

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

DECISION

Dispute Number: DCA-17100-CIRA

Domain Name: <ycd.ca>.

Complainant: Nanaimo Airport Commission, Nanaimo, Canada

Registrant: Chris Stewart

Registrar: Namespro.ca

Panel: The Honourable Neil Anthony Brown KC (Chair), Leslie E. Maerov, FCIArb and James Plotkin, Q.Arb.

Service Provider: Canadian International Internet Dispute Resolution Center

OVERVIEW

1. This proceeding concerns a dispute between the Complainant and the Registrant regarding the registration and use of the domain name <ycd.ca> (“the disputed domain name”).
2. The Canadian International Internet Dispute Resolution Center (“CIIDRC”) is a recognized service provider to the CIRA Domain Name Dispute Resolution Policy of the Canadian Internet Registration Authority (“CIRA”).
3. This is a proceeding under the CIRA Domain Name Dispute Resolution Policy (the “Policy”), in accordance with the CIRA Dispute Resolution Rules (the “Resolution Rules”).
4. The Complainant claims that the Registrant registered the disputed domain name in breach of the Policy and that it should be transferred to the Complainant. The Registrant has filed a Response in this proceeding and has submitted that the disputed domain name is not in breach of the Policy and that it should remain with the Registrant.

THE PARTIES

1.The Complaint has been brought on behalf of the Complainant by Keith Granbois of kgranbois@nanaimoairport.com and its Authorised Representative in this proceeding is Michael

MacPherson of RBS Managed Services Inc. of 201– 138 Craig Street, Duncan, BC V9L 1V9, Canada and 305 – 895 Fort Street, Victoria, BC V8W 1H7, Canada (“the Complainant”).

2. The Registrant in this proceeding is Chris Stewart of 12 Golden Orchard Drive, Hamilton, Ontario, L9C6J2, Canada (“the Registrant”).

REGISTRATION OF THE DISPUTED DOMAIN NAME

1. The disputed domain name <ycd.ca> was registered by the Registrant on August 21, 2013.

2. The Registrar of the disputed domain name is Namespro.co, of admin@namespro.ca.

PROCEDURAL HISTORY

- (a) On July 12, 2022, the Complainant filed a Complaint with the CIIDRC pursuant to the Policy and Resolution Rules.
- (b) Upon a review of the Complaint CIIDRC determined that the Complaint was not in administrative compliance with Resolution Rule 3.12 and the Complainant was given 10 days in which to rectify the deficiency. The Complainant rectified the deficiency on July 28, 2022.
- (c) On July 13, 2022, CIRA was notified of the proceeding and, on the same day, CIRA transmitted its verification response confirming the Registrant’s identity. CIRA also confirmed that the disputed domain name was placed on Registrar LOCK.
- (d) On July 29, 2022. CIRA confirmed compliance of the Complaint with CIRA’s requirements under Resolution Rule 3.2, and commencement of the dispute resolution process.
- (e) On July 29, 2022, CIIDRC notified the Registrant of this administrative proceeding.
- (f) The Registrant filed its Response on August 18, 2022. Paragraph 5.5 of the Rules provides that “the Provider shall review the Response for administrative compliance with the Policy and the Resolution Rules.” Upon

the review of the Response, the Provider determined that the Response was not in administrative compliance in that it failed to nominate any, and up to five candidates, from the Provider's list of available candidates, as set out under Paragraph 5.2(c). On August 19, 2022, the Registrant nominated three candidates for proposed appointment to the Panel.

- (g) The Complaint and the Response were filed in the English language which accordingly became the language of the proceeding, pursuant to paragraph 10 of the Resolution Rules.
- (h) In accordance with Paragraph 6 of the Rules, CIIDRC as Provider was empowered to appoint a three-member Panel, with consideration being given to the nominees of the parties and to appoint a Chair.
- (i) Thereupon, the Provider appointed The Honorable Neil Anthony Brown KC, Leslie E. Maerov, FCI Arb, and James Plotkin, Q. Arb as panellists and the Honorable Neil Anthony Brown KC as Chair of the Panel. Each of the panellists has signed and forwarded to the CIIDRC an Acceptance of Appointment as Arbitrator and Statement of Independence and Impartiality. The Panel has reviewed all of the material submitted by the Complainant and is satisfied on that material that the Complainant is an eligible Complainant under the Policy and the Resolution Rules by virtue of the matters set out under the heading Canadian Presence Requirements in this decision.

FACTUAL BACKGROUND

The facts set out below are taken from the Complaint and the Response, together with related exhibits and other evidence.

Since 1942, there has been an airstrip and subsequently an airport on Vancouver Island at Nanaimo in British Columbia, Canada, which is owned by the Nanaimo Airport Commission, incorporated in 1990 as a not-for-profit company under the Canada Corporations Act. Since 1994, the Commission has owned, as it does today, the fee simple to the land on which the airport is situated. Various improvements have been made to the airport facilities over the years. Nanaimo, like other airports, has a code designated by the International Air Transport Association ("IATA") and the code for Nanaimo is YCD. Nanaimo was assigned this code by IATA in 1942 and the Complainant has

retained it since then. In or about February 2004, the airport set up a website on the internet and started to use the IATA code YCD as an identifying mark. To support that webpage the Complainant has used the domain name < nanaimoairport.com>.

