

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

Dispute Number: DCA-1786-CIRA
Domain Name: <hsbcdirect.ca>
Complainant: HSBC Group Management Services Limited
Registrant: Bradley Reed
Registrar: Go Daddy Domains Canada, Inc.
Panel: Robert John Rogers, Thomas Manson, Q.C. and The Honourable Neil Anthony Brown
QC (Chair).
Service Provider: British Columbia International Commercial Arbitration Centre

DECISION

OVERVIEW

1. This matter concerns a dispute between the Complainant and the Registrant regarding the registration of <hsbcdirect.ca> (“the disputed domain name”).
2. The British Columbia International Commercial Arbitration Centre (“BCICAC”) is a recognized service provider to the CIRA Domain Name Dispute Resolution Policy (“the Policy”) of the Canadian Internet Registration Authority (“CIRA”).
3. This is a proceeding under the CIRA Domain Name Dispute Resolution Policy (the “Policy”), in accordance with the CIRA Dispute Resolution Rules (the “Rules”).

THE PARTIES

4. The Complainant in this proceeding is HSBC Group Management Services Limited of 2910 Virtual Way, 4th Floor, Vancouver, BC V5M 0B2, Canada. (“the Complainant”).
5. The Registrant in this proceeding is Bradley Reed of 2144 Rene-Levesque Blvd Montreal, QC H3B 4W8, Canada (“the Registrant”).

REGISTRATION OF THE DISPUTED DOMAIN NAME

6. The disputed domain name was registered by the Registrant on May 1, 2015.

PROCEDURAL HISTORY

7. According to the information provided by the BCICAC:

- (a) The Complainant filed a Complaint with respect to the disputed domain name in accordance with the Policy on May 25, 2016.
- (b) The Complaint was reviewed and found to be administratively compliant. By letter and email dated May 27, 2016, the BCICAC as service provider confirmed compliance of the Complaint and commencement of the dispute resolution process on May 27, 2016.
- (c) The Complaint together with the annexes thereto was sent by BCICAC as service provider to the Registrant electronically by email on May 27, 2016 and delivered on that date; a successful mail delivery report was subsequently furnished, enabling the Panel to conclude that the Complaint and its schedules were duly delivered to the Registrant. By the same communication the Registrant was informed that it could file a Response in the proceeding on or before June 16, 2016.
- (d) The Registrant did not reply to that communication and did not provide a Response.
- (e) Under Rule 6.5 of the Rules the Complainant was entitled to elect to convert from a panel of three to a single arbitrator which it elected not to do, whereupon BCICAC proceeded to appoint a panel of three arbitrators.
- (f) On June 28, 2016, BCICAC appointed Robert John Rogers and Thomas Manson, Q.C. as panelists and The Honourable Neil Anthony Brown QC as Chair of the Panel. Each of the panelists has signed an Acceptance of Appointment as Arbitrator and Statement of Independence and Impartiality.
- (g) The Panel has reviewed all of the material submitted by the Complainant and is satisfied that the Complainant is an eligible Complainant under the Policy and the Rules.
- (h) In accordance with Rule 5.8, where, as here, no Response is submitted, the Panel shall decide the Proceeding on the basis of the Complaint.

FACTS

8. The facts set out below are taken from the Complaint (and related Exhibits).

The Complainant is a company incorporated in Canada with its principal place of business at 2910 Virtual Way, 4th Floor, Vancouver, BC V5M 0B2, Canada. The Complainant is a subsidiary of HSBC Holdings plc, one of the world's largest banking and financial services companies. It is also part of the group of companies known as the HSBC Group. Among other activities, the Complainant provides online banking services to its Canadian customers as well as information on HSBC Group products and company information via its website at <hsbc.ca>. In 2005 the Complainant and its predecessor in title, HSBC Holdings plc, launched "HSBC Direct", a telephone and online banking service, and operated a website for this service for its Canadian customers under the domain name <hsbcdirect.com/canada>. In the near future, one of the HSBC Group subsidiaries in the United States, HSBC USA, will begin utilizing and promoting HSBC Direct in the marketplace again in connection with its services.

