

ADMINISTRATIVE PANEL DECISION

The City of New York, NYC & Company, Inc. v. New York Show Tickets Inc.
Case No. D2020-3111

1. The Parties

Complainants are The City of New York and NYC & Company, Inc., United States of America (“United States”), represented by Office of the Corporation Counsel of the City of New York, United States.

Respondent is New York Show Tickets Inc., internally-represented.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 19, 2020. On November 20, 2020, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 20, 2020, 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 November 24, 2020. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2020. On December 4, 2020, the Chief Executive Officer (“CEO”) of Respondent contacted the Center regarding an extension to the Response filing period. On December 7, 2020, pursuant to paragraph 5(b) of the Rules, the Response due date was extended until December 18, 2020. The Response was filed with the Center on December 17, 2020.

On December 20, 2020, Complainants submitted an unsolicited supplemental filing to the Center. On December 21, 2020, Respondent submitted a supplemental filing in retort to Complainants' supplemental filing.

The Center appointed Robert A. Badgley as the sole panelist in this matter on December 28, 2020. 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.

On January 18, 2021, the Panel issued Procedural Order No. 1, which stated as follows:

"In light of the evidence made available in the Case File, the Panel hereby orders that the Parties provide the following information and documentation on or before January 31, 2021:

A) Complainant, NYC & Company, Inc.

- a. Provide evidence of Complainant NYC & Company's actual use in commerce of the mark NYCVB from January 1999 through 2018 – apart from the redirection of the 'nycvb'-formative domain names mentioned in the Complaint.
- b. Provide proof to support the assertion at page 13 of the Complaint that there is 'a well-ingrained public association of the acronym NYCVB with [Complainant] NYC & Company based on the decades of prior use of the name and acronym by NYC & Company'.
- c. State when Complainants were first aware of Respondent's ownership of the [Domain Name] and of Respondent's use of the [Domain Name].
- d. Respond to the Respondent's allegation (page 6 of the Response) that Complainants were aware of Respondent's use of the term NYCVB at Respondent's website since 2003.

B) Complainant, City of New York

- a. If Complainant City of New York claims any trademark rights in NYCVB predating April 2, 1999, the date on which the [Domain Name] was registered, provide proof of such rights.
- b. Provide evidence that, '[s]ince prior 1997, NYC & Company has been the official destination marketing organization (DMO) and convention and visitors bureau (CVB) for the Complainant, the City of New York' (see page 8 of the Complaint).
- c. Provide evidence of Complainant City of New York's actual use in commerce of the mark NYCVB from January 1999 through 2018.

C) Respondent's Principal, ["NT"]

- a. In a sworn affidavit, made under penalty of perjury (the 'Affidavit'), state whether NT was aware of Complainant's use of NYCVB as a trademark at the time the [Domain Name] was registered on April 2, 1999.
- b. In the Affidavit, state whether Respondent has derived revenue from its activities at its domain name <nytix.com>.
- c. In the Affidavit, admit or deny the allegation that, from April 1999 until May 2014, the [Domain Name] was redirect to <nytix.com>. If the allegation is denied, please explain why.
- d. In the Affidavit, admit or deny the allegation that, from May 2014 until September 2017, the [Domain Name] was redirect[ed] to Complainant's main website. If this allegation is denied, please explain why. If this allegation is admitted, please explain why this redirection was done.
- e. In the Affidavit, admit or deny the allegation that, beginning March 2018, the [Domain Name] resolved to a website purporting to offer tourism services, on which website certain of Complainant's copyrighted material appeared. To the extent this allegation is denied, please explain why.

f. In the Affidavit, admit or deny that [NT] received the cease-and-desist letter from Complainant on or about December 3, 2018. If this allegation is admitted, please explain why Respondent did not reply to it.

g. Provide proof of the allegation (page 7 of the Response) that, beginning on January 10, 2003, Respondent began to use the [Domain Name] as a 'website for travel and tourism'.

h. Provide proof of the allegation (page 9 of the Response) that, since 2003, Respondent has been 'commonly known' as 'NYCVB'.

