

**IN THE MATTER OF A COMPLAINT PURSUANT TO THE
CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY**

Domain Name: ardene.ca

Complainant: Arden Holdings Inc.

Registrant: Bonfire Development Inc.

Registrar: Baremetal.com Inc.

Service Provider: Resolution Canada Inc.

Panel: James Minns (Chair), Sharon Groom, Teresa Scassa

A. The Parties

1. The Complainant is Arden Holdings Inc.
2. The Registrant is Bonfire Development Inc.

B. Disputed Domain Name and Registrar

3. The disputed domain name is *ardene.ca* (the “Domain Name”).
4. The registrar with which the Domain Name is registered is Baremetal.com Inc. (the “Registrar”).
5. The Domain Name was registered by the Registrant on May 23, 2018.

C. Procedural History

6. This is an administrative dispute resolution proceeding pursuant to the *CIRA Domain Name Dispute Resolution Policy*, version 1.3 dated August 22, 2011 (the “*Policy*”) and the *CIRA Domain Name Dispute Resolution Rules*, version 1.5 dated July 28, 2014 (the “*Rules*”).
7. The Complainant filed a Complaint (the “Complaint”) dated July 27, 2021, with Resolution Canada Inc. (the “Provider”). The Complainant also filed an Addendum to the Complaint dated August 13, 2021, providing a list of panelists that the Complainant wished to nominate as members of a panel.
8. The Provider on August 18, 2021, pursuant to Paragraph 4.3 of the Rules sent by e-mail to the Registrant English and French language versions of the Notice of Complaint filed by the Complainant, along with electronic versions of the Complaint and annexes thereto.
9. The Registrant filed a Response with Appendices attached dated October 16, 2021.
10. On November 11, 2021, the Provider appointed the Panel.
11. Based on the information forwarded by the Provider, the Panel holds that all technical requirements for the commencement and maintenance of this proceeding have been established.
12. The Panel is not aware of any other legal proceeding or other arbitration in relation to the Domain Name that would create a need to alter the progress of the proceeding pursuant to paragraph 13.2 of the *Rules*.

D. Panellist Impartiality and Independence

13. As required by paragraph 7 of the *Rules*, each of the members of the Panel has submitted

to the Provider a declaration of impartiality and independence for this dispute.

E. Remedy Sought

14. In accordance with paragraph 4.3 of the *Policy*, the Complainant has requested that the registration for the Domain Name be transferred to the Complainant.

F. Applicable Law

15. In accordance with paragraph 12.1 of the *Rules*, the Panel shall apply the laws of Ontario and the laws of Canada applicable within Ontario. Also, as stated in paragraph 4.2 of the *Policy* and paragraph 3.2(m) of the *Rules*, the Panel will render its decision in accordance with the *Policy* and the *Rules*.

G. Eligibility of the Complainant

16. Under paragraph 1.4 of the *Policy*, a complainant must satisfy CIRA's *Canadian Presence Requirements for Registrants*, one of which is that the Complaint relates to a trademark registered in the Canadian Intellectual Property Office ("CIPO") and the complainant owns the trademark.
17. The Complainant satisfies CIRA's Canadian Presence Requirements for Registrants Version 1.3 at Section 2(d) as it is a corporation under the laws of Québec; the Complainant's corporation number is 1160584208. Furthermore, the Complainant satisfies CIRA's Canadian Presence Requirements for Registrants Version 1.3 under Section 2(q) as the Complainant is the owner of trademarks which are the subject of a registration under the *Trademarks Act* R.S.C. 1985, c. T-13, for the exact word component of the Domain Name, namely ARDENE and thus is an eligible complainant under the *Policy*.

H. *CIRA Domain Name Dispute Resolution Policy*

18. Paragraph 4.1 of the Policy requires that the Complainant establish that:

4.1 Onus. To succeed in the Proceeding, the Complainant must prove, on a balance of probabilities, that:

a) the Registrant's dot-ca domain name is Confusingly Similar to a Mark in which the Complainant had Rights prior to the date of registration of the domain name and continues to have such Rights;

(b) the Registrant has registered the domain name in bad faith as described in paragraph 3.5;

and the Complainant must provide some evidence that:

(c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4.

