



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE
DOMAIN NAME DISPUTE
ADMINISTRATIVE PANEL
DECISION

CIIDRC case number:	18868-CDRP	Decision date: January 26, 2023
Domain Name:	eequifax.ca	
Panel:	Thomas Manson, K.C.	
Complainants:	Equifax Inc. and Equifax Canada Co.	
Complainants' representative:	Douglas M. Isenberg, Esq.	
Registrant:	Mike Morgan	

1. PROCEDURAL HISTORY

The Canadian International Internet Dispute Resolution Centre ("CIIDRC") is a recognized service provider approved by the Canadian Internet Registration Authority ("CIRA").

This is a dispute resolution proceeding under the CIRA Domain Name Dispute Resolution Policy (the "Policy", "CDRP") and the CIRA Dispute Resolution Rules (the "Resolution Rules").

This matter concerns <eequifax.ca> (the "Disputed Domain Name").

The Registrar for the Disputed Domain Name is BareMetal.com Inc.

On December 8, 2022, Douglas M. Isenberg, Esq., counsel for the Complainants Equifax Inc. and Equifax Canada Co., submitted a complaint (the "Complaint") to CIIDRC pursuant to the CDRP and the Resolution Rules.

The identity of the Registrant was not published in the public WHOIS database; therefore, the Registrant's name was not included in the Complaint.

On December 8, 2022, CIRA was notified of this proceeding. On December 9, 2022, CIRA transmitted by email to CIIDRC its verification response providing the identity of the Registrant. CIRA also confirmed that the Disputed Domain Name was placed on a Registrar LOCK.

Pursuant to Resolution Rule 4.4, CIIDRC notified the Registrant of this administrative proceeding by email on December 9, 2022. The Registrant was also advised thereby that in accordance with Resolution Rule 5.1 a registrant had 20 days to respond to a complaint by filing with the Provider a Response in accordance with the Policy and Resolution Rules. In particular, the Registrant was advised “Your response, as registrant is due not later than December 29, 2022.”

Further, on December 9, 2022, CIIDRC advised the Parties (the “Notification of Commencement Letter”), among other matters, that the Complaint was in administrative compliance with CIRA’s requirements, and the commencement date of the proceeding was December 9, 2022.

The Notification of Commencement Letter also provided the identity of the Registrant to the Complainants and advised that pursuant to para. 11.1 of the Resolution Rules: “where the Registrant’s identity is not published in the public WHOIS database, the Complainant shall have a right to make a further submission to the Panel, including adducing further evidence, with respect only to the issue of the Registrant’s legitimate interest (or lack thereof) in a domain name”. However, no such submissions were made by the Complainants.

The Registrant did not file a response by the due date of December 29, 2022 (or at all).

The Complainants in this administrative proceeding elected an administrative panel consisting of a single-member.

By email dated January 5, 2023, CIIDRC appointed the undersigned as a single-member panel (the “Panel”) in this matter. The undersigned completed and submitted to CIIDRC a Statement of Acceptance and Declaration of Impartiality and Independence. In the result, this Panel has been properly appointed and constituted as the Panel to determine the Complaint in accordance with the CDRP and Resolution Rules.

An issue arose at the outset concerning the correct version of the CDRP as CIRA had two versions on its website (cira.ca) – one in HTML and the other in PDF. The Complainants referred to and referenced the Policy on the CIRA website and attached an HTML version as Annex 4 to the Complaint. However, the Panel determined that the HTML version was in error and advised counsel for the Complainants and the Registrant:

“I intend to approach this matter on the basis of the PDF version of the CIRA Policy, rather than the HTML version (Annex 4). The HTML version is clearly flawed in that it does not identify what must be proved on a balance of probabilities and treats 4.1(a), (b) and (c) as merely requiring “some evidence”. Further, there is nothing to suggest any amendment of the long-standing CIRA Policy as expressed in the PDF version of ver 1.3 of the policy (dated August 22, 2011).”

and the parties were given an opportunity to make submissions or applications in connection with the appropriate CDRP policy or otherwise, forthwith and no later than January 10, 2023. Counsel for the Complainants acknowledged this disposition and expressed no comment or objection to the Panel’s observation and disposition. No response was given by the Registrant.

