



ENERGIZER BRANDS, LLC (aka,
EVEREADY BATTERY COMPANY, INC)
Complainant/Counterclaim
Respondent

vs.

LEONARD G. HOROWITZ
(responding as real party in interest for
dissolved Paradise Products/Paradise
Products Inc.)
Respondent/Counterclaimant

) **CASE No. FA1512001652913**
) **UDRP ARBITRATION**
) **(Complaint No. 1652913)**
)
)
) **RESPONSE TO COMPLAINT**
) **PURSUANT TO DOMAINS:**
) **autoenergizers.com;**
) **autoenergiser.com;**
) **autoenergisers.com;**
) **528autoenergiser.com;**
) **528autoenergisers.com;**
) **MEMORANDUM IN OPPOSITION TO**
) **REVERSE DOMAIN-NAME HIJACKING;**
) **DECLARATION OF LEONARD G.**
) **HOROWITZ; CERTIFICATE OF SERVICE;**
) **APPENDIX I; INDEX AND**
) **EXHIBITS “1” TO “22”;**

RESPONSE TO COMPLAINT

[1.] Respondent received a Written Notice of Complaint and Commencement of Administrative Proceeding on December 24, 2015. The Complainant did not follow FORUM Policy and Rules 3(v); 3(xii) and 4 of the Archived Rules for Uniform Domain Name Dispute Resolution Policy, in submitting and Noticing Respondent of this Complaint. The attached Memorandum provides reasons for dismissing this Complaint and the Complainant’s “reverse cyber-squatting” pursuant to Complainant’s bad faith.

[2.] RESPONDENT INFORMATION

- [a.] Name: *LEONARD G. HOROWITZ*
- [b.] Address: *13-3775 Pahoehoe-Kalapana Road, Pahoehoe, HI 96778*
- [c.] Telephone: *808-965-2112*
- [d.] Fax: *none*
- [e.] E-Mail: *len15@mac.com*

[3.] RESPONDENT AUTHORIZED REPRESENTATIVE, IF ANY

- [a.] Name: *SHERRI KANE*
- [b.] Address: *P. O. Box 75104*
- [c.] Telephone: *310-877-3002*
- [d.] Fax: *none*
- [e.] E-Mail: [*sherrickane@gmail.com*](mailto:sherrickane@gmail.com)

UDRP Rule 5(b)(ii):

Respondent’s preferred contact person for correspondence relating to this case:

- [a.] Contact Name(s): *LEONARD G. HOROWITZ*
- [b.] Contact Emails(s): len15@mac.com; sherrikane@gmail.com.

Rule 5(b)(iii):

The Respondent’s attached **MEMORANDUM IN OPPOSITION TO EVEREADY BATTERY CO.’s FRAUD IN CLAIMS OF DOMAIN AND TRADEMARK INFRINGEMENT; MALICIOUS PROSECUTION; EXTORTION UNDER COLOR OF LAW; UNFAIR AND DECEPTIVE TRADE; AND ATTEMPTED THEFT OF THE SUBJECT DOMAINS BY REVERSE DOMAIN-NAME HIJACKING** details the substance of the Respondent’s affirmative defenses and counterclaims.

For economy, the Respondent consents to have this dispute heard by *one arbitrator*.

[3.] RESPONSE TO FACTUAL AND LEGAL ALLEGATIONS MADE IN COMPLAINT

The attached Memorandum provides a detailed response to the Complaint.

[Elements of the UDRP are as follows:]

[a.] *[Specify in the space below the manner in which the domain name(s) is not/are not identical or confusingly similar to a trademark or service mark in which the Complainant has rights.]* Rule 3(b)(ix)(1); UDRP ¶ 4(a)(i). (i) HOROWITZ’s domains (including autoenergizers.com) are not identical to EBC’s “ENERGIZER” mark. Nor are HOROWITZ’s domains confusingly similar to EBC’s mark. Nor is HOROWITZ’s product name “528 AUTO ENERGIZERS” identical to EBC’s “ENERGIZER” mark. Nor is HOROWITZ’s “528 AUTO ENERGIZERS” product name confusingly similar to EBC’s “ENERGIZER” mark. Obvious differences include the “S” in HOROWITZ’s domains and product names; and the missing “528” and/or the missing word “AUTO” in EBC’s mark. Thus, HOROWITZ’s domain “autoenergizers.com” and Product Name is not “confusingly similar to” EBC’s “ENERGIZER” trademark. The same is true for each of the contested domains. *Polaroid Corporation v. Polarad Electronics Corp.*, 287 F. 2d 492 - Court of Appeals, 2nd Circuit 1961, “neither plaintiff nor defendant had made an adequate showing with respect to confusion.”

Further contrasting EBC’s trademark with HOROWITZ’s domains, advertising, and product name(s): (a) there is nothing “528” about the “ENERGIZER” trademark, ENERGIZER companies, and/or ENERGIZER automotive batteries; (b) The “ENERGIZER 528” battery is not an AUTO-motive battery, and/or it does not turn on *automatically* or function by itself; (c) the “S” is missing from the “ENERGIZER” mark; and (d) it is unreasonable that the “ENERGIZER” mark, widely known to be represented by the “ENERGIZER BUNNY” successor trademark to sell batteries, would be confused with HOROWITZ or his natural health products. *Eveready Battery Co., Inc. v. Adolph Coors Co.*, 765 F. Supp. 440 – Dist. Court, ND Illinois 1991, “Although plaintiffs have not provided evidence which directly addresses this fact issue, the court finds that the likelihood of its succeeding on such a factual showing is negligible.”

[b] *[Specify in the space below why the Respondent (domain-name holder) should be considered as having rights or legitimate interests in respect of the domain name(s) that is/are the subject of the complaint.]* Rule 3(b)(ix)(2); UDRP ¶ 4(a)(ii).

HOROWITZ holds two trademarks pursuant to “LOVE 528” energy products clearly visible on “528 AUTO ENERGIZERS” labels and advertising. The attached Memorandum further details the Respondent’s right to use the contested domains in commerce. The Respondent has “rights and legitimate interests in the contested domains as the inventor, manufacturer, and seller of “528 AUTO ENERGIZERS” sold through, inter alia, the autoenergizers.com domain.

[The Panel may consider any relevant aspects included in, but not limited to UDRP ¶ 4(c):

(i.) Whether, before any notice to the Respondent of the dispute, Respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name is in connection with a bona fide offering of goods or services;

As stated above, the Respondent has been using the product name “528 AUTO ENERGIZERS” in commerce since 2013 (Exhibit 3), and an alternate name “528 Orgone Generators” since 2011. Such usage is based on a 1998 copyrighted text pursuant to “528” energy technology. The Respondent secured autoenergizers.com in September, 2015 to expand sales of “528 AUTO ENERGIZERS” in the automotive industry. All of the above was prior to Complainant noticing the Respondent to Cease and Desist on October 27, 2015.

(ii.) Whether Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if Respondent has not acquired trademark or service mark rights . . .

Respondent has not been commonly known by the domain names per se, but is commonly known to be associated with “528” products and services that all involve the electromagnetic energy frequencies of “528” unrelated to batteries or the Complainant’s properties.

