

THE CANADIAN INTERNET REGISTRATION AUTHORITY

Domain Name: buspar.ca

Complainant: Mead Johnson & Company

Registrant: Turvill Consultants - NARD

Registrar: 10 Dollar Domain Names Inc.

Panellist: Hon. Roger P. Kerans FCI Arb

Service Provider: British Columbia International Commercial Arbitration Centre

BCICAC File: DC 1919 - CIRA

DECISION

1 PRELIMINARY MATTERS

- 1.1* This is a dispute about the domain name "buspar.ca"
- 1.2* The Canadian Internet Registration Authority (CIRA), which is responsible for operating the dot-ca Internet country code Top Level Domain (ccTLD), established, by its Domain Name Dispute Resolution Policy (CDRP), published November 29, 2001, a mechanism for the resolution of disputes about domain names, established the "CIRA Dispute Resolution Rules: (the "Resolution Rules"), and named the British Columbia International Commercial Arbitration Centre (BCICAC) as a service provider under that Policy.
- 1.3* A complaint was filed by the complainant at the BCICAC on June 8, 2006.
- 1.4* The BCICAC has certified and I accept that the complaint complied with the formal requirements of the CDRP and the Resolution Rules.
- 1.5* The BCICAC has certified and I accept that it has complied with provisions of the CDRP and the Resolution Rules in giving Notice of the Complaint to the Registrar of record and Respondent at all locations and by all means reasonably available, including by email, courier, and fax to every address available. Moreover, the BCICAC sought to telephone the Respondent at the number shown on the Registration Information and found that the number is no longer in service.

On July 26, 2006, I suggested to BCICAC some further possible means of actual service upon the Respondent, and, in exercise of powers granted me under Rule 9.1 (C), I extended the time for service to August 30, 1996, thus giving the Respondent, under Rule 5.1) until September 20, 2006 to file a Response. The BCICAC on August 31, 2006 affirmed compliance with my Directions, including the sending of a copy of the Complaint to the fax number shewn on the Registration Information.

No Response has been received.

- 1.6* The Complainant has elected under Rule 6.5 of the Resolution Rules to have this dispute resolved by a single arbitrator.
- 1.7* On July 19, 2006, I was named as sole arbitrator, and have executed a statement of independence and impartiality as required by BCICAC Rules.

2 POSITIONS OF THE PARTIES

2.1 The Complainant submits:

- 2.1.1* That it has a Canadian presence as required by the CDRP and s.2.1.(q) of the Resolution Rules by virtue of the fact that this Complaint relates to the BUSPAR Trade-marks registered in the Canadian Intellectual Property Office by the Complainant.

- 2.1.2 The Complainant is a wholly-owned subsidiary of Bristol-Myers Squibb Company ("BMS"). BMS is a global pharmaceutical and related healthcare products company. Among BMS's numerous successful pharmaceutical products is a prescription-based medicine available for the treatment of anxiety disorders and for short-term relief of the symptoms of anxiety sold under the trade-mark BUSPAR. BMS has been selling the BUSPAR brand product in Canada since as early as 1989. In 1999, BMS's BUSPAR brand product generated sales of over \$750 Million
- 2.1.3 Since November 27, 1996, BMS has advertised and promoted its pharmaceutical preparations in association with the BUSPAR Trade-marks on its website, www.buspar.com, which has generated significant internet traffic or hits. As a result of extensive internet use and promotion predating Registrant's registration of the Domain Name, the BUSPAR Trade-marks have achieved vast public recognition and awareness in Canada.
- 2.1.4 The domain name in dispute is confusingly similar to the trade-mark. It has no real meaning other than as a statement of the Complainant's trade-mark. The only difference between it and the Complainant's web site is the suffix ".ca" instead of ".com".
- 2.1.5 The Registrant's www.buspar.ca website instantly and automatically redirects internet users to an internet pharmacy webpage entitled "Buspar Drugs Online Cheap" which then diverts the visitor to www.legaldrugsonline.com, where the visitor is invited to purchase the Complainant's anti-anxiety products sold in association with its BUSPAR Trade-marks as well as the Complainant's competitors' anti-anxiety products including the ATIVAN, EFFEXOR, FRISIUM, VALIUM, and PANAX products.

