

Before the:

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

*ST. LOUIS UNIVERSITY d/b/a
SAINT LOUIS UNIVERSITY
221 North Grand
St. Louis, MO 63103*

(Complainant)

-v-

*MICHEAL TODD RICE
[REDACTED], MO, USA
63119*

(Respondent)

Case No: D2017-1759

Disputed Domain Names:

<slucomplianceproject.org>
<anewSLU.org>
<makeSLUcompliant.org>

RESPONSE

(Rules, Paragraph 5)

I. Introduction

1. On September 27, 2017, the Respondent received a Notification of Complaint and Commencement of Administrative Proceeding from the WIPO Arbitration and Mediation Center (the **Center**) by email and written notice by DHL courier on September 29, 2017, informing the Respondent that an administrative proceeding had been commenced by the Complainant in accordance with 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**) approved by ICANN on September 28, 2013, and in effect as of July 31, 2015, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**). The Center set **October 17, 2017**, as the last day for the submission of a Response by the Respondent.

II. Respondent's Contact Details
(Rules, Paragraphs 5(c)(ii) and (iii))

2. The Respondent's contact details are:

Name: Micheal Todd Rice

Address: [REDACTED] Missouri, USA, 63119

Telephone: +1 [REDACTED]

Fax: none

Email: [REDACTED]

3. The Respondent's authorized representative in this administrative proceeding is:

Micheal Todd Rice. This is a pro se representation.

4. The Respondent's preferred method of communications directed to the Respondent in this administrative proceeding is:

Electronic-only material

Method: email

Address: [REDACTED]

Contact: Micheal Todd Rice

Material including hardcopy (where applicable)

Method: Post/courier

Address: [REDACTED], Missouri, USA, 63119

Fax: n/a

Contact: Micheal Todd Rice

III. Response to Statements and Allegations Made in Complaint
(Policy, Paragraphs 4(a), (b), (c); Rules, Paragraph 5(c)(i))

5. The Respondent hereby responds to the statements and allegations in the Complaint and respectfully requests the Administrative Panel to deny the remedies requested by the Complainant.

A. Whether the Complainant has rights to the mark in question; (Policy, Paragraph 3(b)(viii))

1. Complainant sets forth its legal case for ownership of its marks, in particular that of **SLU**, which is the basis for its complaint against the domain names of this case. Paragraph (16) of the Complaint states that the “Complainant has enjoyed continuous, longstanding and uninterrupted use of the **SLU** mark... since as early as 1950.” Complainant claims “exclusive rights to use and exploit” its marks, and that the “**SLU** marks have not been successfully challenged.”

2. The Respondent does not have the legal expertise in Intellectual Property to challenge the legalities of trademark and copyright law. However, on simple Google search as layperson, a non-exhaustive list of eleven domain names containing **SLU** was compiled, none of which appears to be affiliated with St. Louis University. That list, the screenshots of those webpages, the use of **SLU** as acronym, and even evidence of commercial items bearing a **SLU** logo are included as **Annex 1 (“SLU” domain names and/or marks unaffiliated with St. Louis University)**. The compiled list of those domain names is as follows:

<https://www.discoverslu.com/>

<http://www.sluchamber.org/>

<http://slucommunitycouncil.org/>

<http://thevoiceslu.com/>

<http://www.slulead.com/>

<http://www.sluniverse.com/php/>

<http://www.sluedu.us/>

<http://slublockparty.com/>

<https://sludev.com/>

<http://sluagency.com/>

<http://www.slubaseball.com/>

3. The **SLU** mark was found utilized by Southeastern Louisiana University for its athletics teams, at domain name <http://lionsports.net/>. Screenshots of those uses are also included in **Annex 1**.

4. Acronym Finder at <https://www.acronymfinder.com/> returns 26 results for **SLU**. That screenshot is attached as **Annex 2 (“AcronymFinder: What does SLU stand for?”)**.

5. Despite the Complainant's claims, it does not appear that in reality or practice that the Complainant has express control of the **SLU** mark. It is unlikely that all, or even most, of these uses of the **SLU** mark documented in **Annex 1** would be formal exceptions to the legal rights that the Complainant claims upon the mark. This begs the question if a short acronym, like **SLU**, can be appropriately retained for the express use of one entity. Admittedly, these issues may be better addressed in a judicial forum. Nonetheless, the Respondent requests the Panel to consider the strength of the mark in establishing the Complainant's standing to file a UDRP complaint.

B. Whether the domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (Policy, Paragraph 4(a)(i))

1. To the degree that Complainant claims the domain names in question to be confusingly similar to its own mark, said domain names can be no more confusingly similar than those found in **Annex 1**, for which the Complainant appears to have not had concern for diversion of internet traffic, the deception of the public as to affiliation, lack of clarity, generic term usage, or other claims that are lodged against the Respondent throughout the Complaint.

