

**IN THE MATTER OF A COMPLAINT PURSUANT TO THE CANADIAN
INTERNET REGISTRATION AUTHORITY DOMAIN NAME DISPUTE
RESOLUTION POLICY AND RULES**

Disputed Domain Name: blancosinks.ca
Complainant: BLANCO Gmbh + Co KG
Complainant representative: Kristian Elftrop of Melbourne IT
Digital Brand Services AB
Registrant: AbdouAl-Khoulani
Registrar: GoDaddy Domains Canada Inc.
Panel: Hugues G. Richard
Service Provider: Resolution Canada Inc.

DECISION

A. THE PARTIES

1. The Complainant is BLANCO Gmbh + Co KG ("BLANCO"), whose corporate address is located at Flehinger Strasse 59, D-75038 Oberderdingen, Germany.
2. The representative for the Complainant is Kristian Elftrop of Melbourne IT Digital Brand Services AB, whose corporate address is located at Saltmätargatan 7, SE 103 68, Stockholm, Sweden.
3. The Registrant is Abdou Al-Khoulani, located at at 1436 Islington Avenue, Toronto, Ontario M9A 3L1.

B. DISPUTED DOMAIN NAME AND REGISTRAR

The disputed domain name that is subject of this arbitration is blancosinks.ca ("Domain Name").

The Registrar with which the Domain Name is registered is GoDaddy Domains Canada Inc. ("Registrar").

The Domain Name was registered on January 29th, 2012.

C. PROCEDURAL HISTORY

On May 19, 2012 the Complainant first tried to contact the Respondent through a cease and desist letter via the Registrar's homepage. The Complainant requested a voluntary transfer of the domain name and offered compensation for the expenses of

registration and transfer fees (not exceeding out of pocket expenses). No response was received so a reminder was sent via CIRA Online Form, on August 16, 2012. The registrant did not respond to this message either.

Since the efforts of trying to solve the matter amicably were unsuccessful, the Complainant chose to file a complaint according to the CIRA domain dispute process.

On September 14, 2012, Catherine Leung, Administrator of the Provider, sent an email to the Registrant. The email contained these following attachments: the English and French copies of the notice of Complaint filed by the Complainant and the electronic version of the Complaint's Schedules of Annexes.

The Provider informed the Registrant that the Registrant had twenty (20) days from the Date of Commencement of the Proceeding, on September 14, 2012, to file a Response to the Complaint with the Provider.

The Registrant has not provided his Response.

D. PANELIST IMPARTIALITY AND INDEPENDENCE

As required by section 7 of the Rules, the Panel, Hugues G. Richard, has submitted to the Provider a declaration of impartiality and independence in relation to this dispute.

E. EFFECT OF FAILURE OF REGISTRANT TO FILE A RESPONSE

As mentioned, the Registrant failed to file a compliant Response. In doing so, no information or submission have been filed to have the Complaint dismissed. Section 5.8 of the Rules states that "[i]f a Registrant does not submit a Response within the period for submission of a Response or any period extended [...] the Panel shall decide the Proceeding on the basis of the Complaint [...]".

The Panel will then make its decision solely on the basis of the facts and arguments submitted by the Complainant.

F. REMEDY SOUGHT

In accordance with paragraph 4.3 of the Policy, and Rules 3.2 (i), the Complainant requests that the Panel issue a decision that the Domain Name be transferred to the Complainant.

G. APPLICABLE LAW

According to Section 12.1 of the Rules, the Panel shall apply the laws of Ontario and the laws of Canada applicable therein. Also, as stated in paragraph 4.2 of the CIRA *Domain Name Dispute Resolution Policy* ("Policy") and in paragraph 3.2 (m) of the

CIRA Dispute Resolution Rules ("Rules"), the Panel will give its decision in accordance with the Policy and the Rules.

H. JURISDICTION OVER THE PARTIES: ELIGIBILITY OF THE COMPLAINANT

To form a Complaint, the Complainant shall specify the basis on which it satisfies CIRA'S *Canadian Presence Requirements for Registrants* (the "CPR") (sub-paragraph 3.2 (f) of the Rules).

The Complainant submitted that it is the owner of numerous trade-marks which are the subject of a registration under the *Trade-marks Act* (Canada) R.S.C. 1985, c. T-13 (the "Trade-marks Act").

In doing so, the Complainant satisfies section 2(q) of the CPR and has therefore established its Canadian presence.

