1. PROCEDURAL HISTORY

The Complaint was filed with the Canadian International Dispute Resolution Centre (the “Center”) on August 13, 2020.

On August 13, 2020, the Center transmitted by email to the Registrar a request for registrar verification connected with the Disputed Domain Name. The Registrar informed the Center of the identity of the Registrant, Respondent, in this administrative proceeding. The Registrar of the disputed domain name confirmed that the disputed domain name was placed on a Registrar LOCK.

On August 17, 2020, the Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

On August 17, 2020, and per the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 17, 2020. Under the Rules, section 5, the due date for Response was September 8, 2020. The Respondent submitted a Response on September 8, 2020.

The Center appointed Rodolfo C. Rivas as the sole panelist in this matter on September 18, 2020. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7. The Center set October 5, 2020, as the due date to receive the decision from the Panel.
2. FACTS ALLEGED BY THE PARTIES

The Disputed Domain Name was created on August 15, 2019.

The Complainant, “Unemployed professors” (as its name states), provides a referral service between writers (unemployed professors) and students or other clients who need essay writing services. Its clients submit the essay's requirements or term paper that they want, and our professors charge to complete these assignments. The Complainant asserts common law rights in the “Unemployed Professors” mark since a trademark registration is not necessary to prove rights in a mark if sufficient evidence shows continuous use and the establishment of secondary meaning in the mark to establish common law rights.

The Complainant asserts that it has continuously used the “Unemployed Professors” mark since May 24 2011, when it registered the <unemployedprofesors.com> domain name.

The Complainant further asserts that “Unemployed Professors” has garnered press coverage under that mark, as can be shown with a simple Google Search.

The Complainant claims it has spent significant monies promoting and marketing under the “Unemployed Professors” mark, using the “Unemployed Professors” logo and equally well-known “professor” icon. Additionally, the Complainant asserts it has gone through significant periods of growth over its 7-year existence on the order of 80% per year.

Finally, the Complainant claims its name was abused in the same fashion by another party using <unemployedprofessors.xyz> and the case was successfully prosecuted in March 2018.

The Respondent claims that its organization was founded by three professors who are not employed in any organization or institution. Hence the name “Unemployed Professors”.

Its business is consultation services to students and start-up businesses, mainly offering tutorial services, academic writing consultations, and start-up business talks. The Respondent also claims its marketing team targets Australians.

The Respondent claims it does not offer the same service. The service rendered in exchange of a fee paid for the duration of the consultation or subject, as evidenced from the calculator on its home page.

For the last year, the Respondent has focused on promoting our business by printing fliers and physically distributing them to learning institutions (offline). As a result, 70% of our customers are obtained offline, but we later register them online to the Disputed Domain Name, and thus, the Respondent has no intention of stealing customers from the Complainant. The Respondent also serves only serve Australian clients, recognizing the different education systems.
3. CONTENTIONS OF THE PARTIES

- Complainant

I. The domain name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant's domain name <unemployedprofessors.com> was created on May 24, 2011.

The Disputed Domain Name is identical to the Complainant's domain name, except for the change of the <.org>. In addition, our the Complainant’s customers are confused and have been asking us if we are affiliated with the website under the Disputed Domain Name. A Bing query for “Unemployed professors” shows the website resolving from the Disputed Domain Name ranked between numbers 2 and 4, causing further confusion to the Complainants’ clients.

II. The Respondent has no rights or legitimate interests in respect of the domain name.

There is no evidence in the record to conclude that Respondent owns any service marks or trademarks that reflect the Disputed Domain Name.

The Complainant asserts that the Respondent uses the Disputed Domain Name to sell the same product sold by the Complainant under the <unemployedprofessors.com> domain name and selling competing products is not a bona fide offering of goods and services according to the UDRP.

III. The domain name has been registered and is being used in bad faith.

The Complainant claims that by using the Disputed Domain Name, the Respondent is intentionally attracting for commercial gain, Internet users to the Respondent’s web site, by creating a likelihood of confusion with the Complainant's mark.

