

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

Dispute Number: DCA-930-CIRA  
Domain Name: www.choice-hotels.ca  
Complainant: Choice Hotels International, Inc. and Choice Hotels Canada Inc.  
Registrant: Daniel Cox  
Registrar: Domainsatcost.ca Corporation  
Panellists: W.A. Derry Millar, Chair, David Wotherspoon and Pierre-Emmanuel  
Moyses  
Service Provider: British Columbia International Commercial Arbitration Centre

**DECISION**

**THE PARTIES**

1. The Complainants are Choice Hotels International, Inc., 10750 Columbia Pike, Silver Spring, Maryland, U.S.A. 20901 and Choice Hotels Canada Inc., 5090 Explorer Drive, Suite 500, Mississauga, Ontario, L4W 4T9.
2. The Registrant is Daniel Cox, 14036 Parkland Blvd. S.E., Calgary, Alberta, T2J 3X5.

**THE DOMAIN NAME AND REGISTRAR**

3. The Domain Name in issue in this proceeding is: "choice-hotels.ca".
4. The Registrar is: Domainsatcost.ca Corporation of Ottawa, Ontario.
5. The Domain Name was registered by the Registrant on March 4, 2006.

**PROCEDURAL HISTORY**

6. The British Columbia International Commercial Arbitration Centre ("**BCICAC**") is a recognized service provider pursuant to the CIRA Domain Name Dispute Resolution Policy ("**Policy**") of the Canadian Internet Registration Authority ("**CIRA**").

7. The Complainants filed a Complaint with respect to the Domain Name in issue in accordance with the Policy on August 3, 2006. The Complaint was reviewed and found to be compliant. By letter dated August 3, 2006, the BCICAC as Service Provider so confirmed compliance of the Complaint and commencement of the dispute resolution process.

8. According to the information provided by BCICAC, the Complaint was delivered to the Registrant by courier on August 4, 2006.

9. The Registrant has not provided a Response.

10. On August 29, 2006, the BCICAC named David Wotherspoon and Pierre-Emmanuel Moyse as Panellists and W.A. Derry Millar as Chair of the Panel.

11. The Panel has reviewed all of the material submitted by the Complainants and is satisfied that the Complainants are eligible Complainants under the Policy and Rules.

## FACTS

12. The facts set out under this heading and under the headings "Position of the Complainants" are taken from the Complainants' Complaint.

13. The Complainant, Choice Hotels International, Inc. ("Choice Hotels") is a corporation incorporated under the laws of the State of Delaware, one of the United States of America. The Complainant, Choice Hotels Canada, Inc. ("Choice Hotels Canada") is a corporation incorporated under the laws of Ontario.

14. The Complainant Choice Hotels franchises more than 5,200 hotels in over 46 countries and territories worldwide. Its brands include QUALITY INN, CAMBRIA SUITES, COMFORT INN, COMFORT SUITES, QUALITY, SLEEP INN, CLARION, MAINSTAY SUITES, SUBURBAN EXTENDED STAY HOTEL, ECONO LODGE, and RODEWAY INN. The Complainant Choice Hotels Canada is a master licensee of Choice Hotels and has over 275 hotels open and under development in Canada.

15. Choice Hotels is the owner of the following Canadian trade-mark registration, set out below. Choice Hotels Canada is licensed to use these marks in Canada:

<b>Trade-mark</b>	<b>Reg. No.</b>	<b>Wares/Services</b>	<b>Reg. Date</b>
CHOICE HOTELS	TMA608648	hotel, motel and restaurant services; hotel and motel services.	April 27, 2004
CHOICE HOTELS INTERNATIONAL	TMA623532	hotel, motel and restaurant services; hotel and motel services	October 26, 2004

CHOICE HOTEL	TMA398488	hotel, motel and restaurant services.	May 22, 1992
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16. Choice Hotels Canada adopted the trade name, Choice Hotels Canada, Inc., in June, 1993 and has been known by this trade name for some time. Choice Hotels Canada is licensed to use the CHOICE HOTELS trade-mark as part of the Choice Hotels trade name by Choice Hotels.

