



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE
DOMAIN NAME DISPUTE
ADMINISTRATIVE PANEL
DECISION

CIIDRC case number:	15909-CDRP	Decision date: 18 September 2021
Domain Name:	loxone.ca	
Panel:	Rodolfo C. Rivas	
Complainant:	Loxone Electronics GmbH	
Complainant's representative:	Stefan Bojovic	
Registrant:	Heinz Kreutz	

1. PROCEDURAL HISTORY

The procedural history of this case was set out in a letter from the Canadian International Internet Dispute Resolution Centre (CIIDRC) to the Panel:

The Canadian International Internet Dispute Resolution Centre (the "Centre", the "CIIDRC") is a recognized service provider pursuant to the CIRA Domain Name Dispute Resolution Policy of the Canadian Internet Registration Authority ("CIRA").

This is a proceeding under the CIRA Domain Name Dispute Resolution Policy (the "Policy"), in accordance with the CIRA Dispute Resolution Rules (the "Resolution Rules").

On **August 4, 2021**, the Complainant filed a Complaint with CIIDRC pursuant to the CDRP and the Resolution Rules. The identity of the Registrant is not published in the

public WHOIS database; therefore, the Registrant's name was not included in the Complaint.

CIRA was notified of this proceeding on **August 4, 2021**. CIRA transmitted by email to CIIDRC its verification response informing who is the Registrant of the disputed domain name. CIRA also confirmed that the <loxone.ca> domain name was placed on a Registrar LOCK.

On **August 6, 2021**, CIIDRC, as Service Provider, confirmed compliance of the Complaint and commencement of the dispute resolution process.

Pursuant to Resolution Rule 4.4, CIIDRC notified the Registrant of this administrative proceeding and forwarded a Notice with a login information and the link to the Complaint to the Registrant on **August 6, 2021**. CIIDRC also delivered the Complaint to the Registrant only by email and by registered express post.

The Registrant failed to file its response by the due date of **August 26, 2021**.

The Complainant in this administrative proceeding has elected for a Panel consisting of a single-member. CIIDRC appointed the undersigned as a single-member Panel in the above-referenced matter by letter dated **September 7, 2021**. The undersigned has confirmed to CIIDRC that he can act impartially and independently as the Single Member Panel in this matter.

The undersigned determines that he has been properly appointed and constituted as the Single Member Panel to determine the Complaint in accordance with the Rules.

2. FACTS ALLEGED BY THE PARTIES

The Complainant is the owner of numerous trademarks around the world, including the following:

1. Canadian trademark registration No. TMA950834 for "LOXONE" since 29 September 2016.
2. International Registration No. 1155417 for "LOXONE" since 11 February 2013.
3. EU trademark registration No. 008401523 for "LOXONE" since 28 January 2010.

The LOXONE trade name has been in use for the Loxone Group's home automation systems and related products and services since 2009 when the company was founded, while the marks themselves have been in use for the same purpose since their respective dates of application. Loxone products for which the above trademarks are in use include intercoms, miniserver extensions, lighting and shading devices, security mechanisms, multimedia and music systems, energy saving products, access control systems, and automation systems for swimming pools, saunas, and gardens. Further details are provided on the company's website: <https://www.loxone.com/frfr/produits/apercu/>

Since its inception, the Loxone Group has become a world leader in the smart home industry and ranks among the fastest-growing companies in its field with over 300 employees in 20 locations, and more than 156,000 Loxone installations worldwide.

One of the ways in which the Loxone Group has expanded throughout the world is through its well-established partner program, in terms of which companies can qualify to become suppliers and installers of Loxone home automation systems. There are currently more than 13,000 Loxone partners worldwide, with an estimated 60 of those being in Canada. Sales in the Canadian market account for a considerable portion of Loxone Group's revenue, in respect of which USD 318,000 in income was generated in the year 2020 while the total revenue generated for Loxone Group worldwide in the same year was EUR100,397.000.

