

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

Domain in Dispute: <cec-ccc.ca>

Complainant: Canadian Employers Council/ Conseil Canadian des Employeurs

Registrant: Walker Johnson

Registrar: Go Daddy Domains Canada, Inc.

BCICAC File: DCA-1565-CIRA

DECISION

1. The Parties

Complainant is Canadian Employers Council/ Conseil Canadian des Employeurs of Toronto, Ontario, Canada, represented by Matthew J. Diskin, of Heenan Blaikie LLP, of Toronto, Ontario Canada.

The registrant's identity is undisclosed in the Complaint, which states: "The Complainant has does not presently have any contact information for the Registrant, but has attempted to contact the Registrant through the CIRA Interested Party Contact Procedure, without any response as of the date of this complaint." However, the British Columbia International Commercial Arbitration Centre ("BCICAC") has informed this panelist that it contacted CIRA and received information regarding the Registrant, whose identity is disclosed as Walker Johnson of Kanata, Ontario, in a notice letter from BCICAC to the Registrant dated January 23, 2014.

2. The Domain Name and Registrar

The disputed domain name is <cec-ccc.ca> (the "Disputed Domain Name"), which was created on September 29, 2013.

3. Governing Policy and Rules

This is a proceeding under the CIRA Domain Name Dispute Resolution Policy, Version 1.3 (August 22, 2011) ("CDRP") and the CIRA Domain Name Dispute Resolution Rules, Version 1.4 (August 22, 2011) ("Rules"). Paragraph 1.8 of the Policy states: "The version of the Policy in effect at the time a Proceeding is initiated will apply to the Proceeding." And, paragraph 1.2 of the Rules states: "The version of the Resolution Rules in effect at the time a Proceeding is initiated will apply to that Proceeding."

4. Procedural History

The history of this proceeding, according to the information provided by BCICAC, is as follows:

- a. On January 17, 2014 Complainant filed a Complaint pursuant to the CDRP and the Rules.

- b. In a letter dated January 23, 2014, BCICAC confirmed compliance of the Complaint and commencement of the dispute resolution process.
- c. As the Complaint with the attachments was filed exclusively online, therefore, BCICAC delivered the Complaint to the Registrant only by e-mail.
- d. The Registrant has not provided a Response. As permitted given the absence of a Response, the Complainant has elected under Rule 6.5 to convert from a panel of three to a single arbitrator.
- e. BCICAC appointed Douglas M. Isenberg as sole arbitrator on February 28, 2014. The undersigned has executed a document titled "Acceptance of Appointment as Arbitrator and Statement of Independence and Impartiality."
- f. Absent exceptional circumstances, and pursuant to Rule 12.2, the Panel's decision is to be delivered to BCICAC by March 20, 2014.

The Panel finds that it was properly constituted and appointed in accordance with the Policy and the Resolution Rules. Based upon the information provided by the BCICAC, the Panel finds that all technical requirements for the commencement and maintenance of this proceeding, unless otherwise noted, have been met.

5. Canadian Presence Requirement

Paragraph 1.4 of the Policy states: "The person initiating a Proceeding (the 'Complainant') must, at the time of submitting a complaint (the 'Complaint'), satisfy the Canadian Presence Requirements for Registrants (the 'CPR') in respect of the domain name that is the subject of the Proceeding unless the Complaint relates to a trade-mark registered in the Canadian Intellectual Property Office ('CIPO') and the Complainant is the owner of the trade-mark." Paragraph 2 of the CPR sets forth a list of individuals and entities that may "hold and maintain the registration of, a .ca domain name," which lists includes "[a] corporation under the laws of Canada or any province or territory of Canada." The Complaint states: "The Complainant satisfies the Canadian Presence Requirements for Registrants Version 1.3 (the 'CPR') on the basis that it is a corporation incorporated under the laws of Canada. A copy of a report from Industry Canada's website confirming the Complainant's status is attached as Tab 1." The report indicates that Complainant was incorporated on October 17, 2005. As a result, the Panel is satisfied that the Complainant meets the Canadian Presence Requirements and is eligible to initiate this proceeding.

6. Factual Background and Parties' Contentions

Complainant states that it "plays an important role in crafting labour and employment policies and advocating for the rights of Canadian employers in Canada and abroad"; that it "is the 'voice' of Canadian business on international labour issues"; that it "is viewed by government, unions and the employer community as the key Canadian employer stakeholder at the International Labour Organization ('ILO'), the United Nations Agency responsible for

employment and international labour issues[, and that it] has been a Canadian representative at the ILO since 1919”; that it is “well-known internationally for representing the interests of Canadian employers at the Organization of American States (the ‘OAS’) and at the International Organization of Employers (the ‘IOE’)”]; and that it “maintains an active dialogue with federal and provincial governments in respect of international social/labour developments and their domestic application, and acts as an intervener in important judicial proceedings.”

