

**CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY**

DECISION

Domain Name: meguiars.ca

Complainant: Meguiar's, Inc.

Registrant: Interex Corporate Registration Services Inc.

Registrar: Rapidregister.ca

Service Provider: Resolution Canada

Panelist: Eric Macramalla (Chair), Peter Cooke and Jay Josefo

A. THE PARTIES

1. The Complainant is Meguiar's, Inc. (the "Complainant"), a California corporation. The Complainant is represented by Osler, Hoskin & Harcourt LLP.
2. The Registrant is Interex Corporate Registration Services Inc. (the "Registrant") located in Charlottetown, P.E.I.

B. DISPUTED DOMAIN NAME & REGISTRAR

3. The disputed domain name is meguiars.ca (the "Domain Name").

C. PROCEDURAL HISTORY

4. This is a dispute resolution proceeding initiated pursuant to the *CIRA Domain Name Dispute Resolution Policy* (the "Policy") and the *CIRA Policies, Rules, and Procedures - CIRA Domain Name Dispute Resolution Rules* (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.
5. The Complainant filed its complaint (the "Complaint") on December 8, 2014. The Date of Commencement of the proceeding was December 9, 2014.
6. The Registrant filed its response dated December 29, 2014, which was deemed deficient by the Provider for failing to provide the preferred method of communication for all correspondence. An Amended Response was filed on January 21, 2015.
7. On January 29, 2015, the Panel was appointed. As prescribed by the Policy, the Panel has declared to the Provider that it can act impartially and independently in connection with this matter, and that there are no circumstances known to the Panel which would prevent it from so acting.

D. CANADIAN PRESENCE REQUIREMENTS: ELIGIBILITY OF THE COMPLAINANT



8. The Complainant is the owner of multiple Canadian trademark registrations comprised of, containing, the element MEGUIAR'S. The Panel is therefore satisfied that the Complainant is eligible to initiate these proceedings.

E. THE POSITIONS OF THE PARTIES

The Complainant's Position

9. The Complainant's submissions include the following.

10. The Complainant is the owner of the Canadian trademark registrations outlined in the table below, which shall be collectively referred to as the MEGUIAR'S Trademarks. The Complainant's trademark registrations cover, in part, surface care products for vehicles, namely cleaners, waxes, polishes, glazes, sanding blocks, buffing pads, sealants, shampoos and conditioners:

Trademark	Reg. No.	Reg. Date
MEGUIAR'S	TMA155,342	February 2, 1968
MEGUIAR'S NXT GENERATION	TMA632,155	February 7, 2005
	TMA830,211	August 21, 2012
	TMA830,890	August 29, 2012

11. The Complainant is the owner of the domain name meguiars.com, which was registered on April 24, 1995 and used since at least as early as 1996.

12. The MEGUIAR'S brand was created in 1901 and has since become one of the leading vehicle surface care product brands in the United States and Canada. The MEGUIAR'S Products are sold over-the-counter in Canada at various retailers including national retail chains Canadian Tire and Home Hardware.

13. The substantial advertising and promotion of the MEGUIAR'S Trademarks and the domain name meguiars.com by the Complainant has created significant

goodwill and widespread consumer recognition around the world, including in Canada.

14. The Complainant has right in the MEGUIAR'S Trademarks by virtue of its trademark registrations.
15. The Domain Name was registered on September 28, 2011. The Domain Name resolves to a website that, among other things, displays "Related Links" and "Ads" for third party websites offering automotive care products and services. The "Related Links" and "Ads" resolve to pages related to competitors of the Complainant and its products. The Registrant is using the Domain Name as part of a revenue generating business. The appearance and contents of web pages for <meguiars.ca> are typical of websites used by Registrants to generate income by directing Internet traffic to links corresponding to the Internet websites of third parties. Referral fees are generated if the visitor to the site uses any of the links.
16. The Domain Name is confusingly similar with the MEGUIAR'S Trademarks. Further, the Registrant does not have a legitimate interest in the Domain Name. Finally, the Registrant registered the Domain Name in bad faith as (i) the Registrant engaged in a pattern of unauthorized domain name registrations containing third party trademarks, (ii) the Registrant registered the Domain Name primarily for the purpose of disrupting the business of the Complainant, a competitor, and (iii) the Registrant registered the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement.
17. The Complainant is seeking the transfer of the Domain Name.