The Parties shall have until February 6, 2021, to respond to the other Parties' respective submissions. The Panel reserves the right to issue such further Procedural Orders as may be necessary for a disposition of this proceeding. The due date for decision in this case is extended February 13, 2021".

The Parties responded with submissions to the Center on January 31, 2021. On February 6, 2021, the Parties replied to each other's respective January 31, 2021 submissions, as prescribed by Procedural Order No. 1.

Additional emails were exchanged between the Parties on February 8, 9, and 11, 2021. These emails have not been taken into consideration, noting that the record in this case already includes inessential points that are not determinative of the decision. Further, the Panel notes that the information exchanged between the Parties was already available to them prior to the filing of the Complaint and was not germane to the Procedural Order No. 1.

4. Factual Background

The record in this case is voluminous. Many of the numerous allegations and arguments advanced by the Parties in this case are not essential to a resolution of this complicated and acrimonious case, and hence the Panel will not lay out such inessential points. In addition, because the Complainant City of New York has indicated that it holds no trademark rights independent of Complainant NYC & Company, Inc., the Panel will consider NYC & Company, Inc. as the "Complainant" hereafter, and when reference to the Complainant City of New York is required, the Panel will use the term "City".

Complainant is a not-for-profit membership company, with more than 1,600 members (businesses or not-for-profit companies). Complainant was formed in 1935. From 1935 to 1999, Complainant asserts, it "conducted business under the name New York Convention and Visitors Bureau, Inc., a/k/a NYCVB, and it acquired common law rights in the acronym NYCVB as a service mark for the services it provided as a destination marketing organization (DMO) and as a convention and visitor bureau (CVB)". Complainant states that it "has been the official [DMO] and [CVB] for [City]" since "prior to 1997".

Numerous *New York Times* articles, including articles published on April 1, 2001, July 7, 2001, September 28, 2001, May 14, 2002, August 14, 2004, August 30, 2005, October 14, 2010, June 15, 2012, and several in November 2020, refer to Complainant as "NYC & Company" and consistently describe it as "the city's convention and visitors bureau". Occasionally during the past 20 years, a *New York Times* article would refer to Complainant as the city's "convention and tourism bureau" or "visitor and convention bureau". A September 21, 2001 *New York Times* article refers to Complainant as "NYC & Company" and describes it as "the New York City convention and visitors bureau". Various acronym "dictionaries" define "NYCVB" as "New York Convention and Visitors Bureau," and add "now NYC & Company".

On June 5, 1997, Complainant began to use a stylized logo featuring the letters NYCVB as a trademark to identify and distinguish its tourism promotion and information services. This mark was registered with the United States Patent and Trademark Office ("USPTO") on December 8, 1998, under USPTO Reg. No. 2,209,069.

On June 28, 1996, Complainant registered the domain name <nycvisit.com>. On March 8, 2001, Complainant registered the domain name <nycgo.com>. Since 2008, Complainant asserts, it has used the latter domain name to host its main website to promote tourism in and around New York City.

In 2009, Complainant registered eight other domain names, each with the Second-Level Domain “nycvb” and different Top-Level Domains such as .biz, .net, .org, *etc.* These domain names have been redirected to Complainant’s website at “www.nycgo.com”.

In a January 27, 1999 press release, Complainant announced that it was changing its corporate name from New York Convention and Visitor Bureau, Inc. to NYC & Company, Inc., its current name, in recognition of Complainant’s expanded mission beyond tourism to other pursuits such as promoting living in or opening a business in New York City.

Complainant’s name change was formalized in September 1999. On June 7, 1999, Complainant registered with the USPTO the service mark NYC AND COMPANY.

