

**DOMAIN NAME DISPUTE
ADMINISTRATIVE PANEL
DECISION**

Decision date:	December 28, 2023
Domain Name:	jemperli.ca
Panel:	Richard S. Levy
Complainant:	Tesarro, Inc. Corporation Service Company
Complainant's Representative	Karl Racine, Gowling WLG (Canada) LLP, Ottawa
Registrant:	Renato Mora

1.0. PROCEDURAL HISTORY

1. This is a proceeding under the CIRA Domain Name Dispute Resolution Policy (the “CDRP” or “Policy”), in accordance with the CIRA Dispute Resolution Rules (the “Resolution Rules” or “Rules”).
2. On or about November 22, 2023, Resolution Canada Inc. (“Resolution Canada”) received a Complaint pursuant to the CDRP and the Resolution Rules.
3. On November 22, 2023, CIRA was notified of this proceeding. On the same date, CIRA transmitted by email to Resolution Canada its verification response informing it who the Registrant of the disputed domain name is. CIRA also confirmed that the Domain Name was placed on a Registrar LOCK.
4. Pursuant to Resolution Rule 4.4, Resolution Canada sent Registrant a copy of the Complaint, and notified Registrant that the Date of Commencement of the Proceeding was November 23, 2023, and that Registrant had twenty days from that date to file a Response.
5. No response was received from the Registrant by the deadline.
6. The Complainant in this administrative proceeding has elected for a Panel consisting of a single-member.
7. Resolution Canada appointed the undersigned as a single-member Panel.

8. The undersigned has confirmed to Resolution Canada that he can act impartially and independently as the Single Member Panel in this matter.
9. The undersigned determines that he has been properly appointed and constituted as the Single Member Panel to determine the Complaint in accordance with the Rules.

2.0. CANADIAN PRESENCE AND TECHNICAL REQUIREMENTS

10. Section 1.4 of the Policy requires that in order to initiate the Complaint, the Complainant, at the time of the initiation of the Complaint, must satisfy the Canadian Presence Requirements for Registrants, version 1.3 (“CPR.”), unless the Complaint relates to a trademark registered in the Canadian Intellectual Property Office (“CIPO”) and the Complainant is the owner of that trademark.
11. The evidence before the Panel is that the Complaint relates to a Canadian registered trademark of which Complainant is the owner. The Panel therefore determines that the Complainant has satisfied the provisions of section 1.4 of the Policy.
12. Based upon the information provided by Resolution Canada and Complainant in the Complaint, the Panel finds that all technical requirements for the prosecution of this proceeding have been met.

3.0. FACTS ALLEGED BY THE PARTIES AND REMEDIES SOUGHT

3.1 Complainant

13. *Domain name registration.* The domain name (the “Domain Name”) that is the subject of this Complaint was registered on January 12, 2022
14. *Trademark Rights of Complainant.* The Complaint is based on the following trademark of which Complainant is the owner:

JEMPERLI (word mark) Canadian registration TMA1103318, applied for on October 11, 2019, issued on July 7, 2021, in association with “pharmaceutical preparations for the treatment and prevention of cancer” (the “JEMPERLI Trademark”)
15. The term “jemperli” is an invented word and does not have a dictionary definition.
16. *Business of Complainant.* The Complainant is an oncology-focused commercial-stage biopharmaceutical company, founded in 2010 and headquartered in Waltham, Massachusetts; its address provided in the Complaint is Tesaro Inc. Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808, United States of America. In 2019, it

was acquired by GSK plc (“GSK”) and operates as a subsidiary of GSK. In 2022 alone, GSK has invested over CA\$109 million in in Canada for pharmaceutical and vaccines Research & Development, and currently employs 1,450 employees across Canada.