The Respondent's website is not only using the same name as the Complainant's, but is offering the same service.

To dispel any possibility that the Respondent choose their name without knowledge of the Complainant's website and therefore intends to create confusion, the Respondent uses a graphic image created by the Complainant to identify the name and picture of one of the Complainant's writers.

The Respondent has sought to replicate the Complainant's business. It seems inconceivable it independently chose the name "unemployed professors" for its similar business. The overall impression created by the
Respondent’s website suggests that the Respondent registered the Disputed Domain Name to establish an online business which confused Internet users into believing that its website was that of the Complainant.

- **Respondent**
  I. The domain name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights.

After founding the company, the Respondent applied for trademark registration. The result was that the term “Unemployed Professors” is a descriptive phrase that describes people’s job status in society and thus lacks distinctiveness. As a result, we sought to buy the domain name as no results showed that anyone had registered “unemployed professors” as a trademark. However, we never thought that calling ourselves unemployed professors would raise any trademark/service mark infringement issue.

We feel it’s unfair that the Disputed Domain Name has been locked since we don’t offer similar services. Tutoring and academic writing consultations are different from selling papers. Therefore, the Respondent never sought to misdirect or siphon business away from the claimant, confuse his customers, or have a confusingly similar business.

Besides, the Complainant’s logo is not even similar to the Respondent's logo. Therefore, this is a significant mark for clients to distinguish the Complaint’s site with that of the Respondent's.

In response to being ranked number 2 in the Bing Search engine, the Respondent has no control over it since this search engine has meager traffic competition. Therefore, any website that publishes an article with the term “Unemployed Professors”, chances are that it will quickly rank high in Bing. Moreover, several sites are ranked on the first page for the term “Unemployed Professors” such as https://acemyhomework.com/, https://essaysrescue.com/, among others. The term “Unemployed Professors” contains descriptive words. Thus, it isn’t easy to control how people use it since several articles have been written in regard to this topic, and almost every region has professors who are not employed for one reason or another. Therefore, it's impossible to shut down every website with the term “Unemployed Professors” since this is a common name that describes a particular group of people in society. Thus, I can't entirely agree that being ranked for the term “Unemployed Professors” is a violation of a service mark since all over the world, various professors are not employed and offering academic writing consultation as the source of their livelihood.

II. The Respondent has no rights or legitimate interests in respect of the domain name.

The Respondent asserts it had no intention to use the term unemployed professors to divert the consumers from the Complaint’s site. First, the Respondent’s services are different though professors accomplish both of
them. The Respondent offers online tutoring coupled with academic writing consultations and start-up business consultations. The Respondent is mainly based in Australia, and all of our clients are Australians seeing that the Respondent understands the academic and business programs in the region.

For the last year, the Respondent has seen our customer base increase due to vigorous marketing, mainly involving distributing flyers and leaflets in higher learning institutions and business forums. From the Respondent's data analysis, 85% of our customers are mainly obtained through this marketing strategy. Internet searches contain 3% of our clients, which can be proved by website traffic. Before the Disputed Domain Name being locked, the Respondent had around 3,000 customers. It is also important to note that we don't offer our services to clients outside Australia, as described in our terms and conditions.

The Respondent states that Trademarks are territorial and must be filed in each country where protection is sought. Accordingly, the Respondent searched the <ipaustralia.gov.au> database for the term “Unemployed professors” registration status, to seek if the name is registered in Australia and didn't find any trademark registration. In the Respondent's understanding, it's not even legally registered in any other country. The term Unemployed Professors is a descriptive phrase that does not refer to a specific service or product but rather a group of people, and the Respondent is part of that group.

