

COMPLAINT TRANSMITTAL COVERSHEET

Attached is a Complaint that has been filed against you with the World Intellectual Property Organization (**WIPO**) Arbitration and Mediation Center (the **Center**) pursuant to the Uniform Domain Name Dispute Resolution Policy (the **Policy**) approved by the Internet Corporation for Assigned Names and Numbers (**ICANN**) on October 24, 1999, 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**).

The Policy is incorporated by reference into your Registration Agreement with the Registrar(s) of your domain name(s), in accordance with which you are required to submit to a mandatory administrative proceeding in the event that a third party (a **Complainant**) submits a complaint to a dispute resolution service provider, such as the Center, concerning a domain name that you have registered. You will find the name and contact details of the Complainant, as well as the domain name(s) that is/are the subject of the Complaint in the document that accompanies this Coversheet.

You have no duty to act at this time. Once the Center has checked the Complaint to determine that it satisfies the formal requirements of the Policy, the Rules and the Supplemental Rules, it will forward an official copy of the Complaint to you. You will then have 20 calendar days within which to submit a Response to the Complaint in accordance with the Rules and Supplemental Rules to the Center and the Complainant. You may represent yourself or seek the assistance of legal counsel to represent you in the administrative proceeding.

- The **Policy** can be found at <http://www.wipo.int/amc/en/domains/rules/>
- The **Rules** can be found at <http://www.wipo.int/amc/en/domains/rules/>
- The **Supplemental Rules**, as well as other information concerning the resolution of domain name disputes can be found at <http://www.wipo.int/amc/en/domains/rules/>
- A **model Response** can be found at <http://www.wipo.int/amc/en/domains/respondent/index.html>

Alternatively, you may contact the Center to obtain any of the above documents. The Center can be contacted in Geneva, Switzerland by telephone at +41 22 338 8247, by fax at +41 22 740 3700 or by e-mail at domain.disputes@wipo.int.

You are kindly requested to contact the Center to provide the contact details to which you would like (a) the official version of the Complaint and (b) other communications in the administrative proceeding to be sent.

A copy of this Complaint has also been sent to the Registrar(s) with which the domain name(s) that is/are the subject of the Complaint is/are registered.

By submitting this Complaint to the Center the Complainants hereby agree to abide and be bound by the provisions of the Policy, Rules and Supplemental Rules.

Before the:

**WORLD INTELLECTUAL PROPERTY ORGANIZATION
ARBITRATION AND MEDIATION CENTER**

Mercury Radio Arts, Inc.
and Glenn Beck,
One Time Warner Center, 8th Fl.
New York, New York 10019

Complainants,

-v-

WhoisGuard
WhoisGuard Protected (),

Respondent.

Disputed Domain Name:

www.glennbeckrapedandmurderedayounggirlin1990.com

**COMPLAINT IN ACCORDANCE WITH THE
DOMAIN NAME DISPUTE RESOLUTION POLICY**

I. Introduction

1. This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy"), adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), approved by ICANN on October 24, 1999 and the World Intellectual Property Organization ("WIPO") Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

II. The Parties

A. The Complainants

2. The Complainants in this administrative proceeding are Mercury Radio Arts, Inc. and Glenn Beck (collectively, "Beck"). Mercury Radio Arts, Inc. is a New York corporation with its principal place of business in New York, New York, United States of America. Glenn Beck is an individual residing in Connecticut, United States of America.

3. Complainants' contact details are:

Names: Mercury Radio Arts, Inc. and Glenn Beck
Address: One Time Warner Center, 8th Floor
New York, New York 10019
Telephone: (212) 974-7474
Fax: (212) 974-8474
E-mail: me@glennbeck.com

4. Complainants' authorized representatives in this administrative proceeding are:

Name: Matthew A. Kaplan, Esq. and Al Daniel, Jr., Esq.
Firm: Cowan, DeBaets, Abrahams & Sheppard LLP
Address: 41 Madison Avenue, 34th Floor
New York, New York 10010
Telephone: (212) 974-7474
Fax: (212) 974-8474
Email: mkaplan@cdas.com, adaniel@cdas.com

5. Complainants' preferred method of communications directed to the Complainants in this administrative proceeding is:

Electronic-only material

Method: E-mail
Address: mkaplan@cdas.com, adaniel@cdas.com
Contact: Matthew A. Kaplan and Al J. Daniel, Jr.

