

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

and

NYC & COMPANY, INC.,
810 Seventh Avenue, 3rd Floor
New York, NY 10019
(Complainant)

-v-

NEW YORK SHOW TICKETS INC.
770 River Road #84
Edgewater, NJ 07020
(Respondent)

Case No: D2020-3111

Disputed Domain Name[s]:

nycvb.com

**RESPONDENTS REPLY TO COMPLAINANTS RESPONSE
PURSUANT TO ADMINISTRATIVE PANEL ORDER NO.1**

Respondent Noel Turner for New York Show Tickets Inc. submits the following reply to complainants response reply pursuant to Administrative Panel Order No. 1

Foreword

The complainant ‘NYC and Company’ has misappropriated the ‘Panel Order No 1’ process and failed to follow the established procedures and processes with their new arguments. Rather than actually answer the set questions directly, as prescribed in the ‘Panel Order No 1’, the complainant’s response to the order appears to be an attempt to retry their case by introducing inappropriate levels of new evidence and new argument. They include theories and unsubstantiated claims that do not respond directly to any of the questions asked of them by the panelist. They also attempt to introduce new areas of testimony that were not included in their original complaint and are not pertinent to the questions asked by the panelist. In addition, they also do not clarify why such new content should be added at such a late stage in the case.

The complainant’s response to ‘Panel Order No.1’ is now a voluminous 17 page testimony of 6381 words and 42 new pieces of evidence. They also include multiple new charges and flimsy evidence which attempts to take the focus away from key areas of the case. Most of their answers do not even pertain to the basic seven questions asked of them in the ‘Panel Order No 1.’ The complainant is clearly attempting to retry the case and drown the respondent and panelist in new complicated litigation and example case law in the very limited time

that is left in the WIPO UDRP litigation process, which is both unfair and arbitrary. All this content should have been contained in their original complaint, unless the panelist intended the Panel Order No 1 to actually be a do-over, which was not communicated to the respondent. It appears that this strategy is designed to manipulate the court and its ultimate UDRP decision. It is requested that the court ignore all new evidence and testimony in this strong-arm approach to the legal process, which does not specifically answer the questions asked of them by the panelist in the 'Panel Order No 1'.

Adding these new arguments and evidence at this very late stage of the case is the kind of dirty tricks campaign that the complainant 'NYC and Company', Charles Flateman, Fred Dixon, Gerald Singleton and Natalie Koepff have often demonstrated in this case. The panelist is urged to reject this power play by the complainants, who have unlimited 'taxpayer financed' resources that are provided from the office of the Mayor in NYC, Bill de Blasio. The complainants have the legal resources to bog down the court and the respondent with every kind of legal argument they can possibly create at this late stage of the case. They are throwing anything then can up against the wall to see what sticks, in order to wrestle an unfair decision in their favor. Another purpose of the behemoth responses by the complainant appears to be an attempt to drown the real infractions in this case, which include the bad faith renewal of a dead trademark and an egregious attempt to get away with reverse domain name hijacking. Both of which the respondent fails to address in any of their often verbose filings. It is clear that the complainant stopped using the term 'NYCVB' a very long time ago, so all their whining cannot change that reality.

The panelist may now expect to see a 10,000 word response from the complainant to this response. All the while, it is taxpayers' money that is being used to fund their legal team's complaint and 'NYC and Company' and Gerald Singleton and Natalie Koepff have no shame in the matter, because pockets are deep in the public purse, as it is not their money. It would be a travesty of justice if this complainant should be allowed to win the case because they have the deepest pockets.

I personally would have made this response shorter, but with the complainant attempting to rewrite Tolstoy's *War and Peace*, it is appropriate to defend all their attacks to the best of our ability, so my apologies to you panelist.

False Narrative Regarding the Organization Name of 'NYC & Company'

The complainant, 'NYC and Company' and the lawyer of record, Gerald Singleton and Natalie Koepff are peddling a false narrative that the organization 'NYC and Company' is also known as the 'NYCVB'. They also contend that the organization is also known as 'NYCVB New York Convention and Visitors Bureau' or even 'NYCVB NYC and Company'. Their testimony states that the two names 'NYC and Company' and 'NYCVB' are often used interchangeably and sometimes together, which is pure fiction, which we will demonstrate below. They attempt to bring in evidence to suggest that one part of their business is still using 'NYCVB', but that too is pure fiction, and no evidence was actually provided to show any parts of the business still use this moniker.

