

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

Domain Name: <musiciansfriends.ca>
Complainant: Musician's Friend, Inc.
Registrant: L.A. Music
Registrar: Lowcost Domains Inc.
Panelists: Patrick D. Flaherty, Bradley J. Freedman, Hugues G. Richard
Service Provider: British Columbia International Commercial Arbitration Centre

DECISION

Parties

The Complainant is Musician's Friend, Inc., a company based in the United States, with the address 931 Chevy Way, Medford, Oregon, 97504.

The Registrant is L.A. Music, 260 Lakeshore Road East, Mississauga, Ontario, L5G 1G9.

Domain Name and Registrar

The domain name that is the subject of this proceeding is <musiciansfriends.ca> (the "Domain Name"). The Registrar of the Domain Name is Lowcost Domains Inc.

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 December 13, 2006, the Complainant filed a complaint regarding the Domain Name with BCICAC.

- (b) On December 13, 2006, 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 January 22, 2007, pursuant to Rule 5.4.
- (d) The Registrant delivered its response, in compliance with the Policy and Rules, to the BCICAC on January 22, 2007.
- (e) The Registrant's response was reviewed by the BCICAC and forwarded to the Complainant.
- (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 January 31, 2007, in accordance with paragraph 6 of the Rules, the BCICAC appointed a three-person Panel comprised of Messrs. Patrick D. Flaherty, Bradley J. Freedman and Hugues G. Richard. Mr. Flaherty was named as Chair of the Panel.
- (h) Each of the Panelists has delivered to the BCICAC the required Statement of Impartiality and Independence, as required by paragraph 7 of the Rules.
- (i) Absent exceptional circumstances, the Panel was required to deliver its decision on or before February 21, 2007.

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 and Registrant were represented by legal counsel throughout this proceeding.

On February 1, 2007, BCICAC informed the Panel by letter that it had received a letter from counsel for the Complainant advising of a typographical error in the complaint and the affidavit of Craig Johnson. BCICAC asked the Panel to advise whether it should forward the letter to the Panel.

On February 6, 2007, Mr. Flaherty, on behalf of the Panel, asked BCICAC to forward the letter from counsel for the Complainant to the Panel members, after which they would decide whether to receive the letter and under what conditions if any.

On February 6, 2007, BCICAC forwarded the letter to the Panel members. Having reviewed the letter the Panel members determined that it would accept the typographical correction made by the Complainant, as it was non-controversial, subject to any objection from the Registrant. No such objection was made.

Background

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

The Complainant is a company based in the United States and runs a well-known business marketing musical instruments and gear. The Complainant sells musical instruments and gear at the website www.musiciansfriend.com, which is visited by tens of thousands of customers from around the world, including Canada, each day, as well as by mail order catalog.

The complaint is based on the Complainant's trademark MUSICIAN'S FRIEND registered in Canada under No. TMA592,327, on October 15, 2003. The Complainant also has two applications for design marks associated with MUSICIAN'S FRIEND: No. 1,140,231 dated May 9, 2002 and No. 1,265,396 dated July 19, 2005.

The Registrant registered the Domain Name on June 14, 2005. As disclosed in the materials filed by the parties, the Registrant has posted no content to the website to which the Domain Name resolves. Rather, it has allowed the Domain Name to be used to provide links to and advertisements for, among others, businesses that sell musical instruments and gear including on-line. A note on the website indicates that these links were provided by egate Domains, the domain name registration company. The note states:

Are you the owner of this domain?
Domains that have been registered but not activated with a service provider are auto-filed with content. Your domain is currently parked with our system and needs to be updated to host a website. If you are the owner of this domain and wish to modify this domain please visit our website for more details.

