

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

Dispute Number: DCA-1739-CIRA  
Domain Name: *hairfinity.ca*  
Complainant: Brock Beauty Inc.  
Registrant: John Drake  
Registrar: 10 Dollar Domain Names Inc.  
Service Provider: British Columbia International Commercial Arbitration Centre  
Panel: W.A. Derry Millar

**DECISION**

**THE PARTIES**

1. The Complainant is Brock Beauty Inc., 840 Oak Harbor Blvd., Slidell, Louisiana, 70458, U.S.A. The Complainant is represented by Sanjukta Tole of Sim Ashton & McKay LLP.
2. The Registrant is John Drake, 22 Maple Ave., Toronto, Ontario, M4W 2T6. The Registrant's administrative contact is identified as John Drake, 22 Maple Ave., Toronto, Ontario, M4W 2T6 with an email address: [sales@lopamarketing.com](mailto:sales@lopamarketing.com).

**THE DOMAIN NAME AND REGISTRAR**

3. The Domain Name in issue ("**Domain Name**") in this proceeding is: *hairfinity.ca*.
4. The Registrar is: 10 Dollar Domain Names Inc.
5. The Domain Name was registered by the Registrant on April 7, 2015.

**PROCEDURAL HISTORY**

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

7. The following procedural steps have taken place with respect to this Complaint:
- (a) The Complainant filed a Complaint with respect to the Domain Name in accordance with the Policy on December 14, 2015.
  - (b) The Complaint was reviewed and found to be compliant. By a letter and e-mail dated December 15, 2015, to the Registrant and Complainant, BCICAC confirmed administrative compliance of the Complaint and forwarded a copy of the Complaint to the Registrant. The BCICAC advised the parties that in accordance with the *CIRA Domain Name Dispute Resolution Rules* (“**Rules**”), the commencement date of the Proceeding was December 15, 2015.
  - (c) No Response to the Complaint was filed by the Registrant by January 4, 2016, pursuant to CIRA Rule 5.1. By letter dated January 5, 2016, delivered by email on January 5, 2016, BCICAC advised the Registrant and the Complainant that no Response had been filed by the Registrant and advised the Complainant that it could elect to convert from a three-person tribunal to a single arbitrator. The Registrant was also advised of his ability to request the BCICAC to accept a late Response. No such request was received by the BCICAC.
  - (d) The Complainant elected to convert from a panel of three to a single arbitrator.
  - (e) W. A. Derry Millar was appointed as the sole arbitrator on January 8, 2016.

8. On February 1, 2016, the Panel extended the time for the delivery of its decision from January 29, 2016, to February 5, 2016, under Rule 12.2.

9. The Panel has reviewed all of the material submitted by the Complainant and the Panel is satisfied that the Complainant is an eligible Complainant under the Policy and Rules. The Complainant as noted below is the owner of a trademark registered in Canada and therefore meets the Canadian Presence Requirements.

## **FACTS**

10. The evidence of the Complainant establishes the following:

- (a) The Complainant is the owner of Canadian registration for the trade-mark HAIRFINITY (Reg. No. TMA901609) covering vitamin supplements (the "**Goods**"). The trade-mark application was filed on August 26, 2013 and the trade-mark registered April 21, 2015.
- (b) The Complainant has used the HAIRFINITY trade-mark throughout Canada continuously since at least as early as January 2008 for the purpose of distinguishing the Goods from the same or similar goods sold or offered for sale by others.
- (c) The Complainant sells the Goods bearing the HAIRFINITY trade-mark directly to consumers for personal use in Canada online and via telephone. The Complainant only sells 3 bottles per order to consumers in Canada. The Complainant delivers a brochure displaying the Goods bearing the HAIRFINITY trade-mark to consumers in Canada when the Goods are delivered to them.
- (d) Sales of the Complainant's goods in association with the trade-mark HAIRFINITY have been substantial. The Complainant has generated significant revenue in Canada through the sale of the Complainant's goods. Sales have increased from 5000 in 2012 to 490,000 in 2014 and 443,000 up to October, 2015.
- (e) The trade-mark HAIRFINITY is prominently displayed on the Complainant's website located at [hairfinity.com](http://hairfinity.com) (the "**Website**") and has been accessible in Canada since at least as early as January, 2008. The Website has had the following number of unique hits originating from Canada between 2012 and November 17, 2015:

