

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

Dispute Number: DCA-2122-CIRA  
Domain Name: <alfakher.ca>  
Complainant: AL Fakher International Co.  
Registrant: International Foods & Resources Inc.  
Registrar: Promo People 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 and use of the domain name <alfakher.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 Domain Name Dispute Resolution Rules (“the Resolution 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 AL Fakher International Co. PO Box 309, Ugland House KY-1-1104 Grand Cayman, Cayman Islands. (“the Complainant”).
2. The Registrant in this proceeding is International Foods & Resources Inc., 157 Elgin Mills Rd. W Richmond Hill, Ontario L4C 4M1 Canada (“the Registrant”).

**REGISTRATION OF THE DISPUTED DOMAIN NAME**

1. The disputed domain name <alfakher.ca> was registered by the Registrant on July 18, 2011.
2. The Registrar of the disputed domain name is Promo People 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 and the Rules on July 17, 2019.

- (b) The Complaint was reviewed and found to be administratively compliant. By letter dated July 18, 2019, 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 Annexes, as the Complaint with attachments had been filed exclusively by email. The Complaint and its Annexes were successfully delivered to one of the Registrant's email addresses by the Complainant and CIRA. By the same communication the BCICAC informed the parties that in accordance with Rule 4.4 the date of commencement of the Proceeding was July 18, 2019 and that any Response had to be filed by August 7, 2019.
- (c) In accordance with Paragraph 2.1 of the Rules, the BCICAC communicated with the parties in both English and French.
- (d) The Registrant did not file a Response in this proceeding with the BCICAC by August 7, 2019 or at all.
- (e) On or about August 7, 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 such notice, which the Complainant did.
- (f) On August 14, 2019, the BCICAC appointed The Honourable Neil Anthony Brown QC 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.
- (g) The Panel has reviewed all of the material submitted by the Complainant and is satisfied on that material that the Complainant is an eligible Complainant under the Policy and the Rules by virtue of its ownership of the trademark registered in the Canadian Intellectual Property Office on March 12, 2010, registered number TMA761652 for AL FAKHER & Design and referred to hereafter.

## **FACTS**

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

The Complainant is a Cayman Islands company that is a world leading shisha tobacco producer whose goods are known worldwide. One of the countries in which it manufactures and trades shisha tobacco is Canada.

Among its 79 international trademarks for AL FAKHER, the Complainant is the owner of the trademark registered in the Canadian Intellectual Property Office on March 12, 2010, registered number TMA761652 for AL FAKHER & Design. It is clear that AL FAKHER is the dominant part of the trademark and that it should for all purposes be regarded as a trademark for AL FAKHER.

Since its registration, the trademark has been and is the mark of the Complainant for its goods and services in Canada and elsewhere and the trademark has been used extensively for that purpose.

The Complainant is the owner of the domain name <alfakher.com> which was registered on July 6, 2002 and which the Complainant uses to promote its business. That domain name resolves to the website at www.alfakher.com where the Complainant prominently displays its mark and advertises and promotes its goods and services.

It has come to the notice of the Complainant that the Registrant has registered and is using the disputed domain name to resolve to a website that purports to be Al Fakher-Canada, trades on the expressions "The Incomparable Special Taste of Al Fakher" and "The unbeatable taste of Al Fakher...in NON TOBACCO MOLLASSES",

advertises and promotes its products and invites the public to buy them for a specified price, as well as offering free shipping and an invitation to visit the Registrant's showroom at an address in Concord, Ontario.

The Registrant registered the disputed domain name on July 18, 2011. The Complainant has never given the Registrant permission or authority to register a domain name incorporating the name and trademark AL FAKHER or any variation thereof or to operate a business under the name AL FAKHER.

The Complainant has become and is concerned at the damage done and being done to it and its reputation and commercial interests by the Registrant and its aforesaid conduct and therefore wishes to have the domain name transferred to itself to protect its reputation and interests and to restore the public confidence in its brand.

## **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 fact that in accordance with criteria 17 of CIRA's requirements it is the owner of a trademark registration in Canada, namely the trademark registered in the Canadian Intellectual Property Office on March 12, 2010, registered number TMA761652 for AL FAKHER & Design and the disputed domain name consists of or includes the exact word component of the registered trade-mark.

#### **2. THE REGISTRATION OF THE DISPUTED DOMAIN NAME**

The disputed domain name <alfakher.ca> was registered by the Registrant on July 18, 2011.

The Registrar of the disputed domain name is Promo People Inc.

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

The Complainant submits that it is the owner of a registered trademark on which it may rely in this proceeding, namely the trademark registered in the Canadian Intellectual Property Office on March 12, 2010, registered number TMA761652 for AL FAKHER & Design. Since its registration, the trademark has been and is the mark of the Complainant for its goods and services in Canada. The trademark is hereinafter referred as "the AL FAKHER trademark").

