

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

Complainant: Handi Foods Ltd.
Complainant’s Counsel: Ashlee Froese
Keyser Mason Ball, L.L.P.
Mississauga ON
L4Z 1S1
Registrant: Bob Jenkins
Calgary AB
Disputed Domain Names: mrpita.ca, handifoods.ca
Registrars: Sibernet Internet and Software Technologies Inc., BareMetal.com
Inc.
Panel: Paul Donovan, Sharon Groom, Denis Magnusson (chair)
Service Provider: Resolution Canada

DECISION

Parties

The Complainant is Handi Foods, Ltd., incorporated under Ontario law, whose place of business is Weston Ontario. The Registrant is Bob Jenkins whose administrative and technical contact is listed as Tom Horton of Calgary Alberta.

Disputed Domain Name and Registrar

The disputed domain name **mrpita.ca** was first registered by the Complainant on February 13, 2003. Shortly after January 22, 2009, the Complainant discovered that the ownership of the domain name **mrpita.ca** had been transferred, without prior knowledge of the Complainant, to the Registrant.

The domain name **handifoods.ca** was registered by the Registrant on January 22, 2008.

The Registrars for the Registrant of the two domain names are Sibernet Internet and Software Technologies Inc. and BareMetal.com Inc., respectively.

Procedural History

The Complainant filed this Complaint with the Provider, Resolution Canada who found the Complaint in compliance with the CIRA *Domain Name Dispute Resolution Rules* (“Rules”) and transmitted it to the Registrant. The Registrant has not filed a Response.

As the Registrant has not filed a Response, the Panel is required to decide the matter “on the basis of the Complaint”, CIRA Rules, para. 5.8.

The Provider appointed the undersigned Paul Donovan, Sharon Groom and Denis N. Magnusson (chair) as the Panel to decide this matter.

Relief Requested

The Complainant requested that the Panel order that the ownership of the two domain names be transferred from the Registrant to the Complainant, and that the carriage of the domain names be transferred to the Registrar, Network Solutions.

Background Facts

The Complainant

The Complainant Handi Foods Ltd. was incorporated under that name on July 28, 1977 under Ontario law. It commenced business in Canada in 1977. The Complainant is one of the largest manufacturers and distributors in Canada of particular types of food products including pita bread.

The Complainant registered the following trademarks in the Canadian Intellectual Property Office ("CIPO").

<u>Trademark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Wares</u>
MR. PITA	TMA438,632	FEB 3, 1995	pita bread
MR. PITA & design	TMA469,522	JAN 23, 1997	Persian style flat bread, pita bread, pizza shells and specialty breads
MR. MINI PITA	TMA303,877	JUN 21, 1985	pita bread

The Complainant has used the trademark MR. PITA in Canada since September, 1984; has used the trademark MR. PITA & design since February, 1993; and has used the trademark MR. MINI PITA since September, 1983.

The Complainant continues to own the above CIPO trademark registrations and continues to use such trademarks in Canada.

The Registrant

The Registrant is Bob Jenkins. The administrative and technical contact for the registered domain names is listed as Tom Horton of Calgary Alberta. The Registrant's identity and contact information was not available on a WHOIS search. The Complainant had to file a Request for Disclosure of Registrant Information with CIRA to secure this information. When the Provider sent the hard copy of the materials by courier to the Registrant, they were returned to the Provider, with the comment from the courier, "no such person".

The MRPITA.CA Domain Name

The Complainant registered the domain name **mrpita.ca** on February 13, 2003.

The Complaint states:

On January 22, 2009, the Complainant's domain name *mrpita.ca* and its e-mail network crashed. In the course of rectifying this issue, the Complainant discovered that the Registrant had fraudulently and deceptively, without the Complainant's knowledge and/or consent:

- transferred ownership of the domain name *mrpita.ca* from the Complainant to the Registrant

- transferred carriage of the domain name from the Complainant's registrar, EasyDNS Technologies Inc., to Sibername Internet and Software Technologies Inc.

The Complainant has properly maintained this domain name registration to date, paying all necessary domain name registration and renewal of registration fees.

