

CANADIAN INTERNET REGISTRATION AUTHORITY

DOMAIN NAME DISPUTE RESOLUTION POLICY

DECISION

Domain Names: interview-sysco.ca
hire-sysco.ca

Complainant: Sysco Corporation
Registrant: [Privacy Protected]
Registrar: NameSilo Technologies Corporation
Service Provider: Resolution Canada Inc.
Panel: Peter C. Cooke

THE PARTIES

The Complainant is Sysco Corporation (the “Complainant”) with an address at 1390 Enclave Parkway, Houston, Texas, 7707, United States of America.

The Registrant is [Privacy Protected].

THE DOMAIN NAME AND REGISTRAR

The subject of this proceeding are the Domain Names interview-sysco.ca, registered on January 8, 2020 and hire-sysco.ca, registered on January 17, 2020 (the “Domain Names”). The Registrar of the Domain Names is NameSilo Technologies Corporation.

PROCEDURAL HISTORY

This is an administrative dispute resolution proceeding pursuant to the Canadian Internet Registration Authority (“CIRA”) *Domain Name Dispute Resolution Policy* (version 1.3) (the “Policy”) and the CIRA *Domain Name Dispute Resolution Rules* (version 1.5) (the “Rules”). By registration of the Domain Name with the Registrar, the Registrant agreed to the resolution of this dispute pursuant to the Policy and the Rules.

According to the information provided by Resolution Canada Inc., the dispute resolution service provider, the history of the proceeding is as follows:

The Complainant filed a complaint (the "Complaint") dated March 2, 2020 with Resolution Canada Inc., requesting that the Domain Name registrations be transferred from the Registrant to the Complainant. After having determined that the Complaint was in administrative compliance with the requirements of the Policy and the Rules, Resolution Canada Inc. commenced the dispute resolution process and served notice of the Complaint on the Registrant (as required by paragraph 4.3 of the Rules) by email on March 11, 2020. No response was received from the Registrant.

The Complainant elected to proceed before a panel consisting of one panelist. The Panel can act impartially and independently in this matter per Paragraph 7 of the *Rules*, as there are no circumstances known to them that would prevent them from so acting.

ELIGIBILITY OF COMPLAINANT

The Complainant is an eligible complainant under Paragraph 1.4 of the Policy, as the Complaint relates to the Complainant's registered Canadian trademarks for SYSCO Reg. No. TMA 471,042 and SYSCO, Reg. No. TMA561,748 (the "SYSCO Registrations").

OVERVIEW OF THE POLICY

Paragraph 4.1 of the Policy sets forth the Complainant's burden of proof in order to succeed in the proceeding. The onus is on the Complainant to prove, on a balance of probabilities that:

The Registrant's dot-ca domain names are Confusingly Similar to a Mark in which the Complainant had Rights prior to the date of registration of the domain names and continues to have such Rights; and

The Registrant has registered the domain names in bad faith as described in paragraph 3.5;

And the Complainant must provide some evidence that:

The Registrant has no legitimate interest in the domain names as described in paragraph 3.4.

COMPLAINANT'S POSITION

The Complainant is the owner of numerous Canadian registrations for the trademark SYSCO (the "Sysco Mark") that the Complainant claims have been used in Canada for more than 20 years. These rights precede the date of registration of the Domain Names.

The Complainant contends that the Domain Names are confusingly similar to the Sysco Mark on the basis that the coined term SYSCO is the dominant portion of the Domain Names and the addition of the generic and/or descriptive words "interview" and "hire" do not negate this similarity. The Complainant further submits that the use of "interview" and "hire" in the Domain Names enhances the confusing similarity as these terms create the impression that the websites are related to or part of Sysco's hiring process.

The Complainant further contends that the Registrant registered and is using the Domain Names in bad faith. The Complainant submits that the Registrant has engaged in a pattern of registering domain names that contain trademarks to which the Registrant is not entitled. The Complainant also contends that the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the interview-sysco.ca website by creating a likelihood of confusion with the Complainant by impersonating the Complainant and misleading direct consumers seeking information about employment with Complainant to the Registrant's website.

