

**CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY**

COMPLAINT

Dispute Number: DCA-933-CIRA

Domain Name: aadac.ca

Complainant: Alberta Alcohol and Drug Abuse Commission

Registrant: Akshay Khanna

Registrar: Namespro Solutions Inc.

Panel: Eric Macramalla

Service Provider: British Columbia International Commercial Arbitration Centre

DECISION

A. THE PARTIES

1. The Complainant is Alberta Alcohol and Drug Abuse Commission (the “Complainant”), a corporation having a place of business at 9th Floor, Peace Hills Trust Tower, 10011 - 109 Street, Edmonton, Alberta, T5J 3S8, Canada.
2. The Registrant is Akshay Khanna (the “Registrant”) who, according to the CIRA Whois information, resides at 9 Loganberry Court, Markham, Ontario, L3R 8N9, Canada.

B. DISPUTED DOMAIN NAME & REGISTRAR

3. The disputed domain name is aadac.ca (the “Domain Name”). The Registrar is Namespro Solutions Inc.

C. PROCEDURAL HISTORY

4. This is a dispute resolution proceeding initiated pursuant to the *CIRA Domain Name Dispute Resolution Policy* (the “Policy”) and the *CIRA Policies, Rules, and Procedures - CIRA Domain Name Dispute Resolution Rules* (the “Rules”). By registration of the Domain Name with the Registrar, the Registrant agreed to the resolution of this dispute pursuant to the Policy and the Rules.
5. The Complainant filed its complaint (the “Complaint”) on August 14, 2006. By way of letter dated that same day, British Columbia International Commercial Arbitration Centre (the “Provider”) found the Complaint to be in compliance with the Policy and Rules.
6. Delivery of the Complaint to the Registrant by email and courier was successful.
7. The Registrant did not file a response.

8. In light of the Registrant's failure to file a response, the Complainant, as per paragraph 6.5 of the Rules, elected to convert the Panel from three members to a single member.
9. On September 11, 2006, the Panel was appointed. As prescribed by paragraph 7.1 of the Policy, the Panel has declared to the Provider that it can act impartially and independently in connection with this matter, and that there are no circumstances known to the Panel which would prevent it from so acting.

D. BASIS FOR DECIDING THE COMPLAINT

10. Since the Registrant has not submitted a response to the Complaint, the Panel shall decide the Proceeding on the basis of the Complaint, as provided by paragraph 5.8 of the Rules.

E. CANADIAN PRESENCE REQUIREMENTS: ELIGIBILITY OF THE COMPLAINANT

11. The Complainant is a corporation with a principal place of business in Edmonton, Alberta and the owner of the Official mark No. 906,912 for AADAC - Alberta Alcohol And Drug Abuse Commission An Agency Of The Government of Alberta Design (the "AADAC Official Mark").
12. Pursuant to paragraph 1.4 of the Policy, and paragraphs 2.1(d) and (r) of the *CIRA Policies, Procedures and Guidelines: Canadian Presence Requirements For Registrants*, the Panel is satisfied that the Complainant is eligible to initiate this proceeding.

F. THE POSITIONS OF THE PARTIES

The Complainant's Position

13. The Complainant is a corporation funded by the Government of Alberta to assist Albertans in achieving freedom from the harmful effects of drugs and gambling.
14. The Complainant delivers information, prevention and treatment services in the field of drugs and gambling.
15. The Complainant offers its services in 49 communities across the province of Alberta. Each year, approximately 30,000 clients receive treatment from the Complainant and more than 150,000 people attend prevention activities or receive information provided by the Complainant.
16. The Complainant is a nationally recognized organization and has partnerships with a number of national programs, including the Canadian Centre on Substance Abuse and the Canadian Health Network.