I. FACTUAL BACKGROUND BASED ON THE COMPLAINANT'S CONTENTIONS

The Complainant makes, among others, the following assertions:

- The Complainant was founded in Germany 1925 and is one of the largest producers of kitchen sinks. They have over 1200 employees worldwide and in 2010 they had a turnover of EUR 242 million. The Complainant is represented by companies/subsidiaries in Germany, Austria, Switzerland, Belgium (responsible for Belgium, the Netherlands, Luxemburg), France, United Kingdom, Ukraine, Czech Republic, Russia, USA, Canada, China, India and long-term partners in about 100 further countries.
- The Complainant offers its products worldwide under the mark "BLANCO" and has spent a significant amount of money promoting and developing this mark.
- The Complainant also owns an international portfolio of registered trademarks for the term "BLANCO" including a UK trademark 1326276 dated 11 January 1991 in class 6, a CTM trademark 7129372 dated 30 October 2002 in classes 6, 10, 21, 39 and 42 and a Canadian trademark TMA628984 dated 22 December 2004. The trademark "BLANCO" has been used in Canada since at least 1990 (Annex 2).
- The Complainant operates websites like blancocanada.com (registered in 2007) and blancoamerica.com (registered in 2000) as well as domain names incorporating the term "sink" such as sinkcenters.asia and sinksandmore.asia.

The BLANCO mark is in possession of substantial inherent and acquired distinctiveness for the products and services it is protected for.

J. COMPLAINANT'S CONTENTIONS:

A. With respect to confusing similarity:

- The dominant part of the Domain Name comprises the word BLANCO, which is identical to the registered trademark BLANCO, which has been registered by the Complainant as trademarks and domain names in numerous countries all over the world.
- The Domain Name combines the Complainant's BLANCO mark with the generic term "sinks". The combination of a generic term with a mark does not prevent a domain name from being found confusingly similar. The presence of the "CA" suffix does not alleviate the potential confusion.
- The fact that the whole of the Complainant's mark BLANCO is incorporated in the Domain Name is sufficient to support a finding of confusingly similarity and the addition of descriptive or non-distinctive terms in the Domain Names will not prevent them from being bound of Confusingly Similar with the Complainants mark. Furthermore, the fact that the term "sinks" is closely connected to the Complainant's business rather strengthens the impression that the Domain Name is somehow connected to the Complainant.
- Anyone who sees the Domain Name is bound to mistake it for a name related to the Complainant. The likelihood of confusion includes an obvious association with the trademark of the Complainant.
- With reference to the reputation of the trademark BLANCO there is a considerable risk that the public will perceive the Respondent's Domain Name either as a domain name owned by the Complainant or that there is some kind of commercial relation between the Respondent and the Complainant. By using the trademark as a dominant part of the Domain Name, the Respondent exploits the goodwill and the image of the trademark, which may result in dilution and other damage for the Complainant's trademark.

B. With respect to bad faith:

- The trademark BLANCO in respect of kitchen supplies belonging to the Complainant has the status of a reputed trademark with a substantial and widespread reputation in the kitchen supplies industry. The considerable value and goodwill of the mark BLANCO is most likely, a large contribution to this and also what made the Respondent register the Domain Name at issue here.

- The Complainant first tried to contact the Respondent on May 19, 2012 through a cease and desist letter, sent via CIRA's messaging function. The Complainant advised the Respondent that the unauthorized use of the BLANCO trademark within the Domain Name violated the Complainant's rights in said trademark. The Complainant requested a voluntary transfer of the Domain Name. Despite a reminder sent on the 16th of August 2012, the Respondent did not reply. Since the efforts of trying to solve the matter amicably were unsuccessful the Complainant chose to file a complaint according with the CIRA domain dispute process.
- Considering that the Domain Name contains the word sinks as well as the term BLANCO the Complainant is under the impression that this registration has not been made thinking of anything else apart from the Complainant and its business.
- As mentioned earlier, the website associated with the Domain Name is a parked Pay Per Click website. Revenue is streamed by parked Pay Per Click websites and the consensus view in WIPO is that parking and landing pages or pay-per-click links may only generate legitimate interests if the domain name is of a generic nature and it is genuinely related to the generic meaning of the domain name at issue, provided that there is no capitalization on trademark value. On the contrary, where such links are based on a trademark, UDRP panels have tended to consider such practices generally as unfair use resulting in misleading diversion.
- The "click through revenue" is ordinarily split between the domain name parking service provider and the owner of the domain name.
- It is evident that the Respondent is using the Domain Name in order to pass off the Complainant's trademark. Adding the term "sinks", which is closely related to the Complainant's business, makes the bad intention of the Respondent obvious.