(iii.) Whether Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.] **Not applicable to Respondent, but applicable to the Complainant for misleadingly diverting consumers as detailed in the attached Memorandum.**

[c.] *[Specify in the space below why the domain name(s) should not be considered as having been registered and being used in bad faith.]* Rule 3(b)(ix)(3); UDRP ¶ 4(a)(iii).

[The Panel may consider any relevant aspects included in, but not limited to UDRP ¶ 4(b):

The domains have been properly and legally registered and used in commerce by the Respondent; thus, the Respondent is not cyber-squatting, but the Complainant is reverse domain name-hijacking, and has filed this Complaint in bad faith as detailed in the attached Memorandum.

(i.) There are no circumstances other than the Complainant’s bad faith allegations indicating that Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that

Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the domain name and related product manufacturing and marketing.

The Complainant makes this bad faith allegation, concealing the fact that Eveready Brands became the Respondent's competitor in April, 2015, and seeks to damage the Respondent's business by depriving the Respondent of his domains. The Respondent registered autoenergizers.com to sell his product "528 AUTO ENERGIZERS;" and more recently Respondent registered the four energisers.com domains to secure his interests and at least recover his documented out-of-pocket costs/investments, directly related to the domain name, including the product itself, labels, boxes, counter-displays, artwork, manufacturing costs, shipping costs, advertising costs, etc.; and defending his rights and properties, not to sell them to the Complainant unless a reasonable offer was tendered by the Complainant. Instead, the Complainant neglected to respond to good faith negotiations and helpful suggestions, and filed this Complaint in bad faith, fraudulently concealing its competing interests, fraudulent search engine consumer diversions, and malicious prosecution of the Respondent in this action to steal Respondent's domains under color of law.

(ii.) Whether 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; NOT APPLICABLE, RESPONDENT HAS NOT DONE THIS, AND HAS NOT ENGAGED IN SUCH A PATTERN.

(iii.) Whether Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; ON THE CONTRARY, THE COMPLAINANT HAS FILED THIS COMPLAINT TO DISRUPT THE BUSINESS OF THE RESPONDENT, WHO BECAME EVEREADY'S COMPETITOR IN APRIL, 2015, WHEN THE BATTERY CO. ENTERED THE NUTRITIONAL PRODUCTS INDUSTRY. See Memorandum for details and exhibits.

(iv.) Whether by using the domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site or location or of a product or service on Respondent's web site or location.]

ON THE CONTRARY, THE COMPLAINANT INITIATED AN ADVERTISING CAMPAIGN USING FALSE AND MISLEADING META TAGS / KEY WORDS / SEARCH TERMS, ON-OR-ABOUT NOVEMBER 7, 2015 TO ATTRACT AND DIVERT INTERNET USERS TO THE COMPLAINANT'S (VENDORS) WEB SITES (e.g., Sears and Walmart); CREATING A LIKELIHOOD OF CONSUMER DIVERSIONS FROM THE RESPONDANT'S WEBSITES, ALSO MANUFACTURING THE FALSE IMPRESSION OF DR. HOROWITZ'S ENDORSEMENT OF THE COMPLAINANT'S PRODUCTS, WHEREAS THE RESPONDANT SIMPLY ACTS TO SELL "528 AUTO ENERGIZERS" IN GOOD FAITH. See Memorandum for more details and evidentiary exhibits.

[4.] **OTHER LEGAL PROCEEDINGS**

[Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the Complaint.] Rule 5(b)(vi). NONE

[5.] **RESPONSE TRANSMISSION**

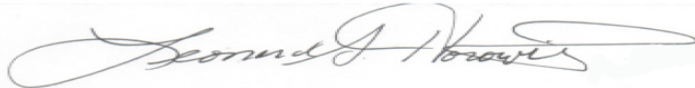
The Respondent asserts that a copy of the Response, as prescribed by FORUM's Supplemental Rules, has been sent or transmitted to the Complainant, in accordance with Rule 2(b). Rule 5(b)(vii); FORUM Supp. Rule 5. SENT HARDCOPY AND E-COPY TO COMPLAINANT'S ADDRESSES, AND BY E-MAIL PROVIDED THE FORUM WITH THIS RESPONSE.

[6.] The Respondent respectfully requests that the Administrative Panel DENIES the remedy requested by the Complainant. **RESPONDENT ALSO REQUESTS THE PANEL TO MAKE A FINDING OF REVERSE DOMAIN-NAME HIJACKING, BASED ON EVIDENCE PROVIDED IN THE ATTACHED REPLY MEMORANDUM.** *[If appropriate and the allegation can be substantiated with evidence, the Rules provide that a Respondent may ask the Panel to make a finding of reverse domain-name hijacking.]* Rule 15(e).

[7.] **CERTIFICATION**

Respondent certifies that the information contained in this Response and attached Memorandum is to the best of Respondent's knowledge complete and accurate; that this Response is not being presented for any improper purpose, such as to harass; and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully Submitted,



[Signature]

LEONARD G. HOROWITZ _____
[Name]

1-5-16 _____
[Date]

[Annex any documentary or other evidence upon which the Respondent relies, together with a schedule indexing such documents] Rule 5(b)(ix). See attached Memorandum and Exhibits Index.

[The Response, not including annexed material, shall not exceed fifteen (15) pages and shall be submitted electronically in a document separate from any Annexes.] FORUM Supp. Rule 5(c).

[The Respondent shall submit the Response, including annexed material, to the FORUM at domaindispute@adrforum.com or to the assigned case coordinator directly.] FORUM Supp. Rule 5(b) (see also Annex to the Supplemental Rules for permissible file types). *[The Response may alternatively be submitted online; Respondent's portion of any three member panel fees may be paid online as well. <http://domains.adrforum.com>]*

**MEMORANDUM IN OPPOSITION TO EVEREADY BATTERY CO.’s FRAUD
IN CLAIMS OF DOMAIN AND TRADEMARK INFRINGEMENT;
MALICIOUS PROSECUTION; EXTORTION UNDER COLOR OF LAW;
UNFAIR AND DECEPTIVE TRADE; AND ATTEMPTED THEFT OF
THE SUBJECT DOMAINS BY REVERSE DOMAIN-NAME HIJACKING**

COMES NOW Respondent LEONARD G. HOROWITZ in Pro Per, pursuant to UDRP Arbitration Rules 4(a) and 4(c), filing this Memorandum attached to Respondent’s Response to the Complaint filed December 21, 2015.

I. THE PARTIES AND PERSONA:

The EVEREADY BATTERY COMPANY, INC. (dba., “ENERGIZER BRANDS, LLC”) hereafter, “EBC”), addressed at 533 Maryville University Drive, St. Louis, MO 63141, is a large multi-national corporation that includes ENERGIZER HOLDINGS, INC., that on February 20, 2015, separated into two new companies: (1) The Personal Care Division named “EDGEWELL PERSONAL CARE” and the HOUSEHOLD PRODUCTS DIVISION, that retained the “ENERGIZER” name and logo. (Exhibit 1)

JOHN GARY MAYNARD, III (Fla 46450) (hereafter, “Maynard”) resides at 720 Epsom Downs Ct., Henrico, VA 23229-6253, (jgmaynard@hunton.com) is counsel for EBC, with the law firm of HUNTON & WILLIAMS. Attorney Maynard advertises his practice as having “a particular emphasis on brand protection; software audits; online enforcement, including domain name counseling and litigation under the Uniform Domain Name Dispute Resolution Policy (UDRP).”