I. *The Position of The Parties - The Complainant's Position*

The Complainant's Background

19. The Complainant is a family-owned Canadian value fashion retailer founded in 1982 and based in Montréal, Québec. It started as an accessories and jewelry retailer, and has since expanded to include clothing, shoes, brand collaborations, and licensed apparel. In addition to its online presence, the Complainant also operates (either directly or under licence) 375 stores across Canada and the United States, as well as in the Middle East, and occupies over 2 million square feet of retail space.

20. As part of its business operations, the Complainant has applied for and registered various trademarks, in Canada, the United States and in several other jurisdictions. In Canada more specifically, the Complainant owns several trademark applications and registrations, including a series of marks which contain the term "ARDENE". These

“ARDENE Marks” (17 Marks) are listed, and their full particulars are attached to the Complaint as Schedule B.

21. The ARDENE Marks are used and registered mainly in association with jewelry, accessories, clothing, and shoes. Screenshots of the Complainant’s website and social media accounts demonstrating the use of the ARDENE Marks by the Complainant are attached to the Complaint as Schedule C.

Complainant’s Position Re: Criterion One - Confusingly Similar to A Mark

22. The Domain Name was registered on May 23, 2018, by Bonfire Development Inc. (the “Registrant”); a screenshot of CIRA’s Whois Lookup for the Domain Name is attached to the Complaint as Schedule D.
23. The majority of the ARDENE Marks (including the ARDENE word mark TMA317,293) have been registered and used by the Complainant well before the registration of the Domain Name by the Registrant – in fact, the earliest registered ARDENE Mark dates back to 1986.
24. The Complainant has not given the Registrant any licence, consent, or authorization, whether express or implied, permitting the Registrant to use or register the ARDENE Marks as part of any domain name.
25. The Complainant has never acquiesced in any way to the use of the ARDENE Marks by the Registrant in the Domain Name.
26. Based on the foregoing, the Complainant submits that the Registrant has registered a domain name that is Confusingly Similar to the Complainant’s ARDENE Marks within the meaning of Section 3.3 of the Policy, as the Domain Name is comprised solely of the identical word component “ardene”. Moreover, the Complainant submits that the word

“ardene” is a coined word with no ordinary meaning in either French or English, which supports the conclusion that the Registrant registered the Domain Name with the intention of appropriating the Complainant’s ARDENE Marks.

Complainant’s Position Re: Criterion Two - Bad Faith

27. Based on its searches, the Complainant submits that the registration of the Domain Name by the Registrant was in bad faith, as described in Section 3.5 of the Policy.
28. On June 27, 2021, the Complainant conducted a reverse search on DomainIQ to identify other domain names owned by the Registrant; the results are attached to the Complaint as Schedule E (the “DomainIQ Search Report”).
29. The Complainant submits that the DomainIQ Search Report indicates that the Registrant has registered over 2,400 domain names and that 99% of these domain names have fewer than five web pages and are undeveloped. Further, several of these domain names consist of, or feature, well-known or famous trademarks owned by third parties or descriptive words, including as examples the following:

ALDOSHOES.CA	CHARMIN.CA
BRATZ.CA	CJAD.CA
CANADIANGOOSE.CA	CLASHOFCLANS.CA
COACHELLA.CA	F21.CA
EVANKO.CA	FODORS.CA
CAMBELLS.CA	FOOTLOCKERS.CA
AIRPORTER.CA	IMBD.CA
AMERICANEAGLE.CA	LEICA.CA
CANADAGOOSEPARKA.CA	IKEA.CA
CASADEI.CA	MANOIRESTSAUVEUR.CA

MCKINSEY.CA
NAUTILUS.CA
PRADA.CA

SUNJET.CA
TONKA.CA
WEST49.CA

30. Based on the results of the DomainIQ Search Report, the Complainant submits that the Registrant:
- i. registered or acquired the Domain Name primarily for the purpose of selling, renting, licensing, or otherwise transferring the Domain Name to the Complainant, Complainant's licensor, a licensee of the ARDENE Marks, or to a competitor of the Complainant for valuable consideration in excess of the Registrant's actual costs in registering or acquiring the Domain Name, in contravention of Section 3.5(a) of the Policy. The Complainant refers to Schedule F attached to the Complaint and points out that the Registrant's website available at the domain name BONFIRE.CA expressly states that "*[c]ertain domain names in our portfolio were purchased strictly as an investment and thus for future resale*";
 - ii. has engaged in a pattern of registering domain names in order to prevent persons who have rights in trademarks from registering the marks as domain names, and registered or acquired the Domain Name in order to prevent the Complainant from registering the ARDENE Marks as a domain name, in contravention of Section 3.5(b) of the Policy; and
 - iii. registered or acquired the Domain Name primarily because the use of the word component "ardene" in the Domain Name creates an undue association between the Registrant and the Complainant in contravention of Section 3.5(d) of the Policy. The use of the word component "ardene" in the Domain Name is attracting internet users who would be looking for Complainant's products and

services and would assume that the Registrant was affiliated with the Complainant.