According to the Complaint, “Complainant stopped using the stylized NYCVB logo around that same time [September 1999], although the NYCVB acronym and stylized logo continued to be used by some NYC & Company’s members until 2005”.

In response to the Panel’s Procedural Order No. 1, which requested “evidence of Complainant NYC & Company’s actual use in commerce of the mark NYCVB from January 1999 through 2018 – apart from the redirection of the “nycvb”-formative domain names mentioned in the Complaint,” Complainant provided various documents, such as business cards, tourism publications, and so forth. The documents provided do not show Complainant using the five-letter string “NYCVB” in itself as a trademark during the period 1999 through 2018. Rather, Complainant regularly used “NYC & Company” as a source identifier. Sometimes, such as in 2007, Complainant’s publications described “NYC & Company” as “the convention and visitors bureau”. At other times, Complainant used other descriptions. For example, in a 2006 “travel planner” published by Complainant, the document’s masthead and “mission statement” stated: “NYC & Company, the city’s official tourism marketing organization...”

Apart from the single item described in the next paragraph, the Panel saw no evidence at least among the voluminous response to Procedural Order No. 1 that Complainant actually used “NYCVB” – either in the stylized form reflected in the USPTO registration, or even that five-letter string on its own – as a trademark from 1999 through 2018.

Complainant renewed its USPTO registration of the design mark NYCVB in 2009, and attached to the USPTO renewal application, as a specimen of use of the mark, an April 7, 2009 screenshot from a New York hotel’s web page, which page showed the NYCVB stylized mark with the text “NYCVB 2009 Member – New York Convention and Visitors Bureau”.

Respondent New York Show Tickets, Inc. (“NY Show Tickets”) is a New Jersey corporation founded in 1998 by an individual known herein as “NT”. NT is Respondent’s Chief Executive Officer. NT owns the domain name <nytix.com>, which was registered on May 18, 1998, and at that site NT operates a commercial website where NY Show Tickets sells tickets to various events in New York City.

NT registered the Domain Name on April 2, 1999, in the name of Respondent, NY Show Tickets Inc. In response to the Panel’s question in Procedural Order No. 1, NT stated under oath that he “was not aware of Complainant’s use of NYCVB as a trademark at the time when [he] registered the [Domain Name] on April 2, 1999”.

Complainant alleges that Respondent was previously a member company of Complainant, including before Respondent registered the Domain Name. Respondent has not denied this allegation, which, in the Panel’s view, would have been an easy thing to do if it were untrue. Instead, Respondent states in its February 6, 2021 filing:

“So far, no evidence has been provided to show when respondents’ membership started or stopped, or if they were even a member at all. But because we do not challenge all of the complainants false statements, the complainant would have you believe that everything they say are true statements of fact, unless we challenge them”.

Over time, the Domain Name apparently has been used in varying manners by Respondent. The Parties provide very different accounts of how the Domain Name was used at various times. According to NT’s affidavit, between 1999 and 2003 the Domain Name did not resolve to an active website and was not redirected to any site. NT states that, “[i]n 2003, the [“www.]nycvb.com[”] website was launched with its own content and articles and the site has been that way since that launch date to present day”.

According to Complainant, however, and as supported by excerpts from the Wayback Machine (www.archive.org) provided in response to Procedural Order No. 1, Respondent made almost immediate use of the Domain Name after registering it. For instance, according to the Wayback Machine, on September 29, 2000, the Domain Name resolved to a web page featuring Respondent NY Show Tickets’ business and offering for sale various tickets, including for Broadway plays, for studio audience seats at television talk shows, for tours of New York City, and so forth. The bottom of the web page states “Copyright © 2000 New York TV Show Tickets, Inc”. (“New York TV Show Tickets, Inc.” appears from the original Domain Name registration record to be the prior name of Respondent NY Show Tickets.)

Similar content appeared at Respondent’s website on February 15, 2001, according to a Wayback Machine screenshot. As of February 4, 2003, September 24, 2004, February 10, 2005, and April 4, 2007, the Wayback Machine screenshots show lengthier lists of event tickets for sale.