In addition, the Complainant is the owner of more than 70 domain names which reflect its trademarks, including the following:

- <loxone.com> registered on 05 July 2008;
- <loxone.us> registered on 12 February 2013;
- <loxone.eu> registered on 06 July 2008;
- <loxone.fr> registered on 18 June 2010;
- <loxone.es> registered on 15 June 2010;
- <loxone.it> registered on 15 June 2010;

- <loxone.ru> registered on 16 June 2010;
- <loxone.gr> registered on 16 June 2010;
- <loxone.in> registered on 06 September 2012; and
- <loxone.uk> registered on 15 March 2019.

The disputed domain name was registered on February 13, 2013.

3. CONTENTIONS OF THE PARTIES

- **Complainant**

The Complainant submits the following:

In February 2013, the Complainant entered into discussions regarding a possible partnership with the Registrant with a view to expanding its business onto the territory of Canada. During the course of such discussions, the Registrant proceeded to register the disputed domain name <loxone.ca> on 13 February 2013 and is still, to the best of the Complainant's knowledge, the Registrant of the disputed domain name.

The disputed domain name was registered without the knowledge or permission of the Complainant, and in contravention of the Complainant's Loxone Partner Guidelines, which were provided to the Registrant and of which he was well aware. Paragraph 2.1. of the Partner Guidelines provide that:

"It is strictly forbidden to open companies, register domain names, create users/usernames on social media platforms or open social media channels that include the Loxone brand name.

.... It is therefore prohibited to use 'Loxone' or 'Lox' or any combinations of these for the domain name of the Partner website."

At the time of registration, the disputed domain name resolved to a website for "LoxOne Automated Systems".

The disputed domain name was registered in contravention of the Loxone Partner Guidelines, which was pointed out to the Registrant in correspondence sent to him by the Complainant dated 19 February 2013. In the same correspondence, the Complainant offered to purchase the disputed domain name from the Registrant as one of the conditions of establishing a business partnership, but he refused the Complainant's offer. As a result, the Complainant was unable to obtain the disputed domain name from the Registrant despite having attempted to do so amicably.

In order to succeed with the Complaint in accordance with Paragraph 3.1 of the Policy, the Complainant provides the following arguments:

1) the Domain Name is Confusingly Similar to a trademark or service mark in which the Complainant has rights

The disputed domain name reproduces the Complainant's "LOXONE" trademark in its entirety. If the ccTLD suffix is disregarded, as it should be in terms of paragraph 1.2 of the Policy, it is clear that the remaining part of the disputed domain name is identical in appearance and sound to the Complainant's trademark and brand name and is, therefore, highly likely to be mistaken for it.

The Complainant has used the LOXONE trade name in connection with its home automation systems and related products around the world since the company's inception, while it formally registered the name as a trademark not long thereafter in various jurisdictions around the world. As a result, Loxone's brand and trademark has established widespread recognition, including in the USA, Europe, Africa and Asia, and the public has learned to perceive the goods and services offered under this mark as being those of the Complainant. Moreover, the Registrant in this matter had been well-aware of the Complainant's reputable trade name and the products offered under their brand prior to registering the disputed domain name as he had been in negotiations with the Complainant about becoming a Loxone partner and expanding the Complainant's business into Canada, as detailed below under the section on lack of legitimate interests.

Accordingly, the disputed domain name creates a clear likelihood of confusion with the Complainant's trademark and it is highly likely that the disputed domain name could

mislead internet users into thinking that <loxone.ca> is the domain name linked to the official website of LOXONE in Canada.

For all of the above-mentioned reasons, the disputed domain name is confusingly similar to the LOXONE trademark in which the Complainant has rights, and therefore the conditions of Paragraph 3.1(a), 3.3. and 4.1(a) are fulfilled.

2) the Registrant has no legitimate interests in the Domain Name

The Registrant does not have a legitimate interest in the disputed domain name in accordance with the circumstances set out in paragraph 3.4 of the Policy, nor does the Registrant have any legitimate interest outside those circumstances taking into account that the list is not exhaustive.

More precisely, the Complainant never assigned, granted, licenced, sold, transferred or in any way authorized the Registrant to use its LOXONE trademark or trade name.

