1. PROCEDURAL HISTORY

The procedural history of this case was set out in a letter from the Canadian International Internet Dispute Resolution Centre to the Panel:

The Canadian International Internet Dispute Resolution Centre (“CIIDRC”) has informed the Panel as follows:

The Complaint under the Uniform Domain Name Dispute Resolution Policy (“Policy”) was filed with the CIIDRC on August 7, 2021 requesting a single-member Panel. The Complaint was found not in compliance with the UDRP Rule 3.2. CIIDRC sent a Deficiency Letter on August 11, 2021. The Complaint was re-submitted on August 19, 2021 and determined that it satisfies the formal requirements of the Policy, the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the CIIDRC Supplemental Rules. The CIIDRC transmitted by email to the concerned Registrar a request for registrar verification in connection with the disputed domain name. On August 11, 2021, the Registrar confirmed that the disputed domain name was placed in a Registrar LOCK. The Registrar also provided the identity and contact details of the Respondent to the CIIDRC.
On August 20, 2021, CIIDRC, as Service Provider, confirmed compliance of the Complaint and commencement of the dispute resolution process. Pursuant to UDRP Rule 4 and Supplemental Rule 5, CIIDRC notified the Respondent of this administrative proceeding and forwarded a Notice with login information and a link to the Respondent on August 20, 2021. The Respondent filed its response by the due date of September 9, 2021. On September 17, 2021 the CIIDRC appointed Mr. Gerald M. Levine as a single-member Panel and so notified the Parties to this proceeding. 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 1, 2021, as the due date to receive the decision from the Panel.

Respondent registered the disputed domain name on June 7, 2003.

This matter is conducted pursuant to the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) of the Internet Corporation for Assigned Names and Numbers (ICANN).

2. FACTS ALLEGED BY THE PARTIES

Complainant is an individual whose family name is Van Dorp. He states that he is “a software developer and want(s) to use my family name for [his IT] business.” Complainant’s business does not yet appear to have been established or if it has, the name “Van Dorp” must be a trade name. Whichever is correct, it is certain that Complainant has no trademark rights. Rather, he explains that “we as a family have strong ties with our history. To use the family name for our business is a natural way to represent our quality and attachment to the services we deliver.” But as it stands “the corresponding domain name] cannot represent me and my family in my business” because it is registered to Respondent. Consequently, “[t]he domain name not being able to represent my company and not being in use at all limits me to have a re-presentable(sic) domain for my company.”

Complainant contends that he and his family are frustrated of their desire for <vandorp.com> since it is being held by Respondent who is demanding a “non-reasonable price” price for it. Not only that but there is a “detestable fee [that has to be paid even] . . . to find out if the domain is represented[,] [and] they also request to waive your legal rights to the domain. So basically[,] if you make an offer to find out if they represent the current owner[,] you also waive the right to file a complaint if you find out Bad faith by the respondent.” Complainant decided not to pay the “detestable fee” (of $19) and did not follow up with Respondent. For these reasons, Complainant requests that the domain name be transferred to him and that when it is “[w]e will be able to setup our site to represent our family business and services.”

Respondent naturally has a different view of the matter. It brings to the Panel’s attention that there is well-established precedent under the UDRP that he who first registers a domain name without intention to
infringe any third-party rights has a superior right or legitimate interest in it. The Whois directory Complainant submits to the Panel shows that respondent registered <vandorp.com> 18 years prior to Complainant’s desire to have it for his IT business. In sum, Respondent states that this “complaint is fundamentally misconceived. The complainant does not posses, nor does he allege, any enforceable trademark rights. . . . Nor does he attempt to explain how vandorp.com could possible have been registered in bad faith when it was registered to the respondent over 18 years ago, in 2003, when the complainant was 16 years old.”

3. CONTENTIONS OF THE PARTIES

- Complainant

The Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name because “the webpage to which the domain is redirecting is mainly a placeholder for an old mailservice not in use for many years. The frontpage and all actions on the website are showing the message that the service is not there but ‘be back for our relaunch’. But there is no relaunch, the thin trail of ownership seems to suggest the company Mailplanet seems to be owned by Telepathy, Inc.” Complainant also contends that Respondent “registered [<vandorp.com> for the purpose of selling and selling for [a] non reasonable price[ ]” which supports its contention of bad faith registration and use.

Complainant further contends that “[t]here seems to be a connection (ownership of Mailplanet Inc. by Telepathy Inc.) between this companies. Both companies don’t use the domain name to be commonly known. Neither do they use the domain for non-commercial use. It’s mainly parked and redirecting since long. . . . The domain http://vandorp.com is for many years redirecting to https://mailplanet.com/@vandorp.com. This you can also find in the internet archive archive.org. This shows that for more then five years this redirect is in place.”

Complainant complains that “[b]ot(sic) companies Mailplanet and Telepathy won’t react not even by a denial message. But interestingly Telepathy is in the market of selling domains. They refer to a site https://www.securedoffers.com/ for domain inquiries. This is show(sic) in the website of Telepathy (at the bottom).” Further, “[w]hen directly contacting the organization they will not confirm the ownership or the availability by mail Contact SecuredOffers.

Complainant’s main contention (in a nutshell) is that Respondent’s website “clearly shows the domain is primarily registered for the purpose of selling and selling for non reasonable prices. They even suggest to bid high enough because you might be ignored, suggesting merely the numbers of the bid (five figure bids) to have more change(sic) of accepting your bid.”

