

*Before the:*

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

**THE CITY OF NEW YORK,**  
c/o Office of the Corporation Counsel  
New York City Law Department  
100 Church Street  
New York, NY 10007

**WIPO Case No. D2020-3111**

and

**NYC & COMPANY, INC.,**  
810 Seventh Avenue, 3<sup>rd</sup> Fl.  
New York, NY 10019

**(Complainants)**

-v-

**Disputed Domain Name(s):**

**NEW YORK T.V. SHOW TICKETS,  
INC., a/k/a NEW YORK SHOW  
TICKETS,**  
244 Fifth Avenue, Suite 2094  
New York, NY 1001-7604

[www.nycvb.com](http://www.nycvb.com)

**(Respondent)**

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**COMPLAINANTS' RESPONSE TO ADMINISTRATIVE PANEL ORDER NO. 1**

Complainants NYC & Company, Inc. (“NYC & Company”) and the City of New York (the “City”) submit the following statement in response to the Panel’s requests for additional evidence as set forth in Administrative Panel Order No. 1.

**Requests to NYC & Company:**

**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.**

## **Response**

NYC & Company has continuously used the mark NYCVB and the name “Convention and Visitors Bureau” in commerce since its founding and incorporation as a not-for profit corporation in 1934 to the present, and it has built up a tremendous amount of goodwill in different iterations of the terms to identify the tourism services that it provides for the City as the City’s official convention and visitors bureau. As shown below, the NYCVB mark and name have been used by NYC & Company in numerous public-facing documents from January 1999 through 2018, demonstrating actual use in commerce, including international business cards, tour guides, press releases, annual reports, and promotional materials distributed at trade shows.

The term “convention and visitors bureau”, or “CVB”, is a well-recognized industry term used to identify not-for-profit organizations that are typically funded by local governments. Attached as ANNEX 1 is a compilation of website definitions of the term “CVB” and “NYCVB”. NYC & Company is listed in the directories of convention and visitors bureaus that are maintained by various trade groups. See

<https://www.travelweekly.com/Hotels/New-York-NY/Convention-Visitor-Bureau;>

[https://micebook.com/suppliers/nyc-and-company/;](https://micebook.com/suppliers/nyc-and-company/)

<https://eventsinamerica.com/convention-visitors-bureaus/newyork/list.html;>

[https://aamcar.com/nyc-visitors-and-convention-bureau/;](https://aamcar.com/nyc-visitors-and-convention-bureau/)

[https://www.ny.com/general/centers.html.](https://www.ny.com/general/centers.html)

The terms “CVB” and “convention and visitors bureau” are also widely associated with NYC & Company in media reports. Attached as ANNEX 2 is a sampling of websites that associate the term CVB with NYC & Company. The NYCVB mark and name are not associated with the Respondent, presumably because Respondent does not identify itself as the source of the nycvb.com website and it does not fit within the industry accepted definition of a CVB; since it is not a not-for-profit organization and it is not funded by local government.

The NYCVB mark and name have been used to identify NYC & Company as the City’s official CVB in numerous articles published in the New York Times and other publications during the past twenty years. Attached collectively as ANNEX 3 are copies of New York Times articles referring to NYC & Company as the official CVB for the City.

By reason of such widespread use and unsolicited media attention, NYC & Company has become well known to the public as the City’s official and only CVB and it has acquired

common law trademark rights in the NYCVB mark and name, apart from the statutory trademark rights it acquired by registering different stylized iterations of the name and mark as service marks with the United States Patent & Trademark Office.

In 1999, NYC & Company announced that it was changing its corporate name from the New York Convention & Visitors Bureau to NYC & Company, which Respondent apparently misinterpreted as an abandonment of the name and an opportunity to seize and trade upon the tremendous reservoir of goodwill already established in the name and mark. Respondent, however, is not now and has never been known to the public as a CVB; it is not a not-for-profit corporation funded by local government and it has no relationship to the City or the Mayor's Office as it claims. Respondent is not even authorized to do business in New York.

