



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE

DOMAIN NAME DISPUTE

ADMINISTRATIVE PANEL

DECISION

CIIDRC case number:	16875-CDRP	Decision date: Feb. 21, 2022
Domain Name:	smsequipment.ca	
Panel:	Thomas Manson, QC	
Complainant:	SMS Equipment Inc.	
Complainant's representatives:	Christopher S. Wilson and Sarah Pennington	
Registrant:	Luc Tessier (Organization: SMS)	

The Canadian International Dispute Resolution Centre ("CIIDRC") is a recognized service provider pursuant to the Domain Name Dispute Resolution Policy (the "Policy") and Rules (the "Rules") of the Canadian Internet Registration Authority ("CIRA"). This matter is conducted pursuant to the Policy and Rules.

1. Parties and Disputed Domain

The Complainant is SMS Equipment Inc., a British Columbia corporation.

The disputed domain name is <smsequipment.ca> (the "Domain").

The Registrar is "(Funio) – Miss Group Canada Inc." (the "Registrar").

The Domain was registered on November 5, 2018.

The Registrant's personal information, including their identity and contact information, was not available in the Domain's WHOIS record. In the Complaint, the Complainant asserted that the Domain's registrant was another company or an affiliate, related company, officer, director, employee, or agent thereof, or another actor who is unknown to the Complainant.

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However, following the commencement of this proceeding, CIRA identified the Registrant as Luc Tessier of Winnipeg, Quebec (sic).

2. PROCEDURAL HISTORY

On January 4, 2022, the Complainant filed a complaint (the “Complaint”) with CIIDRC. The Complainant sought that the Panel order the transfer of the domain name <smsequipment.ca> from the Registrant to the Complainant.

As the Registrant’s personal information, including their identity and contact information, was not available in the Domain’s WHOIS record, the Complainant did not identify the Registrant in the Complaint. CIIDRC notified CIRA of this proceeding on January 5, 2022, and CIRA transmitted its verification response confirming Registrant’s identity (shown in part below) as follows:

Name: LUC TESSIER
...
Organization: SMS
...
Country: Canada
City: WINNIPEG
Province/State: Quebec
(sic)

Upon disclosure of the identity of the Registrant, the Complainant did not initially file further submissions as permitted by paragraph 11.1 of the Rules.

CIIDRC determined the Complaint to be in administrative compliance with CIRA’s requirements and by letter dated January 5, 2022 (the “Transmittal Letter”) forwarded a copy of the Complaint to the Registrant at the email address for the Registrant as set out in the WHOIS database to serve as notice of the Complaint to the Registrant. In accordance with Rule 4.4, the date of the commencement of proceedings was determined to be January 5, 2022. The Transmittal Letter advised the Registrant that in accordance with the provisions of Rule 5, a Response to the Complaint was to be filed within 20 days of the date of commencement of proceedings, or January 25, 2022. The Registrant failed to file a response to the Complaint by January 25, 2022. CIIDRC then advised the Complainant that pursuant to paragraph 6.5 of the Rules, the Complainant had the right to elect that the panel in this matter be converted from a three-member panel to a single-member panel. By email dated January 27, 2022, the Complainant advised CIIDRC that it wished to have a single-member panel appointed.

Following the Complainant’s election to proceed with a single-member panel, by letter dated January 31, 2022, the undersigned was appointed by CIIDRC as the Single Member Panel.

The undersigned has confirmed to CIIDRC that he can act impartially and independently as the Single Member Panel (the “Panel”) in this matter. The undersigned determines that he has been properly appointed and constituted as the Panel to determine the Complaint.

Subsequent to the appointment, by email dated Feb. 14, 2022, especially given that the Complainant was alleging “attempted fraud”, the Panel requested further submissions from the parties in accordance with paragraph 11.1 of the Rules. By email dated Feb. 18, 2022, the Complainant provided additional submissions and evidence (together, the “Further Submissions”). The Registrant made no submissions in response to the Panel’s Rule 11.1 requests, or at all.

