

David Cradick d/b/a Kidd Kraddick)
c/o Claudia Werner)
Leydig, Voit & Mayer Ltd.)
Two Prudential Plaza)
Suite 4900)
Chicago, IL 60601)
(Complainant))
)
v.)
)
Overseas Concepts International)
Registration Department)
POB1345)
Georgetown, KY BWI, KY)
(Respondent))
_____)

Domain Name in Dispute:

kiddkraddick.com

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

[1.] This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy, adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999 and approved by ICANN on October 24, 1999 (ICANN Policy), and the Rules for Uniform Domain Name Dispute Resolution Policy (ICANN Rules), adopted by ICANN on August 26, 1999 and approved by ICANN on October 24, 1999, and the National Arbitration Forum (NAF) Supplemental Rules (Supp. Rules). ICANN Rule 3(b)(i).

[2.] COMPLAINANT INFORMATION

[a.] Name: David Cradick, c/o Claudia Werner
[b.] Address: Two Prudential Plaza, Suite 4900, Chicago, IL, 60601
[c.] Telephone: 312-616-5600
[d.] Fax: 312-616-5700
[e.] E-Mail: cstangle@leydig.com

COMPLAINANT'S AUTHORIZED REPRESENTATIVE

[a.] Name: Claudia Werner
[b.] Address: Two Prudential Plaza, Suite 4900, Chicago, IL, 60601
[c.] Telephone: 312-616-5600
[d.] Fax: 312-616-5700
[e.] E-Mail: cstangle@leydig.com

The Complainant's preferred method for communications directed to the Complainant in the administrative proceeding: ICANN Rule 3(b)(iii).

Electronic-Only Material

- [a.] Method: e-mail
- [b.] Address: Two Prudential Plaza, Suite 4900, Chicago, IL, 60601
- [c.] Contact: cstangle@leydig.com

Material Including Hard Copy

- [a.] Method: post
- [b.] Address/Fax: Two Prudential Plaza, Suite 4900, Chicago, IL, 60601
- [c.] Contact: cstangle@leydig.com

The Complainant chooses to have this dispute heard before a single-member administrative panel. ICANN Rule 3(b)(iv).

[3.] RESPONDENT INFORMATION

- [a.] Name: Overseas Concepts International, Registration Departement
- [b.] Address: POB1345, Georgetown, KY, BWI, KY
- [c.] Telephone: 00
- [d.] Fax: N/A
- [e.] E-Mail: N/A

RESPONDENT'S AUTHORIZED REPRESENTATIVE

- [a.] Name: N/A
- [b.] Address: N/A
- [c.] Telephone: N/A
- [d.] Fax: N/A
- [e.] E-Mail: N/A

[4.] DISPUTED DOMAIN NAME(S)

- [a.] The following domain name(s) is/are the subject of this Complaint: ICANN Rule 3(b)(vi).

kiddkraddick.com

- [b.] Registrar Information: ICANN Rule 3(b)(vii).

- [i.] Registrar's Name: Parava Networks
- [ii.] Registrar's Address: 6009 Richmond Ave. #130
Houston, TX 77057 USA
- [iii.] Telephone Number: 713-720-0202
- [iv.] E-Mail Address: support@parava.net

- [c.] Trademark/Service Mark Information: ICANN Rule 3(b)(viii).

The Complainant bases this Complaint on his use since 1978 of the radio deejay name “Kidd Kraddick” and on the name of his morning radio show, “Kidd Kraddick in the Morning”, which is broadcast around the country. (See Exhibit A). David Cradick also uses his “Kidd Kraddick” moniker in connection with a web site at “kiddlive.com”. (See Exhibit B).

[5.] **FACTUAL AND LEGAL GROUNDS**

Describe the grounds on which this complaint is made. ICANN Rule 3(b)(ix). In particular, the complaint must describe:

1. The manner in which the domain name is identical or confusing
2. Why the Respondent should be considered as having no rights or legitimate interests in the domain name
3. Why the domain name should be considered as having been registered and used in bad faith.

(1) Continuously since at least as early as 1978, Complainant has used the name “Kidd Kraddick” to distinguish his morning radio broadcasting show, “Kidd Kraddick in the Morning”, from other morning radio shows with similar formats. Complainant has invested extensively in creating, maintaining, and promoting goodwill associated with his “Kidd Kraddick” deejay name as well as with his “Kidd Kraddick in the Morning” radio show. Complainant has spent considerable time and money advertising and promoting the radio show by extensively using the mark “Kidd Kraddick” on material, including but not limited to, jackets, long sleeve and short sleeve t-shirts, golf shirts, boxer shorts, mugs, mousepads, hats, bags, and its general website at www.kiddlive.com. (See Exhibit C). As a three-time winner of The Billboard Magazine, “Air Personality of the Year”, 1992 and 1997 AWRO “Air Personality of the Year”, the distinguished Marconi Award for “Radio Personality of the Year” and winner of the first annual 1999 WB Radio Music Awards as the “Best Radio Personality in the Country”, and the winner of the 2001 “Radio and Records CHR/Pop Personality/Show of the Year”, he has dedicated himself not only to a successful radio career, but also to fundraisers and to special events (his non-profit organization sends local children to Walt Disney World in Florida).

