

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

Dispute Number: DCA-1703-CIRA
Domain Name: <goldennuggetcasino.ca>
Complainant: GNLV, Corp.
Registrant: Cyber Media Inc.
Registrar: Go Daddy Domains Canada, Inc
Panel: The Honourable Neil Anthony Brown QC
Service Provider: British Columbia International Commercial Arbitration Centre

DECISION

THE PARTIES

1. The Complainant in this proceeding is GNLV, Corp. of c/o Lauri S. Thompson, Esq., Greenberg Trauring, LLP, 3773 Howard Hughes Parkway, Suite 400 North, Las Vegas, NV 89169, USA (“The Complainant”).
2. The Registrant in this proceeding is Cyber Media Inc. of 31 Lauderdale Drive, Maple, ON L6A 4GB, Canada (“the Registrant”).

THE DOMAIN NAME AND REGISTRAR

3. The Domain Name in issue in this proceeding is < goldennuggetcasino.ca> (“the disputed domain name”).
4. The Registrar is Go Daddy Domains Canada, Inc. The disputed domain name was registered by or on behalf of the Registrant on April 13, 2011.

PROCEDURAL HISTORY

5. 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”).
6. According to the information provided by the BCICAC:
 - (a) The Complainant filed a Complaint with respect to the disputed domain name in accordance with the Policy on July 15, 2015.
 - (b) The Complaint was reviewed and found to be administratively compliant. By letter and email dated July 16, 2015, the BCICAC as service Provider confirmed compliance of the Complaint and commencement of the dispute resolution process on July 17, 2015.

(c) The Complaint together with the annexes thereto was sent by BCICAC as service provider to the Registrant electronically by email on July 16, 2015 and delivered on that date; a successful mail delivery report was subsequently furnished, enabling the Panel to conclude that the Complaint and its schedules were duly delivered to the Registrant. By the same communication the Registrant was informed that it could file a Response in the proceeding on or before August 7, 2015.

(d) The Registrant did not reply to that communication and did not provide a Response.

(e) Under Rule 6.5 of CIRA Domain Name Dispute Resolution Rules ("the Rules") the Complainant was entitled to elect to convert from a panel of three to a single arbitrator which it elected to do, whereupon BCICAC proceeded to appoint a single arbitrator.

(f) On August 24, 2015, BCICAC named The Honourable Neil Anthony Brown QC as sole arbitrator. The sole arbitrator has signed an Acceptance of Appointment as Arbitrator and Statement of Independence and Impartiality.

(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 shall decide the Proceeding on the basis of the Complaint.

FACTS

7. The facts set out below are taken from the Complaint.

8. The Complainant is a United States company incorporated in Nevada with its principal place of business in Las Vegas, Nevada. It operates the famous Golden Nugget resort and casinos in Las Vegas and Laughlin, Nevada, having commenced its operations in 1946. As part of its operations, the Complainant operates online through its website at www.goldennugget.com.

9. The Complainant operates under its famous GOLDEN NUGGET trademark which is registered in the United States of America and Canada. The GOLDEN NUGGET trademark was registered in Canada, where the Registrant is domiciled, on August 18, 1998. The Complainant uses the GOLDEN NUGGET trademark and name in its resort, casino and related businesses and also for the sale of a large range of other goods and services.

10. Without the permission of the Complainant, the Registrant registered the disputed domain name on April 13, 2011. It is alleged that being aware of the Complainant's trademark and operation of the Golden Nugget resorts and casinos, the Registrant registered the disputed domain name in the Canadian extension ".ca" to prevent the Complainant from reflecting its trademark in that extension, provide links to online casinos, drive internet traffic away from the Complainant's website to the Registrant's website to which the disputed domain name resolves and provide the exact same services as the Complainant does under its marks.

CONTENTIONS OF THE PARTIES

A.COMPLAINANT

11. The Complainant submits as follows:

1. CANADIAN PRESENCE REQUIREMENTS

Article 2 of CIRA's Canadian Presence Requirement for Registrants provides a list of conditions allowing entities to hold the registration of a .CA domain name. The Complainant submits that it falls within condition (q) which provides that:

"A Person which does not meet any of the foregoing conditions [conditions (a) to (p)], but which is the owner of a trade-mark which is the subject of a registration under the Trade-marks Act (Canada) R.S.C. 1985, c.T-13 as amended from time to time, but in this case such permission is limited to an application to register a .ca domain name consisting of or including the exact word component of that registered trade-mark".