A second request for further evidence or argument was made by the Panel to the parties by email dated January 13, 2023, with respect to the Complainant Equifax and the allegations of bad faith made by the Complainants. Counsel for the Complainants responded by email dated January 18, 2023. No response was given by the Registrant. Those matters are addressed below in this Panel Decision.

2. FACTS

As the Registrant did not submit a response to the Complaint within the period required to do so (or at all), this Panel shall decide this Proceeding based upon the Complaint pursuant to Resolution Rule 5.8 and additional evidence and argument submitted pursuant to Resolution Rule 11.1 (which together constitute the complete record to be considered by the Panel (the “Record”) in accordance with Resolution Rule 11.2).

The Complainant Equifax Canada Co. (“Equifax Canada”) is a “Canadian entity” located at 5700 Yonge Street, Suite 1501, Toronto, ONTARIO M2M4K2. Equifax Canada is a subsidiary of the other Complainant, Equifax Inc. (“Equifax”).

Equifax Canada is the owner of the EQUIFAX Trademark (Reg. No. TMA213693, registered May 7, 1976) in Canada. Annex 2 is a printout of this registration from the website of the Government of Canada’s Canadian Trademarks Database, along with a report showing 11 registrations for the EQUIFAX trademark in Canada.

Equifax is the owner of the EQUIFAX Trademark in the United States and elsewhere.

Equifax Canada is also the registrant of the domain name <equifax.ca> , which was created on September 19, 2000. The WHOIS record for this domain name (Annex 8) shows that the registrant is “Equifax Canada Co – TMA494966¹. The Complainant Equifax Canada uses the domain name in connection with its primary website in Canada. A screenshot of the home page of Equifax Canada’s website (<https://www.consumer.equifax.ca/personal/>) was shown in Annex 9.

The Complainants provided the Equifax 2021 Annual Report with portions of its US FORM 10-K (together, Annex 5) which describes the global and Canadian operations of the Complainant Equifax. This states, in part (at page 8 of the 10-K):

Canada. Similar to the USIS business units, our Canada operation offers products derived from the credit information that we maintain about individual consumers and businesses. We offer many products in Canada, including credit reporting and scoring, consumer and commercial marketing, risk management, fraud detection and modelling services, identity management and authentication services, together with our decisioning products that facilitate pre-approved offers of credit and automate a variety of credit decisions. We also provide information, technology and services to support debt collections and recovery management, as well as data, technology and services to facilitate the search of land data and process real estate transactions in Canada.

This Panel understands that this is a description of the operations of the Complainant Equifax Canada.

The Disputed Domain Name was created October 22, 2022 (Annex 1) – 47 years after Equifax’s first registrations for the EQUIFAX Trademark (U.S. Reg. Nos. 1,027,544; 1,045,574; and 1,644,585 – Annex 10) and 46 years after Equifax Canada’s first registration for the EQUIFAX Trademark in Canada (Canadian Reg. No. TMA213693) as shown in Annex 2.

The Registrant has no rights in the EQUIFAX Trademark (or any mark similar thereto).

The Registrant is using the Disputed Domain Name in connection with a pay-per-click (“PPC”) or monetized parking page that contains “links” or “affiliate links” for “services” or “goods and services” associated with or related to the EQUIFAX Trademark, including “Equifax Credit Report,” “Credit Scores,” and “3 in 1 Credit Report” (Annex 11).

3. CONTENTIONS OF THE COMPLAINANTS

The Complainants allege that the “Complaint” satisfies the Canadian Presence Requirements for Registrants (“CPR”) via paragraph 2(d) which provides that a “corporation under the laws of Canada or any province or territory of Canada” is eligible to hold and maintain the registration of a .ca domain name. As noted above, the Complaint specifically alleges that Equifax Canada is a “Canadian entity” located in Toronto, Ontario. In

¹ This corresponds to the Complainant’s registration for the trademark “EQUIFAX CANADA” registered May 21, 1998; this is shown at page 4 of Annex 3 to the Complaint.

referring to paragraph 2(d), this Panel understands that the “Canadian entity” reference is to a Canadian corporation, namely Equifax Canada.²

The Complainants did not allege that Equifax, a corporation incorporated or organized in the State of Georgia, is a “Canadian entity” or otherwise able to satisfy the CPR. Moreover, in response to the second request for further evidence or argument made by this Panel, no basis was put forward to establish that joinder of Equifax was necessary for the resolution of this proceeding.

