



## BOULDER COUNTY BAR NEWSLETTER

# JUNE 2013

### DOMAIN NAME ARBITRATION UNDER THE UDRP

BY JUSTIN C. KONRAD

The internet has made large-scale building of goodwill and brand identity more accessible than ever, providing even those with minimal resources a worldwide platform to publicize their trademarks and service marks. Domain names provide an integral part of this functionality, serving as both a locator and a unique identifier of a website's provider. As such, a domain name that consists of a company's primary trademark or service mark can be among the most valuable intellectual property assets relating to a company's brand identity and goodwill.<sup>1</sup>

With the easy accessibility of domain names for legitimate purposes; however, comes the prospect of misuse or opportunistic behavior such as cybersquatting (i.e. registering, trafficking in, or using a domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else<sup>2</sup>). When a client is faced with a domain name that may infringe upon its trademark or service

mark, litigation under federal or state trademark or unfair competition causes of action is often the first avenue considered by counsel. In many cases; however, the expense of full-blown litigation may not represent a wise allocation of client resources. The time involved to pursue an infringement claim in the courts to resolution may also render such action impractical. Or perhaps the owner of the potentially infringing domain name cannot be easily located, or is domiciled in another country and may not be subject to jurisdiction in accessible courts.

The Uniform Domain-Name Dispute Resolution Policy (UDRP), as developed by the Internet Corporation for Assigned Names and Numbers (ICANN) and implemented by all generic top-level domain (gTLD) registrars, can represent a low-cost and swift administrative approach to combat cybersquatting. Especially when the primary objective of a client is to force a cybersquatter to relinquish

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**BOULDER COUNTY BAR  
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ANNUAL MEETING & RECEPTION  
WEDNESDAY, JUNE 5**

CU Folsom Field Center Plate  
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to [www.boulder-bar.org/calendar](http://www.boulder-bar.org/calendar)  
go to June 5 to pay by credit card.

control of an infringing domain name, an administrative proceeding under the UDRP is well worth consideration as a remedy of first resort.

#### 1. What is the UDRP?

ICANN is the non-profit organization to whom the United States government has delegated authority for administration of all gTLDs (including .aero, .asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel).<sup>3</sup> ICANN in turn delegates

*(continued on page 4)*

## CALENDAR OF EVENTS

Pre-registration is required for all BCBA CLE programs. Register by e-mailing [lynne@boulder-bar.org](mailto:lynne@boulder-bar.org), or pay online with a credit card at [www.boulder-bar.org/calendar](http://www.boulder-bar.org/calendar).

Wednesday, June 5  
Annual Meeting and Reception  
\$45 BCBA members \$35 Young Lawyers  
cocktails and hors d'oeuvres

Thursday, June 6  
Civil/Personal Injury  
Negotiation Techniques for  
Insurance Claims  
Presenter: Jerry Sloat  
Noon at Faegre Baker Daniels  
1 CLE \$20, \$10 New/Young Lawyers  
\$11 Lunch

Tuesday, June 11  
Employment & Business  
Marijuana Rights and the Workplace: a  
point/counterpoint presentation from  
plaintiff and defense perspectives  
Presenters: Kimberlie Ryan and Holli  
Hartman, members of the Tax  
Funding/Civil Law Work Group for  
Governor's Task Force on Amendment 64  
Noon @ Hutchinson Black and Cook  
1 CLE \$20, \$10 new/young lawyers  
\$11 Lunch

Wednesday, June 12  
Solo/Small Firm  
Happy Hour  
5 PM @ Conor O'Neill's

Wednesday, June 12  
Taxation, Estate Planning & Probate  
"Life Insurance in the 2013 Estate Plan"  
Presenter: Kurt Hofgard  
Noon @ Hutchinson Black & Cook  
1 CLE \$20, \$10 new/young lawyers  
\$11 Lunch

Thursday, June 13  
Real Estate  
"Municipalization from  
Xcel Energy's Perspective"  
Noon @ Bryan Cave  
1 CLE \$20, \$10 new/young lawyers  
\$11 Lunch