Definition of a CVB (Convention and Visitors Bureau)

While it is accepted that the term 'CVB' may be a well-recognized industry term used to identify non-profit organizations dealing in tourism services, it does not determine that the organization must be government funded. There are no laws governing this despite the constant repetition by the complainant that there is. The complainant also likes to repeat and imply that they are the official CVB for NYC, and they do this ad nauseam under the assumption that if they keep repeating the same statement over and over, it will somehow become true.

The respondent maintains that they are globally recognized as the 'NYCVB'. The complainants gave up rights to the moniker back in 1999 when they ceased using the term 'NYCVB'. Tens of thousands of publicly available stories refer to the complainant as 'NYC and Company' and none as 'NYCVB' - see a good example with: *"By contrast, New York City and Company, the city's official tourism bureau, has a budget of*

just \$14 million in 2007”

<https://www.gothamgazette.com/index.php/economy/2436-tourism-and-jobs>

But none of the public articles ever refer to the complainant as the ‘NYCVB’, in fact if they did the complainant would normally contact that media outlet and have them correct their name in the story to their new correct name ‘NYC and Company’. There is no verifiable use of a secondary appearing anywhere in the public realm.

False Information Regarding Membership on NYC and Company

In every filing of this case, the complainant ‘NYC and Company’ and Gerald Singleton keep making differing statements about the respondents membership status in ‘NYC and Company’ and how long the membership term was. 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. There are many times in the complainant’s documents where they do this dirty-tricks strategy, but we do not have the time to go through and challenge every single false statement that is clearly wrong. Instead we have focused on what we think are the most important facts and matters, but there are many false statements that we have left uncorrected because the complainant’s strategy is to overwhelm us in legal work and burden us with very high costs at this very late stage of the case. This is all ultimately an attempt by the complainant to distract and actually hide many key aspects of the case where they have outright lied to the court. Their attempt to do an end-run by overwhelming the respondent and the court should be rejected. The court should begin charging the complainant by the word, which might make them a little more succinct in their testimony.

Lack of Any Official Document From ‘NYC and Company’ To Name Usage

What is missing from the new and voluminous testimony provided by the complainants as a response to Panel Order 1, is an actual document from Charles Flateman, the Chairperson of the Board of Directors of NYC & Company or Fred Dixon, the President and CEO of NYC & Company, stating that their organization is also known as ‘NYCVB’. What is also missing is a single reference to any use of ‘NYCVB’ on their own website NYCGO.com. In fact there is no reference to the moniker attributed to the complainant anywhere on the whole internet, and that is a very large place indeed. Other members of the complainant’s NYC & Company organization are noticeably silent on the matter, not wanting to lend their professional credibility to the false statements and narrative that their current secondary name is actually ‘NYCVB’.

It is unclear how the rest of the executive committee at the ‘NYC and Company’ feel about the complainant’s defense strategy in this case where the complainant alleges that their organization is known by both names, ‘NYC & Company’ and ‘NYCVB’. ‘NYC and Company’ executive committee members who are notably mute on the subject matter include people like Vicki Been (Office of the Mayor), Andrew Bodziak (Marriott International - which has taken a huge hit during COVID), Kathy Hilt (Macy’s - who currently supplies NYC and Company with mezzanine space for their visitors center), Vijay Dandapani (Hotel Association of NYC), Huntley Lawrence (Port Authority of NY & NJ), Tim Zagat (Zagat Survey) and Joel Fisher (Madison Square Garden Entertainment MSG) all of which may not feel quite the same way about this case as Charles Flateman and Fred Dixon do, but are all nevertheless now associated with this legal action as it has occurred on their watch and with their knowledge.

This document is intended to put those executive committee members on record as being associated and in agreement with this questionable legal action and are now forever tied to the defense of renewing a trademark in bad faith and attempting to commit a reverse domain name hijacking. By not stepping up, these individuals are breaking their own ethical commitment they have to the people of New York City to tell the truth. The truth is that the respondent’s website nycvb.com is a genuine non-profit service, the ‘NYC and Company’ organization has no substantive claim on the term ‘NYCVB’ and this case is nothing more than about saving face rather than it is establishing fact. When the complainant has falsely stated that they use ‘NYCVB’ in their business, the entire executive committee of ‘NYC and Company’, just associated themselves with perjury. The

panelist is encouraged to take a closer look at all the evidence and will see the complainant's case and evidence are extremely flimsy and often compromised. This is the compromised defense that executive committee members like Andrew Bodziak, Vijay Dandapani, Joel Fisher, Lisa Linden, Susan Marenoff-Zausner, Spencer Means, Tracy Nieporent, James Patchett, Raja Rajamannar, Marcus Samuelsson and Maneesh K. Goyal may have unknowingly signed up for but have failed to challenge and therefore failed in their duty as executive members of 'NYC and Company'

