

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

Domain Name in Dispute: studentuniverse.ca
Complainant: StudentUniverse.com Inc.
Registrant: Eugene Winer
Registrar: Domain Robot Enterprises Inc.
Service Provider: Resolution Canada Inc.
Panel: Hugues G. Richard, Panellist

DECISION

The Parties

1. The Complainant is StudentUniverse.com, Inc., a Delaware, United States of America corporation, (the «Complainant»). Its authorized agent is Paul Donovan of Perley-Robertson, Hill & Mc Dougall LLP, 1400-340 Albert Street, Ottawa, Ontario, K1R 0A5.
2. The Registrant is Eugene Winer of 337 Queen Street West, Toronto, Ontario M5V 2A4 (the «Registrant»).

The Disputed Domain Name and Registrar

3. The Domain name at issue is studentuniverse.ca (the «Disputed Domain Name»).
4. The Registrar on the date of the Complaint is Domain Robot Enterprises Inc.
5. The Disputed Domain Name was registered on July 5, 2005.

Procedural History

6. Resolution Canada Inc. is a recognized service provider to the Domain Name Dispute Resolution Policy (the «Policy») and Rules (the «Rules») of the Canadian Internet Registration Authority («CIRA»).
7. The Complainant filed a complaint dated September 23, 2013, (the «Complaint») with the Provider, Resolution Canada Inc., seeking an order in accordance with the Policy and the Rules directing that the registration of the Disputed Domain Name be transferred to the Complainant.

8. Resolution Canada Inc. determined the Complaint to be in administrative compliance with the requirement of the Rules, and, by letter dated September 30, 2013 advised the parties and forwarded a copy of the Complaint to the Registrant by email and courier.
9. The Registrant failed to submit a Response within the timeframe provided pursuant to the Rules and by letter dated October 29, 2013, the Complainant elected to proceed with a single member panel to determine the matter.
10. By letter dated October 24, 2013, Resolution Canada Inc. appointed Hugues G. Richard as a single member panel (the «Panel»).
11. Relying on Resolution Canada Inc., the Panel deems that it has been properly constituted as the single member panel to determine the Complaint in accordance with the Rules.
12. Having not received any Response in a timely manner from the Registrant, the Panel shall determine the matter on the basis of the Complaint.

Background Facts

13. The Complainant is an online student travel agency that provides exclusive deals and experiences to students and faculty members all over the world under the STUDENTUNIVERSE mark.
14. To this extent, the Complainant is the owner of the Canadian trade-mark STUDENTUNIVERSE TMA 844,826 (“the Mark”), for use in association with:

Services: “Online directory services, namely, providing informational website links to travel agencies, travel insurance agencies; promoting the goods and services of others by preparing and placing informational website links on a website via a global computer network”.
15. This Mark has been used in Canada since May 2000.
16. It is also registered in the United States since October 4, 2005 under No. 3,004,170.
17. The Complainant initially obtained the domain name studentuniverse.com on February 13, 1998. The Complainant officially introduced the STUDENTUNIVERSE Mark and the trade name StudentUniverse.com Inc. to Canada in May 2000. Since then, the Complainant has provided Canadian customers with online travel reservation services and searches for travel deals provided on its website at studentuniverse.com.
18. To this extent, the Complainant provided various snapshots of its webpage and evidence of different airline partners towards its travel services.

19. As noted above, the Disputed Domain Name has been registered since July 5, 2005. It expires on July 5, 2014. It was originally registered under the name of Handa Travel, Inc.
20. The current Registrant, Eugene Winer, is the administrative and the technical contact of the Disputed Domain Name. He is Managing Director of a travel agency called "S-Trip". S-Trip is part of Handa Travel Group. Handa Travel Group operates the s-trip.com website. At that website, S-trip offers travel-related services to high school and university students. These services directly overlap with the services offered by the Complainant.
21. The Panel notes that the Disputed Domain Name at the time of the Complaint, resolved to the s-trip.com website.
22. The evidence reveals that since March 5, 2013, the Complainant has contacted the registrant in order to purchase the Disputed Domain Name from the Registrant. Many reminders were also sent to the Registrant. An offer of \$7,500 was originally made on March 5, 2013. The Registrant failed to reply to these attempts; the last of which was made on May 6, 2013.

