

COMPLAINT TRANSMITTAL COVERSHEET

Attached is a Complaint that has been filed against you with the World Intellectual Property Organization (**WIPO**) Arbitration and Mediation Center (the **Center**) pursuant to the Uniform Domain Name Dispute Resolution Policy (the **Policy**) approved by the Internet Corporation for Assigned Names and Numbers (**ICANN**) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the **Rules**), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**).

The Policy is incorporated by reference into your Registration Agreement with the Registrar(s) of your domain name(s), in accordance with which you are required to submit to a mandatory administrative proceeding in the event that a third party (a **Complainant**) submits a complaint to a dispute resolution service provider, such as the Center, concerning a domain name that you have registered. You will find the name and contact details of the Complainant, as well as the domain name(s) that is/are the subject of the Complaint in the document that accompanies this Coversheet.

You have no duty to act at this time. Once the Center has checked the Complaint to determine that it satisfies the formal requirements of the Policy, the Rules and the Supplemental Rules, it will forward an official copy of the Complaint to you. You will then have 20 calendar days within which to submit a Response to the Complaint in accordance with the Rules and Supplemental Rules to the Center and the Complainant. You may represent yourself or seek the assistance of legal counsel to represent you in the administrative proceeding.

- The **Policy** can be found at <http://www.wipo.int/amc/en/domains/rules/>
- The **Rules** can be found at <http://www.wipo.int/amc/en/domains/rules/>
- The **Supplemental Rules**, as well as other information concerning the resolution of domain name disputes can be found at <http://www.wipo.int/amc/en/domains/rules/>
- A **model Response** can be found at <http://www.wipo.int/amc/en/domains/respondent/index.html>

Alternatively, you may contact the Center to obtain any of the above documents. The Center can be contacted in Geneva, Switzerland by telephone at +41 22 338 8247, by fax at +41 22 740 3700 or by e-mail at domain.disputes@wipo.int.

You are kindly requested to contact the Center to provide the contact details to which you would like (a) the official version of the Complaint and (b) other communications in the administrative proceeding to be sent.

A copy of this Complaint has also been sent to the Registrar(s) with which the domain name(s) that is/are the subject of the Complaint is/are registered.

By submitting this Complaint to the Center the Complainant hereby agrees to abide and be bound by the provisions of the Policy, Rules and Supplemental Rules.

Before the:

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

Southern California Regional Rail
Authority (SCRRA)
700 South Flower Street
Suite 2600
Los Angeles, CA 90017

(Complainant)

-v-

Robert Arkow
P.O. Box 800753
Valencia, CA 91380

(Respondent)

Disputed Domain Names:
www.metrolinkrider.com,
www.metrolinksucks.com

COMPLAINT

I. INTRODUCTION

1. This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy), approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), approved by ICANN on October 24, 1999 and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the Supplemental Rules).

II. THE PARTIES

A. The Complainant

2. The Complainant in this administrative proceeding is the Southern California Regional Rail Authority ("SCRRA"), a Joint Powers Authority with its principal place of business in Los Angeles, California, United States of America.
3. The Complainant's contact details are as follows:

Address: 700 South Flower Street, Suite 2600
Los Angeles, CA 90017
Telephone: (213) 452-0200
Fax: (213) 452-0429
E-mail: foaxaca@scrra.net

4. The Complainant's authorized representative in this administrative proceeding is:

RAYMOND G. FORTNER, JR., County Counsel
TRUC L. MOORE, Senior Associate County Counsel
500 W. Temple St., Room 653
Los Angeles, CA 90012
Tel: (213) 974-4334
Fax: (213) 687-7337

5. The Complainant's preferred method of communications directed to the Complainant in this administrative proceeding is:

Electronic-only material

Method: E-mail
Address: tlmoore@counsel.lacounty.gov
Contact: Truc L. Moore

Material including hardcopy

Method: Fax
Address: 500 W. Temple St., Room 653
Los Angeles, CA 90012
Fax: (213) 687-7337
Contact: Truc L. Moore

B. The Respondent

6. According to www.register.com, the respondent in this administrative proceeding for the domain names "metrolinkrider.com" and "metrolinksucks.com" is Robert Arkow, an individual, with contact address at P.O. Box 800753, Valencia, California, 91380. Copies of the printout of the database searches conducted on March 4, 2008 are provided as Annex 1 and 2.