17. CHOICE HOTELS Trade-marks and the Choice Hotels Trade-Name (collectively, the "Choice Hotels Marks") have achieved, according to the Complainants, vast and unparallel public recognition and awareness, and an exceptional reputation in Canada.

18. The Complainants own the domain names choice-hotels.com, choice-hotel.com, choicehotels.com, choicehotel.com and choicehotels.ca. The Complainants operate websites at choicehotels.com/choicehotel.com and choicehotels.ca. These websites advertise the Complainants' lodging services and provide online booking services.

19. The websites have become very valuable to the Complainants. The Complainants state that reservations booked by choicehotels.com exceeded \$1 million in revenues per day for the first three months of 2005, with the daily average for the year totalling \$1.3 million.

20. On March 4, 2006, the Registrant registered choice-hotels.ca. The Registrant's choice-hotels.ca website resolves to a customized internet portal hosted by DomainSponsor.com.

21. DomainSponsor.com operates a revenue program whereby domain name holders who redirect Internet users to its websites are eligible for a referral fee. DomainSponsor's website indicates that it offers the "highest payouts" and touts itself as an "industry leading solution for monetization of parked domains". The website also adds:

"The DomainSponsor revenue program helps domain holders and registrars maximize revenue from their parked domains by providing a straightforward and easy-to-use monetization system.

...DomainSponsor auto-optimizes your domains by placing the best performing keywords and advertiser links on your landing page, thus assuring the highest revenue. The more traffic your domains have, the faster they will optimize."

22. The Registrant's choice-hotels.ca website prominently displayed "choice-hotels.ca" at the top of the homepage, and included numerous lodging and hospitality-related sponsored links, such as "Hotels", "Hotel Reservation" and "Discount Hotel". These sponsored links resolved to websites promoting the services of competitors of the Complainants, as well as the Complainants' own services. The website also provided end users with a means of conducting searches and accessing links to competitors of the Complainants. The website also triggered various pop-up advertisements.

23. On April 4, 2006, the Complainants, through their legal counsel, sent a cease and desist letter to the Registrant requiring the transfer of choice-hotels.ca.

24. The Registrant did not respond to the Complainants' letter.

25. By letter dated April 20, 2006, the Complainants once again attempted to contact the Registrant. No response was received from the Registrant.

### **POSITION OF THE COMPLAINANTS – RIGHTS OF THE COMPLAINANTS IN THE CHOICE HOTELS TRADE-MARKS**

26. The Complainants submit that the Registrant's dot-ca domain name is confusingly similar to a mark in which the Complainants had rights prior to the date of registration of the domain name and continues to have such rights.

27. The Complainants submit that Choice Hotels is the owner of the Choice Hotels trade-mark. Accordingly, Choice Hotels has rights in the Choice Hotels trade-marks and continues to have such rights in accordance with paragraph 3.3(c) of the Policy.

28. The Complainants submit that as Choice Hotels Canada is licensed to use the Choice Hotels trade-mark as part of the Choice Hotels trade-name by Choice Hotels, Choice Hotels has rights in the Choice Hotels trade-name and continues to have such rights in accordance with paragraph 3.3(a) of the Policy. The Complainants submit that each of the Choice Hotels trade-marks were registered before the subject domain name was registered on March 4, 2006. The Complainants further submit that the Choice Hotels trade-name was adopted in June, 1993 and Choice Hotels Canada was widely recognized by this trade-name well before the March 4, 2006 domain name registration. Accordingly, Choice Hotels had rights in the Choice Hotels marks prior to the registration date of choice-hotels.ca and continues to have such rights.

29. The Complainants submit that the domain name, choice-hotels.ca, is confusingly similar to the Choice Hotels marks in accordance with paragraph 3.4 of the Policy. In addition, the Complainants submit that a registrant cannot avoid confusion by appropriating another's entire mark in a domain name and that the addition of a hyphen, as well as other differences in syntax or punctuation, do nothing to remove confusion.

30. The Complainants submit that the domain name choice-hotels.ca is identical to the trade-mark CHOICE HOTELS, as the second level domain is comprised exclusively of this mark. Under the circumstances, the Registrant cannot avoid confusion as it has misappropriated the entirety of the registered trade-mark CHOICE HOTELS.