2. Respondent requests the Panel to consider the pre-existing weakness of the **SLU** mark, and its frequency of use, throughout the internet in what might already be a confusing milieu, if confusion does, in fact, exist. (see [WIPO Jurisprudential Overview 3.0](#), question 1.7 “What is the test for identity or confusing similarity under the first element?”)

3. The domain names in question are not identical or confusingly similar to the marks of the Complainant. The use of **SLU** in the domain names in question is purely for identification of the target, with the addition of descriptive terms of “distinguishing value” and as the “dominant feature” which denote reform, change, and action upon the target. These actions are unlikely to be considered by the public to be self-imposed by the Complainant. Additionally, when “comparing the written, aural, and other sensate elements of Complainant’s marks to those of the disputed domain names,” the domain names in question are not confusingly similar to those of the Complainant. (see [WIPO Case No. D2013-0097](#), **Yellowstone Mountain Club LLC v. Offshore Limited D and PCI**.) Thus, it is unlikely that “Internet users may actually believe there to be a real connection between the domain name and the complainant.” (see [WIPO Overview 2.0](#), question 1.2, “What is the test for identity or confusing similarity, and can the content of a website be relevant in determining this?”)

4. The Complainant lists several of its domain names that carry “compliance” in the web address (paragraph 14) in an attempt to show a similarity or confusion potential for <slucomplianceproject.org>. Of note, Complainant's examples are of second and deeper level sub-domains. The Complainant does not appear to own any primary domain names related to compliance or other term common to the domain names in question.

C. **Whether the Respondent has rights or legitimate interests in respect of the domain names;** (Policy, Paragraph 4(a)(ii))

1. I, Micheal Todd Rice, MD, am the Respondent. I am a physician, a board-certified anesthesiologist, am appointed to the position of assistant professor at [REDACTED] School of Medicine in St. Louis, Missouri, and additionally, hold a Masters Degree in Business Administration. I perform my own clinical medical work, as well as supervise nurse anesthetists, am the director of anesthesiology at one of my organization's surgical centers, and participate in graduate medical education by training resident physician anesthesiologists in the academic setting in our teaching hospitals.

2. The Respondent's spouse, Dr. Mandy Lyn Rice, DO, has been indirectly referenced in this proceeding by the Complainant in connection with **Case**

1722-CC11181 filed in the Twenty-Second Judicial Circuit, St. Louis, Missouri: **Mandy Rice v St. Louis University, et al.** – a Petition for Breach of Contract, Promissory Estoppel, Defamation and Injunctive Relief. (see **Annex 3, the Petition**. Full exhibits available upon request.) Dr. Mandy Rice is physician resident in training in the department of surgery at St. Louis University (SLU) Medical School. The general surgery residency program at SLU is a five-year graduate medical program which commences after the completion of medical school. Dr. Mandy Rice was to start her fifth and final academic year as a general surgery resident on July 1, 2017.

3. As a broad overview to the events preceding the filing of the aforementioned **Petition** (which are more specifically detailed in that document), in September of 2016, Dr. Mandy Rice became aware of severe critiques in her surgery resident file, made by her residency program director, which she alleges were in no way substantiated by fact, evidence, or the required written evaluations by her attending surgeons. As she attempted to ascertain the reason for these critiques, she alleges that she was met with hostility and that her concerns were dismissed. In November 2016, Dr. Mandy Rice became aware of defamatory statements made about her in a public setting by her program director, and which gave her concern that her progress into her final year of training could be at risk, primarily as the result of the single opinion of the program director. Over the ensuing months, Dr. Mandy Rice met with many of her faculty attending surgeons in an attempt to clarify any potential negative findings. As she inquired, requested meetings, and rebutted findings with actual positive evaluations and attendings' feedback, these continued to be dismissed in her formal evaluation process.

4. In preparation for the April 2017 Core Curriculum Committee meeting (the CCC is the committee of select surgical faculty which performs a biannual review of residents' evaluations and progress), Dr. Mandy Rice wrote to each CCC member on March 31, 2017, to describe her concerns for violations of the evaluation process and for undue influence by her program director. That letter is **Annex 4 (“the chronology letter to the CCC”)**. In part, Dr. Mandy Rice described what she alleged to be the program director's use of hearsay and personal opinion in evaluating her, in lieu of a review of objective evaluations by faculty over the preceding months of surgical rotations, as is required by the Common Program Requirements of the Accreditation Council for Graduate Medical Education (the ACGME) – which is also described in **Annex 3, the Petition**.

5. As these events unfolded over many months, given the Respondent's professional training, experience, and specifically his own personal involvement with graduate medical education, he recognized the above described irregularities as frank procedural violations within the SLU surgical residency program. Among multiple other documented irregularities, these placed the program's accreditation at risk, as well as created hostile work and poor learning environments. Despite Dr. Mandy Rice's appeals over several months' time to faculty, the program director, the associate dean for graduate medical education, and eventually the chairman of the department, her complaints were dismissed.

