

ADMINISTRATIVE PANEL DECISION

**DNVB, Inc. d/b/a Thursday Boot Company v. Larry Angell, ZombieCorp LLC
(aka Uncrate LLC)**

Case No. D2023-0532

1. The Parties

Complainant is DNVB, Inc. d/b/a Thursday Boot Company, United States of America (“United States”), represented by Beard & Barks PLLC, United States.

Respondent is Larry Angell, ZombieCorp LLC (aka Uncrate LLC), United States, represented by Taft, Stettinius & Hollister, LLP, United States.

2. The Domain Name and Registrar

The disputed domain name <thursday.com> (the “Domain Name”) is registered with Domain.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 3, 2023. On February 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 6, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on February 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 2, 2023. The Response was filed with the Center on March 2, 2023.

The Center appointed Christopher S. Gibson as the sole panelist in this matter on March 14, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

Complainant was founded in 2014 and is an apparel brand that designs and manufactures footwear products, among other goods. In addition to producing and selling its footwear product line, Complainant also sells bags, briefcases, belts, laces, socks, wallets, boot brushes, hats, t-shirts, jackets, and other leather goods.

Complainant sells footwear exclusively through its website located at the domain name <thursdayboots.com>. Complainant initially registered this domain name on June 9, 2014, and has consistently and exclusively used it to sell footwear since that date. As the single purchasing source of Complainant's goods, Complainant's website is ranked by SimilarWeb.com number 14,348 globally, 3,257 in the United States, and 405 among fashion and apparel, among all websites. Complainant has spent substantial resources to direct Complainant's customer traffic to its website located at the domain name <thursdayboots.com>.

Complainant's initial use of the trademark THURSDAY BOOT CO. was made through a campaign on the crowdsourcing website Kickstarter.com in October 2014. This campaign broke the website's record at the time for footwear products, and launched Complainant's THURSDAY BOOT CO. brand, along with Complainant's domain name <thursdayboots.com>. Following the launch of Complainant's THURSDAY BOOT CO. trademark and domain name, Complainant began developing a portfolio of trademarks for its goods, includes the following trademark registrations, of which the earliest first use in commerce date is October 1, 2014:

Mark	Reg. No.	Reg. Date	Country	Goods ID
THURSDAY	18255634	December 1, 2020	European Union	18: bags, wallets made from leather, 25: hats, jackets, footwear, belts
THURSDAY	UK00918255634	December 1, 2020	United Kingdom	18: bags, wallets made from leather, 25: hats, jackets, footwear, belts
THURSDAY BOOT CO.	18255636	December 1, 2020	European Union	18: bags, wallets made from leather, 25: hats, jackets, footwear, belts
THURSDAY BOOT CO.	UK00918255636	December 1, 2020	United Kingdom	18: bags, wallets made from leather, 25: hats, jackets, footwear, belts
THURSDAY BOOT CO.	6920511	December 13, 2022	United States	25: footwear
THURSDAY BOOT CO. & Design	6886835	November 1, 2022	United States	25: footwear
THURSDAY EVERYDAY	6001893	March 3, 2020	United States	18: leather bags and wallets, 25: footwear; leather belts
THURSDAY EVERYDAY & Design	6001895	March 3, 2020	United States	18: leather bags and wallets, 25: footwear; leather belts
THURSDAY EVERYDAY	1535296	May 12, 2020	European Union	18: leather bags and wallets, 25: footwear; leather belts
THURSDAY EVERYDAY	UK00801535296	October 29, 2020	United Kingdom	18: leather bags and wallets, 25: footwear; leather belts

THURSDAY EVERYDAY	2095004	May 12, 2020	Australia	18: leather bags and wallets, 25: footwear; leather belts
THURSDAY EVERYDAY	2303787	September 27, 2021	Mexico	18: leather bags and wallets
THURSDAY EVERYDAY	2303788	September 27, 2021	Mexico	25: footwear; leather belts
THURSDAY EVERYDAY	1535296	May 12, 2020	WIPO	18: leather bags and wallets, 25: footwear; leather belts

The Domain Name was initially registered on February 21, 1996. Respondent acquired the Domain Name for USD 40,000 on July 6, 2011. The Domain Name currently links to a website titled “Thursday” and states “Enter Store Using Password.”

On Twitter, Respondent owns, controls and operates the handle “@Thursday”. Respondent has used the Twitter account since the day it was created in August 2013 and has 38 followers. Similarly, on Instagram, Respondent owns, controls and operates the handle “@Thursday” and prominently displays the Domain Name. The Instagram account has 180 followers.

Respondent has also made repeated attempts to register trademarks with the United States Patent and Trademark Office (USPTO) for the mark, THURSDAY, in connection with the following goods and services; however, all of these attempts were abandoned:

- THURSDAY.COM – No. 85398829 (Filed August 16, 2011), Class 35: On-line retail store services featuring electronics, clothing, footwear, accessories, grooming products, books, toys, furniture, games, appliances, and automotive products.
- THURSDAY – No. 85404586 (Filed on August 23, 2011), Class 35: Retail store and on-line retail store services featuring electronics, clothing, footwear, accessories, grooming products, books, toys, furniture, games, appliances, and automotive products.
- THURSDAY – No. 86025856 (Filed on August 1, 2013), Class 35: Online retail store services featuring men’s interest products, namely, tools, sports and exercise products, grooming products, and automotive-related products.
- THURSDAY & CO. – No. 86025851 (Filed on August 1, 2013), Class 35: Online retail store services featuring men’s interest products, namely, tools, sports and exercise products, grooming products, and automotive-related products.
- THURSDAY – No. 87409014 (Filed on April 12, 2017), Class 35: Online retail store services featuring curated products in the fields of grooming, personal accessories, housewares, and clothing.