The Complainant is the owner of the Canadian trade mark registration No. TMA 498,858 in the term GOLDEN NUGGET registered in the Canadian Intellectual Property Office ("CIPO"). The Complainant has adduced evidence to that effect (See Annex 6 to the Complaint.). The Complainant therefore submits that it satisfies CIRA's Canadian Presence Requirement for Registrants in respect of the disputed domain name.

2. THE REGISTRAR

The Registrar of record in respect of the disputed Domain Name registration is Go Daddy Domains Canada, Inc. The Complainant has adduced evidence to that effect (see Annex 8 to the Complaint for a copy of the Registry's WHOIS search results for the disputed domain name).

3. THE COMPLAINANT'S RELEVANT TRADEMARK RIGHTS

The Complainant has secured ownership of several trademark registrations for GOLDEN NUGGET including Canadian trade mark No. TMA 498,858, registered on August 18, 1998 for the following services: "(1) Resort hotel, spa, gift shop, convenience store, clothing store and casino services.(2) Cabaret and casino services.(3) Retail gift shop services and hotel reservation services.(4) Auto parking services and hotel services." A copy of this trademark registration is attached at Annex 6 to the Complaint.

4. THE GROUNDS ON WHICH THE COMPLAINT IS MADE

(a) The Complainant

The Complainant is a United States company incorporated in Nevada with its principal place of business in Las Vegas, Nevada. It operates the famous Golden Nugget resort and casinos in Las Vegas and Laughlin, Nevada, having commenced its operations in 1946 and it also has related Golden Nugget properties at Atlantic City, New Jersey, Biloxi, Mississippi and Lake Charles, Louisiana. As part of its operations, the Complainant promotes its business through its website at www.goldennugget.com.

The Complainant has several United States registered trademarks for GOLDEN NUGGET and in addition it owns the Canadian trademark No. TMA 498,858, registered on August 18, 1998 which it also uses in its business. The term GOLDEN NUGGET is exclusively associated with the Complainant.

(b) The Registrant.

The WHOIS record for the Disputed Domain Name does not disclose the identity of the Registrant. However, the Complainant has ascertained that the Registrant is Cyber Media Inc. of 31 Lauderdale Drive, Maple, ON L6A 4G3, Canada and that its email address is telvid@shaw.ca.

(c) The Domain Name

The Domain Name was registered by the Registrant on April 13, 2011. (See Annex 8 to the Complaint), more than 10 years after the Complainant obtained the registration of its Canadian trademark. The Domain Name resolves to a website that contains the exact same services as those provided by the Complainant and links to other gaming informational sites.

The Complainant asserts that the Registrant is violating the terms of Paragraph 4.1 of the CIRA Domain Name Dispute Resolution Policy (the "Policy").

(d) The disputed domain name is Identical or Confusingly Similar to a trademark in which the Complainant had rights prior to the date of the registration of the disputed domain name.

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 (Policy, Paragraph 4.1(a)).

The Complainant must prove, on a balance of probabilities, that the 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.

Paragraph 3.2 of the Policy provides a definition of the term "Mark" as follows:

A "Mark" is:

"... (c) a trade-mark, including the word elements of a design mark, that is registered in CIPO;
[...]."

The Complainant's GOLDEN NUGGET trademark No. TMA 498,858, was registered on August 18, 1998 in the Canadian Intellectual Property Office and is therefore a trademark in which the Complainant had rights at the time of the registration of the domain name and in which it still has rights, as defined in paragraph 3.2 of the Policy.

Paragraph 3.3 of the Policy provides that a domain name is "Confusingly Similar" to a trade mark if the domain name so nearly resembles the trade mark "*in appearance, sound or the ideas*" suggested by the trade mark, as to be likely to be mistaken for the trade mark.

The Domain Name differs from the Complainant's registered trade mark only by the addition of the word "casino" to the trademark, which describes the exact services provided by the Complainant under its trademark and the ccTLD ".ca" which, by virtue of paragraph 1.2 of the Policy is excluded from consideration.

The disputed domain name is confusingly similar in sight, sound, meaning and overall commercial impression to the GOLDEN NUGGET trademark.

The disputed domain name is therefore confusingly similar to the GOLDEN NUGGET trademark.

(e) The Disputed Domain Name was registered in bad faith.

