

ADMINISTRATIVE PANEL DECISION

CFA Properties, Inc. v. Domains By Proxy, LLC and John Selvig Case No. D2012-1618

1. The Parties

Complainant is CFA Properties, Inc. of Wilmington, Delaware, United States of America, represented by Troutman Sanders, LLP, United States of America.

Respondents are Domains By Proxy, LLC of Scottsdale, Arizona, United States of America and John Selvig of Brooklyn, New York, United States of America, represented by Lewis & Lin, LLC, United States of America.

2. The Domain Name and Registrar

The disputed domain name <chickilafoundation.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 10, 2012. On August 13, 2012, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 15, 2012, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on August 17, 2012 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on August 22, 2012.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified Respondent of the Complaint, and the proceedings commenced on August 24, 2012. In accordance with the Rules, paragraph 5(a), the due date for Response was September 13, 2012, which was subsequently extended upon request of Respondent and with the consent of Complainant to September 20, 2012. The Response was filed with

the Center on September 21, 2012.

On September 28, 2012, Complainant filed Additional Submissions by email with the Center and on the same date Respondent replied by email to the Center.

The Center appointed M. Scott Donahey as the sole panelist in this matter on October 1, 2012. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

On October 10, 2012, the Panel issued its Administrative Panel Procedural Order No. 1. That Order provided:

“The Panel has determined that it will accept Complainant’s supplemental filing in Case No. D2012-1618 and consider it also in relation to D2012-1617. Accordingly Respondent will have until October 30, 2012 to file any supplemental response. The content of the supplemental response is to be limited to points raised in the supplemental filing submitted by Complainant and also will be considered in relation to both cases.

The Panel hereby extends the Decision due date in both cases to November 19, 2012.”

In its “Clarification” filed October 15, 2012, in response to Administrative Panel Procedural Order No. 1, Complainant indicated that its Additional Submission filed September 28, 2012 related only to the present case, WIPO Case No. D2012-1618.

In Respondent’s Supplemental Response, filed October 30, 2012, although Respondent failed to identify the Case Number or Numbers to which its Response applied, Respondent identified only the disputed domain name <chickfilafoundation.com>, which is the subject of the present case, WIPO Case No. D2012-1618, and Respondent’s arguments all concerned the web site to which that disputed domain name resolves.

It has been necessary to extend the Decision due date in this case to the date indicated under paragraph 7 below.

4. Factual Background

Complainant is the registrant of the stylized and well-known CHICK-FIL-A mark. The earliest of the numerous registrations with the United States Patent and Trademark Office (“USPTO”) issued October 15, 1974. The CHICK-FIL-A mark has been in continuous use in connection with restaurants and the products served in those restaurants since 1964. The products and restaurants have been promoted on the “www.chick-fil-a.com” web site operated by Complainant since October 25, 1995.

Respondent registered the domain name at issue on November 30, 2011. The Whois lookup listed Domains By Proxy, LLC, a well-known privacy service as the registrant, but the Registrar informed the Center that the actual registrant was one John Selvig, which resulted in an amendment to the Complaint, adding John Selvig as a Respondent. Respondents are referred to herein, jointly and severally, as “Respondent.”

The disputed domain name resolves to a web site which prominently features the famous stylized CHICK-FIL-A trademark, in white on a red background, as used by Complainant at its restaurants and in print and television advertising, followed by the word “FOUNDATION” in white on the same red background. The heading on the home page is followed by a welcome which reads “Welcome to the Chick-fil-A Foundation website! If you would like to have John, Robert and Harvey the Cow perform their Family Values Show at

your church, school or birthday party please email us at []@chickfilafoundation .com or call (404) [].¹