Canadian Presence Requirements

23. The Canadian Presence Requirements for Registrants require that in order for a Registrant to be permitted to apply for registration of, and to hold and maintain the registration of a .ca domain name, the applicant must meet at least one of the criteria listed as establishing a Canadian presence.
24. Section 2(q) of the Presence Requirements specifies that a Person which does not meet any of the conditions specified in section 2(a) to (p) inclusively, but which is the owner of a trade-mark which is the subject of a registration under the *Trademarks Act* (Canada) R.S.C 1985, c.T-13 as amended from time to time, satisfies the requirement, provided that the .ca domain name includes the exact word component of that registered trademark.
25. As provided above, the Complainant is the owner of the following trade-mark registered at the Canadian Intellectual Property Office:

STUDENTUNIVERSE, filed January 31, 2012, registered February 26, 2013, registration No TMA844,826.
26. Accordingly, as the Complaint relates to a Disputed Domain Name which includes the exact word component of a Mark registered in CIPO and owned by the Complainant, the Canadian Presence Requirements are satisfied.

The Position of the Parties

The Complainant's Position

27. The Complainant states that the Disputed Domain Name is confusingly similar with the Mark as it is identical to it.
28. Essentially, having regard to bad faith and legitimate interests, the Complainant contends that since the Disputed Domain Name resolves to s-trip.com and both parties offer travel-related services primarily targeting students, the Registrant obtained the Disputed Domain Name to prevent the Complainant from registering the Disputed Domain Name; to disrupt the Complainant's business; and to intentionally attempt to attract, for commercial gain, Internet users to the Registrant's website.
29. Accordingly, the Complainant requests an Order transferring the Disputed Domain Name to the Complainant.

The Registrant's Position

30. The Registrant did not file a Response within the proper deadlines.
31. By letter dated October 28, 2013, the Registrant provided submissions requesting an extension of time to file a response. The Panel dismissed this request by e-mail dated October 29, 2013 to Resolution Canada Inc. The parties were advised of the decision as of the same date.

Analysis and Findings

32. The purpose of the Policy as stated in paragraph 1.1 of the Policy is to provide a forum by which cases of bad faith registration of .ca domain names can be dealt with relatively inexpensively and quickly. The Policy does not apply to other types of differences between owners of trade-marks and Registrants of Domain names.
33. To succeed in a proceeding, 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; and the Complainant must provide some evidence that:
 - (c) the Registrant has no legitimate interest in the domain name. Even if the Complainant proves (a) and (b) and provides some evidence of (c), the Registrant will succeed in the Proceeding if the Registrant proves, on a balance of probabilities, that the Registrant has a legitimate interest in the domain name.

34. Notwithstanding the above, the Registrant will succeed if the Registrant proves on a balance of probabilities that he has a legitimate interest in the Disputed Domain Name.

Confusingly Similar

35. The Complainant is an online student travel agency that provides exclusive deals and experiences to students and faculty members worldwide under the STUDENTUNIVERSE Mark.
36. The evidence shows that the Complainant is the owner of the mark STUDENTUNIVERSE, filed January 31, 2012, registered in CIPO February 26, 2013, registration No TMA844,826. The Complainant also obtained the domain name studentuniverse.com on February 13, 1998 which represented its service mark and trade name.
37. Evidence further reveals that the Complainant officially introduced the STUDENTUNIVERSE Mark and the trade name StudentUniverse.com Inc. in Canada in May 2000 and that since as early as 2000, the Complainant has continued to provide its Canadian customers with its online travel reservation services and searches for travel deals on its website at domain name studentuniverse.com. Accordingly STUDENTUNIVERSE is a Mark in accordance with the Policy in which the Complainant had rights at least as early as May 2000.
38. Pursuant to paragraph 3.3 of the Policy, 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 mistaken for the Mark.
39. In assessing similarity, Paragraph 1.2 of the Policy provides that the .ca suffix of the domain name is ignored. It is the narrow resemblance test that is applied (*Coca-Cola Ltd. v. Amos B. Hennan*, BCICAC Case No. 00014).
40. The Disputed Domain Name is identical to the Complainant's Mark.
41. Accordingly for the reasons noted above, the Disputed Domain Name is confusingly similar to the Complainant's STUDENTUNIVERSE Mark.