31. The Complainant relies on the decision in *Optrex Limited v Nameshield Inc c/o Daniel Mullen*, DCA-1612-CIRA. In said case, it was demonstrated that the registrant had registered 4,664 .CA domain names. A significant number of these domains corresponded to well-known trademarks owned by third parties, such as <dolceandgabbana.ca>, <majorleaguesoccer.ca>, and <thenewyorktimes.ca>. The panel concluded that the <optrex.ca> domain had also been registered in bad faith, stating the following:

“46. The Panel finds that, on the balance of probabilities, the Complainant has established that the Registrant has engaged in a pattern of registering domain names identical to, or confusingly similar to, trademarks owned by other entities and in use prior to the registration of the domain name. The Registrant did not provide any response or explanation in respect of its conduct and failed to rebut the evidence presented by the Complainant.”

“49. Accordingly, the Panel finds that the Complainant has established, on the balance of probabilities, that the Registrant has registered the Domain in bad faith as described in paragraphs 3.5(b) and (d).”

32. The Complainant submits that in the *Optrex* case, the panel also made reference to the WIPO decision *Volvo Trademark Holding AB v Cup International Limited* (Case No D2000-0338). In this case, the complainant had a registration for the VOLVO OCEAN RACE mark and the registrant had registered the THEVOLVOOCEANRACE.COM domain name. The registrant also owned the AMERICASCUP.COM and TEAMNEWZEALAND.COM domain names, even though other third parties owned the rights to such marks. The decider indicated that *“The fact that the domain names ‘americascup.com’ and ‘teamnewzealand.com’ were registered by the Respondent when*

there were other owners of the trademarks ‘AMERICASCUP’ and ‘TEAMNEWZEALAND’ is in the Panel’s view prima facie evidence of the Respondent engaging ‘in a pattern of such conduct’ as envisaged in sub paragraph 4(b)(ii).”

33. The Complainant also refers to the CIRA decision *Queen’s University at Kingston v Oliver Twist Domains Inc* (December 14, 2017), referring to *British Telecommunications Plc & Ors v One In A Million Ltd & Ors* [1998] EWCA Civ 1272 (23 July 1998). In this case, the registrant had registered the domain name QUEENSUNIVERSITY.CA, and had also registered and held a large number of domain names consisting of or featuring well-known or famous trademarks of third parties. The registrant was found to be cybersquatting and misappropriating the goodwill owned by third parties, with an end to “*generate revenue through misrepresentations made to the public and/or by selling the domain name to the owner of the misappropriated goodwill, or both in sequence*”. Such a “business model” was found to be a “*core form of dishonest dealing*” and the Panel considered that the registrant registered the domain name QUEENSUNIVERSITY.CA in bad faith.
34. The Complainant notes that in order to establish bad faith, Section 3.5 of the Policy provides that any of the circumstances described in Subsections 3.5(a) to 3.5(d) would be sufficient for that purpose. The Complainant submits that, in the present case, the Registrant’s conduct as described above is relevant to several of the subsections and clearly demonstrates bad faith for the purpose of Section 3.5 of the Policy.

Complaint’s Position Re: Criterion Three - No Legitimate Interest

35. The Complainant submits that the Registrant had no legitimate interest in registering the Domain Name. The Complainant has conducted a search on the Canadian Trademark Register to identify active trademark applications or registrations owned by the Registrant. The search results indicate that, as of June 30, 2021, no trademarks were

applied for or registered in Canada in the name of the Registrant, including for a mark comprised of an “ardene” word component; the search results are attached to the Complaint as Schedule G.