Year	Unique Hits
2012	10,539
2013	30,637
2014	150,713
To November 17, 2015	113,979

- (f) The Complainant heavily advertises through social media in Canada. The HAIRFINITY mark has been promoted by the Complainant through Instagram, Facebook, Twitter and YouTube.
- (g) The Complainant has also retained a marketing consultant to oversee social media use of the HAIRFINITY trade-mark, including within Canada. As well the Complainant has hired a customer service agent for its consumers in Canada.

11. The evidence of the Complainant also establishes:

- (a) The Registrant registered the *hairfinitv.ca* Domain Name on April 7, 2015.
- (b) The *hairfinitv.ca* Domain Name hosts a single parked webpage with what appears to be a pay-per-click link (the "**Registrant's Website**"). There is no theme or type of business, product or service offered through the Registrant's Website.
- (c) The pay-per-click link is to Indigo (a bookstore) that sells personal care and body care products. It also has an advertised link to the website [trips.ca](http://trips.ca), which does not lead to an active website, but a consumer from Canada could review the website by typing in the URL separately after arriving on the Registrant's Website.

12. The Complainant attempted to contact the Registrant through CIRA's portal on July 21, 2015 and received no response. On that basis, the Complainant contacted CIRA to have the details of the Registrant's identity released and CIRA did so on August 24, 2015. The Complainant then attempted to contact the Registrant by mail at his residential address and via email on August 25, 2015 and September 10, 2015. On both occasions, the mailed correspondence was returned the offices of the Complainant's authorized representatives and no response was received from the Registrant in respect of the email correspondence.

13. The Complainant conducted a reverse WHOIS search to see what, if any, other domain names were owned by the Registrant through the email address released by CIRA. The Registrant has at least seven other domain names listed to a completely different address in Taiwan. The Registrant's email contact information is the same as that listed in the WHOIS listing for *hairfinitv.ca*. Several of the domain names are comprised of or contain third party

trade-marks registered in the United States and Canada. These include: renewflex.com (trademarks “RENEWFLEX” and “FidoFlex”); careprost.us (trademark “PROSTCARE”); getinsanity.us (trademark “INSANITY”); and kosmiclash.us (trademark “LILASH”).

## **ANALYSIS AND FINDINGS**

14. Under paragraph 3.1 of the Policy, a Registrant must submit to a Proceeding if a Complainant asserts in a Complaint submitted in compliance with the Policy and the Resolution Rules 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.

15. Under paragraph 4.1 of the Policy, 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.

16. Paragraph 4.1 of the Policy also provides that:

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.

#### **CONFUSINGLY SIMILAR - PARAGRAPH 4.1 (a) OF THE POLICY**

17. The Complainant submits that as a result of the registration, extensive use and advertising of the HAIRFINITY trade-mark by the Complainant in Canada, the trade-mark actually distinguishes the Goods from the same or similar goods offered by others. It is submitted that the Complainant is the owner in Canada of all right, title and interest in and to the trade-mark HAIRFINITY.

18. The Complainant also submits the Registrant's registered domain name is confusingly similar to the Complainant's trade-mark HAIRFINITY since the distinctive portion of the Registrant's registered Domain Name *hairfinity.ca* is identical to the Complainant's trade-mark.

19. The Complainant has used the Mark HAIRFINITY in Canada since 2008 on its product labels, advertising and website. The Complainant made a trade-mark application for HAIRFINITY on August 20, 2013, and the trade-mark was registered on April 21, 2015.

20. HAIRFINITY is a "Mark" as defined in paragraphs 3.2(a) and 3.2(c) of the Policy.

21. HAIRFINITY was used by the Complainant as a "Mark" since 2008 well before the registration of the Domain Name on April 7, 2015.

