

**IN THE MATTER OF A COMPLAINT PURSUANT TO THE
CANADIAN INTERNET REGISTRATION AUTHORITY (“CIRA”)
DISPUTE RESOLUTION POLICY (“POLICY”)**

Domain Name: yourcommunityrealty.ca
Complainant: Vivian Risi
Registrant: Ray Fattahi
Registrar: Tucows.com Co.
Panel: David Allsebrook, Robert A. Fashler (Chair), Denis N. Magnusson
Service Provider: Resolution Canada

DECISION

Parties

The Complainant is an individual named Vivian Risi. The Registrant is an individual named Ray Fattahi.

Disputed Domain Name and Registrar of Record

The disputed domain name is **yourcommunityrealty.ca** (the “Domain Name”), which was registered with Tucows.com Co (“Registrar of Record”) on April 1, 2006 (the “Registration Date”).

Procedural History

The Complainant filed the Complaint with the dispute resolution services provider, Resolution Canada (the “Provider”), which the Provider initially found to be deficient. After the Complainant satisfied the Provider that it had complied with the CIRA *Domain Name Dispute Resolution Rules* (“Rules”), the Provider transmitted the Complaint to the Registrant.

The Registrant filed a Response.

The Provider appointed this three-person Panel composed of David Allsebrook, Robert A. Fashler (Chair), and Denis N. Magnusson.

Relief Requested

The Complainant seeks an Order for:

- (a) cancellation of the registration for the Domain Name;
- (b) alternatively, transfer of the Domain Name to the Complainant;

(c) \$10,000 toward the costs of this proceeding;

(d) such further and other relief as the Provider may deem just.

The Panel notes at the outset that it has no authority to grant the relief requested in items (c) and (d) above. The Panel will not address that requested relief further in this Decision.

Background Facts

The Complainant is a real estate agent affiliated with Royal LePage, who carries on business in the Greater Toronto Area in association with the trade name/trade-mark YOUR COMMUNITY REALTY (the “Complainant’s Mark”).

On November 15, 2004, the Complainant applied to register the Complainant’s Mark in the Canadian Intellectual Property Office (“CIPO”), claiming use of the Complainant’s Mark as a trade-mark in association with “real estate brokerage services, real estate agency services, advising with respect to the purchase and sale of real estate, mortgage services” (the “Complainant’s Services”) since December 24, 1993. That application issued to registration on November 10, 2005, under number TMA652,554.

The Complainant displays the Complainant’s Mark in the performance and advertising of the Complainant’s Services, including on the Complainant’s website, which is accessed via the domain name www.yourcommunityservices.com (the “Complainant’s Website”).

The Registrant registered the Domain Name on April 1, 2006.

The Registrant operates a website in association with the trade-mark GOOYA (the “Registrant’s Website”), which is accessed primarily via the URL www.gooya.ca. The Registrant’s Website displays the trade-mark GOOYA in a font and colours that are strikingly similar to those used by the famous search engine GOOGLE. The Domain Name is active, but is used only to forward users to the Registrant’s Website.

The Registrant’s Website is directed to the Persian-Canadian community in the Greater Toronto Area, providing information of interest to that community. That information mostly comprises community news and a business directory. The directory at the Registrant’s Website lists many real estate agents and brokers. The only source of revenue for the Registrant’s Website is from advertising. The Registrant’s Website publishes advertisements for several real estate agents.

On or about May 1, 2008, the Complainant received a notice of a domain name auction for the Domain Name, soliciting bids of not less than \$10,000. The Registrant denies having any involvement in that solicitation.

On or about December 20, 2007, the Complainant informed the Registrant of her rights in the Complainant’s Mark and demanded that the Registrant cease and desist from using the Domain Name. The Registrant refused to comply with that demand.

Policy Requirements

The CIRA *Domain Name Dispute Resolution Policy* (“Policy”) sets out at paragraph 4.1 what Complainant must show to succeed in this proceeding, as follows:

Policy 4.1 Onus. To succeed in the Proceeding, the Complainant must prove, on a balance of probabilities, that:

(a) the Registrant’s dot-ca domain name is Confusingly Similar to a Mark in which 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 paragraph 3.7; and the Complainant must provide some evidence that:

(c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.6.

Even if the 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 paragraph 3.6.

Is the Domain Name Confusingly Similar to the Complainant’s Mark?

To satisfy her burden under paragraph 4.1 (a) of the Policy, the Complainant must prove, on a balance of probabilities, that:

(a) the Complainant’s Mark is a “Mark” as defined in paragraph 3.2 of the Policy;

(b) the Complainant had Rights in the Complainant’s Mark prior to the Registration Date and continues to have such Rights, as “Rights” is defined in paragraph 3.3 of the Policy; and

(c) the Domain Name is Confusingly Similar to the Complainant’s Mark, as “Confusingly Similar” is defined by paragraph 3.4 of the Policy.

As the Complainant’s Mark is registered with the CIPO, it falls within the definition of “Mark” set out in subparagraph 3.2 (c) of the Policy.