5. Parties’ Contentions

A. Complainant

(i) Identical or confusingly similar

Complainant states it has been successfully in business since 2014, a period in which it has acquired substantial goodwill and reputation. Complainant claims that it has consistently and exclusively used its domain name <thursdayboots.com> since registering it in June 2014 to sell footwear and has developed a distinctive marketplace located at that domain name. Complainant has spent substantial resources to direct its customer traffic to its website at <thursdayboot.com> and has developed substantial goodwill in the domain name as a result. Complainant also uses the THURSDAY trademarks (listed above) to principally sell its footwear goods, which it does throughout the world.

Complainant further contends the Domain Name is identical or confusingly similar to its THURSDAY trademarks. Specifically, the Domain Name incorporates its THURSDAY marks, including an identical portion of Complainant's domain name, which due to its use and promotion over the prior nine years, has become distinctive in the minds of consumers as the source for Complainant's goods.

Complainant states that prior UDRP decisions have held that minor distinctions between marks and domain names do not rise to the level of a material difference. Further, Complainant claims persons viewing the Domain Name without awareness of its contents likely would think that it is in some way connected to Complainant, which is known as "initial interest confusion". Complainant submits Internet users familiar with Complainant are likely to confuse the Domain Name with Complainant's company. Therefore, the Domain Name injures the goodwill of Complainant in the marketplace. Complainant concludes that the Panel should find the Domain Name is confusingly similar to trademarks in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

(ii) Rights or legitimate interests

Complainant contends Respondent has no rights or legitimate interests in respect of the Domain Name. Complainant claims that Respondent will be unable to meet the burden of proof to demonstrate any rights or legitimate interests, as Respondent has never made demonstrable preparations to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. Further, Respondent has not been commonly known by the Domain Name. Finally, Respondent has not made any legitimate noncommercial or fair use of the Domain Name.

Complainant states there are two fundamental reasons why Respondent has no rights or legitimate interests in the Domain Name. Respondent has never used the Domain Name, and even to the extent he can be considered to have made any preparations to use it, he has abandoned every opportunity before the USPTO. Complainant claims Respondent has been squatting on the Domain Name since July 2011, when Respondent originally acquired and registered the Domain Name.

Complainant submits that the report provided by DomainTools, LLC for the Domain Name demonstrates that Respondent has failed to launch a business to sell goods or services, or to make any productive use of the Domain Name, during the entirety of Respondent's ownership. Complainant states that the screenshot history in the report is instructive. Complainant claims the screenshots show that the Domain Name has never been used or developed by Respondent. The screenshot history in the report shows that the Domain Name was being used productively until Respondent purchased it in 2011. While the development is primitive, Complainant asserts that the history makes clear that the Domain Name ceased any functionality or use at the time of Respondent's purchase and subsequent registration.

Complainant claims that Respondent will also be unable to meet the burden of showing use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. Respondent's only actions with respect to the Domain Name feature feeble attempts to secure trademarks, each of which resulted in abandonment. Respondent attempted and gave up on securing registrations for the THURSDAY, THURSDAY.COM, and THURSDAY & CO marks, as follows:

- THURSDAY.COM, No. 85398829, filed on August 16, 2011, by Larry Angell, international class 35. Respondent attached a specimen with a cut-off website allegedly intending to show that the domain name was being used to sell gadgets, accessories, clothes, and home goods. However, on September 2, 2011, a snapshot of the domain name still indicates that the site was "undergoing maintenance". On December 14, 2011, the USPTO rejected the application based on likelihood of confusion with service marks in United States Registration Numbers 2763676 and 2761157. Because Respondent abandoned the application by failing to respond within six months of that date, the USPTO issued a Notice of Abandonment on July 16, 2012.

- THURSDAY, No. 85404586, filed on August 23, 2011, by Larry Angell, international class 35, with first use in commerce as early as August 5, 2011. On December 14, 2011, the USPTO rejected the service mark based on likelihood of confusion with the marks in United States Registration Nos. 2763676 and 2761157. Because Respondent abandoned the application by failing to respond within six months of that date, the USPTO issued a Notice of Abandonment on July 16, 2012.
- THURSDAY, No. 86025856, filed on August 1, 2013, by ZombieCorp, LLC, international class 35. Respondent's filing basis was intent to use, despite using the filing basis use in commerce for the same exact service mark merely two years earlier. However, on September 2, 2011, a snapshot of the Domain Name indicates that the site was "undergoing maintenance". Respondent requested and received five extensions (the maximum allowed) to file a statement of use. Because Respondent failed to file for a statement of use, the USPTO issued a Notice of Abandonment on January 9, 2017.
- THURSDAY & CO, No. 86025851, filed on August 1, 2013, by ZombieCorp, LLC, international class 35. Respondent requested and received five extensions (the maximum allowed) to file a statement of use. Because Respondent failed to file for a statement of use, the USPTO issued a Notice of Abandonment on January 9, 2017.
- THURSDAY, No. 87409014, filed on April 12, 2017, by Lawrence Angell, international class 35. On September 4, 2017, the USPTO issued a final refusal for the service mark. Because Respondent abandoned the application by failing to respond within six months of that date, the USPTO issued a Notice of Abandonment on April 30, 2018.

Complainant states that Respondent had a flurry of trademark application activity in the 2011-2013 window, only to abandon each application. Respondent's last application was in 2017, meaning Respondent has not pursued any of these trademarks for at least six years. Further, Complainant contends Respondent's varied filing bases for the THURSDAY marks indicate Respondent was not telling the truth about use of the mark, as Respondent originally filed for the mark on the basis of "use in commerce", only to switch to an "intent to use" basis in the failed applications.

Respondent made trademark applications under the business name ZombieCorp, LLC. Respondent originally filed articles of organization for this business in Ohio on January 8, 2008. Respondent filed for a registered agent change on February 6, 2013. Respondent filed for a subsequent agent appointment on November 13, 2013. Respondent then filed amended articles of organization on June 9, 2015 to change the name from ZombieCorp, LLC to Uncrate, LLC. Complainant claims that whether operating as ZombieCorp, LLC or Uncrate, LLC, Respondent has always been the party applying for the trademarks. Based on this evidence, Complainant claims Respondent has made no use of the Domain Name, nor made demonstrable preparations to use the Domain Name. Respondent has not sold any goods, abandoned each trademark application attempted, and ceased even attempting to apply for trademarks. At a minimum, Respondent has not attempted to make even nominative use of the Domain Name for at least six years.