HUNTON & WILLIAMS, CO. is EBC’s law firm, addressed at Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, VA 23219 (804.788.8200).

PARADISE PRODUCTS is a dissolved China corporation damaged by financial distress contributing to the death of one of the principals. LEONARD G. HOROWITZ is the surviving senior partner in Paradise Products, and the real party in interest Respondent in this dispute. Hereafter “HOROWITZ,” or “Dr. Horowitz,” is a California domiciled citizen with best contact address being 13-3775 Paho-Kalapana Road, Paho, HI 96778. Dr. Horowitz is an investigative journalist, professional whistleblower, consumer protection activist, and businessman whose commercial interests include a global peace initiative featuring “528” frequency music and therapeutic resonance devices including the product at issue—“528 AUTO ENERGIZERS.” HOROWITZ is also the holder of two related trademarks featuring the brand “LOVE 528” on that product and its advertising (Exhibit 2). He is also the co-developer of the “528LOVEvolution” detailed on 528Revolution.com, advertised on Revolution Television.net and the “Revolution Television” channel hosted by Vimeo. Dr. Horowitz is the co-creator of multiple non-profit, ecclesiastical/spiritual, humanitarian services including 528Records.com and the 528 Radio Network that currently includes twelve (12) broadcasting genres accessed through 528Radio.com. That service broadcasts music transposed into the frequency of “LOVE/528Hz” by 528Records.com service users. In addition, Dr. Horowitz researches, formulates, develops, manufactures, and brands a line of natural health and nutritional products, including “528 SuperFood.” (Exhibits 21 and 22)

II. CASE OVERVIEW

Since November 3, 2011, HOROWITZ has sold a line of large and small pyramid-shaped inventions he advertises as “528 Orgone Generators” through 528OrgoneGenerators.com, and 528Revolution.com—domains that EBC does not contest. (Exhibits 3 and 17) However, one such device that “*automatically*” generates an electro-magnetic field of energy through a

528nm/Hz cured resonating natural crystal polymer matrix, and is designed to attach to dashboards and back-panels in motor vehicles, HOROWITZ advertises as “528 AUTO ENERGIZERS.” (Exhibit 3) EBC claims this designation and advertising infringes on their “ENERGIZER” trademark, and may cause consumer confusion with its battery named “Energizer 528,” as well as other Eveready batteries sold in the automotive industry. (Exhibit 10) The contested domains registered to HOROWITZ (or entities in privity with real party of interest HOROWITZ), include: autoenergizers.com; autoenergiser.com; autoenergisers.com; 528autoenergizer.com; and 528autoenergisers.com. EBC, by this Complaint seeks to acquire HOROWITZ’s domains, and prohibit HOROWITZ from alleged wrongful use of the name “528 AUTO ENERGIZERS” in commerce.

HOROWITZ responds by claiming, inter alia, that EBC lost its exclusive ENERGIZER trademark rights through “genericization” and/or “partial genericization,” especially in the pyramid energy device industry. See “partial genericization” discussion in *Tiffany and Co. v. Costco Wholesale Corp.*, 994 F. Supp. 2d 474 - Dist. Court, SD New York 2014 at 482. HOROWITZ contends that ab initio, ENERGIZER was a relatively weak trademark derived from the commonly used word “energize” found in dictionaries as a verb, attached to the noun, “energizer.” EBC then changed, expanded, and/or abandoned its ENERGIZER mark for the “ENERGIZER BUNNY” trademark that is far stronger. (Exhibits 4 and 5) EBC neglected to defend its mark against a slew of earlier alleged infringers, especially multiple parties selling pyramid energizers in metaphysical markets. (Exhibit 6) HOROWITZ also argues that even if genericization had not occurred, and the ENERGIZER trademark was still legally enforceable in the pyramid energy device industry, consumer confusion is outrageously remote, and EBC has not provided any evidence of consumer confusion. HOROWITZ argues it is simply reckless, vexatious, tortious, and criminal under the circumstances of reverse domain hijacking to block and convey ownership of the domains from HOROWITZ to the Eveready Battery Co., especially since “528 AUTO ENERGIZERS” (Exhibit 3) do not look like, nor function like, batteries; the “ENERGIZER BUNNY” does not look like HOROWITZ, and EBC’s “Energizer 528” is a generic “Lantern Battery,” not an automobile battery or automobile industry specialty product (Exhibits 7 and 8) capable of being confused with HOROWITZ’s “no batteries needed” line of goods.

Both parties argue “bad faith.” EBC claims HOROWITZ selected his domains to purposely capitalize on EBC’s famous trademark, or financially gouge EBC to convey ownership of the domains they seek to acquire. HOROWITZ counters, inter alia (aside from the aforementioned objections) that he never considered EBC or trademark infringement when he chose to name his product “528 AUTO ENERGIZERS,” and that during pre-Complaint negotiations, HOROWITZ offered to sell EBC the domain at a reasonable price reflecting the fact that changing the domain names and product names would require substantial costs to repackage the product, redo costly counter displays, develop a new advertising campaign, compensate him for lost 2015 holiday sales, and pay for his own time as a busy professional. The Respondent also argues that: (1) EBC has presented no evidence of their “Energizer 528” predating HOROWITZ’s 1998 “528” copyrighted materials, and EBC may be infringing on the doctor’s intellectual and industrial properties, as well as feigning DR. HOROWITZ’s endorsement or affiliation to sell ENERGIZER products; (2) according to case law, EBC lacks any trademarks or rights to the generic words “AUTO,” “528,” or combined words “528 AUTO ENERGIZERS;” “AutoEnergizers.com;” or “AutoEnergisers.com” (with two “s” letters instead of one “z”); (3) that EBC commenced advertising unfairly and deceptively HOROWITZ’s aforementioned search terms to divert web traffic to Sears and other large vendors on-or-about November 7, 2015, immediately after HOROWITZ made good faith settlement offers and “528” proprietary disclosures; (4) EBC conceals direct competition with HOROWITZ in the natural foods industry with their launch of “ENERGIZER BUNNY TRAIL MIX” in April, 2015, directly competing with HOROWITZ’s “528 SUPERFOOD” (evidencing acts of unfair competition and restraint of trade); (5) EBC is abusing this arbitration process, and maliciously prosecuting HOROWITZ to steal his domains by fraud under color of law (i.e., “reverse cybersquatting”); (6) the Complainant acted in bad faith to manufacture HOROWITZ’s default in this action. The Complaint was filed in violation of the FORUM Policy and Rules 3(v);

3(xii) and 4 of the Archived Rules for Uniform Domain Name Dispute Resolution Policy. The Complainant failed to name the known real party of interest Respondent (i.e., HOROWITZ), and neglected to provide the FORUM and/or Provider with “all information (including any postal and e-mail addresses and telephone and telefax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information *based on pre-complaint dealings*, in sufficient detail to allow the Provider to send the complaint as described in [Paragraph 2\(a\)](#).” [Emphasis added.] In addition, EBC also failed to serve a copy of the Complaint upon the Respondent.¹ Finally, (7) HOROWITZ asserts that the Eveready Battery Co. and/or Attorney Maynard, has established a pattern of vexatiously litigating or arbitrating against alleged infringers, to bully adversaries into submission, compelling opponents to give up their legal rights and properties, to enable EBC to capitalize unfairly and deceptively in its trade in violation of Lanham Act prohibitions, and satisfying the elements of a racketeering enterprise engaged in white collar organized crime.

