

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

Complainant:	VKR Holding A/S
Complainant's counsel:	Jean-François De Rico
Registrant:	Skylight Concepts Ltd.
Panel:	Barry C. Effler
Service Provider:	British Columbia International Commercial Arbitration Centre
BCICAC File Number:	DCA-1577-CIRA

DECISION

The Parties, Domain Names and Registrar

1. The Complainant is VKR Holding A/S, incorporated and operating from Denmark.
2. The Registrant is Skylight Concepts Ltd., carrying on business in Calgary, Alberta.
3. The Domain Name at issue in this dispute is **veluxcalgary.ca**.
4. The Registrar is Tucows.com Co.
5. The Domain name was registered by the Registrant on April 11, 2012.

Procedural History

6. The procedural history of this matter was set out in a letter from the British Columbia International Commercial Arbitration Centre to the Panel herein dated April 9, 2014:

On March 11, 2014 the above-named Complainant filed a Complaint pursuant to the CDRP and the Rules.

The Complaint was reviewed and found to be compliant. By letter and email dated March 13, 2014 the Centre so advised the parties and forwarded a copy of the Complaint to the Registrant.
(Confirmation is attached).

The Registrant contacted the Centre on March 14, 2014 advising that: "There is no dispute here..."
Full text of the email is attached.

The Registrant did not file a response by April 2, 2014 pursuant to CIRA Rule 5.1.

As permitted given the absence of a Response, the Complainant has elected under Rule 6.5 to convert from a panel of three to a single arbitrator.

The Centre advised the Registrant that the registrant may send a written request to accept the late response, which will be forwarded to the appointed arbitration panel. It will be up to the sole discretion of the panel to elect to accept the late submission.

The Centre hereby appoints you, Barry C. Effler, LL.B., LL.M., C.Arb., as sole arbitrator in the above-referenced matter.

7. As required by paragraph 7.1 of the Rules, I have declared to BCICAC that I can act impartially and independently in this matter as there are no circumstances known to me which would prevent me from so acting.
8. I am not aware of any other legal proceeding or other arbitration in relation to the Domain Name that would give rise, under paragraph 13.2 of the Rules, to a need to stay or terminate the progress of this proceeding.

Eligibility of Complainant

9. I have reviewed the material submitted by the Complainant and am satisfied that the Complainant is an eligible complainant under paragraph 1.4 of the Policy. It is the owner of a registered Canadian trade-mark in which the exact word component of such trade-mark is the same as the Domain name in dispute.

Relief Requested

10. The Complainant requests that the Domain Names in dispute be transferred from the Registrant to the Complainant.

Applicable Law

11. As directed by paragraph 12.1 of the Rules, I will render my decision based upon the rules and principles of the laws of Ontario, and the laws of Canada.

Background Facts

12. Background facts alleged by the Complainant and accepted by me as probative are quoted here from the Complaint:

11. The Complainant is a company incorporated under the laws of Denmark and is the owner of the worldwide manufacturer of roof windows and accessories, the VELUX group, as well as the well known VELUX trademark (the "Mark").

12. The Complainant has since 1941 continuously carried on business as a designer and manufacturer of its VELUX roof windows and other products. The Complainant has a presence in some 40 countries throughout the world, and sells its products in approximately 90 countries. The business has grown substantially to become a well known brand worldwide and is controlled from Denmark.

13. Through an intense marketing effort, the VELUX trade mark has acquired a reputation throughout the US and numerous other countries....

15. The Mark [has] been used in Canada since 1982, and was registered in Canada in accordance with the Trade-marks Act (R.S.C. 1985, c. T-13)....

23. The Respondent's name under which it conducts business is Skylight Concepts Ltd.

24. The Disputed Domain Name "veluxcalgary.ca" was registered by the Respondent on April 11, 2012, without the Complainant's knowledge or permission. The respondent is not part of the Complainant's dealer network nor is he an installer authorized or known by the Complainant.