According to the Wayback Machine, as of November 20, 2011, the Domain Name redirected to Respondent’s website at “www.nytix.com”. At that website, which displayed the mark NYTIX, various event tickets were offered for sale, and there were hyperlinks for hotels and other amenities. As of June 15, 2013, the website to which the Domain Name resolved was very similar to the one appearing on November 20, 2011.

As of May 17, 2014, according to Wayback Machine screenshots, the Domain Name redirected to Complainant’s commercial website at “www.nycgo.com”. This use of the Domain Name appears to have continued until at least September 13, 2017.

Again, however, NT denies that the Domain Name was ever redirected to Complainant’s website. According to Respondent, in response to Procedural Order No. 1:

“The nycvb.com domain name has never been redirected to the complainant’s main website at nycgo.com. There has, however, been deep links from the nycvb.com website to many kinds of NYC city services including mta.info, NYC.gov. The New York City Mayors Office and nycgo.com”.

In Respondent’s February 6, 2021 submission, Respondent makes the assertion that “Archive.org evidence is unreliable prior to 2018”. Respondent does not explain why this is so, or on what basis the statement is made. Nor does Respondent cite to any authority which has come to the same conclusion about the reliability of the Wayback Machine at various points in time. The Panel notes that, for nearly 20 years, panels deciding UDRP cases have relied upon screenshot evidence from the Wayback Machine in order to ascertain the historical content of various websites. See, e.g., *The Franchise Group v. Jay Bean*, WIPO Case No. D2007-1438 (“Panels frequently reference the Wayback Machine in order to determine how a domain name has been used in the past...”). See also *Karl’s Sales and Service Company, LLC v. LaPorte Holdings, Inc.*, WIPO Case No. D2004-0929 (reliance on Wayback Machine in a 2004 case).

According to Respondent’s principal NT, the website at “www.nytix.com” is a commercial website that earns revenue, but the Domain Name at issue in this proceeding has never “derived” any revenue. According to NT, the Domain Name resolves to a “non-commercial resource for visitors to New York City”.

As noted above, however, the Wayback Machine screenshots offered into the record by Complainant contradict this assertion. For several years, the Domain Name was redirected to Respondent's website at "www.nytx.com". Today, the Domain Name resolves to a website which contains various hyperlinks to various commercial websites, including the "www.nytx.com" site.

Currently, Respondent's website bears the following mission statement (with emphasis added):

"The New York Convention and Visitors Bureau (NYCVB) is a destination marketing organization dedicated to developing tourism for the five boroughs of New York City [...] The NYCVB has been providing tourism services for over 20 years [...]"

Even though the outside boroughs of New Jersey and the Westchester County cities of Yonkers and Mount Vernon are well outside the NYC catchment area (and not officially members of NYCVB), they often get into the act as the sixth and seventh boroughs [...]"

In NYC we provide a full suite of services for conventions and visitors to NYC, to make the convention and visitors experience, the very best it can be. From planning a small event to a massive 10,000+ person conference, the NYCVB can help provide all the right services that will help the sponsors and organizers deliver on their goal of a conference that the participants will remember. ***Leveraging its deep relationships with business, commerce, hotels and the NYC Mayors office***, the NYCVB can help bring NYC experiences and events that are truly memorable".

According to Complainant, Respondent has no relationship with the Mayor's office, and that the foregoing mission statement is an attempt by Respondent to impersonate Complainant. Complainant also states that the mission statement demonstrates that Respondent is using the Domain Name for commercial purposes.

In response, Respondent explains that "the 'suite of services' in that statement is referring to NYC services as a whole (like conference facilities like the Jacob Javits Center) and not the respondent's own organization's services". According to Respondent, it "passes all requests out to other appropriate parties and derives no income, revenue or commercial value from any of those leads that are then provided to conference venues, facilitators or the other appropriate parties". Respondent has provided no evidence that it "passes all requests out to other appropriate parties".