Material including hardcopy

Method: Facsimile
Fax: (212) 974-8474
Contact: Matthew A. Kaplan and Al J. Daniel, Jr.

B. The Respondent

6. According to DomainTools (<http://whois.domaintools.com>), the Respondent in this administrative proceeding is listed as "WhoisGuard WhoisGuard Protected ()". Copies of the printout of the WHOIS database search for the disputed domain name is attached as Exhibit A.

7. The information disclosed in the WHOIS database search regarding how to contact the Respondent is as follows:

Name: WhoisGuard WhoisGuard Protected ()
Address: 8939 S. Sepulveda Blvd. #110 – 732, Westchester, CA 90045
Telephone: (661) 310-2107
Fax: (661) 310-2107
E-mail: 8d2c2cd9bc8b4156a8e6a99f8552a1a0.protect@whoisguard.com

III. The Domain Name and Registrar

8. This dispute concerns the domain name identified below:

<http://www.glennbeckrapedandmurderedayounggirlin1990.com>

9. The registrar with whom the Domain Name is registered (the “Registrar”) is:

Name: eNom, Inc.
Address: 15801 NE 24th St., Bellevue, WA 98008 USA
Telephone: (425) 974-4689
Fax: (425) 974-4791
E-mail: legal@enom.com

IV. Jurisdictional Basis for the Administrative Proceeding

10. This dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The Registration Agreement for Enom.com, the registrar to which the domain name subject to this Complaint is registered, incorporates the Policy. A true and correct copy of the Enom.com dispute policy is attached as Exhibit B.

11. In addition, in accordance with the Policy, Paragraph 4, the Respondent is required to submit to a mandatory administrative proceeding because:

- a. The Domain Name completely incorporates a trademark or service mark in which Complainants have rights; and
- b. Respondent has no rights or legitimate interests in respect of the Domain Name; and
- c. The Domain Name was registered and was and is being used in bad faith.

V. Factual Grounds

A. Complainants

12. Glenn Beck is one of America's leading radio and television personalities. Mr. Beck's syndicated radio show, *The Glenn Beck Program*, debuted in January 2002 and is now heard throughout the United States on over 350 stations and on XM Satellite Radio. The show is the third highest-rated radio talk show among adults aged 25 to 54. Similarly, Mr. Beck's highly-rated television talk show, *Glenn Beck*, debuted in January 2009 and is one of the most successful new shows on the Fox News Network, being seen by millions of viewers daily.

13. Mr. Beck is also the author of three *New York Times* bestselling books, two of which have reached number one. Moreover, Mr. Beck performs in a live stage tour twice a year, attracting over 200,000 fans in nearly 40 different markets.

14. Mercury Radio Arts, Inc. ("Mercury") is Mr. Beck's fully integrated multi-media production company. Mercury produces or co-produces all Glenn Beck related properties including *The Glenn Beck Program* radio show, the *Glenn Beck* television show, Mr. Beck's *New York Times* bestselling books, his live stage-show business, the website GlennBeck.com, and consumer magazine *Fusion*.

B. Complainants' Rights in and to their trademarks (Rules, ¶ 3(b)(viii)):

15. Mr. Beck plainly has common law trademark rights in his name by virtue of his use of his name in conjunction with providing information services on his long-running, highly-rated, nationally syndicated radio show, his highly-rated Fox News Network show, as well as his use of his name in conjunction with his number one *New York Times* best selling books and successful live show tour, among other things.