Thursday, June 13  
Paralegals Happy Hour  
5 PM @ the Boulder Café

Friday, June 14  
Availability of Legal Services  
Roundtable  
Noon @ BCLS

Thursday, June 20  
Bankruptcy  
Roundtable Luncheon  
Noon @ Agave Bistro  
RSVP to [sarah@boulder-bar.org](mailto:sarah@boulder-bar.org)

Friday, June 21  
Civil Litigation  
"\$1.2 million and Justice TV"  
Presenter: John Pineau  
Find out how to use YouTube to help  
settle your next case, even after  
an adverse judgment.  
This could revolutionize civil practice.  
Noon @ East DAs Training Center (2nd  
floor of the Justice Center)  
1 CLE \$20, \$10 new/young lawyers  
Brownbag Lunch

**BCBA SENIOR LAWYER SECTION HAPPY HOUR**  
**(FOR ALL LAWYERS WHO ARE 60 AND OVER)**  
**PLEASE JOIN US ON**  
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# 3RD ANNUAL FOURMILE FIRE TREE PLANTING SUCCESS

## DAVID A. PERLICK

Each year since the Fourmile Fire, lawyers from Boulder and beyond have come together to plant trees on public and private lands in the area, which burned 6,181 acres and destroyed 169 homes. To date, we have planted nearly 5,000 saplings.

The effort was initiated in conjunction with the American Bar Association's 1 Million Trees project and was spearheaded in Boulder by attorneys Maki Iatridis, Ann Rhodes, David Perlick, and a few lay volunteers. Due to the 2012 fires, Ann and Maki have now become involved in plantings statewide. Of the 750 saplings planted in Boulder last year, over 70% are still alive –much more than expected.

This year we put 1000 little trees in the rocky soil at the top of Sunshine Canyon with the help of about 50 volunteers ranging from teenagers to folks in their seventies, and including CU employees, solo practitioners, representatives of local businesses, members of large and medium sized firms, local church members, and law clerks from the district and appellate courts.

A big thank you goes out to Gabriella Stockmayer of Dietze & Davis for heading up this year's steering committee. We also give thanks to Boulder County Parks and Open Space, including their Volunteer Coordinator, Shane Milne, who orga-

nized the volunteer effort, provided transportation, tools, and much guidance in our efforts.

Finally, we must thank our many sponsors whose donations allowed us to purchase the saplings and planting materials.

**Arnold & Arnold**  
**Berg Hill Greenleaf & Ruscitti LLP**  
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**Renita Jolley**  
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**Conrad Lattes**  
**Nicole Moskowitz**  
**Omni Financial Charity Foundation**  
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**Purvis Gray, LLC**  
**Ruth Wright**  
**Gabe Racz**  
**Ann Rhodes**  
**Tod Smith**  
**Louisa Young**

**Food donations from:**  
**Spruce Confections**  
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**Costco**

Volunteers who helped plant trees this year are: front row: Jim Crannell, Dave Perlick, back row: Adam Davenport, Scott Brenner, Deborah Agee, Erin Adee, Katherine Erwin, Anna Johnson, Dulce Monteiro Mendes, Derek Fehrer, Gabriella Stockmayer, David Pacheco,



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## DOMAIN NAME ARBITRATION *(continued from page 1)*

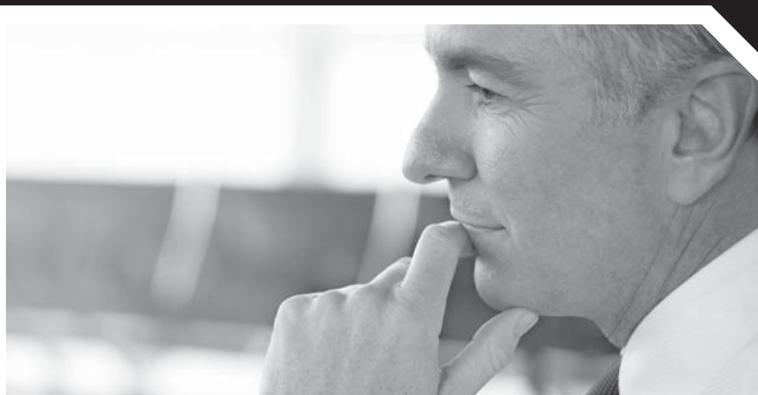
responsibility for management of the reservation of individual domain names to organizations called registrars, popular examples of which include Go Daddy and Network Solutions.<sup>4</sup> Since 2000, in order to receive ICANN accreditation, each registrar must agree to require its gTLD domain name registrants to submit to the UDRP with respect to complaints regarding trademark infringement in registered domain names.<sup>5</sup> As such, the UDRP's authority arises not from statute or regulation, but rather from the terms of the agreement between the registrar and its customers.

