

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

Domain Name: *westjetagents.ca*; *westjetuat.ca* and *westjetgroups.ca*

Complainant: WestJet Airlines Ltd.

Registrants: Greg JA Scott and Access History Web Company

Registrar: Rebel.ca

Service Provider: Resolution Canada Inc.

Panel: Timothy C. Bourne

A. The Parties

1. The Complainant is WestJet Airlines Ltd. ("WestJet"). WestJet's offices are in Calgary, Alberta, Canada.
2. The Registrant for the domain names *westjetagents.ca* and *westjetuat.ca* is Greg JA Scott (the "Registrant Scott"). The Registrant for the domain name *westjetgroups.ca* is Access History Web Company (the "Registrant Access History"). These registrants will be referred to in some instances collectively as the "Registrants".

B. Disputed Domain Names and Registrar

3. The disputed domain names are *westjetagents.ca*, *westjetuat.ca* and *westjetgroups.ca* (the "Domain Names"). The registrar with which the Domain Names are registered is Rebel.ca (the "Registrar"). The domain name *westjetgroups.ca* was registered on May 29, 2017. The domain names *westjetagents.ca* and *westjetuat.ca* were registered on January 29, 2019.

C. Procedural History

4. This is an administrative dispute resolution proceeding pursuant to the *CIRA Domain Name Dispute Resolution Policy*, version 1.3 dated August 22, 2011 (the “*Policy*”) and the *CIRA Domain Name Dispute Resolution Rules*, version 1.5 dated July 28, 2014 (the “*Rules*”).
5. The Complainant filed the Complaint with Resolution Canada Inc. (the “*Provider*”) on November 24, 2022. The Provider sent by e-mail to the Registrants English and French versions of the Notice of Complaint filed by the Complainant, along with electronic versions of the Complaint and annexes thereto. The Notices of Complaint explained that the Registrants had twenty (20) days from November 24, 2022 to file a Response to the Complaint with the Provider. No Response was filed by the deadline.
6. On January 26, 2023, the Provider appointed a Panel.
7. Based on the information forwarded by the Provider, the Panel holds that all technical requirements for the commencement and maintenance of this proceeding have been established.
8. The Panel is not aware of any other legal proceeding or other arbitration in relation to the Domain Names that would create a need to alter the progress of the proceeding pursuant to paragraph 13.2 of the *Rules*.

D. Panellist Impartiality and Independence

9. As required by paragraph 7 of the *Rules*, the Panel, Timothy C. Bourne, has submitted to the Provider a declaration of impartiality and independence for this dispute.

E. Effect of Failure of Registrants to File a Response

10. Neither of the Registrants has filed a response. Paragraph 5.8 of the *Rules* provides that “[i]f a Registrant does not submit a Response within the period for submission of a Response or any period extended ... the Panel shall decide the Proceeding on the basis of the Complaint ...”. Accordingly, the Panel will decide this matter based on the arguments submitted by the Complainant.

F. Remedy Sought

11. In accordance with paragraph 4.3 of the *Policy*, the Complainant has requested transfer of the registrations for the Domain Names to the Complainant.

G. Applicable Law

12. In accordance with paragraph 12.1 of the *Rules*, the Panel shall apply the laws of Ontario and the laws of Canada applicable within Ontario. Also, as stated in paragraph 4.2 of the *Policy* and paragraph 3.2(m) of the *Rules*, the Panel will render its decision in accordance with the *Policy* and the *Rules*.

H. Eligibility of the Complainant

13. Under paragraph 1.4 of the *Policy*, a complainant must satisfy CIRA’s *Canadian Presence Requirements for Registrants* (the “*CPR*”) unless the Complaint relates to a trademark registered in the Canadian Intellectual Property Office (“*CIPO*”) and the Complainant owns the trademark.
14. The Complainant is a provincial corporation incorporated under the laws of the province of Alberta. The Complainant thus meets the *CPR* under paragraph 2(d) and is thus an eligible complainant under the *Policy*.

I. Facts

15. The Complainant makes a number of unchallenged assertions, including the following:
- the Complainant is a leading international airline company that offers service to more than 100 destinations in North America, central America, the Caribbean and Europe;
 - between 2014 and 2018, the Complainant generated over \$20 billion in revenue and has won numerous awards;
 - the Complainant's website is located at the URL <http://www.westjet.com> and the associated domain name *westjet.com* was registered in 1995;
 - the Complainant owns Canadian registrations for sixteen trademarks consisting of or incorporating the term WESTJET, the first of which issued in 1997 (the "WESTJET Trademarks"); and
 - as a result of extensive use and publicity of its trademarks, they have become famous.
16. Without the Complainant's authorization, the domain name *westjetgroups.ca* was registered by the Registrant Access History on May 29, 2017 and the domain names *westjetagents.ca* and *westjetuat.ca* were registered by the Registrant Scott on January 29, 2019. The administrative contact for each of the three domain name registrations is the Registrant Scott and the telephone number, facsimile number and email address for the administrative contact recorded on each of the domain name registrations are identical. The Complainant submits that these facts demonstrate a common element of control and that the Registrant Scott controls each of the Domain Names.

