

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

Domain Name: CANADIANLINEN.CA

Complainant: Canadian Linen and Uniform Service Co.

Registrant: Khwaja Azeem Shah

Registrar: CanSpace Solutions Inc.

Panel: Mr. Richard Levy (Chair), Ms. Myra Tawfik, Mr. David Allsebrook,

Service Provider: Resolution Canada

**DECISION**

**OVERVIEW**

1. This matter concerns a dispute between the Complainant and the Registrant regarding the registration and use of the domain name canadianlinen.ca (the “Domain Name”).
2. Resolution Canada is a recognized service provider to the CIRA Domain Name Dispute Resolution Policy (“the 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 Domain Name in breach of the Policy. The Registrant has filed a Response in this proceeding.

**THE PARTIES**

5. The Complainant in this proceeding is Canadian Linen and Uniform Service Co. of 1959 Upper Water Street of Halifax, Nova Scotia, B3J 3N2, Canada (“the Complainant”) and its Authorised Representative in this proceeding is Andrea Pitts, Borden Ladner Gervais LLP, World Exchange Plaza, 100 Queen St., Suite 1300, Ottawa, Ontario, K1P 1J9 Canada
6. The Registrant in this proceeding is Khwaja Azeem Shah of 44 Greenhedges Court, Toronto, Ontario, M1B 1T2, Canada. (“the Registrant”).

**REGISTRATION OF THE DISPUTED DOMAIN NAME**

7. The disputed domain name was registered by the Registrant on May 12, 2016 with CanSpace Solutions Inc.

## **PROCEDURAL HISTORY**

8. The Complaint giving rise to this proceeding was commenced on December 15, 2020.
9. The Response of the Registrant was filed on January 28, 2021.
10. The Complainant filed a response to the Registrant's claim for costs on February 3.
11. This panel was appointed on February 8.

## **THE CANADIAN PRESENCE REQUIREMENT**

12. The Complainant is eligible to bring this Complaint under paragraph 2.4 of the CIRA Canadian Presence Requirements for Registrants, Version 1.3 (the "CPRR") by virtue of being an unlimited liability corporation under the laws of Nova Scotia, Canada.

## **FACTS ALLEGED BY THE COMPLAINANT**

13. The Complaint is based on two registered Canadian trademarks for CANADIAN LINEN AND UNIFORM SERVICE, owned by the Complainant. One of them, identified as Application 1137437, is associated with: "operation of a business to sell, supply, rent, and clean textiles, uniforms, table linens, wiping towels." It was filed on April 15, 2002 and registered on February 5, 2004.
14. In this registration, the right to the exclusive use of the words CANADIAN and SERVICE are disclaimed apart from the trademark. As well, the right to the exclusive use of the word LINEN in respect of services described as "the operation of a business to sell, supply, rent and clean table linens" is disclaimed apart from the trademark. The right to the exclusive use of the word UNIFORM in respect of services described as "the operation of a business to sell, supply, rent and clean uniforms" is disclaimed apart from the trademark.
15. The earlier registration, identified as Application 0894441, is associated with: "operation of a business to sell, supply, rent, and clean dust control items, namely door mats and treated dust mops. . It was filed on October 27, 1998 and registered on December 5, 2002.
16. In this registration, the right to the exclusive use of the words CANADIAN and SERVICE is disclaimed apart from the trademark.
17. The Complainant also relies on its common law rights, in particular its longstanding and continuous use of CANADIAN LINEN (the "Mark") and CANADIAN LINEN AND UNIFORM SERVICE as trade names and unregistered trademarks.
18. Complainant provides some evidence that the CANADIAN LINEN trademark has been used in Canada to distinguish services of towel laundry and supply from those services provided by others since at least 1925.
19. Complainant states that the use described in the section above inures to its

benefit.