### 2. How Does a UDRP Arbitration Proceeding Work?

The UDRP is typically invoked when a trademark owner (the "Complainant") learns of an allegedly infringing domain name registered to a third party. The Complainant uses a WHOIS service, such as the one operated by ICANN at [www.internic.net/whois.html](http://www.internic.net/whois.html), to determine which registrar manages the offending domain name and to identify the registrant.<sup>6</sup> Once this information is known, the Complainant files a complaint with an ICANN-approved administrative

dispute resolution service provider (a "Provider") to commence the UDRP administrative proceeding and seek transfer or cancellation of the offending domain name.<sup>7</sup> At present, the four Providers authorized to administer UDRP proceedings are the World Intellectual Property Organization (WIPO), the National Arbitration Forum, the Asian Domain Name Dispute Resolution Centre, and the Czech Arbitration Court Arbitration Center for Internet Disputes.<sup>8</sup> Since UDRP jurisdiction is based upon voluntary agreement and proceedings are conducted remotely, the location of the Provider is essentially irrelevant and a Complainant can choose which Provider to utilize based on cost, reputation, or other factors.

A UDRP complaint filed with the WIPO Arbitration and Mediation Center, for example, currently requires a flat fee of \$1,500 if the Complainant is willing to have the complaint resolved by a single panelist, while the fee to use a three-member panelist is \$4,000 – in either case, a fraction of the cost of even simple litigation.<sup>9</sup> The process is straightforward, consisting solely of two written documents in most cases: the complaint, and a response from the registrant of the accused domain name (due within twenty days after the registrant receives WIPO notification of the proceeding).<sup>10</sup> After both parties have submitted their positions and relevant written evidence, the panelist(s) review the documents and issue a written decision – either to transfer the domain name registration to the Complainant, cancel the domain name registration, or dismiss the complaint – typically within two months after the complaint was originally filed.<sup>11</sup>



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## PRESIDENT'S PAGE

BY KEITH COLLINS



### TIME WELL SPENT

My year as president of the Boulder County Bar Association has flown by. Coming into my term, I was not sure what to expect, but I must admit, it has been a lot of fun. It is easy to enjoy yourself when you get to interact with such great people. Reflecting on this past year as bar president, the one thing that stands out in my mind is the number of truly amazing individuals that we have in our bar.

What I enjoyed more than anything about being the bar president was the opportunity to attend many functions

and events that I might not otherwise go to. As a result, I was able to interact with and meet a variety of attorneys who I probably would not have met during my usual course of business. From those who are just starting out, to those who are retiring after more than fifty years of practice, as well as lawyers from virtually every practice area of law. After this past year, I have a much better appreciation for the scope and depth of our organization.

There were two events that really made an impression on me and seemed to highlight the quality of practitioners we have in our community, the first being the pro bono luncheon. For those of you who do not know, the pro bono luncheon is an annual event that is co-hosted by Boulder County Legal Services (BCLS) and Colorado Legal Services. BCLS is a non-profit dedicated to helping provide legal assistance to those in our community who do not have the means or ability to obtain legal representation themselves. BCLS relies on attorneys and paralegals to volunteer and take pro bono cases in a variety of practice areas. The annual luncheon is held to cele-

brate and honor all of those who selflessly gave their time and energy to help others.

I was astonished to learn at the luncheon that members of our bar volunteered more than sixty-six hundred hours in pro-bono services this past year. Individual members gave anywhere from fifty hours to over four-hundred hours. In addition, it seemed that nearly every medium to large size firm has committed to having each attorney handle pro bono cases.