Lack of Public Facing Documentary Proof of Use of Term NYCVB

If you believe the complainant's response to 'Panel Order No 1', you would think that they have many examples of real use of the term 'NYCVB' during the period 1999-2018. But a quick search on Google shows just how ridiculous the complainant's claims actually are. There is not one single google search result that comes up for the complainant when you search for the term 'NYCVB' or 'New York Convention and Visitors Bureau'. The reason for this is because they are in fact NOT publically known for the terms and Charles Flateman, Fred Dixon and Gerald Singleton are peddling this false narrative in order to steal the domain name away from Mr. Turner in an attempt to commit reverse domain name hijacking. See the google searches for 'nycvb' here:

<http://www.google.com/search?q=nycvb>

<http://www.google.com/search?q=new+york+convention+and+visitors+bureau>

You have to ask yourself, if all the evidence provided by the complainant is so good, why is not one piece of evidence indexed by any search engine in any public location? The reality is because it is a total lie and the complainant has been ethically compromised.

Suppression of Counter Evidence

Despite the veritable mountain of less-than-convincing new evidence that the complainant is attempting to introduce into the case at this late stage, the complainant still does not provide some key documents that would speak to the reality of the situation. For example, internal 'NYC and Company' documents, that show that the organization is actually often referred to as 'formerly known as the NYCVB', were not provided to the panelist. These documents exist and the respondent can confirm that he has seen them during his membership of the 'NYC and Company' organization. It is now up to the complainant to deny that they exist.

There were also no internal documents and emails provided from 'NYC and Company' that state that the term 'NYCVB' should never be used in any context and the official name of the organization is decidedly 'NYC and Company' across realms of the organization. The respondent has also seen these documents in person and had discussions with senior employees of 'NYC and Company' over the years about this matter since 1999. These documents have been clearly suppressed by Gerald Singleton, Charles Flateman and Fred Dixon as they run counter to their current fictitious argument that the organization is commonly known as both terms 'NYC and Company' and 'NYCVB'. The documents are in existence, and at some point in the future someone in possession of them will be reading this statement and say, "Hey, I have that evidence", but it may be too late for this case and the potential for the travesty of justice is high. Do not expect Charles Flateman and Fred Dixon to do the right thing and produce these documents, as they are clearly now compromised individuals.

Complainant's History of Abusing Trademark Law

Another example of the questionable tactics used by the complainant occurred when the complainant changed their organization name in 1999 to a similar name of a different organization in NYC that had already been established five years earlier. The New York department store named 'NY And Company' that was formed in 1995 is clearly confusingly similar to 'NYC and Company', but it is evidence of the type of strong-arm tactics and behavior that the complainant demonstrates when it comes to steamrolling their way on trademarks and rights to brands, names and even domain names. 'NY and Company' changed their name to 'Retailwinds' in 2018, undoubtedly being forced by the litigious complainant despite the fact that 'NY and Company' actually owned the brand since 1995, far earlier than the complainant's name change in 1999. Clearly 'NY And Company' did not have the stomach for the fight against 'NYC and Company' that chooses to steal other organization names and use vast public coffers to enact their will, just as they are doing here. See:

False Evidence at NY Times and Others

The respondent does not have the excessive resources currently available to the complainant to defend this case. ‘NYC and Company’ uses resources and funds provided by the city of New York and are able to misuse vast amounts of taxpayer money in any of its legal cases. The respondent however is operating the nycvb.com service as a non-profit and has been overwhelmed by the bully tactics of ‘NYC and Company’ and its henchmen Charles Flateman, Fred Dixon and their legal attack dogs Gerald Singleton and Natalie Koeppf.

Having said this, we were able to take a look at some of the overwhelming false evidence provided by ‘NYC and Company’ and have turned up some disturbing facts. Specifically it appears that the NY Times articles used as evidence for their name as ‘NYCVB’ are fabricated. A quick search on the New York Times website for ‘NYCVB’ shows that the documents provided are either fake or not public, see:

<https://www.nytimes.com/search?query=nycvb>

Either way, the complainant is not being truthful or is misleading the panelist. However, a quick search on The New York Times for “nyc and company” turns up 75,578 results, see:

<https://www.nytimes.com/search?query=nyc+and+company>

A great deal of the other evidence also suffers from a lack of credibility and authentication, but with the limited time left in this part of the case, we have not been able to work on all the new evidence that the complainant has introduced at the eleventh hour.

