



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE

DOMAIN NAME DISPUTE ADMINISTRATIVE PANEL DECISION

CIIDRC case number:	16881-CDRP	Decision date: April 25, 2022
Domain Names:	eqifax.ca; eqifax.ca; and quifax.ca (collectively the “ Domain Names ”)	
Panel:	James Plotkin, Q.Arb	
Complainants:	Equifax Inc. and Equifax Canada Co.	
Complainants’ representative:	Douglas M. Isenberg (Giga Law)	
Registrant:	Antonia Ojo/0902066 BC Ltd.	

1. PROCEDURAL HISTORY

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

The procedural history was set out in a letter from the Canadian International Internet Dispute Resolution Centre (“**CIIDRC**”) to the Panel:

1. On February 13, 2022, Mr. Douglas M. Isenberg of Giga Law filed three separate Complaints on the Complainants’ behalf in CIIDRC file numbers 16881-CDRP (eqifax.ca), 16882-CDRP (eqifax.ca), and 16883-CDRP (quifax.ca) pursuant to the CDRP and the CDRP Rules. The Registrant(s) identity(ies) were not published in the public WHOIS database. The Complaints therefore omitted the Registrant(s’) name(s).
2. The CIIDRC notified CIRA of this proceeding on February 14, 2022.
3. On February 15, 2022, CIRA transmitted its verification response indicating the Registrant in each case was the same person, one Antonia Ojo. CIRA also confirmed it placed the Domain Names on a Registrar LOCK.
4. On February 15, 2022, the CIIDRC, as Service Provider, confirmed each Complaint’s compliance Complaint with the CDRP Rules and commenced the dispute resolution process.

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5. All three Complaints, with annexes, were filed by email. The CIIDRC delivered the Complaints to the Registrant by email and express post to the address CIRA provided.
6. On February 16, 2022, the Complainants' counsel filed further submissions on the issue of the Registrant's legitimate interest (or lack thereof) in the Domain Names, as permitted under CDRP Rule 11.1.
7. The Registrant failed to file its response(s) by the due date of March 7, 2022.
8. On March 15, 2022, counsel for the Complainants filed a request to consolidate all three complaints into a single proceeding assigned to a single panelist.
9. In light of the reasons set forth in counsel's written request for consolidation, the CIIDRC proceeded with the appointment of a single-member panel and determined all three cases shall be administered under File 16881-CDRP.
10. Upon receiving my duly completed declaration of impartiality and independence, the CIIDRC appointed me as the Panel.
11. On April 4, 2022, in accordance with CDRP Rule 11.1, the Panel issued a request to the Complainants for additional evidence pertaining to the Canadian Presence Requirement ("**CPR**"). The Panel provided the Complainants 10 days to transmit any of the requested information. In accordance with CDRP Rule 12.2, the Panel extended the deadline to render a decision in this matter by a commensurate 10 days.
12. On April 11, 2022, the Complainants filed additional evidence in line with the Panel's request. Pursuant to CDRP Rule 11.2, that additional evidence became part of the record in this proceeding.

2. THE PARTIES' CONTENTIONS

A. Complainants

13. In their initial Complaints, the Complainants submitted the CPR is met based on:
 - a. Various trademark registrations currently active with the Canadian Intellectual Property Office ("**CIPO**"); and
 - b. The fact that one of the Complainants, Equifax Canada Co. ("**ECC**"), has its head office at 5700 Yonge Street, Suite 501, Toronto, Ontario, M2M 4K2 [**Complainants' Annex 2**].
14. As noted, the Panel requested additional evidence in respect of the CPR. In response, the Complainants filed the following documents:
 - a. Certificate of Status electronically signed (on April 11, 2022) by the Office of the Registrar of Joint Stock Companies in Nova Scotia for Equifax Canada Co., stating that Equifax Canada Co. "was amalgamated on January 7, 2016 under the *Companies Act* and is a valid and subsisting company", and that it "was registered under the *Corporations Registration Act* and the certificate is currently in force";
 - b. Annual Statement dated January 21, 2022, electronically signed (on April 11, 2022) by the Office of the Registrar of Joint Stock Companies in Nova Scotia for Equifax Canada Co.;