Therefore, the Registrant never had rights in the mark making up the domain name, as set out in paragraph 3.4(a) of the Policy. Furthermore, the Registrant did not register the disputed domain name in Canada in good faith in association with any wares, services or business where the Complainant's trademark and trade name was descriptive in Canada in the English or French language; nor would the disputed domain name be understood in Canada as the generic name of any wares, services or business in any language with which such domain name would have been associated, as per sections 3.4(b) and 3.4.(c) of the Policy.

Moreover, the Registrant did not use the disputed domain name in good faith in association with a non-commercial activity as stipulated in paragraph 3.4(d) of the policy. Finally, the disputed domain name was not the legal name of the Registrant or the name, surname or other reference by which the Registrant was commonly identified; nor was the disputed domain name the geographical name of the location of the Registrant's non-commercial activity or place of business, as set out in sections 3.4(e) and 3.4(f) of the Policy.

On the contrary, the Complainant's mark and brand name is distinctive in relation to the goods and services for which it is registered, and the Complainant's brand has come to

be globally recognized as a leader in home automation systems. It is clear from the fact that the Registrant registered the disputed domain name in contravention of Loxone's Partner Guidelines that he did not use the Complainant's mark and trade name in good faith, but rather had intended to take advantage of the globally established reputation of the Complainant's mark/trade name by registering a domain name identical to the Complainant's mark and trade name for purposes of attracting consumers in order to sell them competing products for commercial gain.

Furthermore, the Complainant need only raise a reasonable challenge to the legitimacy of the domain name registration to establish its case in the absence of a show of legitimacy by the Registrant. Such a reasonable challenge is sufficiently achieved by way of the ownership of the Complainant of a trademark registration in a situation where the Registrant's registration and use of the domain name does not fit into any of the categories set out in paragraph 3.4 of the Policy.

In this matter, it is clear from the reasons set out above that the Registrant does not have a legitimate interest in the disputed domain name as set out in paragraph 3.4 of the Policy, while the Complainant has rights in terms of its registered trademark. Therefore, the Registrant's legitimate interest is reasonably challenged and the Complainant has proven on a balance of probabilities that the Registrant did not have a legitimate interest in the disputed domain name. Accordingly, paragraphs 3.1(b) and 4.1(c) of the Policy have been complied with.

3) the Domain Name has been registered in bad faith

In the present matter, it is clear from the fact that the Registrant wanted to enter into a business partnership with the Complainant, and had been in the process of doing so, that he knew of the Loxone Group and its well-known reputation around the world. Moreover, the Registrant had been aware of the Complainant's Partner Guidelines, which expressly prohibit the registration of domain names that include the LOXONE brand name and trademark, yet he proceeded to register and use a domain name containing the Complainant's brand name/trademark anyway. The Registrant ought also to have known that in terms of the Loxone Group's policy regarding its partner program, exclusivity or protected areas were not offered to partners, which is stated on their website:

<https://www.loxone.com/enus/business-partners/>.

From that alone, it is clear that the Complainant never authorised the registration of the disputed domain name as doing so would have allowed the Registrant to monopolise the Canadian territory using the official ccTLD for Canada, thereby preventing the Complainant from registering the disputed domain name to use as its official website for the territory, which is critical to the expansion of its business.

That the registration and use of the disputed domain name was not agreed to, nor authorised, by the Complainant was further made clear to the Registrant in the email sent to him dated 19 February 2013 in which the Complainant advised the Registrant that it was not going to compromise its Partner Program and that if the Registrant wanted to become a Loxone business partner, the appropriate terms would have to be met. Moreover, the Complainant made it clear in the same email that Loxone Group was interested in using the disputed domain name as the Home Page for the Canadian subsidiary. However, the Registrant refused to sell the disputed domain name to the Complainant, but kept it and proceeded to use it as the website for the sale of his “Raspberry pi” brand of home automation products, which products were in competition with those of the Complainant. Although the Registrant included a disclaimer on the website regarding his affiliation with the Complainant, this is not what consumers who see the disputed domain name are led to believe as they would have associated the disputed domain name with the Complainant’s business by the time they accessed the website and saw the disclaimer. This has been confirmed by previous panels which have held that disclaimers do not necessarily prevent or cure confusion and that confusion has likely already taken place before the disclaimer is encountered.