Although Respondent registered nycvb.com as a domain name in 1999, it did not use the website to promote itself as a "CVB" until 2018, at which time it copied copious amounts of copyrighted content from NYC & Company's website, and masqueraded as a cvb, adopting the persona of NYC & Company. Beginning in 2018 and to this day, Respondent has falsely claimed on its nycvb.com website that it has offices at 12 Times Square (a non-existent address), that it has relationships with the Mayor's Office of the City, and that it has been the City's CVB for decades.

Respondent's use of the NYCVB mark and name on the nycvb.com website only dates to 2018. , Indeed, for most of the time since it registered the disputed domain name in 1999 – from 2000 to 2013 – Respondent used the disputed domain to redirect traffic to its commercial website at [www.nyitix.com](http://www.nyitix.com), but it has never, even to this day, identified or used NYCVB mark and name in any form on the [www.nyitix.com](http://www.nyitix.com) website to identify itself as a CVB. Moreover, in response to earlier complaints by NYC & Company, Respondent redirected all traffic to the nycvb.com domain to NYC & Company's website during the four-year period from 2014 to 2018, and only stopped redirecting traffic to NYC & Company because NYC & Company refused Respondent's request to place a link on the NYC & Company website to the nyitix.com website.

Respondent did not register the disputed domain name at issue in good faith and it acquired no legitimate rights or interest in the domain name. Respondent was previously a member of NYC & Company and it was well aware of NYC & Company's prior and continuing use of the NYCVB mark and name in one form or another from the time it registered the domain name. The fact that NYC & Company changed its corporate name in 1999, and later stopped

using a stylized NYCVB logo that it had registered as a federal service mark, did not result in an abandonment of all trademark rights in the NYCVB mark and name. NYC & Company has continued to use the NYCVB mark in CVB in other formats since 1999 and the public has continued to singularly associate the name and mark with NYC & Company.

NYC & Company acquired common law rights in the NYCVB name and mark based on its continuing and uninterrupted use of the name and mark since 1934. Common law rights in a trademark derive from the use of the mark in commerce so as to distinguish the trademark owners' goods or services from those of its competitors. See T.A.B. Systems v. Pactel Teletrac, 77 F.3d 1372 (Fed.Cir. 1996). Under United States trademark law, common law rights in a trademark or service mark may be established by extensive or continuous use sufficient to identify particular goods or services as those of the trademark owner. See United Drug Co. v. Theodore Rectanus Co., 248 U.S. 90 (1918). According to paragraph 4(a)(i) of the Policy, common law rights are sufficient to support a domain name complaint.

To establish common law rights in a mark, a complainant must show that its mark has acquired secondary meaning, i.e., that the public associates the asserted mark with complainant's goods and services. See First Place Financial Corp. v. Michele Dinoia c/o SZK.com, FA 506772 (Nat. Arb. Forum August 22, 2005). ICANN Panels have found relevant evidence of secondary meaning to include length and amount of sales under the mark, the nature and extent of advertising, consumer surveys and media recognition. Candy Direct, Inc. v. italldirect2u.com, FA 514784 (Nat. Arb. Forum August 22, 2005).

Furthermore, NYC & Company registered NYCVB as a service mark with the USPTO on a first use in commerce on June 5, 1997, with the registration issued and effective on December 8, 1998, before Respondent registered the disputed domain name. The registration for the NYCVB was renewed in September 2009 and still shows as a live registration on the records of the USPTO. See U.S. Reg. No. 2209069. Accordingly, in addition to its common law rights in the NYCVB name and mark, NYC & Company possessed federal trademarks until through 2018.

The possession of U.S. federally registered trademark rights by NYC & Company meets the threshold requirement of possessing trademark rights sufficient to satisfy paragraph 4(a)(i) of the Policy. See Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano, WIPO Case No. D2003-0661.