The Complainant alleges that the Registrant has no legitimate interest in the Domain Names. The Complainant has provided evidence that it is the owner of the Sysco Mark that has been used and registered in Canada prior to the registration of the Domain Names. The Complainant submits that Respondent has no legitimate interest in the Domain Names, but instead is using the Domain Names to refer to Sysco, to trade on Sysco's name and the reputation of the Sysco Mark, and to misleadingly divert consumers to the Domain Names. The Complainant has also reviewed the circumstances in which legitimate interest may arise set out under 3.4 of the Policy and contends that the Registrant has no legitimate interest in the Domain Names.

REGISTRANT'S POSITION

The Registrant did not file a Response to the Complaint.

DISCUSSIONS AND FINDINGS

Confusing Similarity between Domain Name and Complainant's Mark

The Complainant has demonstrated that it is the owner in Canada of the Sysco Registrations, registered as early as February 13, 1997. The Complainant's rights in the Sysco Mark precede the January 7, 2020 and January 17, 2020 registration dates of the Domain Names, and the Complainant submits that the Domain Name is "confusingly similar" with the trademark.

A domain name is confusingly similar to a mark if the domain name so nearly resembles the mark in appearance, sound, or ideas suggested by the mark as to be likely to be mistaken for the mark, as per paragraph 3.3 of the Policy.

The Domain Names are comprised of the entirety of the Complainant's Sysco Mark and the prefixes "interview" and "hire". The Complainant's Sysco Mark constitutes the most distinctive part of the Domain Names as it is a term coined by the Complainant with no meaning in common English or French. Furthermore, the use of the mark by the Complainant for over 20 years both in Canada and throughout North America suggests the Sysco Mark would have some degree of renown. In comparison, the terms "interview" and "hire" are common dictionary words which, when used in conjunction with the Complainant's Sysco Mark, suggest the Domain Names are related to the Complainant's recruiting practices, increasing the risk for confusion. The Respondent also falsely promotes the interview-sysco.ca website as an "official website" of the Complainant and displays the Complainant's Sysco logo on the website without authorization. The fact that the Registrant is clearly intending to trade off the reputation of the Complainant in an effort to attract job-seekers to the Domain Names under presumably false pretences reinforces the confusing similarity between the Sysco Mark and the Domain Names (see *Newegg Inc v Mimi Mimi*, CIRA Dispute No. 411 (2020))

Considering the foregoing, the Panel concludes that the Domain Names interview-sysco.ca and hire-sysco.ca so nearly resemble the Complainant's Sysco Mark so as to be likely to be mistaken for it.

The Panel is therefore of the view that the Complainant has succeeded in establishing confusing similarity under paragraph 4.1(a) of the Policy.

Bad Faith Registration

The Complainant must show, on a balance of probabilities, that the Domain Name was registered in bad faith pursuant to paragraph 3.5 of the Policy. The Complainant need only demonstrate bad faith under one of the grounds provided by the Policy.

The Complainant submits that the Registrant has used the interview-sysco.ca website to impersonate the Complainant to misleadingly direct consumers seeking information about employment with Sysco contrary to Paragraph 3.5(b) of the Policy that states

(d) the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website or other on-line 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.

The evidence submitted by the Complainant includes an e-mail from the Registrant and screenshots of the Registrant's interview-sysco.ca website. The e-mail claims that the interview-sysco.ca website is an "official website" of the Complainant and that job seekers are required to use the interview-sysco.ca website to submit a career application form to the Complainant. The screenshots from the interview-sysco.ca website include uses of the Complainant's Sysco logo and other branding elements without the Complainant's authorization. Consumers that attend the interview-sysco.ca website are required to provide personal information such as full name, date of birth and phone number in order proceed with the "hiring" process. The foregoing, taken in its totality, all suggests that the interview-sysco.ca website was registered in bad faith in order to trade off the reputation of the Complainant in order to perpetrate a job phishing scam.

