

CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY

COMPLAINT

Dispute Number: DCA-1091-CIRA
Domain Name: **salesforce.ca**
Complainant: Salesforce.Com, Inc.
Registrant: Anbarasan Kunjayah
Registrar: Expert.ca (Ramin Haghghat)
Panelist: Harold Margles
Service Provider: British Columbia International Commercial
Arbitration Centre

DECISION

PARTIES

The **Complainant** is an American Corporation which is the registered owner of:

- (1) the Canadian trade-mark SALESFORCE.COM, registered on August 9, 2005 as No. TMA645,498, based upon use in Canada since March 2001, for use in association with a variety of business management services.
- (2) the Canadian trade-mark SALESFORCE, registered on May 28 2008 as No. TMA 714881 for use in association with downloadable web site development software and business management services.

The **Complainant** has extensive sales and is well known in the United States for its software products and services, which have received public endorsements from major manufacturers such as Toyota, Fujitsu and Quantum Corporation in American newspapers and magazines, some of which are distributed in Canada. These publications also identify at least one of the **Complainant's** major competitors, Siebel.

The **Complainant** has engaged in promotional events in Canada throughout 2006-2007. Its sales in Canada have risen from \$2,327,378 in 2004 to \$15,894,320 in 2007.

The **Registrant** is an individual carrying on an internet business at 140-8380 Lansdowne Road, Suite 276, in the city of Richmond, British Columbia. He registered the Domain Name **salesforce.ca** on March 3, 2007. His business website deals in airline tickets, sales force, sales lead management, employment, car insurance, ringtones, dating, houses for sale, mortgages and a number of other categories of goods and services. There is no common theme or type of business, product or service throughout the website.

PROCEDURAL HISTORY

On June 17, 2008 the Complaint was filed with respect to the Domain Name with the British Columbia International Commercial Arbitration Centre, hereinafter referred to as the Centre. The Complaint was reviewed by the Centre and found to be in administrative compliance with the requirements under Rule 42 of the CIRA Domain Name Dispute Resolution Rules, hereinafter referred to as the CIRA rules. By letter and e-mail on June 19, 2008, the Centre advised the parties that the Complaint had been reviewed and found to be compliant. The Centre advised that it was unable to serve the complaint on the **Registrant** either by courier or by e-mail. The **Complainant** elected under Rule 6.5 to convert from a panel of 3 to a single arbitrator. Harold Margles was appointed as the sole arbitrator.

The Panel has reviewed the documentary evidence provided by the **Complainant**. The panel agrees with the Centre's assessment that the Complaint complies with the formal requirements of the CIRA Policy and its Rules.

The Panel believes that it was constituted in compliance with the CIRA rules. The panelist has completed an Acceptance of Appointment as Arbitrator and Statement of Independence and Impartiality.

The Panel has received an e-mail from the **Registrant** since its formation. On July 28, 2008 The **Registrant** advised the Centre by e-mail that he had received the Complaint, albeit late. He advised the Centre and this Panel that:

“....I have no intention of contesting this domain name and here by request that the domain be transferred to the Lawyere on record. Please let me know what steps need to be taken at this point to do it.”

The Panel is obliged to make its decision on or before August 13, 2008 in the English language and is unaware of any other proceedings which may have been undertaken by the parties or others in the present matter.

As no Response has been filed, other than the consent of the **Registrant** to the transfer of the Domain Name **salesforce.ca** to the **Complainant**, the Panel is required to decide the proceedings on the basis of the Complaint and the admission. See CIRA Rules Par. 5.8.

FACTUAL BACKGROUND

Inasmuch as all of the evidence has been submitted by the **Complainant**, the Panel accepts such evidence subject to its relevance, the weight to be attached thereto, and the inferences to be drawn therefrom. As the **Registrant** has chosen not only not to submit any evidence, but has chosen not to contest the Complaint and to consent to the transfer of the Domain Name, the Panel will, accordingly, draw such inferences as common sense and the **Complainant's** unchallenged evidence mandates.

Paragraph 24 of the Complaint states:

“The **Registrant** has registered and has used the Domain Name **salesforce.ca** to advertise and to promote the interests of the **Complainant's** competitors.”

An examination of Schedule K to the Complaint reveals sample pages from the **Registrant's** website. These pages disclose references to a townhome site, computer sale site, sales and marketing job site, sale of home by owner site, among others. The inference is that the remaining pages of the **Registrant's** website would make reference to other products or services unconnected to the **Complainant** or the wares or services protected by its trademarks. There is no evidence to establish that any of these references are competitors of the **Complainant**.

The website does reveal the following, some of which is a reference to the **Complainant's** website, and some of which is a reference to at least one competitor of the **Complainant**:

“Sponsored Links

SALES FORCE

Automate Sales Activities & Improve Collaboration. Free trial and Demo!

www.salesforce.com

EASY CONTACT MANAGEMENT

Contact management inside outlook. Buy Online & Get Started Now

www.Avidian.com

SIEBEL vs. SALESFORCE

Learn Why Siebel CRM On Demand Was Rated #1 in Business Impact

www.CRMonDemand.com

ONLINE CONTACT MANAGEMENT

A Smarter Alternative to ACT! Easy Transition. Free Demo.

www.SalesNexus.com

CRM SOFTWARE SOLUTION

Maximizer Enterprise CRM software Free CRM trial. View online demo

www.Maximizer.Com”

This extract from the **Registrant's** website discloses that the **Registrant** knows:

- (a) The **Complainant's** website, services and wares and, in all probability, knew of them prior to his application for his Domain Name.
- (b) One of the **Complainant's** competitors is Siebel, who is referred to in Schedule J of the Complaint.

