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 October 30, 2009, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**).

The Policy is incorporated by reference into your Registration Agreement with the Registrar(s) of your domain name(s), in accordance with which you are required to submit to a mandatory administrative proceeding in the event that a third party (a **Complainant**) submits a complaint to a dispute resolution service provider, such as the Center, concerning a domain name that you have registered. You will find the name and contact details of the Complainant, as well as the domain name(s) that is/are the subject of the Complaint in the document that accompanies this Coversheet.

You have no duty to submit a Response to the Complaint until you have been formally Notified of the Complaint and Commencement of Administrative Proceedings by the Center. 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 e-mail 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 http://www.icann.org/en/dndr/udrp/policy.htm

- The **Rules** can be found at http://www.icann.org/en/dndr/udrp/uniform-rules.htm

- 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/

- 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 e-mail at domain.disputes@wipo.int.

You are kindly requested to contact the Center to provide an alternate e-mail 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.

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

Systemware, Inc. 15301 Dallas Parkway, Suite 1100 Addison, Texas 75001 **(Complainant)** -v- Direct Privacy ID F9F0A PO Box 120681 George Town, Grand Cayman KY1-1010 KY **(Respondent)**	**Disputed Domain Name:** *cite.com*

COMPLAINT

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 October 30, 2009, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**).

II. The Parties

A. The Complainant

[2.] The Complainant in this administrative proceeding is Systemware, Inc. ("Systemware"), a corporation organized under the laws of New Jersey.

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[3.]   The Complainant's contact details are:

Address: 15601 Dallas Parkway, Suite 1000
                Addison, TX 75001
Telephone: 972-239-0200
Fax: 972-239-7242
E-mail: basso@systemware.com

[4.]   The Complainant's authorized representative in this administrative proceeding is:

David Carstens
Carstens & Cahoon, LLP
13760 Noel Rd.
Suite 900
Dallas, Texas 75240
Telephone: 972-367-2001
Facsimle: 972-367-2002

Email addresses: tmdocketing@cclaw.com, voss@cclaw.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: tmdocketing@cclaw.com
Contact: David Carstens

Material including hardcopy (where applicable)
Method: Facsimile
                13760 Noel Rd.
Address: Suite 900
                Dallas, Texas 75240
Facsimile: 972-367-2002
Contact: David Carstens

B. The Respondent

[6.]   According to the whois.domaintools.com registration database, the Respondent in this
administrative proceeding is Direct Privacy ID F9F0A ("Direct Privacy"), PO Box

12068, George Town, Grand Cayman KY1-1010, KY. Copies of the printout of the database search conducted on April 15, 2011 are provided as Annex A.

[7.]   All information known to the Complainant regarding how to contact the Respondent is as follows:

Direct Privacy ID F9F0A, Direct Privacy LTD
PO Box 12068
George Town, Grand Cayman KY1-1010
KY
Telephone: 1-345-745-6022
Email: cite.com@directnicprivacy.com

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

[8.]   This dispute concerns the domain name identified below:

cite.com – registered initially 3/26/1997

[9.]   The registrar with which the domain name is registered is:

directNIC, LTD

Mail address:
directNIC, LTD
PO Box 11207
Grand Cayman, KY1-1008
Cayman Islands

Office address:
directNIC, LTD
Regatta Office Park
Windward 1, Suite 141
85A Lime Tree Bay Road
West Bay, Grand Cayman
Cayman Islands
Telephone: +1.877.856.9598 or +1.813.283.5168
Facsimile: +1.888.564.7373

IV. Language of Proceedings

[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 B to this Complaint.

The Complaint has been submitted in English. The language of the proceedings should be English.

V. Jurisdictional Basis for the Administrative Proceeding

[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 domain name that is the subject of this Complaint is registered, incorporates the Policy. The registration policy of directNIC LTD makes the policy applicable to cite.com under Provision § 19(b). A true and correct copy of the domain name dispute policy that applies to the domain name in question is provided as Annex C to this Complaint and can be found at *http://www.directnic.com/legal/udrp.php*.