The Complainants submit that the Disputed Domain Name is confusingly similar to the EQUIFAX trademark in its entirety, adding only an extra letter “e” at the beginning.

The Complainants further submit that the Registrant has no legitimate interest in the Disputed Domain Name, pursuant to paragraph 3.1(b) of the CDRP, including under any of the factors set forth in paragraph 3.4 of the CDRP. Each factor is then addressed.

Finally, the Complainants submit that the Disputed Domain Name should be considered as having been registered in bad faith by Registrant in that the Registrant is using the Disputed Domain Name in connection with a monetized parking page that contains “affiliate links” for goods and services” associated with Complainant’s EQUIFAX Trademark, including links labelled “Equifax Credit Report,” “Credit Scores,” and “3 in 1 Credit Report.” The Complainants submit this is in violation of paragraph 3.5(d) of the CDRP. Additionally, because the Disputed Domain Name is “so obviously connected with’ Complainant”, Registrant’s actions suggest “opportunistic bad faith” in violation of the CDRP.

Remedy Sought

The Complainants request the Panel issue a decision that the domain-name registration be transferred to “the Complainant”.

4. DISCUSSION AND FINDINGS

Although the Registrant did not respond to the Complaint, the Complainants must nonetheless establish their eligibility under the CPR and meet the three-part test set out in the Policy in respect of the Disputed Domain Name.

4.1 Eligibility

There are two Complainants, Equifax and Equifax Canada. The CPR apply to certain “individuals and entities” as specified thereafter. The Complainants allege that the “Complaint” (apparently in reference to Equifax Canada) satisfies the CPR via paragraphs 2(d) and 2(q) of the CPR. The Complainants also allege that previous panels have found that “Complainant” satisfied the Canadian presence requirements - *Equifax Inc. and Equifax Canada Co. v. Antonia Ojo/0902066 BC Ltd.*, CIIDRC Case No. 16881-CDRP (eqifax.ca; eqifax.ca; and quifax.ca); *Equifax Inc. and Equifax Canada Co. v. Mike Leigh*, CIIDRC Case No. 18329-CDRP; and *Equifax Inc. and Equifax Canada Co. v. Mike Leigh*, CIIDRC Case No. 18328-CDRP (equifax.ca). To this list may also be added *Equifax Inc. and Equifax Canada Co. v. Mike Morgan*, CIIDRC Case No. 18867-CDRP (equifax.ca). However, some of these decisions are problematic when eligibility of *complainants* is addressed with reference to an essentially undifferentiated *complainant* or the *complaint*.

The issue of eligibility was clearly addressed in *Equifax Inc. and Equifax Canada Co. v. Antonia Ojo/0902066 BC Ltd*, CIIDRC 16881-CDRP (April 25, 2022). The two complainants there are the same as the two in this proceeding. As in this case, Equifax Canada was identified as the entity at the same Toronto address and

² This was certainly the finding of the panel in a recent proceeding involving the same complainants as here, *Equifax Inc. and Equifax Canada Co. v. Antonia Ojo/0902066 BC Ltd.*, CIIDRC Case No. 16881-CDRP (eqifax.ca; eqifax.ca; and quifax.ca). There, the panel concluded (at para 32) that Equifax Canada was “duly incorporated in Nova Scotia”.

holding the same Canadian trademark (TMA 213693). There, the Panel found (at para. 30) that Equifax Canada met the CPR under paragraph 2(d), but not under 2(q). The Panel also noted (at para. 29) “The balance of this analysis will proceed on the basis that ECC is the sole eligible complainant.”