Based on the foregoing, Respondent could not acquire any legitimate rights or interests in the NYCVB mark because Respondent is not known by the mark and was aware of the Complainants' right in the marks before the registration of the domain name. See Hexagon AB, et al. v. Xspect Solutions Inc., WIPO Case No. D2005-0472 (ordering transfer, noting that that Respondent was not known by the mark and was aware of the Complainant's marks before registration of the domain name). Respondent had a duty to ensure that the domain names it registers do not infringe the trademark rights of third parties. See paragraph 2 of the Policy ("It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights").

NYC & Company was not able to locate all documents showing actual use in commerce during the requested time frame because the documents were not retained under its document retention policy and no server was maintained for electronic documents prior to 2007. Nonetheless, some prototypical examples of actual uses in commerce of the mark NYCVB and the words "Convention and Visitors Bureau" to identify NYC & Company during the period from 1999 to 2018 are as follows:

2001- Annexed hereto as Annex 4 are copies of business cards used by NYC & Company's international sales agent since 2001, which use the NYCVB acronym and words in Chinese, Korean and Japanese. The business cards have been in Japanese since 2001 and in Chinese since 2003.

2002 Attached as Annex 5 is a copy of the cover of a report prepared and distributed entitled "2002 Tourism's Economic Impact on New York City, which contains the federally registered NYCVB stylized logo and words "NYC & Company—the Convention & Visitors Bureau" at the bottom of the cover.

2003 Attached as Annex 6 is a completed membership application form dated October 10, 2003 for the Bubba Gump Shrimp Company, which contains the federally registered NYCVB stylized logo and words "NYCVB New York Convention & Visitors Bureau."

2005 Attached as Annex 7 is membership application form dated August 5, 2005 submitted by Respondent, which uses the stylized NYCVB logo with the words Convention and Visitors Bureau."

Attached as Annex 8 is a copy of the cover and contents page of the Official NYC & Company Winter 2005/2006 Guide, which was widely distributed to the public and

tourists and uses the federally registered stylized NYCVB logo and name “Convention & Visitors Bureau.”

Attached as Annex 9 is a copy of the cover and contents page of the Official NYC & Company Summer-Fall 2005/2006 Guide, which was widely distributed to the public and tourists and uses the federally registered stylized NYCVB logo and name “Convention & Visitors Bureau.”

2006 Attached as Annex 10 is a copy of the cover and contents page of 2006 NYC & Company Travel Planner, which was widely distributed to the public and tourists and uses the federally registered stylized NYCVB logo and name “Convention & Visitors Bureau.”

2007 Attached as Annex 11 is a copy of the cover of the NYC07 Official Travel Planner, which was widely distributed to public and tourists and identifies NYC & Company as the “Convention & Visitors Bureau.”

Attached as Annex 12 is a copy of the cover of the NYC07 Official Meeting Planner, which was widely distributed to the public and tourists and identifies NYC & Company as the Convention & Visitors Bureau.

Attached as Annex 13 is a copy of the cover of the Official NYC Visitor Guide 2007, which was widely distributed to the public and tourists and identifies NYC & Company as the Convention & Visitors Bureau.

Attached as Annex 14 is a copy of collateral material prepared by NYC & Company for the 2007 Cycle World International Motorcycle Shows sponsored by Toyota, which prominently states: “A publication of NYC & Company-The Convention and Visitors Bureau.”

2009 Attached as Annex 15 is a website use of the federally registered NYCVB stylized logo that appeared on 4/9/2009 on the website for Herald Square Hotel, identifying it as a member of “NYCVB New York Convention & Visitors Bureau”, which was submitted as a specimen and accepted by USPTO as evidence of use in commerce of the stylized NYCVB mark in commerce.