7. All information known to SCRRA regarding how to contact the respondent is as follows:

Robert Arkow
P.O. Box 800753
Valencia, CA 91380
Phone: (661) 297-2287 / (213) 341- 4323
E-mail: bob@metrolinkrider.com

III. THE DOMAIN NAMES AND REGISTRARS

8. This dispute concerns the domain names "metrolinkrider.com" and "metrolinksucks.com".
9. The Registrar with whom the domain names are registered is as follows, and is attached at Annex 3:

Direct Information PVT LTD d/b/a PublicDomainRegistry.Com
P.O. Box 521362
Longwood, F.L. 32752-1362
Contact: 888-741-4678
Website: <https://www.PublicDomainRegistry.Com>

IV. JURISDICTIONAL BASIS FOR THE ADMINISTRATIVE PROCEEDING

10. This dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The Registration Agreement for PublicDomainRegistry.Com to which the domain names subject to this Complaint are registered, incorporates the Policy in Section 2 of Appendix C. A true and correct copy of that Registration Agreement is attached as Annex 4.

V. FACTUAL BACKGROUND

A. SCRRA's History

11. SCRAA is the owner and operator of a regional transit service in Southern California known as METROLINK®, which operates within the California counties of Los Angeles, North San Diego, Orange, Riverside, San Bernardino and Ventura. SCRRA began operating its METROLINK® trains in October 1992, with the mark being in continuous use since that date.
12. Since 1992, the METROLINK® mark has become well known as an excellent transit service. This past fiscal year, METROLINK® reached a milestone with its 100 millionth passenger boarding. *See* Annex 5 at 2. Gross passenger revenues in 2007 have also exceeded \$62 million dollars. *See* Annex 5 at 11. Ridership growth continues to exceed projections and SCRRA expects the METROLINK® system to grow by more than 90,000 daily boardings by 2020.
13. METROLINK® carries approximately 43,000 daily boardings of long distance commuters and recreational travelers that live, work or visit in the six California

counties that it operates in. Not only does each of these six counties serve as home to some of the largest and most ethnically diverse populations in California, each is an entertainment/recreational hub that attracts local and international visitors from all over Southern California, the United States, and the world. METROLINK® also accommodates visitors flying into the Bob Hope International Airport and those traveling through Los Angeles Union Station. Attached at Annex 6 is a map of METROLINK®'s stations and rail lines.

14. METROLINK® riders and visitors to the area often visit SCRRA's website at www.metrolinktrains.com to obtain updated and accurate travel information. This website is the primary source of information for the public about the METROLINK® commuter train service. Users can obtain and download train schedules, access fare calculators and download press releases and updates.
15. SCRRA is also an active member of the community. It is the operator of the annual HOLIDAY TOY EXPRESS®, a train show spectacular run in conjunction with the California Southland Firefighters SPARK OF LOVE TOY DRIVE which collects and distributes toys to needy children. Attached as Annex 7 is last year's promotional flyer for this event.

B. SCRRA's Intellectual Property Rights

16. SCRRA also owns a trademark registration for the mark METROLINK®. U.S. Trademark Registration No. 1979101 is attached as Annex 8. The mark was first used in commerce on October 26, 1992, and has been in continuous use since that date. The trademark application was filed on April 20, 1993 with the United States Patent and Trademark Office ("PTO") and registered on June 11, 1996 in International Class ("IC") 39 for passenger rail transportation services.
17. On September 11, 2006, SCRRA's Section 8 Affidavit was accepted under 15 U.S.C. Sec. 1058, and the combined affidavit and renewal application filed for Registration No. 1979101 was renewed under Section 9 of the Trademark Act, 15 U.S.C. Sec. 1059. Attached as Annex 9 is the Notice of Acceptance and Notice of Renewal from the PTO. The registration now enjoys incontestable status.

18. The METROLINK® trademark appears prominently on all SCRRA materials, including on tickets, ticket vending machines, on the SCRRA website, and in all promotional and advertising materials. The mark is also predominantly displayed on all of its commuter trains.
19. SCRRA has allowed its METROLINK® trademark to be co-promoted and marketed with a number of special events, including with the Los Angeles Kings hockey team, Los Angeles Clippers basketball team, and with the theatre production, "*WICKED – The Untold Story of the Witches of Oz*". Attached as Annex 10 are web pages from SCRRA's website regarding these promotions.
20. SCRRA is also the domain name registrant for "metrolinktrains.com". The website was launched on June 1, 1999.
21. SCRRA polices its mark regularly and has previously moved to resolve its trademark concerns with a number of businesses and websites over the inadvertent, unintentional, and intentional use of SCRRA's registered mark. SCRRA continues these efforts today.