20. Complainant advertises the CANADIAN LINEN AND UNIFORM SERVICE Goods and Services on pages hosted at <https://www.canadianlinen.com/> , which is accessible in Canada.
21. Complainant has owned the [canadianlinen.com](http://canadianlinen.com) domain name since as early as August 31, 1998.
22. Complainant states it began use of the Canadian Linen Mark on the website at [canadianlinen.com](http://canadianlinen.com) prior to the registration of the Domain Name. The domain name [canadianlinen.com](http://canadianlinen.com) can also be accessed by way of store.canadianlinen.com and portal.canadianlinen.com.
23. Complainant is also very active on social media, including Facebook, Twitter, YouTube, and LinkedIn.
24. Complainant's Goods and Services are available to Canadians through at least 16 production facilities and service centres located throughout Canada. Complainant states that these facilities provide linens, towels, uniforms, floor mats, washroom, and cleaning products in association with the Canadian Linen Mark.
25. Complainant states that its Canadian revenue in every year from 2014 to present has exceeded \$250CAD million annually.
26. Complainant asserts that it has acquired a significant reputation in the Canadian Linen Mark through longstanding use and promotion in Canada.

#### **FACTS ALLEGED BY THE REGISTRANT**

27. The words "CANADIAN" and "LINEN" are disclaimed in the Complainant's registered marks as they are generic in relation to the products and services covered.
28. Complainant's website [www.canadianlinen.com](http://www.canadianlinen.com) as show in SCHEDULE "C" of the Complaint clearly states in bold "WE AREN'T JUST A LAUNDRY COMPANY. WE ARE A WORLD CLASS UNIFORM AND LINEN SERVICE COMPANY".
29. The word "Canadian", the first word in the Mark, is a generic geographical description.
30. Registrant states that Complainant has failed to show any documentation that shows that Complainant has ever tried to register the tradename "CANADIAN LINEN" or has marketed its brand without the word "UNIFORM" and the word "SERVICES", "which forms the core and main business of the complainant".
31. Registrant alleges that, "The website screenshots provided by the complainant in "SCHEDULE E" doesn't show the use of "Canadian Linen" mark as claimed by the complainant. In fact, it shows the logo that very clearly advertises the main branding strategy and core revenue generating business model and one can very clearly see the trademark "Canadian Linen & Uniform Service" next to the symbol C with maple leaf in it which forms the full logo that is used for branding the company and is visible on all

company markings.”

32. Registrant alleges that “SCHEDULE H & I” clearly shows that the Complainant is focused on providing services to other businesses and that Complainant’s products are supplied to employees at work or used by them as uniforms.
33. Registrant alleges that Canadian Linen is not used as a mark on work and uniform products sold by the Complainant, and that, in fact, these products are sold bearing different brands such as “Steel Guard”, “Red Cap”, and Wear Guard”.
34. Registrant states he filed a design trademark application - 2003112 with CIPO on December 24, 2019 with the index heading of “CANADIANLINEN.CA BED & BATH HOME STORE” before receiving any correspondence from Complainant alleging violation of Complainant’s trademark rights.
35. Registrant states Complainant filed a trademark design application – with CIPO on March 24, 2020 for its design mark, the one that appears on its website.
36. Registrant states that he federally incorporated CanadianLinen.ca Corporation on July 15, 2020 and that the preparation for the submission was in progress before he received any correspondence from the complainant.
37. Registrant states that there are many companies that are using the words “Canadian” and “Linen” in marketing their services and products. And that these companies are also incorporated and are actively doing business in Canada with established logos and websites selling linen products to businesses. He provides as examples: (a) “CANADIAN LINEN & TOWELS” with an active website “CANADALINEN.COM”, (b) “CANADIAN TOWEL & LINEN CORPORATION” with an active website “CANADIANTOWEL.COM”, (c) “CANADA LINENS with an active website “CANADALINENS.CA”, (d) “CANADA LINEN WORKS” that shows closed status on Google but is still active in the NUANS Search for active companies.
38. Registrant states that the word “CANADIAN” and the word “LINEN” are used by many companies, as both of these words are generic words.
39. Registrant states that Registrant and Complainant are not competitors in that they serve completely different target markets, Complainant being focused on Business-to-Business commerce while Registrant is focused on Business to Consumers commerce. Registrant states that Complainant mainly provides a laundry service and business-related uniform products while Registrant sells home use linen products.
40. Registrant states that Complainant has established sales representatives, long standing contracts, and obtains business by way of a government bidding process, whereas Registrant is focused on on-line channels, a direct selling model to consumers, and big box e-commerce, such as Amazon, Walmart, and BestBuy. Registrant states that Canadianlinen.ca store was registered on Amazon, Ebay and BestBuy before receiving any correspondence from the Complainant
41. Registrant states that he and his associates use the trade names, Bloom

Linen, Linen Express, Linen Mart, Choice Linen and Canadian Hotel Supply in Canada, some of these being turned into domain names, to sell hotel and motel linens through sales representatives, and that the Domain Name was created to sell linens directly to consumers i.e., for a different market niche through different market channels.