3. FACTS

The Complaint and Further Submissions and Evidence set out facts relating, among other things, to the parties, SMS EQUIPMENT marks and domains, and the Domain. These facts as submitted by the Complainant, and accepted by this Panel are as follows:

Complainant and its Marks and Domains

The Complainant has offices across Canada which carry on the business of marketing, selling, and servicing a broad range of heavy-duty equipment serving the forestry, mining, light construction, and roadbuilding industries under the name SMS EQUIPMENT. The Complainant is a licensed user in Canada of the SMS EQUIPMENT trademark and trade name, and various marks incorporating the SMS EQUIPMENT trademark (collectively the “SMS EQUIPMENT Marks”) pursuant to a Licence Agreement (the “Licence Agreement”) with SMS Construction and Mining Systems Inc. (“SMS Construction”), a shareholder of the Complainant.

The Complainant was incorporated in January 2002 in the Yukon and continued into British Columbia in February 2005.

The Complainant’s US domain SMSEQUIPMENT.COM was first registered in the United States on March 13, 2008.

The Complainant registered the EQUIPEMENTSMS.COM and EQUIPEMENTSMS.CA domains on March 27, 2008 and has used them since then.

The Complainant registered the SMSEQUIP.COM domain name on April 4, 2008; this domain now redirects to SMSEQUIPMENT.COM.

The Complainant changed its name to SMS Equipment Inc., as it is presently known, on May 12, 2008.

The Licence Agreement was entered into on November 29, 2013. Pursuant to the License Agreement, SMS Construction granted an exclusive license to the Complainant to use the SMS EQUIPMENT Marks on a world-wide basis. The Complainant has used the SMS EQUIPMENT Marks in accordance with the License Agreement, which has not been terminated.

SMS Construction is the owner of registered trademarks under the Trademarks Act (Canada), R.S.C. 1985, c. T-13, including the SMS EQUIPMENT Marks including the following Canadian trademark registrations:

Mark	Goods and Services	Registration Date
SMS EQUIPMENT	Various goods and services provisionally classified in Classes 7, 12, 35, 36, 37, and 40	July 16, 2015
SMS EQUIPMENT & Design	Various goods & services provisionally classified in Classes 7, 12, 35, 36, 37, and 40	July 16, 2015
SMS EQUIPMENT Logo	Various services provisionally classified in Classes 35, 37, and 40	April 29, 2016
SMS Equipment & Design	Various goods and services provisionally classified in Classes 7, 12, 35, 36, 37, and 40	July 16, 2015
SMS	Various goods and services provisionally classified in Classes 7, 12, 35, 36, 37, and 40	July 16, 2015

The SMS EQUIPMENT Marks are inherently distinctive and, because of the Complainant's extensive use and promotion, the Complainant has established a significant reputation and goodwill in its brand and its goods and services in Canada, all offered under the SMS EQUIPMENT Marks.

The Complainant submits, and this Panel accepts, that by reason of the Complainant's widespread presence in Canada, and the Complainant's extensive use in Canada, and elsewhere, of its Marks, the Complainant has developed substantial goodwill in the SMS EQUIPMENT name and the SMS EQUIPMENT Marks, as well as its primary domain name, SMSEQUIPMENT.COM (and other domains such as SMSEQUIP.COM).

The Disputed Domain and its use

The Domain was registered on November 5, 2018.

The Domain currently (presumably, as of the date of the Complaint) resolves to a page stating "Simple index.html!". There is no evidence of any prior or another website at <smsequipment.ca>.

4. CONTENTIONS OF THE PARTIES

- **Complainant's Position**

The Complainant initially asserted that the Registrant was another corporation, said to be a direct competitor of the Complainant, or an affiliate, related company, officer, director, employee, or agent thereof, or another actor unknown to the Complainant. Upon identification of the Registrant Tessier, in its Further Submissions, the Complainant alleges that the Registrant is not affiliated with the Complainant and does not have rights in the SMS EQUIPMENT Marks. There is evidence to suggest that the Registrant Tessier is affiliated with a direct competitor of the Complainant. In this respect, the Complainant refers to an August 24, 2020 article published on L'Hebdo du St-Maurice, which appears to be an online news site for the Shawinigan, Quebec region. The last paragraph of the article identifies a "Luc Tessier" as an "associé" (i.e., partner) of a direct competitor of the Complainant.

