



FRASER MILNER CASGRAIN LLP

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BY E-MAIL (domaindispute@adrforum.com)
Confirmation by Courier

October 5, 2007

National Arbitration Forum
P.O. Box 50191
Minneapolis, MN
U.S.A. 55405

Dear Sirs:

Subject: Domain Name Dispute re: domtar.org
Domtar Inc. v. Joel Theriault
Our Ref.: 201338-41

Enclosed for filing please find the following for the above-referenced matter:

1. Five copies (including an original) of a Complaint filed pursuant to ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP) with attachments preceded by a Table of Contents;
2. A cheque in the amount of \$2,600 USD to cover the filing fee for a three-person panel regarding one Internet domain name; and
3. A copy of ICANN's Uniform Domain Name Dispute Resolution Policy Rules and NAF Supplemental Rules (included as Annex A to C).

In accordance with UDRP Rules and National Arbitration Forum's Supplemental Rules, a copy of the Complaint in Microsoft Word (PC Format) with attachments has been sent by e-mail.

As stated in the attached Complaint, a copy of the Complaint together with the Complaint Transmittal Sheet has been sent and transmitted to the Respondent, Joel Theriault by courier to 8651 South Nicolet Rd., Sault Sainte Marie, Michigan 49783 and Avenue Suite, P.O. Box 99, Foleyet, Ontario, P0M 1T0 and by e-mail to joel@whitemoose.ca and theriaultjoel@hotmail.com, in accordance with Rules 2(b) and 3(b)(xii). A copy has also been sent to the Registrar of the disputed domain name Melbourne IT, Ltd. dba Internet Names Worldwide (R52-LROR) by courier at Level 2, 120 King Street, Melbourne, Victoria 3000, Australia.

Thank you for your attention to this matter.

Yours truly,

FRASER MILNER CASGRAIN LLP

Wendy D. Riel

WDR/alr
Encls.
558586_1.DOC

Complaint Transmittal Cover Sheet

To: Joel Theriault, Respondent
From: Domtar Inc., Complainant
Cc: National Arbitration Forum
Date: Friday, October 5, 2007
Re: domtar.org

The attached Complaint is being filed against you with the National Arbitration Forum (the "Forum") pursuant to the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on October 24, 1999 and incorporated in your Registration Agreement with the Registrar of your domain name(s). By submitting this Complaint to the Forum, the Complainant agrees to abide and be bound by the provisions of the Policy, the ICANN Rules, and the Forum's Supplemental Rules.

Until you are notified by the Forum that a proceeding has commenced, you have no duty to act with regard to this Complaint.

- The Forum will examine the Complaint to determine whether it conforms to the ICANN Policy, Rules, and the Supplemental Rules.
- If the Complaint conforms to those standards, the Forum will forward an official copy of the Complaint to you.
- *Once the official Complaint is forwarded to you, you will have **twenty (20)** calendar days to submit a Response to both the Forum and the Complainant in accordance with the Policy, Rules, and Supplemental Rules.*
- You may seek legal assistance to represent you in this administrative proceeding.

The Policy and Rules governing this proceeding can be found at:

ICANN Policy <http://www.icann.org/udrp/udrp-policy-24oct99.htm>
ICANN Rules <http://www.icann.org/udrp/udrp-rules-24oct99.htm>
Forum Supplemental Rules
<http://domains.adrforum.com/main.aspx?itemID=631&hideBar=False&navID=237&news=26>

Alternatively, you may contact the Forum to obtain any of the above documents.

Telephone: (800) 474-2371 or (952) 516-6400
E-mail: domaindispute@adrforum.com

Please provide the Forum with the contact information (mailing address, e-mail address, telephone number) where the official Complaint and other communications in the administrative proceeding should be sent.



COPY

**National Arbitration Forum
P.O. Box 50191
Minneapolis, Minnesota 55405 USA**

Domtar Inc.)
395 de Maisonneuve Blvd. West)
Montréal, Québec)
H3A 1L6)
Canada)

(Complainant))

Domain Name In Dispute:
domtar.org

v.)

Joel Theriault)
8651 South Nicolet Rd.)
Sault Sainte Marie, Michigan)
49783)
United States)

(Respondent))

**COMPLAINT IN ACCORDANCE WITH
THE UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY**

[1.] This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (UDRP), adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999 (attached as **Annex A**) and approved by ICANN on October 24, 1999 (ICANN Policy), and the Rules for Uniform Domain Name Dispute Resolution Policy (ICANN Rules), adopted by ICANN on August 26, 1999 (attached as **Annex B**) and approved by ICANN on October 24, 1999, and the National Arbitration Forum (NAF) UDRP Supplemental Rules (Supp. Rules) (attached as **Annex C**). ICANN Rule 3(b)(i).