6. Given that Dr. Mandy Rice was getting no effective response from SLU faculty or leadership, the Respondent, Dr. Micheal Todd Rice, wrote a letter to the dean of the medical school on March 9, 2017. (**Annex 5, letter to the dean**). That letter gave an overview of the events of roughly the previous six months, shared the aforementioned concerns, and requested that the dean intervene to force compliances and to correct the identified violations. On March 13, 2017, the Respondent copied that letter to the dean to the SLU Office of General Counsel (addressed to attorneys Shorey and Moore as the contacts listed on that office's webpage), requesting that office's assistance with resolution of the issues. (**Annex 6, email to SLU Office of General Counsel**.) The dean never addressed the violations or non-compliances brought to his attention. The Office of General Counsel, which apparently houses the SLU Office of Compliance, never responded in any form.

7. Despite the many communications and meetings that preceded the April 2017 CCC meeting, that group upheld the program director's unsubstantiated findings that Dr. Mandy Rice had several critical deficiencies and would be required to repeat her fourth year of residency. A faculty on the CCC would afterwards tell Dr. Mandy Rice that the body never looked at her evaluations, but considered gossip, hearsay, and the program director's opinion in deciding her remediation. That is a frank violation of ACGME program requirements. These and other supporting points can be read in **Annex 3 (the Petition)**.

8. A formal appeal of the remediation was initiated by Dr. Mandy Rice per institutional guidelines. That appeals process ultimately found in the program director's favor, on or about June 12, 2017, yet never acknowledged the evaluation violations or any of the other aforementioned issues.

9. As no other method had been successful in drawing attention to or forcing transparency of the violations and non-compliances at SLU, the Respondent bought the domain name <slucomplianceproject.org> on June 22, 2017, and began a purpose-driven endeavor to force upon SLU the compliances which it refuses. The domain name identifies SLU as the target of its efforts, carries a message of its intention to act upon SLU to bring it into compliance, and is itself an expression of free speech (see [WIPO Case No. D2004-0175, Justice for Children v. R neetso / Robert W. O'Steen](#)). The Respondent immediately began to populate the site with examples of SLU's systemic dysfunctions, its ACGME violations, the negative effects of its poor educational culture, a section on disruptive physician behavior, the legal case of Wilson v. Bahnson, et al. (Ohio State Medical School) to which parallels could be drawn to SLU's disruptive program leadership, links for SLU residents and faculty to report issues within and outside of the institution, and a media update page where a link was placed to the local newspaper [story](#) from March 15, 2017, which revealed that SLU medical school is the only medical school in the United States currently on probation with its accreditation agency for a variety of non-compliances.

10. As a last effort to have the list of violations and non-compliances recognized by someone in leadership at SLU, Dr. Mandy Rice requested and was granted a personal interview with the dean of the medical school on June 29, 2017. Per her report, she found him to be hostile, dismissive and threatening. He ultimately told her that she could either follow the final decision of the appeals process or leave the university. He dismissed all concerns for non-compliances and violations without recognition. These details are also noted in **Annex 3 (the Petition)**.

11. The surgery resident schedule for the 2017-2018 academic year was published at the end of June 2017. The program director assigned Dr. Mandy Rice to rotations in August and September as a junior level resident at the Cardinal Glennon pediatric hospital associated with SLU. This rotation is typically a first and third-year resident rotation. Dr. Mandy Rice had already successfully completed the junior level rotations in those years. No chief level resident (comprised of the fourth and fifth years) is known to have been placed back into the junior resident position after having successfully completed those rotations in two junior years. This assignment was recognized as retaliation against Dr. Mandy Rice for her pursuit of transparency and the communication of program violations. The program director had previously told Dr. Mandy Rice that despite the planned remediation of her fourth year of residency that she would remain a

chief resident in her rotations, meaning that there would be no upper level resident between her and the attending surgeons on her services. This is especially important as chief level residents must be able to participate in a minimum number of certain types of advanced cases, as well as in supervisory roles to junior level residents, in order to graduate. Now, with the schedule published, it was obvious that the program director would violate her chief resident statement for multiple rotations. Dr. Mandy Rice realized that the program, its director, and the university leadership were all functioning in arbitrary fashion, that no system could protect her interests, and that if the program director chose to terminate her that she would have no recourse. Litigation was filed on August 25, 2017, in order to protect her interests – over two months after the creation of the <slucomplianceproject.org> website. (see **Annex 3, the Petition**).