Dealing in this proceeding with the Complainant Equifax Canada, the decision in *Equifax Inc. and Equifax Canada Co. v. Antonia Ojo/0902066 BC Ltd*, CIIDRC 16881-CDRP (April 25, 2022) is persuasive. This Panel also finds that Equifax Canada meets the requirements of 2(d). However, as such, it cannot rely on para. 2(q) since that applies only where “A Person which does not meet any of the foregoing conditions ...”.

With respect to the Complainant Equifax, the Complaint alleges (in Footnote 1 of the Complaint) that the Complainants are referred to “interchangeably, as the context may require or allow”. However, in response to the Panel’s request of January 13, 2023, counsel advised that the Complainant Equifax was:

“not a necessary party to this proceeding but was included ... for clarity, that is to explain the relationship between Equifax Canada Co. (which satisfies the Canadian presence requirements) and its parent company, Equifax Inc.”

As Equifax was included as a party for only evidentiary purposes, it is unnecessary to determine whether the Complainant Equifax also meets the CPR so as to stand as an eligible complainant under the CDRP.

This Panel notes that *Equifax Inc. and Equifax Canada Co. v. Antonia Ojo/0902066 BC Ltd*, CIIDRC 16881-CDRP (April 25, 2022), at para. 28, also approached the proceeding before it based on a single eligible complainant, Equifax Canada.

Hereafter, when referring to “the Complainant” this Panel refers only to Equifax Canada.

4.2 Requirements

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

- (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; and
- (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.

This Panel will consider each of these requirements in turn.

4.3 Analysis

The purpose of the CDRP is to provide a forum in which cases of bad faith registration of domain names registered in the dot-ca country code top level domain name registry operated by CIRA ... can be dealt with relatively inexpensively and quickly; that purpose is kept in mind throughout.

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

To succeed in this proceeding, paragraph 4.1(a) of the Policy requires the Complainant to establish, on a balance of probabilities, that the Registrant's dot-ca domain name be Confusingly Similar to a Mark in which the Complainant had Rights prior to the date of registration of the domain name and continue to have such Rights.

With respect to Rights to a Mark, the Complainant satisfies this requirement through its rights to the EQUIFAX Mark. Again, *Equifax Inc. and Equifax Canada Co. v. Antonia Ojo/0902066 BC Ltd*, CIIDRC 16881-CDRP (April 25, 2022) is persuasive. There, the Panel concluded at para 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].

This is identical to the present case. Here too, the Complainant's EQUIFAX mark predates the registration date of the Disputed Domain Name and the Complainant continues to have such rights.

With respect to Confusing Similarity, the Disputed Domain Name must so nearly resemble the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark. In assessing similarity with respect to a domain name, the dot-ca suffix is ignored. The test to be applied when considering "confusingly similar" is one of first impression and imperfect recollection.

The Disputed Domain Name consists of the Complainant's EQUIFAX Mark and the addition of a single letter "e". Misspelling of a well-known mark has been found to give rise to confusing similarity pursuant to the CDRP; *Skyscanner Limited v Mike Morgan*, DCA-2180-CIRA (Feb. 18, 2020) and *Skyscanner Limited v Kerwin Ivan*, DCA-2179-CIRA (March 3, 2020).

In *Indeed, Inc. and Indeed Canada Corp. v. Homayon Sadeghi / Marketing Reputation Inc.*, CIIDRC Case No. 16919-CDRP ("indeeds" compared with the trademark INDEED) the panel concluded (at para. 4.3.1.4):

The addition of the letter "s" after the INDEED Trademark amounts to typo-squatting and does not alleviate the confusion.

Likewise, in *AMAZON.com Inc. vs David Abraham*, DCA-784-CIRA ("amazons.ca" compared to AMAZON trademarks) the panel concluded:

Nor do we believe the addition of the letter "s" to the word "amazon" sufficient to distinguish the Disputed Domain Name AMAZONS.CA in appearance, sound or idea suggested from the AMAZON Marks.

Hence, the Complainant characterizes the Disputed Domain Name as a case of "typosquatting". In *Equifax Inc. and Equifax Canada Co. v. Mike Morgan*, CIIDRC Case No. 18867-CDRP (January 11, 2023) the panel described this practice as follows:

This is a common practice known as "typosquatting", which consists of insignificant modifications to trademarks to seek to wrongfully take advantage of errors by users in typing domain names into their web browser's location bar.