As such, the Panel is satisfied that the Complainant has established that the Registrant registered the interview-sysco.ca domain name in bad faith pursuant to paragraph 3.5(d) of the Policy.

The Complainant further submits that the Registrant has engaged in a pattern of registering domain names that contain trademarks to which the Registrant is not entitled, contrary to Paragraph 3.5(b) of the Policy that states:

(b) 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;

The Complainant has submitted evidence that the Registrant has registered a number of domain names incorporating third-party trademarks and trade-names that are well-known in Canada including Home Depot, Sobeys, Loblaws, Sears, and Safeway. These domains include:

career-homedepot.ca	careers-homedepot.ca	careers-sobeys.ca
hire-sysco.ca	interview-sysco.ca	job-loblaw.ca
job-sears.ca	jobs-homedepot.ca	jobs-loblaw.ca
jobs-safeway.ca	jobs-sears.ca	jobs-tigerdirect.ca
searshr.ca	griffith-foods.ca	

The evidence demonstrates that the Registrant has engaged in pattern of registering trademarks and the names of others as domain names in association with terms related to recruitment (e.g. “interview”, “career”, “hire”, and “job”). Considering the evidence submitted by the Complainant with respect to the interview-sysco.ca domain name and the foregoing similarities, it is likely that domains were registered in bad faith as well for similar purposes. In any event, the Registrant has prevented both the Complainant and other persons from registering marks to which they have rights in. As such, the Panel is satisfied, on a balance of probabilities, that the Domain Names were registered in bad faith contrary to 3.5(b) of the Policy.

No Legitimate Interest in the Domain Names

The Complainant has submitted that the Registrant has no legitimate interest in the Domain Names, but instead is using the Domain Names to refer to Sysco, to trade on Sysco’s name and the reputation of the Sysco Mark, and misleadingly divert consumers to the Domain Names.

Paragraph 3.4 of the Policy provides a non-exhaustive list of criteria that the Panel may rely on to find that a Registrant has a legitimate interest in the Domain Name. These are:

- (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 used 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 used 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.

Paragraph 4.1 (c) of the Policy requires that the Complainant provide *some evidence* that the Registrant has no legitimate interest in the Domain Name.

In the present case, the Panel is satisfied that the Complainant has met its onus in providing some evidence that the Registrant has no legitimate interest in the Domain Names. The Complainant has provided evidence suggesting that the Domain Name *interview-sysco.ca* was registered to perpetuate a job phishing scam by trading off the reputation of the Complainant. Although similar evidence was not filed for *hire-sysco.ca*, I am prepared to infer that the purpose for its registration was the same. The Registrant cannot be said to be using the Mark in good faith, so as to claim to have a legitimate interest in the Domain Names set forth under Paragraphs 3.4(a)-(d) of the Policy.

Furthermore, the Registrant cannot rely on Paragraphs 3.4(e) and 3.4(f) of the Policy, as the coined Sysco Mark is neither the legal name or identifier of the Registrant nor is it a geographical name of the Registrant's place of business.

In view of the above, the Panel concludes that the Registrant has no legitimate interest in the Domain Names.

CONCLUSION AND DECISION

The Complainant has proven, on a balance of probabilities, that the Domain Names are confusingly similar to a Sysco Mark in which the Complainant had rights prior to the date of registration of the Domain Names and in which the Complainant continues to have such Rights.

The Complainant has proven, on a balance of probabilities, that the Registrant registered the Domain Names in bad faith.

The Complainant has adduced some evidence that the Registrant has no legitimate interest in the Domain Names.

The Registrant did not file a Response disputing the Complainant's submissions, or justifying its registration of the Domain Names.

For these reasons, the Complaint regarding the Domain Names is successful and the Panel orders, pursuant to paragraph 4.3 of the Policy, that the registration of the Domain Names be transferred to the Complainant.

Dated May 4, 2020



Peter C. Cooke