[2.] **COMPLAINANT INFORMATION**

- [a.] Name: Domtar Inc.
- [b.] Address: 395 de Maisonneuve Blvd. West
Montréal, Québec, H3A 1L6
- [c.] Telephone: (514) 848-5555
- [d.] Fax: (514) 848-6850
- [e.] E-Mail: razvan.theodoru@domtar.com

Complainant's authorized representative in the administrative proceeding:

- [a.] Name: Fraser Milner Casgrain LLP
- [b.] Address: 99 Bank Street
Suite 1420
Ottawa, Ontario K1P 1H4
- [c.] Telephone: (613) 783-9627
- [d.] Fax: (613) 783-9690
- [e.] E-Mail: wendy.riel@fmc-law.com

The Complainant's preferred method for communications directed to the Complainant in the administrative proceeding: ICANN Rule 3(b)(iii).

Electronic-Only Material

- [a.] Method: Email
- [b.] Address: wendy.riel@fmc-law.com
- [c.] Contact: Wendy Riel

Material Including Hard Copy

- [a.] Method: Fax
- [b.] Address/Fax: (613) 783-9690
- [c.] Contact: Wendy Riel

The Complainant chooses to have this dispute heard before a three member administrative panel and submits the following candidates from the ICANN-approved Provider's National Arbitration Forum list of qualified dispute resolution panellists to serve as the panellist. ICANN Rule 3(b)(iv).

- [a.] Frederick M. Abbott
Florida State University
College of Law
Damon House, Room 203
Phone: (850) 644-1572
Fax: (850) 644-5487
Email: fabbott@law.fsu.edu
- [b.] Dennis Arthur Foster
4600 Flower Valley Drive
Rockville, Maryland 20853
Phone: (301) 983-2500
Fax: (301) 929-3299
Email: dafoster@fosterintlwyer.com
- [c.] Nicolas C. Ulmer
Partner, Winston & Strawn LLP
43 Rue du Rhone

1204 Geneva, Switzerland
Phone: +41 (0)22 317 7675
Email: nulmer@winston.com

[3.] **RESPONDENT INFORMATION**

- [a.] Name: Joel Theriault
[b.] Address: 8651 South Nicolet Rd. or Avenue Suite, P.O. Box 99
Sault Sainte Marie, Michigan Foleyet, Ontario
49783 P0M 1T0
United States Canada
[c.] Telephone: (906) 635-6922 or (705) 899-2155
[d.] Fax: Unknown
[e.] E-Mail: joel@whitemoose.ca; theriaultjoel@hotmail.com

[4.] **DISPUTED DOMAIN NAME(S)**

- [a.] The following domain name is the subject of this Complaint: ICANN Rule 3(b)(vi).

domtar.org

This domain appears to have been registered on or about November 27, 2005. A copy of the WHOIS record as printed on September 10, 2007 is attached hereto as **Annex D**.

- [b.] Registrar Information: ICANN Rule 3(b)(vii).

- [i.] Registrar's Name: Melbourne IT, Ltd. dba Internet Names
Worldwide (R52-LROR)
[ii.] Registrar Address: Level 2, 120 King Street
Melbourne Victoria 3000
Australia
[iii.] Telephone Number: +61 3 8624 2300
[iv.] Facsimile Number: +61 3 9620 2388
[iv.] E-mail Address: Unknown

- [c.] Trademark/Service Mark Information: ICANN Rule 3(b)(viii).

- (a) Attached as **Annex E** are United States trade-mark registrations 0877808, 0872834, 0893509, 1206156, 1378708, 2415725, 2444314 for **DOMTAR** registered by Domtar Inc. in association with an extensive list of paper products.
- (b) Attached as **Annex F** is a copy of a Canadian trade-mark application 1313480 for registration of the trade-mark **DOMTAR**.

- (c) Attached as **Annex G** are United States trade-mark registrations and pending applications for trade-marks containing **DOMTAR** registered by Domtar Inc. in the United States in association with a wide variety of wares and services.
- (d) Attached as **Annex H** are Canadian trade-mark registrations and pending applications for trade-marks containing **DOMTAR** registered by Domtar Inc. in Canada in association with a wide variety of wares and services.