Complainant also contends Respondent must provide proof of being commonly known by the Domain Name. However, there is no evidence that Respondent is commonly known by the Domain Name. Respondent has no evidence of selling any goods or services in connection with the Domain Name or through Uncrate, LLC.

Finally, Complainant states no evidence exists to suggest that Respondent is making a legitimate noncommercial or fair use of the Domain Name. Complainant also argues that because of the existence and development of its THURSDAY marks, if Respondent does start to develop the Domain Name and make any *bona fide* offerings of goods or services, Respondent would likely immediately be infringing on Complainant's THURSDAY marks. Thus, the Panel should find that Respondent has no rights or legitimate interests in respect of the Domain Name.

(iii) Registered and used in bad faith

Complainant claims that the Domain Name was registered and is being used in bad faith. Complainant contends that by using the Domain Name, Respondent has registered or acquired it primarily for the purpose of selling, renting, or otherwise transferring it to Complainant who is the owner of the trademark or to a competitor of Complainant for valuable consideration in excess of documented out-of-pocket costs directly related to the Domain Name.

Complainant explains that the facts in this case present the relatively unique situation in which the Domain Name was registered before Complainant acquired trademark rights in its THURSDAY marks. However, Complainant argues that prior panels have held that a party can register or acquire a domain name in good faith, yet if the party uses the domain name in the future so as to call into question the party's compliance with the party's representations and warranties, this may be deemed to be retroactive bad faith registration. This is argued to be the situation at present. Respondent's passive use of the Domain Name must be deemed retroactive bad faith registration.

Complainant cites *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), finding that under certain circumstances "passive use" of a domain name can constitute bad faith use, and argues that a registrant has a duty that includes a representation and warranty that the registration will not now or in the future use the domain name in violation of any laws or regulations. Complainant states factors that help establish passive use include the complainant's trademark becoming widely known, the respondent furnishing no evidence of actual or intended good faith use of the domain name, the respondent taking active steps to conceal its true identity, and an impossibility to conceive of a use of the domain name at issue that would be legitimate.

In the present case, Complainant states that its THURSDAY marks have become widely known across the world. Complainant can demonstrate this through its business success over the last seven years and its successful registration of the naked THURSDAY mark in both the EU and UK. Respondent cannot furnish evidence of any actual or intended good faith use of the Domain Name. The screenshot history for the Domain Name, as presented in the DomainTools report, demonstrates that the website in connection with the Domain Name has been under construction and not in actual use since it was transferred to Respondent. The website hosted at the Domain Name remains in virtually the same state as it was in 2011, unused. At this point, it is impossible to conceive of Respondent using the Domain Name in a legitimate way.

Complainant urges the Panel to consider the unique facts that are present, as well as the holding in *Octogen Pharmacal Company, Inc v. Domains By Proxy, Inc. / Rich Sanders and Octogen e-Solutions*, WIPO Case No. [D2009-0786](#) that bad faith registration can be deemed to have occurred even without regard to the state of mind of the registrant at the time of registration, if the domain name is subsequently used to trade on the goodwill of the mark holder, just as bad faith use can occur without regard to the fact that the domain name at issue has been passively used. Complainant states that one factor to analyze is a situation where, after the respondent becomes aware of a complainant, the respondent then changes the manner in which the domain name is used to take advantage of the complainant's reputation in its trademarks. Complainant claims this is what Respondent has done. Complainant claims Respondent became aware of Complainant and its THURSDAY marks over the course of the last eight years, and that Respondent keeping the Domain Name in its current state is an abuse of Complainant's valuable goodwill in its THURSDAY marks. Complainant states Respondent has changed use of the Domain Name by maintaining a logo and a false password-protection "store" that has created a likelihood of confusion with Complainant. Respondent, through his current maintenance of the Domain Name in this fashion, has managed to simultaneously create confusion with Complainant while also passively holding and failing to develop the Domain Name.

Complainant submits that at this point, Respondent maintains the Domain Name for the primary reason of selling it to Complainant, the owner of the THURSDAY marks, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the Domain Name. Complainant reached out to Respondent and made a good faith offer to purchase the Domain Name for USD 75,000, to which Respondent initially asked for payment of USD 5.0 million, and ultimately settled on a demand of USD 1.5

million, along with the sale and transfer of various social media platform assets in violation of platform terms and conditions. Respondent claimed that he was “far along in developing his brand” with the Domain Name, a statement that is disproven by the entirety of the last decade of Respondent’s ownership of the Domain Name.

B. Respondent

Respondent argues this is a classic case of reverse domain name hijacking (“RDNH”). Complainant filed the Complaint knowing that Respondent had registered the Domain Name in 2011, three years prior to Complainant acquiring purported rights in any THURSDAY related trademarks. Respondent asserts Complainant also knows that it does not have, and cannot claim, exclusive rights in the word “Thursday”, one of the most common words in the English language, and for this and other reasons below, has no rights in the Domain Name.

(i) Identical or confusingly similar

Respondent contends that Complainant fails to meet its burden to demonstrate the Domain Name is identical or confusingly similar to a trademark in which Complainant has rights. In particular, Complainant fails to meet its burden that it has an exclusive right in the word “Thursday”. Respondent submits that there are at least 114 other third-party owned United States trademarks containing the word element THURSDAY, demonstrating that numerous marks containing this word element are co-existing, and Complainant’s rights to its marks have not prevented the registration of other marks containing the element. These third-party uses of the live marks are prominent and prolific, illustrating a crowded field of THURSDAY-related marks. These third-party uses also demonstrate Complainant’s inability to claim exclusive rights to a trademark containing THURSDAY and marks containing THURSDAY with an additional word, notwithstanding Complainant’s applications and registrations, or its use.