The Registrant's Position

18. The Registrant has argued as follows:
19. "Meguiars" is a surname and is "also known as MacGuire, McGuire, Maguire, MacGwire, McGwier, and McGwire".
20. Domains for specific family names are offered in the singular and plural sense, as available, such as Wilson or Wilsons, as in John Wilson or the Wilson family – The Wilsons – being able to use john@wilson.ca or john@wilsons.ca only as an example.
21. On the Meguiar surname, Wikipedia notes the following, including a link to a page belonging to Complainant which in turn links to the meguiarscanada.ca website: During translation in the Ulster Plantation, various English translations of the original Mag Uidhir appeared, including Mc Guire, Maguire, MacGuire and McGuire. In South West Donegal, the name is retranslated into Gaelic as Mac Guibhir. An unusual version is Meguiar, an American spelling best known from "Meguiar's Wax."

22. In researching Meguiars the registration system found there was no match for trademarks, which appears to be due to the protected term for waxes to be Meguiar's, not Meguiars.
23. The Registrant was not aware of Complainant and has not even owned a car since 1998, much less ever 'shampooed' or waxed a car for that matter. The Registrant did go to school with someone with the surname, and has met the former MP and federal minister Joe McGuire, which is another variant of the surname.

F. DISCUSSION & REASONS

24. In accordance with paragraph 4.1 of the Policy, to succeed in this proceeding, the Complainant must prove, on a balance of probabilities, that:
 - (a) the Registrant's 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 of the Policy;

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 of the Policy.

CONFUSINGLY SIMILAR - PARAGRAPH 3.3

25. In order to satisfy this branch of the test, the Complainant must demonstrate (i) that it has rights in a mark, (ii) that the rights in its mark predate the registration date of the Domain Name, and (iii) that the Domain Name is confusingly similar with the disputed domain name.

Rights in the Marks & Rights that Predate the Domain Name Registration Dates

26. Where the Complainant relies upon a trademark registered prior to the domain name registration date, the Policy does not require or permit a Panel to go behind the registration to determine whether the mark is valid or invalid based upon lack of distinctiveness or non-use. In cases where a trademark registration matured to registration after the domain name registration date, or the Complainant is relying on common law rights, it must establish rights that predate the domain name registration.
27. The Complainant's trademark registrations for MEGUIAR'S and MEGUIAR'S NXT GENERATION issued to registration prior to the September 28, 2011 registration date of the Domain Name. Therefore, the Panel concludes that the Complainant has established rights that precede the registration of the Domain Name.

Confusingly Similar

28. As per paragraph 3.3 of the Policy, a domain name will be found to be confusingly similar with a mark if the domain name so nearly resembles the mark in appearance, sound or in the ideas suggested by the mark so as to be likely to be mistaken for the mark.
29. Pursuant to paragraph 1.2 of the Policy, a domain name is defined as the second level domain (the portion that immediately precedes the dot-ca suffix).
30. The test to be applied when considering “confusingly similar” is one of first impression and imperfect recollection. The Complainant must prove, on a balance of probabilities, that a person, as a matter of first impression, knowing the Complainant’s corresponding marks only, and having an imperfect recollection of the marks, would likely confuse the Domain Name for the Complainant’s marks based upon the appearance, sound or the ideas suggested by the mark.
31. It should be noted that the test for confusion under the Policy is not the same test for confusion set out under the Canadian *Trademarks Act*. Under the Section 6(5) of the *Trademark Act*, when assessing the likelihood of confusion between marks, the factors to consider are as follows: (a) the inherent distinctiveness of the marks and the extent to which they have become known; (b) the length of time the marks have been in use; (c) the nature of the wares, services, or businesses; (d) the nature of the trade; (e) the degree of resemblance between the marks in appearance or sound or in the ideas suggested by them; and (f) the surrounding circumstances.
32. In contrast, the Policy provides that confusion is established if a domain name so nearly resembles a mark in appearance, sound or in the ideas suggested. This is similar to the test set out under Section 6(5)(e) of the *Trademarks Act*. However, the remaining factors as set out under the *Trademarks Act* do not apply to the assessment of confusion under the Policy. The Policy’s summary proceedings are ill-suited for the in-depth and traditional confusion analysis contemplated by the *Trademarks Act*.
33. Apostrophes cannot be reflected in a domain name. Accordingly, the Domain Name is effectively identical to the MEGUIAR’S trademark.
34. The Panel concludes that the Domain Name is confusingly similar with the Complainant’s MEGUIAR’S Trademarks, given that the Domain Name so nearly resembles the MEGUIAR’S Trademarks in appearance, sound and in the ideas suggested so as to be likely to be mistaken for these marks.