[5.] **FACTUAL AND LEGAL GROUNDS FOR THE COMPLAINT**

This Complaint is based on the following factual and legal grounds: ICANN Rule 3(b)(ix).

(a) Manner in which the Domain Name is identical or confusingly similar to a Trade-mark in which the Complainant has rights ICANN Rule 3(b)(ix)(1); ICANN Policy 4(a)(i)

1. As is set out in more detail below, the disputed domain name is identical to the Complainant's well known and registered trade-mark DOMTAR in which the Complainant has rights.
2. The trade-mark DOMTAR is owned by the Complainant, Domtar Inc., and has been used in Canada, the United States and internationally by the Complainant since at least 1965.
3. In 1965, the Dominion Tar & Chemical Company, Limited became known as Domtar Ltd. – Domtar Ltée, which subsequently became Domtar Inc. Domtar Inc. carries on business in the United States, Canada and internationally as a well-known paper, pulp and wood manufacturer and distributor. Its trade-mark DOMTAR is well known and is readily associated with Domtar.
4. Since at least 1965, Domtar has designed, manufactured, marketed and distributed a wide range of paper products for a variety of consumers. Domtar is Canada's largest paper company and is one of North America's largest integrated makers and marketers of uncoated freesheet paper. Domtar operates more than 80 paper distribution facilities strategically located across North America, employing nearly 14,000 people. Domtar Inc. also operates ten (10) sawmills and one wood remanufacturing facility in North America. Domtar is internationally renowned for its paper, wood and distribution services offered to merchants, retail outlets, stationers, printers, publishers, converters and end-users all over North America and throughout the world under the trade-mark DOMTAR and trade-name, Domtar Inc. Domtar's worldwide sales have exceeded 3,000 million dollars for each of the last four years.
5. The Internet domain name <domtar.com> is registered to Domtar Inc. Attached as **Annex I** is the Whois report, printed September 10, 2007 for <domtar.com> showing Domtar Inc. as the registrant of this domain name.
6. Since 1995, Domtar has advertised and offered its services through its web site <domtar.com>. This web site is used by Domtar as a marketing vehicle and as a portal through which clients can learn about Domtar and access Domtar's products and services.

Attached as **Annex J** are printouts of selected pages from Domtar's Internet website located at <domtar.com>.

7. DOMTAR is a registered trade-mark of Domtar Inc., registered in countries around the world, including the United States of America. An application to register the trade-mark in Canada is pending. (See **Annexes E and F**, as set out above). The trade-mark DOMTAR is registered and used in association with the goods and services set out therein, including a variety of paper goods and related services.
- (c) ***The Respondent Has No Rights or Legitimate Interest in the Disputed Domain Name ICANN Rule 3(b)(ix)(2); ICANN Policy 4(a)(ii).***
8. The disputed domain name appears to have been registered by the Respondent on or about November 27, 2005 (See **Annex D**, as set out above).
9. The Respondent is intentionally using the Complainant's well recognized trade-mark DOMTAR in order to divert traffic to its website. The Respondent is deliberately creating confusion for Internet users attempting to reach the Complainant's website. Accordingly, the Respondent is not making a legitimate use of the disputed domain name and is using the disputed domain name in bad faith.
10. The disputed domain name redirects to an active website located at <www.whitemoose.ca>. This website currently comprises a host of articles, photographs and video clips regarding forestry and herbicides. A printout of this website is attached as **Annex K**.
11. The disputed domain name incorporates verbatim the Complainant's trade-mark DOMTAR. There is a real and practical likelihood that the disputed domain name has been and will continue to be confused with the Complainant's trade-mark. The Respondent's redirection of visitors to <www.domtar.org> to a different top level domain name does not avoid the risk of confusion.
12. A domain name which is identical to a registered trade-mark creates confusion.

See Justice for Children v. R neetso, WIPO Case No. D2004-0175. (A different top level domain such as .org does not dispel any confusion).
13. The risk of confusion is critical given that the Complainant's identical DOMTAR trade-mark has been in use for over forty years and is well known internationally, and given that Domtar Inc. advertises and performs its services at <domtar.com>.
14. The Complainant has established a pattern of usage in the trade-mark DOMTAR which pre-dates the Respondent's registration of the disputed domain name in November 2005 by almost forty years -- a fact which, given the widespread recognition of the Complainant's trade-mark in connection with pulp, paper and wood manufacturing, was or should have been known to the Respondent.