Despite Complainant’s assertion that the Domain Name contains the word element THURSDAY, Complainant has failed to meet its burden that it owns the right to this singular term, which a common word used in everyday parlance that is also found in numerous co-existing, registered marks owned by numerous parties. Respondent submits this factor favors dismissal of the Complaint.

(ii) Rights or legitimate interests

Respondent asserts that Complainant has failed to meet its burden to demonstrate Respondent’s lack of rights or legitimate interests with respect to the Domain Name.

Respondent claims that when purchasing the Domain Name in 2011, he intended immediate use of the Domain Name. Respondent states his intent to use the Domain Name is first evidenced by filing use-based United States federal trademark applications for THURSDAY and THURSDAY.COM in August 2011. Respondent even submitted a specimen showing a draft mockup of the website associated with the Domain Name in these applications, further demonstrating this intent. Respondent has filed other trademark applications for THURSDAY trademarks, further demonstrating an intent-to-use the Domain Name. On August 1, 2013, Respondent filed an intent-to-use United States federal trademark application for THURSDAY & CO and THURSDAY. And on April 12, 2017, Respondent filed an intent-to-use United States federal trademark application for THURSDAY. Although Respondent did not pursue the applications to registration, Respondent claims the filings reflect a continuing intent to use the Domain Name.

Respondent argues domain name ownership and use for the purposes of the Policy can exist outside the scope of and does not have to reflect trademark ownership. A domain name can be used without acquiring trademark rights, as Respondent has done in this case through its use of the Domain Name as a private website, for email, and as referenced in its social media accounts. Accordingly, Complainant’s assertion that Respondent has “abandoned every opportunity before the USPTO” to make preparations to use the Domain Name is without merit, as such use is not determinative of use for the purposes of the Policy. Complainant’s

attempt to dispute “use” by disputing Respondent’s ownership of THURSDAY as a trademark is outside the scope of the Policy, and does not refute Respondent’s actual use of the Domain Name or its intended use.

Respondent states archived website evidence also demonstrates Respondent’s intent to use the Domain Name, in addition to its trademark applications. In 2011 and throughout 2012, the Domain Name featured a website displaying “Thursday.com coming soon,” indicating that Respondent was constructing his website. Respondent also states he has continuously and actively used the Domain Name in connection with a password-protected website since 2013. Respondent’s current use of the website associated with the Domain Name dates back to at least as early as 2013. Respondent has continuously maintained and still maintains a website, which is password protected, allowing users to enter with appropriate credentials. The website has changed in form and substance throughout this use. Furthermore, Respondent owns a business called “Thursday, LLC”. And Respondent uses the Domain Name for email, and has done so for several years, demonstrating rights and legitimate interests.

Respondent submits that his use of the Domain Name and the website is further evidenced by its Twitter and Instagram social media accounts, its prominent use of the Domain Name with both accounts, and use of handles for “@Thursday”. On Twitter, Respondent owns, controls and operates the handle “@Thursday”, a component of the Domain Name, and Respondent has continuously used its Twitter account since the day it was created in August 2013, and has 38 followers. Similarly, on Instagram, Respondent owns, controls and operates the handle “@Thursday” and prominently displays the Domain Name and has 180 followers.

Respondent contends that UDRP panels have held that use of a domain name with a website requiring log-in information or even use limited to email or FTP services demonstrate rights and legitimate interests in a domain name. Respondent has used the Domain Name in connection with the password-protected website since at least as early as 2013. Respondent also uses the Domain Name for email. Both of these uses qualify as legitimate for the purposes of Paragraph 4(c) of the Policy.

Respondent argues that Complainant ignores both Respondent’s current and continuous use of the Domain Name since at least as early as 2013 and its intent to use the Domain Name since 2011. Unable to refute Respondent’s intended and actual use of the Domain Name, Complainant resorts to asserting that Respondent “has failed to launch a business to sell goods or services, or make any productive use of this domain name during the entire (sic) of his ownership”. Respondent argues this argument misses the point. Complainant has been well-aware of Respondent’s legitimate use for years and, accordingly, acquiesced to such use. Complainant had knowledge of Respondent nearly two years prior to filing the Complaint through Complainant’s broker’s communications with Respondent while attempting to purchase the Domain Name, as well as through Complainant’s communication with Respondent about advertising on Respondent’s “www.uncrate.com” site at the same time.

Respondent contends Complainant erroneously asserts that Respondent must provide proof of being commonly known by the Domain Name. However, this assertion is without merit. Respondent may use any of the defenses under in paragraph 4(c) of the Policy, since they are listed “in particular but without limitation,” and each separated by the word “or”, not “and”. As described above, Respondent is using the Domain Name and, before that, had intended to use it in good faith, in line with Paragraph 4(c)(i).

Respondent claims any purported infringement of Complainant’s THURSDAY marks is irrelevant and outside the scope of the UDRP. Complainant’s assertion that any future “legitimate use of the Domain Name” will infringe the THURSDAY mark is without merit as a result. And even if infringement were relevant to this analysis on intended or actual use and Respondent’s legitimate rights and interests in the Domain Name, Complainant has offered no evidence of consumers’ likelihood of confusion between any of its marks and Respondent’s use of the Domain Name, let alone Respondent’s intent or actual use in connection with similar goods and services, as is required to demonstrate infringement. Indeed, the crowded field of THURSDAY marks refutes this unsupported assumption by Complainant.

Complainant’s knowledge of Respondent’s ownership of the Domain Name is further evidenced in Complainant’s properly naming Respondent in the Complaint, despite Respondent’s WhoIs information

being protected by privacy. Complainant's ability to immediately name Respondent demonstrates that it was aware of Respondent before filing the Complaint. Communications between Respondent, Complainant, and a broker corroborate Complainant's knowledge of Respondent's ownership of the Domain Name, as well as Respondent's intent to use, and current use, of the Domain Name. Respondent began receiving numerous offers from brokers to sell the Domain Name in 2020 and 2021 and Complainant initiated contact with Respondent about purchasing the Domain Name, working through a broker but maintaining Complainant's secrecy from Respondent. At least as early as April 2021, Complainant was aware that its broker was corresponding with Respondent, whom Complainant had known for years, through Respondent's <uncrate.com> email address.