Below on the home page is a picture of Mike Huckabee. Mr. Huckabee is a former governor of Arkansas, a Christian minister, a television personality, an author, a political commentator and an outspoken supporter of the views espoused by Chick-fil-A's President and CEO, Dan T. Cathy. Mr. Cathy is a devout Christian who closes all Chick-fil-A restaurants on Sunday, supports traditional marriage and the traditional family, and who openly expresses the view that homosexuality is a sin and is adopted as a life style by choice. When gay, bisexual, lesbian, and transgender individuals called for a boycott of Chick-fil-A restaurants to counter Mr. Cathy's openly anti-gay marriage views, Mr. Huckabee and other like-minded individuals called for supporters of Mr. Cathy's views to eat a meal at the Chick-fil-A restaurants in support of Mr. Cathy. There is a link below Mr. Huckabee's picture to a letter purportedly written by Mr. Huckabee in support of Chick-fil-A Appreciation Day.

Below this portion of the home page is a coupon offering to provide anyone who abandons his or her homosexual life style a free Chick-fil-A sandwich.

The next item is a link to "Chick-fil-A Foundation visits a Christian Talk Show!"

The next link is one entitled "Spreading Joy and Family Values in NYC! The gang makes a trip to New York City to recruit new members and spread joy!"

At the bottom of the page in very small print, especially in comparison to the size of the print used on the rest of the home page, is the following statement: "Content Copyright 2012 CHICKFILAFUNDATION.COM. All rights reserved. This site is not affiliated with Chick-fil-A."

On another web page, under a picture of Mr. Cathy, there is the following letter:

"Greetings!

I feel truly blessed to have spent 11 years as COO of Chick-fil-A. As I'm sure you know, Chick-fil-A has been a family restaurant for the past 45 years and as long as I am in charge, our priority will continue to be family.

Family. That's a great place to begin! What is a family? Well, as far as I'm concerned it starts with the parents. A man and a woman. A husband and a wife. Starting a family any other way is unnatural and in opposition to God's will. So, if a man married to a man or a woman married to a woman is your definition of a family and you looking for a place to grab a quick bite to eat I would encourage you to look elsewhere because that is not Chick-fil-A;s definition. I know remarks like these have received a lot of attention from the liberal media lately and there are a lot of things being said about my family and our beliefs. To all the critics out there, I would like to say this; if you don't agree with me, then don't give my company business. To take that a step further, if you don't agree me [sic] I don't want your business. To everyone that agrees with our stance, thank you for your continued support. God bless you.

Dan Cathy
President and Chief Operating Officer of Chick-fil-A"

The site also contains pictures of the president of the National Organization for Marriage, and a message supporting traditional marriage; a clinical therapist and Christian who runs a clinic to cure homosexuality in Minnesota, and Rick Santorum, a former Senator from Pennsylvania and candidate for the Republican

¹ Respondent lives in Brooklyn, New York. Area code 404 is the area code for Atlanta, Georgia, where Complainant has its headquarters. When the Panel called, a man with a Southern accent thanks the caller for calling the Chick-fil-A foundation and asks the caller to leave a message.

nomination for President in 2012, a Christian supporter of traditional marriage.

5. Parties' Contentions

A. Complainant

1. Original Complaint

Complainant argues that the disputed domain name is confusingly similar to Complainant's registered trademarks and service mark in the CHICK-FIL-A family of marks, in that the disputed domain name consists of Complainant's mark absent the hyphens with the English word "foundation" appended thereto.

Complainant argues that the content of Respondent's web site is not at issue in the determination as to whether the disputed domain name is confusingly similar to the mark under paragraph 4(a)(i) of the Policy.

Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name. Complainant asserts that Respondent does not produce, distribute or sell any goods or services under the CHICK-FIL-A mark or under the trade name Chick-fil-A Foundation. Nor has Respondent ever been commonly known by the disputed domain name.

Anticipating in the Complaint that Respondent would contend that Respondent is making a fair use of the mark, Complainant argues that initial interest confusion precludes a finding of fair use, citing a United States federal court decision citing WIPO UDRP decisions in the cases of *Covance, Inc. v. Covance Campaign*, WIPO Case No. D2004-0206 and *Russo v. Guillaumin*, WIPO Case No. D2006-1627.