22. The Complainant has established that the Registrant's Domain Name "*hairfinity.ca*" is confusingly similar to the Complainant's Mark.

23. Paragraph 3.3 of the Policy defines "confusingly similar" as follows:

In determining whether a domain name is '**Confusingly Similar**' to a Mark, the Panel shall only consider whether the domain name so nearly resembles the Mark in appearance, sound or ideas suggested by the Mark as to be likely to be mistaken for the Mark.

24. The test to be applied in determining the issue of "confusingly similar" is set out in paragraph 66 of the decision in *Government of Canada v. David Bedford, c.o.b. Abundance Computer Consulting*<sup>1</sup>:

The test for "Confusingly Similar" under Policy paragraph 3.4 is one of resemblance based on first impression and imperfect recollection. Accordingly, for each domain name the Complainant must prove on a balance of the probabilities that a person, on a first impression, knowing the Complainant's corresponding mark only and having an imperfect recollection of it, would likely mistake the domain name (without the .ca suffix) for the Complainant's corresponding mark based upon the appearance, sound or ideas suggested by the Mark.

25. While there has been a minor change in the wording of what is now Paragraph 3.3 of the Policy, the test as set out in *Government of Canada* case is still applicable. In the Panel's view, a person knowing the Complainant's Mark "HAIRFINITY" only and "having an imperfect recollection of" it "would likely mistake the Domain Name" "*hairfinity.ca*" "for the Complainant's corresponding mark based upon the appearance, sound or ideas suggested by the Mark."

#### **Bad Faith - Paragraph 4.1(b) of the Policy**

26. In order to establish bad faith, the Complainants must establish on the balance of probabilities, one of paragraphs 3.5(a), (b), (c) or (d) of the Policy. The Complainants have provided evidence in relation to paragraphs (b), (c) and (d).

27. Paragraph 3.5 defines "registration in bad faith" for the purposes of the Policy as follows:

For the purposes of paragraph 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:

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<sup>1</sup> BCICAC Case No. 00011 (May 27, 2003). See also *Sittercity Inc. v. Mocilac* CIRA Dispute No. 00169 (2011 LNCIRA 8) at paras 18 to 20.

(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 is engaged in a pattern of registering domain names in order to prevent persons who have rights and Marks from registering the Marks as domain names.

(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.”

(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.

28. The Panel finds that the Complainant has satisfied the requirements of paragraphs 3.5 (b), (c) and (d) of the Policy and is entitled to a finding that the Registrant has registered the Domain Name "cointreau.ca" in bad faith.

**Bad Faith – Paragraph 3.5(b) of the Policy - Pattern of Unauthorized Registrations**

29. Under paragraph 3.5(b), the Complainant must establish that:

(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 is engaged in a pattern of registering domain names in order to prevent persons who have rights and Marks from registering the Marks as domain names.

30. The Complainant submits that:
- (a) The Registrant is a serial domain name registrant. CIRA disclosed to the Complainant the email contact for the Registrant in relation to the Domain Name is <[sales@lopamarketing.com](mailto:sales@lopamarketing.com)>.
  - (b) A reverse WHOIS search for the Registrant's email <[sales@lopamarketing.com](mailto:sales@lopamarketing.com)> indicates that the Registrant has also registered at least five other domain names containing third party marks, namely: (i) [renewflex.com](http://renewflex.com); (ii) [fidoflex.com](http://fidoflex.com); (iii) [careprost.us](http://careprost.us); (iv) [getinsanity.us](http://getinsanity.us); and (v) [lilash.us](http://lilash.us). For each of these domain name registrations, the registrant was the same "John Drake" with the same email address. However, the mailing address provided by the Registrant in those registrations is 19 Shi Da Rd Apt 6, Taipei, Taiwan. All five of the aforementioned domain names are registered third party trademarks.
  - (c) In addition, the Registrant has been the subject of at least three UDRP proceedings. In all cases, the UDRP panel found that the Registrant had registered and used the domain names containing third party trademarks in bad faith.<sup>2</sup>
  - (d) The Registrant has engaged in a pattern of registering domain names in order to prevent persons who have rights in trademarks from registering the marks as domain names.
  - (e) It is likely that the Registrant simply used a Canadian postal address to register the *hairfinity.ca* domain name so as not to have to show that it met Canadian Presence Requirements. This is consistent with the fact that the Complainant's communications to the mailing address were returned to sender.