## **CONTENTIONS OF THE COMPLAINANT AND REGISTRANT**

- 42.** In accordance with Paragraph 3 of the Policy, the Complainant contends:
- a. That the Domain Name is confusingly similar to its registrations and common law trademark rights prior to the date of registration of the Domain Name and that it continues to have such rights;
  - b. That the Domain Name has been registered in bad faith; and
  - c. That the Respondent has no legitimate interest in the Domain Name.

Accordingly, Complainant asks that the Domain Name be transferred to it.

- 43.** The Registrant denies all three contentions and asks that the request to transfer the Domain Name be dismissed.
- 44.** In addition, Registrant contends that the Panel award him \$5000 pursuant to subsection 4.6 of the Policy, which states:

“Bad Faith of Complainant. If the Registrant is successful, and the Registrant proves, on a balance of probabilities, that the Complaint was commenced by the Complainant for the purpose of attempting, unfairly and without colour of right, to cancel or obtain a transfer of any Registration which is the subject of the Proceeding, then the Panel may order the Complainant to pay to the Provider in trust for the Registrant an amount of up to five thousand dollars (\$5000) to defray the costs incurred by the Registrant in preparing for, and filing material in the Proceeding. The Complainant will be ineligible to file another Complaint in respect of any Registration with any Provider until the amount owing is paid in full to the Provider.”

## **ONUS OF PROOF ON THE COMPLAINANT**

- 45.** To succeed in a Proceeding, the Complainant must prove the three criteria of Paragraph 3 of the Policy, on a balance of probabilities. Even if the Complainant proves (a) and (b) above on this basis 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 of the Policy.

## **CONFUSION**

- 46.** The Complainant must prove, on a balance of probabilities, that the Registrant’s 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 in which Complainant continues to have such Rights.

**47.** Under paragraph 3.2 of the CDRP, a “Mark” is:

(a) a trade-mark, including the word elements of a design mark, or a trade name that has been used in Canada by a person, or the person’s predecessor in title, for the purpose of distinguishing the wares, services or business of that person or predecessor or a licensor of that person or predecessor from the wares, services or business of another person;

(b) a certification mark, including the word elements of a design mark, that has been used in Canada by a person or the person’s predecessor in title, for the purpose of distinguishing wares or services that are of a defined standard;

(c) a trade-mark, including the word elements of a design mark, that is registered in CIPO; or

(d) the alphanumeric and punctuation elements of any badge, crest, emblem or mark in respect of which the Registrar of Trade-marks has given public notice of adoption and use pursuant to paragraph 9(1)(n) of the *Trade-marks Act* (Canada).

**48.** The Complainant has established that it has registered trademark rights in Canada for the trademark CANADIAN LINEN AND UNIFORM SERVICE used in association with its services namely, selling, supplying, renting and cleaning textiles, uniforms, table linens and wiping towels. However, the Complainant has not met its burden of proving that the domain name CANADIANLINEN.CA is confusingly similar to its registered trademark. The Registrant is not using the Complainant’s registered trademark. The only common elements are the words CANADIAN and LINEN, both of which are inherently descriptive. In fact, the Complainant itself has recognized the descriptive nature of the terms CANADIAN and LINEN by expressly disclaiming rights to their exclusive use. Furthermore, the Registrant has demonstrated that many businesses in Canada use these same words to describe their products and services such that the term CANADIAN LINEN is not distinctive of any one source in Canada.

**49.** The Complainant alleges that it also enjoys common law or unregistered trademark rights in Canada in the trademark CANADIAN LINEN and in the trade name CANADIAN LINEN AND UNIFORM SERVICE Co. In respect of the trade name, the Registrant’s domain name is not confusingly similar to CANADIAN LINEN AND UNIFORM SERVICE Co. Given the descriptive nature of the terms CANADIAN and LINEN and the fact that the two businesses operate in different channels of trade, there is little likelihood of confusion. In terms of the claim to common law or unregistered trademark rights, the Complainant has provided some evidence that it uses the term CANADIAN LINEN to distinguish its services of towel laundry and supply from those services provided by others since at least 1925. It has also demonstrated that it registered and uses the domain name canadianlinen.com since 1998. However, the evidence provided does not clearly demonstrate use of CANADIAN LINEN or canadianlinen.com as trademarks. Stronger evidence of use as a trademark and acquired distinctiveness would have been required given the descriptive nature of the words in question.

