

## **COMPLAINT TRANSMITTAL COVERSHEET**

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**) 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**) in effect as of July 31, 2015.

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.

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, including annexes, to you by email as well as sending you hardcopy Written Notice by post and/or facsimile, as the case may be. You will then have 20 calendar days from the date of Commencement 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 <https://www.icann.org/resources/pages/policy-2012-02-25-en>
- The **Rules** can be found at <https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en>
- The **Supplemental Rules**, as well as other information concerning the resolution of domain name disputes can be found at <http://www.wipo.int/amc/en/domains/supplemental/eudrp/newrules.html>
- A **model Response** can be found at <http://www.wipo.int/amc/en/domains/respondent/index.html>

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 email at [domain.disputes@wipo.int](mailto:domain.disputes@wipo.int).

You are kindly requested to contact the Center to provide an alternate email address to which you would like (a) the Complaint, including Annexes 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**

**VERIZON TRADEMARK SERVICES LLC**

1320 North Court House Road  
Arlington, Virginia 22201  
United States,

*Complainant,*

-v-

**Jimmy Seavey**

68 School Street, #2  
Concord, New Hampshire 03301  
United States,

*Respondent.*

**Disputed Domain Name(s):**

fiosfinder.com

**COMPLAINT**

(Rules, Paragraph 3(b); Supplemental Rules, Paragraphs 4(a), 12(a), Annex E)

**I. Introduction**

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 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**) in effect as of July 31, 2015.

**II. The Parties**

**A. The Complainant**

(Rules, Paragraphs 3(b)(ii) and (iii))

2. The Complainant in this administrative proceeding is Verizon Trademark Services LLC, a limited liability company organized and existing under the laws of Delaware, with its

principal place of business at 1320 North Court House Road, Arlington, Virginia 22201, United States of America (“Complainant”). Complainant is an intellectual property holding company and the owner of numerous trademark and service mark registrations consisting of or incorporating “FIOS” detailed in Section VI below (collectively, the “FIOS Marks”). Complainant has granted licenses to its affiliates to use the FIOS Marks (collectively the “Verizon Companies”). Complainant and the Verizon Companies are collectively referred to herein as “Verizon.” Complainant submits this complaint seeking transfer of the Internet domain name fiosfinder.com (the “Infringing Domain Name”) from Jimmy Seavey (“Respondent”) to Complainant.

3. The Complainant’s contact details are:

Address: 1320 North Court House Road  
Arlington, Virginia 22201, U.S.A.  
Telephone: (703) 351-3020  
Fax: (703) 351-3669  
E-mail: patrick.m.flaherty@verizon.com

4. The Complainant’s authorized representative in this administrative proceeding is: Patrick M. Flaherty, Assistant General Counsel - Trademarks & Copyrights, who is located at 1320 North Court House Road, 9th Floor, Arlington, Virginia 22201, U.S.A. Mr. Flaherty’s telephone number is (703) 351-3020; his facsimile number is (703) 351-3669; and his email address is patrick.m.flaherty@verizon.com.

5. The Complainant’s preferred method of communications directed to the Complainant in this administrative proceeding is:

Electronic-only material

Method: e-mail  
Address: patrick.m.flaherty@verizon.com  
Contact: Patrick M. Flaherty

Material including hardcopy (where applicable)

Method: Facsimile and regular mail  
Address: 1320 North Court House Road  
Arlington, Virginia 22201, U.S.A.  
Fax: (703) 351-3669  
Contact: Patrick M. Flaherty

**B. The Respondent**  
(Rules, Paragraph 3(b)(v))

6. According to the Whois database, the Respondent in this administrative proceeding is Jimmy Seavey. A copy of the printout of the database search conducted on October 14, 2015, is provided as Annex 1.
7. All information known to the Complainant regarding how to contact the Respondent are as follows:

**FIOSFINDER.COM**

Registrant Name: Jimmy Seavey  
Registrant Organization:  
Registrant Street: 68 School St. #2  
Registrant City: Concord  
Registrant State/Province: New Hampshire  
Registrant Postal Code: 03301  
Registrant Country: United States  
Registrant Phone: +1.8887796988  
Registrant Email: [jseavey@jamesseavey.com](mailto:jseavey@jamesseavey.com)

