

**IN THE MATTER OF A COMPLAINT MADE PURSUANT TO THE CANADIAN
INTERNET REGISTRATION AUTHORITY DOMAIN NAME DISPUTE
REGISTRATION RESOLUTION POLICY (v 1.2) AND RULES (v 1.3)**

Complainant: Salmon Arm Savings and Credit Union
370 Lakeshore Drive NE, P.O. Box 868
Salmon Arm, B.C. V1E 4N9
(the "Complainant")

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Registrant: Afeezco Domain Services Inc.
1100-1200 West 73rd Avenue
Vancouver, B.C. V6P 6G5
(the "Registrant")
Administrative Contact: Gino Afeezco
Email: admin@afeezco.ca

Disputed Domain Name sascu.ca
(the "Domain Name")

Registrar: Go Daddy Domains Canada Inc.

Single Member Panel: Hugues G. Richard

Service Provider: British Columbia International Commercial Arbitration
Centre (the "BCICAC")

BCICAC File: DCA-1159-CIRA

PROCEDURAL HISTORY

The BCICAC is a service provider recognized by the Canadian Internet Registration Authority, pursuant to the Domain Name Dispute Resolution Policy (v 1.2) (the "Policy") and Rules (v 1.3) (the "Rules") of the Canadian Internet Registration Authority.

On April 6, 2009, the Complainant filed a complaint with the BCICAC seeking an order directing that the registration of the Domain Name be transferred from the Registrant to the Complainant.

The BCICAC forwarded notice of the Complaint to the Registrant by later dated April 8, 2009, in accordance with Rules 2.1 and 4.3. BCICAC set the date of commencement of proceedings to be April 6, 2009 and informed the Registrant of its right to file a Response to the Complaint within 20 days, or before May 28, 2009.

BCICAC received no response to its letter dated April 8, 2009. Therefore, pursuant to Rule 6.5, BCICAC advised the Complainant by later dated June 11, 2009 that it could choose a single-member panel to adjudicate the Complaint. The Complainant chose to do so, and this Panel was named by BCICAC as a Single Member Panel on June 12, 2009. The undersigned filed his Acceptance of Appointment and Statement of Independence with BCICAC on June 12, 2009.

CANADIAN PRESENCE REQUIREMENTS

Pursuant to 1.4 of the Policy, a complaint is eligible for arbitration only if the person submitting it satisfies the Canadian Presence Requirements for Registrants (the "CPR") at the time of submission. The CPR state that to be permitted to apply for the registration of, and to hold and maintain the registration of, a .ca domain name, the applicant must meet at least one of the criteria listed as establishing a Canadian presence. Section 2(d) of the CPR states that a corporation constituted under the laws of Canada or any province or territory of Canada has the requisite Canadian presence.

The Complainant has been incorporated as a credit union under the *Credit Union Incorporation Act* of British Columbia (R.S.B.C. 1996, c.82) since well before it submitted the Complaint (April 6, 2009). The Complainant meets the Canadian presence requirements. Therefore, the Complaint is eligible for arbitration by the Panel.

ALL TECHNICAL REQUIREMENTS MET

BCICAC's attempts to deliver the Complaint to the Registrant have been unsuccessful. The Registrant has not filed a response to the Complaint within the delay granted it. Therefore, in accordance with Rule 5.8, the Panel shall decide the Proceeding on the basis of the Complaint.

FACTS

Domain Name: sascu.ca
Salmon Arm Savings and Credit Union
and
Afeezco Domain Services Inc.
BCICAC File: DCA-1159- CIRA

The following facts are derived solely from the Complainant's Complaint:

