

COMPLAINT TRANSMITTAL COVERSHEET
(<http://arbiter.wipo.int/domains>)

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.icann.org/udrp/udrp-policy-24oct99.htm>.

The **Rules** can be found at <http://www.icann.org/udrp/udrp-rules-24oct99.htm>.

The **Supplemental Rules**, as well as other information concerning the resolution of domain name disputes can be found at <http://arbiter.wipo.int/domains>.

A **model Response** can be found at <http://arbiter.wipo.int/domains/filing/udrp/>

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 Complainant hereby agrees 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**

TLR)
Route 2, Box 22)
Davis, CA 95616)
)
(Complainant))
)
v.)
)
United Engineering)
Service, LLC)
5720 Whethersfield Ln.)
1B)
Bloomfield Hills, MI)
48301)
)
(Respondent))
_____)

Domain Names In Dispute:

Engineer.info
Engineer.biz

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

[1.] This Complaint is hereby submitted for decision 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 October 24, 1999 and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**). See Exhibit A.

[2.] **COMPLAINANT INFORMATION**

[a.] Name: TLR
[b.] Address: Route 2, Box 22

Davis, CA 95615
[c.] Telephone: (530) 400-1287
[d.] E-Mail: tavenier@engineer.net

See Exhibit B.

COMPLAINANT'S AUTHORIZED REPRESENTATIVE

[a.] Name: Brett E. Lewis, Esq.
[b.] Address: 45 Main Street, Suite 818
Brooklyn, NY 11201
[c.] Telephone: 718.243.9323
[d.] Fax: 718.243.9326
[e.] E-Mail: brett@lewishand.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: brett@lewishand.com
[c.] Contact: Brett E. Lewis, Esq.

Material Including Hard Copy

[a.] Method: Fax
[b.] Address/Fax: 718.243.9326
[c.] Contact: Brett E. Lewis, Esq.

COMPLAINANT'S CHOICE OF PANEL

The Complainant chooses to have this dispute heard before a single-member administrative panel.

[3.] RESPONDENT INFORMATION

Respondent in this proceeding is:

[a.] Name: United Engineering Service, LLC
[b.] Address: 5720 Whethersfield Ln.
1B
Bloomfield Hills, MI 48301
[c.] Telephone: 586-822-6818
[d.] E-Mail: jeff@product.info

See Exhibit C.

Respondent in this proceeding is also known as:

- [a.] Name: Jeffrey Krus P.E.
- [b.] Address: 5720 Whethersfield Ln.
1B
Bloomfield Hills, MI 48301
- [c.] Telephone: 586-822-6818
- [d.] E-Mail: jeff@product.info

See Exhibits D and E.

[4.] DISPUTED DOMAIN NAME(S)

- [a.] The following domain names are the subject of this Complaint:

<Engineer.biz>, <Engineer.info>

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

- [i.] Registrar's Name: 123 Registration, Inc.
- [ii.] Registrar Address: P.O. Box 2600
Sarasota, FL 34230 USA
- [iii.] Telephone Number: 941.954.5770
- [iv.] E-Mail Address: notify@123registration.com

- [c.] Jurisdictional Basis for the Administrative Proceeding
(Rules, paras. 3(a), 3(b)(xv))

This dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The registration agreement, pursuant to which the domain name that is the subject of this Complaint is registered, incorporates the Policy. A true and correct copy of the domain name dispute policy that applies to the domain name in question is provided as Exhibit A to this Complaint.

