

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

Domain Name: blancofaucet.ca
Complainant: BLANCO GmbH + Co KG
Registrant: Abdou Al-Khouliani
Registrar: Go Daddy Domains Canada, Inc.
Panellist: Sharon Groom
Service Provider: Resolution Canada, Inc.

DECISION

A. The Parties

1. The Complainant, BLANCO GmbH + Co KG is a corporation located in Germany.
2. The Registrant for the domain name is Abdou Al-Khouliani located in Toronto, Ontario.

B. The Domain Name and Registrar

3. The disputed domain name is blancofaucet.ca. The Registrar for this domain name is Go Daddy Domains Canada, Inc. The disputed domain name was registered on January 29, 2012.

C. Procedural History

4. This is a proceeding under 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 1.4) (the “Rules”).
5. The history of the proceeding as provided by the dispute resolution provider, Resolution Canada, Inc., is that the Complainant filed a complaint against the Registrant with Resolution Canada, Inc. requesting that the current registration of the domain name blancofaucet.ca be transferred to BLANCO GmbH + Co KG. The Complaint was dated September 11, 2012.
6. Resolution Canada, Inc. served notice of the Complaint on the Registrant as required by paragraph 4.3 of the Rules. Service of the Complaint was made by e mail on September 14, 2012.

7. The Registrant was given twenty days to file a response but no response was filed.
8. The Complainant has elected to proceed before a panel consisting of only one panellist.

D. Panellist Impartiality and Independence

9. As required by paragraph 7 of the Rules, I have submitted to Resolution Canada, Inc. a declaration of impartiality and independence in relation to this dispute.

E. Canadian Presence Requirements

10. The Complainant, BLANCO GmbH + Co KG, is a German company. However it owns a Canadian trade-mark registration for the mark BLANCO, registration no. 628,984 which is included in the disputed domain name. As such it meets the Canadian Presence Requirements under paragraph 2(q) of the CIRA *Canadian Presence Requirements for Registrants*, Version 1.3.

F. Factual Background

11. The Complainant is engaged in the manufacture and sale of sinks and faucets. It has been selling these products in Germany since 1925 and now has a global business with many registrations for the trade-mark BLANCO around the world. The Complainant's products have been sold in Canada since 1990 and the Complainant registered the trade-mark referred to above in Canada in 2004, based on use since 1990.

12. The Complainant provided a list of domain names that it has registered and more than 100 of them commence with the word BLANCO. The Complainant registered blancocanada.com in 2007 and blancoamerica.com in 2000.

13. The Complainant states that the domain name blancofaucet.ca leads to a parked Pay Per Click website.

G. CIRA *Domain Name Dispute Resolution Policy*

14. Under paragraph 4.1 of the Policy it requires that the Complainant establish 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;
- (b) the Registrant has registered the domain name in bad faith as described in section 3.5; and
- (c) the Registrant has no legitimate interest in the domain name as described in section 3.4.

15. The Complainant must establish points (a) and (b) above on the balance of probabilities and for point (c) it must provide some evidence that the Registrant has no legitimate interest in the domain name.

H. Analysis

Confusingly Similar

16. The Complainant has to show that it has rights in a mark (and continues to have these rights) that is confusingly similar to the domain name and that these rights pre-date the date of registration of the disputed domain name.

17. The date of registration of the domain name is January 29, 2012, therefore this is the relevant date for this analysis.

18. The Complainant registered its mark BLANCO in Canada in 2004 and states that it has been using this mark since 1990 in association with the wares covered in the registration, which include sinks and faucets. The Complainant provides copies of pages from its websites at www.blancocanada.com and www.blancoamerica.com demonstrating current use of the mark BLANCO. It is apparent that the Complainant uses this mark to distinguish its wares from those of others. The mark BLANCO therefore satisfies the definition of a "mark" in subparagraph 3.2(a) of the Policy.

19. The Complainant has "rights" in this mark as it is the party that has used and registered it in Canada. These rights predate the date of registration of the disputed domain name as the mark was registered in 2004, which is prior to the relevant date of January 29, 2012. The fact that the mark still appears on the Complainant's website shows that the use of this mark is continuing.