17. *Product*. GSK’s product line includes the endometrial cancer treatment dostarlimab, which it markets under the brand name JEMPERLI. GSK obtained marketing authorization for JEMPERLI from Health Canada on December 23, 2021. Although not mentioned in the Complaint, it is assumed that Complainant, an affiliate of GSK, exercises control over the quality of the products bearing the mark JEMPERLI and that the use of JEMPERLI by GSK enures to the benefit of Complainant.
18. *Website*. GSK operates a patient website and a healthcare professional website in connection with JEMPERLI at www.jemperli.com and www.jemperlihcp.com, respectively. These dot-com domain names were registered on August 14, 2019, and March 12, 2020 respectively, which predate registration of the impugned Domain Name.
19. *Registrant’s use of Domain Name*. The Domain Name points to a website showing the Registrar’s information i.e., a “parking page”, and is not being used for a bona fide offering of goods or services. A WayBack Machine search disclosed that on October 5, 2022, the Domain Name resolved to the identical parking page.
20. *Notice from Complainant to Registrant*. Complainant sent cease and desist correspondence to Registrant on September 8, 2023 and October 17, 2023, both without response.

3.2 Registrant

21. As was noted above, the Registrant has not filed a Response.

4.0 CONTENTIONS OF THE PARTIES

4.1 Complainant

22. ***Confusingly similar***. Complainant submits that the Domain Name is confusingly similar to a trademark or service mark in which the Complainant has rights, prior to the registration of the Domain Name and that it continues to have such rights.
23. Complainant contends that its rights in the JEMPERLI Trademark precede the January 12, 2022, registration date of the Domain Name.
24. Complainant contends that it used the aforementioned websites prior to the January 12, 2022, registration date of the Domain Name.

25. Complainant contends that it announced in a press release dated December 15, 2021, that Health Canada granted marketing approval of the product associated with the mark JEMPERLI.
26. Complainant contends that Registrant's second-level domain, i.e., the word JEMPERLI preceding the dot-ca suffix, is identical to TMA1103318 for JEMPERLI and that several decisions under the CDRP have established that the identity or near identity of the Domain Name and Complainant's mark is sufficient to prove the "confusingly similar" element.
27. **Legitimate interest.** Complainant submits that Registrant has no legitimate interest in the Domain Name, in accordance with paragraph 3.1(b) and 3.4 of the Policy, specifying, with respect to each of the six circumstances listed in paragraph 3.4, that none of these apply.
28. Complainant submits CDRP precedents in support of its contention that paragraphs 3.4 (b) to (d) require some kind of good faith use of the Domain Name and that "jemperli" does not qualify as a legitimate use under paragraphs (b), (c) or (f) of section 3.4.
29. Complainant contends that, having shown some evidence that Registrant lacks a legitimate interest in the Domain Name, it has satisfied this element of the Policy.
30. **Bad faith registration.** Complainant contends that: "As explained above, "jemperli" is a term coined by the GSK and its only meaning is in reference to GSK's endometrial cancer treatment and trademarks. Further, GSK's business cannot be avoided when conducting a basic online query for "jemperli". In these circumstances, there is no way that the Registrant may not have been aware of the JEMPERLI Trademarks or GSK's activities, and it must have had the Complainant in mind in selecting the Domain Name. Therefore, the mere unauthorized registration of the Domain Name by the Registrant, an unaffiliated entity, by itself, suggests opportunistic bad faith."
31. Complainant contends that "Moreover, several decisions (*which it cites*) in relation to domain name disputes have found that the non-use or passive holding of a domain name will, in certain circumstances, constitute a domain name being used in bad faith."
32. Complainant also contends that "the particular circumstances of this case which lead to this conclusion (*of bad faith*) are:
 - "a. there is no indication of any actual or contemplated good faith use of the Domain Name by the Registrant;

- b. the Registrant has taken active steps to conceal its identity and avoid communication, including providing and failing to correct false contact details in breach of its registration agreement;
- c. the Complainant has received no response from its multiple attempts of contacting the Registrant; and
- d. any attempt to actively use the Domain Names would inevitably lead to a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Registrant's website among users of the Internet who would inevitably be led to believe that such a website would be owned by, controlled by, established by or in some way associated with the Complainant."

33. Complainant submits it has satisfied this element of the Policy.

34. **Remedy sought.** The Complainant requests that the Domain Name be transferred to it.

