

**IN THE MATTER OF A COMPLAINT PURSUANT TO THE CANADIAN INTERNET
REGISTRATION AUTHORITY (“CIRA”) DOMAIN NAME DISPUTE RESOLUTION
POLICY (“POLICY”)**

Complainant: ABELSoft Corporation

Complainant’s Counsel: Peter Giddens
Lang Michener LLP
Brookfield Place
181 Bay Street, Suite 2500
Toronto ON M5J 2T7

Registrant: Dimitri Nissanov

Disputed Domain Names: <abelmed.ca> & <abeldent.ca>

Registrar: 10 Dollar Domain Names Inc.

Panel: Denis N. Magnusson, Sole Panellist

Service Provider: Resolution Canada

DECISION

Parties

The Complainant is ABELSoft Corporation of Burlington Ontario. The Registrant is Dimitri Nissanov of Toronto Ontario who is an employee or officer of Antibex Software of Toronto Ontario.

Disputed Domain Name and Registrar

The disputed domain names are **abelmed.ca**, registered May 25, 2007 and **abeldent.ca**, also registered on May 25, 2007. The Registrar is 10 Dollar Domain Names Inc.

Procedural History

The Complainant filed the Complaint with the Provider, Resolution Canada, which found the Complaint in compliance with the CIRA *Domain Name Dispute Resolution Rules* (“Rules”) and the Provider transmitted it to the Registrant.

The Registrant filed no Response. As the Registrant has submitted no Response, the Panel is required to decide this matter on the basis of the Complaint. [Rules 5.8]

No Response having been filed, the Complainant elected to have the matter determined by a single member panel [Rules 6.5]. The Provider selected Denis N. Magnusson as the Sole Panel Member.

Relief Requested

The Complainant requested that the Panel order that the domain name registrations be transferred from the Registrant to the Complainant.

Background Facts

The Complainant

The Complainant is ABELSoft Corporation, incorporated under Ontario law with its head office in Burlington. The Complainant was founded in 1977 and operates a business throughout North

America, including Canada, supplying office management computer software to medical professionals, in particular, to medical doctors and to dentists. The Complainant has more than 9000 clients for its software products.

The Complainant registered the trademark **abelmed** in the Canadian Intellectual Property Office (“CIPO”) for the wares “computer software programs and instruction manuals sold therewith used for the management of medical practices”, effective August 26, 1994. The Complainant has also registered the domain name **abelmed.com** effective July 24, 1997

The Complainant registered the trademark **abeldent** in the CIPO for the wares “computer software programs and instruction manuals sold therewith used for the management of dental practices”, also effective August 26, 1994. The Complainant has registered the domain name **abeldent.com**, also effective July 24, 1997.

The Registrant

Antibex Software, at its web site located at www.antibex.ca, describes itself as a Toronto-based company founded in 2001 which sells software to medical professionals for the management of their practices. An April 3, 2006 press release located at the Antibex web site at antibex.ca describes the Registrant Dimitri Nissanov as an Account Representative of Antibex.

The Dispute

The Complaint states that a client of the Complainant, when attempting to locate an Internet site for the Complainant, typed www.abelmed.ca into his browser and found that the address resolved to the Antibex Software site at www.antibex.com. The Complainant later discovered that the Registrant had registered both **abelmed.ca** and **abeldent.ca** as domain names. The Complainant’s investigation also showed that both of the domain names in dispute, **abelmed.ca** and **abeldent.ca** were linked to the Antibex Software web site at www.antibex.com.

Eligible Complainant

An eligible Complainant under the Policy includes any person who is the owner of a trademark registered in the CIPO, to which trademark the dispute relates, Policy 1.4. The Complainant is the registered owner of the trademarks **abelmed** and **abeldent**, both registered in the CIPO effective August 26, 1994, before the registration of the domain names **abelmed.ca** and **abeldent.ca** by the Registrant effective May 25, 2007. On this basis, as well as other bases not dealt with here, the Complainant is an eligible Complainant under the Policy.

Onus on Complainant

Policy 4.1 requires that:

the Complainant must prove, on a balance of probabilities, that:

- (a) the Registrant’s dot-ca domain name is Confusingly Similar to a Mark in which the Complainant had Rights prior to the date of registration of the domain name and continues to have such Rights; and
- (b) the Registrant has registered the domain name in Bad Faith as described in paragraph 3.7;

and the Complainant must provide some evidence that:

(c) the Registrant has no Legitimate Interest in the domain name as described in paragraph 3.6.