As to use of the Domain, in its Further Submissions and Evidence, the Complainant says the Registrant has used the Domain for email addresses as part of what appears to be an attempted fraud. Specifically, the Complainant has submitted that the Registrant intentionally incorporated and used the Complainant's tradename and the SMS EQUIPMENT trademark in relation to the Domain and its associated email addresses (in the format [name]@smsequipment.ca) in order to attempt to secure, for commercial gain, unauthorized parts shipments from one of the Complainant's suppliers under the guise of a legitimate transaction with the Complainant.

With the Complaint, the Complainant provided evidence of an order for parts (the "Unauthorized Order") directed to "Vintage Parts", a used and aging parts supplier operating in Wisconsin.

The Complainant purchased replacement parts from Vintage Parts from time to time but the Unauthorized Order was to be delivered to "SMS Equipment Inc. Parts Department" care of the direct competitor at a Shawinigan, Quebec address. The Complainant does not have an office in Shawinigan and does not request that suppliers deliver parts directly to customers, or to SMS Equipment Inc. "care of" any of the Complainant's customers.

Upon learning of the Unauthorized Order, the Complainant contacted Vintage Parts to request further information, and about Vintage Parts' sales history with the Complainant. By email dated late October 2020, Vintage Parts shared with the Complainant information regarding all SMS Equipment accounts open with it. This information confirmed that there was a duplicate account set up for the Complainant's Thunder Bay/Roslyn Ontario branch. The contact email for that account was shown as john@smsequipment.ca. There was also a duplicate account set up for the Complainant's Winnipeg branch, with an address which did not correspond to the Complainant's address. Vintage Parts advised that the contact for the Winnipeg account was also john@smsequipment.ca (although that is not what the Complainant's exhibit CC shows).

On November 25, 2020, the Complainant's external legal counsel sent a letter to the competitor corporation by way of a Shawinigan mailing address and by email to steve@smsequipment.ca. No explanation was given for the use of the

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steve@smsequipment.ca email. In any event, counsel demanded that the competitor corporation immediately stop its use of the “SMS EQUIPMENT INC. TRADEMARK, TRADENAME, AND THE SMSEQUIPMENT.CA DOMAIN NAME AND EMAIL ADDRESSES”. The Complainant says that letter and email were successfully delivered and the Complainant received no response by either mail or email.

The Complainant submits that as a valid and existing corporation under the laws of British Columbia it satisfies CIRA’s Canadian Presence Requirements. Further, the Complainant submits that it has Rights in the SMS EQUIPMENT Trademark and has valid grounds for requesting a transfer of the Domain because:

- i. the Domain is Confusingly Similar to the SMS EQUIPMENT Marks;
- ii. the Registrant has No Legitimate Interest in the Domain; and
- iii. the Registrant Registered the Domain in Bad Faith

- **Registrant’s Position**

The Registrant has not filed a response.

- **Remedy Sought**

The Complainant requests the Domain Name be transferred from the Registrant to the Complainant.

5. DISCUSSION AND FINDINGS

5.1 Eligibility

Paragraph 1.4 of the Policy provides (in part) that “the person initiating a Proceeding ... must, at the time of submitting a complaint ..., satisfy the Canadian Presence Requirements for Registrants ... in respect of the domain name that is the subject of the Proceeding ... “. Subparagraph 2(d) of the Canadian Presence Requirements for Registrants provides that a corporation under the laws of Canada or any province or territory of Canada meets the Canadian Presence Requirements. As a British Columbia corporation, SME Equipment Inc. is an eligible complainant under paragraph 1.4 of the CDRP.

5.2 Analysis

In accordance with Paragraph 4.1 of the Policy, to succeed in a proceeding the onus is on the Complainant to prove:

- (c) 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

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(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.

The Panel will consider each of these requirements in turn. However, before doing so, the nature of this process should be emphasized.

The stated purpose of the Policy 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.

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

To succeed in this Proceeding, paragraph 4.1(a) of the Policy requires the Complainant to demonstrate, on a balance of probabilities, that 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.