III. The domain name has been registered and is being used in bad faith.

The Respondent asserts that it didn’t register the Disputed Domain Name to disrupt the Complainant’s business since the services of the Respondent are different. Therefore, the Respondent and the Complainant are not even competitors since we have various products and services. The main reason why the Respondent bought the Disputed Domain Name is that it describes our job (social) status in society. Since offering tutoring services is one of the roles of a professor.

The Respondent's oppose the transfer of the Disputed Domain Name since almost 70% of our clients have been obtained offline, and this will give the Complainants our customers who don't seek to buy papers. Besides, our domain contains our personal information, tutor’s information, bank details, and the client's details, which they submit when making payment. Therefore, we feel if transferred it to someone else, it can be misused by the Complaint’s considering the high cases of Internet fraud in the modern world.

4. DISCUSSION AND FINDINGS

As per paragraph 4(a) of the Policy, for this Complaint to succeed concerning the Disputed Domain Name the Complainant must prove the following:

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Complainant: eric turvey (VP Unemployed professors)
Respondent: Rowly Smith
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(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) The disputed domain name has been registered and is being used in bad faith.

1) That the Domain Name is Identical or Confusingly Similar to a Mark in which the Complainant has Rights

Concerning the initial aspect under the first element, and being that this is an unregistered or common law trademark, to establish rights for purposes of the Policy, the Complainant must show that its mark has become a distinctive identifier which consumers associate with the Complainant’s goods and/or services (see 1.3 of WIPO 3.0 Overview).

The Complainant provided evidence that its business under the domain name <unemployedprofessors.com> has been covered across the Internet in websites such as “slate.com”, “businessinsider.com” and “nationalpost.com” to name a few, with some of this coverage dating back to 2012. Some of this coverage emphasizes that the activity promoted by the Complainant could be construed as academic cheating, nevertheless, this does not preclude the Complainant bringing the present Complaint. The evidence on record suggests the Complainant has been in business since at least 2011 using the “Unemployed Professors” name/mark and that its business stretches beyond Canada, suggesting that at the very least, its level of activity is not trivial. Under these circumstances, and as per evidence on record, the Panel notes that although the term “unemployedprofessors” involves two common dictionary terms, the Panel considers that in combination, they are capable of becoming distinctive and can confer rights for UDRP purposes.

Turning onto the confusing similarity analysis, the Panel finds that the Complainant has established confusing similarity, as the Disputed Domain Name reproduces in its entirety the mark “Unemployed Professors”. The only difference between the mark and the Disputed Domain Name lies in the different gTLD, which for this matter, is insignificant in assessing the first element of the Policy.

Accordingly, the Panel finds the Complainant has satisfied the requirements set forth under paragraph 4(a)(i) of the Policy.

2) That the Respondent has No Rights or Legitimate Interest in the Domain Name

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Based on the evidence on record, the Complainant has not authorized, licensed, or permitted the Respondent to register or use the Disputed Domain Name or use the “Unemployed Professors” mark. The Complainant has prior rights in the “Unemployed Professors” mark, predating the Respondent’s registration of the Disputed Domain Name. In the Panel view, these assertions are enough to establish a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. In turn, shifting the burden to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see 2.1 of WIPO 3.0 Overview).

The Respondent can demonstrate its rights or legitimate interests in the Disputed Domain Name through evidence that justifies it falls under any of the lists of circumstances contained under Paragraph 4(c) of the UDRP:

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

(ii) the Respondent has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) the 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.