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<sup>2</sup> See: Provo Craft & Novelty, Inc. v. John Drake, Case No. D2010-2176; Beachbody, LC v. John Drake, Case No. D2012-1100; IM Production v. John Drake, Case No. D2014-1626.

31. The Panel agrees with the submission of the Complainant that the unauthorized registration of as few as two domain names containing third party marks, including the disputed domain name, is sufficient to establish that the Registrant has engaged in a pattern of unauthorized registrations.<sup>3</sup>

32. The Panel agrees with the Complainant that, given the intention of the Policy to provide redress against abusive domain name registrations, paragraph 3.5(b) should be given an expansive interpretation to prevent cybersquatters from stockpiling domain names with a view to reaping a commercial advantage by capitalizing on end user confusion. As explained by the Panel in *Hasbro Inc. v. 1550507 Ontario Inc.*:<sup>4</sup>

*58 Cybersquatters routinely register multiple domain names that constitute intentional misspellings of owner marks (i.e., typosquatting), or register domain names that may not otherwise appeal to a mark owner. In these cases, a registrant has not sought to "prevent" a complainant mark owner from registering certain domain names, nor has a complainant been prevented from registering said domains. Rather, the registrant may be stockpiling these domains, or using them to redirect end users to unaffiliated sites with a view to reaping a commercial advantage by capitalizing on end user confusion.*

*59 In such a case, to conclude that a registrant could escape the reach of paragraph 3.7(b) of the Policy on the basis that an intention to deprive the mark holder of the domain name cannot strictly be shown only encourages a registrant to misappropriate third party marks as domain names that would not have otherwise been sought to be secured by a complainant.*

*60 This could not have been the intention of the Policy, which is designed to address clearly abusive and unauthorized domain name registrations in a cost-effective and timely manner without recourse to costly and lengthy court proceedings.*

*61 Of course, the Panel may consider the surrounding circumstances when considering bad faith. Nevertheless, with respect to the interpretation of paragraph 3.7(b) of the Policy, the approach should be a pragmatic one, sensitive to the practices of*

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<sup>3</sup> See: *Hasbro Inc. v. 1550507 Ontario Inc.*, DCA-1180-CIRA, 2009 LNCIRA 21 at para. 54; *Cointreau v. Netnic Corp.*, DCA-1358-CIRA, 2012 LNCIRA 4 at para. 48; *Carey International Inc. v. Simonetti*, DCA-1524-CIRA, 2013 LNCIRA 26 at para. 5458.

<sup>4</sup> *Hasbro Inc. v. 1550507 Ontario Inc.*, DCA-1180-CIRA, 2009 LNCIRA 21 at para. 58 -62.

*cybersquatters and the commercial realities related to domain name registrations.*

*62 Given the expansive interpretation the Panel believes should be accorded the Policy, an intention on the part of a registrant to obstruct a mark owner together with a pattern of unauthorized domain name registrations should be sufficient to satisfy paragraph 3.7(b) of the Policy. Indeed, this has been a position taken in cases decided pursuant to the Uniform Dispute Resolution Policy, which incorporates similar language.*

33. In the Panel's view, the only reasonable inference that can be drawn from the evidence presented by the Complainant is that "the Registrant registered the domain name ... to prevent the Complainant or the Complainant's licensor or licensee of the Mark, from registering the Mark as a domain name."

34. The Panel finds that the registration of the Domain Name *hairfinity.ca* and the other domain names referred to in paragraph 31(b) above by the Registrant constitutes a pattern of abusive registrations within 3.5(b) of the Policy.

