

ADMINISTRATIVE PANEL DECISION

AlgaeCal Inc. v. AlgaeCal Fraud

Case No. D2013-1248

1. The Parties

The Complainant is AlgaeCal Inc. of Vancouver, British Columbia, Canada, represented by Gowling Lafleur Henderson, LLP, Canada.

The Respondent is AlgaeCal Fraud of St. Michael, Barbados.

2. The Domain Name and Registrar

The disputed domain name <algaealfraud.com> is registered with Internet.bs Corp. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 11, 2013. On July 11, 2013, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 12, 2013, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amended Complaint on July 16, 2013.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and that the proceedings commenced on July 18, 2013. In accordance with the Rules, paragraph 5(a), the due date for Response was August 7, 2013. The Respondent did not submit any response. Accordingly, the Center notified the parties of the Respondent's default on August 8, 2013.

The Center appointed Peter L. Michaelson as the sole panelist in this matter on August 15, 2013. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

Based on the deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel by August 29, 2013. However, due to exceptional circumstances recently experienced by the Panel, the Panel extended the deadline to September 12, 2013.

4. Factual Background

As reflected in the registration record for the disputed domain name in the Registrar's WhoIs database (a copy of that record appears in Annex 8 to the Complaint) and confirmed by the Registrar, the disputed domain name was both created and registered to the Respondent on March 31, 2013, and is set to expire on March 31, 2014.

A. Complainants' ALGAECAL Marks

The Complainant owns a United States and several foreign counterpart trademark registrations for the mark ALGAECAL in block letters. In Annex 3 to the Complaint, the Complainant has provided hard-copy printouts of publicly accessible records from the United States Patent and Trademark Office, the Canadian Intellectual Property Office and the OHIM for, respectively, its US, Canadian and CTM registrations, and also copies of the corresponding certificates for its Chinese and Indian registrations. Pertinent details of these registrations are as follows:

1. ALGAECAL
United States registration no. 3,160,440
registered: October 17, 2006; filed: January 11, 2005

This mark is registered for use in connection with: "Dietary food supplements; food supplements; nutritional additives for use in foods and dietary supplements for human consumption; mineral supplement; calcium supplement", in international class 5. The registration indicates that both first use of the mark in conjunction with these goods and first use in commerce commenced as of March 15, 2006.

2. ALGAECAL
Canadian registration no.: TMA774485
registered: August 13, 2010; filed: August 28, 2008

This mark is registered for use in connection with: "Dietary food supplements and food supplements for developing and maintaining bones, cartilage, teeth, gums, muscle function and general good health; nutritional additives for use as a food ingredient and as an ingredient in vitamin supplements and dietary supplements, all for human consumption; mineral supplement; calcium supplement; topical cream for wound healing; nutritional supplements in face mask, lotion, and cream form sold as a component of nutritional skin care products". The registration indicates that the mark was used in Canada in conjunction with these goods as early as June 21, 2006.

3. ALGAECAL
CTM registration no.: 007243033
registered: August 7, 2009; filed: September 2, 2008

This mark is registered for use in connection with: "Dietary food supplements; food supplements; nutritional additives for use in foods and dietary supplements for human consumption; mineral supplement; calcium supplement; topical cream for wound healing; nutritional supplements in face mask, lotion, and cream form sold as a component of nutritional skin care products", all in international class 5.

4. ALGAECAL
PRC registration no.: 6968126
registered: July 21, 2010

This mark is registered for use in connection with: "Dietary food supplements; food supplements; nutritional additives for use in foods and dietary supplements for human consumption; mineral supplement; calcium supplement; topical cream for wound healing; nutritional supplements in face mask, lotion, and cream form sold as a component of nutritional skin care products", all in international class 5.

5. ALGAECAL

India registration no.: 1725855
registered: August 27, 2008

This mark is registered for use in connection with: "Dietary food supplements; food supplements; nutritional additives for use in foods and dietary supplements for human consumption; mineral supplements; calcium supplements; topical cream for wound healing; nutritional supplements in face mask, lotion, and cream form sold as a component of nutritional skin care products".