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

TLR, a sole proprietorship, ("TLR" or "Complainant") is the owner of common law rights in the trademark ENGINEER.NET™ (the "Mark"). TLR uses the Mark *suggestively* in

connection with a job listing / job search service for engineers and employers of energy. See Exhibit F. Separate and apart from TLR's use, the term "ENGINEER.NET" has no association with a job search site. Rather it requires imagination, thought and perception to reach a conclusion as to the nature of the services offered on the site. Abercrombie & Fitch v. Hunting World, 537 F.2d 4, 17 (9th Cir. 1976) ("A term is *suggestive* if it requires imagination, thought and perception to reach a conclusion as to the nature of goods...") (emphasis added) (citations omitted)). Accordingly the Mark is inherently distinctive and therefore entitled to protection as a trademark under the common law of the United States and section 43(a) of the Lanham Act *as amended* at 15 U.S.C. §1125(a). See, id. at 25 (the mark SAFARI CLOTH BERMUDA SHORTS is suggestive of the article Bermuda Shorts).

In addition, the Mark has acquired distinctiveness through secondary meaning. TLR registered the ENGINEER.NET™ domain name on June 5, 1996. See Exhibit B. Shortly thereafter, and until 2001, TLR used the domain name in conjunction with, an indexed and searchable database that advertised projects for construction that were up for bid, and included job search services. From 2001 to the present, TLR has used the ENGINEER.NET™ domain name *exclusively* in connection with a commercial engineering job search portal. See Affidavit of Eric Tavenier ("Tavenier Aff."), ¶ 3, attached hereto as Exhibit G. The portal is widely used in the engineering industry – an average of *seventy thousand* unique visitors make in excess of *one million* page views on the site every month. See Tavenier Aff., ¶ 4; see also Exhibit Q. TLR's clients include such Fortune 500 companies as Starbucks, Harley-Davidson, Fujitsu, Sharp, Perini, ATK, B/E Aerospace, Dolby, Tiffany & Co., Altec Lansing, General Mills, and Peterbilt, among others. See Tavenier Aff., ¶ 5; see also Exhibit F. As a result of TLR's efforts, the Web Site has developed substantial goodwill among both engineers seeking jobs and companies seeking engineers. See Tavenier Aff., ¶ 6.

Accordingly, TLR has also accrued trademark rights through its continuous use of ENGINEER.NET™ over a period of six years where it has become successful and well-regarded in its industry. Cf., e.g., ProQuest Information and Learning Company v. Domain Administrator, FA 784204 (Nat. Arb. Forum, Oct. 11, 2006) (complainant acquired common law trademark rights in its EXPLORESCIENCE™ mark for use in science-oriented learning Web site through continuous use of a domain name over several years); accord Alexey Mezenin v. John Baselmans, FA 664060 (Nat. Arb. Forum, May 8, 2006) (complainant acquired common law trademark rights through secondary meaning in its MUSICSONGLYRICS.COM™ mark for Web site offering song lyrics where it had used mark for four years with considerable online traffic).

Moreover, proof of exact copying of a mark may be sufficient to establish secondary meaning. See Transgo, Inc. v. AJAC Transmission Parts Corp., 768 F.2d 1001, 1016 (9th Cir. 1985) (“There is no logical reason for the precise copying save an attempt to realize upon a secondary meaning that is in existence.” (citation omitted)); see also Laureyssens v. Idea Group, Inc., 964 F.2d 131 (2d Cir. 1992) (The existence of secondary meaning may be inferred from evidence of deliberate copying of the mark); Harlequin Enter. V. Gulf & Western Corp., 644 F.2d 946, 950 (2d Cir. 1981) (Direct copying may be the most significant evidence of secondary meaning). Similarly, under the Lanham Act, use in commerce of a mark for a period of five years gives rise to a presumption that the mark has attained secondary meaning. See 15 U.S.C. §1052(f).

Accordingly, TLR possesses trademark rights in the Mark.

[5.] FACTUAL AND LEGAL GROUNDS

[a.] The Domain Names are Virtually Identical to the ENGINEER.NET™ Mark.

Complainant's Mark is virtually identical to and confusingly similar to the Domain Names. The mere addition of a generic TLD to the end of a domain name does not sufficiently distinguish it from the Mark.