16. Moreover, on January 12, 2007, Mercury filed an intent to use trademark application with the United States Patent and Trademark Office ("USPTO"),

Serial No. 77/081,634, seeking to register the mark “GLENN BECK” for a number of goods and services, including but not limited to “on-line information services, namely, providing information, opinion and commentary in the field of current events and news reporting relating to political and social issues” On March 17, 2009, the USPTO granted a Notice of Allowance, and on August 10, 2009, Mercury filed a Statement of Use of the trademark in a number of classes. Mercury is awaiting action by the USPTO on the Statement of Use. A true and complete copy of the Status Report as of September 4, 2009 from the USPTO website is attached hereto as Exhibit C.

17. Mercury also maintains a website at www.glennbeck.com (the “Glenn Beck Website”) which prominently bears the “Glenn Beck” name and mark. A true and correct copy of the main page of the Glenn Beck Website as of September 4, 2009 is attached hereto as Exhibit D.

C. The Respondent

18. As the WHOIS records for the Domain Name merely states “WhoisGuard WhoisGuard Protected ()”, Complainants do not know the actual identity of Respondent.

D. Respondent’s Wrongful Use of the Glenn Beck name and Mark for its Domain Name

19. On September 1, 2009, without Mercury or Mr. Beck’s knowledge or permission, Respondent obtained and/or activated a registration of the domain name: glennbeckrapedandmurderedayounggirlin1990.com with the Registrar, and, upon information and belief, shortly thereafter used the registration to publish a web site titled “GlennBeckRapedAndMurderedAYoungGirlIn1990.com” A true and complete printout of the main page of the website at www.glennbeckrapedandmurderedayounggirlin1990.com (the “Website”), as it appeared on September 4, 2009, is attached hereto as Exhibit E.

20. The Domain Name is plainly libelous, patently false, not authorized by Mercury or Beck, and is likely to cause confusion for consumers.

21. The Website features links to other websites, including foxnewsboycott.com. The Fox News Boycott website offers for sale numerous books, stickers and clothing items, as well as solicits donations from its viewers. A true and correct copy of the “FNB Store” page from www.foxnewsboycott.com, as it appeared on September 4, 2009, is attached hereto as Exhibit F.

22. Complainants request the cancelation of the Domain Name herein to avoid such unauthorized and disruptive activities in future.

23. In requesting the cancelation of the domain name at issue, Complainants will prove the existence of each of the three elements set forth in Paragraph 4 of the Policy, which are:

- a. The Domain Name glennbeckrapedandmurderedayounggirlin1990.com fully incorporates and is confusingly similar to trademarks in which Complainants own rights; and
- b. The Respondent has no rights or legitimate interest in respect to the glennbeckrapedandmurderedayounggirlin1990.com Domain Name; and
- c. The Respondent’s Domain Name was registered and was and is being used in bad faith.

VI. Legal Grounds

A. The Domain Name Is Confusing Similar to Trademarks in which the Complainants Have Rights (Policy, ¶ 4(a)(i), Rules, ¶ 3(b)(ix)(1))

24. Respondent’s domain name, glennbeckrapedandmurderedayounggirlin1990.com is confusingly similar to Complainants’ “Glenn Beck” trademark as it incorporates the “Glenn Beck” name and mark entirely.

25. While the USPTO has not issued a registration in the “Glenn Beck” mark yet, the USPTO granted a Notice of Allowance of the “Glenn Beck” mark and Mercury has filed a Statement of Use. Moreover as explained above, Mr. Beck owns common law trademark rights in his name.

26. It is well settled that the term “trademark or service mark” as used in Paragraph 4(a)(i) of the Policy encompasses both registered marks and common law marks. *CBS Broadcasting, Inc. f/k/a CBS, Inc. v. Nabil Z. Aghloul*, WIPO Case No. D2004-0988 (finding protectable rights in common law trademark after approximately three years of use prior to the Registrant’s registration of identical domain name).

27. The fact that the domain name consists of “Glenn Beck” followed by other words does not preclude a finding of confusing similarity. As explained in the WIPO Overview of WIPO Panel Views on Selected URDP Questions, Section 1.4 explains that the view of the majority of WIPO Panels is that “[a] domain name consisting of a trademark and a negative term is confusingly similar to the complainant’s mark.” (citing *Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. D2000-0662 (“a domain name is ‘identical or confusingly similar’ to a trademark ... when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name.”); *see also Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. 2000-1415).

