

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

**Domain Names:** FLUORCORPORATION.CA

**Complainant:** Fluor Corporation  
**Registrant:** Undisclosed  
**Registrar:** Go Daddy Domains Canada, Inc.

**Panel:** David Allsebrook  
**Service Provider:** ResolutionCanada Inc.

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**DECISION**

**A. The Parties**

1. The Complainant **Fluor Corporation** is a publicly traded U.S. corporation having its head office in Texas. Its authorized representative in this dispute is CSC Digital Brand Services AB located in Sweden.
2. The Registrant gave a Calgary postal address.

**B. The Domain Name and Registrar**

3. The domain name at issue is **FLUORCORPORATION.CA**.
4. The domain name is registered with Go Daddy Domains Canada, Inc.

**C. Panel Member Impartiality and Independence Statement**

5. As required by paragraph 7 of the Rules, the undersigned has declared to the Provider that he can act impartially and independently in this matter, as there are no circumstances known to him that would prevent him from so acting. The Panel has been informed of the Registrant's name and contact information for the purposes of making this determination.

**D. Canadian Presence Requirement**

6. The Complainant owns a number of trade mark registrations in Canada for the trade mark **FLUOR** including registrations numbered TMA188799, TMA607194

and TMA785713. It therefore complies with the Canadian presence requirements which qualify it to hold .ca domain name registrations and to lodge complaints under the CIRA Dispute Resolution Policy (CDRP).

## **E. Factual Background**

7. The Complaint is dated August 5, 2015. The identity of the Registrant was unknown to the Complainant because the Registrant elected for privacy. The name and email address of the Registrant were provided to Resolution Canada Inc. by CIRA on August 5. On August 7, Resolution Canada provided notice of the complaint, a copy of the complaint and of the annexes to it, to the email address provided by the Registrant. No response has been received from the Registrant.
8. Fluor Corporation is one of the largest publicly owned engineering, procurement, construction, maintenance and project management companies in the world. It has offices in 30 countries, 40,000 employees, and revenues in 2013 of 27.4 billion dollars. Fluor has been executing work in Canada for more than 60 years and is a dominant engineering, procurement and construction contractor in Canada's oil and gas industries.
9. The domain name resolves to a web page run by the Registrar of the domain name, Go Daddy Domains Canada Inc. (Go Daddy). The web page is a pay per click page half occupied with advertisements for Go Daddy and half by ten pay per click links having no discernable connection to the Fluor Corporation or its industry. Pursuant to the Go Daddy. Com LLC registration agreement, portions of which were provided by the Complainant, a domain name registered through Go Daddy. Com LLC which is not given an address away from Go Daddy. Com LLC's servers by the registrant will be directed to a parked page featuring advertisements for Go Daddy. Com LLC and pay per click links to generate revenue. The Go Daddy. Com LLC agreement with its registrants provides that the registrants do not control the advertising or receive compensation. No information was provided as to whether this agreement, described as being from a different GO Daddy entity than the Registrar, applies to the Registrant, but the Complaint assumes that it does.
10. The Complaint alleges that the Registrant sent emails addressed from fluorcorporation.ca to interested applicants in response to a fraudulent job posting. The email requested that applicants respond to the address hrd@fluorcorporation.ca with resumes. A copy of the alleged email is attached.
11. The Complaint attaches three letters Fluor Corporation wrote to the Registrant and transmitted through CIRA setting out Fluor's trade mark claims and asking for the transfer to Fluor of the domain name. They were sent on April 28, 2015,

May 7, 2015 and May 18, 2015 and are the same message sent three times. None refers to the alleged fraudulent job posting.

## **F. Analysis**

12. The Complaint alleges that the domain name is Confusingly Similar (as defined in the CDRP) to its trade marks, was adopted in bad faith and that the registrant has no legitimate interest in it. The Complaint requests the transfer of the domain name to Fluor Corporation.
13. To succeed, a CDRP complainant must demonstrate the three factors specified in paragraph 4.1 of the CDRP, namely:
  - “**4.1 Onus.** To succeed in the 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 as described in paragraph 3.5; and the Complainant must provide some evidence that: (c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4.
14. “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 as described in paragraph 3.4”

### ***Confusing Similarity issue***

15. The domain name, according to the Whois search, was registered on March 3, 2015. The three Canadian registrations of the Fluor trademark were registered in 1972, 2004 and 2010 respectively.
16. The confusing similarity test is applied after omitting the .ca element of the domain name. It also discounts the addition of non-distinctive elements such as descriptive terms and the word “corporation”. Accordingly I consider the domain name fluorcorporation.ca to be confusingly similar to the trade mark Fluor.