Thus, Respondent claims Complainant knew about Respondent's ownership, intent and use of the Domain Name at least as early as 2020 and 2021, years prior to filing this Complaint. In contrast, Respondent was unaware that Complainant was attempting to purchase the Domain Name and was not informed by the broker representing Complainant. However, Respondent made known its use of the Domain Name, the branding of Respondent's website, and ownership of the social media handles to Complainant's broker. In fact, Complainant has long been familiar with Respondent, the owner of Uncrate, LLC, illustrating how Complainant must have known about Respondent's intent and actual use of the Domain Name while Complainant's broker negotiated the purchase of the Domain Name between Complainant and Respondent. As early as 2015, Complainant contacted Respondent regarding advertising Complainant's business on the Uncrate LLC's website at "www.uncrate.com". In 2020, Complainant advertised its goods on "www.uncrate.com" and, indeed, Complainant even corresponded further with Respondent about the possibility of additional advertising as late as November 2021, after Complainant's correspondence with Respondent about the potential sale of the Domain Name. Complainant knew about Respondent and its use of the Domain Name well before the filing of the Complaint.

On February 10, 2023, just one week after Complainant filed the Complaint, Complainant filed an intent-to-use based United States trademark application for THURSDAY GOODS. The goods and services associated with the THURSDAY GOODS application are nearly identical to the goods and services associated with Respondent's applications, if not an exact combination of each. The new application directly targets goods and services sold by Uncrate LLC, which Complainant has long known is owned by Respondent.

(iii) Registered and used in bad faith

Respondent asserts it registered and used the Domain Name in good faith, and that Complainant failed to meet its burden of proving Respondent registered and uses the Domain Name in bad faith. Respondent states Complainant provides no evidence to support a finding of bad faith registration or use of the Domain Name. Respondent registered the Domain Name in good faith, years prior to Complainant acquiring rights in Complainant's trademarks, and uses the Domain Name in good faith and for legitimate purposes.

Respondent registered the Domain Name in good faith and not for the purpose of selling, renting, or otherwise transferring the Domain Name to Complainant in bad faith. Respondent contends he cannot have registered the Domain Name in bad faith unless he was aware of, and targeted, Complainant's rights in the mark at the date of such registration. However, Complainant did not acquire its purported rights to any of Complainant's marks, or any claimed rights in marks containing the word element THURSDAY, until October 1, 2014, at the earliest, three years after the Domain Name was registered. Thus, it is impossible for Respondent to have known or contemplated Complainant's rights at the time it registered the Domain Name. Complainant cannot establish bad faith for this first reason.

Respondent also states he has not engaged in a pattern of behavior other than conducting legitimate business, again demonstrating that registration of the Domain Name was in good faith. Respondent has never been named in a UDRP proceeding prior to this one and has not been a party to a lawsuit involving negative business dealings.

Respondent submits Complainant's main argument concerns Respondent's alleged "passive use" of the Domain Name. This argument fails for several reasons. First, Respondent is not passively using the

Domain Name. As discussed above, Respondent is actively using the Domain Name for a legitimate purpose and has been since at least as early as 2013, over a year prior to Complainant's first acquired rights in Complainant's marks. Further, Respondent showed an intent to use the Domain Name since as early as 2011. Respondent asserts that while Complainant cites to the *Telstra* case as its main authority, that case involved a unique set of facts not present in this case. Respondent argues none of the *Telstra* factors favor Complainant here. First, while Complainant asserts it is well-known in the United States, it has not offered any evidence that it is "widely known by" by the THURSDAY mark, a common term in the English language. Second, Respondent has offered evidence of actual and intended use of the Domain Name prior to when Complainant allegedly acquired rights in Complainant's marks. Third, Respondent uses a privacy service for its Whois contact information but has not actively concealed itself otherwise or in correspondence with Complainant's broker, as evidenced by Complainant's knowledge of Respondent's ownership of the Domain Name. Fourth, Complainant has offered no evidence to suggest Respondent has registered false information with the Registrar. And fifth, because "THURSDAY" is a common term, numerous conceivable legitimate uses for the Domain Name exist outside of Complainant's alleged rights in connection with its goods and services, with Respondent's actual and legitimate uses being among them. Respondent concludes Complainant cannot satisfy any of the factors discussed in *Telstra* and its argument for passive holding or passive use should be rejected.

Respondent also states that Complainant has failed to provide evidence demonstrating that Respondent and Complainant are competitors or that Respondent registered the Domain Name for the primary purpose of disrupting Complainant's business. Respondent does not sell leather products, shoes, or boots in connection with the Domain Name. Further, the Domain Name was registered by Respondent three years before Complainant began operating a business and acquired rights in Complainant's marks.

Even further, Respondent argues that Complainant's speculation that Respondent's use of the Domain Name would result in the infringement of Complainant's marks is without merit. Respondent can use the Domain Name for any number of things that do not infringe Complainant's purported trademark rights, as Respondent's current use of the Domain Name demonstrates. Finally, to the extent Complainant speculates that by maintaining a logo and a "false password protection 'store'" Respondent has created confusion with Complainant's marks, Complainant both fails to provide any evidence of this confusion and also fails to provide evidence of a "false password protection store".

(iv) Reverse domain name hijacking

Finally, Respondent asserts that Complainant's bad faith filing of the Complaint is an abuse of the UDRP process and a classic case of RDNH. For this independent reason, Respondent contends the Complaint should be dismissed.

Respondent contends that Complainant filed the Complaint for the purpose of harassing Respondent and attempted RDNH. UDRP panels have found RDNH where the registration date of the domain name at issue precedes the date of complainant's trademark registration. Complainant, represented by counsel, knew Respondent purchased the Domain Name in 2011, approximately three years prior to Complainant's purported rights to Complainant's marks. Respondent contends that prior panels have found RDNH in cases with a similar fact pattern, where a complainant, represented by counsel, files a complaint notwithstanding the fact that the respondent obtained its domain three years prior to the complainant's alleged trademark ownership.