Was the Disputed Domain Name registered in bad faith?

42. The Complainant essentially relies on Paragraphs 3.5 (b), (c), (d) of the Policy in support of its claim.

Paragraph 3.5(b)

43. The Complainant argues that the Registrant registered the Disputed Domain Name to prevent the Complainant from registering the Mark as a domain name whereas he has no legitimate interest in the Mark.

44. The Complainant does not provide enough evidence to support this argument. The Panel disagrees with that determination and considers that the Complainant has not satisfied its burden with respect of Paragraph 3.5 (b).

Paragraph 3.5 (c)

45. The Complainant argues that the Registrant registered the domain name primarily for the purpose of disrupting the business of the Complainant, who is a competitor of the Registrant both specialized in the offer of travel-related services primarily targeting students.
46. This Panel recognizes the difficulty to show bad faith with concrete evidence. Therefore, the Panel takes into consideration surrounding circumstances and draws inference to determine whether or not the Registrant's actions demonstrate such bad faith (*CBC/Radio-Canada v. Quon*, CIRA No. 00006, 2003).
47. To this extent, a Registrant disrupts the business of a competitor if it offers goods or services that compete with, or rival the goods or services offered by the trade-mark owner (*General Motors Acceptance Corporation v. Bob Woods*, CIRA No. 00051, 2006). In the matter at bar, the Registrant offers the same services as the Complainant, the trade-mark owner, being travel-related services primarily towards the student population. This is sufficient evidence of registration in bad faith.

Paragraph 3.5 (d)

48. The Complainant adds that the Registrant registered the Disputed Domain Name in an intentional attempt to attract, for commercial gain, Internet users to the Registrant's website, thereby creating a likelihood of confusion with the Complainant's STUDENTUNIVERSE Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's products or services.
49. The evidence reveals that the Registrant similarly registered a domain name which contains the whole of the Complainant's STUDENTUNIVERSE mark, which is specifically used for travel-related services for students. This is likely to cause consumers to believe that the Registrant's Disputed Domain Name is endorsed, sponsored or approved by the Complainant, which is not the case (*HRB Royalty v. Taxman*, CIRA No. 00093, 2008). This is evidence of bad faith.
50. The Disputed Domain Name, when used, resolves to s-trip.com which is where the Registrant's website is located and where the Registrant's company offers its travel-related services primarily targeting students. This is further evidence of bad faith.
51. For the reason noted above, the Panel is satisfied that the Complainant has met the burden that the Registrant registered the Disputed Domain Name in bad faith as required by the Policy.

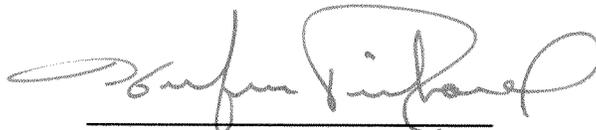
Legitimate Interest of the Registrant

52. The Complainant has the burden of providing some evidence that «the Registrant has no legitimate interest in the domain name as described in paragraph 3.4»
53. With regard to the evidence, the Panel is satisfied that the Complainant has provided some evidence that the Registrant does not have legitimate interest in the Disputed Domain Name as required by paragraphs 3.4 and 4.1 (c).
54. Moreover, the Panel is of the opinion that the Registrant has failed to meet his burden, on a balance of probabilities, that he had a legitimate interest in the Disputed Domain Name.
55. Accordingly the Panel concludes that the Registrant has no legitimate interest in the Disputed Domain Name.

Decision

56. For the reasons set out herein, the Panel decides in favour of the Complainant and orders the transfer of the Disputed Domain Name to the Complainant.

Dated this November 12th, 2013

A handwritten signature in black ink, appearing to read 'Hugues G. Richard', written over a horizontal line.

Hugues G. Richard
Panellist