17. The Complainant also maintains a strong national presence by attending numerous addiction and health conferences. For example, the Complainant has provided displays and distributed its materials at a number of conferences across Canada.
18. The Complainant registered the domain name aadac.com in 1998, and this domain name resolves to the Complainant's website.
19. The Complainant is the owner of the AADAC Official Mark, which was advertised on October 19, 1994. The Complainant also takes the position that it is the owner of the "registered trade-mark AADAC". However, the Complainant is not the owner of such a registration, and it appears that this was intended to be a reference to the AADAC Official Mark.
20. The Complainant also states that it "has used the mark AADAC in conjunction with all of its services and wares since its inception in 1971".
21. The Domain Name was registered on May 4, 2005 and made to resolve to a website hosted by DomainSponsor.com, which displayed links to third party websites unrelated to the Complainant.
22. The Domain Name is confusingly similar with the AADAC mark in which the Complainant had rights prior to the registration date of the Domain Name, and continues to have such rights.
23. The Registrant has no legitimate interest in the disputed domain name.
24. The Registrant registered the Domain Name in bad faith in that (i) it has engaged in a pattern of abusive domain name registrations, and (ii) it registered the Domain Name primarily for the purpose of disrupting the business of the Complainant, a competitor of the Registrant.
25. The Complainant has never authorized, licensed, or otherwise permitted the Registrant to use AADAC as a trade-mark, trade name, or domain name.
26. As previously noted, the Registrant did not file a response.

G. DISCUSSION & REASONS

27. In accordance with paragraph 4.1 of the Policy, to succeed in this proceeding, the Complainant must prove, on a balance of probabilities, that:
 - (a) the Registrant's 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 Rights¹; and

- (b) the Registrant has registered the Domain Name in bad faith as described in paragraph 3.7 of the Policy;

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 of the Policy.

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.

CONFUSINGLY SIMILAR - PARAGRAPH 3.4

- 28. In order to satisfy this branch of the test, the Complainant must demonstrate (i) that it has rights in a mark, (ii) that the rights in its mark predate the registration date of the Domain Name, and (iii) that the Domain Name is confusingly similar with the disputed domain name.

Rights in a Mark

- 29. The Complainant is the owner of the AADAC Official Mark. Accordingly, as per paragraph 3.2(d) of the Policy, the Complainant has rights in this mark.
- 30. In making its case under this first prong of the test, the Complainant has not relied upon its common law trade-mark rights in AADAC. However, based upon the evidence submitted by the Complainant, the Panel is satisfied that the Complainant is also the owner of the common law trade-mark AADAC (the “AADAC Trade-mark”). Accordingly, as per paragraph 3.2(a) of the Policy, which contemplates protection for common law trade-marks, the Complainant has rights in the AADAC Trade-mark.

Prior Rights

- 31. The Domain Name was registered on May 4, 2005.
- 32. The AADAC Official Mark was advertised on October 19, 1994. While insufficient evidence was submitted to support the position that the AADAC Trade-mark has been in use since 1971, the Panel is satisfied that this mark has been in use for some time, and at least before May 4, 2005.

¹ The terms “Rights”, “Mark” and “Confusingly Similar” are defined terms under the Policy.

33. The Panel concludes that the Complainant's rights in its marks predate the registration date of the Domain Name.

Confusingly Similar

34. As per paragraph 3.4 of the Policy, a domain name will be found to be confusingly similar with a mark if the domain name so nearly resembles the mark in appearance, sound or in the ideas suggested by the mark so as to be likely to be mistaken for the mark.
35. Pursuant to paragraph 1.2 of the Policy, a domain name is defined as the second level domain (the portion that immediately precedes the dot-ca suffix).
36. The test to be applied when considering "confusingly similar" is one of first impression and imperfect recollection. The Complainant must prove, on a balance of probabilities, that a person, as a matter of first impression, knowing the Complainant's corresponding mark only, and having an imperfect recollection of the mark, would likely confuse the Domain Name for the Complainant's mark based upon the appearance, sound or the ideas suggested by the mark (*Government of Canada, on behalf of Her Majesty the Queen in Right of Canada v. David Bedford*, BCICAC Case No. 00011).
37. A registrant cannot avoid confusion by appropriating another party's entire mark in a domain name.
38. The domain name aadac.ca incorporates the whole of the distinctive element of the AADAC Official Mark, namely, AADAC. As well, the Domain Name is identical to the AADAC Trade-mark, as the second level domain is comprised exclusively of this mark.
39. Accordingly, the Panel finds that the Domain Name is confusingly similar with the Complainant's marks, given that aadac.ca so nearly resembles the AADAC Official Mark and AADAC Trade-mark in appearance, sound and in the ideas suggested as to be likely to be mistaken for these marks.

