

**IN THE MATTER OF A COMPLAINT PURSUANT  
TO THE CANADIAN INTERNET REGISTRATION AUTHORITY (“CIRA”)  
DOMAIN NAME DISPUTE RESOLUTION POLICY (“the POLICY”)**

**Dispute Number:** DCA-2189-CIRA  
**Complainant:** Snap Inc.  
**Registrant:** Daisy Ducharme  
**Disputed Domain Names:** snapchatprints.ca; snapchatprint.ca; snapcatprints.ca  
**Registrar:** Go Daddy Domains Canada, Inc.  
**Arbitrator:** Mr. Claude Freeman, LL.M. (ADR), C. Med., C. Arb.  
**Service Provider:** British Columbia International Commercial Arbitration Centre (the “BCICAC”)

**BCICAC FILE NUMBER:** DCA-2189-CIRA

**PROCEDURAL OVERVIEW**

On January 30, 2020, the Complainant filed a complaint with the BCICAC, via electronic transmission, against the Registrant, seeking the Registrant’s registrations of <snapchatprints.ca; snapchatprint.ca; and snapcatprints.ca> be transferred to the Complainant.

In a letter dated January 31, 2020, the BCICAC confirmed that the Complainant was found to be in administrative compliance with the Policy and Rules. In accordance with the provisions of Rule 4.3, the BCICAC, as dispute resolution service provider, so advised the parties and forwarded a copy of the complaint to the Registrant via electronic transmission for their response (and so advised the Registrant that the due date for their response was February 20, 2020). Given that the Complaint and related attachments were filed exclusively online, the BCICAC delivered the Complaint to the Registrant only via email. The Registrant has provided no response whatsoever to the BCICAC, with respect to the issue of the Registrant’s legitimate interest in the disputed domain names as permitted by section 11.1 of the CIRA Domain Name Dispute Resolution Rules Version 1.4 (August 22, 2011). On February 21, 2020, the BCICAC sent an email to the parties advising that a response had not been received, and that a) the Registrant may send the Centre a written request to accept a late response, which will be forwarded to an appointed arbitration panel for consideration, and b) under Rule 6.5, the Complainant can advise the BCICAC within 5 days of the notice therein of its intent to convert to a single arbitrator.

In the absence of a response by the Registrant, the Registrant is not in administrative compliance in the following areas:

- 1) failure to nominate candidates from the providers list – per paragraph 5.2(c) of CDRP rules;
- 2) failure to provide a summary of and references to the relevant Canadian Law – per paragraph 5.2(f) of CDRP rules;

- 3) failure to provide a summary of and references to prior CIRA decisions that would be persuasive, and which apply to domain names registered under any other top-level domain – per paragraph 5.2(g) of CDRP rules; and
- 4) failure to conclude with the certification of the Registrant in the form set out in Appendix ix “B”, followed by the signature of the Registrant or its authorized representative – per paragraph 5.2 (j) of CDRP rules.

As provided for by paragraph 5.6 of CDRP rules, the Registrant is permitted 10 days notice in order to remedy all instances of non-compliance.

As permitted under Rule 6.5, the Complainant elected to convert from a panel of three arbitrators to a single arbitrator, to render a decision in this matter. On February 28, 2020, the BCICAC provided the appointment of the herein arbitration to the sole arbitrator, who accepted the appointment on the same day.

### **BACKGROUND/FACTS**

The Complainant SNAP INC. (hereafter “Snap”), launched its goods and services in 2011, and the Snapchat App has been one of the fastest growing and most popular smartphone applications in the world. The Snapchat App was declared the “Fastest Rising Startup” at the 2012 TechCrunchies Awards, and “Best Mobile Application” at the 2013 TechCrunchies Awards. By February 2014, a study concluded that 77% of U.S. college students use the Snapchat App, and by the end of 2015, the app had over 100 million daily active users. In 2016, the Snapchat App was recognized as the most-downloaded app in the Apple App Store. Growth for the Snapchat App has continued to increase exponentially year over year, and by the end of the third quarter of 2019, 210 million people on average used Snapchat daily, opening the app 30 times a day and spending an average of 30 minutes on the app.