Positions of the Parties

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

- (a) The Domain Name is confusingly similar to a mark in which the Complainant had rights prior to the date of registration of the Domain Name and continues to have such rights.
 - (i) The Complainant is the owner of the trademark "MUSICIAN'S FRIEND" registered in the Canadian Intellectual Property Office (CIPO).
 - (ii) This mark was obtained by the Complainant before the registration of the Domain Name.
 - (iii) Since the absence of spaces and punctuation marks are irrelevant for the purpose of determining confusing similarity, the only difference between the Domain Name and the mark is the non-material addition of the letter "s".

- (iv) Accordingly, the Domain Name is confusingly similar to the Complainant's "MUSICIAN'S FRIEND" mark.
- (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 "MUSICIAN'S FRIEND" 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 "MUSICIAN'S FRIEND" in view of the fact that the Registrant is in the same business as the Complainant, namely, among other things, online sale of musical instruments.
 - (iv) The Domain Name is parked and it is asserted points to a pay-per-click website which advertises the sale of musical instruments.
 - (v) The mark MUSICIAN'S FRIEND is not clearly descriptive or a generic name.
 - (vi) The Registrant was not using the Domain Name in good faith or in association with a non-commercial activity.
- (c) The Registrant registered the Domain Name in bad faith as described in paragraph 3.7.
 - (i) The Registrant registered the Domain Name in order to prevent the Complainant from registering its mark as a domain name and the Registrant 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, as described in paragraph 3.7(b). In *Sam Ash Music Corporation v. LA MUSIC and L.A. Musical Instruments*, CIRA Dispute Number 00067, the Registrant was found to have registered a domain name in bad faith. The Registrant has also registered a number of domain names containing trademarks owned by third parties. Further, the Registrant's administrative contact, Mr. Rob Piperni, has also registered a number of domain names containing trademarks owned by third parties.
 - (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 is a retailer of musical instruments and accessories. In addition to operating a store, it also sells musical instruments and accessories on line. As such, the Registrant is a direct competitor of the Complainant. The Registrant's administrative contact has registered the domain name <musiciansfriend.ca>, which is the subject of a parallel proceeding. The Registrant has previously been found to have

registered a domain name in bad faith. The Domain Name is parked with a pay-per-click website which advertises musical instruments.

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

- (a) L.A. Music is not the Registrant of the Domain Name. Rather, Robert Piperni, who is listed as the administrative contact in respect of the Domain Name and who is the son of the owner of L.A. Music, is in fact the true Registrant. The Affidavit of Mary Piperni, who has been operating L.A. Music with her husband since 1978, indicates that she and her husband allowed Robert Piperni to acquire domain names for his own personal use using the account of L.A. Music, and that the Domain Name was acquired for Robert Piperni's personal use.
- (b) The Registrant submits that because the Complainant is a U.S. corporation it does not satisfy the Canadian Presence requirements of the Policy.
- (c) The Registrant submits that the test for confusing similarity is the test found in section 6(5) of the *Trade-marks Act*. The Registrant submits that this test is not met for the following reasons:
 - (i) The words "musician" and "friend" in the Complainant's mark are both descriptive, and accordingly the mark MUSICIAN'S FRIEND is not inherently distinctive.
 - (ii) The Registrant intends to use the Domain Name to provide an online chat room where users can share information concerning musical instruments, bands and music techniques. These services are different than those provided by the Complainant.
 - (iii) The Complainant's consumers are sophisticated and not likely to be confused between the Complainant's mark and the Domain Name.
 - (iv) The Complainant has failed to establish sufficient use of its Mark in Canada.
- (d) The Registrant did not register the Domain Name in bad faith.
 - (i) The Registrant registered the Domain Name for the purpose of establishing an online chat room for musicians to share information and reviews concerning musical instruments, bands and music techniques. The Registrant has no interest in operating an online music store.
 - (ii) Robert Piperni, who is said to be the true Registrant, is not a competitor of the Complainant within the meaning of paragraph 3.7(c) of the Policy.

