

**CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY
COMPLAINT**

Dispute Number: DCA-1161
Domain Names: wrightlimo.ca; wrightlimousine.ca; thewrightlimousine.ca;
wrightlimousineservice.ca; thewrightlimousineservice.ca
Complainant: The Wright Limousine Service Inc.
Registrant: Chris Nadon
Registrar: Sibername Internet and Software Technologies Inc.
Arbitrator: David Wotherspoon
Service Provider: British Columbia International Commercial Arbitration Centre

DECISION

A. THE PARTIES

1. The **Complainant** is The Wright Limousine Service Inc. (“Wright Limousine Inc.”), a corporation under the laws of Canada, having a principal place of business at 33 Manitou Dr., Kitchener, ON, N2C 1K9.
2. The **Registrant** is Chris Nadon, an individual with a listed mailing address of 7068 Hwy #24, RR#6, Guelph, ON, N1H 6J3.

(collectively, the “**Parties**”)

B. THE DOMAIN NAME AND REGISTRAR

3. The 5 Domain Names at issue (the “**Domain Names**”) are:
 - (a) wrightlimo.ca
 - (b) wrightlimousine.ca
 - (c) thewrightlimousine.ca
 - (d) wrightlimousineservice.ca
 - (e) thewrightlimousineservice.caenterprise rentals.ca
4. The Registrar of the Domain Names is Sibername Internet and Software Technologies Inc.
5. The Domain Names were registered on June 23, 2008.

C. PROCEDURAL HISTORY

6. The British Columbia International Commercial Arbitration Centre (“**BCICAC**”) is a recognized service provider pursuant to the *CIRA Domain Name Dispute Resolution Policy Version 1.2* (the “**Policy**”) of the Canadian Internet Registration Authority (“**CIRA**”).
7. On May 21, 2009, the **Complainant** submitted a complaint (the “**Complaint**”) with respect to the Domain Names with the BCICAC. The Complaint was written in English as permitted by paragraph 10.1 of the *CIRA Domain Name Dispute Resolution Rules Version 1.3* (the “**Rules**”).
8. On May 22, 2009, BCICAC, as Service Provider, confirmed compliance of the Complaint and commencement of the dispute resolution process.
9. The **Registrant** did not file a response.
10. The **Complainant** elected under paragraph 6.5 of the Rules to convert from a panel of three to a single arbitrator.
11. I am appointed as the sole arbitrator in the Complaint.
12. I have reviewed all of the material submitted by the **Complainant** and am satisfied that the **Complainant** is an eligible **Complainant** under the Policy and the Rules.
13. I have received no further submissions from either party since being appointed.
14. I am obliged to issue a decision on or prior to August 4, 2009 in the English language and am unaware of any other proceedings which may have been undertaken by the Parties or others in the present matter.

D. RELIEF REQUESTED

15. The **Complainant** requested that the arbitrator order the Domain Names be transferred from the **Registrant** to the **Complainant** forthwith, at the expense of the **Registrant**.

E. FACTS

16. The facts set out below were submitted by the **Complainant** and are accepted as being true.
17. The **Complainant** incorporated on October 25, 1991.

18. “The Wright Limousine Services Inc.” is the registered corporate name of the **Complainant**. It is named after Patrick Wright, the owner of the company.
19. Since the inception of the business, the “Wright Limousine” has been used as the company’s Trade Name (the “**Company Name**”); i.e. for the purpose of distinguishing the limousine services and businesses of the **Complainant** from the services and business of all other limousine service providers.
20. The **Complainant** registered “thewrightlimousine.com” on or about January 28, 2001. Since then, the **Complainant** has used the website www.thewrightlimousine.com to advertise, market and sell its goods, services, and business, and in particular the leasing of a wide variety of limousines and other luxury vehicles to the public for a wide variety of corporate and private social events.
21. The **Registrant**, Chris Nadon, is the Owner of Guelph Limo Services (“**Guelph Limo**”), which has a website at www.guelphlimo.com. Guelph Limo holds itself out to be a “luxury transportation specialist.” The types of vehicles it leases include airport transportation, stretch limousines, and other luxury passenger vehicles for corporate and personal events.
22. Sibernet Internet and Software Technologies Inc. registered the Domain Names on June 23, 2008 and Mr. Nadon is the **Registrant** of the Domain Names.
23. The **Complainant** carried on business over a radius of approximately 200 kilometres from Kitchener, taking in the cities of Kitchener, Waterloo, Cambridge, Guelph, Toronto, Niagara Falls and London. A significant portion of the **Complainant**’s business comes from Guelph and other municipalities.
24. The **Complainant** and Guelph Limo operate within less than 30 kilometres of each other from Guelph and Kitchener respectively. The two companies compete directly in the Kitchener, Waterloo, Guelph, Cambridge market for business.
25. On November 5, 2008, a Google Internet search of wrightlimousine.com directed one user to guelphlimo.com. In an e-mail requesting information regarding a 10 passenger SUV, this user wrote: “I am looking for Wright Limousine and when I did a google search of Wrightlimousine.com I came across Guelph Limo Service? Have I reached the correct company?” The **Registrant** replied by e-mail with the link www.thewrightlimousine.com and a quote for the same service offered by Guelph Limo.
26. On November 10, 2008, a different user requested a quote on a Mercedes limousine bearing a specified Wright Limousine Inc. licence plate. The user was redirected to guelphlimo.com and submitted the request to info@guelphlimo.com.
27. At the time of the Complaint, the Domain Names immediately directed and pointed users to Guelph Limo’s website.