III. FACTUAL AND LEGAL ISSUES

FORUM POLICY titled: “**4. Mandatory Administrative Proceeding**,” “sets forth the type of disputes for which” arbitration is authorized. Thereby, the Respondent is “required to submit to a mandatory administrative proceeding in the event that” the Complainant complied “with the Rules of Procedure,” *which the Complainant neglected to do in bad faith pursuant to improper service of this Complaint*, as detailed above. For this reason alone, this Complaint must be DISMISSED.

Assuming however, for whatever reason, this Complaint is not dismissed for the Complainant’s failure to follow the rules, for bad faith efforts to deprive the Respondent of his right to due process on the merits by filing a timely response—to contrive the Respondent’s default—**the Complainant must, but has failed to, prove EACH of the following three elements** (quoted from Uniform Domain Name Dispute Resolution Policy, paragraph 4(a)):

- (i) [that the] domain name[s in dispute] is [are] identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) [Respondent has] no rights or legitimate interests in respect of the domain name; and
- (iii) [Respondent’s] domain name has been registered and is being used in bad faith.

A. The domain name registered by Respondent is neither identical to, or confusingly similar to, the “ENERGIZER” trademark or service mark in which Complainant has rights, and the Complainant’s argument contains reckless assertions, omissions, and misrepresentations, evidencing a pattern of bad faith.

1. The Complainant claims possible consumer confusion and potential dilution of the “ENERGIZER” trademark by noticing the Respondent on October 27, 2015, “Energizer is concerned because the autoenergizers.com domain name and 528 AUTO ENERGIZERS product name are confusingly similar to its ENERGIZER trademark. Each incorporates the famous ENERGIZER mark in its entirety and is used in connection with *related goods* sold for use in the automotive industry, an industry in which Energizer has operated for many years.” [Emphasis added.]

¹ Complainant’s intentional bad faith negligence pursuant to Rules 3(v), 3(xii) and 4 (improper Complaint service) was intended to deprive the Respondent of his rights to due process, domain properties, and timely responsive pleading; and compelled the Respondent to contact the Provider for a copy of the Complaint. The Respondent was “tipped off” to this Complaint by an uninvolved third party. Thus, Service was not in accordance with these Rules.)

2. The deception in the Complainant's allegation is in the words "related goods." As detailed below, there is *no relationship* between ENERGIZER batteries and HOROWITZ's electromagnetic field generating pyramids other than the use of the term "AUTO" to infer a dual meaning—"AUTO"OMATIC and "AUTO"MOBILE.

3. "HOROWITZ's domains (including autoenergizers.com) are clearly not identical to EBC's "ENERGIZER" mark. Nor are HOROWITZ's domains confusingly similar to EBC's mark. Nor is HOROWITZ's product name "528 AUTO ENERGIZERS" identical to EBC's "ENERGIZER" mark. Nor is HOROWITZ's "528 AUTO ENERGIZERS" product name confusingly similar to EBC's "ENERGIZER" mark; especially to the more intelligent consumers attracted to HOROWITZ's, or other vendors', orgone generator pyramids. (Exhibit 6)

4. Any lesser-educated consumer who stumbles upon HOROWITZ's "autoenergizers.com" website can instantly see that a "528 AUTO ENERGIZER" bears no resemblance to an ENERGIZER battery. Other obvious differences in HOROWITZ's advertising include the "S" in HOROWITZ's domains and product names; and the missing "528" and/or the missing word "AUTO" in EBC's "ENERGIZER" mark. Thus, HOROWITZ's domain "autoenergizers.com" and product name "528 AUTO ENERGIZERS" is not "confusingly similar to" EBC's "ENERGIZER" trademark. The same is true for each of the contested domains.

5. But *the Complainant argues recklessly and in bad faith* otherwise, without citing any case law to back his statement that "Respondent's disputed domain names . . . are confusingly similar to Complainant's ENERGIZER trademark because Respondent's domain names contain simple misspellings or typographical errors that an Internet user might make when typing in Complainant's mark, and add the generic terms "528," which is **a part number for a specialty battery**, and "auto," which directly relate to Complainant's business. A simple misspelling and typo of Complainant's mark does not sufficiently distinguish a disputed domain name and a mark. See *State Farm Mutual Automobile Insurance Company v. shilei*, FA1623634 (Nat. Arb. Forum July 14, 2015)(finding that 'Respondent's <statefarmdrivesafeandsave.com> domain name is confusingly similar to Complainant's STATE FARM mark because it is differentiated by only the additions of the words 'drive,' 'safe,' 'and,' 'save,' and the gTLD '.com.'") [Emphasis added to show counsel is "confused." In previous correspondence the "528" in the "specialty battery—"Energizer 528"—was *misrepresented* to be a battery "**measurement**." (See misrepresentation in Exhibit 13 and Attorney Maynard's criminal record in Exhibit 14.)

6. EBC's above argument also contains additional misrepresentations and omissions evidencing *a pattern of bad faith* that discredits Maynard and the Complaint. Complainant's counsel Maynard misrepresented the arbitrator's determination in *State Farm v. shilei*, evidencing a pattern of bad faith. The *actual determination in the cited arbitration case* in which the Respondent, "shilei," *failed to respond (i.e., defaulted)* simply noted that "Past panels have found that when words that describe a mark holder's **business operations** are added to a mark in the creation of a domain name, the resulting domain name is confusingly similar to the mark. See *Chanel, Inc. v. Cologne Zone*, D2000-1809 (WIPO Feb. 22, 2001) ("CHANEL, the salient feature of the Domain Names, is **identical** to a mark in which Complainant has shown prior rights. The addition of the generic term, "perfumes" is not a distinguishing feature, and in this case seems to increase the likelihood of confusion because it is an apt term for Complainant's business."). [Emphasis added.]

7. In contrast, HOROWITZ's product and domain names are not **identical** to ENERGIZER, nor are the terms "528" or "AUTO" indicative of the Complainant's **business operations** directed at selling batteries. Nor do HOROWITZ's business operations involve selling automobiles or simply the generic number "528." HOROWITZ's business operations involve selling health products, and in this instant case, pyramid "energizers."