According to Complainant, Respondent's other website, "www.nytx.com", contains "fictitious names and biographies for its alleged employees". Complainant states that the "Corporate Team" shown in the "About Us" section of that website "does not exist," and the purported biographical sketches of the team members "are wholly fictional" with "stock photographs used by many other websites". Respondent has not addressed this allegation.

Complainant also asserts that, at the website to which the Domain Name resolves, Respondent falsely indicates its physical address, 12 Times Square, which does not exist and that Respondent's site features a photo of a building that does not exist. Again, Respondent has not addressed this allegation.

In 2007, Respondent registered the domain name <nycandcompany>. At some point in time, Complainant learned of this domain name registration and demanded that Respondent transfer that domain name to Complainant. Respondent did so.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

According to Complainant, based on its “long-standing use of the NYCVB acronym, and notwithstanding the multi-year hiatus in its use of the stylized NYCVB logo, the NYCVB acronym has continued to be singularly associated with NYC & Company in the minds of consumers...”. Complainant contends that Respondent has registered and used the Domain Name in bad faith, in the past by redirecting the Domain Name and currently by trying to impersonate Complainant for commercial gain.

B. Respondent

Respondent denies virtually all the main allegations made by Complainant, and asserts that it is not acting in bad faith. Several of Respondent’s key contentions are folded into the “Background” discussion above. Respondent also asserts that Complainant has abandoned its trademark rights to NYCVB through non-use for more than 20 years. To repeat, the Panel will not lay out all the Parties’ allegations and arguments, as many are immaterial to the issues properly before the Panel and necessary for a disposition of this case under the Policy.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

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

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark NYCVB through an existing USPTO registration demonstrated in the record. The Panel also concludes that the Domain Name is identical to the registered NYCVB mark.

Respondent argues that Complainant abandoned its right to the trademark NYCVB in 1999 when it changed its name and allegedly stopped using the mark. The Panel is not prepared to conclude that Complainant abandoned the NYCVB mark. First, the mark was renewed with the USPTO in 2009. The specimen of use filed with the USPTO renewal application was an April 7, 2009 screenshot from a New York hotel’s web page, which page showed Complainant’s NYCVB stylized mark with the text “NYCVB 2009 Member – New York Convention and Visitors Bureau”.

Second, in 2009 Complainant also registered a series of domain names comprised solely of “NYCVB” plus a Top-Level Domain, which domain names resolved to Complainant’s main commercial website. Such conduct is not reflective of someone who intends to abandon one’s trademark.

Third, while Complainant apparently did not make extensive use of “NYCVB” as a mark after 1999, Complainant regularly referred to itself as New York City’s “convention and visitors bureau”. As noted above, there is evidence that “CVB” is an accepted abbreviation for “convention and visitors bureau”. In addition, the record contains numerous media articles also referring to Complainant as New York’s “convention and visitors bureau”. Based upon Complainant’s own use of “convention and visitors bureau” and unsolicited media use of that term with reference to Complainant, there is a colorable argument that Complainant enjoys common law rights in the mark NEW YORK CONVENTION AND VISITORS BUREAU as a source identifier to distinguish its services in the market.

Fourth, and relatedly, Respondent’s own conduct *vis-à-vis* the Domain Name may be relevant to the first element under the UDRP, even though Respondent’s conduct is typically more germane to the second and

third elements. The issue of unregistered trademark rights is taken up in section 1.3 of the *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition* (“WIPO Overview 3.0”), which states in part:

“The fact that a respondent is shown to have been targeting the complainant’s mark (e.g., based on the manner in which the related website is used) may support the complainant’s assertion that its mark has achieved significance as a source identifier”.

