

CANADIAN INTERNET REGISTRATION AUTHORITY

DOMAIN NAME DISPUTE RESOLUTION POLICY

DECISION

Domain Name: cannador.ca
Complainant: Humidicorp LLC
Registrant: [Redacted for Privacy]
Registrar: Go Daddy Domains Canada, Inc.
Service Provider: Resolution Canada Inc.
Panel: Peter C. Cooke

THE PARTIES

The Complainant is Humidicorp LLC (the “Complainant”) with an address at 3422 Old Capitol Trail, #619, Wilmington, Delaware 19808 U.S.A.

The Registrant’s information was listed as “redacted for privacy”

THE DOMAIN NAME AND REGISTRAR

The subject of this proceeding is the Domain Name cannador.ca registered on April 5, 2017. The Registrar of the Domain Name is Go Daddy Domains Canada, Inc.

PROCEDURAL HISTORY

This is an administrative dispute resolution proceeding pursuant to the Canadian Internet Registration Authority (“CIRA”) *Domain Name Dispute Resolution Policy* (version 1.3) (the “Policy”) and the CIRA *Domain Name Dispute Resolution Rules* (version 1.5) (the “Rules”). By registration of the Domain Name with the Registrar, the Registrant agreed to the resolution of this dispute pursuant to the Policy and the Rules.

According to the information provided by Resolution Canada Inc., the dispute resolution service provider, the history of the proceeding is as follows:

The Complainant filed a revised complaint (the “Complaint”) dated November 14, 2019 with Resolution Canada Inc., requesting that the Domain Name registration be transferred from the Registrant to the Complainant. After having determined that the Complaint was in administrative compliance with the requirements of the Policy and the Rules, Resolution Canada Inc. commenced the dispute resolution process and served notice of the Complaint on the Registrant (as required by paragraph 4.3 of the Rules) by email on November 21, 2019. No response was received from the Registrant.

The Complainant elected to proceed before a panel consisting of one panelist. The Panel can act impartially and independently in this matter per Paragraph 7 of the *Rules*, as there are no circumstances known to him that would prevent him from so acting.

ELIGIBILITY OF COMPLAINANT

The Complainant is an eligible complainant under Paragraph 1.4 of the Policy, as the Complaint relates to a domain name corresponding with the Complainant's registered Canadian trademarks CANNADOR, Reg. No. TMA 1,032,487 and CANNADOR & DESIGN, Reg. No. TMA1,032,512 (the "CANNADOR Registrations").

OVERVIEW OF THE POLICY

Paragraph 4.1 of the Policy sets forth the Complainant's burden of proof in order to succeed in the proceeding. The onus is on the Complainant to prove, on a balance of probabilities that:

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

The Registrant has registered the domain name in bad faith as described in paragraph 3.5;

And the Complainant must provide some evidence that:

The Registrant has no legitimate interest in the domain name as described in paragraph 3.4.

COMPLAINANT'S POSITION

The Complainant contends that "CANNADOR" is the Complainant's trademark, and is the word element of its design mark, used in Canada by the Complainant since as early as November 20, 2014. The Complainant further contends that these rights precede the date of registration of the Domain Name, namely, April 5, 2017.

The Complainant submits that the Domain Name was registered in bad faith, primarily for the purpose of securing financial gain through improper means. In addition, it is contended that the Domain Name was registered to coerce or compel the Complainant to enter into a Canadian distributorship and/or other business relationship with the Registrant, its company, associates and the like.

The Complainant also submits that the Registrant has no legitimate interest in the Domain Name.

DISCUSSIONS AND FINDINGS

Is the Domain Name Confusingly Similar to a Mark in which the Complainant had Prior Rights?

The Complainant submits that the Domain Name cannador.ca is confusingly similar with the Complainant's CANNADOR trademark and that its rights in the mark precede the April 5, 2017 registration date of the Domain Name.

a. Confusingly Similar

A domain name is confusingly similar to a mark if the domain name so nearly resembles the mark in appearance sound or ideas suggested by the mark as to be likely to be mistaken for the mark, as per paragraph 3.3 of the Policy.

In applying this definition, it is important to note paragraph 1.2 of the *Policy* which stipulates that:

For the purposes of this Policy, "domain name" means the domain name excluding the dot-ca suffix..."

The Registrant has appropriated the entirety of the CANNADOR trademark in the selection of the Domain Name. As such, the Domain Name cannador.ca so nearly resembles the Complainant's CANNADOR Trademarks so as to be likely to be mistaken for them.