This fast-rising upstart meant that, by February, 2017, the Snapchat App had an estimated 79% market share among teenagers and young adults in the United States, giving it the highest reach of social media and networking sites, surpassing Facebook, Instagram, and Twitter, with roughly the same numbers for Canada. The meteoric rise in popularity and use of the Snapchat app and brand also means that its name is referenced in the media and popular culture, frequently, if not daily.

The Complainant owns numerous trademark registrations in Canada and worldwide for the SNAP Marks, with each registration remaining valid and in full force and effect. Therefore, some registration records list the Complainant’s former name Snapchat, Inc. that was changed to Snap Inc. on September 23, 2016. The Complainant also owns numerous trademark registrations in Canada and worldwide for its ghost design (“Ghost Logo”), which has been in use as the Snapchat App icon since the app was launched in 2011. In addition, Complainant is the owner of U.S. Registration No. 5,357,726 for the color yellow (“Snapchat Yellow”) in connection with software for, *inter alia*, sending and receiving photographs and video identified with Complainant’s websites, products and services.

As a result of the Complainant's widespread use of SNAP marks in continuous and unsolicited media coverage, Complainant has a high degree of consumer recognition, and a strong, loyal base of Snapchat App users, exposing many hundreds of people around the world to the SNAP Marks. The consuming public and the trade, therefore, recognize and associate the SNAP Marks with the Complainant. Accordingly, SNAP Marks have acquired a high degree of public recognition and distinctiveness as a symbol of the products and services offered by the Complainant and, thus, embody the valuable reputation and goodwill belonging exclusively to the Complainant.

Without going into exhaustive details, a number of UDRP Panels have previously found that the SNAP Marks are well-known, or internationally recognized, that the Complainant's trademarks have been registered and used for several years worldwide, and have acquired a reputation among millions of especially teenaged internet users. Though these are UDRP decisions and not CRDP decisions, the findings reflect a "worldwide" reputation.

Accordingly, the Complainant submits that the SNAP Marks are pursuant to paragraph 3.2(a) and (c) of the CIRA Policy.

### **FACTUAL AND LEGAL GROUNDS (CIRA Rule 3.2(i))**

Complainant submits that in accordance with Paragraph 3.1 of the CIRA Policy, the Domain Names in dispute are Infringing Domain Names and should be transferred to the Complainant for the following reasons of Confusingly Similar, Bad Faith, and Legitimate Interest.

#### **Confusingly Similar:**

[a.] *Complainant has prior rights and continues to have such rights in the SNAP Marks and the Infringing Domain Names are confusingly similar to the SNAP Mark. (CIRA Policy 3.3).*

- 1) Complainant has continuously used the SNAP Marks, including the SNAPCHAT mark since well before the Infringing Domain Names were registered on December 20, 2018 and March 5, 2019, giving Complainant trademark rights that predate the registration of the Infringing Domain names.
- 2) The Infringing Domain Names incorporate the entirety of the SNAPCHAT mark or a confusingly similar variation in the term SNAPCAT and thus causing consumer confusion to the SNAPCHAT mark on first impression. Under paragraph 3.3 of the CIRA Policy, in determining whether a domain name is "confusingly similar", the panel shall consider only whether the domain name so nearly resembles the mark in appearance, sound, or the ideas suggested by a mark are likely to be mistaken for the mark.
- 3) One of the Infringing Domain Names, SNAPCATPRINTS.CA does not contain an exact copy of the word component of the SNAPCHAT mark, but varies in a minor way as a result of dropping the letter "h" from the name. Prior CIRA decisions have held that dropping one letter still allows for definition of confusingly similar.