36. The Complainant notes that as of the date of the Complaint, the Registrant is not using the Domain Name in association with any wares, services, business, or non-commercial activity. Rather, the Domain Name redirects to the ARDENE.COM domain name, the Complainant’s website, as demonstrated in screenshots taken on July 27, 2021, of the Domain Name attached as Schedule H to the Complaint.
37. In addition, a search conducted on July 6, 2021, on the Internet Archive Wayback Machine’s website WEB.ARCHIVE.ORG reveals that the Domain Name has been redirecting to the VANITYEMAIL.CA/ARDENE.CA domain name since at least as early as August 4, 2018, and until at least as late as May 19, 2019; the results of this search are attached as Schedule I to the Complaint.
38. The Complainant notes that VANITYEMAIL.CA is a domain name owned by the Registrant since at least as early as November 1, 2006, as reflected in Schedule E attached to the Complaint. As of July 6, 2021, this domain name redirects to the BONFIRE.CA domain name.
39. Considering that (i) the Registrant is not using the Domain Name in association with any wares, services, business, or non-commercial activity, (ii) “ardene” is not a generic name in Canada for goods or services nor is it a geographical location, (iii) “ardene” is not the legal name of the Registrant, and (iv) the Registrant has no rights in trademarks comprised of the word component “ardene”, the Complainant submits that the Registrant cannot claim to have any legitimate interests in the Domain Name within the meaning of Section 3.4 of the Policy.

J. The Position of The Parties - The Registrant's Position

The Registrant's Background

40. The Registrant describes itself as a web developer. It sees each domain as a potential investment in a new business opportunity. The Registrant has learned from trial and error that domain names are very valuable, both from a development potential and a resale potential. The Registrant acquires domain names because of their value and the right to develop and/or resell these valuable assets.
41. The Registrant offers as examples of its business model the domains CreditCards.ca and Jobs.ca. which Registrant acquired for a price well into the six-figures range, developed them, and later resold them.
42. In another example, the Registrant bought the domain "bonfire.ca" and created Registrant's company using this domain. The Registrant was approached by a corporation who wanted the domain for a new music streaming service. The Registrant sold the domain for a profit. A decade later the corporation abandoned their project, and the Registrant re-acquired the domain. Therefore, the Registrant now owns the bonfire.ca domain name again.
43. The Registrant buys some domains because they are similar to other domains the Registrant already owns. Future development efforts can be leveraged to develop and launch many domains using the same backend platform. The Registrant likes to acquire similar/related domains to domains it already owns.
44. The Registrant has acquired a large portfolio of thousands of generic domain names of various types. These types include:
 - i. 2-letter, 3-letter, and 4-letter acronym domains (i.e., o2.ca, op.ca, col.ca.

- ii. dictionary words (i.e., bonfire.ca, summit.ca, propel.ca)
 - iii. 2-word domains that create a common term or phrase (i.e., autoinsurance.ca, patentlawyer.ca)
 - iv. given names and surnames (i.e., brad.ca, jenkins.ca)
 - v. names of geographic places (i.e., cherryville.ca, westbank.ca, castlemountain.ca)
 - vi. geographic based 2-word domains (i.e., ottawaweather.ca, torontoplumbing.ca)
45. This is not an exhaustive list of generic domain "types". The Registrant has grown a portfolio primarily by buying domain names in the aftermarket, i.e., from existing owners on a domain-by-domain basis, as portfolio acquisitions of numerous domains in a single purchase, or from the CIRA approved TBR expiring domain auctions. The Registrant has a significant investment in its domain name portfolio. The Registrant's entire portfolio is reserved for future use in a development project, or possibly as a resale for profit.

Registrant's Position Re: Criterion One - Confusingly Similar to A Mark

46. The Registrant agrees and is aware that the domain name Ardene.ca is Confusingly Similar to Complainant's Mark. The Registrant submits that the same may be said for nearly every generic name or word in the dictionary. In some cases, a given name or word could be similar to many trademarks owned by many different owners. The Registrant is very careful to not infringe on anyone's trademarks. This is why The Registrant does not typically "park" domain names that are generic names with advertisements.
47. The Registrant agrees that the Complainant has applied for various trademarks. The Registrant does understand and fully respects the Complainants trademark rights.
48. The Registrant accepts the Complainant's marks as demonstrated in the Complaint. The Registrant agrees that the Complainant's marks appear to be legitimate examples of the Complainant's marks in use.

