that the Panel grants the Respondent's respectful request to allow this Rebuttal to some of the issues in the Complainant's second supplemental filing, the Rebuttal is provided below.

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RESPONDENT'S SECOND SUPPLEMENTAL FILING

The Complainant's explanation of its failure to attach a screen shot of the Respondent's website is not credible.

The Complainant states 1) That there was... no reason to believe the printouts and screenshots would be of relevance in the proceeding." and 2) "There was no sign whatsoever that the Respondent would deliberately change the content of the webpage connected to the disputed domain name and submit untrue statements to the Panel." Statement 1 lacks credibility on its face. Statement 2 is easily rebutted with competent evidence.

1) No reason to believe that a screen shot would be relevant?

In order to prevail in a UDRP proceeding, the Complainant is required to bear the burden of proof in showing that the Respondent both registered and used the domain name at issue in bad faith. Accordingly, what credible Complainant could claim that the best evidence of the domain's use, a print out of the domain, would not be relevant to the proceedings? There could be no more relevant piece of evidence, and the fact that the Complainant conveniently omitted it from the Complaint suggests that the Complainant was well-aware of the Respondent's use – but knew that if evidence thereof was provided to the Panel, that the Panel would be compelled to reject the Complaint.

It seems that the Complainant, after not receiving a reply to its "Christmas Greetings," demand letter, presumed that Mr. White would not reply to the Complaint, and thus the thin arguments therein would be evaluated under a default standard, and that the domain that the Complainant clearly covets would be bestowed upon it, based upon an

incomplete record. When the Respondent made an appearance, the Complainant was embarrassed by the poor showing in the Complaint, and has now scrambled through two supplemental filings to try and rehabilitate its case – and still has not succeeded.

2) The Web Page was clearly not changed after notice of the dispute.

The Respondent has already discussed the brief, momentary, and temporary pages visible at the website, and the fact that these were clearly generated by GoDaddy in lieu of allowing the page to simply default to **404 – Page Not Found** status. This is clearly not evidence of bad faith.

As discussed in the Respondent's First Supplemental Filing, the refresh cycle of the web page in Google's cache system is clearly greater than three weeks. Here we are, a full month after the last cache, and we still see that the Google cache of mydhl.com demonstrates the same thing – the long-standing historical use of the domain. **See Annex V.** Annex V demonstrates that on this date, February 3, 2010, the Google cache for mydhl.com is still reflecting the content of the web page, as it appeared on January 3, 2010. This is two days before the complaint was filed. And, if Google's cache cycle is at least a month long (as demonstrated by the fact that the cache remains un-refreshed since January 3, 2010), then the version cached on January 3, 2010 reflects what the domain name looked like as early as December 3, 2009.

Nevertheless, this is all relatively irrelevant. The arguments and annexes to date show that the domain name was used in its current form for many years. Why the Complainant is only now concerned about the domain is unexplained, but tilts the scales in Respondent's favor "[T]he longer the time between the registration of a disputed domain name and the assertion of the Complainant's rights the harder, in general, the inference of bad faith registration becomes to sustain," *YIT Corporation v. Future Media Architects Inc.*, WIPO Case No. D2007-0588. They also show that this is the current use, and the recent use, and the use before the Complaint was filed, are all in accord – consistent with the Respondent's core political speech – and panelists do not dismiss Respondents' rights to political speech when deciding UDRP cases. See, e.g., *Sutherland Institute v. Continuative LLC*, WIPO Case No. D2009-0693. ("If the right of political speech is to be interfered with based on Complainant's service mark incorporated in Respondent's disputed domain name, it is preferable that a federal or state court make that application of the concept of 'bad faith'"); *Mercury Radio Arts, Inc. and Glenn Beck v. Isaac Eiland-Hall*, WIPO

Case No. D2009-1182. This is even further the case when there is truly no confusing similarity between the alleged mark and the Respondent's domain name. See *Netflix Inc. v. Anthony Fox*, NAF Case FA0909001287043 (actual similarity, but no confusing similarity between NETFLIX and <netlix.com>).

Annex V

This is Google's cache of <http://www.mydhl.com/>. It is a snapshot of the page as it appeared on Jan 3, 2010 16:39:12 GMT. The [current page](#) could have changed in the meantime. [Learn more](#)

These terms only appear in links pointing to this page: [mydhl.com](#)

[Text-only version](#)

My Democracy Has Losers



Before their political "marriage."



A bit too comfortable



adoring babble



Ms. (Mr.?) Clinton

Political Speech, brought to you by a free country, and a constitution, unequalled in all of recorded history.