28. Accordingly, as the Domain Name incorporates the “Glenn Beck” name entirely, Complainants have satisfied the first element.

B. Respondent has no Rights or Legitimate Interests With Respect to the Domain Name (Policy, ¶ 4(a)(ii), Rules, ¶ 3(b)(ix)(2))

1. Respondent has no Right to Use the Domain Name.

29. Neither Mercury or Glenn Beck authorized Respondent to use the Glenn Beck name and mark in any manner, nor to register the domain name glennbeckrapedandmurderedayounggirlin1990.com.

30. There is no evidence that the Respondent – who has hidden his name behind WhoisGuard – is or has been commonly known as “Glenn Beck”, or has acquired any trademark or service mark rights in the “Glenn Beck” name or mark. Thus, the Respondent has no right to use the Domain Name.

2. Respondent has no Legitimate Interests with Respect to the Domain Name.

31. Respondent similarly has no legitimate interests with respect to the Domain Name. At best, Complainants expect Respondent to assert that it is using the Domain Name to indicate that the Website is a “protest” site.

32. While some URDP decisions have upheld the use of domain names on which web sites critical to a company or organization are posted, “a line is often drawn where the protest site does not make is clear that it is in fact a protest site.” *Hollenbeck Youth Center, Inc. v. Stephen Roland*, WIPO Case No. D2004-0032. The *Hollenbeck* Panel explained that even if the nature of the respondent’s website is a non-commercial protest site,

it is the Panel’s belief that protest disseminated through the powerful tools of the Internet is only legitimate if the protest is transparent. Transparency starts with choosing a domain name that reflects the protest as opposed to a domain name which implies an affiliation to the trademark holder. If the protest is reflected in the domain name (for instance by adding the component “sucks” or a similar element), Internet users will have a choice to follow or not to follow the link. Otherwise, they may be misled.

(emphasis added)

33. Here, there is nothing in Respondent's Domain Name to indicate to the public that the Domain Name resolves to a complaint or protest site. Thus, Respondent is attempting to mislead the public regarding the nature, origin and affiliation of the Website.

34. Indeed, as explained in the *Nicole Kidman* decision, *supra*, "The use of domain names that incorporate or are confusingly similar to a famous person's name strongly suggests an intent to divert users seeking information on that celebrity." (finding respondent had no legitimate right or interest in domain name incorporating Nicole Kidman's name)

35. Moreover, as explained below, the fact that the Domain Name is plainly defamatory undermines any argument that Respondent has any legitimate interest in using the Domain Name.

**C. The Domain Name Was Registered and is Being Used in Bad Faith
(Policy, ¶ 4(a)(iii), Rules, ¶ 3(b)(ix)(3))**

1. Respondent Was Aware of Complainants' Rights When it Registered the Domain Name.

36. Respondent registered the Domain Name on September 1, 2009, approximately seven years after Glenn Beck began his syndicated radio show, over two years after Mercury filed the trademark application for the mark "Glenn Beck", and eight months after he began appearing on Fox News Networks. Given the millions of people who have seen or heard Mr. Beck on his radio and television shows, Respondent cannot legitimately assert that it was unaware of Mr. Beck.

2. The Domain Name is Plainly Defamatory and Establishes That It Was Registered in Bad Faith.

37. The most compelling evidence that Registrant registered the Domain Name at issue in bad faith is the fact that the Domain Name, in and of itself, is a defamatory comment stating that Mr. Beck engaged in horrific criminal activities that Mr. Beck never engaged in.

38. In doing so, Complainants assert that Respondent is using the Domain Name in

order to damage Mr. Beck's reputation, tarnish his trademark rights, and disrupt Complainants' business activities. Such actions constitutes bad faith under the Paragraph 4(b) of the Policy.

That paragraph makes clear that disruption of business activities can constitute bad faith.

