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

Dispute Number:	DCA-1667-CIRA
Domain Name:	www.thule.ca
Complainant:	Thule Sweden AB
Registrant:	Liang Yingjie
Registrar:	HEXONET Services, Inc.
Panel:	Melvyn J. Simburg
Service Provider:	British Columbia International Commercial Arbitration Centre

DECISION

THE PARTIES

1. The Complainant in this proceeding is Thule Sweden AB, a Swedish company located at Box 69, Hillerstorp, 330-33 Sweden ("Thule").

The Registrant is Liang Yingjie, an individual with a listed residence address of 1252 Forestwood Dr., Mississauga, Ontario, Canada L5C 2B4

THE DOMAIN NAME AND REGISTRAR

2. The Domain name in issue in this proceeding is <thule.ca> ("the disputed domain name"). The Registrar is: HEXONET Services, Inc. The disputed domain name was registered by the Registrant on August 21, 2014.

PROCEDURAL HISTORY

3. The British Columbia International Commercial Arbitration Centre ("BCICAC"") is a recognized service provider to the CIRA Domain Name Dispute Resolution Policy ("the Policy") of the Canadian Internet Registration Authority ("CIRA").

4. According to the information provided by BCICAC:

a. The Complainant filed a Complaint with respect to the disputed domain name in accordance with the Policy on April 13, 2015.

b. BCICAC as Service Provider reviewed the Complaint and found it to be compliant. By letter dated April 13, 2015, BCICAC confirmed compliance of the Complaint and commencement of the dispute resolution process.

c. BCICAC sent the Complaint, together with its annexes, to the Registrant by e-mail and letter on April 13, 2015.

d. The Registrant did not reply to that communication and did not provide a Response to the Complaint.

e. As permitted under CIRA Domain Name Dispute Resolution Rules ("the Rules") the Complainant elected under Rule 6.5 to convert from a panel of three to a single Arbitrator.

f. On May 6, 2015, BCICAC named Melvyn J. Simburg as the Panel. On May 7, 2015 the undersigned signed an Acceptance of Appointment as Arbitrator and Statement of Independence and Impartiality, thereby comprising the Panel.

g. The Panel has reviewed all of the material submitted by the Complainant and is satisfied that the Complainant is an eligible Complainant under the Policy and the Rules

h. In accordance with Rule 5.8, where, as here, no Response is submitted, the Panel decides the Proceeding on the basis of the Complaint.

FACTS

5. The facts set out below are taken from the Complaint and related documents.

a. Thule is a major manufacturer and seller of carriers, racks, boxes and cases for transportation for more than 70 years and has conducted business in Canada since the 1970s. Its products are famous, well-known by its market, and have a reputation for high quality.

b. Thule is the owner of Canadian trademark registration number TMA 261,671 for the mark "THULE", which has been registered since 1981 and remains in effect.

c. Thule registered the domain <thule.com> in 1998, which it has used thereafter as the main website to advertise the brand THULE ever since. Complainant has registered another 247 "Thule" related domain names worldwide as well.

d. Registrant registered the disputed domain name in August of 2014 without the Complainant's knowledge or permission. The domain is occupied by a page that contains links to products similar to those offered for sale by Complainant.

e. Complainant has never had a relationship with Registrant, has never licensed Registrant to use the THULE mark, and Registrant has never been authorized to use Complainant's THULE mark in Canada or elsewhere in any manner, including in or as part of a domain name.

f. Complainant tried to contact the Registrant via the website of CIRA but received no response. Complainant filed a Request for Disclosure of Registrant information, which

request was granted. Complainant sent a cease and desist letter and email to Registrant on December 3, 2014, but did not receive a response. Nor did Registrant take down the website. Complainant sent a reminder email on February 12, 2015, but again did not receive a response.

POSITION OF THE COMPLAINANT

6. Complainant submits as follows:

a. In view of the facts, Thule is the owner of and has the exclusive right to use or grant license to use the THULE trademark and brand name in domain names, and to act against any third party using the trademark in a domain name without Complainant's authorization. Use of the mark without Complainant's authorization, including use in a domain name, infringes Complainant's trademark.

b. The disputed domain name is substantively identical to Complainant's trademark. Consumers are bound to mistake it for Complainant's mark and assume the website belongs to Complainant or is authorized by Complainant.