12. The Complainant alleges that the creation of <slucomplianceproject.org> is an attempt by the Respondent to extract commercial gain by supporting Dr. Mandy Rice's lawsuit against SLU. That accusation twists the chronology and purpose of the site. The Respondent has demonstrated a many months-long history of failed attempts to have serious complaints acknowledged by SLU. The institution has refused to address issues that are vital to the compliance and accreditation of the residency program and resident education, in general, and are harmful to the Respondent's spouse, in particular. A need for compliance is the recurrent theme throughout the events described above. The Respondent has envisioned a concerted effort, a Project, to drive towards that goal of compliance. In that endeavor, the website exists to force transparency, to educate residents and staff, and to effect change at SLU. To the Respondent's knowledge, no other website exists which combines the multiple issues raised regarding procedural compliances and violations or that informs, details and educates the public on these matters – either specifically regarding SLU or more generally regarding broader concerns that are so vividly exemplified by SLU's failures. While the Rice v. SLU, et al Petition has been given a dedicated page at <slucomplianceproject.org>, there are eleven (11) other pages on the site. Only two of those additional pages have any reference to that litigation, which is through media reports shared to the site and from commentary that is volunteered by visitors via anonymized email.

13. For the Complainant to purport that commercial gain is a primary purpose of the pre-existing website is to imply that once litigation in a matter is initiated, that all free speech on the topic must cease, else it be considered commercial. It is striking that the Complainant would leave the Respondent and others with no

official avenues of complaint resolution, then when they engage in pointed public criticism and eventual litigation, the Complainant lodges the disingenuous accusations of trademark infringement and commercial gain. The Respondent is making a legitimate non-commercial and fair use of the domain names in question in order to criticize, inform, and encourage change.

14. The website is not utilized to recruit participants to Dr. Mandy Rice's litigation. All calls to action direct residents and staff to use official channels of ACGME, medical and specialty boards, and hospital and SLU departments to effect change. These points and links are clearly noted on the website page "[What Can I Do?](#)" and other pages on the site. The website is not used to mislead internet users as to source or affiliation, nor does it disparage the Complainant. All information on the site is used in legitimate criticism of and education on topics related to SLU, and refers to SLU-specific and general issues surrounding graduate medical education.

15. In regards to legitimate use, from the dissenting Panelist in [WIPO Case No. D2006-1627](#), (**Joseph Dello Russo M.D. v. Michelle Guillaumin**), he notes that *"it is undisputed that Respondent has exhibited no 'intent for commercial gain' through her website. In these circumstances, even if a <trademark.TLD> domain name might initially divert consumers, and even if that diversion might be misleading because the domain name does not, on its own, communicate that the website is not operated by the trademark owner, the exception of paragraph 4(c)(iii) cannot apply because there is no intent for commercial gain, and that phrase is a critical component of paragraph 4(c)(iii)."* Furthermore, he adds *"... Bosley Medical is part of the continuing trend of federal circuit courts that have held that, in cases involving non-commercial criticism cites, United States trademark law does not support challenges to the registration, ownership and use of <trademark.TLD> domain names."* By this rationale, federal courts would seem even less likely to support challenges to the domain names in question in this case as they are significantly distinguishable from a <trademark.TLD> domain name.

16. A further support of legitimate interest in criticism sites, as well as an excellent overview of the topic in general, is found by the Panel in [WIPO Case No. D2004-0014](#) (**Howard Jarvis Taxpayers Association v. Paul McCauley**): *"In sum, although there has been a split even in the United States, in this Panel's view, the weight of authority suggests that a consensus is emerging that trademark.TLD domain names, when used for U.S.-based criticism sites, can*

constitute a legitimate interest, especially if there are not other indicia of bad faith. Given that this appears to be the emerging view in federal courts as well, aligning the decisions under the Policy with decisions emerging from the courts will prevent forum shopping.” Again, by this rationale, federal courts would seem even less likely to support challenges to the domain names in question in this case as they are significantly distinguishable from a <trademark.TLD> domain name.

17. As the Panel noted in [WIPO Case No. D2004-0206 \(Covance, Inc. and Covance Laboratories Ltd. v. The Covance Campaign\)](#), there is a “spectrum of confusion” to be considered, varying from a near identical domain name to one with a variety of modifiers. *“It is worth mentioning that the vast majority of cases decided to date by panels under the 'initial confusion' type rationale appear to concern domain names falling into this identical ‘trade mark.com’ category. Where however a domain name is not 'identical' but is 'confusingly similar' to a Complainant’s trade mark in the ‘trade mark + modifier.com’ or ‘modifier + trade mark.com’ format then the degree of initial confusion may differ markedly in the particular factual circumstances of the case. In this Panel’s view this spectrum of confusion is not susceptible of some kind of brightline analysis or automatic rule for legitimacy. The potential degree of initial confusion needs to be considered in the particular factual circumstances of the case while keeping in mind the Policy’s aims.”* The panel further writes, *“Where the degree of initial confusion is at the lower end of the spectrum, because by way of example only, the modifier element imports a negative connotation such that people would be much less likely to assume that there is some connection between the Respondent’s domain name and the Complainant’s trade mark then it would seem to be an unreasonable extension of the trade mark owner’s rights under the Policy to automatically find that the Respondent does not have legitimate rights in the domain name under paragraph 4(c)(iii).”*