Registrant's Position Re: Criterion Two - Bad Faith

49. The Registrant purchased the Domain Name in an expired domain auction from Sibername and registered the Domain Name on May 23, 2018.
50. The Registrant notes that Complainant makes the statement that they have not given the Registrant authorization to use the Domain Name. The Registrant submits that is a false statement and suggests that the lawyer representing the Complainant may have not been aware of an agreement authorizing the use of the Domain Name.
51. The Registrant refers to Appendix D through F attached to the Response as showing correspondence from Ardene employees granting permission to use the ardene.ca domain name in partnership with Complainant's marketing department. The Ardene employees Vicki Marcoux, Marketing Director [Appendix B], and Eleanor Salines, Digital Marketing Manager [Appendix C] both granted permissions to partner with the Registrant's advertising partner, Affinity. Affinity operates the SitePlug service, which sends traffic from the Ardene.ca domain name on a zero-click basis (i.e., redirect).
52. The Complainant concludes that Registrant registered the Domain Name with the intention of appropriating the Complainant's marks. The Registrant does not agree and asserts that the Domain Name was registered due to it being a given name, used in Canada, just like the hundreds of other domain names the Registrant also owns of a similar type (given names and surnames).
53. The Registrant submits that the Complainant has provided no evidence that Registrant registered the Domain Name to "appropriate" the Complainant's Mark.

54. The Complainant alleges bad faith due to other domain registrations that are also trademarks of other businesses. The Registrant submits that Complainant's evidence is egregiously misleading. The Registrant submits that many of the domains listed are not even registered, let alone registered by Registrant, therefore Registrant submits that this evidence was knowingly submitted as being false and misleading.
55. In addition, the Registrant submits that other domains that are registered and owned by Registrant are inherently generic as well. Out of thousands of generic domains Registrant owns, many will have existing trademarks as most common dictionary words or names are included in some existing trademarks. This is exactly why a trademark is specific to products or services and does not cover every possible use of a word.
56. The Registrant states that the following domains are registered, but are not owned by Registrant, contrary to the Complainant's assertion in its submission:
aldoshoes.ca
ikea.ca
tonka.ca
57. The Registrant states that the following domains are not even registered by anyone and are free to register:
canadagooseparka.ca
clashofclans.ca
evanko.ca
imbd.ca
manoirestsauveur.ca
58. The Registrant states that the following generic domains are owned by Registrant:
canadiangoose.ca - an animal, multiple trademarks but all incorporate additional words
cambells.ca - a surname, no trademark found in CIPO

cjad.ca - an acronym, no trademark found in CIPO

fodors.ca - a surname, no trademark found in CIPO

leica.ca - a surname, multiple trademarks found in CIPO

mckinsey.ca - a surname, one trademark found in CIPO

bratz.ca - a surname, multiple trademarks found in CIPO

coachella.ca - a city in California, we own many California city names in the .CA space.

airporter.ca - a type of service, one trademark found in CIPO but incorporates additional words

casadei.ca - a surname, multiple trademarks found in CIPO

footlockers.ca - containers for storing personal items, especially used in military

nautilus.ca - an animal, <https://en.wikipedia.org/wiki/Nautilus>

americaneagle.ca an animal, https://en.wikipedia.org/wiki/American_Eagle

charmin.ca, a given name/first name. Registrant knows a girl from high school with this first name

f21.ca - acronym, one trademark found in CIPO but incorporates another word

prada.ca - a surname, multiple trademarks found in CIPO

sunjet.ca - a two-word domain, thought it would be a good travel website. One trademark for inkjet printers.

west49.ca - in reference to the 49th parallel, the US/Canada border, no trademark found in CIPO

59. Registrant submits that the Complainant's the bad faith evidence is very misleading by listing domains Registrant clearly does not own or are not even registered. Further domains listed are clearly generic names, places, animals, items, etc... Some don't even have any existing trademarks as the Complainant is clearly trying to imply.
60. Registrant argues that trademarks will exist on many words and names, but that trademark registration does not grant full rights to every potential use of that word. Registrant acknowledges and respects the various trademark owner's marks, and the

Registrant works to ensure that Registrant does not infringe. Even the Complainant does not show any real evidence of infringement regarding the Ardene.ca domain name.

61. The Registrant submits that the Complainant has provided no real evidence of bad faith other than pure conjecture.
62. Regarding the cases cited by Complainant the Registrant submits that *Optrex Limited vs Nameshield*, and *Queen's University vs Oliver Twist Domains* are irrelevant due to the fact that "ardene" is generic word that is a given/first name, while the examples in the cases cited are of egregious trademark infringement.