- 4) The Infringing Domain Names' inclusion of the descriptive term "prints" or "print" does not differentiate the Infringing Domain Names from the Complainant's SNAP Marks. Prior panels have recognized the incorporation of a trademark in its entirety with other non-distinctive words to be sufficient to establish that a domain name is confusingly similar with such trademark. Further, the addition of the term "print" or "prints" is likely to increase consumer confusion in reference to Complainant's camera and messaging applications.
- 5) The Respondent has been in at least two previous domain name disputes with Complainant. The most recent of these disputes was decided by the National Arbitration Forum on December 28, 2019, in Complainant's favor with regard to the Domain names <snapchatprints.ca>, <snapchatprints.app>, <snapchatstore.com>, and <snapcemetary.com>, which Respondent had been using to redirect to <ghostfacechillah.com> and <hangmanprints.com>. At the time of this dispute, the Respondent was using the redirected websites to offer customized printing services as well as infringing merchandise that depicted the Complainant's various SNAP Marks and logos without the Complainant's authorization. In this case, the Panel found the Respondent's domain names confusingly similar to the Complainant's marks. The Panel also found the use of such domain names to divert internet traffic to a commercial website and the sale of counterfeit products through the disputed domain names was evidence that a Respondent "does not make a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of a disputed domain name." The Panel further stated that the use of a confusingly similar domain name to attract users for commercial gain was evidence of bad faith, "especially when the commercial nature of the webpage relates to sale of unlicensed or counterfeit products."
- 6) The other previous domain name dispute was decided by the National Arbitration Forum on July 11, 2019, in Complainant's favor with regard to the domain name <snapchatprints.com> which the Respondent was also using to redirect to <hangmanprints.com>. At the time of that dispute, Respondent's website only promoted customized printing services, whereby customers could upload photos to be printed on various products (and did not yet sell infringing merchandise). Respondent's printing service also purported to work in connection with software products of Complainant's competitors, namely, Instagram, Facebook, Google Photos, and Flickr, but had nothing to do with Complainant or the Snapchat App. In that case, the Panel found Respondent registered the confusingly similar domain name in bad faith and with no legitimate interest and ordered transfer of the domain name to Complainant. On the element of confusing similarity, the Panel found <snapchatprints.com> was confusingly similar to the SNAPCHAT mark because "Respondent incorporates the SNAPCHAT® mark in its entirety, adding only the term 'prints,' which is merely descriptive of Respondent's business, and the '.com,'" which did not distinguish the domain name from Snap's mark.
- 7) Given Respondent's prominent use of the SNAP Marks in the Infringing Domain Names, users encountering the Infringing Domain Names will find they so nearly Resemble Complainant's Marks, in particular, the SNAPCHAT mark, as to be mistaken for it.

**Bad Faith:**

- [b.] *The Infringing Domain Names are registered and being used in bad faith.*  
(CIRA Policy 3.5 and 4.1(c))

As discussed earlier, when the Registrant registered the Infringing Domain Names, she was aware of the Complainant's rights in its SNAP Marks, which have been, and are internationally recognized and registered in Canada, the United States, Europe, China, and elsewhere throughout the world, and whose first use made of the SNAP Marks date back to September, 2011.

- 2) Under 3.5(b) of the CIRA Policy, evidence that a Registrant 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 shall be evidence of bad faith. CIRA Policy, Pg. 3.5(b). The Complainant filed a Request for Domain Name Information with CIRA for domain names registered by the Registrant of the SNAPCHATPRINTS.CA domain name. An exhibit filed with this Complaint shows that the current Registrant is the registrant of 32 dot-ca domain names. A review of the domain names listed on this exhibit and owned by the Registrant reveals that many of the .ca domain names are identical to or confusingly similar to third party trademarks in use prior to the registration dates.
- 3) Several CDRP decisions have stated that even two registrations, including the domain in the dispute, are sufficient to establish a pattern. See, e.g. Yamaha Corporation and Yamaha Motor Canada Ltd. v. Jim Yoon, CIRA Decision No. 00089 (October 31, 2007); Brar Natural Flour Milling Inc. v. Brar Natural Flour Milling Inc., CIRA Decision No. 00171 (October 4, 2011).