C. The Respondent

22. The respondent in this matter, Robert Arkow, appears to be a commuter on METROLINK® trains. On or about May 11, 2006, the respondent contacted SCRRA to discuss some of his concerns regarding METROLINK®'s policies, including a requirement that monthly pass holders sign or write their names on monthly passes. SCRRA was able to address some of the respondent's concerns. However, with respect to the requirement that monthly passes be signed, SCRRA was not inclined to eliminate this requirement.
23. Thereafter, during random inspections on METROLINK® trains by the fare conductor or law enforcement personnel, the respondent was discovered with a monthly pass that did not bear his signature or name. He was thereafter cited or asked to sign/write his name to the pass. Respondent has convinced himself that these incidents evidence that SCRRA is targeting him for harassment purposes.

24. On or about August 1, 2007, SCRRA executives learned that the respondent had registered the domain name "metrolinkrider.com". Attached as Annex 11 is the home page for "metrolinkrider.com". SCRRA ran Whois searches on the domain name, and found that the respondent had registered the domain name on August 11, 2006. *See Annex 1.*
25. The "metrolinkrider.com" website purports to be a protest site, yet incorporates SCRRA's entire registered trademark in the domain name without any indication that it is a protest site. The website also contains postings by the respondent with such statements as "Stupid Metrolink Tricks---Seen something really dumb on Metrolink?" and "Are the Engineers that stupid?" *See Annex 12.*
26. Upon further investigation of "metrolinkrider.com", SCRRA discovered that respondent had intentionally included SCRRA's registered trademark and its domain name in the metatag keywords for his webpage. These metatag keywords include "metrolinktrains", "metrolink", "metrolink rider" and "metrolink trains". His metatag description for the website also purports that it "Is a website for passengers and employees of the Los Angeles Metrolink rail system." Nowhere in respondent's metatag description does he indicate that this is not the official site for METROLINK® or that it is a purported protest site. Attached as Annex 13 is the source report for "metrolinkrider.com".

D. Attempts At Informal Resolution Have Been Unsuccessful

27. Subsequently thereafter, SCRRA attempted to negotiate with the respondent to resolve the dispute and seek the transfer of the disputed domain name. SCRRA contacted Respondent via letter correspondence on January 14, 2008, advising him of SCRRA's trademark concerns. *See Annex 14.* SCRRA's Manager of Media & External Communications, Mr. Francisco Oaxaca, executed such correspondence on behalf of SCRRA.
28. Respondent refused and informed Mr. Oaxaca via telephone correspondence that he had moved forward in registering the domain name "metrolinksucks.com" as a retaliatory measure against any action SCRRA planned to take and that he would seek publicity. These actions culminated in a letter sent to SCRRA by the

respondent on February 11, 2008, where he claimed he was running a purported criticism site and invited SCRRA to take this matter to court so that he could generate publicity. Respondent also acknowledged that in "preparation of [SCRRA's] possible legal action(s)", he had purchased "metrolinksucks.com". Attached as Annex 15 is Respondent's February 11, 2008 correspondence.

29. In a final attempt to informally resolve the dispute, counsel for SCRRA, Truc L. Moore, contacted the respondent to discuss possible resolution of the matter and the transfer of the domain name to SCRRA upon reimbursement of costs for the two domain names. The respondent refused and repeated the same statements made previously to Mr. Oaxaca.
30. According to Whois search results, respondent registered "metrolinksucks.com" only after respondent received correspondence from SCRRA on January 14, 2008, and only after he was apprised of SCRRA's trademark concerns. Counsel for SCRRA accessed "metrolinksucks.com" on February 20, 2008 and discovered the site was operational. This webpage links to the same identical site and carries the same identical content as "metrolinkrider.com". A cached copy of the "metrolinksucks.com" homepage carrying a February 25, 2008 cached date is attached as Annex 16. Its metatag keywords and description are also identical to "metrolinkrider.com". *See* Annex 17. Since at least February 25, 2008, it appears that the respondent has caused the webpage to be inaccessible.

VI. LEGAL GROUNDS

31. In requesting the transfer of the domain names at issue, SCRRA will prove that each of the three elements as set forth in Paragraph 4(a) of the Uniform Domain Name Dispute Resolution Policy are present. The three elements are:
 - (i) The respondent's domain names "metrolinkrider.com" and "metrolinksucks.com" are identical or confusingly similar to the METROLINK® mark in which SCRRA has rights; and
 - (ii) The respondent has no rights or legitimate interest in respect to the "metrolinkrider.com" and "metrolinksucks.com" domain names; and
 - (iii) The respondent's domain names have been registered and are being used in bad faith.