Until thwarted by the Respondent, the Complainant had used a site at the **mrpita.ca** domain name in association with its food products manufacturing and distributing business to advertise its products and to facilitate its customers in contacting the Complainant.

The HANDIFOODS.CA Domain Name

The Registrant registered the domain name **handifoods.ca** on January 22, 2008,

Eligible Complainant

The Complainant is an eligible Complainant under the Policy 1.4

With respect to the domain name **mrpita.ca**, an eligible Complainant includes any person who is the owner of a trademark registered in the CIPO, to which trademark the dispute relates. The Complainant's trademark, registration TMA438,632, comprising the words "Mr. Pita", clearly "relates to" the dispute over this domain name registration.

With respect to the domain name **handifoods.ca**, an eligible Complainant includes any person who is the owner of a trade name used in Canada, to which the dispute relates. The Complainant is the owner of the trade name Handi Foods Ltd. which it has used in Canada since 1977. This trade name clearly "relates to" this domain name.

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]

Re Domain Name MRPITA.CA

(a) Confusingly Similar

Marks in Which Complainant Had and Has Rights

Policy 3.2 provides that a "Mark" includes a trademark registered in the CIPO. The Complainant registered the trademark MR. PITA on February 3, 1995 and the Complainant

continues to own that registration. The Complainant has extensively used and continues to use this mark in Canada. This registered trademark is a “Mark” in which the Complainant had Rights *prior to* the date of the Registrant’s registration of the disputed domain name **mrpita.ca** on January 22, 2008, and in which Mark the Complainant continues to have Rights.

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*. Thus the registered trademark consisting of the words “Mr. Pita” differs from the registered domain name **mrpita.ca** only in the lack of a period after “mr” and in the lack of a space between “mr” and “pita”. It has been held by numbers of CIRA Dispute Resolution Decisions that minor differences in syntax, punctuation or spacing have little or no impact on whether or not a domain name is Confusingly Similar with a Mark.¹

Thus, the domain name greatly resembles the Complainant’s Mark, in the form of the registered trademark “Mr. Pita”. The Panel finds that the resemblance is so near that the domain name is likely to be mistaken for the Mark, and so the domain name is Confusingly Similar to the Complainant’s Mark.

b) Bad Faith

The CIRA *Policy 3.7* has a restrictive definition of what can constitute the Registrant’s necessary Bad Faith in registering the domain name. That definition states that there will be Bad Faith, “*if, and only if*” one or more of three specific circumstances obtain. The Complainant submitted argument with respect to the definition of bad faith in *Policy 3.7(b)*.

Policy 3.7(b): Registrant’s Purpose of Preventing Complainant Registering Mark as Domain Name

Policy 3.7(b) defines this instance of bad faith:

(b) the Registrant registered the domain name . . . in order to prevent the Complainant . . . from registering the Mark as a domain name, provided that the Registrant . . . has engaged in a pattern [of such activity];

The Complainant’s Mark is the trademark “Mr. Pita” that it has registered and used for its pita bread products. The Complainant had registered that Mark as the domain name **mrpita.ca**. The Registrant’s later fraudulently causing the domain name registration to be transferred from the Complainant to the Registrant had the effect, from that point forward, of preventing the Complainant from continuing to register the Mark as a domain name. It is reasonable to infer that the Registrant intended to prevent the Complainant from continuing to register the Mark as a domain name, i.e., that was his purpose.

¹ See, for example, *Canadian Broadcasting Corporation / Societe Radio-Canada v. William Quon* (CIRA Dispute Resolution Decision # 00006), *Coca-Cola Ltd. v. Amos B. Hennan* (CIRA Dispute Resolution Decision # 00014), *Sleep Country Canada Inc. v. Pitfold Ventures Inc.* (CIRA Dispute Resolution # 00027) and *Reitmans Canada Limited v. Pitfold Ventures Inc.* (CIRA Dispute Resolution Decision # 00032).