All of those who were honored at the luncheon were also amazing individuals, in addition to being great attorneys. I was privileged to introduce Helen Stone, the recipient of this year's John Marshall award. Helen has been an outstanding member of our bar over the past thirty years and has been deeply dedicated to pro bono services during that time. Additionally, this year's Boulder County Bar Association's Young Lawyer of the Year, Brandy Rothman, was honored for her incredible service to pro bono work. Brandy and

*(continued on page 9)*

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## PRO BONO PAGE

### Pro Bono Referrals

Nine cases were referred during April. Thank you to the following attorneys:

Joyce Bergmann  
Evan Branigan  
Peter Enichen  
Judson Hite  
Peter Jarldane  
Roseann Murray  
Curt Rautenstrauss  
Jeffrey Skovron  
Craig Small

### Pro Se Program Volunteers

Josh Anderson  
Mary Louise Edwards  
Lenore Fox  
John Hoelle  
Lauren Ivison  
Chris Jeffers  
Brandy Rothman

### BCAP Volunteers

The following attorneys accepted pro bono referrals for the Boulder County AIDS Project in April:  
Laurel Herndon  
(The Immigrant Legal Center)

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Boulder County Legal Services (BCLS) celebrated the outstanding tradition of pro bono service in Boulder County at the Annual Pro Bono Luncheon, held April 29, 2013, at the Boulder Marriott. BCLS honored local attorneys, mediators, law students, and paralegals who volunteered 6,632 hours in 2012 to provide legal services to low-income residents of Boulder County.

The Boulder County Bar Association honored Helen Stone (left photo) with the John Robert Marshall Award for her dedication in providing legal services to the poor. Keith Collins, president of the Boulder County Bar Association, presented the award, which is presented annually in honor of John Robert Marshall, a local attorney who tirelessly advocated for the poor. Helen Stone, who also celebrated her fortieth year as an attorney, has been a friend of BCLS and a model of the ethic of pro bono service since 1973. She was the first woman president of the Boulder County Bar Association and has served on the Board of Directors of Colorado Legal Services (CLS) for over 30 years.

(Right photo) Tom Rodriguez of Vincent Romeo & Rodriguez receives Supreme Court recognition award. L to R: Judge Gale Miller, Colorado Court of Appeals, Justice Monica Márquez; David Stark, chair of the committee for pro bono on the Chief Justice's Commission on the Legal Profession; Tom Rodriguez; Justice Gregory Hobbs.

The law students of the CU Legal Aid and Defender Program under the direction of Professor Norman Aaronson and Professor Deborah Cantrell, and the students of the CU Juvenile Law Clinic, under the direction of Professor Colene Flynn Robinson, were recognized for their outstanding contribution of a combined total of 1,562 pro bono hours serving clients of BCLS with family law cases during 2012.

## LAWYER ANNOUNCEMENTS

Thank you to those BCLS volunteer lawyers who were honored at the annual pro bono lunch.

**50 - 75 Pro Bono Hours**

Joyce Bergmann, Howard Bernstein  
Robert Cooper, Christina Ebner  
Mary Louise Edwards, Elizabeth Meyer  
Drew Richman, Jeffrey Skovron, Craig Small

**75 - 100 Pro Bono Hours**

Eve Canfield, Christopher Jeffers  
Judson Hite, Tucker Katz  
Mary Street, Leonard Tanis, Bruce Warren

**100 - 200 Pro Bono Hours**

Susan Bryant, Peggy Goodbody, Stuart Ollanik  
Norton Steuben, Bruce Wiener

**200-300 Pro Bono Hours**

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**400 Pro Bono Hours and Above**  
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Ebner & Gent, Goulart & Associates  
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Robinson Tweedy, Samson & Videgar  
Stone Rosen & Fuller, Vincent Romeo & Rodriguez  
Warren Carlson & Moore

**Boulder County Bar Association  
Professionalism Committee  
On-Call Schedule**

June 3	Steve Meyrich	303.440.8238
June 10	Helen Stone	303.442.0802
June 17	Curt Rautenstrauss	303.666.8576
June 24	Lee Strickler	303.443.6690

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real estate and personal injury.