[b.] Respondent Has no Legitimate Rights or Interests in the Domain Name

1. TLR has not licensed, transferred, assigned or otherwise authorized United Engineering Services, LLC ("Respondent" or "United Engineering Services") to use the Mark, or any variations thereof, as domain names on the Internet. See Tavenier Aff., ¶ 7.
2. United Engineering Services is not commonly known by the Domain Names.
3. If United Engineering Services has, as an individual, business, or other organization, become known by the Domain Names, which consist predominantly of Complainant's common law trademark, such recognition could only be *after* Complainant accrued trademark rights, and *because* Respondent is passing its site off as Complainants. Passing off is not a legitimate right or interest.
4. United Engineering Services has made no use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. To that end, United Engineering Services is offering the same exact services offered by Complainant.
5. In fact, Respondent has wholesale-copied Complainant's actual code, in violation of its terms of use (see Exhibit H), pasted it into its own html, and claimed it as its own. Similarly, Respondent has scraped job listings from Craigslist, Careerbuilder, Monster, and Hotjobs, among others. See Exhibit I. This practice is commonly known as "Screen Scraping," and is illegal under the Computer Fraud and Abuse Act

18 U.S.C. § 1030 (a)(2), (“CFAA”), and is also a Trespass to Chattel. See, e.g., Register.com v. Verio, 126 F.Supp.2d 238 (S.D.N.Y.), aff’d, 356 F.3d 393 (2d Cir. 2004)(Copying Whois information in violation of terms of use constitutes a violation of the CFAA and is a trespass to chattel); accord eBay, Inc. v. Bidder’s Edge, Inc., 100 F.Supp.2d 1058 (N.D. Ca. 2000) (defendant’s auction-aggregating robots that copied plaintiff’s auction business, and reproduced it on its own web page, constituted a trespass to chattels under California law.).

6. Respondent has intentionally targeted TLR with its scheme – not once, but twice. In September of 2002, shortly after registering the Domain Names, Respondent solicited advertising space on the Engineer.net website. See Tavenier Aff., ¶ 8; see also Supplemental Affidavit of Eric Tavenier, (or “Tavenier Supp. Aff.”), attached hereto as Exhibit R. At that time, Respondent’s websites featured innocuous engineering tools and calculators. See Tavenier Aff., ¶ 8; see also Exhibit J; see also Tavenier Supp. Aff.
7. At some point between September 2002 and December 2002, Respondent, while still an advertiser on TLR’s web site, changed his website to *directly compete* with TLR’s, posting job listings in the field of engineering. See Tavenier Aff., ¶ 9; see also Exhibit K. After learning of Respondent’s scheme, Mr. Tavenier demanded that Respondent immediately cease from infringing TLR’s ENGINEER.NET mark. In response, Respondent complied – he stopped using the Domain Names to compete against Complainant. See Tavenier Aff., ¶ 9; see also Exhibit L; see also Tavenier Supp. Aff.

8. In or about January 2006, Respondent resumed use of the Domain Names in connection with competing job search services. See Tavenier Aff., ¶¶ 10, 11; see also Exhibit M; see also Tavenier Supp. Aff.

9. Respondent claimed in its email to Complainant, dated December 30, 2002, (see Exhibit R), that:

We are not going to be a [sic] engineer only “Job Board”. We currently are negotiating many agreements with other websites & businesses that are going to provide content to Engineer.info. There is no website on the internet that provides the informational resources to engineers that Engineer.info will.

See Tavenier Supp. Aff., p.5, attached hereto as Exhibit R.

10. Respondent continued:

Your concern_s [sic] about Engineer.info _Cooping_ the engineer.net name are very much valid and we understand completely... Our goals at Engineer.info are not to _coop_ or violate copyright laws at any other website_s business. We want to work & partner with good websites such as engineer.net or engcen.com to take their existing business names an[d] bring it to a higher level...All new future job queries at engineer.info will be branded with the content provider_s name. (emphasis added).

See Tavenier Supp. Aff., p.7, attached hereto as Exhibit R. This email strongly supports the inference that Respondent had actual notice of Complainant’s trademark rights at the time Respondent registered the Domain Names.