A typosquatting registration is designed to confuse; *Redbox Automated Retail, LLC d/b/a Redbox v. Milen Radumilo* WIPO Case No. D2019-1600. The Complainant refers to other cases including *Equifax Inc. and Equifax Canada Co. v. Antonia Ojo/0902066 BC Ltd*, CIIDRC 16881-CDRP (April 25, 2022) where the panel concluded that certain domain names were "confusingly similar to the EQUIFAX Mark". The panel there emphasized (in para 43):

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").

The addition of a single letter (the additional “e” here) does not change the characterization especially where the additional letter has an insignificant phonetic effect on a well-known mark, a confusing similarity may be found; *Hotwire, Inc. v. Webatopia Marketing Limited*, WIPO Case No. D2012-1985. (“houtwire” compared with the trademark “hotwire”). There is no doubt that “eequifax” is confusingly similar to the Complainant’s well-known trademark EQUIFAX.

Overview

This Panel concludes that the Disputed Domain Name is confusingly similar to the EQUIFAX mark in which Complainant Equifax Canada has rights and the Complainant has satisfied paragraph 4.1(a) of the Policy.

4.3.2 Whether the Registrant registered the Disputed Domain Name in Bad Faith

To succeed in this proceeding, paragraph 4.1(b) of the Policy requires the Complainant to demonstrate, on a balance of probabilities, that the Registrant registered the domain name in bad faith as described in paragraph 3.5. The Policy provides four examples of bad faith in paragraph 3.5, but these are non-exhaustive (*Equifax Inc. and Equifax Canada Co. v. Antonia Ojo/0902066 BC Ltd*, CIIDRC 16881-CDRP (April 25, 2022), not exclusive, or illustrative (see *SMS Equipment Inc. v. Tessier* CIRA Decision No 00472, 2022 and cases cited there).

The focus of the Complainant here appears to be on paragraph 3.5(d) of the Policy, which provides:

... any of the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence that a Registrant has registered a domain name in bad faith:

...

(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.

and “opportunistic bad faith”, which this Panel takes to be a generalized concept of bad faith (rather than conduct falling within an enumerated category of paragraph 3.5).

(a) Paragraph 3.5(d)

In this context, the Complainant says that the Registrant is using the Disputed Domain Name in connection with a PPC or monetized parking page that includes links for goods and services associated with Complainant’s EQUIFAX Trademark, including links labelled “Equifax Credit Report,” “Credit Scores,” and “3 in 1 Credit Report.” The Complainant says this use is a clear indication that 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,” in violation of paragraph 3.5(d) of the CDRP.

Further in response to the second request for further evidence or argument, the Complainant says that the Registrant should be considered a competitor of Complainants as a result of publishing a website (using the Disputed Domain Name) that contains links for services related to Complainants’ services, regardless of whether following the links leads to further websites that actually offer competitive services. In support of this approach, the Complainant relies on *LEGO Juris A/S v. James Carswell*, CIRA Case No. 00150 (Resolution Canada), where the panel found bad faith not because the PPC links were for direct competitors of the complainant but because (at para 26):

... the Registrant’s actions make it a competitor in that it is competing for the web traffic that would otherwise go to the Complainant by utilizing the Complainant’s well-known trade-mark in its domain name.

The diversion of web traffic from the legitimate LEGO sites to its own sites creates revenue for the Registrant through the sponsored links, at the expense of the Complainant.

The Complainant says the same is true here: by using the EQUIFAX Trademark in the Disputed Domain Name <eequifax.ca>, Registrant's website is competing with Complainants for traffic (regardless of where the links on Registrant's website ultimately lead). However, the Complainant is relying on para. 3.5(d) of the Policy, rather than para. 3.5(c). The passage above from *LEGO Juris A/S* is in the context of that panel's analysis of para. 3.5(c), which refers to competition. In this context, this Panel prefers to deal with the Complainant's submissions without importing a competition element.