## DOMAIN NAME ARBITRATION *(continued from page 3)*

A UDRP complaint must allege three basic elements in order to establish a prima facie case for transfer or cancellation of a domain name: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the registrant has no rights or legitimate interests in respect of the domain name; and (iii) the domain name was registered and is being used in bad faith.<sup>12</sup> The UDRP and associated Rules provide guidance for demonstrating and rebutting each element; for example, the UDRP provides that bad faith may be shown with proof that the domain name was registered primarily for the purpose of transferring the domain name registration to the owner of the trademark for consideration in excess of out-of-pocket costs associated with the domain name.<sup>13</sup> In addition, although no formal system of precedent binds UDRP panels, a wealth of published panel decisions is available to help prepare persuasive arguments based on similar facts presented in past complaints.<sup>14</sup> WIPO has even

compiled a useful overview which compiles and cites panel decisions with respect to common fact patterns that arise in connection with each of the UDRP Policy's required elements.<sup>15</sup>

In the event that the Complainant has proven the three UDRP elements to the satisfaction of the panel, the decision will direct the relevant Provider to transfer the domain name to the Complainant (or, in unusual cases, cancel the domain name); if not, the complaint will be dismissed. Notably, the panel cannot award monetary damages, injunctions, or any relief other than transfer or cancellation of the offending domain name.<sup>16</sup>

### 3. How Does the UDRP Interact With Court Action?

The UDRP does not prevent a trademark owner or registrant from filing suit in a court of competent jurisdiction, either before, during or after a UDRP proceeding has been initiated.<sup>17</sup> In fact, one requirement for

initiating a UDRP complaint is that the Complainant must agree to submit to jurisdiction in either the location of the principal office of the applicable registrar (provided that the registrant has also, by virtue of its registration agreement, submitted to such jurisdiction as well) or the location of the registrant as reflected in the registrar's WHOIS database, in order to ensure that there is a suitable jurisdiction available for judicial resolution of disputes not settled by the UDRP proceeding.<sup>18</sup> Once a decision directing transfer of a domain name has been issued and the parties notified, the applicable registrar is directed by the UDRP to wait ten business days before implementing the decision in order to give the registrant time to file a new complaint in court and seek reconsideration of the issues underlying the decision.<sup>19</sup> Courts typically review the issues previously resolved in a UDRP proceeding de novo and do not assign precedential or persuasive authority to UDRP panel decisions.<sup>20</sup> However, relatively few cases decided under the UDRP are subsequently challenged in court, making it the end of the matter in many cases.<sup>21</sup>

### 4. Conclusion

The UDRP represents an important and increasingly popular tool for attorneys representing trademark and service mark owners. While not a replacement for more formal judicial action, it can represent a valuable initial step when a client wishes to "test the waters" to see if an infringement claim based on a domain name will stick, or when the primary goal of the client is simply to stop the registrant from using an infringing domain name rather than

*(continued on page 10)*



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## PRESIDENT'S PAGE *(continued from page 5)*

Helen are just two examples of the talented and generous group of professionals we have in our local bar association.

The other memorable event that I attended this year was the Past President's Dinner. Most of you are probably unaware that our bar hosts a dinner every year for the past presidents of the Boulder County Bar Association. The bar decided it was too expensive to give us each our own library, so it puts on the dinner instead. The dinner is hosted by the current president, which this year was me.

There is no agenda or business that takes place at the dinner, it is purely a social function. I knew a fair number of faces at the dinner, many who I was surprised to see, not knowing they had served as the bar president.

The majority of the individuals in attendance have been practicing law for more than twenty years, and some, many more. The collective knowledge that was present was amazing. While listening to the old war stories being shared, I realized that many of individuals in the room helped shape much of the law that is argued and litigated today.

The conversations that night made it evident that these individuals were not only great lawyers, but exceptional people. They are caring, hard-working, ethical, humble, and kind. Nearly everyone present made a point to congratulate me on my term as president and inquire as to how I was doing. The dinner was an unexpectedly enjoyable and educational experience and I am very much looking forward to next year's.

Being a lawyer, you cannot help but to be aware of the less than stellar reputation of our profession. However, after this past year, it is difficult for me to reconcile our profession's reputation with the caliber of attorneys we have practicing in our community.