31. The Complainants submit that choice-hotels.ca incorporates the whole of the distinctive element of the trade-mark CHOICE HOTELS INTERNATIONAL, namely CHOICE HOTELS, while being nearly identical in appearance to the trade-mark CHOICE HOTEL. As such, the choice-hotels.ca domain name is confusingly similar to the trade-marks CHOICE HOTEL and CHOICE HOTELS INTERNATIONAL.

32. The Complainants submit that the subject domain name is also confusingly similar to the Choice Hotels Trade Name, as it is identical to the distinctive element of the subject trade name, namely, Choice Hotels.

33. The Complainants submit that the addition of the hyphen does nothing to remove confusion and is immaterial to the confusion analysis.

34. The Complainants submit that choice-hotels.ca is confusingly similar to the CHOICE HOTELS Marks, given that choice-hotels.ca so nearly resembles the CHOICE HOTELS Marks in appearance, sound and in the ideas suggested by the CHOICE HOTELS Marks as to be likely to be mistaken for the CHOICE HOTELS Marks and in which the Complainants had rights prior to the registration date of choice-hotels.ca, and continue to have such rights.

### **POSITION OF THE COMPLAINANTS - REGISTRATION OF CHOICE-HOTELS.CA IN BAD FAITH – PARAGRAPH 3.7(b)**

35. The Complainants submit that in accordance with subparagraph 3.7(b) of the Policy, bad faith registration will be established if the Complainants can demonstrate the following:

"[T]he 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."

36. The Complainants rely upon subparagraph 3.7(b), and submit the Registrant has engaged in a pattern of registering domain names that incorporate the marks of third parties to which it has no entitlement to the knowledge of the Complainants, and that the Registrant has prevented the Complainants from registering choice-hotels.ca.

37. The Complainants submit that evidence indicating that a Registrant owns multiple domain names which correspond to third party trade-marks constitutes *prima facie* evidence of bad faith registration: *Viacom International Inc. v. Harvey Ross Enterprises, Ltd.*, BCICAC Case No. 00015. The Complainants submit that it has been held that as few as two (2) domain name registrations is sufficient to establish that a registrant has engaged in a "pattern" of abusive registrations: *Great Pacific Industries Inc. v. Ghalib Dhalla*, BCICAC Case No. 00009; *Volvo Trademark Holding AB v. Cup International Limited*, WIPO, Case No. D2000-0338.

38. By letter dated May 16, 2006, CIRA provided the Complainants with a list of the dot-ca domain names owned by the Registrant.

39. The Complainants submit that the CIRA report reveals that the Registrant has engaged in an extensive and systematic pattern of abusive domain name registrations having

registered at least 111 dot-ca domain names comprised of, or containing, third party marks, or intentional misspellings of same (i.e. typosquatting) to which it had no entitlement to the knowledge of the Complainants.

40. The Complainants submit that among the famous brands targeted by the Registrant were AMERICAN EXPRESS, COKE, AOL, SCOTIA BANK, TD CANADA TRUST, ROYAL BANK, BANK OF MONTREAL, EXPEDIA, GOOGLE and BELL.

41. The Complainants submit that of these 111 domain names, 102 domain names are comprised of, or contain, marks that are the subject of Canadian trade-mark registrations, or which are intentional misspellings of same.

42. The Complainants submit that the Registrant has also registered domain names that contain trade-marks that are the subject of common law rights owned by third parties. These domain names include the following: craigslist.ca; intellicast.ca; ludacris.ca; mapsonus.ca; drudgereport.ca; multimap.ca; spybot.ca; torrentspsy.ca & torrentstop.ca; and spyhunter.ca.

43. The Complainants state that the Registrant's registration of choice-hotels.ca has prevented the Complainants from registering the impugned domain name and using it.

44. The Complainants submit that the Registrant's registration of at least 111 domain names containing third party marks to which it has no entitlement constitutes a clear and extensive pattern of abusive registrations falling squarely within 3.7(b) of the Policy.