A copy of the AL FAKHER trademark registration has been adduced in evidence by the Complainant and is annexed to the Complaint as Annex 3.

#### **4. THE GROUNDS ON WHICH THE COMPLAINT IS MADE**

Basis for the Complaint.

##### **Confusingly Similar**

**Complainant's Mark.** The Complainant submits that the disputed domain name is confusingly similar to the AL FAKHER trademark, which is a "mark" within the meaning of subsection 3.2.1 of the CIRA Domain Name

Dispute Resolution Policy ("the Policy"), and in which the Complainant had rights prior to the date of registration of the disputed domain name, and in which it continues to have rights.

The domain name <alfakher.ca> is confusingly similar to the AL FAKHER trademark, because it contains the entirety of the trademark and an internet user would construe the words "AL FAKHER" as being the same as the words AL FAKHER in the AL FAKHER trademark, that the domain name may well be invoking the trademark and that the domain name is virtually identical to the trademark and is being used to promote and refer to the Complainant's goods and services that are marketed under the trademark.

The Complainant produces and markets shisha tobacco products and is one of the major sellers in the market. The domain name is being used to sell products similar to those of the Complainant.

Having regard to all of the foregoing, the Complainant submits that the disputed domain name is confusingly similar to the AL FAKHER trademark.

### **No Legitimate Interest**

The Registrant does not have any legitimate interest in the disputed domain name within the meaning of section 3.4 of the Policy.

The Complainant is the only producer of shiska tobacco product under the AL FAKHER trademark and is one of the major sellers in the market. The Complainant already has a domain name linked to a website to promote its products under the AL FAKHER trademark and brand. The disputed domain name incorporates the AL FAKHER trademark in its entirety and is being used for the sale of similar products, which creates an image that the goods are genuine AL FAKHER trademark goods. However the Registrant is not entitled to be a dealer or distributor of the Complainant. Thus the Registrant is not known by the disputed domain name and does not have a legitimate interest in it under the Policy.

The products offered on the Registrant's website indicate that the Registrant is trying to gain illegitimate commercial benefit under the AL FAKHER trademark by using the disputed domain name to sell those products. Indeed, there is no evidence that the products on sale under the AL FAKHER Trademark are original AL FAKHER trademarked products.

Even if they were, the Registrant is creating the false impression that it is an official or authorized dealer of the Complainant. The Registrant could not rely on the principles in *Oki Data Americas, Inc., v. ADS, Inc.* WIPO Case No. D2001-1903 as the Registrant's website does not adequately disclose the relationship between the Complainant and the Registrant.

The Complainant therefore submits that the Registrant has no legitimate interest in the disputed domain name within the meaning of paragraph 3.4 of the Policy.

### **Bad Faith**

The disputed domain name is likely to confuse internet users into believing that it is affiliated or endorsed by the Complainant or that the use of the disputed domain name is at least authorized by the Complainant.

The Registrant deliberately attempted to confuse internet users in relation to the AL FAKHER trademark for illegitimate purposes and attempts to ride free on the Complainant's goodwill.

The Registrant was completely aware of the AL FAKHER trademark when it registered the disputed domain name. On the date of registration, the Complainant's trademark was already registered and had been recognized worldwide for many years. The fact that the Registrant offered the Complainant's products for sale on its

website linked to the disputed domain name further indicates that the Registrant must have been fully aware of the Complainant's trademark rights and its good reputation while registering the disputed domain name.

Thus it is submitted that the Registrant registered the disputed domain name in bad faith within the meaning of paragraph 3.5 of the Policy.

## **B. THE REGISTRANT**

The Registrant did not file a Response to this proceeding.

## **DISCUSSION OF THE ISSUES AND FINDINGS**

### **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 2.17 of the Canadian Presence Requirements for Registrants establishes that requirement where:

“17. **Trade-mark registered in Canada.** A Person which does not meet any of the foregoing conditions, 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 evidence is that the Complainant is the owner of a trademark registration in Canada, namely the trademark registered in the Canadian Intellectual Property Office on March 12, 2010, registered number TMA761652 for AL FAKHER & Design and the disputed domain name consists of or includes the exact word component of the registered trade-mark.

The Complainant has therefore satisfied CIRA's Canadian Presence Requirement for Registrants in respect of the disputed domain name and the Panel so finds.

