



**CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE**

**DOMAIN NAME DISPUTE**

**ADMINISTRATIVE PANEL**

**DECISION**

CIIDRC case number:	<b>16872-CDRP</b>	Decision date: <b>February 28, 2022</b>
Domain Name:	<b>waycon.ca</b>	
Panel:	<b>Claude Freeman, LL.M., C. Med., C. Arb.</b>	
Complainant:	<b>Waycon Manufacturing Ltd.</b>	
Registrant:	<b>Viorel Mazilescu</b>	

**1. PROCEDURAL HISTORY**

The procedural history of this case was set out in a letter from the Canadian International Internet Dispute Resolution Centre to the Panel on February 11, 2022.

On December 29, 2021, the Complainant (through their representative) filed a complaint (the Original Complaint”) with CIIDRC. In the original complaint, the Complainant sought an order in accordance with the Policy and Rules directing that the registration of the domain name (waycon.ca) (the “Domain Name”) be transferred to the Complainant.

As the identity of the owner of the Domain Name was not published on the WHOIS database, in the Original Complaint, therefore, the Complainant did not identify the name of the Registrant in the Complaint.

On January 12, 2022, CIRA was notified of this proceeding, and on the same date, CIRA transmitted to CIIDRC its verification response confirming the Registrant’s identity as follows:

Viorel Vazilescu  
 134 Big Horn Trail  
 Okanagan Falls, BC. V0H 1R3  
 Email: [viorel@shaw.ca](mailto:viorel@shaw.ca) [postmaster@waycon.ca](mailto:postmaster@waycon.ca)

**Domain Name: waycon.ca**  
**16872-CDRP**

CIRA also confirmed that the “waycon.ca” domain name was placed on a Registrar LOCK.

On January 13, 2022, the Complaint, was reviewed by CIIDRC and was found to be in administrative compliance with the requirements of Paragraph 3.2 of the Rules 3, and by way of an emailed letter, dated January 13, 2022, (the “Transmittal letter”) forwarded a copy of the Complaint to the Registrant at the email address for the Registrant provided for by CIRA, to serve as notice of the Complaint to the Registrant in accordance with Paragraphs 2.1 and 4.3 of the Rules. The Transmittal letter determined the date of the commencement of proceedings in accordance with Paragraph 4.4 of the Rules to be January 14, 2022. The Transmittal letter advised the Registrant that in accordance with the Rules, a response to the Complaint was to be filed within 20 days of the commencement of proceedings, or February 3, 2022. Pursuant to Resolution Rule 4.4, CIIDRC, this notice also notified the Registrant of the login information and the link to the Complaint.

On January 27, 2022, the Complainant filed a further submission with respect to the issue of the Registrant’s legitimate interest (or lack thereof) in the disputed name, as permitted by section 11.1 of the CIRA Domain Name Dispute Resolution Rules Version 1.5.

The Registrant failed to file its response by the due date of February 3, 2022.

Accordingly, the Complainant in this proceeding elected for a panel of a single-member, and on February 11, 2022, this panel member confirmed to CIIDRC that it could impartially and independently act as sole arbitrator in this matter. This panel member determines that it has been properly appointed to determine the Complaint in accordance with the Rules.

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

## **2. FACTS ALLEGED BY THE PARTIES**

### **The Complainant**

- a) The Complainant was incorporated in 1988, and is known as “Waycon”, a Canadian owned and operated business specializing in metal fabrication and industrial equipment manufacturing in Penticton, British Columbia. For over 30 years, Waycon earned its name and goodwill, and has a strong customer base and presence in Penticton, BC and across Canada for the manufacturing of heavy equipment and machinery for sawmill, logging, forestry, energy, mining, agricultural and construction sectors. Waycon’s services also include project management, welding, forming, fabrication, sandblasting, painting, and the assembly and installation of industrial equipment, among some of the related industrial service offerings.
- b) The Complainant was incorporated in the province of British Columbia in 1988. The Complainant has common law rights in the trademark names Waycon Manufacturing Ltd. and WAYCON in British Columbia. The WAYCON trademark is the only registered and active company in British Columbia and is owned by the Complainant. The mark has been advertised locally in British Columbia and Canada for over thirty years. The Complainant’s domain name “waycon.net” was registered in 1999. The Registrant registered the Disputed Domain Name in 2014.
- c) The Complainant has conducted a search on the Canadian Trade-Mark Register and the only association and application as of December 29, 2021, is the Complainant’s application on May 13, 2021. No trademarks were applied for or registered other than the complainants in Canada, including for a mark comprised of an “WAYCON” word component. These were evidenced by the annexed search results. In addition, a search conducted on December 29, 2021, on the Internet Archive Wayback Machine’s website: WEB.ARCHIVE.ORG reveals the domain name has no website nor any data since it was registered in 2014.