Second, Respondent asserts that panels have found bad faith filing when a complainant attempts to purchase a domain name without informing the domain owner and then later asserts a UDRP action against the domain owner, after first delaying to assert the registrant's bad faith. Here, Complainant admits that it initially contacted Respondent regarding the purchase of the Domain Name through a broker. At no point during Complainant's attempt to acquire the Domain Name from Respondent did it suggest that Respondent registered or was using the Domain Name in bad faith. Respondent asserts that Complainant was well aware that it was negotiating with Respondent given its past business with Respondent. In contrast to Complainant's bad faith, Respondent could not have targeted Complainant for the potential sale of the

Domain Name as Respondent registered the Domain Name three years prior to Complainant's purported trademark rights. Nor was Respondent aware that Complainant was the potential purchaser of the Domain Name in 2021, further illustrating this point.

Finally, Respondent states that Complainant filed a United States trademark application for THURSDAY GOODS, in connection with goods and services nearly identical to those in Respondent's applications, within a week of filing the Complaint and on the same day Respondent received a copy of the Complaint. Complainant filed an additional five United States trademark applications after the filing of the Complaint, with each filed in connection with goods and services identical to those sold by Uncrate LLC, a separate business of Respondent. Respondent contends the timing of these filings demonstrates Complainant's bad faith attempt to block Respondent from refiling Respondent's applications, to impact future use of the Domain Name in connection with Respondent's business, and to advance Complainant's speculative and erroneous argument that any future use of the Domain Name by Respondent will infringe Complainant's marks.

Respondent contends that individually, each of these facts demonstrate Complainant's bad faith filing of the Complaint. Collectively, there can be no dispute as to Complainant's intent to harass Respondent and force Respondent to incur needless costs to defend its rights. This is an abuse of the UDRP process and a classic case of RDNH.

6. Discussion and Findings

In order to succeed on its Complaint, Complainant must demonstrate that the three elements set forth in paragraph 4(a) of the Policy have been satisfied. These elements are that:

- (i) the Domain Name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) Respondent has registered and is using the Domain Name in bad faith.

A. Identical or Confusingly Similar

Complainant has demonstrated that it has registered rights in its THURSDAY, THURSDAY BOOT CO., and THURSDAY EVERYDAY trademarks. As stated in the WIPO Overview of Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1, "[w]here the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case". The fact that third-parties also own trademarks with the word element "Thursday" does not prevent this finding.

[WIPO Overview 3.0](#), section 1.7, further provides:

"[i]t is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name."

Here, the Panel finds that the Domain Name is identical to Complainant's THURSDAY trademark and confusingly similar to Complainant's THURSDAY BOOT CO. and THURSDAY EVERYDAY marks.

Accordingly, the Panel finds that the Domain Name is identical or confusingly similar to a trademark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Regarding the second element of the Policy, section 2.1 of the [WIPO Overview 3.0](#) states, “where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. The Policy provides that to demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP paragraph 4(c) include the following:

- (i) before any notice of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue”.

The crux of Complainant’s position is that Respondent has never used the Domain Name, and to the extent he can be considered to have made any preparations to use it through trademark applications, he has abandoned every opportunity to register a trademark corresponding to the Domain Name before the USPTO, with Respondent’s last application being in 2017, meaning Respondent has not pursued any trademark for at least six years. Complainant relies on screenshot history for the Domain Name, as presented in the DomainTools report, to show the website in connection with the Domain Name has been first under construction and then behind a password protected site since it was transferred to Respondent. Complainant claims Respondent has been squatting on the Domain Name since July 2011, when Respondent originally registered it. Complainant also argues that because of the existence and development of its THURSDAY marks, if Respondent does start to develop the Domain Name and make any *bona fide* offerings of goods or services, Respondent would likely be infringing on Complainant’s THURSDAY marks.

To these points, the Panel finds Respondent has made a number of relevant responses. First, Respondent provided evidence he has filed multiple United States federal trademark applications for THURSDAY and THURSDAY.COM, corresponding to the Domain Name, even before Complainant existed, reflecting demonstrable preparations and at least an initial intent to use the Domain Name for legitimate purposes prior to the existence of Complainant. The Panel recognizes, however, that Respondent abandoned each of his trademark applications. In any event, as stated in section 2.11 of the [WIPO Overview 3.0](#), “[p]anel[s] tend to assess claimed respondent rights or legitimate interests in the present, *i.e.*, with a view to the circumstances prevailing at the time of the filing of the complaint”. Thus, Respondent’s trademark applications, while providing indications that Respondent may previously have intended to make *bona fide* use of the Domain Name for commercial purposes (and independent of any reference to Complainant), do not address sufficiently the circumstances prevailing at the time Complainant filed the Complaint.

In addition, however, Respondent, makes the obvious point that a domain name can be used for legitimate purposes without the registrant having acquired corresponding trademark rights. Indeed, the list of non-exclusive defenses under paragraph 4(c) of the Policy to demonstrate rights or legitimate interests in a domain name does not mention trademark rights as a prerequisite. Instead, paragraph 4(c)(ii), for example, provides that being commonly known by the domain name – which is not the case for Respondent – can serve as a basis for a right or legitimate interest “even if the respondent has acquired no trademark or service mark rights”.