The Panel is therefore of the view that the Complainant has succeeded in establishing confusing similarity under paragraph 4.1(a) of the Policy.

b. Prior Rights

The Complainant submits that it is the owner in Canada of the CANNADOR Registrations, both of which claim use in Canada since at least as early as November 20, 2014.

The CANNADOR Registrations were filed on December 4, 2017 and registered on June 26, 2019. As the Domain Name was registered on April 5, 2017, neither the filing dates nor the registration dates of the CANNADOR Registrations precede the registration of the Domain Name. As such, the Registrant cannot rely on the CANNADOR Registrations to establish prior rights.

The Complainant has also asserted common law rights in the trademark CANNADOR "from the Canadian date of first use of the CANNADOR trademarks to the date that the CANNADOR trademarks were registered". To establish common law rights in the CANNADOR trademark, the Complainant must evidence use of CANNADOR prior to April 5, 2017. That "use" must be use in Canada, as per 3.2 (a) of the *Policy*.

The Complainant has submitted the following evidence and information in support of its claim:

- i. The Complainant has owned the domain <cannador.com> since May 10, 2012 and the domain <mycannador.ca> since December 16, 2017;
- ii. The Complainant, through the website mycannador.ca, and related websites, advertises, offers for sale and sells its goods. Copies of screenshots from the mycannador.ca website are provided (Exhibit "E").
- iii. The Complainant advertises, offers for sale and sells its goods at various Canadian retail locations. Copies of pages from the mycannador.ca website listing the Canadian retail locations are provided (Exhibit "F");
- iv. The Complainant has had a licensed distributor in Canada "since 2017"; and
- v. The e-mail between a representative of the Complainant and what appears to be the Registrant dated April 6, 2017 (the "E-mail") which suggests that a sale was made to the Registrant.

In the Panel's view, the foregoing evidence submitted by the Complainant does not clearly establish that the Complainant had common law rights in Canada in the CANNADOR mark prior to the registration date of the Domain Name. The majority of the evidence submitted by the Complainant are screenshots taken from the mycannador.ca website. However, the Complainant did not register the mycannador.ca website until December 16, 2017, well after the registration date of the Domain Name on April 5, 2017. Similarly, it is not clear whether the retail locations listed on the mycannador.ca website were selling goods in Canada prior to the registration date of the Domain Name.

The Complainant also submits that it had a licensed distributor in Canada since 2017. However, it is unclear when in 2017 the distributor made sales in Canada and whether this was before or after April 5, 2017.

Although the cannador.com website was registered on May 10, 2012, there is no evidence that the Complainant's goods were sold to Canadians through this website prior to the registration date of the Domain Name.

The email provided by the Complainant as evidence of bad faith suggests the CANNADOR mark was in use prior to April 5, 2017. The E-mail is between Zane Witzel <zane@cannador.com>, presumably a representative of the Complainant, and "Josh" <j.long@longleafblunts.com>, who appears to be the Registrant.

At paragraph 4 of the e-mail, the Registrant states “I’ve had it for a couple of weeks and I’m loving it. Everyone I showed or told was like WTF! That’s amazing, where did you buy it.” This statement suggests that the Registrant had obtained one of the Complainant’s products prior to the registration date of the Domain Name. However, it is not clear the manner by which the Complainant obtained the product, including where it was acquired (in Canada or elsewhere). As such, the contents of the E-mail do not clearly establish common law use of the CANNADOR mark in Canada prior to the registration date of the Domain Name.

The Complainant has alleged common law rights, but the evidence before the Panel is insufficient to demonstrate such rights. A review of the evidence does not permit the Panel to conclude that the Complainant had any rights in the CANNADOR Mark in Canada prior to the registration of the Domain Name. As the Complainant has not met its burden in terms of paragraph 3.1(a) of the Policy, the Complaint must be dismissed.

BAD FAITH REGISTRATION AND NO LEGITIMATE INTEREST IN THE DOMAIN NAME

Given the finding above, the questions relating to whether the Domain Name was registered in bad faith and whether the Registrant had a legitimate interest in the Domain Name need not be considered.

CONCLUSION AND DECISION

The Complainant has not proven, on a balance of probabilities, that the Complainant had Rights prior to the date of registration of the Domain Name, in a Mark which is confusingly similar to the Domain Name.

For this reason, the Complaint is dismissed.

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Peter C. Cooke
Dated February 3, 2020