18. On or about September 8, 2017, the Complainant notified Dr. Mandy Rice's attorney, David Bohm of Danna McKitrick, of its intention to sue regarding trademark infringement, and demanded certain concessions (**Annex 7, Complainant's Request for Response regarding slucomplianceproject.org**). As the Respondent had used a privacy service in the purchase of the domain name in order to keep his personal address and cell phone number out of readily accessible public records, he voluntarily disclosed his identity as the domain name owner to Complainant via Mr. Bohm upon receipt of said notification. On

September 12, 2017, the Complainant filed suit in reference to trademark infringement in U.S. district court, **Case 4:17-cv-02397, St. Louis University vs. Micheal Todd Rice and Mandy Rice**. That case can be found referenced within a local newspaper [article](#), as the Respondent has not been served.

19. The Respondent learned through his attorney that the Complainant threatened to seek a restraining order regarding <slucomplianceproject.org>. While in no way an admission of wrongdoing, in order to avoid additional legal hassle, the Respondent agreed to make more explicit and prominent the disclaimer of non-affiliation with SLU, to remove a partial picture of a SLU building, to remove any reference to the site mentioning SLU medical students, and to remove a picture of a SLU faculty manual. These concessions were shared with the Complainant on the evening of September 13, 2017, via phone call placed by Respondent's attorney to the Complainant's attorney. Additionally, the Respondent placed a prominent link to the official SLU Compliance Department near the top of the main page of the website in order to further reduce any chance of an internet user's confusion as to the site's affiliation or the user's destination. Despite these concessions made in good faith, the Complainant proceeded with the pursuit of a restraining order.

20. Noting that the Complainant might be able to obstruct the Respondent's free speech, as well as potentially cause him to lose access to the considerable work of having created the website, on or about Sept 18, 2017, he purchased other domain names to which the work could be saved and cloned. <anewslu.org> and <makeslucompliant.org> were selected as these were distinguished by language of external reform and were highly unlikely to ever be selected by the Complainant for its own use. These domain names carry a low chance of confusion and were purchased in transparent fashion, accompanied by a notice placed on the primary website.

21. On September 22, 2017, the Complainant obtained a hearing with a judge in an attempt to obtain a restraining order against the Respondent and his use of the primary domain name. While the Respondent does not have the details of that hearing, his attorney was informed that the judge denied the Complainant's request for restraining order.

22. For further consideration, and in no way an admission that the domain names in question are confusingly similar to any of the Complainant's, the non-US Panel writes in [WIPO Case No. D2004-0206 \(Covance, Inc. and Covance Laboratories Ltd. v. The Covance Campaign\)](#), "... where a criticism site is based in the United States, or where a case is decided by US-based Panels, a number of Panels have held that the Respondents use of an identical or confusingly similar trade mark as its domain name may give rise to a legitimate interest provided that there are no indicia of bad faith. Mr. Bernstein suggests that the discrepancy in approach between Panels arises from US legal principles and the robust approach to free speech derived from the First Amendment to the US Constitution and that this approach is mirrored by recent decisions of the US Federal Courts. As a matter of principle, this Panel would not have thought that it was appropriate to import unique national legal principles into the interpretation of paragraph 4(c) of the Policy. This is so even if the effect of doing so is desirable in aligning decisions under the Policy with those emerging from the relevant courts and thus avoiding instances of forum shopping. The overriding purpose of the Policy is to prevent cybersquatting in favour of legitimate trade mark owners but in doing so paragraph 4(c)(iii) of the policy clearly seeks to balance the trade mark owner's right against the rights of a domain name owner in circumstances where use of the trade mark as part of the domain name is truly for the purposes of criticism and the domain name owner in no way seeks to make a commercial use of the trade mark or to tarnish it. Nowhere is it expressly anticipated by the Policy that this paragraph may not operate if the domain name at issue is found to be identical or confusingly similar to the Complainant's trade mark."

D. Whether the domain names have been registered and are being used in bad faith. (Policy, Paragraph 4(a)(iii))

1. Per the Policy, Paragraph 4(b), the Respondent has not registered or used the domain names in question in bad faith:

a. Specifically for this Complaint, "The domain names were not registered by the Respondent, in an intentional attempt to attract for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's

mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location.”

2. The website in no way calls for internet users to join in or support a commercial gain for Respondent via litigation. Even if such a call were made, this would likely be protected speech, particularly in the United States. The Panel found in [WIPO Case No. D2015-2062 \(Titan Enterprises \(Qid\) Ply Ltd v. Dale Cross / Contact Privacy Inc\)](#) that even in that Respondent's solicitation of members of the public to participate in litigation there was no evidence of commercial purpose. Regardless, the website in question dedicates only one page of twelve to **the Petition (Annex 3, Mandy Rice v. SLU et al)**. There are no products for sale, no advertising, or any request for financial support.