The disputed domain name was bought by the Registrant at an auction on August 21, 2013. The Complainant contends that the Registrant acquired the domain name in breach of the Policy and has endeavored to sell it to the Complainant. The parties engaged in negotiations for the sale of the domain name but no sale took place. The Registrant contends that its acquisition of the domain name was not in breach of the Policy and that it should be allowed to retain the domain name.

CONTENTIONS OF THE PARTIES

A. THE COMPLAINANT

The Complainant made the following contentions.

The Complainant relies on its use of the IATA code YCD since 1945 and on its website since 1997 as giving rise to a trademark. The trademark for which it contends is therefore YCD. The trademark is not registered, but the Complainant contends that it is an unregistered trademark and that its unregistered trademark for YCD is enough to give it standing to bring the Complaint and to establish the first element that it must prove under the Policy.

It adds that the problem with the domain name is that it consists solely of the IATA code and that this “would cause confusion for anyone looking to find information about the airport, or air travel to and from Nanaimo”. It adds that anyone booking travel through any online or traditional agent would be familiar with the IATA code of YCD, which is available anywhere that air travel to Nanaimo is referenced, both online and offline.

The Registrant has no legitimate interest in the domain name as it has not been developed as a website and it has been used only to resolve to a webpage.

The Complainant attempted to buy the domain name from the Registrant for USD\$3,000, but the Registrant responded that it wanted no less than USD\$10,000.

The Complainant has attached to the Complaint several Annexes which are in evidence and thus part of its case. The annexes include Annex A which is a statement relating to the IATA code of YCD for the airport and its predecessor YCD which was assigned by IATA to the nearby Cassidy weather station and which now relates to the Complainant's airport. In regard, the Complainant submits that the YCD IATA code is prominently displayed on its website as well as on advertising and billboards.

The registrant does not have a legitimate interest in the domain name as it does not satisfy any of the criteria set out in paragraph 3.4 of the Policy relating to legitimate interest. To the contrary, the webpage associated with the disputed domain name was not a *bona fide* offering, as it was trying to capitalize on the reputation and goodwill of the airport's trademark or otherwise mislead internet users. Moreover, the domain name generates a high-risk of implied affiliation with the airport and its facilities.

Annex B shows that the registrant had no legitimate interest in the domain name because the home page for the domain name was unchanged from January 2014 to at least December 2021. During that time the domain name resolved to a webpage with graphic representation of the letters <ycd.ca> and two icons, one with an illustration of an airliner landing and the word "Arrivals" and the other with an illustration of an airliner taking off and the word "Departures".

The same graphic was available until December 2021, after which the webpage did not carry the icons referred to. At the present, the domain name does not resolve to a website home page.

It can be inferred from the fact that the domain name was advertised for sale at USD\$10,000 that it was registered with the intention of selling it to the Complainant, which is defined in the Policy as bad faith. Moreover, the price at which the domain name was offered was excessive and far in excess of the Registrant's actual registration costs.

Annex B then states that "Site has been removed, the domain ycd.ca no longer has a webpage associated with it."

Annex C contains emails from August 17, 2021 to September 14, 2021 relating to the history of the attempted sale and purchase of the domain name showing, the Annex contends, bad faith registration.

Annex D contains references to prior UDRP decisions.

The Complainant therefore asks for a finding that the registration of the domain name was in breach of the Policy and for an order that the domain name be transferred to it.

B. THE REGISTRANT

The Registrant made the following contentions.

Confusingly Similar

The domain name was acquired by the Registrant on August 26, 2013 in an expired TBR Domain Auction through pool.com. It was acquired as an investment and for a joint venture with the Complainant's brother. A proposed "Your Custom Designs/Decals" business has not been executed as of yet. The domain name is a customized related domain name that could be useful in the Registrant's imaging business as was his purchase of other domain names such as <dws.ca> and others including words such as <decalshop.ca>. Acronyms are acquired for their generic letters.

The domain name is similar, but not confusingly similar, to a Trademark. It is a generic acronym and was not acquired with any intent of selling to the Complainant.

Legitimate Interest

The Registrant claims a legitimate interest in the domain name as he has been investing in domain names for 15 years as an investment, for development or resale. Acronyms are a large part of his portfolio.

The Complainant's brother and he have been in the imprinting business of custom designs and decals for various local organizations and businesses for many years. The

Registrant saw the value of the disputed domain name as an investment and for a “personal venture”. He has other customizations that are related to domain names in his portfolio.

Bad Faith

The domain name was not acquired in bad faith. The Registrant lives in Ontario and was therefore not aware of the Complainant’s airport or its code.

He has never acquired a domain name for the purpose of targeting any other business, person or company.

Not being able to agree on the price for the domain name is not a sign of bad faith. The parties’ negotiations were close to agreement on the sale price when the Complaint was filed. The registrant also had to take tax on the sale into account. He did not refuse to sell the domain name and negotiations stalled before the price was agreed on.