The Mark

The relevant portion of paragraph 3.2 of the Policy states that for a "Mark" is:

(a) trademark, 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;

The Panel finds that SMS Equipment qualifies as a "Mark" for the purposes of the Policy.

Rights

Paragraph 3.1 of the Policy requires that the Complainant had Rights in a Mark prior to the date of registration of the domain name and continues to have such Rights. The term "Rights" is not defined in the Policy.

The Complainant has used the SMS EQUIPMENT Marks since May 2008 in association with the Goods and Services, and continues to do so throughout Canada. Pursuant to the November 2013 License Agreement, SMS Construction granted an exclusive license to the Complainant to use the SMS EQUIPMENT Marks on a world-wide basis. That agreement has not been terminated. In light of the Complainant's rights to use the SMS EQUIPMENT Marks in Canada, the Panel finds that the Complainant has prior "Rights" in the SMS EQUIPMENT Marks for the purpose of Paragraph 3.1 of the Policy.

Confusingly Similar

Paragraph 3.3 of the Policy provides:

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.

As Paragraph 1.2 of the Policy defines the Domain Name for the purpose of this proceeding to exclude the .ca suffix, the portion of the Domain Name consisting of “smsequipment” is the portion of the Domain Name relevant for consideration.

Here, the Domain incorporates the Complainant’s SMS EQUIPMENT trademark in its entirety. In a comparable case, *Daiichi Sankyo Company, Limited v. Nameshield Inc.* (CIRA Decision No. 00465, 2021) the Panel explained:

The second level of the Domain Name consists of the Japanese words “daiichi” and “sankyo”. This is the entirety of Complainant’s trade-mark and thus is not distinguishable therefrom in appearance, sound or the ideas suggested by the mark. In *Loxone Electronics GmbH v. Heinz Kreutz*, 15909- CDRP (CIIDRP Sep. 18, 2021), the Panel found that “the disputed domain name reproduces the trademark in its totality, namely, ‘LOXONE’”. Here, the Panel similarly concludes that the daiichisankyo.ca Domain Name identically copies the DAIICHI SANKYO trade-mark and thus, that Complainant has met the Confusingly Similar requirement of Paragraph 4.1(a).

So too, “smsequipment” copies the entirety of the SMS EQUIPMENT Mark. There is no material distinction between the Domain and the Complainant’s trademark. The Panel finds that the Complainant has demonstrated that the Domain Name so nearly resembles the Complainant’s Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark.

Overview

The evidence before the Panel is that <smsequipment> is Confusingly Similar to the SMS EQUIPMENT Mark, the Complainant had Rights in the Mark prior to the date of registration of the Domain Name, and the Complainant continues to have such rights. Accordingly, the Panel finds that the Complainant has satisfied the provisions of paragraph 4.1(a) of the Policy.

4.3.2 Whether the Registrant registered the 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. The Policy provides four examples of bad faith in paragraph 3.5, but these are non-exhaustive (*Kindred IP Limited v. Patrick Lanier* (CIRA Decision No. 00469, 2021 and *KPMG International Cooperative and KPMG LLP v. Dominique Brassard* (CIRA Decision No. 00425, 2020), not exclusive (see *Daiichi Sankyo Company, Limited v. Nameshield Inc.* (CIRA Decision No. 00465, 2021), or illustrative (see *General Motors LLC v. Tony Wilson* (CIRA Decision No. 00182, 2012)). “Other situations may still qualify; as evidence of bad faith (see *Daiichi Sankyo Company, Limited v. Nameshield Inc.* (CIRA Decision No. 00465, 2021). It is

open to the panel to find other grounds which lead to a conclusion of bad faith conduct; see *Arden Holdings Inc v. Bonfire Development Inc.* (CIRA Decision No 00468, 2021, at para. 84).