**III. The Domain Name(s) and Registrar(s)**  
(Rules, Paragraphs 3(b)(vi), (vii))

8. This dispute concerns the domain name fiosfinder.com. The domain name at issue was registered on February 14, 2015.
9. The registrar with which the Infringing Domain Name is registered is GoDaddy.com, LLC (“GoDaddy”). GoDaddy’s mailing address is 14455 North Hayden Road., Ste. 226, Scottsdale, Arizona 85260, U.S.A and email address is [domaindisputes@godaddy.com](mailto:domaindisputes@godaddy.com).

**IV. Language of Proceedings**  
(Rules, Paragraph 11)

10. To the best of the Complainant's knowledge, the language of the Registration Agreement is English, a copy of which is provided as Annex 2 to this Complaint. The Complaint has been submitted in English.

**V. Jurisdictional Basis for the Administrative Proceeding**  
(Rules, Paragraphs 3(a), 3(b)(xiv))

11. 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 Infringing Domain Name is registered, incorporates the Policy. The domain name at issue was registered on February 14, 2015. GoDaddy has incorporated the Policy in Section 5 of its Domain Name Registration Agreement entitled Dispute Resolution Policy (located at [https://www.godaddy.com/agreements/showdoc.aspx?pageid=REG\\_SA](https://www.godaddy.com/agreements/showdoc.aspx?pageid=REG_SA)), a true and correct copy of which is provided as Annex 2.

**VI. Factual and Legal Grounds**  
(Policy, Paragraphs 4(a), (b), (c); Rules, Paragraph 3)

12. This Complaint is based on the following grounds:

**A. The domain name(s) is(are) identical or confusingly similar to a trademark or service mark in which the Complainant has rights;**

(Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

- The Verizon Companies are among the world's leading providers of communications, entertainment, IT and security products and services to residential, business, wholesale, and government wireline and wireless customers.

- Verizon is a publicly traded company on the New York Stock Exchange under the stock ticker symbol VZ. A Dow 30 company, Verizon in 2014 generated annual consolidated operating revenues of more than \$127 billion and employs a diverse workforce of more than 178,000 employees.
  
  - The Verizon Companies have offered and provided a full array of communications and entertainment products and services under the FIOS Marks since 2004 in the United States. Verizon’s FIOS services include Internet, television, and digital voice services. The FIOS Internet services are designed to provide the fastest and most powerful Internet access offered by Verizon, offering download and upload speeds as fast as 500 Mbps. The FIOS television services include 100% all digital programming, movies and sports channels, premium and international channels, expansive HD programming, an on-demand video library, interactive features, digital video recording, and fiber-quality picture and sound. The FIOS digital voice services provide 99.9% network reliability and are rated number one in call quality and reliability according to the 2014 American Customer Satisfaction Index.
  
  - Verizon owns many U.S. trademark registrations for its FIOS Marks, including the following examples:
    - a. Registration No. 3,001,081 for the mark FIOS, first used August 30, 2004, filed February 6, 2004, issued September 27, 2005, covering services in International Classes 37 and 38.
    - b. Registration No. 3,147,510 for the mark VERIZON FIOS, first used August 30, 2004, filed June 3, 2004, issued September 26, 2006, covering services in International Classes 37 and 38.
- True and correct printouts from the United States Patent and Trademark Office’s (“USPTO”) website of the above-listed registrations with the full description of the goods and services are collectively attached hereto as Annex 3.
- Verizon’s main website featuring information on many of the products and services branded with the FIOS Marks can be accessed via the domain name

verizonfios.com, which Verizon has used since 2004. This website also allows potential customers to (1) “check availability” for FIOS branded products and services by searching using a street address or zip code, and (2) order such products and services. Screenshots of the verizonfios.com website are attached as Annex 4.