4.2 Registrant

35. As was noted above, the Registrant has not filed a Response.

5.0 DISCUSSION AND FINDINGS

5.1 Eligibility

31. Complainant is an eligible complainant under paragraph 1.4 of the CDRP.

5.2 Requirements

32. In accordance with Paragraph 4.1 of the CDRP, the Complainant must prove, on a balance of probabilities:

- (a) That the Registrant's dot ca (.ca) Domain Name is Confusingly Similar to a trademark or service mark in which the Complainant had Rights prior to the date of registration of the Domain Name and continues to have such Rights, as described in paragraph 3.3 of the Policy;
- (b) That the Registrant has registered the Domain Name in bad faith, as described in paragraph 3.5 of the Policy; and
- (c) That the Registrant has no legitimate interest in the Domain Name, as described in paragraph 3.4 of the Policy, Complainant having the onus of providing some evidence of this element.

If the Complainant is unable to satisfy its onus and provide the required proof, the Complaint fails. The Panel will consider each of these requirements in turn.

5.3 Analysis

5.3.1 That the Domain Name is Confusingly Similar to a Mark in which the Complainant has Rights

33. The test for determining whether a domain name is “Confusingly Similar” to a Mark is set out in paragraph 3.3 of the Policy, which requires that the Panel “only consider whether 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. This test differs in many ways from the test of confusion under the *Trademarks Act*.

34. The Complainant has Rights in the Mark JEMPERLI, the Domain Name is identical to the Mark and therefore it is confusingly similar to this mark. ¹

35. The Panel finds that Complainant has proven this first element.

5.3.2 That the Registrant has No Legitimate Interest in the Domain Name

36. Paragraph 4.1 of the Policy requires that to succeed in the Complaint, Complainant must provide some evidence that the Registrant has no legitimate interest in the Domain Names “as described in paragraph 3.4”. ²

37. The Panel finds that, for the reasons provided in its contentions, Complainant has provided some evidence that the Registrant has no legitimate interest in the Domain Name and has therefore met its onus. As Registrant did not contest these proceedings, the Panel finds that Complainant has proven this element.

5.3.3 That the Registrant has Registered the Domain Name in Bad Faith

38. Only in rare cases will there be direct evidence of a registration in bad faith. In most cases, as case law attests, such a finding is based on “common sense inferences from the registrant's conduct and other surrounding circumstances.”

39. Under paragraph 3.5 of the Policy, Registrant will be considered to have registered the Domain Name in bad faith if Complainant can demonstrate that Registrant, in effecting the

¹ [Anytime Fitness Franchisor LLC v. Stefan Witt](#), CIRA Case 00498 at para 22, <anytimefitness.ca>; [Sleep Country Canada Inc. v. Pilfold Ventures Inc.](#), CIRA Case 00027 at para 14, <sleepcountrycanada.ca>.

² [Skechers USA, Inc. v. Sharon Berling](#), CIRA Case 00461 at para 28, <skechersshoescanadaoutlet.ca>.

registration of the Domain Name, was motivated by any one of the four general intentions set out in that paragraph. The paragraph also stipulates that these itemized circumstances are “without limitation.”

40. The term “jemperli” is an invented word, and as such is not one traders would legitimately choose unless seeking to create an impression of an association with the Complainant.³

41. In addition, as Complainant has contended, Registrant has passively held the Domain Name⁴, has taken steps to conceal its identity, avoided communication with Complainant, and has failed to correct false contact details,

42. Accordingly, the Panel finds that the Registrant has registered the Domain Name in bad faith and that, in addition to the first two elements, Complainant has proven the third required element of the Policy.

6.0 DECISION AND ORDER

43. The Panel therefore finds that Complainant has satisfied the onus placed upon it by paragraph 4.1 of the Policy and is entitled to the remedy sought by it.

44. For the above reasons, in accordance with paragraph 4 of the CDRP, and paragraph 12 of the Resolution Rules, the Panel orders that the Domain Name **jemperli.ca** be transferred to Complainant.

Dated: December 28, 2023



Signed: Richard S. Levy

³ [Telstra Corporation Limited v. Nuclear Marshmallows](#), WIPO Case D2000-0003 at para 7.2, <telstra.org>.

⁴ [GOJO Industries, Inc. v. Water by Wave Inc.](#), CIRA Case 00438 at paras 29-31, <purellhandsanitizer.ca>