The Registrant further attempted to differentiate the Complainant’s trade name and mark from the identical one used by him in the disputed domain name by explaining on the website that, “LoxOne” is “...presented by a upper case “L” followed by a lower case “ox” followed by an uppercase “O” and ending with a lowercase “ne”...”, however, he ought to have known that domain names appear all in lowercase letters and that the disputed domain name would, therefore, not be able to be differentiated from the Complainant’s identical trade name and mark by internet users. Moreover, even if upper and lower cases letters were distinguishable in domain names, such minor differences would not be sufficient to differentiate the Complainant’s trademark from the disputed domain name. On the contrary, internet users would have perceived the domain name as being identical

to the LOXONE trade name and trademark in which the Complainant has rights and would have entered the website linked to the disputed domain name on the assumption that they would access the goods and services offered by the Complainant, but would instead have found products from a competitor on offer.

It is clear that the Registrant registered the disputed domain name in order to prevent the Complainant from registering its trade name/mark as a domain name, as well as for the purpose of disrupting the business of the Complainant and attempting to attract, for commercial gain, internet users to the Registrant's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website, and thereafter trying to sell them competing products.

In light of the foregoing, the Registrant's conduct constitutes bad faith under paragraph 3.5(b) and/or 3.5(c), and/or paragraph 3.5.(d) of the Policy. Accordingly, the requirements of registration of the disputed domain name in bad faith as set out in paragraphs 3.1(c), 3.5, and 4.1(b) of the Policy have been fulfilled.

- **Registrant**

The Registrant, as noted above, did not file a Response.

- **Remedy Sought**

The Complainant requests the Domain Name be transferred to it.

4. DISCUSSION AND FINDINGS

4.1 Eligibility

Based on the evidence before the Panel, namely the Complainant's Canadian trademark registration "LOXONE" under registration TMA950834, since September 29, 2016, the Panel therefore determines that the Complainant has satisfied the provisions under section 1.4 of the Policy.

4.2 Requirements

In accordance with Paragraph 3.1 of the CDRP, the onus is on the Complainant to prove on a balance of probabilities that:

- 1) The Complainant's trademark qualifies as a "Mark" as defined in paragraph 3.2 of the Policy;
- 2) The Complainant had "Rights" in the trademark prior to the date of registration of the disputed domain name and continues to have "Rights" in the trademark.
- 3) The disputed domain name is "Confusingly Similar" to one or more of the registrations comprising the Mark as the concept of "Confusingly Similar" is defined in Paragraph 3.3 of the Policy,
- 4) The Registrant does not have a "legitimate interest" in the disputed domain name as the concept of "legitimate interest" is defined in Paragraph 3.4 of the Policy, and
- 5) The Registrant or an unknown third party has registered the disputed domain name in "bad faith" in accordance with the definition of "bad faith" contained in Paragraph 3.5 of the Policy.

If the Complainant is unable to satisfy this onus, bad faith registration is not demonstrated, and the Complaint fails.

4.3 Analysis

Based upon the information provided by CIIDRC, the Panel finds that the Registrant is deemed to have been given notice of the Complaint, and all technical requirements for the prosecution of this proceeding have been met.

The Panel will now consider each of the requirements below.

4.3.1 That the Domain Name is Confusingly Similar to a Mark in which the Complainant has Rights

In analyzing the first requirement, and looking at the relevant portions of paragraph 3.2 of the Policy, it states that for the purpose of this proceeding a "Mark" is: "a trademark, including the word elements of a design mark, or a trade name that has been used in Canada by a person, or the person's predecessor in title, for the purpose of distinguishing the wares, services or business of that person or predecessor or a licensor of that person or predecessor from the wares, services, or business of another person."

Based on the evidence provided, it appears that the Complainant has been using the trademark "LOXONE" widely and across the world, including Canada, since at least its

earliest trademark registration in 2010 and continues to use the trademark in Canada. The Complainant, in its course of business applied for a Canadian trademark in February 20, 2013 and obtained the registration in September 29, 2016.

