



The Power of Internet Gripe Sites

Managing the Destructive Potential of “BrandSucks.com”

Background on Direct Navigation

For any consumer, navigating the Internet can be a challenging task. Given the omnipresence of search engine portals such as Google and Yahoo!, one might assume that Internet users primarily use search engines to reach their intended destinations online. However, WebSideStory’s StatMarket division (now a part of Omniture) estimated that more than 67 percent of global Internet users arrive at Web sites by direct navigation.¹

This type of navigation, also known as type-in or direct search, is defined as traffic derived from a visitor arriving at a Web site by keying a word or phrase into the browser address bar rather than following a link, a bookmark, or a search engine’s results. Typically, direct navigation users type in generic terms or brand names plus generic terms. For example, a direct navigation user may type in realestate.com when looking for information on purchasing a home or may type in remaxagent.com when looking for a RE/MAX real estate agent.

Even the most savvy of users can miss a keystroke and unintentionally stumble upon an unexpected site. They can be unwittingly exposed to overt schemes involving spyware, phishing or at the very least, a poor experience while searching for a product or brand site. Unfortunately, this reality often prompts brand owners to focus primarily on



defensive strategies while neglecting to critically evaluate which domains they should own and how to optimize their existing domain portfolio to benefit their business. As a result, it has become fairly standard practice to cast a wider net than necessary and register large quantities of domains to keep them out of the hands of others. Many of the domains that are obtained in this way do not generate traffic and are therefore relatively useless; others will go underutilized because they remain mired in a sea of domains stockpiled by marginally advised corporations. While some of these domains will be properly developed into functional sites or redirected to useful Web content that already exists under a different moniker, others will lead to a dead end for anyone who types them in.

Defensive Strategies to Prevent Gripe Sites

Since gripe sites are often difficult to reclaim, one common defensive strategy is the registration of *brandsucks* domains by brand owners. These domains are composed of a known brand, followed by the word “sucks.” The addition of “sucks” to the brand is one of the simpler and more intuitive pejorative terms and brand owners often seek advice on how to handle these domains. “Sucks.com” is the rightmost anchor of nearly 20,000 domains registered today. Two thousand domains have “stinks.com” on the right and about the same number of domains begin with the term “boycott.” “Sucks” is evidently the preferred violation of brands that domain registrants want to protest or tarnish. Because of this, we chose to focus on “sucks” sites and gathered data from these domains based on a variety of perspectives. The purpose of this paper is to take a look at the ways in which brands deal with this dilemma in hopes of establishing a set of best practices; which will act as one component of an overall domain name strategy. We also

¹ Cook, John. “Marchex Solidifies Its Web Presence Deal Lets Company Move Into Direct Navigation.” 24 November 2004. [The Seattle Post-Intelligencer](#). Online. 4 June 07.



intend to trace the origins of harvesting potential gripe sites and question whether this strategy truly serves the brand owner's best interests.

Methodology

For this study we looked at the names of companies that compose the Global 500 and Fortune 500 lists that are assembled based on their annual revenue by Time Inc.'s Fortune magazine; the scope of this data set allowed us to look at high level, worldwide trends. We created the list of domains we examined by taking the names of these companies, removing "inc," "corporation" and other non-core terms, and adding the word "sucks" as a suffix. Since many of the most well recognized brands are for products (example: Marlboro) rather than trade names, we also included Interbrand's 100 Best Global Brands. We produced a total of 1,058 domain names for our data set, all in the dot-COM TLD. For brands that have multiple words in their moniker, the words were joined without the use of a hyphen (for example, Goldman Sachs became goldmansachssucks.com). If the hyphen is already part of the brand (for example, Coca-Cola), the words in the brand were both hyphenated and unhyphenated to create domains (coca-colasucks.com and cocacolasucks.com).

After compiling the list, we used proprietary FairWinds tools and publicly available Whois resources to gather information on whether each *brandsucks* domain in our data set was registered and by whom it was registered. We then visited the sites to record what they were being used for at that particular moment in time. In a separate data set, we gathered and examined every UDRP complaint that was filed with World Intellectual Property Organization (WIPO) and National Arbitration Forum (NAF) regarding a "sucks" domain. The data from WIPO and NAF was exhaustive so it includes "sucks" domains beyond the domain sample set we constructed leveraging the Fortune



and Interbrand lists. After collecting and sorting all this information, we were able to make observations about general registration and usage trends that surround the *brandsucks* domain, and draw conclusions about the domain strategies that are being practiced today – as well as what should be avoided.