2009 Attached as Annex 16 is a copy of a postcard that was handed out to more than 5,900 attendees by NYC & Company at tradeshows at the following locations in 2009:

Destination Showcase in Chicago, IL on June 24, 2009  
# of attendees – 1,200

ESSAE in Saratoga Springs, NY on June 25, 2009

# of attendees – 225

MPI WEC in Salt Lake City, UT on July 11 – 14, 2009

# of attendees – 4,500 to 5,000

2014 Attached as Annex 17 is a copy of amended By-Laws adopted by NYC & Company on September 30, 2014, reciting that NYC & Company is chartered under the name “New York Convention and Visitors Bureau Inc.”

**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”.**

NYC & Company has been described as the City’s Convention & Visitors Bureau in numerous articles appearing in the New York Times between 2000 and 2010, copies of which are collectively annexed as Annex 3, supra.

NYC & Company appears as one the top results in a Google search for the term NYCVB, a copy of which is annexed as Annex 18.

NYC & Company is referred to as the City’s official convention and visitor bureau in numerous reports issued by the City.

It is a well settled that the use of a name or mark in articles by third parties, as well as the public’s own association of a mark with the Complainant, are sufficient to create protectible trademark rights, even where the Complainant is not using the mark to identify itself. See National Cable Television Ass’n Inc. v. American Cinema Editors Inc., 973 F.2d 1572, 1578, 19 USPQ2d 1424, 1428 (Fed. Cir. 1991), cited with approval by ATT & Mobility LLC v. Mark Thomann and Dormitus Brands, LLC, Opp. No. 91218108 (TTAB Feb. 10, 2020) (use of trade name for plaintiff organization “within the titles and text of articles in its publications and in correspondence” sufficient to show use as a trade name). See also Jim Dandy Co. v. Martha White Foods, Inc., 458 F.2d 1397, 173 USPQ 673 (CCPA 1972) (use of a term as advertising slogan sufficient to defeat a right of registration of mark by another); American Stock Exch., Inc. v. American Express Co., 207 USPQ 356, 363 (TTAB 1980) (opposition may be based on use of term in manner analogous to trademark use, such as “in advertising, use as a grade mark, use as the salient or distinguishing

feature of a trade name, use of an acronym or the initial letters of a corporate name, etc."). "Moreover, even without use directly by the claimant of the rights, the courts and the Board generally have recognized that abbreviations and nicknames of trademarks or names used only by the public give rise to protectable rights in the owners of the trade name or mark which the public modified." See 1 J. Thomas McCarthy, TRADEMARKS AND UNFAIR COMPETITION § 7:4 (2d ed. 1984), and cases cited therein.

**c. State when Complainants were first aware of Respondent's ownership of the disputed domain name and of Respondent's use of the disputed domain name.**

According to archived captures of website images on the Wayback Machine maintained at [www.archive.org](http://www.archive.org), Respondent did not post any content on a website using the domain name nycvb.com until 2018. Attached as Annex 20 is a printout of a Wayback Machine summary of all captured images (139 in total) between March 2, 2000 and December 16, 2020.

From 2000 to 2013, Respondent redirected all traffic to [www.nycvb.com](http://www.nycvb.com) domain to its website at [www.nytx.com](http://www.nytx.com). And then beginning in 2014 and continuing through 2017, Respondent directed all traffic to the [www.nycvb.com](http://www.nycvb.com) domain to NYC & Company's website at [www.nycgo.com](http://www.nycgo.com), which did not cause any injury to NYC & Company because Respondent was not claiming that it was a convention and visitors bureau, much less the CVB for the City.

Respondent only first began posting content using the [www.nycvb.com](http://www.nycvb.com) domain as a standalone website in 2018, at which time NYC & Company learned that Respondent was copying copyrighted material from NYC & Company's website and falsely claiming to be the convention and visitors bureau for the City. NYC & Company complained immediately as noted in the Complaint.