B. The Parties

The Complainant, AlgaeCal Inc., is a Canadian federal corporation with an office in Vancouver, Canada. AlgaeCal Distribution Inc. is a wholly owned subsidiary of the Complainant. AlgaeCal Distribution Inc. is the proprietor of the ALGAECAL Marks and has granted an exclusive license to the Complainant to use those marks anywhere in the world as, *inter alia*, a brand name for calcium supplements. The license came into effect on July 1, 2009 and expires on July 1, 2014.

Since 2006, the Complainant has been selling organic calcium supplements for human consumption under the ALGAECAL Marks. These supplements are derived from a marine algae called "Algas Calcareas". See printouts of various pages, from the Complainant's website at <algaecal.com>, provided in Annex 2 to the Complaint. These products are sold to approximately 18,000 customers in North and South America, Asia, Europe and Africa. The Complainant also sells its products through its website (relevant pages of which are provided in hard-copy form in Annex 5 to the Complaint) which receives over 100,000 visitors per month. These products are also available on-line through third-party websites, such as Amazon.com (as shown by the print-out provided in Annex 6 to the Complainant of relevant pages from the Amazon.com website). Currently, the Complainant's annual revenues from these products exceed USD 2 Million.

For calendar year 2012, the Complainant incurred approximately USD 357,000 in promotional expenses. One of its promotional activities involved featuring its products on the "Dr. Oz" national television show in the United States.

During early August 2012, the Complainant commenced civil proceedings in the British Columbia Supreme Court ("Court") against a former employee who misappropriated confidential information and who was making defamatory statements online regarding the Complainant. The former employee was the IT/systems manager and is an expert on Internet and domain name matters. On August 15, 2012, the Court, as part of those proceedings, issued an injunction against the former employee enjoining him from making further defamatory remarks and requiring him to return the confidential information he misappropriated (a redacted copy of the injunction appears in Annex 7 to the Complaint).

The Respondent registered the disputed domain name on March 31, 2013. The WhoIs record for the name specifies the registrants (Respondent) as "AlgaeCal Fraud" and "Deano Fraud" and provided a physical contact address of 1305 W Homer St, BB 11103 St. Michael, Barbados.

According to an affidavit from Mr. Neuls, CEO of the Complainant (a copy of this affidavit appears in Annex 9 to the Complaint), the physical contact address of the Respondent does not exist in Barbados and the owner of the telephone number for the Respondent, as specifically listed in the WhoIs entry, is for a third-party (located in British Columbia, not Barbados) who has no knowledge of the Respondent.

The Complainant states that the Respondent's website contains content, including various assertions, concerning the Complainant and its products that are defamatory, false, misleading and unsupported. In

Annex 10 to the Complaint, the Complainant has provided hard-copy printouts, of various illustrative pages containing articles from the Respondent's website, which provide such content. The articles are entitled "Forged COAs Check Your AlgaeCal Samples", "Some AlgaeCal Formulas Might Be Nothing More than Coral Calcium", "AlgaeCal Clinical Studies and Major Conflict of Interest", "AlgaeCal Plus and Brazil Live Coral Calcium", "If AlgaeCal is Contaminated With High Lead Levels Then So is Garden of Life Raw Calcium", and "How AlgaeCal Tricked the FDA to Get Away With Making Unapproved Health Claims".

Annex 13 to the Complaint provides a copy of the Respondent's article, which also appears on its website, entitled "Forged COAs Check Your AlgaeCal Samples". This article states "evidence has been found showing that AlgaeCal was forging certificates of analysis to hide the heavy metal levels of their raw ingredient", but also stated "the evidence including lab results and Lot # involved in this cover up will be posted as it is gathered", *i.e.* that presently it has no evidence to corroborate its claims. Further unsupported statements exist in the other articles (*e.g.*, the article from the Respondent's website provided in Annex 14 to the Complaint).