Observations

Only 35 percent of the *brandsucks* domains we surveyed are owned by the brand found within the domain. Forty-five percent of the domains are currently available for registration and each one presents an opportunity for brand owners to reach out to the Internet community or to prevent a potential public relations nightmare. These sites garner traffic by luring legitimate buyers searching for the brand in addition to disgruntled customers and those that are simply curious to see the content on a potential gripe site. Brand owners are advised to take a serious look at the traffic that these names garner and the kind of unique marketing opportunity they can afford.

Loews, the popular movie theater chain (recently spun off from Loews Corporation to AMC), is the domain registrant of *loewssucks.com* and placed a “Guest Satisfaction Survey” on the page that resolves when users type this domain in their browser address bars. Loews makes good use of the domain in a way that allows it to reach out to customers and get feedback about their experiences. If a customer stumbled upon the site by accident, then he or she is likely to be impressed with the brand’s dedication to customer service. If a customer was looking for a gripe site, then the brand has at least tried to mitigate whatever poor experience led that customer to look for such a site. By doing so, the brand is essentially getting a second chance at providing a positive experience to their customer and restoring faith in their brand.



Loews, however, is one of the only brands in our study to optimally utilize a *brandsucks* domain. The percentage of brand-owned “sucks” sites that actually end up working against the brand is extraordinarily high. Eighty-three percent of the Web sites that go to a company-sponsored site simply resolve to the brand’s main homepage. This can be damaging to the brand because companies that do this are associating their brand with a memorable and negative domain name.

A company can pretend as though the “sucks” part of the domain isn’t there, but that does not mean that customers will do the same. Redirecting a *brandsucks* domain is not like redirecting a typo, where the Internet user may not even notice the difference between the name that they typed and the name that the page resolves to. A “sucks” domain is distinct and users who type *brandsucks* domains in the browser are doing so for a reason. Besides Loews, Southwest Airlines is the only other company in our sample set that owns the appropriate “sucks” domain and acknowledges the “sucks” part of the domain on the Web page that resolves. On southwestsucks.com, Southwest claims that they are protecting against inaccurate information and suggests that customers log on to the company’s official page for what they need to know about the airline. Though this is not quite as constructive as Loews’ approach, it still shows an awareness of the negative nature of the domain and presents a unique way of turning the domain into a more positive asset for the company by attempting to address customer grievances.

Beyond those companies that attempt to make use of the “sucks” domain names that they own are the companies that seem to register them purely for defensive purposes and simply warehouse them. In our study, 67 percent of the registered domains did not resolve (DNR) to any content whatsoever.



Use of Registered Domains

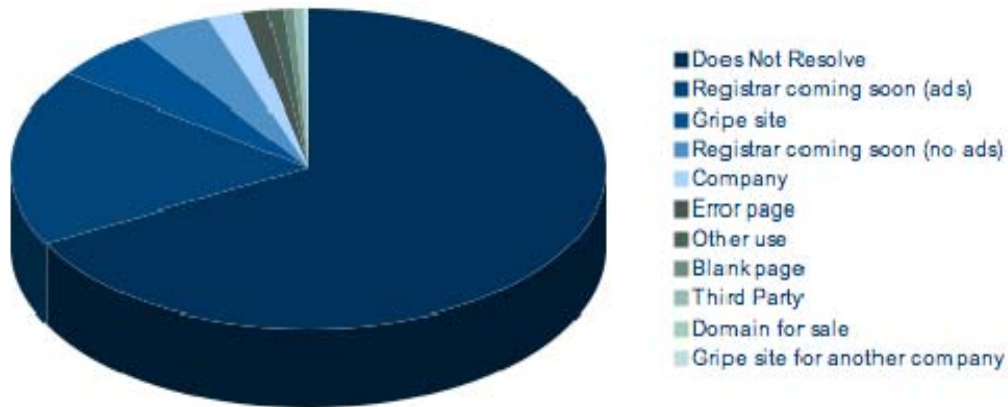


Figure 1

Once again, an Internet user is most likely to land on a brandsucks.com page for one of two reasons. They can stumble upon it while searching for the actual brand or product via search engines and click on a link to it out of curiosity, or they may be looking for a gripe site via search or direct navigation in order to read consumer opinions or post their own. Either way, the user is not provided with a meaningful experience that reflects favorably on the brand. Chances are, if the customer was looking for a legitimate site and happened upon a page that does not resolve, they will shrug off the detour and continue on; if they were looking for a gripe site and couldn't find one, they might continue searching, or just be fed up and drop their search. The company is not successfully promoting its brand in either instance, and while this may be innocuous in the first case, it is a lost opportunity in the second.