The earliest record located by NYC & Company concerning Respondent's ownership of the disputed domain name is an email communication in October 2017, which refers to the fact that Respondent was redirecting all traffic to the [www.nycvb.com](http://www.nycvb.com) domain to NYC & Company's website. Attached as Annex 19 is a copy of an email from Noel Turner to Bryan Grimaldi (NYC & Company) in which Respondent proposed that NYC & Company post a link on the NYC & Company website to Respondent's NYTIX website; the email notes that Respondent had been redirecting traffic to nycvb.com website to NYC & Company website. In that regard, as noted in

One2move International ApS v. One2Move, WIPO Case No. D2018-2117, previous panels have found that using a domain name in order to redirect Internet users to the complainant's website may support a finding of bad faith as the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant (see, WIPO Overview 3.0, section 3.1.4).

**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.**

NYC & Company has found no records to corroborate Respondent's allegation that NYC & Company was aware of the use of the term NYCVB at Respondent's website in 2003. Furthermore, as noted above in response to the foregoing request, all traffic to the [www.nycvb.com](http://www.nycvb.com) domain was redirected by Respondent to its commercial website at [www.nytix.com](http://www.nytix.com), without any content or statements on the nytix website to explain what meaning, if any, the term nycvb had in reference to the Respondent.

Respondent's allegation that Complainant's were aware of Respondent's use of the term at any website maintained by Respondent is flatly contradicted by the captured images for the disputed domain on the Wayback Machine, which show that Respondent did not use the term NYCVB until 2018. Attached collectively as ANNEX 21 are copies of captured images for the disputed domain during the period from 2000 to 2013, which show that Respondent did not use the term NYCVB during that time period. Attached as ANNEX 22 are captured images for the disputed domain from 2014 to 2017, which show that Respondent redirected traffic to the disputed domain to NYC & Company's website and did not use the term NYCVB as a mark to identify itself during that time period.

The Rules direct that "[t]he Panel shall determine the admissibility, relevance, materiality and weight of the evidence." Rules, paragraph 10(d). Such a task implicitly includes the evaluation of the credibility of the evidence. See SEB and Groupe SEB UK Limited v. Dimasoft Limited, WIPO Case No. D2013-0252. As noted in Associated Newspapers Limited v. Makhdoom Babar, Mail Group, WIPO Case No. D2019-0049, "[i]n proceedings under the Policy, where there is no formal discovery or disclosure process, no opportunity to cross-examine witnesses under oath, and so forth, determinations of a party's credibility are not always easy, and a panelist is often left with nothing more than the allegations by the parties, the documentary

evidence placed into the record, points of common knowledge, and the application of logic, experience, and common sense. In this context, a party who makes an untrue statement, or offers an internally inconsistent set of allegations, or fails to corroborate with documentary evidence an assertion that can be easily corroborated if true, that party runs the risk of impairing its credibility in general.

Complainants submit that in assessing Respondent's credibility, the Panel should consider the fact that Respondent has published and continues to publish numerous false statements on its website, including the false statement that it has a relationship with the Mayor's office and that it has been the CVB for the five boroughs of New York City for decades, as well as its use of a false address. In this case, Respondent has a history of copying of photographs and other copyrighted material from NYC & Company's website and of impersonating NYC & Company.

Prior Panels has recognized that the unauthorized use of trademarks and copyrighted images on a website, creating a false suggestion of a legitimate or official connection with the Complainant, does not give rise to legitimate rights or interests in the use by respondent. See Philip Morris Products S.A. v. Contact Privacy Inc. Customer 0155627093 / Richard Chen, Heat it Up, WIPO Case No. D2019-2909; A10 Networks, Inc. v. Dave Styka, WIPO Case No. D2017-0497 ("The Respondent is not known by the disputed domain name or any part of it, and there is no evidence of it ever having conducted legitimate business under that name or anything approximating it."). See also INTS It Is Not the Same GmbH v. Philippe Leveau, WIPO Case No. D2014-0622 (finding bad faith registration and use where it was shown that respondent had "chosen a well-established trademark with attendant goodwill to which it has no rights whatsoever; and has sought to profit from the false suggestion of a connection with the Complainant.").