- Verizon has spent many millions of dollars since 2004 to extensively advertise and promote FIOS branded products and services in the United States. Indeed, WIPO and National Arbitration Forum administrative panels have already recognized Verizon’s rights in the FIOS Marks. *See Verizon Trademark Services LLC v. William Poku*, WIPO Case No. D2011-1832 (transferring disputed domain name givemefios.com to Verizon); *Verizon Trademark Services LLC v. Darlington Edu d/b/a Barmax Distribution*, NAF Claim No. FA0611000830994 (transferring disputed domain names fisonlinereviews.com, fisonlinereviews.net, fisonlinereviews.biz and fisonlinereviews.info, et. al. to Verizon.) Copies of these UDRP decisions involving the FIOS Marks are attached as Annex 5.
- In addition to registered rights in the FIOS Marks, Verizon has also established common law rights acquired through the substantial and continuous use and promotion of the FIOS Marks since at least as early as August 2004.
- Verizon’s proprietary rights in the FIOS Marks predate Respondent’s registration of the Infringing Domain Name.
- The Infringing Domain Name is confusingly similar to the FIOS Marks because it incorporates the term “FIOS” in its entirety with the addition of the descriptive term “finder.” The “finder” element of the Infringing Domain Name is a common or generic term that adds no element of distinctiveness to the Infringing Domain Name and that this is all the more so as a consequence of the very significant degree of renown attaching to Complainant’s FIOS Marks in the United States. *See, e.g., F. Hoffmann-La Roche AG v. Private Whois valiumfinder.com*, WIPO

Case No. D2011-1484. Previous WIPO panels have held that the term “finder” fails to distinguish the disputed domain name from Complainant’s mark. See *Pet Plan Ltd. v. Omkar Nalamwar / PRIVATE REGISTRANT / A HAPPY DREAMHOST CUSTOMER*, WIPO Case No. D2015-0412 and *The American Automobile Association, Inc. v. Samuel Yudin*, WIPO Case No. D2011-2322 (finding that the generic term “finder” does not change the confusing similarity). Previous UDRP panels have also held that incorporating a trademark in its entirety is generally sufficient to establish that a domain name is identical or confusingly similar to complainant’s mark. See, e.g., *Revlon Consumer Products Corporation v. IONE Inc.*, WIPO Case No. D2010-1000.

- Courts and administrative panels have recognized that consumers expect to find a trademark owner on the Internet at a domain name address composed of the organization’s name or mark. See *Dr. Michael Crichton v. Alberta Hot Rods*, WIPO Case No. D2002-0872. As previous panels have found, the addition of a generic top-level domain name, such as “.com” or “.info,” is irrelevant when determining whether a disputed domain name is confusingly similar to a protected mark. See, e.g., *Universal City Studios, Inc. V. G.A.B. Enterprises*, WIPO Case No. D2000-0416.

**B. The Respondent has no rights or legitimate interests in respect of the domain name(s);**

(Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

- Respondent has no legitimate rights or interests in the Infringing Domain Name. The Infringing Domain Name literally represents to Internet users that they will be able to locate or “find” and order the Complainant’s FIOS branded services and in fact the Infringing Domain Name resolves to a website claiming to offer Verizon’s FIOS branded services while also displaying sponsored ads for Verizon’s competitors and fiber optic products, as well as unrelated third party products and services for organic foods and pet care.



- Respondent has placed the following statement in small print at the bottom of the homepage of the website associated with the Infringing Domain Name: “*All trademarked content property of respective owners. FiosFinder.com is an information source on Fios TV, Internet, Phone availability and pricing. We are not a Verizon Retailer.*” However, it is well settled that existence of a disclaimer cannot cure bad faith, particularly when bad faith has been established by other factors such as “initial interest confusion.” *See, e.g., Estée Lauder Inc. v. estelauder.com, estelauder.net and Jeff Hanna*, WIPO Case No. D2000-0869. The Respondent’s statement is purely self-serving and ineffective. Given its size and placement on the Respondent’s website the disclaimer of affiliation with Verizon is not likely to be read and, even if read, is wholly insufficient to prevent any confusion. Furthermore, the disclaimer is false because Respondent claims to offer the option to order FIOS branded services from the “order service” option under the “Request” tab on the infringing website. This section of the infringing website goes on to state “*Order Verizon Fios TV, Internet and Phone service from Verizon or from one of our other sponsors below.*” and then displays sponsored ads and logos for Verizon’s competitors offering phone, TV and Internet services. Respondent falsely claims to represent Verizon and the ability to sign up customers for Complainant’s FIOS branded products and services, thus creating the false and misleading impression that the infringing website is an official site or otherwise authorized by Verizon. Such services can only be ordered directly from Verizon or from Verizon’s authorized FIOS retailers and agents. Respondent’s use of competitor ads and logos indicates that Respondent is using the FIOS Marks in a domain name to bait consumers and then switch them to other goods or services. Screenshots of the website associated with the Infringing Domain Name are attached hereto as Annex 6.
- Respondent has no connection or affiliation with Verizon or any of the many products and services provided by Verizon in association with the FIOS Marks. On information and belief, Respondent has never sought or obtained any trademark registrations for “FIOS” or any variation thereof, and indeed could