**Legitimate Interest:**

- [c.] *Respondent has no rights or legitimate interests in the Infringing Domain Names.*  
(CIRA Policy 3.4 and 4.1(c))

- 1) 3.4 (a) of the Policy does not apply because Respondent has no rights in the Infringing Domain Names and is not using them in good faith. There is no relationship between Complainant and Respondent. Respondent has no right to own or use any domain name(s) incorporating Complainant's SNAP Marks, and nothing in Respondent's WHOIS information suggests Respondent is commonly known by the Infringing Domain Names. See **Exhibit 1**.
- 2) 3.4(b) and (c) of the Policy do not apply because SNAPCHAT is not descriptive or generic in English or French of Respondent's wares, services, or business.
- 3) 3.4(d) of the Policy does not apply because Respondent is not using the Infringing Domain Names for non-commercial activity, but to the contrary is using them to divert internet traffic to Respondent's commercial website as discussed in detail above.
- 4) 3.4(e) of the Policy does not apply because there is no indication that the Infringing Domain Names nor SNAPCHAT is the legal name of the Respondent (Daisy Ducharme) or other reference by which Respondent is commonly identified.
- 5) 3.4(f) of the Policy does not apply because there is no indication the Infringing

- Domain Names are geographical locations.
- 6) In the dispute decided by the National Arbitration Forum on July 11, 2019, in Complainant's favor with regard to the domain name <snapchatprints.com>, on the element of rights or legitimate interest, the Panel found "respondent fails to use <snapchatprints.com> in connection with a *bona fide* offering of goods and services or for a legitimate noncommercial or fair use because the resolving webpages offers a printing service, which references "Complainant, Complainant's services, and its competitors." These circumstances also apply to the Infringing Domain Names, only now Respondent is also selling infringing goods bearing Complainant's SNAP Marks and other brand elements. In the dispute decided by the National Arbitration Forum on December 28, 2019, in Complainant's favor with regard to several confusingly similar domain names, the Panel affirmed this point and added that "the sale of counterfeit products through a disputed domain name is further evidence that a respondent does not make *bona fide* offering of goods and services or a legitimate noncommercial or fair use of a disputed domain name."
- 7) Given the notoriety of Complainant's SNAP Marks, as well as the fact that Respondent has no rights in the marks, Respondent did not register the Infringing Domain Names for any legitimate purpose. Rather, Respondent registered the Infringing Domain Names for Respondent's commercial benefit to attract consumers to Respondent's Website to sell infringing goods bearing Complainant's SNAP Marks and other brand elements, or to offer printing services that have no connection to Complainant.

**REMEDY SOUGHT (CIRA Rule 3.2(j))**

In accordance with Paragraph 4.3 of the CIRA Policy, and CIRA Rule 3.2(j), for the reasons described above, the Complainant requests the Panel appointed in this administrative Proceeding issue a decision that the Infringing Domain Names be transferred to Complainant.

The Complainant has done what is prudently and legally necessary to register and protect their brand in the jurisdictions in which they operate – as not to do so, would be tantamount to corporate suicide with regard to brand identification, marketability, and corporate survival.

The submission is made by the Complainant that the Registrant is currently using the Disputed Domain Names to resolve to a site which is in apparent, commercial use, where the Respondent is presumably profiting from the sales of products competing with the Complainant. Past panels and arbitrators have held that there does not have to be any positive act on the part of the Respondent in order to not be held in "bad faith". The simple act of diverting web traffic to another site that legitimately belongs to another domain owner can be construed as simple hi-jacking of that legitimate trade-mark/domain. The submissions provided by the Complainant therefore allege that the Registrant is not only in violation of its trademark but is also using this violation in bad faith against the Complainant with its products/services.

As mentioned earlier, the Complainant has submitted copies of their prior trade-mark registrations, all in support of their position on prior registration authority. Sites/domain names blatantly infringing on or closely navigating near or to, previously and properly registered, highly visible and well-known domain names, trade-marks (which are clearly owned by those with a demonstrated, and prior, legitimate interest) do not enhance the credibility (for all the tests

of legitimate interest/confusingly similar and bad faith) of those Registrants who feel they have some right or licence to freely infringe or compete at will.