He is an investor in generic domain names only, including numbers or acronyms. They are bought for resale, possible development or personal use.

The domain name is a generic acronym and although it is the same as the airport code, it could also stand for many things such Your Custom Designs.

The design of the Registrant’s website has been virtually the same throughout his nine years’ ownership of the disputed domain name.

There are 27 results for YCD trademarks, showing that the acronym has multiple uses. But the YCD trademark have been largely inactive or expunged.

Domain names are monetised by PPC websites the contents of which are determined by the monetiser and not by the registrant and not directed intentionally towards anything specific.

The Registrant has never had any knowledge of a possible infringement of the Complainant’s trademark. There has been no sponsorship, advertising or links associated

with the website. The links have produced only \$1.52 in revenue from PPC activity in nine years.

Only when he received the Complaint did the Registrant become aware of the Complainant, Nanaimo Airport and its IATA code.

The domain name was not bought with the intention of selling it to the Complainant. The buyer started the negotiations. The Complainant's broker approached the Registrant. The Registrant did not approach the Complainant. The Registrant did not know that the broker's principal was the airport. The Complainant is wrong in saying that the Registrant refused to sell for less than \$10,000.

DISCUSSION OF THE ISSUES

JURISDICTION

The dispute set out in the Complaint is validly before the Panel. That is so because paragraph 3.1 provides that the Registrant must submit to the proceeding if the Complainant asserts that the domain name is confusingly similar to the Complainant's trademark as defined; that the Registrant has no legitimate interest in the domain name and that the Registrant has registered the domain name in bad faith. The Complainant has asserted all of those elements and the dispute is therefore validly before the Panel.

CANADIAN PRESENCE REQUIREMENTS

Paragraph 1.4 of the Policy provides that a complainant initiating a complaint must satisfy the Canadian Presence Requirements for Registrants in respect of the domain name that is the subject of the proceeding. This covers the situation where a transfer is ordered and that the successful complainant must be eligible to become the registrant.

Paragraph 2 (d) of the Canadian Presence Requirements for Registrants establishes that the requirement to meet the Presence Requirements will have been satisfied by a complainant in the following circumstance:

“Corporation. A corporation under the laws of Canada or any province or territory of Canada; ...”.

Paragraph 2 (p) of the Canadian Presence Requirements for Registrants establishes that the requirement will also have been satisfied by a complainant in the following circumstance:

“Government. Her Majesty the Queen in right of Canada, a province or a territory; an agent of Her Majesty the Queen in right of Canada, of a province or of a territory; a federal, provincial or territorial Crown corporation, government agency or government entity; or a regional, municipal or local area government;...”.

The Complainant has satisfied CIRA's Canadian Presence Requirement for Registrants in respect of the disputed domain name as the evidence is that the Complainant is a corporation and also a government agency or government entity. It is therefore eligible and entitled to initiate the Complaint on those two grounds.

WHAT HAS TO BE PROVED IN THIS PROCEEDING?

Paragraph 4 (a) of the Policy provides that, to succeed, the Complainant must prove three elements. They are that:

- (a) The domain name is confusingly similar to a mark in which the Complainant had rights prior to the registration of the domain name and continues to have such rights;
- (b) The Registrant has registered the domain name in bad faith; and
- (c) The Registrant has no legitimate interest in the domain name.

In addition, it is necessary, in coming to conclusions on those three elements, for the panel to have regard to other and more detailed provisions of the Policy, including definitions.

The Panel will now deal with each of the three elements in turn.

Confusingly Similar

The first element that the Complainant must prove in this proceeding is that it has a mark and that the disputed domain name is confusingly similar to the mark. That requirement is set out in paragraph 3.1 of the CIRA Domain Name Dispute Resolution Policy which describes the type of dispute to which the Registrant of a domain name must submit and in paragraph 4(a) of the Policy which describes exactly what must be proved by a complainant. Accordingly, the Complainant must show that the 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 that it continues to have such rights.

The first question to be answered under this heading is whether the Complainant has shown that it is the owner of a mark. The CIRA Policy has an extensive definition of “mark” which includes, in general terms, a registered trademark, “a trade-mark”, “a trade name” used in Canada to distinguish between different business offerings, and badges and similar indicia declared by the Registrar of Trade-marks to be so covered.

The Complainant does not claim that it has a registered trademark. However, that is not fatal to the claim, as it is well recognised both under the analogous Uniform Domain Name Dispute Resolution Policy (“the UDRP”) and the CIRA Policy that a complainant will have satisfied the requirement for a trademark if it owns an unregistered or common law trademark on which it can rely. The Complainant’s case is that it has an unregistered or common law trademark that comes from its designation of YCD as the code for the Complainant’s airport at Nanaimo and in effect that the code is the mark of its trade. The code is allocated by the International Air Transport Association (IATA). The evidence is that Nanaimo airport was assigned its YCD code by IATA in 1942 and that it has retained the code since then. The evidence is also that in or about February 2004, the Complainant set up a website on the internet and started to use the IATA code YCD as an identifying mark on its site.

