

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

Domain Names: <governmentofcanada.ca>; <gouvernementducanada.ca>;  
<canadiancustoms.ca>; <ecgc.ca>; <publicworkscanada.ca>;  
<statcanada.ca>; <statscanada.ca>; <theweatheroffice.ca>;  
<transportcanada.ca>; and <weatheroffice.ca>

Complainant: Government of Canada, on behalf of Her Majesty the Queen in Right of  
Canada

Registrant: David Bedford in his own name and doing business as Abundance  
Computer Consulting

Registrar: 411.ca – Wideport.com Incorporated

Panellists: Bradley J. Freedman, Stefan Martin and Patrick Flaherty

Service Provider: British Columbia International Commercial Arbitration Centre

**DECISION**

**The Parties**

1. The Complainant is the Government of Canada, on behalf of Her Majesty the Queen in Right of Canada.
2. The Registrant is David Bedford, having a place of business in Burnaby, British Columbia, Canada.

**The Domain Names and Registrars**

3. The domain names that are the subject of this proceeding are:  
<governmentofcanada.ca>; <gouvernementducanada.ca>; <canadiancustoms.ca>; <ecgc.ca>;  
<publicworkscanada.ca>; <statcanada.ca>; <statscanada.ca>; <theweatheroffice.ca>;  
<transportcanada.ca>; and <weatheroffice.ca> (collectively the “Domain Names”).
4. The Registrar of the Domain Names is 411.ca – Wideport.com Incorporated.

**Procedural History**

5. This is an administrative proceeding pursuant to the CIRA Domain Name Dispute Resolution Policy, adopted by the Canadian Internet Registration Authority and posted on the CIRA website on November 29, 2001 (the “Policy”) and the CIRA Domain Name Dispute Resolution Rules, version 1.1 (the “Rules”).

6. By registering the domain name with the Registrar, the Registrant agreed to the resolution of certain disputes pursuant to the Policy and Rules.

7. According to the information provided by the dispute resolution service provider, British Columbia International Commercial Arbitration Centre ("BCICAC"), the history of this proceeding is as follows:

- (a) On April 3, 2003, the Complainant filed a complaint regarding the Domain Name with BCICAC.
- (b) On April 7, 2003, having determined that the complaint was in administrative compliance with the requirements of the Policy and the Rules, BCICAC delivered a copy of the complaint to the Registrant.
- (c) On April 28, 2003, the Registrant delivered its response to BCICAC.
- (d) Both the complaint and the response were filed in English, which is the language of this proceeding in accordance with Rules paragraph 10.1.
- (e) On May 5, 2003, in accordance with Rules paragraph 6 and considering the nominees of the parties, BCICAC appointed a three-person Panel comprised of Messrs. Bradley J. Freedman, Stefan Martin and Patrick Flaherty. Mr. Freedman, a nominee common to both parties, was named as Chair of the Panel.
- (f) Each of Messrs. Freedman, Martin and Flaherty delivered to BCICAC the required Statement of Impartiality and Independence, as required by Rules paragraph 7.
- (g) Absent exceptional circumstances, the Panel was required to deliver its decision on May 28, 2003.

8. The Panel finds that it was properly constituted and appointed in accordance with the Policy and the Rules.

9. Based upon the information provided by BCICAC, the Panel finds that all technical requirements for the commencement and maintenance of this proceeding were met.

10. The Complainant was represented by legal counsel throughout this proceeding. The Respondent was not represented by legal counsel.

### **Factual Background**

11. The Panel proceeds on the basis of the following facts, which are established by the evidence submitted by the parties:

- (a) The Complainant is the Government of Canada on behalf of Her Majesty the Queen in Right of Canada. The Complainant has various departments and agencies, including Canada Customs and Revenue Agency, Department of the Environment, Department of Public Works and Government Services, Statistics Canada, and the Department of Transport.
- (b) The Registrant is an individual resident in Burnaby, British Columbia, Canada.

- (c) Between January 7, 1999 and May 1, 2000, the Registrant registered numerous domain names in the .com and .org top level domains that incorporated or were similar to marks or names in which the Complainant asserts rights. The Registrant used those domain names for his principle site, domainbaron.com, where he offered the domain names and others for sale and displayed banner advertisements.
- (d) By letter dated November 19, 1999, the Complainant gave notice to the Registrant of the Complainant's objection to his practice of registering domain names that incorporate or are similar to marks or names in which the Complainant has rights.
- (e) In the proceeding known as *Government of Canada v. David Bedford a.k.a. DomainBaron.com* (Case No. D2001-0470, June 30, 2001) pursuant to the Uniform Domain Name Dispute Resolution Policy (the "UDRP") adopted by the Internet Corporation for Assigned Names and Numbers and applicable to disputes regarding the alleged bad faith registration and use of domain names in various generic and country code top level domains, including .com, .org, and .net, the Complainant recovered from the Registrant 31 domain names, including <canadiancustoms.com>; <gouvernementducanada.com>; <governmentofcanada.com>; <statcanada.com>; and <transportcanada.com>.
- (f) The Registrant registered the Domain Names between November 9, 2000 and May 29, 2002. The Registrant registered five of the Domain Names (<gouvernementducanada.ca>, <canadiancustoms.ca>, <ecgc.ca>, <publicworkscanada.ca>, and <statcanada.ca>) after the issuance of the decision in *Government of Canada v. David Bedford a.k.a. DomainBaron.com*.
- (g) The Registrant's use of the Domain Names has varied from time to time.
- (i) At one time, four of the Domain Names (<governmentofcanada.ca>, <statscanada.ca>, <transportcanada.ca>, and <weatheroffice.ca>) were offered for sale on the Registrant's domainbaron.com website.
- (ii) At one time, six of the Domain Names (<governmentofcanada.ca>, <gouvernementducanada.ca>, <statcanada.ca>, <statscanada.ca>, <transportcanada.ca>, and <weatheroffice.ca>) were used to redirect Internet users to the Registrant's domainbaron.com website where other domain names were offered for sale.
- (iii) At one time, seven of the Domain Names (<gouvernementducanada.ca>, <canadiancustoms.ca>, <statcanada.ca>, <statscanada.ca>, <theweatheroffice.ca>, <transportcanada.ca>, and <weatheroffice.ca>) were used to redirect Internet users to the Registrant's governmentofcanada.ca website, which was used to promote atheism.
- (iv) At one time, the <ecgc.ca> Domain Name was used to redirect Internet users to the Registrant's atheists.net website, which was used to promote atheism.
- (v) At one time, six of the Domain Names (<canadiancustoms.ca>, <statcanada.ca>, <statscanada.ca>, <theweatheroffice.ca>, <transportcanada.ca>, and <weatheroffice.ca>) were used to redirect Internet users to the Registrant's landoverbaptist.org website, which was

used to promote atheism and included a store where users could purchase anti-religious merchandise.

- (vi) At one or another time, each of the Domain Names other than <ecgc.ca> were used to redirect Internet users to the Registrant's unitedstatesgovernment.org website, which was used to criticize United States foreign policy.

## Parties' Contentions

12. The Complainant contends as follows:

- (a) The Complainant is the owner of the following official marks: GOVERNMENT OF CANADA/GOUVERNEMENT DU CANADA; WEATHER OFFICE; and WEATHEROFFICE.CA. The Complainant has common law rights in the following trade-marks: GOVERNMENT OF CANADA; GOUVERNEMENT DU CANADA; CANADA CUSTOMS AND REVENUE AGENCY; EC.GC.CA; PUBLIC WORKS; PUBLIC WORKS AND GOVERNMENT SERVICES CANADA; STATISTICS CANADA; and TRANSPORT CANADA. The Domain Names are confusingly similar to the Complainant's corresponding marks.
- (b) The Registrant has no legitimate interest in the Domain Names because: (i) the Domain Names are confusingly similar to the Complainant's marks; (ii) the Registrant offered the Domain Names for sale; (iii) the Registrant used the Domain Names to redirect Internet users to other websites that have no connection to the Domain Names; (iv) the Registrant does not have the Complainant's permission to use the Complainant's marks nor any relationship with the Complainant; (v) the Complainant has not used the Domain Names in good faith in association with wares, services or businesses in respect of which the Domain Names were descriptive or generic names; (vi) the Registrant has not used the Domain Names in good faith in connection with a non-commercial activity; (vii) the Domain Names do not constitute the Registrant's legal or other names; and (viii) the Domain Names do not constitute geographic names or the location of the Registrant's non-commercial activity or business.
- (c) The Registrant registered and is using the Domain Names in bad faith because the Registrant registered the Domain Names to prevent the Complainant from registering its marks as domain names, and has engaged in a pattern of doing so.

13. The Registrant contends as follows:

- (a) As of the date of the registration of the Domain Names, the Complainant did not have rights in the alleged marks, on some or all of the following grounds: (i) the marks were not advertised as official marks; (ii) the marks are generic, descriptive and not distinctive of the Complainant; (iii) the marks have not been used by the Complainant.
- (b) The Domain Names are not confusingly similar to the Complainant's corresponding marks on some or all of the following grounds: (i) the Domain Names are generic and descriptive in nature; (ii) the Complainant's corresponding marks are not distinctive of the Complainant; and (iii) the Domain Names are materially different than the Complainant's corresponding marks.

