

## **COMPLAINT TRANSMITTAL COVERSHEET**

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

The Policy is incorporated by reference into your Registration Agreement with the Registrar(s) of your domain name(s). Accordingly, when you registered your domain name(s) you also agreed to submit to and participate in 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 for Uniform Domain Name Dispute Resolution Policy (the **Rules**) and the Center's Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**), and it has received the required payment from the Complainant, 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. Should you so desire, you may wish to seek the assistance of legal counsel to represent you in the administrative proceeding.

- The ICANN Policy can be found at <http://www.icann.org/dndr/udrp/policy.htm>
- The ICANN Rules can be found at <http://www.icann.org/dndr/udrp/uniform-rules.htm>
- The Center's Supplemental Rules, as well as other information concerning the resolution of domain name disputes can be found at <http://arbiter.wipo.int/domains>.

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 9111, by fax at +41 22 740 3700 or by e-mail at [domain.disputes@wipo.int](mailto: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 you have registered the domain name(s) that are identified in the Complaint.

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

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

American Mensa, Ltd.	)	
1229 Corporate Drive West	)	
Arlington, TX 76006-6103	)	
USA	)	
Complainant,	)	<b>Disputed Domain Name:</b>
	)	MINNESOTAMENSA.ORG
v.	)	
	)	
Alan Heigl	)	
PO Box 177	)	
Northfield, Minnesota 55057-0177	)	
USA	)	
Respondent.	)	
	)	

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

**I. Introduction**

This Complaint is submitted for decision in accordance with the Uniform Policy for Domain Name Dispute Resolution, adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on August 26, 1999, (the **Policy**), the Rules For Uniform Domain Name Dispute Resolution Policy, approved by ICANN on October 24, 1999 (the **Rules**), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**). See Rules, para. 3(b).

## II. The Parties

### A. Complainant

1. Complainant in this administrative proceeding is American Mensa, Ltd.
2. Complainant's contact details are as follows:

Pamela Donahoo, Executive Director  
American Mensa, Ltd.  
1229 Corporate Drive West  
Arlington, TX 76006-6103  
Phone: +1-817-607-0060  
Fax: +1-817-649-5232  
Email: PamD@americanmensa.org

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

Jason Aquilino, Esq.  
Venable LLP  
575 7<sup>th</sup> St., NW  
Washington, DC 20004-1601  
Phone: +1-202-344-8262  
Fax: +1-202-344-8300  
E-mail: jaaquilino@venable.com

4. Complainant's preferred method of communications is as follows:

#### Material including hardcopy

Method: E-mail

Jason Aquilino  
Venable LLP  
575 7<sup>th</sup> St., NW  
Washington, DC 20004-1601  
Phone: +1-202-344-8262  
Fax: +1-202-344-8300  
E-mail: jaaquilino@venable.com

Electronic-only material:

1. PamD@americanmensa.org
2. jaaquilino@venable.com.
3. cemccann@venable.com

**B. Respondent**

1. According to the WHOIS database, Respondent in this administrative proceeding is an individual named Alan Heigl. A copy of the printouts of the database WHOIS search conducted on January 3, 2004, is provided as Annex 1.
2. All information known to the Complainant regarding how to contact the Respondent is as follows:

Alan Heigl,  
Mill City Records  
P.O. Box 177  
Northfield, Minnesota 55057-0177  
United States  
Tel: (507) 663-6090  
Fax: (507) 663-0060  
alheigl@millcityrecords.com  
webmaster@minnesotamensa.org

This information was taken from Respondent's domain name registration entry in the WHOIS database, and the email address webmaster@minnesotamensa.org was used by Respondent during recent correspondence.

**III. Administrative Panel**

The Complainant elects to have the dispute decided by a single-member Administrative Panel.

**IV. The Domain Name and Registrar**

1. This dispute concerns the domain name registration for **MINNESOTAMENSA.ORG**.

2. The registrar with whom the domain name is registered is:

TotalChoice Hosting Services  
3757 S. Baldwin Rd.  
Suite 227  
Lake Orion, MI 48359  
support@totalchoicehosting.com

TotalChoice Hosting Services is a reseller for:

Wild West Domains, Inc.  
Phone: (480) 624-2500  
support@wildwestdomains.com  
TrademarkClaims@wildwestdomains.com

Wild West Domains, Inc. is a Go Daddy Group, Inc. Company:

The Go Daddy Group, Inc.  
14455 N. Hayden Rd.  
Suite 219  
Scottsdale, AZ 85260  
Phone: (480) 505-8899  
support@godaddy.com

## **V. Complainant's Service Marks**

This case involves a domain name, which, on information and belief, was registered for the purpose of falsely implying an official affiliation with Complainant by use of Complainant's well known mark. MINNESOTAMENSA.ORG is the domain name for a web page carrying statements that it is "the former, current, and future authentic website of Minnesota Mensa." See Annex 2, print out of <minnesotamensa.org> from July 28, 2004. Despite what it may claim, MINNESOTAMENSA.ORG operates without authorization from American Mensa <us.mensa.org> or the local Minnesota Mensa Chapter <mnmensa.org>.