11. In Respondent’s email, he acknowledged that Complainant’s concerns of copying and brand infringement were “very much valid” (see id at 7). Despite, however, pledging

- to brand the Engineer.info site to a new name, and to offer predominantly non-job related content, Respondent broke all promises.
12. What Respondent did do, was cease posting job listings for several years before he resumed scraping them from third party sites, and unfairly competing with Complainant in bad faith.
 13. To maximize confusion, Respondent uses search engine optimization to assure that customers looking for Complainant's ENGINEER.NET site will also see links to Respondent's Job listing site. See Tavenier Aff., ¶ 16; see also Exhibit N.
 14. Once Complainant learned that Respondent was again infringing its ENGINEER.NET™ mark, Complainant sent a cease and desist letter to Respondent. See Tavenier Aff., ¶¶ 12, 13; see also Exhibit O. Respondent ignored the letter and continued making infringing and illegal use of the Domain Names and Complainant's content. Respondent also changed its Whois contact information in an effort to hide its true identity.¹ This thinly veiled attempt at cyberflight further establishes Respondent's lack of legitimate rights in the Domain Names.

[c.] Respondent Registered and Used the Domain Name in Bad Faith

Respondent acquired the Domain Names primarily for the purpose of attempting to attract, for commercial gain, Internet users to Respondent's Site by intentionally confusing Complainant's clients and prospective users as to whether or not Respondent was affiliated with Complainant, or endorsed by Complainant.

¹ As noted in § [3.] supra, United Engineering Services, LLC, is an alter ego for Jeffrey Krus. See Exhibits C, D, and E. Also note that the Web sites at the Domain Names have not changed. Compare Exhibit L with Exhibit M.

1. Respondent registered the Domain Names in mid-2002 – 6 years after Complainant began using the Mark in commerce in connection with employment services, and over a year after TLR used ENGINEER.NET™ *exclusively* with employment services. See Exhibits C and D; see also Tavenier Aff., ¶ 3.
2. As described in § [b.] *supra*, In 2002, immediately after registering the Domain Names, Respondent approached Complainant about advertising on the ENGINEER.NET™ site. Within weeks of signing on to advertise on Complainant’s website, Respondent changed the content on its Web sites to directly compete against Complainant. Respondent then siphoned Web traffic off of Complainant’s site, until he was caught. Compare Exhibit J with Exhibits K and L; see also Tavenier Aff., ¶ 9; see also Tavenier Supp. Aff. and Supp. Exhibit A.
3. In or about January 2006, after previously acknowledging the validity of Complainant’s trademark and other rights, (see Exhibit R), and pledging to cease making unlawful uses of the Domain Names, Respondent began competing directly against Complainant again, using the infringing Domain Names in a deliberate scheme to divert Complainant’s users to Respondent’s competing Web sites. This constitutes clear evidence of bad faith. Tavenier Aff., ¶ 9.
4. Moreover, Respondent’s latest wave of infringement is more sophisticated, effective and damaging to Complainant than its initial scheme in 2003. As an initial matter, Respondent has employed search engine optimization techniques to maximize its parasitic misappropriation of Complainant’s goodwill and to maximize marketplace confusion. See Tavenier Aff., ¶¶ 11, 14, 15, 16.