In the Complaint, Complainant argues that Respondent has registered and is using the domain name in bad faith in that Respondent clearly knew of Complainant's famous mark at the time Respondent registered the mark, as the web site to which the disputed domain name resolves evidences such knowledge. Complainant argues that the mere incorporation of a famous trademark into a domain name constitutes bad faith use, citing the National Arbitration Forum decisions in *Morgan Stanley v. Blog network Int'l*, FA 0161469 and *Elsevier Inc. v. Colan*, FA 0161469. Complainant argues that the "initial interest confusion" doctrine constitutes bad faith registration and use in and of itself, citing a number of UDRP decisions.

Complainant contends that the disclaimer on the web site that the web site "is not affiliated with Chick-fil-A is not effective since it is in "micro font at the very bottom of the Web Site where it is unlikely to be seen by any viewer. The suggestion initially created on the web site to which the disputed domain name resolves creates an initial impression that Respondent is affiliated with Complainant, and that cases have held that criticism sites are not protected under fair use where the site creates the "look and feel" of a complainant's own web site, citing *Justice for Children v. R netso*, WIPO Case No. D2004-0175.

Finally, in the Complaint, Complainant invites the Panel to draw an adverse inference from the use of a privacy shield service which creates difficulty in identifying the owner of the domain name registration, citing a number of WIPO UDRP cases to this effect.

2. Additional Submission

Following receipt of the Response, Complainant submitted an additional submission which the Panel elected to accept under the Rules, paragraphs 10(a), (b), (d), and 12, despite the fact that the panel had not requested the further submission.

In addition to iterating many of the arguments previously made in its Complaint, Complainant attempted to counter Respondent's fair use argument that the web site constituted a parody and a criticism of Complainant. Citing the case of *Trump v. Web-adviso*, WIPO Case No. D2010-2020, Complainant argued that there could be no legitimate parody "when the domain name at issue suggested that the web site might be sponsored or associated with the complainant regardless of the content of the purported parody web

site.” Complainant argues that “Respondent’s Web site makes extensive use of CFA’s marks and logos and other indicia of origin of CFA to give the Web site the look and feel of CFA’s web site that is likely to confuse the public into believing that the Respondent’s Web site is affiliated with CFA or a non-profit foundation associated with CFA.”

Quoting from the case of *Valero Energy Corp. v. Am. Dist. Systems, Inc.*, WIPO Case No. D2001-0581, Complainant argues that the “initial interest confusion” resulting from the similarity of the domain name to the mark held by a complainant is sufficient in and of itself to defeat a “First Amendment” claim, referring to the amendment to the United States Constitution which provides protection for free speech, as well as other “rights reserved to the people.” Citing United States federal court decisions, Complainant argues that the domain name itself must embody the parody by simultaneously conveying the two meanings embodied in the web site itself. See, e.g., *People for the Ethical Treatment of Animals (PETA) v. Doughney*, 263 F.3d 359 (4th Cir. 2001). Complainant also cites an early UDRP decision dealing with parody in which the panel adopts a two-step test which a parody must pass in order to be successful: first, the panel must determine whether the domain name itself constitutes a parody; second, if the domain name constitutes a parody, the panel must examine the content of the web site to see whether the content constitutes a parody “In order to constitute parody, the web site must poke fun at the goods or services associated with Complainants’ marks: use of another’s trademark to poke fun at something unrelated to Complainant’s mark is not parody.” *A&F Trademark, Inc. and Abercrombie & Fitch Stores, Inc. v. Justin Jorgensen*, WIPO Case No. D2001-0900.

Complainant argues that Respondent’s web site fails as a parody in that “it displays to viewers absolutely no hint that it is claimed to be a parody site, instead referencing the cows that are the famous mascots of CFA’s national advertising campaign.”