Complainant, an international high IQ society, permits its local chapters to register domain names using its registered trademark and service mark MENSA. The authorized web site for the Minnesota chapter of Mensa was established as <mnmensa.org>. Respondent has

registered and is using a domain name that is confusingly similar to Complainant's service mark in an attempt to confuse members and potential members into believing that they are visiting a web site affiliated with or sponsored by Complainant.

This complaint is based on Complainant's trademarks and service marks MENSA and its logo, consisting of a globe on top of a stylized letter "M" (hereinafter "Mensa Logo"), both registered with the United States Patent and Trademark Office for various services including "indicating membership in a society in which the sole requirement for qualification for membership is a score at or above the 98th percentile on any of a number of standard IQ tests." Mensa's MENSA trademark, service mark and Logo registrations are valid, subsisting, and in full force and effect. See attached Annex 3 for various Mensa trademark records from the United States Patent and Trademark Office Trademark Electronic Search System. Mensa's right to use its MENSA mark is incontestable pursuant to 15 U.S.C. § 1065.

## **VI. Jurisdictional Basis for the Administrative Proceeding**

1. This dispute is properly within the scope of the Uniform Domain Name Dispute Resolution 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 was registered, incorporates the Uniform Domain Name Dispute Resolution Policy. A true and correct copy of the registration agreement incorporating the Uniform Domain Name Dispute Resolution Policy is provided as Annex 4 to this Complaint.

2. In addition, in accordance with Uniform Domain Name Dispute Resolution Policy, Paragraph 4(a), Respondent is required to submit to a mandatory administrative proceeding because:

- (a) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (b) The Respondent has no rights or legitimate interests in respect of the domain name; and
- (c) The domain name was registered and is being used in bad faith.

## **VII. Factual and Legal Grounds**

The factual and legal grounds for this Complaint are:

- (1) **The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.**
  - (a) **Complainant has rights in the mark MENSA.**

Complainant objects to Respondent's domain name registration because this registration is likely to be confused with Complainant's well known mark MENSA. Complainant's rights in its MENSA marks are expansive and predate Respondent's registration of the domain name MINNESOTAMENSA.ORG.

Complainant is the American branch of the international high IQ society, Mensa International, Ltd. The MENSA mark was first used in commerce as early as 1946. See Annex 3. Mensa "provides a forum for intellectual exchange among members. Its activities include the exchange of ideas by lectures, discussions, journals, special-interest groups, and local, regional, national, and international gatherings; the investigations of members' opinions and attitudes; and assistance to researchers, inside and outside Mensa, in projects dealing with intelligence or Mensa." [excerpt from the Mensa Constitution]. <<http://www.mensa.org/home.php>>, visited January 3, 2005. "Mensa was founded in England in 1946 by Roland Berrill, a barrister, and Dr. Lance Ware, a scientist and lawyer. They had the idea of forming a society for bright people, the only qualification for membership of which was a high IQ. The original aims were, as they are

today, to create a society that is non-political and free from all racial or religious distinctions. The society welcomes people from every walk of life whose IQ is in the top 2% of the population, with the objective of enjoying each other's company and participating in a wide range of social and cultural activities.” <<http://www.mensa.org/info.php>>, visited January 3, 2005.

“Today there are some 100,000 Mensans in 100 countries throughout the world. There are active Mensa organizations in over 40 countries on every continent except Antarctica.” *Id.* “American Mensa has approximately 50,000 members. Five million Americans are eligible for Mensa membership.” <[http://us.mensa.org/about\\_mensa/overview.php3](http://us.mensa.org/about_mensa/overview.php3)>, visited January 3, 2005. See Annex 5 for more information on Mensa, print outs from Mensa International and American Mensa web sites.

**(b) Respondent’s Domain Name is confusingly similar to Complainant’s Marks**

The Domain Name and mark at issue are clearly similar based on their appearance, sound, connotation and commercial impression. The second level domain name “MINNESOTAMENSA” is identical to “Minnesota Mensa,” the name of the local Mensa chapter in Minnesota. Members and potential members of the Minnesota chapter are as likely, if not more likely, to visit the unauthorized MINNESOTAMENSA.ORG site as they are to visit the official MNMENSA.ORG site.

