

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

Complainant:	Indeed, Inc. and Indeed Canada Corp.
Complainant's counsel:	Bereskin & Parr LLP
Registrant:	Rina Lay
Panel:	Barry C. Effler
Service Provider:	British Columbia International Commercial Arbitration Centre
BCICAC File Number:	DCA-1806-CIRA

DECISION

DECISION SUMMARY:

Complainants succeeded in establishing that the domain at issue was confusingly similar to their trade-mark even though not identical as to the word portion of the trade-mark.

Confusion was based on the use of the letter "L" to replace the letter "I". In its lower case form the letter "L" appeared to be an upper case "I". Thus Indeed.ca (LNDEED.CA) appeared to be just the capitalized form of INDEED.ca.

This is clearly a situation of typosquatting which the Panel defined as an attempt to benefit from the typographical error of the internet user based on confusion over the actual domain name. An alternative form of typosquatting is benefiting from internet traffic based on common misspellings or mistyping of the names of high traffic websites.

Bad faith was established from actual conduct of the Registrant in attempting to confuse the public into believing the Registrant or someone using the domain as an email address was actually sending mail from the Complainants web domain.

The Parties, Domain Names and Registrar

1. The Complainants are Indeed, Inc. of Austin, Texas, United States and Indeed Canada Corp., of Halifax, Nova Scotia.
2. The Registrant is Rina Lay.
3. The Domain Name at issue in this dispute is **LNDEED.CA**.
4. The Registrar is Wild West Domains Canada, Inc.
5. The Domain Name was registered by the Registrant on February 15, 2016.

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 August 25, 2016:

On July 29, 2016 the above-named Complainant filed a Complaint pursuant to the CDRP and the Rules.

In a letter dated August 2, 2016, the Centre as Service Provider, confirmed compliance of the complaint and commencement of the dispute resolution process.

As the Complaint with the attachments was filed exclusively online, therefore, the Centre delivered the Complaint to the Registrant only by email.

The Registrant has not provided a Response. 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 hereby appoints you, Barry Effler LL.B., LL.M., C, Arb. (Fellow), 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.
9. Reference to *Policy* herein means the *CIRA Domain Name Dispute Resolution Policy, version 1.3 (August 22, 2011)*. Reference to *Rules* herein means the *CIRA Domain Name Dispute Resolution Rules Version 1.5 (July 28, 2014)*.

Eligibility of Complainant

10. I have reviewed the material submitted by the Complainants and am satisfied that both Complainants are an eligible complainant under paragraph 1.4 of the *Policy*. Indeed Canada Corp. is a Nova Scotia corporation which meets the Canadian presence requirement.
11. Indeed, Inc. is the owner of a registered Canadian trade-mark which it is alleging the Domain Name in dispute is being intentionally masqueraded as the word component of such trade-mark. Paragraph 1.4 of the *Policy* requires that a complainant meet the Canadian Presence Requirement of the *Canadian Presence Requirements For Registrants version 1.3* “unless the Complaint relates to a trade-mark registered in the Canadian Intellectual Property Office (“CIPO”) and the Complainant is the owner of the trade-mark.
12. The trade-mark in question is INDEED and the Domain Name in dispute is LNDEED.CA which are not identical as to the word portion. However, the Complaint relates to a Canadian trade-mark and accordingly I am satisfied as to the eligibility of Indeed, Inc. as a complainant.

Relief Requested

13. The Complainant requests that the Domain Name in dispute be transferred from the Registrant to the Complainant.

Applicable Law

14. 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

15. Background facts alleged by the Complainant and accepted by me as probative are quoted here from the Complaint: [edited to remove reference to exhibits provided with the Complaint for improved readability]:

Complainant Indeed, Inc. (“Complainant” or “Indeed”) provides the world’s largest job site, with over 180 million unique visitors every month from over 60 different countries. Indeed helps companies of all sizes hire employees and helps job seekers find employment opportunities. Indeed has offices throughout the world, including Toronto, Canada. Indeed owns indeed.ca and has used the Canadian ccTLD domain with an employment related search engine geared to Canadians since at least 2009, and continues to do so.

...

The Co-Complainant, Indeed Canada Corp. (“Indeed Canada”), is a sister company of Indeed, and it is an authorized licensee of Indeed to use the INDEED mark in Canada, as further discussed below.

...

On February 15, 2016, <Indeed.ca> was registered to an undisclosed registrant.

...

