



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE

DOMAIN NAME DISPUTE

ADMINISTRATIVE PANEL

DECISION

CIIDRC case number:	15632-CDRP	Decision date: July 21, 2021
Domain Name:	investment-finder.ca	
Panel:	Michael Erdle, FCI Arb., C. Med., C. Arb	
Complainant:	483A Bay Street Holdings LP	
Complainant's representative:	Mark Webster of Maucher Jenkins	
Registrant:	Fred Patricio	

1. PROCEDURAL HISTORY

This matter is conducted pursuant to the Canadian Dispute Resolution Policy (the CDRP) and the Canadian Dispute Resolution Rules (the Resolution Rules) of the Canadian Internet Registry Authority.

The Domain Name was registered on April 9, 2021.

On June 3, 2021, Mark Webster filed a Complaint on behalf of 483A Bay Street Holdings LP pursuant to the CDRP and the Resolution Rules. The identity of the Registrant is not published in the public WHOIS database; therefore, the Registrant's name was not included in the Complaint.

CIRA was notified of this proceeding on June 3, 2021 and, on the same date, CIRA transmitted by email to CIIDRC its verification response confirming the Registrant's identity and contact information as follows:

Name: fred patricio
 Preferred language: EN
 Organization: N/A
 Email: fred.patricio@protonmail.com

Domain Name: investment-finder.ca

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Phone: 1-215-648-5215
Fax: N/A
Country: Canada
Street: 4308 nd Avenue
City: Kelowna
Province/State: British Columbia
Postal code/Zip code: V1Y1P5
CPR category: Canadian Citizen - Individual
WHOIS privacy: Private
CIRA Registrant Agreement version: 2.0
Agreed by Registrant: 2021-04-09 T16:47:09.003Z

CIRA also confirmed that the < **investment-finder.ca** > domain name was placed on a Registrar LOCK.

On June 3, 2021, CIIDRC, as Service Provider, confirmed compliance of the Complaint and commencement of the dispute resolution process.

The Complainant did not file any further submissions with respect to the issue of the Registrant's legitimate interest (or lack thereof) in the disputed domain name, as permitted by section 11.1 of the CIRA Domain Name Dispute Resolution Rules Version 1.5.

CIIDRC notified the Registrant of this administrative proceeding and forwarded a Notice with a login information and the link to the Complaint to the Registrant on June 3, 2021.

The Registrant failed to file its response by the due date of June 23, 2021.

The Complainant has elected for a Panel consisting of a single-member.

On July 7, 2021, CIIDRC appointed Michael Erdle, FCI Arb., C. Med., C. Arb., as a single-member Panel in the this matter.

2. FACTS ALLEGED BY THE PARTIES

The facts alleged by the Complainant are summarized as follows:

FIL Limited, which trades as Fidelity, is one of the largest and best-known investment fund managers in the world. It offers its services worldwide, including in Canada.

The Complainant is a subsidiary of FIL Limited, with offices in Bermuda. It is the current registered owner of a large number of Canadian trade mark registrations for marks comprising of or containing FIDELITY INVESTMENTS, for a wide range of financial services and related goods and services.

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The Complainant, either itself or through its subsidiaries and related companies, offers Canadian investors a full range of domestic and international mutual funds or pools through a number of advice-based channels, including financial planners, investment dealers, banks and insurance companies.

These services have been offered in Canada since 1987 under the brand name FIDELITY INVESTMENTS and marks including FIDELITY INVESTMENTS and related designs (the "Marks").

The Marks pre-date the registration of the Domain Name. They include:

1. Canadian Trade Mark Registration no. 0672799 for **FIDELITY INVESTMENTS** in Class 36, filed on 20 December 1990 and registered on 6 March 1992;
2. Canadian Trade Mark Registration no. 0584268 for **FIDELITY INVESTMENTS** in Class 36, filed on 20 May 1987 and registered on 8 February 1991;
3. Canadian Trade Mark Registration no. 0665670 for **FIDELITY INVESTMENTS CANADA** in Class 36, filed on 31 August 1990 and registered on 12 June 1992; and
4. Canadian Trade Mark Registration no. 1299875 for **FIDELITY INVESTMENTS** in Classes 9, 16, 35, 36 and 41, filed on 1 May 2006 and registered on 30 September 2008.

The Complainant and its subsidiaries and related companies have acquired a considerable reputation and goodwill in the FIDELITY INVESTMENTS marks in relation to financial services internationally, including in Canada.

For at least the last 20 years the Complainant and its subsidiaries and related companies have promoted services provided under the Marks to Canadians on the Internet through the **<fidelity.ca>** domain name. The evidence filed with the Complaint includes print-outs from the Complainant's website, *www.fidelity.ca*, showing the use of the Marks.

The Complainant alleges that "phishing" activities are currently being carried out by individuals posing as the Complainant using the Domain Name. The Complainant alleges that members of the Canadian public have been defrauded as a result of these activities. It says it is concerned that its clients and other members of the public will be deceived and defrauded as a result of these actions.

In particular, phishing emails have been sent to members of the Canadian public from email addresses associated with the Domain Name from individuals posing as employees of the Complainant. Consumers who have been the victim of this fraud first completed an enquiry form through the website *https://investment-finder.ca/* (the "**Phishing Website**"). The Complainant submitted printouts from the Phishing Website showing the enquiry form received by a consumer. The consumer in question was then sent a fake FIDELITY branded Application Form and Contract Note. Complainant stated that the "Guaranteed Investment Bond" referred to in those documents is not a legitimate investment product

provided by the Complainant or its related companies or subsidiaries. (In the Complainant's evidence, personal information was redacted for reasons of confidentiality.)