Successful promotion of one's brand means always being where the customer expects you to be, and making a positive impact with your trademark whenever a worthwhile occasion presents itself. Given that the *brandsucks* domain is such an intuitive gripe name, it presents one of those opportunities. This study not only shows how overlooked this strategy is, but how a brand's lost opportunity can become another's gained opportunity.

According to Whois data, the Corporation Service Company (CSC) leads the pack of registrars in our data set serving as the registrar of record for about 41 percent of all the registered *brandsucks* domains on our list. According to its Web site, CSC is "the world's leading provider of corporate domain name management and brand protection services" as well as "the leading provider of trademark, domain and Internet solutions."² When you perform a Whois on *microsoftsucks.com*, "CSC Corporate Domains(sm) - Expert Global Domain Name Management for Corporations, Law Firms and IP Professionals"³ appears at the top of your screen. However, Microsoft Corporation does not own this domain.

We did in fact find that CSC has processed the appropriate registrations of domains on behalf of the brand-owning companies that we examined in our study. However, 87 percent of CSC's *brandsucks* registrations were done on behalf of Dan Parisi, an infamous domain name speculator and cybersquatter, perhaps best known for maintaining a pornography Web site on the domain "whitehouse.com" for several years. Upon finding this trend, FairWinds alerted CSC and at the time of this paper's release has yet to receive a comment on the matter.

² <http://www.cscprotectsbrands.com/html/about/history.html>

³ http://who.godaddy.com/WhoIs.aspx?domain=microsoftsucks.com&prog_id=godaddy



Early US case law protects registrars from trademark liability for the actions of their customers; the purpose of insulating registrars from such liability is to encourage the growth of the Internet industry, which could be crippled if registrars had to engage in a complicated and expensive trademark clearance for every purchase. However, brand owners must be aware that this provision also leaves them with fewer safeguards against the infringement of their brands and forces them to scrutinize the alignment of their partners' goals with their own.

Brand owners can create a safeguard against damaging infringement by developing a proactive domain name strategy that allows them to focus on what is most likely to be intuitive to users that practice direct navigation and stay one step ahead of cybersquatters. The lack of this type of strategy can leave brands in a situation similar to that of Dutch financial services institution Rabobank Group. A third party owns *rabobanksucks.com* and is pointing the domain to the IP address of Rabobank's global home page. As a result, someone browsing the site is provided with official Rabobank content along with the constant reminder that they are browsing it under the *rabobanksucks.com* moniker.

Sometimes, when brands find that a third party owns their *brandsucks* domain, they look to recover the name by leveraging the Uniform Dispute Resolution Policy (UDRP). In order to be successful, the brand owner would have to find that 1) the domain name in question is identical or confusingly similar to a trademark or a service to which the Complainant has rights, 2) the Respondent (the domain holder) has no rights or legitimate interests with respect to the domain name and 3) the domain name has been registered and is being used in bad faith. All three of these criteria must be met in order for a transfer to take place; otherwise, the complaint will be denied.⁴

⁴ <http://www.icann.org/udrp/udrp-policy-24oct99.htm>



The application of these criteria, however, can vary greatly. In our data set, panels regularly noted that they were informed, though not bound, by the decisions of earlier arbitration panels. This is part of the flexibility of the UDRP, which is meant to secure its ability to handle new challenges that arise in the domain name space and reflect that trademark rights can differ depending on the country where the mark is used. At the same time, this does eliminate some predictability in the enforcement process and can leave brands uncertain of how to proceed. Taking a look at all 84 UDRP decisions on *brandsucks* domain names, however, produced some useful information on how UDRP proceedings tend to unfold.