### **Requests to the City of New York:**

#### **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 disputed domain name was registered, provide proof of such rights.**

The City has prominently used the words "Convention and Visitors Bureau" and the term CVB to identify and identify NYC & Company as the official New York Convention and Visitors Bureau for the City since 1934 when NYC & Company was incorporated. Various agencies of the City, including the Mayor's Office, the Office of Management and Budget

(“OMB”), and the Comptroller, have issued and published reports and press releases that have been widely circulated, which identify NYC & Company as the official Convention and Visitors Bureau or CVB for the City. As such, while not claiming independent trademark rights in the mark NYCVB, the City is closely aligned with NYC & Company in the minds of consumers and tourists around the world and has legitimate rights and interests in the continuing use of the NYCVB mark and name to identify NYC & Company. The City has a federally registered service mark for the block face NYC letters, which are used to identify City agencies and those block letters are used with the City’s permission as part of a service mark registered by NYC & Company for tourism and convention services. See USPTO Reg. No. 3668124 (owned by the City) (NYC block letters for tourism information provided by others) (registered 8/18/09 based on first use in commerce 4/07) and USPTO Reg. No. 3667168 (owned by NYC & Company) (registered 8/11/09 based on first use in commerce 6/15/07).

**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).**

NYC & Company is referred to in many official budget reports and press releases by the Mayor’s Office as the official Convention and Visitors Bureau of the City. Respondent, on the other hand, has no relationship with the City in any capacity and is not a recognized CVB. The following documents specifically refer to NYC & Company as the City’s convention and visitors bureau of CVB:

- Attached as ANNEX 23 is a copy of a Press Release dated Nov. 18, 1998 re NYC & Company as CVB ("New York City is enjoying tremendous interest from potential travelers around the world as the news spreads of our cultural and economic renaissance, and our cleaner, safer streets," said Fran Reiter, President and CEO of the New York City Convention and Visitors Bureau.)
- Attached as ANNEX 24 is a copy of a Press Release from the Mayor's Office dated June 19, 2000 (“NYC & Company, the parent organization of the New York Convention and Visitors Bureau, is the City's official tourism marketing agency. It is a private, non-profit organization whose principal responsibility is to enhance New York City's economy through tourism development by marketing the City on a worldwide basis as the premier destination for business and leisure travelers.”)
- Attached as ANNEX 25 is a copy of a Press Release from the Mayor's Office dated July 11, 2000 (quoting and identifying “Cristyne Lategano-Nicholas,

President and CEO of NYC & Company, the City's convention and visitors bureau”)

- Attached as ANNEX 26 is a copy of a Press Release from the Mayor's Office re NYC & Company dated August 7, 2000 (using CVB acronym to refer to NYC & Company)
- Attached as ANNEX 27 is a copy of a Press Release from the Mayor's Office re NYC & Company dated Jan. 4, 2001 (“NYC & Company - the Convention & Visitors Bureau is the City's official tourism marketing agency.”)
- Attached as ANNEX 28 is a copy of the Mayor's Weekly Column dated Nov. 26, 2002 (“For more information on how you can "Paint the Town Red, White & Blue" this holiday season, contact NYC & Company, the city's Convention and Visitors Bureau.”)
- Attached as ANNEX 29 is a copy of the 2003 NYC Comptroller Report (“Also, according to NYC & Co., the City’s convention and visitors bureau, the estimated number of visitors for 2001 was 14.3 percent fewer than 2000 and the number is expected to increase by only 0.8 percent in 2002.”)
- Attached as ANNEX 30 is a copy of the 2003 Mayor's Executive Budget (“One-quarter of the revenue collected from the additional City one percent tax rate increase was earmarked for the development of tourism. Of this dedicated revenue, seven-eighths of the one-quarter percent funded the New York Convention and Visitors Bureau.”)
- Attached as ANNEX 31 is a copy of the 2004 ERA Market Study re NYC & Company as the City’s CVB (“In July 2004, Economics Research Associates (ERA) was commissioned by NYC & Company, New York City’s Convention and Visitor Bureau, to provide a multi-dimensional understanding of the potential opportunities and challenges associated with the Convention Corridor proposal.”)
- Attached as ANNEX 32 is a copy of the 2005 Mayor’s City organization chart (listing “New York City Convention and Visitors Bureau” as “Other Authorities, Boards, Commissions and Corporations” under the “Deputy Mayor for Economic Development and Rebuilding”)
- Attached as ANNEX 33 is a copy of the 2005 Executive Budget - Message of the Mayor (“One-quarter of the revenue collected from the additional City one percent tax rate increase was earmarked for the development of tourism. Of this dedicated revenue, seven-eighths of the one-quarter percent funded the New York Convention and Visitors Bureau.”)
- Attached as ANNEX 34 is a copy of the 2006 Mayor's Executive Budget (“One-quarter of the revenue collected from the additional City one percent tax rate

