

The undersigned has reviewed the majority decision as issued by my esteemed peers (“Majority”) and respectfully disagrees with the conclusion that there is an insufficient basis upon which to order the transfer the disputed domain name to the Complainant.

The Majority has indicated that the Registrant’s website does not offer goods that compete directly with those offered by the Complainant: *“the other product lines being offered on the splashndirt.ca website are not competitors of the 509 products.”*

The Majority added as follows: *“Moreover, when clicking on the various brands, the other brands being sold on the Respondent’s website are not in direct competition with the 509 merchandise as those other brands do not appear to include goggle, boots, outerwear or helmets in their product lines. There does not appear to be any confusion or deceit taking place in this instance.”*

The undersigned has difficulty with this assertion. A review of ride509.ca reveals that the Registrant’s website is promoting the sale of products that compete directly with the Complainant, including, without limitation, gloves, goggles, hoodies, footwear and shirts. These products are offered by businesses such as Skinz Protective Gear, PowerMadd, Vortex and PC Racing.

It is also noted that the Registrant’s website promotes the sale of products related to outdoor activities such as snowmobiling and other off-road activities. So while certain other products may not compete directly with those goods sold by the Complainant, they nevertheless rival those goods sold by the Complainant, thereby resulting in the Registrant being deemed a competitor of the Complainant for the purpose of the Policy.

The Majority has noted that the Registrant, once contacted by the Complainant, only offered to sell the disputed domain name four years after its registration. A delay in selling a domain name does not obviate a finding of bad faith. As well, and perhaps more importantly, laches is not a defence under the Policy.

The domain name is confusing with the Complainant’s trademarks and its use is likely to mislead or confused end users as to source or sponsorship. Furthermore, the Registrant is selling goods that compete directly with those goods sold by the Complainant, as well as selling goods within the same field occupied by the Complainant.

Based upon the foregoing, the undersigned finds in favour of the Complainant and orders the disputed domain name transferred.



Eric Macramalla
(Dissent)