8. Maynard wrote that consumers would have to type mistakes to access the wrong website, and confusion would still be averted by gross differences in the products! Consequently, the Complainant's main argument is *frivolous* and *reckless* in addition to being controverted by case law. *Polaroid Corporation v. Polarad Electronics Corp.*, 287 F. 2d 492 - Court of Appeals, 2nd Circuit 1961, dismissed since "neither plaintiff nor defendant had made an adequate showing with respect to confusion." "The possibility of confusion is one that exists between distinct products that are similar in appearance and are marked deceptively." Accordingly, the injury that is remedied by the trademark cause of action is public confusion as to the source of the goods." [*Shakey's Inc. v. Covalt*, 704 F.2d 426 \(9th Cir.1983\); *Carson Manufacturing Co.*, 686 F.2d at 670-71; *North Carolina Dairy Foundation, Inc. v. Foremost-McKesson, Inc.*, 92 Cal.App.3d 98, 110, 154 Cal.Rptr. 794, 801 \(1979\).](#)

9. EBC has provided *no evidence* or proof of any consumer confusion, as is required to justify a claim of infringement. *Monte Carlo Shirt, Inc. v. Daewoo Intern.(America)*, 707 F. 2d 1054 – Court of Appeals, 9th Circuit 1983 (at 1058) "A showing of likely buyer confusion as to the source, origin, or sponsorship of goods is part of a cause of action for infringement of a registered trademark." See also: [*Carson Manufacturing Co. v. Carsonite International Corp.*, 686 F.2d 665, 669-70 \(9th Cir.1981\), cert. denied, U.S. , 103 S.Ct. 1499, 75 L.Ed.2d 930 \(1983\); *Levi Strauss & Co. v. Blue Bell, Inc.*, 632 F.2d 817, 821-22 \(9th Cir.1980\); *Lindy Pen Co. v. Bic Pen Corp.*, 550 F.Supp. 1056, 1060-61 \(C.D.Cal.1982\).](#) Certainly, as a trademark specialist, Attorney Maynard knows, or should know, case law controverting his reckless argument, such as *Polaroid*; or *Eveready Battery Co., Inc. v. Adolph Coors Co.*, 765 F. Supp. 440 – Dist. Court, ND Illinois 1991, "Although plaintiffs have not provided evidence which directly addresses this [consumer confusion] fact issue, the court finds that the likelihood of its succeeding on such a factual showing is negligible."

10. Moreover, the *business operations* of Eveready is not "LOVE 528" nor even "528." The "Energizer 528" battery is not an AUTO-motive battery as the Complainant deceptively infers. The ENERGIZER battery is not powered by a magnet like "528 AUTO ENERGIZERS;" and batteries do not turn on *automatically* or function by itself like HOROWITZ's product. EBC certainly does not engage in *business operations* involving magnetically-powered electromagnetic field therapy devices that function auto-matically in auto-mobiles. In addition, the "Energizer 528" is "specialty battery" used exclusively in lantern flashlights, not in automobiles per se. In fact, Exhibit 10 shows EBC's Cease and Desist Notice wherein the company recommends the Respondent use the generic term "AUTO" in renaming his product to something other than "528 AUTO ENERGIZERS." In contrasting case law, the generic term "perfumes" clearly associated with CHANEL's "business operations" is a far cry from "LOVE 528" energy medicine and automatic ambient air resonating devices that transmit the "LOVE 528" frequency recommended to reduce pain, stress, and probably even "road rage."

11. Exhibits 7 and 8 evidence more Eveready fraud. The Complainant's attorneys neglected to disclose or submit for discovery the "Energizer 528" Specifications Sheet, that HOROWITZ obtained online. Evidence herein compounds Maynard's false claim (in his pre-filing correspondence of November 24, 2015, Exhibit 13 [third paragraph]) that the "Energizer 528" battery was named (purportedly in 1997) "to identify the size of a particular battery . . ." (*not its "part number"* as the Complaint falsely alleges). In fact, that battery Spec Sheet, does not identify the "part number" nor any "528" *measurement*. The Spec Sheet:

(a) neglects any measurement close to 528 in inches or millimeters in any dimension. Consequently, there is *nothing* about the "Energizer 528" battery that is "528;"

(b) identifies no date what-so-ever evidencing EBC had not named its "Energizer 528" battery *after* HOROWITZ's 1998 best-selling copyrighted publication, *Healing Codes for the Biological Apocalypse*, in which he advanced his 528 intellectual and industrial property. (HOROWITZ requested that Maynard provide evidence for his false claims regarding "Energizer 528" batteries, but instead, Maynard neglected to respond and simply filed this UDRP Complaint.); in addition, EBC:

(c) deceptively states under “Chemical System:” “No added mercury or cadmium,” a claim that misleads consumers and defrauds “Energizer 528” buyers into thinking that the battery does not contain the toxic metals mercury or cadmium, whereas it still does contain mercury, unlike alkaline batteries sold by several of EBC’s competitors that are “mercury free.” So the Eveready Battery Company deceptively advertises its alkaline “Energizer 528” as a “green” product, perfectly safe for homes, toys, and land fills, whereas it is not;² and

(d) Exhibits 8 and 12 prove that the source of the “Energizer 528” battery is confused by EBC officials and their advertisers who renamed the same product at least three times, so that it is virtually impossible for consumers to distinguish one “Energizer 528” battery from the other; whether EBC’s “Energizer 528” are household/flashlight “Lantern Batteries,” or are used to power televisions and home electronics, or are somehow even healthier for you. The advertisements even confuse the *source* of the “Energizer 528” battery being the Energizer Company, or the Eveready Company, or one of their subcontractors. Clearly, this is not an “AUTO”-mobile battery, and EBC’s negligence and confusingly-deceptive trade practices compound confusion to this case.

12. It is also unreasonable that the “ENERGIZER” mark, widely known to be represented by the “ENERGIZER BUNNY” to sell batteries, would be confused with DR. HOROWITZ’s “LOVE 528” trademarks or his natural health products bearing that mark.

B. ENERGIZER BRANDS, LLC feigns HOROWITZ’s “bad faith” and conceals its attorney’s knowledge that HOROWITZ has rights and legitimate interests in the domains blocked for theft.

1. HOROWITZ has rights and legitimate interests in the contested domains as the inventor, manufacturer, and seller of “528 AUTO ENERGIZERS” that prominently bear HOROWITZ’s trademark “LOVE 528” depicted as the “Perfect Circle of Sound” (slogan) that does not look like the ENERGIZER BUNNY. In fact, Maynard knowingly issued a false claim that HOROWITZ holds “no rights or legitimate interests”³ even though: (a) HOROWITZ obviously does; (b) Maynard’s co-counsel, Attorney Thomas A. Polcyn, who knowingly conceals the fact that his client competes in the natural health products market against HOROWITZ, documented in Exhibit 10 his foreknowledge (before filing this Complaint) that HOROWITZ is the real party in interest who sells the “528 AUTO ENERGIZERS” through the domain autoenergizers.com. These attorneys also had prior knowledge that HOROWITZ, and his partners, purchased the other domains in good faith to sell the same pyramid product.