5. Respondent has also repeatedly and unlawfully accessed TLR's servers to scrape job listings off of the ENGINEER.NET site. See, e.g., Register.com v. Verio, 126 F.Supp.2d 238 (S.D.N.Y.), aff'd, 356 F.3d 393 (2d Cir. 2004)(Screen scraping in violation of terms of use constitutes a violation of the CFAA). Respondent also screen scrapes content from other web sites, including Craigslist, Careerbuilder, Monster, Hotjobs and others. See Tavenier Aff., ¶¶ 11, 14, 15; see also Exhibit I.
6. Moreover, Respondent's scheme also violates TLR's Terms of Service, (see Exhibit H), and constitutes a trespass to chattels. See, e.g., eBay, Inc. v. Bidder's Edge, Inc., 100 F.Supp.2d 1058 (N.D. Ca. 2000) (defendant's auction-aggregating robots that copied plaintiff's auction business, and reproduced it on its own web page, constituted a trespass to chattels under California law.). Respondent's use of the Domain Names in violation of various federal and common laws further demonstrates Respondents wanton disregard of third party rights and bad faith registration and use of the Domain Names in a broader unlawful scheme.
7. Respondent has materially benefited from his bad faith use of the Domain Names. An ALEXA.ORG printout comparison of ENGINEER.NET™, with the Domain Names, demonstrates dramatic shifts in web traffic, inuring to the benefit of Respondent, that correspond with Respondent's infringing use. See Exhibit P.
8. Complainant sent Respondent a cease and desist letter, dated January 10, 2007 (the "Cease and Desist Letter"). See Tavenier Aff., ¶ 13; see also Exhibit O. Respondent's only response to the Cease and Desist Letter was to change his Whois information to reflect the name of his Limited Liability Company, United Engineering Services.

9. The practice of changing Whois records in response to a cease and desist letter is commonly known as “cyberflight,” – a practice that is evidence of bad faith under the Policy. See, e.g., Kirkbi AG v. Company Require / Karlina Konggidinata and Pool.com, Inc., Case No. D2004-0359 (WIPO July 12, 2004) (transfer of domain name subject to UDRP is evidence of bad faith cyber-flying); British Broadcasting Corporation v. Data Art Corporation / Stoneybrook, Case No. D2000-0683 (WIPO Sept. 20, 2000) (an ostensible change of the registrant is insufficient where the beneficial owner remains the same, and the attempt to cyber-fly is evidence of bad faith.); PREPADOM v. Domain Drop S. A. (PREPADOM-COM-COM), Case No. D2006-0917 (WIPO, Oct. 9, 2006) (Transfer of Domain Name before impending proceeding held to be registration in bad faith).
10. Respondent has also targeted Complainant by tailgating ENGINEER.NET™’s search engine rankings. Specifically, Respondent has copied script naming conventions and script names to further mislead and confuse Internet users. See Tavenier Aff., ¶ 16; see also Exhibit N. For example, Complainant uses the script name “engineeringjobs” to maximize search engine results in the URL <http://www.engineer.net/jobs/engineeringjobs.php?jobid=10103> while Respondent uses the script name “engineering_jobs” in the confusingly similar URL http://www.engineer.info/engineering_jobs.asp?THEJOBNUMBER=1 - which is confusing to both Search Engines as well as customers. Moreover, Respondent started using this convention only *after* Complainant pioneered its use. See Tavenier Aff., ¶ 16.

11. For all of the foregoing reasons, Complainant respectfully requests that this Panel transfer the Domain Names to Complainant.

[6.] **REMEDY SOUGHT**

The Complainant requests that the Panel issue a decision that the Domain Name be transferred to Complainant.

[7.] **OTHER LEGAL PROCEEDINGS**

No other legal proceedings have been filed, as of the date of filing of this Complaint.

[8.] **COMPLAINT TRANSMISSION**

The Complainant asserts that a copy of this Complaint, together with the cover sheet as prescribed by WIPO'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); WIPO Supp. Rule 4(a).

The Complainant further asserts that a copy of this Complaint, together with the cover sheet as prescribed by WIPO's Supplemental Rules, has been sent or transmitted to the Registrar in accordance with WIPO Supp. Rule 4(b).

[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, to the jurisdiction of the place of the location of the principal office of the concerned registrar.