In fact, in 1987, Complainant began his own charity organization, named “Kidd’s Kids”. (See Exhibit D). For ten years, Kidd’s Kids has provided free trips for the families of hundreds of chronically and terminally ill children. Kraddick fills the seats of a 757 airplane each November and spends four days helping children fulfill a fantasy. A video chronicling the trip is available for a free rental at Dallas/For Worth Blockbuster Video Stores.

In 1990, Complainant was named one of the top 10 Outstanding Young Americans by the United States Junior Chamber Selection; the award is based on community service. As the first radio personality to receive the award, Complainant joined previous recipients including George Bush, Neil Armstrong, John F. Kennedy, Joe Montana, and Jesse Jackson.

As a result of Complainant’s advertising and promotional efforts under his radio deejay name “Kidd Kraddick”, as well as his charitable efforts in providing chronically ill and/or physically challenged children with an unforgettable adventure to Disney World in Florida,

Complainant's "Kidd Kraddick" and "Kidd's Kids" marks are favorably recognized and relied upon by the relevant industry and the consuming public as indicating high quality radio broadcasting services as well as philanthropic services originating exclusively from Complainant and its affiliate radio stations. Due to such efforts, Complainant's mark has earned very valuable goodwill and is well known throughout the United States. In order to protect this asset, Complainant has filed a federal trademark application with the United States Patent and Trademark Office for the mark "KIDD KRADDICK", Serial No. 78/171,519.

On June 17, 2002, Russ Martin, a competitor radio deejay, reserved the domain name, www.kiddkraddick.com. Accordingly, long after Complainant had been using the name as his radio deejay personality, Russ Martin, without any authorization from Complainant, began utilizing the domain name kiddkraddick.com. On September 26, 2002, Complainant's attorney accessed Respondent's web site located at www.kiddkraddick.com. The web site displayed a page that compared Complainant to a type of bird, namely, a Bushtit. (See Exhibit E). The web site listed many false and disparaging statements about Complainant's radio personality "Kidd Kraddick" in an attempt to ridicule Complainant and his morning radio show. However, consumers accessing Respondent's web site not only were led to believe that Complainant was affiliated with this web site due to use of Complainant's radio deejay name as the exact domain name, but they were also confused into believing that Complainant supported the statements maligning him and his morning radio show. In fact, what likely led to even more confusion, was the fact that Complainant's likeness was pictured on Respondent's web page, exactly as found on Complainant's web site at www.kiddlive.com. Russ Martin, Complainant's competitor, even called attention to the disparaging web site containing the "Bushtit" comparison during his own radio show.

On or about October 1, 2002, one of Complainant's representatives complained to Russ Martin's employer about the disparaging web site. Then, on October 8, 2002, Complainant's attorney discovered that even though the domain name registration was not even near expiration, it had been transferred to a different Registrar and alleged owner, namely Parava Networks, owned by "Overseas Concepts International, Registration Departement, POB1345, Georgetown, KY, BWI," in the country "KY" (See Exhibit F), which Complainant believes may be affiliated with Russ Martin as it also contained material which may be viewed as tarnishing Complainant's reputation. The web site contained revealing pictures of "Big Beautiful Women." On October 15, 2002, one of Complainant's representatives talked to Russ Martin's general manager about the new content of the still disparaging web site. By October 16, 2002, the web site was not up anymore.

Undoubtedly, confusion is likely in that Respondent's domain name kiddkraddick.com is identical in spelling, sight, sound, and commercial impression to Complainant's long established radio deejay name and virtually identical to the name of Complainant's morning radio show. The use of Complainant's likeness, the same as found on Complainant's web site, also leads to confusion. Further, it is likely that consumers will enter the domain name when looking for the web site of Complainant.