Confusion in this case is enhanced because Respondent is intentionally claiming to be the official website of the Minnesota chapter of Mensa. See Annex 2. Besides displaying the Mensa Logo (a registered trademark), Respondent’s web site contains much of the same information as the official website of the Minnesota Mensa chapter, including: the calendar of events; the 2005

Regional Gathering information; the Bylaws of Minnesota Mensa; contact information of the chapter and its board of directors; a copy of the "Mensagenda" (the Official Newsletter of Minnesota Mensa); a list of new members; articles; puzzles and other material. For reasons discussed in further detail below, Respondent wants people to believe that his web site is the official web site of Minnesota Mensa. The fact that Respondent is operating a web site for the stated purpose of being the "official" web site of Minnesota Mensa is certain to result in a high level of confusion regarding the standing of the actual official web site approved by Complainant.

It is a common practice for local chapters to publish their own web sites, with permission from Complainant. Many of the chapters contain names that include the chapter location and the MENSA mark, including: DenverMensa.org, NorthTexasMensa.org, NNJMensa.org, RichmondMensa.org, and SFMensa.org, among many others. Therefore, it would not be unusual for a person guessing at the URL for the local Minnesota chapter to attempt to visit MinnesotaMensa.org, even before visiting MNMensa.org.

Moreover, the fact that the MENSA mark is famous enhances the likelihood of confusion. Complainant has used its mark for forty years, provided services to hundreds of thousands of people, published countless books and other materials, and is generally well known by the public.

**(2) Respondent has no rights or legitimate interests in the domain name.**

Respondent has no rights or legitimate interests in respect of the domain name MINNESOTAMENSA.ORG. To the best of Complainant's knowledge, Respondent has no rights to any trademark consisting of the term MENSA. Respondent is not commonly known by

the name MENSA or MINNESOTA MENSA, nor is he operating under license, agreement or authorization from Complainant.

Upon information and belief, Respondent is a member of the Minnesota chapter of Mensa and was at one time the webmaster of the chapter's web site. From March 1998 until August 2002, Respondent voluntarily designed and maintained the original version of the official Minnesota Mensa web site at <mmensa.org> with permission and approval of Complainant and its local Minnesota chapter. This was not a paid position. In August 2002, the Minnesota Mensa board elected a new web master for the web site. During the same month of August 2002, Respondent met with one of the board members of the Minnesota chapter and was temporarily reinstated as web master pursuant to an agreement that also included terms for apologies to be made by various parties for statements they had made in the past. See Annex 6, copy of agreement. However, this agreement did not state for how long Respondent was to serve in his reinstated position. Regardless, the board of the Minnesota chapter met later, in accordance with the procedures of the chapter's bylaws, and decided to permanently remove Respondent as webmaster.

Upon further information and belief, Respondent was unhappy with the fact that the board stripped him of his position and felt that he had been wronged. It would also appear from correspondence with Respondent that he was displeased with the skills of the gentleman who replaced him. Soon, Respondent chose to act as the Minnesota chapter's unauthorized webmaster and started his own version of the Minnesota chapter's web site, which he operated at his personal web site located at the domain name <MillCityRecords.com>. However, on or around June 28, 2003, Respondent registered and began using the confusingly similar domain name MINNESOTAMENSA.ORG. See Annex 1.

Complainant does not sponsor or endorse Respondent's activities in any respect and has not given its consent to the exploitation of its trademarks or trade name. Respondent is not the official webmaster, nor is his web site the official site of the Minnesota Mensa chapter. Instead, Respondent is using the domain name MINNESOTAMENSA.ORG with the intent to misleadingly divert Complainant's members to his web site, to disrupt Complainant's Minnesota chapter, and to tarnish Complainant's image by publishing a second web site to the Minnesota Mensa chapter and claiming that the official site is a rogue site.

**(3) The domain name was registered and is being used in bad faith.**

Complainant believes the domain name MINNESOTAMENSA.ORG was registered in bad faith. On information and belief, Respondent registered the domain name MINNESOTAMENSA.ORG with knowledge that Complainant held rights in and to its MENSA mark. Respondent has been a member of Mensa for over twelve years and is certainly aware of Complainant's exclusive rights in its name. See Annex 7, letter from Respondent, dated June 21, 2004. Given his past position as webmaster of MNMensa.org, he was also very much aware that the only authorized domain name was <MNMensa.org>.