- Respondent

The Respondent mainly confirms Complainant’s observations about the relationship between it and Telepathy: “MailPlanet.com, Inc. is an active District of Columbia corporation in good standing. . . . It was
incorporated over 20 years ago on May 14, 2000. It is a wholly owned subsidiary of Telepathy, Inc., which is also an active District of Columbia corporation in good standing. MailPlanet.com, Inc. was incorporated to provide a vanity email service primarily offering email addresses at domain names matching last names. MailPlanet.com, Inc. is the registered owner of hundreds of last name domain names.” Respondent explains that “[w]hile the service is currently on hold, MailPlanet.com, Inc. has a long history of offering vanity email addresses based on its last name domain name holdings. Even after MailPlanet.com stopped accepting new customers, it continued to provide email services for a small number of legacy customers who requested to continue renewing the service and does so to the present day.”

Respondent explains that it acquired the domain name following its abandonment by an earlier registrant in 2003 long before Complainant (and his family) began dreaming that one day he would become an IT entrepreneur. Even if Respondent had a trademark, a current search of Google “for the phrase "van dorp" returns over 1.3 million results. The top results include several individuals with the last name of Van Dorp, the Complainant not among them.” This is evidence (the Respondent states) that the term “‘Van Dorp’ is not exclusively or predominately associated with the Complainant such that visitors to vandorp.com would expect that the Disputed Domain Name would be associated with the Complainant.” Thus, neither the timing of the registration of <vandorp.com> nor its use support Complainant’s demand that the domain name be transferred to him.

- **Remedy Sought**

The Complainant requests the Domain Name be transferred to it.

4. **DISCUSSION AND FINDINGS**

4.1 **Requirements**

In accordance with Paragraph 4 of the Policy, the onus is on the Complainant to prove:

1. That the Domain Name is Identical or Confusingly Similar to a trademark or service mark in which the Complainant has rights:
2. That the Registrant has no rights or legitimate interests in the Domain Name; and
3. That the Domain Name has been registered and being used in bad faith.

The Panel will consider each of these requirements in turn.

4.2 **Analysis**

4.2.1 **That the Domain Name is Identical or Confusingly Similar to a Mark in which the Complainant has Rights**
A precondition for invoking the UDRP is that complainant has a trademark. This could be either registered or unregistered, but if unregistered complainant must offer evidence of secondary meaning. If a complainant is unable to fulfil this condition the complaint must be dismissed. The Panel accepts that <vandorp.com> is identical or confusingly similar to Complainant’s name, which satisfies the first element of Paragraph 4(a)(i), but Complainant offers no proof that it has a registered or unregistered trademark.

At best, and this is uncertain because of the sparsity of detail in the Complaint, Complainant may be using “Van Dorp” as a trade name. Where a trade name functions as a mark, and there is proof of secondary meaning it may be considered as a right. However, Respondent submits evidence that undercuts this proposition of a trade name, but even if Complainant is operating a business under his family name, that alone would not help Complainant. Previous panels have held that usage as a trade name does not serve to establish common law rights in a mark,” New Jersey Lawyers Service, LLC v. Guaranteed Subpoena Service, Inc., FA160900 1695657 (Forum November 10, 2016) (<lawyersservices.com>). In any event, Complainant offers no evidence of any unregistered mark or that he is even currently operating an IT business, rather than it being a wishful future enterprise.

For these reasons, Complainant does not satisfy his burden under Paragraph 4(a)(i) of the Policy.

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

In view of Complainant’s failure on the first requirement of the UDRP, it is unnecessary to consider whether Respondent lacks rights or legitimate interests in <vandorp.com>, although for the record, based on Respondent’s affirmative contentions and offers of proof, the Panel finds that it demonstrates that it has rights or legitimate interest in the subject domain name.

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

It follows from the preceding findings that as Respondent has rights or legitimate interests in the subject domain name, its registration of <vandorp.com> was lawful. Contrary to Complainant’s presuppositions, there is no rule of law that registrants acquiring domain names act in bad faith by offering them for sale on the open market for sums that exceed the amounts complainants can afford or would wish to pay. Complainant’s accusations that Respondent either registered or is using <vandorp.com> in bad faith are without legal or factual foundation.

4. REVERSE DOMAIN NAME HIJACKING

As the Respondent stated, and which the Panel accepts, “this is a complaint that should never had been brought.” Complainant fails on the most basic element of the Policy, namely proof that it has trademark rights. Complainant deserves to be castigated, but should it be sanctioned for reverse domain name
hijacking? Had Complainant taken advice from counsel familiar with the UDRP, it would have been
discouraged from filing such a baseless complaint. If it had itself investigated UDRP requirements it would
have recognized it could not succeed. Offsetting this, however, is the troubling reality that for all the simple
architecture of the UDRP and ease in filing complaints, mostly with little guidance for pro se arbitrants, the
law (whichever side of the caption they may be on) is daunting.

For these reasons, Panels are less inclined to find pro se arbitrants guilty of RDNH. BFS of the Americas
29, 2009) (holding that “[t]he Complaint was obviously prepared without the benefit of legal advice, and there
was evident naivete in [believing that it had a claim].”); Praetorian Legal Limited v. Michael Ross, D2019-
2468 (WIPO November 29, 2019) (<tess-timeshare.com>. “The Complaint was so inadequate that there was
never any real risk it could succeed.... In these circumstances the Panel has concluded that a finding of
RDNH is not necessary.”) So it is here, and for this reason Respondent’s request to sanction Complainant
with reverse domain name hijacking is denied.

5 DEICATION 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 that the domain name <vandorp.com> remain with
Respondent.

Made as of September 20, 2021.

SIGNATURE OF PANEL

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Gerald M. Levine, Ph. D., Esq.