When talking about the quality of people in our organization, I would be remiss if I did not mention the other board members and staff at the Bar. I have been very fortunate to work with a terrific board. We are a very diverse group of lawyers who work well together and have a lot of fun doing so. However, there is no one who I am more grateful to than our executive director, Christine Hylbert. Christine does a phenomenal job of making sure our organization runs smoothly while performing an impressive number of duties and always with a smile. Additionally,

Sarah Flinn started this past November as Christine's executive assistant and has made an extremely positive addition to our bar staff.

The Boulder County Bar Association is a great organization that has been serving our profession and community for over one hundred years. Getting involved with the bar is a great way to grow your practice, become a better lawyer, and to give a little back to others. If you have not been actively involved in the bar association, I encourage you to consider increasing your participation. There are many ways to get involved. The bar is currently looking for individuals who are interested in co-chairing any one of our eighteen sections for next year. In addition, we are always in need of individuals to put on CLE's, be a mentor, or volunteer at any of our functions. If you would like to get more involved, please contact our offices.

I have gained so much during my time on the board and as president. I believe I have grown not only professionally but also personally. The bar association has been an integral part of my career thus far, and I am grateful for all the opportunities and experience it has provided me. It has been an enjoyable privilege to serve.

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**Jim Christoph, JD**



## DOMAIN NAME ARBITRATION (continued from page 4)

seeking damages.

*Justin C. Konrad is a partner at Hutchinson Black and Cook, LLC. Justin's practice includes representation of individuals, emerging companies and established entities in the areas of business and corporate law, entertainment law, and intellectual property.*

1. For example, the domain name icloud.com reportedly sold from an online storage firm to Apple, Inc. in 2011 for \$4.5 million. [http://news.cnet.com/8301-13579\\_3-20068165-37.html](http://news.cnet.com/8301-13579_3-20068165-37.html) (last visited May 9, 2013).
2. See 15 U.S.C. 1125(d)(1)(A)
3. See <http://www.icann.org/en/about/welcome> (last visited May 7, 2013).
4. See <http://www.icann.org/registrar-reports/accredited-list.html> (last visited May 9, 2013).
5. See ICANN General Information at <http://www.icann.org/en/help/dndr/udrp> (last visited May 9, 2013).
6. A "WHOIS" interface (pronounced "who is") is a simple method for querying databases that store information about the registered owners of domain names and other internet resources. Based only on the domain name, the WHOIS interface can reveal the registrar, creation date, most recent update to registration, and other information.
7. See the UDRP (adopted effective October 24, 1999) at <http://www.icann.org/en/help/dndr/udrp/policy> (last visited May 6, 2013) (the "Policy")

- and the UDRP Rules (adopted effective October 30, 2009) at <http://www.icann.org/en/help/dndr/udrp/rules> (last visited May 9, 2013) (the "Rules").
8. See ICANN List of Approved Dispute Resolution Providers at <http://www.icann.org/en/help/dndr/udrp/providers>; The Uniform Domain Name Dispute Resolution Policy and WIPO at
  9. See WIPO Schedule of Fees Under the UDRP at <http://www.wipo.int/amc/en/domains/fees/index.html> (last visited May 9, 2013).
  10. Under the UDRP and Rules, the panel does have authority to request additional information from the parties or even to require an in-person hearing, but a survey of reported panel decisions indicates that invocation of such authority is extremely rare.
  11. See Rules at §15(b).
  12. See Policy at §4(a).
  13. See Policy at §4(b).
  14. See ICAAN directory of published proceedings at <http://www.icann.org/en/help/dndr/udrp/proceedings> (last visited May 9, 2013), and WIPO search tool for published decisions at <http://www.wipo.int/amc/en/domains/search/index.html> (last visited May 9, 2013).
  15. See WIPO Overview 2.0 at <http://www.wipo.int/amc/en/domains/search/overview2.0/index.html> (last visited May 9, 2013).
  16. See Policy at §4(i).
  17. See Policy at §§4(k) and 5 (providing that all disputes may be brought through any court, arbitration or other available forum); Rules at §18 (providing that the panel may elect to suspend, terminate or proceed to decision in a proceeding if court proceedings are initiated prior to or during a UDRP administrative proceeding).