Further, as shown in the printout provided in Annex 15 to the Complaint from the "About this Site" section of the Respondent's website, the Respondent states that the information on its site is based on "first-hand knowledge that I have learned from a friend that used to work for AlgaeCal" and which result from the "illegal and unethical actions" of the Complainant that "sickened my friend and eventually lead to my friend leaving AlgaeCal because the greed and deceit became unbearable". Further, the Respondent states in this section of its website: "My friend has not authorized any of the info on this blog, and in fact I have taken matters upon myself to publish all of the info found on this website because I believe the world should know the truth behind this potentially dangerous product that has been sold to consumers all around the world. ... As you will see almost all of the info found on this site will be inside information that I have copied from my friend's computer without them knowing. Even though my friend would not approve of me publishing this info I feel that the world deserves to know the truth behind AlgaeCal." The Complainant asserts that these statements are all false and misleading.

During May 2013, the Complainant added further defendants (including the Respondent's website) to its Court proceeding who were allegedly involved in defaming the Complainant and using its confidential information.

Starting on or about June 7, 2013, when Canadian-based Internet users tried to access the Respondent's website, the site responded with a page (a copy of which appears in Annex 16 to the Complaint) stating the following:

"AlgaeCal Fraud - AlgaeCal Scam Database Error
AlgaeCal Fraud is having temporary database problems ... check back soon.
AlgaeCal Fraud Error establishing a database connection".

Further, on or about June 19, 2013, the Complainant discovered that the Respondent's website was blocked to Canadian IP addresses -- including that associated with the Complainant's location in Vancouver, but could be accessed by Internet users from other countries.

5. Parties' Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's ALGAECAL Marks as the name contains the term "algaecal" in combination with an pejorative word ("fraud"), where the latter fails to add any distinctiveness whatsoever to the term sufficient to distinguish the name from the mark so as to sufficiently mitigate any resulting confusion of Internet users.

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

The Complainant contends that, for various reasons, the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

First, the Complainant has not licensed or authorized the Respondent to use any of the Complainant's ALGAECAL Marks or a domain name containing any of those marks. Moreover, the Respondent was well aware of these marks at the time it registered the disputed domain name and, by doing so, specifically targeted the Complainant.

Second, the Respondent's website does not constitute a genuine "complaint" site, inasmuch as the site contains statements which the Respondent knowingly and deliberately made that are false, misleading and unsupported regarding the Complainant and its products, specifically including highly prejudicial allegations of illegal behavior, criminal conduct and poisonous products. As such, this site does not constitute a legitimate fair use of the domain name and moreover is one designed to intentionally damage the Complainant's marks and more generally its reputation, and disrupt the Complainant's business. The lack of a fair use is further reflected in, among other acts, the Respondent (a) having provided false contact information to hide its identity in the Whois database, let alone employing a fictitious address that includes false references to the Complainant and its CEO -- which has likely been done to just taunt the Complainant, and (b) blocking the Complainant from viewing its website.

(iii) Registered and Used in Bad Faith

The Complainant also contends that, for several reasons, the Respondent has registered and is using the disputed domain name in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

First, the Respondent, in registering the name, has provided false contact information to intentionally conceal its true identity and further, by including knowingly false information that references the Complainant and its CEO, is deliberately taunting both the Complainant and its CEO.

Specifically, the Complainant's prior physical address was: 2805-1323 Homer Street, British Columbia, Canada, V6B 5T1. The current physical address of AlgaeCal Distribution, the Complainant's subsidiary is: The Business Centre Upton, St. Michael Barbados, BB11103. The Respondent's physical contact address, as set forth in the Whois record for the disputed domain name, is 1305 W Homer St, BB 11103, St. Michael, Barbados -- which is an address that does not exist in Barbados. In addition, the telephone number which the Respondent provided in its contact information is also false as it is associated with an individual in British Columbia, not Barbados, who has no knowledge of the Respondent.