Complainant further states that it “is the exclusive Canadian user of the trade names the ‘Canadian Employers Council’ (in English) and the ‘Conseil Canadian Des Employeurs’ (in French)”]; that it “also commonly uses and is referred to under the abbreviated trade names ‘CEC’ or ‘CCE’”]; and that it “uses a well-known and distinctive design mark containing ‘CEC’ and ‘CCE’ with a Canadian flag in the middle” (the “CEC/CCE Mark”) and that “[t]he CEC/CCE trade name and the CEC/CCE Mark form part of a widely recognized brand under which the Complainant carries on business in Canada and internationally[, which]... have been used since 2006, and a similar design has been used since 2001.” Complainant also states that it was previously the registrant (since July 16, 2001) of the domain name <cec-cce.ca> (the disputed domain name in the instant proceeding) but that it “inadvertently lapsed on August 15, 2013.” During the time that it was the registrant of the domain name, Complainant states that it “regularly used the domain to communicate with its members by posting news information, and updates of interest to its members, in both English and French.” Complainant has provided copies of archived pages of its website (from the Internet Archive’s “Wayback Machine”) as well as a brochure (from “around late 2006 or early 2007”) about Complainant that contained a URL using the Disputed Domain Name and a letter from Complainant dated May 17, 2013, referring members to the same URL.

Despite Complainant’s failure to renew the Disputed Domain Name and its apparent subsequent registration by the current registrant, Complainant states that the website using the Disputed Domain Name “still contains an identical ‘home page’ to that which previously appeared when the Complainant owned the domain, which suggests to site visitors that the domain is likely still owned by the Complainant”; and that an e-mail address on the current website that at one time was “the general email address for the Complainant” is now inaccessible to Complainant and returns an undeliverable message.

Complaint states, and provides evidence to support, that “[c]ounsel to the Complainant wrote to the Registrant on December 6, 2013 and again on December 13, 2013 via the CIRA Interested Party Contact Procedure, but has not received a response to either letter.”

Complainant contends that the Disputed Domain Name is confusingly similar to the CEC/CCE Mark; and that Complainant has rights in this mark that pre-date the registration date of the Disputed Domain Name and that Complainant continues to have such rights.

Complainant further contends that Registrant has no legitimate interest in the Disputed Domain Name because, *inter alia*, “[t]he Registrant only acquired the rights to the domain cec-cce.ca because the Complainant’s registration of that domain inadvertently lapsed” after 12 years; “[t]he website is no longer practically functional”; and “the Registrant was aware of the Complainant, its trade name and the CEC/CCE Mark at the time it registered the domain.”

Complainant further contends that the Registrant should be considered as having registered the Disputed Domain Name in bad faith because, *inter alia*, “[u]sers that visit the domain are led to believe that the Complainant’s website is no longer functional and are unable to contact the Complainant via its general email address [and, therefore,] [s]ome visitors to the site may be led to believe that the Complainant is no longer operational”; and “the Registrant registered the domain name primarily for the purposes of: preventing the registration of the domain by the Complainant; disrupting the business of the Complainant; and/or selling the domain to the Complainant.”

Complainant requests that the Disputed Domain Name be transferred from the Registrant to the Complainant.

The Respondent did not file a Response.

7. Discussion and Findings

To obtain a transfer of the Disputed Domain Name, Complainant must, as set forth in paragraph 4.1 of the Policy, 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;

and the Complainant must provide some evidence that:

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

Rights and Confusingly Similar

With respect to paragraph 3.1(a) of the Policy, regarding rights and confusing similarity, the Panel notes that neither the CDRP nor the Rules defines “Rights.” However, previous panels have recognized that unregistered, common law rights are sufficient under these proceedings. See, e.g., *Trailwest Online Inc. v. Talltech Systems Inc.*, CIRA Case No. 00073 (“[t]he Policy and previous awards are clear that a Complainant does not need to have a registered trademark”); *The Governing Council of the University of Toronto v. Temporary Source Inc.*, CIRA Case No. 00099 (“the Policy applies to both registered and unregistered marks”); and *Zuffa, LLC v. David Bruce*, CIRA Case No. 00163(referring to an “unregistered common law mark”). Accordingly, based upon the uncontested representations and evidence provided by Complainant, the Panel finds that Complainant has rights in the CEC/CCE Mark and that these rights pre-date creation of the Disputed Domain Name, which occurred on September 29, 2013.