- (c) The Registrant has a legitimate interest in the Domain Names on some or all of the following grounds: (i) the Registrant used the Domain Names in good faith for a non-commercial activity, including criticism, review, and reporting – to promote atheism and the rights of atheists, to parody and criticize religion, or to criticize governments; and (ii) the commercial activities on the Registrant's various websites raise funds to pay for his non-commercial activities.
- (d) The Registrant did not register the Domain Names to prevent the Complainant from doing so, because the Complainant does not want to register the Domain Names itself. The Registrant offered to sell the Domain Names to the Complainant for a price of \$300 each, but the Complainant did not accept the offer.
- (e) The Registrant does not assert that the complaint was brought in bad faith.

## Discussion and Findings

### A. Procedural and Other Matters

14. The complaint involves multiple domain names. This is permitted by Rules paragraph 3.4, provided that the relevant registration information indicates the same registrant for all registrations. In this case, the registration information for the Domain Names indicates that the registrant is either "David Bedford" or "Abundance Computer Consulting". The Complainant's uncontradicted evidence establishes that Abundance Computer Consulting is a business name registered and used by David Bedford. Based upon that evidence, the Panel finds that "David Bedford" or "Abundance Computer Consulting" are the same registrant within the meaning of Rules paragraph 3.4.

15. The Complainant, being the Canadian federal government, satisfies the CIRA Canadian Presence Requirement for Registrants (RPPG 05-20001108-00006 Version 1.2 Effective Date: November 8, 2000).<sup>1</sup>

16. The Registrant is domiciled in British Columbia. The Complainant stated a preference for the dispute to be determined according to the laws of Ontario. The Registrant stated a preference for the dispute to be determined according to the laws of British Columbia. In those circumstances, Rules paragraph 12.1 requires the Panel to render its decision in accordance with the Policy, the Rules and any rules and principles of the laws of Ontario and the laws of Canada applicable therein.

17. The Complainant referred the Panel to numerous UDRP decisions. The Policy appears to be modelled on the UDRP, but contains certain provisions, including important definitions, that are significantly different from the UDRP. Accordingly, while UDRP decisions may provide some guidance regarding the interpretation of the Policy, UDRP decisions must be read with caution given the substantial differences between the UDRP and the Policy.

### B. The Policy – An Overview

18. The Policy applies only to disputes involving alleged bad faith registration of domain names in the dot-ca country code top level domain – conduct commonly known as "cybersquatting" or "cyberpiracy". The Policy does not apply to other kinds of disputes between

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<sup>1</sup> See section 2(p).

trade-mark owners and domain name registrants. The narrow scope of the Policy reflects its stated purpose as a forum in which cases of bad faith registration of dot-ca domain names can be dealt with relatively inexpensively and quickly.<sup>2</sup>

19. The application of the Policy is limited to situations in which a complainant asserts the following:

- (a) the registrant's dot-ca domain name is "Confusingly Similar" (as defined in Policy paragraph 3.4) to a "Mark" (as defined in Policy paragraph 3.2) in which the complainant had "Rights" (as defined in Policy paragraph 3.3) prior to the date of registration of the domain name and continues to have such "Rights";
- (b) the registrant has no legitimate interest in the domain name as described in Policy paragraph 3.6; and
- (c) the registrant has registered the domain name in bad faith as described in Policy paragraph 3.7.<sup>3</sup>

If a dispute does not fall within this narrow framework, it is beyond the scope of the Policy.

20. Policy paragraph 4.1 sets forth the onus regarding the three required elements. The onus is on a complainant to prove, on a balance of probabilities, that: (a) the registrant's dot-ca 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 continues to have such "Rights"; and (b) the registrant has registered the domain name in bad faith as described in Policy paragraph 3.7. A complainant must also provide some evidence that (c) the registrant has no legitimate interest in the domain name as described in Policy paragraph 3.6. Policy paragraph 4.1 further provides that even if a complainant proves (a) and (b) 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 Policy paragraph 3.6.

### **C. The Complainant's Marks**

21. The Complainant must prove, on a balance of probabilities, that each of the Domain Names are "Confusingly Similar" to a "Mark" in which the Complainant had "Rights" prior to the date of registration of the Domain Name and continues to have such "Rights".

22. Policy paragraph 4.1 provides that the date of registration of a domain name is the date on which the domain name was first registered in the dot-ca registry or the predecessor registry operated by the University of British Columbia.

23. Based upon the evidence provided by the parties, the Panel finds that the Domain Names were initially registered on various dates between November 9, 2000 and May 29, 2002. The various registration dates are the dates for determining whether the Complainant had "Rights" in the corresponding "Mark" upon which it relies.

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<sup>2</sup> Policy paragraph 1.1.

<sup>3</sup> Policy paragraph 3.1.

24. Policy paragraph 3.2 provides a definition of the term “Mark” as follows:

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).*

25. Policy paragraph 3.5 provides for the deemed use of a Mark as follows:

*A Mark is deemed to be in "use" or "used" in association with:*

- (a) *wares: (i) if, at the time of the transfer of the property in or possession of the wares in the normal course of trade, the Mark is marked on the wares themselves or on the packages in which they are distributed or the Mark is in any other manner so associated with the wares that notice of the association is then given to the person to whom the property or possession is transferred; or (ii) at the time the wares are exported from Canada, if the Mark was marked in Canada on the wares or on the packages in which they are contained and the wares or packages are still marked when exported;*
- (b) *services, if the Mark is used or displayed in the performance or advertising of those services;*
- (c) *a business, if the Mark is displayed in the operating, advertising or promoting of the business; or*
- (d) *a non-commercial activity, if the Mark is displayed in the carrying out, promoting or advertising of the non-commercial activity.*

26. Policy paragraph 3.3 provides that a person has “Rights” in a Mark if:

- (a) *in the case of paragraphs 3.2 (a) and 3.2(b), the Mark has been used in Canada by that person, that person's predecessor in title or a licensor of that person or predecessor;*
- (b) *in the case of paragraph 3.2(c), the Mark is registered in CIPO in the name of that person, that person's predecessor in title or a licensor of that person; or*
- (c) *in the case of paragraph 3.2(d), public notice of adoption and use was given at the request of that person.*

27. The wording of Policy paragraph 3.2(a), and in particular the requirement that a trade-mark or trade name be used by a person for the purpose of distinguishing the person's wares, services or business from those of other persons, is substantially similar to the definition of "trade-mark" found in the *Trade-marks Act*, R.S.C. 1985, c. T-13.<sup>4</sup> In interpreting the meaning of Policy paragraph 3.2(a), the Panel relies upon Canadian jurisprudence regarding the *Trade-marks Act* definition of "trade-mark".<sup>5</sup>

28. The fundamental principles of Canadian law regarding the concept of a "trade-mark" may be summarized as follows:<sup>6</sup>

- (a) Trade-marks must serve to identify the source of wares and services, and to distinguish a trader's wares and services from those of other traders. The ability to distinguish, known as distinctiveness, is the cardinal requirement of a trade-mark.
- (b) Distinctiveness may be inherent or acquired. Inherent distinctiveness refers to the inherent ability of a trade-mark to distinguish the source of wares or services with which it is associated. There is a spectrum of distinctiveness, from non-distinctive words that are clearly descriptive of the character of wares or services, to words that are suggestive but not clearly descriptive, to words that are arbitrary, fanciful or invented. Distinctiveness can be strengthened through use.
- (c) Acquired distinctiveness refers to a trade-mark's ability, acquired through use, to distinguish the source of wares or services with which it is associated. Acquired distinctiveness is also known as "secondary meaning".
- (d) The mere use of a particular trade-mark is not sufficient to support a finding of distinctiveness. Nevertheless, distinctiveness may be inferred in some circumstances from the inherent distinctiveness of the mark, its use (including advertising) and substantial sales.
- (e) Proof of exclusivity is not essential to proof of distinctiveness. Also, proof of acquired distinctiveness does not require demonstrating a lack of descriptiveness, but only that the acquired secondary meaning of the mark is dominant. Further, it is not necessary that the trade-mark owner show that consumers know the owner's name to establish distinctiveness.

29. It is important to note that Policy paragraphs 3.2, 3.3, and 3.5 treat unregistered trade-marks and certification marks differently from registered trade-marks and official marks. If a

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<sup>4</sup> *Trade-marks Act* section 2 defines "trade-mark" as "a mark that is used by a person for the purpose of distinguishing or so as to distinguish wares or services manufactured, sold, leased, hired or performed by him from those manufactured, sold, leased, hired or performed by others".

<sup>5</sup> This approach is consistent with Rules paragraph 12.1, which requires the Panel to render its decision in accordance with the Policy, the Rules and any rules and principles of the laws of Ontario and the laws of Canada applicable therein.

