

*Glenn Hagele and the “Council
for Refractive Surgery Quality
Assurance”, aka “CRSQA”
(Complainant)*

v.

*Brent Hanson
31811 Pacific Highway S
B-169
Federal Way, WA 98003
(Respondent)*

Domain Names In Dispute:
USAEYES.US

Case Number:
FA0812001237910

**RESPONSE IN ACCORDANCE WITH
THE usTLD DISPUTE RESOLUTION POLICY**

1) Respondent received a Notification of Complaint and Commencement of Administrative Proceeding on December 23, 2008. The Notification stated that Complainant had submitted a Complaint for decision in accordance with the usTLD Dispute Resolution Policy (“usTLD Policy”) as adopted by the U.S. Department of Commerce (“DOC”) on February 21, 2002, the Rules for the United States Domain Name Dispute Resolution Policy (“usTLD Rules”), and the National Arbitration Forum’s Supplemental Rules (“Supplemental Rules”). usTLD Rule 4.

2) **RESPONDENT INFORMATION**

a) Name: *Brent Hanson*
Address: *31811 Pacific Highway S., B-169, Federal Way, WA 98003*
Telephone: *919-323-6030*
Fax: *425-650-3711*
E-Mail: *brentahanson@netscape.net*

3) The Respondent’s preferred method for communications directed to the Respondent in the administrative proceeding: usTLD Rule 5(c)(iii).

a) **Electronic-Only Material**

Method: *e-mail*
Address: brentahanson@netscape.net
Contact: *Brent Hanson*

b) Material Including Hard Copy

Method: *postal mail*
Address/Fax: *31811 Pacific Highway S., B-169, Federal Way, WA 98003*
Contact: *Brent Hanson*

- 4) The Respondent chooses to have this dispute heard before a single-member administrative panel as stated in the Complainant's Complaint.

5) RESPONSE TO FACTUAL AND LEGAL ALLEGATIONS MADE IN COMPLAINT.

- a) This Response specifically responds to the statements and allegations contained in the Complaint and includes any and all bases for the Respondent to retain registration and use of the disputed domain name. usTLD Rule 5(c)(i).

b) COMPLAINANT OPERATES AN ORGANIZED CRIMINAL ENTERPRISE.

Complainant claims to be "*a nonprofit nongovernmental Lasik patient advocacy providing patient related services including, but not limited to, physician certification, physician information, patient advocacy, consumer alert, and dissemination of health related information.*"

However, complainant's organization actually engages in organized crime by issuing fraudulent "certifications" to laser eye surgeons; publishing claims to represent surgeons who are not affiliated with his organization; submitting fraudulent reports to government agencies; engaging in extortion of credit unions; and engaging in criminal harassment of consumers who complain about bad outcomes of laser eye surgery on internet bulletin boards. A full compendium of complainant's criminal activities cannot be included in this response, as Supplemental Rule 5(a) limits the size of this document to 10 pp. However, illustrative samples of complainant's fraudulent and criminal activities are provided below, with references to external exhibits that contain published statements and videotaped depositions of complainant.

i) FRAUDULENT CERTIFICATIONS ISSUED TO LASER EYE SURGEONS.

Complainant, as the sole employee of CRSQA, publishes advertisements claiming to have issued "Certifications" to laser eye surgeons attesting to their surgical skill. However, the statements in his advertisements are fraudulent as complainant acknowledges in one of his own depositions that he [REDACTED].¹

ii) FRAUDULENT CLAIMS OF REPRESENTING LASER EYE SURGEONS.

Complainant has a long history of publishing documents on his web site at USAEyes.org claiming that various surgeons are members of CRSQA, even when

¹ Exhibits A, A1, A2, A3.

surgeons are not members of CRSQA.²

iii) BOASTED OF OPENING UP “THE VERY DEEP POCKETS OF A FLORIDA CREDIT UNION” IN A SCHEME FOR MONEY.