For present purposes, the test of whether the insignia YCD gives rise to an unregistered trademark is whether it is recognized by the relevant market as identifying the Complainant as the source of the goods and services that are offered for sale under the insignia. This is sometimes put in a different, but useful way by asking if the insignia has a secondary meaning as well as a primary meaning. The primary meaning of YCD is

simply the letters making up the insignia, which do not formulate a word with any meaning at all, but its secondary meaning examines the word in context and in particular the way in which it is used to see if it means anything more specific. When that is done, the secondary meaning may pinpoint the claimant as the source of the goods and services it offers when it uses the word. That is what has happened in the present case.

It could not be said that the whole world would instantly recognize YCD as the IATA code for Nanaimo. But the travelling public that uses Nanaimo is certainly made aware of it by the presence of the insignia on the Complainant's website and its use on luggage tags and no doubt other incidental uses where it is necessary to identify the code of the airport. A wider public would also recognize the insignia as indicating a particular airport and, even if they cannot identify the airport, they would know that the airport in question that relates to a given code number can be identified.¹

For example, it appears that IATA codes starting with the letter "Y" are known as Canadian airports, and it seems, only Canadian airports, that had previously been give that designation, which stood for the word "yes" being the answer to the question: was the airport previously a weather station? Such airports were apparently then given the abbreviation of the former weather station. We know that Nanaimo was previously a weather station, hence it scored a "y" for "yes" and the designation "cd" was presumably an abbreviation for Cassidy. The Panel mentions this only because such a history suggests that the use of abbreviations such as YCD in the present case are not entirely unknown as codes for airports in Canada and that when seen as domain names, it may well identify in the minds of potential buyers that they identify airports and are of some value. Thus, the market of people who would recognize YCD as the mark of an airport may be wider than at first thought.

To take another airport, the Registrant himself in effect says that he would not know the code for Nanaimo airport because he lives in Hamilton, Ontario and that he had no idea that YCD was the code for Nanaimo. That fact is thus in evidence and the Panel has looked at what public information is available on Hamilton and the familiarity that people in Hamilton might have with IATA codes and their being the mark of an airport. In fact, Hamilton has an airport, the John C. Munro International Airport. It also has an IATA code which would therefore be available to be known by passengers and others

¹See, for information on this issue: https://en.wikipedia.org/wiki/IATA_airport_code#United_States

using the airport at Hamilton. Those users would have noticed that the code for Hamilton is YHM, “Y” for a weather station and “HM” presumably for Hamilton. They would also notice that on some occasions the airport describes itself as YHM, not Hamilton or John C. Munro International Airport. Like Nanaimo, Hamilton has a website and the website has a section entitled “About YHM”. Thus, the code is being used as the name of the airport. Airport users would also notice advertisements like the one currently on the airport’s website, “Come see YYC. Fly non-stop from Hamilton to Calgary”. Again, the code is used as the name of an airport, Calgary, clearly making it a mark that identifies the source of goods or services sold under the sign and hence a trademark.

Again, it cannot be said that the entire world would recognize an IATA code as the sign of an airport or a particular airport. But it would seem from the matters just considered that it is likely that, particularly in Canada, where the code starts with the letter “Y”, at least some part of the population would know that when they saw a three-letter domain name starting with the letter “Y”, especially when they also saw that the remainder of the code may well be an abbreviation of a locality, such as Hamilton , Calgary or Cassidy, that they looking at not simply a jumble of letters , but a sign indicating a specific airport.

Toronto John C. Munro Hamilton	YHM
Toronto Region of Waterloo Int	YKF
Toronto Metropolitan Area	YTO
Toronto Billy Bishop City A/P	YTZ
Toronto Lester B. Pearson Intl	YYZ

Taking all of the evidence into account, the Panel finds that YCD identifies Nanaimo Airport to a sufficiently wide audience as to qualify as an unregistered trademark of the Complainant to identify the goods and services provided by the Complainant at its airport at Nanaimo and that it has been used as such by the Complainant and the public for many years.

Even if the YCD code were not an unregistered trademark on the general principles just discussed, the Panel also finds that the IATA code comes within the definition of “mark” in the CIRA Policy because it is a “trade name.” It is a trade name because it distinguishes the goods and services of the entity, who use it in their trade, from the goods and services of others who do not use it. Clearly it is used in trade and is intended to and does in fact distinguish between the goods and services of those associated with the Nanaimo airport

on the one hand and the goods and services of others not associated with it on the other hand.

Accordingly, YCD is an unregistered trademark or a trade name coming within the definition of “mark” in paragraph 3.2 of the CIRA Policy and it thus qualifies as a “mark” for the purposes of 3.1 of the Policy with which the disputed domain name must be confusingly similar.

The next question, therefore, is whether the disputed domain name is confusingly similar to the unregistered trademark YCD.