In *Beam Suntory Inc. v. Name Redacted* (WIPO Case No. D2018-2861) the Panel stated “where a respondent uses a domain name to impersonate a complainant or perpetrate fraud through emails, a complainant should provide evidence of such activity, not unsupported allegations or conclusory statements” (citing also *Align Technology, Inc v. Web Reg/ Rarenames/ Aligntechnology.Com*, WIPO Case No. D2008-0103). Here too, notwithstanding the Complainant’s submission that this matter is “especially straightforward” due to the Registrant’s lack of a Response, the Complainant is obliged to establish bad faith registration by the Registrant as a matter of evidence, not mere allegations and conclusory statements.

The Complainant alleged among other things, that the Registrant (initially suspected to be the corporate competitor of the Complainant) has used the Domain for email addresses as part of what appears to be an attempted fraud in order to fraudulently secure parts shipments for its business. However, in the Further Submissions, the Complainant accepted that the Panel did not need to make any findings in respect of the corporate competitor of the Complainant and acknowledged that the full scope of the Registrant’s use of the Domain, and any coordination as between the Registrant and the activities of the corporate competitor, were not known to the Complainant.

In fact, the Domain was registered in November 2018; the Panel cannot find bad faith registration of the Domain by the Registrant based on the use of a john@smsequipment.ca email by persons unknown and conduct involving the corporate competitor in or about the Fall of 2020 in connection with an order for parts to Vintage Parts.

However, it is clear on the evidence that the Registrant is not affiliated with the Complainant and does not have rights in the SMS EQUIPMENT Marks. In this context, the Complainant also argued that given the reputation and longstanding use by the Complainant of the SMS EQUIPMENT Marks, as well as the Complainant’s registration and use of the domain SMSEQUIPMENT.COM, and the other SMS EQUIPMENT Domains, there was no reason for the Registrant to have registered the Domain other than to trade off of the reputation and goodwill of the Complainant’s Marks and trade name. In this respect, the Complainant refers to *Charles Jourdan Holding AG v. AAIM* (WIPO Case No. D2000-0403) for the proposition that where the domain name in question is “so obviously connected with the Complainant and its products that its very use by someone with no connection with the Complainant suggests opportunistic bad faith”.

The Complainant also says the Registrant had constructive notice that the SMS EQUIPMENT Marks include registered trademarks in both Canada and the U.S. Given the Complainant’s widespread reputation in Canada and the ubiquitous presence of the SMS EQUIPMENT Marks on the Internet, the Registrant was, or should have been, aware of the SMS EQUIPMENT Marks long before acquiring the Domain. Here the Complainant refers to *Caesars World, Inc. v. Forum LLC* (WIPO Case No. D2005-0517) where the Registrant registered the domain name CAESARSPALACEPOKER.COM in bad faith after it knew or should have known about the Complainant’s trademarks given the Complainant’s worldwide reputation and presence on the Internet. Further, in *The Swatch Group AG / Swatch AG v.*

packy phim (WIPO Case No. D2018-0851) the Panel concluded “the Complainants’ trademarks SWATCH and SWATCH GROUP are distinctive and widely known and can conceive of no explanation for the Respondent’s registration of the disputed domain name, which is inherently misleading, other than to impersonate the Complainant.... and the Panel therefore concludes that the disputed domain name has been registered and is being used in bad faith.”

The Complainant submits that *KPMG International Cooperative and KPMG LLP v. Dominique Brassard* (CIRA Decision No. 00425, 2020) is “relatively analogous”. In *KPMG*, the subject domain (kpmg-lawyers.ca) used the complainant’s trademark KPMG and the generic “lawyers”, but the domain itself never appeared to be used. However, an @kpmg-lawyers.ca email address was used to attempt to perpetrate a fraudulent money transfer. Although there was no direct link between the sender of the fraudulent email and the registrant, the panel accepted, given the evidence before it (the registrant had not submitted a response), that the registrant and sender were the same person. The Panel noted that the evidence and arguments of the Complainant did not fit squarely into one of the specific examples of bad faith enumerated in paragraph 3.5 of the Policy but the Panel concluded that the registrant registered the domain name in bad faith. The purpose of the domain registration was to create email addresses designed to “fool and defraud clients of the Complainants” – the registrant knew of the complainants and registered the subject domain in order to create email addresses with the KPMG mark designed to fool and defraud the complainants’ clients. Yet the *KPMG* decision is distinguishable, especially in that the Panel here cannot find that the Registrant and the person or persons using the john@smsequipment.ca email and SMS EQUIPMENT Marks are “the same person”. Also, insofar as the use of emails is concerned, in *KPMG* the relevant domain was registered September 19, 2019, and the fraudulent emails were sent October 3, 2019. There is no comparable timing for use of any @smsequipment.ca emails or SMS Equipment Marks here.