On March 2, 2006 complainant’s attorney sent a letter to a branch manager of a credit union in which he threatened to sue her for defamation. The branch manager sent a polite reply to complainant’s attorney requesting that complainant stop harassing her. Complainant subsequently sent an e-mail to a 3rd party bragging that he had opened up “*the very deep pockets of a Florida Credit Union*”, and that he was “*willing to sink as far as necessary*” in his campaign to destroy his “enemies”.³

iv) FORGED A SCIENTIST’S NAME ON A DOCUMENT AND SUBMITTED IT TO THE FEDERAL GOVERNMENT IN AN ATTEMPT TO HAVE HER FIRED

On or about May 2007 Complainant forged Dr. Luranell Burch’s name on to a documented titled “*THE LASIK REPORT - A Call for the Discontinuation of a Harmful Procedure*”. After forging her name on the document, he then submitted it to her employer, the National Institute for Environmental Health Sciences, through the American Society of Cataract and Refractive Surgeons (ASCRS) and demanded that she be fired for using the agency’s resources to publish a “non-official” document. ASCRS subsequently attempted to absolve itself and claimed that complainant was entirely responsible for the forgery.

Complainant then filed a lawsuit against Dr. Luranell Burch and threatened to publish the social security number of her mother. Dr. Burch filed a counter lawsuit against complainant, which is ongoing. The judge subsequently ordered all members of CRSQA to be added as defendants.⁴

v) FRAUDULENT SPEECH TO THE FDA CLAIMING TO REPRESENT A LASIK PATIENT, AFTER PREVIOUSLY THREATENING AND EXTORTING HER.

After conducting a campaign of threats of harassment against a woman in California, Sandy Keller, he delivered a tearful speech to the FDA claiming to represent her. On the same day of the speech, he had an article posted on his web site in which he attacked her.⁵

vi) CRIMINAL HARASSMENT OF NINE INDIVIDUALS

On or around June 2006, complainant threatened to publish the social security

² Exhibits B, B1, B2.

³ Exhibits C, C1, C2, C3, C4, C5.

⁴ Exhibits D, D1, D2, D3, D4, D5, D6.

⁵ Exhibits E, E1, E2, E3, E4, E5.

numbers of nine individuals on a web site that Complainant controls.⁶

c) **“COUNCIL FOR REFRACTIVE SURGERY QUALITY ASSURANCE”, AKA “CRSQA” IS NOT PUBLICLY RECOGNIZED AS A LEGITIMATE ORGANIZATION.**

Complainant used Wikipedia to post articles promoting his criminal enterprise, and called the editors “vandals” after they edited his articles. Ultimately, the editors of Wikipedia banned complainant from publishing articles about “Council for Refractive Surgery Quality Assurance” on the web site. In their discussion, the editors stated the following:⁷

Once the hype related to self-promotion or character assassination is removed, there seems to be little notability about this organisation. It says it's a non-profit watchdog organization for consumers, but it makes its money from certifying physicians; the bulk of its citations from Wikipedia are to unsourced articles that refer readers to directories of member physicians. Wikipedia notability requires significant coverage by reliable sources; search results for this organization provide only passing quotes in news articles or unrelated articles about personal privacy issues. I could find no direct links to the mainstream articles (O Magazine, etc.) promoted by the org's press releases.

...

The article at present lacks reliable sources that comment on the importance of this organization. Some time back, it had more references, but they appeared to be self-promotional and they got removed by people who were doing cleanup. Having looked at the history I don't see anything that I would care to restore as a reference at this moment. In the Google results, this WP article is at the top of the rankings next only to CRSQA's own website, which is a suggestion that the organization is not too well known on the web.

...

The FDA links document only that your powerpoint presentation was entered into the minutes of a meeting; the government is not "publishing" or "referencing" your study or your statements. Verifying notability of your association's study would be provided from links to your study's final results published in recognized authoritative medical journals.

...