Trademarked Material Used By Respondent on NYCVB.com

Much has been said by the complainant about the use of the complainant’s trademarked images on nycvb.com and the term ‘copious’ has been bandied about with reckless abandon in their testimony. As we have already established in my prior testimony, the small amount of photos that were used on the site were in fact just eight images. As with most of the complainant’s testimony, they had inflated it to say it was ‘copious’ amounts, but then provided no evidence to back that statement up. We have established that those images were used from the complainant’s own image store and were used under license, but the respondent removed the images on the same day of notification of discontent by the complainant, to which they also do not identify that fact, because they clearly often leave many important elements and facts of this case out. As a prior member of ‘NYC and Company’, the respondent did not realize that they must remove images when their membership ceased although this policy is not identified in the image download contract that the respondent signed.

Public Does Not Associate ‘NYC and Company’ with term ‘NYCVB’

No evidence has been provided by the complainant that shows that the general public associates, in any way, the complainant with the term ‘NYCVB’. As demonstrated, the complainant does not actually use the term ‘NYCVB’ in any public-facing documents. It is a grand stretch to claim that the public associates them with the term, when they cannot be found using the term anywhere. The truth of the matter is the complainant has no association with ‘NYCVB’ in the public consciousness and it has no rights of secondary meaning as the evidence demonstrates no recent public use of the term within the last 20 years. The complainant has also not shown any use of the term by third parties to reference themselves and therefore cannot claim that as a protectable right either.

Google Search Engine Index and Other Search Engines

Google is the only search engine that actually gives the complainant any result entry for the term ‘NYCVB’ and even then it is in second position, behind the respondent’s website that is in first search position. On closer inspection, Google should not even do this as it has already been established that the complainant does not have a single web page on their whole website that actually contains the word ‘NYCVB’. In addition, Google is the only search engine that gives the complainant this privilege, since as indicated in prior testimony, every single other search engine does not recognize the complainant as associated in any way shape or form with the term ‘NYCVB’ and does not list them anywhere in any of their results. All the other top search engines that list the respondent as the first result and do not include a result for the complainant at all for ‘NYCVB’

include: Bing.com, Yahoo.com, Ask.com, Baidu.com, Dogpile.com, DuckDuckGo.com, Ecosia.com, Exalead.com, Excite.com, Gigablast.com., Lycos.com, MetaCrawler.com, Mojeek.com, Qwant.com, Searx.com, Sogou, Startpage.com, Swisscows.com, WebCrawler.com, Yandex.com, Yippy.com, and Youdao.com.

Archive.org Evidence Is Unreliable Prior to 2018

Because the website scans of nycvb.com from archive.org, prior to 2018, were so irregular, their findings cannot be relied upon or certified. In some cases archive.org did not visit the NYCVB.com website for many years, including one gap of eight years, but that cannot be taken that the website was not up and operating at the time. Pasting over the cracks of missing and erroneous data on archive.com is not an appropriate conclusion that the complainant makes. Many internet websites have been operating for years, but a lack of audit evidence on archive.org does not establish that they were not in operation at the time; it only establishes that archive.org does not have information about them available. It was only in 2018 when the respondent specifically requested that the archive.org service start tracking the nycvb.com website, and that is when accurate records began being recorded. As prior testimony indicates, the respondent's nycvb.com website was up and running with content in 2003 and has been available ever since then.

The Complainant Cites an Incorrect Account of Being Aware of the Respondent's Use of nycvb.com

The complainant has cited October 2017 as being the earliest record of them being aware of the respondent's ownership of the domain name nycvb.com. However, they have failed to identify the large amount of correspondence and conversations that have transpired between the respondent and 'NYC and Company' over the years prior to that date in regards to nycvb.com. There have been a number of 'NYC and Company' senior managers that were well aware of the respondent's use of the domain name nycvb.com and its plans for its launch in 2003.

The complainant incorrectly described an event that took place in 2007, when Mr. Turner was on much better terms with 'NYC and Company', as he was still a paid member of the organization. He had noticed that 'NYC and Company' had failed to register their own trademarked domain name 'nycandcompany.com', so he contacted the complainant, who was legally represented by Bryan Grimaldi at the time. The respondent then graciously gifted 'NYC and Company' the domain name on August 1, 2007, as a good neighbor and member gesture. The complainant's new representation today is Natalie Koepff and Gerald Singleton, and they do not grant Mr. Turner the well deserved credit for this selfless and generous act. Now the complainant attempts to use the respondent's benevolent gesture in a highly manipulative manner to suggest that the gift was in fact registered in bad faith and it was a shakedown for cash, which is a disgusting claim and lacks any evidence. How times have changed under the new administration at 'NYC and Company' and now with the likes of Fred Dixon and Charles Flateman, its future may be bleak. The respondent would certainly not be as generous now and would not have bought it for them on their behalf. The 'NYC and Company' organization has become a shadow of its former self and now suffers from poor ethical practices.

