

CANADIAN INTERNET REGISTRATION AUTHORITY

DOMAIN NAME DISPUTE RESOLUTION POLICY

DECISION

Domain Name: koolatron.ca
Complainant: Koolatron Corporation
Registrant: Antonia Ojo
Registrar: Bare Metal.com Inc.
Service Provider: Resolution Canada Inc.
Panel: Peter Cooke

THE PARTIES

The Complainant is Koolatron Corporation (the “Complainant”) with an address at 139 Copernicus Blv., Brantford, ON N3P 1N6.

The Registrant is Antonia Ojo (the “Registrant”) with an address at 1201 -11871 Horseshoe Way, Richmond, BC V7A 5H5.

THE DOMAIN NAME AND REGISTRAR

The subject of this proceeding is the domain name koolatron.ca (the “Domain Name”) registered on October 7, 2012. The Registrar of the Domain Name is Bare Metal.com 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 complaint (the “Complaint”) 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 on April 20, 2022 and served notice of the Complaint on the Registrant (as required by paragraph 4.3 of the Rules) by email. 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 them that would prevent them from so acting.

ELIGIBILITY OF COMPLAINANT

The Complainant is an eligible complainant under Paragraph 1.4 of the Policy. The Complainant is an Ontario corporation and is eligible to file the Complaint by virtue of its qualifying Canadian presence. Under the 2(d) of the *Canadian Presence Requirements For Registrants* (version 1.3) the Complainant is “A corporation under the laws of Canada or any province or territory of Canada”.

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 is the owner of the registered Canadian trademark KOOLATRON TMA688258. The Complainant states that it continues to own and use its trademark in Canada. The Complainant claims to have used the trademark in since at least 1976.

The Complainant alleges that the Registrant's website redirects the Domain Name to random websites, including, but not limited to Lowes.ca, hckfridge.com and vtailsources.com. According to the Complainant, Lowes.ca and hckfridge.com contain many of the Complainant's goods.

The Complainant alleges that the Registrant has no legitimate interest in the Domain Name and the Registrant registered the Domain Name in bad faith as per paragraph 3.5 of the Policy.

REGISTRANT'S POSITION

The Registrant did not file a Response to the Complaint.

DISCUSSIONS AND FINDINGS

Confusing Similarity between Domain Name and Complainant's Mark

The Complainant has demonstrated that it is the owner in Canada of the KOOLATRON trademark registration, registered May 5, 2007. The Complainant's rights in the trademark precede the October 7, 2012 registration date of the Domain Name, and the Complainant submits that the Domain Name is "confusingly similar" with the trademark.

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 Panel concludes that the Domain Name koolatron.ca so nearly resembles the Complainant's trademark KOOLATRON to be likely to be mistaken for it, as the Domain Name is,

identical to the trademark. The Complainant's rights in the trademark began well before the registration date of the Domain Name, and the Complainant continues to have such rights in its trademark.

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

Bad Faith Registration

The Complainant must prove, on a balance of probabilities, that the Domain Name was registered in bad faith pursuant to paragraph 3.5 of the Policy.

The Complaint alleges that the Registrant knowingly, willfully and in bad faith adopted the Complainant's Mark as a domain name with the intention of relying on the goodwill and reputation enjoyed by the Complainant's Mark for the purpose of disrupting the business of the Complainant. According to the Complainant, the Registrant's activities fall squarely within Paragraph 3.5(c) and (d) of the Policy. The Complainant need only demonstrate bad faith under one of the grounds provided by the Policy.

Paragraph 3.5(d) of the *Policy* states that a Registrant will have registered a domain name in bad faith if:

(d) the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

Pursuant to paragraph 3.5(d) of the Policy, bad faith is indicated where the Registrant registered the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to the Registrant's website or other on-line location by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement.

The Domain Name currently resolves to a web page providing links to "Small Kitchen Appliances", "Beverage Refrigerator" and "Kitchen Appliances". Having regard to the Complainant's trademark registration, it covers "Refrigeration products, namely portable and countertop thermo-electric refrigerators and coolers, and refrigeration trays and containers", in

addition to “Wholesale and retail distribution of refrigeration products”. Having links of this nature, i.e. relating to goods that appear to overlap directly with those covered by the Complainant’s trademark registration, appears intended to attract, for commercial gain, Internet users to the Registrant’s website by creating a likelihood of confusion with the Complainant’s mark as to source, sponsorship, affiliation, or endorsement.

Accordingly, this Panel finds that the Complainant has established, on a balance of probabilities, that the Registrant’s website is being used for the Registrant’s own commercial gain. It has done so by both falsely suggesting that it is the Complainant, and by creating a likelihood of confusion with the Complainant’s KOOLATRON trademark, by suggesting that the Complainant is the source of, or has some affiliation with or otherwise endorses the goods and services linked to by the Registrant.

As such, the Panel is satisfied that the Complainant has established that the Registrant registered the Domain Name in bad faith pursuant to paragraph 3.5(d) of the Policy.

No Legitimate Interest in the Domain Name

Paragraph 4.1 (c) of the Policy requires that to succeed in the Complaint, the Complainant must provide *some evidence* that the Registrant has no legitimate interest in the Disputed Domain Name. Given the difficulty inherent in proving a negative, the Policy only requires the Complainant to lead “some evidence” sufficient to establish a lack of legitimate interest under 3.4. The Registrant may then rebut this evidence by demonstrating a legitimate interest on a balance of probabilities.

The Complainant states as a fact that it did not authorize the registration of the Domain Name. The Registrant did not reply to the Complaint.

There is no evidence presented, with reference to paragraph 3.4, that the Registrant had rights in the KOOLATRON mark, that the Disputed Domain Name was clearly descriptive, or that it was a generic name, that it was used in association with a non-commercial activity such as criticism, review or news reporting, that it comprised a reference by which the Registrant was commonly identified, or that it was the geographical name of the location of the Registrant’s business.

The Panel finds that the Complainant has provided some evidence proving that the Registrant has no legitimate interest in the Domain Name.

CONCLUSION AND DECISION

The Complainant has proven, on a balance of probabilities, that the Domain Name is confusingly similar to the KOOLATRON trademark in which the Complainant had rights prior to the date of registration of the Domain Name and in which the Complainant continues to have such rights.

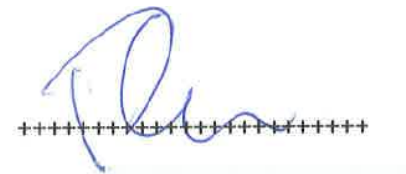
The Complainant has proven, on a balance of probabilities, that the Registrant registered the Domain Name in bad faith.

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

The Registrant did not file a Response disputing the Complainant’s submissions, or justifying its registration of the Domain Name.

For these reasons, the Complaint regarding the Domain Name is successful and the panel orders, pursuant to paragraph 4.3 of the Policy, that the registration of the Domain Name be transferred to the Complainant.

Dated May 31, 2022



Peter C. Cooke