Pursuant to paragraph 3.3 of the Policy, a domain name will be found to be confusingly similar with a mark if it so nearly resembles the same in appearance, sound or in the ideas suggested so as to be likely to be mistaken for the mark. The test to be applied when considering “confusingly similar” is one of first impression and imperfect recollection and the “dot-ca” suffix should be excluded from consideration (see *Coca-Cola Ltd. v. Amos B. Hennan*, BCICAC Case No. 00014).

Having regard to those principles, the Panel finds that the disputed domain name meets the test since it is identical to the YCD trademark. The Panel finds that the disputed domain name contains the entirety of the trademark in the domain name, with the exception of the generic top-level domain “.ca”, a feature which is not taken into consideration in domain name practice, as every domain name must have a top-level domain. The internet user would naturally conclude that the domain name is identical to the trademark and would see it as Confusingly Similar to the trademark, as defined in the Policy for that reason. An internet user would also conclude that the idea suggested by the domain name was that it was an official domain name that would lead to a website dealing with the Complainant’s business conducted under the YCD trademark.

The Complainant has also established that it has held and used its rights to the YCD trademark since 1942, that those rights have been confirmed and announced through its use on the Complainant’s website since 2004 and prior to the date of registration of the disputed domain name on August 26, 2013, and that it continues to have rights in the

trademark. Therefore, Complainant satisfies the onus placed on it by clause (a) of Paragraph 4.1 of the Policy.

The Panel therefore concludes that the disputed domain name is identical (and therefore “Confusingly Similar”, as defined) to the YCD trademark in which the Complainant had rights prior to the registration date of the disputed domain name and in which it continues to have such rights.

The Complainant has thus made out the first of the three elements that it must prove.

DOES THE REGISTRANT HAVE A LEGITIMATE INTEREST IN THE DOMAIN NAME?

The next element that the Complainant must prove is that the Registrant has no legitimate interest in the domain name

The Complainant’s case

The Complainant’s case on legitimate interest is that the Registrant does not have a legitimate interest in the disputed domain name. The Complainant’s case in that regard is set out in Annex B to the Complainant which consists of three screenshots taken from the Wayback Machine at www.archive.org recording the history of the use of the domain name at three points: first, January 2014, which was a few months after the Registrant had registered the domain name on August 26, 2013; secondly, December 2021; and thirdly and most recently at July 2022.

The Complainant also says that it can be seen from these screenshots that the Registrant has no legitimate interest in the domain name. It adds: “Since registering the domain name in 2013, the website has not been developed for use, and simply has a placeholder site with no utility. The site was unchanged from January 2014 to December 2021. As of July 2022, there is no longer a website associated with the domain, and an attempt to visit the site now returns “This site can’t be reached” error.” At the bottom of the page, the following words also appear: “Site has been removed, the domain ycd.ca no longer has a webpage associated with it.” It is to be noted that the webpage ycd.ca was locked by CIRA on July 13, 2022, and the complaint was delivered to the Registrant on July 29, 2022,

and so it may be inferred that after eight years the website was taken down in response to the complaint.

The Complainant is therefore submitting that the Registrant does not have a legitimate interest in the domain name because after seven years it has not yet been used for a proper website and, in any event, the limited use that has been made of the domain name shows that the Registrant does not have a legitimate interest.

The Registrant's case

The Registrant's case is that he does have a legitimate interest in the domain name. He argues that this is so because he runs a legitimate business investing in domain names which he also uses for his imprinting and design business and that he bought the domain name as part of that business. He then argues that he bought the domain name as part of his business as an investment, to use in a joint venture with his brother and for "personal venture". He adds that he buys only "generic" names and largely "acronyms", which he does for investment, development and personal use, which thus give him a legitimate interest in the domain name as one of his investments.

How is legitimate Interest to be determined?

Paragraph 4 .1 (a) makes it clear that, to prevail, the Complainant must provide some evidence that the Registrant has no legitimate interest in the domain name. If the Complainant meets this threshold, the burden shifts to the Registrant to demonstrate a legitimate interest on a balance of probabilities. It is left to the panel to decide what is a legitimate interest in any given case. The Policy gives some indication, however, in paragraph 3.4 of the sort of conduct that will amount to a legitimate interest and it follows that if a registrant can bring itself within any one of those criteria it will have shown a legitimate interest and hence will have a complete defence to the claim.

But it is important to remember that those criteria are not the only way a registrant can prove that it has a legitime interest. The paragraph just cited makes it clear that the criteria it sets out are "without limitation", meaning that the registrant can rely on other criteria even if they are not listed in the Policy criteria set out in paragraph 3.4.

The element of legitimate interest is also shown to be important because the parting words of paragraph 4.1 of the Policy declare that even if the Complainant prevails on confusingly similar and bad faith and produces “some evidence” of there being no legitimate interest, the registrant will succeed if it proves “on a balance of probabilities” that it has such a legitimate interest. Thus, the registrant has a second chance, as it were, and the effect of there being a legitimate interest is so great that it may over-ride even a finding against it of bad faith registration. All that the registrant must do is to persuade a panel that despite there being an adverse finding against it on confusingly similar and bad faith it still has, on the balance of probabilities, a legitimate interest “as described in paragraph 3.4.”