28. In a letter to the **Complainant's** counsel dated November 26, 2008, the **Registrant** indicated that he was prepared to accept a reasonable offer for the purchase of the Domain Names.
29. On March 2, 2009 the **Complainant** delivered a message to each of the contested domain names requesting that the **Registrant** cease and desist from using the Domain Names and transfer them to the **Complainant** at its expense. The **Complainant** did not receive any response from the **Registrant** or anyone on behalf of Guelph Limo.

F. THE POLICY REQUIREMENTS

30. Pursuant to paragraph 4.1 of the Policy, 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.
31. If the **Complainant** proves (a) and (b) and provides some evidence of (c), the onus shifts to the **Registrant** who must then prove, on a balance of probabilities that he/she has a legitimate interest in the domain name as described in paragraph 3.6.

G. CONFUSINGLY SIMILAR – PARAGRAPH 3.1(a), 3.4

(i) The Complainant's Mark

32. Paragraph 3.2 of the Policy outlines the characteristics of a "Mark" as contemplated by the Policy:

A trade-mark, including the word elements of a design mark, or a trade name that been used in Canada by a person, or the person's predecessor in title, for the purpose of distinguishing the wares, services or business of that person or predecessor or a licensor of that person or predecessor from the wares, services or business of another person.

[Emphases added.]

33. Additionally, paragraphs 3.3(a) and 3.5(b) of the Policy provide that a person has Rights in a Mark if it has been used or displayed in the performance or advertising of services in Canada by that person.
34. The following factors allow me to conclude that the **Registrant** had and has rights in the Company Name as a Mark:
- (a) “The Wright Limousine Services Inc.” is the **Complainant**’s registered corporate name;
 - (b) since incorporating on October 25, 1991, the **Complainant** used the Company Name to advertise, market and sell its services and business. (see *Browne & Co. v. Bluebird Industries*, Resolution Canada, Case No. 000002, p. 8-9 (“*Browne & Co.*”); *Canadian Broadcasting Corporation/Société Radio-Canada v. William Quon*, CIRA, Dispute Number 00006, p. 11 (“*CBC v. Quon*”); *Trail West Online Inc. v. Tall Tech Systems Inc.*, BCICAC, Case Number DCA968-CIRA, para. 71);
 - (c) the Company Name incorporates the surname of Patrick Wright, the **Complainant** company’s owner, sole shareholder and president; and
 - (d) the **Complainant** registered and used the domain name thewrightlimousine.com to advertise, market and sell its goods, services, and business, services since before the Domain Names were registered.
35. Therefore, the Company Name is a Mark as defined by the Policy.

(ii) Confusingly Similar

36. At paragraph 32 of the Complaint, the **Complainant** asserts: “the test for ‘confusingly similar’ under Policy paragraph 3.4 is one of resemblance based upon first impression and imperfect recollection.” The **Complainant** relies upon *Government of Canada v. Bedford c.o.b. Abundance Computer Consulting*, BCICAC, Case Number 00011, para. 66 and *Bell Canada v. Archer Enterprises*, BCICAC, CIRA Decision Number 00038.
37. I disagree with this assertion. Paragraph 3.4 of the Policy sets out the test for “Confusingly Similar”:

A domain name is Confusingly Similar to a Mark if the domain name so nearly resembles the Mark in appearance, sound or ideas suggested by the Mark as to be likely to be mistaken for the Mark.

[Emphasis added.]

38. The language in Policy paragraph 3.4 differs from the test for confusion under section 6(5) of the *Trade-marks Act* (R.S., 1985, c. T-13). In the present context, the focus is on

the level of resemblance between the domain name in issue and the Company Name having regard to the “appearance, sound or ideas suggested by the Mark” and not on first impression or imperfect recollection.