<sup>6</sup> See *Western Clock Co. v. Oris Watch Co.*, [1931] 2 D.L.R. 775 (Ex. Ct.); *Havana House Cigar & Tobacco Merchants Ltd. v. Skyway Cigar Store* (1998), 81 C.P.R. (3d) 203 (F.C.T.D.), aff'd (1999), 3 C.P.R. (4<sup>th</sup>) 501 (F.C.A.); *Nature's Path Foods Inc. v. Quaker Oats Co. of Canada Ltd.* (2001), 12 C.P.R. (4<sup>th</sup>) 190 (F.C.T.D.); *Ray Plastics Ltd. v. Dustbane Products Ltd.* (1994), 57 C.P.R. (3d) 474 (Ont. C.A.); *Molson Breweries v. John Labatt Ltd.*, (2000), 5 C.P.R. (4<sup>th</sup>) 180 (F.C.A.); *General Motors du Canada v. Decarie Motors* (2000), 9 C.P.R. (4<sup>th</sup>) 368 (F.C.A.); *Ciba-Geigy Canada Ltd. v. Apotex Inc.* (1992), 44 C.P.R. (3d) 289 (S.C.C.); and *Oxford Pendaflex Canada Ltd. v. Korr Marketing Ltd.* (1982), 64 C.P.R. (2d) 1 (S.C.C.).



complainant's "Mark" is an unregistered trade-mark or certification mark,<sup>7</sup> the complainant must establish that the trade-mark was used in Canada by the complainant or its predecessor for the purpose of distinguishing the wares, services or business of the complainant or its predecessor prior to the domain name registration date.<sup>8</sup>

30. On the other hand, if the complainant's "Mark" is a trade-mark registered in the Canadian Intellectual Property Office prior to the domain name registration date, the complainant is not required to establish distinctiveness or use - the mere registration of the trade-mark is sufficient to establish "Rights" in the "Mark" within the meaning of the Policy.<sup>9</sup> Similarly, if the complainant's "Mark" is an official mark duly advertised prior to the domain name registration date, the complainant is not required to establish distinctiveness or use - the mere advertising of the official mark is sufficient to establish "Rights" in the "Mark" within the meaning of the Policy.<sup>10</sup> Accordingly, where a complainant relies upon a trade-mark registered prior to the domain name registration date or an official mark advertised prior to the domain name registration date, the Policy does not require or permit a panel to go behind the Canadian Trade-marks Register to determine whether the mark is valid or invalid based upon lack of distinctiveness or non-use. Those kinds of challenges to registered trade-marks and advertised official marks are beyond the scope of the Policy and the jurisdiction of the Panel, and must be the subject of court or other proceedings.

31. The Complainant asserts "Rights" in various "Marks". The Registrant disputes those "Rights" and "Marks" on various grounds. The following are the Panel's findings regarding the Complainant's asserted "Rights" in each "Mark".

(a) GOVERNMENT OF CANADA and GOUVERNEMENT DU CANADA

32. The Complainant asserts common law trade-mark rights in the names GOVERNMENT OF CANADA and GOUVERNEMENT DU CANADA. The Complainant also relies upon its official mark GOVERNMENT OF CANADA & DESIGN (application no. 0902329) advertised pursuant to *Trade-marks Act*, s. 9(1)(n)(iii), which is comprised of the Canadian flag and the words "Government of Canada" and "Gouvernement du Canada". The official mark was advertised in 1976, prior to the registration dates for the governmentofcanada.ca and gouvernementducanada.ca domain names (November 9, 2000 and July 15, 2001 respectively). The Complainant asserts that these marks are consistently used in association with the provision of government services and programs.<sup>11</sup>

33. The marks GOVERNMENT OF CANADA and GOUVERNEMENT DU CANADA are the alphanumeric and punctuation elements of an official mark 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*. Accordingly, the Panel finds that the marks GOVERNMENT OF CANADA and GOUVERNEMENT DU CANADA are "Marks" within the meaning of the Policy by virtue of Policy paragraph 3.2(d).

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<sup>7</sup> This also applies to trade-marks registered in the Canadian Intellectual Property Office after the domain name registration date.

<sup>8</sup> Policy paragraphs 3.2(a) and (b), 3.3(a) and 3.5.

<sup>9</sup> Policy paragraphs 3.2(c) and 3.3(c).

<sup>10</sup> Policy paragraphs 3.2(d) and 3.3(c).

<sup>11</sup> The Complainant also relies upon the same official mark advertised in 1987 on behalf of the Treasury Board of Canada.

34. The Complainant is the registrant of the official mark GOVERNMENT OF CANADA & DESIGN, and the mark was advertised at its request. Accordingly, the Panel finds that the Complainant had “Rights” in that mark within the meaning of the Policy by virtue of Policy paragraph 3.3(c) prior to the date of registration of the corresponding Domain Name and continues to have such “Rights”.

(b) CANADA CUSTOMS AND REVENUE AGENCY

35. The Complainant asserts common law trade-mark rights in the CANADA CUSTOMS AND REVENUE AGENCY mark. The Complainant has provided evidence of use of the mark in association with its customs and revenue services prior to July 15, 2001 (the registration date for the <canadiancustoms.ca> domain name).

36. The Registrant disputes the Complainant’s asserted rights in the CANADA CUSTOMS AND REVENUE AGENCY mark on the basis that the mark has not been advertised as an official mark pursuant to paragraph 9(1)(n)(iii) of the *Trade-marks Act*. However, the Complainant asserts common law rights in the mark based upon use, not statutory rights based upon advertisement as an official mark. The Registrant also contends that the CANADA CUSTOMS AND REVENUE AGENCY mark is descriptive and not distinctive of the Complainant.

37. The Panel finds that as a result of extensive use by the Complainant, the CANADA CUSTOMS AND REVENUE AGENCY mark has acquired distinctiveness and distinguishes the Complainant’s services from those of other persons. The Panel also finds that the Complainant uses the CANADA CUSTOMS AND REVENUE AGENCY mark in association with its customs and revenue services by displaying the mark in the carrying out, promoting or advertising of those services. The Panel also finds that those services constitute “non-commercial” services within the meaning of Policy paragraph 3.5(b). Accordingly, the Panel finds that the CANADA CUSTOMS AND REVENUE AGENCY mark is a “Mark” within the meaning of the Policy pursuant to Policy paragraph 3.2(a). The Panel also finds that the Complainant had “Rights” in that mark within the meaning of the Policy pursuant to Policy paragraph 3.3(a) prior to the date of registration of the corresponding Domain Name and continues to have such “Rights”.

(c) EC.GC.CA

38. The Complainant asserts common law trade-mark rights in the mark EC.GC.CA based upon use of the mark as a domain name for a government website prior to February 8, 2002 (the registration date for the <ecgc.ca> domain name) and in advertising and promotional materials. The Complainant contends that the ec.gc.ca domain name has acquired distinctiveness as a trade-mark. The Complainant provided evidence that the ec.gc.ca domain name is used for the Environment Canada website, and evidence of publications advertising to the public that the Environment Canada website may be accessed using the ec.gc.ca domain name.

39. The Registrant disputes the Complainant’s asserted rights in the EC.GC.CA mark on the basis that the mark has not been advertised as an official mark pursuant to paragraph 9(1)(n)(iii) of the *Trade-marks Act*. However, the Complainant asserts common law rights in the mark based upon use, not statutory rights based upon advertisement as an official mark.

40. Domain names have a dual purpose. In some limited circumstances, domain names may function merely as surrogates for Internet IP addresses, in which case they are not being used as trade-marks – they do not distinguish the wares, services or business of the owner of the domain name. In many circumstances, however, domain names will also serve a source identifying function by providing information regarding the source of the wares, services or information advertised on or available through a website, in which case they are used as trade-marks.

41. The term “ec.gc.ca” is inherently distinctive. It is arbitrary, not descriptive or generic. The evidence establishes that the Complainant uses the term “ec.gc.ca” as a domain name for its Environment Canada website, and also uses the term “ec.gc.ca” in promotional publications to identify the Internet source of Environment Canada information and services.

42. The Panel finds that the EC.GC.CA mark distinguishes the Complainant’s services from those of other persons. The Panel also finds that the Complainant uses the EC.GC.CA mark in association with its environment-related services by displaying the mark in the carrying out, promoting or advertising of those services. The Panel also finds that those services constitute “non-commercial” services within the meaning of Policy paragraph 3.5(b). Accordingly, the Panel finds that the EC.GC.CA mark is a “Mark” within the meaning of the Policy pursuant to Policy paragraph 3.2(a). The Panel also finds that the Complainant had “Rights” in that mark within the meaning of the Policy pursuant to Policy paragraph 3.3(a) prior to the date of registration of the corresponding Domain Name and continues to have such “Rights”.

(d) WEATHER OFFICE and WEATHEROFFICE.CA

43. The Complainant relies upon the official marks WEATHER OFFICE (application no. 0911924) and WEATHEROFFICE.CA (application no. 0911925) advertised pursuant to *Trade-marks Act* s. 9(1)(n)(iii). The official marks were advertised in May 2000, prior to the June 19, 2002 registration date for the <theweatheroffice.ca> domain name. The Complainant has not adduced any evidence of use of either mark, except for the use of the term “weatheroffice” as part of the domain name <www.weatheroffice.ec.gc.ca>.