[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 dispute resolution provider 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 Complaint'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,

TLR

BY: 

Brett E. Lewis
Robert P. Johnson
Attorneys for Complainant
LEWIS & HAND, LLP
45 Main Street, Suite 818
Brooklyn, NY 11201

2/6/07

Date

Before the:

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

TLR)
Route 2, Box 22)
Davis, CA 95616)
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48301)
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(Respondent))
_____)

Domain Names In Dispute:

Engineer.info
Engineer.biz

SUPPLEMENTAL AFFIDAVIT OF ERIC TAVENIER

STATE OF CALIFORNIA }
} ss:
COUNTY OF YOLO }

ERIC TAVENIER, being duly sworn, deposes and says under penalty of perjury:

- I am a sole proprietor doing business as TLR ("TLR"). As such, I have personal knowledge of the facts attested to herein.

2. TLR is the Registrant of the domain name ENGINEER.NET™.
3. I submitted an earlier Affidavit to the Panel in this Proceeding, dated February 1, 2007, (or "Tavenier Aff.").
4. I am submitting this Supplemental Affidavit, (or "Tavenier Supp. Aff."), to explain the addition of a Supplemental Exhibit.
5. As I testified in the Tavenier Aff., I contacted Respondent in December of 2002 complaining about his use of the Domain Names to unfairly compete with TLR by cloning my website and its job listings. At the time I signed the Tavenier Aff. (i.e., Feb. 1, 2007), I was unable to locate the actual email from over four years ago. Since February 1, 2007, however, I have uncovered the emails exchanged between myself and Jeff Krus, of Respondent United Engineering Services, LLC, (or the "Emails"), and I am attaching fair and accurate copies of the Emails hereto as Exhibit R.
6. The facts and circumstances regarding how I came to discover the Emails are as follows:
 - a. On or about, January 30, 2007, I located my old iMac office computer in my attic storage and attempted to retrieve and the Emails. It was apparent to me that the built in monitor of the iMac was not functioning.
 - b. On February 1, 2007, with no way to connect an external monitor, I had concluded that the Emails were simply lost and that I would not be able to provide them to the Panel as extrinsic evidence.
 - c. On February 5, 2007, I enlisted my son, who does computer support on the side. With my son's help, we marginally revived, (i.e., slammed around), the iMac/monitor to a point where it was barely possible to see and to navigate the computer. We then

retrieved the Emails from the original Eudora mail Inbox stored locally on the machine.

- d. The only way we could get the Emails was to open up Eudora on the old iMac, "Select All," then "Copy" and "Paste" the contents of the Email into a text file (or ".txt" file). A true and correct copy of the contents of the Emails is attached hereto as Exhibit R.
- e. I have not altered the contents of the text in any way shape or form, (other than as described in ¶6(d), *supra*), and I retain my old iMac for inspection should it become necessary for purposes of this proceeding.

Sworn to under penalty of perjury this 6th day of February 2007.

By: Eric Tavenier,

Eric Tavenier
 Sole Proprietor of TLR.

Sworn to before me this

6th day of February 2007 BY ERIC TAVENIER

[Signature]
 Notary Public

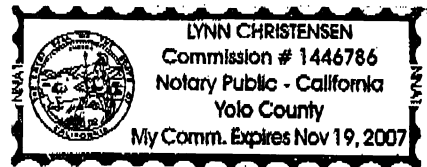


EXHIBIT R

From: "Jeffrey Krus P.E." <jeff@engineer.biz>
To: <info@engineer.net>
Cc: <admin@engcen.com>,
<Bill@meyersweb.com>
Subject: Engineer.info
Date: Mon, 30 Dec 2002 14:31:41 -0500
MIME-Version: 1.0
X-Priority: 3 (Normal)
X-MSMail-Priority: Normal
Importance: Normal
X-MimeOLE: Produced By Microsoft MimeOLE V6.00.2800.1106
X-Declude-Sender: jeff@engineer.biz [68.61.79.74]
X-Note: This E-mail was scanned by Declude JunkMail for spam.

Eric,

Thanks for your email.

I understand your concerns as to our current website. Engineer.net is a very great website. "Cloning" websites is always a big concern to webmasters.

