

**CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY
RESOLUTION OF COMPLAINT**

Dispute Number: DCA - 2017 - CIRA
Domain Names: c2cjournal.ca
Complainant: The Manning Foundation for Democratic Education
Registrant: CC Journ
Arbitrator: Melvyn J. Simburg
Service Provider: British Columbia International Commercial
Arbitration Centre

DECISION

The Parties

1. Complainant is the Manning Foundation for Democratic Education, a non-profit corporation duly incorporated under the laws of Canada and a registered charity as defined in the Income Tax Act (Canada), with a registered office at 514-11th Ave SW Calgary, Alberta T2R 0C8.
2. The Registrant is identified as CC Journ, which is a pseudonym for unknown registrant CC Journ.

The Disputed Domain Name and Registrar

3. The Domain Name at issue is c2cjournal.ca (Disputed Domain Name).
4. The Registrar of record for the Disputed Domain Name is Go Daddy Domains Canada, Inc.
5. The Disputed Domain Name was registered on December 19, 2006, but the Registrant was changed in September 2017 to the current Registrant without consent of the Complainant.

Procedural History

6. The British Columbia International Commercial Arbitration Centre, (BCICAC) is a recognized service provider to the Domain Name Dispute Resolution

Policy, (Policy) and the Rules, (Rules) of the Canadian Internet Registration Authority, (CIRA).

7. Complainant filed a complaint on September 14, 2018, (Complaint) with the BCICAC seeking an order in accordance with the Policy and the Rules that the Disputed Domain Name be transferred to Complainant.

8. BCICAC confirmed the Complaint to be in administrative compliance with the Rules. As the Complaint with attachments was filed exclusively online, BCICAC on September 18, 2018 forwarded a copy of the Complaint to the Registrant in accordance with the Rules to admin@c2cjournal.ca and postmater@c2cjournal.ca.

9. Delivery was confirmed, but the Registrant did not provide a response within the timeframe required by the Rules, namely October 9, 2018. The Registrant still has not provided a response.

10. Complainant elected to convert to a single arbitrator as permitted by Rule 6.5 and BCICAC named Melvyn J. Simburg to act as the Arbitrator to determine the matter.

11. On October 17, 2018 the undersigned signed an Acceptance of Appointment as Arbitrator and Statement of Independence and Impartiality.

12. As there was no Response to the Complaint, the Arbitrator shall, in accordance with Rule 5.8, decide the Proceeding on the basis of the Complaint. The facts set out below are taken from the Complaint and related documents.

Canadian Presence Requirements

13. In order for Complainant to be permitted to apply for registration of, and to hold and maintain the registration of a “.ca” domain name, the Canadian Presence Requirements for Registrants, (the Presence Requirements) require that the applicant meet at least one of the criteria listed as establishing a Canadian presence.

14. Complainant is a non-profit corporation duly incorporated in Canada and a registered charity as defined in the Income Tax Act (Canada), with a registered office in Calgary, Alberta.

15. The Complaint relates to a Disputed Domain Name, which was previously owned by Complainant and Complainant meets the Presence Requirements For Registrants under provision 2(d) Corporation of Version 1.3, CIRA POLICIES, RULES, AND PROCEDURES.

16. Accordingly, Complainant is an Eligible Complainant under paragraph 1.4 of the Policy and the Presence Requirements are satisfied.

The Position of the Parties

The Position of Complainant

17. The disputed domain name was first used in 2006 by the Canadian Journal of Ideas, Inc., a non-profit corporation, which also used the mark 'c2c Journal' at the same time. Complainant purchased target assets from the Canadian Journal of Ideas, Inc. in 2012, including both the 'c2c Journal' unregistered mark and the Disputed Domain Name.

18. The c2c Journal began as a publication with the aim of contributing to Canada's national arena of ideas by promoting principles of democratic governance, individual freedom, free markets, and similar ideas. The journal was published both online and in print format. It has been published continuously online since 2006, primarily on the website bearing the Disputed Domain Name. The journal also maintains accounts on Facebook, Twitter, and distributes information via email to its email subscribers.

19. The c2c journal is a unique name and a well-known mark in the realm of Canadian public policy. It is a tongue-in-cheek play on "Sea to Sea" (Canada's official motto) and "Conservatives to Canadians."

20. The complaint is based on unauthorized transfer of the Disputed Domain Name from Complainant's account as registrant to another account with the same registrar of record, which occurred in September of 2017. The Complainant has reason to believe that the transfer was made by an individual who was an employee or contractor of Complainant but has subsequently ended any professional relationship with Complainant. Complainant has attempted to contact individuals suspected of transferring the registration without authorization. The individuals contacted have not responded or have been evasive in responses to requests to transfer the registration back to Complainant.