44. The Registrant contends that the official marks WEATHER OFFICE and WEATHEROFFICE.CA are invalid because they have never been used by the Complainant. The Registrant refers to *Trade-marks Act* s. 9(1)(n)(iii), which requires that an official mark be “adopted and used” by a public authority in Canada. For the reasons set forth above, the Policy does not require or permit a panel to go behind the Canadian Trade-marks Register to determine whether a duly advertised official mark has been effectively adopted and used by the advertised owner of the mark.

45. The marks WEATHER OFFICE and WEATHEROFFICE.CA are the alphanumeric and punctuation elements of official marks 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*. Accordingly, the Panel finds that the marks WEATHER OFFICE and WEATHEROFFICE.CA are “Marks” within the meaning of the Policy by virtue of Policy paragraph 3.2(d).

46. The registration information for the official marks WEATHER OFFICE and WEATHEROFFICE.CA indicates that the registrant of the marks and person at whose request those marks were advertised is “the Federal Government of Canada as represented by the Ministry of Environment”. Accordingly, the Panel finds that the Complainant had “Rights” in that mark within the meaning of the Policy by virtue of Policy paragraph 3.3(c) prior to the dates of registration of the corresponding Domain Names and continues to have such “Rights”.

(e) PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

47. The Complainant asserts common law trade-mark rights in the mark PUBLIC WORKS AND GOVERNMENT SERVICES CANADA based upon use of the mark in association with various government services prior to May 29, 2002 (the registration date for the <publicworks.ca> domain name).

48. The Registrant disputes the Complainant’s asserted rights in the PUBLIC WORKS AND GOVERNMENT SERVICES CANADA mark on the basis that the mark has not been advertised as an official mark pursuant to paragraph 9(1)(n)(iii) of the *Trade-marks Act*. However, the

Complainant asserts common law rights in the mark based upon use, not statutory rights based upon advertisement as an official mark. The Registrant also contends that the PUBLIC WORKS AND GOVERNMENT SERVICES CANADA mark is generic and descriptive in nature, and not distinctive of the Complainant.

49. The Panel finds that as a result of extensive use by the Complainant, the PUBLIC WORKS AND GOVERNMENT SERVICES CANADA mark has acquired distinctiveness and distinguishes the Complainant's services from those of other persons. The Panel also finds that the Complainant uses the PUBLIC WORKS AND GOVERNMENT SERVICES CANADA mark in association with its services by displaying the mark in the carrying out, promoting or advertising of those services. The Panel also finds that those services constitute "non-commercial" services within the meaning of Policy paragraph 3.5(b). Accordingly, the Panel finds that the PUBLIC WORKS AND GOVERNMENT SERVICES CANADA mark is a "Mark" within the meaning of the Policy pursuant to Policy paragraph 3.2(a). The Panel also finds that the Complainant had "Rights" in that mark within the meaning of the Policy pursuant to Policy paragraph 3.3(a) prior to the date of registration of the corresponding Domain Name and continues to have such "Rights".

(f) PUBLIC WORKS CANADA

50. The Complainant asserts common law trade-mark rights in the mark PUBLIC WORKS CANADA based upon the popular usage of the mark to refer to the Complainant's Department of Public Works and Government Services prior to May 29, 2002 (the registration date for the <publicworks.ca> domain name).

51. The Registrant disputes the Complainant's asserted rights in the PUBLIC WORKS CANADA mark on the basis that the mark has not been advertised as an official mark pursuant to paragraph 9(1)(n)(iii) of the *Trade-marks Act*. However, the Complainant asserts common law rights in the mark, not statutory rights based upon advertisement as an official mark. The Registrant also contends that the PUBLIC WORKS CANADA mark is generic and descriptive in nature, and not distinctive of the Complainant.

52. The Complainant has adduced evidence that the media uses the term "Public Works Canada" to refer to the Complainant's Department of Public Works and Government Services. However, the Complainant has not adduced any evidence that the Complainant itself uses the term "Public Works Canada" as a trade-mark or trade name for the purpose of distinguishing its wares, services of business from those of other persons, as required by Policy paragraph 3.2(a), whether by displaying the mark in the carrying out, promoting or advertising of the Complainant's services, within the meaning of Policy paragraph 3.5(d), or otherwise.

53. Accordingly, the Panel concludes that the Complainant has not proven, on a balance of probabilities, that PUBLIC WORKS CANADA is a "Mark" within the meaning of the Policy, or that the Complainant has "Rights" in that mark within the meaning of the Policy

(g) STATISTICS CANADA

54. The Complainant asserts common law trade-mark rights in the mark STATISTICS CANADA based upon use of the mark in association with various government services prior to November 9, 2000 (the registration date for the <statscanada.ca> domain name) and July 15, 2001 (the registration date for the <statcanada.ca> domain name).

55. The Registrant disputes the Complainant's asserted rights in the STATISTICS CANADA mark on the basis that the mark has not been advertised as an official mark pursuant to paragraph 9(1)(n)(iii) of the *Trade-marks Act*. However, the Complainant asserts common law rights in the mark based upon use, not statutory rights based upon advertisement as an official

mark. The Registrant also contends that the STATISTICS CANADA mark is generic and descriptive in nature, and not distinctive of the Complainant.

56. The Panel finds that as a result of extensive use by the Complainant, the STATISTICS CANADA mark has acquired distinctiveness and distinguishes the Complainant's services from those of other persons. The Panel also finds that the Complainant uses the STATISTICS CANADA mark in association with its services by displaying the mark in the carrying out, promoting or advertising of those services. The Panel also finds that those services constitute "non-commercial" services within the meaning of Policy paragraph 3.5(b). Accordingly, the Panel finds that the STATISTICS CANADA mark is a "Mark" within the meaning of the Policy pursuant to Policy paragraph 3.2(a). The Panel also finds that the Complainant had "Rights" in that mark within the meaning of the Policy pursuant to Policy paragraph 3.3(a) prior to the date of registration of the corresponding Domain Name and continues to have such "Rights".

(h) TRANSPORT CANADA

57. The Complainant asserts common law trade-mark rights in the mark TRANSPORT CANADA based upon use of the mark in association with various government services prior to November 9, 2000 (the registration date for the <transportcanada.ca> domain name).

58. The Registrant disputes the Complainant's asserted rights in the TRANSPORT CANADA mark on the basis that the mark has not been advertised as an official mark pursuant to paragraph 9(1)(n)(iii) of the *Trade-marks Act*. However, the Complainant asserts common law rights in the mark based upon use, not statutory rights based upon advertisement as an official mark. The Registrant also contends that the TRANSPORT CANADA mark is generic and descriptive in nature, and not distinctive of the Complainant.

59. The Panel finds that as a result of extensive use by the Complainant, the TRANSPORT CANADA mark has acquired distinctiveness and distinguishes the Complainant's services from those of other persons. The Panel finds that the TRANSPORT CANADA mark distinguishes the Complainant's services from those of other persons. The Panel also finds that the Complainant uses the TRANSPORT CANADA mark in association with its services by displaying the mark in the carrying out, promoting or advertising of those services. The Panel also finds that those services constitute "non-commercial" services within the meaning of Policy paragraph 3.5(b). Accordingly, the Panel finds that the TRANSPORT CANADA mark is a "Mark" within the meaning of the Policy pursuant to Policy paragraph 3.2(a). The Panel also finds that the Complainant had "Rights" in that mark within the meaning of the Policy pursuant to Policy paragraph 3.3(a) prior to the date of registration of the corresponding Domain Name and continues to have such "Rights".

**D. Confusing Similarity Between Domain Names and Complainant's Marks**

60. The Complainant asserts that the Domain Names are "Confusingly Similar" to one or more of the Complainant's corresponding marks. The Registrant disputes that any of the Domain Names are "Confusingly Similar" to any of the Complainant's marks.