From November 21, 2005, to approximately April 31(sic), 2015 HSBC Group and its predecessor in title, HSBC Holdings plc, and through its subsidiary HSBC Bank Canada, was the registrant of the disputed domain name. However, the registration expired prior to that on Nov 21, 2014 and the status of the domain went from "registered" to "auto-renew grace".

On May 1, 2015, the Registrant registered the disputed domain name.

HSBC Group and its predecessor in title, HSBC Holdings plc, have registered 42 trademarks with the Canadian Intellectual Property Office ("CIPO"), 29 of which include the term HSBC, including HSBC DIRECT (TMA652,447), HSBC (TMA455,477) and HSBC DIRECT & Hexagon Design (TMA652, 704) (hereinafter collectively referred to as "the HSBC Marks).

Prior to the registration by the Registrant of the disputed domain name, HSBC Group and its predecessor in title, HSBC Holdings plc, have extensively used the HSBC Marks in Canada through <hsbc.ca>, <hsbdirect.ca> and <hsbedirect.com/canada> in order to provide online banking services to its customers. The trademark HSBC was registered in CIPO on March 15, 1996, the trademark HSBC DIRECT was registered in CIPO on November 8, 2005, and HSBC DIRECT & Hexagon Design was registered as a trademark in CIPO on November 15, 2005, all of which occurred well before the registration of the disputed domain name by the Registrant on May 1, 2015.

CONTENTIONS OF THE PARTIES

A. POSITION OF THE COMPLAINANT

9. The Complainant submits as follows:

1. CANADIAN PRESENCE REQUIREMENTS

The Complainant satisfies the Canadian presence requirement of the Policy in view of the Complainant's registration of the HSBC marks in CIPO, evidence of which is adduced in Complainant's Exhibit 1-Canadian Registration of the HSBC marks.

2. THE REGISTRAR

The Registrar of record in respect of the disputed domain name registration is Go Daddy Domains Canada, Inc. The Complainant has adduced evidence to that effect (see the Complainant's Exhibit 5 to the Complaint for a copy of the Registry's WHOIS search results for the disputed domain name).

3. THE COMPLAINANT'S RELEVANT TRADEMARK RIGHTS

HSBC Group and its predecessor in title, HSBC Holdings plc, have registered 42 trademarks with CIPO, 29 of which include the term HSBC, including HSBC DIRECT (TMA652,447), HSBC (TMA455,477) and HSBC DIRECT & Hexagon Design (TMA652, 704).->

Prior to the registration by the Registrant of the disputed domain name, HSBC Group and its predecessor in title, HSBC Holdings plc, have extensively used the HSBC Marks in Canada through <hsbc.ca>, <hsbdirect.ca> and <hsbedirect.com/canada> in order to provide online

banking services to its customers. HSBC was registered as a trademark in Canada on March 15, 1996, HSBC DIRECT was registered in Canada as a trademark on November 8, 2005, HSBC DIRECT & Hexagon Design was registered as a trademark in Canada on November 15, 2005, all of which occurred well before the registration of the disputed domain name by the Registrant in 2015.

The Complainant submits Exhibit 1--Canadian Registration of the HSBC Marks.

4. THE GROUNDS ON WHICH THE COMPLAINT IS MADE

(a) The Complainant

The Complainant is a company incorporated in Canada with its principal place of business at 2910 Virtual Way, 4th Floor, Vancouver, BC V5M 0B2, Canada. The Complainant is a subsidiary of HSBC Holdings plc, one of the world's largest banking and financial services companies. Among other activities, it provides online banking services to its Canadian customers as well as information on HSBC Group products and company information via its website at <hsbc.ca>. In 2005 the Complainant and its predecessor in title, HSBC Holdings plc, launched "HSBC Direct", a telephone and online banking service, and operated a website for this service for its Canadian customers under the domain name <hsbcdirect.com/canada>. In the near future, one of the HSBC Group subsidiaries in the United States, HSBC USA, will begin utilizing and promoting "HSBC Direct" in the marketplace again in connection with its services.