According to the panel in *Daiichi Sankyo Company, Limited v. Nameshield Inc.*, CIRA Case No. 16060-CDRP (CIIDRC), a case relied upon by the Complainant:

Prior Panels have held that the use of a domain name to host monetized "pay-per-click" links can demonstrate bad faith. See *Home Depot International, Inc. & Home Depot of Canada Inc. v. Oliver Twist Domains Inc.*, DCA2082 (CIRA May 23, 2019) (where "[t]he Domain Name at times resolves to a pay-per-click parking page with links categorized under various headings and leading to sites of others, unrelated to the Complainants", the Panel "finds that the Registrant registered the domain name, homedepotprint.ca, in bad faith under paragraphs 3(b), 3(c) and 3(d) of the Policy.")

In *Daiichi Sankyo Company, Limited*, the complainant submitted a screenshot of the resolving daiichisankyo.ca website showing links titled "Pharmaceutical Company", "Labs", "Pharma Company", and "Sales". The complainant asserted that this was "a monetized parking page that contains affiliate links for goods and services associated with complainant's DAIICHI SANKYO Trademark". The panel in *Daiichi Sankyo Company, Limited*, concluded:

... the pay-per-click links at Respondent's website are related to Complainant's line of business. This, combined with the words that make up the Domain Name, leads to the conclusion, on a balance of probabilities, that Respondent is seeking to attract, for commercial gain, internet users to its daiichisankyo.ca website by creating a likelihood of confusion with the Complainant's DAIICHI SANKYO mark. The facts of this case fit the scenario of paragraph 3.5(d) of the Policy and thus Complainant has satisfied the requirement of paragraph 4.1(b).

Equally here, this Panel concludes that the Registrant's use of a PPC or monetized parking page that contains "links" or "affiliate links" for "services" or "goods and services" associated with the Complainant's EQUIFAX Trademark, including links labelled "Equifax Credit Report," "Credit Scores," and "3 in 1 Credit Report" is evidence of bad faith registration pursuant to para. 3.5(d) of the CDRP.

(b) "Opportunistic Bad Faith"

"Opportunistic bad faith" may fall within the generalized category of bad faith evident in the preliminary language of paragraph 3.5. The Complainant's argument is that because the Disputed Domain Name is "so obviously connected with" Complainant, Registrant's actions suggest "opportunistic bad faith" in violation of the Policy. This is consistent with the conclusion that misspellings characterized as "typosquatting" constitute *prima facie* evidence of bad faith registration (*Skyscanner Limited v Kerwin Ivan*, DCA-2179-CIRA (March 3, 2020) (at para. 51, with reference to "svscanner.ca", "skscanner.ca", "skysanner.ca", "skvscannr.ca", and "svkscanner.ca" domains and the SKYSCANNER Mark).

The "obvious connection" between the Disputed Domain Name and the Complainant arises from the similarity between <eequifax> and the EQUIFAX Mark as well as the Registrant's imputed or constructive knowledge of the goodwill of the Complainant's EQUIFAX Mark. There is no doubt that the Complainant's EQUIFAX Mark enjoys a wide reputation and can be considered a well-known trademark. Like the panel in *Equifax Inc. v. Balticsea LLC, Balcsea LLC*, WIPO Case No. D2022-2497 (Sept. 22, 2022) it is inconceivable to this Panel that the Registrant would have registered the Disputed Domain Name without being aware of the Complainant's well-known EQUIFAX Mark.

In *Equifax Inc. and Equifax Canada Co. v. Antonia Ojo/0902066 BC Ltd*, CIIDRC 16881-CDRP (April 25, 2022) the panel observed that:

... 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; *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).

This Panel has found that the Registrant engaged in typosquatting and his actions amount to “opportunistic bad faith” in violation of the Policy thus constituting evidence that the Registrant registered the Disputed Domain Name in bad faith.