c. Registrant registered the domain name in August of 2014 without authorization, permission or knowledge of Complainant. The Domain name has at times resolved to what appears to be a monetization website that carries links to for-profit sites, from which Registrant, on information and belief, collects revenue in the form of pay-per-click and/or affiliate marketing fees, that advertise and sell a variety of goods and services including some related to products similar to Thule's goods and services. As a result Registrant is wrongfully exploiting Complainant's reputation and goodwill.

d. Registrant's use of the THULE mark in the domain name and in association with products on the website shows that Registrant was aware of the existence of the THULE brand and trademark when registering the disputed domain name and appropriated it intentionally.

e. Registrant has no right or legitimate interest in the disputed domain name because:

i. The Registrant registered the disputed domain name later in time than Complainant's registration of the THULE trademark in Canada and Complainant's registration of the domain <thule.com> in Canada.

ii. Registrant's use of the disputed domain name infringes Complainant's statutory trademark rights in the mark THULE.

iii. Registrant has no rights in or to use the trademark THULE.

f. Registrant has registered and is using the disputed domain name in bad faith.

i. Registrant intentionally attempted to attract Internet users by creating a domain name and website likely to be confused with the Complainant's trade-mark and

business brand.

ii. Respondent is not using the disputed domain name in connection with a *bona fide* commercial offering, nor for a legitimate noncommercial or fair use. Respondent is using it to provide pay-per-click links to third-party websites. Respondent registered the domain name primarily for the purpose of redirecting business of the Complainant, to intentionally attract, for commercial gain, Internet users to Respondent's website. Links on the Respondent's website also lead to competitors of Complainant.

iii. Registrant failed to answer the emails of the Complainant regarding Registrant's trademark infringement and despite being warned Registrant continued using the disputed domain name.

iv. On the actual website the disputed domain is offered for sale.

DISCUSSION

CANADIAN PRESENCE REQUIREMENTS

7. The Panel finds that the Complainant is an Eligible Complainant (see paragraph 1.4 of the Policy) and has met the Canadian Presence Requirements by virtue of the fact that the Complainant is the owner of the trade-mark THULE (TMA 261,671).

(A) CONFUSINGLY SIMILAR

8. Under paragraph 4.1 of the Policy the Complainant must prove on the balance of the 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

Even if the Complainant proves (a) and (b) and provides some evidence of (c), the Registrant will succeed in the Proceeding if the Registrant proves, on a balance of probabilities, that the Registrant has a legitimate interest in the domain name as described in paragraph 3.4."

9. Registrant has filed no response to the Complaint and accordingly Registrant has

provided no evidence of legitimate use.

10. The panel finds that the disputed domain name is confusingly similar to the Complainant's THULE mark, and the mark is "A Mark in which the Complainant had Rights prior to the date of registration of the domain name and continues to have such rights." This conclusion is based on the following.

a. Complainant is the owner of the "THULE" trademark, which it registered in 1981, and continues to use the mark in trade within Canada.

b. Accordingly, the Panel finds that Complainant has rights in the "THULE" trademark and continues to have such rights.

c. The test of whether a domain name is confusingly similar with a mark or trade name, pursuant to paragraph 3.3 of the Policy, is if it so nearly resembles the Mark in appearance, sound or in the ideas suggested so as to be likely to be mistaken for the mark.

d. Paragraph 1.2 of the Policy provides that a domain name is defined so as to exclude the "dot-ca" suffix.

e. The Panel has undertaken a comparison between the disputed domain name and the "THULE" trademark and finds that the domain name so nearly resembles the trademark in appearance, sound and the ideas suggested as to be likely to be mistaken for the mark. The "THULE" name is clearly well established and so prestigious that the objective bystander would naturally assume that the "thule" of the domain name was invoking the "THULE" of the trademark and that it was an official "THULE" domain name leading to an official Thule website.

f. Moreover, if the trademark is included in the disputed domain name, a Registrant cannot avoid a finding of confusion by appropriating another's entire mark in a domain name. *RGIS Inventory Specialists v. AccuTrak Inventory*, BCICAC Case No. 00053; *Glaxo Group Ltd. v. Defining Presence Marketing Group, Inc. (Manitoba)*, BCICAC Case No. 00020. Applying that principle to the present case, the disputed domain name incorporates the whole of the registered "THULE" trademark. Accordingly, the Panel finds that the Registrant cannot avoid a finding of confusion as it has misappropriated the entirety of the "THULE" trademark.

