

**CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY**

COMPLAINT

Dispute Number: DCA-802 CIRA
Domain Name: cdplus.ca
Complainant: ROW Limited Partnership
Registrant: Pilford Ventures Inc.
Registrar: Sibername Internet and Software Technologies Inc.
Panel: Michael D. Manson
Service Provided: British Columbia International Commercial Arbitration Centre

DECISION

A. THE PARTIES

1. The Complainant is ROW Limited Partnership, 255 Shields Court, Markham, Ontario, L3R 8V2.
2. The Registrant is Pilford Ventures Inc., 26 Horetzky Street, Winnipeg, Manitoba, R2C 4L9.

B. THE DOMAIN NAME AND REGISTRAR

3. The domain name at issue is cdplus.ca. The domain name is registered with Sibername Internet and Software Technologies Inc. of Ottawa, Ontario.

C. PROCEDURAL HISTORY

4. The Complainant submitted this complaint to the British Columbia International Commercial Arbitration Centre as service provider in respect of the *CIRA Domain Name Dispute Resolution Policy* of the Canadian Internet Registration Authority (CIRA). The Service Provider served notice of the complaint to the Registrant as required by *CIRA Rules*, paragraph 4.3. No response to the complaint was received from the Registrant. The Complainant elected to have the complaint heard by a single panellist as permitted under 6.5 of the *CIRA Rules*. The Service Provider selected Michael Manson as the single panel member for this complaint.

D. PANEL MEMBER IMPARTIALITY AND INDEPENDENCE STATEMENT

5. As required by the *CIRA Rules*, paragraph 7.1, I, Michael Manson, have declared to the provider that I can act impartially and independently in respect of this matter as there are no circumstances known to me which would prevent me from so acting.

E. BASIS FOR DECIDING THE COMPLAINT

6. Since the Registrant has not submitted a response to the complaint, paragraph 5.8 of the *CIRA Domain Name Dispute Resolution Rules* applies, namely that the panel shall decide the proceeding on the basis of the complaint filed.

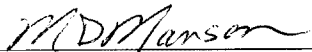
F. FACTUAL BACKGROUND

7. The BCICAC has certified that the complainant has complied with the formal requirements of the CDRP under the *Resolution Rules*.
8. The BCICAC has certified and I accept that it has complied with the provisions of the CDRP and the *Resolution Rules* in giving notice of the complaint to the Registrar of record and the Respondent on October 7, 2004, and the Respondent has failed to respond to the complaint.
9. The materials submitted by the Complainant shows that the Complainant satisfies CIRA's Canadian presence requirement for registrants, being the owner of Canadian Trade-mark Registration No. TMA446,847 for the trade-mark CD PLUS, for use in association with the operation of a business dealing in compact discs.
10. The evidence submitted also establishes, on the face of the trade-mark registration relied on by the Complainant that the trade-mark has been used in Canada by the Complainant since as early as July 22, 1988 such that the Complainant has rights in the trade-mark.
11. The Registrant has registered a .ca domain name "cdplus.ca" (the "Domain Name"), which makes use of the Complainant's registered trade-mark CD PLUS which is virtually identical to the Complainant's and is thus essentially the same as the Complainant's mark.
12. The Complainant has submitted that, firstly, cdplus.ca is confusingly similar to CD PLUS, the Complainant's registered trade-mark and that cdplus.ca is also confusingly similar to cdplus.com, the domain name under which the Complainant sells entertainment products online, in Canada and abroad. I find that the domain name is confusingly similar to the Complainant's mark, as provided for under paragraph 3.4 of the *CIRA Domain Name Dispute Resolution Policy*.
13. The Complainant also alleges that the Registrant has no legitimate claim or interest in the domain name, in that the URL www.cdplus.ca is redirected to a customised search engine. The Registrant may only have a legitimate interest in the domain name if the registrant satisfies the requirements of section 3.6 of the *Policy*. There is no evidence that the Registrant has a legitimate interest in the domain name as set out in section 3.6 of the *Policy* which would constitute a legitimate interest of the Registrant in the domain name.

14. However, nowhere in the complaint has the Complainant alleged bad faith by the Registrant in registering the domain name cdplus.ca, unlike the decisions relied upon by the Complainant concerning the domain names www.redrobin.ca and www.biogen.ca. In both those cases, bad faith was alleged by the Complainant and in fact there was some evidence provided of such bad faith in each case.
15. Paragraph 3.7 of the *CIRA Policies, Rules and Procedures* provides that a Registrant will be considered to have registered a domain name in bad faith **if, and only if** (emphasis mine):
 - (a) The Registrant registered the domain name or acquired the registration, primarily for the purpose of selling, renting, licensing or otherwise transferring the registration to the Complainant, or the Complainant's licensor or licensee of the mark, or to a competitor of the Complainant or the licensor of licensee for valuable consideration in excess of the Registrant's actual costs in registering the domain name, or acquiring the registration; or
 - (b) The Registrant registered the domain name or acquired the registration in order to prevent the Complainant, or the Complainant's licensor or licensee of the mark, from registering the mark as a domain name, provided that the Registrant, alone or in concert with one or more additional persons has 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; or
 - (c) 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.
16. Accordingly, if and only if the evidence demonstrates at least one of the criteria set out in paragraph 3.7 of the *Policy*, there can be no showing of bad faith, which is essential to the Complainant to be able to be successful in this proceeding.
17. While the Registrant's purpose in registering the Domain Name may be determined by common sense inferences from the Registrant's conduct and other surrounding circumstances, I must, on the evidence before me, be able to find bad faith in the circumstances (*Canadian Broadcasting Corporation v. Quon* (April 8, 2003); Dispute No. DCA 681 – CIRA), (*Coca-Cola Ltd. v. Amos Hennis* (October 28, 2003); Dispute No. DCA 711 - CIRA).
18. Notwithstanding that the Complainant sent two letters to the Registrant dated May 14, 2004 and June 23, 2004, which were not responded to by the Registrant, on a balance of probabilities I am unable to find the necessary evidence of bad faith required for the Complainant to be successful and therefore I find that the Registrant did not register the Domain Name in bad faith.

19. In view of this last finding, I conclude that this complaint concerning the domain name www.cdplus.ca is not successful and is dismissed. The Panel will not make any Order regarding the registration of the www.cdplus.ca domain name.

Dated at Vancouver, British Columbia, Canada, this 31st day of January, 2005.



Michael D. Manson
Sole Panel Member