The Registrant acquired and has used the disputed domain name in bad faith in derogation of Paragraph 3.5 of the Policy. That is so because the domain name contains the entirety of the GOLDEN NUGGET trademark together with the word "casino" which describes the exact same services as the Complainant provides under the mark. Accordingly, the Registrant must have included the GOLDEN NUGGET trademark in the domain name to capitalize and trade off the good will and fame of the Complainant and its mark.

Further, by using the domain name in connection with an online casino and online gaming links, the Registrant has used the domain name in a manner that creates a likelihood of confusion among the consuming public as to the source, sponsorship, affiliation or endorsement of the Registrant's site.

Moreover, as the Registrant must be taken to have had prior knowledge of the Complainant's trademark rights and to have intended to benefit itself commercially by confusing the public, it had the bad faith intent required by the Policy.

(f) The Registrant has no legitimate rights or interests in the disputed domain name.

The disputed domain name was linked to a website that contains numerous links to online casinos, which are the exact same services provided by the Complainant, as well as other gaming informational sites. The Registrant's site also displays the Complainant's famous GOLDEN NUGGET design logo together with the remainder of the "casino.ca" portion of the domain name. Accordingly, the Registrant has no legitimate rights in the GOLDEN NUGGET mark, is aware of the Complainant's use of the mark and its unique design logo and is using the mark to drive internet traffic away from the Complainant's website to the website of the disputed domain name for its own commercial gain.

Moreover the Registrant is not commonly known by the domain name and consumers associate the GOLDEN NUGGET trademark with the Complainant and its casino properties and not with the Registrant.

The Registrant also has no authority to use the GOLDEN NUGGET trademark at all and cannot show that it has used the disputed domain name for a legitimate non-commercial or fair use.

B. THE REGISTRANT

12. The Registrant did not file a Response in this proceeding.

DISCUSSION OF THE ISSUES

1. CANADIAN PRESENCE REQUIREMENTS

13. Article 2 of CIRA's Canadian Presence Requirement for Registrants provides a list of conditions allowing entities to hold the registration of a .CA domain name. The Complainant submits that it falls within condition (q) which provides that:

"A Person which does not meet any of the foregoing conditions [conditions (a) to (p)], but which is the owner of a trade-mark which is the subject of a registration under the Trade-marks Act (Canada) R.S.C. 1985, c.T-13 as amended from time to time, but in this case such permission is limited to an application to register a .ca domain name consisting of or including the exact word component of that registered trade-mark".

The Complainant is the owner of the Canadian trade mark registration No. TMA 498,858 in the term GOLDEN NUGGET registered in the Canadian Intellectual Property Office ("CIPO"). The Complainant has adduced evidence to that effect (See Annex 6 to the Complaint.) which the Panel accepts. The Complainant has therefore satisfied CIRA's Canadian Presence Requirement for Registrants in respect of the disputed domain name.

GENERAL

14. Paragraph 3.1 of the Policy provides in effect that a complainant must establish 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;

(b) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4; and

(c) the Registrant has registered the domain name in bad faith as described in paragraph 3.5.”

It is clear that all three of those requirements must be established and on the balance of probabilities.

The Panel will now deal with each of the three elements.

CONFUSINGLY SIMILAR

15. As the Complainant submits, it is required to prove that the 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. The Complainant must therefore show that it has rights to a mark, that it had those rights before the domain name was registered, that it still has them and that the disputed domain name is confusingly similar to the GOLDEN NUGGET trademark. The Complainant submits that it can meet those requirements.

16. The first question that arises is whether the Complainant has a trademark on which it can rely for the purpose of this proceeding. The Complainant has adduced evidence which the Panel accepts, to show that it is the owner of series of trademarks for GOLDEN NUGGET in the United States and Canada. The details of those trademarks are verified and set out in Annexes 1, 2, 3, 4, 5 and 6 to the Complaint and the Complainant’s rights to them have been verified by a Declaration by Steven Scheinthal, the Secretary and General Counsel of the Complainant and filed in this proceeding. The United States trademarks are of course indicative of the Complainant’s rights to the GOLDEN NUGGET trademark, but for present purposes it is sufficient to rely on the Canadian trademark as the Registrant is domiciled in Canada. The

Canadian trademark is No. TMA 498,858 and it was registered in CIPO on August 18, 1998 (“the GOLDEN NUGGET trademark”).

