

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

Domain Name: <priceline.ca>
Complainant: priceline.com Incorporated
Registrant: Supriyo Malaker
Registrar: Sibername Internet and Software Technologies Incorporated
Panelists: Patrick D. Flaherty, John Lee, and David Wotherspoon
Service Provider: British Columbia International Commercial Arbitration Centre

DECISION

Parties

The Complainant is priceline.com Incorporated, a publicly traded company based in the United States, the principal office of which is located at 800 Connecticut Avenue, Norwalk, Connecticut, United States of America.

Domain Name and Registrar

The domain name that is the subject of this proceeding is <priceline.ca> (the “Domain Name”). The Registrar of the Domain Name is Sibername Internet and Software Technologies Incorporated, of Ottawa, Ontario, Canada.

Procedural History

This is a proceeding under the Canadian Internet Registration Authority (CIRA) Domain Name Dispute Resolution Policy (Version 1.1 - Effective Date: December 4, 2003) (the “Policy”) and the CIRA Domain Name Dispute Resolution Rules (Version 1.2 - Effective Date: December 4, 2003) (the “Rules”). Both the Policy and the Rules were posted on the CIRA website on November 4, 2003.

The history of this proceeding, according to the information provided by the dispute resolution service provider, British Columbia International Commercial Arbitration Centre (BCICAC), is as follows:

- (a) On September 13, 2005, the Complainant filed a complaint regarding the Domain Name with BCICAC.

- (b) On September 13, 2005, having determined that the complaint was in administrative compliance with the requirements of the Policy and the Rules, BCICAC delivered a copy of the complaint to the Registrant.
- (c) The Registrant requested an extension of time in which to deliver its Response and an extension was granted by the BCICAC to October 22, 2005, pursuant to Rule 5.4.
- (d) The Registrant delivered its Response, in compliance with the Policy and Rules, to the BCICAC on October 24, 2005.
- (e) The Registrant's Response was reviewed by the BCICAC and forwarded to the Complainant on October 26, 2005.
- (f) Both the complaint and the response were filed in English, which is the language of this proceeding in accordance with paragraph 10.1 of the Rules.
- (g) On October 26, 2005, in accordance with paragraph 6 of the Rules, the BCICAC appointed a three-person Panel comprised of Messrs. Patrick D. Flaherty, John Lee, and Jacques A. Léger, Q.C. Mr. Flaherty was named as Chair of the Panel.
- (h) On November 1, 2005, Mr. Léger, Q.C. recused himself from the Panel, though there was no issue before this Panel as to his ability to act.
- (i) On November 2, 2005, the BCICAC appointed David Wotherspoon as the replacement for Mr. Léger, Q.C.
- (j) Each of the Panelists have delivered to the BCICAC the required Statement of Impartiality and Independence, as required by paragraph 7 of the Rules.
- (k) Absent exceptional circumstances, the Panel was required to deliver its decision on or before November 23, 2005.

The Panel finds that it was properly constituted and appointed in accordance with the Policy and the Rules. Based upon the information provided by the BCICAC, the Panel finds that all technical requirements for the commencement and maintenance of this proceeding have been met. The Complainant was represented by legal counsel throughout this proceeding. The Respondent was not represented by legal counsel.

Background

The Panel proceeds on the basis of the following facts set forth below as established in the evidence submitted by the parties.

The Complainant is a publicly traded company based in the United States and runs a well-known Internet-based travel service from which consumers can purchase airline tickets, hotel rooms, rental cars, vacation packages, and cruises. These services are offered on a website operated by the Complainant at the URL <priceline.com>. The Complainant registered the domain name

<priceline.com> on June 19, 1997. In the first month that the Complainant's website was launched, it was ranked as one of the world's top 10 most-visited commerce websites, based on data reported by RelevantKnowledge Inc. The Complainant's 2004 gross travel bookings were \$1.68 billion dollars.

The Complainant also owns and operates Priceline.co.uk, a London-based online travel service and is an investor in an Asian travel service, also called Priceline.com, that operates in Hong Kong and Singapore.

