

CANADIAN INTERNET REGISTRATION AUTHORITY  
DOMAIN NAME DISPUTE RESOLUTION POLICY

DECISION

Domain Name: sinex.ca  
Complainant: The Proctor & Gamble Company  
Registrant: Zaki Sohail Ahmad  
Registrar: Go Daddy Domains Canada, Inc.  
Service Provider: Resolution Canada Inc.  
Panel: Peter C. Cooke

THE PARTIES

The Complainant is The Proctor & Gamble Company (the “Complainant”) with an address at One Proctor & Gamble Plaza, Cincinnati, Ohio, 45202, USA

The Registrant is Zaki Sohail Ahmad of Longhouse Crescent, Mississauga, ON, L5R 4A5, Canada

THE DOMAIN NAME AND REGISTRAR

The subject of this proceeding is the Domain Name sinex.ca registered on January 14, 2015. The Registrar of the Domain Name is Go Daddy Domains Canada Inc.

PROCEDURAL HISTORY

This is an administrative dispute resolution proceeding pursuant to the Canadian Internet Registration Authority (“CIRA”) *Domain Name Dispute Resolution Policy* (version 1.3) (the “Policy”) and the CIRA *Domain Name Dispute Resolution Rules* (version 1.5) (the “Rules”). By registration of the Domain Name with the Registrar, the Registrant agreed to the resolution of this dispute pursuant to the Policy and the Rules.

According to the information provided by Resolution Canada Inc., the dispute resolution service provider, the history of the proceeding is as follows:

The Complainant filed a complaint (the “Complaint”) dated December 29, 2017 with Resolution Canada Inc., requesting that the Domain Name registration be transferred from the Registrant to the Complainant. After having determined that the Complaint was in administrative compliance with the requirements of the Policy and the Rules, Resolution Canada Inc.

commenced the dispute resolution process and served notice of the Complaint on the Registrant (as required by paragraph 4.3 of the Rules) by email on January 4, 2018. No response was received from the Registrant.

The Panel can act impartially and independently in this matter, as there are no circumstances known to them that would prevent them from so acting.

### ELIGIBILITY OF COMPLAINANT

The Complainant is an eligible complainant under Paragraph 1.4 of the Policy, as the Complaint relates to the Complainant's registered Canadian trademark SINEX TMA261405.

### OVERVIEW OF THE POLICY

Paragraph 4.1 of the Policy sets forth the Complainant's burden of proof in order to succeed in the proceeding. The onus is on the Complainant to prove, on a balance of probabilities that:

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

The Registrant has registered the domain name in bad faith as described in paragraph 3.5;

And the Complainant must provide some evidence that:

The Registrant has no legitimate interest in the domain name as described in paragraph 3.4.

### COMPLAINANT'S POSITION

The Complainant contends as follows:

The Complainant contends that SINEX is the Complainant's trademark, used in Canada by the Complainant or a predecessor since at least as early as 1960, and that these rights precede the date of registration of the Domain Name.

The Complainant further contends that the Registrant registered and is using the Domain Name in bad faith. In particular the Complainant contends that the Registrant registered or acquired the Domain Name primarily for the purpose of selling it to the Complainant or to a competitor of the Complainant for more than the cost to acquire it. The Complainant further alleges that the Registrant registered or acquired the Domain Name primarily for the purpose of disrupting the business of the Complainant. The Complainant alleges that the Registrant registered the

Domain Name to disrupt the Complainant's business through consumer confusion as to the Complainant's affiliation with the website sinex.ca where the Domain Name is currently parked. The Complainant further alleges that prolonged non-use of a domain name indicates that the registration was in bad faith.

The Complainant alleges that the Registrant has no legitimate interest in the Domain Name. The Complainant has provided evidence that it is the owner of the trademark registration SINEX which has been registered and used in Canada prior to the registration of the Domain Name. The Complainant has also reviewed paragraph 3.4 of the Policy and contends that the Registrant has no legitimate interest in the Domain Name.

### REGISTRANT'S POSITION

The Registrant did not file a Response to the Complaint

### DISCUSSIONS AND FINDINGS

#### Confusing Similarity between Domain Name and Complainant's Mark

The Complainant has demonstrated that it is the owner in Canada and elsewhere of trademark rights in the registered trademark SINEX, which has been in use since at least as early as 1960 in Canada. The Complainant's rights in the trademark easily precede the 2015 registration date of the Domain Name, and the Complainant submits that the Domain Name is "confusingly similar" with the trademark.

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, as per paragraph 3.3 of the Policy.

In applying this definition, it is important to note paragraph 1.2 of the Policy which stipulates that:

For the purposes of this Policy, "domain name" means the domain name excluding the dot-ca suffix..."

Ultimately, the Panel has concluded that the Domain Name sinex.ca so nearly resembles the Complainant's trademark SINEX so as to be likely to be mistaken for it.

The Panel is therefore of the view that the Complainant has succeeded in establishing confusing similarity under paragraph 4.1(a) of the Policy.

## Bad Faith Registration

The Complainant submits that the Registrant has registered and is using the Domain Name in bad faith because the Registrant registered or acquired the Domain Name primarily for the purpose of selling the registration to the Complainant or to a competitor of the Complainant for more than the cost to acquire it.

The Complaint also submits that the Registrant registered or acquired the Domain Name primarily to disrupt the business of the Complainant.

Paragraph 3.5 (a) of the Policy states that the following circumstance, if found by the Panel to be present, shall be evidence that a Registrant has registered a domain name in bad faith:

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.

The Complaint sets forth that the Complainant contacted the Registrant using CIRA's *Interested Party Contact: Message Delivery Form*. The Registrant responded by offering to sell the Domain Name.