As to whether the Disputed Domain Name is confusingly similar to the CEC/CCE Mark, paragraph 3.3 of the Policy states: “In determining whether a domain name is ‘Confusingly Similar’ to a Mark, 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.” This Panel agrees with Complainant that “[t]here is no question that the entire disputed domain name is identical to and therefore confusingly similar to the Complainant’s trade name and design mark.”

Accordingly, the Panel finds that Complainant has met its burden of proof with respect to paragraph 3.1(a) of the Policy.

No Legitimate Interest

With respect to paragraph 3.1(b) of the Policy, regarding a lack of legitimate interests, the Panel is satisfied that the Complainant has established, on a balance of probabilities, that the Registrant does not have a legitimate interest in the Disputed Domain Name. The Registrant, by failing to submit a Response, has not made any attempt to rebut Complainant’s allegations or argue that it has a legitimate interest in the Disputed Domain Name under any of the six elements described in paragraph 3.4 of the Policy. Under these circumstances, the lack of a response is fatal to the Registrant. See, e.g., *Cointreau v. Netnic Corporation*, CIRA Case No. 00180 (“[t]here is no evidence from the ‘customer’ about its ‘interest’ in the Domain Name”); and *General Motors LLC v. Tony Wilson*, CIRA Case No. 00182 (“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”).

Accordingly, the Panel finds that Complainant has met its burden of proof with respect to paragraph 3.1(b) of the Policy.

Bad Faith

With respect to paragraph 3.1(c) of the Policy, regarding bad faith, the Panel agrees with Complainant’s observation that the enumerated list of bad faith examples in paragraph 3.5 is not exhaustive, as the Policy specifically says that the examples are “in particular but without limitation.” Accordingly, a Panel may find bad faith even in the absence of any of the examples set forth in paragraph 3.5(a)-(d).

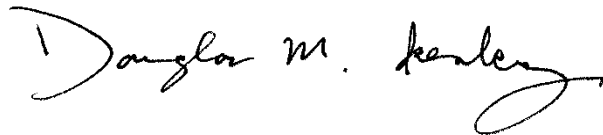
Complainant cites the decision *Caseware International Inc., c/o Mr Alan Charlton v. Mr John Lee*, CIRA Case No. 00057, in support of its argument that registration of a lapsed domain name constitutes bad faith. Although the cited decision involved a lapsed domain name, the facts of that case are different than those of the instant proceeding, in part because in *Caseware* “the domain name resolved to a website showing competing products” whereas here the Disputed Domain Name is being used in connection with a partial portion of Complainant’s former website. And, another decision in which a complainant inadvertently failed to renew a domain name, *ESET, spol. s.r.o. v. Data Integration Systems Co. c/o Michael Mahmood*, CIRA Case No. 00225, also included important additional facts, that is, the registrant in that case suggested that it would sell the domain name to the complainant for a price between \$6,500 and \$11,000.

Nevertheless, this Panel agrees with *Caseware* that “the uniqueness of the name and its previous use over a long period by the Complainant” are relevant to a finding of bad faith. In addition, numerous cases under the analogous Uniform Domain Name Dispute Resolution Policy (“UDRP”) have found bad faith when a registrant obtained a domain name after the relevant trademark owner inadvertently allowed it to lapse and the new registrant had not used the domain name (or had used it in a non-competitive manner) and had not offered to sell it. See, e.g., *Bestway Holdings Ltd v. Bkarato, AK Bkarato*, WIPO Case No. D2012-2485; and *BAA plc v. Spektrum Media Inc.*, WIPO Case No. D2000-1179. Indeed, in one such case, the new registrant, as here, used the domain name in connection with what “appears to be a copy of an archived version” of the complainant’s website. *Iona College v. Ilya S.*, WIPO Case No. D2012-2271.

In light of the above, as well as the registrant’s failure to respond to Complainant’s communications or the Complaint in this proceeding, the Panel finds that Complainant has met its burden of proof with respect to paragraph 3.1(c) of the Policy.

8. Decision

For all the foregoing reasons, in accordance with paragraph 4.3 of the Policy, the Panel orders that the Disputed Domain Name <cec-ccce.ca> be transferred to Complainant.

A handwritten signature in black ink that reads "Douglas M. Isenberg". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end.

Douglas M. Isenberg, sole arbitrator

Dated: March 20, 2014