Finally, Complainant argues both that the web site itself is designed to confuse the user that it is affiliated with Complainant and also that there is initial interest confusion, since the disputed domain name suggests that the user will be taken to a web site affiliated with Complainant, and in fact the web site is not affiliated with Complainant.

B. Respondent

1. Original Response

Respondent is identified as a “parodist, comedian, and actor” who registered the disputed domain name as “part of an artistic work of criticism targeting Complainant’s position on the issue of the legality of same-sex marriage in the United States.” Respondent attached a declaration with annexes showing that Complainant’s founder started a private foundation in support of various Christian religious organizations that oppose same-sex marriage, and that this foundation has received much publicity for its support of traditional marriage and for its position that homosexuality is a free choice. The annexes also showed that former Governor Mike Huckabee organized a national “Chick-fil-A Appreciation Day,” which resulted in an increase in daily sales of 30% at Chick-fil-A restaurants.

Respondent registered the disputed domain name with the intent of “criticizing – through parody – Complainant’s conduct and positions.” Respondent has at no time used the disputed domain name for nor realized any commercial gain from the use of the disputed domain name, nor has Respondent ever offered for sale, or sold services or goods through use of the disputed domain name. Respondent’s Declaration, at ¶7.

Respondent argues that “it is readily apparent to visitors to the Domain Name that it is not affiliated with the Complainant. The web site content is different from that of Complainant’s web site. Additionally, the content of Respondent’s site makes the parody clear. Any visitor who might be confused by the parodic content will quickly discover a disclaimer at the bottom of the screen indicating that the Web site is not affiliated with the Complainant.”

Respondent asserts that Respondent has made a legitimate noncommercial fair use of the disputed domain name citing UDRP WIPO cases in support of criticism sites. Respondent argues that this site was registered by a citizen of the United States to criticize United States citizens and a United States corporation, and UDRP decisions have recognized that free speech considerations must be taken into account in such cases, citing numerous UDRP WIPO decisions and United States court decisions.

Respondent further argues that the likelihood of confusion is small and that Respondent has neither sought nor realized any financial gain through the use of the disputed domain name. Respondent also cited numerous UDRP WIPO decisions where a well-known trademark had been registered as or as part of a domain name for a parody or criticism site and the registrant was not found to be in bad faith.

2. Supplemental Response

Respondent argues that “Respondent’s activities have been solely focused on noncommercial speech, and his [sic] site does not solicit sales, donations, or display any intent for commercial gain, nor are there any advertisements or commercial links associated with the web site.” In the U.S. federal court *PETA* decision, discussed by Complainant, the Fourth Circuit court seemed to suggest that one looked only at the domain name when evaluating a parody defense. However, Respondent argues, in the case of *Lamparello v. Falwell*, 420 F.3d 309, the Fourth Circuit clarified their holding. In finding that a web site which parodied Reverend Falwell’s did not violate the Lanham Act, the Fourth Circuit stated that “a court must look not only to the allegedly infringing domain name, but also to the underlying content of the web site.” *Id.*, at 318.

Finally, Respondent argues that a user could not be confused that the web site was that of Complainant. The web site to which the disputed domain name resolves has the look and feel of having been created by a novice web designer, rather than by a professional web designer that would be hired by a wealthy corporation. The web site has a disclaimer on the bottom of the site. Finally, it is not required that a web site be “a particularly clear parody” in order to be protected. *Action Instruments, Inc. v. Technology Associates*, WIPO Case No. D2003-0024.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall 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.”

Paragraph 4(a) of the Policy directs that the complainant must prove each of the following:

1. that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and,
- 2 that the respondent has no rights or legitimate interests in respect of the domain name; and,
3. that the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name, consisting of Complainant’s distinctive trademark and service mark minus the hyphens and the additional word “foundation,” descriptive of a private philanthropic organization, is confusingly similar to Complainant’s CHICK-FIL-A trademark and service mark. *EAuto, L.L.C. v. Triple S. Auto Parts d/b/a/ Kung Fu Yea Enterprises, Inc.*, WIPO Case No. D2000-0047.