The Complainant is the owner of nearly one hundred international trade-mark registrations for "PRICELINE" and "PRICELINE.COM".

The complaint is based on the Complainant's trade-mark "PRICELINE" registered in Canada under No. TMA560,731, on April 24, 2002. The Complainant also has a trade mark for "PRICELINE.COM", registered in Canada under No. 635,744, dated March 21, 2005.

The Registrant registered the disputed Domain Name on January 8, 2003. The website was not in use for a period of at least ten months from the date of registration. The Registrant is currently using the Domain Name in connection with a website that provides numerous links to other websites in areas such as travel, insurance, finance and health. The Registrant's website provides links to certain of the complainant's competitors in the online travel industry, such as <expedia.ca> and <tripadvisor.ca>.

By email dated May 7, 2003, the Complainant first notified the Registrant that its use of the Domain Name constituted infringement of the Complainant's trade-marks and indicated that the Registrant must immediately transfer the domain name to the Complainant. The Complainant sent subsequent communications to the Registrant on January 8th, October 6th, and October 18, 2004. The Registrant responded to the Complainant by letters dated June 18th, 2003 and November 10, 2004, denying any wrongdoing.

Positions of the Parties

The Complainant seeks an order requiring the Domain Name to be transferred to it on the following bases:

- (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.
 - (i) The Complainant is the owner of the trade-mark "PRICELINE" registered in the Canadian Intellectual Property Office (CIPO).
 - (ii) This mark was obtained by the Complainant in advance of the registration of the Domain Name.
 - (iii) The Domain Name is identical to the registered and well-known "PRICELINE" mark.

- (iv) Accordingly, the Domain Name is confusingly similar to the Complainant's "PRICELINE" mark.
 - (v) The Domain Name's confusing similarity with the Complainant's mark is also demonstrated by the fact that CIPO rejected the Registrant's June 2003 application to register the trade-marks "PRICELINE" and "PRICELINE.CA" on the grounds that these proposed marks were confusing with the Complainant's pre-existing marks.
- (b) The Registrant has no legitimate interest in the Domain Name.
- (i) The Registrant has not satisfied any of the requirements set forth in paragraph 3.6 of the Policy.
 - (ii) The Registrant has never been licensed or authorized to use the "PRICELINE" mark and has no right or legitimate interest to use it as a domain name.
 - (iii) The Registrant must have been aware, at the time of registering the Domain Name, of the Complainant's prior trade mark rights in "PRICELINE" in view of the fact that that the mark was well-known internationally. Further, "PRICELINE" is a coined word, which is inherently distinctive; it is neither descriptive nor generic
 - (iv) The Registrant's interest in the Domain Name is to attract users to his Website through consumer confusion with the Complainant's mark and to reap the benefits of the goodwill attached to the Complainant's mark by obtaining advertising revenue for posting links to third-party websites, including websites that offer services in competition to the Complainant. Other than directing visitors to the disputed Domain Name to third party websites, the Registrant does not provide any legitimate products or services.
 - (v) The Domain Name was inoperative until at least as late as November 29, 2003, eleven months after the date of registration, suggesting that there is no legitimate business connected to the Domain Name.
- (c) The Registrant registered the Domain Name in bad faith as described in paragraph 3.7.
- (i) The Registrant registered the Domain Name primarily for the purpose of selling it to the Complainant for valuable consideration, much in excess of the Registrant's actual costs of registering the Domain Name, as described in paragraph 3.7(a). The Registrant rejected the Complainant's offer to purchase the Domain Name for \$5,000 (CDN), and instead stated that he would not consider transferring the Domain Name for less than \$40,000 (CDN).
 - (ii) The Registrant registered the Domain Name primarily for the purpose of disrupting the business of the Complainant, who is a competitor of the

Registrant, as described in 3.7(c). The Registrant's website disrupts the Complainant's business by providing links to the websites of online travel competitors and by misleading users into believing that the Registrant's business is endorsed, sponsored or approved by the Complainant. The Registrant is a competitor with the Complainant in the sense that it is competing for internet traffic and taking advantage of the goodwill associated with the Complainant's marks.