A. The Domain Names Are Identical or Confusingly Similar To a Trademark or Service Mark In Which The Complainant Has Rights (Policy, para. 4(a)(i), Rules, paras. 3(b)(viii), (b)(ix)(1))

i. Complainant Has Superior Trademark Rights in the METROLINK® Service Mark

32. SCRRA is the owner of U.S. Trademark Registration No. 1979101 for the term METROLINK® in the United States. It has been continuously using this mark in commerce for its regional transit service since October 26, 1992. *See* Factual Background, *supra* 5-6. Based on this first use date, SCRRA's statutory and common law rights in the trademark attached prior to respondent's first use of the marks in his domain names. Respondent's domain name registrations on August 11, 2006 and January 24, 2008, occurred more than a decade after SCRRA's first use of the mark. As the senior user of the mark, SCRRA's trademark rights are superior to any rights that respondent may have, if any, to METROLINK®.

ii. The Domain Name "metrolinkrider.com" Is Confusingly Similar to the METROLINK® Mark

33. The test for confusing similarity is a comparison between the trademark and the domain name to determine likelihood of confusion. *Gateway, Inc. v. Pixelera.com, Inc.*, Case No. D2000-0109. (All case authority is attached as Annex 19 with a corresponding Table of Authorities.) Evidence of actual confusion is irrelevant. *Id.*

34. With respect to the "metrolinkrider.com" domain name, the mark is identical to SCRRA's mark. SCRRA's METROLINK® trademark is reproduced in its entirety as the first and dominant portion of the domain name. The combination of the mark with the wording "rider" does not eliminate the risk of confusion—the term "rider" is generic in the transportation industry, and adds no additional arbitrary or fanciful meaning whatsoever when used in context with the METROLINK® mark. The addition of ".com" is also without legal significance in determining similarity, as it is a designation that every internet provider must use as part of its internet address.

35. Without any other distinctive elements in the domain name, "metrolinkrider.com" appears to METROLINK® riders and customers as an official website owned and operated by SCRRRA. METROLINK® is well known for its regional transit system, which gives rise to an expectation as to what can be found at "metrolinkrider.com." The domain name reads as though it contains official information for riders of METROLINK®, and there is nothing else contained in the domain name to dissuade them otherwise. Confusion occurs in the instant before the "metrolinkrider.com" website has even been accessed. When the average Internet user enters "metrolinkrider.com" into the web browser, they have a legitimate expectation that it is an official METROLINK® site regarding METROLINK® trains.
36. Although the words "Metrolinkrider.com is NOT an official website of the Southern California Regional Rail Authority (SCRRRA)" appears on the site, these words are, in comparison to the heading "Welcome to MetrolinkRider.Com", in smaller print and farther down in the webpage. *See Annex 11.* By the time the disclaimer is viewed, confusion on the part of Internet users has already occurred. They've accessed a site that they believe is the official METROLINK® site, when that simply isn't the case. UDRP decisions have recognized this "initial interest confusion", which occurs when members of the public see the disputed domain name and think it may lead to a website associated with the Complainant. *CBS Broadcasting, Inc., f/k/a/ CBS, Inc. v. Nabil Z. Aghloul, Case No. D2004-0988.*

iii. "Metrolinksucks.com" is Also Confusingly Similar to the METROLINK® Mark

37. Many of the arguments advanced above for "metrolinkrider.com" equally applies to "metrolinksucks.com". As with "metrolinkrider.com", SCRRRA's entire METROLINK® trademark is reproduced in "metrolinksucks.com" as the first and dominant part of the mark, and accordingly, is confusingly similar to the registered mark.
38. The addition of the word "sucks" after the registered mark does not cut against a finding of likelihood of confusion. A number of UDRP cases have found that a domain name consisting of a trademark and a negative term is confusingly similar to a complainant's mark, especially when considering that not all internet users

are English speakers or are familiar with the use of "sucks" to indicate a site for criticism. *See The Royal Bank of Scotland Group plc, National Westminster Bank plc A/K/A NatWest Bank v. Personal and Pedro Lopez*, Case No. D2003-0166, which summarizes this authority.