Fifty-six percent of the complaints filed in the data set resulted in the transfer of the domain name to the trademark owner; 31 percent resulted in the complaint being denied. The rest of the disputes were either withdrawn (9 cases) or are still under review (1 case). According to WIPO, 80 percent of UDRP decisions in general favor the Complainant and lead to transfer. Therefore, *brandsucks* domains are significantly (30%) less likely to lead to transfer than other domain constructions that include a trademark or something that closely resembles a trademark.

Confusingly Similar Domains

There are two schools of thought when evaluating the confusing similarity of a domain. On one hand, the consensus seems to be that “the fame of a mark does not always mean that consumers will associate all use of the mark with the mark’s owner,” which is particularly apt in the case of *brandsucks* domains.⁵ These domain name arbitration panels decide that adding the word “sucks” to a domain does not constitute registration of a confusingly similar domain name, stating that “trademark owners,

⁵ Kendall/Hunt Publishing Company v. headhunterbob, FA0111000102247 (NAF January 14, 2002)



indeed, are highly unlikely to disparage or parody their own goods or services.”⁶ The panel in the *Kendall/Hunt Publishing Company v. headhunterbob* dispute handled by the National Arbitration Forum (NAF) went so far as to say that “‘sucks’ is a pretty short word and it isn’t a compliment,” and “considering most beginning linguists learn curse words first, it is likely anyone with any command of the English language knows ‘sucks’ doesn’t have a good connotation.”⁷

On the other hand, brand owners attempt to prove the confusing similarity of “sucks” by pointing out that it is a slang term that may not be understood by non-Americans and therefore might be attributed to the brand owner in question. As stated by the panel of *Cabela v. Cupcake Patrol*, “courts and other UDRP Panels have recognized that the intentional registration of a domain name while knowing that the second-level domain contains another’s valuable trademark weighs in favor of a likelihood of confusion”.⁸

Since all three UDRP criteria need to be met, being unable to prove that the name meets the first criterion of confusing similarity would invalidate the complaint. However, cases that present overriding evidence of bad faith registration and a lack of legitimate interest in using the domain tend to settle the question in favor of the Complainant even if there is some uncertainty as to the similarity of the domain.

Legitimate Interest in Using the Domain

A legitimate interest in registering and owning a domain can be proved by the following:

⁶ Berlitz Investment Corp. v. Stefan Tinculescu, D2003-0465 (WIPO August 22, 2003)

⁷ Homer TLC, Inc. v. GreenPeople, FA0508000550345 (NAF October 25, 2005)

⁸ Cabela v. Cupcake Patrol, NAF Case No. FA95080 (August 29, 2001)



- 1- use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- 2- being commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- 3- noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.⁹

As one panel stated, “neither the courts in the United States of America nor panels in [Uniform Dispute Resolution] Policy proceedings have reached a clear consensus as to whether a critic may use her subject’s trademark as a Web address to post critical commentary, even when (as in this proceeding) the gripe site is entirely non-commercial.¹⁰ However, it is noteworthy that all of the UDRP complaints that were filed against general gripe sites serving as opinion forums resulted in the complaint being denied, presumably because, as another panel put it, “protest and commentary is the quintessential noncommercial fair use envisioned by the Policy.”¹¹

If a Web site is a bona fide protest site that does not derive revenue from its existence, it constitutes legitimate use of the domain and can therefore remain with the party that registered it. One decision specifically states that the UDRP is not a way to “insulate” trademark owners from criticism.¹² The same panel that claimed that any beginning linguist would be able to distinguish a “sucks” domain from the official brand site also had some choice words for complainants trying to transfer legitimate gripes

⁹ <http://www.icann.org/dndr/udrp/uniform-rules.htm>

¹⁰ Paul McMann v. J McEachern, D2007-1597 (WIPO February 9, 2008)

¹¹ McLane Company, Inc. v. Fred Craig D2000-1455 (WIPO January 11, 2001)

¹² KB Home v. RegisterFly.com- Ref# 9323034 c/o Whois Protection Service- ProtectFly.com, FA0506000506771 (NAF August 30, 2005)



sites. In its decisions, the panel stated that, “Complaining has long been a favorite pastime of humanity and the Internet has not changed that” and “[the] Respondent is actually using Complainant’s trademark correctly because Respondent is referring to Complainant and its business.”¹³