17. The next question that arises is whether the GOLDEN NUGGET trademark 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. The Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant had rights prior to the date of registration of the domain name and continues to have such rights, namely the GOLDEN NUGGET trademark. The GOLDEN NUGGET trademark is clearly a mark as defined by Paragraph 3.2 of the Policy and it comes within the meaning of Paragraph 3.2 (a), as the evidence shows that it is registered in CIPO.

18. The evidence is that the GOLDEN NUGGET trademark was registered by the Complainant on August 18, 1998, many years prior to the date on which the disputed domain name was registered, namely April 13, 2011 and that it still has those rights acquired by registration of the mark. The panel therefore finds that the GOLDEN NUGGET mark is a mark in which the Complainant had rights before the disputed domain name was registered and in which it still has rights.

19. Pursuant to paragraph 3.3 of the Policy, a domain name will be found to be confusingly similar with a mark if it so nearly resembles the same in appearance, sound or in the ideas suggested so as to be likely to be mistaken for the mark. The test to be applied when considering “confusingly similar” is one of first impression and imperfect recollection and the “dot-ca” suffix should be excluded from consideration (see *Coca-Cola Ltd. v. Amos B. Hennan*, BCICAC Case No. 00014). When those principles are applied, the disputed domain name is confusingly similar to the Complainant’s GOLDEN NUGGET mark.

20. In particular, the disputed domain name consists of the entirety of the GOLDEN NUGGET trademark together with the generic word “casino”. As the domain name includes the trademark, the immediate impression is that the domain name is similar to and relates to the trademark. When, as in the present case, the domain name also includes a generic or descriptive word such as “casino”, an objective bystander would naturally conclude that the domain name relates to the trademark and the services provided pursuant to that trademark. As the principal business of the Complainant and trademark owner is in casinos, the internet user would conclude that the domain name is an official domain name of the Complainant and that it relates to the casino services provided by the Complainant.

21. Accordingly, the disputed domain name is confusingly similar to the GOLDEN NUGGET trade-mark as it so nearly resembles the trademark in appearance, sound and in the ideas suggested as to be likely to be mistaken for the trademark within the meaning of Paragraph 3.3 of the Policy.

22. The Panel therefore concludes that the disputed domain name is confusingly similar to the GOLDEN NUGGET trade-mark in which the Complainant had rights prior to the registration date of the disputed domain name and in which it continues to have such rights. The Complainant has thus established the first element that it must prove.

REGISTRATION AND USE IN BAD FAITH

23. The Panel now turns to consider whether the disputed domain name was registered in bad faith. The Panel finds, on the grounds relied on by the Complainant and generally, that the

Registrant registered the disputed domain name in bad faith. Specifically, the Panel finds that the Registrant has registered and used the disputed domain name in bad faith as described in Paragraph 3.5 of the Policy. That is so for the following reasons.

Intentionally Attract Traffic For Commercial Gain - Paragraph 3.5(d)

24. The Complainant relies on paragraph 3.5(d) of the Policy and submits that the Registrant intentionally attempted to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the GOLDEN NUGGET trade-mark as to the source, sponsorship, affiliation or endorsement of the contents of Registrant's website. The Panel agrees with that submission.

25. As the Complainant submits and establishes by evidence which the Panel accepts, the domain name resolves to a website that contains material suggesting that it is the Complainant or alternatively that it is trying to pass itself off as the Complainant. As amply demonstrated by Annex 9 to the Complaint, the website contains the Complainant's name and its famous GOLDEN NUGGET logo and contains material relating to casino services. It then contains links to "Casino Promos", "Casino Sites", and "Casino Sitemap", ranks a series of casinos by name with downloading links and provides general information about casinos and how to use them. It contains several pages of information about how to gamble at casinos, mobile transactions and facilities to play in online casinos. The website also brazenly uses the name "Golden Nugget Casino" and other services clearly designed to encourage the internet user to use and act on the facilities so described in considerable detail. It is therefore clear that the Registrant is using the Complainant's name and trademark and the name of its casino to solicit gambling business for itself and also to divert internet users from the Complainant to other casinos. The only inference open on the evidence is that the Registrant is doing this for a commercial advantage for itself. All of this evidence shows conclusively that the Registrant registered the domain name in bad faith, as it is creating a likelihood of confusion with the GOLDEN NUGGET trademark as to the source, sponsorship, affiliation or endorsement of the contents of the Registrant's website.

Paragraph 3.5 (d) has therefore been satisfied.

