



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE
DOMAIN NAME DISPUTE
ADMINISTRATIVE PANEL
DECISION

CIIDRC case number:	20449-UDRP	Decision date: April 13, 2023
Domain Name:	lassornde.com	
Panel:	David L. Kreider	
Complainant:	Lassonde Industries Inc.	
Complainant's Representative	Rosemarie Sarrazin of Miller Thomson	
Respondent:	faxforward01 forward	

1. PROCEDURAL HISTORY

The procedural history of this case was set out in a letter from the Canadian International Internet Dispute Resolution Centre to the Panel:

1. On March 16, 2023, Ms. Rosemarie Sarrazin of Miller Thomson, counsel for the Complainant, filed a Complaint under the UDRP Policy and Rules.
2. On March 16, 2023, the Registrar, NameCheap Inc., was notified of this proceeding, and on the same date, the Registrar transmitted by email to CIIDRC its verification response informing who is the Registrant, Respondent, in this administrative proceeding. The Registrar also confirmed that the <lassornde.com> domain name was placed on a Registrar LOCK.
3. Under UDRP Rule 4 and Supplemental Rule 5, CIIDRC notified the Respondent of this administrative proceeding and forwarded a Notice of Commencement to the Respondent by email on March 16, 2023. A copy was also mailed to the address provided to the Registrar by registered mail and was delivered on March 27, 2023.
4. The deadline for the Respondent's response was set as April 5, 2023.

5. No response was received by the deadline, or at all.
6. The Complainant in this administrative proceeding has elected for a Panel consisting of a single-member.
7. On April 12, 2023, CIIDRC appointed the undersigned, David L. Kreider, Chartered Arbitrator, as a single-member Panel. On April 13, 2023, the undersigned completed and returned to CIIDRC his statement of acceptance and declaration of impartiality and independence.
8. Absent exceptional circumstances, and under Rule 15 (b), the decision is due by April 26, 2023.

The domain name **<lassornde.com>** (the “Disputed Domain Name”) was registered on February 13, 2023.

This matter is conducted under the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) of the Internet Corporation for Assigned Names and Numbers (ICANN).

2. FACTS ALLEGED BY THE PARTIES

Incorporated in Canada on September 3, 1981, the Complainant, Lassonde Industries Inc., listed its shares on the Toronto Stock Exchange in 1987. As described in its 2022 Annual Report, the Complainant is the largest producer of fruit juices and drinks in Canada and one of the two largest producers of store brand shelf-stable fruit juices and drinks in the United States. The Company employs over 2,700 people working in 17 plants across Canada and the United States. For 2021, the Company’s sales totalled \$1,892.9 million.

Beginning with Aristide Lassonde, the “Lassonde” family name has been used by the Complainant and its predecessors continually in commerce since 1918. The Complainant’s predecessor company, A. Lassonde Inc., was incorporated in 1962.

While the Complainant owns proprietary trademarks and logos in Canada and in the United States, including Antico, Apple & Eve, Arte Nova, Canton, Double Vie, Dublin’s Pub, Fairlee, Fruité, Grown Right, Kiju, Mont-Rouge, Northland, Oasis, Old Orchard, Old South, Orange Maison, Rougemont, Ruby Kist, Simple Drop, Sun-Rype, The Switch, Tropical Grove and under trademarks for which the Company is a licensed user such as Allen’s, Arizona, Del Monte, Graves, and Nature’s Best, significantly, the Complainant has disclaimed the right to the exclusive use of the word LASSONDE apart from its registered design marks in both Canada and the United States. The Complainant relies in these administrative proceedings on its unregistered common law trademark in the name “Lassonde” (the “Mark”), by way of the Mark being an inherently distinctive identifier of Complainant’s product, and by way of the longevity of the Mark, the number of sales associated with it, and the extent of Complainant’s advertising and promotion of the Mark.

3. CONTENTIONS OF THE PARTIES

- **Complainant**

The Complainant submits that the Disputed Domain Name reflects a clear case of “typo squatting”, being virtually identical and/or confusingly similar to Complainant’s Mark, except for the addition of a single letter “r” in the Mark (see: *Andrey Ternovskiy dba Chatroulette v. Privacy Protection Service, Provided through Communigal Communication Ltd, Perfect Privacy, LLC, Contact Privacy Inc. Customer 0147901156, Contact Privacy Inc. Customer 0150243305, Contact Privacy Inc. Customer 0148620601, Contact Privacy Inc. Customer 0150016370, Contact Privacy Inc. Customer 0148380240, Contact Privacy Inc. Customer 0148620598 / Milen Radumilo, White & Case, D2018-0552*).

The Complaint avers this difference does not alter the fact that both the Mark “Lassonde” and the Disputed Domain Name <**lassornde.com**> are visually and aurally similar and can easily be confused (see: *Playboy Enterprises International, Inc. v. Tom Baert, D2007-0968*).

Here, the Complainant submits that there is undoubtedly a confusing similarity between the Disputed Domain Name <**lassornde.com**>, on the one hand, and the Mark “Lassonde”, on the other.

The Complainant denies that it authorized the Respondent to use its mark in the Disputed Domain Name and there is no connection between the Complainant and Respondent. The Respondent is not commonly known by the Disputed Domain Name and has not been using the Disputed Domain Name in connection with a *bona fide* offering of goods or services.

