

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

Complainant: Fluor Corporation
Complainant’s Representative: Melbourne IT DBS Inc.
Emely Romero
Mountain View, CA, USA
Disputed Domain Name: fluor.ca
Registrant: Peter Schneider
Registrar: Computer Engineering Inc.
Panel: Denis Magnusson (Chair), Hugues Richard, Myra Tawfik
Service Provider: Resolution Canada

DECISION

Parties

The Complainant is Fluor Corporation, a U.S. company incorporated in the state of Delaware, with an office in Irving Texas, USA.

The Registrant is Peter Schneider of Sherwood Park, Alberta.

Disputed Domain Name and Registrar

The disputed domain name is fluor.ca, registered by Peter Schneider on January 22, 2001. The Registrar is Computer Engineering Inc.

Procedural History

The Complainant filed this Complaint with the Provider, Resolution Canada, which found the Complaint in compliance with the CIRA *Domain Name Dispute Resolution Rules* (“Rules”) and transmitted the Complaint to the Registrant.

The Registrant filed a Response.

The Provider appointed Denis Magnusson (Chair), Hugues Richard and Myra Tawfik as the Panel to decide this dispute.

Relief Requested

The Complainant requested that the Panel order that ownership of the domain name be transferred from the Registrant to the Complainant. If the Complainant succeeds in this Complaint, this is a remedy that the Panel can award under the Policy.

The Response requested that if the matter was resolved in favour of the Complainant, that the Panel order the Complainant to pay compensation to the Registrant for registration fees, the costs in effecting the transfer, and compensation for an alleged period of misdirection of the Registrant’s domain name to a site of the Complainant. These are remedies that the Panel has no authority to award under the Policy.

Eligible Complainant

Policy 1.4 provides that a Complainant may submit a Complaint which relates to a trade-mark registered in the Canadian Intellectual Property Office (“CIPO”) of which the Complainant is the owner. The Complainant relies on the trademark FLUOR, first registered in the CIPO on February 23, 1973, of which the Complainant, the US-based Fluor Corporation, is the current owner¹.

The Complainant

The Complainant is Fluor Corporation, a corporation incorporated under the law of the US state of Delaware². The Complaint states that it is an “engineering, procurement, construction, maintenance services and project management company”, which was founded in 1912. The Complaint notes that the company “is a Fortune 150 company that is ranked No. 1 in Fortune Magazine’s “Engineering, Construction” category of America’s largest corporations”. The company employs 36,000 in 66 countries, including in offices in Canada in New Brunswick, Alberta and British Columbia.

The Response expresses some concern about whether the named Complainant’s representative, Melbourne IT DBS Inc., actually represents the Complainant Fluor Corporation. The Panel is satisfied that the material submitted with the Complaint supports the fact that the named representative actually represents the Complainant.³

The Registrant

The Registrant is Peter Schneider, a resident of Alberta.

Procedural Background

The Registrant registered the disputed domain name **fluor.ca** on January 22, 2001, a little more than two months after dot-ca domain name registrations first became possible⁴.

¹ CIPO trademark registration, TMA188799. Both Complaint and Response refer to another corporate entity, Fluor Canada Ltd., incorporated January 1, 2004. That corporation is not the Complainant, and if it were it would fail in this Complaint as it could not show that it had rights in the Mark prior to the critical date of the registration of the domain name, January 22, 2001, prior to the existence of this corporate entity.

² The Registrant, in the Response, expressed some concern about the proper identification of the Complainant. The Complaint materials clearly identify the Complainant as the Fluor Corporation (a Delaware corporation) with a source address for the Complaint of Irving Texas, USA. The key CIPO trademark registration upon which the Complainant relies as its Mark (TMA188799, registered February 2, 1973) lists the current owner of that registration as the Fluor Corporation (a Delaware corporation) with an address of Irvine California. Large corporations have multiple offices performing various functions. As Delaware law would not permit more than one corporation to be incorporated under the same name, i.e. Fluor Corporation, the Panel is prepared to infer that the Fluor Corporation named in the Complaint, is the same corporation as named in the key CIPO trademark registration.

³ In a summary process like this under the Policy, there are real limits on what a Panel can do to verify material submitted in the Complaint and Response. A Panel has an obligation to enquire further of the parties with respect to (or simply to discount) a material submission of fact that on its face, in all the circumstances, appears to be of dubious factual accuracy. On the face of the material submitted with the Complaint concerning the appointment of the Complainant’s representative, the Panel found no reason to enquire further or to discount the information.

⁴ The dot-ca domain became available for domain name registrations as of November 8, 2000.

