

**PUBLIC INTEREST COMMITMENT
DISPUTE RESOLUTION PROCEDURE COMPLAINT**

Adobe Systems Incorporated,)
American Apparel and Footwear Association,)
Best Buy Co., Inc., Darden Corporation,)
Facebook, Inc., Kate Spade, LLC,)
Levi Strauss & Co., Little Caesar Enterprises,)
Inc., MarkMonitor Inc., Panera, LLC,)
Tailored Brands, Inc., United States Telecom)
Association, and Verizon Communications Inc.;)
Complainants,)
v.)
Top Level Spectrum, Inc., d/b/a)
Registry, LLC, Fegistry Top Level, LLC,)
and DotFeedback, LLC;)
Respondent.)

**COMPLAINT FOR ICANN COMPLIANCE INVESTIGATION, EVALUATION BY
PICDRP STANDING PANEL, AND REMEDIES**

INTRODUCTION

Complainants respectfully request that the Internet Corporation for Assigned Names and Numbers (“ICANN”) open a compliance investigation and convene a Public Interest Commitment Dispute Resolution Procedure (“PICDRP”) Standing Panel. ICANN and the PICDRP Panel must fully investigate and remedy an escalating pattern of discriminatory, fraudulent and deceptive registry misconduct. Respondent, and parties acting in concert with Respondent, perpetrated and continue to perpetrate deceptive practices in the .FEEDBACK top level domain (“TLD”) in violation of its Public Interest Commitments (“PICs”), in contravention of the promises Respondent expressed in its new gTLD application, in violation of Respondent’s

own policies, terms and conditions, and in violation of applicable law. Such acts and practices do not accord with expectations that TLDs will be operated in the public interest.

The PICs originated from ICANN Governmental Advisory Committee (“GAC”) advice that new generic TLD (“gTLD”) registries and registrars should “respect all substantive and procedural laws under the applicable jurisdictions” and “be operated in an open manner consistent with general principles of openness and nondiscrimination.” See Ex. 1, ICANN, GAC Beijing Communiqué (Apr. 11, 2013). With those goals in mind, the GAC advised ICANN’s Board of Directors (the “Board”) that all new gTLD registries should implement various consumer safeguards, including WHOIS verification and checks, to ensure against deliberately false or inaccurate domain name registration data and prohibitions against fraudulent or deceptive practices. *See id.* The GAC further advised that the PICs “include a non-discriminatory requirement to provide registrants an avenue to seek redress for discriminatory policies.” *See* Ex. 2, GAC Los Angeles Communiqué (Oct. 15, 2014). Thus, the PICDRP is a mechanism specifically designed to provide redress to domain registrants or potential registrants to address registry policies and practices that run afoul of the registry’s PICs. The purpose of the PIC is to protect the public from harm, and to ensure all new gTLD registries operate in an open, transparent and nondiscriminatory manner and do not engage in or facilitate fraudulent and deceptive practices or allow them to proliferate.

The Board has stated that one particular PIC requires registry operators “to publish clear registration policies such that a prospective registrant is able to understand whether they are eligible to register a domain name in the TLD” and that a prospective registrant may seek redress “if the prospective registrant believes they have been unduly discriminated against as a result of a registry operator violating its published eligibility criteria for registering names in the TLD.”

See Ex. 3, Letter from Stephen Crocker to Thomas Schneider (June 11, 2015). The Board recently explained to the Intellectual Property Constituency that “ICANN’s commitment to enforce the PICDRP remains unchanged” and noted that the PICDRP “provides a potential alternative or parallel mechanism for a harmed party to pursue remedies.” *See* Ex. 4, Letter from Stephen Crocker to Greg Shatan (June 30, 2016).

As shown below, Respondent has engaged in numerous ongoing violations of its PICs, promises set forth in its new gTLD application, and its own policies, terms and conditions. Respondent violated, and failed to abide, in its own right, by the PIC provisions prohibiting “fraudulent or deceptive practices” and other “activity contrary to applicable law” in the .FEEDBACK registry. *See* Ex. 5, .FEEDBACK Registry Agreement, Specification 11 (3)(a). Respondent committed to, but failed to operate .FEEDBACK in “a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.” *See id.*, Specification 11 (3)(c). Among the many violations presented in more detail below, Respondent:

- Repeatedly changed its own policies and marketing programs in a confusing, unclear, nontransparent manner, and with discriminatory intent.
- Self-allocated, or reserved for allocation to third parties acting in concert with Respondent, numerous domain names corresponding to brands, many of which were held during the Sunrise period, thereby preventing them from being registered by the brand owner.
- Applied exorbitant and discriminatory prices for Sunrise registrations, reserved or self-allocated Sunrise-eligible names in order to withhold them from Sunrise registration and offer such domain names to others for “dirt cheap” during an Early

Access Phase, and implemented a \$5,000 “trademark claims” fee to validate marks and discourage brand owners from attempting to recover domain names matching their marks from third parties.

- Mandated that all .FEEDBACK domains point to a live website where people can “give actual feedback,” even though Respondent has hired paid professionals to act as reviewers and write fabricated reviews to post on .FEEDBACK sites to give the false appearance that such sites were places for trusted, legitimate commentary. Respondent never disclosed that such reviews are not from actual customers, its role in soliciting and hiring paid reviewers, and the fact that the vast majority of such reviews (62%) come from identifiable users located in the Seattle, Washington area, in close proximity to Respondent’s headquarters.
- Changed its policies yet again to launch a marketing program called FREE.FEEDBACK, which resulted in Respondent misusing brand owners’ .COM WHOIS information and deceptively soliciting them to validate and renew .FEEDBACK domain names they never sought to register. The FREE.FEEDBACK program resulted in brand owners being targeted by phishing schemes using the scraped .COM registration data used in the deceptive FEEDBACK registration.

As discussed in greater detail below, each of these acts individually, and in combination, violate Respondent’s PICs.

Complainants point out and emphasize that they do not bring this Complaint to challenge the ostensible purpose of a new gTLD like .FEEDBACK to promote free expression, or to facilitate genuine commentary and public discourse. Instead, Complainants bring this Complaint for the narrow and important purpose of addressing Respondent’s deceptive and misleading

practices, which violate the commitments it made to operate .FEEDBACK as a trusted space for genuine commentary, whether positive or negative. Unfortunately, as discussed in further detail below, it appears that Respondent has widely populated .FEEDBACK websites with bogus commentary, including from paid commentators and user comments copied from third party websites such as Yelp. These fraudulent activities harm Complainants, all other targeted businesses, and consumers who seek real and trustworthy feedback about companies or are looking for customer support. These deceptive practices are exactly the kind of registry misconduct the PICs were designed to prevent.

Complainants respectfully request that ICANN fully investigate this matter, promptly convene a PICDRP Panel to review the Respondent's violations, and impose appropriate sanctions and remedial measures. This Complaint supplements Complainants' initial online PIC form, which was subject to a restricted word limit and provided no ability to attach supporting evidence and exhibits.

JURISDICTION

The Internet Corporation for Assigned Names and Numbers ("ICANN") and the Public Interest Commitment Dispute Resolution Procedure ("PICDRP") Standing Panel have proper jurisdiction pursuant to the PICDRP and Specification 11 of the .FEEDBACK Registry Agreement. *See* Ex. 6, ICANN, PICDRP Part B § 1.3 (Dec. 19, 2013); *id.* § 3.3; *id.* § 3.4; *see also* Ex. 5, ICANN, .FEEDBACK Registry Agreement, Specification 11.