Conclusion - Confusion

40. The Panel finds that the Domain Name is confusingly similar with the AADAC Official Mark and AADAC Trade-mark in which the Complainant had rights prior to the registration date of aadac.ca, and continues to have such rights.

BAD FAITH REGISTRATION - PARAGRAPH 3.7

41. The Complainant has alleged that the Domain Name was registered in bad faith pursuant to paragraphs 3.7(b) and (c) of the Policy.

Pattern of Abusive Registrations

42. As per paragraph 3.7(b) of the Policy, the Complainant must establish the following:

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.

43. The Policy does not define the term "pattern". It has been held, however, that as few as two (2) domain name registrations, including the disputed domain name, is sufficient to establish that the Registrant has engaged in a "pattern" of abusive registrations (*Great Pacific Industries Inc. v. Ghalib Dhalla*, BCICAC Case No. 00009). The Panel endorses this position.

44. By way of correspondence dated July 25, 2006, CIRA provided the Complainant with the Registrant's dot-ca domain name portfolio.

45. The Registrant is the owner of the domain names goodyeartires.ca and ottawalynx.ca. These correspond to the third party trade-marks. In light of these registrations, together with the Registrant's failure to legitimize these registrations given his non-response, the Panel finds that the Registrant has engaged in a pattern of abusive registrations.

46. Before a Complainant has satisfied the requirements set out in paragraph 3.7(b) of the Policy, it must not only establish that the Registrant owns multiple domain names to which it is not entitled, but also that "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". As well, the Policy provides that the Complainant must establish that the Registrant has also prevented third parties from registering their marks as domain names. This language is similar to the language in the *Uniform Dispute Resolution Policy* ("UDRP").

47. In this case, the Domain Name matches the AADAC marks and the Complainant operates a website at aadac.com. Accordingly, the Panel has no difficulty finding that the Complainant was prevented from registering the Domain Name.

48. Accordingly, the Panel is satisfied that the Complainant has met the test prescribed by paragraph 3.7(b) of the Policy.

49. In any event, the Panel is further of the view that paragraph 3.7(b) of the Policy should be given an expansive interpretation that is consistent with the intention of the Policy to provide redress from abusive domain name registrations.
50. Cybersquatters routinely register multiple domain names that constitute intentional misspellings of owner marks (i.e., typosquatting), or register domain names that may not otherwise appeal to a mark owner. In these cases, a registrant has not sought to “prevent” a complainant mark owner from registering certain domain names, nor has a complainant been prevented from registering said domains. Rather, the registrant may be stockpiling these domains, or using them to redirect end users to unaffiliated sites with a view to reaping a commercial advantage by capitalizing on end user confusion.
51. In such a case, to conclude that a registrant could escape the reach of paragraph 3.7(b) of the Policy on the basis that an intention to deprive the mark holder of the domain name cannot strictly be shown only encourages a registrant to misappropriate third party marks as domain names that would not have otherwise been sought to be secured by a complainant.
52. Given the right circumstances, a registrant could completely escape the reach of the Policy notwithstanding an extensive pattern of abusive registrations. For example, a registrant could own multiple domain names that constitute intentional misspellings of third party marks and simply be pointing them to inactive websites. In such a case, a complainant could not be said to have been prevented from registering the disputed domain names, as these intentionally misspelled domain names are not ones it would have sought to register. Similarly, without an active site, the complainant would not be in a position to establish that the registrant was a competitor, nor may it be in a position to establish that the registrant registered the domain name to sell for a profit, as per paragraphs 3.7(c) and (a) of the Policy, respectively.
53. This could not have been the intention of the Policy, which is designed to address clearly abusive and unauthorized domain name registrations in a cost-effective and timely manner without recourse to costly and lengthy court proceedings.
54. Of course, the Panel may consider the surrounding circumstances when considering bad faith. Nevertheless, with respect to the interpretation of paragraph 3.7(b) of the Policy, the approach should be a pragmatic one, sensitive to the practices of cybersquatters and the commercial realities related to domain name registrations.
55. Given the expansive interpretation, the Panel believes should be accorded the Policy, a mere intention on the part of a registrant to obstruct a mark owner together with two or more unauthorized domain name registrations should be sufficient to satisfy paragraph 3.7(b) of the Policy. Indeed, this has been a position taken in cases decided pursuant to the UDRP, which employs language similar to paragraph 3.7(b) of the Policy.