17. The Domain Name *westjetuat.ca* is inactive and the Complainant asserts that the term "uat" is likely an acronym for the phrase "User Acceptance Testing", which is a process for ensuring the appropriateness of a product for consumers.
18. The Domain Names *westjetagents.ca* and *westjetgroups.ca* each resolve to a website impersonating the Complainant. Both websites display one or more of the WESTJET Trademarks and the Complainant's copyrighted works. The website to which the domain name *westjetagents.ca* resolves states that it is "YOUR TRAVEL AGENT SOLUTION" and offers an online travel reservation system for booking vacations. The website to which the domain name *westjetgroups.ca* resolves refers to "MEXICO-ATTRACTIONS" and "OTHER TOURS".
19. The Complainant issued demand letters to the Registrant Scott on March 10, 2022 and March 21, 2022 to which no response was received.

J. Complainant's Contentions

i. Domain Names are Confusingly Similar to a Mark in Which the Complainant Had Rights Prior to the Domain Names Registration Dates and Continues to Have Such Rights

20. The registrations for the Complainant's WESTJET Trademarks each predate the registrations for the Domain Names. The Complainant's registered trademarks are each confusingly similar to the Domain Names since each of the Domain Names incorporates the trademark WESTJET.

ii. The Registrants Have No Legitimate Interest in the Domain Names

21. The Complainants submit that none of the enumerated circumstances constituting a legitimate interest from paragraph 3.4 of the *Policy* exist with respect to the Registrants and Domain Names.

iii. The Domain Names Were Each Registered in Bad Faith

22. The Complainant submits that each of the circumstances enumerated in subparagraphs 3.5(b), 3.5(c) and 3.5(d) of the *Policy* exist. The Complainant has provided detailed arguments in support of each bad faith ground.

Discussion and Findings

K. Procedural Issue – Multiple Registrations

23. According to paragraph 3 of the *Rules*, a Complaint may relate to more than one domain name registration if the registration information for the registrations indicates the same registrant for all the registrations.
24. The Rules for the Uniform Dispute Resolution Policy incorporate a similar provision, which permits a Complaint to relate to more than one domain name if the domain names are registered by the same domain name holder. UDRP panels have treated multiple registrants controlled by a single person as one single respondent where multiple domain names are under the common control or ownership of a single person (see *Apple, Inc. vs. WhoIs Privacy Services Pty Ltd. et al.*, UDRP Case No. D2013-1312). In *Adobe Systems Incorporated v. Domain Oz* (UDRP Case No. D2000-0057), the panel found common control where multiple allegedly fictitious registrants listed identical administrative contact information.
25. The Panel concludes that this reasoning is persuasive for this CDRP decision. The Domain Names are under common control in view of the identical administrative contact information provided within them. It is thus appropriate to include multiple domain name registrations as the subject of the Complaint.

L. Complainant's Burden of Proof

26. Paragraph 4.1 of the *Policy* provides that, to succeed, the Complainant must prove, on a balance of probabilities, that:

- (a) the Domain Names are Confusingly Similar to a Mark in which the Complainant has Rights prior to the date of registration of the Domain Names and continues to have such Rights; and
- (b) the Registrants have registered the Domain Names in bad faith as described in paragraph 3.5.

27. Paragraph 4.1(c) of the *Policy* states that the Complainant must provide some evidence that:

- (c) the Registrants have no legitimate interest in the Domain Names as described in paragraph 3.4.

M. Confusingly Similar – Paragraph 3.3 of the *Policy*

28. To satisfy this branch of the test, the Complainant must demonstrate that it had Rights in a Mark that predates the registration of each of the Domain Names. Also, the Complainant must demonstrate that each of the Domain Names is confusingly similar with the Mark.

29. The Complainant evidenced numerous Canadian trademark registrations for trademarks consisting of or incorporating the term WESTJET, including registration Nos. TMA480424 and TMA651001, each for the trademark WESTJET. Both registrations issued prior to the dates on which the Domain Names were registered. Accordingly, the Complainant's registered trademarks predate each of the Domain Name registration dates and the Complainant's registered trademarks are a proper basis for finding that the Complainant had Rights in a Mark prior to the date on which each of the Domain Names was registered.

30. Each of the Domain Names is confusingly similar with the Complainant's trademark WESTJET. Each of the Domain Names wholly incorporate the Complainant's well-known trademark WESTJET. The Panel agrees that the addition of descriptive or non-distinctive terms such as "agents" or "groups" or the acronym "uat" does not

preclude a finding of confusion (*Research in Motion Limited v. Louis Espinoza*, WIPO Case No. D2008-0759; *Research in Motion Limited v. Jumpline.com*, WIPO Case No. D2008-0758).

