

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

Domain Names: VIVIDSEATS.CA

Complainant: Vivid Seats LLC

Registrant: Ticket Spectrum

Registrar: Go Daddy Domains Canada, Inc.

Panel: David Allsebrook (Chair), Teresa Scassa, Peter Cooke

Service Provider: Resolution Canada Inc.

DECISION

A. The Parties

1. The Complainant, **Vivid Seats LLC**, is a corporation located in Chicago, Illinois, which carries on business providing tickets for theatre, concert, sports and other entertainment events in Canada and around the world. Its authorized representative in this dispute is Alessandro Colonnier of the Ottawa law firm ANDREWS ROBICHAUD P.C.
2. The Registrant, Ticket Spectrum, is a ticket vendor located in Calgary, Alberta. It has filed no response and named no representative in this dispute.

B. The Domain Name and Registrar

3. The domain name at issue is **VIVIDSEATS.CA** (the “Domain Name”).
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 have declared to the Provider that they can act impartially and independently in this matter, as there are no circumstances known to them that would prevent them from so acting.

D. Canadian Presence Requirement

6. The Complainant owns trademark registrations in Canada for the trademarks VIVID SEATS, registration number TMA1,022,387 and VIVIDSEATS Design, registration number TMA1,022,388, both of which were registered on May 23, 2019. 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” or the “Policy”).

E. Factual Background

7. The Complainant describes itself as a leading purveyor of tickets to theatre, concert, sports, and other entertainment events in Canada and around the world, processing millions of ticket sale transactions per year at its www.vividseats.com website (the “Complainant’s vividseats.com Website”), which was originally registered by the Complainant under its previous name “Vivid Seats Ltd”.
8. The Complainant claims to have used the VIVIDSEATS trademarks both in Canada and around the world, for well over a decade. In support of its claim, the Complainant has provided records from the Wayback Machine of screenshots from the Complainant’s vividseats.com Website from as early as February 8, 2005.
9. Unbeknownst to and without permission from the Complainant, the Domain Name was registered on January 28, 2009.
10. The Registrant and its Administrative Contact are known to the Complainant. Specifically, the Registrant made a ticket vendor’s account on the Complainant’s vividseats.com Website (herein the “Registrant’s VIVIDSEATS Account”). The Complainant banned the Registrant’s VIVIDSEATS Account in 2015 for what the Complainant describes as engaging in fraudulent ticket sales in the amount of \$13,666.34USD.
11. After this ban and based on the earliest record found in the Wayback Machine dated July 3, 2016, the Domain Name redirected its traffic to the domain www.ticketspectrum.com, which is the business name of the Registrant. Based on records obtained from the Wayback Machine, the domain www.ticketspectrum.com offered competing services to those offered by the Complainant.
12. Subsequently, at least as early as May 21, 2017, this redirect was changed to www.yourtickettothestars.com, another site that offered (and continues to offer) competing services to those offered by the Complainant.

F. Analysis

13. The Complaint alleges that the Domain Name is Confusingly Similar (as defined in the CDRP) to its trademarks, 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 it.
14. 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.

“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. To repeat the first test under *s. 4.1*, “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.”

The term “Confusingly Similar” is defined in the Policy as:

3.3 “Confusingly Similar”. In determining whether a domain name is “Confusingly Similar” to a Mark, the Panel shall only consider whether 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.

16. The Domain Name, according to the Whois search, was registered on January 28, 2009. The Canadian registrations of the VIVID SEATS trademarks were registered after that, in 2019. However, the Complainant has also claimed that it had used the VIVID SEATS trademarks in Canada prior to the date of registration of the Domain Name. The Complainant must therefore show, on a balance of

probabilities, that it had acquired common law or unregistered rights in the VIVID SEATS trademarks in Canada prior to January 28, 2009.

17. The Complainant has adduced evidence in the form of screenshots from the Complainant's vividseats.com Website acquired from the Wayback Machine. The screenshots demonstrate that Complainant's vividseats.com Website displayed the VIVID SEATS trademarks in connection with the sale of tickets to sports events and concerts held in Canada since as early as February 8, 2005. The Panel is satisfied that the evidence provided establishes that the Complainant had acquired some common law rights in the VIVID SEATS trademarks in Canada commencing as early as February 8, 2005.
18. The Complainant has therefore established that it had rights to the VIVID SEATS trademarks before the Domain Name VIVIDSEATS.CA was registered.
19. 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.
20. The panel concludes that the domain name VIVIDSEATS.CA is confusingly similar to the trademark VIVID SEATS for the purposes of the CDRP.

Bad Faith Issue

21. The second test is whether the trademark 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:”
22. The Registrant registered the trademark of one of its competitors as its own domain name. It has used the Domain Name to direct internet users to its own business, which competes directly with the Complainant's business. It has offered no explanation as to how this could be accomplished in good faith.
23. The panel concludes that the domain name VIVIDSEATS.CA was registered in bad faith.

Legitimate Interest Issue

24. 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.”

25. 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.”

26. The Complainant enjoys the exclusive right to use the VIVID SEATS trademarks throughout Canada in association with ticket agency services. This raises an onus upon the Registrant to show how it may legitimately use the Domain Name to provide its own ticket agency services. It has not responded to the complaint and has not discharged this onus.

27. The panel concludes that the Registrant has no legitimate interest in the domain name VIVIDSEATS.CA.

G. Conclusion and Decision

28. The panel concludes that:

- (a) the domain name VIVIDSEATS.CA is confusingly similar to the trademark VIVID SEATS for the purposes of the CDRP,
- (b) the domain name VIVIDSEATS.CA was registered in bad faith, and
- (c) the Registrant has no legitimate interest in the domain name VIVIDSEATS.CA.

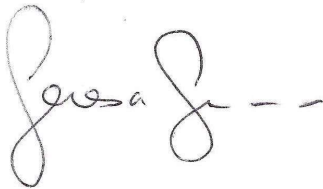
29. The panel directs that the domain name VIVIDSEATS.CA be transferred to the Complainant **Vivid Seats LLC**.

October 4, 2019

Panel



David Allsebrook (Chair)



Teresa Scassa



Peter Cooke