From November 21, 2005, to approximately April 31 (sic), 2015 HSBC Group and its predecessor in title, HSBC Holdings plc, through its subsidiary HSBC Bank Canada, was the registrant of the disputed domain name. The Registrant registered the disputed domain name on the following day, namely May 1, 2015.

The Complainant and associate companies in the HSBC Group registered 42 trademarks with CIPO, 29 of which include the term HSBC, including HSBC DIRECT (TMA652,447), HSBC (TMA455,477) and HSBC DIRECT & Hexagon Design (TMA652, 704).

Prior to the registration by the Registrant of the disputed domain name, the Complainant and associate companies in the HSBC Group extensively used the HSBC Marks in Canada through <hsbc.ca>, <hsbdirect.ca> and <hsbcdirect.com/canada> in order to provide online banking services to its customers. The trademark HSBC was registered in CIPO on March 15, 1996, the trademark HSBC DIRECT was registered in CIPO as a trademark on November 8, 2005 and the trademark HSBC DIRECT & Hexagon Design was registered as a trademark in CIPO on November 15, 2005, all of which occurred well before the registration of the disputed domain name by the Registrant on May 1, 2015.

(b) The Registrant.

The Registrant of the disputed domain name is identified in the letters sent by the BCICAC, namely letters of May 27, 2016 and June 16, 2016.

(c) Use of the Domain Name

As stated previously, the Registrant registered the disputed domain name on May 1, 2015. It is alleged that, being aware of the Complainant and its business, the HSBC Marks and the operation of the Complainant's business under the marks, the Registrant:

- registered the disputed domain name in the Canadian extension ".ca" to prevent the Complainant from reflecting its trademark in that extension,
- set up a website to give the false impression that it was the Complainant or that its website was affiliated or associated with or sponsored by the Complainant, and
- through that website offered some services in direct competition with services provided by the HSBC Group including the provision of money and debt advice.

It is further alleged that in doing so, the Registrant stood to gain financially from the perceived affiliation or association with or sponsorship by the HSBC Group.

(d) The disputed domain name is Confusingly Similar to a trademark in which the Complainant had rights prior to the date of the registration of the disputed domain name.

The Registrant's <hsbcdirect.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 (Policy, Paragraph 4.1(a)).

The Complainant must prove, on a balance of probabilities that the 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.

Paragraph 3.3 of the Policy provides that a domain name is "Confusingly Similar" to a trade mark if the domain name so nearly resembles the trade mark "*in appearance, sound or the ideas*" suggested by the trade mark, as to be likely to be mistaken for the trade mark.

The disputed Domain Name is confusingly similar to the HSBC Marks and in particular the HSBC DIRECT mark to which it is identical, excluding the .ca suffix which should be disregarded for this purpose.

The disputed domain name is therefore confusingly similar to the HSBC Marks.

(e) The Registrant has no legitimate rights or interests in the disputed domain name as none of the criteria set out in Sections 3.4 (a) to (f) of the Policy are met.

The disputed domain name is not used for the purpose of distinguishing the wares, services or business of the Registrant.

The disputed domain name is not registered with CIPO as a trademark or a certification mark of any party other than the Complainant and is not advertised under Section 9 of the Trade-marks Act. As such the disputed domain name does not constitute a mark in which the Registrant has rights as defined under the Policy and the Registrant cannot claim the benefit of Section 3.4(a) of the Policy.

The Disputed Domain Name is not clearly descriptive of wares, or services or business, as to quality or character, the condition of or the persons employed in production, performance or operation of same as the case may be, or the place of origin.

Nor is the Disputed Domain Name understood in Canada to be the generic name for any ware, service or business in any language. As such, neither Section 3.4(b) or (c) is carried out in association with the Disputed Domain Name. The Disputed Website is clearly operated by the Registrant for commercial purposes only. Consequently, Section 3.4(d) is not applicable. [Reference Exhibits 4 and 5 -- screenshots of pages from the Disputed Website]

The legal name or name, surname or other reference by which to identify the Registrant was not known to the Complainant because the identity of the owner is cloaked pursuant to CIRA's Privacy Policy. Therefore, the Registrant must be an individual, and it is reasonable to assume that no individual has a legal name or surname that would be identical or even remotely similar to "HSBC Direct" As such, Section 3.4(e) of the Policy is not applicable.

