

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

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Domain Name: **godaddy.ca**

Complainant: GoDaddy.com, Inc.

Registrant: Jan Ladwig

Registrar: Tucows.com Co

Arbitrator: Jacques Biron

Service provider: British Columbia International Commercial Arbitration Centre  
To be the CIRA-approved Dispute Resolution Provider

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**DECISION**

A...The preamble

1...The Registrant was notified of the complaint and commencement of the dispute resolution process on March 2, 2007 electronically (as per his request).

2...The Registrant has not provided a Response.

3...As permitted given in the absence of a Response, the Rule 6.5 is elected to convert from a panel of three to a single arbitrator.

B...The Arbitrator

4...The Arbitrator hereby declares that he has no direct or indirect relation with any of the parties to this Arbitration. The arbitrator declares that he has instituted an "ethical wall", and he did not receive any other information related to any matter involving the parties of this Arbitration.

5...The Arbitration was conducted in conformity with the CIRA Policies, rules, and Procedures – CIRA Domain Name Dispute Resolution Rules in accordance with Rule 4.4, establishing the date of commencement of the Proceedings as of March 2, 2007.

6...The jurisdiction of the Superior court of the province or territory in Canada shall be established in the city of Ottawa in the Province of Ontario, which represent the Registrant and the Registrar's Province.

C...The parties

7...The Complainant, **GoDaddy.com, Inc.** is incorporated under the laws of Arizona, U.S.A., whose principal Place of business is 14455 North Hayden Road, suite 219, Scottsdale, AZ 85260, U.S.A.

8...The Complainant's authorized representative in this administrative proceedings is Christine Jones as General Counsel using the same address.

9...The Registrant for the domain name is **Jan Ladwig**, which has its principal place of business at NA 3601 Credit Woodlands, Mississauga, ON, Canada L5C 2K8.

10...The second contact for the Registrant is **Andy Ninowski**, which has its address at NA 21 Louisa St., Toronto ON, Canada M8V 2K5.

D...The Domain Name and Registrar

11...The dispute domain name is **godaddy.ca**. The Registrar for the domain name is Tucows.com Co. The dispute domain name was registered on December 17, 2001.

E...Procedural History

12...This is a proceeding under the Canadian Internet Registration Authority (CIRA) *Domain Name Dispute Resolution Policy* (Version 1.1) (the *Policy*) and the CIRA *Domain Name Dispute Resolution Rules* (Version 1.2) (the *Rules*).

13...The History of the proceedings, according to information provided by the dispute resolution provider, British Columbia International Commercial Arbitration Centre (BCICAC) recognized as service provider for the CIRA Domain Name Dispute Resolution Policy of the Canadian Internet Registration Authority (CIRA), is as follow (Rules, paras.3.2(h) and (i)):

- The Complainant filed a complaint against the Registrant with The British Columbia International Commercial Arbitration Centre, requesting that the current registration of the domain name -- godaddy.ca -- be transferred to the Complainant. The Complaint was received by BCICAC ON March 2, 2007.

- **GoDaddy.com, Inc.** ("Go Daddy"), the Complainant, is the owner of the Canadian registered trademark: **GODADDY.COM**, TMA662862 registered on April 19, 2006 under the file number 1262252.

#### F...Factual background of the Complainant

14... The Complainant is also the owner of the following trademarks, registered in U.S.A. as describe:

Registration	First use in	Mark
2558989	19990419	GO DADDY
2388707	19990701	GO DADDY SOFTWARE
2593111	20011201	GO DADDY
2904954	20011201	GODADDY.COM
2945200	20011201	GO DADDY.COM
2945201	20011201	GODADDY.COM
2969916	20011201	GODADDY.COM
3156369	20011201	DADDY

The trademarks are further used in web site hosting, design, email, secure certificates, shopping carts, traffic building software, and products and services needed for online presence.

15... Additionally, as evidence, the Complainant, either itself or through related entities, had at least the following domain names:

- godaddy.com, registered on 2 March 1999
- godaddy.net, registered on 2 March 1999
- godaddy.info, registered on 23 August 2001
- godaddy.biz, registered on 12 March 2002
- godaddy.us, registered on 18 April 2002
- godaddy.org, registered on 19 April 2002
- godaddy.cc, registered on 8 June 2003
- godaddy.mobi, registered on 12 June 2003
- godaddy.co.uk, registered on 17 December 2003
- godaddy.at, registered on 5 February 2004
- godaddy.de, registered on 24 March 2004
- godaddy.name, registered on 6 March 2006
- godaddy.ms, registered on 28 March 2006.

16...Godaddy.com is accessed daily by thousands of users throughout U.S.A, Canada and the world.

17...Go Daddy is the largest ICANN accredited domain name registrar worldwide for .com, .net, .org, .biz and .us registrations, with nearly 18 million domain names under management

G...Factual background of the Registrant and other facts

18...On 17 December 2001, the Registrant registered the Domain Name "godaddy.ca" and has continually used that domain name since.

19...The Domain Name links to the website for NameCom.com, a business offering mainly domain name registration, website hosting and web design services, as well as other products and services needed for an online presence.

