

IN THE MATTER OF
A Complaint pursuant to the Canadian Internet Registration Authority (**CIRA**)
Dispute Resolution Policy (**CDRP**) and Domain Name Dispute Resolution Rules (the **Rules**).

File Number: DCA-1968-CIRA
Domain Name: THEPETPLAN.CA
Complainant: Pet Plan Ltd.
Registrant: David R. Christian
Registrar: Go Daddy Domains Canada, Inc.
Sole Arbitrator: Michael Erdle
Service Provider: British Columbia International Commercial Arbitration Centre
(BCICAC)

DECISION

On March 14, 2018, the Complainant filed a complaint against the Registrant with the BCICAC, with respect to the registration of <thepetplan.ca> (the “Domain Name”).

The BCICAC confirmed the Complainant was in administrative compliance with the Policy and the Rules and forwarded a copy of the complaint to the Registrant on March 15, 2018.

The Registrant did not submit a response to the complaint by April 4, 2018, as required under the Rules.

Accordingly, under Rule 6.5, the Complainant was permitted to elect to convert from a three-person tribunal to a single arbitrator. The Complainant elected to do so.

I was appointed as sole arbitrator on April 10, 2018. I accepted the appointment on April 12, 2018.

Factual Background

In accordance with Rule 5.8, having received no response to the complaint, I shall decide the complaint based on the information provided in the Complaint and accompanying materials, as set out in this award.

The Complainant is PET PLAN LTD., a corporation with offices at 57 Ladymead, Guildford, Surrey, England GU1 1DB

The Registrant is David R. Christian, whose address is 403 Applewood, Nanaimo, British Columbia, V9R 0A6.

The Complainant, Pet Plan Ltd was founded in 1976 and is based in Brentford, United Kingdom. It is a subsidiary of Allianz Insurance plc – one of the largest general insurers in the UK and part of the Allianz Global Group, an international financial services group.

The Complainant provides pet insurance for domestic and exotic pets both in the United Kingdom and around the world, including Canada, through various licensees. The company offers insurance for dogs, cats, rabbits, horses, reptiles, birds, and small mammals. It also offers insurance to pet care professionals and a pet finding service.

The Complainant has continually operated under the Pet Plan name and has used the PET PLAN mark in connection with its pet insurance products.

The Complainant is the owner of the following trademarks (the “Trademark”), registered in the Canadian Intellectual Property Office (“CIPO”):

PET PLAN for SERVICES: (class 36)(1) Providing insurance broking services in connection with health insurance for domestic animals. (CA Reg. No. TMA463628, Filing Date: July 31, 1989, Registration Date: September 27, 1996);

PET PLAN for GOODS: (classes 16, 25, 26)(1) Badges for wear, not being precious metal; articles of clothing for leisure wear, namely, t-shirts, shirts, sweaters, headgear for leisure wear, namely hats, caps, visors and headbands; posters; teaching materials in the field of animal care and animal health, namely instructional handouts, workbooks and manuals, (2) Printed materials, namely pamphlets, leaflets, newsletters and brochures, books, manuals, booklets, guidebooks, leaflets, instructional materials in the field of animal care and animal health, namely instructional handouts, workbooks and manuals; and for SERVICES: (classes 35, 36, 38, 40, 41, 42, 44) (1) Business administration services; administration of credit arrangements; credit services, advice and assistance in respect of the aforementioned services; education and training services in the field of animal care and animal health; arranging and conducting seminars, conferences, exhibitions and conventions in the field of animal care and animal health; organizing, arranging and conducting of sporting and recreational events in the field of animal competitions; publication of printed and audio-visual material; production of film, video and audio for broadcast transmission and public performance; the operation of an internet website providing an interactive medium for the provision of information in the areas of animal health, animal care, insurance services for animals; consulting services, namely providing advice and assistance in respect of insurance services related to animals, educational and training services in the fields of animal care and animal health, arranging and conducting seminars and sporting and recreational events relating to animals. (2) Insurance services; underwriting services; providing insurance broking services in connection with health insurance for domestic animals; administration of insurance contracts; accident, dental, sickness and life insurance for pets (CA Reg. No. TMA592526, Priority Filing Date: February 14, 2000. Registration Date: October 17, 2003);

The Trademarks are also registered in the United Kingdom, European Union, and United States of America.