COMPLAINANTS

Complainant Adobe Systems Incorporated ("Adobe") is a Delaware corporation with its principal place of business at 345 Park Avenue, San Jose, CA 95110. Complainant American Apparel and Footwear Association ("AAFA") is an unincorporated association with its principal

place of business at 740 6th Street NW, Washington, DC 200001. Complainant Best Buy Co., Inc. (“Best Buy”) is a Minnesota corporation with its principal place of business at 7601 Penn Avenue S., Richfield, MN 55423. Complainant Darden Corporation (“Darden”) is a Florida corporation with its principal place of business at 1000 Darden Center Drive, Orlando, FL 32837. Complainant Facebook, Inc. (“Facebook”) is a Delaware corporation with its principal place of business at 1601 Willow Road, Menlo Park, CA 94025. Complainant Kate Spade, LLC (“Kate Spade”) is a Delaware limited liability company with its principal place of business at 2 Park Avenue, New York, NY 10016. Complainant Levi Strauss & Co. (“Levi Strauss”) is a Delaware corporation with its principal place of business at 1155 Battery Street, San Francisco, CA 94111. Complainant Little Caesar Enterprises, Inc. (“Little Caesar’s”) is a Michigan corporation with its principal place of business at 2211 Woodward Avenue, Detroit, MI 48201. Complainant MarkMonitor Inc. (“MarkMonitor”) is a Delaware corporation with its principal place of business at 3540 E Longwing Lane Suite 300, Meridian, ID 83646. Complainant Panera, LLC (“Panera”) is a Delaware limited liability company with its principal place of business at 6710 Clayton Road, Richmond Heights, St. Louis, MO 63117. Complainant Tailored Brands, Inc. (“Tailored Brands”) is a Texas corporation with its principal place of business at 6380 Rogerdale Rd, Houston, TX 77072. Complainant United States Telecom Association (“USTelecom”) is a an unincorporated associated with its principal place of business at 607 14th Street, NW, Suite 400, Washington, DC 20005. Complainant Verizon Communications Inc. (“Verizon”) is a Delaware corporation with its principal place of business at 1 Verizon Way, Basking Ridge, NJ 07920.

Complainants are widely recognized as trusted leading global providers of products and services, consumer-facing companies, membership organizations, and brand protection

organizations spanning many important sectors of the economy, including apparel, restaurant, retail, technology, software, telecommunications and entertainment industries. Complainants, either directly or through their affiliates or wholly-owned subsidiaries, own numerous registrations for their well-known respective trademarks and service marks, including *inter alia* the ADOBE, BEST BUY, OLIVE GARDEN, YARD HOUSE, FACEBOOK, INSTAGRAM, WHATSAPP, KATE SPADE, LEVIS, LITTLE CAESARS, MARKMONITOR, PANERA, PANERA BREAD, MEN’S WEARHOUSE, and VERIZON marks, in the United States, and around the world. Complainants own numerous domain names and operate well-known websites associated with their trademarks, which consumers depend upon for genuine products and services, information and customer support. *See* Ex. 7, Complainant Trademark Registrations; Ex. 8, Complainant Websites.

RESPONDENT

Respondent Top Level Spectrum, Inc., also d/b/a DotFeedback, LLC, Fegistry, LLC, Fegistry Top Level, LLC, (collectively “TLS” or “Respondent”), upon information and belief, is a Delaware corporation, organized on December 21, 2011, with its principal place of business located at 1845 West Mercer Way, Mercer Island WA 98040. TLS is the registry operator for the .FEEDBACK new generic Top-Level Domain (“TLD”), having applied for exclusive rights to operate this TLD on or about June 13, 2012 and executed a registry agreement with ICANN on December 19, 2013. TLS is also the registered name holder for approximately seventeen percent (17%) of all domain names either registered or reserved within the .FEEDBACK TLD.

PARTIES ACTING IN CONCERT WITH RESPONDENT

Feedback SAAS, LLC (hereinafter “Feedback SAAS”), upon information and belief, is a Washington corporation, organized on June 18, 2015, with its principal place of business located

at 1845 West Mercer Way, Mercer Island WA 98040. Feedback SAAS provides marketing services for the .FEEDBACK TLD, as well as mandatory default website hosting services for all domain names registered in the .FEEDBACK TLD.

Liberty Domains, LLC (hereinafter “Liberty Domains”) is, upon information and belief, an unregistered limited liability company with a principal mailing address of 848 N. Rainbow Blvd., Las Vegas NV 89107 US, a principal phone number of +1.7028509010, and a principal email address of givemespeech@gmail.com. Liberty Domains is the registered name holder for approximately forty-seven percent (47%) of all domain names registered in the .FEEDBACK TLD.

Core Domains, LLC (hereinafter “Core Domains”) is, upon information and belief, an unregistered limited liability company with a principal mailing address of 848 N. Rainbow Blvd., Las Vegas NV 89107 US, a principal phone number of +1.7028509010, and a principal email address of givemespeech+core@gmail.com. Core Domains is the registered name holder for approximately three percent (3%) of all domain names registered in the .FEEDBACK TLD. Notably, Liberty Domains and Core Domains share the same reported address, which upon information and belief is a “mail drop” location.

Jay Per Erik Westerdal (hereinafter “Mr. Westerdal”) is the principal, officer and registered agent for TLS and Feedback SAAS. At all times relevant to this complaint, acting alone or in concert with others, he formulated, directed, controlled, facilitated or participated in the acts and practices of TLS and Feedback SAAS, including the acts and practices set forth in this Complaint.

Rugly Group, Inc. (hereinafter “Rugly Group”) is an active Michigan corporation, incorporated on October 31, 2003, an active Washington corporation, incorporated on August 1,

2007, and a permanently revoked Nevada corporation, incorporated on February 8, 2008, with its principal place of business located at 505 Broadway East, #383, Seattle WA 98102. Rugly Group is the registered name holder for approximately four percent (4%) of all domain names registered in the .FEEDBACK TLD.

Christopher Roger Rugh (hereinafter “Mr. Rugh”) is listed as the President of Rugly Group according to the records of the Nevada Secretary of State, identified as an “authorized officer or agent” of Rugly Group according to the records of the Michigan Secretary of State, and identified as “Other” in the category of “Governing Persons” according to the records of the Washington Secretary of State.

COMPLAINANTS’ STANDING

Each of Complainants has been harmed as a result of Respondent’s acts or omissions in connection with the operation of the .FEEDBACK TLD, which violate Respondent’s Public Interest Commitments. *See* Ex. 6, PICDRP Part B, Section 1.1 (“Any person or entity that believes they have been harmed as a result of a Registry Operator’s act or omission in connection with the operation of its gTLD that is non-compliant with its PICs may report such alleged non-compliance by the Registry Operator”).

RESPONDENT’S PUBLIC INTEREST AND RELATED CONTRACTUAL COMMITMENTS

Respondent Committed in its Application to Operate .FEEDBACK in the Public Interest

On or about June 13, 2012, Respondent submitted its application to become the exclusive registry operator of the .FEEDBACK new gTLD. *See* Ex. 9, ICANN, .FEEDBACK New gTLD Application (June 13, 2012) (“Application”). In the Application, in response to ICANN’s question about how the new gTLD would benefit registrants, Internet users and others,

Respondent stated: “We hope to create a community that uses the domains with respect and helps users better understand a product or service.... We hope to solidify a positive and recognizable reputation as the best TLD for finding product information whether it is positive or negative.” *See id.* at 6.

Respondent acknowledged the important role and responsibility a registry plays in serving the public interest, controlling and delegating the records in its registry and in preventing fraud and abuse:

Top Level Domain registries stand in a unique position within the global DNS infrastructure. TLD registries collect registrants’ registration data and so often “know” the entity responsible for a particular domain name. TLD registries record associations between domain names, registrars and registrants and therefore are in the core of the control chain for every domain name in the TLD. Registries also directly control the delegation records and therefore have the power to enable or disable a particular domain name in the DNS. Applicant as a future TLD registry recognizes its important role in maintaining law and order and is committed to acting in the best interests of the public.

See id. at 31. Respondent stated that it would “periodically (at least once every 12 months) perform a random check of WHOIS records in .TLD for prima facie evidence of fraudulent or inaccurate WHOIS information.” *See id.* at 33. The purpose of this audit is to “improve accuracy of WHOIS information,” which serves the public interest by ensuring truthful and reliable registration information is available to brand owners to protect consumers from infringement, as well as law enforcement and cybersecurity experts in order to address fraud and DNS security threats. *See id.* Respondent assured ICANN that it was “prepared to deal with situations where registry intervention may be required in order to stop illegal activity, prevent abusive conduct or to enforce the law” and that it would “take reasonable steps to investigate and respond to any reports of illegal activity in connection with the use of the TLD.” *See id.* at 32.

