

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

**Complainant:** Kijiji International Limited, Blanchardstown Corporate Park, Unit 6,  
Dublin, Ireland

**Complainant Counsel:** Eric Macramalla, Gowling Lafleur Henderson LLP, 160 Elgin  
Street, Suite 2600, Ottawa, Ontario, K1P 1C3

**Registrant:** Antonia Ojo, 1201 – 11871 Horseshoe Way, Richmond, British Columbia,  
V7A 5H5

**Registrars:** GoDaddy Domains Canada, Inc., 14455 N. Hayden Road, Suite 219,  
Scottsdale, Arizona, 85260, United States of America, and BareMetal.com Inc. 4255  
Shelbourne Street, Victoria, British Columbia, V8N 3G1

**Disputed Domain Names:** kijij.ca, kijigi.ca, kijijii.ca, kijijji.ca, kilili.ca,  
kingstonkijiji.ca, kjiji.ca and wwwkijiji.ca

**Panelist:** Paul W. Braunovan

**Service Provider:** Resolution Canada Inc.

**DECISION**

**The Parties**

1. The Complainant is Kijiji International Limited, Blanchardstown Corporate Park, Unit 6, Dublin, Ireland.
2. The Complainant is represented by Mr. Eric Macramalla, Gowling Lafleur Henderson LLP, 160 Elgin Street, Suite 2600, Ottawa, Ontario, K1P 1C3.
3. The Registrant is Antonia Ojo, 1201 – 11871 Horseshoe Way, Richmond, British Columbia, V7A 5H5.

**The Domain Names and Registrars**

4. There are eight disputed domain names in total: kijij.ca, kijigi.ca, kijijii.ca, kijijji.ca, kilili.ca, kingstonkijiji.ca, kjiji.ca and wwwkijiji.ca.
5. Due to the fact that there are eight disputed domain names, this dispute involves multiple Registrars. The Registrars with which the disputed domain names are registered are GoDaddy Domains Canada, Inc., 14455 N. Hayden Road, Suite 219, Scottsdale, Arizona, 85260, United States of America, and

BareMetal.com Inc. 4255 Shelbourne Street, Victoria, British Columbia, V8N 3G1.

### **Procedural History and Rules**

6. The Complainant commenced this 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 1.5) (“the Rules”) by a complaint dated December 11, 2015.
7. The service provider determined that the complaint was in administrative compliance with the Policy and the Rules and forwarded a copy of the complaint to the Registrant.
8. The Registrant did not file any reply to the complaint.
9. The Panel finds that it was properly constituted pursuant to the Policy and the Rules, and that all of the requirements under the Policy and the Rules for the commencement and maintenance of this proceeding have been met.

### **Canadian Presence Requirements**

10. The Panel finds that the Complainant is an Eligible Complainant (see paragraph 1.4 of the Policy) and has met the Canadian Presence Requirements by virtue of the fact that the Complainant is the owner of the Canadian trademarks KIJJI (TMA707,133), registered February 12, 2008, and KIJJI & Design (TMA723,434), registered September 11, 2008 under the *Trademarks Act*, R.S.C. 1985, c. T-13, as amended).

### **The Complaint**

11. Pursuant to paragraph 4.1 of the Policy, to succeed in this proceeding the Complainant must prove, on a balance of probabilities, that:
  - (i) 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
  - (ii) the Registrant has registered the domain name in bad faith as described in paragraph 3.5 of the Policy.
12. The Complainant must also provide some evidence that the Registrant has no legitimate interest in the domain name as described in paragraph 3.4 of the Policy. Even if the Complainant proves the first two elements of the test as set out in paragraph 11, above, and provides some evidence that the Registrant has no legitimate interest in the domain name, 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.