2. Attorney Maynard wrote in bad faith his Complaint statement (paragraph b.): “The Respondent should be considered as having no rights or legitimate interests in respect of the domain names. The WHOIS information for the disputed domain name does not reflect that Respondent is commonly known by the disputed domain name . . . Such evidence is sufficient to establish respondent’s lack of rights to the disputed domain name.” Maynard’s authority for this reckless misrepresentation is Maynard’s own victory by *default* in *Capital One Financial Corp. v. Ryan G. Foo/PPA Media*

² Battery poisonings continue to be a major medical problem according to the CDC that published 40,400 hospitalizations of children <13 years of age occurred from 1997 and 2010 due mainly to battery ingestions, that EBC claims it has helped reduce following educational campaigns.

³ Maynard issued this false claim to defraud HOROWITZ and steal his domains. Maynard’s false claim reflects Maynard’s moral turpitude and multiple malpractices, including violations of Professional Conduct Rules 1.2; 3.1; 3.3; and 8.4. In essence, Maynard prays to make this honorable Provider complicit in EBC’s organized crime and racketeering enterprise engaged in extortion, mail fraud, unfair and deceptive trade, malicious prosecution, and conspiracy under color of law for thievery.

Services, FA 1544064 (March 25, 2014) (finding that “there is no basis in the record for a finding that Respondent is known by the disputed domain name under Policy ¶ 4(c)(ii) . . .”

3. Clearly, that case record was specious due to the respondent’s failure to answer. Maynard makes a mockery of this arbitration process wherein he repeatedly references such default cases lacking adjudication on the merits. Procedural bias evidenced by the Complainant’s reckless service tactics as HOROWITZ experienced (as aforementioned) may best explain Maynard’s victories over defrauded registrants who are ignorant in matters of law, incompetent to respond, and frightened by EVEREADY’s extortionate threats of malicious prosecution. A gross impression of impropriety accompanies this case and Maynard’s citing of such arbitration “precedents” as though sham case law condemning citizens to domain dispositions is somehow Constitutional instead of criminal. The Complaint evidences that the vast majority of Maynard’s victims flee the scene of his white collar crimes leaving his multinational corporate clients as victors in reverse domain hijacking. Maynard’s misrepresentations and pattern of bad faith pleadings also evidence his criminal “condition of mind” to commit theft by fraud, extending his criminal record shown in Exhibit 14.

4. More honorably, the fact finder and Service Provider determined in *City One v. Foo* that registrant Ryan G. Foo used his domain name “to host competing and related hyperlinks” that was not “a Policy ¶ 4(c)(i) *bona fide* offering of goods or services, . . .” unlike the facts in the instant case wherein HOROWITZ does not sell batteries or promote ENERGIZER’s competition.

5. Moreover, both Maynard and Polcyn concealed their affiliations and sponsorship by HOROWITZ’s competitor in the consumer health products industry— ENERGIZER HOLDINGS, INC., and EDGEWELL PERSONAL CARE.” (Exhibit 1)

6. Maynard’s bad faith, omissions, misrepresentations, and frank fraud provide just cause to dismiss this action as an abuse of process and malicious prosecution for domain theft, and conspiracy to deprive HOROWITZ of his rights and e-commerce properties by reverse cybersquatting.

C. The Respondent’s domain names have been registered and administered in good faith as any reasonable person can judge.

1. HOROWITZ is an American citizen who can exercise his legal and lawful rights in commerce, as he does by advertising and selling products, or preparing to do so, on or through “autoenergizers.com” and/or the other disputed domains.

2. HOROWITZ’s good faith registrations and legal entitlements are even evidenced in Attorney Polcyn’s correspondence of October 27, 2015 (Exhibit 10) in which Polcyn acknowledged HOROWITZ’s registration of the domain sought to be acquired by the Complainant. Polcyn wrote, “[t]he domain autoenergizers.com redirect to the website located at <http://www.528revolution.com/529-auto-energizers/> (“Website”), which appears to be owned and operated by you or your organization. From a review of the Website, we see that you sell a product under the name 528 AUTO ENERGIZERS (“Product Name”), as shown below . . .”

3. Polcyn then attached HOROWITZ’s “528 AUTO ENERGIZERS” advertisement displaying HOROWITZ’s “LOVE 528” trademark. (Exhibit 10) This provides a copy of the “528 AUTO ENERGIZERS” advertisement that HOROWITZ published by and through these and his other domains.

4. *Included in Polcyn’s screen shot of HOROWITZ’s “528 AUTO ENERGIZERS” advertising* are two other HOROWITZ products: (1) OxySilver; and (2) Liquid Dentist (“Best Oral Healthcare”). As Polcyn’s letter evidences, following the Complainant’s neglected “inquiry reasonable,” **each of HOROWITZ’s products bear most prominently HOROWITZ’s trademark “LOVE 528.”** This fact alone makes EVEREADY’s claim preposterous—that HOROWITZ holds no rights or

legitimate interests in respect of the domains. (See HOROWITZ's trademarks in Exhibit 2 and Polcyn's inclusions thereof in his Notice, Exhibit 10.)

5. Consequently, the Complaint was filed in bad faith, and the Complainant cannot assert in *good faith* any of the above three Rule 4(a) required elements. Thus, this action must be dismissed as worse than frivolous, it is outrageously fraudulent and reveals a pattern of domain registrant prosecutions consistent with a racketeering enterprise engaged in organized crime.

IV. AFFIRMATIVE DEFENSES, COUNTERCLAIMS, and AUTHORITIES

A. THE COMPLAINANT DOES NOT HAVE THE LEGAL RIGHTS IT PURPORTS TO HAVE DUE TO “GENERICIZATION” OR “PARTIAL GENERICIZATION OF THE MARK FROM: (1) common language usage of the mark and inherent weakness; (2) dilution of the mark caused by adapting the “ENERGIZER BUNNY” trademark; and (3) the failure to prosecute many citizens and companies making use of the word “energizer” in their product names and advertisements.

1. The Complainant submits extensive uncontested evidence of having trademarked the word “ENERGIZER” internationally. But EBC omits the fact that dictionaries regularly publish their word mark as a derivative of “energize,” the verb, for which “energizer” is its noun. (Exhibit 9) The court in *Tiffany* stated, “Even an incontestable or famous mark can become generic and lose protection. *Pilates, Inc. v. Current Concepts, Inc.*, 120 F.Supp.2d 286, 296 (S.D.N.Y.2000) (if a mark has become generic it "lacks protection even if it is incontestable"); *see also, TCPIP Holding Co., Inc. v. Haar Communications, Inc.*, 244 F.3d 88, 93 (2d Cir.2001) (“[g]eneric marks. . . are not entitled to any protection against infringement, even if they [are also] famous as marks . . .”). However, widespread use of a mark to describe a product or service, alone, is not enough to render a mark "generic." *See, e.g., Marks v. Polaroid Corp.*, 129 F.Supp. 243, 270 (D.Mass.1955), *aff'd*, 237 F.2d 428 (1st Cir. 1956). Indeed, in this case much more than widespread use of the mark exists from people energizing themselves through exercise, or acting as energizers for others, such as: (a) natural healers, including chiropractors and acupuncturists, who administer “energy medicine” as bio-spiritual energy therapists; and (b) spiritualists and religious persons who use “hands on healing” to energize others with the power of the Holy Spirit. In addition, as shown by examples in Exhibit 6, **there are many companies and citizens manufacturing non-battery devices that transmit energy, in one form or another, to other things and people, accurately and legally advertised as “energizers.”**