Registrant's Position Re: Criterion Three - No Legitimate Interest

63. The Registrant indicates the specific Domain Name in question, ardene.ca, was registered as being part of a list of given names/surnames. The Registrant refers to Appendix A attached to the Response for evidence of use as a given name in Canada.
64. The Registrant previously developed and ran a vanity email service on the website vanityemail.ca. Many other given names and surnames were redirected to the vanityemail.ca service, where users could rent an email address from the Registrant. As Registrant came across expiring domains in the TBR process, or through aftermarket sales, the Registrant has continued to acquire additional given names and surnames for this purpose.
65. A change in pricing from the Registrant's initial email service provider made the model no longer successful and the service was shut down in 2020 to stop new email address orders from coming in. The Registrant has not found another cost-effective and suitable replacement.

66. The Registrant claims to own approximately 800 domain names that are exact matches for given names and surnames, so although the vanity email service remains shuttered to new customers, it is one of Registrant's future development projects to re-launch the service with a new mail provider and website. As the Complainant has pointed out, Archive.org has verified that the Ardene.ca domain name was used precisely in this way for the first couple years Registrant owned it.
67. The Registrant notes that the VanityEmail service had been running since as far back as 2009 and earlier.
68. The Registrant submits that this use clearly establishes the Registrant's legitimate interest in the domain Ardene.ca in conjunction with the VanityEmail service.
69. The Registrant submits that the act of selling .CA domain names at prices exceeding registration costs is specifically allowed/endorsed/permitted by CIRA through the resale of expired domain names by registrars through CIRA's TBR system and subsequent auctions. This system is designed to specifically exclude the general public from being able to register domains at normal registration costs and that they can only be acquired through highest bidder auctions.
70. The Registrant submits that the act of selling domain names for profit above registration costs is completely supported by CIRA as long as the new purchaser accepts the CIRA terms and conditions. That has always legitimized buying and selling .CA domain names as a legitimate interest - subject to the CIRA terms of service.
71. The Registrant submits that reselling domains for profit is a legitimate interest. Developing the domain first, then reselling is always the preferred option as the Registrant is able to increase the resale value and profit by doing so. On occasion, the Registrant does sell undeveloped domain names when it makes sense to do so.

J. Discussion and Analysis

Discussion Re: Criterion One - Confusingly Similar to A Mark

72. The Complainant registered the trademark ARDENE on August 15, 1986, as TMA317,293 well before the Registrant registered the Domain Name on May 23, 2018. The Complainant asserts that the Complainant has not given the Registrant any license, consent, or authorization, express or implied, to use or register the Ardene Marks as part of any domain. The Complainant has never acquiesced in any way to the use of the Ardene Marks by the Registrant in the Domain Name. The Domain Name is comprised solely of the identical word component “ardene” as the Domain Name. The Complainant states that the word “ardene” is a coined word with no ordinary meaning in either French or English. The Complainant concludes that the registrant’s intention is to appropriate the Complainant’s Mark.
73. The Registrant agrees that the Domain Name is Confusingly Similar to the Complainant’s Marks. The Registrant submits that every generic name or word in the dictionary may be confusingly similar to many different trademarks. The Registrant is careful not to infringe the trademarks of others. The Registrant for example avoids “parking” domain names with advertising links. Otherwise, the Registrant understands and accepts the Complainant’s Marks to be legitimate and in use.
74. For the purposes of determining that the Domain Name is “Confusingly Similar,” the Domain Name, omitting the “.ca.” portion is compared to the ARDENE trademark. According to well-established practice under the Policy, the respective usage is not taken into account; only the domain name and the mark are compared. This comparison shows that the Domain Name and the Complainant’s Mark are for all practical purposes identical and therefore Confusingly Similar.

75. The panel finds and accepts that the Complainant has satisfied the onus on a balance of probabilities under Paragraph 4.1(a) of the Policy in concluding that the Registrant's Domain Name is Confusingly Similar to the Complainant's Mark.