It's not the availability of the Oprah magazine article online that makes the information suspect; it's that your links go nowhere but to your website's press release with information and quotes that may or may not be part of the published article...but there seems to be no way to verify the information in the article or any offers to provide actual copies to interested readers.

⁶ Exhibit F

⁷ Exhibit G

d) THE DOMAIN NAME <USA EYES.US> IS NOT IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT CLAIMS TO HAVE RIGHTS.

- i) It is impossible for visitors to <usaeyes.us> to be confused into thinking that they are visiting complainant's web site. A simple perusal of the home page of <usaeyes.us> makes it immediately obvious that the site is designed to openly criticize complainant, as the banner on the page has the text "USA Eyes Exposed". No person of average intelligence could conclude that an organization would operate a web site to "expose" itself. Furthermore, there are many statements and links on the site that encourage the visitor to visit complainant's site at <usaeyes.org> for verification of criticisms made on respondent's site.

e) RESPONDENT OWNS <USA EYES.US> AND HAS RIGHTS AND LEGITIMATE INTERESTS THAT IS/ARE THE SUBJECT OF THE COMPLAINT.

- i) 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, establishes a legitimate interest in the domain name. UDRP panels have stated repeatedly that criticism of a trademark owner's activities is a fair use, even if the domain name incorporates the Complainant's trademark. See, e.g., *Bridgestone Firestone, Inc. v. Myers*, WIPO Case No. D2000-0190 (July 6, 2000); *Bosley Med. Group v. Kremer*, WIPO Case No. D2000-1647 (February 28, 2001); *TMP Worldwide Inc. v. Potter*, WIPO Case No. D2000-0536 (August 5, 2000); *The Am. Nat'l Red Cross v. Mafiabusters.com LLC*, NAF File No. FA0206000114589 (August 6, 2002); *Pensacola Christian College Inc. v. Gage*, NAF File No. FA0110000101314 (December 12, 2001); *Compusa Mgmt. Co. v. Customized Computer Training*, NAF File No. FA0006000095082 (August 17, 2000); *Robo Enters., Inc. v. Daringer*, NAF File No. FA0101000096375 (February 21, 2001); *Savin Corp. v. savinsucks.com*, NAF File No. FA0201000103982 (March 5, 2002); *Bloomberg L.P. v. Secaucus Group*, NAF File No. FA0104000097077 (June 7, 2001); *Mayo Found. for Ed. and Research v. Briese*, NAF File No. FA0102000096765 (May 4, 2001); *Dorset Police v. Coulter*, eRes Case No. AF-0942 (October 20, 2001); *Carefree Toland Pools, Inc. v. Thomson*, eRes Case No. AF-1012 (October 30, 2001); cf. *Wal-Mart Stores, Inc. v. MacLeod*, WIPO Case No. D2000-0662 (September 19, 2000) (stating that criticism can be a legitimate interest, but finding no legitimate interest because the protest site was created only as a pretext for selling the site back to the trademark owner); *Becker & Poliakoff, P.A. v. Isabell*, eRes Case No. AF-0847 (August 9, 2000) (stating the panel would find criticism to be a legitimate fair use if it had not decided the dispute on other grounds).

Respondent also is not a commercial enterprise and the sole purpose of its web site is to provide verifiable, factual information about complainant's organized criminal enterprise. Although the information provided on respondent's web site admittedly is, and should be, embarrassing to complainant and its LASIK surgeons, complainant has not provided any evidence to support his allegation that it is defamatory.

There is significant social value in permitting supporters of an organization to express

their support and appreciation for them (such as through the use of a "fan site" that uses a performer's name), as part of their First Amendment rights, just as there is a right to criticize public figures and organizations under the freedom of speech principles of the U.S. Constitution. These rights clearly override the minimal commercial value of a domain name in a case like this.

f) RESPONDENT HAS NOT REGISTERED <USAEYES.US> IN BAD FAITH.