- d) The Complainant submits that the Registrant has no right, licence or authorization to use the Complainant's registered name nor to redirect to the Complainant's competitor. Consequently, the Registrant has no legitimate interest under paragraph 3.4(a) of the CDRP.
- e) The Complainant asserts that the Registrant has merely registered the domain name "waycon.ca" in bad faith and that the Registrant has no legitimate interest or right to the disputed domain name and that its intent is to mislead internet users who search the WAYCON mark and intentionally redirect to the competitor's website. The Complainant says that a Domain IQ search corroborates 85,800 search results since it was registered in 2014.

#### **The Registrant**

No Response has been filed.

### **3. CONTENTIONS OF THE PARTIES**

#### **The Complainant**

The Complainant submits that the infringement of the disputed domain has been impacted by a) the Registrant aiming to prevent the Complainant of the mark from reflecting the mark in the .ca Domain name, b) the "mark" was acquired for the purpose of transferring the domain registration to the Complainant for a fee and to a competitor, c) the Registrants have intentionally attempted to attract internet users to a website belonging to a local competitor's website for commercial gain by creating a likelihood of confusion with the Complainant's mark as to the source and: d) neither the Complainant nor Specialty Machine Works Ltd. have requested the redirect. The Complainant submits that the owner of Specialty Machine Works Ltd., Ken Wortman requests this be removed immediately (though nothing in writing has been submitted in support of this request). The Complainant is unsure of the out-of-pocket costs or lost sales directly associated with the registrations and redirect.

The Complainant submits further that a) the Registrant's domain name "waycon.ca" is identical to the Complainant's "waycon.net" domain name, b) the mark is distinct and unique to the complainant founders who in 1987 developed the name WAYCON by merging Dave Adaway and John O'Connell's last names Adaway "WAY" and O'Connell "CON" creating the mark, c) the mark was designed by founders to specifically include the name WAYCON and: d) the mark has the elements of the name Waycon as the gear incorporates abbreviated "W M" for "Waycon Manufacturing" and WAYCON to the right of the gear which identifies the unique name of the Complainant's mark.

In addition, the Complainant notes that a) their mark WAYCON was developed in 1987, and in 1999 registered the domain name "waycon.net", whereas the Registrant registered the Disputed domain name of "waycon.ca" in 2014, and that since it's registration in 2014, the domain name has been redirected to "specmach.ca" of Specialty Machinery noted above. The Complainant finds the Registrant's domain name to be identical and confusingly similar to the Complainant's mark, as it comprises the entirety of the word mark and the word element in the logo mark, it resembles the mark in appearance, sound and the ideas suggested by the mark as to be likely mistaken for the mark. This causes further confusion as both companies compete in the same industry.

Considering that the Registrant is not using the Disputed Domain Name in association with any wares, services, business, or non-commercial activity, the Complainant submits that the Registrant has acquired the Disputed Domain Name primarily for disrupting the mark and business operations and for economic gain to be derived at the expense of the Complainant. As a result, the Complainant concludes on a balance of probabilities, that the Registrant has engaged in a pattern of misconduct that clearly demonstrates bad faith.

### **The Registrant**

As noted above, no Response has been filed by the Registrant.

### **The Remedy Sought**

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

## **4. DISCUSSION AND FINDINGS**

### **4.1 Canadian Presence Requirements**

Paragraph 1.4 of the Policy requires that in order to initiate the Complaint, the Complainant at the time of the initiation of the Complaint must satisfy the Canadian Presence Requirements for Registrants v 1.3 ("Canadian Presence Requirements") unless the Complaint relates to a trademark registered in the Canadian Intellectual Property Office ("CIPO") and the Complainant is the owner of that trademark.

The evidence before the Panel is that the Complainant is the owner of the Mark together with the related trademark application registered in the CIPO at the date of the Complaint and that the Complaint relates to the Mark.

The Panel therefore determines that the Complainant has satisfied the provisions of paragraph 1.4 of the Policy.