- (e) The Registrant has a legitimate interest in the Domain Name pursuant to paragraphs 3.6(b) and (c) of the Policy:
 - (i) The Registrant registered the Domain Name for the good faith purpose of establishing an online chat room for musicians to share information concerning musical instruments, music techniques and bands. The words “musicians” and friends” are common dictionary words.
 - (ii) Since the registration of the Domain Name, the Registrant has established a directory of on-line providers of musical instruments and related services for use by musicians. The Registrant is continuing to design the complicated chat room interface for the website associated with the Domain Name.
- (f) Since the Domain Name was registered on June 14, 2005, the Complainant should be denied the relief sought on the ground that it has failed to act in a timely manner in bringing this complaint.

Discussions and Findings

The Policy

The onus on the Complainant is set out in paragraph 4.1 of the Policy, which reads as follows:

4.1 Onus. To succeed in the Proceeding, the Complainant must prove, on a balance of probabilities, that:

- (a) the Registrant’s dot-ca domain name is Confusingly Similar 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.

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.

Canadian Presence Requirements

The Registrant submits that the Complainant does not meet the Canadian presence requirements in the Policy. This is incorrect. Because the Complainant is the owner of the registered Canadian

trademark MUSICIAN'S FRIEND, it meets the Canadian Presence requirements. See CIRA Canadian Presence Requirements For Registrants, version 1.3, paragraph 2(q).

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 trademark that is registered in CIPO is considered to be a "Mark" in which the Complainant has "Rights". Since the Complainant's trademark was registered on October 15, 2003 and the Domain Name was not registered until June 14, 2005, the Complainant's rights existed prior to the registration of the Domain Name. Contrary to the Registrant's assertions, since the Complainant's mark is a registered trademark, the Complainant is not required to establish distinctiveness or use under the Policy. (see *Government of Canada v. David Bedford*, CIRA Dispute No. 11, at para. 30).

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 test for confusing similarity is a test of resemblance based upon first impression and imperfect recollection. The relevant cases and underlying rationale are discussed in *Canadian Thermos Products Inc. v. Michael Fagundes*, CIRA Dispute 00049. The test for confusion under the *Trade-marks Act* as referenced and relied on by the Registrant does not apply under the Policy.

For the purposes of determining whether a domain name is confusingly similar to a Mark, Policy paragraph 1.2 indicates that the ".ca" suffix of the domain name should not be considered. Further, since punctuation marks and spaces are to be ignored under the Policy (see *Canadian Broadcasting Corporation v. William Quon*, CIRA Dispute 00006), the only differences between the Domain Name and the Mark are the absence of an apostrophe and the addition of an "s" to the end of "friend". This is not sufficient to distinguish the Mark and the Domain Name. Internet users will likely be confused.

Who is the Registrant?

As noted above, the Registrant asserts that the "true Registrant" is not L.A. Music (as shown in the CIRA WHOIS database) but Robert Piperni. This assertion is key to the Registrant's and Mr. Piperni's denial of bad faith and the assertion of legitimate interest in the Domain Name. In particular, Mr. Piperni claims that, unlike L.A. Music, he is not a competitor of the Complainant and that he intends to use the Domain Name in the future as a forum or chat room for musicians, not to sell musical instruments or gear.

This submission requires the Panel to consider whether it is open to a panel under the Policy and Rules to go beyond or behind the registration information contained in the CIRA WHOIS database. The Policy does not on its face contemplate such an inquiry, and in fact, the Rules suggest otherwise. Paragraph 1.1(h) of the Rules provides that “Registration Information” (which includes the identity of the Registrant) is to be determined by reference to the information in the CIRA WHOIS database. This is consistent with the procedural approach taken in the Policy and the Rules, which mandate a cost effective and streamlined process for adjudication of domain name disputes. In this regard, the right of complainants to deliver responding materials is extremely limited and no cross-examination is permitted. Accordingly, it would be contrary to the Policy and Rules and inconsistent with the approach to resolution adopted therein to entertain evidence or submissions that seek to contradict the information contained in the CIRA WHOIS database. Rather, a complainant is entitled to rely on the information in the CIRA WHOIS database in making its case. In this regard, an analogy can be drawn to the refusal of other Panels to look behind the registration of a trademark in the CIPO and to entertain attacks on the legitimacy of a registration of a trademark in the context of a CIRA dispute resolution proceeding. (See *Government of Canada v. David Bedford*, CIRA Dispute No. 11, at para. 30).