The Complainant submits that the use of (**snapchatprints.ca; snapchatprint.ca; and snapchatprints.ca**) is, and can only be attributed to the Complainant, by virtue of its trade name, trade-mark, and other history attesting to its use, related strictly to its corporate name and services. Further, anything to the contrary defies the rational, reasoning and legal basis for filing for trade-marks and trade names in the first place. Anything else would, and will be confusing and distracting – with the results being that internet users, and existing/potential customers, will or could be confused with this, having a damaging effect to the public image of the Complainant.

In short, the Complainant submits that the disputed domain names are:

- 1) Confusingly similar
- 2) Registrant has no right or legitimate interest in the domain names, and
- 3) The domain names were registered and used in bad faith.

### **Reasons**

As noted earlier, the Registrant has not put forth submissions of any kind to be reviewed in any detail. Accordingly, as per paragraph 4.1 of the CDRP policy, the onus is on the Complainant to prove on a balance of probabilities that the disputed domain names as registered by the Registrant are confusingly similar to that of the Complainant, and that they have been registered in bad faith. In addition, the Complainant is required under this paragraph to provide “some evidence” that the Registrant has no legitimate interest in the disputed domain name(s).

#### **1. Confusingly Similar**

The first test is whether a Disputed Domain Name is confusingly similar to a Complainant’s domain name.

The evidence before us shows that in Canada, the Complainant has been using the SNAP Trademark in Canada since at least 2011.

In order to address the issue of confusion with the standard legal test prevailing in Canada, one can find that in determining whether or not there exists a reasonable likelihood of confusion between the trademarks at issue, the Registrant must have a regard to all the surrounding circumstances, including non-exhaustingly, those specifically enumerated in Subsection 6 (5) of the Canadian Trademarks Act.

- a) inherent distinctiveness of the trademarks, and the extent to which they have become known;
- b) length of time the trademarks have been in use;
- c) nature of wares, services or business;
- d) nature of the trade; and
- e) degree of resemblance between the trademarks in appearance or sound in the ideas suggested by them.

A generally accepted principle when applying the test of confusion is looking at the trademarks from the point of the unwary consumer – comparing similarities as opposed to differences. Can the internet user be easily misled by error or otherwise – and perhaps not even know? Could this confusion also impact not only on any and all other potential commercial relationships being sought with the Complainant? If this would impact on the commercial relationship sought with the Complainant by the internet users, then by logical corollary, this confusion would impact (or possibly sabotage) the commercial relationships the Complainant has or is seeking with its' existing client base as well.

The Registrant's dot.ca domains are Confusingly Similar with a Mark in which the Complainant had Rights prior to the date of registration of the domain name and continues to have such Rights. Simply put, this assertion was held in *Veuve Clicquot Ponsardin v. Boutiques Clicquot Ltée*. 2006 SCC 23, [2006] 1 SCR 824 (2 June 2006). Confusion under the *Trade-marks Act* occurs if the use over the trade-marks is likely to lead to the inference that the wares and services associated with the trade-marks are manufactured, sold or performed by the same person. Also see *LEGO Juris A/S v. James Carswell*, CIRA CASE No. 00150 (2010). That being said, even if the Registrant were not marketing/selling, manufacturing products or services of the like the Complainant provides, this can create an intellectual extrapolation. Hijacking some of the Complainant's web traffic away can be cause for the unwary user of the web to be misled and think that the Registrant really is the Complainant – thus creating a false, competitive "climate". The fact that the Registrant may be selling same or competitive products as does the Complainant, creates a very confusing, commercial picture for internet users, thus impacting directly on the Complainant.