Upon information and belief, Respondent contends that the agreement signed on August 10, 2002, officially makes him the webmaster of the Minnesota Mensa web site. According to another web site published by Respondent, he contends that the agreement was dishonored and he plans to act as the "webmaster" for the Minnesota Mensa website for a length of time dictated by an arbitrary formula that he has created. See Annex 8, web page explaining why Respondent intends to be webmaster into the year 2007. The agreement, however, does not state how long Respondent was to hold his volunteer position and was therefore clearly an "at-will employment". Respondent was reinstated as web master pursuant to the agreement, but the term

was only for a short period of time. Regardless, nothing in the agreement grants Respondent permission to use the MENSA trademark in a domain name.

Complainant has given the Minnesota Mensa chapter permission to use MENSA in its MNMENZA.ORG domain name, but it has not given permission to Respondent to individually register or use any name containing the MENSA mark. Moreover, the Minnesota Mensa chapter board never gave permission to Respondent to register MINNESOTAMENZA.ORG, via agreement or otherwise. In short, Respondent registered and now operates MINNESOTAMENZA.ORG without any authorization or permission from Complainant, the owner of the MENSA trademark. Clearly, Respondent incorrectly feels that his local chapter has dishonored an agreement with him and as a result he has employed his own brand of self help at the expense of Complainant's trademark rights.

Respondent has knowingly made several false claims that his web site is the official Minnesota Mensa web site and that the official site is actually the rogue site. On June 3, 2004, he wrote to the chair of the Mensa website awards committee to inform him that the committee made a mistake by nominating MNMENZA.ORG, because MNMENZA.ORG was a rogue site and MINNESOTAMENZA.ORG was the official site. See Annex 9. Respondent made similar claims in his response to Complainant's counsel's letter of June 4, 2004. See Annex 7. False claims like these have perpetuated the confusion already caused by his registration and use of the confusingly similar MINNESOTAMENZA.ORG domain name.

It is clear that Respondent has registered the domain name in order to prevent Complainant and its affiliate, the Minnesota Mensa chapter, from reflecting the MENSA mark in the corresponding domain name MNMENZA.ORG. Respondent has also registered the domain name primarily for the purpose of disrupting the MNMENZA.ORG web site. Respondent

essentially hijacked a domain name that is confusingly similar to Minnesota Mensa's MNMENZA.ORG for the sole purpose of running a web site with an identical purpose to the official site. Compare Annex 10, excerpts from <mnmensa.org>, to Annex 11, excerpts from <minnesotamensa.org>.

Despite the similarities in Respondent's web site and the official Minnesota Mensa web site, they differ substantially in their usability, aesthetics and depth of information. Furthermore, Respondent's web site contains idiosyncratic material that tarnishes the MENSA name, such as: the "Lame Mensan Style Poem" on the home page; a perverse Classified ad; a strange recipe for "Boiled Water Stew;" a page that reads "Welcome to the original, authentic, *competent* Minnesota Mensa website!" [emphasis added]; and a link to a page discussing Respondent's personal love of the guitar. See Annex 12. Additionally, Respondent also uses the domain name and site to personally profit by offering to sell advertising and classified ad space and by linking to his personal web pages (still under the MINNESOTAMENZA.ORG URL) that solicit business for his computer consulting services. See Annex 13.

Complainant has sent several letters to Respondent in an attempt to settle this dispute but it has become clear that Respondent is not willing to surrender the name. The most comprehensive letter was sent by Andrew Price, counsel for Complainant, which was delivered on June 15, 2004. See Annex 14. Respondent sent Complainant's counsel a detailed reply on June 21, 2004, stating that he was within his rights to use the name because he was the real webmaster of the local chapter. See Annex 7.

Circumstances indicate, therefore, that the domain name MINNESOTAMENZA.ORG was acquired in bad faith, primarily for the purpose of diverting Complainant's members and potential members to Respondent's site and disrupting Complainant's services. As Respondent's

use of this domain name creates a strong likelihood of confusion, and tarnishment in the marketplace, this panel should deny Respondent the use of Complainant's mark and transfer the domain name to Complainant.

### **VIII. Remedies Requested**

In accordance with Paragraph 4(b)(i) of the Policy, for the reasons described in Section VII above, the Complainant requests that the Administrative Panel appointed in this proceeding issue a decision that the contested domain name be transferred to the Complainant.

### **IX. Other Legal Proceedings**

There have been no legal proceedings involving Complainant and the domain name at issue.