The Registrant seeks to have the complaint dismissed on the following bases:

- (a) While the Registrant agrees that the Domain Name is identical to the Complainant's trade-mark, the Registrant's website at <priceline.ca> is not confusingly similar with the Complainant's website at <priceline.com>. The businesses of the Registrant and the Complainant are completely different and thus no confusion between the two can arise in the mind of a reasonably informed consumer.
- (b) The Registrant did not register the Domain Name in bad faith.
 - (i) The Registrant purchased the Domain Name and other generic and descriptive domain names for the purposes of developing websites. He in fact developed the Domain Name into an internet information service portal where visitors can locate cheap and low-cost products and services offered by businesses in all popular categories.
 - (ii) The Registrant's primary purpose in registering the Domain Name was not to sell it to the Complainant or otherwise. At the time of registration, the Registrant did not have knowledge of the Complainant and its trade-marks. The Registrant became acquainted with the term "PRICE LINE", which is an economic term, during his graduate studies at McGill University. The Registrant did not contact the Complainant to offer the Domain Name for sale; rather, the Registrant was contacted by the Complainant. The Registrant has not sold a single domain name.
 - (iii) The Registrant did not register the Domain Name for the purpose of disrupting the business of the Complainant. As previously indicated, the Registrant purchased the Domain Name with a view to development. Furthermore, the Registrant is not a competitor of the Complainant since it does not offer similar competing services, and in any event, the Complainant offers no services to Canadians in Canada.
- (c) The Registrant had a legitimate interest in the Domain Name:
 - (i) The Registrant used the Domain Name in good faith in association with his information portal services and the Domain Name was both descriptive of his services and a generic name for his services (paragraphs 3.6(b) and (c)).

- (ii) "PRICE LINE" is widely used in various industries. "PRICE LINE" is also a very common economic term.
- (iii) <priceline.ca> fits within the pattern of descriptive domain names registered by the Registrant. For example, the Registrant commonly registers words ending in "LINE", such as <sportline.ca>, <bizline.ca>, <loanline.ca> and <budgetline.ca>.

Discussions and Findings

2. The Policy

The Policy applies only to disputes involving alleged bad faith registration of domain names in the dot-ca country code top level domain. The Complainant will succeed only where it proves, on a balance of probabilities, that:

- (a) The Registrant's dot-ca Domain Name is "Confusingly Similar" (as defined in Policy paragraph 3.4) to a "Mark" (as defined in Policy paragraph 3.2) in which the Complainant had "Rights" (as defined in Policy paragraph 3.3) 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 Policy paragraph 3.7.

Further, the Complainant must provide some evidence that:

- (c) The Registrant has no legitimate interest in the Domain Name as described in Policy 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 he has a legitimate interest in the Domain Name as described in Policy paragraph 3.6.

3. Confusing Similarity Between the Domain Name and the Complainant's Mark

The Complainant has succeeded in proving, on a balance of probabilities, that the Domain Name is "Confusingly Similar" to a Mark in which the Complainant had rights prior to the registration of the Domain Name.

Under Policy paragraphs 3.2 and 3.3, a trade-mark that is registered in CIPO is considered to be a "Mark" in which the Complainant has "Rights". Since the Complainant's trade-mark was registered on April 24, 2002 and the domain name was not registered until January 8, 2003, the Complainant's rights existed prior to the registration of the Domain Name.

For the purposes of determining whether a Domain Name is confusingly similar to a Mark, Policy paragraph 1.2 indicates that the "dot-ca" suffix of the Domain Name should not be considered. Absent the "dot-ca" suffix, the Domain Name is identical to the Complainant's

trade-mark and accordingly the two are clearly confusingly similar. Policy paragraph 3.4 provides that:

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.

The Registrant’s assertion that there is no confusing similarity proceeds on an erroneous construction of the test for confusing similarity under the Policy. The test is not whether the websites of the Registrant and Complainant are confusingly similar, but rather whether the Domain Name itself is confusingly similar to the trade-mark at issue. Here, the Domain Name and the Mark are identical and there can be no doubt that the two are therefore confusingly similar within the meaning of the Policy.