61. Policy paragraph 3.4 provides a definition of "Confusingly Similar" as follows:

*A domain name is "Confusingly Similar" to a Mark if the domain name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark.*

62. In applying this definition, it is important to note that Policy paragraph 1.2 provides as follows:

*For the purposes of this Policy, "domain name" means the domain name excluding the "dot-ca" suffix and the suffixes associated with all third and fourth level domain names accepted for registration by CIRA.*

63. Notwithstanding the use of the term "Confusingly Similar", the following considerations support the view that the test under Policy paragraph 3.4 is a test of resemblance based upon first impression and imperfect recollection, rather than a test of confusion as applied in cases of trade-mark infringement under the Canadian *Trade-marks Act* or passing off at Canadian common law:

- (a) The Policy's definition of "Confusingly Similar" is similar to the wording of Canadian *Trade-marks Act* section 9(1). Section 9(1) prohibits the adoption of any mark "consisting of, or so nearly resembling as to be likely to be mistaken for", certain official marks and other prohibited marks. The test under *Trade-marks Act* section 9(1) is a test of resemblance based upon imperfect recollection, rather than a test of source confusion. In particular, the test is whether a person, on a first impression, knowing the official mark only and having an imperfect recollection of it, would likely mistake the challenged mark for the official mark. The section 9(1) test does not include consideration of marketplace factors that are an important part of a source confusion analysis.<sup>12</sup>
- (b) The Policy's definition of "Confusingly Similar" is also similar to the wording of Canadian *Trade-marks Act* sections 6(5)(e). Section 6(5)(e) sets forth one of the circumstances a court is required to consider in determining whether trade-marks or trade-names are confusing, namely "the degree of resemblance between the trade-marks or trade-names and the in appearance or sound or in the ideas suggested by them". Significantly, the definition of "Confusingly Similar" does not include any of the other criteria set forth in *Trade-marks Act* sections 6(5)(a) – (d), namely, the inherent distinctiveness of the trade-marks or trade-names and the extent to which they have become known, the length of time the trade-marks or trade-names have been in use, the nature of the wares, services or business, and the nature of the trade.
- (c) A "Mark" within the meaning of the Policy may be a duly advertised official mark. Applying a confusion test to official marks is not consistent with Canadian trade-mark law. An official mark advertised under *Trade-marks Act* sections 9(1)(n) may be relied upon to prevent the use of similar marks even though there is no likelihood of confusion.
- (d) A comparison of domain names and trade-marks without considering marketplace criteria is consistent with the way in which domain names are used on the Internet. Specifically, Internet users often use domain names without knowing the nature and content of the website to which the domain name connects and other marketplace criteria that are important considerations in a conventional trade-mark confusion analysis.

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<sup>12</sup> See *Canadian Olympic Assn. v. Olymel* [2000] F.C.J. No. 842 (Fed. T.D.); *Techniquip Ltd. v. Canadian Olympic Assn.* [1999] F.C.J. No. 1787 (F.C.A.), affirming [1998] F.C.J. No. 280 (F.C.T.D.); and *Canadian Olympic Assn. v. Logo-Motifs Ltd.* [1999] F.C.J. No. 1847 (F.C.T.D.).

- (e) The procedure contemplated by the Policy is not well suited to the kinds of factual determinations involved in a conventional confusion analysis applied in trade-mark infringement disputes. In particular, the Policy is intended to be a relatively quick and inexpensive process, panels must make factual determinations based upon written submissions and documentary evidence, complainants have no right of reply without the panel's permission, and parties are often not represented by counsel.

64. The Panel notes that in proceedings under the UDRP, complainants are required to prove that a disputed domain name is "identical or confusingly similar" to the complainant's corresponding trade-mark or service mark. However, unlike the Policy, the UDRP does not contain a definition of the term "confusingly similar". Consequently, decisions pursuant to the UDRP are of little or no assistance in interpreting this aspect of the Policy.<sup>13</sup>

65. Prior decisions under the Policy are not consistent regarding the test to be applied under Policy paragraph 3.4. Two decisions have concluded that the test is one of resemblance: *Trans Union LLC v. 1491070 Ontario Inc.* (April 23, 2003; Dispute No. TRA-030423-001011) and *Canadian Broadcasting Corporation v. Quon* (April 8, 2003; Dispute No. DCA 681-CIRA). Two other decisions have held that the test is one of "confusion", either as that term is used in conventional trade-mark infringement disputes or with slight modification: *Browne & Co. Ltd. v. Bluebird Industries* (October 22, 2002, Dispute No. 00002) and *Air Products Canada Ltd. v. Index Quebec Inc.* (April 15 and 23, 2003).

66. For the reasons set forth above, the Panel concludes that that the test for "Confusingly Similar" under Policy paragraph 3.4 is one of resemblance based upon first impression and imperfect recollection. Accordingly, for each Domain Name the Complainant must prove on a balance of probabilities that a person, on a first impression, knowing the Complainant's corresponding mark only and having an imperfect recollection of it, would likely mistake the Domain Name (without the .ca suffix) for Complainant's corresponding mark based upon the appearance, sound or the ideas suggested by the Mark.

67. As will be noted below, the Registrant places considerable reliance upon the decision in *Air Products Canada Ltd. v. Index Quebec Inc.* (April 15 and 23, 2003). In that decision, the panel found that the domain name <airproducts.ca> was not "Confusingly Similar" with the complainant's registered trade-mark AIRPRODUCTS & DESIGN because the words "air products", in the context of Internet use, were not distinctive and therefore could not cause confusion. The *Air Products* panel's reasoning in that regard was based upon the view that the test for "Confusingly Similar" under Policy paragraph 3.4 is confusion. However, the *Air Products* panel noted that the Policy is relatively new and has not been extensively interpreted, and expressly acknowledged that Policy paragraph 3.4 could be interpreted to require a test of resemblance rather than confusion. The *Air Products* panel held that under the resemblance test, the domain name <airproducts.ca> was "Confusingly Similar" with the complainant's registered AIRPRODUCTS & DESIGN trade-mark. For the reasons set forth above, this Panel has concluded that a test of resemblance based upon first impression and imperfect recollection is the appropriate test under Policy paragraph 3.4. Accordingly, the Panel disagrees with the

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<sup>13</sup> The Panel also notes that panels under the UDRP have applied different tests. Some panels have undertaken a literal comparison of the domain name and the trade-mark, and have not considered whether there is any source confusion. Other panels have undertaken a source confusion analysis as required by conventional Anglo-American trade-mark law, which involves a consideration of all of the circumstances including the strength of the complainant's mark, the sophistication of likely consumers, and the nature of the wares and services with which the domain name and conflicting mark are used. See *The Vanguard Group Inc. v. Lorna Kang* (Case No. D2002-1064, January 20, 2003), at footnotes 9 and 10.

conclusion in *Air Products Canada Ltd. v. Index Quebec Inc.* that confusion is the proper test under Policy paragraph 3.4.

68. The Panel also disagrees with the reasoning in *Air Products Canada Ltd. v. Index Quebec Inc.* to the extent that the panel in that case suggests that a complainant's mark must be distinctive in order to sustain a finding that a challenged domain name is "Confusingly Similar" to the complainant's mark under Policy paragraph 3.4. Distinctiveness may be an appropriate consideration in determining whether a complainant has "Rights" in a "Mark" within the meaning of the Policy.<sup>14</sup> However, distinctiveness of a complainant's mark is not an appropriate consideration in determining whether the challenged domain name is "Confusingly Similar" to the complainant's mark. The Panel's view in this regard is consistent with the fact that a complainant may rely upon an official mark advertised pursuant to paragraph 9(1)(n) of the *Trade-marks Act*. Such official marks do not have to be distinctive in order to be advertised under the *Trade-marks Act* or afforded significant protection under the *Trade-marks Act*.

69. The following are the Panel's findings regarding whether the Domain Names are "Confusingly Similar" to the Complainant's corresponding marks.

(a) <governmentofcanada.ca>

70. The Complainant alleges that the <governmentofcanada.ca> domain name is "Confusingly Similar" to its GOVERNMENT OF CANADA mark. The Registrant contends that the domain name is not "Confusingly Similar" to the GOVERNMENT OF CANADA mark because the mark is generic and descriptive in nature and not distinctive of the Complainant.

71. For the reasons set forth above, the distinctiveness of the GOVERNMENT OF CANADA mark is not relevant to determining whether the <governmentofcanada.ca> domain name is "Confusingly Similar" to the mark.

72. The <governmentofcanada.ca> domain name, without the .ca suffix, is identical to the Complainant's GOVERNMENT OF CANADA mark, except for the omission of spaces between words. Applying the resemblance test, the Panel finds, on a balance of probabilities, that a person, on a first impression, knowing the Complainant's GOVERNMENT OF CANADA mark only and having an imperfect recollection of it, would likely mistake the <governmentofcanada.ca> domain name (without the .ca suffix) for the Complainant's GOVERNMENT OF CANADA mark based upon the appearance, sound or the ideas suggested by the Complainant's mark. Accordingly, the Panel finds that the <governmentofcanada.ca> domain name is "Confusingly Similar" to its GOVERNMENT OF CANADA mark within the meaning of Policy paragraph 3.4.

(b) <gouvernementducanada.ca>

73. The Complainant alleges that the <gouvernementducanada.ca> domain name is "Confusingly Similar" to its GOUVERNEMENT DU CANADA mark. The Registrant contends that the domain name is not "Confusingly Similar" to the GOUVERNEMENT DU CANADA mark because the mark is generic and descriptive in nature and not distinctive of the Complainant.

74. For the reasons set forth above, the distinctiveness of the GOUVERNEMENT DU CANADA mark is not relevant to determining whether the <gouvernementducanada.ca> domain name is "Confusingly Similar" to the mark.

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<sup>14</sup> For the reasons, distinctiveness of a complainant's mark is relevant if a complainant relies upon an unregistered trade-mark or certification mark, but is not relevant if the complainant relies upon a trade-mark registered in the Canadian Intellectual Property Office prior to the domain name registration date or an official mark duly advertised prior to the domain name registration date.