Rather, the Complainant alleges, the Respondent has posed as a representative of Complainant’s wholly owned subsidiary, Sun-Rype, using an email address associated with the Disputed Domain Name to request payment by a third party of a genuine Sun-Rype invoice to defraud third parties into thinking they are dealing with a subsidiary of the Complainant itself with an intention to derive advantage to the Respondent from user confusion. Such use, the Complainant asserts, confers no rights on the Respondent (see, for example: *DivX, LLC v. PrivacyProtect.org / Gerente de Dominia, CSRUS Enterprises, D2011-0600*).

The Respondent’s actions in posing as the Complainant and seeking payment from a third party is clear evidence of the Respondent’s fraudulent intent and bad faith registration and use of the Disputed Domain Name.

- **Respondent**

The Respondent failed to submit a Response timely, or at all.

- **Remedy Sought**

The Complainant requests the Disputed Domain Name be transferred to it.

4. DISCUSSION AND FINDINGS

4.1 Requirements

Under Paragraph 4, the onus is on the Complainant to prove:

1. That the Disputed Domain Name is Identical or Confusingly Similar to a trademark or service mark in which the Complainant has rights;
2. That the Registrant has no rights or legitimate interests in the Disputed Domain Name; and
3. That the Disputed Domain Name has been registered and is being used in bad faith.

The Panel will consider each requirement.

4.2 Analysis

4.2.1 That the Domain Name is Identical or Confusingly Similar to a Mark in which the Complainant has Rights

As the Complainant correctly asserts, the finding that a domain name is confusingly similar to a mark is a low threshold which involves a simple comparison in order to “assess whether a complainant has sufficient rights so as to give it standing to bring a complaint” (See: *Research in Motion Limited v. One Star Global LLC*, D2009-0227). Domain names consisting of a misspelling of a complainant’s trademark (i.e., “typo squatting”) are considered by panels confusingly similar to the relevant mark for purposes of the first Policy element. See: *WIPO UDRP Overview 3.0*, at para. 1.9.

The first Policy element of identity or confusing similarity comprises two parts, however. To establish standing a Complainant must additionally prove that it has rights in the Mark. Here, the Complainant concedes, as it must, that it has disclaimed the right to the exclusive use of the word LASSONDE apart from its registered design marks which incorporate the word. As noted above, the Complainant relies in these administrative proceedings on its unregistered common law trademark in the name “Lassonde”, because of the Mark being an inherently distinctive identifier of Complainant’s product and given the longevity of the Mark, the number of sales associated with it, and the extent of Complainant’s advertising and promotion of the Mark at considerable expense over a continuous period of many years.

This Panel considers that no point would be served by detailing here the considerable and persuasive evidence adduced by the Complainant supporting its claim to unregistered common law rights in the LASSONDE Mark. The learned Panel in *Lassonde Industries Inc. v. Redacted for Privacy / Pierre-Paul Lassonde, Lassonde Industries, Inc.*, (CIIRDC Case No. UDRP-13940) considered this very issue under similar facts, concluding:

“Therefore, this Panel, is ready to confirm the existence of unregistered or common law trademark rights over the terms LASSONDE and LASSONDE INDUSTRIES, INC. (at least since 1918 and 1984 respectively), for the purposes of the Policy and of this Case”.

I agree with the reasoning and findings of the Panel on this issue in *Lassonde Industries Inc.* and adopt the same finding here.

This Panel concludes that the Disputed Domain Name is identical to Complainant's unregistered or common law trademark LASSONDE. The Complainant has satisfied the first element under paragraph 4(a)(i) of the Policy.

4.2.2 That the Respondent has No Rights or Legitimate Interest in the Domain Name

The Complainant has adduced evidence, including relevant email chains, to demonstrate that the Respondent used the Disputed Domain Name and a related email address to engage in a fraudulent practice known as "*phishing*" to impersonate a representative of the Complainant's subsidiary company for the purpose of diverting to the Respondent funds owed the subsidiary. Such fraudulent practices are antithetical to fair use and shows the Respondent lacks any rights or legitimate interest in the Disputed Domain Name.

Panels have categorically held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods or illegal pharmaceuticals, ***phishing***, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. See: *WIPO UDRP Overview 3.0*, at para. 2.13.1.

As the Respondent has defaulted and has not sought to rebut the Complainant's allegations and evidence, the Panel is entitled to accept, and does accept, the Complainant's evidence as established fact.

Thus, the Panel concludes that the Complainant has satisfied the second element under paragraph 4(a)(ii) of the Policy.

4.2.3 That the Respondent has Registered and Used the Domain Name in Bad Faith

Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (*particularly domain names comprising typos* or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity *can by itself create a presumption of bad faith*. See: *WIPO UDRP Overview 3.0*, at para. 3.1.4.

Furthermore, the use of a domain name for *per se* illegitimate activity such as the sale of counterfeit goods or ***phishing*** can never confer rights or legitimate interests on a respondent as *such behavior is manifestly considered evidence of bad faith*. *Ibid.*, see also: *WIPO UDRP Overview 3.0*, at para. 3.2.1. "*Particular circumstances panels may take into account in assessing whether the respondent's registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark []...*".

The Panel finds that the Complainant has satisfied the third element under paragraph 4(a)(iii) of the Policy.

4 DECISION and ORDER

For the above reasons, under Paragraph 4 of the Policy, Paragraph 15 of the Rules, and Rule 10 of the Supplemental Rules, the Panel orders that the Disputed Domain Name <lassornde.com> be transferred to the Complainant.

Made as of April 13, 2023.

SIGNATURE OF PANEL



David L. Kreider