Therefore, a good first step in deciding this issue is to see if the evidence brings the Registrant within the criteria set out in paragraph 3.4(a)-(f) and, if it does not, then to see if there are any other circumstances showing a legitimate interest in the domain name. The Panel will thus look in turn at each of the specified criteria which are set out as follows.

“3.4 Legitimate Interests. For the purposes of paragraphs 3.1(b) and 4.1(c), any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate that the Registrant has a legitimate interest in a domain name:

(a) the domain name was a Mark; the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;

(b) the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was clearly descriptive in Canada in the English or French language of: (i) the character or quality of the wares, services or business; (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or (iii) the place of origin of the wares, services or business;

(c) the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language;

(d) the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;

(e) the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or

(f) the domain name was the geographical name of the location of the Registrant's non-commercial activity or place of business."

Has the Registrant made out any of these criteria?

The Panel finds that the Registrant has not made out a case that he has a legitimate interest in the domain name under any of the paragraph 3.4 criteria. Taking them in turn and using the same paragraph numbering:

(a) as the Panel has already found, the principal part of the domain name is an unregistered trademark consisting of the IATA code. But the Registrant did not allege in the proceeding or prove that he had rights in that trademark, which he clearly did not, that he used it as a mark, which he also clearly did not, or, in particular, that he used the mark in good faith, which he certainly did not.

(b) the Registrant did not allege or prove that the domain name was descriptive of any goods or services. That the registrant has a business and domain names are assets of that business is different than a domain name being used in connection with any goods and services. The domain name was not used in connection with the holding, purchase or sale of domain names, or any other goods and services. Finally, the Registrant baldly asserts, but provide no corroborating evidence to prove, that the domain name was purchase in connection with a custom design/decal business, which also contradicts the notion that he purchased it as a domain name speculator;

(c) the Registrant did not allege or prove that the domain name was the generic name of any particular goods or services; in fact, it is the opposite to generic, as the evidence is that the letters in the domain name invoke the IATA airport code, which is not generic but identifies specific airports and only those specific airports; in the present case it indicates only the Nanaimo airport and no other, so by definition it cannot be generic;

(d) the Registrant did not allege or prove that he used the domain name in association with a non-commercial activity including, without limitation, criticism, review or news

reporting. His evidence is that the domain name would be used for business and not for any non-commercial activities;

(e) the Registrant did not allege or prove that he was commonly identified by the domain name and he clearly is not; (or)

(f) the domain name clearly was not the geographical name of the location of the Registrant.

Indeed, it is inconceivable that the Registrant could bring himself within any of the criteria. He did not allege any of them and none of his evidence was relevant to establishing any of them. Nor are any of the criteria related in any meaningful way with the facts of this matter as they have been proved by the evidence. So far, therefore, the Registrant has not shown that he has a legitimate interest in the domain name.

Other matters relied on by the Registrant

However, he is also entitled to rely on matters other than the specific criteria set out in paragraph 3.4(a)-(f) to make out a legitimate interest. The Panel must now look at those matters as they are the main case advanced by the Registrant. His real case is not based on any of the specific criteria in paragraph 3.4(a)-(f), but on something entirely different.

The Registrant's case is that he has run a legitimate business investing in domain names which he also uses for his imprinting and design business, that he bought the domain name as an investment and for "personal venture", that he only buys generic names and largely acronyms for investment, development and personal use, which thus give him a legitimate interest in his investments.

These submissions do not give the Registrant a legitimate interest in the domain name. First, they revolve around the notion that the domain name, presumably "ycd" as the major part of it without the generic top level domain ".ca", is generic. The Panel is not persuaded that this is so. A generic word is one that can apply to a group or class and which is not meant to be a reference to specific members of a group or class. In trademark law, a mark that has become "genericized" is one that, though once distinctive of goods or services, has become the standard name for those goods or services. The domain name in question here fits neither of these definitions.

Likewise, an acronym by definition stands for something specific and identifiable and even if the user or observer does not know what it is, they would know that the acronym stands for something specific, which is the reason why an acronym has been created and is being used. An acronym is also usually a designation that can be used as a word and usually because it includes a vowel, which is not the case with the domain name here, as the group of letters “ycd” do not immediately present themselves as being a word with any meaning at all. The Panel therefore finds that on the balance of probabilities the domain name was not intended to be anything in the nature of a generic or generalized term or concept and was more likely to be, as it was, a designation for a specific object. In addition, anyone who knew that the letters were an IATA code would know that such a code is used to designate a specific airport and not airports in general. If it is an acronym, it has clearly been created by IATA to designate one particular airport and it has none of the generic characteristics for which the Registrant contends. If that were not so, the code would be of no use as a code.

The Registrant is relying on the argument that the domain name is generic, presumably because it is often found in domain name cases that a domain name that is genuinely generic, or a genuine dictionary or common word, gives rise to a legitimate interest. This is because it usually does not target a specific trademark owner directly or mislead the public in any way and can be presented as the use of a domain name not for targeting an individual or a trademark. The Panel has simply been told that the domain name is generic without being told why this is so. It does not appear to the Panel to be generic because it has no generic or generalize element in it and it seem to be very specific.