3. There is a prominent and clear disclaimer of non-affiliation just under the main heading of each page of the website. A link to the official SLU Compliance Department site has been placed near the top of the front page, preceding any of the main text of the site. It is immediately apparent to internet users visiting the site that it is not affiliated with or operated by the Complainant. Additionally, on the “[What Can I Do?](#)” page, internet users are encouraged to visit official SLU sites via provided links in order to communicate issues through those channels. There is no attempt to mislead internet users or divert traffic.

4. The Respondent acted in good faith to make multiple concessions regarding the site, at the Complainant's request via his attorney, as described in paragraph 16 of III(5)(c) above. Among those concessions, the Respondent voluntarily revealed to the Complainant his identity as domain name owner.

5. The domain names in question are utilized for bona fide criticism, complaint, and education on matters of significant importance regarding the graduate medical education of physicians, specifically at SLU. The Respondent has special knowledge, experience and expertise on these topics, in general, and specific information regarding SLU that has been denied other forum for discussion due to the Complainant's obstruction to and dismissal of a long series of items brought to its attention.

6. The **SLU** mark is weak. It is utilized in other areas of the internet, not affiliated with St. Louis University, for both commercial and non-commercial purposes. (**See Annex 1 and 2.**) The Respondent's use of the **SLU** mark could not be any more of a violation or offense than multiple other uses found elsewhere, to which the Complainant has not apparently objected, and to which the Respondent should not be held to a different standard. (see [WIPO Jurisprudential Overview 3.0](#), question 1.7 “What is the test for identity or confusing similarity under the first element?”)

7. Some panelists have noted that a derogatory or pejorative word, like <sucks>, added into the domain name can more clearly distinguish to an internet user a domain name's non-affiliation with the mark owner. The Respondent disagrees that free speech and criticism must be confined to “derogatory” terms that are borderline profane and that would detract from the constructive purpose of the website, as well as undermine the Respondent's professional reputation. Terms like <sucks> would taint the tone and purpose of the site, as well as dissuade medical professionals, which are its primary target, from visiting it. **SLU** is used as an identifier in the domain names in question, with additional distinguishing terms which carry a message and make confusion unlikely. Further restriction is an excessive infringement on the ability to target criticism and speak freely. The Panel opined in [WIPO Case No. D2004-0175 \(Justice for Children v. R neetso / Robert W. O'Steen\)](#) that “respect for and protection of free speech is not limited to elegant language or good taste.” Conversely, the Respondent argues that free speech cannot be limited to words that are purely derogatory.

IV. Reverse Domain Name Hijacking (Rules, Paragraph 15(e))

6. As excerpted from [WIPO Case No. D2015-1054 \(Foundation Fitness LLC v. Jiang Zhou\)](#): “Paragraph 15(e) of the UDRP Rules provides that, 'if after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.' Reverse Domain Name Hijacking is defined under the UDRP Rules as 'using the UDRP in bad

faith to attempt to deprive a registered domain-name holder of a domain name.' A finding of reverse domain name hijacking is warranted if the Complainant knew or should have known at the time it filed the Complaint that it could not prove one of the essential elements required by the Policy (*Futureworld Consultancy (Pty) Limited v. Online Advice*, [WIPO Case No. D2003-0297](#)).”

A. Whether the Complainant has brought the proceedings in bad faith which diminishes the credibility of the UDRP process and constitutes an attempt at Reverse Domain Name Hijacking:

1. As noted throughout the Response, and documented in **Annex 1** (“**SLU**” **domain names...**) and **Annex 2** (**AcronymFinder: What Does SLU stand for?**), there are various other uses of the SLU mark readily found throughout the internet, both commercially and non-commercially, and which are un-affiliated with St. Louis University. Complainant has utilized the legal services of Intellectual Property experts for many years and should have known that the **SLU** mark is weak. There is no evidence that the Complainant has made efforts to protect the SLU mark from these other uses. The fact that the Respondent has been targeted is an evidence that the Complainant is attempting to shut down the Respondent's ability to criticize and exercise free speech rights in regards to Complainant's wrongdoing. In addition, with regards to the **SLU** mark, it cannot be defended that the Complainant would hold the Respondent to a different standard than other domain name owners and acronym users across the internet. Certainly, if the Respondent can easily find domain names containing the **SLU** mark, a well-established university with attorneys who specialize in Intellectual Property would have known of these un-affiliated mark uses. These facts make the Complainant's interest in the protection of the **SLU** mark appear arbitrary, call into question why the Respondent is being targeted for domain name transfer when others of similar use are not, and beg the question if a short acronym, like **SLU**, can be appropriately retained for the express use of one entity. Admittedly, some of these questions may be better addressed in a judicial forum.