It is important that brand owners understand fair use and what it means for their brand enforcement strategy. Cybersquatters and many legitimate third-party registrants are well read on policy and understand both their vulnerabilities and a brand’s. For example, the owner of virginmediasucks.com has set up a gripe site about Virgin Media’s service, and has included a note to lawyers at the bottom of his site declaring that he is “very well aware of WIPO regulations and trademark laws” and asks that they not send any “pointless threatening letters.”¹⁴ Brand owners should be just as aware of their rights, so that they can properly enforce their brand and avoid allocating resources to UDRPs that won’t be resolved in their favor. If brands are armed with sufficient regulatory knowledge, perhaps they can preempt the need for a UDRP altogether and register valuable sites that, once lost, are unlikely to be regained.

The UDRP decision surrounding “salvationarmsucks.com” is interesting because it seemed as though the Respondent did express a legitimate interest in developing the site in precisely a way that would insulate it from complaint. Upon its registration, the Respondent sent the Complainant (the Salvation Army) a letter stating that his intentions were to have the Web site act as a “free speech” zone where criticisms of the Salvation Army could be posted. This letter was sent in July of 2000, well before the March 2001 filing date of the complaint. However, the registrant’s offer to sell the domain to the

¹³ Homer TLC, Inc. v. GreenPeople, FA0508000550345 (NAF October 25, 2005)

¹⁴ <http://virginmediasucks.com/>



Complainant in return for silence was enough to disprove his claims of ‘legitimate interest.’

In the Respondent’s letter, it was written that he “will agree not to publish a derogatory article singularly about [the Complainant’s] client with regard to this topic, if this matter is handled as [he has] outlined in this letter.”¹⁵ The Respondent goes on to attempt to dissuade the Complainant from filing a complaint, by claiming that litigation will cost more than just buying the domain according to the terms outlined in the letter. As the panel in *Wal-Mart Stores, Inc. v. Walsucks and Walmarket Puerto Rico* points out, “it is as if a newspaper were to approach the potential subject of an adverse investigative report to propose that for an appropriate fee the report could be avoided. This would not be characterized as ‘free speech’ activity. It would rather be characterized as ‘extortion’.”¹⁶

As a result, the letter’s claim of free speech and criticism was not found to be persuasive, and the Panel decided that the Respondent registered the name in bad faith with no intentions to pursue legitimate interests. In fact, all complaints that have been brought against third parties trying to sell a brand’s “sucks” domain have resulted in the transfer of the name to the brand.

While our UDRP decision data set provided insight into what Web site content can be considered proof of legitimate interests, it also provided a glimpse into what the absence of content can prove. There was one “brandsucks” UDRP filed for a domain name that was not developed into a site. According to the panel of *Quilogy, Inc. v. Rodney Ruddick*, the fact that the Web site was undeveloped constituted “passive

¹⁵ *The Salvation Army v. Info-Bahn, Inc.*, D2001-0463 (WIPO May 10, 2001)

¹⁶ *Wal-Mart Stores, Inc. v. Walsucks and Walmarket Puerto Rico*, D2000-0477 (WIPO July 20, 2000)



holding” of the domain, which “does not give rise to rights or legitimate interests.”¹⁷ The domain was ultimately ordered for transfer.

This question of whether the mere registration of a domain name without any active use can possibly constitute a lack of legitimate interest or bad faith registration has been a point of contention among UDRP panels. There are panels that believe that it is bad faith unless there is active use that rises to the level of a right or legitimate interest, but others feel that the UDRP requires active use of the site in order to judge the validity of a complaint. Many cybersquatters look to avoid enforcement by leaving their domains undeveloped because of those panels that require an active use of the site to consider intent. All of the sites in our data set that are owned by Dan Parisi, for example, do not resolve. These panels may also cause brands to doubt the utility of filing a complaint and make them hesitant to pursue infringements. However, in light of decisions such as *Quilogy, Inc. v. Rodney Ruddick*, infringements of domains—especially those committed by serial infringers—can be pursued with the UDRP.