- c. Agreement of Amalgamation dated January 6, 2016 for Equifax Canada Co.; and
 - d. Certificate of Amalgamation dated January 7, 2016 for Equifax Canada Co.
15. With respect to CDRP paragraph 3.1(a) (“the Disputed Domain Name is Confusingly Similar to a trademark or service mark in which the Complainant has Rights prior to the date of registration of the domain name and continues to have such Rights”), the Complainants submit:
- a. They or their related entities own 221 trademark registrations in at least 56 jurisdictions around the world [**Complainants’ Annex 3**]. The Canadian trademark registration for the EQUIFAX word mark (TMA213693) was registered May 7, 1976. This predates the Domain Names’ registration by decades.
 - b. The Domain Names are all confusingly similar to the EQUIFAX Mark since they are all nearly identical to the Mark, with minor alterations in the nature of typos. The Complainants reference Uniform Dispute Resolution Policy (“**UDRP**”) cases, as well as the WIPO Overview of jurisprudence, for the proposition that domain names consisting of obvious or intentional misspellings of a complainant’s Mark are confusingly similar with that Mark.
16. With respect to CDRP paragraph 3.1(b) (the Registrant’s lack of legitimate interest in the Domain Names), the Complainants submit the Registrant meets none of the enumerated legitimate interests under CDRP paragraph 3.4:
- a. With respect to paragraph 3.4(a), the Registrant has no rights in the EQUIFAX Mark. As the Complainants’ evidence amply demonstrates, the Complainants, or related entities, control a variety of registered trademarks comprising or including the word EQUIFAX.
 - b. With respect to paragraph 3.4(b), the Registrant did not register the Domain Names in good faith in association with wares services or a business, and the Domain Names are not clearly descriptive in Canada, in English or French 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. This is because the Domain Names are confusingly similar with the Complainants’ Marks.
 - c. With respect to paragraph 3.4(c), the Domain Names were not understood in Canada as the generic name, in any language, of any wares, services or business in respect of which the Domain Names were registered in good faith.
 - d. With respect to paragraph 3.4(d), given the Domain Names redirect to a website for “Experian”, which the Complainants state is one of their direct competitors, the Registrant is not using the Domain Names in good faith in association with non-commercial activities.
 - e. With respect to paragraph 3.4(e), the WHOIS information for each of the Domain Names does not list the registrant as “Eqifax”, “Quifax” or “Equfax”. There is therefore no indication that the Domain Names comprise the Registrant’s legal name, surname or other reference the Registrant uses to commonly identify themselves.
 - f. With respect to paragraph 3.4(f), given the Domain Names do not describe any geographical location, this legitimate interest category plainly does not apply.
17. In accordance with CDRP Rule 11.1, the Complainants were entitled to file additional submissions on the legitimate interest prong since the Registrant’s identity was hidden behind a privacy shield when

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the Complainants filed their initial Complaints. In summary, the Complainants submitted the Registrant lost in six previous CDRP complaints:

- a. *Kijiji International Limited v. Antonia Ojo*, CIRA Case No. 00307 (transfer of <kijij.ca>, <kijigi.ca>, <kijijii.ca>, <kijijiji.ca>, <kilili.ca>, <kingstonkijiji.ca>, <kjiji.ca> and <wwwkijiji.ca>);
- b. *Ford Motor Company of Canada, Ltd v. Antonia Ojo*, CIRA Case No. 00319 (transfer of <fordparts.ca>);
- c. *Payless ShoeSource Worldwide, Inc. v. Antonia Ojo*, CIRA Case No. 00364 (transfer of <paylessshoes.ca>);
- d. *Stanley Black & Decker, Inc. v. Antonia Ojo*, CIRA Case No. 00386 (transfer of <craftsman.ca>);
- e. *ADESA, Inc. v. Antonia Ojo*, CIRA Case No. 00391 (transfer of <adesapublicauction.ca>); and
- f. *Liberty Procurement Co. Inc. v. Antonia Ojo*, CIRA Case No. 00420 (transfer of <bedbathbeyond.ca>).

18. The Complainants say this pattern of conduct further demonstrates the Registrant's lack of legitimate interest in the Domain Names.

19. With respect to CDRP paragraph 3.1(c) (the Registrant has registered the domain name in bad faith as described in paragraph 3.5), the Complainants make three submissions:

- a. The Domain Names redirect visitors to a website for one of the Complainants' competitors, Experian. The Complainants say this falls within CDRP paragraph 3.5(d): "the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location".
- b. Previous panels have decided that where a website is used to direct visitors to a complainant's competitor, the domain name is used in bad faith. The Complainants cite several UDRP cases for this proposition.
- c. Since the Domain Names are "so obviously connected with" the Complainants, the Registrant has engaged in "opportunistic bad faith", which violates the CDRP.