75. The <gouvernementducanada.ca> domain name, without the .ca suffix, is identical to the Complainant's GOUVERNEMENT DU CANADA mark, except for the omission of spaces between words. Applying the resemblance test, the Panel finds, on a balance of probabilities, that a person, on a first impression, knowing the Complainant's GOUVERNEMENT DU CANADA mark only and having an imperfect recollection of it, would likely mistake the <gouvernementducanada.ca> domain name (without the .ca suffix) for the Complainant's GOUVERNEMENT DU CANADA mark based upon the appearance, sound or the ideas suggested by the Complainant's mark. Accordingly, the Panel finds that the <gouvernementducanada.ca> domain name is "Confusingly Similar" to its GOUVERNEMENT DU CANADA mark within the meaning of Policy paragraph 3.4.

(c) <canadiancustoms.ca>

76. The Complainant alleges that the <canadiancustoms.ca> domain name is "Confusingly Similar" to its CANADA CUSTOMS AND REVENUE AGENCY mark. The Registrant contends that the domain name is not "Confusingly Similar" to the CANADA CUSTOMS AND REVENUE AGENCY mark because: (i) the mark is generic and descriptive in nature and not distinctive of the Complainant; and (ii) the mark includes the words "and revenue agency", which are not part of the domain name.

77. For the reasons set forth above, the distinctiveness of the CANADA CUSTOMS AND REVENUE AGENCY mark is not relevant to determining whether the <canadiancustoms.ca> domain name is "Confusingly Similar" to that mark.

78. The <canadiancustoms.ca> domain name, without the .ca suffix, is different in appearance and sound from the Complainant's CANADA CUSTOMS AND REVENUE AGENCY mark, because the domain name uses the word "canadian" rather than "canada", and does not include the words "and revenue agency". The Complainant's CANADA CUSTOMS AND REVENUE AGENCY mark suggests the idea of a government of Canada department responsible for the administration of tariffs (customs) and revenue. The <canadiancustoms.ca> domain name suggests two ideas: Canadian tariffs (customs) or the cultural traditions or habits (customs) of Canadians.

79. Applying the resemblance test, the Panel finds that the Complainant has not proven, on a balance of probabilities, that a person, on a first impression, knowing the Complainant's CANADA CUSTOMS AND REVENUE AGENCY mark only and having an imperfect recollection of it, would likely mistake the <canadiancustoms.ca> domain name (without the .ca suffix) for the Complainant's CANADA CUSTOMS AND REVENUE AGENCY mark based upon the appearance, sound or the ideas suggested by the Complainant's mark. Accordingly, the Panel finds that the Complainant has not proven, on a balance of probabilities, that the <canadiancustoms.ca> domain name is "Confusingly Similar" to its CANADA CUSTOMS AND REVENUE AGENCY mark within the meaning of Policy paragraph 3.4.

(d) <ecgc.ca>

80. The Complainant alleges that the <ecgc.ca> domain name is "Confusingly Similar" to its EC.GC.CA mark. The Registrant contends that the domain name is not "Confusingly Similar" to the EC.GC.CA mark because the domain name is not distinctive of the Complainant's Department of Environment.

81. For the reasons set forth above, the distinctiveness of the EC.GC.CA mark is not relevant to determining whether the <ecgc.ca> domain name is "Confusingly Similar" to that mark.

82. The <ecgc.ca> domain name, without the .ca suffix, is identical to the Complainant's EC.GC.CA mark, except for the omission of a period between the "ec" and "gc" letters. Applying

the resemblance test, the Panel finds, on a balance of probabilities, that a person, on a first impression, knowing the Complainant's EC.GC.CA mark only and having an imperfect recollection of it, would likely mistake the <ecgc.ca> domain name (without the .ca suffix) for the Complainant's EC.GC.CA mark based upon the appearance, sound or the ideas suggested by the Complainant's mark. Accordingly, the Panel finds that the <ecgc.ca> domain name is "Confusingly Similar" to the EC.GC.CA mark within the meaning of Policy paragraph 3.4.

(e) <weatheroffice.ca>

83. The Complainant alleges that the <weatheroffice.ca> domain name is "Confusingly Similar" to its WEATHER OFFICE and WEATHEROFFICE.CA marks. The Registrant contends that the domain name is not "Confusingly Similar" to the WEATHER OFFICE and WEATHEROFFICE.CA marks because the marks are generic and descriptive in nature and not distinctive of the Complainant.

84. For the reasons set forth above, the distinctiveness of the WEATHER OFFICE and WEATHEROFFICE.CA marks is not relevant to determining whether the <weatheroffice.ca> domain name is "Confusingly Similar" to those marks.

85. The <weatheroffice.ca> domain name, without the .ca suffix, is identical to the Complainant's WEATHER OFFICE mark, except for the omission of spaces between words. The <weatheroffice.ca> domain name, without the .ca suffix, is identical to the Complainant's WEATHEROFFICE.CA mark, except for the omission of the .ca suffix from the mark.

86. Applying the resemblance test, the Panel finds, on a balance of probabilities, that a person, on a first impression, knowing the Complainant's WEATHER OFFICE and WEATHEROFFICE.CA marks only and having an imperfect recollection of them, would likely mistake the <weatheroffice.ca> domain name (without the .ca suffix) for the Complainant's WEATHER OFFICE and WEATHEROFFICE.CA marks based upon the appearance, sound or the ideas suggested by the Complainant's marks. Accordingly, the Panel finds that the <weatheroffice.ca> domain name is "Confusingly Similar" to the Complainant's WEATHER OFFICE and WEATHEROFFICE.CA marks within the meaning of Policy paragraph 3.4.

(f) <theweatheroffice.ca>

87. The Complainant alleges that the <theweatheroffice.ca> domain name is "Confusingly Similar" to its WEATHER OFFICE and WEATHEROFFICE.CA marks. The Registrant contends that the domain name is not "Confusingly Similar" to the WEATHER OFFICE and WEATHEROFFICE.CA marks because the marks are generic and descriptive in nature and not distinctive of the Complainant.

88. For the reasons set forth above, the distinctiveness of the WEATHER OFFICE and WEATHEROFFICE.CA marks is not relevant to determining whether the <theweatheroffice.ca> domain name is "Confusingly Similar" to those marks.

89. The <theweatheroffice.ca> domain name, without the .ca suffix, is identical to the Complainant's WEATHER OFFICE mark, except for the omission of spaces between words and the addition of the word "the". The <theweatheroffice.ca> domain name, without the .ca suffix, is identical to the Complainant's WEATHEROFFICE.CA mark, except for the omission of spaces between words and the .ca suffix from the mark and the addition of the word "the".

90. Applying the resemblance test, the Panel finds, on a balance of probabilities, that a person, on a first impression, knowing the Complainant's WEATHER OFFICE and WEATHEROFFICE.CA marks only and having an imperfect recollection of them, would likely mistake the <theweatheroffice.ca> domain name (without the .ca suffix) for the Complainant's WEATHER OFFICE and WEATHEROFFICE.CA marks based upon the appearance, sound or the ideas suggested by the Complainant's marks. Accordingly, the Panel finds that the

<theweatheroffice.ca> domain name is “Confusingly Similar” to the Complainant’s WEATHER OFFICE and WEATHEROFFICE.CA marks within the meaning of Policy paragraph 3.4.

(g) <publicworkscanada.ca>

91. The Complainant alleges that the <publicworkscanada.ca> domain name is “Confusingly Similar” to its PUBLIC WORKS AND GOVERNMENT SERVICES CANADA mark.<sup>15</sup> The Registrant contends that the domain name is not “Confusingly Similar” to the PUBLIC WORKS AND GOVERNMENT SERVICES CANADA mark because the mark is generic and descriptive in nature and not distinctive of the Complainant.

92. For the reasons set forth above, the distinctiveness of the PUBLIC WORKS AND GOVERNMENT SERVICES CANADA mark is not relevant to determining whether the <publicworkscanada.ca> domain name is “Confusingly Similar” to that mark.

93. The <publicworkscanada.ca> domain name, without the .ca suffix, is different in appearance and sound from the Complainant’s PUBLIC WORKS AND GOVERNMENT SERVICES CANADA mark, because the domain name does not include the words “and government services”. Both the Complainant’s mark and the <publicworkscanada.ca> domain name suggest the idea of public works in Canada, however only the Complainant’s mark also suggests the idea of government services in Canada.

94. Notwithstanding the differences between the Complainant’s mark and the challenged domain name, applying the resemblance test, the Panel finds, on a balance of probabilities, that a person, on a first impression, knowing the Complainant’s PUBLIC WORKS AND GOVERNMENT SERVICES CANADA mark only and having an imperfect recollection of it, would likely mistake the <publicworkscanada.ca> domain name (without the .ca suffix) for the Complainant’s PUBLIC WORKS AND GOVERNMENT SERVICES CANADA mark based upon the appearance, sound or the ideas suggested by the Complainant’s mark. Accordingly, the Panel finds that the <publicworkscanada.ca> domain name is “Confusingly Similar” to the Complainant’s PUBLIC WORKS AND GOVERNMENT SERVICES CANADA mark within the meaning of Policy paragraph 3.4.

(h) <statscanada.ca>

95. The Complainant alleges that the <statscanada.ca> domain name is “Confusingly Similar” to its STATISTICS CANADA mark. The Registrant contends that the domain name is not “Confusingly Similar” to the STATISTICS CANADA mark because: (i) the mark is generic and descriptive in nature and not distinctive of the Complainant; and (ii) the term “stats” is an acronym for the name of numerous other organizations.