increase was earmarked for the development of tourism. Of this dedicated revenue, seven-eighths of the one-quarter percent funded the New York Convention and Visitors Bureau.”)

- Attached as ANNEX 35 is a copy of the 2007 Executive Budget - Message of the Mayor (“One-quarter of the revenue collected from the additional City one percent tax rate increase was earmarked for the development of tourism. Of this dedicated revenue, seven-eighths of the one-quarter percent funded the New York Convention and Visitors Bureau.”)
- Attached as ANNEX 36 is a copy of the 2011 OMB Tax Forecasting (“One-quarter of the revenue collected from the additional City hotel room occupancy 1.0 percent tax rate increase was earmarked for the development of tourism. Of this dedicated revenue, seven-eighths of the one-quarter percent funded the New York Convention and Visitors Bureau.”)
- Attached as ANNEX 37 is a copy of the 2013 OMB Tax Revenue Forecasting Documentation April, 2013 Forecasting (“One-quarter of the revenue collected from the additional City hotel room occupancy 1.0 percent tax rate increase was earmarked for the development of tourism. Of this dedicated revenue, seven-eighths of the one-quarter percent funded the New York Convention and Visitors Bureau.”)
- Attached as ANNEX 38 is a copy of the 2014 OMB Tax Revenue Forecasting Documentation August, 2014 Forecasting (“One-quarter of the revenue collected from the additional City hotel room occupancy 1.0 percent tax rate increase was earmarked for the development of tourism. Of this dedicated revenue, seven-eighths of the one-quarter percent funded the New York Convention and Visitors Bureau.”)
- Attached as ANNEX 39 is a copy of the 2015 OMB Tax Revenue Forecasting Documentation November, 2015 Forecasting (“One-quarter of the revenue collected from the additional City hotel room occupancy 1.0 percent tax rate increase was earmarked for the development of tourism. Of this dedicated revenue, seven-eighths of the one-quarter percent funded the New York Convention and Visitors Bureau.”)
- Attached as ANNEX 40 is a copy of the 2017 OMB Tax Revenue Forecasting Documentation Forecasting (“One-quarter of the revenue collected from the additional City hotel room occupancy 1.0 percent tax rate increase was earmarked for the development of tourism. Of this dedicated revenue, seven-eighths of the one-quarter percent funded the New York Convention and Visitors Bureau.”)
- Attached as ANNEX 41 is a copy of a Press Release-issued by the NYC Department of Cultural Affairs dated July 9, 2020 (“NYC & Company is the

official destination marketing organization and convention and visitors bureau for the City of New York.”)

- Attached as ANNEX 42 is a copy of City Council Hearing Testimony re NYC & Company dated September 24, 2020 (“NYC & Company is the official destination marketing and tourism organization for the five boroughs of New York City. We are also often known as the convention and visitors bureau (CVB).”)

**c. Provide evidence of Complainant City of New York’s actual use in commerce of the mark NYCVB from January 1999 through 2018.**

The City has used the mark NYCVB in commerce to refer to the NYC & Company and the services it provides for the City in numerous reports and press releases as set forth in the prior response.