The Response states that when the domain name was first registered it was not used to resolve to any web page. The Response further states that some unknown person, as of June 16, 2003, caused the disputed domain name **fluor.ca** to be redirected to fluor.com⁵. This redirection was not discovered until early 2007 and remains unexplained. At that time the Registrant arranged for the disputed domain name **fluor.ca** to resolve to the parking site to which it currently resolves.

As the Registrant is an individual, the CIRA default privacy policy applied such that the identity of the Registrant was not disclosed in a Whois search, unless the Registrant had opted for such disclosure, which the Registrant had not. The Complainant states that the Complainant first attempted to contact the Registrant using CIRA's message delivery system⁶ on February 12, 2010 and not receiving a response sent a second communication by the message delivery system five days later on February 17, 2010. When no response was received to this second message, the Complainant submitted a Request for Disclosure of Registrant Information. Upon disclosure of the registrant's identity the Complainant sent a letter to the Registrant on March 19, 2010, demanding that the domain registration be transferred to the Complainant, followed by a reminder on March 26, 2010. Having received no response from the Registrant, the Complainant filed this Complaint.

The Response states that since the above communications appeared to the Registrant to have originated from Australia, which he did not associate with the American Fluor Corporation, he treated the communications as a scam.⁷ The Response notes other issues that the Registrant had with these communications including concerns, in effect, about the Eligible Complainant status of the named Complainant and about the nature of the Mark upon which that Complainant relied.

The Panel notes that the content of these communications, as revealed in the attachments to the Complaint, would leave the Registrant with some legitimate questions. The communication informs the Registrant of the existence of "Marks" of the Complainant. The first of these are two US trademark registrations which have no direct relevance in a Complaint under the Policy about dot-ca domain name registrations⁸. One Canadian trademark registration is also referred to, but if the Registrant had investigated this registration the Registrant would know that this trademark had been registered after the Registrant had registered the disputed domain name, and thus could not form the basis for a successful Complaint under the Policy⁹. As the Response notes, these communications did not refer to the key CIPO trademark registration relied upon in this Complaint.

The communication continued to assert the claimed basis of the Complainant's legal rights, referring to the US Anti-cybersquatting Consumer Protection Act of 1999 and the US Lanham

⁵ Fluor.com is a domain name registered by the Complainant.

⁶ Under this system, CIRA will forward a message to the undisclosed Registrant, but CIRA cannot guarantee that the Registrant will respond to such message.

⁷ The Complainant was represented by Melbourne IT DBS Inc.

⁸ A trademark registered in the US (or in any other country than Canada) does not constitute a "Mark" under Policy 3.2.

⁹ CIPO trademark registration TMA607194, registered April 7, 2004. The domain name was registered January 22, 2001

Act (US federal trademark legislation) neither of which are relevant to a domain name dispute in Canada concerning dot-ca registered domain names.

The communication then sets out how the Complainant might enforce its claimed rights, first by referring the matter to “the Internet Corporation for Assigned Names and Numbers (ICANN) to be resolved under its Uniform Domain Name Dispute Resolution Policy (UDRP) and seek a ruling that the Domain Name be transferred to Fluor”. ICANN’s UDRP has no application to dot-ca domain names registered through the Canadian Internet Registration Authority (CIRA).

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) defines “Mark” as including a trademark registered in the Canadian Intellectual Property Office (“CIPO”). The Complainant relies on its current ownership of a trademark registered in the CIPO, FLUOR registered for the services, among others, of the design and engineering of plant equipment for the petroleum and natural gas industries. This trademark was first registered on February 23, 1973 which is before the date of the registration of the disputed domain name, January 22, 2001.

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.

The Mark is the registered trademark FLUOR. The domain name in dispute is **fluor.ca**. In assessing Confusingly Similar the dot-ca suffix is ignored, as is capitalization. The Mark and the domain name are identical and so are Confusingly Similar.

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. That definition states that there will be Bad Faith, "*if, and only if*" one or more of three specific circumstances obtain.

The Complainant submits that the Registrant registered the domain name in Bad Faith under Policy 3.7(c).

3.7(c) the Registrant registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of the Complainant, or the Complainant's licensor or licensee of the Mark, who is a competitor of the Registrant.

Policy 3.7(c) has three included requirements for a showing of Bad Faith: i) the use of the domain name by the Registrant must disrupt the business of the Complainant, ii) the Registrant must be a competitor of the Complainant, and iii) the Registrant must have registered the domain name with the primary purpose of so disrupting the business of a competitor.

i) Use of the Domain Name to Disrupt the Business of the Complainant

The domain name **fluor.ca** now resolves to an apparent holding site -- "we're working on this site; please come back soon". The web page also has links to web pages for Computer Engineering Inc. of Edmonton, Alberta, the Registrant for the domain name, offering the services of domain name registration, web hosting, email hosting and Internet service provider.