Respondent's many promises to operate .FEEDBACK in the public interest were reflected again in the PICs contained in its registry agreement and in the many terms and conditions it imposed on third parties in its various customer-facing agreements. *See* Ex. 5, .FEEDBACK Registry Agreement, Specification 11; Ex. 10, .FEEDBACK Registry-Registrar Agreement. In sum, all these commitments, promises and provisions demonstrate that Respondent agreed to operate the .FEEDBACK TLD in the public interest, a commitment it has violated on a continuing basis.

**Respondent Registration Policies And Marketing Programs are Not Clear, Open or
Transparent and Are Discriminatory**

As shown below, Respondent developed and implemented a confusing and ever-shifting collection of opaque, discriminatory and otherwise improper registration policies and marketing programs. Respondent committed to operate .FEEDBACK “in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.” *See* Ex. 5, FEEDBACK Registry Agreement, Specification 11 § 3(c). As shown below, since the time Respondent first launched .FEEDBACK, it ignored and/or violated this key PIC.

Respondent constantly changed and reissued its policies in a confusing, unclear, nontransparent manner and with discriminatory intent.

**Respondent Failed to Publish its Registry Policies and Key Registry Information in Violation of
its PICs**

From the time the .FEEDBACK TLD first launched on October 20, 2015, most of the initial information about its registration policies were available essentially as hearsay, discussed only in certain industry news reports. Complainants and other potential registrants were unable from the start to clearly understand their eligibility to register domain names, the applicable

launch timeframes to register domain names, pricing for various launch phases, the requirements concerning mandatory website hosting on the .FEEDBACK's platform and many other details necessary for registrants to register and manage domain names in the TLD.

Respondent first published its TLD Startup Information and Registration and Launch Policies (“RLP”) on the ICANN startup information website on October 15, 2015. *See* Ex. 11, ICANN, .FEEDBACK TLD Startup Information (last visited Oct. 13, 2016); Ex. 12 TLS, Registration and Launch Policies (Oct. 8, 2015). These materials specified that Respondent would operate an “End-Date Sunrise” period from October 20, 2015 to January 6, 2016, an Early Access Period (“EAP”) from January 6, 2016 to January 18, 2016, and a Trademark Claims period from January 18, 2016 to April 17, 2016. *See* Ex. 11, ICANN, .FEEDBACK TLD Startup Information. The only transparency, or publicly available information, regarding Respondent's initial registration and launch policies came from third party press reports. Most information regarding Respondent's policies remained unavailable through the NIC.FEEDBACK website until early November 2015, and in some cases key information was not made available until early December 2015—nearly two months after Respondent launched the TLD.

Respondent Made Material Changes its Policies Again, Failed to Publish Them and Denied Registrants the Ability to Avail Themselves of Sunrise Protections

On November 4, 2015, in the midst of Respondent's Sunrise period, industry press reported a new material development, not mentioned in its initial registration and launch policies, namely that Respondent planned to “sell domains matching 5,000 of the world's top brands to a third party that does not own the trademarks.” *See* Ex. 13, Domain Incite, *Forget .SUCKS, .FEEDBACK Will Drive Trademark Owners Nuts All Over Again* (Nov. 4, 2015). The report also suggested that “all .feedback domains — including the 5,000 brands — [will] point by

default to a hosted service that facilitates comment and criticism.” *See id.* According to Mr. Westerdal, “[t]he as-yet unspecified third-party taking possession of the 5,000 brand names would not be prevented from selling the domains to the matching brand owner, or to any third parties, he said, though he would not be in favor of such a move.” *See id.* With respect to registration pricing for prospective registrants, the report stated, “[i]f you agree to use the hosted service with your domain, the domain and service combined will cost a minimum of just \$20 per year,” “[h]owever, if you want to turn off the hosted service and use your .feedback like a regular domain, pointing to the website of your choice, the price will ratchet up to \$50 a month, or \$620 a year [sic].” *See id.* According to the report, “.FEEDBACK went into its sunrise period last week with a \$2,000 wholesale fee — the same high price that attracted criticism for .SUCKS.” *See id.* These intended practices--which Respondent reported to industry press but failed to describe in any earlier public-facing registry policy--were consistent with Respondent’s intentions to make it as difficult as possible for trademark owners to obtain defensive registrations.

Once again, upon information and belief, a review of the NIC.FEEDBACK website on the same day this report was published indicated that Respondent had not published *any of its registration policies, details about Sunrise registrations or information about this new marketing program to the public.* Adding to the confusion, at that time, upon information and belief, the website also lacked a necessary abuse point of contact, web-based free public Whois query service, and the necessary link ICANN requires for an appropriate Whois policy and educational materials. A screenshot of NIC.FEEDBACK from November 18, 2015 shows the absence of any registry policies, although an abuse point of contact had been added by this date. *See Ex. 14, NIC.FEEDBACK (as of Nov. 18, 2015).* The absence of key point of contacts and published

policies prevented Complainants (and all users) from locating the proper contact to lodge abuse complaints with Respondent, or the ability to query the .FEEDBACK WHOIS database for information about the availability or registration status of domain names in .FEEDBACK. This lack of transparency had a discriminatory impact on Complainants and other brand owners, especially because this information was not available during a portion of the Sunrise period.

Respondent Self-Allocated, Registered and Used Domain Names Corresponding to Famous Trademarks in the Midst of Sunrise

The following month, in November of 2015, according to industry reports, Respondent began not only reserving or self-allocating domain names, but actually registering and using domain names in .FEEDBACK that corresponded to famous trademarks. “This has happened whilst .FEEDBACK is still in its sunrise period,” according to the report. *See Ex. 15, Domain Incite, .FEEDBACK Regs Fox Trademark to Itself During Sunrise* (Nov. 12, 2015). Again, at least as late as November 18, 2015, none of Respondent’s policies were actually available through the NIC.FEEDBACK website. *See Ex. 14, TLS, NIC.FEEDBACK* (as of Nov. 18, 2015). Respondent used the lack of publicly available information and confusion surrounding its non-transparent registration policies, terms and conditions to self-allocate names matching trademarks and deny potential registrants the opportunity to take advantage of ICANN’s mandated sunrise period. Respondent also used this time to reserve these domain names for later allocation to parties acting in concert with Respondent.

Respondent Introduced Two Additional “Services” and Issued New Policies in the Midst of Sunrise, Discriminating Against Brand Owners

The following month (at least as late as December 6, 2015), again during the .FEEDBACK Sunrise period, Respondent updated its NIC.FEEDBACK website to include a new page titled “Claims Period EAP” describing a new “trademark claims” service it was

introducing through which trademark owners could pay \$5,000 to “validate” their trademark with the registry and obtain the domain name in the event a third party registrant lost a claim against the domain name based on those trademark rights. *See* Ex. 16, TLS, .FEEDBACK Claims Period EAP (as of Dec. 6, 2015). This “service” is largely superfluous, given the ability of domain name arbitration panels and courts to order free transfer of such domain names, and resulted in further confusion with the effect discriminating against trademark owners who might have been considering defensively registering domain names in the TLD.

On or about the same date, Respondent also updated its NIC.FEEDBACK website to include a new page titled “Early Access” describing the above referenced “Free Speech Partner Program.” *See* Ex. 17, TLS, Early Access (as of Dec. 6, 2015). Under this program, “all companies and individuals” could “purchase domains ahead of normal pricing with a few terms.” *See id.* Participants were required to register the domain at a participating registrar during specified days of EAP and agree to use the default feedback platform for the life of the domain, in exchange for a significant rebate on the price of the domain. *See id.* As a result this latest unclear iteration on a registration policy, brand owners could only avail themselves of their legal right to obtain registrations corresponding to their trademarks at discriminatory prices compared to other registrants.