Discussion Re: Criterion Two - Bad Faith

76. The Complainant relies on a DomainIQ domain name search conducted June 27, 2021, to demonstrate bad faith on the part of the Registrant. The search shows a list of 2,433 domain names associated with the Registrant. The Complainant submits that 99% of the domains have fewer than 5 website pages or are undeveloped. Several of the domains listed are said to feature known or famous trademarks owned by others or descriptive words.
77. The Complainant argues based on the search results that: (i) the Registrant's purpose in registering the Domain Name was to sell the Domain Name to the Complainant (Paragraph 3.5(a) of the Policy); (ii) the list shows a pattern of registering domain names to prevent others with trademark rights from registering the domain names (Paragraph 3.5(b) of the Policy); and (iii) the registration of the ardene.ca domain name creates an undue association between the Complainant and Registrant which attracts users looking for the Complainant's products (Paragraph 3.5(d) of the Policy).
78. In reply, the Registrant claims many of the domains listed by Complainant are not registered, or are not registered by Registrant, or many may have existing trademarks as most are common dictionary words or names. The Registrant argues that the protection afforded to trademark registered words or names is limited to specific wares and services. Registrant submits the evidence the Complainant submitted is knowingly false and misleading.

79. The DomainIQ domain name search conducted by Complainant on June 27, 2021, would appear to be incomplete or misguided. The Complainant states that it conducted a reverse search to identify domain names owned by the Registrant. The search results appear to reflect all domain names that may have ever been registered to Registrant at some point in time in the past or present. The search result is a list of 2,433 domains. A quick scan of the search results indicates that most of the listed domains have either expired or were transferred in 2018 or 2019. Indeed, the subject Domain Name Ardene.ca is shown as having expired as of May 23, 2021.
80. The Complainant makes the statement that 99% of the domains on the list have fewer than 5 website pages or are undeveloped. No evidence is offered in support of this contention.
81. The Complainant makes the statement that several of the domains listed are said to feature known or famous trademarks owned by others or descriptive words. The Complainant in the Complaint does list 26 domains from the DomainIQ list as examples of domains featuring known or famous trademarks owned by others or descriptive words. The Complainant offers no evidence to support the contention that one or more of the domains listed are trademarks or famous trademarks.
82. The Registrant denies ownership of three of the domains listed by Complainant. Registrant states that five of the domains listed by Complainant are not even registered. Registrant asserts that the remaining 18 domains listed by Complainant are generic word domains owned by Registrant and offers a specific illustration of the generic nature of the word used in the domain name.
83. The panel finds that the DomainIQ reverse survey is not a complete or reliable source of evidence to support a bad faith claim under Paragraph 3.5(a), (b) or (d) of the Policy.

84. To demonstrate Bad Faith under the Policy the Complainant must show, on the balance of probabilities, that the domain name was registered in bad faith. Paragraph 3.5 of the Policy lists several grounds which constitute bad faith, and it must be noted that the list is not exhaustive. It is open to the panel to find other grounds which lead to a conclusion of bad faith conduct.
85. The Complainant in the Complaint relies on Paragraph 3.5(a), (b) and (d) of the Policy in alleging bad faith by the Registrant.
86. Paragraph 3.5(a) [paraphrased] pertains to registration of a domain name primarily for the purpose of selling, renting, licensing or otherwise transferring the Registration to the Complainant, or a licensor, licensee, or competitor for an amount in excess of the actual cost in registering the domain name or acquiring the registration. There is no evidence showing that Registrant at any time tried to sell, rent, license or otherwise transfer the Domain Name to the Complainant or others. The evidence shows that the Registrant registered and used the Domain Name primarily as a generic name in connection with the development of a vanity email business opportunity.
87. The panel finds that the Complainant has provided no evidence that the Registrant registered the domain name to appropriate the Complainant's trademark(s).
88. Paragraph 3.5(b) [paraphrased] speaks to the registration or acquisition of a domain name 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 with others has engaged in a pattern of registering domain names to prevent persons who have Rights in Marks from registering the Marks as domain names. There is no evidence showing that the Registrant registered or acquired the Domain Name to prevent or deprive the Complainant or others from the opportunity of registering the Mark as a domain name. The Complainant registered the ARDENE Mark on August 15, 1986. The Registrant

registered the Domain Name on May 23, 2018. The Complainant had every opportunity to register the Domain Name during the intervening years between 1986 and 2018.