35. The Panel finds that the Registrant acted in bad faith in the registering the Domain Name *hairfinity.ca*.

**Bad Faith - Paragraphs 3.5(c) and (d) of the Policy - Disrupting Complainant's Business and Capitalizing on its Mark**

36. Under paragraphs 3.5(c) and (d), the Complainant must establish that:

(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; or

(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.

37. The Complainant submits that:
- (a) A registrant's pointing of a domain name to a pay-per-click website that displays links to websites of businesses that offer goods and services that compete with, or rival, those goods and services offered by a complainant may constitute evidence of bad faith.
  - (b) A registrant is responsible for the content of any webpage hosted at the disputed domain name and cannot evade this responsibility by means of its contractual relationship with the registrar. As such, it is irrelevant whether the parked pay-per-click website is operated by the registrant or the registrar.<sup>5</sup>
  - (c) For the purposes of paragraph 3.5(c), a registrant who derives revenue from parked pay-per-click websites from domain names capitalizing on third party marks renders the registrant a "competitor" to the trademark owner.<sup>6</sup>
  - (d) The Registrant's Website is a single parked webpage that contains, inter alia, a pay-per-click link to an online retailer that sells personal care and body products, including products that compete with those of the Complainant. The sale by Indigo of vitamin-based personal care products offered by potential competitors of the Complainant.
  - (e) Given the Registrant's use of the *hairfinity.ca* Domain Name to direct potential consumers to the parked webpage with a pay-per-click link to a business selling products belonging to potential competitors of the Complainant, the Registrant has effectively gained economic benefit from the redirected traffic. As such, the Registrant is clearly a "competitor" to the Complainant for the purposes of paragraph 3.5(c).

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<sup>5</sup> See: *Hasbro Inc. v. 1550507 Ontario Inc.*, DCA-1180-CIRA, 2009 LNCIRA 21 at paras 46-50; *LEGO Juris A/S v. Abbott*, CIRA Dispute No. 00193, 2012 LNCIRA 17 at para. 36.

<sup>6</sup> See: *Hasbro Inc. v. 1550507 Ontario Inc.*, DCA-1180-CIRA, 2009 LNCIRA 21 at paras 46-50; *BLANCO GmbH + Co KG v. Al-Khoulani*, CIRA Dispute No. 00203, 2012 LNCIRA 27.

- (f) The Registrant's use of the *hairfinity.ca* Domain Name is also likely to result in consumers being misled as to source or sponsorship of the Registrant's Website. As such, the Registrant's Website and use of the domain name is clearly disruptive to the Complainant's business. In cases of coined trade-marks with some established reputation, it is presumed that a registrant would have constructive notice of the distinctive trade-mark's existence prior to the registration of a domain name. The logical conclusion is that the domain name was registered precisely to capitalize on the accumulated goodwill of the another's trademark in order to increase internet traffic to the registrant's website and thus generate pay-per-click revenue. This would meet both the standard for paragraphs 3.5(c) in disrupting the business of the complainant and 3.5(d) for intentionally creating the impression of a false sponsorship, affiliation, or endorsement with a registrant's website.<sup>7</sup>
- (g) The Complainant's HAIRFINITY trade-mark is a distinctive, coined term. The Complainant has established significant sales in Canada within the couple of years preceding the registration of the *hairfinity.ca* Domain Name. One can infer that the Complainant's trade-mark has establish notable reputation in the Canadian marketplace. Accordingly, the Registrant ought to have known of the Complainant's trade-mark prior to registration of the Domain Name and the Registrant's subsequent activities relating to the Registrant's Website are clear instances of bad faith.
- (h) Taking all of the foregoing circumstances into account, it is clear that the Registrant's activities constitute the elements of bad faith enumerated under paragraphs 3.5 (b), (c) and (d).
- (i) The Registrant has attempted to conceal his identity using an address in Toronto rather than the usual address located in Taipei Taiwan. The Complainant believes that the Registrant has used a false address to get around the Canadian Presence

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<sup>7</sup> See: *Weekday Brands AB v. Whitfield*, CIRA Dispute No. 00201, 2012 LNCIRA 25 para. 31.

