

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

Dispute Number: DCA-2060-CIRA
Domain Name: <keystonevalves.ca>
Complainant: Emerson Vulcan Holding LLC
Registrant: Dan Thompson
Registrar: Go Daddy Domains Canada, Inc
Panel: The Honourable Neil Anthony Brown QC
Service Provider: British Columbia International Commercial Arbitration Centre

DECISION

OVERVIEW

1. This matter concerns a dispute between the Complainant and the Registrant regarding the registration of the domain name <keystonevalves.ca> ("the disputed domain name").
2. 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").
3. This is a proceeding under the CIRA Domain Name Dispute Resolution Policy (the "Policy"), in accordance with the CIRA Dispute Resolution Rules (the "Rules").
4. The Complainant claims that the Registrant registered the disputed domain name in breach of the Policy. The Registrant has not filed a Response in this proceeding.

THE PARTIES

1. The Complainant in this proceeding is Emerson Vulcan Holding LLC, 8000 W. Florissant Avenue, St Louis, Missouri 63136, United States of America ("the Complainant").
2. The Registrant in this proceeding is Dan Thompson, 24 Copernicus Blvd, Unit 8, Brantford, Ontario N3P 1N4 and dthompson@valvelite.com ("the Registrant").

REGISTRATION OF THE DISPUTED DOMAIN NAME

1. The disputed domain name <keystonevalves.ca> was registered by the Registrant on September 29, 2014.
2. The Registrar of the disputed domain name is Go Daddy Domains Canada, Inc.

PROCEDURAL HISTORY

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 February 15, 2019 via electronic transmission.

- (b) The Complaint was reviewed and found to be administratively compliant. By letter dated February 19, 2019 and delivered via email, the BCICAC as service provider confirmed administrative compliance of the Complaint and, as Notice in accordance with Rules 2.1 and 4.3, forwarded a copy of the Complaint to the Registrant together with its Schedules, by email on that date, as the Complaint with attachments had been filed exclusively by email. By the same communication the BCICAC informed the parties that in accordance with Rule 4.4 the date of commencement of the Proceeding was February 19, 2019 and that any Response had to be filed by March 11, 2019.
- (c) The Registrant did not file a Response in this proceeding with the BCICAC by March 11, 2019 or at all.
- (d) On or about March 11, 2019 the BCICAC by email to the Complainant and the Registrant gave notice that the time to submit a Response had expired and that accordingly under Rule 6.5, the Complainant might elect to convert from a three-person tribunal to a single arbitrator within 5 days of receipt of, which the Complainant did.
- (e) On March 18, 2019, BCICAC appointed The Honourable Neil Anthony Brown Q.C. as sole arbitrator in this proceeding. The sole arbitrator has signed and forwarded to the BCICAC an Acceptance of Appointment as Arbitrator and Statement of Independence and Impartiality.
- (f) 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 by virtue, pursuant to section 2(q) of the Canadian Presence Requirements for Registrants, of its ownership of the trademark for KEYSTONE with the registration number TMA 558661 registered with the Canadian Intellectual Property Office on May 21, 1991 and used by or on behalf of the Complainant in Canada.

FACTS

The facts set out below are taken from the Complaint, together with related Schedules.

The Complainant is a United States company which has been operating in Canada for many years. It manufactures and sells a wide range of products including valves under the brand KEYSTONE. In particular, it has used the KEYSTONE mark in Canada to identify its valves since at least 1959. It licenses its trademarks to its parent and affiliated companies and by that means controls the character and quality of its products. It registered the KEYSTONE trademark TMA 384872 in Canada on May 24, 1991 for use in association with "valves". It has also registered the KEYSTONE trademark in many jurisdictions around the world. As part of its extensive business, it has been manufacturing KEYSTONE brand butterfly valves for over 70 years. It also operates its primary website at www.emerson.com and maintains separate webpages for each of its brands therein including Keystone valves.

Accordingly, KEYSTONE is a "mark" pursuant to subparagraph 3.2 (a) and (c) of the CIRA Policy, which was used in Canada and in which the Complainant enjoyed rights in Canada prior to the date of registration of the disputed domain name <keystonevalves .ca> on September 29, 2014.