13. The Complainant submitted evidence that it is the owner of numerous trade-marks throughout the world. Of particular relevance to this dispute, the Complainant is the owner of the registered Canadian trade-mark numbers

(a) TMA362721 for "VELUX and design", registered November 10, 1989

(b) TMA173331, registered December 18, 1970 and TMA664357, registered May 16, 2006 , both for the word "VELUX"; for different wares and services.

Discussion and Findings

14. Policy paragraph 4.1 sets forth the onus on a complainant. It provides as follows:

4.1 **Onus.** *To succeed in the Proceeding, the Complainant must prove, on a balance of 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.

15. The Policy provides a definition of the term "Mark" (but as amended no longer defines Rights):

3.2 **Mark.** *A "Mark" is:*

(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; ...*

16. The Complainant is the owner of a registered Canadian trade-mark in which the exact word component exactly matches the Domain Name excluding the dot ca portion of the domain name. The Complainant established that it has rights in a trade-mark that was

a “Mark” prior to the date on which the Domain Name was registered. The trade-marks were all registered significantly earlier than the April 11, 2012 date of registration of the Domain Name. (see paragraph 13, above for details.)

17. The relevant definition of “Mark” requires that a trade-mark be “used”. The term “use” is no longer defined in the Policy. As indicated in the Background Facts set out above, the Complainant has been advertising and selling its roof windows and accessories using one or more of the registered trade-marks since at least 1982. The Complainant therefore meets this requirement.
18. I am satisfied that the Domain Name is confusingly similar to the Complainant’s Mark. The relevant key word “VELUX” in the Domain Name is the same word as in the Mark, with the exclusion of the dot ca in the Domain Name.
19. I am satisfied that the Complainant has established bad faith by the Registrant for the purposes of paragraphs 4.1 of the Policy by showing circumstances meeting paragraphs 3.5 (d) of the Policy.

Paragraph 3. 5 of the Policy:

3.5 Registration in Bad Faith. For the purposes of paragraphs 3.1(c) and 4.1(b), any of the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence that a Registrant has registered a domain name in bad faith:

...

(d) the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant’s website or other on-line location, by creating a likelihood of confusion with the Complainant’s Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant’s website or location or of a product or service on the Registrant’s website or location.

20. The Complainant's evidence is that "the respondent is using the Disputed Domain Name for its own website, and to market and sell not only the Complainant's trademarked products, but also to market and sell competing products... (Complaint, paragraph 26).
21. A screen image of the www.veluxcalgary.ca website shows a copy of the VELUX word and design mark as well as a discussion of Velux products.



Velux is the definitive world leader in skylight technology, from their ultra quiet chain drives, solar powered blinds & seamless wireless operating systems Velux truly rides the edge of innovation. Velux products are designed for both out of reach operational operation ease and have the capability to meet egress safety rules where addition wall space exceeds code limits.

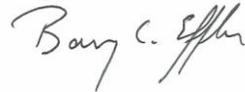
22. The Complainant states it has no business relationship with the registrant, see paragraph 24 of the Complaint quoted under Background Facts, above.
23. The use of the word and design marks for Velux on the Respondent's commercial website meets the circumstances outlined for bad faith in paragraph 3.5 (d) of the Policy. The respondent is not an authorized reseller or installer of Velux products and its website is clearly attempting to profit from an implication that it is an authorized dealer or installer.
24. There is no evidence that any of the circumstances outlined in paragraph 3.4 of the Policy regarding legitimate interest apply and I am satisfied that the Registrant has no legitimate interest in the Domain Name as it is not an authorized dealer or installer of Velux products.

25. I am satisfied that the Complainant has met the onus on it to succeed, as required by paragraph 4.1 of the Policy.

Order

26. For the reasons set forth above, I order the Domain Name in issue to be transferred to the Complainant.

Dated: April 30, 2014



Barry C. Effler, LL.B., LL.M., C. Arb. (Fellow)
Sole Panellist