- i) Respondent has not offered to sell the domain name to any entity, nor intends to sell the domain to any entity. The Respondent has simply acquired the domain name for the purpose of educating the public regarding the organized criminal enterprise that is operated by the complainant.
- ii) A consensus has not yet developed among panels regarding whether an individual can have a legitimate interest in using a domain name in the form <trademark.com> for the purpose of criticizing or commenting on the trademark owner. Compare *Bosley Med. Group*, WIPO Case No. D2000-1647 (using <trademark.com> to comment on trademark owner is fair use), with *Nintendo of Am. v. Jones*, WIPO Case No. D2000-0998 (November 17, 2000) ("Insofar as a domain name which is identical to a name or mark is used solely in the context of the product of the owner of the name or mark and the owner objects to the use, it is not legitimate."). In the absence of a consensus, a panel must consider the parties' arguments and relevant legal authorities and then make a decision consistent with the goals of the Policy and the Rules, as well as general legal principles. See Rules Paragraph 15(a) ("A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.").

Prior panel decisions finding no legitimate interest in using a domain name in the form of <trademark.com> for the purpose of criticizing or commenting on the trademark owner all relate to a trademark owner that is a commercial enterprise. Complainant claims to offer a "non-profit" service. Respondent also does not offer or provide any goods or services through its web site, nor does it solicit or accept donations. Accordingly, there is no intent to divert nor effective diversion of any commerce, nor any risk of misdirected donations. Respondent has neither sought nor received any commercial gain from the registration and use of the domain name.

- iii) The panel in *Legal & Gen. Group Plc v. Image Plus*, D2002-1019 (WIPO Dec. 30, 2002), found that initial interest confusion was displaced by the criticism content at the respondent's web site and that such a "low level of confusion is . . . a price worth paying to preserve the free exchange of ideas via the Internet." In *Elm Grove Dodge Chrysler Jeep, Inc. v. Schedule Star*, FA 352423 (Nat. Arb. Forum Dec. 27, 2004), the panel came to a similar conclusion, finding no bad faith registration or use where the respondent "only registered the disputed domain names to voice concerns and complaints about Complainant" and "[n]o one reading the web site would be confused as to sponsorship."

iv) Complainant has presented a bizarre claim to the National Arbitration Forum that respondent has “*employed exactly the same techniques of domain abuse and harassment in Washington CeaseFire v. Private Registration, National Arbitration Forum claim No:*” This claim is baseless and demonstrates that complainant is completely out of touch with reality. This claim by complainant is only exceeded in absurdity with his public claims that he “certifies” LASIK surgeons, even though he has no credentials beyond a high school diploma. Complainant’s bizarre claims about respondent owning WashingtonCeasefire.NET are only relevant, in that they provided a source of information from which respondent was able to use previous NAR filings as a template response in this action.

g) COMPLAINANT HAS NO LEGITIMATE INTEREST IN OBTAINING <USAEYES.US>.

The National Arbitration Forum previously transferred ownership of <usaeyes.info> from the respondent to the complainant. Complainant then used the domain for the sole purpose of publishing the decision of the National Arbitration Forum, rather than to promote his criminal enterprise. Based on the history of the complainant, his sole purpose in obtaining <usaeyes.us> is to publish the decision of the National Arbitration Forum in this case.⁸

6) RESPONSE TRANSMISSION.

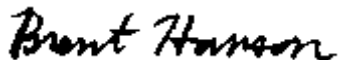
The Respondent asserts that a copy of the Response, as prescribed by the Supplemental Rules, has been sent or transmitted to the Complainant, in accordance with usTLD Rules 2(a) & 2(g)(iii).

7) The Respondent respectfully requests that the Administrative Panel deny the remedy requested by the Complainant.

8) CERTIFICATION.

Respondent certifies 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. usTLD Rule 5(c)(vii).

9) Respectfully Submitted,



Brent Hanson

December 26, 2008

⁸ Exhibit H1