

IN THE MATTER OF A COMPLAINT PURSUANT TO THE CANADIAN
INTERNET REGISTRATION AUTHORITY DOMAIN NAME DISPUTE
RESOLUTION POLICY

Domain Name: fluorgroup.ca
Complainant: Fluor Corporation
Registrant: Fluor Curling
Registrar: Go Daddy Domains Canada, Inc.
Panelist: Sharon Groom
Service Provider: Resolution Canada, Inc.

DECISION

A. The Parties

1. The Complainant, Fluor Corporation is a corporation located in the United States.
2. The Registrant name for the domain name is Fluor Curling, with the organization listed as Fluorgroup, located in Calgary, Alberta.

B. The Domain Name and Registrar

3. The disputed domain name is fluorgroup.ca. The Registrar for this domain name is Go Daddy Domains Canada, Inc. The disputed domain name was registered on January 27, 2015.

C. Procedural History

4. This is a proceeding under the Canadian Internet Registration Authority (“CIRA”) *Domain Name Dispute Resolution Policy* (Version 1.3) (the “Policy”) and the CIRA *Domain Name Dispute Resolution Rules* (Version 1.4) (the “Rules”).
5. The history of the proceeding as provided by the dispute resolution provider, Resolution Canada, Inc., is that the Complainant filed a complaint against the Registrant with Resolution Canada, Inc. requesting that the current registration of the domain name fluorgroup.ca be transferred to Fluor Corporation. The Complaint was dated March 2, 2015.

6. Resolution Canada, Inc. served notice of the Complaint on the Registrant as required by paragraph 4.3 of the Rules. Service of the Complaint was made by email on March 13, 2015.

7. The Registrant was given twenty days to file a response but no response was filed.

8. The Complainant has elected to proceed before a single panelist.

D. Panelist Impartiality and Independence

9. As required by paragraph 7 of the Rules, the panelist has submitted to Resolution Canada, Inc. a declaration of impartiality and independence in relation to this dispute.

E. Canadian Presence Requirements

10. The Complainant, Fluor Corporation, is a U.S. company. However it owns various Canadian trade-mark registrations for the mark FLUOR, the earliest of which is registration no. 188,799 which is included in the disputed domain name. As such it meets the Canadian Presence Requirements under paragraph 2(q) of the CIRA *Canadian Presence Requirements for Registrants*, Version 1.3.

F. Factual Background

11. The Complainant began in 1912 as a construction company and is now a publically traded (NYSE) company employing 40,000 people across 6 continents in the areas of engineering, procurement, construction, maintenance and project management. In 2013 Fluor Corporation earned revenues of \$27.4 billion. Fluor Corporation has also been executing work in Canada for over 60 years.

12. It operates numerous websites including fluor.com and fluor.ca and owns trade-mark registrations for the mark FLUOR around the world, including Canada.

13. The disputed domain name fluorgroup.ca was registered on January 27, 2015. Currently it resolves to an “under construction” website, but the Complainant has submitted evidence supporting its statement that the domain name “was used to impersonate Complainant, sending emails to potential job seekers from a “FLUOR CORPORATION <hrd@fluorgroup.ca” email address and requesting that they provide personal information...”. The emails sent from the “FLUOR CORPORATION <hrd@fluorgroup.ca” email address also used the name of the actual HR Manager of the Complainant. The email attached an interview form which included the Complainant’s name, the logo FLUOR® and the address of the Complainant’s Canadian operation.

G. CIRA Domain Name Dispute Resolution Policy

14. Under paragraph 4.1 of the Policy it requires that the Complainant establish 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 registered the domain name in bad faith as described in paragraph 3.5; and

(c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4.

15. The Complainant must establish points (a) and (b) above on the balance of probabilities and for point (c) it must provide some evidence that the Registrant has no legitimate interest in the domain name.

H. Analysis

Confusingly Similar

16. The Complainant has to show that it has rights in a mark (and continues to have these rights) that is confusingly similar to the domain name and that these rights pre-date the date of registration of the disputed domain name.

17. The date of registration of the domain name is January 27, 2015, therefore this is the relevant date for this analysis.

18. The Complainant first registered its mark FLUOR in Canada in 1973 and has provided evidence demonstrating its use, as well as substantial sales figures indicating that the mark is still in use in Canada. The mark FLUOR therefore satisfies the definition of a "mark" in subparagraph 3.2(c) of the Policy.

19. The Complainant has "rights" in this mark as it is the party that has registered it in Canada. These rights predate the date of registration of the disputed domain name as the mark was registered in 1973, which is prior to the relevant date of January 27, 2015.