Second, the Respondent had prior knowledge of the Complainant's ALGAECAL Marks but, in spite of that knowledge, intentionally registered the name.

Third, the Respondent, through the false and unsupported information contained in its website, is using the disputed domain name to intentionally damage the Complainant's marks and reputation and, by doing so, to deliberately disrupt its business. In that regard, as the name includes the Complainant's mark ALGAECAL, the Respondent is attempting to intentionally divert Internet customers from the Complainant's website to that of the Respondent where those customers will be exposed to the Respondent's false and unsupported information to the Complainant's ultimate detriment.

Lastly, the Respondent's intentional blocking of its site to the Complainant, as well as to all users in Canada, also evidences bad faith for the simple reason that if the site were a legitimate complaint site then its content would be freely accessible to all public Internet users not just those in countries which the Respondent has permitted.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

In view of the lack of a Response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual representations.

A. Defamatory content

The Complainant has ardently objected to what it views as defamatory content on the Respondent's website, repeatedly stating that, in its opinion, the content contained false, misleading and unsupported allegations regarding the Complainant and its products, particularly including allegations that are highly suggestive of illegal behavior, criminal conduct and products being tainted with poison or other dangerous ingredients.

In this Panel's view, UDRP administrative panels simply do not have the authority nor, given the summary nature of UDRP proceedings and the rather limited procedural tools available to them, are they equipped to ascertain whether any specific content posed to a website is truthful or not, and, if untruthful, is actionably defamatory and injurious to a complainant. Such conclusions are properly determined through a sufficiently exhaustive factual-based investigation accomplished through litigation in a court of competent jurisdiction.

All this Panel can do is categorize the general nature of the content, regardless of its truth, *i.e.*, whether, for purposes of paragraph 4(c)(iii) of the Policy, a disputed domain name is being used in conjunction with a site that is generally intended to provide critical comment or not -- regardless of its accuracy, and thus falls within the safe harbor of being a legitimate noncommercial or fair use; or whether the intent of a respondent evidences some mendacious motive through which the use is actually one designed to achieve commercial gain or to tarnish the mark(s) at issue.

Accordingly, the Panel will not opine as to the accuracy or lack thereof of any of the content posted to the Respondent's website, but notes that, in the absence of any Response, all the Complainant's contentions are undisputed and will be viewed by the Panel as such, thus lending considerable credence to the validity of those contentions.

B. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's ALGAECAL Marks.

From a simple comparison of the disputed domain name to the Complainant's mark ALGAECAL, no doubt exists that the disputed domain name is confusingly similar to the Complainant's marks. The primary difference between the disputed domain name and the mark ALGAECAL is appending the word "fraud" to form a separate corresponding composite term "algaecalfraud" along with, secondarily, appending the generic Top Level Domain ("gTLD") ".com" to that term to form the disputed domain name, with the last addition being irrelevant in assessing confusing similarity or identity under paragraph 4(a) of the Policy and thus ignored.

It is now very well-established in UDRP precedent, including numerous decisions previously rendered by this Panel, that a minor variation, such as adding a short letter or number group, or even generic or highly descriptive words, or geographic identifiers, such as a country name, to a mark, is usually insufficient in and of itself, when used in forming a domain name that results from modifying the mark, to confer requisite and sufficient distinctiveness to that name to avoid user confusion. Even those generic words that are pejorative