20. The Complainant has thus established rights in the mark BLANCO since prior to 2012, and has demonstrated that it continues to have these rights. The question then is whether this mark is confusingly similar to the domain name blancofaucet.ca. The test for this is whether the domain name in question so nearly resembles the mark in appearance, sound or in the ideas suggested by it as to be likely to be mistaken for the mark.

21. In this case the domain name incorporates the entire mark BLANCO and combines it with the descriptive term "faucet". Adding a non-distinctive, descriptive term such as "faucet" is not enough to distinguish the domain name from the Complainant's trade-mark. Therefore I find that the domain name is likely to be mistaken for the Complainant's mark as it incorporates the whole of the Complainant's mark combined merely with a descriptive term. Therefore the Complainant has established, on a balance of probabilities, the facts required to support the requirements of paragraph 4.1(a) of the Policy.

Legitimate Interest

22. Paragraph 3.4 provides six possible ways in which a Registrant may have a legitimate interest in a domain name, which shall be discussed below.

23. In this case the domain name resolves to a parked pay per click website. The domain name is not used by the Registrant as a trade-mark on his website, or in association with his business. Therefore paragraph 3.4(a) is not satisfied. Also, the Registrant does not appear to have used the domain name in good faith in association with any wares, services or business. Therefore this Registrant's use does not fall under subparagraphs 3.4(b) or (c). Nor was the Registrant using the domain name in good faith in association with criticism, review or news reporting (paragraph 3.4(d)). Finally, the domain name is not the legal name or other identifier of the Registrant (3.4(e)), nor is it the geographical name of the location of the Registrant's place of business (3.4(f)). Therefore, none of the criteria in section 3.4 have been satisfied and I find that the Complainant has provided some evidence that the Registrant has no legitimate interest in the domain name.

Bad Faith

24. The Complainant has to show, on the balance of probabilities, that the domain name was registered in bad faith. Paragraph 3.5 deals with the grounds which constitute bad faith and it must be noted that these are no longer exhaustive; it is open to the panellist to find other grounds which lead to a conclusion of bad faith conduct.

25. I do not find any evidence that the Registrant's activities support bad faith under subparagraph 3.5(a) as there is no evidence that the Registrant offered to sell the domain name to the Complainant for more than the Registrant's actual costs in registering it.

26. With regard to subparagraph 3.5(b), the registration of this domain name has prevented the Complainant from registering its mark as a .ca domain name. But we have no evidence that the Registrant has engaged in a pattern of registering domain names to prevent rightful owners of marks from registering them as domain names. Therefore bad faith is not shown under this ground either.

27. I do not find that the facts support a finding of bad faith under subsection 3.5 (c), as, while the business of the Complainant may have been disrupted, the Registrant is not a competitor of the Complainant.

28. I do think that the facts support a finding of bad faith according to subsection 3.5(d). The Complainant's mark has been registered in Canada since 2004, used in Canada as early as 1990 and is currently used globally in the sale of sinks and faucets. Therefore it seems likely that the Registrant would have been aware of the Complainant's mark at the time he registered the domain name in 2012 and that this was the motivation behind its registration. The Registrant therefore seems to have chosen this domain name for the purpose of commercial gain, as the likelihood of confusion with the brand BLANCO will drive internet traffic to the Registrant's website.

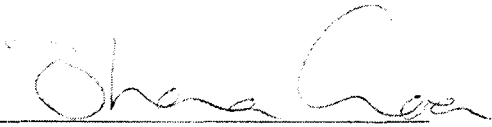
29. I therefore find that the Complainant has demonstrated, on the balance of probabilities, that the Registrant has registered this domain name for commercial gain, to attract users to his website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Registrant's website.

I. Conclusion and Decision

30. In conclusion, I find that the Complainant does have rights in the mark BLANCO which predate the registration of the domain name. I also find that the domain name is confusingly similar to the Complainant's mark and that the Registrant had no legitimate interest in the domain name. Finally, I find that the Complainant has shown that the Registrant registered the domain name in bad faith.

31. I therefore order, pursuant to paragraph 4.3 of the Policy, that the registration of the domain name blancofaucet.ca be transferred to the Complainant, BLANCO GmbH + Co KG.

Dated November 6, 2012



Sharon Groom