#### **POSITION OF THE COMPLAINANTS - REGISTRATION OF CHOICE-HOTELS.CA IN BAD FAITH – PARAGRAPH 3.7(c)**

45. The Complainants also rely upon subparagraph 3.7(c), and submit that the Registrant registered choice-hotels.ca primarily for the purpose of disrupting the business of the Complainants, competitors of the Registrant. Under subparagraph 3.7(c), the Complainant must establish that:

"(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."

46. The Complainants submit that:

- (a) using a domain name to redirect Internet users to a competitor website constitutes a disruption of a trade-mark owner: *CanadaDrugs.com Partnership v. NC Britton Holdings Ltd. o/a Minit Drugs*, BCICAC Case No. 00028; *Elysium Wealth Management Inc. v. Brian Driscoll*, Resolution Canada Case No. 00005; *Sleep Country Canada Inc. v. Piffold Ventures Inc.*, Resolution Canada Case No. 00027; and
- (b) bad faith under subparagraph 3.7(c) exists in cases where the use of a domain name is likely to cause confusion among Internet users as to affiliation or

sponsorship: *Bell Canada v. Archer Entreprises*, BCICAC Case No. 00038; *Glaxo Group Limited v. Defining Presence Marketing Group Inc. (Manitoba)*, BCICAC Case No. 00020.

47. The Complainants submit that:

- (a) It has become an increasingly popular practice for registrants to park their domain names at websites that operate revenue programs whereby domain name holders who redirect Internet users to these websites are eligible for a referral fee.
- (b) The pointing of domain names to DomainSponsor.com hosted Internet portals can constitute evidence bad faith as per subparagraph 3.7(c): *Sleep Country Canada Inc. v. Pilfold Ventures Inc.*, Resolution Canada Case No. 00027; *Lee Valleys Tools Limited v. Pilfold Ventures Inc.*, Resolution Canada Case No. 00040; *Reitmans Canada Limited/Reitmans Canada Limitee v. Pilfold Ventures Inc.*, Resolution Canada Case No. 00032; *The Men's Warehouse Inc. v. Wade Traversy*, Resolution Canada Case No. 00023; *Fresh Intellectual Properties Inc. v. Sweets and Treats*, BCICAC Case No. 00033; *Canada Post Corporation v. Marco Ferro*, BCICAC Case No. 00042.
- (c) In cases where a registrant has pointed a domain name to a DomainSponsor.com hosted site, it will be deemed to be a "competitor" as per the Policy as it has provided a means for Internet users to access links of businesses that compete with a complainant: *The Standard Life Assurance Company of Canada v. Hank Morin*, BCICAC Case No. 00046; *Sleep Country Canada Inc. v. Pilfold Ventures Inc.*, Resolution Canada Case No. 00027; *Reitmans Canada Limited/Reitmans Canada Limitee v. Pilfold Ventures Inc.*, Resolution Canada Case No. 00032.

48. The choice-hotels.ca domain name resolved to a customized Internet portal hosted by DomainSponsor.com. The website prominently displayed "choice-hotels.ca" at the top of the homepage, and included numerous hospitality-related sponsored links, such as "Hotels", "Hotel Reservation" and "Discount Hotel". These sponsored links resolved to websites promoting the services of competitors of the Complainants. The website also provided end users with a means of conducting searches and accessing links to competitors of the Complainants. As well, the website triggered pop-up advertisements.

49. The Complainants submit that in return for parking choice-hotels.ca at this website, the Registrant became eligible for a referral fee.

50. The Complainants submit that the Registrant's use of choice-hotels.ca in connection with the DomainSponsor.com website qualifies the Registrant as a competitor of the Complainants, as links are provided to competitors of the Complainants. The misdirection of Internet traffic by capitalizing on consumer confusion with a view to reaping a commercial benefit clearly qualifies as a disruption to the Complainants' businesses.

51. The Complainants submit that by virtue of the unauthorized diversion of Internet traffic, the valuable goodwill subsisting in the CHOICE HOTELS Marks is harmed, thereby also constituting a disruption to the Complainants.

52. The Complainants further submit that, by using a domain name comprised exclusively of the trade-mark CHOICE HOTELS to simply "compete" for Internet traffic based upon consumer confusion, irrespective of the content of the Registrant's website, the Registrant is rendered a competitor of the Complainants, and disrupts the Complainants.