2. As noted in **Annex 7 (Request for Response Regarding “slucomplianceproject”)**, the Complainant demands that Respondent “Move the revised content of the 'slucomplianceproject' website to a domain name that does not use any of Saint Louis University's registered or common law trademarks.” This demand seems to be an evidence that the Complainant would pursue any use of the SLU mark, regardless of demonstrated legitimate interest, fair use, free speech rights, good faith or lack of confusion. The Complainant, with expertise in Intellectual Property and experience in WIPO proceedings, should have known that the Complaint would fail on at least one of these points. As the Panel noted in **WIPO Case No. D2015-2062 (Titan Enterprises (Qid) Ply Ltd v. Dale Cross / Contact Privacy Inc)**: *“The Complainant's arguments, if taken to their logical conclusion, would suggest that any criticism website, regardless of its noncommercial nature, should be prohibited from using the name of the subject of the criticism in its domain name, even if it is apparent from the domain name itself (as it is in this case) that the subject matter of the website connected with the domain name is likely to be critical of the Complainant. The Panel does not take such an extreme view of the Policy.”*

3. The Complainant includes as its **Annex 21** screenshots of <slucomplianceproject.org> taken on September 6, 2017. As described herein, the Respondent made multiple concessions to the Complainant on September 13, 2017, not as an admission of wrongdoing, but in an attempt to avoid further legal hassle and to demonstrate good faith. Among those changes were: a more explicit and prominent disclaimer of non-affiliation with SLU, removal of a partial picture of a SLU building, removal of any mention of SLU medical students, and removal of a picture of a SLU faculty manual. Despite the changes that the Respondent made to the website, the Complainant includes those earlier screenshots which were made irrelevant and predate several iterations of the Amended Complaint. This appears to be an attempt by the Complainant to taint the Panel's view and invalidate the concessions made in good faith by the Respondent. Even if those concessions and changes had not been made, this would not be proof of non-legitimate use. Again, the Panel found in **WIPO Case No. D2015-2062 (Titan Enterprises (Qid) Ply Ltd v. Dale Cross / Contact Privacy Inc)**: *“The Complainant has contended that the Respondent's Website contains photographs of the Complainant's premises, advertising material, misstatements or misrepresentations and posts negative reviews out of context.*

The Respondent has provided significant material that rebuts such allegations. Such conduct, even if accepted by the Panel, does not prove that the Respondent is not operating a legitimate, noncommercial criticism website. Moreover the correctness of such assertions is not a matter that is determinable by the Panel. The Policy is designed to deal with clear cases of cybersquatting, see Clockwork IP LLC, One Hour Air Conditioning Franchising, LLC v. Elena Wallace, WIPO Case No. D2009-0485 ('UDRP proceedings are for clear cases of cybersquatting, not for resolving trademark infringement and/or trademark dilution disputes or other matters more appropriately dealt with through the courts')."

4. The Complainant was very familiar with the events leading up to the Respondent's acquisition of the domain names in question, even having received direct communication from the Respondent several months prior (**Annex 6**). The Complainant should have recognized the legitimate interests and good faith of the Respondent. The Complainant had many opportunities to rectify issues brought to its attention. Instead, it chose to dismiss and suppress those issues, leaving the Respondent no official channels of redress. The Complainant should have known that the Respondent was likely to seek more assertive methods to bring attention to these matters. The Complainant chose to attempt to silence and intimidate the Respondent, and to attempt to interrupt criticism and information flow to the Respondent's internet audience and the medical community, rather than engage in the repeatedly requested dialogue for resolution.

5. The Complainant pursued a multi-pronged, aggressive approach to silence Respondent's criticism. The Complainant filed a federal lawsuit against the Respondent for trademark infringement, sought a restraining order, and lodged a UDRP complaint against the Respondent. Given the Complainant's expertise in trademark usage, First Amendment issues, and the UDRP process, it should have known that its efforts would fail for any or all of the reasons mentioned in the previous points contained within this Response. The most likely explanation for such an aggressive pursuit by the Complainant is not as a protection of its weak mark and Intellectual Property, but rather as a direct attempt to intimidate, overwhelm, harass, cause economic hardship, and silence the bona fide criticism of the Respondent. This behavior fits the Complainant's patterns of stifling criticism and suppressing dissent that are well-described throughout this Response and particularly in **Annex 3 (the Petition)**. While litigation is not

mutually exclusive of an ongoing UDRP matter, it is noted that the “Policy was adopted to provide a straightforward and inexpensive alternative to litigation for resolving a limited category of disputes, those involving cybersquatting.” (see [WIPO Case No. D2006-1627, Joseph Dello Russo M.D. v. Michelle Guillaumin](#)). In that regard, the use of the UDRP process by the Complainant must be considered an abuse of the process' design.