20...The Registrant's email address listed in the WHOIS database is infringing, as evidence of several attempts. Emails are returned as undeliverable.

21...On 12 January 2005, the Complainant Go Daddy contacted the Registrar Tucows.com, seeking for a valid email address for the Registrant.

22...The Tucows compliance officer responded by informing Go Daddy that dot-ca domain names are govern by CIRA and Tucows cannot hold or suspend a domain name, even with invalid WHOIS information.

23...On 17 January 2005, Go Daddy then contacted CIRA Compliance, attempting to obtain the correct email address for the Registrant.

24...CIRA refer the Complainant to the Registrar.

25...On 23 June 2006, the Complainant again attempted to contact the Registrant via the email address listed in the WHOIS database.

26...Upon this attempt, G0 Daddy did not receive a failure notice.

27...It was presumed the Registrant received the infringement notice.

28...The registrant did not respond nor took any corrective action (as evidence by the 12 July 2006 WHOIS search.

29...On 12 July 2006, the Complainant sent another email notice to **both** email address listed in the WHOIS database.

30...Although the Complainant did receive a failure notice for one of the email address but, did not received, a failure notice from the second email address.

31...It is again presumed that that the Registrant receive the infringement notice.

32...On 11 September 2006, the Complainant sent a certified letter to the address listed in the WHOIS database.

33...The letter was returned as undeliverable.

34...As of the date of submitting the Complaint, the Domain Name **godaddy.ca** was still operable and listed to the Registrant.

#### H...CIRA Domain Name Dispute Resolution Policy Requirements

35...Paragraph 3.1 of the *Policy* requires the Complainant to establish that:

(a) *the Registrant '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 continues to have such Rights;*

(b) *the Registrant has no legitimate interest in the domain name as described in paragraph 3.6; and*

(c) *the Registrant has registered the domain name in bad faith as describe in paragraph 3.7.*

36...According to paragraph 4.1 of the *Policy*, The Complainant must establish element (a) and (c) above on a balance of probabilities.

37...The Complainant must also provide "some evidence" that the Registrant has no legitimate interest in the domain name.

#### I...Analysis

##### Confusing Similar to a Mark in which the Complainant had Rights

38...In order to succeed with the Complaint, the Complainant must first establish that "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," (*Policy*, sub-para.3.1) The *Policy* contains definitions of each of the terms "Mark", "Rights" and "Confusingly Similar."

39...The definition of "Mark" is found in sub-paragraph 3.2 of the *Policy*. Sub-paragraph 3.2 (c) provides:

3.2 Mark. A "Mark" is:

...  
(c) a trade-mark, including the word elements of a design mark, that is registered in CIPO;

40... The definition of "Rights" is found in sub-paragraph 3.3. Sub-paragraph 3.3(b) provides that person's predecessor in title or a licensor of that person;

41...The Arbitrator finds that the Complainant has rights in the registered trade-mark **godaddy.ca** and finds that the Complainant has establish its rights in the mark Go Daddy predate two years before the registration by the Registrant of the dispute domain name.

42...The Arbitrator finds that the Complainant has establish clearly that "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 **godaddy** by the Registrant.

43...The **godaddy.ca Domain Name, without the dot-ca suffix, is identical to the Complainant's mark** (Paragraph 1.2 of the *Policy* provides that, "*For purposes of the policy, "domain name" means the domain name excluding the dot-ca suffix and suffixes associated with all third and fourth level domains accepted for registration by CIRA.*"). See *Sam Ash Music Corporation v. LAMUSIC and L.A. Musical Instruments* (CIRA Decision No.00067) (finding that the Domain Name samash.ca, without the dot-ca suffix, was identical to Complainant's Marks SAMASH.COM and SA).

44...It cannot be dispute that a person, on a first impression, knowing the Complainant's corresponding mark and having an imperfect recollection of it, it would likely mistake the Domain Name, without the .ca suffix, for the Complainant's corresponding mark based upon the appearance, sound and ideas suggested by the mark, *Government of Canada v. Bedford* (CIRA Decision May 27, 2003, p.15).

Registrant has No Legitimate Interest in the Mark or in respect to the Domain Name

45...Under sub-paragraph 4.1(c) of the *Policy*, The Complainant must provide some evidence that "the Registrant has no legitimate interest in the domain name". Paragraph 3.6 identifies six circumstances in which a legitimate interest may arise. These are:

(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 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.*

46...The Complainant submitted that the Registrant has no legitimate interest in the Domain Name as define in Paragraph 3.6 of the *Policy*. The Registrant's use of the Domain Name does not satisfied any of the criteria set out in Paragraph 3.6 of the *Policy*.

47...In particular, the Registrant has not been using the Domain Name in good faith, as the Domain Name links Internet visitors who seeks to visit the website of the Complainant (but who enter the Domain Name godaddy.ca) to its own competing business and website located at [www.namecow.com](http://www.namecow.com).