15. The Respondent has no rights or legitimate interest in respect of the disputed domain name as, *inter alia*:
- (a) the Respondent does not have any rights in, nor authorization to use the trade-mark DOMTAR;
 - (b) the Respondent is not employed by or affiliated with Domtar Inc. in any way;
 - (c) the Respondent has never been licensed or otherwise authorized to use the trade-marks of Domtar Inc.;
 - (d) the Respondent has never carried on any legitimate business under the name DOMTAR or by reference to the Internet website located at domtar.com. To the contrary, the Respondent has simply registered and thereafter has used the disputed domain to divert unwitting users to its own website;
 - (e) the Respondent is not commonly known by the disputed domain name nor does the disputed domain name bear any resemblance or relevance to the content offered through its website; and
 - (f) there is no connection between the disputed domain name and a *bona fide* offering of goods and services by the Respondent.
16. A domain name which is identical to a trade-mark in which a Complainant has rights does not qualify as legitimate non-commercial or fair use under paragraph 4(c)(iii) of the ICANN Policy, regardless of website content. The reasoning supporting this view was explained by the panel in *Covance, Inc. and Covance Laboratories Ltd. v. The Covance Campaign*, WIPO Case No. D2004-0206:

This is because there is an immediate potential for false association with the trade mark owner and a degree of initial confusion which is at the top end of the spectrum. To hold otherwise may also prevent a trade mark owner from validly acquiring an identical domain name which it would otherwise be entitled to in accordance with the Policy's aim of preventing cybersquatting, minimising confusion with established trade marks and helping to assure bona fide trade mark owners' rights. It is worth mentioning that the vast majority of cases decided to date by panels under the "initial confusion" type rationale appear to concern domain names falling into this identical 'trade mark.com' category. The Respondent cannot use a domain name which is confusingly similar to the Complainants' trade mark, especially where it is not clear to the public from seeing the domain name itself that the Respondent's website is a complaint site.

17. The true nature of the Respondent's website at <whitemoose.ca/herbicide/herbicideindex.htm>, a complaint site, is not reflected in the domain name itself. The Respondent has not provided an indication (for example a derogatory or uncomplimentary word) that would make it dissimilar to the Complainant's trade-mark. As a consequence, Internet users following the link or finding the link

through search engines will not be aware that they will end up on a complaint site until they have studied the content of the Respondent's website.

18. The Respondent has intentionally deceived the public into believing that the web site is endorsed by the Complainant. By using the disputed domain name in this manner, the Respondent does not have legitimate rights or interests in the disputed domain name.

See Covance, Inc. and Covance Laboratories Ltd. v. The Covance Campaign, WIPO Case No. D2004-0206, *MicroFinancial, Inc. v. Glenn Harrison*, WIPO Case No. D2003-0396 and *Justice for Children v. R. neesto*, WIPO Case No. D2004-0175, wherein, in determining that *justiceforchildren.net* and *justiceforchildren.org* should be transferred to the owner of the service mark JUSTICE FOR CHILDREN it was held that,

Respondent's use of the Disputed Domain Names does not fit entirely within the paragraph 4(c)(iii) safe harbour, since Respondent undeniably intended "to misleadingly divert consumers" by taking advantage of Complainant's registered mark. By intentionally selecting Complainant's mark to present his views, he has not made a legitimate use of the domain names.

19. A disclaimer on the website does not bolster the legitimacy of the right to the domain name.

See Estee Lauder Inc. v. estelauder.com, estelauder.net and Jeff Hanna, WIPO Case No. D2000-0869, wherein it was held that,

The fact that users, once so diverted or attracted, are confronted with numerous disclaimers does not cure the initial and illegitimate diversion.

20. The right to express one's views is not tantamount to identifying one's self by another's name when expressing such views. Accordingly, there can be no legitimate rights or interests in a domain name where a domain name registrant makes intentional use of another's trade-mark to divert Internet users and potential customers to the registrant's website. As held in *Estee Lauder Inc. v. estelauder.com, estelauder.net and Jeff Hanna*, WIPO Case No. D2000-0869,

Respondent could well have chosen a domain name that was not confusingly similar to Complainant's and/or in which Complainant had no rights.

See also Kirkland & Ellis LLP v. DefaultData.com, American Distribution Systems, Inc., WIPO Case No. D2004-0136.

21. It is therefore respectfully submitted that the Respondent has no rights or legitimate interest in the disputed domain name as contemplated by ICANN Policy 4(a)(ii).