C. With respect to legitimate interest:

- The Complainant has not found that the Respondent has any registered trademarks or trade names corresponding to the Domain Name. The Complainant has also not found anything that would suggest that the Respondent has been using BLANCO in any other way that would give them any legitimate rights in the name. Consequently the Respondent may not claim any rights established by common usage.

- The Complainant has not found anything to indicate that the Respondent is commonly known by the Domain Name. Furthermore, there is no other evidence in the record suggesting that Respondent is commonly known by the Domain Name. Thus, Respondent has not established rights or legitimate interests in the Domain Name.
- In fact, the Respondent has used the Domain Name in connection with a link parking page. It is well-established that operating a link parking page using a trademark in a domain name, and providing connection to goods and/or services competitive with the trademark owner, does not establish rights or legitimate interests.

K. OVERVIEW OF APPLICABLE CRITERIA

The Policy sets out, at paragraph 4.1, three criteria to be established by the Complainant in order to successfully prove the Complaint. The onus is on the Complainant to 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 3.5;

The Complainant must also provide some evidence that:

(c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4.

Accordingly to the Policy, the complainant has to win with respect to all three elements to be successful.

L. DISCUSSION AND FINDINGS

The Panel will now deal with each of the criteria mentioned above.

- (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;**

Under paragraph 3.3 of the Policy, "the Panel shall only consider whether 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".

As stated by the Complainant, a domain name excludes the "dot-ca" suffix for the purpose of the Proceeding. See paragraph 1.2 of the Policy and *Citrix Online LLC vs Mediavision Network Inc.*, (October 28, 2011), *Resolution Canada, CIRA Dispute No.00175*. Therefore, the Panel has to decide whether BLANCO and BLANCOSINKS are confusingly similar.

The Panel in *General Motors Acceptance Corporation v. Bob Woods*, (January, 2006), *B.C.I.C.A.C., CIRA Dispute No. 00051*, page 5 held that "[t]he addition of descriptive or non-descriptive terms in a domain name will not prevent it from being found confusingly similar with a Complainant's Mark". Further: "The fact that the whole of the distinctive element of the GMAC Marks, namely GMAC, is incorporated in the domain name is sufficient to support a finding of confusing similarity".

Likewise, in the present case, the Panel finds that the addition of the letters "sinks" to a famous trade-mark such as BLANCO does not avoid a finding of confusing similarity.

Accordingly, the Panel finds that the Domain Name is confusingly similar to the Complainant's Mark, in which the Complainant had rights prior to the date of registration of the Domain Name, and continues to have such rights.

(b) The Registrant has registered the domain name in bad faith as described in paragraph 3.5 of the Policy;

It is to be noted that the Complainant to be successful under this second element of the basis for Complaint need not prove "use" in bad faith but only "registration" in bad faith.

The Complainant contends that "it may be inferred that the Registrant registered the Domain Name primarily for the purpose of disrupting the business of the Complainant and in an attempt to profit (Policy 3.5 (c))".

Sub-paragraph 3.5 (c) provides that:

3.5 Registration in Bad Faith. For the purposes of paragraphs 3.1(c) and 4.1(b), any of the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence that a Registrant has registered a domain name in bad faith:

(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;

To satisfy this factor, the Complainant must prove the two elements required by this subparagraph: (i) the Domain name was registered primarily for the purpose of disrupting the business of the Complainant; and (ii) the Complainant is a competitor of the Registrant.

The Panel will address each of those issues.

(i) The Domain name was registered primarily for the purpose of disrupting the business of the Complainant.

The Panel finds no direct evidence that the Registrant registered the Domain Name primarily "for the purpose of disrupting the business of the Complainant". However, from the evidence presented in the Complaint and which the Registrant has failed to answer, the Complainant's Mark BLANCO is world-renowned. Therefore, as stated in the Complaint, "The considerable value and goodwill of the mark BLANCO is most likely, a large contribution to this and also what made the Respondent register the Domain Name at issue here." It is evident that the Respondent is using the Domain Name in order to pass off the Complainant's trademark.