More importantly, Respondent has provided at least some evidence that the Domain Name has been used for a private website and for email, and is referenced in Respondent's related social media accounts. Respondent has provided evidence that it has used the Domain Name in connection with the password-protected website since at least as early as July 2013, before Complainant existed. The website was initially titled "Thursday & Co" and then beginning in 2016-2017 was titled simply "Thursday". The site has always been password protected and states "Enter Store Using Password". This remains the current state of the website to which the Domain Name resolves. See e.g., *Alfaleads Limited v. Perfect Privacy, LLC / Frank Kube*, WIPO Case No. 2019-3089 ("requesting a User Log-in (by inserting an email address and a password) for website access is a standardized technical means to restrict on the Internet certain website areas to specific Internet users and is not in contrast to a finding that the disputed domain name is being used within the meaning of paragraph 4(c) of the UDRP."); *Thrive Networks, Inc. v. Thrive Ventures, Inc.*, WIPO Case No. [D2003-0534](#) ("Although it may not be easy to discern whether a domain name is being used for email, FTP services, or simply as a host, such uses are legitimate."). Complainant indicated it initially registered its <thursdayboots.com> domain name on June 9, 2014 and made initial use of its THURSDAY BOOT CO. trademark through a Kickstarter.com campaign in October 2014. Thus, Respondent's password protected site was in place before, and not in response to, Complainant and its <thursdayboots.com> domain name and THURSDAY BOOT CO. mark. Respondent also owns a business called "Thursday, LLC" dating from 2015. And Respondent provided evidence of what appears to be a sale receipt from the email address "shop@thursday.com" for the sale of miscellaneous goods; however, the sale receipt dates from 2018 and appears to be issued to someone associated with Respondent's related entity at "www.uncrate.com". This is slim evidence of activity for Respondent's password protected store that is apparently at the website to which the Domain Name resolves.

Finally, Respondent also points out that Complainant has offered no evidence of consumers' likelihood of confusion between any of its marks and Respondent's use of the Domain Name, nor provided evidence of Respondent's intent to use or actual use of the Domain Name in a manner that targets Complainant or its goods and services. While these factors are relevant to the third element of the Policy, they do not directly provide a basis for establishing rights or legitimate interests in the Domain Name.

In view of all of the evidence in this case, the Panel finds that Respondent has provided evidence of intent to use the Domain Name for legitimate purposes as early as 2011, and also some possible legitimate use of the Domain Name through a purported password-protected site starting in 2013, before Complainant existed, and with activity as recently as 2018, and additional claims that Respondent uses the Domain Name for email. Importantly, there is no evidence in the record that Respondent has ever targeted Complainant in any use of the Domain Name, or that Respondent changed the use of the Domain Name in response to Complainant or its marks.

In this regard and above all, considering the Panel's finding under the third element, the Panel determines it is not necessary to make a finding under the second element of the Policy.

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that Complainant demonstrate that Respondent registered and is using the Domain Name in bad faith. Here, the Panel finds that Complainant has failed to establish both bad faith registration and bad faith use.

First, as to whether the Domain Name was registered in bad faith, the record is undisputed that Respondent acquired the Domain Name identical to the common word "Thursday" and then sought corresponding trademarks before the USPTO approximately three years before Complainant registered its <thursdayboots.com> domain name and started using a trademark containing the THURSDAY element. Thus, the record is also undisputed that (i) Respondent did not acquire and subsequently register the Domain Name for the purpose of selling, renting, or otherwise transferring it to Complainant or to a competitor of Complainant; and (ii) Respondent did not register the Domain Name to disrupt Complainant or to prevent Complainant as the owner of a trademark from reflecting that mark in a corresponding domain name. Instead, when Respondent purchased the Domain Name for USD 40,000 and then subsequently

registered it, Complainant did not exist. See *Cetin Family Tekstil Gida Pazarlama Sanayi Ve Ticaret Limited Sirketi v. Tom Lamboo, Intron Sport*, WIPO Case No. [D2022-3960](#) (“The Respondent cannot have registered the disputed domain name in bad faith unless he was aware of, and targeted, the Complainant’s rights in the mark [...] (if any existed) at the date of such registration, and the Complainant cannot therefore establish that the disputed domain name was registered in bad faith.”); see also [WIPO Overview 3.0](#), section 3.8.1 (“where a respondent registers a domain name before the complainant’s trademark rights accrue, panels will not normally find bad faith on the part of the respondent.”). Thus, there is no evidence that Respondent targeted Complainant when acquiring the Domain Name and consequently no evidence of registration in bad faith.

To the extent Complainant argues that a party can register or acquire a domain name in good faith, yet if the party uses the domain name in the future so as to call into question the party’s compliance with the party’s representations and warranties, this may be deemed to be retroactive bad faith registration, this line of reasoning is clearly disfavored under UDRP precedent. As stated in [WIPO Overview 3.0](#), section 3.2.1, “a number of cases in 2009 and 2010...explored application of registrant representations in UDRP paragraph 2 in finding so-called “retroactive” bad faith registration; while this particular concept has not been followed in subsequent cases, UDRP paragraph 2 may be relevant on its own terms”. The Panel agrees with the consensus approach. Moreover, Complainant has in any event provided no evidence to indicate Respondent failed to comply with the registrant representations in UDRP paragraph 2.

Complainant nonetheless contends that Respondent now maintains the Domain Name for the primary reason of selling it to Complainant for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the Domain Name. In this connection, Complainant claims that Respondent has been squatting on the Domain Name since July 2011, and that this form of “passive use” is condemned under the analysis in the *Telstra* case. However, the record provides no evidence that Respondent has ever targeted Complainant in any way during the period Respondent has owned the Domain Name and, on the other hand, provides evidence that (i) Respondent had established his password protected website before Complainant existed, and (ii) Complainant was the party who contacted Respondent through a broker (while keeping Complainant’s identity secret) seeking to purchase the Domain Name, only to be rebuffed by Respondent, who indicated to the broker that Respondent required a price that was apparently higher than Complainant was willing to pay. Aside from this broker-based interaction, there is no evidence that Respondent ever sought to sell the Domain Name to Complainant.

