1. As a Special Masters advisor to the court and after review of the case *Nissan Motor Co. v. Nissan Computer Corp.* and the 2002 court ruling, I submit the defendant, Nissan Computer Corp has a valid case for an appeal and a countersuit for product disparagement against Nissan Motors. I looked at the facts, as they occurred, to evaluate the mistakes and estimate the amount of fair or unfair business practices, each party executed.

No: Date: Event:

1. Late 1980s Nissan Motors became known in the U.S. market, soon to be world renowned.

2. 1991 Nissan Computer Corp began business in North Carolina, U.S.

3. 1994 *Nissan.com* domain name was registered by Nissan Computer Corp.

4. 1995 Nissan Motors contacted Nissan Computer Corp regarding the domain name.   
But no further contact ensued.

5. 1996 *Nissan.net* domain name was registered by Nissan Computer Corp.

6. 1999 The World Intellectual Property Association (WIPO) started settling domain name disputes under its Uniform Domain Name Dispute Resolution Policy (UDRP).[[1]](#footnote-1)

7. 2000 Nissan Motors sued Nissan Computer Corp for Cybersquatting and $10 million.

8. 2002 The California Superior Court and the U.S. Ninth District Court held that Nissan Computer had not acted in bad faith when it acquired the disputed domain names.

2. The following outline depicts the ethics of the position taken by Uzi Nissan in the dispute.

Event 3. The registration of the domain name matches the (family) last name of the owner, Mr. Uzi Nissan which indicates the domain name registration is legitimate and not cybersquatting. And the business was operational for years and also legitimate.

Event 5. Nissan Computer Corp registered another domain name and maybe they were receptive to giving up the first domain name registration. This was soon after the initial contact by Nissan Motors.

Event 8. The courts held that Nissan Computer had not acted in bad faith. But the court’s additional ruling for *Nissan.com* not to be used for commercial purposes and to find a different name for its business, and no advertisement allowed. This seems to be not fair, as if it is punishment, though the court found them not guilty.

Event 8. Nissan Computer is defiant of the courts’ additional ruling and the website *Nissan.com* has all the restrictions, including commentary that places negative commentary about the Nissan Motors lawsuit.[[2]](#footnote-2) But it is true. And neither party agreed to a non-disclosure agreement.

3. The following outline of the ethics of the position taken by Nissan Motors in the dispute.

Event 1. It would have been prudent and wise for Nissan Motors to secure their business domain name early. But at least five years transpired before any company registered the *Nissan.com* domain name.

Event 4. Nissan Motors contacted Nissan Computer Corp but did not make any offer to buy the domain name. No further contact occurred between the two parties for five years.

Event 6. By now, Nissan Motors probably has checked the registration of the domain name and found it matched the (family) last name of the owner, Mr. Uzi Nissan. They would also find the additional domain name registration. Nissan Motors can conclude that the domain name registration is legitimate but may be purchasable. Maybe Nissan Motors could make a fair offer to buy the domain name from Nissan Computers. But four years have passed since initial contact.

Event 7. The advent of the WIPO UDRP could be the means for Nissan Motors to sue for the domain name, instead of making a fair offer to buy the domain name. Nissan Motors decided to ‘take’ the domain name with legal action and probably reasoned the other party couldn’t afford a legal battle.

Event 8. The courts held that Nissan Computer had not acted in bad faith. The courts did not force the transfer of ownership of the domain name. Nissan Motors is still advertising their business at *NissanUSA.com*.[[3]](#footnote-3)

4. The courts’ general decision is fair to the parties and the general public, because in the court’s opinion, there was no cybersquatting that took place. So the monetary damages judgment of $10 million cannot be justified. The courts’ additional ruling seemed to be based on partiality towards the plaintiff, was not fair to both parties, and not in context with the court’s general decision. The appeal of this court’s additional ruling, is resented now, based on the favoritism towards Nissan Motors over Nissan Computer Corp because of ‘potential confusion’ of the domain name. The appellant’s argument is, either party would suffer from their customers’ potential confusion when encountered by a strange occupant of the domain name web address. In line with the opinion of the court, it is my recommendation that both parties should seek arbitration for the fair purchase of the domain name. In addition, since the courts held that Nissan Computer had not acted in bad faith, there is grounds for a countersuit against Nissan Motors, of product disparagement of Nissan Computer Corp’s services.

1. UDRP at the World Intellectual Property Association downloaded from <http://www.wipo.int/amc/en/domains/gtld/>. [↑](#footnote-ref-1)
2. NISSAN COMPUTERS website, downloaded from <http://www.nissan.com/> on September 18, 2014. [↑](#footnote-ref-2)
3. NISSAN MOTORS website, downloaded from [www.nissanusa.com](http://www.nissanusa.com) on September 18, 2014. [↑](#footnote-ref-3)