Bad faith registration by the Registrant is not to be found here based on evidence of conduct well after, apparently almost two years after, the registration of the Domain. However, the Panel accepts that the Registrant’s intention when the Domain was registered was to create a likelihood of confusion with the Complainant’s SMS EQUIPMENT Marks as to the source, sponsorship, affiliation, or endorsement of the Registrant’s website and associated emails and that the Domain was registered to trade off of the reputation and goodwill of the SMS EQUIPMENT Marks and the Complainant’s trade name.

It should also be noted that the contact information of the Registrant on the domain’s WHOIS refers to their address as being in Winnipeg, Quebec – it is common knowledge that Winnipeg is in Manitoba. It is reasonable to conclude that the Registrant was not acting in good faith when they submitted address information.

Overview

Based upon the evidence before the Panel and the Registrant’s lack of response to the Complaint and to the Rule 11.1 Request from this Panel, the Panel finds that the Registrant registered <smsequipment.ca> in bad faith. Accordingly, the Panel finds that the Complainant has satisfied the provisions of paragraph 4.1(b) of the Policy.

4.3.3 Whether the Registrant has No Legitimate Interest in the Domain Name

To succeed in a 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.

Paragraph 3.4 of the Policy provides 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 used 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 used 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.

The Complainant’s evidence, which is accepted by the Panel, is that the Complainant is the exclusive licensee of the SMS EQUIPMENT Marks and the Registrant Tessier has no rights in these marks. These marks include “SMS EQUIPMENT”, which apart from the space, is identical to the domain name. In *Panavision International, L.P. v. Daniel Mullen c/o/b Netnic Corporation* (CIRA Decision No. 00378, 2018) a majority of the Panel stated (at para 38): “In cases where a domain name is an exact match for a brand owner’s trademark, the initial assumption will be that a registrant does not have a legitimate interest in said domain absent an agreement to the contrary between the parties.” As in *Panavision International* there is nothing in the record to displace this assumption.

Paragraphs 3.4(a) addresses “good faith” use of a Mark where the domain name is a Mark and the registrant has rights to the Mark. Here, the Registrant has not been licensed or permitted to use the SMS EQUIPMENT Marks, or any domain names incorporating the SMS EQUIPMENT Marks. The Complainant has the exclusive right to use the SMS EQUIPMENT Marks in Canada under the License Agreement by virtue of SMS Construction’s trademark registrations and common law trademark rights. Paragraphs 3.4(b), (c), and (d) address “good faith” use of a domain name by a registrant. There is no evidence before the Panel that

the Registrant Tessier, used the Domain Name in good faith. Therefore, the provisions of paragraphs 3.4(a), (b), (c), and (d) do not apply.

The Domain Name does not comprise the legal name of the Registrant Tessier; nor is the Domain Name another reference by which the Registrant was commonly identified; indeed, SMS EQUIPMENT is the trade name and common identifier of the Complainant, not the Registrant. Therefore, the provisions of paragraph 3.4(e) do not apply.

Last, the domain name is not the geographical name of a location of any noncommercial activity or place of business; nothing about the name SMS Equipment is geographical or suggests a geographical reference. Therefore, the provisions of Paragraph 3.4(f) do not apply.

Overview

The Panel finds that the Complainant has provided “some evidence” that the Registrant has no legitimate interest in <smsequipment.ca>. Accordingly, the Panel finds that the Complainant has satisfied the provisions of paragraph 4.1(c) of the Policy.

5 DECISION and ORDER

For the reasons set out above, and in accordance with the Policy and Rules, the Panel orders that the registration of the domain name <smsequipment.ca> be transferred to the Complainant.

Made as of February 21, 2022

SIGNATURE OF PANEL



Thomas Manson, Q.C.