39. SCRRRA is concerned about its riders and customers who may not recognize "metrolinksucks.com" as negative because some are non-fluent English language speakers. SCRRRA operates its train in six of the most diverse and densely populated counties in Southern California, all of which serve as home to a number of Arabs, Asians, Hispanics, and Latinos. SCRRRA serves six counties with a total population of approximately 21.4 million, and the percent of ethnic riders by line corridor is anywhere between 39% in the Ventura County Line to 78% in the Riverside Line. *See Annex 5 at 12.* These counties are also home to top travel destinations for a number of tourists and visitors both locally and from around the world. *See supra 4-5.* This diversity is represented in SCRRRA's daily commuters and travelers who may not be fluent in English, yet often look to the Internet to find travel information, train schedules, and station locations when planning their trips. They may not recognize the negative connotations of the word "suck" that is attached to the METROLINK® mark. In those instances where such facts are present, UDRP panels have found likelihood of confusion with domain names comprising the registered trademark in its entirety, followed by wording like "sucks", "blows" or "boycott". *See The Royal Bank of Scotland Group plc, National Westminster Bank plc A/K/A NatWest Bank v. Personal and Pedro Lopez*, Case No. D2003-0166.
40. This Panel should come to the same conclusion here about "metrolinksucks.com". In coming to this conclusion, the Panel should also consider that "metrolinksucks.com" is not, as of the date of this filing, operating as a legitimate protest site. The respondent did not register this domain name until January 24, 2008 of this year, and only after being apprised of SCRRRA's trademark concerns. This was done as a retaliatory measure to fend off any legal efforts SCRRRA may take against respondent. *See Annex 15.*

B. The Respondent Has No Rights Or Legitimate Interests With Respect To The Domain Names (Policy, para. 4(a)(ii), Rules, para. 3(b)(ix)(2))

i. The Respondent Does Not Have Permission from SCRRA to Register the Domain Names

41. SCRRA submits that the respondent has no legitimate interest in the disputed domain names. In particular, SCRRA relies upon Paragraph 4(c)(i)-(iii) of the UDRP and submits that there is no bona fide offering of goods or services, no evidence that the respondent is commonly known by the domain names or that he has a legitimate interest in maintaining the domain names.
42. SCRRA has not authorized the respondent to use the METROLINK® name or mark in any manner, nor to include it in the domain names “metrolinkrider.com” and “metrolinksucks.com”. The respondent is not commonly known by the METROLINK® name or the disputed domain names, and has never operated any businesses or charities under either. There is no evidence that respondent acquired trademark or service mark rights of any kind in the mark, or that he has offered bona fide goods or services of any kind at “metrolinkrider.com” and “metrolinksucks.com”.

ii. The Respondent Does Not Have A Legitimate Interest in Maintaining the Domain Name "metrolinkrider.com"

43. SCRRA asserts that the respondent is using the domain name “metrolinkrider.com” to divert Internet users intended for SCRRA’s website. There is nothing in respondent’s domain name “metrolinkrider.com” to indicate to the public that it is a complaint or protest site. To the contrary, his metatag description for “metrolinkrider.com” (as well as “metrolinksucks.com”) establishes that it "Is a website for passengers and employees of the Los Angeles Metrolink rail system", without any mention of the protest nature of the site. *See* Annex 13 and Annex 17. Google search results carry the same description. *See* Annex 18. The description for these home pages do not mention that the pages are devoted to criticism, are unofficial sites, are devoted to protest or comments regarding METROLINK®, its transit service, or the level of its customer service. Indeed, because the domain name is confusingly similar to SCRRA’s registered

trademark, Internet users may perceive the domain name as one operated by SCRRRA for both its passengers and employees.

44. Only after Internet users have reached the website, do they discover that this is not the case. There is simply no transparency here with "metrolinkrider.com".

45. While some UDRP decisions have upheld the use of domain names which resolve to be critical of a complainant's business, "a line is often drawn where the protest site does not make it clear that it is in fact a protest site." *Hollenbeck Youth Center, Inc. v. Stephen Rowland*, Case No. D2004-0032. The Panel in *Hollenbeck* found no rights or legitimate interests in the domain name at issue after noting:

"...the Panel has difficulties recognizing a legitimate interest of Respondent to keep the domain name which may mislead the public regarding the nature of the attached site. Although the noncommercial nature of Respondent's web site is quite evident and not contested, it is the Panel's belief that protest disseminated through the powerful tools of the Internet is only legitimate if the protest is transparent. **Transparency starts with choosing a domain name which reflects the protest as opposed to a domain name which implies an affiliation to the trademark holder.**" [Emphasis Added].

46. The *Hollenbeck* decision is also consistent with a number of other UDRP decisions which hold that the right to criticize does not extend to registering a domain name that incorporates the trademark of another, is confusingly similar, or conveys an association with the trademark. *Kirkland & Ellis LLP v. DefaultData.com, American Distribution Systems, Inc.*, Case No. D2004-0136.