Although further support for the confusing similarity of the Domain Name and Mark is not necessary in this case, it is also notable that the CIPO examiner rejected the Registrant’s June 2003 application to register “PRICELINE” and “PRICELINE.CA” as trade-marks on the ground that they were confusingly similar to the Complainant’s pre-existing marks.

4. Bad Faith Registration

Policy paragraph 3.1(c) requires the Complainant to prove, on a balance of probabilities, that the Registrant registered the Domain Name in bad faith, as described in Policy paragraph 3.7. As noted in *Viacom International Inc. v. Harvey Ross Enterprises, Ltd.*, (October 15, 2003) BCICAC, “‘bad faith’ within the meaning of the Policy is a term of art, and is not intended to apply to distasteful conduct that might constitute bad faith in the ordinary sense of the term.”

The Policy (paragraph 3.7) sets forth an exhaustive list of criteria for determining whether a registrant registered a domain name 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.

As has been previously observed, a complainant will rarely have direct evidence of the purpose for registration. The Registrant's purpose in registering a domain name may be determined by common sense inferences from the Registrant's conduct and other surrounding circumstances.¹ Where the Complainant has established with evidence an inference of bad faith, the Registrant has an obligation to put forward evidence that responds or explains his conduct as being something other than indicative of bad faith .

In *Acrobat Construction v. 1550507 Ontario Inc.*, (June 16, 2003) Resolution Canada, the Panel stated at p. 9:

Of course, it is difficult, usually, if not impossible, to actually show bad faith with concrete evidence. The Panel is therefore of the opinion that it can take into consideration surrounding circumstances and draw inferences to determine whether or not the Registrant's actions are captured by paragraph 3.7... To require the Complainant to provide direct evidence of the Registrant's bad faith intentions would allow a Registrant with a certain level of skill to easily evade the applications of the CIRA Policy, hence rendering its application moot or irrelevant.

Therefore, once the Complainant has presented sufficient evidence to establish one of the situations in 3.7, it is incumbent upon the Respondent to either respond or explain why its conduct should not be considered bad faith.

The Complainant's first argument is that the Registrant registered the Domain Name in bad faith because his primary purpose was to sell the Domain Name to the Complainant. The Panel does not accept that the evidence makes out this allegation. While there is some evidence that, after being approached by the Complainant's representative by email, the Registrant was willing to sell the domain name for a price in excess of registration costs, the evidence does not support the inference that this was the Registrant's "primary purpose" when registering the Domain Name. It should also be pointed out that the Complainant's representative did not identify himself as acting for the Complainant when initially offering to purchase the Domain Name.

Overall, the emails exchanged between the Complainant's representative and the Registrant do not demonstrate that the Registrant was particularly interested in selling the Domain Name. Rather, as he asserts, the Registrant seems to have repeated his intention to use the Domain Name and expressed a disinterest in selling it even though being pursued to do so.

¹ *CBC v. William Quon*, (April 8, 2003) BCICAC DCA 681-CIRA

The Complainant's second argument that the Registrant registered the Domain Name primarily for the purpose of disrupting the Complainant's business, who is a competitor of the Registrant, is more compelling. The Panel finds that the Complainant has put forward sufficient evidence to raise a *prima facie* case that this was the Registrant's primary purpose, and that the Registrant has failed to adequately respond. Rather, as discussed below, the evidence put forward by the Registrant tends to confirm his bad faith in registering the domain name.

The Panel has had regard to the following evidence in this respect:

- (a) The Complainant's trade-mark is widely known (as evidenced by the data put forward by the Complainant referred to above at pp. 2 and 3) and "priceline" is a coined phrase that has become associated with its particular brand of internet travel service such that the Registrant's denial of knowledge of that mark is dubious;
- (b) The Complainant put forward evidence (in the form of a chat room posting demonstrated to be by the Registrant) that prior to the registration of <priceline.ca> the Registrant was seeking information and advice on how to bolster a claim that he was not acting in bad faith in using a domain name that made use of a well-established company's trade-mark. The Registrant has not denied that prior to the registration of <priceline.ca> he was seeking such information and advice;
- (c) While the Registrant now uses the domain name in connection with a "click through" website, the domain name was not used with any active website for more than 10 months after its initial registration, including more than 6 months after the Registrant received the initial complaint from the Complainant;
- (d) While the Registrant claims that he registered the Domain Name intending it to refer to the two word term from economics "PRICE LINE"², his conduct suggests otherwise. First, he did not attempt to register a two word variant of the domain (such as <price-line.ca>) but chose the one word <priceline.ca> which is identical to the Complainant's mark. Further, in the body of the website as now operated, the Registrant does not refer to the two word "price line" but instead makes use of the Complainant's mark "priceline" throughout;³
- (e) The Registrant asserts that <priceline.ca.> is either generic or descriptive in nature and its registration was consistent with his pattern of registering other descriptive or generic domain names such as <cardeals.ca> and <alaskacruise.ca>, all of which have been registered by him. In the Panel's view, <priceline.ca> stands apart from these other domain names. "Priceline" is not a common term used in

² The Registrant put forward the following definition of the term: "A straight line representing the combinations of variables, usually two goods, that cost the same at some given prices. The slope of a price line measures relative prices, and changes in prices can therefore be represented by changing the slope of, or rotating, a price line. A steeper line means a higher relative price of the good measured on the horizontal axis."

³ For example, the website stated: "Priceline would like to help you on the following matters."

everyday language. The descriptive names registered by the Registrant such as <cardeals.ca> or <alaskacruise.ca> clearly indicate the type of content that one would expect to find on those websites. <priceline.ca> does not. Its registration does not reflect a pattern of legitimate registrations as asserted by the Registrant, but is rather suggestive of bad faith;

- (f) The Registrant also tried to explain the registration of <priceline.ca> as fitting into his general pattern of registering generic and descriptive domain names that end in the suffix “LINE”.⁴ All of the domain names referred to by the Registrant as establishing this pattern were registered significantly after the registration of <priceline.ca> and indeed after the dispute with the Complainant had arisen. The “pattern” referred to therefore appears to have been created for the purpose of the Registrant’s response to this Complaint and not for some proper purpose;
- (g) While the Registrant claims that he registered “price line” (as the term is understood in the world of economics) because it was expected to be descriptive of the services his website was expected to provide, the content of the website as now operated does not support this assertion; and
- (h) The Registrant’s website as now operated contains links to the websites at which the Complainant’s competitors offer their services. This suggests that the Registrant’s purpose in registering the Domain Name was to disrupt the Complainant’s business (See *Lee Valleys Tools Limited v. Pilfold Ventures Inc.* (September 2, 2005) Resolution Canada.)

The foregoing factors show and the Panel concludes that the Registrant did not register the Domain Name as a proxy for the economic term “PRICE LINE” or as a generic or descriptive term, but rather registered the Domain Name because he was aware of the Complainant’s well-established trade-mark rights and intended to and has in fact disrupted the Complainant’s business in so doing.

The Policy (paragraph 3.7(c)) requires in addition that the Registrant be a “competitor” of the Complainant. Regardless of whether the term “competitor” is properly limited to a commercial business competitor providing similar products or services or is defined more broadly to include someone who competes for internet traffic, on the facts before us, the Registrant is a “competitor” of the Complainant. By providing links to online travel services that compete with the services provided by the Complainant, the Registrant has made himself a competitor of the Complainant. In any case, the Registrant is clearly competing for internet traffic with the Complainant since his use of the domain name that is identical to the Complainant’s mark is likely to cause confusion that the Complainant’s website can be accessed through <priceline.ca>. The Panel notes that this approach is consistent with the analyses found in *Bell Canada v. Archer Entreprises*, Dispute Number 00038, *Great Pacific Industries Inc v. Ghalib Dhalla*, Dispute

⁴ As proof of this pattern, the Registrant indicates that he has also registered the domain names <sportline.ca>, <bizline.ca>, <loanline.ca> and <budgetline.ca>.

Number 00009 and *Glaxo Group Limited v. Defining Presence Marketing Group Inc.*, Dispute Number 00020.