### **2. REGISTRATION OF THE DISPUTED DOMAIN NAME**

- (a) The disputed domain name <alfakher.ca> was registered by the Registrant on July 18, 2011.
- (b) The Registrar of the disputed domain name is Promo People Inc.
- (c) The Complainant submits that the Registrant of the domain name is International Foods & Resources Inc., a company situated at 157 Elgin Mills Rd. W Richmond Hill Ontario L4C4M1, Canada.
- (d) The above matters have been asserted on behalf of the Complainant and the Panel accepts their veracity. In that regard, the Complainant's authorized representative has certified that the information contained in the Complaint is to the best of the Complainant's knowledge complete and accurate. The Complainant has also adduced in evidence and annexed to the Complaint as Annex 1 the result of an online WHOIS search which shows the registration of the disputed domain name on the date alleged and that the Registrant in this proceeding is the Registrant of the disputed domain name.

The Panel is satisfied that the evidence adduced justifies the submissions made by the Complainant that the Registrant and its contact details are as alleged in the Complaint and the Panel so finds.

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.

### **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:

- (c) 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
- (d) the Registrant has registered the domain name in bad faith as described in paragraph 3.5 or generally; and
- (e) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4.

Paragraph 4.1 also provides that the Complainant must provide some evidence of each of the foregoing criteria and a specific requirement 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."

The Panel finds that the Complainant has provided some evidence of each of the requirements and that in particular, as will be seen in more detail, the Complainant has provided some evidence of (c), but that the Registrant cannot succeed as it has not proved on a balance of probabilities that it has a legitimate interest in the domain name, within the meaning of paragraph 3.4.

The Panel will now deal with each of the three elements in the order in which they appear in the Policy.

#### **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 disputed 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 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 submits that it is the owner of the trademark registered in the Canadian Intellectual Property Office on March 12, 2010, registered number TMA761652 for AL FAKHER & Design, the AL FAKHER trademark.

A copy of the AL FAKHER trademark registration has been adduced in evidence by the Complainant and is annexed to the Complaint as Annex 3.

The Complainant also submits in support of its claim to the AL FAKHER trademark that it has been used since March 12, 201 to promote and sell its goods and services in Canada and that no other person has lawfully sold its products under the AL FAKHER trademark.

The next question that arises is whether the AL FAKHER trademark is a "mark "in which the Complainant had rights prior to the date of registration of the disputed domain name and continues to have such rights.

Bearing in mind that the Registrant registered the disputed domain name on July 18, 2011, the Panel finds that the Complainant had rights in the mark from at least March 12, 2010 which was of course prior to the date of registration of the disputed domain name.

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

### **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).

The Panel finds that the disputed domain name is confusingly similar to the AL FAKHER trademark because at first impression and also at subsequent impression it contains the entirety of the trademark and an internet user would construe the words "AL FAKHER" as being the same as the words AL FAKHER in the AL FAKHER trademark, that the domain name may well be invoking the trademark and that the domain name is virtually identical to it and has been used to promote and refer to the Complainant's goods and services that are marketed under the trademark.

Moreover, an internet user would also conclude that the idea suggested by the domain name was that it was an official domain name that would lead to an official website dealing with the Complainant's goods and services sold under the AL FAKHER trademark.

Accordingly, the disputed domain name is, for the purposes of the Policy, confusingly similar to the AL FAKHER 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 AL FAKHER trademark within the meaning of Paragraph 3.3 of the Policy.

The Panel therefore finds that the disputed domain name is confusingly similar to the AL FAKHER 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**

The Complainant's case on this issue is that the Registrant does not have a legitimate interest in the disputed domain name within the meaning of section 3.4 of the Policy. The reasons advanced by the Complainant are that the Complainant has prior rights to the use of its AL FAKHER trademark, it registered its own <alfakher.com > domain name on July 6, 2002, about 9 years prior to the Registrant registering the disputed domain name on July 18, 2011 and the Complainant has been carrying on business under that name in Canada since March 12, 2010. Moreover, the Complainant submits that the Registrant is using the disputed domain name and the AL FAKHER trademark to compete with it unlawfully and is trying to ride on the goodwill and reputation built up by the Complainant, giving the false impression that the goods offered for sale on its website

are genuine AL Fakher goods or similar to AL Fakher goods and services and that they are being offered with some sort of imprimatur from the Complainant. The Panel agrees with the Complainant and adds that such evidence cannot establish a legitimate interest in the disputed domain name and can lead only to the conclusion contended for by the Complainant.

In particular, from the Registrant's website and the illustrations appearing on it, it is clear from the evidence that the Registrant is claiming that it is offering shisha products and requisites for consumption by means of a hookah pipe, that the products have "the incomparable special taste of Al Fakher" and that they are being marketed under the AL FAKHER trademark.

The Panel agrees with those submissions and finds accordingly that they establish that the Registrant has no legitimate interest in the disputed domain name.

They also accord with the following analysis of this issue that the Panel has had occasion to make in several prior cases. 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, paragraph 4.1 requires that the Complainant must provide some evidence that "...(c) the Registrant has no legitimate interest in the domain name *as described in paragraph 3.4 (emphasis added)*." 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 waived that right by not filing a Response.