Engineer.info is developing to be one of the biggest informational resources for engineers in the world. Our banner ad we asked you to put on your site indicates this and still holds true today. We are not going to be a engineer only "Job Board". We currently are negotiating many agreements with other websites & businesses that are going to provide content to Engineer.info. There is no

website on the internet that provides the informational resources to engineers that Engineer.info will.

In order for us to provide the informational resources taylorred for engineers, we have several marketing research campaigns currently in place. Placing banner ads on other engineer websites in the past was one of them. Our experience with banner ads proves not to be so effective.

Our future content is being chosen partly from the surveys that were previously on our site and partly from other marketing research campaigns currently in place. Based on our marketing research, we are very carefully selecting content providers to provide content to Engineer.info.

Our current site is only temporary and experimental and will shortly be changed. We are not advertising or promoting our current website externally in any way. Our agreement with engineer.net was effective at the very beginning of October of this year. This agreement was for a period of two months and expired at the very beginning of December. Our temporary website has gone online shortly after. Although, engineer.net decided to run the ad to the end of the month, this was done at engineer.net's own discretion and engineer.info is relieved of any agreements with engineer.net immediately after the initial two months time period it has originally entered into with engineer.net.

During the time of my last email. we had an opening for someone to join our team. Since my last job inquiry email that you listed below, we have filled the position and our no longer in need to post.

Your concern _s about Engineer.info _Cooping _ the engineer.net name are very much valid and we understand completely. Business on the internet is very competitive. Given the current economic times, there are a big reduction in job postings to job websites. There are an overwhelming number of job boards on the internet furiously competing with each other. Given this high level of competition and a down economy, many websites are going out of business. Our goals at Engineer.info are not to _Coop _ or violate copyright laws at any other website _s business. We want to work & partner with good websites such as engineer.net or engcen.com to take their existing business names any bring it to a higher level. We will be providing much more content then just job listings. We have sparked much interest in the worldwide engineering community in our near future goals. We currently are seeking a reliable and an abundant resource to provide job listings to our near future site. All new future job queries at engineer.info will be branded with the content provider _s name. Search engines such as google do this with hundreds of websites. Job boards such as CareerBuilder.com partner with business _ in the same manner. Our goal is to be a broad & content rich informational resource for all engineers with job listings being only one resource. Any requests from employers to post jobs at engineer.info will be directed to the the content provider _s sales representitve. Monetary gains by engineer.info will be mutually determined via agreement between engineer.info and the job content supplier. Our business goal is to generate more page views and create more business for both supplier and engineer.info.

I apologize for any inconviance or mis-understandings that engineer.info has brought upon engineer.net. I hope the above email helps. If you have any further questions or concerns please call me

My phone number is 586-822-6818.

Jeffrey Alan Krus P.E.

Email:jeff@engineer.biz

Phone: 586-822-6818

Jeff,

You (and Meyersweb.com) have violated the copyrights and acceptable use policies of Engineer.net (and engcen.com).

Apparently you do not have any original ideas and must steal them from others.

While Engineer.net makes no claim as to being the first engineering job board on the web, or the largest; your behavior is unethical at best.

You have willfully attempted to coop the name recognition of our Engineer.net domain name for your engineer.info job board site that you have created during your advertisement period on the Engineer.net site. Your site only had an engineering calculator and a survey when you arranged to advertise on our site. Then you cloned the concept of our site with the hopes of generating confusion in the marketplace during the last month of your Ad run. If we had discovered this sooner than last friday we would have

terminated our agreement upon discovery.

Your actions are so obvious, you even copied the Engineer.net pricing model to the penny.

Your email below is evidence of your bad intentions.

We have also contacted www.engcen.com, whos graphics you have pilfered and placed in a similar location on your site.

We have archived your site at the time you began your ad on our site, and archived it again with your copyright infringements last friday.

Go do something original with your domain.

We have retained counsel in California to monitor your site.

We expect to see your site change to the extent that we will not have to pursue any further legal challenges.

Eric Tavenier
info@engineer.net
www.engineer.net

cc: Legal Counsel - A. Tavenier, ESQ.