Pet Plan has an Internet presence through its websites, particularly the website at <petplan.co.uk>. According to Complainant’s evidence, this domain name received a total of 314,670 visits in the 6 months prior to the complaint.

According to the WHOIS search results submitted in the Complainant's materials, the Domain Name was registered on December 5, 2017.

Remedy

Pursuant to paragraph 4.3 of the Policy, if the Panel decides in favour of the Complainant, the Panel must decide whether the Domain Name should be deleted or transferred to the Complainant.

Reasons

Eligibility

Pursuant to paragraph 1.4 of the Policy, CIRA's eligibility requirements for Complainants, are satisfied if the complaint relates to a trademark registered with the Canadian Intellectual Property Office and the Complainant is the owner of the trademark.

The Complainant submitted evidence of its ownership of Canadian Trademark Registration Nos. TMA463628 and TMA592526 for PET PLAN. Accordingly, the Complainant satisfies the Canadian Presence Requirements under the Policy.

Burden of Proof

The Respondent has not made any formal response to the Complaint. Nevertheless, under the Policy, the onus is on the Complainant to prove on a balance of probabilities that the domain name is confusingly similar to Complainant's trademark, that the Complainant has rights in the mark, and that it has been registered in bad faith. The Complainant must also provide "some evidence" that the Registrant has no legitimate interest in the disputed domain name.

1. Rights in the Trade-mark

As noted above, the Complainant has rights in the Trademark by virtue of its registrations in the Canadian Trademarks Office.

Those rights pre-date the registration of the Domain Name by more than 20 years.

2. Confusingly Similar

The Domain Name includes the whole of Complainant's Trademark.

A domain name is "Confusingly Similar" to a Mark if the "domain name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark". In assessing whether a domain name is "Confusingly Similar", the Panel shall only consider the appearance, sound, or idea suggested and not have regard to other factors. The "domain name", for the purposes of the Policy, means the domain name excluding the dot-ca suffix. (Paragraph 3.3 of the Policy)

The omission of spaces or punctuation are also not to be considered when determining confusing similarity.

The mere addition of the word “the” to Complainant’s trademark does not negate the confusing similarity between the Domain Name and the Complainant’s Trademark. Many CIRA and WIPO cases have held that the inclusion of generic, descriptive term(s) in the Domain Name along with the trademark in issue will not prevent the Domain Name from being found to be confusingly similar. Complainant cites, for example, *Enterprise-Rent-A-Car Company v. David Bedford*, 0097 (CIRA, March 27, 2008).

By incorporating the whole of Complainant’s PET PLAN trademark, with the mere addition of “the”, there is a likelihood that Internet users seeing the Domain Name, even without being aware of the content, are likely to think that the Domain Name is in some way associated with the Complainant. See, for example, *Great Pacific Industries v. Ghalib Dhala*, 00009 (CIRA Apr. 21, 2003), where the Panel stated that the test of confusing similarity is whether the average Internet user, with an imperfect recollection of the Mark, who wishes to access a website operated by the Complainant, either by entering a domain name including the Mark into the address bar of an Internet browser, or by entering the key terms of the domain name into an Internet search engine, would likely be confused as a matter of first impression.

Consumers would likely mistake the Domain Name for the Trade-mark, since (i) the Domain Name includes the Trademark, (ii) the Complainant’s Trademark registration pre-dates the registration of the Domain Name, and (iii) the Complainant has used and developed goodwill in the Trademark in Canada.

I find that the Domain Name is confusingly similar to the Trademark.

3. Registration in Bad Faith

The Complainant submits that the Registrant registered the Domain Name in bad faith.

The Complainant and its PET PLAN trademark are known internationally, with trademark registrations in many countries, including Canada. The Complainant has marketed and sold its goods and services using this trademark since 1997, long before Respondent’s registration of the Domain Name in 2017.

At the time of registration of the Domain Name, the Respondent knew, or should have known, of the existence of the Complainant’s trademark and that registration of domain names containing well-known trademarks constitutes bad faith.

Under paragraph 3.5(a) of the Policy, bad faith can be established by evidence demonstrating that Respondent “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.”

When the Complaint was filed, the Domain Name resolved to a page stating that “thepetplan.ca is for sale!”. The Complainant states that the Respondent was offering to sell the Domain Name for \$2,500, an amount well in excess of the Respondent’s costs of registration.