1. The Complainant is Salmon Arm Savings and Credit Union, a co-operative offering offline and online banking and other financial services to the Canadian public. The Complainant operates three credit union branches in Salmon Arm, Sicamous, and Sorrento, all of which are in the Province of British Columbia.
2. The Complainant is incorporated as a credit union, as defined in the *Credit Union Incorporation Act* (R.S.B.C. 1996, c.82).
3. The Complainant has used the common law mark "SASCU" (the "Complainant's Mark") in association with the provision of its banking and financial services since 1999. Complainant's Mark is an acronym representing the Complainant's legal name, **Salmon Arm Savings and Credit Union**.
4. The Complainant has owned the domain name sascu.com (the "Complainant's Website") since 1999, and uses its website to offer internet banking and financial services to the Canadian public.
5. Through Complainant's Website, the Complainant provides financial services such as online banking, online investing, insurance coverage, and mortgages and loans.
6. The Registrant registered the Domain Name on March 6, 2005.
7. The Domain Name consists entirely of Complainant's Mark.
8. The Domain Name resolves to a web site (the "Domain Name Website") which is headed "Sascu.ca – What you need, when you need it".
9. The Domain Name Website also provides links for such services as "Online Banking", "Internet Banking", "Online Credit Card", "Canadian Auto Insurance" and "Foreclosure Home".
10. Upon clicking on some of these links, the user is directed to different links for banks such as HSBC and TD that provide services similar to those provided by the Complainant.

REMEDY SOUGHT

In its Complaint, the Complainant seeks the following order:

that the Domain Name be transferred to Complainant in accordance with paragraph 4.3 of the Policy.

THE POLICY

The purpose of the Policy as stated in paragraph 1.1 of the Policy is to provide a forum in which cases of bad faith registration of .ca domain names can be dealt with relatively inexpensively and quickly.

To succeed, the Complainant must prove, on a balance of probabilities, that (paragraph 4.1 of the Policy):

1. Complainant's Mark meets the definition of a "Mark" as per paragraph 3.2 of the Policy;

2. the Complainant had “Rights” (as “Rights” are defined in paragraph 3.3 of the Policy) in the Complainant’s Mark prior to the date of registration of the Domain Name and continues to have “Rights”;
3. the Domain Name is “Confusingly Similar” to the Complainant’s Mark as the concept of “Confusingly Similar” is defined in paragraph 3.4 of the Policy;
4. the Registrant has registered the domain name in “bad faith” in accordance with the definition of “bad faith” contained in paragraph 3.7 of the Policy; and
5. the Registrant has no “legitimate interest” in the Domain Name as the concept of “legitimate interest” is defined in paragraph 3.6 of the Policy.

If the Complainant is unable to establish, on the balance of probabilities, criteria 1, 2, 3 and 4, and provide some evidence of criteria 5, the Complaint will fail.

MARK

The Policy defines a “Mark” as the following (paragraph 3.2):

(a) a trade-mark, 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;

For the purposes of the Policy and pursuant to paragraph 3.5, a mark is deemed to be in “use” or “used” in association with:

(b) services, if the Mark is used or displayed in the performance or advertising of those services;

As previously mentioned, Complainant’s Mark is an acronym for the Complainant’s full name, Salmon Arm Savings and Credit Union. The Complainant has used the Complainant’s Mark since 1999 as an unregistered trade-mark in Canada to differentiate its banking and financial services from other providers of similar services. The Complainant continues to use the Complainant’s Mark for the same purpose. This is sufficiently evidenced by copies of advertisements for the Complainant’s services, the earliest dating from 1999.

The Complainant registered the Complainant’s Mark as the domain name sascu.com in 1999 and has used this domain name in connection with the performance and advertising of its services, and as a means to distinguish its services from those provided by another.

In light of these facts, the Panel finds that the Complainant’s Mark is a “Mark” within the provisions of paragraph 3.2 (a) of the Policy.

RIGHTS

The Policy states that the Complainant has “Rights” in Complainant’s Mark if (paragraph 3.3):

- (a) in the case of paragraphs 3.2 (a) and 3.2(b), the Mark has been used in Canada by that person, that person’s predecessor in title or a licensor of that person or predecessor;

It has already been stated that the Complainant has used the Complainant’s Mark in Canada prior to the registration of the Domain Name. In addition, Complainant continues to use Complainant’s Mark through its website sascu.com where it displays advertisements for its services.