On December 10, 2015, still midway through the .FEEDBACK Sunrise period, TLS introduced yet another set of registry policies, in addition to the two new “services” it described as “Early Access” and “Claims Period EAP.” *See* Ex. 18, TLS, .FEEDBACK Registration and Launch Policies (Dec. 10, 2015) [hereinafter the “December 10, 2015 Policies”]. Industry press reporting on these changes indicated that they were intended to reflect a shift from Respondent’s earlier-announced intention to directly sell 5,000 domain names matching trademarks to third

parties. Instead, their latest tactic was not to make these sales directly but to promote such sales through the deep discounts encapsulated in its “Free Speech Partner Program” rebate system. *See* Ex. 19, Domain Incite, *TLS Says .FEEDBACK Will Be “UDRP-Proof,” Will Hire Lawyers to Defend Registrants* (Dec. 21, 2015). Respondent’s December 10, 2015 Policies also included a new requirement that all registrants point their domain names to a live web page “where visitors can give actual feedback.” *See* Ex. 18, December 10, 2015 Policies. Registrants have a “one-time” one hundred and twenty (120) day grace period before they must satisfy this live feedback site requirement. *See id.* According to Respondent, this section “applies to all domains unless they have received express written permission of the Registry.” *See id.*

The December 10, 2015 Policies also provided additional detail regarding the mandatory default content and hosting platform provided by Feedback SAAS. According to these policies, Feedback SAAS will provide all standard registrations a platform to capture feedback, and Respondent will “set the nameservers for each domain name and control the registrants DNS for standard registrations to support the platform resolving to [the] SAAS platform.” *See id.* Registrants in the .FEEDBACK TLD may choose to discontinue this default service, but will “need to pay applicable fees.” *See id.* Even registrants who opt out of the default platform are still required to provide a live site where visitors can provide actual feedback. *See* Ex. 20, TLS, *.FEEDBACK Live Site Requirement* (last visited Oct. 13, 2016). The “live site” requirement and opt-out fee disproportionately impact and discriminate against brand owners. Brand owners are much more likely to opt out in order to redirect visitors away from the .FEEDBACK site corresponding to their brand, and to their well-established “Contact Us” pages on their own websites, where customer already know how to reach them. Pointing .FEEDBACK pages to their known, trusted websites, also ensures a safe, consistent and reliable customer service

experience. Indeed, many brand owners who obtained a .FEEDBACK domain name have wound up pointing .FEEDBACK domains back to own servers. *See id.* (giving examples of brand owners' .FEEDBACK registrations that are redirected to their own websites).

Respondent's Ever-Changing, Opaque Policies Denied Trademark Owners the Reasonable Opportunity to Participate in the Sunrise Process

During this period of ever-changing, confusing policy changes, on January 6, 2016, the .FEEDBACK Sunrise period closed and Respondent's Early Access Period began. The numerous opaque and confusing changes Respondent made to its registry policies during the Sunrise period disparately impacted trademark owners, Complainants and brand owners rely on registry policies published prior to Sunrise in order to decide whether and how to participate in the Sunrise registration process. Per ICANN's PIC obligations, trademark owners also rely on such Sunrise policies to be clear and published with advance notice of when the Sunrise will take place, and any other material terms or conditions that may apply. Clear information about Sunrise registrations versus other launch phases is critical to help trademark owners determine the best registration strategy for registering in a particular TLD. Potential registrants who do not own trademarks were not similarly impacted by Respondent's mid-Sunrise policy and program changes, given that they were not eligible to participate in Sunrise and had no need to make registration decisions until after the Sunrise period concluded.

This continual stream of unclear, confusing, non-transparent, and *ad hoc* changes to the .FEEDBACK registry policies, programs, and marketing and promotional practices, many of which were published in the midst of the TLD Sunrise period, achieved an intended outcome of confusing registrants and discriminating against Complainants and other trademark owners. These opaque policies inhibited or discouraged Complainants from defensively registering domain names in .FEEDBACK during Sunrise or General Availability, discriminated

against brand owners by imposing additional barriers and costs on registration, and enabled the proliferation of fraudulent and deceptive practices (as described below) that harm Complainants and brand owners. All these practices show that Respondent violated its PIC to operate .FEEDBACK “in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.”

Respondent Violated its PICs by Improperly Self-Allocating, Registering and Using Domain Names Corresponding to Trademarks

Respondent self-allocated, reserved, activated and used domain names corresponding to well-known trademarks. *See* Ex. 21, .FEEDBACK Zone File and Registration Data (showing Respondent’s reserved and self-allocated names, including pre- and mid-Sunrise reserved and self-allocated names). On its face, this practice harms and disparately impacts Complainants and trademark owners as a class of potential registrants. Historical .FEEDBACK zone file and registration data show that Respondent reserved or self-allocated over a thousand domains prior to or during Sunrise, the vast majority of which correspond to trademarks. *See id.*

Upon information and belief, the overwhelming majority of domain names registered and activated within the .FEEDBACK TLD—over seventy percent (70%)—are currently owned and operated by Respondent, and parties working in concert with Respondent, including Core Domains, Liberty Domains and Rugly Group. A large portion of these domain names correspond to trademarks. *See* Ex. 22, MarkMonitor, Custom Investigative Report: .FEEDBACK (Sept. 23, 2016); Ex. 21, .FEEDBACK Zone File and Registration Data. Respondent’s bulk self-allocation and registration to parties acting in concert with Respondent of domain names matching trademarks in .FEEDBACK has enabled a variety of fraudulent schemes targeting brand owners and deceiving consumers, as discussed in greater detail below.

Respondent has discriminated against Complainants and other brand owners through such self-allocation and activation practices. Respondent is only permitted under the Registry Agreement to self-allocate and activate up to one hundred (100) operational or promotional names in the TLD, or allocate *but not activate* an additional number of domains in the TLD. *See* Ex. 5, .FEEDBACK Registry Agreement, Specification 5 §§ 3.2-3.3. Respondent circumvented these provisions by reserving and then allocating additional names to parties acting in concert with it. Respondent and these additional parties have activated such names in order to host the Feedback SAAS platform. This systematic practice was not conducted transparently and openly, pursuant to clear registry policies, and discriminates against Complainants and other brand owners given that the vast majority of names registered through this scheme match trademarks.

Respondent is Violating its PIC Obligations by Populating its .FEEDBACK Websites with Fabricated and Fraudulent Comments

As shown below, Respondent has engaged in a pattern of using bogus, paid comments regarding Complainants' businesses to create the false impression that .FEEDBACK is a legitimate forum for consumer feedback. When Respondent filed its application to be granted the right to operate the .FEEDBACK TLD, it assured ICANN and the public, "We hope to create a community that uses the domains with respect and helps users better understand a product or service.... We hope to solidify a positive and recognizable reputation as the best TLD for finding product information whether it is positive or negative." *See* Ex. 9, .FEEDBACK Application.

Respondent committed to "include in their Registration Agreements a provision prohibiting Registered Name Holders from . . . trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable

law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.” *See* Ex. 5, .FEEDBACK Registry Agreement, Specification 11 § (3)(a). Respondent violated its own ostensible policy requiring .FEEDBACK registrants to point their domain names to sites “*where visitors can give actual feedback.*” *See* Ex. 18, December 10, 2015 Policies (emphasis added). Respondent also violated the promises it made to ICANN and to the public to operate .FEEDBACK as a trusted, reputable TLD for finding genuine, non-fabricated information. It has also clearly violated its own policies and its PIC obligations to prevent fraudulent or deceptive practices. Respondent cannot prevent fraudulent and deceptive practices when Respondent itself is engaged in and facilitating these same activities.