Finally, the Disputed Domain Name does not contain any geographical terms or names of any physical location. As such, Section 3.4(f) of the Policy is not applicable.

(f) The Disputed Domain Name was registered in bad faith.

Bad Faith Registration

The Disputed Domain Name has been registered in bad faith, as defined under section 3.5 of the Policy. Although the initial burden to prove (on the balance of probabilities) bad faith in registering the Disputed Domain Name lies on the Complainant, such obligation does not need to be more than to make out a prima facie case. See *Canadian Broadcasting Corporation/Societe Radio-Canada v. William Quon*, CIRA Dispute Number 00006 (April 8, 2003), pp. 13-14. The surrounding circumstances may be considered in assessing whether the Disputed Domain Name has been registered in bad faith.

Surrounding Circumstances

The pertinent surrounding circumstances include the following:

The Disputed Domain Name resolves to a website (the "Disputed Website") that prominently features the HSBC Marks, specifically HSBC and HSBC DIRECT, in its logo and its website and email address, all without the consent of the Complainant. In addition, there is an unauthorized reference to HSBC as a "former sponsor" and the Complainant's trade-marks HSBC and the Hexagon Design appear on the home page. [see Exhibit 6 — screenshots of hsbcdirect.ca home page] The Disputed Website also promotes itself as a "money savings organization" by providing money advice and debt advice, which a reasonable user would assume is within the realm of the banking and financial services provided by HSBC Group and its related entities [see Exhibit 7 — screenshots of <hsbcdirect.ca> "About Us" page].

Based on the above circumstances, it is submitted that certain of the criteria as set out in Section 3.5 of the Policy with respect to proof of the Disputed Domain Name being registered in bad faith are met.

Section 3.5(d)

The disputed domain name was registered as an intentional attempt to attract, for commercial gain, Internet users to the Disputed Website by creating a likelihood of confusion with the

HSBC Marks as to the source, sponsorship, affiliation, or endorsement of the Disputed Website, or of a product or service on the Disputed Website.

As submitted earlier, the HSBC Marks are very well known throughout the world, including in Canada, as being affiliated with the Complainant, and HSBC Holdings plc and its subsidiaries including the Complainant, in association with banking and financial services. Furthermore, the HSBC Group has owned and operated websites using the HSBC Marks since 2000. As such, users looking for an HSBC website will typically navigate to a website owned and operated by HSBC Group by doing a basic Internet search using any of the HSBC Marks as the search term. HSBC DIRECT is a trade-mark used in association with an online and telephone banking service which is offered by HSBC Group, and users can search for HSBC Direct and access websites owned and operated by HSBC Group which reference the HSBC Direct service and utilize the HSBC DIRECT trademark.

It is clear that the intention of the Registrant with respect to the disputed domain name is to falsely lead users into believing that the Disputed Website is somehow affiliated or associated with or sponsored by HSBC Group, through the use of the HSBC Marks in the website URL and throughout the Disputed Website. By alleging that HSBC Group is a former sponsor, the Disputed Website implies that HSBC Group has endorsed the Disputed Website and the services which it provides, all of which is false. The use of the moniker "former sponsor" does nothing to materially dissipate the overall impression. Furthermore, some of the services provided on the Disputed Website are in direct competition with services provided by HSBC Group, including the provision of money and debt advice. In doing so, the Registrant stands to gain financially from the perceived affiliation or association with or sponsorship by HSBC Group, as there is a strong likelihood that users seeking information on or financial assistance from HSBC Group will be misled into either believing that the Disputed Website is owned and operated by HSBC Group, or else will assume that the Disputed Website has received the support and endorsement of HSBC Group for its products and services.

In light of the foregoing, it is submitted that the disputed domain name was registered in bad faith under the provisions of Section 3.5 (d) of the Policy.