### ***Bad Faith Issue***

17. The second test is whether the trade mark has been registered in bad faith. Section 3.5 of the Policy begins:
  - “**Registration in Bad Faith.** 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.”

18. The Complaint asserts that its fame, in conjunction with the exact duplication of its name in the domain name, makes it impossible to conceive that the Registrant could have been unaware of the complainant’s name; that the resolution of the domain name to pay per click links demonstrates bad faith; that the Registrant used the domain name registration to launch a phishing attack; and that the Registrant failed to respond to cease and desist letters.
19. The framework for the determination of the presence of bad faith is set out in section 3.5 of the CDRP, which sets out a non-exhaustive list of instances of bad faith. The Complaint does not cite any of the specific instances as being applicable in this situation.
20. The Complainant says that their fame is such that the Registrant must have known of them. The Complainant’s services of engineering, procurement, construction, maintenance and project management are not typically provided to individual consumers. I am not prepared to infer that the Registrant, an individual, must have known of Fluor Corporation. Even if she did know of Fluor Corporation, I am not prepared to assume that no legitimate use of the name was possible, for example in unrelated fields of activity.
21. The Complainant says that the use of pay per click sites is bad faith *per se*. Such sites generate revenue when users who land on them click the links on them. The links are typically to commercial businesses who place ads. The selection of ads on the pages is influenced by the behavior of the users and so can reflect the user’s’ collective interest in the subject suggested by the domain name. In this instance the assortment of links does not on first impression suggest any collection of subjects which would relate to Fluor Corporation. The Complaint does not raise this issue.
22. In this case, assuming as alleged that the Go Daddy.com LLC registration agreement applies, the pay per click usage of the domain name is a default policy of the Registrar and the revenue from it does not accrue to the Registrant. It simply means that the domain name owner has not created a web site. It is not apparent where bad faith on the part of the Registrant lies in this practice.
23. The Complainant says that the Registrant “used the Disputed Domain Name to send emails to interested applicants in response to a fraudulent job posting.” The only other information provided about this allegation is a copy of an alleged email and a title given to it by the Complainant, “Copy of the Email used in Phishing attempt.” The document begins “Hello Applicant”, briefly describes Fluor Corporation, asks that if the reader is interested in a position with Fluor that resumes be sent to hrd@fluorcorporation.ca, and gives a plausible job description of the duties of a job position entitled “Project Controls-Cost Specialist”.

24. The email concludes “Interested? Reply to this email to contact” followed by a black rectangle and a period, then on the same line “Your contact details will be shared when you reply”. It then reads “Not Interested? Decline – Your contact details will not be shared. On the final line it gives the name and address of a company in Ireland. Both the word “Decline” and the name of the Irish company are hyperlinks. A copy of the email is attached to these reasons as Appendix A.
25. If the document provided is an email, it is not a complete email. It does not provide the address of the recipient, the address of the sender, or the date it was sent. A name appears to have been blacked out from the document. The Complaint does not say how the Complainant got this document, when it learned of the alleged scheme or what action it has taken. No explanation of the alleged scheme is given. What was the fraudulent job posting to which this was the response? Who received this email? What was the blacked out name? Why was it blacked out and by whom? Who is the Irish Company? What happened when the recipient of the email clicked on the hyperlinks or emailed hrd@fluorcorporation.ca? In the absence of an explanation of the circumstances and more definite links to the Registrant, I cannot conclude that the registration of the domain name was in furtherance of a fraudulent scheme and therefore in bad faith.
26. Nor is the failure to respond to demand letters itself sufficient to establish bad faith. The Complaint does not content that the Registrant has a legal obligation to respond to them.
27. However, the allegations taken together are sufficiently substantiated and serious that an answer could be expected from an innocent party, if only an indignant denial. Registrants are required by the CIRA Registration Agreement to keep their contact information up to date and to accept correspondence addressed to them through CIRA. The allegations taken together, particularly the alleged use of the domain name in an email soliciting applications for jobs at Fluor, compounded by the silence of the Registrant in answer to this Complaint, establish bad faith on the part of the Registrant for the limited purposes of the CDRP.

