

In the Matter of a Complaint Pursuant to Canadian Internet Registration Authority Domain Name Dispute Resolution Policy

Dispute Number: DCA-1225-CIRA

Domain Name: tobiano.ca

Complainant: Pagebrook Inc.

Registrant: High Country Net Ventures Inc.

Registrar: BareMetal.com Inc.

Panelist: Barry C. Effler, C. Arb. (Fellow)

Service Provider: British Columbia International Commercial Arbitration Centre

DECISION

The Parties

- 1. The Complainant** is Pagebrook Inc., hereinafter referred to as the "Complainant". The Complainant is an Ontario registered corporation which is extraprovincially registered to carry on business in British Columbia.
- 2. The Registrant** is High Country Net Ventures Inc., of Kamloops, British Columbia, hereafter referred to as the "Registrant".

The Domain Name and Registrar

- 3.** The Disputed Domain Name at issue is tobiano.ca.
- 4.** The Registrar for the Disputed Domain Name is BareMetal.com Inc.
- 5.** The Disputed Domain Name was registered on October 11, 2006.

Procedural History

6. The British Columbia International Commercial Arbitration Center (“BCICAC”) is a recognized service provider to the Domain Name Dispute Resolution Policy (“Policy”) of the Canadian Internet Registration Authority (“CIRA”).
7. On March 18, 2010, the Complainant filed a complaint with respect to the Disputed Domain Name (“Complaint”), which Complaint was deemed by BCICAC to be in administrative compliance and the Complainant to be eligible.
8. By letter dated March 23, 2010, BCICAC notified the Registrant of the Complaint and of the commencement of the dispute resolution process in respect of the Complaint.
9. The Registrant did not file a Response within the time limits set out in paragraph 5.1 of the Rules.
10. BCICAC advised the parties that no Response had been received within the timeframe permitted by the Policy, and, as permitted in Rule 6.5, the Complainant elected to convert to a single arbitrator.
11. On April 26, 2010, BCICAC appointed Barry C. Effler as sole arbitrator to determine the matter in accordance with the Rules.
12. The Panelist has delivered to BCICAC the Statement of Impartiality and Independence as required by the Rules.
13. Absent exceptional circumstances, the Panel was required to deliver its decision by May 17, 2010.

14. The Panel finds that it was properly constituted and appointed in accordance with the Policy and the Rules.

Complainant Eligibility

15. The Disputed Domain Name, tobiano.ca was registered on October 11, 2006 and includes the exact word component of the Complainant's Canadian registered trade mark, TOBIANO which was registered in the Canadian Intellectual Property Office (CIPO) on September 14, 2006 under registration No TMA672707. Accordingly, the Complainant satisfies the Canadian Presence Requirements as prescribed by paragraph 1.4 of the Policy as the Complaint relates to a trade-mark registered in the Canadian Intellectual Property Office and the Complainant is the owner of the trade-mark.

Analysis

16. Albert Budai, is listed as the Administrative and Technical Contact for the Registrant in the WHOIS search result for tobiano.ca. On April 21, 2010, Albert Budai wrote to the Provider the following:

Subject: Re: DCA-1125-CIRA tobiano.ca

To All Parties,

I don't care about the domain name.

If you continue to waste my time in reading this junk that you produce, I will bill each of you at my charge out rate of \$400 an hour. You may think that's funny but you won't be laughing when my bill collectors come knocking on your door.

For the record, I only attempt to register GENERIC domains. Who on earth would think that a horse name like Tobiano would become a trademark ? I guess the company who wants to steal the domain name slipped some money under the table to the trademark granting authority.

Also, for the record, I have not been contacted by the organization seeking to steal the domain name from me at any time. Complete utter fucking lie.

As far as the rude comments about Baremetal.com, they are a first class hard working bunch of guys. To the uneducated dumb asses out there among you, people register domain names and then they often park them while they are planning the development of a site. Labelling the parking of a domain name and that somehow Baremetal.com has something to do with that is only an argument a good for nothing slimy lawyer can make.

I removed the Tobiano.ca domain name from my account at Baremetal.com several weeks ago but apparently that is not enough to cancel the name.

So CIRA, if your listening, send me a request to cancel the name.

As far as the resort development company who is attempting to steal the domain name, good luck with your efforts to build a resort beside Kamloops Lake, a cesspool of pollution so bad that in the 1970s magazines like Western Fish and Wildlife were reporting that people swimming in the lake 'mysteriously' were getting skin rashes. LOL.

Have a great day.

Albert Budai

17. On the basis of this correspondence, I am prepared to find that the Registrant is not objecting to the Complainant's request for relief, namely the transfer of the Disputed Domain Name to the Complainant. Further, I am prepared to find that the Registrant is consenting to the cancellation of the registration of the Disputed Domain Name.

18. The decision left to make is whether to transfer the Disputed Domain Name to the Complainant or only direct the cancellation of the Disputed Domain Name.

19. The Complainant has the registered Canadian trade-mark for the word TOBIANO. Paragraph 3.4 of the Policy states:

3.4 “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.

20. The Disputed Domain Name is identical to the TOBIANO Canadian trade-mark.

21. Cancellation of the Disputed Domain Name will leave the name open for registration by someone other than the Complainant and create the possibility of a confusingly similar domain name.


22. On the basis of avoiding future issues, I am prepared to find that the appropriate remedy in this case is the transfer of the Disputed Domain Name to the Complainant.

Order

23. For the reasons set out, the Panel decides this Dispute in favour of the Complainant.

24. Pursuant to paragraph 4.3 of the Policy, The Panel orders that the Disputed Domain Name, tobiano.ca be transferred from the Registrant to the Complainant.

Dated at Winnipeg, Manitoba, this 6th day of May, 2010.



Barry C. Effler, Sole Panellist