

IN THE MATTER OF THE ARBITRATION OF A COMPLAINT PURSUANT TO THE CANADIAN
INTERNET REGISTRATION AUTHORITY (CIRA) DISPUTE RESOLUTION POLICY (CDRP) AND
DOMAIN NAME DISPUTE RESOLUTION RULES (THE RULES)

Between

Clover Gifts, Inc.

Complainant

And

George Morrison, G M Consulting Services

Respondent

DECISION

Introduction

1. This is a domain name dispute pursuant to the Canadian Internet Registration Authority (CIRA) Domain Name Dispute Resolution Policy (CDRP) of the Province of British Columbia, Canada (the "Province"), which took place at the city of Vancouver in the Province of British Columbia in accordance with the Canadian Internet Registration Authority (CIRA) Domain Name Dispute Resolution Policy (CDRP) of the British Columbia International Commercial Arbitration Centre (the "Centre").
2. The Administrative Panel consists of Edward C. Chiasson, Q.C.

The Parties

3. The Claimant, Clover Gifts, Inc., is a corporation in Carson City, Nevada, United States of America.
4. The Respondent is a Canadian company registered to do business in British Columbia and located in Surrey, British Columbia, Canada.

5. The domain name in dispute is AIRS.CA and the Registrar of Record for the subject domain name at the time the Complaint was filed was DomainPeople, Inc.

Background

6. The following information derives from the Complaint.

7. The Complainant obtained an assignment of the trademark AIRS on June 12, 2003. The trademark originally was filed on April 26, 2002. It relates to perfume and incense.

8. The subject domain name was registered on June 18, 2003.

9. The Respondent has a personal and business relationship with the assignor of the trademark AIRS.

10. The website to which the subject domain name resolves is used to sell perfume and incense and products sold by the Complainant.

11. The following information derives from the Defence.

12. The Respondent has an operating web store accessible at airs.ca and has continuously used the AIRS mark in connection with its business through its predecessors in interests since at least 1995. The domain name "airsworld.com" was registered in 1995 and listed the instant Respondent as affiliated with the Registrant of the airsworld.com domain name, namely Airs Fragrance Products, Inc.

13. The Respondent questions the legitimacy of the assignment relied on by the Complainant and raises issues of Canadian and United States' law concerning the assignability of trademark rights without the accompanying goodwill.

14. The assignor of the trademark AIRS currently licenses her trademark rights to Air Fragrance Products Inc., of British Columbia where she has worked for the past three years.

15. The Respondent has a business relationship with the assignor. He and his consulting company, GM Consulting Services, are listed as the administrative contact and technical contact for the Registrant of the airsworld.com domain name, Airs Fragrance Products, Inc.

16. Airs Fragrance Products was incorporated in British Columbia, Canada on February 6, 2002. It has used continuously the trademark AIRS in connection with its legitimate business interests, namely the sale of wares in the field of perfumes and incense. The company offers its wares to consumers via the internet and its web pages can be located at airsworld.com and airs.ca and through additional domain names related to the trademark AIRS such as floralbyairs.com.

Discussion and Conclusions

Identical or confusingly similar

17. The Complainant asserts that it is the owner of the trademark AIRS by reason of an assignment. The Respondent asserts that the assignment is not valid under United States' law, which the Respondent contends applies to the assignment. It also questions the authenticity of signatures on the assignment and raises the spectre of undue influence.

18. The issues raised by the Respondent are serious and not susceptible of resolution in a proceeding such as this. They require consideration by a forum that receives evidence and can assess properly and thoroughly issues of credibility.

19. The Administrative Panel must take the essential facts as they are presented to it and will proceed on the basis that the Complainant is the assignee of the trademark AIRS.

20. It cannot be questioned seriously that the subject domain name is essentially identical to the trademark AIRS. It differs by the addition of .CA, which is of no significance.

21. The Administrative Panel is satisfied that the Complainant has met the first requirement of its case.

Legitimate interest

22. The Complainant has an obligation to establish that the Respondent does not have a legitimate interest in the subject domain name. It has not done so.

23. The fact that parties are in competition with each other does not lead to a conclusion that one does not have a legitimate interest in a domain name.

24. In this case, the Respondent and the company with which he is associated has been involved in the perfume and incense business and with the word AIRS for many years.

25. It may be that the Complainant has a proper trademark infringement claim, but in this proceeding it cannot be said that the Respondent does not have a legitimate interest in the subject domain name. An examination of issues of infringement and historical rights, is not appropriate in this forum.

26. The Administrative Panel is not satisfied that the Complainant has established the second requirement of its case.

Bad faith

27. Similarly, and for the same reasons, the Administrative Panel is not satisfied that the Complainant has met its obligations of establishing bad faith.

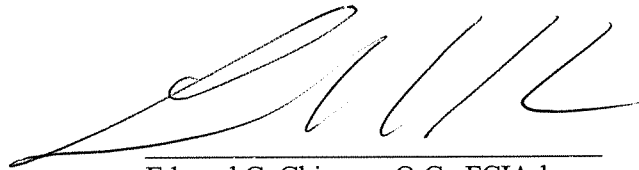
28. The long involvement of the Respondent in the use of the word AIRS commercially and in domain names militates against the Complainant's position.

29. There is some spectre of an ongoing dispute with many layers between the parties. This forum makes no attempt to resolve that dispute or to probe into it. The ability of the parties to pursue whatever rights they consider they have is not addressed in this decision.

Decision

30. The Complaint is dismissed.

Made at the City of Vancouver, in the Province of British Columbia, Canada this 4th day of October 2005.

A handwritten signature in black ink, consisting of a large, stylized initial 'E' followed by several vertical strokes and a final flourish.

Edward C. Chiasson Q.C., FCIArb.