39. I conclude that the following fact that the Domain Names all incorporate the words “Wright Limo” or “Wright Limousine,” which are identical or nearly identical to the **Complainant’s** Company Name, supports an inference that the Domain Names are confusingly similar, as defined in the Policy, to the Company Name. This is particularly evident upon considering the Domain Names without the “dot-ca” suffix in accordance with Policy paragraph 1.2:

For the purposes of this Policy, “domain name” means the domain name excluding the “dot-ca” suffix and the suffixes associated with all third and fourth level domain names accepted for registration by CIRA.

40. The **Complainant** provided two examples which appear to be examples of actual confusion caused by the Domain Names (see paragraphs 25 and 26 above):
- (a) First, in an e-mail dated November 5, 2008, an Internet user sought to inquire about Wright Limousine SUV limousine services. The e-mail conveys actual confusion on the part of the user as to whether she was contacting the correct company (i.e. Wright Limousine Inc.).
 - (b) Second, in an e-mail dated November 10, 2008, an Internet user submitted a request for information regarding a limousine bearing a Wright Limousine Inc. license plate to info@guelphlimo.com.
41. Based upon the evidence provided above, I further conclude that an Internet user with knowledge of the Company Name or the company Wright Limousine Inc. could mistake the domains in question as somehow being affiliated with or owned by the **Complainant**.
42. The **Registrant** did not respond to the Complaint.
43. Therefore, I find that the **Complainant** has established, on a balance of probabilities, that the Domain Names are “Confusingly Similar” to the Company Name.

H. LEGITIMATE INTERESTS – PARAGRAPH 3.6

44. At paragraph 17 of the Complaint, the **Complainant** asserts that the **Registrant** has no legitimate interest in the Domain Names for the following reasons:
- (a) there has never been any relationship between the **Complainant** and the **Registrant**;
 - (b) the **Registrant** has not used the Domain Names in good faith in association with any business or services at any time;

- (c) the **Registrant** cannot claim a legitimate interest, as Wright Limousine is not a generic name of any wares, services, or business, but rather the proper surname of Patrick Wright;
 - (d) the Domain Names have not been used in good faith or for a *bona fide* purpose;
 - (e) the **Registrant** has never used the domain names in association with a non-commercial activity;
 - (f) “Wright Limousine” and “Wright Limo” are not legal names by which the **Registrant** is commonly identified; and
 - (g) the Domain Names do not describe the geographical location of the **Registrant’s** place of business.
45. Given the evidence provided, I find that the **Complainant** provided some evidence to support an inference that the **Registrant** does not have a legitimate interest in the Domain Names.
46. The burden now shifts to the **Registrant** to demonstrate that he holds a legitimate interest in the Domain Names as accorded by one or more of the interests provided under paragraph 3.6. The **Registrant** did not reply to the Complaint.
47. Therefore, I conclude that the **Registrant** did not have a legitimate interest in the Domain Names.

I. REGISTRATION IN BAD FAITH – PARAGRAPH 4.7

48. Paragraph 4.7 of the Policy is restrictive – the **Complainant** must establish, on a balance of probabilities, one of the following to satisfy a finding that **Registrant** registered the Domain Names in bad faith:
- (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** ... who is a competitor of the **Registrant**.

49. The **Complainant** presented evidence regarding (a) and (c). The **Complainant** did not rely upon paragraph 3.7(b).

50. The **Registrant** did not file a response. Therefore, the **Registrant** fails to rebut any inference drawn that is prejudicial to his position.

51. I will address each consideration in turn.

(i) Sale for Profit – Paragraph 3.7(a)

52. At paragraph 24, the **Complainant** asserts that the **Registrant** registered the Domain Names for the purpose of selling them to the **Complainant** for valuable consideration in excess of the **Registrant**'s actual cost. In support of this claim, the **Complainant** asserts the following (at paragraphs 25-28 of the Complaint):

(a) in a letter dated November 26, 2008, from Guelph Limo to Mark T. Nowak, then solicitor for Wright Limo, in which Mr. Nadon claims to use the Domain Names merely to “point, direct, or create a web presence”;

(b) at the time the Complaint was filed, the **Registrant** falsely claimed to have disabled the link function (e.g. using wrightlimo.com immediately redirected a user to the Guelph Limo webpage);

(c) the **Registrant** solicits an offer to purchase the Domain Names at a “reasonable price”;

(d) that an offer to purchase a domain name even if no price is demanded can constitute evidence of bad faith: *Red Robin International Inc. v. Tieu*, BCICAC, CIRA Dispute No. 00001;

(e) that the **Registrant**'s correspondence with the **Complainant**'s lawyer indicates an intention on the part of the **Registrant** to extract payment from the **Complainant** and therefore the registration is abusive in nature; and

(f) the **Registrant** did not respond to the **Complainant**'s requests of March 2, 2009, to cease and desist from using the Domain Names and transfer them to the **Complainant** at its expense.