18. See Policy at §4(k) and Rules at §§1 and 3(b)(xiii).
19. See Policy at §4(k).
20. See 4 McCarthy on Trademarks and Unfair Competition § 25:74.75 (4th ed).
21. <http://www.wipo.int/amc/en/domains/challenged> (last visited May 6, 2013).



Supporter of the Boulder County  
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**Amanda Sessa**

Home Loan Consultant

NMLS #257356 | LMB #100018251

**John Sessa**

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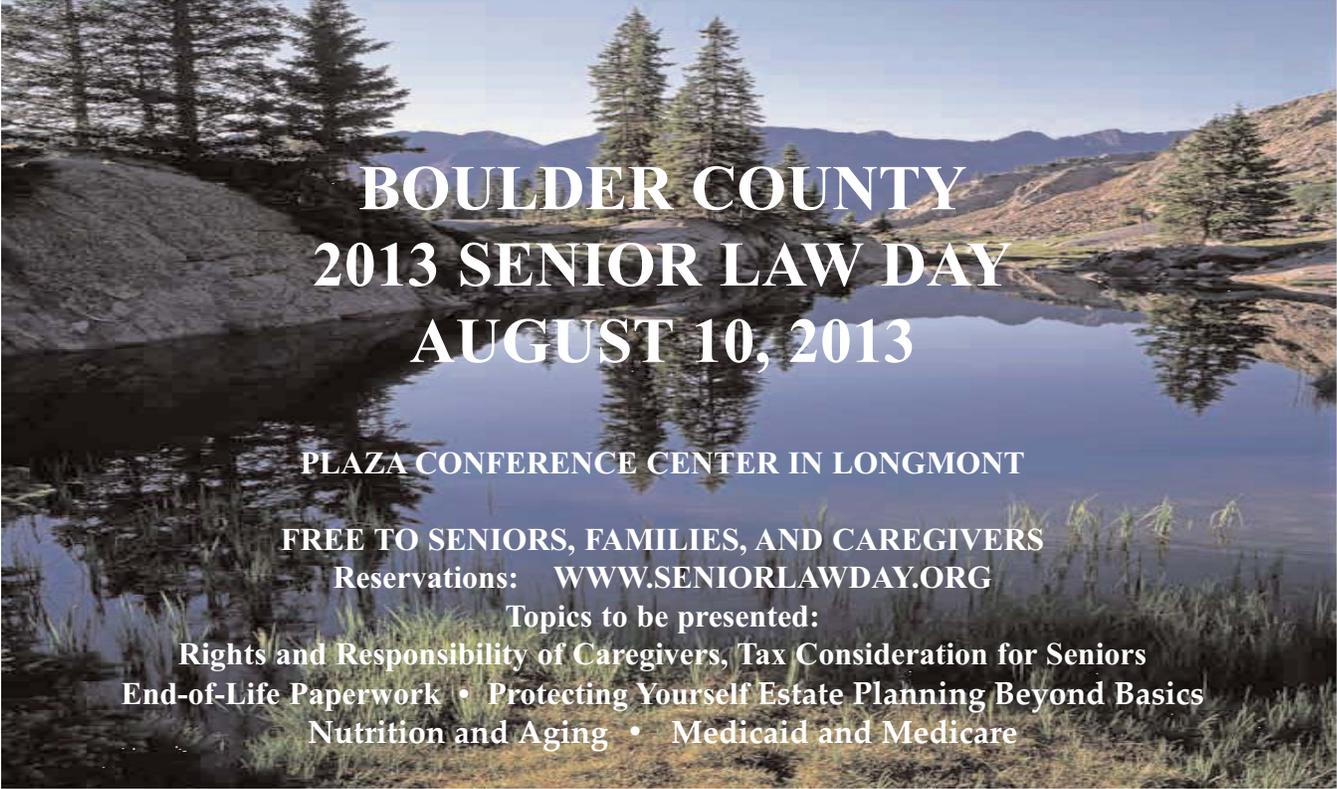
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