On February 16, 2016, Registrant sent unsolicited emails to internet users from the email address adodd@Indeed.ca, and fraudulently represented that Registrant was an employee of Indeed and requested that the recipient provide personal and confidential business information.

...

Complainant learned of Registrant’s fraudulent phishing scheme in connection with the Domain Name on February 18, 2016. At this time, <Indeed.ca>, the Domain Name, was redirecting to Indeed’s website at indeed.com. Specifically, an individual named “Ashley Dodd” was using the email address adodd@Indeed.ca in connection with a phishing scheme, whereby she fraudulently represents that she is an employee of Indeed and requests recipients to provide personal and confidential business information.

Complainant’s attorneys sent a cease-and-desist letter, addressed to “Ashley Dodd”, on February 18, 2016 regarding the fraudulent activities and requesting transfer of <Indeed.ca>. . . . Complainant also contacted the website host for <Indeed.ca> and requested that the webpage no longer be redirected to Indeed’s website. The host complied with Complainant’s request. Registrant never responded to Complainant’s February 18 letter.

On June 21, 2016, Complainant learned that <Indeed.ca> was resolving to a “Sign In” page, featuring the INDEED Marks and prompting users to enter

their email address and password. . . Further research revealed that the Registrant had switched to a new website hosting company. . . .

Complainant attempted to contact Registrant through CIRA's Interested Party Contact Form on July 1, 2016, and never received a response. . .

Complainant requested and received from CIRA disclosure of Registrant's identity, as identified above. . . On July 28, 2016, Complainant's attorneys sent a final cease-and-desist letter, addressed to Registrant Rina Lay, again regarding the fraudulent activities and requesting transfer of <Indeed.ca>. Registrant would have already been aware of Complainant's concerns from its previous communications, as described above. . . . Registrant never responded to Complainant's July 28th letter by the stipulated deadline for a response.

16. 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

Mark	Registration Number	Registration Date	Goods/Services
INDEED	TMA759439	02/12/2010	Services: (1) Computer services, namely, providing a search engine for obtaining job listings, resume postings, and other job search information via the Internet; dissemination of advertising for others via the Internet; teaching in the field of job acquisition, human resources, analytics and metrics, job optimization and advertising; training services in the field of job acquisition, human resources, analytics and metrics, job optimization and advertising; entertainment, namely, organizing festivals and gatherings in the field of employment.

INDEED

TMA876194

04/22/2014

Wares: (1) application software for mobile computing devices, namely, providing an internet search engine for obtaining job listings, resume postings, and other job search information Services: (1) providing multiple user access to proprietary collections of employment information by means of global computer information networks

Discussion and Findings

17. *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.

18. 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; ...*

19. The Complainant Indeed, Inc. 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 February 15, 2016 date of registration of the Domain Name. (see paragraph 16, above for details.)
20. 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 Complainants have been providing employment related search services in Canada since 2009. The Complainants therefore meet this requirement.
21. The issue of the Confusingly Similar test for *Policy* paragraph 4.1 (a) is the most difficult test for the Complainants to meet. The word portion of the trade-mark does not exactly match the word portion of the Domain Name.
22. The Complainants’ submission is that the name <Indeed.ca> so nearly resembles Complainant’s INDEED marks in appearance, sound, or the ideas suggested, as to be likely to be mistaken for the INDEED Marks. The presence of the “dot.ca” suffix is irrelevant in a paragraph 3.1 (a) of the *Policy* analysis, and thus, is excluded from consideration for the purposes of determining whether the disputed Domain Name is confusingly similar to Complainant’s trademarks. Here the relevant portion of the Domain Name, “Indeed,” is an intentional misspelling of Complainant’s INDEED Marks. Internet users will view the lower case “l” in “Indeed” as a capital case “I,” and thus, will

view “Indeed” as “Indeed.” As such, the Complainant’s mark and the disputed Domain Name remain the same in appearance and commercial impression. This intentional misspelling does not negate the confusing similarity between the Complainant’s mark and the disputed Domain Name.