Upon information and belief, Respondent has solicited and paid numerous third parties, including professional freelance writers who offer to post a set number of words for a fee, to write fabricated reviews regarding Complainants’ products and services. Respondent uploaded these false reviews to multiple websites hosted by Feedback SAAS within the .FEEDBACK TLD. *See* Ex. 22, MarkMonitor, Custom Investigative Report: .FEEDBACK (Sept. 23, 2016). As of September 23, 2016, 27,573 reviews were available on 1,592 .FEEDBACK sites, representing fifty-seven percent (57%) of all registered .FEEDBACK domain names. It is also significant that the forty-three percent (43%) of the remaining registered .FEEDBACK domains do not contain any reviews at all. *See id.* The vast majority of reviews appear to be fabricated at Respondent’s direction, with sixty-two percent (62%) of identified reviewers located in the greater Seattle, Washington area in close proximity to Respondent’s headquarters. Notably, twenty-two percent (22%) of the reviews are dated *before* the registration date of the domain name on which the review was found, according to the Whois records for the domain names

(consisting of 6,192 reviews on 926 different domains). *See id.* Complainant's investigation shows forty-six (46) reviews dated between April 26, 2006 and the official opening of the .FEEDBACK Sunrise period on October 20, 2015. *See id.* This strongly suggests that Respondent or its affiliates manipulated the review dates, as the review date field is automatically generated by the website platform system whenever a user posts a review. *See id.*

The 926 domains displaying pre-registration comments are owned by forty-five (45) registrants. Liberty Domains owned the vast majority of the domains (851 domains, or ninety-two percent (92%)). *See id.* As noted above, on information and belief, Liberty Domains is affiliated with or acting in concert with Respondent. The 6,192 registered users who left a review on a .FEEDBACK webpage dated before the registration date for the domain name account for twenty-four percent (24%) of all registered users of the Feedback SAAS service. ICANN and the PICDRP Panel should note that an astounding sixty-seven percent (67%) of users who left a pre-registration review were from the greater Seattle, Washington area. *See id.* These users were all located in close geographical proximity to the Seattle area headquarters of Respondent. *See id.* The top ten (10) registered users of the Feedback SAAS service posted 605 reviews between January 15, 2016 and March 13, 2016 on 133 domain names. Eighty-eight (88) such domain names were registered to Rugly Group, and forty-five (45) such domains were registered to Core Domains or Liberty Domains. *See id.*

Research into the top ten (10) registered users that could be identified by name revealed that five (5) are freelance writers with four (4) actively promoting their paid review services. *See id.* All five (5) suspected paid reviewers were found maintaining UpWork.com accounts with comments about their services from previous employers. *See id.* On February 5, 2016, an unnamed company located in Seattle, Washington posted an UpWork.com job proposals looking

for thirty (30) freelance review writers to “write feedback’s [sic] for a list of domains that include famous people, products, businesses and issues and submit feedback as directed.” *See id.*; *see also* Ex. 23, UpWork, Freelancers to write feedback’s [sic] for famous people, businesses, and issues (Feb. 5, 2016). On March 5, 2016, an unnamed company located in Seattle, Washington posted an UpWork.com job proposal looking for fifty (50) freelance review writers to “write about their experience fora [sic] list of domains that include famous people, products, businesses and issues and submit as directed.” *See* Ex. 22, MarkMonitor, Custom Investigative Report: .FEEDBACK; *see also* Ex. 24, UpWork, Newbie Freelancers to write and perform data entry and research (Mar. 5, 2016). The only requirements listed were the ability to have “excellent writing skills in English,” to leave “feedback” in increments of “150 words each” and any postings “must be written using proper sentence structure and grammar.” The solicitation offered “50 feedbacks for \$5.00 and in return we give you a good feedback. Payment per feedback is .10 cents.” *See* Ex. 23; Ex. 24. On information and belief, the unnamed Seattle-based company soliciting these reviews was Respondent or a party acting on Respondent’s behalf. In addition, Feedback SAAS users in the Seattle, Washington area are disproportionately represented—according to recent data, sixty-two percent (62%) of Feedback SAAS user profiles listed an address in Seattle or a town in the Seattle metropolitan area. Ex. 22, MarkMonitor, Custom Investigative Report: .FEEDBACK. Of these profiles, twenty-six percent (26%) were found to have left a review dated prior to the corresponding domain registration date. *See id.* This data does not account for the 386 unregistered users who posted comments during this time, as additional information was not available about the user.

These ostensibly independent reviews from ordinary consumers are intended to give the appearance of legitimate commentary within .FEEDBACK sites, when, in fact, the reviews are a

complete sham. The reviews are not genuine public commentary arising from actual unsolicited consumer interaction with Complainants, other companies or their products and services. These reviews may also give the false appearance that the .FEEDBACK TLD is a popular and trusted space for independent and helpful commentary on companies, and their products and services across industry sectors. Respondent made unauthorized use of Complainants' trademarked logos, tag lines, and other brand-related indicia on .FEEDBACK sites, which creates the false impression that Complainants may have sponsored or endorsed the .Feedback site associated with its brand and displaying its logo. The misuse of Complainants' trademarked logos caused harm by associating well-known brands with fabricated reviews or outdated information misappropriated from third party websites.

The false and deceptive content appears designed to improperly promote Respondent's domain name registration, hosting and content development services. Paid bogus reviews on websites hosted by Feedback SAAS predominate in .FEEDBACK, breaching the public trust and creating a registry business model based on falsehoods. Respondent has never disclosed its financial relationship with paid reviewers, nor is there any disclaimer indicating that the reviews are paid works for hire and do not legitimately reflect actual consumer experiences. In addition, many of the .FEEDBACK reviews appear to have been copied (and in some cases fraudulently post-dated) from content posted on other well-known online platforms, including Yelp (including reviews originally posted years earlier). *See* Ex. 25, Comparison of .FEEDBACK Reviews and Yelp Reviews; Ex. 26, *De Beers Intangibles Limited v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. D2016-1465 (Sept. 14, 2016) (discussing copied and post-dated reviews on the `debeers.feedback` website taken from earlier Yelp reviews). Content scraped or copied from

prior Yelp reviews explicitly violates many provisions in the Yelp Terms of Service. *See* Ex. 27, Yelp, Terms of Service § 6 (Nov. 27, 2012).

**Respondent’s FREE.FEEDBACK Marketing Program Targets Complainants, Uses
Material Misrepresentations and False
WHOIS Registration Data and Encourages Phishing Attacks**

Respondent continues to target Complainants and other trademark owners and consumer facing companies through its FREE.FEEDBACK website and what it calls its “give away” marketing campaign, launched earlier this year. Respondent registered the FREE.FEEDBACK domain name on June 18, 2015, as one of many other domain names self-allocated to TLS. *See* Ex. 28, MarkMonitor, FREE.FEEDBACK Summary (Sept. 26, 2016). The FREE.FEEDBACK website features a single search field and advises visitors to “[c]laim a free.feedback domain name, start by entering your email address” and “[p]ick a name that you want to collect feedback about.” *See id.*; *see also* Ex. 29, TLS, FREE.FEEDBACK Domains (last visited Oct. 13, 2016). Entry of an email address into the field automatically triggers importation of registration data for the applicable second-level domain name, which is then displayed in additional fields that the user must change if it wishes to modify such data. *See* Ex. 28; Ex. 29. Upon information and belief, such registration data is scraped and copied by the FREE.FEEDBACK website from existing legitimate domain name registrations owned by Complainants in the .COM TLD. Registrations made through the “FREE.FEEDBACK” website therefore create a form where Complainants’ WHOIS data from .COM is pre-populated without their consent or authorization. The email address shown on the FREE.FEEDBACK website defaults to the Complainants’ and other brand owners’ contact information. This fraudulent and deceptive practice further demonstrates Respondent’s involvement in targeting brand owners with the FREE.FEEDBACK program, given that it positions the brand owner as the source of registration

and renewal fees but provides no apparent monetary benefit for domain investors who cannot monetize the mandatory Feedback SAAS platform.

Users must complete all registration data fields to proceed, although data fields are not case sensitive, meaning that any text at all—even a single character—will serve as an acceptable street address or phone number. With all fields complete, users are greeted with a “Thanks for your reservation!” message, explaining that “[y]ou will receive a confirmation email within the next 24 hours.” *See* Ex. 29, TLS, FREE.FEEDBACK Domains. An email follows shortly thereafter from Internet Domain Services BS Corp., a signatory to the 2013 Registrar Accreditation Agreement (“RAA”) and registrar affiliated with TLS, prompting recipients to “click the link below” in order “to verify that the email address specified by you is a valid one.” It warns that “[f]ailure to verify the email address within the next 15 days will lead to the user account and domain names that use this address as registrant contact being suspended.” *See* Ex. 28, MarkMonitor, FREE.FEEDBACK Summary.