Disrupt a Competitor

56. As per paragraph 3.7(c) of the Policy, the Complainant must establish the following:

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.

57. Accordingly, the Complainant must establish (i) that the Registrant and the Complainant are competitors, and (ii) that the Registrant's use of the Domain Name is disrupting the Complainant.

The Registrant's Website

58. The Registrant has pointed the Domain Name to a customized Internet portal displaying various sponsored or advertised links. The Registrant is paid a fee by DomainSponsor.com each time an end user clicks on an advertisement appearing on the site.

59. The website includes the banner "AADAC.CA", as well as links entitled "AADAC EDMONTON", "ADDICTION TREATMENT" and "ALCOHOL TREATMENT", to name a few. These links take the end user to a list of sponsored links that themselves resolve to websites promoting various wares and services unrelated to the Complainant. The Registrant's website also provides a means by which end users may conduct their own searches.

Customized Internet Portals or Pay Per Click Sites

60. It has become an increasingly popular practice among 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. Registrants only see an upside to doing so, as in many cases, the alternative would be to park the domain names at inactive sites, which of course is a less attractive proposition as it does not generate revenue for registrants.

61. The Panel in *PepsiCo, Inc. v. LaPorte Holdings, Inc. and Pepsiemployment.com a/k/a Henry Chan*, WIPO Case No. D2005-0087, commented on this practice:

The websites associated with the Domain Names – consisting solely of links "for monetization of parked domain names," according to a webpage from DomainSponsor provided as an exhibit by Complainant – represent a crude but increasingly popular scheme for cybersquatters to earn money from their activities. See *PepsiCo, Inc. v. Henry Chan*, WIPO Case No. D2004-0033 ("using the domain

names to divert web traffic to search engines and linking portals...
diverted web traffic used for a financial benefit”).

62. It is a well-established principle that resolving a disputed domain name to a customized Internet portal, such as those hosted by Hitfarm.com or DomainSponsor.com, with a view to reaping a commercial advantage by attempting to capitalize on consumer confusion constitutes *prima facie* evidence of bad faith as per paragraph 3.7(c) of the Policy (*The Standard Life Assurance Company of Canada v. Hank Morin*, Resolution Canada Case No. 00046; *Sleep Country Canada Inc. v. Pilfold Ventures Inc.*, BCICAC 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.*, BCICAC 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).
63. In such cases, the Registrant will be found to be a “competitor” of the complainant, as it has offered a means by which end users may access links to businesses that compete with the complainant, while also competing for Internet traffic by trying to capitalize on consumer confusion.
64. Such use of a domain name is also “disruptive” to a complainant, as potential consumers are likely to be confused into believing that the registrant’s website is somehow affiliated with, or sponsored by, the complainant. As well, the mere misdirection of end users to the registrant’s website, and to websites operated by competitors of the complainant, constitutes a disruption to the complainant.
65. The Panel in *Sleep Country Canada Inc. v. Pilfold Ventures Inc.*, *supra*, held that use of a domain name in these circumstances qualifies as bad faith pursuant to paragraph 3.7(c):

The Panel finds that the Registrant’s use of the domain name in association with a web page that linked to competitors of the Registrant, constituted the Registrant a competitor of the Complainant for the purposes of CIRA Policy para. 3.7(c). Further, the Panel concludes that the effect of the Registrant’s use of the Confusingly Similar domain name with this web page offering products directly competing with the Complainant’s business would disrupt the business of the Complainant.

