

**IN THE MATTER OF A COMPLAINT PURSUANT TO THE CANADIAN INTERNET
REGISTRATION AUTHORITY (“CIRA”) DOMAIN NAME DISPUTE RESOLUTION
POLICY (“POLICY”)**

Complainant: Abelsoft Corporation

Complainant’s Representative: Peter Giddens
Lang Michener LLP
Toronto ON

Registrant: Gabi Fish o/a Health-pages.ca

Disputed Domain Name: <abelsoft.ca>

Registrar: DomainsAtCost Corp.

Panel: Denis N. Magnusson (sole panellist)

Service Provider: Resolution Canada

DECISION

Parties

The Complainant is Abelsoft Corporation, incorporated under the laws of Ontario with its principal place of business in Burlington, Ontario. The Registrant is Gabi Fish o/a Health pages.ca of Richmond Hill, Ontario.

Disputed Domain Name and Registrar

The disputed domain name is <abelsoft.ca>, registered on August 24, 2007. The Registrar is DomainsAtCost Corp.

Procedural History

The Complainant filed this Complaint with the Provider Resolution Canada on January 21, 2008. The Provider, finding the Complaint to be in order under the Policy, transmitted the Complaint to the Registrant. The Registrant submitted no Response. Thus, the Panel is required by the Policy to decide the matter on the basis of the Complaint. The Complainant elected to have the matter decided by a sole panellist. The Provider appointed Denis N. Magnusson as the sole panellist.

Relief Requested

The Complainant requested that the Panel order that the domain name registration be transferred from the Registrant to the Complainant.

Background Facts

The Complainant

The Complainant was founded in 1977. It provides practice and clinical management computer software for the medical, dental and physiotherapy professions and it has 9000 customers located throughout North America including Canada.

The Complainant registered the trademark <ABELSOFT> in the Canadian Intellectual Property Office (“CIPO”) on August 25, 1999 for use in association with the wares, “computer software for the management of medical and dental practices” and for the services “financial and business consulting services relating to the management of medical and dental practices”.

The Registrant

The Registrant Gabi Fish registered the disputed domain name <abelsoft.ca> on August 24, 2007. By November 25, 2007 the registrant had created a website located at the disputed domain name <abelsoft.ca> which featured the words “Coming Soon!” under a printed reproduction of the “abelsoft.ca” domain name at the top left of the web page.

The Dispute

The Complainant contacted the Registrant on December 5, 2007 to ask that the <abelsoft.ca> domain name be transferred to the Complainant. The Registrant did not reply to this request.

The Complainant filed this Complaint on January 21, 2008.

Eligible Complainant

An eligible Complainant under the Policy includes any person who is the owner of a trademark registered in the CIPO, to which trademark the dispute relates, Policy 1.4. The Complainant is the registered owner of the trademark <ABELSOFT> registered in the CIPO on August 25, 1999. As the registered domain name is <abelsoft.ca>, the Complainant’s CIPO trademark registration is clearly a trademark registration to which this dispute relates. The Complainant is an eligible Complainant under the Policy.

Onus on Complainant

Policy 4.1 requires that:

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.

[emphases added]

(a) Confusingly Similar

Marks in Which Complainant Had and Has Rights

Policy, 3.2(c) states a “Mark” includes a trademark registered in the CIPO. CIPO registration constitutes “Rights” in such registered Mark for the trademark registrant, under Policy 3.3.(b). The Complainant registered the trademark <ABELSOFT> which registration remained on the CIPO register at the time of the filing of this Complaint. The Complainant acquired Rights in its registered trademark *prior to* the registration of the relevant domain name:

abelsoft CIPO registered on August 25, 1999

vs.

domain **abelsoft.ca** registered on August 24, 2007

Confusingly Similar

Policy 3.4 defines “Confusingly Similar”:

“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.”