As part of that original domain name gesture in 2007, Bryan Grimaldi had indicated that the complainant had no further use of the 'NYCVB' moniker and that the respondent was free to use the domain name for his own web service. In 2009 Grimaldi requested that Mr. Turner add words to the nycvb.com website to indicate that the respondent's website was not operated by the complainant and asked for a link to their own website to be established. In return they would grant a link exchange back to another of Mr. Turner's websites, which was agreed and put into practice. This agreement remained in practice until 2017, which is when Mr. Turner recognized that after a significant redesign of the complainants website, the complainant had not only removed the link back, but had also stolen copyrighted materials from the respondent's website about TV show tickets and had included it on their own website at:

<https://www.nycgo.com/articles/live-tv-show-tapings-and-tickets>, where it still remains to this day. The text from that page is a text copy from the respondent's own trademarked website. The new management team at 'NYC and Company' had become unfriendly to many of its former members and Mr. Grimaldi then left their employ a short time later.

As Bryan Grimaldi has now left the employ of the complainant, the complainant has now taken a single nugget of that 2007 correspondence and reformulated into their own agenda with a twisted meaning to suit their complaint. This is often their strategy in this legal case and it goes to speak to just how little that ethics now matter in this organization that is run under Fred Dixon and Charles Flateman.

Other Discussions About nycvb.com Prior to 2017

Prior to the 2017 missive about use of images and in addition to the 2007 agreement that was discussed above, the respondent had many conversations regarding the registration, use and ownership of nycvb.com with many key figures at 'NYC and Company'. In late 1999, the respondent received approval from Fran Reiter, who was the head of 'NYC and Company' at the time, and she clarified that 'NYC and Company' had no further use of the moniker 'NYCVB' after their global name change that she spearheaded in early 1999. A story that was published earlier that year had indicated that some parts of the business would still use the moniker, but Ms. Reiter confirmed that was no longer the case in late 1999. All evidence now shows that was in fact correct as no part of the complainant's organization has used the moniker publically since 1999.

In 2003, Cristyne Lategano Nicholas, the new president and CEO of 'NYC and Company' was also apprised of the ownership of the domain name by the respondent and expressed no concern. As she stated at the time, their focus was developing the new brand name 'NYC and Company' and wholeheartedly divorcing themselves from the old brand name as much as they could. After Lategano's departure in 2006, George Fertitta was appointed by NYC Mayor Michael Bloomberg as the next CEO and President of 'NYC & Company'. The respondent does not recollect any conversations with Fertitta, but he did have many talks with Bryan Grimaldi, as listed in above sections. Grimaldi's term with 'NYC and Company' covered the years 2009 -2019 and he was a key figure in the relationship between the current complainant and respondent.

It is alleged that Mr. Grimaldi's departure came under a dark cloud after he had been dissatisfied with the direction and tone that 'NYC and Company' senior management were taking the organization, and as such the organization began removing women from the board of directors and reducing their numbers on the executive committee. 'NYC and Company' has become a sexist organization that is now run by old, rich, white men. In hindsight, the choice to leave might have been the right decision for Grimaldi.

Press Releases and Public Marketing

The complainant claims that they have used the term 'NYCVB' in press releases and countless public facing documents, but have provided absolutely no evidence of that other than their use of the term 'convention and visitors bureau' in various rambling and inconsistent statements and documents. Many internal documents with the term do not meet the criteria required for case law.

Charles Flateman Past Poor Conduct

Mr. Flateman has a long-held a personal vendetta against Mr. Turner in his business dealings between the parties. This stems from when Mr. Flateman was working at the Shubert Organization, where Mr. Flateman often discouraged partners to do business with Mr. Turner and often disparaged Mr. Turner to his colleagues and business partners. That personal animosity has now spewed over into Mr. Flateman's conduct as the Chairperson of the Board of Directors of 'NYC and Company'. It is somewhat ironic that Mr. Flateman has recently renamed his role from "chairman" to "chairperson", when all the women have been removed from senior director positions.

Conclusion

nycvb.com is a non-profit website for tourism in New York City and has been operating for many years with full knowledge of the complainant. The complainant is now trying very hard to claim a secondary name for their organization with the term 'NYCVB' in order to justify their bad-faith registration of the trademark 'nycvb' and this subsequent attempt at reverse domain name hijacking in order to save face in their highly

political organization. Please reject their claim and allow nycvb.com to continue their quest to deliver unbiased tourist information to the masses in their non-profit status.