### **4.2 The Policy**

The purpose of the Policy, as stated in Paragraph 1.1 of the Policy as referenced above, is to provide a forum in which cases of bad faith registration of .ca domain names can be dealt with relatively inexpensively and quickly.

Paragraph 4.1 of the Policy puts the onus on the Complainant to demonstrate this "bad faith registration" by proving on a balance of probabilities that:

1. The Mark qualifies as a "Mark" as defined in Paragraph 3.2 of the Policy,
2. The Complainant had "Rights" in the Mark prior to the date of registration of the Domain Name and continues to have "Rights" in the Mark,
3. The Domain Name is "Confusingly Similar" to one or more of the registrations comprising the Mark as the concept of "Confusingly Similar" is defined in Paragraph 3.3 of the Policy,
4. The Registrant does not have a "legitimate interest" in the Domain Name as the concept of "legitimate interest" is defined in Paragraph 3.4 of the Policy, and
5. The Registrant or an unknown third party has registered the Domain Name in "bad faith" in accordance with the definition of "bad faith" contained in Paragraph 3.5 of the Policy.

If the Complainant is unable to satisfy this onus, bad faith registration is not demonstrated, and the Complaint fails.

### **4.3 Notice to the Registrant**

As noted above, after CIIDRC had determined the Complaint to be in administrative compliance with the requirements of Paragraph 3.2 of the Rules, by way of the emailed Transmittal Letter dated January 13, 2022, CIIDRC forwarded a copy of the Complaint to the Registrant in accordance with Paragraphs 2.1 and 4.3 of the Rules. Paragraph 2 of the Rules entitled “Communications” requires that CIIDRC give to a registrant notice of a complaint being filed against a domain name which is registered in the name of the registrant. Such notice will be deemed to have been given to this registrant provided that CIIDRC uses one of the various methods of communication as listed in Paragraph 2, and provided that such communication is directed to the address shown in the registration information for that registrant for the domain name in question.

The term “Registration Information” is defined in the Rules as:

“Registration Information” means the information of record regarding a Registration in the Registry’s WHOIS database. Though the identity of the Registrant is not publicly published in the WHOIS database, it is clear from the evidence before the Panel that CIIDRC in forwarding a copy of the Transmittal Letter and a copy of the Complaint to the party and to the address set forth as the registration information by CIRA in their database with respect to the Domain Name, that CIIDRC complied with the notice provision contained in Paragraph 2 of the Rules. It is also highly likely that with CIRA placing a Registrar LOCK on the Domain Name, this action served to further alert the Registrant of proceeding.

The Panel, therefore, finds that the Registrant is deemed to have been given notice(s) of the Complaint.

### **4.4 That the Domain Name is Confusingly Similar to a Mark in which the Complainant has Rights**

#### Mark

In the matter at hand, the relevant portions of Paragraph 3.2 of the Policy states that for the purpose of the Policy a “Mark” is: (a) 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;

For over 30 years, the Complainant has used the Mark in Canada to distinguish its services and business from any other provider of similar financial products/services or business. Further, there is a Trade-Mark Application filed by the Complainant on May 13, 2021.

This use by the Complainant of the Mark commenced well before current knowledge of the registration of the Domain Name became known, as well as before the registration of the Disputed Domain Name in 2014.

The Complainant continues to so use their Mark in Canada.

The Panel finds that the Complainant has established that the Mark qualifies as a “Mark” for the purposes of Paragraph 3.2(a) of the Policy.

#### Rights

Paragraph 3.1 of the Policy requires that the Complainant has “Rights” in the Mark. Unfortunately, the term “Rights” is not defined in the Policy.

However, given the evidence before the Panel of the Complainant's ownership and use of the Mark in Canada, the Panel finds that the Complainant has "Rights" in the Mark for the purpose of Paragraph 3.1 of the Policy.

#### Confusingly Similar

The Policy in Paragraph 3.3 provides that the Domain Name will be found to be "Confusingly Similar" to the Mark only if the Domain Name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as 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 "Waycon" is the portion of the Domain Name relevant for consideration.

The Domain Name consists of the word "Waycon". To satisfy the onus placed upon it by the Policy, the Complainant must demonstrate that the addition of any word(s) or suffix (such as .ca) to the Mark in the Domain Name is not sufficient to distinguish the Domain Name from the Mark so that the Domain Name can not be said to so nearly resemble the Mark in appearance, sound or the ideas suggested by the Mark as likely to be mistaken for the Mark.