The Complainant maintains that the Registrant registered the disputed domain name <keystonevalves.ca> on September 29, 2014 and that the website to which the domain name resolves competes with Complainant's business by passing itself off as a business called "KEYSTONEVALVES a Division of Valvelite" and also by offering for sale authentic KEYSTONE brand valves, together with a range of third party valves, and the Registrant's own house brand VALVELITE (or VSERIES) valves.

The Registrant also maintains a website based on its own corporate and brand name located at www.valvelite.com. It is alleged that the Registrant is abusing Complainant's trademark KEYSTONE to attract web traffic for commercial gain by causing consumer confusion and has engaged in a pattern of such conduct. Significantly, the conduct complained of has been expressly admitted by the Registrant in communications between the parties.

It is also alleged that the Registrant had no right to engage in the aforesaid conduct, that it is plain that the Registrant is using the Complainant's trademark KEYSTONE in the domain name without any authority and that the Respondent has used the domain name to resolve to its own website at www.valvelite.com as a competitor of Complainant, to create confusion, to imply that the services being offered by itself are being offered with the approval of the Complainant, which is untrue, and also for the purpose of obtaining commercial gain for the Registrant.

For these reasons, the Complainant has requested that the disputed domain name be transferred from the Registrant to the Complainant.

The Registrant has not replied to the submissions of the Complainant by way of a Response, but it has conceded the essential elements of Complainant's claim in correspondence.

CONTENTIONS OF THE PARTIES

A. THE COMPLAINANT

The Complainant submits as follows:

1. CANADIAN PRESENCE REQUIREMENTS

The Complainant submits that it satisfies the Canadian presence requirement of paragraph 1.4 the Policy in view of the Complainant's registration of the KEYSTONE trademark with CIPO referred to above and established by the evidence.

2. THE REGISTRATION OF THE DISPUTED DOMAIN NAME

The disputed domain name < keystonevalves.ca > was registered by the Registrant on September 29, 2014. In support thereof, the Complainant adduces a copy of the WHOIS information for the domain name.

The Registrar of the disputed domain name is Go Daddy Domains Canada, Inc and the Complainant has adduced evidence to that effect.

3. THE COMPLAINANT'S RELEVANT TRADEMARK RIGHTS AND ITS USE BY THE COMPLAINANT IN ITS BUSINESS

The mark on which the Complaint is based is the following trademark registered with the Canadian Intellectual Property Office ("CIPO"), namely: the trademark for KEYSTONE with the registration number TMA 384872 registered with the Canadian Intellectual Property Office on May 24, 1991 for use in association with "valves", (hereinafter referred to as "the KEYSTONE trademark"). A copy of the trademark certificate is adduced by the Complainant in evidence. There are also extensive international registrations of the KEYSTONE trademark and evidence has been adduced of those registrations.

The Complainant has a long-standing and well developed reputation based on the use of the KEYSTONE trademark in Canada and internationally. It has used the KEYSTONE mark in its business in Canada since at least as early as 1959.

4. THE GROUNDS ON WHICH THE COMPLAINT IS MADE

Basis for the Complaint

Confusingly Similar

Complainant's Marks. The disputed Domain Name is confusingly similar to the KEYSTONE trademark, which is a mark within the meaning of subsection 3.2(a) and (c) of the Policy and in which Complainant had rights prior to the date of registration of the Domain Name, and in which it continues to have rights.

The Domain Name is confusingly similar to the KEYSTONE trademark because it contains the entirety of the KEYSTONE trademark and a generic or descriptive word referring to a type of goods, namely "valves". The Complainant cites several prior CIRA decisions that support such a conclusion.

Moreover, the proper interpretation of this issue is whether the Domain Name so nearly resembles the trademark in appearance, sound or the ideas suggested by the trademark as to be likely to be mistaken for the trademark. When that test is applied, it is apparent that the domain name is confusingly similar to the trademark.

The KEYSTONE trademark is known to identify the Complainant and its goods and services and internet users would therefore naturally assume that the domain name refers to Complainant and its products.

Applying the test set out in the Policy and the principles elaborated upon in the CIRA decisions, the Domain Name is confusingly similar to the KEYSTONE trademark.

No Legitimate Interest

It is submitted that the Registrant does not have any legitimate interest in the disputed Domain Name within the meaning of section 3.4 of the Policy.

There are six non-exclusive circumstances under which the Registrant may establish a legitimate interest in the Domain Name, but the Registrant could not bring itself within the plain language of any of them.