The Registration Date of the Domain Name is April 1, 2006. As the Complainant’s Mark has been continuously registered in the CIPO since November 10, 2005, until the present time, and the Complainant has been continuously carrying on business in association with the Complainant’s Mark between December 24, 1993, and the present time, the Complainant has proven that it had Rights in the Complainant’s Mark before the Registration Date, and that Complainant continues to have Rights in the Complainant’s Mark.

For all practical and legal purposes, the Domain Name is identical to the Complainant’s Mark. The only difference is the elimination of the spaces between the three words that comprise the

Complainant's Mark and the addition of the .ca suffix. Under paragraph 1.2 of the Policy, the .ca suffix must not be considered as being part of the Domain Name. Elimination of the spacing does not alter the appearance, sound or meaning of the Domain Name at all. There is ample CDRP case authority supporting that proposition. See for example: *Christian Houle v. Jean-Pierre Ranger International Inc.* (CIRA Dispute Resolution Decision # 00010); *Government of Canada v. David Bedford* (CIRA Dispute Resolution Decision # 00011); *Government of Alberta v. Advantico Internet Solutions Inc.* (CIRA Dispute Resolution Decision # 00012); *Franchizit Corporation v. 984308 Ontario Inc.* (CIRA Dispute Resolution Decision # 00021); *Sleep Country Canada Inc. v. Pitfold Ventures Inc.* (CIRA Dispute Resolution Decision # 00027); *Alberta Treasury Branches v. Jim Yoon* (CIRA Dispute Resolution Decision # 00052); and *Vessel Assist Association of America, Inc. v. Michael MacKenzie* (CIRA Dispute Resolution Decision # 00080).

The Complainant has met her burden under paragraph 4.1 (a) of the Policy.

Did the Registrant Register the Domain Name in Bad Faith?

Paragraph 3.7 of the Policy defines the meaning of bad faith narrowly, as follows:

Policy 3.7 Registration in Bad Faith. 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.

The Complainant's Mark was registered in the CIPO five months before the Registration Date of the Domain Name. What's more, the Complainant's Mark was pending in the CIPO since November of 2004, and would have been displayed in the Canadian Trade-marks Database not more than a month after the filing date. The Complainant's domain name www.yourcommunityservices.com was registered in 1999. The Complainant has been using the Complainant's Mark actively in the Greater Toronto Area since 1993, in association with a successful real estate business.

The Registrant has an address in Toronto. The Registrant's Website is directed primarily to the Persian-Canadian community of Toronto, as evidenced by the fact that virtually all telephone

numbers shown in all advertisements and directory listings posted at the Registrant's Website have use the area codes 416, 905, and 647.

Anyone who seeks to register a domain name must conduct a search to see which names are available. Those searches also reveal which names are not available. A prudent Canadian business person will also search the Canadian Trade-marks Database, which is intended to give notice to the world of existing trade-mark rights.

It is difficult to believe that the Registrant would not have been aware of the Complainant's Rights in the Complainant's Mark before he chose to register the Domain Name. There are many ways in which he ought to have learned of its existence no later than the time that he did his searching to see if he could secure the name for himself.

As well, to the objective observer, the meaning of the words that make up the Domain Name (your community realty) appear to have absolutely no legitimate connection with the purpose, content, or users of Registrant's Website.

When the objective observer visits the Registrant's Website, they find a trade-mark that is an obvious knock off of the famous GOOGLE mark.

Finally, although the Registrant asserts vehemently that he had nothing to do with the communication received by the Complainant soliciting a bid to purchase the Domain Name for not less than \$10,000, the actual facts surrounding that event point in a different direction. The solicitation directed readers to submit their bids to the fax number 647-430-5618 or the email address privatedomains@secureregister.net. That fax number and that email address are the same as the telephone number and the email address given for the Registrant's Administrative Contact identified in the Registrant's registration for the Domain Name.

Furthermore, if the Complainant had made the bid that was solicited and it was accepted, exactly who would have accepted and who would have received the proceeds of the transaction? The answer is crystal clear – it would be the Registrant. To deny involvement in the attempted sale seriously erodes the Registrant's credibility.

This foregoing circumstantial evidence raises a number of serious questions about the business practices and credibility of the Registrant. So, it becomes important to consider what the Registrant has to say about why he chose this particular domain name.

The Registrant says, *inter alia*:

“The main reason the domain has been forwarded o [sic] this website is because we needed a domain name with English words in it and the following factors were considered when yourcommunityrealty.ca was chosen and registered:

- the website is about a community in Canada so the name must be a Dot CA name,
- the website deals with a small community in Canada so the word “community” must be in it,

- Using the word “Your” or “You” in domain names is a very common practice nowadays since such words provide a strong sense of belonging to the website for visitors,
- The Persian Community in comparison with other small communities in Canada has the largest number of Real Estate Agents considering its size. Realty is also the most famous type of business in this community and culturally speaking realty is the most important part of the members of [sic] Persian community. Using the word “Realty” would provide a very strong attraction towards the website especially for those real estate agents who would want to be listed in the business directory section of the website.