or convey negative sentiment, such as “sucks”, generally do not convey any distinctiveness when combined with a mark to form a domain name, let alone enough to adequately distinguish the name from the mark -- and are often specifically selected for their ability to connote a web site that provides negative commentary of some form about the very products or services associated with the mark. Here, adding such a generic word, that being the word “fraud”, in the manner which the Respondent specifically did, to the mark ALGAECAL clearly resulted in such a minor variation. See, e.g., *General Motors LLC v. Carol Schadt*, WIPO Case No. D2012-2106; *National Westminster Bank plc v. Steve Mart*, WIPO Case No. D2012-1711; *Tommy Bahama Group, Inc. v. Berno Group International*, WIPO Case No. D2012-0531; *National Association of Realtors v. Hammerberg & Associates, Inc.*, WIPO Case No. D2012-0075; *Space Needle LLC v. Erik Olson*, WIPO Case No. D2011-0931; *Oakley, Inc. v. Kate Elsberry, Elsberry Castro*, WIPO Case No. D2009-1286; *Clearwire Legacy, LLC v. Leon Ganesh*, WIPO Case No. D2010-0148; *Burberry Limited v. Domain Admin*, WIPO Case No. D2009-0703; *Krispy Kreme Doughnuts, Inc. v. John Sharp*, WIPO Case No. D2009-0099; *MasterCard International Incorporated v. Global Prepaid*, WIPO Case No. D2008-2008; *HRB Innovations Inc., Express Tax Service Inc. v. Calvin Brown*, WIPO Case No. D2008-1072; *Dreamworks Animation, LLC v. Creahq, Mike Furlong*, WIPO Case No. D2008-0505; *Marvel Manufacturing Company Inc. v. Koba Internet Sales, LP*, WIPO Case No. D2008-0265; *MySpace, Inc. v. Edwin De Jesus, EDJ Associates Inc.*, WIPO Case No. D2007-1878; *BlackRock, Inc. v. blackrockfinancialservices.com*, WIPO Case No. D2007-1627; *F. Hoffmann-La Roche AG v. Transliner Consultants*, WIPO Case No. D2007-1359; *National Football League v. Peter Blucher d/b/a BluTech Tickets*, WIPO Case No. D2007-1064; *Toilets.com, Inc. v. Rons Porta Johns*, WIPO Case No. D2007-0952; *Associated Bank Corp. v. Texas International Property Associates*, WIPO Case No. D2007-0334; *Gerber Childrenswear Inc. v. David Webb*, WIPO Case No. D2007-0317; *SPX Corporation v. Hevun Diversified Corporation*, NAF Claim No. FA 791657; *Google Inc. v. Jennifer Burns*, NAF Claim No. FA 726096; *The Cheesecake Factory Inc. and The Cheesecake Factory Assets Co., LLC v. Say Cheesecake*, WIPO Case No. D2005-0766; *Napster, Inc. v. Giovanni Vinscani*, WIPO Case No. D2005-0531; *Caesars Entertainment, Inc. v. Nova Internet Inc.*, WIPO Case No. D2005-0411; *Lockheed Martin Corporation v. The Skunkworx Custom Cycle*, WIPO Case No. D2004-0824; *Lockheed Martin Corporation v. Deborah Teramani*, WIPO Case No. D2004-0836; *National Collegiate Athletic Association v. Dusty Brown*, WIPO Case No. D2004-0491; *Lane-Labs USA, Inc. v. Powell Productions*, NAF Claim No. FA 155896; and particularly *Cable News Network LP, LLP v. Elie Khouri d/b/a Channel News Network et al.*, NAF Claim No. FA 117876.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's ALGAECAL Marks as to cause confusion. Hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

Based on the evidence of record here, the Panel finds that no basis exists which would appear to legitimize a claim by the Respondent to the disputed domain name under paragraph 4(c) of the Policy.