**Are the Registrant’s dot-ca domain names Confusingly Similar to a Mark in which the Complainant had rights prior to the date of registration of the domain names and continues to have such rights?**

13. The terms “Confusingly Similar” and “Mark” are both specifically defined in the Policy.
14. As noted above, the Complainant owns Canadian trademark registrations for the trademark KIJJI (TMA707,133), registered February 12, 2008, and KIJJI & Design (TMA723,434), registered September 11, 2008.
15. The Panel finds that the Complainant has rights in a Mark as that term is defined in paragraph 3.2(c) of the Policy, which defines a Mark as including “a trademark, including the word elements of a design mark that is registered in CIPO”.
16. The Panel finds that the Complainant has rights in its registered trademark, namely, KIJJI, and that the Complainant continues to have such rights since the evidence suggests that the Complainant’s registered trademark is still validly registered with the Canadian Intellectual Property Office.
17. The Complainant, however, is required to show that it has rights in a Mark “prior to the date of registration of the domain name”. Since the present dispute involves eight disputed domain names, we have to consider the date of registration of each of the disputed domain names. These dates are set out in the table below:

<b>Disputed Domain Name</b>	<b>Date of Registration of Disputed Domain Name</b>
wwwkijiji.ca	January 10, 2007
kjiji.ca	April 18, 2007
kingstonkijiji.ca	January 13, 2008
kijij.ca	April 27, 2008
kijijji.ca	April 27, 2008
kijijiji.ca	April 27, 2008
kilili.ca	November 28, 2008
kijigi.ca	November 28, 2008

18. The Panel takes note of the fact that the Complainant’s earliest registered Canadian trademark – KIJJI (TMA707,133) was registered on February 12, 2008. This date would be prior to the last five disputed domain names registered by the Registrant, but subsequent to the first three disputed domain

names registered by the Registrant. As a result, the Panel will perform its review of the dispute domain names in two separate groups: those registered after February 12, 2008 and those registered before February 12, 2008.

### **Disputed Domain Names Registered After February 12, 2008**

19. As per the table at paragraph 17, there are five disputed domain names that were registered AFTER the Complainant had registered the mark KIJJI with the Canadian Intellectual Property Office on February 12, 2008. Those five disputed domain names are: kiiij.ca, kijijii.ca, kijiiji.ca, kilili.ca, and kijigi.ca.
20. A disputed domain name will be held to be 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.
21. In the Panel's view, all five of the disputed domain names are Confusingly Similar to the Complainant's trademark KIJJI. The disputed domain name kiiij.ca is simply a minor variation of the Complainant's mark KIJJI, merely reversing the order of the "JII" to "IJJ" (KIIIJ vs. KIJJI). The disputed domain name kijijii.ca is simply a minor variation of the Complainant's mark KIJJI, merely adding an extra "I" after each "J" (KIIJII vs. KIJJI). The disputed domain name kijiiji.ca is simply a minor variation of the Complainant's mark KIJJI, merely adding an extra "I" each time the letter "J" appears (KIJJII vs. KIJJI). The disputed domain name kilili.ca is simply a minor variation of the Complainant's mark KIJJI, where the J's have been replaced with L's (KILILI vs. KIJJI). The disputed domain name kijigi.ca is simply a minor variation of the Complainant's mark KIJJI, where the last "J" has been replaced with a "G" (KIJIGI vs. KIJJI). In my view, all five of these disputed domain names are Confusingly Similar to the Complainant's mark KIJJI.
22. The registration of the Complainant's KIJJI mark (February 12, 2008) is prior to the registration of the disputed domain names (which all occurred later in 2008). As noted above, the Complainant's evidence suggests that the Complainant continues to have such rights in the KIJJI mark.
23. The Panel is of the view that the Complainant has met its burden in establishing that the five disputed domain names referred to above are all Confusingly Similar to a Mark in which the Complainant had rights prior to the date of registration of the disputed domain names and continues to have such rights.