The panel in *Kirkland & Ellis* recognized that while free speech was important:

"Nevertheless, the right to express one's views is not the same as the right to identify itself by another's name when expressing those views. Thus, while Respondent may express its views about the quality, or lack thereof, of the U.S. legal profession, in general, or any firm offering legal services, in particular, **Respondent does not have the right to identify itself as that particular firm. And, there is nothing in the domain name to indicate that the site is devoted to criticism, even though that fact is apparent when visiting the site. By using Complainant's service mark, Respondent**

diverts Internet traffic to its own site, thereby potentially depriving Complainant of visits by Internet users.” [Emphasis added].

47. Respondent is attempting to mislead the public regarding the nature, origin, and affiliation of the “metrolinkrider.com” website. He is doing so to increase traffic to his own site. This is further apparent when evaluating the metatag keywords for the “metrolinkrider.com” website, where the respondent has intentionally included SCRRA's registered trademark and its "metrolinktrains.com" domain name. *See* Annex 13. These metatags and keywords include "metrolinktrains", "metrolink", "metrolink rider" and "metrolink trains", words that again contain the entirety of SCRRA's trademark. If respondent had a legitimate interest in attracting those who wished to comment or be critical of METROLINK®, he would have included additional keywords that identify the protest nature of the site.
48. Respondent should not be allowed to initially associate himself with SCRRA when he attempts to express his views. Accordingly, this Panel should find that the respondent has no rights or legitimate interests in the domain name "metrolinkrider.com".

iii. The Respondent Does Not Have a Legitimate Interest in Maintaining the Domain Name "metrolinksucks.com"

49. As to "metrolinksucks.com", the webpage was never intended as a protest site or to be run as a protest site. By respondent's own admission as contained in his February 11, 2008 letter, it was registered subsequently as a retaliatory or preemptive measure to any legal proceedings that SCRRA would take, and as a mechanism for the respondent to generate publicity for himself. *See* Annex 15. His February 11, 2008 correspondence also reveals his true intentions in registering the domain name—he is using the domain name as a threat or in an attempt to embarrass or coerce SCRRA in order to settle his dispute over the monthly pass policy. This certainly is not a legitimate interest that should be protected under the UDRP policy. In *Westminster Savings Credit Union v. Hart Industries Inc. And Gregory Hart*, Case No. D2002-637, the Panel held such facts to reflect a lack of good faith activities under the domain name.

50. The facts indicate that when "metrolinksucks.com" was operational, the website was not a true criticism site. Had respondent intended "metrolinksucks.com" to be a true criticism site, he would have included additional content and further explanations. He did not. He simply registered the domain name after being apprised of SCRRA's trademark concerns, and linked it to the "metrolinkrider.com" webpage. *See* Annex 16 & 18. The respondent also does not need two confusingly similar domain names in order to exercise free speech rights. The pattern of registering two domain names (so far as known by SCRRA) with identical content, demonstrates any lack of a legitimate interest.
51. Now, with the website apparently non-operational, it certainly isn't being maintained as a protest site.
52. Even if the Panel should find that respondent has free speech rights, it can still find that respondent has no rights or legitimate interests with respect to the "metrolinksucks.com" domain name. *See The Royal Bank of Scotland Group plc, National Westminster Bank plc A/KA/A NatWest Bank v. Personal and Pedro Lopez*, Case No. D2003-0166. The panel in *Royal Bank* found when transferring the "natwestbanksucks.com" domain name that:
- "Respondents' can very well achieve their objective of criticism by adopting a domain name that is not identical or substantially similar to Complainants' marks. ...it does not appear that one can be at full liberty to use someone else's trade name or trademark by simply claiming the right to exercise a right to freedom of expression".
- This panel decision is indeed consistent with a number of other decisions, including *Westminster Savings Credit Union v. Hart Industries Inc. And Gregory Hart*, Case No. D2002-637.
53. SCRRA respectfully submits that respondent has no rights or legitimate interests with respect to the domain names, according to Paragraph 4(a)(ii) of the Policy.

C. The Domain Names Were Registered and Are Being Used In Bad Faith (Policy, paras. 4(a)(iii), 4(b); Rules, para. 3(b)(ix)(3))

i. Respondent Was Well Aware of SCRRA's Rights When He Registered the Domain Names at Issue

54. Respondent registered the domain name "metrolinkrider.com" on August 11, 2006. By respondent's own admission, he has been a passenger on METROLINK® trains for the past nine years and cannot ignore the reputation and widely known character of the transit system he was using at the time he registered the domain name. In the unlikely event that respondent was not aware of SCRRA's trademark rights in 2006, he certainly was aware by January 14, 2008 when he received SCRRA's correspondence letter—respondent did, after all, rush out shortly thereafter to register "metrolinksucks.com" on January 24, 2008. The use of the METROLINK® trademark in the metatag keywords and description also supports the fact that he was fully aware of SCRRA's trademarks.