The same response can be made to the submission that the domain is an acronym, as if this will give rise to a stronger defence, which it does not. Acronyms are neither necessarily generic or unusable as trademarks. Many well-knowns trademarks are acronyms (e.g., CNN, BMW, IBM).

Moreover, the Registrant’s evidence on these issues is weak and does not make out his case on the balance of probabilities. He submits that he has regularly bought generic words and “acronyms” and used them in his business; but he gives an example of only one such domain name (apart from the disputed domain name) namely <dws.ca>. Even

that one, when its website is examined, suggests that it was acquired because the letters in the domain name may have reflected the initials of the name of the founder of the business that now uses the domain name, rather than any notions of generic words and acronyms on which the Registrant was relying. It is only reasonable for the Panel to expect more detail of the individual cases where the Registrant can be shown by evidence to have developed domain names in the same way that he claims was his reason for buying <ycd.ca>. That evidence has not been produced and the Panel has concluded that there is none.

In particular, the Registrant is quite specific in stating that he bought the domain name for one reason only, i.e. that it is an acronym and a generic word and he wanted to develop it for use in his imaging business. As already noted, the Panel concludes that it is not persuaded that the domain name is either generic or an acronym. But even if it were, nine years have passed by and there is no evidence that the Registrant has done anything at all to develop the domain name which he contends was the reason he bought it. Had the Registrant done anything to develop this allegedly acronymic and generic domain name, there would be a trail of consultants, advertising, correspondence, emails, money transfers, drawings, plans and other preparations which could have been brought to the Panel to show that the Registrant had been doing what he claimed he would do. But in this case, there is no such evidence, which is a serious and substantial defect in the Registrant's case. The Panel is therefore not persuaded that the Registrant has done anything at all in nine years to develop the domain name for use in his business and it is not persuaded that this was the reason or even a contributing factor why he bought the domain name. The real reason, the Panel has concluded, is closer to home and far more persuasive in getting to the truth of this matter.

The real reason for buying the domain name

It is common ground that, since he bought it, the Registrant has used the domain name to link to pay-per-click links. There is not much evidence of this and the Registrant maintains that he has earned very little for the PPC clicks. But the Complainant, as part of its case, has taken some screenshots of the result shown on the Wayback Machine at www.archive.org as to how the domain name has been used since the Registrant acquired it. Annex B to the Complainant consists of three screenshots taken from the Wayback Machine recording the history of the use of the domain name at three points: first, January

2014, which was a few months after the Registrant had registered the domain name on August 26, 2013 ; secondly, December 2021; and thirdly and most recently at July 2022.

The evidence of the Wayback Machine shows that from January 2014 it carried depictions of an airliner taking off and an airliner landing and the words “Arrivals” and “Departures”. The Registrant at one point stated that Voodoo was responsible for the content of whatever web page it was that was captured by the Wayback Machine. It certainly showed that someone was well aware that the domain name had a connection with an airport and the arrival and departure of aircraft. The icons of the aircraft look suspiciously like a promotion of the domain name and its possible sale on the basis that it is connected with an airport and that it might be of particular value and interest to someone connected with airports, airlines or aviation or merely someone who would like to make money from it.

The Panel’s concern is that this evidence has appeared, but with no explanation from the Registrant as to whether he knew about it or did anything to deter it. As the evidence shows this landing page with the “arrival” and “departure” buttons had been hosted at the domain name for some time, the Panel is prepared to infer that the Registrant was aware of it. Clearly, the Panel is limited in the conclusions it can reach on the limited evidence, but the icons on the web page to which the domain name resolved, only weaken the Registrant’s case that his buying and keeping and offering the domain name for sale had nothing to with its being the IATA code for Nanaimo Airport.

The Panel is entitled to draw inferences from the evidence and the inference it draws from Annex B is that the Registrant did not buy the domain name for the reasons he has given. The Panel also draws the inference that when he bought the domain name, he was aware that it was the IATA code for Nanaimo Airport and that he probably bought it for that reason.

Alternatively, the fact that the Registrant has not replied to Annex B or given evidence that must be available to him, of actual work he has done in the course of developing his domain names and the disputed domain name in particular, casts doubt over his entire case.

Thus, the Panel does not accept any of the matters that the Registrant relies on to show that he has a legitimate interest in the domain name and it finds that he does not have any such legitimate interest.

The Complainant has thus established the second of the three elements that it must prove.

REGISTRATION IN BAD FAITH

The Panel now turns to consider whether the disputed domain name was registered in bad faith. In that regard, the Panel notes that, consistent with the decision in *Canadian Broadcasting Corporation? Societes Radio-Vanada v. William Quon*, CIRA Dispute Number 00006(April 8, 2003), pp.13-14, surrounding circumstances may be considered in assessing whether the disputed domain name has been registered in bad faith.

By clause 4.1 of the Policy, the Complainant is obliged to prove that:

“(c) the Registrant has registered the domain name in bad faith as described in paragraph 3.5.”