(B) NO LEGITIMATE INTEREST IN THE DOMAIN NAME

11. Paragraph 4.1(c) of the Policy requires Complainant to provide some evidence that the Registrant has no legitimate interest in the domain name as described in paragraph 3.4. The Panel finds that Complainant has provided such evidence. Complainant's case in this regard is as follows:

a. There has never been any relationship between the Complainant and the Registrant, and the Registrant has never been licensed or otherwise authorized to use the Complainant's THULE trademark, in Canada or elsewhere, in any manner, including as part of a domain name. The Panel accepts this submission as evidence and so finds.

b. The Complainant has been selling products in Canada in association with its THULE trademarks since the late 70s. Thule is the number one brand by far in Canada with about 75% of the market share. The Panel accepts this submission as evidence and so finds.

c. The Registrant registered the domain name in August 2014 without the knowledge or permission of the Complainant and resolved it to a pay-per-click website populated with sponsored links to other companies that offer products similar to what the Complainant offers…It means that the Registrant was aware of the existence of the Thule brand and trademark when registering the domain name <thule.ca>. The domain is also offered for sale. The Panel accepts this submission as evidence and so finds.

The same result on this issue is reached by an examination of the various criteria set out in paragraph 3.4 of the Policy:

(a) Registrant has not used the domain name as a mark in good faith with Registrant having rights in the mark within the meaning of subparagraph 3.4(a).

(b) There is no evidence that Registrant registered the domain name in association with any particular wares, services or business of Registrant and it is therefore not possible to consider whether the term "THULE" is clearly descriptive of, or a generic name for, any wares, services or business under subparagraphs 3.4(b) and (c) of the Policy.

(c) There is no evidence that the domain name is being used for non-commercial activity, or for fair use, within the meaning of subparagraph 3.4(d).

(d) There is no evidence that the domain name is a legal name of Registrant or the name or surname or other reference by which Registrant is or was commonly known within the meaning of subparagraph 3.4(e).

(e) Subparagraph 3.4(f) of the Policy does not apply because the term "THULE" is not a geographical location.

12. The Panel accepts the submission of the Complainant and the evidence adduced in its support and concludes that these matters constitute evidence that Registrant has no legitimate interest in the disputed domain name.

13. Moreover, Registrant has not filed a response to the Complaint or sought to rebut the above evidence and has thus provided no evidence of legitimate use. In addition, in light of the facts set forth above, it is inherently unlikely that Registrant has or could establish a legitimate interest in the domain name.

(C) REGISTRATION OF <thule.ca> IN BAD FAITH

14. The Panel now turns to consider whether the disputed domain name was registered in bad faith. The Panel finds that Registrant registered the disputed domain name in bad faith.

15. Complainant's case in support of bad faith is as follows:

a. Registrant intentionally attempted to attract Internet users by creating a likelihood of confusion with the Complainant's trademark.

b. Registrant is not using the disputed domain name for any bona fide commercial offering; nor is it using it for any legitimate non-commercial or fair use. Rather, it is using the Complainant's domain name and Mark to provide pay-per-click links to third party websites, thus disrupting the business of Complainant for purposes of financial gain.

c. Complainant sent a cease and desist e-mail to Registrant in December of 2014. After receiving no response, Complainant sent a follow up e-mail in February of 2015 and attempted to contact Registrant through the CIRA website. To date, Complainant has received no response from Registrant.

d. The website currently occupying the domain name is for sale.

16. The Registrant has filed no response to the Complaint and therefore provided no evidence on the issue of bad faith. The Panel therefore accepts the evidence and the inferences upon the evidence show bad faith registration on the part of Registrant.

GENERAL

17. The Panel has reviewed all information submitted by the Complainant and finds that apart from and in addition to the liability of Registrant pursuant to paragraph 3.5(b) of the Policy, Registrant registered the disputed domain name in bad faith within the generally accepted meaning of that expression.

18. In particular, Complainant's trademark is well known and has been for many years; Complainant has spent significant funds and resources over the years on development and marketing of the Mark and its brand; Registrant has taken Complainant's trademark to use as a domain name without approval or consent of Complainant; Registrant has offered no Response or any other legitimate argument or reason for its actions and accordingly adverse inferences may be drawn from that fact.

19. These being the facts, the Panel finds that Registrant registered the disputed domain name in bad faith within the generally accepted meaning of that expression.

DECISION

20. The Panel finds that Complainant has met the requirements of Paragraph 4.1 of the Policy and is entitled to the relief it seeks.

ORDER

The Panel directs that the registration of the domain name <thule.ca> be transferred from Registrant to Complainant.

Date: May 13, 2015

Melvyn J. Simburg