96. For the reasons set forth above, the distinctiveness of the STATISTICS CANADA mark is not relevant to determining whether the <statscanada.ca> domain name is “Confusingly Similar” to that mark.

97. The <statscanada.ca> domain name, without the .ca suffix, is different in appearance and sound from the Complainant’s STATISTICS CANADA mark, because the domain name uses the abbreviated term “stats” instead of the complete word “statistics” used in the mark. Nevertheless, both the Complainant’s mark and the <statscanada.ca> domain name suggest

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<sup>15</sup> The Complainant also alleges that the <publicworkscanada.ca> domain name is “Confusingly Similar” to its alleged PUBLIC WORKS CANADA mark. For the reasons set forth above, the Complainant does not have rights in the PUBLIC WORKS CANADA mark. Accordingly, it is neither necessary nor appropriate for the Panel to make any finding regarding whether the <publicworkscanada.ca> domain name is “Confusingly Similar” to the PUBLIC WORKS CANADA mark within the meaning of the Policy.

the idea of a government of Canada department responsible for statistics. In this regard, the Panel notes that the official Statistics Canada website uses the domain name <statscan.ca>, which confirms that Panel's view that the term "stats" is understood to be an abbreviation of the word "statistics".

98. Applying the resemblance test, the Panel finds, on a balance of probabilities, that a person, on a first impression, knowing the Complainant's STATISTICS CANADA mark only and having an imperfect recollection of it, would likely mistake the <statscanada.ca> domain name (without the .ca suffix) for the Complainant's STATISTICS CANADA mark based upon the appearance, sound or the ideas suggested by the Complainant's mark. Accordingly, the Panel finds that the <statscanada.ca> domain name is "Confusingly Similar" to the Complainant's STATISTICS CANADA mark within the meaning of Policy paragraph 3.4.

(i) <statcanada.ca>

99. The Complainant alleges that the <statcanada.ca> domain name is "Confusingly Similar" to its STATISTICS CANADA mark. The Registrant contends that the domain name is not "Confusingly Similar" to the STATISTICS CANADA mark because: (i) the mark is generic and descriptive in nature and not distinctive of the Complainant; and (ii) the term "stat" is an acronym for numerous other organizations.

100. For the reasons set forth above, the distinctiveness of the STATISTICS CANADA mark is not relevant to determining whether the <statcanada.ca> domain name is "Confusingly Similar" to that mark.

101. The <statcanada.ca> domain name, without the .ca suffix, is different in appearance and sound from the Complainant's STATISTICS CANADA mark, because the domain name uses the term "stat" instead of the complete word "statistics" used in the mark. On a close comparison, the term "stat" is different from the term "stats", and might not convey the idea of "statistics". On the other hand, the Panel notes that the official Statistics Canada website uses both domain names <statscan.ca> and <statcan.ca>, which confirms that Panel's view that both terms "stats" and "stat" are understood to be abbreviations of the word "statistics". In any event, the appropriate test requires the Panel to consider the first impression of the domain name in the mind of a person with an imperfect recollection of the corresponding mark. The Panel finds that from that perspective, both the Complainant's mark and the <statcanada.ca> domain name suggest the idea of a government of Canada department responsible for statistics.

102. Applying the resemblance test, the Panel finds, on a balance of probabilities, that a person, on a first impression, knowing the Complainant's STATISTICS CANADA mark only and having an imperfect recollection of it, would likely mistake the <statcanada.ca> domain name (without the .ca suffix) for the Complainant's STATISTICS CANADA mark based upon the appearance, sound or the ideas suggested by the Complainant's mark. Accordingly, the Panel finds that the <statcanada.ca> domain name is "Confusingly Similar" to the Complainant's STATISTICS CANADA mark within the meaning of Policy paragraph 3.4.

(j) <transportcanada.ca>

103. The Complainant alleges that the <transportcanada.ca> domain name is "Confusingly Similar" to its TRANSPORT CANADA mark. The Registrant contends that the domain name is not "Confusingly Similar" to the TRANSPORT CANADA mark because the mark is generic and descriptive in nature and not distinctive of the Complainant.

104. For the reasons set forth above, the distinctiveness of the TRANSPORT CANADA mark is not relevant to determining whether the <transportcanada.ca> domain name is "Confusingly Similar" to that mark.

105. The <transportcanada.ca> domain name, without the .ca suffix, is identical to the Complainant's TRANSPORT CANADA mark, except for the omission of spaces between words. Applying the resemblance test, the Panel finds, on a balance of probabilities, that a person, on a first impression, knowing the Complainant's TRANSPORT CANADA mark only and having an imperfect recollection of it, would likely mistake the <transportcanada.ca> domain name (without the .ca suffix) for the Complainant's TRANSPORT CANADA mark based upon the appearance, sound or the ideas suggested by the Complainant's mark. Accordingly, the Panel finds that the <transportcanada.ca> domain name is "Confusingly Similar" to the Complainant's TRANSPORT CANADA mark within the meaning of Policy paragraph 3.4.

#### **E. No Legitimate Interest in the Domain Names**

106. Policy paragraph 4.1 requires the Complainant to provide "some evidence" that the Registrant has no legitimate interest in each of the Domain Names, as described in Policy paragraph 3.6. If the Complainant satisfies this evidentiary burden, the onus shifts to the Registrant to prove on a balance of probabilities that the Registrant has a legitimate interest in the challenged domain name.

107. Policy paragraph 3.6 sets forth an exhaustive list of criteria for determining whether a registrant has a legitimate interest in a domain name. It reads as follows:

*The Registrant has a legitimate interest in a domain name if, and only if, before the receipt by the Registrant of notice from or on behalf of the Complainant that a Complaint was submitted:*

- (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.*

*In paragraphs 3.6 (b), (c), and (d) "use" by the Registrant includes, but is not limited to, use to identify a web site.*

108. The legitimate interest criteria set forth Policy paragraphs 3.6(a), (b), (c), and (d) are satisfied only if the registrant's use was in "good faith". The term "good faith" is not defined by

the Policy. The Panel notes that “good faith” as used in Policy paragraph 3.6 is not necessarily the opposite of “Bad Faith” as defined in Policy paragraph 3.7.

109. The Complainant contends that none of the legitimate interest criteria set forth in Policy paragraph 3.6 are applicable to the Registrant. The only ground of legitimate interest relied upon by the Registrant is that he uses the Domain Names in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting, as set forth in Policy paragraph 3.6(d). The other grounds of legitimate interest set forth in Policy paragraph 3.6(d) were not relied upon by the Registrant and are not applicable in this case. Accordingly, it is neither necessary nor appropriate for the Panel to discuss them further.

110. The Registrant asserts that he has a legitimate interest in the Domain Names because he uses the Domain Names for websites that promote atheism and the rights of atheists, parody and criticize religion, or criticize the foreign policy of the United States. The Registrant asserts that any commercial activity through those websites is to raise funds to pay for the non-commercial activity of criticism and review, and is merely incidental to the primary, non-commercial purpose of the websites.

111. The Registrant asserts that he plans to use the generic or descriptive Domain Names for websites that have some connection to the Domain Names, i.e. domain names that contain the word “weather” for a website that warns about the effects of global warming. The Registrant asserts that he plans to use the Domain Names that refer to the Government of Canada for websites that criticize or review the governing of Canada. The Registrant provided no evidence regarding the implementation of those stated plans.

112. The Complainant disputes the Registrant’s assertions of legitimate interest on the following grounds:

- (a) The Registrant’s use of the Domain Names was not in “good faith” because:
  - (i) the Registrant had no rights in the Marks, and no permission from the Complainant to use them;
  - (ii) the Registrant knew that the Domain Names were confusingly similar to the Complainant’s trade-marks;
  - (iii) the Registrant offered the Domain Names for sale, and used the Domain Names for website that offered other domain names for sale; and
  - (iv) the Domain Names were used for websites that had no connection with the Domain Names.
- (b) The Registrant’s use of the Domain Names is tainted by the Registrant’s bad faith use of numerous other domain names in the .com, .org, and .ca top level domains that incorporate the Complainant’s trade-marks. In this regard, the Complainant relies upon UDRP decisions regarding disputes between the Complainant and the Registrant regarding similar domain names.
- (c) At one time, six of the Domain Names were used to redirect users to the landoverbaptist.org website where merchandise was advertised for sale – a commercial activity.
- (d) At one time, six of the Domain Names were used to redirect Internet users to the Registrant’s domainbaron.com website where other domain names were offered for sale
- (e) The use of the Domain Names for websites that criticize U.S. foreign policy and atheism is “merely contrived to attempt to obtain the benefit of the “legitimate interest” exception” in Policy paragraph 3.6(d).

- (f) The Registrant uses the Domain Names for websites that have no connection with the Domain Names in an attempt to exploit Internet user confusion and misdirect or divert users to the Registrant's websites.