Apart from the **Registrant's** use of the Domain Name, **salesforce.ca**, the contents of his website seek to identify, and to some extent distinguish, the **Complainant** from its competitor(s). I do not have evidence, other than the blanket statement in paragraph 24 of the Complaint as to the identity of the other competitors of the **Complainant**.

ISSUES

Is the Domain Name salesforce.ca confusingly similar to the Complainant's registered trademarks SALESFORCE.COM TMA645,498 and SALESFORCE TMA714881?

Paragraph 4.1 of the Policy obligates the **Complainant** to prove that, on the balance of probabilities, the **Registrant's** Domain Name is confusingly similar to the **Complainant's** trade-marks. The **Complainant** has established its rights to the marks by both their registrations and unchallenged use thereof. The **Registrant** has conceded that right.

The Domain Name and the trade-marks are identical in appearance, sound and the idea suggested, other than the "ca" and "com" website identification suffix. The **Complainant** has satisfied the burden of proof under Paragraph 3.4 and 4.1 of the Policy.

Does the Registrant have a legitimate interest in the Domain Name "salesforce.ca"?

Paragraph 4.1 of the Policy requires that the Complainant *must provide some evidence* that the **Registrant** does not have a legitimate interest in the Domain Name.

The concession by the **Registrant** on July 28, 2008, is sufficient to meet this burden on the **Complainant**. The panel finds that the Registrant has no legitimate use in the Domain Name "salesforce.ca"

Has the Registrant registered the Domain Name "salesforce.ca" in bad faith?

Paragraph 4.1 of the Policy requires that:

"the **Complainant** must prove on the balance of probabilities that:

After the **Complainant** has established that the Domain Name is confusingly similar to its Mark

.....(b) the **Registrant** has registered the Domain Name in bad faith as described in Paragraph 3.7"

Paragraph 3.7 provides that:

".... A **Registrant** will be considered to have registered a Domain Name in bad faith, **if and only if**.....

(c) The **Registrant** registered the Domain Name or acquired the Registration **primarily** for the purpose of **disrupting the business of the Complainant**" (emphasis added).

As stated by the Panel in **Honest Ed's Limited v. Mr. Ernesto Imbrogno** at page 5:

“The policy and the rules permit evidence to be provided by either party in any manner by anyone. The evidence is not under oath. There is no discovery process or right to cross-examine an opposing party in order to test the credibility of the evidence or to ascertain additional or contradictory evidence which may assist the examining party. This limitation on the ability of either party to bolster its own case or impeach the opponent's case by means of discovery or cross-examination were intended to simplify the procedure, reduce costs and enable decisions to be made expeditiously. In the result, however, **The Complainant is almost never able to determine the primary intent of the Registrant as mandated by the word 'primary' combined with the exclusive intent of the Registrant mandated by the words 'if and only if' in Paragraph 3.7 of the Policy.**” (emphasis added).

The panel adopts the reasoning of the Panel in **Canadian Broadcasting Corporation and William Quon CIRA Dispute 00006** at page 13, which totally supports the **Complainant's** submissions in Paragraphs 21 and 27 of the Complaint, namely, that the Panel ought to draw common sense inferences from the **Registrant's** conduct and the surrounding circumstances. The reasonable inference to be drawn from the Registrant's decision to adopt the Domain Name confusingly similar to the **Complainant's** registered trade-marks was to attract business that would otherwise be directed to the **Complainant**. That is a primary purpose. The fact that the website subsequently deals with additional commercial areas does not detract from that primary purpose.

The website utilizing the Domain Name has no legitimate purpose. The Panel finds that it was intended to disrupt the business of the **Complainant** by drawing the **Complainant's** customers into purchasing competitive services or wares from Siebel or unrelated goods or services through the **Registrant**. That intention can be further inferred from the use of the **Complainant's** website in the “Sponsored Links” category.

The concession by the **Registrant** to the transfer of the Domain Name to the **Complainant**, coupled with his declaration not to contest the Complaint, is an acknowledgement of the validity of the allegations in the Complaint.

The Panel concludes that the **Registrant** registered the Domain Name **salesforce.ca** primarily for the purpose of disrupting the business of the **Complainant**, and that that was his only reason for registering the Domain Name.

DECISION

For the foregoing reasons the Panel decides:

1. The Domain Name **salesforce.ca** registered by the **Registrant** is confusingly similar to the trademarks **SALESFORCE.COM** and **SALESFORCE** in which the **Complainant** has rights.
2. The **Registrant** has no legitimate interest in respect of the Domain Name **salesforce.ca**.
3. The Domain Name has been registered by the **Registrant** in bad faith.

Accordingly, pursuant to Paragraph 4.3 of the CIRA Policy,

The Panel **ORDERS** that the registration of the Domain Name

“salesforce.ca”

be forthwith transferred to the **Complainant** by the Registrar Expert.ca (Ramin Haghghat)

Harold Margles
Panel

Dated: August 8, 2008