Bad Faith Registration of a Domain

The registration of a domain in bad faith can be proved by:

1- circumstances indicating that the domain name has been registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for more than the out-of-pocket costs directly related to registering the domain name; or

¹⁷ *Quilogy, Inc. v. Rodney Ruddick*, FA0211000134653 (NAF January 9, 2003)



2- the domain name has been registered in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

3- the domain name has been registered primarily for the purpose of disrupting the business of a competitor; or

4- the domain name is being used intentionally to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Web site or location or of a product or service on the Web site or location.¹⁸

Bad faith registrations of *brandsucks* domains were often proven through attempts on the part of the registrants to sell a domain to the owner of the brand contained within the domain. It appears that such activity reveals awareness of a domain's similarity and value to the brand, and therefore shows its registration and use to be an act of bad faith. A good example of this is the group of complaints brought forth by *Wal-Mart Stores, Inc.*, against *Walsucks* and *Walmarket Puerto Rico* over five domains that include *walmartpuertoricosucks.com*. These proceedings determined that the Respondents clearly had no legitimate business claims to the domains, and registered names "primarily for disrupting the business of a competitor" and resulted in a transfer of the names in question.¹⁹

The domain holder's intent seemed to be the most important element in determining bad faith, and was often decided by the "I know it when I see it" approach. In these cases, the UDRP panels decided to look to the US Ninth Circuit Court of

¹⁸ <http://www.icann.org/dndr/udrp/uniform-rules.htm>

¹⁹ *Wal-Mart Stores, Inc. v. Walsucks and Walmarket Puerto Rico*, D2000-0477 (WIPO July 20, 2000)



Appeals, which stated that “the law has long been established that if an infringer ‘adopts his designation with the intent of deriving benefit from the reputation of the trademark or trade name, its intent may be sufficient to justify the inference that there are confusing similarities.’”²⁰ The panel decision on the UDRP that was filed maintained that the Respondent registered the domain knowing that it would be effective if it contained Wal-Mart’s trademark and the Respondent had a recorded history of trying to extort money from Wal-Mart with his domain registrations. A panel for another UDRP had “no difficulty in finding bad faith registration and use” since the “Respondent has shown a cynical pattern of dealing in domain names with apparent attempt to embarrass the owners of internationally known marks. The fact that Internet users are diverted to the Respondent’s sites is evidence of bad faith.”²¹ The panel goes on to say that it “is not in a position, however, to judge whether the criticism found on the Respondent’s Web sites is valid or libelous,” so that again, future panels can be informed, but not bound by, the decisions made for this particular case.²²

Conclusion

Brand owners have a lot to consider when playing the domain name game with *brandsucks* domains. Purely defensive registrations are often unnecessary expenditures; however, as mentioned before, a *brandsucks* domain can be an effective offensive tool for protecting a brand’s reputation because of its widely regarded popularity for designating a gripe site. Brands need to adopt the same strategy for their domain name portfolios as any other crucial aspect of their marketing plan: optimize while maintaining cost and time efficiency. As always, a company that stays informed of updates in the domain name space from trusted advisors, keeps on top of developing trends and shifts in

²⁰ Wal-Mart Stores, Inc. v. Walsucks and Walmarket Puerto Rico, D2000-0477 (WIPO July 20, 2000)

²¹ ADT Services AG v. ADT Sucks.com, D2001-0213 (WIPO April 23, 2001)

²² ADT Services AG v. ADT Sucks.com, D2001-0213 (WIPO April 23, 2001)



policy, employs a carefully proactive approach, and understands Internet user behavior will be better positioned to effectively leverage its brand online.

By being proactive, brands can avoid the need for the reactive, costly and uncertain UDRP. However, a proper brand enforcement strategy should be in place to deal with problematic infringements as they crop up. Brands need to strike back when appropriate so that when they do file UDRPs, they have reasonable assurance of success and a positive ROI from newfound traffic or decreased consumer and reputation harm. Finally, brand owners could gain much by forming a united front against online fraud and coming together to share their experiences, brainstorm new defenses and provide their consumers with safe and positive online experiences.

The data sets used to perform the research outlined in this paper are available on FairWinds Partners' Web site. We encourage you to review the [list of registered domains](#) if you are curious about who owns your domain and how they are using it, and the [list of UDRP complaints](#) involving "sucks.com" to learn about filing a successful UDRP against this type of gripe site.

Special thanks to Diane Cabell, corporate counsel for Creative Commons, for her contributions to this paper.