

CIRA POLICIES, RULES, AND PROCEDURES

CIRA Domain Name Dispute Resolution Policy Version 1.2

PARAGRAPH 1 – INTRODUCTION

1.1 Purpose. The purpose of this CIRA Dispute Resolution Policy (the “**Policy**”) is to provide a forum in which cases of bad faith registration of domain names registered in the dot-ca country code top level domain name registry operated by CIRA (the “**Registry**”) can be dealt with relatively inexpensively and quickly.

1.2 Scope. The Policy sets forth the terms and conditions for resolution by arbitration of a dispute between a person (the “**Registrant**”) who has obtained the registration of a domain name in the Registry (the “**Registration**”) and any other person (other than CIRA or a CIRA certified registrar (a “**Registrar**”) acting in its capacity as Registrar) concerning the registration of the domain name. For the purposes of this Policy, “**domain name**” means the domain name excluding the “dot-ca” suffix and the suffixes associated with all third and fourth level domain names accepted for registration by CIRA.

1.3 Rules. A dispute resolution proceeding initiated under the Policy (a “**Proceeding**”) is also subject to the CIRA Dispute Resolution Rules (the “**Resolution Rules**”) (currently available at http://www.cira.ca/en/cat_Dpr.html).

1.4 Eligible Complainants. The person initiating a Proceeding (the “**Complainant**”) must, at the time of submitting a complaint (the “**Complaint**”), satisfy the Canadian Presence Requirements for Registrants (the “**CPR**”) (currently available at http://www.cira.ca/en/cat_Registration.html) in respect of the domain name that is the subject of the Proceeding unless the Complaint relates to a trade-mark registered in the Canadian Intellectual Property Office (“**CIPO**”) and the Complainant is the owner of the trade-mark.

1.5 Dispute Resolution Service Provider. All Proceedings will be administered by a dispute resolution service provider approved by CIRA (the “**Provider**”).

1.6 Role of CIRA. CIRA will not participate in any way in any Proceeding other than as expressly provided in the Policy and the Resolution Rules.

1.7 Alternative Proceedings. The availability of a Proceeding pursuant to the Policy will not prevent either the Registrant or the Complainant from submitting a dispute between them to a judicial or administrative proceeding, arbitration, mediation or any other procedure at any time for independent resolution. However, unless otherwise agreed among the Complainant, the Registrant and the Provider, neither the Complainant

nor the Registrant will take any action to cause or permit the provisions of any foreign or domestic legislation relating to arbitration of disputes to apply to the conduct of any Proceeding.

1.8 Amendments. CIRA reserves the right to amend the Policy at any time. Any amended Policy will become effective thirty (30) calendar days after the amended Policy is posted on CIRA's website. The version of the Policy in effect at the time a Proceeding is initiated will apply to the Proceeding.

1.9 Commitments by Complainant. By initiating a Proceeding, the Complainant:

- (a) agrees that the Complainant will be bound by the provisions of the Policy and the Resolution Rules; and
- (b) represents and warrants to CIRA and the Registrant that: (i) the Complainant satisfies the CPR at the time of submitting the Complaint or the Complaint relates to a trade-mark registered in **CIPO** and the Complainant is the owner of the trade-mark; and (ii) if CIRA transfers the Registration that is the subject of the Proceeding to the Complainant or a nominee of the Complainant, at the time of transfer, the Complainant, or nominee, will satisfy the CPR in respect of the domain name that is subject of the Proceeding.

PARAGRAPH 2 - COMPLAINT

2.1 Initiation of Proceeding. A Proceeding is initiated by the submission of a Complaint by a Complainant with a Provider in accordance with the Resolution Rules.

2.2 Administration of Proceeding. The Provider will administer the Proceeding in accordance with the Policy and the Resolution Rules.

2.3 Fees. The fees charged by a Provider in connection with a Proceeding are set out in the Resolution Rules.

2.4 Restriction on Registration Transactions. Upon the receipt of notice by CIRA from a Provider of the submission of a Complaint to the Provider, unless otherwise permitted by the Policy, CIRA will not allow the Registration that is the subject of the Complaint to be cancelled, transferred to, or merged with another person, and the Registration will be so marked in CIRA's records.

2.5 Permitted Transactions. CIRA may suspend, cancel or modify the Registration that is the subject of a Complaint in accordance with the terms of the agreement between the Registrant and CIRA concerning the Registration (the "**Registrant Agreement**"). After the date on which CIRA receives one of the communications or documents listed below, CIRA will delete the reference to the Proceeding in CIRA's records and CIRA may allow the Registration to be cancelled, transferred to, or merged with another person:

- (a) notice from the Provider that the Proceeding is concluded or terminated;
- (b) appropriate written or electronic instructions from the Registrant's Registrar to transfer the Registration to the Complainant;
- (c) an original copy of an agreement executed by both the Registrant and the Complainant settling the Complaint; or
- (d) a certified copy of an order, ruling, judgment or decision of a court, tribunal, board, administrative body or commission in Canada or an arbitrator disposing of the Complaint.