Furthermore, that paragraph makes clear that the examples of bad faith listed are not intended to be an exhaustive list, and bad faith may be found in the absence of the specific factors

enumerated there. *See CBS Broadcasting, Inc. f/k/a CBS, Inc. v. Nabil Z. Aghloul, supra*

39. For example, in the *Hollenbeck Youth Center* case, the Panel found that a domain name hosting a site protesting against the complainant and its director was registered in bad faith because:

no indication whatsoever was given that the domain name resolves to a protest site rather than that of the Complainant. Internet users are very likely to assume that the domain name resolves to a website of the Complainant. The Respondent's use is not transparent and is misleading. Moreover, the Respondent cannot have been in any doubt at the time of registering the domain name or subsequently, that there would be an adverse effect on [Complainant] as a result of Internet users (including sponsors and potential sponsors) who, wishing to find an [Complainant] present on the Internet, end up without warning at ... a site highly critical of [Complainant] and its director.

40. Like the *Hollenbeck Youth Center* case, the Domain Name herein gives no indication that the user will be directed to a protest site. As the Domain Name incorporates the name "Glenn Beck" in its entirety, it is reasonable to assume that the average Internet user looking for information about Glenn Beck will find the Domain Name and believe or suspect that Mr. Beck committed the horrible acts stated.

41. Respondent's Domain Name therefore dilutes and tarnishes Complainants' trademarks because the Domain Name purports to link Mr. Beck with the horrific criminal acts of murder and rape.

42. In sum, Complainants respectfully assert that the Panel should determine that Respondent registered and maintained the Domain Name in bad faith, according to Paragraph 4(a)(iii) of the Policy.

VII. Remedies Requested

43. In accordance with Paragraph 4(i) of the Policy, for the reasons described above, the Complainants request the Administrative Panel appointed to this administrative proceeding issue a decision that the contested Domain Name be cancelled.

VIII. Administrative Panel

44. Complainants elect to have the dispute decided by a single-member Administrative Panel.

IX. Mutual Jurisdiction

45. In accordance with Paragraph 3(b)(xiii) of the Rules, Complainants agree to submit, only with respect to any challenge that may be made by the Respondent to a decision by the Administrative Panel to cancel the Domain Name that is the subject of the Complaint, to the jurisdiction of the courts situated in the location of Respondent's address, as shown for the registration of the Domain Name in the concerned registrar's WHOIS database at the time of the submission of this Complaint.

X. Other Legal Proceedings

46. Complainants are not aware of any other legal proceedings pending in connection with the Domain Name.

XI. Communications

47. A copy of this Complaint and its exhibits, together with the cover sheet as prescribed by the Supplemental Rules, has been sent on today's date, September 4, 2009: (i) via regular mail to the address as shown for Respondent on the Registrar's WHOIS database at the

time of the submission of this Complaint, and (ii) to the Registrar via Federal Express priority to the address as shown on its website. A copy of this Complaint, the cover sheet as prescribed by the Supplemental Rules, and such exhibits that are available in electronic form have also been sent via e-mail to: (i) the administrative contact for the Domain Name as shown on the Registrar's WHOIS database at the time of the submission of this Complaint; and (ii) Respondent at his or her e-mail address.

48. This Complaint is submitted to the Center in electronic form (except to the extent not available for annexes), and in four (4) sets together with the original.

XII. Payment

49. As required by the Rules and Supplemental Rules, payment in the amount of US\$ 1,500.00 is being remitted by the enclosed check.

XIII. Certification

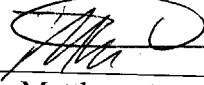
50. Complainants agree that its claim and remedies concerning the registration of the Domain Name, the dispute, or the dispute's resolution shall be solely against the domain name holder and waives all such claims and remedies against (i) the WIPO Arbitration and Mediation Center and Panelists, except in the case of deliberate wrongdoing, (ii) the Registrar, (iii) the Registrar's administrator, (iv) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees and agents.

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

Dated: New York, New York
September 4, 2009

Respectfully submitted,

COWAN, DEBAETS, ABRAHAMS & SHEPPARD, LLP



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