50. For these reasons, we find that the Registrant's Domain Name is not confusingly similar to the Complainant's registered trademark or its trade name. In addition, the Complainant has not established on a balance of probabilities that it had common law rights in the trademark CANADIAN LINEN or in canadianlinen.com in association with its services.

#### **REGISTRATION IN BAD FAITH**

51. For the purposes of paragraph 3.1(c) and 4.1(b) of the Policy, 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:
- a) ***(to Transfer for excess consideration)*** 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 licensor or licensee for valuable consideration in excess of the Registrant's actual costs in registering the domain name or acquiring the Registration;
  - b) ***(a pattern to Prevent registration)*** the Registrant registered the domain name or acquired the Registration in order to prevent the Complainant, or the Complainant's licensor or licensee of the Mark, from registering the Mark as a domain name, provided that the Registrant, alone or in concert with one or more additional persons has engaged in a pattern of registering domain names in order to prevent persons who have Rights in Marks from registering the Marks as domain names;
  - c) ***(to Disrupt the Complainant's competing business)*** the Registrant registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of the Complainant, or the Complainant's licensor or licensee of the Mark, who is a competitor of the Registrant; or
  - d) ***(to Attract users by creating confusion)*** the Registrant has intentionally attempted to attract, for commercial gain, internet users to the Registrant's website or other location, by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.
52. There is no evidence that the Registrant registered the Domain Name in order to transfer the Registration to the Complainant or to another in excess of the Registrant's actual costs in registering the Domain Name. The Complainant did not submit any such evidence. The Registrant provided evidence that he registered the Domain Name for the purpose of running a business to sell linens directly to consumers, given that he and associates use other domain names to sell linens to other businesses, such as motels.

53. There is no evidence that the Registrant registered the Domain Name in order to prevent the Complainant, or the Complainant's licensor or licensee of the Mark, from registering the Mark as a domain name, nor that the Registrant engaged in a pattern of registering domain names in order to prevent persons who have Rights in Marks from registering marks as domain names.
54. There is evidence provided by the Registrant that he and his associates registered other domain names for the purpose of selling linens.
55. There is no evidence that the Registrant registered the Domain Name primarily for the purpose of disrupting the business of the Complainant, or the Complainant's licensor or licensee of the Mark, who is a competitor of the Registrant.
56. Complainant provided no evidence that its business had been disrupted and Registrant provided evidence that its business consisted of channels of distribution, products and customers that are sufficiently different from those of Complainant.
57. There is no evidence that the Registrant registered the Domain Name intentionally to attract internet users to its website by creating a likelihood of confusion with Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.
58. The Registrant provided evidence that the terms CANADIAN and LINEN, both separately and in combination are descriptive and not distinctive of Complainant's services and products.
59. This evidence was not outweighed in the balance by any evidence of Complainant that the term CANADIANLINEN has acquired distinctiveness in the Canadian marketplace for the sale of linens, and, in particular, such sale directly to consumers.
60. There are no other circumstances submitted in evidence by the parties that prove, on a balance of probabilities, that Registrant has registered the Domain Name in bad faith.
61. Accordingly, we hold that the Domain Name was not registered in bad faith.

#### **LEGITIMATE INTEREST IN REGISTRATION**

62. In order for its Complaint to succeed a Complainant must provide some evidence that the Registrant has "no legitimate interest in the domain name as described in paragraph 3.4". Paragraph 3.4 is 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."

**63.** The term "Mark" is used in section 3.4(1). It is defined as:

"3.2 Mark. A "Mark" is:

a trade-mark, including the word elements of a design mark, or a trade name that has been used in Canada by a person, or the person's predecessor in title, for the purpose of distinguishing the wares, services or business of that person or predecessor or a licensor of that person or predecessor from the wares, services or business of another person.

**64.** Section 3.4 of the Policy sets out a non-exclusive list of legitimate interests a Registrant may have in its domain name. The onus on Complainant, to show that there is no legitimate interest, requires it to show some evidence tending to negate each claim to legitimacy.