CIRA will have the right but not the obligation to take any steps to verify the validity of the communication or document. If CIRA receives and accepts any of the above noted communications, CIRA will notify the Provider upon the execution of the cancellation, transfer, or merge.

2.6 Extension of Time. Upon the receipt of notice by CIRA from a Provider of the submission of a Complaint to the Provider, all deadlines relating to a Registration that is the subject of the Complaint including, without limitation, the obligation to renew a Registration, but excluding any deadlines that are provided for in the Policy or the Resolution Rules, will be suspended while the Proceeding is pending. The suspension will automatically cease when the Provider gives notice to the Registrant, the Complainant and CIRA of the decision on the Complaint or CIRA notifies the Registrant and the Complainant that CIRA has taken all the steps it intends to take under paragraph 2.5. The Registrant will have ninety (90) days after the date the notice is given to meet the suspended deadline(s.)

PARAGRAPH 3 - BASIS FOR COMPLAINT

3.1 Applicable Disputes. A Registrant must submit to a Proceeding if a Complainant asserts in a Complaint submitted in compliance with the Policy and the Resolution Rules that:

- (a) the Registrant's dot-ca domain name is Confusingly Similar to a Mark in which the Complainant had Rights prior to the date of registration of the domain name and continues to have such Rights;
- (b) the Registrant has no legitimate interest in the domain name as described in paragraph 3.6; and
- (c) the Registrant has registered the domain name in bad faith as described in paragraph 3.7.

For the purposes of this Policy, the date of registration of a domain name is the date on which the domain name was first registered in the Registry or the predecessor registry operated by the University of British Columbia.

3.2 Mark. A “**Mark**” is:

- (a) a trade-mark, including the word elements of a design mark, or a trade name that has been used in Canada by a person, or the person’s predecessor in title, for the purpose of distinguishing the wares, services or business of that person or predecessor or a licensor of that person or predecessor from the wares, services or business of another person;
- (b) a certification mark, including the word elements of a design mark, that has been used in Canada by a person or the person’s predecessor in title, for the purpose of distinguishing wares or services that are of a defined standard;
- (c) a trade-mark, including the word elements of a design mark, that is registered in CIPO; or
- (d) the alphanumeric and punctuation elements of any badge, crest, emblem or mark in respect of which the Registrar of Trade-marks has given public notice of adoption and use pursuant to paragraph 9(1)(n) of the *Trade-marks Act* (Canada).

3.3 Rights. A person has “**Rights**” in a Mark if:

- (a) in the case of paragraphs 3.2 (a) and 3.2(b), the Mark has been used in Canada by that person, that person’s predecessor in title or a licensor of that person or predecessor;
- (b) in the case of paragraph 3.2(c), the Mark is registered in CIPO in the name of that person, that person’s predecessor in title or a licensor of that person; or
- (c) in the case of paragraph 3.2(d), public notice of adoption and use was given at the request of that person.

3.4 “Confusingly Similar”. A domain name is “**Confusingly Similar**” to a Mark if the domain name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark.

3.5 Use. A Mark is deemed to be in “**use**” or “**used**” in association with:

- (a) wares: (i) if, at the time of the transfer of the property in or possession of the wares in the normal course of trade, the Mark is marked on the wares themselves or on the packages in which they are distributed or the Mark is in any other manner so associated with the wares that notice of the association is then given to the person to whom the property or possession is transferred; or (ii) at the time the wares are exported from Canada, if the Mark was marked in Canada on the wares or on the packages in which they are contained and the wares or packages are still marked when exported;

- (b) services, if the Mark is used or displayed in the performance or advertising of those services;
- (c) a business, if the Mark is displayed in the operating, advertising or promoting of the business; or
- (d) a non-commercial activity, if the Mark is displayed in the carrying out, promoting or advertising of the non-commercial activity.

3.6 Legitimate Interests. The Registrant has a legitimate interest in a domain name if, and only if, before the receipt by the Registrant of notice from or on behalf of the Complainant that a Complaint was submitted:

- (a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;
- (b) the Registrant used the domain name in Canada in good faith in association with any wares, services or business and the domain name was clearly descriptive in Canada in the English or French language of: (i) the character or quality of the wares, services or business; (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or (iii) the place of origin of the wares, services or business;
- (c) the Registrant used the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language;
- (d) the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;
- (e) the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or
- (f) the domain name was the geographical name of the location of the Registrant's non-commercial activity or place of business.

In paragraphs 3.6 (b), (c), and (d) "use" by the Registrants includes, but is not limited to, use to identify a web site.