23. The Complainants are asserting that this is a situation of the intentional registration of a domain name to confuse the public that they are actually going to a legitimate domain for a business they wish to conduct business with. The term “typosquatting” has been coined and referred to in a number of arbitrations the Complainant has referred me to.¹
24. This is a situation of typosquatting which I define as an attempt to benefit from the typographical error of the internet user based on confusion over the actual domain name. An alternative form of typosquatting is benefiting from internet traffic based on common misspellings or mistyping of the names of high traffic websites.
25. I agree with the analysis provided by the Complainants set out in paragraph 22 above and accordingly I am satisfied that the Domain Name is confusingly similar to the Complainant’s Mark.
26. Merely been confusingly similar is not sufficient to be successful with a complaint. Bad faith must be established. As an example, if “Lynn Nancy Deed” of Saskatchewan had registered this domain to discuss poetry, I am certain no complaint would have been filed.
27. I am satisfied that the Complainant has established bad faith by the Registrant for the purposes of paragraphs 4.1 of the *Policy*. Paragraphs 3.5 of the *Policy* outlines circumstances which if found shall be evidence that the Registrant has registered a

¹ See, e.g., *Enterprise Holdings, Inc. v. Elbrus Ganiev*, FA 1636953 (Nat. Arb. Forum October 18, 2015) (finding “Typosquatting in itself is a species of bad faith under the Policy because of the evidence it provides that the Respondent has full knowledge of the Complainant’s rights and has specifically sought to target the goodwill in the Complainant’s mark for commercial advantage.” See also *Zone Labs, Inc. v Zuccarini*, FA 190613 (Nat. Arb. Forum Oct 15, 2003) (“Respondent’s registration and use of a domain name that capitalizes on the typographical error of an Internet user is considered typosquatting. Typosquatting, itself is evidence of bad faith registration and use”).

domain name in bad faith. The paragraph expressly states that this list is without limitation.

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:*

28. The Complainant's evidence is that the Domain Name is
 - (a) that the Domain Name originally would refer people going to it to the domain name of the Complainants, namely indeed.ca. After a complaint to the domain name registrar, this was stopped.
 - (b) Then the Domain Name went to a page which used the Complainants' name and trade-marks to attempt to appear to be the legitimate website of the Complainants and asked users to enter their email and passwords for the Complainants' website.
 - (c) "On February 16, 2016, Registrant sent unsolicited emails to internet users from the email address adodd@Indeed.ca, and fraudulently represented that Registrant was an employee of Indeed and requested that the recipient provide personal and confidential business information" [quoted from Complaint and set out in Background Facts above.]
29. Phishing is a term referring to the intentional misleading of a person for the purpose of obtaining their online credentials for wrongful purposes. The evidence in paragraph 25(b) above is a form of phishing to steal identification and credentials. This is bad faith registration of a domain name for the purpose of illegal activity. Similarly, the unsolicited emails referenced in (c) are an attempt at wrongfully obtaining information.
30. This evidence meets the bad faith requirements of Paragraph 3.5 as there is uncontroverted evidence of attempted fraudulent usage of the Domain Name by the Registrant.
31. The Complainant has established evidence to meet the tests set out in Paragraph 4.1 (a) Confusing Similar domain name to a trademark of the Complainant and (b) evidence of bad faith by the Registrant.

32. The test in paragraph 4.1 of the Policy is

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.

33. The Complainant has met the onus to establish its case for the purposes of meeting the confusingly similar and bad faith requirements of paragraph 4.1 (a) and (b). The onus is on the Registrant to prove on a balance of probabilities that the Registrant has a legitimate interest in the Domain Name.

34. The Registrant has chosen to not participate in these proceedings and accordingly has not provided any evidence to the Panel in support of her position.

35. There is no evidence before this Panel that the Registrant has any business or personal project that would indicate a legitimate interest in the Domain Name.

36. 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.

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

38. Paragraph 4.3 of the *Policy* requires the Panel to decide if the Domain Name should be cancelled or transferred to the Complainant if the Panel decides in favour of the Complainant.

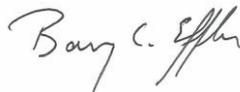
39. The Complainants have no rights to “LNDEED” for business purposes as it is not identical to their trade-mark. The Domain Name is not a real word and the word portion “LNDEED” has no meaning or reference to anything that I am aware of. These factors would normally lead to the conclusion that a cancellation is the appropriate remedy.

40. I am transferring the Domain Name as I have found intentional misuse of this Domain Name to masquerade as the word portion of the trade-mark owned by the Complainants (as owner and licensee). There is no apparent usage of this Domain Name except to impersonate the domain name of indeed.ca. Simply cancelling the Domain Name registration will leave the name available for registration again by others who may wish to emulate the wrongful usage. Transfer is the only remedy which will protect the Complainants' business interests and protect the interests of all persons who may be fooled by the impersonation of a legitimate business and its .ca domain name.

Order

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

Dated: September 13, 2016



Barry C. Effler, LL.B., LL.M.
Sole Panellist