B. Registrant

20. As noted, the Registrant failed to respond by the deadline in accordance with the CDRP Rules and did not seek an extension of time.

C. Remedy Sought

21. The Complainants seek an order to have the Domain Names transferred.

3. DISCUSSION AND FINDINGS

22. Although the Registrant did not respond to the Complaints, the Complainants must nonetheless establish their eligibility under the CPR and meet the three-part test set out in CDRP paragraph 3.1 in respect of each Domain Name.
23. For the reasons that follow, the Panel is satisfied one of the Complainants, ECC, meets the CPR, and that it satisfied all elements in the CDRP paragraph 3.1 analysis regarding all three Domain Names. The Panel will address the CPR and each of the paragraph 3.1 requirements in turn. Before doing so, the Panel will comment briefly on the CIIDRC's consolidation of the Complaints.
24. Although this decision pertains to three different domain names, all are minor variants of ECC's EQUIFAX Mark. The Panel need not undertake a discrete analysis for each of the Domain Names; the Panel's findings on each limb of the CDRP analysis applies equally to all three. Where necessary, the Panel references the evidence filed with each Complaint individually.

A. Consolidation of Complaints

25. As noted, the Complainants initially filed three Complaints, one for each of <eqifax.ca>, <eqifax.ca> and <quifax.ca>. This was necessary at the time since the WHOIS search for each of the Domain Names revealed the Registrant's name was "redacted for privacy" [**Complainant Annex 1**]¹.
26. Once CIRA identified the Registrant, the Complainants were in a position to have the three Complaints dealt with as one and before a single panel. This is because the CDRP Rules permit a single complaint to cover multiple domain name registrations provided they share the same Registration Information, as defined [**CDRP Rule 3.4**].

B. Eligibility

27. There are two Complainants, Equifax Inc. and ECC. The Complainants rightly point out that previous panels have permitted multiple complainants to file a single complaint [e.g. **TCF Canada Inc., CIIDRC Case No. 14777-CDRP**]. In such a case, at least one of them must meet the CPR [**CDRP paragraph 1.4**].
28. The Panel finds ECC meets the CPR. It is thus unnecessary to determine whether Equifax Inc. also meets the CPR. The balance of this analysis will proceed on the basis that ECC is the sole eligible complainant.
29. The CPR enumerates several grounds pursuant to which a complainant may establish standing. The two ECC relies upon are: 1) being a corporation under the laws of Canada or any province or territory of Canada [**CPR paragraph 2(d)**]; and 2) owning a trademark registered under the *Trademarks Act*, R.S.C. 1985, c.T-13, provided the complaint relates to a trademark registration "consisting of or including the exact word component of that registered trade-mark" [**CPR paragraph 2(q)**].
30. The Panel is satisfied ECC meets the CPR under paragraph 2(d), but not under 2(q).
31. Dealing first with CPR paragraph 2(d), the ECC furnished evidence that it holds a Canadian trademark registration for EQUIFAX (TMA 213693) [**Complainants' Annex 2**]. That registration lists ECC's address as 5700 Yonge Street, Suite 501, Toronto, Ontario, M2M 4K2.

¹ Since the Complainants were originally required to file three complaints, it produced annexes in support of each.

32. Since a non-Canadian corporation may have a physical location in Canada, ECC's trademark registration is insufficient to demonstrate compliance with CPR paragraph 2(d). However, the additional evidence ECC filed in response to the Panel's request fills that evidentiary gap. Specifically, ECC filed various certified true copies of documents issued by the Nova Scotia Registrar of Joint Stock Companies. Those documents easily demonstrate, on a balance of probabilities, that ECC is in fact duly incorporated in Nova Scotia. This satisfies CPR paragraph 2(d).
33. With respect to CPR paragraph 2(q), none of the Domain Names consist of or include "the exact word component" of the EQUIFAX mark or any of the other registered trademarks identified in the Complainants' evidence [**Complainants' Annex 3**]. CPR paragraph 2(q) is not met based on that provision's plain language. The Complainants did not rely on authority for the proposition that in a case such as this—where the impugned domain name is a misspelling of the complainant's mark, also known as "typosquatting"—CPR paragraph 2(q) is met despite the provision's plain language. In any event, paragraph 2(q)'s drafting is unambiguous.²