48...By choosing to register a domain name which corresponds to a well-established trademark as a highly visited corresponding dot com website (godaddy.com), the Registrant is profiting from the visitors seeking information about the Complainant. (*Policy*, paragraph 3.6 (a)). See Web Hosting Talk Forum, evidencing a customer seeking to find a Go Daddy Canadian presence, but instead finds namecow.com.

49...Go Daddy is not a clearly descriptive term of the associated wares, services or business in Canada or the United States. (*Policy*, paragraph 3.6(b)).

50... The mark "Go Daddy" does not have any generic meaning in Canada, as it is exclusively associated with the business of the Complainant and is distinctive of the Complainant's business. (*Policy*, paragraph 3.6 (c)). See Trade-Marks Act, R.S., c. T-10, s.2 ("distinctive", in relation to a trade-mark, means a trade-mark that actually distinguishes the wares or services in association with which it is used by its owner from the wares or services of others or is adapted so to distinguish them).

51...The Registrant has never been commonly known by the name "Go Daddy" or the godaddy.ca Domain Name, nor is Go Daddy the legal name of the Registrant. (*Policy*, paragraph 3.6 (e)). See NameCow.com Company overview.

52...There is no evidence that the Registrant has used the Domain Name in good faith in association with a non-commercial website activity. (*Policy*, paragraph 3.6(d)). The Domain Name links to a commercial website offering identical services and goods as GoDaddy.com.

53..."Go Daddy" is not known geographically as name of a location, and to the Complainant's knowledge, the Registrant does not carry out any non-commercial activity or have a place of business in a geographical location called "Go Daddy". (*Policy*, paragraph 3.6 (f)).

54...The Complainant has not licensed or otherwise permitted the Registrant to use the Complainant's Go Daddy trademarks, nor has the Complainant licensed or otherwise permitted to apply for use any Domain Name incorporating those marks.

#### The Registrant Registered and is Using the Domain Name in bad faith

55...The exclusive bases for a finding of bad faith registration are set out in sub-paragraph 3.7 of the *Policy*. They are:

3.7 ***Registration 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 acquire 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 on 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 Complaint, or the Complainant's licensor or*

*licensee of Mark, from registering the Mark as a domain name, provide 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.*

56...The Complainant submitted that the Registrant has registered the Domain name in bad faith, as set forth in paragraph 3.7 of the *Policy*. The evidence establishes 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. (*Policy*, paragraph 3.7 (c)).

57...The Domain Name directs Internet users to an un-affiliated website, namecow.com, offering identical services and products as Go Daddy. GoDaddy.com is the number one domain name registrar for six top-level domains, for which Namecow.com also offers registration.

58...The Registrant, by registering a domain name identical to the Complainant's mark and linking the Domain Name to a business that offers goods and services that can compete with and rival the goods and services of the Complainant, is disrupting the business of Go Daddy. See *Glaxo Group Limited v. Defining Presence Marketing Group Inc. (Manitoba)* (CIRA Decision No. 00020).

59...Additionally the Registrant is acting in opposition to Go Daddy by competing for Internet Users. See *Glaxo Group Limited (supra)* ( holding that where a competitor uses a Domain Name in association with similar or identical services and where the use of the Domain Name creates a likelihood of confusion among end users as the affiliation, sponsorship or endorsement of the website, the competitor has disrupted the business of the Complainant).

60...The Domain Name godaddy.ca bears no connection to the Registrant.

61...It is reasonable to infer that Domain Name was acquire primarily for the purpose of disrupting the business of the Complainant. Reference *Browne & Co Ltd v. Bluebird Industries* (CIRA Decision No. 00002).

62...In any event, the Arbitrator finds that the Complainant has met the requirements to satisfy the balance of probability that the Domain Name was registered by the Registrant in bad faith under paragraph 3.7 (b) and as per paragraph 3.7 (c) of the *Policy*.

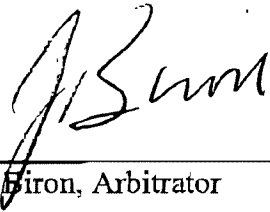
#### J Conclusion

63...Dealing with difficult people simply means dealing with difficult behaviour. This is what happened in the relation between the Complainant and the Registrant where there was no communication because the Registrant's conduct shows that he ignored the problem.

64...The Law of Evidence gives a definition of is "What is evidence? The rules of evidence control the presentation of facts before the court. Their purpose is to facilitate the introduction of all logically relevant facts *without sacrificing* any fundamental policy of the law which may be of more importance than the ascertainment of the truth". See *The Law of Evidence in Canada*, page 1, Butterworths Canada Ltd, 1992 and Butterworth Legal publishers Austin, Texas,

65...It is established that the Complainant had its rights in the Mark Go Daddy which predated the registration of the disputed Domain Name. Considering that the Registrant has no legitimate interest in the Domain Name, the Complainant has been able to establish that registration of the disputed Domain Name was in bad faith within the meaning of paragraph 3.7 of the *Policy*.

66...Considering that proof of bad faith registration is an essential requirement under the *Policy*, I agree with the Complainant and order the transfer of the Domain name **godaddy.ca** to the Complainant.



Jacques Biron, Arbitrator

April 12, 2007