B. POSITION OF THE REGISTRANT

10. The Registrant did not file a Response in this proceeding.

DISCUSSION OF THE ISSUES

1. CANADIAN PRESENCE REQUIREMENTS

11. Article 2 of CIRA's Canadian Presence Requirement for Registrants provides a list of conditions allowing entities to hold the registration of a .CA domain name. The Complainant submits that it comes within sub-paragraph secondly (q) which provides for:

"A Person which does not meet any of the foregoing conditions [conditions (a) to (p)], but which is the owner of a trade-mark which is the subject of a registration under the Trade-marks Act (Canada) R.S.C. 1985, c.T-13 as amended from time to time, but in

, this case such permission is limited to an application to register a .ca domain name consisting of or including the exact word component of that registered trade-mark".

The Complainant clearly qualifies under that provision as it is the owner of several such trademarks more particularly set out above and which are registered with CIPO.

The Complainant has adduced evidence to that effect (See Exhibit 1 to the Complaint) which the Panel accepts. The Complainant has therefore satisfied CIRA's Canadian Presence Requirement for Registrants in respect of the disputed domain name.

2. REGISTRATION OF THE DISPUTED DOMAIN NAME

From November 21, 2005, to November 21, 2014 HSBC Group and its predecessor in title, HSBC Holdings plc, through its subsidiary HSBC Bank Canada, was the registrant of the disputed domain name. From November 21, 2014 to April 30, 2015, the registration status of the disputed domain name was "auto-renew grace". The Registrant registered the disputed domain name on May 1, 2015. The meaning of "auto-renew grace" status was never explained, but evidently, "auto-renew grace" was a provisional status, which did not protect registration in the event that another party registered the domain name; as that is apparently what happened here.

3. GENERAL

The purpose of the Policy, as stated in paragraph 1.1, is to provide a forum in which cases of bad faith registration of .CA domain names can be dealt with relatively inexpensively and quickly.

In accordance with paragraph 4.1 of the Policy, 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"¹ to a Mark² 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 3.5;

and the Complainant must provide some evidence that:

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

The Panel will now deal with each of the three elements.

CONFUSINGLY SIMILAR

¹ The expression "Confusingly Similar" is described in paragraph 3.3 of the Policy.

² The word "Mark" is described in paragraph 3.2 of the Policy.

12. As the Complainant submits, it is required to prove that the disputed 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. The Complainant must therefore show that it has Rights to a mark, that it had those Rights before the domain name was registered, that it still has them and that the disputed domain name is confusingly similar to the HSBC Marks. The Complainant submits that it can meet those requirements.

13. The first question that arises is whether the Complainant has a trademark on which it can rely for the purpose of this proceeding. The Complainant has adduced evidence which the Panel accepts, to show that it is the owner of series of trademarks collectively referred to as the HSBC Marks in Canada. The details of those trademarks and the Complainant's Rights to those marks are verified and set out in Exhibit 1 to the Complaint.

14. The next question that arises is whether the HSBC marks are "Mark(s)" in which the Complainant had Rights prior to the date of registration of the Domain Name and continues to have such Rights. The Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant had Rights prior to the date of registration of the domain name and continues to have such Rights, namely the HSBC Marks. The HSBC Marks are clearly marks as defined by Paragraph 3.2 of the Policy and come within the meaning of Paragraph 3.2 (a), as the unchallenged evidence shows that they are registered in CIPO.

15. The evidence is that the HSBC mark was registered as a trademark in CIPO on March 15, 1996, the HSBC DIRECT mark was registered in CIPO as a trademark on November 8, 2005 and the HSBC DIRECT & Hexagon Design mark was registered as a trademark in CIPO on November 15, 2005 all of which occurred well before the registration of the disputed domain name by the Registrant on May 1, 2015. The evidence is also that the Complainant still has those Rights acquired by registration of the marks.

16. The panel therefore finds that the HSBC marks are marks in which the Complainant had Rights before the disputed domain name was registered and in which it still has Rights.

17. Pursuant to paragraph 3.3 of the Policy, a domain name will be found to be confusingly similar with a mark if it so nearly resembles the same in appearance, sound or in the ideas suggested so as to be likely to be mistaken for the mark. The test to be applied when considering "confusingly similar" is one of first impression and imperfect recollection and the "dot-ca" suffix should be excluded from consideration (see *Coca-Cola Ltd. v. Amos B. Hennan*, BCICAC Case No. 00014). When those principles are applied, the disputed domain name is confusingly similar to the Complainant's HSBC Marks.