The Complainant's evidence also shows that the Respondent attempted to profit by using the Domain Name for pay-per-click content, including sponsored links which relate to Complainant's own products and services. The Complainant argues that there is no plausible good-faith reason for Respondent to have registered the Domain Name, and "the only feasible explanation for Respondent's registration of the disputed domain name is that Respondent intends to cause confusion, mistake and deception by means of the disputed domain name. Accordingly, any use of the disputed domain name for an actual website could only be in bad faith." (Citing *Vevo LLC v. Ming Tuff*, FA 1440981 (NAF May 29, 2012)).

The evidence shows that the Respondent has registered two other domain names that infringe upon Complainant's PET PLAN trademark, namely <thepetplan.org> and <thepetplan.net>. These domain names are also for sale at the price of \$2,500. This demonstrates that the Respondent is engage in a pattern of abuse, which is additional evidence of bad faith registration and use.

On the facts and evidence presented by the Complainant, it would be unreasonable to think that Registrant chose this particular Domain Name by accident or without any knowledge of Complainant's business. It is reasonable to infer that the Registrant registered the Domain Name for the purpose of selling it to the Complainant or a third-party, or to exploit the goodwill associated with the Trademark to attract Internet traffic and revenues.

Based on the evidence and submissions of the Claimant, I find on a balance of probabilities, that the Registrant registered the Domain Name in bad faith.

4. Legitimate Interest

The Policy requires that the Complainant must provide some evidence that the Registrant has no Legitimate Interest in the Domain Name. If the Complainant meets this burden, the Registrant may still succeed if it proves, on a balance of probabilities, that it has a Legitimate Interest in the Domain Name. The Respondent has not made any formal submissions in this case, so it simply falls to the Complainant to provide "some evidence" of no legitimate interest.

The Complainant contends that the Registrant has no rights or legitimate interests in respect of the domain name.

Paragraph 3.4 of the Policy provides a non-exhaustive list of instances when a registrant can establish a "Legitimate Interest" in a domain name.

The Domain Name is not the legal name of the Registrant.

The Registrant has no rights to use the Trademark and is not using it in good faith.

The Complainant does not carry out any activity or have any business with the Registrant. No license or authorization has been granted to the Registrant by the Complainant to make any use, or apply for registration of the Trademark or the Domain Name.

The Trademark is not not clearly descriptive of, or a generic term for, any wares, services or business. Nor was the Registrant actually using the domain name in association with any wares, services or business.

The Domain Name is not being used in good faith in association with a non-commercial activity.

Although the Respondent failed to file any response to the Complaint, in an email to the BCICAC dated April 9, 2018, the Respondent stated:

“I wish to delete thepetplan.ca, that was my intention from day 1.”

This contradicts statements made in an earlier email dated March 15, 2017, from the Respondent to the BCICAC in response to the original Complaint, in which he stated he intended to use the Domain Name for a “hobby blog”. It is also inconsistent with his response to the Complainant’s demand letter prior to filing to the filing of the complain, in which he said he intended to have a website about “a training plan for dogs”. According to Complainant’s evidence, at that time the Respondent was offering the Domain Name for sale, which shows he had no real intention to use it, nor any legitimate interest in the name.

The evidence does not support a conclusion the Registrant ever used or was legitimately preparing to use the Domain Name in connection with any bona fide wares or services. The statements made by the Registrant in his responses to the Complainant’s cease and desist letter and to the BCICAC in response to the Complaint are not credible and are inconsistent with the fact that the Domain Name was “parked” and offered for sale.

Based on the evidence and record before me, I find that the Registrant has no legitimate interest in the Domain Name.

Decision and Order

Based on the uncontested evidence of the Complainant, including the facts and arguments in the Complaint and supporting documents, I find that the Complainant has satisfied the requirements and burden of proof in the Policy and the Rules.

I find that the Claimant has rights in the Trademark.

I find that the Domain Name is confusingly similar to the Trademark, that the Registrant has no legitimate interest in the Domain Name and has registered the Domain Name in bad faith.

I hereby order and direct that the registration of the Domain Name be transferred from the Registrant to the Complainant.

Dated at Toronto, Ontario, this 30th day of April, 2018.



Michael Erdle,
C.Arb. FCI Arb.