The Panel, in *Great Pacific Industries Inc. v. Ghalib DhalJa* (April 2, 2003), B.C.I.C.A.C., CIRA Dispute No 00009, p. 20-21, finds that such registration and use of the Domain Name would disrupt the business of the Complainant. In the case, the Registrant had its website "under construction" for three to five years. The Panel concluded that the Registrant should not be permitted to use the Complainant's trademark in its Domain Name and then simply sit on the name for years. As a result, the Panel concluded:

"There is no legitimate purpose in registering and holding this name. As with the provisions of paragraph 3.7 (b) [now 3.5 (c)], had the Registrant made greater use of the website, we would have placed a greater onus on the Complainant to demonstrate the requirements of paragraph 3.7 (c), however, under the circumstances, we believe that the Complainant has satisfied its onus".

In the present case, the Registrant registered a domain name containing a well known trade-mark and yet he doesn't operate his website. As the situation is similar to the *Great Pacific Industries* case, the Panel finds the Registrant has registered the Domain Name primarily for the purpose of disrupting the business of the Complainant.

(ii) The Complainant is a competitor of the Registrant

The Complainant does not expressly contend that the Complainant is a "competitor" of the Registrant.

The decision in *Canadian Thermos Products v. Michael Fagundes* (January 18, 2006), B.C.I.C.A.C., CIRA Dispute No 00049 illustrates the divergent views on what constitutes a competitor. The Panel said that:

"This requirement of Policy paragraph 3.7(c) [now 3.5(c)] has been given different interpretations in previous decisions under the Policy. Some panels have adopted a broad interpretation, holding that a complainant is a competitor of a registrant if they have websites that compete for the attention of Internet users (for example, see *InternetMovie Database Inc. v. 384128 Canada Inc.* (December 2005)). Other panels have adopted a narrower interpretation, holding that there must be some form of direct or indirect business competition between the complainant and the registrant, which may include the registrant directing Internet users to websites of the complainant's business competitors or advertising wares or services that compete with the complainant's wares and services (for example, see *Acrobat Construction v. 1550507 Ontario Inc.* (June 2003, *Trans Union LLC v. 1491070 Ontario Inc.* (April 2003), *Microsoft Corporation v. Microscience Corporation* (July 2005), *The Toro Company v. Hannon* (August 2005)), and that competition for the attention of Internet users is not sufficient to make the complainant a "competitor" of the registrant within the meaning of Policy paragraph 3.7(c) [now 3.5(c)]."

There is no definition of the term "competitor", neither in the Policy nor in the Rules. The issue is whether actual competition exists between the Complainant and the Registrant.

Using a broad interpretation, the Panel finds that the Complainant is in fact a competitor to the Registrant. As mentioned earlier, the website associated with the Domain Name is a parked Pay Per Click website. Revenue is streamed by parked Pay Per Click websites and the consensus view in WIPO is that parking and landing pages or pay-per-click links may only generate legitimate interests if the domain name is of a generic nature and it is genuinely related to the generic meaning of the domain name at issue, provided that there is no capitalization on trademark value. On the contrary, where such links are based on a trademark, UDRP panels have tended to consider such practices generally as unfair use resulting in misleading diversion, see among others WIPO case No. D2010-1364, D2010-1437, D2010-1404. The Registrant is effectively gaining economic benefit from the redirected traffic.

The Panel concludes that the Registrant registered the Domain Name in bad faith. It is worth noting that the Registrant did not attempt to justify his actions.

(c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4 of the Policy.

The Registrant has not received any licence or consent, express or implied, to use the trade-mark BLANCO as a domain name or in any other manner.

Moreover, the submissions made by the Complainant indicate that the domain name does not resolve to an active website.

Also, the Registrant does not appear to have used BLANCO or any other marks containing BLANCO as a trade-mark, company name, business or trade name.

Finally, the Registrant is not commonly known in reference to BLANCO and/on Blancosinks.

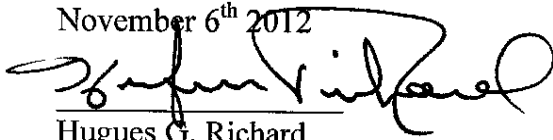
The Registrant has not proven, on a balance of probabilities, that the Registrant has a legitimate interest in the Domain Name as described in paragraph 3.4 of the Policy.

Accordingly, the Panel finds that the Complainant has provided some evidence that the Registrant has no legitimate interest in the Domain Name and this evidence has not been rebutted by the Registrant.

M. CONCLUSION AND ORDER

The Complaint having succeeded in proving the three elements of the basis for the Complaint, the Panel orders that the Domain Name blancosinks.ca be transferred to the Complainant.

November 6th 2012



Hugues G. Richard
Sole Panelist