Then, as per the evidence on record, the Complainant's use of the trademark, in the terms of paragraph 3.2 of the Policy, commenced some years before the registration of the disputed domain name, namely February 13, 2013.

Based on this, the Panel finds that the Complainant has established that the "LOXONE" trademark qualifies as a "Mark" for the purposes of paragraph 3.2(a) of the Policy and that it has Rights to the mark.

The Panel must turn now to analyze if there is a confusing similarity between the disputed domain name and the trademark.

As contained in the record and evidence at hand, the disputed domain name reproduces the trademark in its totality, namely, "LOXONE". As paragraph 1.2 of the Policy indicates, for the purpose of this proceeding, the .ca suffix can be excluded of the analysis.

Furthermore, pursuant to paragraph 3.3 of the Policy, in determining whether a domain name is confusingly similar to a Mark, the Panel shall only consider whether the domain name resembles the Mark in appearance sound, or ideas suggested by the Mark as to be likely to be mistaken for the Mark. In the instances where the domain name incorporates the distinguishing element of the Mark, confusion will be established.

In the matter at hand, the Panel finds that it is more likely than not that an Internet user would mistake the disputed domain name as being somehow affiliated to or owned by the Complainant, particularly because the distinguishing element of the disputed domain name, namely "loxone", and "LOXONE" Mark are identical.

Based on the foregoing, the Panel finds that the Complainant has established, on a balance of probabilities, that the disputed domain name is confusingly similar to "LOXONE" Mark.

4.3.2 That the Registrant has Registered the Domain Name in Bad Faith

The Panel must now turn to the bad faith requirement contained under paragraph 3.5 of the Policy. Under this requirement, the Registrant will be considered to have registered the Domain Name in bad faith if the Complainant can demonstrate that the Registrant in effecting the registration of the Domain Name was motivated by any one of the four general intentions set out in paragraph 3.5 of the Policy.

In this case in particular, the Registrant's use of the disputed domain name that is confusingly similar to the Complainant's registered mark to intentionally attempt to attract Internet users to its website for commercial gain amounts to bad faith under paragraph 3.5(d) of the Policy. Additionally, in this case paragraph 3.5(c) seems to apply, namely due to the Registrant's registration of the disputed domain name primarily for the purpose of disrupting the business of the Complainant, who is a competitor of the Registrant.

The evidence at hand, shows that the Registrant was aware of the Complainant and its trademarks and registered the disputed domain name for no other purpose than to offer Internet users competing products, for its commercial gain.

Accordingly, the Panel finds on a balance of probabilities that the Registrant has registered the disputed domain name in bad faith under paragraph 3.5(d) of the Policy.

4.3.3 That the Registrant has No Legitimate Interest in the Domain Name

Turning to the last requirement, paragraph 4.1 of the Policy requires that to succeed in the Complaint, the Complainant must provide some evidence that the Registrant has no legitimate interest in the Disputed Domain Names "as described in paragraph 3.4". For this, paragraph 3.4 of the Policy provides a list of circumstances, which, if found to be proved upon evaluation of all evidence presented, shall demonstrate that the Registrant does have a legitimate interest in a domain name.

Although in the matter at hand, the Registrant did not provide a response, there is no evidence presented that: the Registrant had Rights in the Mark, that either disputed domain name was clearly descriptive or that it was a generic name, that it was used in association with a non-commercial activity, that it comprised a reference by which the Registrant was commonly identified, or that it was the geographical name of the location of the Registrant business.

The Panel, on balance of probability, finds that the Complainants have provided sufficient evidence to establish that the Registrant has no legitimate interest in the disputed domain name and the Registrant has failed to demonstrate that any of the circumstances set out in paragraph 3.4 of the Policy exist in this case.

5. DECISION and ORDER

For the above reasons, the Panel finds that the Complainant has satisfied the onus placed upon it by paragraph 4.1 of the Policy and is entitled to the remedy sought by it, in accordance with Paragraph 4 of the CDRP, Paragraph 12 of the Resolution Rules, the Panel orders that the disputed domain name, namely <loxone.ca>, be transferred to the Complainant.

Made as of 18 September 2021



Rodolfo C. Rivas