The first of the circumstances above-mentioned will be analyzed by the Panel under the third element of the Policy, below. Under the second circumstance, the Respondent is not commonly known by the Disputed Domain Name, and the Respondent does not make any assertions nor provides any evidence in this regard. The Respondent states that the reason for utilizing the term "Unemployed Professors" is because the Respondent is comprised of three individuals who claim to be professors and are currently unaffiliated to any institution or organization. Therefore the term "Unemployed Professors" factually describes its status. Although this could be true, the Respondent does not provide evidence that the three individuals are professors nor currently unemployed. Nevertheless, the Respondent's argument does not seem persuasive on the balance of probabilities. The Respondent claims it checked the Australian IP Office for the existence of a trademark for "Unemployed Professors" and has not found one opted to register the Disputed Domain Name. Using the Australian IP Office presupposes a level of knowledge and sophistication that would indicate the Respondent's familiarity with a simple Google Search, after all – *qui potest plus, potest minus*. This simple Google Search would have provided information on the existence of the Complainant, through its domain name and/or news/press coverage. Also, the availability of similar domain names, including <unemployedprofessors.com> when registering the Disputed Domain Name, should have prompted further review on the Respondent.

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The third circumstance under Paragraph 4(c) of the UDRP will be further examined under the third element below. Nevertheless, in what relates to this second element, the Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the Disputed Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Therefore the Complainant has fulfilled the second requirement set under paragraph 4(a) of the Policy.

3) That the Respondent has Registered and Used the Domain Name in Bad Faith

It is important to note that the UDRP proceedings differ from all legal proceedings relating to Trademarks, as the UDRP is *sui generis* and with its own rich jurisprudential body. The tests to determine trademark infringement go well beyond the UDRP, and it is not the role of this Panel to make any findings and/or determinations in that regard.

Under 2.15 of WIPO 3.0 Overview, in some cases, panels assess the second and third UDRP elements together; this is one of these cases. Part of the analyses for the third element has already been examined under the preceding element. The Panel will now delve further in this analysis.

The mark in this dispute, albeit common law and composed of the combination of two common dictionary terms, in its combined form has become distinctive for the UDRP. Based on this, and the fact that the Respondent acknowledges having consulted the Australian IP Office, the Panel finds that the Respondent ought to be aware of the Complainant’s trademarks at the time of registration; a simple search would have sufficed for this. Furthermore, this is an obligation imposed under paragraph 2 of the Policy (see paragraph 3.2.3 of the WIPO Overview 3.0).

The matter at hand includes assertions by the Respondent that indicate untruthfulness on the part of the Respondent and could amount to bad faith behavior under the UDRP. The first of this is has already been discussed under the second element and in the prior paragraph. The Respondent also claims that its business activities differ significantly from the Complainant, by focusing on tutoring focused on the Australian education system and providing services to start-ups. The Respondent does not offer any evidence on this other than its assertions in the Response. Reviewing the website resolving from the Disputed Domain Name there are references to tutoring. Still, digging further, it is clear that a bulk of the services provided have to do with academic writing and papers, as indicated explicitly under the About Us page: "We provide university, high school thesis papers, college thesis papers, University thesis papers, including any other academic writing task in any academic field and education level to our clients around the globe." This description renders the services provided by the Respondent indistinguishable from the Complainant's. Additionally, it makes clear that the services offered are not exclusive to the Australian market, another untruthfulness contradicting the assertions by the Respondent.

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Based on the above, and the evidence on record, the Respondent has sought to replicate the Complainant's business. It seems implausible it independently chose the name “Unemployed Professors” for its similar business. Although the website’s trade dress resolving from the Disputed Domain Name does differ from the Complainant’s, it is conceivable and on the balance of probabilities that confused Internet users could be led to believe that the Respondent’s website resolving from the Disputed Domain Name was that of the Complainant.

Based on all the above, the Respondent’s actions fall squarely within the conduct described under paragraph 4(b)(iv) of the Policy: "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or a product or service on your website or location".

Accordingly, the Panel finds that the Complainant has satisfied the requirements set forth under paragraph 4(a)(iii) of the Policy.

5. DECISION and ORDER

For the above reasons, in accordance with Paragraph 4 of the Policy, Paragraph 15 of the Rules, and Rule 10 of the Supplemental Rules, the Panel orders the transfer of the Disputed Domain Name to the Complainant.

Made as of September 21, 2020.

SIGNATURE OF PANEL

Rodolfo C. Rivas