2. Continuing discussion in *Tiffany*, “The question of whether a mark is, or has become, generic is generally one of fact.” *Bristol-Myers Squibb Co. v. McNeil-P.P.C. Inc.*, 973 F.2d 1033, 1039 (2d Cir.1992). The [t]ypes of evidence considered by courts in determining whether a mark is generic include: (1) dictionary definitions (as shown in Exhibit 9); (2) generic use of the term by competitors⁴ and other persons in the trade (as shown in Exhibits 3 and 6); (3) the Complainant's own generic use (as shown in Exhibits 4 and 5); (4) generic use in the media (as shown in Exhibits 4 and 5); and (5) consumer surveys (neglected by the Complainant in this instant case.) *Pilates, Inc.*, 120 F.Supp.2d at 297; *see also, In re Reed Elsevier Prop. Inc.*, 482 F.3d 1376, 1378 (Fed.Cir.2007).

3. Exhibit 6 evidences a large segment of society does not distinguish “pyramid energizers” on the basis of source, but rather as a generic term referencing pyramid devices that are believed to transmit various forms of energy. “Essentially, a mark is generic if, in the mind of the purchasing public it does not distinguish products on the basis of source but rather refers to the type of

⁴ HOROWITZ is certainly EBC's “competitor” as evidenced by EBC's entry into the natural nutritional foods and consumer health care markets in April, 2015. See Exhibits 1 and 4.

product"). [*Courtenay Commc'ns Corp. v. Hall*, 334 F.3d 210, 214, n. 2 \(2d Cir.2003\)](#) See also: 15 U.S.C. § 1064(3) (LexisNexis Supp. 2013).

4. Under these circumstances, precisely as evidenced in this instant case, a court may partially cancel the Complainant's registered trademark since one use of the trademarked term has become generic. For example, "a term that is [arbitrary or fanciful] for a particular product [e.g., batteries] may be [generic] for another" [e.g., orgone generators] and "[a] term may . . . be generic in one market and descriptive or suggestive or fanciful in another." In *Tiffany*, quoting: [*Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9-10 \(2d Cir.1976\)](#)

5. One of "two principal circumstances" under which courts have determined that trademarked terms are, or have become, generic, is "where a seller [like EBC] appropriates an existing generic term [e.g., "energize"] and claims exclusive rights in it as a 'trademark' of that term," upon the addition of a single letter "r."⁵ "[B]ut the term was generic before the seller used it and so the seller never had trademarked rights in it." Op. cit. *Tiffany* at 481, referencing: [*Horizon Mills Corp. v. QVC, Inc.*, 161 F.Supp.2d 208, 213 \(S.D.N.Y. 2001\)](#). It should be noted that EBC opposes HOROWITZ's single "s" letter additions to the contested mark; thus, cannot in good faith claim their "r" addition to the verb "energize" did not create a generic term for their trademark, *ab initio*.

6. Accordingly, even the Complainant's statutorily incontestable mark has been rendered wholly or partially invalid (i.e., "partial genericization"), and should be cancelled (and this Complaint dismissed), since it has come to be "the generic name" for goods or services, or a portion thereof, for which it is registered. . . ." That is, in this instant case, *energy transmitting people, products, or services are "energizers" that "keep going, and going, and going."* 15 U.S.C. § 1064(3) (LexisNexis Supp.2013). See also, [*Park 'N Fly, Inc.*, 469 U.S. at 194-95, 105 S.Ct. 658](#).

7. Summarily, the Complainant feigns rights it does not have, making it easy for the fact finder in this dispute to dismiss this Complaint for Eveready's failure to meet any of the required elements of the Provider's Rules; including providing a four prong Paragraph 15(a) test to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and ***principles of law that it deems applicable.***" [Emphasis added.] According to case law, EBC filed this Complaint to allegedly protect rights it does not legally own, and infringes on the rights and properties that the Respondent does own.

B. THE COMPLAINANT ACTED IN BAD FAITH BY REGISTERING THIS COMPLAINT TO REVERSE CYBER-SQUAT, TO PREVENT A COMPETITOR AND LEGAL OWNER OF VALIDLY ACQUIRED DOMAINS FROM ENGAGING IN COMMERCE, TO DISRUPT THE RESPONDENT'S BUSINESS(ES), AND COMPETE UNFAIRLY AND DECEPTIVELY ON THE INTERNET, AFTER INTENTIONALLY ACTING UNETHICALLY TO CONFUSE AND ATTRACT INTERNET USERS USING FALSE AND MISLEADING KEY WORDS OR META TAGS IN EVEREADY'S ONLINE ADVERTISEMENTS, IN VIOLATION OF GOOD FAITH FAIR BUSINESS DEALINGS, AND IN VIOLATION OF ELEMENTS IN UDRP RULE 4(b).

⁵ The Complainant cannot have it both ways—claim the Respondent's addition of one letter "s" at that end of the mark does not diminish the infringement; and at the same time claim its mark was not genericized by adding the single letter "r" at the end of the commonly used English word "energize." The Complainant fraudulently conceals this weakness in its mark that most probably caused the Complainant to adapt (vicariously abandoning "ENERGIZER" for) the stronger "ENERGIZER BUNNY" trademark.

1. UDRP RULE 4(b) holds respondents to a level of *good faith* and *fair business dealings* that must be likewise observed by complainants, or otherwise this Honorable FORUM would be prejudicial and in breach of 42 USC 1983. Rule 4(b) penalizes parties for bad faith registrations, and so it must hold reverse domain hijackers equally accountable.

2. The Complainant violated Rule 4(b) provisions by registering this Complaint:

(i) to acquire HOROWITZ's domains by misrepresentations, omissions, and frank fraud; and/or to avoid offering reasonable value in consideration of HOROWITZ's expenses (See Appendix I), to acquire HOROWITZ's domains illegally, by extortion under color of law;

(ii) to acquire several domains by a pattern of fraud, after HOROWITZ et. al., registered for trademark rights on the name "ENERGIZER." (Exhibit 19) In order to prevent competitor HOROWITZ et. al., "from reflecting the [pseudo]mark" in the corresponding domain names: autoenergiser.com; autoenergisers.com; 528autoenergiser.com; 528autoenergisers.com, that HOROWITZ secured to defend his rights and commercial interests;

(iii) to acquire HOROWITZ's domains primarily for the purpose of disrupting HOROWITZ's business as a natural health products competitor; since EBC extended its product line into the consumer health market shortly before filing this Complaint, as evidenced by EBC's advertising of "Energizer Bunny Trail Mix," beginning on-or-about April 16, 2015. Exhibit 4 evidences "[t]he ENERGIZER BUNNY trademark is filed in the category of Staple Food Products, Meats and Processed Food Products" in direct competition with HOROWITZ "528 SuperFood" product advertised through vendors online, (Exhibit 20) and by infringing on HOROWITZ's "528" industrial and intellectual properties made known to the Complainant before the Complaint was filed. (Exhibits 11, 21 and 22)

(iv) by using false and misleading search terms (meta tags, focus key words), including "Energizers" with an "s," and "528," and the word "auto," in markets and product categories beyond the battery and/or automotive markets, including the natural health food market, EBC has intentionally attempted to attract, hook and divert consumers away from HOROWITZ's websites, and at the same time feign the famous doctor's "sponsorship, affiliation, or endorsement" of Energizer Company products (since HOROWITZ is widely known to have made "528" an extremely unique and beneficial number). (Exhibits 12, 21 and 22)

3. Since EBC committed the above violations of the aforementioned elements of Rule 4(b), this Complaint must be dismissed for EBC's bad faith.