The policy then provides in paragraph 3.5:

“For the purposes of paragraphs 3.1(c) and 4.1(b), 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:

1. the Registrant registered the domain name, or acquired the Registration, primarily for the purpose of selling, renting, licensing or otherwise transferring the Registration to the Complainant, or the Complainant’s licensor or licensee of the Mark, or to a competitor of the Complainant or the licensee or licensor for valuable consideration in excess of the Registrant’s actual costs in registering the domain name, or acquiring the Registration;...”

The Panel finds that the facts of the case bring it within that provision and that the Registrant therefore registered the domain name in bad faith. The Panel has already found under the Legitimate Interest prong that it does not accept the Registrant’s explanation of how he came to acquire the domain name or the reasons he gave for having

done so. That weakens the Registrant's case so much that there is no evidence to support his contentions.

On the totality of the evidence, the Panel also finds that it is more likely than not that the Registrant knew at the time he bought the domain name that it was in effect a code, probably an IATA code, probably the IATA code for Nanaimo airport and that if he bought the domain name he would be able to sell it to the airport commission or a competitor in excess of the Registrant's actual costs in registering the domain name, or acquiring it.

Those remarks are equally applicable to the issue of bad faith as they are to legitimate interest. In reaching those conclusions, the Panel has been influenced by the webpage of the domain name shown by the Wayback Machine and what it revealed about the Registrant's intentions. He seems to be arguing that the company named Voodoo did this and not him. But he is responsible for what appears on the webpage to which his domain name resolved. The Registrant has given no evidence of any directions he gave to Voodoo not to include any content on the webpage although he must have some knowledge of any such directions. Nor was the banner on the webpage an isolated occurrence. It appeared consistently on the webpage from shortly after the Registrant bought the domain name in 2013 until December 2021, by which time the negotiations to sell the domain name were underway, a period of eight years. The banner was removed when the negotiations had been underway for about three months.

Although the Policy is confined to bad faith in the registration of the domain name and not in its use, as is the case with the UDRP, the Panel draws the inference from all the evidence that the Registrant bought the domain name in all probability knowing that it was the IATA code for Nanaimo airport, and with an intention to sell it to the Complainant for an amount far exceeding its registration costs.

The Panel therefore finds that the Registrant has registered the domain name in bad faith by committing a breach of Section 3.5(a) of the Policy.

Bad Faith in General

It is to be noted that the criteria for bad faith are not exclusive, but that complainants may rely on circumstances other than those enumerated to show bad faith registration.

Bad faith registration may also be shown by conduct other than the conduct specified in the various criteria mentioned above. This is made clear by Section 3.5 providing as it does, that “(f) or the purposes of paragraphs 3.1(c) ... 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... “(Emphasis added). This provision is included, as bad faith conduct may take many forms and it is frequently used to find bad faith registration and (under the Uniform Domain Name Dispute Resolution Policy) bad faith use.

The Panel has examined all of the evidence carefully and has concluded that it shows that the Registrant registered the domain names in circumstances that can fairly be described as bad faith within the generally accepted meaning of that expression.

The Panel rejects the notion that the Registrant bought the domain name because it was what he has described as generic or as an acronym and/or to develop it in his business. The evidence in support of that interpretation of the facts is unpersuasive and the Panel does not accept it. There is really no evidence that the Registrant has even started work after eight years on any such project or that he had even made any plans for doing so. Any evidence to that effect would be solely within the Registrant’s knowledge and yet he has not produced it. In particular, the Registrant necessarily implied, even if he did not directly assert, which he probably did, that he bought the domain name specifically to use in a business to be called Your Custom Designs, Your Custom Decals, Your Canadian Domains, or Your Canadian Dream, no doubt because of the initials YCD. The Registrant has had eight years at least to start or start planning or to be engaged in some form of preparation to develop such a business, but he has done, on the evidence, nothing. The Panel therefore does not accept his argument.

The complete lack of evidence to support the Registrant’s interpretation of the facts not only means that the Panel cannot accept it but that it makes the alternative interpretation all the more plausible and, in the view of the Panel, more probable. That interpretation is

that the Registrant bought the domain name knowing that it was the IATA code for the Nanaimo Airport.

The Panel finds that the intention of the Registrant was to register the domain name because it reflected the Complainant's established trademark in the aviation industry and because it provided him with scope for selling it to the Complainant or a party that competed with the Complainant in the aviation and related industries and, generally, to use it to further his own interests. That conduct constitutes bad faith registration of the domain name on any test and the Panel so finds.

The Complainant has thus made out the third of the three elements that it must establish.

CONCLUSION AND DECISION

The Panel finds that the constituent elements of the Policy have all been made out and that the Complainant is entitled to the relief it seeks. The Panel will therefore order that the disputed domain name be transferred to the Complainant.

ORDER

The Panel directs that the registration of the disputed domain name <ycd.ca> be transferred from the Registrant to the Complainant.

Dated: September 15, 2022



The Honorable Neil Anthony Brown KC (Chair)



Leslie E. Maerov, FCI Arb



James Plotkin, Q. Arb