### **Disputed Domain Names Registered Before February 12, 2008**

24. As per the table at paragraph 17, there are three disputed domain names that were registered BEFORE the Complainant had registered the mark KIJJI with the Canadian Intellectual Property Office on February 12, 2008. Those three disputed domain names are: wwwkijiji.ca, kijiji.ca, and kingstonkijiji.ca.
25. The Complainant's KIJJI trademark was registered **after** the date of registration of the disputed domain names and as such the Complainant cannot rely upon its registration of the KIJJI trademark to meet its onus. The Panel is of the view that the Complainant has the burden of proving that it has rights prior to date of registration of the domain names, and if the Complainant is relying on a **registered** trademark pursuant to paragraph 3.2(c) of the Policy, then in our view the Complainant's trademark must have been registered prior to the registration of the domain names. We do not think that the Complainant should be able to rely on a trademark registration to establish its rights, yet reference some other date other than the registration date of that trademark for the purpose of assessing priority as against the date of registration of the domain names.
26. In light of the above findings, in our view the Complainant cannot rely solely on its Canadian trademark registration for KIJJI, since the Complainant did not have rights under paragraph 3.2(c) until February 12, 2008, which is subsequent to the dates of registration of the three disputed domain names that were registered before that date.
27. However, the Complainant has also asserted rights in the trademark KIJJI based on use of the mark in Canada. Paragraph 3.2(a) of the Policy states that a Mark is: "a trademark, 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". The Complainant asserts use of the KIJJI mark in Canada since at least as early as 2005. Since the dates of registration for the three disputed domain names referred to above are January 10, 2007 (wwwkijiji.ca), April 18, 2007 (kijiji.ca), and January 13, 2008 (kingstonkijiji.ca), the Panel will now review the Complainant's alleged evidence of use of the KIJJI trademark in Canada from 2005 to those respective domain name registration dates (ranging from January 10, 2007 to January 13, 2008).
28. The Complainant has made the following submissions and submitted the following evidence in support of its claim:
  - (i) The Complainant is the owner of the kijiji.ca domain name, which was registered on January 18, 2005 (paragraph 13 of complaint);

- (ii) Revenue and expenses for the years 2005 and 2006 were in excess of one million dollars (paragraph 14 of complaint);
  - (iii) Printouts from the kijiji.ca website from 2005 to 2006 (exhibit 3 of complaint).
29. Based on a review of all of the evidence filed, the Panel finds that the Complainant has rights in the trademark KIJJI as per the definition of Mark in paragraph 3.2(a) of the Policy. Most importantly, the evidence does include copies of the Complainant's website from 2005 and 2006 which prominently feature use of the KIJJI trademark. The evidence shows that in 2005 and 2006 the KIJJI website had launched in Calgary, Charlottetown, Edmonton, Halifax, Hamilton, Kitchener, London, Montreal, Ottawa, Quebec, Regina, Saint John, Saskatoon, St. Catharines, St. John's, Sudbury, Toronto, Vancouver, Victoria, Windsor and Winnipeg. The use of the KIJJI mark in Canada by the Complainant in 2005 and 2006 was quite extensive. For example, a printout from February 7, 2006 of the Kijiji Toronto classified listings show 4,706 listings in the "BUY AND SELL" category, and a further 1,296 listings in the "VEHICLES" category. In such circumstances, the Panel is of the view that the evidence supports the Complainant's position that that the KIJJI mark was used in Canada by the Complainant "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".
30. A disputed domain name will be held to be 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.
31. In the Panel's view, all three of the disputed domain names are Confusingly Similar to the Complainant's trademark KIJJI. The disputed domain name wwwkijiji.ca is simply the Complainant's mark KIJJI with the element WWW before it. WWW is a short form for WORLD WIDE WEB and would not help to distinguish the disputed domain name from the Complainant's trademark. The disputed domain name kijiji.ca is simply the Complainant's mark KIJJI without the first "i". The disputed domain name kingstonkijiji.ca is simply the entirety of the Complainant's mark KIJJI with the word KINGSTON before it. In my view, all three of these disputed domain names are Confusingly Similar to the Complainant's mark KIJJI.
32. The use of the Complainant's KIJJI mark (going back to 2005) is prior to the registration of the disputed domain names (which all occurred in 2007 or 2008). As noted above, the Complainant's evidence suggests that the Complainant continues to have such rights in the KIJJI mark.

33. The Panel is of the view that the Complainant has met its burden in establishing that the three disputed domain names referred to above are all Confusingly Similar to a Mark in which the Complainant had rights prior to the date of registration of the disputed domain names and continues to have such rights.

**Did the Registrant register the domain names in bad faith?**

34. Under paragraph 3.5 of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence that a Registrant has registered a domain name in bad faith:
- (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 of 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;
  - (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; or
  - (d) the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website or other on-line 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 or location or of a product or service on the Registrant's website or location.
35. The Complainant has alleged bad faith with respect to paragraph 3.5(b) and paragraph 3.5(d), as referenced above.