ii. Respondent's Intentional Attempts to Create A Likelihood of Confusion with SCRRA's Mark Is Evidence of Bad Faith

55. By using domain names which seem to indicate sponsorship of, affiliation with, or endorsement by SCRRA, even if the sites may be intended to disseminate protest, respondent has indeed acted in bad faith as contained in Article 4b(iv) of the Policy. By using "metrolinkrider.com" and "metrolinksucks.com", respondent is intentionally attempting to attract Internet users to these sites by creating a likelihood of confusion. *See supra* Discussion at 9-12. The use of misleading domain names, misleading metatags and descriptions, attempts at diverting Internet users, and the passing off of the domain names as possible official METROLINK® websites, can only be indicative of bad faith. These actions should not be protected under the UDRP Policy.

56. A number of cases have come to the same conclusion. In *Banque Cantonale de Genève v. Primatex Group S.A.*, Case No. D2001-0477, the Panel found bad faith where there was a likelihood of confusion with Complainant's registered trademark. Bad faith was also found in *Reg Vardy Plc v. David Wilkinson*, Case No. D2001-0593. There, the Panel found a deliberate attempt to attract Internet

users by creating a likelihood of confusion as evidenced by use of the mark on respondent's website and in metatags.

iii. Registration of "metrolinksucks.com" After the Fact is Evidence of Bad Faith

57. Bad faith can also be found from respondent's after the fact registration of "metrolinksucks.com". The evidence indicates that the respondent only thought to register the domain name after being apprised of SCRRA's trademark concerns. Where similar facts like this presented itself in *CBS Broadcasting, Inc., f/k/a/ CBS, Inc. v. Nabil Z. Aghloul*, Case No. D2004-0988, the Panel found this to be evidence of bad faith registration. In *CBS*, the Panel noted that there was no credible evidence in the record that the respondent had ever intended to use the domain name in dispute with a criticism site because it registered the domain name only after the Complainant issued a cease and desist letter. "In fact, the Panel has serious reservations whether the Respondent's subsequent creation of the website was motivated by anything other than a desire to frustrate the Complainant's efforts to obtain the transfer of a domain name". *Id.* That is certainly the case here.

iv. The Domain Names Were Registered Primarily to Disrupt SCRRA's Business, And Is Further Evidence of Bad Faith

58. SCRRA also relies on Paragraph 4(b)(iii) of the UDRP Policy to show that the respondent had registered the domain issues at issue primarily for the purpose of disrupting SCRRA's business. The respondent has made it apparent in past communications that he regards the registrations as an opportunity to "damage" SCRRA through media publicity and as a retaliatory measure to any legal action SCRRA may take. Respondent's February 2008 communication, his deliberate intent in using the METROLINK® mark in the domain names and in metatag keywords and descriptions, and an after the fact registration of "metrolinksucks.com", is evidence of this.
59. This evidence indicates that the prime motive of respondent in registering the domain names at issue was for nuisance value to disrupt SCRRA's business and to create media publicity for himself and his webpages. Mr. Arkow threatens SCRRA in his February 11, 2008 correspondence that:

“Should you wish to go to court, please be my guest. **That action, on your part, will generate publicity, something that my website could certainly use. ...If a court decides that ‘MetrolinkRider.com’ is a trademark infringement, then I have an alternate name for the site, MetrolinkSucks.com. I have purchased this URL in preparation of your possible legal action(s).**” [Emphasis Added.]

See Annex 15. The threat of negative publicity against SCRRA under an inherently misleading domain name is bad faith and not what the UDRP policy was intended to protect. On these grounds alone, this Panel can find that the domain names were registered and used in bad faith. The respondent is not concerned with running a criticism site. The respondent is inviting legal action so that he can somehow use this as a basis to generate that publicity for himself while trying to tarnish the image and reputation of SCRRA through negative publicity.

60. Further, according to his February 2008 correspondence, his contingency plan is to fall back on "metrolinksucks.com", another domain name that contains SCRRA's registered trademark in whole and which was registered as a retaliatory measure once he was apprised of SCRRA's trademark concerns. "metrolinksucks.com" was not registered prior to this dispute, did not operate as a criticism site prior to this dispute, and when operational, mirrors in its entirety the web site at "metrolinkrider.com". It was clearly done with the intention to disrupt SCRRA's business and force it to focus on respondent's bad faith registration of yet another domain name.
61. This factual scenario is very similar to that found in *Reg Vardy Plc v. David Wilkinson*, Case No. D2001-0593, where the Panel transferred a domain name after finding that the respondent intended to disrupt complainant's business and seek media attention for himself. The disruption need not be done by a competitor. *Id.* In *Reg Vardy*, the Respondent's website and e-mail of April 14, 2001 evidenced this intent by stating:

"Feel free to take this matter to any court or governing body in the land... **I will however not make this matter easy for you, nor will you gaining control of the said domain names silence me as this is obviously what REG VARDY are trying to do.**

I would ask you to recommend to your client to drop this matter before he does his company more harm than good, **I will seek to get this matter the highest level of publicity** and I have the right to freedom of speech"

62. Respondent's current behavior in this action as evidenced in his February 2008 letter and in communications with Mr. Oaxaca and with SCRRRA counsel, mirrors the behavior exhibited by the respondent in *Reg Vardy*. Like the panel in *Reg Vardy*, this Panel should find that the respondent's declared intentions in combination with extensive other evidence presented, as sufficient to demonstrate bad faith.
63. The *Reg Vardy* Panel's decision is also in line with the Panel in *Tribodos Bank NV v. Ashley Dobbs*, Case No. 2002-0776.

iv. Bad Faith Can Still Be Found Even if the Panel Finds Non-Commercial Use, Absence of Competition, or Lack of Intention to Sell Domain Name

64. Respondent can further be found to have acted in bad faith even if the Panel finds that the character of the websites are non-commercial, the absence of a competitive relationship or the absence of an intention to sell the domain name at issue. In *Banque Cantonale de Geneva v. Primatex Group S.A.*, Case No. D2001-0477 (2001) for instance, the fact that the complainant's business may be disrupted by the respondent's website, that Internet users were attracted to the site without warning that they were linking to a protest site and likelihood of confusion, were found to be indicative of bad faith.
65. The panel in *Hollenbeck Youth Center, Inc. v. Stephen Rowland*, Case No. D2004-0032 also came to a similar conclusion when ordering the transfer of "hollenbeckyouthcenter.org" to the complainant. It found that:
- "...the majority [are] of the view that given their findings on confusion and that the respondent deliberately used the domain to suggest to Internet users a link to the complainant, we are compelled to find that the Domain Names were registered and are being used in bad faith.'

66. Accordingly, SCRRRA respectfully submits that the Panel find that respondent registered and maintained the domain names in bad faith, according to Paragraph 4(a)(iii) of the Policy.

VI. REMEDIES REQUESTED

67. In accordance with Paragraph 4(i) of the Policy, for the reasons described in Section V above, the Complainant requests the Administrative Panel appointed in this administrative proceeding issue a decision that one or both domain names, "metrolinkrider.com" and "metrolinksucks.com" be transferred to the Complainant.

VII. ADMINISTRATIVE PANEL

68. The Complainant elects to have the dispute decided by a single-member Administrative Panel.

VIII. MUTUAL JURISDICTION

69. In accordance with Paragraph 3(b)(xiii) of the Rules, the Complainant will submit, with respect to any challenges that may be made by the Respondent to a decision by the Administrative Panel to transfer or cancel the domain names that are the subject of this Complaint, to the jurisdiction of the courts at the location of the domain name holder's address, as shown for the registration of the domain name(s) in the concerned registrar's Whois database at the time of the submission of the Complaint to the Center.

IX. OTHER LEGAL PROCEEDINGS

70. No other legal proceedings have been commenced or terminated in connection with or relating to the domain names that are the subject of the Complaint.

X. COMMUNICATIONS

71. A copy of this Complaint, together with the cover sheet as prescribed by the Supplemental Rules, has been sent or transmitted to the respondent on March 18, 2008 by postal service, postage pre-paid and return receipt requested.

72. A copy of this Complaint, has been sent or transmitted to the concerned registrar on March 18, 2008 by postal service, postage pre-paid and return receipt requested.
73. This Complaint is submitted to the Center in electronic form (except to the extent not available for annexes), and in four (4) sets together with the original.

XI. PAYMENT

74. As required by the Rules and Supplemental Rules, payment in the amount of USD \$1500 has been made by check.

XII. CERTIFICATION

75. The Complainant agrees that its claims and remedies concerning the registration of the domain names, the dispute, or the dispute's resolution shall be solely against the domain name holder and waives all such claims and remedies against (a) the WIPO Arbitration and Mediation Center and Panelists, except in the case of deliberate wrongdoing, (b) the concerned registrar, (c) the registry administrator, (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.
76. The Complainant certifies that the information contained in this Complaint is to the best of the Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully submitted,

RAYMOND G. FORTNER, JR.
County Counsel

By _____/s/ Truc Luu Moore_____
TRUC M. LUU
Attorney for SCRRA