In any event, even if the Panel did entertain the Registrant’s submissions in this regard, it would not have any effect upon our determinations on the issues of bad faith and legitimate use. Briefly, the assertions made by the Registrant about the “true” Registrant are not supported by credible or cogent evidence. Moreover, those assertions are inconsistent with some of the documentary evidence and the common sense inferences that may be drawn from the conduct of L.A. Music and Mr. Piperni. Further, even if Mr. Piperni was the “true” Registrant he would still be considered a competitor of the Complainant within the meaning of the Policy as described below.

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.*, CIRA Dispute 00015, “‘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 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 (see *Canadian Broadcasting Corporation v. William Quon*, CIRA Dispute 00006). Accordingly, as a practical matter, where the complainant's evidence is sufficient to create an inference of bad faith, the registrant must put forward evidence to explain his conduct.

In *Acrobat Construction v. 1550507 Ontario Inc.*, CIRA Dispute 00013, 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.

Policy paragraph 3.7(b) does not apply to this dispute because the Domain Name does not prevent the Registrant from registering its Mark MUSICIAN'S FRIEND as a domain name. The additional "s" at the end of the Domain Name is a complete answer to the Complainant's arguments with respect to paragraph 3.7(b).

However, the Panel finds that the Complainant has put forward sufficient evidence to establish a *prima facie* case that the Registrant registered the Domain Name primarily for the purpose of disrupting the Complainant's business, who is a competitor of the Registrant, contrary to paragraph 3.7(c) of the Policy.

For the reasons set forth above, the Panel does not accept the argument that the “true” Registrant of the Domain Name is Robert Piperni. Accordingly, for the purposes of this dispute, the Registrant is L.A. Music. It operates a store selling musical instruments and accessories as well as a website selling musical instruments and accessories online that is in direct competition to the business of the Complainant.

However, even if the Panel was prepared to accept that Robert Piperni was the true Registrant, he would also be a competitor of the Complainant within the meaning of the Policy. He is closely associated with L.A. Music and he has allowed the Domain Name to be used to provide links to and advertisements for competing online music retailers. In this sense, he is at a minimum, an indirect competitor of the Complainant (see *priceline.com Incorporated v. Supriyo Malaker*, CIRA Dispute 00045).

The Panel is satisfied on the evidence that the primary purpose of the Domain Name registration was to disrupt the Complainant’s business. In this regard, we note the following:

- (a) The Registrant has already been found to have registered a domain name in bad faith in a previous CIRA decision. It registered the domain name <samash.ca>, with Sam Ash being a popular music store in the United States. (see *Sam Ash Music Corporation v. LA MUSIC*, CIRA Dispute 00067).
- (b) Both the Registrant and Robert Piperni have registered a number of domain names that contain registered trademarks of third parties, including trademarks related to businesses of a musical nature. The following are examples of domain names registered by the Registrant: <fenderamps.ca>, <garrisonguitars.ca>, <pearldrums.ca>, and <voxamps.ca>. The following are examples of domain names registered by Robert Piperni: <ampeg.ca>, <fenderelectricguitar.ca>, <korgkeyboards.ca>, and <rolandkeyboards.ca>.
- (c) The Registrant has not provided any of its own content to the website associated with the Domain Name, even though it was registered over a year and a half ago, on June 14, 2005. Rather, the Registrant has allowed the Domain Name to be used to provide links to competing online music retailers.
- (d) The fact that the Registrant is a competitor of the Complainant and has previously registered a domain name (which incorporated the name of a popular US music store) in bad faith, also suggests that the Registrant was likely aware of the Complainant’s business and MUSICIAN’S FRIEND trademark prior to registering the Domain Name.
- (e) Robert Piperni, who is the administrative contact and son of the owners of the Registrant and who has been involved with the Registrant’s business, has also registered the domain name <musiciansfriend.ca>.