53. The Complainants submit that the purpose behind the registration of the subject domain name was to "piggyback" on the tremendous goodwill associated with the CHOICE HOTELS Marks in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainants. Under the circumstances, it is reasonable to infer that the Registrant not only knew this diversion would be disruptive, but also intended it to be so. As such, the Registrant registered the subject domain name with a view to attracting business to itself from those who had come to recognize the CHOICE HOTELS Marks; that is primarily for the purpose of disrupting the business of the Complainants.

54. The Complainants submit that in determining whether the Registrant's actions are captured by paragraph 3.7, 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: *Canadian Broadcasting Corporation/Société Radio-Canada v. William Quon*, BCICAC Case No. 00006.

55. While the Complainants submit that the Registrant's activities fall squarely within the scope of paragraph 3.7, the Complainants directed the Panel's attention to the following surrounding circumstances, which the Complainants submit further support the position that the subject domain name was registered in bad faith:

- (a) A registrant's actual or constructive knowledge of a complainant's rights in a domain name at the time of registration has been found to reinforce a finding of bad faith registration: *Canadian Broadcasting Corporation/Société Radio-Canada v. William Quon*, BCICAC Case No. 00006; *Coca-Cola Ltd. v. Amos B. Hennan*, BCICAC Case No. 00014; *Government of Alberta, on behalf of Her Majesty the Queen in Right of Canada v. Advantico Internet Solutions Inc.*, BCICAC Case No. 00012.
- (b) A trade-mark registration provides constructive knowledge to third parties of a complainant's rights: *Canadian Broadcasting Corporation/Société Radio-Canada v. William Quon*, BCICAC Case No. 00006.
- (c) In *Choice Hotels International, Inc. v. ResSystem.com, Inc.*, NAF Case No. FA282797, the registrant registered domain names that incorporated the whole of the Complainant Choice Hotels' marks, except that it added hyphens and non-distinctive terms to the disputed domain names. The Panel held that it should be assumed that the respondent had actual knowledge of the Complainant Choice Hotels' rights:

"Respondent's registration of domain names that incorporate Complainant's well-known registered marks in their entirety, deviating only with the addition of a hyphen



and geographic, generic, or descriptive terms, suggests that Respondent knew of Complainant's rights in the marks."

56. The Complainants submit that given the extensive reputation of the CHOICE HOTELS Marks, the Registrant's systematic targeting of major brand owners, and the Registrant's wholesale incorporation of the trade-mark CHOICE HOTELS in the disputed domain name, the only reasonable conclusion is that the Registrant had actual knowledge of the CHOICE HOTELS Marks, thereby supporting a finding of bad faith. In any event, and at the very least, the Registrant had constructive knowledge of the CHOICE HOTELS Trade-marks given that they are the subject of Canadian trade-mark registrations. This also supports a finding of bad faith.

57. The Complainants submit that the registration of domain names that are minor typographical variations on well-known marks is a practice referred to as "typosquatting". In *A & F Trademark, Inc., Abercrombie & Fitch Stores, Inc., Abercrombie & Fitch Trading Co., Inc. v. Party Night, Inc.*, WIPO, Case No. D2003-0172, the Panel addressed what is meant by "typosquatting":

"...[T]he practice of intentional misspelling is classic and it is often referred to as "typo-squatting". This has been defined as "the registration of domain names that are identical to popular website domain names except for slight differences that may occur as a result of common keyboarding or spelling errors in order to misdirect Internet users to the mis-labeled website" (see *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. D2002-1064, <vanguard.com>). "Typo-squatting" has been disapproved of in numerous WIPO decisions (for a recent example involving the same Respondent, see *Lanco, Inc., Lane Bryant, Inc. and Charming Shoppes, Inc. v. Party Night, Inc. c/o Peter Carrington*, WIPO Case No. D2003-0173, <laynbryant.com>, citing e.g. *Telstra Corp. Ltd. V. Warren Bolton Consulting Pty. Ltd.*, WIPO Case No. D2000-1293; *Playboy Enterprises International Inc. v. SAND WebNames-For Sale*, WIPO Case No. D2001-0094; see also the references cited in *The Vanguard Group Inc. v. Lorna Kang*, WIPO Case No. D2002-1064, <vanguard.com>)."