**Paragraph 3.5(b) Bad Faith**

36. The Complainant has raised an allegation of bad faith pursuant to paragraph 3.5(b) of the Policy. As noted above, paragraph 3.5(b) of the Policy states that bad faith will be found where 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.
37. The Panel finds that the Complainant has not established bad faith pursuant to paragraph 3.5(b) of the Policy, for the following reasons. The bad faith test under paragraph 3.5(b) is a two-part test:
- (i) The Registrant has to have "registered the domain name...in order to prevent the Complainant...from registering the Mark as a domain name", AND
  - (ii) The Registrant has to have "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".
38. In our view, the Registrant has not prevented the Complainant from registering the Mark as a domain name. The Complainant's mark is KIJJI and the registration of the eight disputed domain names does not prevent the Complainant from registering KIJJI as a domain name. In fact, the evidence shows that the Complainant has already registered KIJJI as a domain name (kijiji.ca).
39. At best, it could be said that the registration of the eight disputed domain names prevents the Complainant from registering those eight specific variations of its Mark as domain names. But that is not what the wording of paragraph 3.5(b) states. Paragraph 3.5(b) only refers to the Complainant being prevented from registering **the Mark** as a domain name, it does not refer to the circumstance of where the Complainant is prevented from registering **variations of the Mark** as a domain name, and therefore this category of bad faith cannot apply to such circumstances.
40. Even if paragraph 3.5(b) were to be interpreted in a manner such that the section applied to circumstances where the Complainant is prevented from registering **variations of the Mark** as a domain name, the Panel would also have to consider whether the Registrant registered the domain name for that purpose – not just whether that was the end result. Obviously, where the Registrant has registered these variations of the Mark as domain names, the Complainant would not subsequently be able to also register these same

variations of the Mark as domain names – since they would already have been taken by the Registrant. However, paragraph 3.5(b) requires the Panel to consider the **intentions** of the Registrant.

41. In the absence of any reply from the Registrant, the purpose of the Registrant registering the domain names has to be inferred from the complaint and the evidence. As a whole, the Complainant’s submissions appear to suggest that the Registrant registered (and used) the disputed domain names for financial gain:
- (i) “The use of the Domain Names puts the Registrant in a position to reap a financial benefit by way of referral fees” (paragraph 2 of the complaint);
  - (ii) “...the Registrant registered the disputed domain names in an attempt to attract, for commercial gain, Internet users to his websites by creating a likelihood of confusion with the Complainant as to source or sponsorship” (paragraph 5 of the complaint);
  - (iii) “The Registrant has either resolved the Domain Names to consumer survey websites or to pay-per-click websites, both of which put the Registrant in a position to reap a financial benefit” (paragraph 17 of the complaint);
  - (iv) “This use puts the Registrant in a position to reap a financial benefit by way of a referral fee” (paragraph 20 of the complaint);
  - (v) “The use of the disputed domain names puts the Registrant in a position to reap a financial benefit” (paragraph 21 of the complaint)
42. Although many of the submissions of the Complainant refer to the use of the domain names (rather than the registration of the domain names), the Panel believes that it is reasonable to infer the purpose of the Registrant registering the domain names based on the way in which the domain names are subsequently used. The Panel is of the view that the domain names were registered by the Registrant to generate traffic to the Registrant’s website, in order to make money from these websites through referral fees, pay-per-click or other such methods. We see no evidence on the record to support the allegation that the Registrant registered the disputed domain names in order to prevent the Complainant from engaging in the same domain name registrations (even if the wording of paragraph 3.5 would apply to variations of the Mark, which we do not believe that it does).
43. Under the circumstances, the Panel finds that the Complainant has **not** established the bad faith of the Registrant under paragraph 3.5(b).

#### **Paragraph 3.5(d) Bad Faith**

44. The Complainant has raised an allegation of bad faith pursuant to paragraph 3.5(d) of the Policy. As noted above, paragraph 3.5(d) of the Policy states that

bad faith will be found where the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website or other on-line 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 or location or of a product or service on the Registrant's website or location.