Conclusion - Confusion

35. The Panel finds that the Domain Name is confusingly similar with the MEGUIAR’S Trademarks in which the Complainant had rights prior to the registration date of the Domain Name, and continues to have such rights.

BAD FAITH REGISTRATION

36. The Complainant has submitted evidence that the Registrant has engaged in a pattern of unauthorized domain name registrations containing 3rd party trademarks, including, deutschebank.ca, veloster.ca, partypokercanada.ca, philishave.ca and abercrombiefitch.ca. It seems unlikely that the Registrant can claim any entitlement or rights to the domain names. The Panel concludes that these registrations constitute evidence of bad faith registration as per Paragraph 3.5(b).
37. The Complainant has also alleged that the Domain Name was registered in bad faith pursuant to paragraph 3.5(d) of the Policy, namely that the Registrant registered the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement.
38. The Domain Name is comprised exclusively of the MEGUIAR'S trademark. Under the circumstances, the Panel is of the view that the Domain Name is likely to confuse potential consumers into believing that the Registrant is somehow affiliated with, or endorsed by, the Complainant. Further, resolving the disputed domain name to a pay-per-click website in these circumstances featuring sponsored links to competitors of the Complainant is evidence of bad faith. These websites put the Registrant in a position to reap a financial benefit by way of referral fees. Accordingly, the Panel concludes that bad faith does indeed exist as per Paragraph 3.5(d) (*Sleep Country Canada Inc. v. Pilfold Ventures Inc.*, Resolution Canada Case No. 00027; *Lee Valleys Tools Limited v. Pilfold Ventures Inc.*, Resolution Canada Case No. 00040).
39. In light of the foregoing, the Panel finds that the Complainant has established bad faith as per paragraph 3.5(d).

LEGITIMATE INTEREST

40. The final element to determine is whether the Registrant has a legitimate interest in the Domain Name.
41. As per paragraph 4.1 of the Policy, the Complainant must provide "some evidence that the Registrant has no legitimate interest in the domain name as described in paragraph 3.6".
42. Once this onus has been discharged by the Complainant, the Registrant may still succeed if it can show, on a balance of probabilities, that it has a legitimate interest in the Domain Name pursuant to paragraph 3.4.
43. The Panel finds that the Complainant has provided sufficient evidence that the Registrant does not have a legitimate interest in the Domain Name. The Complainant did not authorize the registration and the domain name is likely to mislead the public into believing that the Registrant is affiliated with, or endorsed by, the Complainant.

44. The Registrant has sought to legitimize the Domain Name by arguing that it constitutes a surname. The Panel has concluded, however, that “meguiars” is not a commonly known surname in Canada. Further, the domain name is not the legal name of the Registrant or a name, surname or other reference by which the Registrant is commonly identified. For these reasons, the Registrant has not legitimized the domain name registration.
45. Accordingly, the Panel finds that the Registrant does not have a legitimate interest in the Domain Name.

DECISION & ORDER

46. For the reasons set out herein, the Panel decides this dispute in favour of the Complainant.
47. Pursuant to paragraph 4.3 of the Policy, the Panel orders the transfer of the domain name meguiars.ca.

Dated at Ottawa, Ontario, Canada, this 27th day of February, 2015.



Eric Macramalla (Chair) for the Panel
Peter Cooke and Jay Josefo