

CANADIAN INTERNET REGISTRATION AUTHORITY

DOMAIN NAME DISPUTE RESOLUTION POLICY

COMPLAINT

Dispute Number: 00001
Domain Name: redrobin.ca
Complainant: Red Robin International, Inc.
Registrant: Greg Tieu
Registrar: Tucows, Inc. dba Tucows.com
Panellist: J.E. Redmond Q.C.
Service Provider: British Columbia International Commercial Arbitration Centre

DECISION

1. This is my decision as a single member Panel, in accordance with the provisions of the CIRA Domain Name Dispute Resolution Policy (the “Policy”) and the CIRA Domain Name Dispute Resolution Rules (the “Rules”). The Registrant not having provided a response to the complaint, the Complainant elected under Rule 6.5 to convert from a Panel of three to a single member Panel, and in accordance with Rule 5.8, the proceeding is being decided on the basis of the Complaint.
2. The material submitted by the Complainant shows that the Complainant satisfies CIRA’s Canadian Presence Requirement for Registrants, being the owner of the registered Canadian trademark Red Robin. This trademark constitutes a Mark under section 3.2 of the Policy.
3. The evidence submitted also establishes that the Mark has been used in Canada by the Complainant, so that the Complainant has Rights in the Mark, in accordance with section 3.3 of the Policy.
4. The Registrant has registered a .ca Domain Name, “redrobin.ca” (the “Domain Name”) which is essentially identical to the Complainant’s Mark.
5. In setting out the legal basis for its Complaint, the Complainant submits, first, that the Domain Name is confusing with the Complainant’s Mark. Since the Domain Name is identical to the Complainant’s Mark, which was registered by the Complainant in Canada prior to the registration date of the Domain Name, and which was and is being used by the Complainant in

Canada, I find that the Domain Name is Confusingly Similar to the Complainant's Mark, as that term is defined in section 3.4 of the Policy.

6. The Complainant alleges that the Registrant has no legitimate interest in the Domain Name. A Registrant only has a legitimate interest in a domain name if the Registrant satisfies the requirements of s. 3.6 of the Policy. The Complainant has submitted in Schedule 3 to the Complaint a series of letters exchanged between the Complainant and the Registrant. In the absence of a response from the Registrant, providing any evidence to demonstrate a legitimate interest on the part of the Registrant in the Domain Name, the only information in the record before me from the Registrant touching on the issue of the existence of a legitimate interest in the Domain Name on the part of the Registrant must be found in the exchange of correspondence between the Complainant and the Registrant. The only reasonable inference from the statements of the Registrant in this correspondence is that, having been given the opportunity to explain the existence of a legitimate interest in the Domain Name, he has not done so. The evidence does not show the existence of any of the factors set out in section 3.6 of the Policy which would constitute a legitimate interest of the Registrant in the Domain Name.

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

8. From the Registrant's letters to the Complainant contained in Schedule 3 to the Complaint, it appears that the Registrant: (i) had not, up to the time of those letters, used the Domain Name; (ii) was offering to sell it to the Complainant; and (iii) was implying that he would sell the Domain Name to someone else if the Complainant did not buy it.

9. The Complainant's submission that the Registrant had registered the Domain Name in bad faith within the meaning of section 3.7 of the Policy is further supported by the evidence that the Registrant had registered the domain names "virginatlanticairlines.ca", "virgin-atlantic.ca", and "virginatlanticairways.ca", which domain names were subsequently transferred to Virgin Enterprises. There was also evidence of the registration by the Registrant of the domain name "surreyplace.com", Surrey Place Mall being the name of a mall in Vancouver, B.C. The initial letter of complaint from the lawyers for Red Robin International, Inc. to the Registrant, dated October 25, 2001, offered to release the Registrant from any liability and to reimburse him for

the cost of registering the Domain Name, in exchange for an immediate transfer of the Domain Name to Red Robin. The Registrant's rejection of that offer and his intimation that the Complainant could buy his "beautiful 'bird'" from him, further support the Complainant's submission that the Registrant registered the Domain Name in order to prevent the Complainant from registering its Mark as a domain name, and that his primary purpose in registering the Domain Name was to sell it for valuable consideration in excess of his actual costs in registering the Domain Name. The cases¹ cited at pages 13 to 15 of the Complaint support the Complainant's submissions.

10. I find that the Registrant registered the Domain Name in bad faith.

11. In view of my findings as set out above, I conclude that the registration of the Domain Name "redrobin.ca" should be transferred to the Complainant.

DATED at the City of Edmonton, in the Province of Alberta, this 7th day of October, 2002.

J. E. REDMOND, Q.C.

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¹ *Saskatoon Star Phoenix Group Inc. v. Noton* (2001), 12 C.P.R. (4th) 4 (Sask.Q.B.); *Bell ActiMedia Inc. v. Puzo* (1999), 2 C.P.R. (4th) 289 (F.C.T.D.); *Innersense International Inc. v. Manegre* (2000), 7 C.P.R. (4th) 107 (Alta Q.B.); *Itravel2000.com Inc. v. Fagan* (2001), 11 C.P.R. (4th) 164 (Ont. S.C.J.)