Requirements to be met under CIRA's policies given that two mailed letters addressed to the Registrant's Toronto address were returned, marked "return to sender". The attempt to ignore CIRA's requirements and mislead CIRA and the public is an additional factor supporting the finding of bad faith on the part of the Registrant.

38. The Panel agrees with the submissions of the Complainant and finds that the activities of the Registrant amount to bad faith under these paragraphs.

**Legitimate Interests in Domain Name Paragraph 4.1(c) of the Policy and Paragraph 3.4 of the Policy**

39. The Panel finds that the Complainant has met its burden under paragraph 4.1(c) of the Policy to provide some evidence that the Registrant does not have a legitimate interest in the Domain Name.

40. The Panel agrees with the submissions of the Complainant that:

- (a) The Registrant has no legitimate interest in respect of the Domain Name *hairfinit.ca*. The Domain Name is identical to the Complainant's coined trade-mark, HAIRFINITY, and its domain name hairfinit.com.
- (b) The Registrant has no legitimate interest in the *hairfinit.ca* Domain Name because:
  - (i) There is no evidence that the *hairfinit.ca* Domain Name is not being used, and was not being used prior to its registration, by the Registrant as a trade-mark in good faith in Canada. The Registrant has no rights to the HAIRFINITY trademark. The Complainant has been the sole registered owner and has extensively used the HAIRFINITY trade-mark in Canada, and the Registrant has used the trade-mark without any authorization from the Complainant.
  - (ii) The term HAIRFINITY is coined and, therefore, the Registrant cannot be using it in the *hairfinit.ca* Domain Name in a manner descriptive of the

character or quality of the goods, services or business, the conditions of the persons employed in production of goods, the performance of services or operation of business, or the place of origin of the goods, services or business;

- (iii) The term HAIRFINITY is not a generic name or title for any object in any language given that it is a coined term;
  - (iv) The Registrant has not used, and there is no evidence that the Registrant will use, the *hairfinity.ca* Domain Name in Canada in good faith in association with noncommercial activity such as criticism, review or news reporting;
  - (v) HAIRFINITY is not the legal name or surname of the Registrant, nor is it the reference by which the Registrant is commonly identified. In fact the Registrant is known as John Drake; and
  - (vi) The HAIRFINITY trade-mark has no geographical connotations that would justify the Registrant using it in the *hairfinity.ca* Domain Name.
- (c) The Registrant is not using the *hairfinity.ca* Domain Name in association with any bona fide offering of goods or services. Instead the Registrant uses the domain name for the purpose of generating pay-per-click revenue for itself or on behalf of its registrar for goods that are not originating from the Complainant. Such use is not a bona fide offering of goods or services within paragraph 4(c)(i) of the Policy.

41. The Panel agrees with the comments by the Panel in *Metalor Technologies International SA v. KMG Environmental Inc.*<sup>8</sup>, that:

40 In cases where a domain name is an exact match for a

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<sup>8</sup> CIRA Dispute No. 00275, (2015 LNCIRA 1).

brand owner's trade-mark, the initial assumption will be that a registrant does not have a legitimate interest in said domain absent an agreement to the contrary between the parties. Nothing in the record displaces this assumption.

42. The Panel also agrees with the submission of the Complainant that pay-per-click websites have also been used as proof of lack of legitimate interest. The Panel agrees that it is difficult to maintain legitimate interest in the Domain Name if the website is capitalizing on the goodwill of the Complainant's Mark. Where the page has been parked with pay-per-click remuneration being paid to whomever, then it is not considered to be a bona-fide practice and an assumption that the intent was simply to capitalize on the goodwill of the trade-mark is made.

### **ORDER**

43. The Complainant has met the requirements of paragraph 4.1 of the Policy. The Panel directs that the registration of the Domain Name "hairfinity.ca" be transferred from the Registrant to the Complainant.

Dated: February 4, 2016.

  
W. A. Derry Millar