Several ICANN decisions have held that Respondent must transfer its domain name when the domain is exactly the same as Complainant's mark. In *Akai Electric Co., Ltd. v. Semi-Tech*

(*Global*) Ltd., for example, the National Arbitration Forum held that Respondent must transfer the domain name akai.com to Complainant, finding that (in addition to requirements (2) and (3)), the domain name was identical to Complainant's mark. See *Akai Electric Co., Ltd. v. Semi-Tech (Global) Ltd.*, FA0206000114653, (NAF September 30, 2002); see also *The Aarque Companies v. Aarque Graphics*, FA0004000094669, (NAF June 16, 2000) (transferring aarque.com to Complainant); *Aeroturbine, Inc. v. Domain Leasing Ltd.*, FA0002000093674, (NAF March 23, 2000) (transferring the domain aeroturbine.com to Complainant); *Adventure City, Inc. v. Robert Giunta*, FA0002000094632, (NAF March 15, 2000) (transferring the domain adventurecity.com to Complainant).

Furthermore, numerous UDRP proceedings have been based on common law rights alone where the Complainant has been able to successfully transfer the domain name from the Registrant to the Complainant. See *Blue Max Technology v. Compudigital Industries*, FA0007000095107, (NAF August 6, 2000); *Jeanette Winterson v. Mark Hogarth*, (WIPO Case No. D2000-0235, May 22, 2000 ("The Rules do not require that the Complainant's trademark be registered by a government authority or agency."); *Julia Fiona Roberts v. Russell Boyd*, (WIPO Case No. D2000-0210, May 29, 2000) (Panelist found that actress, Julia Roberts, had common law trademark rights in her name and ordered transfer of domain juliaroberts.com); *Margaret Drabble v. Old Bard Studios Limited*, (WIPO Case No. D2001-0209, March 26, 2001); *Universal City Studios, Inc. v. David Burns and Adam-12 Dot Com*, (WIPO Case No. D2001-0784, October 1, 2001); *The National Deaf Children's Society and (2) Ndc's Limited v. Nude Dames, Chat, Sex*, (WIPO Case No. D2002-0128, April 19, 2002); *English Harbour Entertainment Limited v. RaveClub Berlin*, (WIPO Case No. D2002-0287, May 13, 2002). Accordingly, Complainants have been successful without a federal registration or registration issued by a governmental body if the Complainant can prove common law rights in the trademark or service mark so that the mark is associated with the Complainant by the consuming public. Here, the mark "KIDD KRADDICK" clearly is associated with Complainant. (See Exhibits A-D).

A side-by-side comparison of Complainant's "Kidd Kraddick" mark and the domain name at issue shows they are identical. Therefore, registration and use of the domain name by Respondent will result in consumer confusion as to source and tarnishment of Complainant's mark.

Based on the foregoing, it is clear that actual confusion is likely to be present and continued confusion is likely.

(2) Respondent should not be considered as having rights or a legitimate interest in the domain name kiddkraddick.com for several reasons. In *Charles Jourdan Holding AG v. AAIM*, several circumstances were held to support a finding of no legitimate rights or interests. *Charles Jourdan Holding AG v. AAIM*, D2000-0403, (WIPO June 27, 2000). Those circumstances include Respondent not being a licensee of Complainant, Respondent not receiving permission or consent to use the trademark, and Complainant having prior rights in the trademark that precede Respondent's registration of the domain name. *Id.* *Charles Jourdan Holding AG* also set forth examples of a showing of a legitimate interest, and included a bona

fide offering of goods or services and a legitimate noncommercial or fair use of the domain name. *Id.*

None of these examples of rights or legitimate interests on the part of the Respondent exist here. First, Respondent is not a licensee of Complainant. Second, Complainant did not authorize or consent to Respondent's use of the mark "Kidd Kraddick" in connection with Respondent's domain name and web page. Third, Complainant has prior rights as it believes Respondent only recently established its presence on the Internet, which is consistent with the date the current Respondent registered the web site www.kiddkraddick.com, namely, October 8, 2002 (See Exhibit F). Clearly, Complainant's common law use of "Kidd Kraddick" since as early as 1978 far predates Respondent's extremely short period of use. It also predates any use by the original Registrant (Russ Martin), for he initially registered the domain kiddkraddick.com on June 17, 2002. Further, it does not appear that Respondent currently offers any goods or services, nor does it appear that Respondent has a legitimate noncommercial or fair use of the confusingly similar domain name since the domain name has no apparent or logical connection to the content of the web site.