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 some 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 Registrant cannot have used the Domain Name in good faith under section 3.4(1).

The Registrant cannot have used the Domain Name in good faith under section 3.4(2).

The Registrant cannot have used the Domain Name in good faith under section 3.4(3).

The Registrant cannot have used the Domain Name in good faith under section 3.4(4).

Moreover, in each of the criteria mentioned above, the facts as they are known simply cannot be accommodated in any of those provisions.

The Registrant also cannot have used the domain name under section 3.4(5) as it is not the legal name of the Registrant.

The Registrant also cannot have used the Domain Name under section 3.4(6) 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 disputed 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 in effect taken the Complainant's trademark, set itself up as a direct competitor of the Complainant, caused the domain name to resolve to the Registrant as a direct competitor of the Complainant and caused or allowed it to be used for soliciting business that is clearly illegal and designed to damage the Complainant's lawful business.

Nor could it be said that the Registrant is an official or authorized dealer of the Complainant within the principles enunciated in *Oki Data Americas, Inc., v. ADS, Inc.* WIPO Case No. D2001-1903. The Panel completely agrees with the submission of the Complainant that the Registrant could not bring itself within those principles as the Registrant's website does not adequately disclose the relationship between the Complainant and the Registrant.

These facts have two effects. First, they show that the Complainant has shown some 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. It is illegal and unprincipled in every respect and cannot possibly justify the registration or use of the domain name.

Finally, and underlying all of these considerations is the fact that the Registrant had an unlimited opportunity of presenting its case, but has forfeited that opportunity by not filing a Response and has not tried in any way to show it has a legitimate interest in the domain name.

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 by 3.1.3 that:

“ the Registrant has registered the domain name in bad faith as described in paragraph 3.5.”

Section 3.5 provides that “For 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 in effect relied on by the Complainant, namely:

“1...;

2...:

3. 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;

4. 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 first examine the above two criteria which are particularly important in this case.

### **3.5.3 Disrupting the business of the Complainant**

The disputed domain name includes the Complainant's trademark and the Registrant has used it to redirect internet users to the website of itself in its role as a competitor of the Complainant and the services offered are in competition to those of the Complainant, albeit illegally so. In any event, it cannot but disrupt a complainant's business when a competitor takes its trademark and starts to advertise competing services, for the disruption comes from the potential loss of business.

The Panel therefore finds that the Registrant, as a competitor, registered the domain name in bad faith by disrupting the Complainant's business within the meaning of paragraph 3.5.3.

### **Intentionally Attract Traffic For Commercial Gain –Paragraph 3.5.4**

The Complainant submits that the Registrant registered the domain name in bad faith *inter alia* because it is using the domain name to carry on a competing business using the Complainant's name and trademark, giving rise to confusion in the market place. The Panel agrees and so finds.

The Panel finds that the Registrant intentionally attempted to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the AL FAKHER trademark as to the source, sponsorship, affiliation or endorsement of the contents of Registrant's website. In that regard, the Panel refers to and repeats the comments it has made on the contents of the Registrant's website and the conclusions to be drawn from those contents.

Moreover, if the domain name remains with Registrant, further disruption and the further loss of potential business because of the inevitable confusion is probable. That is because the Registrant 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 and its illegal business. The confusion created is as to whether the internet user has arrived at the Complainant's site or not and whether the goods and services being offered are those of the Complainant or not.

The Complainant also submits that the Registrant's conduct puts the Complainant's business at risk of further loss and damage, and there is a real danger to the goodwill of the business. The Panel agrees and so finds.

The Panel therefore finds that the Registrant has registered the domain name in bad faith by committing a breach of paragraph 3.5.4.

### **Bad Faith in general**

Bad faith registration may also be shown by conduct other than the conduct specified in the various criteria mentioned above. This is made clear by Section 3.5 providing as it does, that “For 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:...” (emphasis added). This provision is included, as bad faith conduct may take many forms and it is frequently used to find bad faith registration and (under the Uniform Domain Name Dispute Resolution Policy) bad faith use.

The Panel has 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 established trademark in the shisha business and to use it for an illegal purpose to further its own 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 on any test.

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

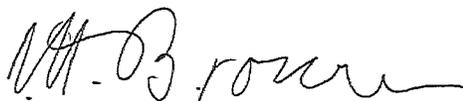
### **CONCLUSION AND DECISION**

The Panel finds that the constituent elements of the Policy have all 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 disputed domain name <alfakher. ca> be transferred from the Registrant to the Complainant AL Fakher International Co.

Date: August 16, 2019

A handwritten signature in black ink, appearing to read 'N.A. Brown', written in a cursive style.

The Honourable Neil Anthony Brown QC