C. CDRP Requirements

34. In accordance with Paragraph 3.1 of the CDRP, ECC must show:
- a. The Domain Names are Confusingly Similar to a trademark or service mark in which ECC has rights predating the Domain Names' registration, and that it continues to have such rights;
 - b. The Registrant has no legitimate interest in the Domain Names; and
 - c. The Domain Names have been registered in bad faith.
35. The onus is on ECC to prove the Domain Names are confusingly similar and were registered in bad faith. ECC must also provide "some evidence" that the Registrant lacks a legitimate interest in the Domain Names [**CDRP paragraph 4.1**]. The onus then shifts to the Registrant to prove a legitimate interest [**ibid.**].
36. The Panel will consider each requirement in turn.

D. Analysis

1. The Domain Names are Confusingly Similar to a Mark in which ECC has Rights

37. On the first limb of the analysis, ECC must establish two things: 1) that it has active rights to a "Mark" preceding the Domain Names' registration; and 2) that the Domain Names are confusingly similar to that Mark.
38. CDRP paragraph 3.2 defines "Mark", inter alia as follows:
- (a) a trade-mark, including the word elements of a design mark, or a trade name that has been used in Canada by a person, or the person's predecessor in title, for the purpose of distinguishing the wares, services or business of that person or predecessor or a licensor of that person or predecessor from the wares, services or business of another person.

² Given the prevalence of typosquatting as a form of abusive domain name registration practice, one may ponder whether CPR paragraph 2(q) should be amended to recognize this reality. The Panel is nonetheless required to apply the CDRP (and CPR) as written.

...

(c) a trade-mark, including the word elements of a design mark, that is registered in CIPO.

39. CDRP paragraph 3.3 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”.
40. CDRP paragraph 1.2 clarifies that the “.ca” suffix is excluded from the confusion analysis. That ECC does not possess trademark registrations including “.ca” is therefore irrelevant to the analysis.
41. With respect to the first prong, ECC relies on various trademark registrations, including its Canadian trademark registration number TMA213693 for EQUIFAX. That registration dates to May 7, 1976 and remains active [**Complainants’ Annex 2**]. According to WHOIS information ECC recovered from CIRA’s website, the Registrant (or the Domain Names’ initial registrant) registered the Domain Names on the following dates:
 - a. Eqifax.ca – January 10, 2003 [**Complainants’ Annex 1 (eqifax.ca)**];
 - b. Quifax.ca – October 16, 2015 [**Complainants’ Annex 1 (quifax.ca)**]; and
 - c. Eqifax.ca – October 3, 2002 [**Complainants’ Annex 1 (eqifax.ca)**].
42. Based on the evidence, the Panel is satisfied that ECC’s EQUIFAX mark predates all the Domain Names’ registration dates.
43. With respect to the second prong, the Panel concludes all the Domain Names are confusingly similar to the EQUIFAX mark. Each Domain Name is a classic example of typosquatting. They all vary the EQUIFAX mark by omitting a single letter (either the “e”, the “u” or the “i”).
44. In addition to the UDRP authorities ECC relies upon, a number of CDRP panels have recognized typosquatting-based domain names as confusingly similar to the mark they approximate. Indeed, previous panels made such a finding in at least two proceeding against this Registrant [**Payless Shoesource Worldwide, Inc. v. Antonia Ojo, 1934-CDRP; Kijiji International Limited v. Antonia Ojo, CIRA Case No. 00307**].
45. In light of the foregoing, the Panel is satisfied ECC has met the threshold under CDRP paragraph 3.1(a) on a balance of probabilities in respect of all three Domain Names.

2. That the Registrant has No Legitimate Interest in the Domain Name

46. The CDRP places the initial onus on ECC to establish that the Registrant has no legitimate interest in the Domain Names. Given the difficulty inherent in proving a negative, the CDRP only requires ECC to lead “some evidence” sufficient to establish a lack of legitimate interest. The Registrant may then attempt to rebut that evidence by establishing a legitimate interest on a balance of probabilities [**CDRP paragraph 4.1; 14541-CDRP (calvinkleincanadaoutlet.ca), para. 53**]. As the Registrant filed no submissions, ECC clears this prong if it meets the “some evidence” threshold.
47. The panel concludes that it does.
48. CDRP paragraph 3.4 sets out a non-exhaustive list of six “legitimate interests”:

- a. the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;
 - b. the Registrant registered 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 registered 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 or 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.
49. CDRP paragraphs 3.4 (a)-(d) all require "good faith" on the Registrant's part. As explained in the bad faith registration analysis below, the Panel cannot conclude the Registrant registered (per paragraphs (b) and (c)) or uses (per paragraphs (a) and (d)) the Domain Names in good faith.
50. The Panel points out that ECC appears to mistake CDRP paragraph 3.4(a)'s content. It rests its conclusion that the Registrant has no rights in "the Mark" on the basis of its own registrations. This may be a valid point when the Domain Name comprises or contains the complainant's entire Mark (subject to the possibility that both the complainant and registrant have legitimate rights in an identical Mark). But this is insufficient when the domain name comprises or contains a *variation* on a complainant's Mark. CDRP paragraph 3.4(a) is concerned with whether a registrant has rights in the Mark represented in the *domain name*. Although almost certainly not the case here, it is, in general, possible for a registrant to have rights in a Mark represented in a domain name that is identical to, or confusingly similar with, a complainant's Mark. However, given ECC successfully demonstrated the Registrant's lack of good faith, this misapprehension does not affect the outcome.
51. The Panel also concludes ECC has led sufficient evidence to show the Registrant does not satisfy CDRP paragraph 3.4 (e) or (f).
52. With respect to (e), CIRA identified the Registrant as "Antonia Ojo". Regardless of whether this is the Registrant's true name or an alias, it does not match with any of the Domain Names. Absent evidence from the Registrant to the contrary, this is sufficient to sustain ECC's position.
53. With respect to (f), ECC correctly submits none of the Domain Names correspond with a geographical location. That legitimate interest ground therefore cannot apply.
54. Although unnecessary to reach a conclusion on this prong, the Panel finds merit in ECC's additional submissions on the Registrant's lack of legitimate interest. The Registrant's pattern of registering domain names adjudged to have offended the CDRP supports the inference that the Respondent lacks a legitimate interest in the Domain Names. The Registrant's default in this proceeding only strengthens that conclusion.

55. In light of the foregoing, the Panel is satisfied ECC provided “some evidence” that the Registrant lacks a legitimate interest in the Domain Names. The Registrant, given his or her silence, has failed to rebut on a balance of probabilities.

3. That the Registrant has Registered the Domain Name in Bad Faith

56. CDRP paragraph 3.5 provides a non-exhaustive list of circumstances demonstrating bad faith registration. ECC relies on paragraph 3.5(d) as well as arguments not based on the enumerated bad faith examples. Although the Panel is of the view that this situation falls outside paragraph 3.5(d), the Panel accepts ECC’s other arguments.

57. CDRP paragraph 3.5(d) reads as follows:

[T]he Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant’s website or other on-line location, by creating a likelihood of confusion with the Complainant’s Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant’s website or location or of a product or service on the Registrant’s website or location.

58. As ECC submitted, the website hosted at the Domain Names redirect visitors to ECC’s competitor’s website. Surely an Internet user who navigates to the Registrants’ landing pages, having thought they typed “Equifax” into their url field, would not be confused into thinking ECC sponsors, endorses or affiliates itself with the Registrant’s website. Indeed, the only confusion a user would likely encounter is why they landed on a website advertising ECC’s competitor when they were looking for ECC.

59. However, ECC prudently did not limit itself to the “cookie cutter” bad faith grounds listed in CDRP paragraph 3.4. As ECC submits, correctly in the Panel’s view, there is authority for the proposition that a registrant who engages in typosquatting has not registered the domain name in good faith [*Equifax Inc. v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. D2021-3815 (transfer of <equifax.com>); *Six Continents Hotels, Inc. v. Ramada Inn*, WIPO Case No. D2003-0658]. Although these are UDRP decisions, they remain instructive since the UDRP also requires a complainant to establish bad faith registration (in addition to bad faith use, which the CDRP does not require).

60. In light of the foregoing, the Panel finds ECC has established, on a balance of probabilities, that the Domain Names were registered in bad faith.

4 DECISION and ORDER

61. For the above reasons, in accordance with paragraph 4 of the CDRP and paragraph 12 of the CDRP Rules, the Panel finds in ECC’s favour and orders the Domain Names **TRANSFERRED** to ECC.

Made at Ottawa, Ontario on April 25, 2022

PANEL SIGNATURE



James Plotkin, Q.Arb