18. In particular and applying those principles to the disputed domain name and the respective marks:

- ✓(a) the disputed domain name consists of the entirety of the HSBC mark and the generic word "direct" which the evidence shows is the name adopted and widely used by the Complainant as a business and service of the Complainant; the domain name therefore so nearly resembles the HSBC mark in appearance, sound or in the ideas suggested as to be likely to be mistaken by internet users for the HSBC mark;

(b) as the domain name includes the HSBC DIRECT mark and nothing else of relevance, it is identical to the HSBC DIRECT mark and it therefore so nearly resembles the HSBC DIRECT mark in appearance, sound or in the ideas suggested as to be likely to be mistaken by internet users for the mark;

(c) as the domain name includes the entirety of the HSBC DIRECT mark, it also so nearly resembles the HSBC DIRECT & HEXAGON mark in appearance, sound or in the ideas suggested as to be likely to be mistaken by internet users for the HSBC DIRECT & HEXAGON mark.

19. Accordingly, the disputed domain name is confusingly similar to each of the HSBC Marks as it so nearly resembles all of the marks in appearance, sound and in the ideas suggested as to be likely to be mistaken for each of the HSBC Marks within the meaning of Paragraph 3.3 of the Policy.

20. The Panel therefore concludes that the disputed domain name is confusingly similar to the marks in which the Complainant had Rights prior to the registration date of the disputed domain name and in which it continues to have such Rights.

The Complainant has thus established the first of the three elements that it must prove.

NO LEGITIMATE INTEREST IN THE DOMAIN NAME

21. Paragraph 4.1 of the Policy provides that the Complainant must provide some evidence that "...(c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4." The Panel finds that the Complainant has provided some evidence that the Registrant has no legitimate interest in the disputed domain name. The Complainant has provided the following evidence to that effect which in each case the Panel accepts.

(a) **Paragraph 3.4(a)**

The Complainant has shown that the disputed domain name was not a mark, that the Registrant used any such mark in good faith or that the Registrant had Rights in any such mark;

(b) **Paragraph 3.4(b)**

The Complainant has shown by the evidence that the Registrant did not register the domain name in good faith in association with any wares, services or business and that the domain name was clearly descriptive 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) **Paragraph 3.4(c)**

The Complainant has shown by the evidence that the Registrant did not register the domain name in Canada in good faith in association with any wares, services or business and that the domain name was understood in Canada to be the generic name thereof in any language;

(d) **Paragraph 3.4(d)**

The Complainant has shown by the evidence that the Registrant did not use the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;

(e) Paragraph 3.4(c)

The Complainant has shown by the evidence that the domain name did not comprise the legal name of the Registrant or that it was a name, surname or other reference by which the Registrant was commonly identified;

(f) Paragraph 3.4(f)

The Complainant has shown by the evidence that the disputed domain name is not the geographical name of the location of the Registrant's non-commercial activity or place of business.

22. As the Registrant has not filed a response to the Complaint, the only evidence before the Panel is that of the Complainant.

23. As the only evidence before it is that the Registrant has no legitimate interest in the disputed domain name, the Panel finds that the Registrant does not have a legitimate interest in the disputed domain name and that it is therefore removed from the application of Paragraph 3.4 of the Policy.

The Panel also finds that the Complainant has complied with Paragraph 4 (c) of the Policy and has provided evidence that the Registrant has no legitimate interest in the domain name as described in paragraph 3.4 of the Policy.

The Complainant has thus established the second of the three elements that it must prove.

REGISTRATION IN BAD FAITH

24. The Panel now turns to consider whether the disputed domain name was registered in bad faith. As the Registrant has elected not to file a Response, the Panel finds on the evidence submitted by the Complainant that the Registrant registered the disputed domain name in bad faith. Specifically, the Panel finds that the Registrant has registered and used the disputed domain name in bad faith as described in Paragraph 3.5 of the Policy.