The Complainant has never authorized the Respondent to utilize any of the ALGAECAL Marks nor does the Complainant apparently have any relationship or association whatsoever with the Respondent. As such, any use to which the Respondent were to put the Complainant's mark ALGAECAL or one confusingly similar thereto in connection with the identical or even similar goods and services to those currently provided by the Complainant, in circumstances as are present here, may violate the exclusive trademark rights now residing with the Complainant. See, e.g., *General Motors*, *National Westminster*, *Amy Stran v. EzDomainSearch.com*, *Juan Curtis*, WIPO Case No. D2011-1710; *Tommy Bahama*, *Space Needle*, *Oakley*, *Burberry*, *HRB Innovations Inc.*, *Dreamworks*, *MySpace*, *Blackrock*, *F. Hoffmann-La Roche AG*, *National Football League*, *Toilets.com, Inc.*, and *Associated Bank*, all cited *supra*; also *Starline Publications, Inc. v. Unity*, WIPO Case No. D2008-1823; *GoDaddy.com, Inc., v. GoDaddysDomain.com*, *Clark Signs*, *Graham Clark*, WIPO Case No. D2007-0303; *Citgo Petroleum Corporation v. Richard Antinore*, WIPO Case No. D2006-1576; *New Destiny Internet Group, LLC and Xplor Media, Inc. v. SouthNetworks*, WIPO Case No. D2005-0884; *The Cheesecake Factory Inc.*, *Napster and Caesars Entertainment, Inc.*, *supra*; *Pelmorex Communications Inc. v. weathernetwork*, WIPO Case No. D2004-0898; *Sybase, Inc. v. Analytical Systems*, WIPO Case No. D2004-0360; *Caesars World, Inc. and Park Place Entertainment Corporation v. Japan*

Nippon, WIPO Case No. D2003-0615; *Leiner Health Services Corp. v. ESJ Nutritional Products*, NAF Claim No. FA 173362; *MPL Communications, Limited et al v. 1WebAddress.com*, NAF Claim No. FA 97092; *Treeforms, Inc. v. Cayne Industrial Sales, Corp.*, NAF Claim No. FA 95856; and *America Online, Inc. v. Xianfeng Fu*, WIPO Case No. D2000-1374. Consequently, in this Panel's view, the Respondent could not legitimately acquire any public association between itself and the mark ALGAECAL or even any mark similar thereto, at least for the goods and services provided by the Complainant under its marks.

Further, there is absolutely no evidence of record that the Respondent has ever been commonly known by the disputed domain name or more generally the mark ALGAECAL. Nor could the Respondent likely ever become commonly known by either the disputed domain name or the mark without infringing on the exclusive trademark rights of the Complainant. This is so in light of the Complainant's exclusive trademark rights which date back some seven-eight years (2006 in Canada, 2005 in the US) prior to when the Respondent registered the disputed domain name in 2013 and the reputation which the Complainant has gained in its ALGAECAL Marks ever since. See, e.g. *General Motors, National Westminster, Tommy Bahama, Amy Stran, Space Needle, Oakley, Burberry, Starline Publications, HRB Innovations Inc., MySpace* and *Treeforms, Inc.*, all cited *supra*. Hence, the Respondent does not fall within paragraph 4(c)(ii) of the Policy.

Lastly, at a very cursory level, the Respondent's website would appear to be a "gripe" site providing negative commentary about the Complainant and its products -- regardless of the accuracy of such commentary, which constitutes a legitimate noncommercial or fair use under paragraph 4(c)(iii) of the Policy. However, upon closer examination and as discussed in the following section below, the Respondent's intention, as manifested through the collective nature of its activities, is not to merely provide critical comments but rather to damage the Complainant's marks and reputation, and disrupt the Complainant's business. This does not constitute legitimate noncommercial or fair use of the disputed domain name under paragraph 4(c)(iii).

As such, based on the evidence before the Panel, the Respondent does not fall within any of paragraphs 4(c)(i)-(iii) of the Policy.

Accordingly, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name within paragraph 4(a)(ii) and 4(c) of the Policy.

D. Registered and Used in Bad Faith

The Panel finds that the Respondent's actions, with respect to the disputed domain name, constitute bad faith registration and use.

While the Respondent's website itself first appears to be a complaint site (also known as a so-called "gripe" site) on which the Respondent has posted considerable commentary highly critical of the Complainant and its products and thus seemingly protected as free speech, close examination of the Respondent's actions, viewed collectively, reveals a different and rather illicit purpose behind its use of the disputed domain name and the associated website: to intentionally cause injury and disruption to the Complainant's marks, reputation and business.