Persons familiar with the Complainant Fluor Corporation, identified by its trademark FLUOR registered in Canada since 1973, who might reasonably think that they could locate the Complainant through the **fluor.ca** domain name, would find themselves at the holding web page to which the domain name now resolves, without any indication of how such person might locate the Complainant Fluor Corporation on the Internet. Such diversion of potential customers and others seeking to locate the Complainant to a dead-end site disrupts the business of the Complainant. Thus, the first substantive element of Policy 3.7(c) is satisfied.

ii) The Registrant as a Competitor of the Registrant

The Registrant of the domain name is Peter Schneider and the Administrative Contact for the domain name is also listed as Peter Schneider with a postal address of PO Box 3288, Sherwood Park, Alberta. The Complaint notes that Peter Schneider is listed as the President, and we infer an owner, of Strathcona Engineering Ltd., the web site for which gives a mailing address identical to that of the Registrant of the domain name, i.e., PO Box 3288, Sherwood Park, Alberta.

The web site for Strathcona Engineering Ltd. indicates that it offers, among others, the services of Project Management, Engineering and Construction Management. As the Complaint notes, Strathcona Engineering Ltd., of which the Registrant is the President and owner, is a competitor of the Complainant in the engineering field. Thus, the second element of Policy 3.7(c) is satisfied, the Registrant is a competitor of the Complainant in the engineering and project management fields.

iii) Registrant's Primary Purpose in Registering the Domain Name

The Registrant registered the fluor.ca domain name in January, 2001.

The Complaint notes considerable evidence of the size and reputation of the Complainant in the global engineering and project management fields, which had been established by January, 2001. The Complaint also states that the Complainant has done business in Canada for more than 60 years. It had registered FLUOR as a Canadian trademark at least as early as 1953¹⁰, and the trademark relied upon in this Complaint was registered in 1973. The Panel would have appreciated evidence more clearly addressed to the likelihood of an engineer in Alberta, prior to the critical date January 22, 2001¹¹, knowing of the existence of the Complainant Fluor Corporation.¹² Nevertheless, the Panel concludes that it is reasonable to infer that the Registrant, then active in the engineering and project management business in Alberta, would have known of the existence of the Fluor Corporation, and its identification by the word FLUOR. In the Response the Registrant does not expressly deny such knowledge.

Thus, the Registrant registered the domain name **fluor.ca** knowing of the prominent Fluor Corporation operating in the engineering and project management fields, that is, as a competitor of the Registrant. The reasonable inference is that the primary purpose of the Registrant was to cause the business disruption which naturally followed from this act of domain name registration. This is so unless the evidence and context suggest some other likely purpose the Registrant had when registering the domain name. The Response notes that the word "fluor" appears as a noun in English language dictionaries, is used in various contexts particularly in relation to minerals processing, and is a surname of at least one family originating in Switzerland. What the Response does not do is suggest some plausible reasons, apart from disrupting the business of the Complainant, why the Registrant might want to register a domain name in the form **fluor.ca**.

c) Legitimate Interest

To succeed, the Complainant must offer some evidence that the Registrant has no Legitimate Interest in the domain name as defined in Policy 3.6. Policy 3.6 states that the Registrant has a Legitimate Interest in a domain name "if and only if" at least one of six specified interests is shown. As the Complaint indicates, the evidence does not support a claim to a Legitimate Interest in the domain name by the Registrant under any of the six heads of interest in Policy 3.6.

DECISION AND ORDER

The Complaint succeeds.

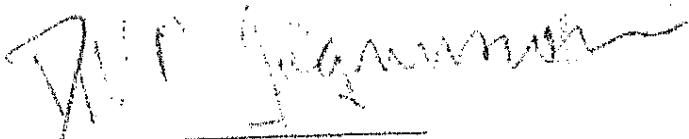
¹⁰ CIPO registration number UCA49218.

¹¹ This is the date on which the domain name was registered, and on which there must be a showing of a primary purpose on the part of the Registrant to disrupt the business of the Complainant.

¹² What business had the Complainant done in Canada, and particularly in Alberta prior to January 22, 2001? It now has an office in Calgary, but was that office in existence prior to January 22, 2001?

The Panel orders the ownership of the disputed domain name **fluor.ca** be transferred to the Complainant.

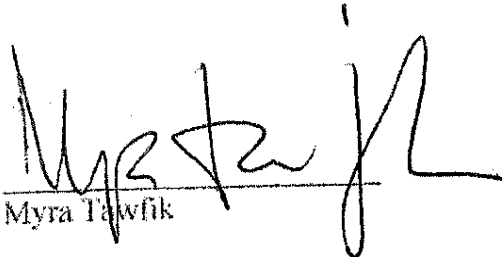
August 17, 2010



Denis N. Magnusson (Chair)



Hugues G. Richard



Myra Tawfik