In that regard, the Panel agrees with the submission of the Complainant that, consistent with the decision in *Canadian Broadcasting Corporation? Societes Radio-Vanada v. William Quon*, CIRA Dispute Number 00006 (April 8, 2003), pp.13-14, surrounding circumstances may be considered in assessing whether the disputed domain name has been registered in bad faith and that those surrounding circumstances in the present case include the following.

Intentionally Attract Traffic For Commercial Gain - Paragraph 3.5(d)

25. The Complainant relies on paragraph 3.5(d) of the Policy and submits that the Registrant intentionally attempted to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the HSBC marks as to the source, sponsorship, affiliation or endorsement of the contents of Registrant's website. The Panel accepts that submission.

As the Complainant submits and the unchallenged evidence shows, the disputed domain name resolves to a website that prominently features the HSBC Marks, specifically HSBC and HSBC DIRECT, in its logo and its website and email address, all without the consent of the Complainant.

There is also an unauthorized reference on the website to HSBC as a "former sponsor" and the Complainant's trade-marks HSBC and the Hexagon Design appear on the home page as shown by the Complainant's Exhibit 6 — screenshots of <hsbcdirect.ca> home page. The website also promotes itself as a "money savings organization" by providing money advice and debt advice, as is shown by the Complainant's Exhibit 7 — screenshots of <hsbcdirect.ca> "About Us" page].

This evidence submitted by the Complainant and not rebutted by the Registrant clearly shows that the Registrant embarked upon a deliberate attempt to pretend either that it actually was the Complainant and that the website was the Complainant's website or that it was endorsed or approved of in some way by the Complainant, which of course was deceptive and untrue.

Those circumstances bring the case squarely within the meaning of Section 3.5(d) of the Policy as they show an intention to create confusion as to the true nature of the website.

The only inference that can be drawn from the evidence is that the disputed domain name was registered as an intentional attempt to attract, for commercial gain, internet users to the website by creating a likelihood of confusion with the HSBC Marks as to the source, sponsorship, affiliation, or endorsement of the Registrant's website, or of a product or service on the website within the meaning of **Paragraph 3.5(d)**.

26. Although the Complainant relies mainly on Paragraph 3.5 (d), the Panel also finds that the Registrant has, within the meaning of Paragraph 3.5 (c), registered the domain name primarily for the purpose of disrupting the business of the Complainant, being a competitor of the Registrant. It is clear from the evidence submitted by the Complainant that the intention of the Registrant was to damage the Complainant's business by diverting potential clients away from the Complainant's website to its own site. The Registrant has therefore in practice set itself up as a competitor of the Complainant and has attempted to prevent business going to Complainant's site and to divert it to itself, no doubt for financial reward.

Paragraph 3.5(c) has therefore also been satisfied.

27. Apart from the specific provisions of the Policy referred to and having regard to the manner in which the disputed domain name was registered, using the HSBC Marks and the lack of any explanation from the Registrant for its apparently deceptive conduct, the Panel finds that the disputed domain name was registered in bad faith within the generally accepted meaning of that expression.

28. The Complainant has verified the above matters by detailed evidence and the Panel accepts the whole of that evidence. The Registrant has filed no response to the Complaint and, accordingly, the Registrant has provided no evidence on the issue of bad faith that can rebut any of the submissions and evidence of the Complainant.

The Complainant has therefore established the third of the three elements that it must prove.

CONCLUSION

29. The Panel finds that the constituent elements of the Policy have been made out, that the Complainant is entitled to the relief it seeks. The Panel will therefore order that the disputed domain name be transferred to the Complainant.

DECISION

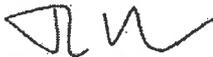
30. The Panel finds that the Complainant has satisfied the requirements of Paragraph 4.1 of the Policy and that it is entitled to the remedy it seeks.

ORDER

31. The Panel directs that the registration of the Domain Name <hsbcdirect.ca> be transferred from the Registrant to the Complainant.

Date: July 8, 2016

Robert John Rogers
Panelist



Thomas Manson, Q.C.
Panelist



The Honourable Neil Anthony Brown QC
Chair