The above 4 factors would help the website’s ranking and positioning in the search engines and also would provide a very good and relevant English word for our website.”

The foregoing explanation given by the Registrant is far-fetched and obviously contrived. It does not project credibility. Quite the opposite.

Based on the circumstantial evidence and the implausible explanation given by the Registrant, the Panel concludes that the Registrant must have known about the Complainant’s business, and likely the Complainant’s domain name yourcommunityrealty.com, at the time that he registered the Domain Name. As well, the direct communication sent to the Complainant attempting to sell the Domain Name to the Complainant confirms the purpose of registration for ultimate sale to the Complainant.

It is palpably obvious that the Registrant is acting in bad faith. The only question is: does the Registrant’s bad faith fall within one of the categories set out in paragraph 3.7 of the Policy?

If the Registrant did not acquire the Domain Name for the far-fetched purpose that he asserts, then what might his real purpose have been? The Registrant is a businessman. The purpose of carrying business is to make money. The clear explanation for the Registrant to have registered the Domain Name is that he hoped to sell the Domain Name to the Complainant, or to a competitor of the Complainant, or to another dealer in Domain Names (thereby aiding and abetting them in making a sale to one of the first two categories of buyer). And, eventually, the Registrant did directly approach the Complainant and invited the Complainant to bid on the Domain Name, either alone or in concert with others. Failing such sale, the Registrant was positioned to benefit from traffic intended for the Complainant by the sale of advertising space to realtors competing with the Complainant.

Previous CDRP decisions have expressly endorsed reliance on circumstantial evidence to establish bad faith. See, e.g., *Canadian Broadcasting Corporation / Societe Radio-Canada v. William Quon* (CIRA Dispute Resolution Decision # 00006):

[i]t is quite difficult, usually, if not impossible, to actually show bad faith with concrete evidence. The Panel is therefore of the opinion that it can take into consideration surrounding circumstances and draw inferences to determine whether or not Registrant’s actions are captured by paragraph 3.7. For example, the Panel may consider surrounding circumstances to decide whether or not Registrant has registered the Domain Name primarily for the purpose of selling it to Complainant or a competitor. To require

Complainant to provide direct evidence of Registrant's bad faith intentions would allow a Registrant with a certain level of skill to easily evade the application of the CIRA Policy, hence rendering its application moot or irrelevant.

[...]

[A]lthough the initial burden to prove (on a balance of probabilities) the Respondent's bad faith in the registration of the disputed Domain Name lies squarely on the shoulders of Complainant, such obligation does not need to be more than to make out a *prima facie* case.

The Panel finds that the Registrant did register the Domain Name in bad faith within the meaning of subparagraph 3.7 (a) of the Policy. As the Panel has found bad faith under subparagraph 3.7 (a) of the Policy, there is no need to consider whether the two other kinds of bad faith are present.

Does the Registrant Have a Legitimate Interest in the Domain Name?

The Complainant's burden under this heading is quite light. Under paragraph 4.1 (c) of the Policy, the Complainant need only adduce "some evidence" that the Registrant has no legitimate interest in the Domain Name. The burden then passes to the Registrant, who must prove that he does have legitimate interests in the Domain Name, on a balance of probabilities.

Paragraph 3.6 of the Policy sets out the only circumstances that demonstrate legitimate interests, as follows:

Policy 3.6 Legitimate Interests. 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 Registrants includes, but is not limited to, use to identify a web site.

Subparagraphs 3.6 (a), (b), (c) of the Policy all require that the Registrant be acting in good faith. The submissions of the Complainant and the Registrant have established that the Registrant registered and used the Domain Name in bad faith, which is sufficient to meet the Complainant's light burden in relation to those subparagraphs. As well:

(a) the Domain Name was not a "Mark" in which the Registrant had "Rights" at any material time, and so subparagraph 3.6 (a) does not apply;

(b) the Domain Name does not clearly describe (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, and so subparagraph 3.6 (b) does not apply;

(c) the Domain Name is not, in its entirety, the generic name of any wares or services or business in any language, and so subparagraph 3.6 (c) does not apply; and

(d) the Registrant's Website is a commercial enterprise, and the Registrant has not used the Domain Name in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting, and so subparagraph 3.6 (d) does not apply.

The Domain Name is not the Registrant's legal name, or any name, surname or reference by which the Registrant is known. Nor is the Domain Name the geographical name of a location. Hence, subparagraphs 3.6 (e) and (f) have no application.

The Complainant has met her burden in relation to paragraph 3.6 of the Policy.

The Registrant has not provided any evidence that persuades the Panel that the Registrant has any legitimate interests in the Domain Name. In fact, the Registrant's submissions do the exact opposite. Hence, the Registrant has failed to satisfy his burden of proving that he has legitimate interests in the Domain Name.

Order

The Panel orders that the Domain name be transferred to the Complainant.

Date: 19 August 2008

Signed:

David Allsebrook

A handwritten signature in black ink, appearing to read 'R. Fashler', is written over a horizontal line.

Robert A. Fashler

Denis N. Magnusson