The Complainant and the Canadian Securities Administrators (CSA) have issued a number of alerts to the public regarding this scam. The fake "Guaranteed Investment Bond" offered through the Domain Name is the same product referred to in those alerts.

The Registrant did not submit any evidence in response to the Complaint.

3. CONTENTIONS OF THE PARTIES

- **Complainant**

The Complainant submits that Registrant registered the Domain Name in bad faith and that it has no legitimate interest in the name. It submits that the Registrant's use of the Domain Name is confusing to consumers.

The Complainant submits that Respondent is making unauthorised use of the Complainant's Marks in a fraudulent attempt to masquerade as the Complainant. In view of the considerable reputation and goodwill of the Complainant, and the evidence that the Domain Name is being used in connection with a fraud or phishing activity, the Complainant submits that the Respondent's use of the Domain Name is manifestly intended to deceive consumers into believing that they are dealing with the Complainant and/or to take advantage of the Complainant's reputation and goodwill.

The Complainant submits that this evidence shows that the Registrant registered the Domain Name in bad faith and that it has no legitimate interest in the Domain Name.

- **Registrant**

The Registrant did not submit any response to the complaint.

- **Remedy Sought**

The Complainant requests the Domain Name be transferred to it.

4. DISCUSSION AND FINDINGS

4.1 Eligibility

Under paragraph 1.4 of the CDRP, the Complainant must, at the time of submitting a Complaint, satisfy the Canadian Presence Requirements for Registrants (the “CPR”) in respect of the domain name that is the subject of the Complaint unless the Complaint relates to a trade-mark registered in the Canadian Intellectual Property Office (“CIPO”) and the Complainant is the owner of the trade-mark.

The Complaint relates to the Marks, which are registered with CIPO. The Complainant is the registered owner of the Marks. Therefore, the Complaint is eligible under the CDRP.

4.2 CDRP Requirements

In accordance with Paragraph 4.1 of the CDRP, the onus is on the Complainant to prove on a balance of probabilities, that:

The Domain Name is Confusingly Similar to a trademark or service mark in which the Complainant had Rights prior to the registration of the Domain Name and continues to have such Rights; and

The Registrant registered the Domain Name in bad faith.

The Complainant must also provide some evidence that Registrant has no legitimate interest in the Domain Name. The onus then shifts to the Registrant to prove that it does have a legitimate interest.

4.3 Analysis

4.3.1 That the Domain Name is Confusingly Similar to a Mark in which the Complainant has Rights

The Complaint is based on the Complainants’ rights in the Marks, which are registered in Canada. The Marks all comprise or contain the words “FIDELITY INVESTMENTS”.

The evidence shows that the Marks were registered long before the Domain Name was registered in 2021.

Therefore, the Complainant has demonstrated that it has prior Rights in the Marks.

Paragraph 3.3 of the CDRP states that:

“In determining whether a domain name is “**Confusingly Similar**” to a Mark, the Panel shall only consider whether the domain name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark.”

The Domain Name is **investment-finder.ca**. The Panel must consider the domain name as a whole, as well as the individual words that make up the domain name. .

The only similarity to the Complainant’s Marks is the word “investment(s)”.

In support of its argument that the Domain Name is confusingly similar to Complainant’s Marks, and that it was registered and used in bad faith, the Complainant refers to two UDRP decisions involving the Complainant against registrants involved in similar phishing activities: *FIL Limited v Domain Admin, Whois Privacy Corp.*, [WIPO Case No. D2019-1093](#) and *FIL Limited v Domain Admin, Privacy Protect, LLC, / John Hope, Hope Ltd.* [WIPO Case No. D2019-1340](#).

It is noteworthy that both of those cases involved domain names that included the word “Fidelity” - **<fidelitycryptocompany.com>** and **<fidelitycryptomining.com>**.

The Complainant’s evidence is that the trademark and trade name “Fidelity” is well known throughout the world in association with its investment products and services.

In each of the trademark registrations submitted in evidence by the Complainant, the right to the exclusive use of the word “INVESTMENTS” is disclaimed apart from the trademark. It is a common English word and is not distinctive of the Complainant’s investment services. The distinctive word in each of the Marks is “FIDELITY”.

The Domain Name does not contain the distinctive element of the Complainant’s Marks. It contains only the word “investment”, in which the Complainant has disclaimed any exclusive trademark rights, together with the word “finder”.

Nor does the Domain Name as a whole so nearly resemble the Marks as to be likely to be mistaken for them.

I find that the Domain Name is not Confusingly Similar to the Complainant’s Marks.

4.3.2 Bad Faith Registration; Legitimate Interest in the Domain Name

In light of my findings with respect to the first element the Complainant must establish under the CDRP, it is not necessary for me to determine whether the Registrant registered the Domain Name in bad faith or has any legitimate interest in the Domain Name.

4.3.3 Conclusion

Based on the evidence submitted, I find that the Complainant has not satisfied the onus under Paragraph 4.1 of the CDRP and the Compliant must be denied.

5 DECISION and ORDER

For the above reasons, in accordance with the CDRP and the Resolution Rules, the Panel concludes that requested relief shall be **DENIED** and orders that the domain name **REMAIN** with the Respondent.

Made at the City of Toronto, Ontario as of the 21st day of July, 2021.

SIGNATURE OF PANEL



Michael Erdle, FCI Arb., C. Med., C. Arb.