V. Administrative Panel

(Rules, Paragraphs 5(c)(iv) and (c)(v) and Paragraph 6; Supplemental Rules, Paragraph 7)

7. The Respondent elects to have the dispute decided by a **three-member Administrative Panel**, as opposed to the Complainant's election of a single member Panel. As the Respondent designates a three-member Administrative Panel, the Respondent will provide the names of three persons, one of whom the Center will endeavor to appoint to the Administrative Panel in accordance with Paragraph 6 of the Rules and Paragraph 8 of the Supplemental Rules. The names of these three nominees are taken from the Center's published list of panelists at <http://arbitrator.wipo.int/domains/panel/panelists.html> and are as follows:

A. David H. Bernstein
Partner – Debevoise & Plimpton LLP
[REDACTED]
New York, NY 10022
United States of America
Telephone: +1 [REDACTED]
Fax: +1 [REDACTED]
E-mail: [REDACTED]

B. M. Scott Donahey
[REDACTED]
Palo Alto, CA 94306
United States of America
Telephone: +1 [REDACTED]
Facsimile: +1 [REDACTED]
E-mail: [REDACTED]

C. Richard G. Lyon
Attorney and Dispute Resolution Professional
[REDACTED]
Bozeman, MT 59715
United States of America
Telephone: [REDACTED]
Email: [REDACTED]

VI. Other Legal Proceedings

(Rules, Paragraph 5(c)(vi))

8. **Other legal proceedings have been commenced or terminated in connection with or relating to the domain names that are the subject of the Complaint.**

A. The Respondent's spouse, Dr. Mandy Lyn Rice, DO, has been indirectly referenced in this proceeding by the Complainant in connection with **Case 1722-CC11181** filed in the Twenty-Second Judicial Circuit, St. Louis, Missouri: **MANDY RICE V ST. LOUIS UNIVERSITY, ET AL.** That case is a Petition for Breach of Contract, Promissory Estoppel, Defamation and Injunctive Relief (attached as **Annex 3, the Petition**. Full exhibits available upon request.) Dr. Mandy Rice is a resident physician in training in the department of surgery at St. Louis University (SLU) Medical School. The general surgery residency program at SLU is a five-year graduate medical program which commences after the completion of medical school. Dr. Mandy Rice was to start her fifth and final academic year as a general surgery resident on July 1, 2017. While multiple issues are described in the Petition, the main theme is an overview of the violations of procedure and residency program requirements at St. Louis University in regards to the evaluation of Dr. Mandy Rice and the decision made by SLU for her to repeat her fourth year of residency.

B. On September 12, 2017, the Complainant filed suit in reference to trademark infringement in U.S. district court, **Case 4:17-cv-02397, St. Louis University vs. Micheal Todd Rice and Mandy Rice**. That case can be found referenced within a local newspaper [article](#), as the Respondent has not been served.

C. On September 22, 2017, the Complainant obtained a hearing with a judge in an attempt to obtain a **restraining order** against the Respondent's use of the primary domain name. While the Respondent does not have the details of that hearing, his attorney was informed that the judge denied the Complainant's request for a restraining order.

VII. Communications

(Rules, paras. 2(b), 5(c)(vii); Supplemental Rules, Paragraphs 3, 7, 12)

9. A copy of this Response has been transmitted to the Complainant on **October 9, 2017** in electronic form.
10. This Response is submitted to the Center in electronic form, including any annexes, in the appropriate format.

VIII. Payment

(Rules, Paragraph 5(d); Supplemental Rules, Annex D)

11. In view of the Complainant's designation of a single-member Panel and the Respondent's designation of a three-member Panel, the Respondent hereby submits payment in the amount of **USD \$2,000** by credit card through the Center's secure online payment facility. Payment number: EPAY-Y6tcFhzfl1m7zR.

IX. Certification

(Rules, Paragraph 5(c)(viii), Supplemental Rules, Paragraph 15)

12. The Respondent agrees that, except in respect of deliberate wrongdoing, an Administrative Panel, the World Intellectual Property Organization and the Center shall not be liable to a party, a concerned registrar or ICANN for any act or omission in connection with the administrative proceeding.

13. The Respondent certifies that the information contained in this Response is to the best of the 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 the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully submitted,

Micheal Todd Rice

[digital signature]

Date: 09 October 2017

X. List of Annexes

[(Rules, Paragraph 5(c), Supplemental Rules, Paragraph 12, Annex E)

Annex 1“SLU” domain names and/or marks unaffiliated with St. Louis University

Annex 2 “AcronymFinder: What does SLU stand for?”

Annex 3 The Petition (Mandy Rice, DO v. SLU, et al)

Annex 4 The Chronology Letter to the Core Curriculum Committee (CCC)

Annex 5 Respondent's Letter to the Dean of the Medical School

Annex 6 Email to SLU General Counsel

Annex 7 Request for Response Regarding <slucomplianceproject.org>