89. Paragraph 3.5 (c) requires that [paraphrased] 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. The Registrant must be a competitor of the Complainant for Paragraph 3.5 (c) to apply. There is no evidence to suggest that the Registrant is a competitor of the Complainant.
90. In Paragraph 3.5(d) the Registrant [paraphrased] must intentionally attempt 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 source, sponsorship, affiliation, or endorsement of the Registrant's website or location of a product or service on the Registrant's website or location.
91. The Registrant denies the Complainant's statement that the Registrant was not authorized to use the Complainant's domain name. The Registrant suggests the Complainant's legal counsel may not have been aware of a relationship under which the Complainant granted permission to Affinity, who is Registrant's advertising partner, and operates a SitePlug service, which sends traffic from the Ardene.ca domain name on a zero-click basis (i.e., domain redirect) to the Ardene.com domain.
92. The Registrant asserts that it registered and has used the Domain Name as a given name with the intention of adding it to inventory as part of a vanityemail.com domain name development effort.
93. The evidence presented by Complainant and Registrant indicated the Registrant acquired the Domain Name on May 23, 2018. A search on WEB.ARCHIVE.ORG reveals the Domain Name has been redirecting to the VANITYEMAIL.CA/ARDENE.CA domain

since at least August 4, 2018 and continuing until at least as late as May 19, 2019. There then seems to be a gap in the evidence as to the use of the Domain Name from August 4, 2018, until some time in December 2019. As of July 6, 2021, the Domain Name is redirected to the Registrant's domain at bonfire.ca. Up to this point the use of the Domain Name does not fall within the rubric of Paragraph 3.5(d) of the Policy.

94. The Registrant next submits that beginning in December 2019 the Domain Name was redirected to Complainant's ardene.com website with the permission of the Complainant. The Registrant relies on an exchange of emails between Complainant's employees and representatives of a company or organization called Affinity in relation to a marketing service called SitePlug. The Registrant asserts that Affinity is an advertising partner with the Registrant.
95. There is nothing in the exchange of emails produced by Registrant as Appendix D through F to show that Complainant's employees knew or ought to have known of the involvement of the Registrant or that the Affinity marketing service SitePlug would be redirecting Internet traffic from the ardene.ca domain to the ardene.com domain.
96. The activities of the Registrant described above do not fit entirely within the parameters of Paragraph 3.5(d). Paragraph 3.5(d) may be satisfied if the Registrant receives commercial gain by redirecting domain name traffic on a zero-click basis to the Complainant's ardene.com website. The evidence indicates that the Domain Name is an undeveloped website and therefore it can not be said that the Registrant is, "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."

97. The panel finds and accepts that the Complainant has not satisfied the onus on a balance of probabilities under Paragraph 4.1(b) of the Policy in concluding that the Registrant has not registered the domain name in bad faith as described in Paragraph 3.5 of the Policy.

Discussion Re: Criterion Three - No Legitimate Interest

98. The Complainant submits that the registrant is not using the Domain Name in association with any wares, services, business, or non-commercial activity. The word “ardene” is not a generic name for goods, services, or a geographic location. The Registrant has no trademark(s) using or incorporating the “ardene” word. The word “ardene” not the Registrant’s name. Therefore, based on the forgoing the Complainant submits that the Registrant has no legitimate interest in the Domain Name.
99. The Registrant submits that “ardene” is a given name or surname. In support of this contention the Registrant has produced as Appendix A a LinkedIn list of 14 results showing people in Canada with “Ardene” as a first name. This evidence is presented in conjunction with Registrant’s position that the Registrant has a legitimate interest in the Domain Name for use in the Registrant’s vanityemail.com email rental service in operation since as early as 2009.
100. The Registrant claims to have 800 domains which are exact matches for names and surnames. The Vanity Email service was shutdown by Registrant in 2020 due to increased costs for email provider services. The Registrant states that it intends to re-launch the site in the future.
101. The Registrant submits that the buying and reselling of domain names for profit above registration costs is a legitimate interest completely allowed/endorsed/permitted and

supported by CIRA and the CIRA TBR system and subsequent auctions if the new purchaser accepts the CIRA terms and conditions.

102. The panel finds and accepts that the Complainant has not satisfied the onus to provide some evidence that the Registrant does not have a legitimate interest under Paragraph 4.1(c) of the Policy and that the Registrant has shown in the balance of probabilities that it has a legitimate interest in the Domain Name as described in Paragraph 3.4 of the Policy.

K. Conclusion and Decision

103. Thus, for all the reasons set out above, the Panel declines to order the transfer of the registration for the Domain Name to the Complainant. The Complaint is dismissed.

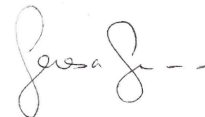
December 2, 2021



James Minns, Chair



Sharon Groom



Teresa Scassa