never do so given Verizon's prior and exclusive rights to this mark throughout the world. Nor has Respondent received any license, authorization, or consent -- express or implied -- to use the FIOS Marks in a domain name or in any other manner either at the time Respondent registered and began using the Infringing Domain Name, or at any other time.

- Nor do Respondent's activities constitute a fair use of the Infringing Domain Name. Respondent's misappropriation of the FIOS Marks for use in the Infringing Domain Name is no accident. Clearly, Respondent chose to register the Infringing Domain Name to capitalize on the consumer recognition of the well-known FIOS Marks in the United States, a tactic commonly referred to by WIPO panels as "targeting" Complainant's mark. *See, e.g., Wal-Mart Stores, Inc. v. John Boland*, WIPO Case No. D2014-2052.

C. **The domain name(s) was/were registered and is/are being used in bad faith.**  
(Policy, Paragraphs 4(a)(iii), 4(b); Rules, Paragraph 3(b)(ix)(3))

- Respondent's use of the Infringing Domain Name demonstrates Respondent's knowledge of Complainant's rights in its FIOS Marks. By registering the Infringing Domain Name with knowledge of Verizon's rights in its FIOS Marks, Respondent acted in bad faith. *See Verizon Trademark Services, LLC v. NA a/k/a NA DomainDevelopments.com*, NAF Claim No. FA0512000616307.
- Respondent has intentionally created a likelihood of confusion as to Verizon's affiliation with the Infringing Domain Name. Respondent must have expected that any use of the Infringing Domain Name would cause harm to Verizon. The Infringing Domain Name is so "obviously indicative" of the FIOS Marks that Respondent's use of the Infringing Domain Name would "inevitably lead to confusion of some sort." *AT&T v. Rice*, WIPO Case No. D2000-1276.
- In addition to traditional likelihood of confusion, Respondent's registration and use of the Infringing Domain Name also creates initial interest confusion, which

attracts Internet users to the website located at the Infringing Domain Name based on Respondent's use of the FIOS Marks. By registering the Infringing Domain Name with knowledge of Verizon's rights in its FIOS Marks, Respondent acted in bad faith.

- UDRP panels have consistently found that registration and use of a domain name including a famous trademark belonging to a third party, without proving rights or legitimate interests in it, represents bad faith registration and use. *See, e.g., DaimlerChrysler Corporation v. Web4COMM SRL ROMANIA*, WIPO Case No. DRO2006-0003; *Veuve Cliquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. D2000-0163 (holding that the disputed domain name "is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith."). Furthermore, the Infringing Domain Name includes the entire FIOS mark. This also supports a finding of bad faith. *See Wal-Mart Stores, Inc. v. Jeff Milchen, supra; Cellular One Group v. Paul Brien*, WIPO Case No. D2000-0028.
- This use of the Infringing Domain Name is disruptive to Verizon's business because Internet users searching for Verizon may be diverted away from Verizon's main websites. Respondent's registration and use of the Infringing Domain Name, virtually identical and confusingly similar to the Complainant's FIOS Marks, along with a website accessible at this domain name that claims offer FIOS branded products and services but in fact features advertisements for and direct links to purchase the products and services of Verizon's competitors (e.g., AT&T, CHARTER, DIRECTTV, DISH, and TIME WARNER CABLE), is an attempt by the Respondent to profit from the traffic generated by confused Internet users seeking the Complainant's main websites. Such disruption to Verizon's main websites supports a finding of bad faith registration and use. *See Social & Health Services, Ltd. v. HealthFinder, Inc.*, Case No. D2001-0318. Furthermore, because the Infringing Domain Name is obviously connected with Verizon's FIOS branded products and services, and is being used to advertise

competing products and services, a finding of bad faith is appropriate. *See Oakley Inc. v. Li Susanto*, WIPO Case No. D2010-0496.