Contemporaneously, the FREE.FEEDBACK program sends an email from Feedback SAAS that reads, “Hi, I am extending a free year of domain registration to you for [SAMPLE.FEEDBACK],” “[t]he domain is already live and you are listed as the main contact on the account through the ICANN registrar www.internet.xyz.” *See* Ex. 30, Feedback SAAS, Registration For [REDACTED].FEEDBACK (July 27, 2016). Complainants and other trademark owners have received multiple unsolicited communications from Feedback SAAS concerning such unwanted domain names registered within the .FEEDBACK TLD. Complainants did not request the .FEEDBACK domain name, and did not complete any information on the FREE.FEEDBACK website. Nor did they have any interest in registering, much less “extending a free year of domain name registration,” in the .FEEDBACK TLD. *See* Ex. 28, MarkMonitor,

FREE.FEEDBACK Summary. Between July 21, 2016 and September 12, 2016, there were four hundred and forty-three (443) total domain names registered through the FREE.FEEDBACK website, which correspond to trademarks belonging to Complainants and other well-known trademarks owned by other companies. *See id.* ICANN and the PICDRP Panel should investigate the underlying details further, but given the use of Respondent's back end, platform and solicitations, Respondent and parties working in concert with Respondent appear to be responsible for the deceptive registrations made through the FREE.FEEDBACK website.

Complainants and multiple other trademark owners who received such email notifications from Feedback SAAS and TLS registrars never visited the FREE.FEEDBACK website, and they never requested a free trial registration in the .FEEDBACK TLD. *See id.* As such, email communications from the Respondent, Feedback SAAS, or other parties acting in concert with Respondent, falsely suggest an existing business relationship with Complainants, and they misrepresent by omission the actual identity of any parties who submitted Complainant contact information through the FREE.FEEDBACK website. Specifically, these email communications assert that “*You should have received instructions on how to login and control the domain directly*” and “*we are required to verify that the email address specified by you is a valid one.*” *See id.* (emphasis added); *see also See Ex. 30, Feedback SAAS, Registration For [REDACTED].FEEDBACK.* Moreover, these email communications offering to extend a “free” year of service, fail to disclose adequately to recipients the material terms and conditions of the offer, including when they must cancel the trial or other program to avoid substantial future charges, and the means by which to cancel.

As a result of these false statements, omissions and material misrepresentations by Respondent, some Complainants and trademark owners targeted by the Respondent's

FREE.FEEDBACK marketing campaign were deliberately misled into believing that their respective organizations had sought to register .FEEDBACK domain names. Some companies were misled into believing someone in their company had applied to register in .FEEDBACK and erroneously verified their contact information to proceed with a one year “free” trial. These companies may not have been aware that the cost of renewing these unwanted .FEEDBACK registrations will wind up costing them thousands of dollars per year. *See* Ex. 31, .FEEDBACK Pricing Information.

For Complainants and others who did not click on a link to verify their contact information, many FREE.FEEDBACK domain name registrations continue to remain active, well beyond the fifteen (15) day email verification period, when such domains were supposed to have been cancelled. *See* Ex. 28, MarkMonitor, FREE.FEEDBACK Summary. Moreover, because Complainants and other trademark owners never requested such domain names through the FREE.FEEDBACK website, the presence of their otherwise legitimate contact information—scraped from the .COM TLD—constitutes false registration data. Upon information and belief, Respondent and parties working in concert with Respondent are responsible for the creation and perpetuation of this false registration data. The use of .COM registration data likely violates all applicable .COM Whois Terms of Service. *See, e.g.,* Ex. 32, MarkMonitor, .COM Whois Terms of Service (last visited Oct. 13, 2016) (“By submitting a WHOIS query, you agree that you will use this Data only for lawful purposes and that, under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail (spam); or (2) enable high volume, automated, electronic processes that apply to [registrar] (or its systems).”); *see also* Ex. 33, Domain Tools, Terms of Service (last visited Oct. 4, 2016) (“You will not use the Service for illegal purposes (allow,

enable, or otherwise support the transmission by e-mail, telephone, postal mail, facsimile or other means of mass unsolicited, commercial advertising or solicitations) but will abide by and comply with all applicable local, state, national, and international laws and regulations in your use of the Service (including laws regarding the transmission of technical data exported from the United States)...You may not use any "deep-link", "page-scrape", "robot", "spider" or other automatic device, program, algorithm or methodology, or any similar or equivalent manual process, to access, acquire, copy or monitor any portion of the Service or any Service Data....”).

The continued existence of live, unsolicited domain names registered through FREE.FEEDBACK deceptive marketing campaign creates a false impression of endorsement or sponsorship between Respondent, the .FEEDBACK TLD, Complainants and other famous trademark owners. Respondent’s deceptive practices destabilize the DNS, and turn the .FEEDBACK TLD into a space where fraud and abuse are permitted to proliferate. Cyber-criminals flock to TLDs and websites where they know consumers may be seeking to reach and contact companies and use that information to defraud companies and consumers. Respondent’s practices have triggered phishing and domain name slamming incidents perpetrated by known third-party scammers. *See* Ex. 28, FREE.FEEDBACK Summary (citing Support@Internet.BS, E-mail Address Verification Initiated (2016)); Ex. 34, Correspondence from “Domain Name” to [Redacted] (Sept. 7, 2016) (“This letter is to inform you that it’s time to send in your registration and save. Failure to complete your Domain name search engine registration by the expiration date may result in cancellation of this offer making it difficult for your customers to locate you on the web.... Act today! Select Term: 1 year 9/7/2016 - 9/7/2017 \$75.00 2 year 9/7/2016 - 9/7/2018 \$119.00 5 year 9/7/2016 - 9/7/2021 \$199.00 10 year -Most Recommended- 9/7/2016 - 9/7/2026 \$295.00 Lifetime (NEW!) Limited time offer - Best value! Lifetime

\$499.00 ... Select the term above, then return by fax: 1-718-799-1429.”); Ex. 35, Search Engine Roundtable, *Google’s John Mueller: Domain Name Search Engine Registration Is A Scam* (June 15, 2015) (identifying a nearly identical email from the same sender as a scam).

Respondent Fails To Abide By Its Own Policies, Terms and Conditions Related to its PIC Obligations

Respondent fails to abide by its own policies, terms and conditions that go hand in hand with its PIC obligations to operate .FEEDBACK in an open, transparent, and non-discriminatory manner, adhere to clear registration policies and take steps to prevent fraud and deception. Respondent has failed to abide by numerous of its own terms of service, including its Registration and Launch Policy, Acceptable Use Policy (“AUP”), WHOIS Terms of Use, and the Feedback SAAS Terms of Use.

As an initial matter, Respondent’s Registration Policy indicates that any modifications or amendments shall be effective “upon posting on the .FEEDBACK Registry website and giving [ninety] 90 days prior written notice to all .FEEDBACK accredited Registrars.” *See* Ex. 12, TLS, Registration and Launch Policies (Oct. 8, 2015); Ex. 18, TLS, Registration and Launch Policies (Dec. 10, 2015). However, Respondent’s initial registry policies indicated they were revised as of October 8, 2015, whereas the next publicly-available iteration of the same policies was revised on December 10, 2015. It appears that Respondent implemented new policies immediately upon publication on December 10, 2015, even though this was less than ninety (90) days after its original policies had been published, and without adequate advanced notice to its registrars. These policy changes, as well as the nearly-contemporaneously published updates to the NIC.FEEDBACK website announcing the Free Speech Partner Program and Claims Period EAP, were not provided to Registrars a full ninety (90) days prior to the Sunrise or

EAP. Complainants were materially harmed by these unclear policy changes and new programs.