In assessing similarity, the dot-ca suffix of the domain name is ignored, Policy 1.2. The registered trademark upon which the Complainant bases its Complaint is **ABELSOFT** and the domain name without the dot-ca suffix is **abelsoft** -- the Mark and the domain name are identical apart from capitalization. The Registrant’s domain name is likely to be mistaken for the Complainant’s Mark and is Confusingly Similar under the Policy.

b) Bad Faith

Policy, 3.7 has a restrictive definition of what can constitute the Registrant’s necessary Bad Faith in registering the domain name. There is Bad Faith, “*if, and only if*” one or more of three specific circumstances obtain. The Complainant submitted that the Registrant had registered the domain names in Bad Faith under Policy 3.7(c):

“(c) the Registrant registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of the Complainant . . . who is a competitor of the Registrant.”

The Complainant first became aware of the Registrant’s registration and use of the disputed domain name when one of the Complainant’s customers, familiar with the Complainant’s trademark (brand name) **ABELSOFT** and with its business name **Abelsoft** Corporation tried to locate the Complainant’s website at the URL www.abelsoft.ca and found that this URL resolved to the Registrant’s website, unconnected to the Complainant’s business. When a Registrant registers a domain name more or less identical to a Complainant’s well-established brand name and the distinctive element of the Complainant’s business name and the Registrant uses that registered domain name for a website unconnected to the Complainant’s business, the Complainant’s business has been disrupted. The Internet has become so established as an expected mode of marketing for established businesses that customers of such businesses will expect to find websites linked to the businesses the customers are seeking at domain names which are identical to the distinctive trademarks or trade names of such businesses. When such customers are frustrated in finding the businesses they seek at such domain names, the businesses of the trademark and trade name owners have been disrupted.

Under Policy 3.7(c) the Complainant must also show that the Registrant registered the domain name “primarily for the purpose of” disrupting the business of the Complainant. Decided cases under the CIRA Policy, with which this Panel concurs, have stated that the purpose of a Registrant in registering a domain name can reasonably be inferred from the necessary and likely effects of the fact of the Registrant’s domain name registration and the uses to which the Registrant puts the registered domain name. Thus it is reasonable to infer that the Registrant

intended the effect of disruption of the Complainant's business through the Registrant's registration of the domain name.

Finally, under Policy 3.7(c), the Complainant must show that the Registrant is a competitor of the Complainant. The Complaint notes that the Registrant Gabi Fish is the CEO of a business operating under the business name "Smart Care Solutions" and that Gabi Fish is the Registrant for the domain name <smartcaresolutions.ca>. The website at the latter domain name describes Smart Care Solutions as offering business solutions (services) for health care providers and features a link to an associated webpage offering computer software (wares) for "medical practice office management and medical billing software". Thus, the Registrant is the CEO of a business in direct competition with the Complainant – this constitutes the Registrant a "competitor" of the Complainant for the purposes of Policy, 3.7(c).

The Complaint offers other evidence by which the Registrant could be found to have registered the domain name in Bad Faith under Policy 3.7(c) and also makes submissions with respect to the Registrant's Bad Faith registration under Policy 3.7(b). Having found that the Registrant has registered the domain name in Bad Faith under Policy 3.7(c) on the above-described basis, the Panel has concluded that it need not consider these further submissions, despite their persuasive nature.

In conclusion, the Panel finds that the Registrant did register the domain name in Bad Faith as defined in Policy 3.7(c).

c) Legitimate Interest

The Complainant has the burden of providing "some evidence" that "the Registrant has no Legitimate Interest in the domain name as described in paragraph 3.6". The Complainant made submissions in the light of the facts of this dispute and the several bases only upon which a Registrant's Legitimate Interest can be based under Policy 3.6. The Complainant has satisfied the requirement of submitting some evidence that the Registrant has no Legitimate Interest in the domain name.

Conclusion and Order

The Complainant has satisfied the Complainant's burden under the Policy of establishing Confusing Similarity, Bad Faith, and some evidence that the Registrant does not have a Legitimate Interest in the domain name. For the reasons set out above, the Panel grants the relief requested by the Complainant and orders that the domain name registration <abelsoft.ca> be transferred to the Complainant.

Date: March 6, 2008

Denis N. Magnusson

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