VI. Factual and Legal Grounds

[12.] This Complaint is based on the following grounds:

A. The domain name is identical or confusingly similar to a service mark in which the Complainant has rights;

Systemware has filed an application for the CITE trademark on March 17, 2011 in International Class 42 (Miscellaneous services) with Serial No. 85-269955. See Annex D. The services related to the CITE trademark are cloud computing featuring software for use in database management, namely, database management software for use in output, documents and content management, computer hardware development, computer software development, consulting services in the field of cloud computing, consulting services in the field of design, selection implementation and use of computer hardware and software systems for others; customization of computer hardware and software; database development services; technical support services, namely troubleshooting in the nature of diagnosing computer hardware and software problems.

Further, Systemware has used the CITE trademark in connection with its services on its website since at least as early as February 2011 and has obtained common-law rights therein. See Annex E. Systemware has the exclusive right to use and license the CITE trademark for the services recited in the registration.

Systemware has invested substantial effort over a period of time, including the expenditure of substantial dollars, to develop good will in its trade name and trademarks to cause consumers throughout the United States to recognize the CITE mark as distinctly designating products and services that originate with Systemware.

The domain name in question, cite.com, is identical to Systemware's CITE trademark.

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

The burden of proof with respect to this element is light for the Complainant. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455. Complainant must make a *prima facie* showing that Respondent does not have rights or legitimate interests in the domain name. *Id.*

Systemware has no relationship with Direct Privacy whatsoever. Systemware has never authorized Direct Privacy to use the domain name "cite.com" or any other domain name. Additionally, there is no indication that Direct Privacy has any legitimate interest in the trademark CITE according to searches done on the United States Patent & Trademark Office ("USPTO") website.

Further, entering cite.com in the address bar of an internet browser resolves to no active website. See Annex F. There is no evidence that Direct Privacy is making any legitimate noncommercial or fair use of cite.com without intent for commercial gain. There is no evidence of Direct Privacy's use of, or demonstrable preparations to use, cite.com or a name corresponding to cite.com in connection with a bona fide offering of goods or services. Finally, there is no evidence that Direct Privacy has been commonly known by CITE.

C.   The domain name was registered and is being used in bad faith.

Systemware understands that in general, when a domain name is registered by a respondent before the complainant's relied-upon trademark right is shown to be first established, the registration of the domain name would not have been in bad faith. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, paragraph 3.1. However, some panels have begun to consider paragraph 2 of the UDRP as a warranty at the time of registration that the domain name will not be used in bad faith, finding that, by breaching such warranty, use in bad faith may render the registration in bad faith. *Id.* Additionally, other panels look at the totality of the circumstances in assessing "registration and use in bad faith," as a unitary concept, given that some of the circumstances listed as evidence in paragraph 4(b) of the UDRP appear to discuss use and not registration. *Id.* Under either of these two theories, discussed below, Direct Privacy has both registered and is using cite.com in bad faith. Additionally, the general priority rule should not be applied in this case due to the factors surrounding Direct Privacy's bad faith use.

Systemware requests that the panelist adopt the approach that the registration date is not dispositive of the bad faith registration issue, and retroactive bad faith registration can be found under a totality of circumstances analysis. *See generally City Views Limited v. Moniker Privacy Services / Xander, Jeduyu, ALGEBRALIVE*, WIPO Case No. D2009-0643.

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The totality of the circumstances indicate a finding of bad faith registration and use.

The registrant is using cite.com in bad faith, in part, due to the use of a proxy service. Direct Privacy, or its affiliated registrar service, is a privacy or proxy registration service. The manner in which such a service is used can constitute a factor indicating bad faith. *See* WIPO Overview of WIPO Panel Views on Selected UDRP Questions, paragraph 3.9. Consequently, Systemware is unaware of a way to determine the "true" registrant, which would, perhaps, affect the date of acquisition. Additionally, Systemware cannot verify if the registration was transferred between different parties. Both of these issues could drastically affect the panel's analysis; however, since the "true" registrant hides behind a privacy shield, Systemware is left to guess at the registrant's actual date of acquisition.