(c) Registrant’s Non-participation

Last, the Registrant failed to file a response to the Complaint or otherwise participate in this Proceeding. This reinforces the findings of bad faith whether under para. 3.5(d) or generally under para. 3.5. “Failure to respond reinforces a finding of bad faith because a reasonable person with a legitimate claim to a domain name would likely respond with a correction or denial”; see para. 4.3.3.5 in *Indeed, Inc. and Indeed Canada Corp. v. Homayon Sadeghi / Marketing Reputation Inc.*, CIIDRC Case No. 16919-CDRP (July 14, 2022). “The Respondent, having neglected to participate in these proceedings, did not bring any evidence to support any good faith reason for having chosen to register the disputed domain name; such evidence is not apparent from the record, and the Respondent has to bear the consequences of its default in that regard.”; see *Equifax Inc. v. Balticsea LLC, Balcsea LLC*, WIPO Case No. D2022-2497 (Sept. 22, 2022). These observations are relevant here.

Overview

This Panel finds that the Registrant registered <eequifax.ca> in bad faith and the Complainant has satisfied paragraph 4.1(b) of the Policy.

4.3.3 Whether there is “some evidence” that the Registrant has No Legitimate Interest in the Disputed Domain Name

To succeed in this proceeding, paragraph 4.1(c) of the Policy requires the Complainant to provide some evidence that the Registrant has no legitimate interest in the domain name as described in paragraph 3.4 of the Policy. As the panel observed in *Equifax Inc. and Equifax Canada Co. v. Antonia Ojo/0902066 BC Ltd.*, CIIDRC Case No. 16881-CDRP (at para 46) “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.

CDRP paragraph 3.4 sets out a non-exhaustive list of six “legitimate interests” and states that the Registrant has a “legitimate interest” in a domain name if, in particular, but without limitation:

- 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 noncommercial 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 noncommercial activity or place of business.
(*emphasis added*)

With respect to paragraph 3.4(a), the Registrant has no rights in the EQUIFAX Mark (or any mark similar thereto) and Annex 2 clearly shows that the Complainant is the "owner of the EQUIFAX Trademark", which was first used in commerce and registered in 1975, including multiple registrations in Canada (Annex 2), the oldest of which is Canadian Reg. No. TMA213693 (registered May 7, 1976).

With respect to paragraph 3.4(b), the Disputed Domain Name is not clearly descriptive of any wares, services or business or otherwise within the scope thereof.

With respect to paragraph 3.4(c), the Disputed Domain Name cannot be understood to be a generic name for any wares, services, or business.

With respect to paragraph 3.4(d), by using the Disputed Domain Name in connection with a PPC or monetized parking page that contains affiliate links for goods and services associated with Complainant's EQUIFAX Trademark, including links labeled "Equifax Credit Report," "Credit Scores," and "3 in 1 Credit Report" (Annex 11), Registrant is not using the Disputed Domain Name for "non-commercial activity".

Further, CDRP paragraphs 3.4 (a)-(d) all require "good faith" on the Registrant's part. As explained above in 4.3.2, the Panel cannot conclude the Registrant registered (per paragraphs (b) and (c)) the Disputed Domain Name in good faith. Further, in this typosquatting case, this Panel cannot conclude the Registrant uses (per paragraphs (a) and (d)) the Disputed Domain Name in good faith.

With respect to paragraph 3.4(e), CIRA identified the Registrant as "Mike Morgan". Whether this is a "legal name" or not, the Disputed Domain Name does not comprise the name of the Registrant, nor a name, surname or other reference by which the Registrant could have been commonly identified. Therefore, the provisions of paragraph 3.4(e) do not apply.

Last, the Disputed Domain Name is not the geographical name of a location of any non-commercial activity or place of business; nothing about the "eequifax" is geographical or suggests a geographical reference. Therefore, the provisions of paragraph 3.4(f) do not apply.

Overview

This Panel finds that the Complainant has provided "some evidence" that the Registrant has no legitimate interest in the Disputed Domain Name. Accordingly, the Complainant has satisfied paragraph 4.1(c) of the Policy.

4 DECISION and ORDER

For the above reasons, in accordance with paragraph 4 of the CDRP and paragraph 12 of the Resolution Rules, this Panel orders that the registration of the Disputed Domain Name <eequifax.ca> be transferred to the Complainant Equifax Canada.

Made as of this 26th day of January 2023

SIGNATURE OF PANEL



Thomas Manson, K.C.