45. The Panel finds that the Complainant **has** established bad faith pursuant to paragraph 3.5(d) of the Policy, for the following reasons.
46. The Complainant has successfully established that the Registrant has intentionally attempt to attract Internet users to the Registrant's website. The Complainant has also successfully established that the purpose of the Registrant's attempts to generate traffic is for commercial gain. Finally, and most importantly, the Complainant has successfully established that the Registrant is generating this Internet traffic by creating a likelihood of confusion with the Complainant's mark.
47. The Panel has already established that the disputed domain names are Confusingly Similar to the Complainant's KIJJI mark. The Registrant has obviously registered a number of variations of the Complainant's KIJJI mark in the hope that a computer user looking for the KIJJI website at kijiji.ca will make an error in typing and will accidentally end up at one of the Registrant's websites. With the exception of kingstonkijiji.ca all of the disputed domain names are classic examples of typosquatting in the view of the Panel. For the kingstonkijiji.ca disputed domain name, the Panel is of the view that the Registrant is still creating a likelihood of confusion with the Complainant's KIJJI mark, given that the disputed domain name incorporates the entirety of the Complainant's mark. The Panel is of the view that the view that the Registrant has registered kingstonkijiji.ca in the hope that a computer user looking for Kingston, Ontario listings on the KIJJI website at kijiji.ca will try typing kingstonkijiji.ca and will end up at the Registrant's website.
48. Under the circumstances, the Panel finds that the Complainant **has** established the bad faith of the Registrant under paragraph 3.5(d).

**Does the Registrant have a legitimate interest in the disputed domain names?**

49. Paragraph 3.4 of the Policy provides a non-exhaustive list of various criteria that a panel is to consider in assessing legitimate interest. The Policy requires that the Complainant must provide some evidence that the Registrant has no legitimate interest in the domain name as described in paragraph 3.4. If the Complainant meets this burden, the Registrant will still succeed in the proceeding if it proves on a balance of probabilities that it has a legitimate interest in the disputed domain name.

50. Based on a review of the evidence and submissions, the Panel is of the view that the Complainant has met its initial burden of providing *some* evidence that the Registrant has no legitimate interest in the disputed domain names (as the term “legitimate interest” is described in paragraph 3.4). In particular, the Complainant has provided some evidence that the disputed domain names were not Marks that the Registrant used in good faith and that the Registrant had rights in the Marks. The Complainant has also met its burden in showing that the disputed domain names are not a clearly descriptive or generic name associated with the wares or services offered on the website, and that the Registrant did not use the disputed domain names in good faith in association with a non-commercial activity. Finally, the Complainant has met its burden in showing that the disputed domain names are not the legal name of the Registrant or some other name by which it was commonly identified, nor are the disputed domain names the geographic name or the location of the Registrant’s non-commercial activity or business.
51. As a result, the Panel finds that the Complainant has met its burden of showing *some* evidence that the Registrant had no legitimate interest in the disputed domain names under paragraph 3.4. The Panel is of the opinion that this finding is sufficient for the Complainant to meet its burden pursuant to paragraph 4.1(c) of the Policy.

**Burden shifts to Registrant to prove Legitimate Interest on a balance of probabilities**

52. Since the Complainant has met its burden pursuant to paragraph 4.1(c) of the Policy, the Registrant can only succeed in this proceeding if the Registrant proves, on a balance of probabilities, that the Registrant has a legitimate interest in the domain names. Since the Registrant has not filed a reply to the complaint, the Panel is of the opinion that it is unable to find, on a balance of probabilities, that the Registrant has a legitimate interest in the disputed domain names pursuant to paragraph 3.4 of the Policy.

**Summary of Findings**

53. The Panel has found that the Complainant has proven, on a balance of probabilities, that the disputed domain names are Confusingly Similar to a Mark in which the Complainant had rights (either by way of a trademark registration or by way of use in Canada). The Complainant has also established that its rights were prior to the date of registration of the domain names and that it continues to have such rights, and that the Registrant has registered the disputed domain names in bad faith as such term is described in paragraph 3.5 of the Policy. Further, the Panel finds that the Complainant has provided *some* evidence that the Registrant has no legitimate interest in the disputed domain names, and that the Registrant has failed to meet its burden

of proving, on a balance of probabilities, that it has a legitimate interest in the disputed domain names.

54. As a result of the above findings, the Panel orders that all eight disputed domain names (kijij.ca, kijigi.ca, kijijii.ca, kijijji.ca, kilili.ca, kingstonkijiji.ca, kiji.ca and wwwkijiji.ca) be transferred from the Registrant to the Complainant.

DATE: February 18, 2016

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