As will be discussed below in the “rights or legitimate interests” and “bad faith” sections, the Panel finds that Respondent had Complainant and its trademark in mind when it registered the Domain Name, and that Respondent targeted Complainant’s mark for commercial gain by sowing consumer confusion.

There is also precedent under the UDRP to the effect that a domain name adopting an abbreviation of a part of a party’s trademark may be considered germane to a “confusingly similar” analysis regarding the domain name in question. See, e.g., *Express Messenger Syst. V. Golden State Overnight*, WIPO Case No. D2001-0063 (because “Cal” is a “common abbreviation” for “California,” the domain name <calovernight.com> was confusingly similar to complainant’s trademark “California Overnight”).

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your 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) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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 Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. At bottom, the Panel does not find Respondent credible.

The Domain Name was registered on April 2, 1999, which is several months after Complainant had secured its USPTO registration of the NYCVB trademark. The Panel finds that Respondent was aware of Complainant and its NYCVB trademark at the time it registered the Domain Name. Respondent’s caginess, in the face of Complainant’s allegation that Respondent was a member of Complainant from 1998 to 2000, does not do Respondent credit in this proceeding. If Respondent were not a member, it would have been very easy to say so. Instead, Respondent states that Complainant has not provided proof of Respondent’s membership, and Respondent asserts that Complainant employs “dirty tricks” and that Respondent need not expressly deny each and every false allegation that Complainant raises. This sort of evasiveness and diversion leads the Panel to conclude that Respondent was in fact a member of Complainant at a time when Complainant was undisputedly using the NYCVB trademark and before the Domain Name was registered.

It follows from this conclusion that Respondent knew perfectly well that Complainant was the convention and visitors bureau (CVB) for New York City at the time the Domain Name was registered.

The Panel finds that, notwithstanding Respondent’s claim to the contrary, Respondent was using the Domain Name from 2000 to 2013 to redirect to Respondent’s commercial website where Respondent sold tickets for various events in and around New York City. The Panel finds the Wayback Machine screenshots far more reliable than Respondent’s statements to the contrary. Respondent did not provide any evidence to support

its statements that: (1) from 1999 to 2003, the Domain Name did not resolve to any website at all; or (2) from 2003 forward, the Domain Name resolved to a noncommercial, not-for-profit website offering information about tourism in New York. Respondent's unsupported comment that the Wayback Machine is unreliable as evidence prior to 2018 is rejected by this Panel. Again, that source has been widely used, in UDRP cases and many other contexts, as authoritative for nearly 20 years.

Respondent's knowing and, so far as the record reveals, unauthorized use of Complainant's NYCVB trademark in the Domain Name to increase traffic to Respondent's ticket-selling commercial website is not a legitimate use of the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered or Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates its discussion above in the "rights or legitimate interests" section, including the finding of Respondent's lack of credibility. As such, the Panel finds, on a balance of probabilities and based on the voluminous record presented, that Respondent target Complainant's NYCVB trademark for commercial gain, namely, to increase Respondent's ticket sales to New York events, in violation of the above-quoted Policy paragraph 4(b)(iv).

The Panel also notes that Respondent never denied the rather serious allegations that Respondent's other website, "www.nytix.com": (1) contains "fictitious names and biographies for its alleged employees"; (2) falsely indicates that its physical address that does not exist and features a photo of a building that does not exist; and (3) falsely claims a close relationship with the Mayor's Office. The latter claim is germane to Complainant's allegation that, since 2018, Respondent has essentially been impersonating Complainant.

Another factor weighing in favor of a "bad faith" finding here is Respondent's registration of the domain name <nycandcompany.com> in 2017. Although Respondent surrendered that domain name to Complainant without much ado, one must ask why Respondent – who, by its own account, understood Complainant to be trading under the name NYC & Company – would have registered that domain name, if not to chisel on Complainant's reputation for offering tourism services and thereby derive commercial gain.

Complainant has established Policy paragraph 4(a)(iii).

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <nycvb.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: February 13, 2021