Complainant believes that Respondent registered the domain name with actual and constructive knowledge of Complainant's use of the mark "Kidd Kraddick". Registration of a domain name with actual or constructive knowledge of its use as a mark suggests no rights or legitimate interests and can serve as evidence of bad faith. *The Prudential Insurance Company of America v. Stonybrook Investments, LTD*, FA 100182 (Nat. Arb. Forum November 15, 2001) citing *Samsonite Corporation v. Colony Holding*, FA 94313 (Nat. Arb. Forum April 17, 2000). Complainant began using the mark "Kidd Kraddick" in connection with his radio broadcasting show long before the current Respondent or prior Registrant registered the domain name kiddkraddick.com. Prior to Respondent's registration, Complainant's use of the mark became well known and associated with quality morning radio entertainment services and with charitable endeavors throughout the industry and with the consuming public. It is obvious that Respondent had at least constructive knowledge of Complainant's use of the mark "Kidd Kraddick" in connection with radio broadcast services given that this is a coined and arbitrary name. Respondent is also likely connected with the original Registrant, Russ Martin (see Section 3, *infra*), a gentleman that provides similar services (namely, radio broadcasting services) and is a competitor of Complainant.

Consequently, Respondent should not be considered as having rights or a legitimate interest in the mark "Kidd Kraddick" or in the domain name kiddkraddick.com.

(3) The domain name kiddkraddick.com was registered and is being used in bad faith by Respondent.

Policy ¶ 4(b) lists a number of circumstances that support a finding of bad faith. However, the same section states that the list is non-exhaustive and, therefore, the Panel is permitted and encouraged to look at the totality of circumstances when determining the crucial bad faith registration and use issues. See *Cellular One Group v. Brien*, D2000-0028 (WIPO Mar. 10, 2000) (finding that the criteria specified in 4(b) of the Policy is not an exhaustive list of bad faith evidence); see also *Twentieth Century Fox Film Corp. v. Risser*, FA 93761 (Nat. Arb. Forum May 18,

2000) (finding that in determining if a domain name has been registered in bad faith, the Panel must look at the “totality of circumstances”).

Respondent’s use of the domain name kiddkraddick.com is likely to confuse and mislead consumers. Complainant believes that Respondent had constructive and actual knowledge of Complainant’s rights in the “Kidd Kraddick” mark, yet Respondent continues to use the “Kidd Kraddick” mark as its domain name. As noted above, Registration of a domain name with actual or constructive knowledge of its use as a mark suggests no rights or legitimate interests and can serve as evidence of bad faith. *The Prudential Insurance Company of America v. Stonybrook Investments, LTD*, FA 100182 (Nat. Arb. Forum November 15, 2001) citing *Samsonite Corporation v. Colony Holding*, FA 94313 (Nat. Arb. Forum April 17, 2000).

Complainant initially investigated what services or products the original Registrant, Russ Martin, provided through the web site. Not only were no services or products discovered, but the investigation also found that all the web site initially did (as of at least as late as September 26, 2002) was attempt to disparage Complainant by portraying Complainant’s likeness with false and maligning statements about him and his morning radio show. (See Exhibit E). Registrant at that point even referenced the web site during his competing radio show in a further attempt to ridicule Complainant. From October 8, 2002 until October 15, 2002, viewers of www.kiddkraddick.com were confronted by several pages consisting of revealing pictures of a “big beautiful woman”. (See Exhibit G). It was not until October 16, 2002, after a second complaint by one of Complainant’s representatives that the further tarnishing material was taken off of the web site. It therefore seems clear that the current Respondent has shown no legitimate business interest in any product or service that uses the name “Kidd Kraddick”; in fact, it appears as though registration and use of the same name here was done intentionally to tarnish the reputation and image of Complainant. Such circumstances have been considered evidence of bad faith. See *Samsonite Corporation, supra*.

In addition, by registering a domain with the exact same “coined” name as the Complainant, it is apparent that Respondent was attempting to represent Complainant or to at least connect himself with Complainant so as to cause confusion and to damage the reputation and business of the Complainant. Similar behavior has been deemed “bad faith” in several ICANN decisions. See *American Registry of Diagnostic Medical Sonographers Inc. v. Ardms.net*, FA0205000114279 (NAF June 24, 2002) (finding that the registration of the domain name ardms.net was calculated to mislead candidates for Complainant’s examinations into believing that they are reaching a site operated by or at least approved by Complainant); *Société des Baines de Mer et du Cercle des Etrangers á Monaco v. Britannia Finance et al.*, (WIPO Case No. D2000-1315, January 8, 2001) (finding that the domain name is so obviously connected to the Complainant and its products that its very use by someone with no connection with the Complainant suggests opportunistic bad faith); *Justerini & Brooks Limited v. Juan Colmenar Rueda*, (WIPO Case No. D2000-1308, December 11, 2000) (finding that Respondent’s use of a domain incorporating Complainant’s name is such that the similarity to Complainant’s name and mark will inherently lead to passing off and that it would be a potential instrument of fraud if used in any manner by any person, company or organization other than the Complainant or with the Complainant’s authority).