The Panel finds that the Complainant had “Rights” in Complainant’s Mark prior to the date of registration of the Domain Name, and continues to have “Rights”.

CONFUSINGLY SIMILAR

A Domain Name will be “Confusingly Similar” to Complainant’s Mark if the Domain Name so nearly resembles the Complainant’s Mark in appearance, sound or the ideas suggested by the Complainant’s Mark as to be likely to be mistaken for the Complainant’s Mark (paragraph 3.4 of the Policy).

In these proceedings, “domain name” means the domain name excluding the “dot-ca” suffix (paragraph 1.2 of the Policy). The Domain Name before the Panel consists of the Complainant’s Mark, SASCUC, followed by the .ca suffix. Only that part of the Domain Name consisting of “SASCUC” is relevant.

The Complainant alleges that the “standard of ‘Confusingly Similar’ is easily met” because the Complainant’s Mark is SASCUC and the Domain Name is sascu.ca.

The Panel is inclined to agree. The Domain Name does not simply “nearly resemble” Complainant’s Mark; it consists entirely of Complainant’s Mark, without differentiation. As such, in appearance, sound or the ideas suggested by Complainant’s Mark, the Domain Name is certainly likely to be mistaken for Complainant’s Mark.

The Panel is satisfied that the Domain Name is confusingly similar to Complainant’s Mark.

BAD FAITH

The Registrant will be considered to have registered the Domain Name in bad faith if, and only if, the registration of the Domain Name meets one of the three enumerated criteria of paragraph 3.7 of the Policy.

The Complainant alleges the bad faith conduct of the Registrant pursuant to paragraph 3.7(a), (b) and (c). Paragraph 3.7(a), (b) and (c) provide that a Registrant will be considered to have registered a domain name in bad faith if, and only if:

- (a) 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;
- (b) the Registrant registered the domain name or acquired the Registration in order to prevent the Complainant, or the Complainant's licensor or licensee of the Mark, from registering the Mark as a domain name, provided that the Registrant, alone or in concert with one or more additional persons has engaged in a pattern of registering domain names in order to prevent persons who have Rights in Marks from registering the Marks as domain names; or
- (c) the Registrant registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of the Complainant, or the Complainant's licensor or licensee of the Mark, who is a competitor of the Registrant.

As previously mentioned, the Registrant did not submit a response to the Complaint. Therefore, CIRA case law dictates that the Registrant's intention must be inferred from logical assumptions drawn from the Domain Name Website and from the Registrant's conduct with regard to domain names.

Paragraph 3.7(b)

A parsing of the words in paragraph 3.7(b) of the Policy reveal two elements the Complainant must establish:

- i. that the Registrant registered or acquired the Domain Name to prevent the Complainant from registering the Complainant's Mark as a domain name, and
- ii. that the Registrant has engaged in a pattern of registering domain names in order to prevent others from registering their marks as domain names.

The Complainant produced evidence that, as of December 16, 2008, the Registrant had registered 2,858 .ca domain names, many of them consisting of typical typographical errors of well known or famous trade-marks of various organisations. Typical among these are the following examples: audie.ca (for "audi.ca"), famouplayers.ca (for "famousplayers.ca"), homehardware.ca (for "homehardware.ca", and shoppersdrugsmart.ca (for "shoppersdrugmart.ca").

The Complainant cites *The Dillar Corporation c/o Formica Corporation v. Lorenzo Salvalaggio*, (2008) CIRA Dispute Number 00092, par. 49: “[...] it has been held that as few as two (2) domain name registrations is sufficient to establish that a registrant has engaged in a ‘pattern’ of abusive registrations.” The Registrant has registered many more than two. The Panel is convinced that the Registrant has engaged in a pattern of abusively registering domain names.