21. Although Complainant has continued to be able to use its website and the domain associated with the website, and although there has been no disruption or interference to Complainant's services provided through the website, the unauthorized registrant has the ability to terminate the domain or point it from the current website to a different location. Complainant submits that this lack of control by Complainant over the domain is an interference with Complainant's control over its trademark and use of the mark.

22. Complainant submits that the Disputed Domain Name is confusingly similar to Complainant's Mark in which Complainant had rights prior to the transfer of the

Disputed Domain Name and continues to have such rights, and further that the Registrant has no legitimate interest in the Disputed Domain Name and that the Disputed Domain Name was transferred without authorization and even without knowledge of the Complainant.

23. Complainant submits that Registrant transferred the Disputed Domain Name improperly and thereafter the Disputed Domain Name became an improper registration. Complainant asserts that the Registrant does not have a legitimate interest in the Domain, has not undertaken any action for the delivery of goods or services related to the Disputed Domain Name, and that the registration continues in bad faith under paragraph 3.5 of the Policy. Accordingly, Complainant requests that the Disputed Domain Name be transferred to Complainant.

The Position of the Registrant

24. The Registrant did not file a Response.

Analysis and Findings

25. The purpose of the Policy as stated in paragraph 1.1 is to provide a forum by which cases of bad faith registration of dot-ca domain names can be dealt with relatively inexpensively and quickly. The Policy does not apply to other types of differences between owners of trade-marks and Registrants of Domain names.

Relevant provisions of the Policy are provided below

26. Paragraph 4.1 of the Policy provides:

4.1 Onus. To succeed in a Proceeding, 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 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 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 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 of the Policy.

27. Paragraph 3.2 of the Policy provides in part:

3.2 Mark. A “Mark” is

(a) a trade-mark, including the word elements of a design mark, or a tradename 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;

The Policy does not require that a mark be registered in CIPO.

28. Paragraph 3.3 provides:

3.3 Confusingly Similar: 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 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 consider only the appearance, sound, or idea suggested and not have regard to other factors. According to paragraph 1.2 of the Policy, the presence of the country code top-level domain “dot-ca” does not alleviate the potential confusion between a trademark and domain name. The addition lacks distinctiveness and is not sufficient to give the Domain Name an individual meaning.

29. Paragraph 3.4 provides:

3.4 Legitimate Interest: For the purposes of paragraphs 3.1(b) and 4.1(c), any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all the evidence presented, shall demonstrate that the Registrant has a legitimate interest in the domain name:

(a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;

(b) the Registrant registered the domain name in Canada in good faith in association with wares, services or business and the domain name was clearly descriptive in Canada in the English or French

language of: (i) the character or quality of the wares, services or business; (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or (iii) the place of origin of the wares, services or business;

- (c) the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language;
- (d) the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;
- (e) the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or
- (f) the domain name was the geographical name of the location of the Registrant's non-commercial activity or place of business.

In paragraph 3.4(d) "use" by the Registrant includes, but is not limited to, use to identify a website.

30. Paragraph 3.5 provides:

3.5 Registration in Bad Faith. 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 Arbitrator to be present, shall be evidence that a Registrant has registered a domain name in bad faith:

- (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 Complainant, or Complainant's licensor or licensee of the Mark, or to a competitor of Complainant, or the licensor or licensee 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 Complainant, or Complainant's licensor or licensee of the Mark, from registering the Mark as a

domain name, provided that the Registrant, alone in concert with one or more additional persons has engaged in a pattern of registering domain names in order to prevent persons who have Rights in 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 Complainant, or 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 location, by creating a likelihood of confusion with 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.

31. In summary, to succeed in a proceeding, Complainant must prove on a balance of probabilities that:

1. The dot-ca domain name is confusingly similar to a Mark in which Complainant had Rights prior to the registration of the Disputed Domain Name and continues to have such Rights;
2. The Registrant has registered the Disputed Domain Name in bad faith; and
3. Complainant must provide some evidence that the Registrant has no legitimate interest in the Disputed Domain Name.
4. Notwithstanding the evidence presented that the Registrant has no legitimate interest in the Disputed Domain Name, the Registrant will succeed if the Registrant proves on a balance of probabilities that he has a legitimate interest in the Disputed Domain Name.

Confusingly Similar to a Mark

32. Evidence shows that Complainant is the owner of Complainant's Mark, that Complainant's Mark was in use before transfer of the Disputed Domain Name, and Complainant continues to have its trademark rights and use the Mark. The relevant definition of "Mark" requires that a trade-mark be "used". The term "use" is no longer defined in the Policy. The Complainant has been advertising and selling its services in Canada using the Mark since at least 2012, and continues to do so. The Complainant therefore meets the use requirement.