3.7 Registration in Bad Faith. For the purposes of paragraph 3.1(c), a Registrant will be considered to have registered a domain name in bad faith if, and only if:

- (a) the Registrant registered the domain name, or acquired the Registration, primarily for the purpose of selling, renting, licensing or otherwise transferring the Registration to the Complainant, or the Complainant's licensor or licensee of the Mark, or to a competitor of the Complainant or the licensee or licensor for

valuable consideration in excess of the Registrant's actual costs in registering the domain name, or acquiring the Registration;

- (b) the Registrant registered the domain name or acquired the Registration in order to prevent the Complainant, or the Complainant's licensor or licensee of the Mark, from registering the Mark as a domain name, provided that the Registrant, alone or in concert with one or more additional persons has engaged in a pattern of registering domain names in order to prevent persons who have Rights in Marks from registering the Marks as domain names; or
- (c) the Registrant registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of the Complainant, or the Complainant's licensor or licensee of the Mark, who is a competitor of the Registrant.

PARAGRAPH 4 - DECISION AND REMEDIES

4.1 Onus. To succeed in the Proceeding, the Complainant must prove, on a balance of probabilities, that:

- (a) the Registrant's dot-ca domain name is Confusingly Similar to a Mark in which the Complainant had Rights prior to the date of registration of the domain name and continues to have such Rights; and
- (b) the Registrant has registered the domain name in bad faith as described in paragraph 3.7;

and the Complainant must provide some evidence that:

- (c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.6.

Even if the Complainant proves (a) and (b) and provides some evidence of (c), the Registrant will succeed in the Proceeding if the Registrant proves, on a balance of probabilities, that the Registrant has a legitimate interest in the domain name as described in paragraph 3.6.

4.2 Decision and Amendment to a Decision. The panel appointed to decide the Proceeding (the "**Panel**") will consider all the evidence presented in the Proceeding and will render its decision in accordance with the Policy and the Resolution Rules. The Panel may amend a decision pursuant to the Resolution Rules. The Panel shall be wholly responsible for the accuracy of the decision, the *corrigendum*, and any references therein. CIRA is not responsible for the decision and, if applicable, the *corrigendum*, and CIRA will not make any amendments to the decision.

4.3 Remedies. If the Panel decides in favour of the Complainant, the Panel will decide whether the Registration should be cancelled or transferred to the Complainant or

in the case where the Complainant does not satisfy the CPR in respect of the domain name that is subject of the Proceeding, a nominee of the Complainant that satisfies the CPR in respect of the domain name that is subject of the Proceeding (the “**Nominee**”).

4.4 Notice and Publication of Decision or *Corrigendum*. The Provider shall notify the Complainant, the Registrant, the Registrant's Registrar and CIRA of the Panel's decision or, if applicable, the *corrigendum* pursuant to the Rules. CIRA will, in accordance with the Rules, publish each decision in a Proceeding in full on CIRA's website.

4.5 Implementation of Decision. If a Panel decides in a Proceeding by way of its decision that a Registration is to be canceled or transferred, and CIRA is satisfied that the Complainant, or Nominee, then satisfies the CPR in respect of the domain name that is subject of the Proceeding, CIRA will implement the decision as soon as practicable but no sooner than sixty (60) days after the date on which CIRA is notified by the Provider that the Complainant, the Registrant, the Registrant’s Registrar have been notified by the Provider of the Panel’s decision. If the Panel decides that the Registration should be transferred, CIRA is not required to effect the transfer until the Complainant or Nominee, enters into a Registrant Agreement with CIRA.

4.6 Bad Faith of Complainant. If the Registrant is successful, and the Registrant proves, on a balance of probabilities, that the Complaint was commenced by the Complainant for the purpose of attempting, unfairly and without colour of right, to cancel or obtain a transfer of any Registration which is the subject of the Proceeding, then the Panel may order the Complainant to pay to the Provider in trust for the Registrant an amount of up to five thousand dollars (\$5000) to defray the costs incurred by the Registrant in preparing for, and filing material in the Proceeding. The Complainant will be ineligible to file another Complaint in respect of any Registration with any Provider until the amount owing is paid in full to the Provider.

PARAGRAPH 5 - LIMITATION OF LIABILITY

5.1 Limitation on Liability. In no event will CIRA, the Registrant’s Registrar, any Provider or their respective directors, officers, members, employees, agents or representatives, or any member or members of a Panel, be liable to a Registrant, a Registrant’s Registrar, a Complainant or any other person for any loss, damages or expense including, without limitation, any special, indirect, incidental, exemplary, punitive or consequential damages, or economic loss or damages resulting from loss of use, lost business revenue, lost profits or third party damages arising from or in any way connected with:

- (a) the application of the Policy or the Resolution Rules by any of them;
- (b) a decision or *corrigendum* rendered by a Panel in a Proceeding;

- (c) CIRA's compliance with any order, ruling, decision, *corrigendum*, or judgment made by a Panel in a Proceeding or by any court, tribunal, board, administrative body, commission or arbitrator; or
- (d) any action taken or not taken by CIRA, the Registrant's Registrar, a Provider or a Panel or a member of a Panel in consequence of the Resolution Rules or this Policy, including without limitation paragraph 5.1(a), 5.1(b) or 5.1(c).

5.2 Exception to Limitation. In no event is the limitation of liability set out in paragraph 5.1 intended to limit the liability of the Provider for the Provider's gross negligence or willful misconduct or a member of a Panel for the member's gross negligence or willful misconduct.