The Respondent filed no submissions.

3 DECISION

3.1 *Canadian Presence.*

- 3.1.1 The CDRP rule 1.3 requires that a Complainant have a Canadian presence as defined by the CIRA Policy called Canadian Presence Requirements For Registrants (RPPG 05-20001108-00006 Version 1.2 Effective Date: November 8, 2000)).
- 3.1.2 Both rule 1.3 and rule 2(q) exempt a Complainant from those rules if it holds a registered trade-mark in Canada that is related to the domain name in dispute.
- 3.1.3 I accept that the evidence offered by the Complainant that it has registered the trade-mark BUSPAR in Canada, and, in any event, I infer from the evidence that the trade-mark is widely used and known in Canada.

3.2 *Confusing Similarity*

- 3.2.1 Paragraph 3.1(a) of the CDRP requires that the complainant establish that the domain name in dispute 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."
- 3.2.2 I accept the evidence that the Complainant has a valid and subsisting registered trade mark in Canada respecting the phrase "BUSPAR" which has subsisted since 2005. In my view this creates rights in the mark within the meaning of Paragraph 3.3 of the CDRP.
- 3.2.3 In my view, and because "BUSPAR" is a coined term, with no meaning in English except in relation to the Complainant and its business, a person familiar with the trade-mark and searching the web for the Complainant or its products would find the domain name in dispute confusingly similar.

3.3 *No legitimate Interest*

- 3.3.1 Paragraph 3.1(b) of the CDRP requires that the complainant establish that the Registrant has no legitimate interest in the domain name.
- 3.3.2 I accept the evidence from the Complainant that the sole use by the Respondent of the domain name in dispute is to refer the visitor to websites of other business offering products and services for sale, including products of the Complainant's competitors, and that it would appear that the respondent has not and is not carrying on any other business in connection with this domain name - or at all. It is one thing to offer the products of the Complainant at the retail level; it is quite another to pretend that it is the Complainant who is making the offer. The Registrant had no legitimate interest in representing that it was "buspar".

3.3.3 In my view, the Complainant has no legitimate interest in the domain name in dispute. The Complainant has established that the Respondent use of the name failed to fall within any of the six matters of legitimate interest spelled out in paragraph 3.6 of the CDRP.

3.4 *Bad Faith*

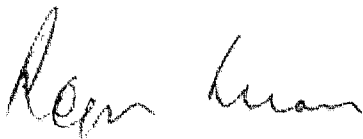
3.4.1 Paragraph 3.1(b) of the CDRP requires that the complainant establish that the Registrant has registered the domain name in bad faith.

3.4.2 Paragraph 3.7 of the CDRP provides three possible ways in which bad faith may be inferred: 1) if the Respondent "registered the domain name . . . primarily for the purpose of sale to the Complainant . . . or a competitor . . .", 2) if the Respondent "registered the domain name . . . to prevent the Complainant from registering the mark in a trade name, or 3) if the Respondent "registered the domain name . . . for the purpose of disrupting the business of the Complainant."

3.4.3 In my view, having regard to the total lack of any evidence of any legitimate interest in the name on the part of the Respondent, his failure to reply to the Complaint, and the fact that the domain name contains a phrase that is meaningless in English unless understood as the trade name of the Complainant, the only rational conclusion is that it was and is employed for one reason and only one reason: to attract persons who search the net for the makers of BUSPAR and divert them to the websites of another business, which offers competing products and services. In other words, the only available and reasonable inference is that the Respondent is guilty of at least one of the three tests for bad faith. This is a classic case of "typo-squatting". As stated, it is one thing to offer the products of the Complainant for retail sale on the web; it is quite another, and bad faith, to represent falsely that the firm offering the products for sale is in fact the Complainant.

4 FORMAL ORDER

4.1 *I hereby order and direct that the domain name in dispute be transferred to the Complainant.*



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Hon. Roger Philip Kerans FCI Arb
Sole Arbitrator
September 22, 2006
Victoria, B.C., Canada.