The Complainant has adduced evidence to that effect and maintains that it has therefore complied with its obligation to produce some evidence that the Registrant has no legitimate interest in the Domain Name.

Bad Faith

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

The Registrant is both a seller of multiple third-party valves (e.g. KEYSTONE, HOMESTEAD and CASHCO brands) and of its own VALVELITE (or V-SERIES) valves. The Registrant is the owner of the domain name <valvelite.com>, used in association with the website www.valvelite.com selling a variety of valve and actuator products. Indeed, the Registrant also owns the domain name <keystonevalvesupplies.com>, which simply redirects to its website www.valvelite.com.

The Registrant is therefore a competitor to the Complainant, in that it sells its own VALVELITE brand valves and third-party valves in competition to the Complainant's KEYSTONE valves. The Registrant

has shown a pattern of registering famous valve product brands as its own .ca domain names. The Registrant's activities clearly display bad faith intent as defined by the CDRP Policy.

Paragraph 3.5 of the Policy lists four non-exhaustive circumstances showing bad faith and the Complainant relies on the two described in subparagraphs 3.5(b) and 3.5(d) of the Policy, though other circumstances may apply. Thus:

1. Pattern of Domain Name Registrations by Registrant to Prevent Registration by Persons with Rights in Marks (Subparagraph 3.5(b))

The Complainant adduces evidence to show a pattern of Domain Name registrations to prevent registration by other persons with rights in marks. As Registrant has done this, it has registered the Domain Name in the present case in bad faith.

2. Intentionally Attempting to Attract for Financial Gain by Creating Likelihood of Confusion as to Source, Sponsorship, Affiliation or Endorsement (Paragraph 3.5(d))

The various valve brands on the Registrant's website all have a different look in terms of colour or shape. KEYSTONE brand valves are blue, HOMESTEAD brand valves are red, etc. The Registrant's VALVELITE or VSERIES valves are presented in the same blue colour and the same shape as the Complainant's KEYSTONE valves, further signalling to customers that KEYSTONE and VALVELITE are associated with the Domain Name and its resolving website. Evidence in the form of a photograph shows a VALVELITE valve beside a pair of KEYSTONE valves. It is apparent that the Valvelite valve looks nearly identical to the smaller of the two KEYSTONE valves, showing an intention to create confusion.

It is also apparent from the Registrant's websites that it is passing itself off as the Complainant through the use of the language at the top of the website stating "KEYSTONE VALVES, A division of Valvelite Incorporated", which is of course false since KEYSTONE valves is a longstanding trademark of the Complainant and has no association with Valvelite.

The aforesaid conduct is the very definition of bad faith, in that the Registrant is using a domain name comprising a third-party brand to attract web traffic for that brand (in this case KEYSTONE) for his own commercial gain by creating a likelihood of confusion in the mind of the public as to source, sponsorship, affiliation or endorsement of the Registrant's website. In particular, the Registrant directs customers seeking KEYSTONE brand valves to the look-a-like VALVELITE and VSERIES valves, and to third party valves.

Conclusion on Bad Faith

The Complainant submits that it has met its burden of proving that the Registrant registered the domain name in bad faith under both subparagraphs 3.5(b) and 3.5(d) of the Policy.

Conclusion on the Complainant's case

The dominant portion of the Domain Name, Keystone, is identical in sound and appearance to the Complainant's registered KEYSTONE trademark and thus the Domain Name is confusingly similar to the trademark.

Registrant clearly has no legitimate interest in the Domain Name.

The Registrant's conduct amounts to bad faith at the time of registration and at all relevant times thereafter under paragraph 3.5(d) of the Policy by reason of the Registrant intentionally attempting to

attract, for commercial gain, internet users to its website by causing the Domain Name to resolve to the website, thus creating a likelihood of confusion with the KEYSTONE trademark as to the source, sponsorship, affiliation, or endorsement of the Domain Name and the contents so the website.

B. THE REGISTRANT

The Registrant did not file a Response to this proceeding. However, the Registrant has engaged in correspondence with Complainant in which it has made certain concessions on the facts and has made statements the substance of which is as follows:

"We are not and have never tried creating an appearance of affiliation with Emerson? We have zero information on our website claiming endorsement with Emerson or being an authorized distributor etc. We also have lots of other product lines on our website that are not related to Emerson. All of those products are powered by the same keystonevalves.ca website. All of those other products are benefiting from the high ranking we have."