As well, as per paragraph 1.2 of the Policy, and per BCICAC Case No. 00014 (*Coca-Cola Ltd. v. Amos B. Hennan*), the domain name is defined as follows: "domain name" means the domain name excluding the "dot-ca" suffix and suffixes associated with all third and fourth level domain names accepted by CIRA. Further, a Registrant cannot avoid confusion by appropriating another's entire mark in a domain name, as per *RGIS Inventory Specialists v. AccuTrak Inventory*, BCICAC Case No. 00053, and *Glaxo Group Limited v. Defining Presence Marketing Group Inc.* (Manitoba), BCICAC Case No. 00020.

To this arbitrator, the domain names "Snapchatprints.ca; Snapchatprint.ca, and Snapcatprints.ca" are clearly a part of, (and similar in appearance, sound and in the ideas) with the "SNAP" Trademark. There appears therefore, not only confusion with, but also misappropriation of the domain names, by the Registrant, regardless of whether we know or not of the Registrants' motives or modus operandi.

This Arbitrator concludes on this issue that the Complainant has met the onus of demonstrating that the disputed domain names are "confusingly similar" – as also supported in part by the "tests" applied by Subsection 6 (5) of the Canadian Trademarks Act ("a" to "e" above).

## 2. Legitimate Interest

A sufficient and initial proof brought on by the Complainant and pertaining to the Registrant's lack of legitimate interest forces the Registrant to rebut, explain or otherwise plead this issue, for



which the Registrant has not done so. Failing to do so permits the Arbitrator to make a negative inference.

As described above, the Complainant must provide “some evidence” that the Registrant has no legitimate interest in the domain name(s), as described in Policy paragraph 4.1(c). If the Complainant satisfies this evidentiary burden, the onus shifts to the Registrant to prove on a balance of probabilities that the Registrant has a legitimate interest in the challenged domain name, for which the Registrant has not done.

Policy paragraph 3.4 sets forth an exhaustive list of criteria for determining whether a registrant has a legitimate interest in a domain name. It provides as follows:

*The Registrant has a legitimate interest in a domain name if, and only if, before the receipt by the Registrant of notice from or on behalf of the Complainant that a complaint was submitted.*

- (a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant has Rights in the Mark;*
- (b) the Registrant used the domain name in Canada in good faith in association with any 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 used 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 of 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 paragraphs 3.4 (b), (c), and (d) “use” by the Registrant includes, but is not limited to, use to identify a web site.*

The legitimate interest criteria set forth in Policy paragraphs 3.4 (a), (b), (c), and (d) are satisfied only if the Registrant’s use was in “good faith”, a term which is not defined by the Policy. This Arbitrator notes that “good faith” as used in Policy paragraph 3.4 is not necessarily the opposite of “Bad Faith” as defined in Policy paragraph 3.5.

This Arbitrator has reviewed submissions by the Complainant and absent any submissions to not only debate the Complainant’s positions, but to provide any historical proof of commercial activities, and fully eliminate confusion between the Registrant and the Complainant, leaves for invalidated support for the Registrant. Furthermore, the history covered by the Complainant’s

submissions themselves (registration, market and media notoriety etc), speaks volumes about the Complainant's right to their legitimate interest.

The domain names in dispute were registered by the Registrant on December 20, 2018, and March 5, 2019, and such, without any prior or existing written contract or other form of trade-mark use or licence with the Complainant (who has thus far demonstrated historical and prior Trade-mark Registration).

Any commercial or business relationship of any sort between the parties is expressly denied by the Complainant, permitting the use etc. of any of the Complainant's trademarks or domain name by the Registrant, which might give rise to any confusion. Absent any rebuttal, this unto itself demonstrates a clear, historical lack of interest in the disputed domain name by the Registrant.

The Registrant has not provided any justification whatsoever for its claim to a legitimate interest in the disputed domain names. The Domain Names are identical to a Mark in which the Complainant has rights and for which the Registrant has demonstrated no legitimate interest.