The registrant's passive use of cite.com amounts to bad faith. The domain name cite.com does not resolve to a website or other on-line presence. There is no evidence that a website or other online presence is being established which will use cite.com. There is no evidence of advertising, promotion or display to the public of cite.com. There is no evidence that Direct Privacy has offered to sell, rent or otherwise transfer cite.com to Systemware, a competitor of Systemware, or any other person. Indeed, the use of a proxy service by the registrant makes it difficult for Systemware to uncover any evidence of the use, or even circumstances surrounding the use of cite.com. In short, there is no positive action being undertaken by Direct Privacy in relation to cite.com.

As the panel in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, indicated, there is a distinction between taking a positive action in bad faith, and doing nothing with a website. The significance of the distinction is that the concept of a domain name "being used in bad faith" is not limited to positive action; inaction is within the concept. *Id.* Inactivity by Direct Privacy amounts to the domain name being used in bad faith. In other words, registering the website *14 years ago* with limited, sporadic utilization at some undefined point in the future is "bad faith."

The combination of inactivity and the use of a proxy service amount to bad faith use by either Direct Privacy or the "true," hidden registrant. The bad faith use constitutes a breach of the representations made by the registrant under UDRP paragraph 2. This bad faith use renders the registration to be done in bad faith as well. Alternatively, the bad faith use and bad faith registration should be viewed as a unitary concept. Under such a viewing, the bad faith use renders the registration to be done in bad faith.

VII. Remedies Requested

[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 disputed domain name "cite.com" be transferred to the Complainant.

VIII. Administrative Panel

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

IX. Mutual Jurisdiction

[15.] In accordance with Paragraph 3(b)(xiii) 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 or cancel the domain name(s) that is/are the subject of this Complaint, to the jurisdiction of the courts at the location of the principal office of the concerned registrar and the domain name holder's address, as shown for the registration of the domain name(s) in the concerned registrar's WhoIs database at the time of the submission of the Complaint to the Center.

X. Other Legal Proceedings

[16.] No other legal proceedings have been commenced or terminated in connection with or relating to cite.com, the domain name that is the subject of the Complaint.

XI. Communications

[17.] A copy of this Complaint, together with the cover sheet as prescribed by the Supplemental Rules, has been sent or transmitted to the Respondent on April 26, 2011 electronically via the Internet to cite.com@directnicprivacy.com, the Administrative and Technical contact listed in the WhoIs database for cite.com.

[18.] A copy of this Complaint has been sent or transmitted to the concerned registrar on April 26, 2011 electronically via the Internet to legal@directnic.com and inquiries@directnic.com, which are contact addresses listed on directnic.com's website.

[19.] This Complaint is submitted to the Center in electronic form, including annexes, in the appropriate format.

XII. Payment

[20.] As required by the Rules and Supplemental Rules, payment in the amount of USD $1500 by Credit Card (the details of which will be provided by fax).

XIII. Certification

[21.] The Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain name holder and waives all such claims and remedies against (a) the WIPO Arbitration and Mediation Center and Panelists, except in the case of deliberate wrongdoing, (b) the concerned registrar, (c) the registry administrator, (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.

[22.] 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,

David W. Carstens, Attorney for the Complainant

Date: 4/26/2011

XIV. List of Annexes

1.   Attached as Annex A is a true and correct copy of the printout of the WhoIs database search conducted on April 13, 2011

2.   Attached as Annex B is a true and correct copy of the Registration Agreement.

3.   Attached as Annex C is a true and correct copy of the domain name dispute policy that applies to cite.com.

4.   Attached as Annex D is a true and correct copy of Systemware's trademark application for CITE, Serial no. 85-269955.

5.   Attached as Annex E is a true and correct copy of Systemware's website, showing use of CITE in connection with the sale of its goods and services.

6.   Attached as Annex F is a true and correct copy of screenshot of an attempt to resolve cite.com to a website on April 13, 2011.

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