The test to be applied when considering confusing similarity is one of first impression and imperfect recollection. Will a person as a matter of first impression, knowing only the complainant's corresponding trademark (but having Domain Name "Waycon.ca"), likely mistake the disputed domain name for the complainant's trademark based upon the appearance, sound or the idea suggested by the trademark?

In the matter at hand, the Panel finds that the Mark is sufficiently known in Canada as reflecting the goodwill of licensees of the Mark from the Complainant who are engaged in their business of metal fabrication and industrial equipment manufacturing. The Panel is therefore, satisfied that the Complainant has met the confusingly similar requirement of Paragraph 3.3.

The Panel finds that the Complainant has met the onus placed upon it by Paragraph 3.3 of the Policy and has demonstrated that 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.

#### **4.5 That the Registrant has No Legitimate Interest in the Domain Name**

Paragraph 4.1 of the Policy requires that to succeed in the Complaint, the Complainant must provide some evidence that the Registrant has no legitimate interest in the Domain Name as the concept of "legitimate interest" is provided for 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:

- 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

**Domain Name: waycon.ca**

16872-CDRP

- business and the domain name was understood in Canada to be the generic name thereof in any language;
- d) the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;
  - e) the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or
  - f) the domain name was the geographical name of the location of the Registrant's non-commercial activity or place of business.

In Paragraph 3.4(d) "use" by the Registrant includes, but is not limited to, use to identify a website. It is to be noted that with respect to the matter at hand, in Paragraphs 3.4(a), (b), (c), and (d), there is a requirement that the Registrants act "in good faith".

There is no evidence before the Panel that the Registrant used the Domain Name and the website to which the Domain Name resolves in good faith. Further, the Complainant submits that the Registrant has no license or contract allowing him to use their Name/Mark.

The Registrant's name would appear not to be included in the Domain Name nor is there a geographical reference in the Domain Name, so the provisions of Paragraph 3.4(e) and Paragraph 3.4(f) do not apply.

The Panel finds that the Complainant has provided evidence that the Registrant has no legitimate interest in the Domain Name.

#### **4.6 That the Registrant has Registered the Domain Name in Bad Faith**

Under Paragraph 3.5 of the Policy, the Registrant will be considered to have registered the Domain Name in bad faith if, and only if, the Complainant can demonstrate that the Registrant in effecting the registration of the Domain Name was motivated by any one of the four general intentions set out in Paragraph 3.5.

Of these intentions, the form of intention contained in Paragraph 3.5(d) is the one most applicable to the matter at hand.

Paragraph 3.5(d) provides as follows:

- (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.

Based upon the evidence before the Panel and especially the Registrant's failure to provide accurate information in the registration information with respect to the Domain Name, the Panel finds that the Complainant has satisfied the provisions of Paragraph 3.5 (d) of the Policy by establishing that that the Registrant has intentionally attempted to attract/redirect for commercial or other gain, traffic to the website to which the Domain Name resolves by creating a likelihood of confusion with the Mark as to the source, sponsorship, affiliation, or endorsement of such website.

## **5 DECISION and ORDER**

### **5.1 Decision**

As was above set out, Paragraph 4.1 of the Policy provides that to be successful in the Complaint the Complainant has the onus of proving on a balance of probabilities three specific items and of providing some evidence that the Registrant has no legitimate interest in the Domain Name.

The Panel finds that the Complainant has satisfied this onus with respect to all three of these items by demonstrating that the Mark qualifies as a Mark in accordance with Paragraph 3.2 of the Policy; that the Domain Name is Confusingly Similar to the Mark; and that the Registrant has registered the Domain Name in bad faith in accordance with the provisions of Paragraph 3.5 of the Policy.

The Panel also finds that the Complainant has shown evidence that the Registrant does not have a legitimate interest in the Domain Name in accordance with the provisions of Paragraph 3.4 of the Policy.

The Panel therefore finds that the Complainant has satisfied the onus placed upon it by Paragraph 4.1 of the Policy and is entitled to the remedy sought by it.

### **5.2 Order**

The Complainant in the Complaint seeks an order in accordance with the Policy and the Rules directing that the registration of the Domain Name be transferred from the Registrant to the Complainant.

For the above reasons, in accordance with Paragraph 4 of the Policy and Paragraph 12 of the Rules, the Panel orders that the Domain Name (Waycon.ca) be transferred to the Complainant.

Made as of February 28, 2022

SIGNATURE OF PANEL



Claude Freeman, LL.M., C.Med., C.Arb.