[emphases added]

(a) Confusingly Similar

Marks in Which Complainant Had and Has Rights

Policy, 3.2(c) states a “Mark” includes a trademark registered in the CIPO. As noted the Complainant registered the trademarks **abelmed** and **abeldent** for “computer software programs and instruction manuals sold therewith used for the management of medical (or dental) practices” in the CIPO effective August 26, 1994 which was prior to the Registrant’s registration of the domain names **abelmed.ca** and **abeldent.ca** at issue in these proceedings. Those trademarks remain on the CIPO register, registered to the Complainant.

Confusingly Similar

Policy, 3.4 defines “Confusingly Similar”:

A domain name is Confusingly Similar to a Mark if 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.

In assessing similarity, the dot-ca suffix of the domain name is ignored, Policy 1.2. The registered trademarks upon which the Complainant bases its Complaint are **abelmed** and **abeldent** and the respective domain names without the dot-ca suffix are **abelmed** and **abeldent**. The marks and the respective domain names are identical.

Thus, the domain names are clearly likely to be mistaken for the relevant Marks.

b) Bad Faith

The CIRA *Policy*, 3.7 has a restrictive definition of what can constitute the Registrant’s necessary Bad Faith in registering the domain name. That definition states that there will be Bad Faith, “*if, and only if*” one or more of three specific circumstances obtain. The Complainant submitted evidence and argument with respect to the definitions of Bad Faith. The Panel finds it sufficient to consider only the definition of bad faith in Policy 3.7(c) which sets out this circumstance of bad faith:

(c) the Registrant registered the domain name . . . primarily for the purpose of disrupting the business of the Complainant . . . who is a competitor of the Registrant. [emphases added]

Competitors

To succeed in showing the Registrant’s Bad Faith under this provision the Complainant must establish that the Registrant is a *competitor* of the Complainant. The Complaint indicates that the the business for which the Registrant is an Account Representative competes in the business of supplying office management software for medical and dental professionals. This satisfies the Policy 3.7(c) requirement that the Registrant be a competitor of the Complainant.

Disrupting the Business of the Complainant

Persons who were familiar with the Complainant's Abelmed and Abeldent products and had reason to locate the Complainant ABELSoft on the Internet might well enter "abelmed.ca" or "abeldent.ca" into their web browsers, as a client of the Complainant actually did. Doing so would take the Internet user not to the ABELSoft site, but to its competitor Antibex's site. There is ample authority in earlier decided CIRA domain name dispute cases that using a domain name confusingly similar to a Complainant's trademark with the effect of diverting potential customers to a web site of a competitor of the Complainant constitutes disrupting the business of the Complainant.

Purpose

Policy 3.7(c) requires the Panel to make a finding about the Registrant's purpose in registering the domain names. It is reasonable to infer that the Registrant's use of the domain names informs us as to the Registrant's purpose in registering those domain names. The Registrant's use of the domain names to attempt to divert would-be customers for the Complainant's wares to the business and wares for which the Registrant acted as an Account Executive indicates that this was his purpose in registering the domain names, which purpose constitutes disrupting the business of the Complainant.

Primarily

Policy 3.7(c) requires that the Panel conclude that the Registrant registered the Confusingly Similar domain name *primarily* for the purpose of disrupting the business of the Complainant. There being no other apparent explanation for the Registrant's registration of these domain names, the Panel must conclude that the Registrant's primary purpose was to disrupt the business of the Complainant.

c) Legitimate Interest

Complainant's Burden

The Complainant has the burden of providing some evidence that "the Registrant has no Legitimate Interest in the domain name[s] as described in paragraph 3.6". The Panel finds that the Complainant has provided such evidence in its Complaint.

Paragraph 3.6 stipulates that the Registrant has a Legitimate Interest in a domain name "if, and only if" the Registrant has one or more of the six specific interests set out in Policy 3.6(a) to (f). As the Complaint establishes, none of those six interests apply to this case.

Conclusion

The Complainant has satisfied the Complainant's burden under the Policy of establishing Confusing Similarity, Bad Faith, and that the Registrant does not have a Legitimate Interest in the domain names. The Registrant, not having filed a Response, has failed to establish any Legitimate Interest in the domain names under the Policy.

Order

For the reasons set out above, the Panel grants the relief requested by the Complainant and orders that the domain name registrations for **abelmed.ca** and **abeldent.ca** be transferred to the Complainant.

Date: September 25, 2007

Signed:

Denis N. Magnusson