B. Rights or Legitimate Interests

In the present case, the rights or legitimate interests question is secondary to the issue of registration and

use in bad faith. If Respondent has acted in bad faith, Respondent cannot be said to have rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

1. Parody as a UDRP Defense

Respondent has claimed to be using the disputed domain name as a parody. Parody is a curious migrant from the law of copyright to the law of trademarks. Parody has existed in literature from time immemorial. One author, songwriter, artist, etc. has chosen to copy certain elements of the work of another in order to make fun of the style or content of the other's expression. In the context of the law of copyright which protects the originator of a work from another's reproduction, the Supreme Court of the United States has defined "parody" as the "use of some elements of a prior author's composition to create a new one that, at least in part, comments on that author's works." *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 560 (1994). In that case, the rap group 2 Live Crew wrote a parody of the song, "Oh, Pretty Woman," co-authored and sung by the late Roy Orbison. Section 107 of the United States Copyright Act sets out four non-exclusive factors that a court must weight in determining whether a given use of a copyrighted work (such as parody) constitutes a "fair use." Those factors are:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

In the *Campbell* case, the United States Supreme Court held that "transformative works" such as parodies "lie at the heart of the fair use doctrine's guarantee of breathing space within the confines of copyright." *Id.*, at 579. To the extent that the parody "has no critical bearing on the substance or style of the original composition, which the alleged infringer merely uses to get attention or to avoid the drudgery in working up something fresh," the less likely the parody is to withstand the test of the four factors. *Id.*, at 580.

It is a defense to a claim of trademark infringement "that the use of the name, term, or device charged to be an infringement is a use, otherwise than as a mark, of the party's individual name in his own business, or of the individual name of anyone in privity with such party, or of 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, or their geographic origin." 15 U.S.C. 1115(b)(4). This is known in United States trademark law as the "fair use" defense. It is not obvious how parody would fit within this definition, but United States federal cases have held that it does. See, e.g., *People for the Ethical Treatment of Animals (PETA) v. Doughney*, 263 F.3d 359 (4th Cir. 2001).

More importantly for our purposes, previous UDRP panels have held that the concept of parody as a defense applies in UDRP decisions. One of the early decisions involved the domain name <abercrombieandfilth.com>, a domain name which resolved to a web site at which pornography aimed at the homosexual market was depicted. *A & F Trademark, Inc. and Abercrombie & Fitch Stores, Inc. v. Justin Jorgenson*, WIPO Case No. D2001-0900. Among the arguments for bad faith made by the complainants in the *Abercrombie* case was that the use of the confusingly similar domain name to resolve to a pornographic web site served to tarnish Complainant's famous mark.² The panel itself found that the web site to which the domain name resolved "promotes gay-oriented pornographic goods and/or services." Believing the case to be one of first impression under the Policy, the panel applied a two-step test to a defense based on parody.

² "Tarnishment" in trademarks is a use of the mark so as to damage its value as an identifier, i.e. to reduce the economic value of the mark's good will.

First, the domain name itself must convey two separate messages: that it is the original and at the same time that it is a parody of the original. If so, then one proceeds to the second step. In the *Abercrombie* case the Panel found that the first step had been satisfied. In the second step, one examines the content of the web site to which the domain name resolves. The web site “must poke fun at the goods or services associated with Complainants’ marks.” The panel found that there was “no content conceivably poking fun at Complainant.” Moreover, the panel held, the confusingly similar domain name was used to intentionally attract users to the site for commercial gain by creating a likelihood of confusion. Thus, the parody defense was rejected.

In an even earlier case, the panel in *Valero Energy Corporation v. American Distribution Systems, Inc., D/B/A Default Data.Com And Brian Wick*, WIPO Case No. D2001-0581, the Panel found both “initial interest confusion” and that Respondent had used such confusion to intentionally attract Internet users to the web site for commercial gain. Again, the parody case failed.