58. The Complainants submit that typosquatting constitutes evidence of bad faith registration, as these types of registrations have been found to be abusive in nature: *Bell Canada v. Archer Entreprises*, BCICAC Case No. 00038; *Amazon.com Inc. v. David Abraham*, BCICAC Case No. 00018; *The Standard Life Assurance Company of Canada v. Hank Morin*, BCICAC Case No. 00046.

59. The Complainants submit that the Registrant has registered numerous domain names that constitute intentional misspellings of third party marks. Such domain names include, without limitation, ingdirecr.ca, aericnexpress.ca, bellmobillity.ca, camoe.ca, weatjet.ca, futurehsop.ca, mapqest.ca and stadarlife.ca. The Registrant's typosquatting activities further

support a finding of bad faith as these registrations clearly demonstrate the Registrant's intention to deceived potential consumers in an attempt to reap a commercial benefit.

60. The Complainants submit that a registrant's failure to respond to a complainant's transfer request can reinforce a finding of bad faith registration: *Canadian Broadcasting Corporation/Société Radio-Canada v. William Quon*, BCICAC Case No. 00006; *Biogen, Inc. v. Xcalibur Communication*, BCICAC Case No. 00003.

61. As noted by the Complainants in their Complaint, in finding bad faith registration, the Panel in *Cigna Corporation v. Jit Consulting*, eResolution, Case No. AF-00174, remarked on the significance of failing to respond to demand correspondence:

"A reasonable party confronted with the implication that it is using a registered domain name within the context of a "cease and desist" letter would be moved to respond with a correction or denial if such implication were untrue."

62. The Complainants submit that the Registrant's failure to respond to the Complainants two letters further supports a determination of bad faith registration.

63. The Complainants submit that the foregoing supports a finding that choice-hotels.ca was registered in bad faith as per subparagraphs 3.7(b) and (c).

#### **NO LEGITIMATE INTEREST IN THE DOMAIN NAME**

64. The Complainants submit that the Registrant has no legitimate interest in the domain name as described in paragraph 3.06.

65. The Complainants submit that to establish rights, the overall circumstances should demonstrate that the registration was obtained in good faith for the purpose of making *bona fide* use of the domain name.

66. The Complainants submit that there has never been any relationship between the Complainants and the Registrant, and the Registrant has never been licensed, or otherwise authorized to register or use, the Choice Hotels Marks in any manner whatsoever, including in, or as part of, a domain name. With respect to paragraph 3.6(a), the Complainants submit that the appointing of a domain name to a DomainSponsor.com hosted website does not constitute *bona fide* or good faith use: *Sleep Country Canada Inc. v. Pilfold Ventures Inc.*, Resolution Canada Case No. 00027; *Reitmans Canada Limited/Reitmans Canada Limitee v. Pilfold Ventures Inc.*, Resolution Canada Case No. 00032; *B and J Garcia S.L., Arnedo, Spain v. Gorila*, WIPO Case No. D2004-1071; *Lowen Corporation d/b/a Lowen Sign Company v. Henry Chan*, WIPO Case No. D2004-0430.

67. The Complainants submit that the purpose behind the registration of choice-hotels.ca was to exploit Internet traffic properly destined for the Complainants with a view to reaping a commercial advantage based upon consumer confusion and that this is not *bona fide* or good faith use of a domain.

68. The Complainants submit that in any event, the domain name has not been used as a Mark as defined by the Policy, namely "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". It follows that the Registrant cannot claim Rights in the impugned domain name.

69. With respect to the balance of the elements of paragraph 3.6 of the Policy, the Complainants submit that:

- (a) With respect to paragraph 3.6(b) - The Registrant has not used choice-hotels.ca in good faith in association with any wares, services or business, and the domain name is not clearly descriptive in any of the senses stipulated by 3.6(b);
- (b) With respect to paragraph 3.6(c) - The Registrant cannot claim a legitimate interest in the domain name as choice-hotels.ca is not generic of any wares, services or business, nor has the domain name been used in good faith or for a *bona fide* purpose.
- (c) With respect to paragraph 3.6(d) - The Registrant has never used the domain name in association with a non-commercial activity, and therefore cannot invoke subparagraph 3.6(d) of the Policy. The Complainants further submit that the domain name has not been used in good faith.
- (d) With respect to paragraph 3.6(e) - "Choice-Hotels" is not a legal name, surname or other reference, by which the Registrant is commonly identified, and accordingly the Registrant cannot rely on subparagraph 3.6(e) of the Policy.
- (e) With respect to paragraph 3.6(f) - The domain name is not the geographical name or the location of the Registrant's non-commercial activity or place of business.