53. I find that an offer to purchase the Domain Names at a “reasonable price” does not prove, on a balance of probabilities, that the **Registrant** seeks to sell the Domain Names for valuable consideration in excess of the initial registration cost, which is required under paragraph 3.7(a). What “reasonable price” means is unclear. While it could mean an amount in excess of the initial registration cost, it could also mean the registration cost.

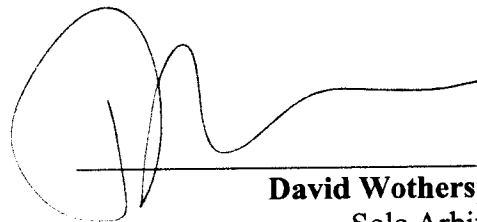
54. Moreover, I reject the **Complainant's** interpretation of the jurisprudence at paragraph 48(d) above.
55. The facts that the **Registrant** is admittedly using the Domain Names to create a web presence, failed to disable the links and has not responded to cease and desist requests do not support a finding under paragraph 3.7(a) of the Policy. If anything, they lend weight to a finding under paragraph 3.7(c) of the Policy.
56. I conclude that the **Complainant** has failed to satisfy its onus under paragraph 3.7(a) of the Policy. However, this does not dispose of the issue. The **Complainant** need only make out one of the three "bad faith" considerations under paragraph 3.7 of the Policy.

(ii) Disruption of Competitor – Paragraph 3.7(c)

57. At paragraph 19, the **Complainant** asserts that the **Registrant** registered the Domain Names primarily for the purpose of disrupting the business of the **Complainant**. In support of this assertion, the **Complainant** notes the following (at paragraphs 21-23 of the Complaint):
 - (a) the **Complainant** and the **Registrant** are direct competitors, which alone should constitute evidence of bad faith (see *Browne & Co., supra.*);
 - (b) the "Wright Limousine" has no connection to the business activities of Guelph Limo Service; and
 - (c) the **Registrant** was using the name wrightlimousine.com to redirect potential customers of the Wright Limousine to his business Guelph Limo Service.
58. Further, the **Complainant** submitted evidence of two users who sought to inquire about Wright Limousine services but were redirected to guelphlimo.com. The two e-mails contain Guelph Limo's response to the users inquiries. These e-mails suggest that the **Complainant's** business was disrupted. The e-mails alone do not support an inference that the **Registrant** registered the Domain Names primarily for the purpose of disrupting the business of the **Complainant**.
59. However, taken together with other evidence, such as the proximity of the Parties' business operations, the fact that the Parties are direct competitors within the same Ontario region, the **Complainant's** rights in the Mark and the lack of connection between the business activities of the **Registrant** and the Company Name, I am satisfied, on a balance of probabilities, that the **Registrant** registered the domain names primarily for the purpose of disrupting Wright Limousine Inc.'s business.
60. Therefore, I conclude that the **Registrant** registered the domain names in bad faith in accordance with paragraph 3.7(c) of the Policy.

J. DECISION AND ORDER

61. For the foregoing reasons, I conclude that the **Complainant** has met the requirements of paragraph 4.1 of the Policy:
- (a) the Domain Names registered by the **Registrant** are confusingly similar to the trademarks in which the **Complainant** has rights;
 - (b) there is some evidence that the **Registrant** has no legitimate interests in respect of the Domain Names; and
 - (c) the Domain Names have been registered by the **Registrant** in bad faith.
62. The **Registrant** did not respond to the Complaint. Thus, the **Registrant** has failed to establish, on a balance of probabilities, that he has a legitimate interest in the Domain Names.
63. Accordingly, and pursuant to paragraph 4.3 of the Policy, I order that the registrations of the following domain names:
- (a) wrightlimo.ca
 - (b) wrightlimousine.ca
 - (c) thewrightlimousine.ca
 - (d) wrightlimousineservice.ca
 - (e) thewrightlimousineservice.ca
- be transferred forthwith to the **Complainant**.
64. Finally, I am unable to grant the **Complainant's** request that the costs associated with transferring the Domain Names be paid by the **Registrant**. Such a request falls outside my jurisdiction as Arbitrator.



David Wotherspoon
Sole Arbitrator
July 29, 2009