113. The evidence demonstrates, and the Panel finds, that the Registrant has used the Domain Names for websites the content of which has no apparent connection or relationship with the Domain Names. In particular, there is no real nexus between the Domain Names and the asserted objects of the Registrant's criticism. Further, the Registrant has not asserted any legitimate justification for his registration and use of the Domain Names for those websites. The Panel concludes that such use of the Domain Names is not a "good faith" use within the meaning of Policy paragraph 3.6(d).

114. The evidence demonstrates, and the Panel finds, that the Registrant has used the Domain Names <canadiancustoms.ca>, <statcanada.ca>, <statscanada.ca>, <theweatheroffice.ca>, <transportcanada.ca>, and <weatheroffice.ca> for websites that offer other domain names for sale. The Panel concludes that such use of those Domain Names is not merely incidental to the primary purpose of the websites, and those Domain Names are not used for a "non-commercial" purpose within the meaning of Policy paragraph 3.6(d).

115. After considering all of the circumstances, including the prior disputes between the parties regarding the Registrant's registration and use of other domain names, the Panel finds that the non-commercial content of the Registrant's websites, including the criticism of religion and the promotion of atheism, is a contrived attempt to avoid the application of the Policy.

116. In the circumstances, including the Registrant's past and current use of the Domain Names, the Registrant's bare assertions regarding his planned future use of certain Domain Names are not sufficient to prove, on a balance of probabilities, that the Registrant has legitimate interests in those Domain Names.

117. For these reasons, the Panel finds as follows: (a) the Complainant has satisfied its evidentiary burden under Policy paragraph 4.1, such that the burden is on the Registrant to prove on a balance of probabilities that the Registrant has a legitimate interest in the challenged domain name; and (b) Policy paragraph 3.6(d) is not applicable to any of the Domain Names, and therefore the Registrant has not proven on a balance of probabilities that he has a legitimate interest in any of the Domain Names as described in Policy paragraph 3.6.

## **F. Bad Faith Registration**

118. Policy paragraph 4.1 requires the Complainant to prove, on a balance of probabilities, that the Registrant registered each of the Domain Names in bad faith, as described in Policy paragraph 3.7.

119. "Bad faith" within the meaning of the Policy is a term of art, and is not intended to apply to distasteful conduct that might constitute bad faith in the ordinary sense of the term. Policy paragraph 3.7 sets forth an exhaustive list of criteria for determining whether a registrant registered a domain name in "bad faith". It reads as follows:

*For the purposes of paragraph 3.1(c), a Registrant will be considered to have registered a domain name in bad faith if, and only if:*

- (a) *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 licensee or licensor for valuable consideration in excess of the*

*Registrant's actual costs in registering the domain name, or acquiring the Registration;*

- (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; or*
- (c) 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.*

120. The Registrant's purpose in registering the Domain Names may be determined by common sense inferences from the Registrant's conduct and other surrounding circumstances. See *Canadian Broadcasting Corporation v. Quon* (April 8, 2003; Dispute No. DCA 681-CIRA).

121. The Complainant relies upon Policy paragraph 3.7(b), and asserts that the Registrant registered the Domain Names in order to prevent the Complainant from registering its marks as domain names. The Complainant contends that the Registrant knew that his domain name registration practices would prevent the Complainant from registering its marks as domain names. The Complainant notes that the Registrant registered all of the Domain Names after November 19, 1999, when the Complainant put the Registrant on notice that it objected to his registration of domain names that are similar to the Complainant's trade-marks and official marks. The Complainant also notes that the Registrant registered five of the Domain Names after July 9, 2001, the date of the UDRP decision in *Government of Canada v. David Bedford*.

122. The Complainant also asserts that the Registrant has engaged in a pattern of registering domain names to prevent persons who have "Rights" in "Marks" from registering the "Marks" as domain names. The Complainant points to the Domain Names in dispute, and also relies on the Registrant's registration of numerous other domain names in the .com and .org domains, including: <canadacouncil.com>, <canadiancustoms.com>, <canadianforces.com>, <canadiangrain.com>, <cangov.com>, <contractscanada.com>, <customscanada.com>, <dominionofcanada.com>, <envcan.com>, <environmentcanada.com>, <environment-canada.com>, <gouvernementducanada.com>, <govcan.com>, <governmentofcanada.com>, <hrcanada.com>, <humanresourcescanada.com>, <nrcan.com>, <nrcanada.com>, <receivergeneral.com>, <resourcescanada.com>, <revcan.com>, <revenuecan.com>, <statcan.com>, <statcanada.com>, <statisticscanada.com>, <statistics-canada.com>, <statscan.com>, <statscan.org>, <stats-canada.com>, <thebankofcanada.com>, <thegovernmentofcanada.com>, <transportcanada.com>.

123. In answer to the Complainant's assertions and evidence, the Registrant contends that the Complainant has no interest in registering the Domain Names, and therefore asserts that he did not register the Domain Names to prevent the Complainant from doing so. The Registrant relies upon the Complainant's Government of Canada Internet Guide, which directs the Complainant's various departments to register domain names in the .ca domain using the .gc.ca suffix.



124. The Registrant also states that his purpose in registering the Domain Names was to sell the Domain Names. He states as follows:

*The Registrant having registered the domain names simply for their worth as do many other organizations involved with the domain name industry; and always considering the Complainant as a potential buyer for them – even though all Indications show that the Complainant has no use for them; offered them to the Complainant.*

125. The referenced offer was for a price of \$300 for each Domain Name and was communicated by email on April 22, 2003.

126. In light of all of the evidence and the Panel's previous finding that the Registrant does not have a legitimate interest in the Domain Names and is not using the Domain Names in good faith, the Panel finds that the Registrant registered the Domain names to prevent the Complainant from registering its Marks as domain names. The Complainant's internal policy and practice of registering domain names in the dot-ca domain using the .gc.ca suffix does not preclude the Complainant from registering other dot-ca domain names, and does not afford a defence to the Registrant. Further, the Panel notes that the evidence submitted by the Complainant establishes that at least one of the Complainant's various departments – Statistics Canada – uses a domain name registered in the dot-ca top level domain – statscan.ca.

127. The Panel also finds that the Registrant has engaged in the requisite pattern of registering domain names in order to prevent persons who have "Rights" in "Marks" from registering the "Marks" as domain names. This finding is based upon the ten Domain Names registered by the Registrant in the dot-ca domain that are the subject of this proceeding. In the circumstances, it is neither necessary nor appropriate for the Panel to make any determination of whether the requisite pattern of bad faith domain name registration may be established by reference to domain names registered in domains other than the .ca domain.

128. Also, based upon the Registrant's own evidence, the Panel finds that the Registrant registered each of the Domain Names primarily for the purpose of selling, renting, licensing or otherwise transferring the registrations of the Domain Names to the Complainant for valuable consideration in excess of the Registrant's actual costs in registering the Domain Names.

129. For these reasons, the Panel finds that the Complainant has proven, on a balance of probabilities, that the Registrant registered each of the Domain Names in bad faith, as described in Policy paragraph 3.7.

### **Conclusion and Decision**

130. The Complainant has not proven, on a balance of probabilities, that the <canadiancustoms.ca> 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 continues to have such "Rights", as those terms are defined in the Policy.

131. The Complainant has proven, on a balance of probabilities, that each of the Domain Names other than the <canadiancustoms.ca> 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 continues to have such "Rights", as those terms are defined in the Policy.

132. The Complainant has proven, on a balance of probabilities, that the Registrant registered each of the Domain Names in bad faith as described in paragraph 3.7 of the Policy.

133. The Complainant has adduced some evidence that the Registrant has no legitimate interest in each of the Domain Names, as described in paragraph 3.6. The Registrant has not proven, on a balance of probabilities, that he has a legitimate interest in any of the Domain Names, as described in paragraph 3.6.

134. For these reasons, the complaint regarding the <canadiancustoms.ca> domain name is not successful and is dismissed. The Panel will not make any order regarding the registration of the <canadiancustoms.ca> domain name.

135. For these reasons, the complaints regarding the domain names <governmentofcanada.ca>, <gouvernementducanada.ca>, <ecgc.ca>, <publicworkscanada.ca>, <statcanada.ca>, <statscanada.ca>, <theweatheroffice.ca>, <transportcanada.ca>, and <weatheroffice.ca> are successful, and the Panel orders and directs that the registrations of each of those domain names be transferred to the Complainant as follows:

Domain Name	Transfer registration to:
<governmentofcanada.ca>	Government of Canada on behalf of Communication Canada
<gouvernementducanada.ca>	Government of Canada on behalf of Communication Canada
<ecgc.ca>	Government of Canada on behalf of Environment Canada
<publicworkscanada.ca>	Government of Canada on behalf of Public Works and Government Services Canada
<statcan.ca>	Government of Canada on behalf of Statistics Canada
<statscanada.ca>	Government of Canada on behalf of Statistics Canada
<theweatheroffice.ca>	Government of Canada on behalf of Environment Canada
<transportcanada.ca>	Government of Canada on behalf of Transport Canada
<weatheroffice.ca>	Government of Canada on behalf of Environment Canada

Bradley J. Freedman, Stefan Martin and Patrick Flaherty

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Bradley J. Freedman  
Chair

Date: May 27, 2003