**VII. Remedies Requested**

(Rules, Paragraph 3(b)(x))

13. In accordance with Paragraph 4(i) of the Policy, for the reasons described in Section VI above, the Complainant requests the Administrative Panel appointed in this administrative proceeding that the Infringing Domain Name be transferred to Complainant.

**VIII. Administrative Panel**

(Rules, Paragraph 3(b)(iv); Supplemental Rules, Paragraph 8(a))

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

**IX. Mutual Jurisdiction**

(Rules, Paragraph 3(b)(xii))

15. In accordance with Paragraph 3(b)(xii) of the Rules, the Complainant will submit, with respect to any challenges that may be made by the Respondent to a decision by the Administrative Panel to transfer the domain name that is the subject of this Complaint, to the jurisdiction of the courts at the location of the principal office of the concerned registrar for the domain name.

**X. Other Legal Proceedings**

(Rules, Paragraph 3(b)(xi))

16. None.

**XI. Communications**

(Rules Paragraph 3(b), Supplemental Rules, Paragraphs 3, 4, 12)

17. This Complaint has been submitted to the Center in electronic form, including annexes, in the appropriate format.
18. A copy of this Complaint has been transmitted to the concerned registrar on October 14, 2015, in electronic form in accordance with paragraph 4(c) of the Supplemental Rules.

## **XII. Payment**

(Rules, Paragraph 19; Supplemental Rules Paragraph 10, Annex D)

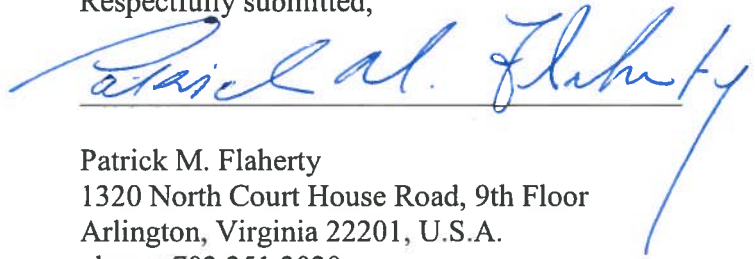
19. As required by the Rules and Supplemental Rules, payment in the amount of USD 1,500 has been made by credit card.

## **XIII. Certification**

(Rules, Paragraph 3(b)(xiii); Supplemental Rules, Paragraph 15)

20. The Complainant agrees that its claims and remedies concerning the registration of the domain name(s), 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 WIPO Arbitration and Mediation Center and Panelists, except in the case of deliberate wrongdoing, (b) the concerned registrar(s), (c) the registry administrator, (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.
21. 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.

Respectfully submitted,



Patrick M. Flaherty  
1320 North Court House Road, 9th Floor  
Arlington, Virginia 22201, U.S.A.  
phone: 703 351 3020  
fax: 703 351 3669  
email: patrick.m.flaherty@verizon.com

In-house counsel for Verizon Trademark Services  
LLC

Dated: October 14, 2015

#### **XIV. List of Annexes**

(Rules, Paragraph 3(b)(xiv); Supplemental Rules, Paragraphs 4(a), 12(a), Annex E)

- Annex 1:* Whois database printout for the Infringing Domain Name
- Annex 2:* GoDaddy Domain Name Registration Agreement
- Annex 3:* U.S. Registration No. 3,001,081 for the mark FIOS, and U.S. Registration No. 3,147,510 for the mark VERIZON FIOS.
- Annex 4:* Screenshots for the domain name verizonfios.com
- Annex 5:* WIPO decisions ordering the transfer of disputed domain names involving the FIOS Marks
- Annex 6:* Screenshots for the Infringing Domain Name