In the view of this Panel, an offer to sell is not by itself evidence of bad faith.

The Complainant contacted the Registrant directly by email and asked that the Domain Name be transferred. The Registrant replied..."if you are interested in purchase (sic) of said domain kindly offer us a quote. Thanks."

The Complainant takes the position that the Registrant's response, when considered within the context of the situation, supports an intention to register the Domain Name primarily to sell it for greater than what was paid for it. This Panel, while sympathetic to the Complainant's position, is not prepared to make the inferences necessary to make a finding of Bad Faith, simply on the basis that when approached by the Complainant, the Registrant asked the Complainant to indicate what it might be willing to pay for the Domain Name. Bad Faith is not found on this basis.

The Complainant contends that the Registrant registered or acquired the Domain Name primarily for the purpose of disrupting the business of the Complainant, which is captured by 3.5 (c) of the Policy. The Complaint sets forth that the Registrant has parked the Domain Name. A review of that parked site reveals that it contains links on the subject of the Complainant's goods namely nasal sprays, including links to the nasal sprays of competitors of the Complainant.

The use of sponsored links has been found to be evidence of Bad Faith (see for example CDRP 00288 - Vanguard Trademark Holdings USA, LLC v. Essi Nikulainen for nationalcarhire.ca). As indicated above, the web page at [sinex.ca](http://sinex.ca) contains sponsored links to allergy nose sprays, including those of competitors of the Complainant. Accordingly it would appear that the Registrant registered or acquired the Domain Name primarily for the purpose of disrupting the Complainant's business by re-directing internet traffic away from the Complainant.

Although not mentioned by the Complainant, 3.5(c) of the Policy requires that the Complainant be a competitor of the Registrant. That being said, a broad interpretation of this test would support a view that, in this context, competing for internet traffic makes the parties competitors.

The Registrant has a registered trademark identical to the Domain Name and the trademark would appear to be distinctive. There is no evidence of commercial use of the Domain Name as a trademark by the Registrant. The Registrant failed to file a response so there is no "good faith" explanation for this disruption.

Accordingly, the Panel is prepared to conclude that the Registrant registered the Domain Name in bad faith, pursuant to paragraph 3.5 (c) of the Policy.

#### No Legitimate Interest in the Domain Name

The Complainant has submitted that the Registrant has no legitimate interest in the Domain Name.

Paragraph 4.1 (c) of the Policy requires that the Complainant provide *some evidence* that the Registrant has no legitimate interest in the Domain Name.

The Complainant has provided evidence that it has a registered trademark SINEX that was in use in Canada prior to the registration date of the Domain Name. In addition, the Complainant has in its submissions reviewed each of the paragraphs in 3.4 of the Policy and not identified any possible legitimate interest of the Registrant. The Complainant has therefore satisfied its initial burden.**[do we agree on this ?]**

It therefore becomes incumbent on the Registrant to provide evidence that it has a legitimate interest in the Domain Name. Since the Registrant has failed to provide a response to the Complaint, the panel is limited to reviewing the Complainant's Complaint.

The Registrant has a legitimate interest in a domain name if, and only if, before the receipt by the Registrant of notice from or on behalf of the Complainant that a Complaint was submitted:

(a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;

(b) the Registrant used the domain name in Canada in good faith in association with any wares, services or business and the domain name was clearly descriptive in Canada in the English or French language of (i) the character or quality of the wares, services or business; (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or (iii) the place of origin of the wares, services or business;

(c) the Registrant used the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language;

(d) the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;

(e) the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or

(f) the domain name was the geographical name of the location of the Registrant's non-commercial activity or place of business.

The Panel has reviewed the Complainant's submissions and come to the following conclusions:

The Registrant cannot rely on 3.4(a) of the Policy. The Domain Name may be a mark, but it is the Complainant's mark.

The Registrant cannot rely on 3.4(b) or 3.4 (c) of the Policy. The Domain Name is neither clearly descriptive nor generic, but is an inherently distinctive word within the context of the Complainant's goods.

The Registrant cannot rely on 3.4(d) of the Policy as the Domain Name is not being used in association with non-commercial activities such as criticism, review or news reporting.

The Registrant cannot rely on 3.4(e) of the Policy as the Domain Name is not the legal name or other identifier of the Registrant.

The Registrant cannot rely on 3.4 (f) of the Policy as the Domain Name has no relation to the geographical name of the Registrant's place of business.

In view of the above, the panel concludes that the Registrant has no legitimate interest in the Domain Name.

CONCLUSION AND DECISION

The Complainant has proven, on a balance of probabilities, that the 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 in which the Complainant continues to have such Rights.

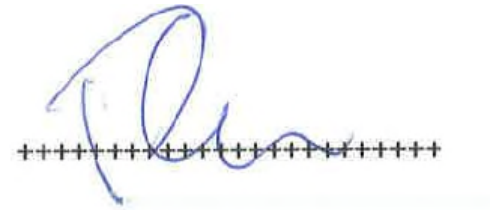
The Complainant has proven, on a balance of probabilities, that the Registrant registered the Domain Name in bad faith.

The Complainant has adduced some evidence that the Registrant has no legitimate interest in the Domain Name.

The Registrant did not file a response disputing the Complainant's submissions, or justifying its registration of the Domain Name.

For these reasons the Complaint regarding the Domain Name is successful and the panel orders, pursuant to paragraph 4.3 of the Policy, that the registration of the Domain Name be transferred to the Complainant.

Dated March 2, 2018

A handwritten signature in blue ink is written over a horizontal dotted line. The signature is cursive and appears to be 'Peter C. Cooke'.

Peter C. Cooke (Chair)  
Yuri Chumak  
Alessandro Colonnier