Moreover, although Complainant cites the *Telstra* case, it fails to meet the criteria set forth in that case to demonstrate that any “passive holding” or “passive use” of the Domain Name has been in bad faith. In *Telstra*, the panel used the following five criteria to establish that the passive use by the respondent there constituted bad faith use:

1. The complainant’s trademark has a strong reputation and is widely known, as evidenced by its substantial use in Australia and in other countries. Moreover, the panel in *Telstra* found that “the word <TELSTRA> appears to be an invented word”. Here, by comparison, the Domain Name is identical to the common English language word, “Thursday”, and there is insufficient evidence in the record to establish that Complainant’s THURSDAY marks (registered in the EU and UK), as compared to its THURSDAY BOOT CO. marks, are “widely known”. See also [WIPO Overview 3.0](#), section 3.3 (considering “the degree of distinctiveness or reputation of the complainant’s mark”).
2. The respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name. By comparison, here, Respondent has provided evidence of efforts, over time, to use the Domain Name for at least an intended good faith use, plus additional minimal evidence of actual good faith use. Although the Panel declined to determine whether or not Respondent had rights or legitimate interests in the Domain Name, the facts in this case are sufficient to distinguish it from those in the *Telstra* case.
3. The respondent has taken active steps to conceal its true identity, by operating under a name that is not a registered business name. Here, Respondent has not used a fake name and instead used a privacy service;

however, Respondent did not attempt to conceal his identity when contacted by a broker acting on behalf of Complainant (whose identity was concealed, at that time, from Respondent).

4. The respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement. In this case, there is no evidence that Respondent supplied false contact details in breach of the registration agreement for the Domain Name.

5. Considering all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the complainant's rights under trademark law. Unlike in *Telstra*, where the complainant's trademark was comprised of "an invented word," the Domain Name is identical to the common word "Thursday," and it is not implausible to conceive of any actual or contemplated good faith use of the Domain Name by Respondent (or other third-parties). Indeed, Complainant has provided no evidence that Respondent's use (or limited or alleged non-use) of the Domain Name has in any manner created concerns of infringement, passing off or trading on the goodwill of Complainant, or more pertinently, bad faith on the part of Respondent. Moreover, and importantly, unlike in the *Telstra* case, Complainant's trademarks here did not predate the registration of the Domain Name.

Complainant has urged that once Respondent became aware of Complainant and its THURSDAY marks, Respondent has changed his use of the Domain Name "by maintaining a logo and a false password-protection 'store'". However, the evidence in the record establishes that Respondent did not change his use of the Domain Name and instead had created his password protected website before Complainant existed. As to the hypothetical posed by Complainant that if Respondent starts to develop the Domain Name and make any *bona fide* offerings of goods or services Respondent would likely infringe on Complainant's THURSDAY marks, Complainant has failed to provide any evidence demonstrating that Respondent and Complainant are competitors, and it is plausible that Respondent can use the Domain Name in a number of different ways that do not infringe on Complainant's trademark rights.

Finally, in relation to Complainant's squatting argument, the Panel is persuaded by the analysis in *Salomon Brothers Group Inc. v. Domain Administration, CitiBank, N.A.*, WIPO Case No. [D2022-3406](#), where the panel reasoned:

"Under Complainant's line of reasoning for bad faith passive holding, even where no trademark exists at the time of registration, a domain name registrant could be found to have registered a domain name for a bad faith blocking purpose if the registrant merely holds the domain name, with no intent to use it, and a trademark corresponding to that domain name is subsequently registered by a third-party many years later. Complainant is not the only company choosing a new brand name – whether corresponding to a fanciful term, word or acronym – only to find that that brand has already been registered as a domain name many years previous by a third-party. In such cases, there is no bad faith registration of the domain name, nor does the long holding of the domain name constitute bad faith blocking or squatting. See e.g., [WIPO Overview 3.0](#), section 3.1.1. Unless the registration of the domain name targeted a trademark owner (and/or its trademark or about-to-be launched nascent trademark), the domain name registrant does not register in bad faith."

Accordingly, on the evidence presented by Complainant in this case, the Panel is unable to find bad faith registration and use of the Domain Name under the Policy, and Complainant has therefore failed to satisfy the third element of the Policy.

D. Reverse Domain Name Hijacking

Respondent contends that Complainant's actions in this case constitute RDNH, as Complainant, represented by counsel, knew or should have known that it would be unable to prove that Respondent had registered and used the Domain Name in bad faith. The primary factor in support of this finding is that the Domain Name was registered approximately three years before Complainant's trademark rights came into existence, and Complainant is using this case in a bad faith attempt to coerce Respondent into transferring the Domain

Name after failing to obtain it by other means (*i.e.*, a failed attempt to purchase the Domain Name through a broker while maintaining the secrecy of Complainant's identity).

Paragraph 15(e) of the Rules provides that, 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".

Here, the Panel determines that a finding of RDNH against Complainant is proper. Complainant, represented by counsel, brought its Complaint with clear knowledge that Respondent had registered the Domain Name long before Complainant and its trademarks existed. See *Proto Software, Inc. v. Vertical Axis, Inc/PROTO.COM*, WIPO Case No. [D2006-0905](#) ("The Panel considers that the Complainant is represented by Counsel who even on a rudimentary examination of the Policy and its' (sic) application in this area should have appreciated that the Complaint could not succeed where the Respondent's domain name had been registered three years prior to filing a trademark application or actual use of the mark."). Moreover, and in any event, Complainant did not come close to meeting the *Telstra* factors for bad faith passive holding, or providing *any* evidence of bad faith use of the Domain Name. Instead, Respondent has provided evidence that Complainant was aware of Respondent and its Uncrate.com business, and to support the logical inference that this case is brought in harassment against Respondent after Complainant failed to purchase the Domain Name while using a broker, and without having alleged any bad faith registration or use in any prior communications. See *e.g.*, *Cetin Family Tekstil Gida Pazarlama Sanayi Ve Ticaret Limited Sirketi v. Tom Lamboo, Intron Sport*, WIPO Case No. [D2022-3960](#) ("The exchange of emails exhibited by the Complainant indicates that the Complainant made a commercial approach to the Respondent to buy the disputed domain name without any suggestion that the disputed domain name had been registered or used in bad faith. The Complainant volunteers that it has made numerous unsuccessful approaches to the Respondent and then launched the present proceeding, having failed in its legitimate efforts to purchase the disputed domain name from the Respondent.").

In conclusion, the Panel finds RDNH against Complainant.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Christopher S. Gibson/

Christopher S. Gibson

Sole Panelist

Date: May 3, 2023