As set out below in these reasons, the Panel reaches a similar conclusion in relation to the Registrant's registration of the domain name **handifoods.ca**. Thus, the Registrant has engaged in a pattern of activity designed to prevent the Complainant from registering its Marks as domain names, and so has acted in Bad Faith as defined in Policy 3.7(b).

c) Legitimate Interest

Under Policy 4.1(c) 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". Paragraph 3.6 stipulates that the Registrant has a Legitimate Interest in a domain name "if, and only if" the Registrant has one or more of the specific interests set out in Policy 3.6.

The Complaint summarizes why the Registrant has no Legitimate Interest in the domain names as defined in Policy 3.6:

The Registrant does not satisfy any of the requirements [in Policy 3.6] that would demonstrate that it has a legitimate interest in the Domain Names in that:

the Registrant has no legitimate rights or interests in or to the Complainant's Trade-marks and/or the Complainant's Trade Name;

the Domain Names are not actively operating, therefore the Domain Names are not clearly descriptive of the character or quality of the wares, services and/or business or is a generic name of the wares, services and/or business used by the Registrant;

the Registrant is not using the Domain Names for any commercial or legitimate non-commercial activity.

the Registrant's name, as identified in CIRA's Registrant Information Disclosure, is Bob Jenkins, therefore, the Domain Names are not composed of the Registrant's legal or commonly known name; and

the Domain Names are not actively operating and, therefore, the Domain Names are not a geographical location of its non-commercial activity or place of business.

The Panel finds that the Complainant has met its burden under the Policy of adducing some evidence that the Registrant did not have a legitimate interest in the domain name. Since the Registrant did not file a response, pursuant to the Policy the Complainant has established that the Registrant has no legitimate interest

Re Domain Name HANDIFOODS.CA

(a) Confusingly Similar

Marks in Which Complainant Had and Has Rights

The Complainant was incorporated under the trade name Handi Foods Ltd. in 1977. The Complainant has done business in Canada under that name continuously from 1977 to date. Policy 3.2(a) provides that a "Mark" includes a trade name that has been used in Canada.

Confusingly Similar

The Registrant's domain name **handifoods.ca** is Confusingly Similar to the Complainant's trade name Handi Foods Ltd.

b) Bad Faith

The Panel finds that the Registrant registered the domain name **handifoods.ca** in Bad Faith. The Registrant's registration of the domain name had the effect of preventing the Complainant from registering its Mark, its trade name Handi Foods Ltd., as a domain name. It is reasonable in all the circumstances to infer that the Registrant had the purpose of preventing the Complainant from registering its trade name as a domain name. Also, the fact that the Registrant registered the domain name **mrpita.ca** establishes a pattern of such activity. Thus, we find that the Registrant registered the domain name **handifoods.ca** in Bad Faith.

c) Legitimate Interest

The Complainant has met the burden in Policy 4.1(c) of providing some evidence that "the Registrant has no legitimate interest in the domain name as described in paragraph 3.6" with respect to the **handifoods.ca** domain name on the same basis as for the **mrpita.ca** domain name as set out above in these reasons.

Conclusion

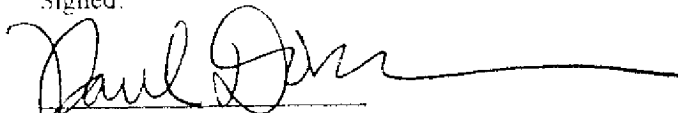
The Complainant has satisfied the burden of proof in establishing Confusing Similarity, Bad Faith, and no Legitimate Interest necessary to succeed in the Complaint with respect to both the **mrpita.ca** and **handifoods.ca** domain names.


Order

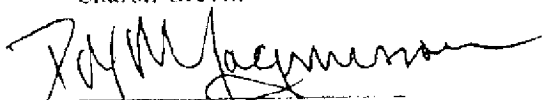
For the reasons set out above, the Panel grants the relief requested by the Complainant, and orders that the registration of the domain names be transferred to the Complainant and that the carriage of the domain names be transferred to the Registrar named by the Complainant, Network Solutions.

Date: 30 April 2009

Signed:


Paul Donovan


Sharon Groom


Denis N. Magnusson