DISCUSSION OF THE ISSUES

1. CANADIAN PRESENCE REQUIREMENTS

Paragraph 1.4 of the Policy provides that a complainant initiating a complaint must satisfy the Canadian Presence Requirements for Registrants in respect of the Domain Name that is the subject of the proceeding.

Paragraph 2 (q) of the Requirements relied on by Complainant 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 KEYSTONE trademark more particularly set out above and which is registered with CIPO.

The Complainant has therefore satisfied CIRA's Canadian Presence Requirement for Registrants in respect of the disputed Domain Name.

2. REGISTRATION OF THE DISPUTED DOMAIN NAME

- (a) The disputed domain name <keystonevalves.ca> was registered by the Registrant on September 29, 2014. In support thereof, Complainant adduces a copy of the WHOIS information for the domain name which is attached to the Complaint at Schedule A. The Registrar of the disputed domain name is Go Daddy Domains Canada, Inc and the Complainant has adduced evidence to that effect.
- (b) The Complainant submits that the Registrant of the domain name is Jordan (Dan) Thompson and this has been verified.
- (c) The Panel will therefore proceed with this matter on the basis that the Complainant has made out its standing to file the Complaint and that the Registrant is the proper party against whom the proceeding should be brought. In any event, there is no dispute about this aspect as the named Registrant has been served with the Complaint and its Schedules.

3. GENERAL

The purpose of the Policy, as stated in paragraph 1.1, is to provide a forum in which cases of bad faith registration of .CA domain names can be dealt with relatively inexpensively and quickly.

In accordance with paragraph 4.1 of the Policy, to succeed in the Proceeding, the Complainant must prove, on the 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 or generally;

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.

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

CONFUSINGLY SIMILAR

As the Complainant correctly submits, it is required to prove that the disputed 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 mark on which it relies to establish that proposition. The Complainant submits that it can meet those requirements. The Panel agrees.

The Mark

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 the trademark for KEYSTONE, details of which have already been set out and supported by evidence which the Panel accepts and which is defined above for the purpose of this decision as "the KEYSTONE trademark".

The next question that arises is whether the KEYSTONE trademark relied on 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.

Bearing in mind that the Registrant registered the disputed Domain Name <keystonevalves.ca> on September 29, 2014, ("the due date") the Panel finds that that the Complainant had rights in the trademark KEYSTONE registered number TMA 384872 from when it was registered with the Canadian Intellectual Property Office on in Canada on May 24, 1991 which was of course prior to the due date.

The Panel also finds that the Complainant continues to have such rights.

The Panel finds that the KEYSTONE trademark comes within the meaning of "mark" in Paragraph 3.2 (a) of the Policy, as the unchallenged evidence shows it is registered with CIPO.

The panel therefore finds that the KEYSTONE trademark is a mark in which the Complainant had rights before the disputed Domain Name was registered and in which it still has rights.

The question then arises whether the disputed domain name is confusingly similar to the KEYSTONE trademark.

Confusingly similar

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).

Having regard to those principles, the Panel finds that the disputed Domain Name is confusingly similar to the KEYSTONE trademark. That is so because the internet user who is an objective bystander, asked to make a comparison between the domain name and the trademark, would readily see that the domain name incorporates the trademark and adds the word "valves" to designate what the domain name is dealing with, namely valves. The internet user would therefore conclude that the idea suggested by the domain name was that it was an official domain name of the trademark owner as it included the trademark and that it would lead to an official website of the Complainant dealing with its valves branded in that way. Not only is this the logical way in which the domain name should and would be interpreted, but the Complainant in its very persuasive case has referred to prior decisions where the same approach was taken.

Accordingly, the disputed Domain Name is, for the purposes of the Policy, confusingly similar to the KEYSTONE trademark as it so nearly resembles the mark in appearance, sound and in the ideas suggested as to be likely to be mistaken for the Complainant's trademark within the meaning of Paragraph 3.3 of the Policy.

The Panel therefore concludes that the disputed Domain Name is confusingly similar to the KEYSTONE trademark 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 made out the first of the three elements that it must prove.