Respondent's AUP states that it may deny, cancel or transfer any registration or service to "comply with any applicable court orders, laws, requests or rulings from law enforcement agencies, government agencies, or other organizations, or dispute resolution proceedings." *See* Ex. 18, TLS, Registration and Launch Policies § 2.1. The AUP also states that the certain activities are "prohibited, and constitute registration abuse," including: "uploading content that is "unlawful, harmful, threatening, abusive, . . . tortious, [or] defamatory"; "phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or other activity contrary to applicable law"; "any unsolicited or unauthorized advertising, 'junk mail,' 'spam,' 'chain letters,' [or] "phishing" or "pharming"; "upload[ing], post[ing], email[ing], or transmit[ing] the same message, URL, or post multiple times"; and "intentionally or unintentionally violat[ing] any applicable local, state, national or international law, including, any rules of any national or other securities exchange, and any regulations having the force of law." *See id.* § 2.3 (numbering errors appear in original). The AUP further requires compliance with all applicable laws, including those that relate to consumer protection (including in relation to misleading and deceptive conduct). *See id.* § 2.4. Similarly, Respondent's Whois Terms of Use require parties using the .FEEDBACK TLD Whois service to use Whois data only for lawful purposes, and to refrain from allowing, enabling, or otherwise supporting the "transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to any entities (other than your existing customers from whom you collected such information with their knowledge and permission)." The AUP also requires all registrants to direct domain names to a feedback webpage where visitors can give actual feedback. *See id.* § 2.9. However, as

discussed above, the vast majority of feedback posted on .FEEDBACK sites is fabricated, and does not constitute “actual feedback.”

As discussed above, the latest FREE.FEEDBACK marketing campaign operated by Respondent and parties working in concert with Respondent, uses fraudulent and deceptive marketing practices to create unwanted and spurious registrations within the .FEEDBACK TLD with false registration data. The scheme uses deceptive practices to falsely register domain names corresponding to trademarks, and send unsolicited communications to Complainants and others. Complainants were offered a “free trial” and deceptively urged to validate .FEEDBACK registrations they never registered in the first place. This activity subjected Complainants and others to spam and phishing attacks that are directly related to this campaign.

The Feedback SAAS Terms of Use require users of the Respondent’s .FEEDBACK content platform to not violate any law. *See* Ex. 36, Feedback SAAS, Terms of Use § 1(d)(b) (last visited Sept. 30, 2016). Respondent solicited and paid for content posted on the Feedback SAAS platform, which violates U.S. consumer protection laws and regulations. Respondent’s own Feedback SAAS Terms of Use prohibit users from implying that their content is “in any way sponsored or endorsed by Feedback SAAS,” and they explain that users may be exposed to liability if their content “contains material that is false, intentionally misleading, or defamatory.” *See id.* Respondent’s policies also strictly limit the use of the Feedback SAAS service for “personal, noncommercial use only.” *See id.* Upon information and belief, Respondent or parties acting in concert with Respondent, intentionally solicited for paid content appearing on the Feedback SAAS platform. Respondent, or parties acting in concert with Respondent, paid for false, intentionally misleading material in the form of pretextual reviews regarding Complainants and other trademark owners, as well as their products and services.

Consistent with Respondent’s PIC obligations and those it originally made to ICANN in its application, the Feedback SAAS Terms of Use claim that, “[t]he public can be assured that feedback given to a hosted site is operating at the highest levels of integrity on the Feedback SAAS's [sic] platform. Site owners are held accountable and help ensure that feedback is processed fairly and correctly.” *See* Ex. 36, Feedback SAAS Terms of Use § 7. However, Respondent’s practice of soliciting and posting paid, phony comments on multiple .FEEDBACK sites violates its promise to users and the public to operate Feedback SAAS at the highest levels of integrity. Clearly, the owners of many improper active domain names and websites in .FEEDBACK, many of which are owned and operated by Respondent or parties acting in concert with Respondent, are not held accountable for the violation of their own policies.

PUBLIC INTEREST COMMITMENT VIOLATIONS

Specification 11 Section 3(a)

TLS has violated, and continues to violate, both the text and spirit of its Public Interest Commitment (“PIC”) to “include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from . . . trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.” *See* Ex. 5, .FEEDBACK Registry Agreement, Specification 11 § (3)(a).

Specification 11 Section 3(c)

TLS has violated, and continues to violate, both the text and spirit of its PIC to “operate the TLD in a transparent manner consistent with general principles of openness and non-

discrimination by establishing, publishing and adhering to clear registration policies.” *See* Ex. ___, .FEEDBACK Registry Agreement, Specification 11 § (3)(c).

PIC VIOLATION I

In numerous instances, in connection with the offering for sale, or sale, of domain name registrations within the .FEEDBACK TLD, Respondent has failed to operate the .FEEDBACK TLD consistent with general principles of openness and non-discrimination. Respondent, or those acting in concert with Respondent, self-allocated, registered and used domain names in the .FEEDBACK TLD targeting the Complainants and other trademark owners. Respondent self-allocated, registered and used domain names prior to, or during, the .FEEDBACK TLD trademark sunrise period, and used deceptive and misleading marketing practices to target trademark owners as unwilling registrants in the .FEEDBACK TLD. Complainants and other trademark owners were subject to discriminatory registration fees, opt-out pricing and an ever-changing array of unclear registration policies. Therefore, these discriminatory practices constitute a violation of Specification 11, Section 3(c) of the .FEEDBACK Registry Agreement.

PIC VIOLATION II

In numerous instances, Respondent has paid various third parties to write phony reviews regarding Complainants’ products and services and upload them to the .FEEDBACK website corresponding to the particular Complainant’s trademark. By doing so, these ostensible third party reviews are intended to give the appearance of legitimate commentary, criticism or feedback about Complainants’ products and services on the .FEEDBACK websites, and grow Respondent’s registry business and content hosting services. Respondent has therefore misrepresented, expressly or by implication, that these commentaries come from independent users or ordinary consumers of Complainants’ products and services. Respondent has failed to

clearly and conspicuously, and in close proximity to the representation, disclose the material connection between these paid endorsers and Respondent. Internet users and Complainants' customers were, and continue to be, misled by these false postings. *See, e.g., In re Lord & Taylor, LLC*, FTC Docket No. C-4576 (May 20, 2016), available at <https://www.ftc.gov/system/files/documents/cases/160523lordtaylordo.pdf> (holding that respondent misrepresented that a paid endorser of its products or services was an objective independent user or ordinary consumer, and failed to disclose the material relationship between respondent and the paid endorser, in violation of Section 5 of the Federal Trade Commission (FTC) Act, 15 U.S.C. § 45(a)); *In re Deutsch LA, Inc.*, FTC Docket No. C-4515, (Mar. 24, 2015), available at <https://www.ftc.gov/system/files/documents/cases/1503deutschdo.pdf> (same). These fraudulent and deceptive, non-transparent and discriminatory practices constitute a violation of Specification 11, Sections 3(a) and 3(c) of the .FEEDBACK Registry Agreement.

PIC VIOLATION III

In numerous instances, in connection with the offering for sale, or sale of domain name registrations within the .FEEDBACK TLD, and particularly through correspondence generated through the FREE.FEEDBACK program, Respondent has represented to recipients of such correspondence (including Complainants, other businesses and consumers), expressly or by implication, that they have a preexisting business relationship with Respondent. In truth and in fact, in numerous instances, such parties do not have a preexisting business relationship with Respondent. *See, e.g., Federal Trade Commission v. Construct Data Publishers*, 2014 WL 7004999 (N.D. Ill. Dec. 11, 2014), available at <https://www.ftc.gov/system/files/documents/cases/160920fairguidestip.pdf> (holding that defendants misrepresented that they had a preexisting business relationship with recipients of

marketing solicitations for business directory and domain name services in order to precipitate sales of these services to consumers who had never previously conducted business with defendants, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a)). These fraudulent and deceptive, non-transparent and discriminatory practices constitute a violation of Specification 11, Sections 3(a) and 3(c) of the .FEEDBACK Registry Agreement.

PIC VIOLATION IV

In numerous instances, in connection with the offering for sale, or sale of domain name registrations within the .FEEDBACK TLD, Respondent has created false domain name registration data as reflected in the WHOIS database for the .FEEDBACK TLD, matching registration data copied from legitimate existing domain name registrations in the .COM TLD. Respondent's creation of false registration data has misled trademark owners into mistakenly believing they may have affirmatively registered the .FEEDBACK domain name or caused them to spend substantial time and resources verifying whether they did or did not actually register in this TLD. ICANN and the PICDRP Panel will be able to determine that in numerous instances, trademark owners did not affirmatively register domain names through the FREE.FEEDBACK marketing campaign. Respondent's false importation of WHOIS registration data also deceptively misleads members of the public into mistakenly believing that the trademark owner affirmatively registered the domain name, lending the impression that trademark owners are expressly or implicitly endorsing Respondent and the .FEEDBACK TLD. ICANN and the PICDRP Panel will find that Complainants, other trademark owners and the public were and continue to be misled by the use of this false WHOIS data. *Cf. Federal Trade Commission v. Global Net Solutions, Inc.*, 2005 WL 221836 (D. Nev. Jan. 3, 2005), *available* *at*

<https://www.ftc.gov/sites/default/files/documents/cases/2005/11/051116stip0423168.pdf>

(enjoining and imposing monetary fines on spammers who used false Whois data that inhibited investigation into their other underlying fraudulent and deceptive practices, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a)). These fraudulent and deceptive, non-transparent and discriminatory practices constitute a violation of Specification 11, Sections 3(a) and 3(c) of the .FEEDBACK Registry Agreement.