### **X. Communications**

1. A copy of this Complaint, together with the cover sheet as prescribed by the Supplemental Rules, has been sent or transmitted to the Respondent on January 21, 2005, first to Respondent by electronic means using the email addresses provided to TotalChoice Hosting Services and to Complainant, namely [alheigl@millcityrecords.com](mailto:alheigl@millcityrecords.com) and [webmaster@minnesotamensa.org](mailto:webmaster@minnesotamensa.org). Complainant transmitted the electronic copy by means that allows Complainant to verify delivery. Complainant followed the electronic copy with copies sent by express courier to Respondent's address.

2. A copy of this Complaint has also been sent or transmitted to TotalChoice Hosting Services, Wild West Domains, Inc., and The Go Daddy Group, Inc. by electronic means to [support@totalchoicehosting.com](mailto:support@totalchoicehosting.com), [TrademarkClaims@wildwestdomains.com](mailto:TrademarkClaims@wildwestdomains.com), and [support@godaddy.com](mailto:support@godaddy.com), respectively and to Wild West Domains, Inc., by express courier on January 21, 2005.

## **XI. Mutual Jurisdiction**

In accordance with Paragraph 3(b)(xiii), the Complainant agrees to submit, only with respect to any challenge that may be made by a Respondent to a decision by the Administrative Panel canceling or transferring the domain name, to the jurisdiction of the U.S. District Court for the District of Arizona, as this is the court in the jurisdiction where the registrar, Wild West Domains, Inc. and The Go Daddy Group, Inc., maintains their principal office.

## **XII. Certification**

1. Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, and the dispute's resolution shall be solely against the domain name holder and waives all such claims and remedies against (a) the WIPO Arbitration and Mediation Center and Panelists, except in the case of deliberate wrongdoing, (b) the concerned registrar, (c) the registry administrator, and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.
2. The Complainant certifies that the information contained in this Complaint is to the best of the 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 the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

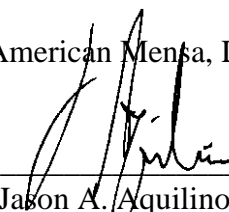
Wherefore, Complainant respectfully requests that the Complaint be instituted and that the registration for MINNESOTAMENSA.ORG be transferred to Complainant.

Respectfully submitted,

American Mensa, Ltd.

Date: January 21, 2005

By: \_\_\_\_\_

  
Jason A. Aquilino  
Clifton E. McCann  
Venable LLP  
575 7<sup>th</sup> Street, N.W.  
Washington DC 20004-1601  
+1-202-344-8262  
E-mail: jaaquilino@venable.com

Counsel and Authorized Representative  
of Complainant American Mensa, Ltd.

**CERTIFICATE OF SERVICE**

I, Jason Aquilino, hereby certify that on this 21<sup>st</sup> day of January, 2005, I served a copy of the foregoing Complaint for Domain Name Dispute Resolution on the following by electronic mail:

An electronic copy without exhibits transmitted to the following persons or entities and in the following order:

- a. Respondent administrative and technical contact at [alheigl@millcityrecords.com](mailto:alheigl@millcityrecords.com) and [webmaster@minnesotamensa.org](mailto:webmaster@minnesotamensa.org)
- b. WIPO at [domain.disputes@wipo.int](mailto:domain.disputes@wipo.int)
- c. TotalChoice Hosting Services at [support@totalchoicehosting.com](mailto:support@totalchoicehosting.com)
- d. Wild West Domains, Inc. at [TrademarkClaims@wildwestdomains.com](mailto:TrademarkClaims@wildwestdomains.com)
- e. The Go Daddy Group, Inc. at [support@godaddy.com](mailto:support@godaddy.com)

I further certify that I caused further copies of the foregoing Complaint for Domain Name Dispute Resolution to be sent on January 21, 2005, to the following and in the following manner:

An original and four copies in hard copy format, together with exhibits by express courier to:

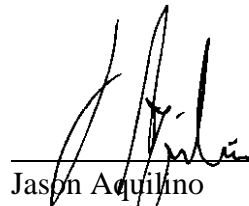
WIPO/Arbitration and Mediation Center  
34 chemin des Colombettes  
1211 Geneva 20  
Switzerland

One copy in hard copy format, together with exhibits by express courier to:

Alan Heigl,  
Mill City Records  
P.O. Box 177  
Northfield, Minnesota 55057-0177  
United States

And

The Go Daddy Group, Inc.  
14455 N. Hayden Rd.  
Suite 219  
Scottsdale, AZ 85260



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Jason Aquilino  
Venable LLP  
575 7<sup>th</sup> St NW  
Washington DC 20004-1601