First, the Respondent had prior knowledge of the Complainant's ALGAECAL Marks but, in spite of that knowledge, intentionally registered the name. During the course of registration, the Respondent deliberately supplied false contact information which ultimately was included in its WhoIs record, particularly specifying a physical address in Barbados that did not exist and a telephone number that was associated not with a party in Barbados but rather a third-party individual in British Columbia who had no knowledge whatsoever of the Respondent. This information contained portions of the contact information for the Complainant as well as for its CEO -- obviously signifying Respondent's desire to target and taunt both. Evidently, the Respondent, in taking no steps to correct this information, manifested (so the Panel infers from the lack of any Response) a continuing intention, while it used the domain name, to conceal its true identity from the public. This, being contrary to the terms of the registration agreement to which the Respondent acceded when it registered the disputed domain name, is itself evidence of bad faith registration and use. (Note specifically paragraph 5a in

the Registrar's Registration Agreement, a copy of which is provided in Annex 1 to the Complaint, which states, in pertinent portion: "As part of the registration process, you must provide certain information and promptly update the information to keep it true, correct, accurate, current and complete. You must provide the following information when registering your Domain: (i) The legal name and postal address of the Registrant ...".) See, e.g. *Ebay Inc. v. Wangming*, WIPO Case No. D2006-1107; and *Salomon Smith Barney Inc. v. Salomon Internet Services*, WIPO Case No. D2000-0668.

Moreover, the Respondent posted to its website highly prejudicial allegations against the Complainant and its products -- information which the Respondent expressly indicated on its website was then unsupported (i.e. "evidence including the lab results ... involved in this cover up will be posted as it is gathered"). Yet, in spite of a lack of referencing any evidence to justify its allegations, the Respondent intentionally posted the information to damage the Complainant's reputation and disrupt its business, specifically that the Complainant engaged in illegal behavior, criminal conduct and provided products laced with poison. The potential damage that could result is patently obvious given the highly inflammatory nature of the allegations and the sharp visceral reaction each allegation will likely, if not nearly automatically, beget in the minds of the Complainant's potential customers who are exposed to those allegations. These allegations -- regardless of whether they are true or not, just by being expressed, will simply drive those customers away from the Complainant's products and thus decrease the Complainant's sales. The Panel, from the lack of any Response, infers that is the exact intent which the Respondent had in mind when it posted this content and no other plausible, let alone legitimate, reason exists to justify its action.

Further, the Respondent intentionally blocked its site from being accessed by all Internet users located in Canada including the Complainant. This stands contrary to the interests of an operator of a legitimate complaint site of freely and widely disseminating its negative commentary to all those Internet users who might be potentially influenced by that commentary and/or affected by the acts which are the subject of those comments. By preventing the Complainant from accessing the Respondent's website, the Respondent effectively shielded its negative comments from the Complainant -- the very party which has the means and motivation to seriously challenge and completely refute the validity of those comments.

All these facts taken together causes the Panel to seriously question the Respondent's true intention: whether to offer negative commentary through a legitimate complaint site, or use its complaint site as a subterfuge to embark on an deliberate campaign to seriously injure the Complainant's marks and reputation, and damage its business. Once the Panel viewed the facts of record here in their entirety, its conclusion became plainly evident: the latter is far more likely to reflect the Respondent's true underlying intention than the former and, once implemented by the Respondent, resulted in bad faith registration and use of the name.

Hence, the Panel concludes that the Respondent's registration and use of the disputed domain name violated the general bad faith provision of paragraphs 4(a)(iii) and 4(b) of the Policy.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations, with respect to the disputed domain name, to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

7. Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by the Complainant. The disputed domain name <algaecal fraud.com> is ordered to be transferred to the Complainant.

Peter L. Michaelson

Sole Panelist

Date: September 12, 2013