The Registrant has failed to adequately respond to the Complainant’s case. The evidence put forward by the Registrant is not credible and tends to confirm rather than refute its bad faith in registering the Domain Name.

Mr. Piperni states in the materials filed that the Domain Name was registered for the purpose of developing an online chat room for musicians to exchange ideas about musical instruments, music techniques and bands. However, even though the Domain Name was registered more than a year and a half ago on June 14, 2005, the Registrant has done nothing to further this stated purpose. While Mr. Piperni alleges that, as part of his website development process, he used the Domain Name for a website on which he has posted links to several musical websites, this is not correct and a note posted on the website by egate Domains belies this statement. The note states:

Are you the owner of this domain?
Domains that have been registered but not activated with a service provider are auto-filed with content. Your domain is currently parked with our system and needs to be updated to host a website.
If you are the owner of this domain and wish to modify this domain please visit our website for more details.

For those reasons, the Panel is satisfied that 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 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 registered the Domain Name in bad faith.

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 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 it provides services, and that the Domain Name was not used for non-commercial activity.

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

The Registrant has not satisfied its burden of demonstrating a legitimate interest. The Registrant relies on paragraphs 3.6(b) and (c) of the Policy, and states that the words "musicians" and "friends" are common dictionary words and are descriptive of the online chat room for musicians that he intends to create. While separately and in the abstract the words "musicians" and "friends" are not distinctive, the combination of the words is distinctive. Further, these words are neither descriptive nor the generic term for an on-line chat room for musicians. In any event, the chat room has not yet been created, so it cannot be said that the Registrant "used" the Domain Name for the purpose of providing an on-line chat room for musicians.

In any event, the legitimate interest criteria set forth in Policy paragraphs 3.6(b) and (c) are satisfied only if the Registrant's use was in "good faith", a term which is not defined by the Policy. Regardless of whether the Registrant is L.A. Music or Robert Piperni, neither has a legitimate interest in the Domain Name because neither can be said to have used the Domain Name in "good faith" given the Registrant's failure to explain the similarity between the Domain Name and the Complainant's Mark as well as the fact that the Domain Name is currently used as a site that advertises online music businesses that compete with the Complainant.

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.

Other Defenses Asserted by the Registrant

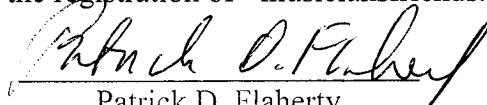
The Registrant asserts, by way of defense, that the Complainant has unreasonably delayed bringing this proceeding. In this respect, the Registrant asserts that the Domain Name has been registered since June 14, 2005, and that the Complainant made no complaint until the commencement of this proceeding. Equitable defenses are not expressly provided for in the Policy or the Rules, though similar concepts do underlie Policy paragraph 4.6 (under which an award of up to \$5,000 may be made against the Complainant who has brought the complaint in bad faith). Policy paragraph 4.2 requires this Panel to render its decision in accordance with the Policy and the Rules. In any case, even if delay could be countenanced as a defence, there is no evidence before us of delay on the part of the Complainant once the Complainant became aware of the registration of the Domain Name by the Registrant. Nor does the Registrant provide any evidence that it somehow altered its position as a result of any such delay or was prejudiced by it. Rather, as noted above, the Registrant has not used the Domain Name during the period of alleged delay other than to disrupt the Complainant's business.

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 trademark "MUSICIAN'S FRIEND". 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 Registrar, Lowcost Domains Inc., transfer the registration of <musiciansfriends.ca> to the Complainant.



Patrick D. Flaherty

Chair

Date: February 16, 2007