**65.** The Complaint alleges that grounds a) to d) of section 3.4 are not available to the Registrant because they require good faith. The Complaint says that the Registrant's use was confusing and not in good faith. With respect to paragraphs e) and f) it says that the Domain Name is the legal name of the Registrant nor solely a geographic name.

**66.** The Registrant has incorporated a federal company whose name is "Canadianlinen.ca". It is not clear whether the Registrant or his corporation carries on his business, which is described on its web site as:

"Welcome to Canadian Linen

"CanadianLinen.ca is an online Linen store and specialized in bedding & bath linen. Our vision is to change the way of People Sleeping experience with our High-Quality Bed Linen. From Luxury Face, Hand and Bath Towels, Canadian Linen offering all kind of Soft Bed Sheets, Comfort and

Down alternative Pillows, Warm Blankets, comfortable and cozy Duvet, Waffle & Terry Bath Robes, Hooked & Hookless Shower Curtains, Diamond shape quilt design Flat & Fitted Mattress Pads, Waterproof Anti Bed Bug Mattress Protectors on a very discounted prices across Canada.”

- 67.** It appears from its web site and response to the Complaint that the Registrant conducts a business using the name “CANADIAN LINENS” to sell linens and related products to consumers. While there may be some overlap with the Complainant’s business, the latter is principally a service business to other businesses rather than to consumers. It is not established that the Complainant has any appreciable goodwill in the consumer market. No actual confusion is in evidence. Even if such evidence existed, it would not of itself demonstrate bad faith. Nothing in the material we have been given shows that the Registrant is attempting to allude to the Complainant’s goodwill or otherwise capitalize upon it. It is following its own plan as if the Complainant did not exist. The Panel is unable to find bad faith in this regard.
- 68.** The Registrant also submits: “There are many companies that are using the words “CANADIAN” and “LINEN” . These companies are also incorporated and are actively doing business in Canada with established logos and websites selling linen products to businesses. For example: (a) the company “CANADIAN LINEN & TOWELS” with an active website “CANADALINEN.COM”, (b) the company “CANADIAN TOWEL & LINEN CORPORATION” with an active website “CANADIANTOWEL.COM”, the company “CANADA LINENS with an active website “CANADALINENS.CA”, the company “CANADA LINEN WORKS” that shows closed status on google but is still active in the Nuans Search for active companies – SCHEDULE “E”. The word “CANADIAN” and the word “LINEN” is used by multiple companies as both of these words are generic words.” The NUANS search was not provided as evidence.
- 69.** With respect to 3.4(b), the terms “CANADIAN” and “LINEN” are descriptive, and as the Registrant points out, are disclaimed in the Complainant’s registrations of its trademark “CANADIAN LINEN AND UNIFORM SERVICE” . The Registrant is selling linens in Canada. It cannot be said that the Complaint has excluded the possibility that the domain name canadianlinen.ca is clearly descriptive of some or all of the Registrants wares, services or business.
- 70.** With respect to 3.4(e), the Registrant’s business calls itself CanadianLinen.ca, as shown in the quotation above. While evidence is sparse, it is at least arguable that the domain name has become a name or other reference by which the Registrant is commonly identified.
- 71.** For these reasons, the Panel concludes that the Complaint does not establish that the Registrant has no legitimate interest in the Domain Name canadianlinen.ca.

### **THE REGISTRANT'S ENTITLEMENT TO COSTS**

72. The Panel does not hold that the Complaint was commenced by the Complainant for the purpose of attempting, unfairly and without colour of right, to cancel or obtain a transfer of the Domain Name. The evidence discloses that Complainant did have a "colour of right" in the term CANADIAN LINEN and that Complainant did not commence the Complaint for the purpose of attempting "unfairly" to obtain a transfer of the Domain Name.
73. Accordingly, the Panel rejects the Registrant's request to be awarded costs.

### **DECISION and ORDER**

74. For the above reasons, the Panel orders that the Domain Name in issue remain with the Registrant and that it not be transferred to the Complainant .

Dated: February 23, 2021

Signed:

A handwritten signature in blue ink, appearing to read 'R. Levy', is written over a light blue rectangular background.

On behalf of the Panel:

Mr. Richard Levy (Chair),

Ms. Myra Tawfik, and

Mr. David Allsebrook