### **3. Registration in Bad Faith**

The following facts lead this Arbitrator to conclude that the disputed domain names were registered in bad faith:

- 1) The Registrant has (after historical and past name and product branding by the Complainant) registered (or acquired) confusingly similar names.
- 2) Registration of the disputed domain names competes directly with the Complainant's trademark and services, and appear to redirect traffic away from the Complainant to the Registrant. The disputed domain names are also embedded as a component of the Complainant's trade-mark.
- 3) The disputed names could have a confusingly and negative public image impact/confusion about affiliation or sponsorship with the complainant, not to mention the diversion of commercial activity away from the Complainant. Refer to *Bell Canada v. Archer Enterprises*, BCICAC Case No. 00038, and *Yamaha Corporation and Yamaha Motor Canada Inc. v. Jim Yoon*, BCICAC Case No. 00089.
- 4) The Registrant has made no attempt whatsoever to provide any answers, rebuttals, support or evidence for the registration/acquisition of the disputed domain names.
- 5) Where the Registrant would seemingly have some justification for the registrations, the Registrant has to put forward some form of evidence to support their conduct, but has not done so. See *Musician's Friend Inc. v. Lowcost Domains Inc.*, CIRA Dispute No. 00074, citing in turn *Canadian Broadcasting Corporation/Société Radio-Canada*.

All of the foregoing is irreconcilable, and sustains the conclusion that there appears to be no compelling need (or right) for the Registrant to register and keep the disputed domain names. Had there been a sound business and legal reason to do so, supported by a business and contractual arrangement with the Complainant, it might be logical for the Registrant to counter-argue all of this. This does not in any way suggest that any counter-argument would be successful. Websites (not to mention trade-names) are to be seemingly purchased/registered,

designed and maintained for some legitimate purpose, and certainly no sound reasons have been advanced by the Registrant to support their recent acquisition of the Disputed Domain Names. At the very least, any use made valid by any arguments that might be raised by the Registrant would (or might have been) less confusing at the outset, if they were to register a name or names which would not be confusing and infringing on the Complainant's Trade-mark. Very importantly, the redirection/resolving of traffic from one web site ("Snapchatprints.ca", "Snachatprint.ca" and "Snapcatprints.ca") to other sites competitive with SNAP can only create a clear impression of causing confusion, disruption and hijacking of the Complainant's business. See *Intesa Sanpaolo S.p.A. v. Interex Corporate Registration Services Inc.*, CIRA Case No. 01130 (2013).

### **Balance of Probabilities**

Even if a complainant has met the burdens of proof contained in Paragraph 4.1, a complaint will be dismissed if the registrant is able to prove on a balance of probabilities that the registrant has a legitimate interest in the disputed domain name. Again, such "legitimate interest" must meet one or more of the six tests as set out in Paragraph 3.4 and referred to above.

This balance of probabilities test in Paragraph 4.1 of the Policy deals with the situation where even though a complainant has satisfied all of the burdens of proof contained in Paragraph 4.1, an Arbitrator believes that justice requires the Registrant to succeed. In finding against a Registrant, the Arbitrator is depriving that Registrant of a property interest. Such a decision should not be, and is not taken lightly. Therefore, even if an Arbitrator finds that a complainant has satisfied the rather heavy burdens of proof placed on it by Paragraph 4.1, if the Arbitrator is satisfied that on a balance of probabilities the Registrant has a legitimate interest in the disputed domain name, the Arbitrator must find for the Registrant and dismiss the complaint. The Registrant has manifestly provided no argument of any sort to either refute the allegations made by the Complainant or at the very least, support the registration (and any rights) in the Disputed Domain Names.

In the case at hand, this Arbitrator is satisfied that on a balance of probabilities, based upon the evidence before him, and rules, that the Registrant has no legitimate interest in the Disputed Domain Names ("Snapchatprints.ca", "Snapchatprint.ca" and "Snapcatprints.ca")

### **Decision and Order**

I find that the Complainant has succeeded in this proceeding, initiated under the Policy. I therefore direct that the registrations of ("*Snapchatprints.ca*", "*Snapchatprint.ca*", and "*Snapcatprints.ca*") be transferred to the Complainant: Snap Inc.

Dated this 17<sup>th</sup> day of March, 2020



Claude Freeman, LL.M. (ADR), C.Med., C.Arb.