31. Accordingly, each of the Domain Names is confusingly similar to the Complainant's trademark WESTJET, which was registered by the Complainant prior to the registration date for each of the Domain Names.

N. Bad Faith – Paragraph 3.5 of the Policy

32. For each Domain Name, the Complainant only needs to demonstrate bad faith under one of the grounds provided in paragraph 3.5 of the *Policy*. Thus, the Panel will address whether bad faith exists under paragraph 3.5(b) of the *Policy*.
33. Paragraph 3.5(b) of the *Policy* provides that the following circumstance constitutes registration of a domain name in bad faith:

the Registrant registered the domain name...in order to prevent the Complainant...from registering the Mark as a domain name, providing 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.

34. In *Ditec International AB/Global Preservation Systems, LLC v. ADAM FARRAR et al.* (National Arbitration Forum, February 1, 2018), a UDRP panel held that the registration of six domain names incorporating the trademark DITEC by multiple domain name registrants indicated bad faith registration under paragraph 4(b)(ii) of the UDRP. The wording for that provision resembles that from paragraph 3.5(b) of the *Policy*. In fact, the UDRP provision does not even contemplate bad faith where the pattern of registering domain names is conducted by the domain name registrant "alone or in concert with one or more additional persons", like paragraph 3.5(b) of the *Policy*. That language explicitly supports a finding of bad faith under paragraph 3.5(b) of the *Policy* in these proceedings.

35. The Panel concludes that the record demonstrates that the Registrant Scott and the Registrant Access History each engaged in a pattern of registering domain names in concert with one another. Such conduct prevented the Complainant from registering its trademark WESTJET combined with different generic terms or a generic acronym as domain names. The Registrants thus registered the Domain Names in bad faith pursuant to paragraph 3.5(b) of the Policy.
36. The Panel also is persuaded by the Registrants' failure to respond to a cease and desist letter sent by counsel for the Complainant and that the Registrants have not made any submissions to the Panel, including submissions alleging that the Domain Names were not registered in bad faith.

O. Legitimate Interest – Paragraph 3.4 of the Policy

37. Paragraph 3.4 of the *Policy* provides that:

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 Registrants have a legitimate interest in a domain name:

- (a) the domain name was a Mark, the Registrants used the Mark in good faith and the Registrants had Rights in the Mark;
- (b) the Registrants 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 Registrants 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 Registrants 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 Registrants or was a name, surname or other reference by which the Registrants 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.

- 38. The Complainant's unchallenged allegation is that there has never been any relationship between the Complainant and the Registrants and the Registrants have never been licenced or otherwise authorized to register or use the WESTJET Trademarks including in, or as part of, a domain name. The Registrants clearly did not register the Domain Names in Canada in good faith. The Registrants have no rights in the trademark WESTJET. Additionally, none of the Domain Names clearly describe any aspect of the Registrants' goods, services, or business nor is there any evidence before the Panel that the Domain Names are understood to be the generic name of any goods, services, or business in any language. Accordingly, the Registrants have no legitimate interest in any of the Domain Names under paragraph 3.4(a), 3.4(b) or 3.4(c) of the *Policy*.
- 39. There is also no evidence before the Panel that the Registrants have used any of the Domain Names for a non-commercial activity. Indeed, the only evidence before the Panel regarding the use of the Domain Names is that two of them are used for travel websites.
- 40. None of the Domain Names are the legal names of the respective Registrants. Nor is there any evidence or suggestion that any of the Domain Names are a name, surname, or other reference by which either of the Registrants is commonly identified. Thus, the Registrants have no legitimate interest under paragraph 3.4(e) of the *Policy*.

41. Finally, there is no evidence before the Panel that any of the Domain Names is a geographical name and thus none of them can constitute the geographical name of either of the Registrants' places of business. Accordingly, the Registrants have no legitimate interest under paragraph 3.4(f) of the *Policy*.
42. The Panel thus concludes that the Complainant has provided some evidence that the Registrants have no legitimate interest in the Domain Names. The onus thus shifts to the Registrants to prove, on a balance of probabilities, that they have a legitimate interest in the respective Domain Names. The Registrants have not filed any submissions disputing the Complainant's submissions or justifying the registrations or use of the Domain Names and thus have failed to meet their onus.

P. Conclusion and Decision

43. For the reasons set forth above, the Panel concludes that the Complainant has established the three elements of the basis for the Complaint in accordance with their respective onuses. Thus, the Panel orders the transfer of the registrations for the Domain Names to the Complainant.

February 16, 2023



Timothy C. Bourne
Sole Panellist