**CONCLUSION**

The damage caused to the Complainants through Respondent’s use of the disputed domain is real and continuing. Respondent now has a listing on ZoomInfo, a b-to-b directory information provider, which is populated with false information about the disputed domain. <https://www.zoominfo.com/c/the-new-york-convention-and-visitors-bureau/474126890>. The listing does not indicate that Respondent New York Show Tickets, Inc. has any connection to the nycvb.com domain. The listing states that NYCVB is a government sponsored convention and visitors bureau, with an address at 12 Times Square, New York, NY, and 43 employees, all of which information is false. The listing contains a link to the disputed domain, which serves to fuel consumer confusion about the nycvb.com domain and what it is really is and who operates it.

While Respondent has claimed that it is merely using the disputed domain to provide information and that it is not a commercial endeavor, the surrounding facts prove just the opposite. Respondent was a member of NYC & Company from 2005 through 2011 and has a history of bad faith behavior. In 2007, it registered the domain, [www.nycandcompany.com](http://www.nycandcompany.com), in another attempt to trade on the goodwill of NYC & Company. At that time, NYC & Company used Respondent’s membership in NYC & Company to persuade it to transfer the domain to NYC & Company. This is no different, except that this time Respondent is no longer a member of NYC & Company and it has refused Complainant NYC & Company’s demand to cease its continuing bad faith parasitic behavior.

As has been shown, Respondent registered the disputed domain in 1999, when NYC & Company changed its corporate name, apparently believing that such name change signaled an intention on NYC & Company's part to abandon all rights in the CVB designation and moniker. But plainly, by adopting the trademarked name, Respondent was seeking to "seeking to create an aura of affiliation with the Complainant by using the Complainant's mark in the Domain Name", like the Respondent in Two Men and a Truck / International, Inc. v. Jason Rager / Paydues Inc., WIPO Case No. D2011-1312. In that case, as here, the disputed domain incorporated the Complainant's trademark in its entirety and there was no relationship between the Complainant and the Respondent. The Panel described such conduct as "a parasitic exploitation of the Complainant's valuable goodwill and reputation for commercial gain, in bad faith and in violation of the Policy." The following statement from the Panel in that case apply with equal force here:

The Respondent has no right to exploit the Complainant's mark to promote its own unrelated services. It is clearly commercial use and designed to divert customers seeking information about the Complainant [ ] to the Respondent.

The Respondent has registered and used the Domain Name in bad faith as it has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's web site by creating a likelihood of confusion with the Complainant's mark as to the source, affiliation or endorsement of the web site. The Respondent's repeated and prominent use of the Complainant's mark on its web site only serves to strengthen the appearance of an association with the Complainant. It may also be using the Complainant's mark to harvest sensitive user information for commercial purposes.

Id.

Based on the foregoing, Complainants request that the Panel order the transfer of the disputed domain to Complainant NYC & Company.

### **CERTIFICATION**

The undersigned representatives of the Complainants certify that the information contained in this Response to Administrative Order No.1 is to the best of the Complainants' knowledge complete and accurate, that the Response is not being presented for any improper purpose, such

as to harass, and that the assertions in this Response are warranted under the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Natalie Koepff, in her capacity as Senior Vice President and General Counsel of NYC & Company, certifies that the information contained herein with regard to the responses of NYC & Company is true, accurate and complete, based on her own personal knowledge and a review of books and records created, kept and maintained in the ordinary course of business of NYC & Company.

Gerald E. Singleton, in his capacity as Senior Counsel-Intellectual Property for the Office of the Corporation Counsel of the City of New York, New York City Law Department, certifies that the information contained herein with regard to the responses of the City is true, accurate and complete, based on his own personal knowledge and a review of books and records created, kept and maintained in the ordinary course of business of the City of New York.

Dated: New York, New York  
January 31, 2021

Respectfully submitted,

/s/ Gerald E. Singleton  
Gerald E. Singleton

/s/ Natalie Koepff  
Natalie Koepff

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