...The Panel finds that it is reasonable to infer the Registrant’s intention in registering a domain name from the use to which the Registrant puts the domain name after registration. The Registrant used the Confusingly Similar domain name on a web site that was dominated by links to mattress and bedding retailers who might compete for business with the Complainant. The adverse impact on,

or disruption of, the Complainant's business from the Registrant so using the Confusingly Similar domain name should have been obvious to the Registrant. I infer that this intention was formed by the Registrant as the domain name was first registered. Further, the dominant use on that web site of links to businesses competing with the Complainant supports the further inference that the Registrant registered the domain name primarily for the purpose of disrupting the business of the Complainant.

Application to the Instant Case

66. Resolving aadac.ca to the DomainSponsor.com website qualifies the Registrant as a "competitor" of the Complainant, as the website provides end users with access to links of competitors of the Complainant, and also competes for Internet traffic by attempting to capitalize on end user confusion. Further, the use of aadac.ca is disruptive to the Complainant, as potential consumers are likely to be confused into believing that the Registrant's Domain Name and website is somehow affiliated with, or sponsored by, the Complainant. As well, the mere potential for the misdirection of end users to the Registrant's website based upon end user initial interest confusion, irrespective of the nature or content of the Registrant's website, constitutes a disruption to the Complainant's business and the goodwill subsisting in its marks. If an end user is confused into believing that there is some association between the Domain Name and the Complainant, but that confusion is immediately dispelled upon visiting the Registrant's website, a disruption to the Complainant has still occurred.
67. The sole purpose behind the registration of the Domain Name was to piggyback on the goodwill associated with the Complainant's marks in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Under the circumstances, it is reasonable to infer that the Registrant not only knew this diversion would be disruptive, but intended it to be so.
68. As per paragraph 3.7(c) of the Policy, the Panel finds that the Registrant registered the Domain Name for the purpose of disrupting the business of the Complainant, a competitor.

Bad Faith - Conclusion

69. Accordingly, the Panel concludes that the Domain Name was registered in bad faith as per paragraphs 3.7(b) and (c) of the Policy.

LEGITIMATE INTEREST - PARAGRAPHS 4.1(C) & 3.6

70. The final element of the test set out in the Policy is to determine whether or not the Registrant has a legitimate interest in the Domain Name.
71. As per paragraph 4.1 of the Policy, the Complainant must provide “some evidence that the Registrant has no legitimate interest in the domain name as described in paragraph 3.6”.
72. Once this onus has been discharged by the Complainant, the Registrant may still succeed if it can show, on a balance of probabilities, that it has a legitimate interest in the Domain Name pursuant to paragraph 3.6, which provides as follows:
 - (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.
73. The Panel finds that the Complainant has provided sufficient evidence that the Registrant does not have a legitimate interest in the disputed domain name as prescribed by paragraph 3.6 of the Policy:
 - (i) As per paragraph 3.6(a), the pointing of a disputed domain name to a customized portal with a view to reaping a commercial advantage by attempting to capitalize on

consumer confusion undermines any claim of good faith and cannot be said to constitute *bona fide* use of the Domain Name. In any event, the Registrant has not used the Domain Name 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 disputed domain name.

- (ii) As the Domain Name has not been used in good faith, the Registrant may not rely upon the protection contemplated by paragraphs 3.6(b),(c) and (d) of the Policy. In any event, the Domain Name itself is not found to be a descriptive or generic term, nor has the Domain Name been used in connection with a non-commercial activity.
- (iii) The Domain Name is not comprised of the legal name of the Registrant, or was a name, surname or other reference by which the Registrant was commonly identified. As well, the Domain Name is not the geographical name of the location of the Registrant’s non-commercial activity or place of business. Accordingly, paragraphs 3.6(e) and (f) do not serve to legitimize the Domain Name.

74. As the Registrant has not replied to the Complaint, it has not proven, on a balance of probabilities, that it has a legitimate interest in the Domain Name.

75. Accordingly, the Panel finds that the Registrant does not have a legitimate interest in the Domain Name.

Decision & Order

76. For the reasons set out herein, the Panel decides this dispute in favour of the Complainant.

77. The Panel therefore orders, pursuant to paragraph 4.3 of the Policy, that the domain name aadac.ca be transferred from the Registrant to the Complainant.

Dated at Ottawa, Ontario, Canada, this 12th day of October, 2006



Eric Macramalla
Sole Panelist