C. THE COMPLAINANT FRAUDULENTLY CONCEALS FEDERAL INFRINGEMENT ELEMENTS TO FALSELY CLAIM INFRINGEMENT AND CONSUMER CONFUSION IN A REVERSE CYBER-SQUATTING AND UNFAIR AND DECEPTIVE TRADE SCHEME TO STEAL RESPONDANT'S DOMAIN(S), DIVERT THE RESPONDENT'S CUSTOMERS, AND DEFRAUD CONSUMERS.

1. The Complainant's infringement claim is reckless, considering the elements cited in 15 U.S. Code § 1115(b)(4): "That the use of the name, term, or device charged to be an infringement is a use, *otherwise than . . . a term or device which is descriptive of and used fairly and in good faith only to describe the goods or services of such party[.]*" (Emphasis added.) HOROWITZ's "528 AUTO ENERGIZERS" is precisely that—a device which is descriptive of and used fairly and in good faith only to describe the goods or services" of HOROWITZ and his pyramid energizers recommended for automobiles and resonating in "528."

2. Furthermore, in the Complaint, "the [ENERGIZER] mark has been or is being used to violate the antitrust laws of the United States" (*Id.*) to damage HOROWITZ, EBC's competitor.

3. The Complainant's bad faith misrepresentations of federal law, false claims of infringement, and fraudulent concealments of its own actions to steal HOROWITZ's domains and divert consumers away from his websites using false and misleading search terms, (Exhibit 12) compounds EBC's pattern of unfair competition and deceptive trade practices.

4. EBC's claims are similar to those adjudicated by the Ninth Circuit in *New West Corp. v. NYM Co. of California*, 595 F.2d 1194 (9th Cir. 1979), wherein section 43 of the Lanham Act, and 15 U.S.C. § 1125(a) were cited as creating a federal remedy against the deceptive use of unregistered trademarks to designate falsely the origin of goods ("passing off"). 595 F.2d at 1198, 1201. Under the Lanham Act "one can capitalize on a market or fad created by another provided that it is not accomplished by confusing the public into mistakenly purchasing the product in the belief that the product is the product of the competitor." *American Footwear Corp. v. General Footwear Co. Ltd.*, 609 F.2d 655, 662 (2d Cir. 1979), cert. denied, 445 U.S. 951, 100 S.Ct. 1601, 63 L.Ed.2d 787 (1980). In this instant case, by false meta tag advertising, EBC has acted to deceive and confuse consumers into thinking that HOROWITZ may have affiliated with, or endorsed, Energizer Battery Co. products. However, HOROWITZ's established customers are far too intelligent to confuse the source of HOROWITZ's product with the "ENERGIZER BUNNY company;" and too sophisticated to believe EBC, with its reputation for producing products that poison landfills and kill children would be promoting "LOVE 528," sponsoring HOROWITZ, or selling "No Batteries Needed" "therapeutic art."

5. "[Union] Carbide sought an injunction against Ever-Ready's use of the term Ever-Ready on or in connection with the advertising or sale of electrical products. Carbide also requested that Ever-Ready be required to deliver up to it all material containing the allegedly infringing marks. . . . The district court found no infringement, no dilution under Illinois law, no unfair competition, and declared Carbide's mark, EVEREADY, invalid." "[A] court, in the exercise of its equity powers, may deny enforcement of a trademark on the part of one who has used that trademark in violation of the antitrust laws." *Union Carbide Corp. v. Ever-Ready Inc.*, 531 F. 2d 366 - Court of Appeals, 7th Circuit 1976. The Appellate Court reversed, and remanded for trial on the merits of Ever-Ready Inc.'s antitrust counterclaims. The Arbitrator in this instant case must, likewise, consider exhibited evidence of EBC's unfair competition, deceptive trade, and reverse cyber-squatting, and dismiss the case promptly to mitigate the Respondent's further damage.

Dated: Pahoia, HI, 96778, January 5, 2016

LEONARD G. HOROWITZ, in Pro Per
Respondent/Counterclaimant

DECLARATION

I HEREBY CERTIFY as the Respondent in this civil action of ENERGIZER BRANDS, LLC (aka, EVEREADY BATTERY COMPANY, INC) v. LEONARD G. HOROWITZ, (real party in interest for the dissolved PARADISE PRODUCTS/PARADISE PRODUCTS INC.) that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Dated: Pahoia, HI, 96778, January 5, 2016

LEONARD G. HOROWITZ, in Pro Per

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of January, 2016, I served a true and correct copy of the foregoing **RESPONSE and MEMORANDUM IN OPPOSITION TO EVEREADY BATTERY CO.'s FRAUD IN CLAIMS OF DOMAIN AND TRADEMARK INFRINGEMENT; MALICIOUS PROSECUTION; EXTORTION UNDER COLOR OF LAW; UNFAIR AND DECEPTIVE TRADE; AND ATTEMPTED THEFT OF THE SUBJECT DOMAINS BY REVERSE DOMAIN-NAME HIJACKING, APPENDIX I, AND EXHIBITS "1" thru "22"** by the methods required by FORUM Supp. Rules 5(b) and (c), described below to:

To:

Delivery by:

FORUM ARBITRATOR(S)

ELECTRONICALLY: domaindispute@adrforum.com

COMPLAINANT'S AUTHORIZED REPRESENTATIVE:

jgmaynard@hunton.com

HARDCOPY by USPS X

John Gary Maynard, III
951 East Byrd Street
Riverfont Plaza, East Tower
Richmond, VA 23219

Respectfully submitted,

/s/ LEONARD G. HOROWITZ.

Dated: Paha, HI, 96778 January 5, 2016

APPENDIX I – DAMAGES TO RESPONDENT

INVESTMENT:	DAMAGES (Approx. U.S. \$)
1. Five Domain Registrations	\$60.00
2. "528 AUTO ENERGIZERS" Artwork Design.....	\$1,250
3. "528 AUTO ENERGIZERS" Manufacturing.....	\$15,000
4. "528 AUTO ENERGIZERS" Packaging.....	\$800
5. "528 AUTO ENERGIZERS" Counter Displays.....	\$900
6. "528 AUTO ENERGIZERS" Lost Holiday Sales (2,000 units x \$60 @ 50%)	\$60,000
7. Cost (mailing and misc.).....	<u>\$17.85</u>
TOTAL (not including fees and costs)	\$78,567.85