The Complainants submit that the Registrant does not have a legitimate interest in choice-hotels.ca.

70. The Complainants also submit that the factual matrix demonstrates that choice-hotels.ca was registered in bad faith and that the Registrant has no entitlement to choice-hotels.ca. In particular, the Complainants note as follows:

- (a) The domain name choice-hotels.ca is confusingly similar with the CHOICE HOTELS Marks, in which the Complainants had rights prior to the registration date of choice-hotels.ca and continue to have such rights.
- (b) The Registrant has engaged in a pattern of registering domain names that incorporate third party marks to which it has no entitlement, and has prevented the Complainants from registering the disputed domain name.
- (c) The Registrant registered the domain name primarily for the purpose of disrupting the business of the Complainants and the Registrant is a competitor of the Complainants.

- (d) The Registrant's actual or constructive knowledge of the CHOICE HOTELS Marks, its registration of numerous domain names that constitute intentional misspellings of third party marks, and its wholesale failure to respond to the Complainants' multiple transfer requests further support a finding of bad faith.
- (e) The Registrant does not have a legitimate interest in choice-hotels.ca as it has not brought itself within any of the circumstances specified by paragraph 3.6.

71. In light of the foregoing, the Complainants request that choice-hotels.ca be transferred from the Registrant to the Complainant Choice Hotels Canada.

### **ANALYSIS AND FINDINGS**

72. Under paragraph 4.1 of the Policy, the onus is on the Complainants to prove on a balance of probabilities that:

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

and the Complainant must provide some evidence that

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

73. Paragraph 4.1 of the Policy also provides that:

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

74. In this case, the Registrant has filed no response to the Complaint and accordingly has provided no evidence of legitimate use.

### **CONFUSINGLY SIMILAR - PARAGRAPH 4.1 (a) OF THE POLICY**

75. With respect to the definition of "Mark" in paragraph 3.2 of the Policy, the Complainants have established that:

- (a) the trade-marks "CHOICE HOTELS", "CHOICE HOTELS INTERNATIONAL" and "CHOICE HOTEL" and the trade name "Choice Hotels Canada, Inc." were

trade marks used by the Complainants before the registration of the Registrant's domain name and are "Marks" as contemplated by paragraph 3.2(a) of the Policy.

- (b) "CHOICE HOTELS", "CHOICE HOTELS INTERNATIONAL" and "CHOICE HOTEL" are registered trade-marks and are "Marks" as contemplated by paragraph 3.2(c) of the Policy.

76. The Complainants have the rights to the "CHOICE HOTELS", "CHOICE HOTELS INTERNATIONAL" and "CHOICE HOTEL" Marks as required under paragraph 3.3(b) of the Policy.

77. The Complainants have met the onus that the Registrant's domain name "choice-hotels.ca" is confusingly similar to the Complainants' Marks.

78. Paragraph 3.4 of the Policy defines "confusingly similar" as follows:

"(a) domain name is '**Confusingly Similar**' to a Mark if the domain name so nearly resembles the Mark in appearance, sound or ideas suggested by the Mark as to be likely to be mistaken for the Mark."

79. We agree with the comments of the Panel in the decision in *Government of Canada v. David Bedford, c.o.b. Abundance Computer Consulting*, BCICAC Case No.00011 that the test to be applied is set out in paragraph 66 of their decision:

"the test for "Confusingly Similar" under Policy paragraph 3.4 is one of resemblance based on first impression and imperfect recollection. Accordingly, for each domain name the Complainant must prove on a balance of the probabilities that a person, on a first impression, knowing the Complainant's corresponding mark only and having an imperfect recollection of it, would likely mistake the domain name (without the .ca suffix) for the Complainant's corresponding mark based upon the appearance, sound or ideas suggested by the Mark."