- (d) *The Disputed Domain Has Been Registered and Used in Bad Faith ICANN Rule 3(b)(ix)(3); ICANN Policy 4(a)(iii).***

22. Paragraph 4(b)(iv) of ICANN Policy sets out a non-exhaustive list of examples of registration and use in bad faith of a domain name. As such, the examples under Paragraph 4(b)(iv) are not exclusive.
23. A domain name is registered and used in bad faith where that domain name comprises the trade-mark of another entity and is registered with a view to divert web traffic or to cause damage and disruption to the owner of the trade-mark.

See *Triodos Bank NV v. Ashley Dobbs*, WIPO Case No. D2002-0776 and *General Growth Properties, Inc., Provo Mall L.L.C. v. Steven Rasmussen/Provo Towne Centre Online*, WIPO Case No. D2003-0845 and *Justice for Children v. R. neesto*, WIPO Case No. 2004-0175, wherein in determining the issue of bad faith, it was held,

Respondent's registration and continued use were undertaken intentionally and expressly to disrupt Complainant's activities, to prevent Complainant from making use of its own mark in two popular top-level domains, and to extend the audience for his criticism by misleading Internet users as to the "source, sponsorship, affiliation, or endorsement" of his website.

24. The Respondent has registered the disputed domain name for the purpose of misdirecting potential customers of Domtar Inc. to its site, to disrupt the business of Domtar Inc. and to tarnish the reputation of Domtar Inc. The Respondent's website is a complaint site that includes a video (See **Annex L**) and links to correspondence between the Respondent and government officials (See **Annex M**) which criticize certain alleged forest management practices of Domtar Inc. These postings are probative of the Respondent's intent to disrupt the Complainant's business and to tarnish the reputation of Domtar Inc.
25. In *Compagnie Générale des Matières Nucléaires v. Greenpeace International*, WIPO Case No. D2001-0376, a Respondent who was neither a competitor of the Complainant nor acting for "commercial gain" was found to have registered and used a domain name in bad faith where the domain name comprised the Complainant's trade-mark. The Panel recognized that the Respondent had a right to campaign and to conduct its campaigns by way of the Internet, but also noted that use of the Complainant's trade-mark as a domain name was "not necessary for that purpose...still less where the use of the Domain Name will trick internet users intending to visit the trade-mark owner's site into visiting the registrant's site".
26. Accordingly, the Respondent has used the Complainant's trade-mark in order to divert Internet traffic to its website, to tarnish the reputation of Domtar Inc. and to disrupt the business of Domtar Inc. Furthermore, the Respondent has unnecessarily used Domtar Inc.'s trade-mark DOMTAR in the disputed domain name in order to operate its website. For all of the foregoing factors, it is respectfully submitted that the Respondent has registered and used the disputed domain in bad faith as contemplated by ICANN Policy 4(a)(iii).

[6.] REMEDY SOUGHT

The Complainant respectfully requests that the Panel issue a decision transferring the domain name registration in respect of <domtar.org> from the Respondent to the Complainant, Domtar Inc.

[7.] OTHER LEGAL PROCEEDINGS

No other legal proceedings have been commenced or terminated in connection with or relating to the disputed domain name which is the subject of this complaint.

[8.] COMPLAINT TRANSMISSION

The Complainant asserts that a copy of this Complaint, together with the cover sheet as prescribed by the NAF's Supplemental Rules, has been sent or transmitted to the Respondent (domain-name holder), in accordance with ICANN Rule 2(b). ICANN Rule 3(b)(xii); NAF Supp. Rule 4(c). The Complainant asserts that a copy of this Complaint, together with the cover sheet as prescribed by NAF's Supplemental Rules, has been sent or transmitted to the Registrar in accordance with NAF Supp. Rule 4(e).

[9.] MUTUAL JURISDICTION

The Complainant will submit, with respect to any challenges to a decision in the administrative proceeding cancelling or transferring the domain name, to the jurisdiction of the courts at the location of the principal office of the concerned registrar.

[10.] **CERTIFICATION**

The Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain-name holder and waives all such claims and remedies against (a) the National Arbitration Forum and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator, and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees and agents.

The Complainant certifies that the information contained in this Complaint is to the best of the Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully Submitted,

DOMTAR INC.

By:

Name: Razvan Theodoru

Title: Vice-President and Secretary, Corporate Governance and Ethics

I have the authority to bind the Corporation.

Domtar Inc.
395 de Maisonneuve Blvd. West
Montréal, Québec
H3A 1L6

(Complainant) September 18, 2007