### ***Legitimate Interest Issue***

28. The third test under the policy is whether the Registrant has no legitimate interest in the domain name as described in paragraph 3.4. Paragraph 3.4 reads 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. In paragraph 3.4(d) "use" by the Registrants includes, but is not limited to, use to identify a web site."

29. Paragraph 4.1 deals with the issue of onus of proof:

"...the Complainant must provide some evidence that: (c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4. 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 as described in paragraph 3.4."

30. The evidence that the Registrant has no legitimate interest is slim but present. Fluor Corporation is active in the Canadian oil and gas industry, which is headquartered in Calgary where the Registrant is. Oil and gas is the dominant industry in Calgary and its affairs are commonly discussed and well known. That is not to say that the Registrant must have known of Fluor but she could well have done. Given the identity of names, the location of the registrant, the prominence of Fluor in the oil and gas business based in Calgary, and the unanswered allegation of use of the Registrant's domain name in the dubious email, the Complaint has provided some evidence that there is no legitimate interest in the domain name. The Registrant having thus been given the burden of proving its legitimate interest, has remained silent. She has therefore failed to discharge her onus of proving her legitimate interest on the balance of probabilities.

## **G. Privacy**

31. The Registrant's name is not disclosed in Whois searches because she opted for privacy when completing her registration. Her name was disclosed to the provider and the Panel for the purposes of resolving this Complaint. I choose not to disclose her name because her identity is not a material issue in the Complaint.

## H. Conclusion and Decision

32. I find that Complaint has established that the domain name is Confusingly Similar with the Complainant's prior owned trade marks; that the domain name fluorcorporation.ca was registered in bad faith for the limited purposes of the CDRP; and that the Complaint imposed a burden on the Registrant to establish that the Registrant had a legitimate interest in the domain name which the Registrant has not borne.

33. The domain name fluorcorporation.ca will be transferred to the Complainant.

September 26, 2015

Panelist



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David Allsebrook

## Appendix A

Hello Applicant,

With 40,000 employees connected across the globe, Fluor delivers some of the most challenging and complex projects in dynamic industries across Canada and around the world. Fluor serves over 600 clients globally in 81 countries on 6 continents

Fluor offers exciting opportunities and flexible career solutions to help fulfill your goals. Are you ready to join a team of world-class professionals? You should apply with an attachment of your CV sent to [hrd@fluorcorporation.ca](mailto:hrd@fluorcorporation.ca), as there are numerous vacancy position available now.

**Job Title: PROJECT CONTROLS - COST SPECIALIST**

**Company: FLUOR**

The position will be responsible for all cost functions as assigned by the Construction Project Controls Manager, for the project

Responsibilities:

- maintain Work Breakdown and Project Coding Structures for control and integrity of work defined by the contract set-up and maintain labor reporting system; by

Direct, Indirect, Supervision, Etc., as well as Craft Mix

- support management reporting of labor metrics
- oversees inputting of cost related, Field and Home Office generated data into Payroll/Tracking, ensuring proper coding, etc., are utilized
- responsible for reconciliation of data on a monthly basis and preparing comprehensive reports and analysis of planned vs actual cost information
- prepares and updates summary cash flow information for various construction categories and overall project
- oversee processing of all trends, budget shifts, change orders, etc.
- prepares detailed and summary Cost Control Reports that provide information on the status of costs (planned, actual, committed, forecast, etc.) and provides

analysis of data as required

- monitors and analyzes daily cost expenditures of the Hook-up & Commissioning S/C. Prepares the Sensitivity Analysis for Management
- analyzes variances in cost and schedule performance against the plan
- recommend solutions or recovery plans to schedule/cost impact or delays and communicates the reasons for the issuance of variance and proposed mitigation plans

to Project Management

- coordinates estimate development with the Project Estimator
- provides Status of Reserves and Contingencies
- participates in the review of Project Risk Analysis with management and provides status reporting
- possesses practical experience in the use of the automated cost management systems
- skilled in the import/export of data, required for support of actuals and forecast
- provides meaningful, accurate historical data
- other duties as assigned

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