The Complainant also alleges that “there is no plausible explanation for registering the domain names listed [...] except for the purpose of preventing the owners of the trade-marks incorporated in those names from registering them.” The Complainant does not cite the following passage from *Viacom International Inc. v. Harvey Ross Enterprises, Ltd.*, (2004) CIRA Dispute Number 00015, which can be found in *Dillar, supra* at par. 47, but the Panel finds it particularly pertinent:

“Moreover, the Registrant has failed to provide any tenable explanation as to its numerous registrations of other domain names which are comprised of third party (sic) marks. The clear inference to be drawn from that conduct, coupled with the registration of the domain name in issue, is that it was done so in bad faith with a view to preventing the Complainant from registering its trade-marks as a domain name.”

The Registrant has clearly engaged in a pattern of registering hundreds of third-party marks as domain names, and absent any explanation as to why, the Panel relies on established authority to conclude that the Registrant has done so in order to prevent both the Complainant and various third parties from registering their own marks as domain names. In light of these authorities and the Complainant’s evidence, the Panel finds that the Registrant has registered the Domain Name *sascu.ca* in bad faith.

Having concluded that the Registrant registered the Domain Name in bad faith pursuant to paragraph 3.7(b) of the Policy, it is not necessary to deal with the Complainant’s claims with regard to paragraph 3.7(a) and (c).

NO LEGITIMATE INTEREST

The Complainant must provide “some evidence” that the Registrant has no legitimate interest in the Domain Name. “Legitimate Interest” is defined in paragraph 3.6 of the Policy as one of six factors:

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.

In paragraphs 3.6 (b), (c), and (d) "use" by the Registrants includes, but is not limited to, use to identify a web site.

As previously mentioned, the Registrant did not submit a response to the Complaint. Therefore, any conclusions must be drawn from the Complainant's Complaint.

The Complainant has established to the satisfaction of the Panel that the Domain Name was not a mark. Therefore, the Registrant could not have used the mark in good faith or had rights in it, as set out in paragraph 3.6(a).

The Complainant in its Complaint writes that "the Registrant has not used the Disputed Domain in any manner other than to pass itself off as a website associated with the Complainant and to misdirect Internet users looking for Complainant's website to advertisements offering services that are competitive with Complainant's Services." The Panel agrees with this assertion. The Panel concludes that the Domain Name was not used in good faith by the Registrant, as provided for in paragraph 3.6(b). This reasoning applies for paragraph 3.6(c) as well.

There is no evidence that the Domain Name is used in Canada in good faith in connection with a non-commercial activity of the Registrant, as per paragraph 3.6(d).

The Domain Name is not a name by which the Registrant is commonly identified, as per paragraph 3.6(e). The evidence does not support that "sascu" has any relation to Afeezco Domain Services Inc.

Finally, with regard to paragraph 3.6(f), although the acronym Domain Name does include a geographical name (i.e. Salmon Arm), the Panel is satisfied with the Complainant's evidence that the Registrant does not conduct any activity, commercial or non-commercial in the said geographical location.

Therefore, the Panel finds that the Complainant has provided some evidence that the Registrant has no legitimate interest in the Domain Name. Still yet, the Policy provides the Registrant a final means of defeating the Complaint if it can prove, on the balance of probabilities, that it has a legitimate interest in the domain name (paragraph 4.1). As mentioned previously, the Registrant has not produced a response to the Complaint. Therefore, it has not satisfied this requirement.

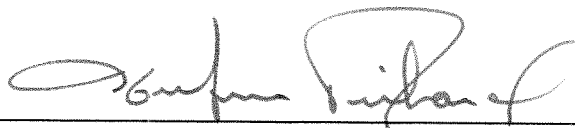
DECISION

The Panel finds that the Complainant has proven, on the balance of probabilities, the requirements of paragraph 4.1 of the Policy. The Complainant is therefore entitled to the remedy it seeks.

ORDER

Pursuant to paragraph 4.3 of the Policy, the Panel orders that the domain name, "sascu.ca", be transferred to the Complainant.

Dated: June 30, 2009.



Hugues G. Richard
Single Member Panel