20. The Complainant has therefore established rights in the mark FLUOR since prior to 2015, and has demonstrated that it continues to have these rights. The question then becomes whether this mark is confusingly similar to the domain name fluorgroup.ca. The test for this is whether the domain name in question so nearly resembles the mark in appearance, sound or in the ideas suggested by it as to be likely to be mistaken for the mark.

21. In this case the domain name consists of the entire mark FLUOR, with the addition of the generic word GROUP. The addition of a generic term does nothing to distinguish the domain name from the Complainant's registered trade-mark and therefore I find that the domain name does so nearly resemble the mark in appearance, sound and in the idea suggested by it so as to be confusingly similar to the Complainant's mark. Support for this decision can be found in the case *Zokool Technologies, Inc. v. Seiko Epson Corporation*, 0123 (CIRA Mar. 4 2009) where the panelist found that the addition of descriptive terms such as "ink", "inkjet" and "cartridge" did

not distinguish the domain names from the EPSON trade-marks. Therefore the Complainant has established, on a balance of probabilities, the facts required to support the requirements of paragraph 4.1(a) of the Policy.

Bad Faith

22. The Complainant has to show, on the balance of probabilities, that the domain name was registered in bad faith. Paragraph 3.5 deals with the grounds which constitute bad faith and it must be noted that these are not exhaustive; it is open to the panel to find other grounds which lead to a conclusion of bad faith conduct.

23. The Complainant argues that the Registrant's conduct constitutes bad faith under paragraph 3.5(d) as the Registrant used the disputed domain name to confuse the public into thinking that the Registrant was the Complainant. The Registrant created a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Registrant's website and emails, for commercial gain.

24. The evidence presented by the Complainant supports this finding as the Registrant was clearly using the disputed domain name to hold itself out as the Complainant, and sending emails to potential employees using the domain name, the Complainant's marks and the name of the Complainant's actual employee. This is clearly an example of bad faith conduct.

25. I therefore find that the Complainant has demonstrated, on the balance of probabilities, that the Registrant has registered this domain name for commercial gain, to attract users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Registrant's website, and that this use therefore constitutes evidence of bad faith under paragraph 3.5(d).

Legitimate Interest

26. In order to succeed the Complainant has to provide some evidence that the Registrant does not have a legitimate interest in the domain name. The Registrant may counter this by proving, on the balance of probabilities, that it does have a legitimate interest as described in paragraph 3.4. Paragraph 3.4 lists six possible ways in which a Registrant may have a legitimate interest in a domain name, but the list is not exhaustive as it is said to be "without limitation". Therefore neither party is bound by only those criteria.

27. In addressing the subject of legitimate interest the Complainant points out that it owns registrations for the trade-mark FLUOR in Canada and in other countries and that through long use (the mark was registered in the United States in 1954) and significant revenues (which as stated earlier exceed \$27 billion) the mark has become well-known in many countries including Canada. The Complainant therefore asserts that the Registrant is likely to have known about the Complainant's mark, thus leading to the registration of the domain name. This is supported by the fact that the Registrant used the registration symbol ® next to the trade-mark FLUOR in its fake job application attached to the email using the disputed domain name. The Complainant has not licensed the Registrant to use this mark in Canada, therefore any use made by the Registrant

in connection with the Complainant's business is an infringement of the Complainant's trademark rights and thus not a legitimate interest. In addition, the Complainant has presented evidence that the Registrant has been using the domain name, and the Complainant's marks, to impersonate the Complainant to potential job applicants, which is further evidence of a lack of a legitimate interest. I therefore find that the Complainant has provided some evidence that the Registrant does not have a legitimate interest in the domain name.

28. The Registrant has not rebutted this evidence with any evidence of its own, therefore it has not shown, on the balance of probabilities, that it has a legitimate interest in the domain name. The fact that the Registrant's name, as listed in the Registrant's contact information, is "Fluor Curling" with the organization as "fluorgroup" does not prove that either of these names are the "legal name" of the Registrant (as referred to in paragraph 3.4(e)) or that either of these names is a name, surname or other reference by which the Registrant is commonly identified.

29. Therefore, I find that the Complainant has presented some evidence that the Registrant does not have a legitimate interest in the domain name, which has not been rebutted by the Registrant, and so the finding is that the Registrant has no legitimate interest.

I. Conclusion and Decision

30. In conclusion, I find that the Complainant has rights in the mark FLUOR which predate the registration of the domain name. I also find that the domain name is confusingly similar to the Complainant's mark, that the Registrant registered the domain name in bad faith and that the Registrant has no legitimate interest in the domain name.

31. I therefore order, pursuant to paragraph 4.3 of the Policy, that the registration of the domain name fluorgroup.ca be transferred to the Complainant, Fluor Corporation.

Dated May 1, 2015

A handwritten signature in black ink, appearing to read "Sharon Groom", written over a horizontal line.

Sharon Groom – Sole Panelist