As a result, the Panel is of the opinion that the Complainant has met its burden of proving, on the balance of probabilities, that the Registrant has acted in bad faith.

5. No Legitimate Interest in the Domain Name

The Complainant must provide “some evidence” that the Registrant has no legitimate interest in the Domain Name, as described in Policy paragraph 3.6. If the Complainant satisfies this evidentiary burden, the onus shifts to the Registrant to prove on a balance of probabilities that the Registrant has a legitimate interest in the challenged domain name.

Policy paragraph 3.6 sets forth an exhaustive list of criteria for determining whether a registrant has a legitimate interest in a domain name. It provides as follows:

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 Registrant includes, but is not limited to, use to identify a web site.

The legitimate interest criteria set forth in Policy paragraphs 3.6(a), (b), (c), and (d) are satisfied only if the Registrant's use was in "good faith", a term which is not defined by the Policy.

The Complainant has put forward evidence that the Registrant does not satisfy any of the requirements of paragraph 3.6 and therefore does not have a legitimate interest in the Domain Name. The Complainant has put forward evidence to show that the Domain Name was not a Mark in which the Registrant had rights, that the Domain Name was neither the generic name for nor descriptive of the Registrant's services, that the Domain Name was not the Registrant's name or the geographical location of the place where he provides services, and that the website did not constitute non-commercial activity because it contained advertisements.

Accordingly, the onus shifts to the Registrant to prove, on a balance of probabilities, that he has a legitimate interest in the Domain Name.

The Registrant claims that he has a legitimate interest in the Domain Name pursuant to paragraphs 3.6(b) and (c) in that he used the Domain Name in good faith and that it was descriptive of the services that he provided or was the generic name for the services that he provided. The Panel finds that the Registrant has not satisfied his onus of establishing legitimate interest on the basis of these paragraphs.

As previously discussed, neither the one-word term "priceline" nor the two-word economic term "price line" is descriptive of or the generic term for the services provided by the Registrant. The one-word term is a distinctive term that was coined by the Complainant. The definition of the two-word economic term "price line" put forward by the Registrant does not describe nor is it the generic word for the type of services provided by the Complainant.

The Registrant relies on *Acrobat Construction v. 1550507 Ontario Inc.*, (June 16, 2003) Resolution Canada, as supporting the proposition that a registrant has a legitimate interest in operating an internet portal service which provides links to other websites. However, *Acrobat* is distinguishable from this case on the facts in that the registrant in that case was found to have used the domain name as a mark and acquired rights in that mark pursuant to paragraph 3.6(a). The Panel did not find that a registrant will always have a legitimate interest in operating an internet service portal.

Accordingly, the Panel is of the opinion that the Registrant has not proven, on a balance of probabilities, that the Registrant has a legitimate interest in the challenged domain name.

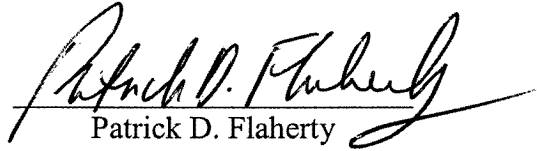
Conclusion and Decision

The Complainant has proven, on a balance of probabilities, that the Domain Name is Confusingly Similar to the Complainant's CIPO registered trade-mark "PRICELINE". The Complainant has also proven, on a balance of probabilities, that the Registrant registered the Domain Name in bad faith as described in paragraph 3.7(c) of the Policy.

The Complainant having adduced some evidence that the Registrant has no legitimate interest in the Domain Name as described in paragraph 3.6, the Registrant has not satisfied its onus of proving, on a balance of probabilities, that it has such a legitimate interest.

For these reasons, the complaint is successful and the Panel orders and directs that the registration of <priceline.ca> be transferred to the Complainant by the Registrar, Sibername Internet and Software Technologies Incorporated.

Patrick D. Flaherty, John Lee, David Wotherspoon

A handwritten signature in black ink, appearing to read "Patrick D. Flaherty", written over a horizontal line.

Patrick D. Flaherty
Chair

Date: November 21, 2005