More recently a parody defense was raised in the case of *The California Milk Processor Board v. Ryan Archer*, WIPO Case No. D2011-1812. In that case, the panel found that United States trademark parody defense depends on “where the allegedly infringing mark cleverly invokes a trademark but in a manner that consumers are unlikely to believe originated with the trademark owner.” However, the panel found that it was unnecessary to reach that issue. The panel found that “Respondent appears to operate this website and others simply as an outlet for his creative works and to support others who create webcomics and videos. The Domain Name is not used to generate advertising revenue, which would undermine the Respondent’s claim of noncommercial purpose.” Finding that the respondent had no commercial purpose in the use of a domain name that was confusingly similar to the complainant’s mark, the panel found no basis for a finding of bad faith under the Policy.

1. Parody In the Present Case?

In the present case, it is questionable whether Respondent’s web site would qualify as a parody. If it is an attempt at a joke, the Panel finds it falls flat. The statements made on the web site, the individuals portrayed, the views expressed appear to the Panel to be consistent with Complainant’s views. The use of the stylized CHICK-FIL-A trademark in combination with the word “Foundation” on the web site must be weighed against the inclusion of a disclaimer that would likely escape the notice of many visitors to the site, which on overall impression gives few hints that this is anything other than a foundation sponsored by Complainant. (One message appearing on the website apparently informs visitors about a “Trade Your Homosexuality for a Chicken Sandwich Day!”, which some consumers could conceivably believe originated with the Complainant, while others may have their doubts). In any event, while this Panel has his doubts regarding applicability of a parody defense to the facts of use of the present case, the Complaint fails for other reasons discussed immediately below.

2. Failure to Prove Bad Faith

In order to succeed where a domain name has been used intentionally to attract users to a web site by a likelihood of confusion as to the source or sponsorship of the web site, it must have been done for purposes of commercial gain. Policy, paragraph 4(b)(iv). Respondent has produced a declaration under oath that he did not intend to receive any commercial gain through his use of the domain name, and the Panel sees no evidence of such Respondent gain on the record before him. . Complainant has failed to produce even a scintilla of evidence to the contrary.

While Complainant is correct to point out that the circumstances indicative of bad faith under the Policy are not exclusive, it is still generally incumbent on the Complainant to show by a preponderance of the evidence that the Respondent registered and is using the domain name in bad faith. In this regard, in so far as other typical exemplars of bad faith may be concerned, the Panel notes there appears to be no evidence of any offer by Respondent to sell the disputed domain name to the Complainant for an exorbitant sum, or of any pattern or history indicating Respondent is a serial cybersquatter. Use of a privacy service may be a relevant consideration, but is not itself dispositive, and in this case Respondent has in any event submitted a

response.

Although the Panel has his doubts as to whether Respondent's current use of the domain name would satisfy the criteria for an affirmative safe-harbor defense based on parody, the Respondent's registration of this domain name with an intent to parody Complainant and its views strikes the panel as plausible (see also *CFA Properties, Inc. v. Domains by Proxy, LLC / John Selvig*, WIPO Case No. D2012-1617). Furthermore, the present use of the domain name is not of a sort which suggests to this Panel any contrary intent.

The essence of bad faith under the Policy is using confusion with the owner's trademark in order to profit from the goodwill created by the trademark owner in the owner's mark. Generally, this means showing both that Respondent knew or should have known about the Complainant and its mark, and that Respondent went ahead regardless to register and use the domain name to capitalize in some way on the reputation of Complainant's mark. While this Panel has few doubts in the circumstances regarding Respondent's awareness of the Complainant, the Panel is not persuaded here that Respondent's registration and use of the disputed domain name has been shown to be for purposes of capitalizing on Complainant's trademark as such.

Thus, the Panel finds there is a failure of proof of bad faith registration and use.

7. Decision

For the foregoing reasons, the Complaint is denied.

M. Scott Donahey

Sole Panelist

Dated: November 30, 2012