Finally, upon information and belief, Complainant believes that Respondent does not actually exist. (See Seth Rose Declaration, Exhibit H). The Respondent's information, as noted in Exhibit F, among other falsities, posits that its zip code is "BWI" and that its country is "KY". There is no such zip code or country in the world. Additionally, there is no phone number, facsimile number, or email address provided for Respondent's contact information. In fact, upon information and belief, Complainant believes Respondent's information is likely falsified information, connected with the original Registrant, Russ Martin, found at 12201 Merit Drive, 930, Dallas, TX 75251, 972-716-7828, russ@rusmartin.com. (See Exhibit I). Such use of falsified information provided to the Registrar has been held to constitute bad faith. *See, e.g., Mayflower Transit, LLC v. Jonny Mayflower/Mayflowers Moving*, (WIPO Case No. D2002-0722, September 18, 2002) (finding that Respondent's contact information contained many falsities, namely a nonexistent entity, city, and street address, and an incorrect zip code and phone number); *Avnet, Inc. v. SS*, (WIPO Case No. D2001-0793, August 12, 2001) (finding the registration of the domain name with a false organization name and fax number to be evidence of bad faith registration); *Hyosung Corporation v. HH*, (WIPO Case No. D2000-0236, June 2, 2000) (stating that Respondent purposefully used false information in registering the domain name to conceal the Respondent's identity and to make it difficult to locate the Respondent for purposes of lawfully pursuing the domain name since the domain name was registered under a nonexistent name and address). Due to the use of this alleged false information, and the fact that the original Registrant, Russ Martin, immediately transferred the domain name upon being contacted by Complainant, Complainant logically believes that the Respondent and the original Registrant may be one in the same, or at the very least related. Russ Martin is a competitor of Complainant's and had initially posted the web site at www.kiddkraddick.com, which ridiculed and disparaged Complainant. (See Exhibit E). Nonetheless, even if Respondent is not connected to the original Registrant, and further, even if Respondent is an actual entity with correct contact information, Complainant asserts that the use of its long-established radio deejay name as a domain name representing no legitimate business interest in any product or service constitutes bad faith on the part of Respondent.

In summation, Complainant owns common law rights in the mark "Kidd Kraddick" and "Kidd Kraddick in the Morning". Complainant has used this mark in commerce and commercial enterprises for over 20 years. Respondent nonetheless registered a domain name identical to Complainant's coined name and mark, without rights or a legitimate interest in the mark or the domain name, and has acted in bad faith according to Paragraph 4(b) of the *ICANN Uniform Domain Name Dispute Resolution Policy*.

[6.] **REMEDY SOUGHT**

The Complainant requests that the Panel issue a decision that the domain-name registration be transferred to David Cradick, d/b/a Kidd Kraddick. ICANN Rule 3(b)(x); ICANN Policy ¶ 4(i).

[7.] **OTHER LEGAL PROCEEDINGS**

None. ICANN Rule 3(b)(xi).

[8.] COMPLAINT TRANSMISSION

The Complainant asserts that a copy of this Complaint, together with the cover sheet as prescribed by NAF's Supplemental Rules, has been sent or transmitted to the Respondent (domain-name holder), in accordance with ICANN Rule 2(b). ICANN Rule 3(b)(xii); NAF Supp. Rule 4(c).

[9.] MUTUAL JURISDICTION

The Complainant will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name the location of the principal office of the concerned registrar. ICANN Rule 3(b)(xiii).

[10.] CERTIFICATION

Complainant agrees that its claims 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 (a) the National Arbitration Forum and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator, and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.

Complainant certifies that the information contained in this Complaint is to the best of Complainant's 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 these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully Submitted,

[Signature]

[Name]

[Date]

List of Exhibits

- Exhibit A Web page displaying affiliate stations throughout the United States that broadcast Complainant's morning radio show, "Kidd Kraddick in the Morning"
- Exhibit B Complainant's web site, www.kiddlive.com, which uses Complainant's "Kidd Kraddick" moniker
- Exhibit C Material available for purchase that displays Complainant's mark
- Exhibit D Web page describing Complainant's charity organization, "Kidd's Kids"
- Exhibit E Display of www.kiddkraddick.com as of September 26, 2002, when registered by Russ Martin
- Exhibit F Whois Results showing Respondent as the Registrant of the kiddkraddick.com domain
- Exhibit G Current content of www.kiddkraddick.com web site displaying revealing pictures of a "big beautiful woman"
- Exhibit H Declaration of Seth Rose
- Exhibit I Whois Results showing contact information of original Registrant, Russ Martin