80. In our view, a person knowing the Complainants' Marks "CHOICE HOTELS", "CHOICE HOTELS INTERNATIONAL" and "CHOICE HOTEL" only and "having an imperfect recollection of" them "would likely mistake the domain name" "choice-hotels.ca" "for the Complainant's corresponding mark based upon the appearance, sound or ideas suggested by the Mark."

#### **BAD FAITH - PARAGRAPH 4.1(b) OF THE POLICY**

81. In order to establish bad faith, the Complainants must establish on the balance of probabilities, one of paragraphs 3.7(a), (b) or (c) of the Policy. The Complainants rely on paragraphs (b) and (c).

82. Paragraph 3.7 defines "registration in bad faith" for the purposes of the Policy. The relevant portions of paragraph 3.7 read as follows:

"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:

(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 is engaged in a pattern of registering domain names in order to prevent persons who have rights and Marks from registering the Marks as domain names."

83. The Panel is of the view that the Complainants have satisfied the requirements of paragraph 3.7(b) of the Policy and are entitled to a finding that the Registrant has registered the name "choice-hotels.ca" in bad faith.

84. Where, as here, the Registrant has neither responded to the Complainants' letters nor to the Complaint, the intent of the Registrant must be inferred from the Registrant's conduct. In our view, the registration of the domain name "choice-hotels.ca" on March 4, 2006, despite the registration by Choice Hotels of its trade marks substantially before March 4, 2006 and the use of the trade name Choice Hotels International, Inc. since the early 1990's can only lead to the conclusion that "the Registrant registered the domain name ... to prevent the Complainant or the Complainants' licensor or licensee of the Mark, from registering the Mark as a domain name."

85. We are also of the opinion that the second part of paragraph 3.7(b) has been satisfied by the evidence of the registration by the Registrant of at least 111 dot-ca domain names composed of, or containing, third party marks, or intentional misspellings of same. Of the 111 domain names, the Complainants have provided evidence that 102 of the domain names are comprised of, or contain, marks that are the subject of Canadian trade-mark registrations, or which are intentional misspellings of those marks.

#### **REGISTRATION IN BAD FAITH - PARAGRAPH 3.7(c) OF THE POLICY**

86. Under paragraph 3.7(c), the Complainant must establish that:

"(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."

87. In our opinion, the Complainants have established bad faith under this paragraph. The fact that the Registrant's website hosted under the disputed domain "choice-hotels.ca" displays links to hotel related services or categories such as: Hotel New York, Hotel Discount, Cheap Hotel, Hotel has the effect of disrupting or potentially disrupt the Complainant's business,

and in our opinion, meet the requirements set out in Section 3.7(c) of the CIRA Policy, thereby demonstrating the Registrant's bad faith.

88. It is clear to us from the manner in which the Registrant uses the domain name that he is a competitor of the Complainants. He earns fees by directing Internet users to the websites of the direct competitors of the Complainants.

89. The only reasonable inference to be drawn, in the absence of an explanation from the Registrant, from his registration of the domain name "choice-hotels.ca" is that it was done to disrupt the business of the Complainants by directing Internet users seeking the hotels of the Complainants to their competitors.

**LEGITIMATE INTEREST IN DOMAIN NAME 4.1(c) OF THE POLICY –  
LEGITIMATE INTEREST, PARAGRAPH 3.6 OF THE POLICY**

90. We find that the Complainants have met their burden under paragraph 4.1(c) of the Policy that the Registrant does not have a legitimate interest in the domain name. As the Registrant has not replied to the Complaint, it has therefore not proven it has a legitimate interest in the domain name as described in paragraph 3.6 of the Policy.

**ORDER**

91. Having determined that the Complainants have met the requirements of paragraph 4.1 of the Policy, we direct that the registration of the domain name "choice-hotels.ca" be transferred to the Complainant, Choice Hotels Canada, as requested by the Complainants.

**Date: September 18, 2006.**

W.A. Derry Millar, David Wotherspoon and Pierre-Emmanuel Moyses

  
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W.A. Derry Millar  
Chair