26. Although the Complainant relies mainly on Paragraph 3.5 (d), the Panel also finds that the Registrant has, within the meaning of Paragraph 3.5 (c) registered the domain name primarily for the purpose of disrupting the business of the Complainant, being a competitor of the Registrant. It is clear from the evidence that the intention of the Registrant was to damage the Complainant's business by diverting potential clients away from the Complainant's website to itself and to competing gambling sites. The Registrant has therefore in practice set itself up as a competitor of the Complainant and has done everything it can to stop business going to Complainant's site and to divert it to rival sites, no doubt doing so for financial reward.

Paragraph 3.5(c) has therefore also been satisfied.

Surrounding Circumstances

27. Apart from the specific provisions of the Policy referred to and having regard to the manner in which the disputed domain name has been registered using the GOLDEN NUGGET trademark and the lack of any explanation from the Registrant for its deceptive conduct, the Panel finds that the disputed domain name was registered in bad faith within the generally accepted meaning of that expression.

28. The Complainant has verified the above matters by detailed evidence and the Panel accepts the whole of that evidence. The Complainant's authorised representative has also

certified that the information contained in the Complaint is to the best of the Complainant's knowledge complete and accurate. The Registrant has filed no response to the Complaint and, accordingly, the Registrant has provided no evidence on the issue of bad faith.

The Complainant has therefore established the second element that it must prove.

NO LEGITIMATE INTEREST IN THE DOMAIN NAME

29. Paragraph 4.1 of the Policy provides that the Complainant must provide some evidence that "...(c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4." The Panel finds that the Complainant has provided evidence that the Registrant has no legitimate interest in the disputed domain name. The Complainant has provided the following evidence to that effect which in each case the Panel accepts.

(a) Paragraph 3.4(a)

30. The Complainant has shown that the disputed domain name was not acquired in good faith or for a *bona fide* purpose and that is the only conclusion the Panel can reach on the evidence. The clear intention of the Registrant was to misappropriate the Complainant's trademark and use it to divert business from the Complainant to the Registrant's website and then to the gambling sites to which it is linked and to do so for financial reward. This completely undermines any claim of good faith or legitimate interest.

(b) Paragraph 3.4(b)

31. The Complainant has shown by the evidence that Registrant has not registered the disputed domain name in good faith, but in bad faith.

(c) Paragraph 3.4(c)

32. The Complainant has shown that the Registrant has not registered the disputed domain name in good faith, but in bad faith.

(d) Paragraph 3.4(d)

33. The Complainant has shown that the Registrants have never used the Domain Name in association with a non-commercial activity, and therefore cannot invoke paragraph 3.4(d) of the Policy. In any event and as previously noted, the Domain Name has not been used in good faith. The Registrant has not used the domain name for a non-commercial fan or information website.

(e) Paragraph 3.4(e)

34. It is apparent from the evidence that GOLDEN NUGGET and <goldennuggetcasino.ca> are not legal names, surnames, or other references by which the Registrant is commonly identified, and accordingly, the Registrant cannot rely on paragraph 3.4(e) of the Policy.

(f) Paragraph 3.4(f)

35. The disputed domain name is not the geographical name of the location of the Registrant's non-commercial activity or place of business.

36. Moreover, the 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. If the Registrant had any evidence that it had any legitimate interest in the domain name, it could have brought that evidence forward but it has not done so. In addition, in view of the facts set out above, it is inherently unlikely that the Registrant could establish a legitimate interest in the domain

name when its *modus operandi* in this matter in registering the domain name by misappropriating the Complainant's trademark without permission has been improper.

37. In light of the foregoing, the Panel finds that the Registrant does not have a legitimate interest in the disputed domain name and that it is therefore removed from the application of Paragraph 3.4 of the Policy.

CONCLUSION

38. The Panel finds that the constituent elements of the Policy have been made out, that the Complainant is entitled to the relief it seeks and that the Panel will order that the disputed domain name be transferred to the Complainant.

DECISION

39. The Panel finds that the Complainant has satisfied the requirements of Paragraph 4.1 of the Policy and that it is entitled to the remedy it seeks.

ORDER

40. The Panel directs that the registration of the Domain Name <goldennuggetcasino.ca> be transferred from the Registrant to the Complainant.

Date: August 30, 2015

A handwritten signature in black ink, appearing to read 'Neil Anthony Brown', is written over a faint, illegible printed name.

The Honourable Neil Anthony Brown QC
Sole Arbitrator