NO LEGITIMATE INTEREST IN THE DOMAIN NAME

Under the Policy, the question whether the Registrant has a legitimate interest in the disputed Domain Name is to be decided in the following framework. First, there must be an assertion that the Registrant has no legitimate interest in the domain name. That criterion has been satisfied because the Complainant has made such an assertion in the Complaint. Secondly, the Complainant must provide some evidence that "... (c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4." Each of the sub-paragraphs of paragraph 3.4 describes a situation which, if made out, would give the Registrant a legitimate interest in the domain name. The obligation on the Complainant is therefore to show that the Registrant cannot make out any of the successive tests in the sub-paragraphs of 3.4. Thirdly, the Panel has to decide whether the evidence as a whole shows on the balance of probabilities that the Registrant has a legitimate interest in the domain name. Fourthly, the Registrant is not confined to the criteria set out in that paragraph, for those criteria are "without limitation". In other words, a registrant may try to bring itself within any of the specified criteria, but it may also rely on any other fact or argument it wishes to rely on to show that it has a legitimate interest. If it does do this, the role of the Panel is to decide if the registrant has made out its case and to make that decision on the balance of probabilities.

The Registrant, however, has largely waived that right by not filing a Response. In so far as the Registrant has engaged in debate on that issue in the correspondence, it is possible to make an assessment of whether on the Registrant's arguments, it has a legitimate interest in the domain name.

The first task of the Panel is therefore to see if the Complainant has provided "some evidence" that the Registrant has not brought itself within any of the specific criteria in paragraph 3.4.

Applying that test, the Panel finds that the Complainant has provided evidence that the Registrant has no legitimate interest in the disputed domain name. In particular, the Complainant has shown by the evidence that, as the Complainant submitted and as the Panel agrees:

The domain name was not a mark and the Registrant cannot have used the Domain Name in good faith under section 3.4(a).

The domain name is not descriptive or generic and the Registrant cannot have used the Domain Name in good faith under section 3.4(b) and (c).

The Registrant did not use the domain name for a non-commercial activity and cannot have used the Domain Name in good faith under section 3.4(d).

The Registrant cannot have used the Domain Name under section 3.4(e) as it is not the legal name of the Registrant.

The Registrant cannot have used the Domain Name under section 3.4(f) as it is not the geographical location of the Registrant as defined.

The Complainant has shown very persuasively that on the available evidence and inferences that can be drawn from it, that the Registrant has no legitimate interest in the domain name.

The Panel has also examined each of the circumstances set out in the various sub-paragraphs of paragraph 3.4 of the Policy. It is apparent to the Panel that the Registrant could not conceivably bring itself within any of the circumstances in those sub-paragraphs. In this regard it must be remembered that the Registrant has illegally taken the Complainant's trademark on its own whim, constructed a domain name around that trademark and then caused it to resolve to the Registrant's own website for commercial purposes and caused or allowed it to be used for soliciting business that might well have been the Complainant's.

These facts have two effects. First, they show that the Complainant has shown persuasive evidence that the Registrant has no legitimate interest in the domain name, so that the Complainant has met its obligations under this section of the Policy. Accordingly, the Complainant has provided evidence that the Registrant cannot bring itself within any of the specified criteria in paragraph 3.4 that would show a legitimate interest in the domain name and the Panel so finds.

They also show that the Registrant has in fact no such legitimate interest, for such conduct described above and elsewhere could never give rise to a legitimate interest in a domain name. In particular, the Registrant has said in the correspondence that:

"We are not and have never tried creating an appearance of affiliation with Emerson? We have zero information on our website claiming endorsement with Emerson or being an authorized distributor etc. We also have lots of other product lines on our website that are not related to Emerson. All of those products are powered by the same keystonevalves.ca website. All of those other products are benefiting from the high ranking we have."

However, the website to which the domain name resolves makes it very plain that the Registrant is passing itself off as, or pretending to be or to be part of the Complainant, and is giving the impression that it has an affiliation with the Complainant and is a distributor for the Complainant, none of which is true. It is in fact using the Complainant's trademark and reputation for its branded products to sell its own, i.e. the Registrant's own brand of valves and other third party brands. Not only is that contrary to the principles that govern this issue, but it is deceptive as well and apparently meant to be so.

The Complainant has thus established the second of the three elements that it must prove.