PIC VIOLATION V

In numerous instances, in connection with the offering or sale of domain name registrations in the .FEEDBACK TLD, Respondent represented, expressly or by implication, that registrants can “extend” a one year free trial of domain name registration and content hosting services on .FEEDBACK’s platform for domain names they never registered in the first place. In many instances, Respondent and those acting in concert with Respondent registered the domain name corresponding to trademark and triggered the solicitation to trademark owners by pre-populating the WHOIS registration data with the trademark owner’s contact information. Respondent failed to disclose adequately to consumers the material terms and conditions of their offer, including the dates when consumers must cancel the trial to avoid future charges and the means consumers must use to cancel the trial or other program. *See, e.g., Federal Trade Commission v. Nutraclick, LLC*, 2016 WL 5329561 (C.D. Cal. Sept. 20, 2016), available at <https://www.ftc.gov/system/files/documents/cases/160921ordprem.pdf> (holding that defendants failed to disclose material terms of a nutritional supplement trial program, including requisite cancellation dates to avoid future charges and the means by which to cancel the trial program, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a)). These fraudulent and

deceptive, non-transparent and discriminatory practices constitute a violation of Specification 11, Sections 3(a) and 3(c) of the .FEEDBACK Registry Agreement.

PIC VIOLATION VI

In numerous instances, in connection with the offering for sale, or sale, of domain name registrations within the .FEEDBACK TLD, Respondent and those acting in concert with Respondent, acting as both the registry operator, content provider, content host and individual registered name holders, failed to adhere to their own registration policies. Respondent, or those acting in concert with Respondent, self-allocated or registered domain names prior to the conclusion of the .FEEDBACK trademark sunrise period, while Respondent compensated third-party reviewers to compose and contribute fake reviews and published such reviews. Respondent's non-transparent and discriminatory contravention of its own registration policies and terms of service constitutes a violation of Specification 11, Section 3(c) of the .FEEDBACK Registry Agreement.

PIC VIOLATION VII

In numerous instances, in connection with the offering for sale, or sale, of domain name registrations within the .FEEDBACK TLD, Respondent has failed to publish for consumers, clear or transparent registration policies or marketing promotions, which disproportionately impacted brand owners as a class of registrants or potential registrants. Such constantly changing and ambiguous registration policies and marketing promotions published by the Respondent constitute a violation of Specification 11, Section 3(c) of the .FEEDBACK Registry Agreement.

COMPLAINANT AND CONSUMER INJURY

Complainants and other trademark owners and consumer facing companies have suffered and continue to suffer monetary loss and reputational harm as a result of Respondent's deceptive acts and practices. The public has also suffered from Respondent's misleading practices and has been misled and confused about the nature of the comments about numerous companies and their goods and services in the .FEEDBACK TLD.

Unclear and constantly changing registration policies and terms of service have prejudiced any meaningful ability of the Complainants, or other trademark owners, to voluntarily register domain names under clear policies and fair conditions in the .FEEDBACK TLD. Furthermore, thousands of domain names corresponding to famous trademarks have been either reserved, earmarked, self-allocated, registered or used by the Respondent, acting alone or in concert with others, even at the very early stages of Respondent's .FEEDBACK TLD launch program. Respondent's activation of such domain names has altered website search engine results, falsely suggesting that Complainants or other companies have been affiliated with such domain names. Complainants and famous trademark owners who have been forced to register domain names defensively within the .FEEDBACK TLD have been harmed through the Respondent's exploitative and discriminatory registration prices and mandatory opt-out fees for default content.

Respondent was responsible for the many paid and false reviews, as well as outdated reviews misappropriated from third party sites, that now appear on a large number of domain names in the .FEEDBACK TLD. Respondent has failed to disclose this fact to the public, and has harmed the Complainants, other brand owners, and their customers as well as the public at large. Respondent's misuse of Complainants' trademarked logos on these sites caused further

harm by implying to the public a possible affiliation or endorsement with Respondent that does not exist.

Respondent's creation of false registration data, through the FREE.FEEDBACK marketing campaign, has harmed and continues to harm Complainants, other famous trademark owners, and consumers by creating a false association with Respondent and false impression brand owners are willingly registering domain names in .FEEDBACK. Some trademark owners have been misled into verifying otherwise wholly unwanted domain name registrations in the .FEEDBACK TLD through the FREE.FEEDBACK marketing campaign. Complainants and other brand owners have devoted considerable time, expense and other resources to investigate Respondent's deceptive acts and practices. Respondent has been unjustly enriched as a result of its acts and practices. Absent relief by ICANN and the Standing Panel, Respondent is likely to continue to injure Complainant and consumers, reap unjust enrichment, and harm the public interest.

ICANN AND THE STANDING PANEL'S POWER TO GRANT RELIEF

The PICDRP empowers the Standing Panel and ICANN to “notify the Registry Operator via an enforcement notice” and provide “thirty (30) days to resolve the noncompliance and notify ICANN of the remedial measures taken,” or otherwise “ICANN will determine, in its sole discretion, the appropriate remedial measure, if any, and continue the enforcement process.” *See* Ex. 6, ICANN, PICDRP Part B §§ 4.5-4.6. Given the myriad violations at issue in this case, Complainants believe that this is not a matter than can be resolved by ICANN Compliance alone. The serious nature of these violations demands that ICANN empower a Standing Panel to ensure that this matter is fully examined and adjudicated. The numerous violations outlined above, together with detailed supporting Exhibits, establish that Complainants have more than

met ICANN's standard of showing Respondent violated its PICs by a preponderance of the evidence.

REQUESTED REMEDIES

WHEREFORE, Complainants, pursuant to Part B, Sections 3.3, 3.4 and 5.4 of the PICDRP and Section 4.3 of the .FEEDBACK Registry Agreement, request that the Standing Panel and ICANN:

1. Conduct a comprehensive compliance review and investigation to evaluate Respondent's compliance with its obligations under Specification 11 of the .FEEDBACK Registry Agreement and its related policies and contracts. In particular, the compliance review should investigate the relationship between Respondent and all other parties working in concert with, or controlled by Respondent.
2. Appoint a Standing Panel to evaluate Respondent's compliance with its obligations under Specification 11 of the .FEEDBACK Registry Agreement. In view of the Respondent's repeated, numerous, escalating and ongoing violations, this matter cannot be resolved by the ICANN contractual compliance department alone.
3. Investigate and immediately terminate all unsolicited domain names in .FEEDBACK TLD that were fraudulently created with false WHOIS registration data through the FREE.FEEDBACK marketing campaign;
4. Award such relief as necessary to redress injury to Complainants and consumers resulting from Respondent's violations of Section 3, of Specification 11 of the .FEEDBACK Registry Agreement, including but not limited to, the refund of monies paid, and the disgorgement of ill-gotten monies, and the cancellation or free transfer of domain names implicating Complainants' trademarks to Complainants;

5. Take all steps necessary to remediate all past false and deceptive practices perpetrated by Respondent and take measures to ensure future compliance with its PIC and all related contractual obligations in .FEEDBACK and any other new TLD should ICANN approve any other gTLD Respondent may seek to operate in the future;
6. Award Complainants the costs of bringing this action, as well as other additional relief as the Standing Panel or ICANN may determine to be just and proper.

Dated: October 24, 2016

Respectfully Submitted,
BRIAN J. WINTERFELDT

/s/ Brian J. Winterfeldt

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