33. In accordance with paragraph 3.3 of the Policy, 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 mistaken for the Mark. In assessing the domain name, the dot-ca suffix is ignored. It is the narrow resemblance that is applied.

34. The Disputed Domain Name incorporates the entire words of the dominant features of Complainant's Mark.

35. In the case of *Great pacific Industries v. Ghalib Dhala*, 00009 (CIRA Apr. 21, 2003), 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 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.

36. Internet users who wish to access a website operated by the Complainant, either by entering a domain name including the Trade-mark into the address bar of the Internet browser, or by entering the key term of the Domain Name into an Internet search engine, would likely find the Disputed Domain Name as a matter of first impression. The Disputed Domain Name does point to Complainant's actual website, but the registration is no longer controlled by Complainant and therefore could be pointed by the Registrant to a different website.

37. Accordingly, for the reasons stated above, the Disputed Domain Name is confusingly similar to Complainant's Mark.

Rights in the Mark prior to the Disputed Domain Name registration and continuing Rights

38. The Disputed Domain Name was registered in 2006, but the complained-of transfer took place in 2017.

39. Complainant's Mark has been in continuous use from 2006 to the present, by Complainant or its predecessor in interest.

40. The Arbitrator is satisfied that Complainant's Mark was in use well before the registration transfer of the Disputed Domain Name and accordingly Complainant had Rights in Complainant's Mark well before the current Registrant's registration of the Disputed Domain Name and as the evidence shows that Complainant's rights are active, Complainant continues to have such Rights.

Was the Disputed Domain Name registered in bad faith?

41. Complainant relies on paragraph (c) of 3.5 of the Policy in support of bad faith registration of the Disputed Domain Name by the Registrant. The Arbitrator notes that the Policy provides that if “any of the 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.”

42. Complainant submits that Registrant transferred the Disputed Domain Name to disrupt the business of Complainant. Complainant reports that when a minor service disruption occurred, the fact that the domain name was no longer under Complainant’s account or control caused a great deal of confusion for Complainant’s personnel.

43. Further, Complainant submits that based on Complainant’s publicly well-known brand and reputation in Canada and the online presence of Complainant’s Mark, and the likely professional association between Registrant and Complainant when the transfer was made, the Registrant could not plausibly assert that Complainant’s Marks were unknown to the Registrant when the Registrant transferred the Disputed Domain Name.

44. Evidence further shows that the Registrant has failed to respond to Complainant’s communications or has responded evasively to the demand for a retransfer to Complainant. A Respondent’s failure to respond to what is effectively a “cease and desist” letter may properly be considered a factor and strong support for finding bad faith registration and use of a domain name.

45. Based on all the circumstances demonstrated in the material and all the evidence provided by Complainant, the Arbitrator is satisfied that Complainant has proven bad faith registration of the Disputed Domain Name as required by the Policy.

Legitimate Interest of the Registrant

46. Paragraph 3.4 of the Policy sets out a non-exhaustive list of criteria upon which the Arbitrator may find, based on all the evidence, that the Registrant has a legitimate interest in the Disputed Domain Name. Paragraph 4.1 of the Policy places the onus on Complainant to provide “some evidence” that the Registrant did not have a legitimate interest in the Disputed Domain Name. Although “some evidence” is not defined, it imposes, in the Arbitrator’s view, a lower threshold than would “a balance of probabilities.” The onus on Complainant is to provide “some evidence” of a negative.

47. Complainant has provided evidence in respect of the absence of any of the conditions stated in the non-exhaustive list contained in paragraph 3.4 of the Policy, and therefore has met its burden to provide “some evidence” that the Registrant has

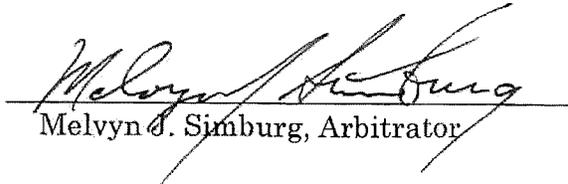
no legitimate interest in the Disputed Domain Name, and in fact that the Registrant's interest was for an improper use.

48. Registrant did not provide a Response and accordingly Complainant's evidence is not refuted. Based on the evidence provided, the Arbitrator is satisfied that the Registrant has no legitimate interest in the Disputed Domain Name.

Decision

49. For the reasons set out herein, the Arbitrator decides in favor of Complainant and orders the transfer forthwith of the Disputed Domain Name to Complainant.

Dated October 23, 2018


Melvyn J. Simburg, Arbitrator