REGISTRATION IN BAD FAITH

The Panel now turns to consider whether the disputed domain name was registered in bad faith. In that regard, the Panel notes that, consistent with the decision in *Canadian Broadcasting Corporation? Societes Radio-Vanada v. William Quon*, CIRA Dispute Number 00006(April 8, 2003), pp.13-14, surrounding circumstances may be considered in assessing whether the disputed Domain Name has been registered in bad faith.

By clause 3.1 of the Policy, the Complainant is obliged to prove that:

"(c) the Registrant has registered the domain name in bad faith as described in paragraph 3.5." Section 3.5 provides that " (f)or the purposes of paragraphs 3.1(c) ... 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:..." and then goes on to provide four such circumstances, two of which are relied on by the Complainant, namely:

"(a)...;

(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 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)...;

(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."

It is to be noted that the criteria for bad faith are not exclusive, but that complainants may rely on circumstances other than those enumerated to show bad faith registration.

The Panel will now examine the two criteria relied on by the Complainant. The Panel finds that they both show that the Registrant registered the Domain Name in bad faith.

3.5 (b) Pattern of conduct

The Complainant has presented a meticulous case and the Panel finds that it has made out this ground. The evidence is that the Registrant is a serial offender and has a bad record in this regard.

The Panel therefore finds that the Respondent registered the Domain Name in bad faith to prevent the Complainant from registering its mark as a domain name, demonstrated by a pattern of conduct.

3(5)(d) Intentionally Attract Traffic For Commercial Gain By Creating likelihood of Confusion-

The Complainant also 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 KEYSTONE trademark as to the source, sponsorship, affiliation or endorsement of the contents of Registrant's website.

Clearly, the Registrant's website has broken this provision. Its content makes that very plain.

Moreover, the Panel agrees with the submission that a distributor acts in bad faith if a website is used in these circumstances and promotes third party brands, which the Registrant has done.

Also, the evidence is that the Registrant in correspondence has admitted this breach and has raised points that are untrue.

Any honest observer would conclude that the Registrant's own brand of valves looks nearly identical to those of the Complainant and that as a consequence the Registrant was misleadingly promoting its own brand of valves and other brands under the guise of a website supported by the Complainant's trademark and brand. It was in every sense using the Complainant's name and trademark to make money selling its own and other brands of nearly identical goods. This is clearly bad faith.

As a particularly brazen act, the Registrant was also passing itself off as the Complainant by stating on the website "KEYSTONE VALVES, A division of Valvelite Incorporated."

The Panel had also noticed that further down the page where that statement appears, the website states: "Keystone Valves supplies is a division of Valvelite Inc", which it is not.

The Respondent has taken the Complainant's trademark, used it in its domain name and sought by that means to divert some of the Complainant's business to itself. The confusion created is as to whether the internet user has arrived at the Complainant's site or not and whether the services being offered are those of the Complainant or not.

These conclusions are very apparent and cannot be argued against. Moreover, they are admitted.

The Panel therefore finds that the Respondent has registered the domain name in bad faith by committing a serious and clear breach of Paragraph 3.5(d).

Bad Faith in general

The Panel has also examined all of the evidence carefully and has concluded that it shows that the Registrant registered the domain name in circumstances that can fairly be described as bad faith within the generally accepted meaning of that expression. Indeed there is no other interpretation that can be placed on the evidence.

The Panel finds that the intention of the Registrant was to register the Domain Name because it reflected the Complainant's famous trademark and brand and to use it for a purpose consistent with its own interests and not with the Complainant's interests and for a purpose that would benefit the Registrant financially by taking away some of the Complainant's potential business. That conduct constitutes bad faith registration.

The Complainant has thus made out the third of the three elements that it must establish.

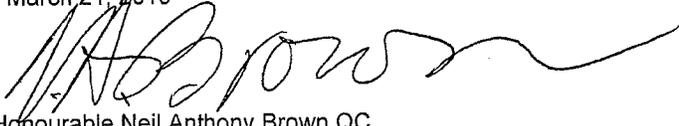
CONCLUSION AND DECISION

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

ORDER

The Panel directs that the registration of the Domain Name <keystonevalves.ca> be transferred from the Registrant to the Complainant Emerson Vulcan Holding LLC.

Date: March 21, 2019

A handwritten signature in black ink, appearing to read 'N. Brown', with a long, sweeping horizontal stroke extending to the right.

The Honourable Neil Anthony Brown QC