

**IN THE MATTER OF A COMPLAINT PURSUANT TO THE CANADIAN  
INTERNET REGISTRATION AUTHORITY DOMAIN NAME DISPUTE  
RESOLUTION POLICY**

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Domain Name:           behaviour.ca

Complainant:           Behaviour Interactive Inc.

Registrant:             Maser Media Inc.

Registrar:             Namespro Solutions Inc.

Panel:                 David Allsebrook (Chair), Myra Tawfik, Teresa Scassa

Service Provider:     Resolution Canada, Inc.

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**DECISION**

**A.     The Parties**

1. Behaviour Interactive Inc. (the “Complainant”), is a Canadian federal corporation located in Ottawa, Ontario.
2. The registrant Maser Media Inc. (the “Registrant”) is located in Brampton, Ontario.

**B.     The Domain Name and Registrar**

3. The disputed domain name is <behaviour.ca> (the “Domain Name”). The registrar for the Domain Name is Namespro Solutions, Inc. (the “Registrar”). The Domain Name was registered on or about November 12, 2008.

**C.     Procedural History**

4. This is a proceeding under 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”).
5. The history of the proceeding as provided by the dispute resolution service provider, Resolution Canada, Inc. (“Resolution Canada”), is that the Complainant filed a complaint against the Registrant with Resolution Canada requesting that the current registration of the Domain Name be transferred to the Complainant.

6. The complaint is dated October 15, 2019. At the request of Resolution Canada, an addendum to the complaint was filed on October 22 nominating potential panelists to adjudicate this dispute. The response, which takes the form of an annotated complaint, is dated November 7, 2019. At the request of Resolution Canada, an addendum to the response was filed on November 8 nominating potential panelists to adjudicate this dispute and certifying the completeness and accuracy of the response.
7. The panel was appointed on December 10, 2019.

**D. Panellist Impartiality and Independence**

8. As required by paragraph 7 of the Rules, the panellists have submitted to Resolution Canada declarations of impartiality and independence in relation to this dispute.

**E. Canadian Presence Requirements**

9. The Complainant is a Canadian corporation located in Canada. As well, it is the registered owner of trademarks incorporating the word BEHAVIOUR in Canada, including registration no. TMA537165 for the mark BEHAVIOUR which was registered in 2000. The Domain Name consists of the word “behaviour”. The panel finds that the Complainant satisfies the Canadian Presence Requirements under paragraph 2(q) of the *CIRA Canadian Presence Requirements for Registrants*, Version 1.3.

**F. Factual Background**

Allegations of the Complainant:

10. The Complainant describes itself as having an extensive online presence as a video game producer and distributor which uses the BEHAVIOUR Marks in association with such goods and services. The Complainant asserts that it is one of the biggest independent video game developers in North America and has developed over 250 video game titles and sold over 60 million copies on all major platforms.
11. The Complainant’s trademark BEHAVIOUR, registration number TMA53716, was registered November 16, 2000 for use in respect of:

**Goods:** Sound effect systems, namely, software to produce sound effects to be used in connection with the entertainment market.

**Services:** Services of development, production, retail and wholesale distribution of audio-visual content for the entertainment market; development and production of live action and animation films, television series; development and production of multimedia products for third parties, namely, services of development and production of audio-visual content for the entertainment market on desktop, set-top and on-line platforms for exploitation on various media; services of retail and wholesale distribution of films, television series, home videos; services of

development and publication of entertainment software for third parties; communication services, namely, development and design of trade and brand images; graphic design services.

12. The Complainant's trademark **b'heivje(r)**, regn. TMA508126, was registered on February 16, 1999 for use in respect of

**Goods:** Multimedia products, namely, interactive games, magazines, reference cdroms, infotainment cd-roms and other audiovisual content-based products on cd-rom or other media.

**Services:** Services of development and production of multimedia products for third parties, namely, services of development, production and distribution of audiovisual content for the entertainment market; development and production of live-action and animation films, television series; development and production of interactive games, magazines, reference cd-roms, infotainment cd-roms and other audiovisual content-based products on cd-rom or other media, on desktop, set-top and on-line platforms, for exploitation on various media; services of distribution of films, television series, home videos; services of development and publication and design of trade and brand images; graphic design services.

13. The Domain Name <behaviour.ca> was registered by the Registrant on November 12, 2008.
14. As of the date of the present Complaint, the Registrant is not using the Domain Name in association with any wares, services or business. Rather, the Domain Name is redirected to NORTH.CA and subsequently to 401.CA, a website on which YouTube videos published by CIRANEWS are embedded. Evidence provided by the Complainant from the Internet Archive Wayback Machine indicates that the Domain Name has been redirected to NORTH.CA since at least August 2013.

#### Allegations of the Registrant:

15. The Registrant maintains that it provides education-related services and that it registered the disputed domain name as part of an ongoing education initiative that dated back to 1997. The Registrant asserts that it runs education-related websites at the following domains: [www.Teacher.ca](http://www.Teacher.ca), [www.LessonPlans.com](http://www.LessonPlans.com) and [www.LessonPlans.ca](http://www.LessonPlans.ca). The Registrant also maintains that the word "BEHAVIOUR" is relevant to its educational offerings in the fields of education, psychology and counselling.
16. The Registrant confirms that the disputed Domain Name redirects users in the manner described in the Complaint. It indicates that it has not yet developed a website for use in relation to the Domain Name, and that it redirects to a holding page as a means of

managing the domain in the interim. The Registrant denies using the Domain Name in any way that infringes the trademark rights of the Complainant. It also states that it has registered many other domain names for use in the educational field, including: [TEACHER.ca](http://TEACHER.ca), [SOCIALSKILLS.ca](http://SOCIALSKILLS.ca), [SCHOOLING.ca](http://SCHOOLING.ca), [MATHEMATICIAN.ca](http://MATHEMATICIAN.ca), [DEGREE.ca](http://DEGREE.ca), [VOCATIONAL.ca](http://VOCATIONAL.ca), [FAMILYCOUNSELLOR.ca](http://FAMILYCOUNSELLOR.ca), [PYSCHOLOGICAL.ca](http://PYSCHOLOGICAL.ca), [LESSONPLANS.ca](http://LESSONPLANS.ca), and many more”.

17. The Registrant notes that trademark rights are confined to the goods and services for which they are registered, and that another company has the same trademark registered for other goods and services. It indicates that it had previously been approached by another business in Canada that sought to acquire the Domain Name. This company had a Canadian trademark registered for “Behaviour” in relation to business management consulting services (TMA873050) and a website at <https://www.behaviour.com/>). The Registrant indicated that in spite of the approach, they did not sell the Domain Name to this other Company.

#### **G. CIRA Domain Name Dispute Resolution Policy**

18. Paragraph 4.1 of the Policy requires that the Complainant establish that:

- a) 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;
- b) (b) the Registrant has registered the domain name in bad faith as described in section 3.5; and
- c) (c) the Registrant has no legitimate interest in the domain name as described in section 3.4.

19. The Complainant must establish points (a) and (b) above on the balance of probabilities and for point (c) it must provide some evidence that the Registrant has no legitimate interest in the domain name. 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 section 3.4 of the Policy.

#### **H. Analysis**

##### Rights in a Mark

20. Under paragraph 4.1(a) of the Policy, the Complainant has to show, on the balance of probabilities, that it had rights and continues to have rights in a “Mark” prior to the date of registration of the disputed domain name, which may cause the domain name to be

mistaken for the Mark. A “Mark” is defined in paragraph 3.2(c) of the Policy to include a trademark, including the word elements of a design mark, that is registered in CIPO.

21. The Complaint establishes that the Complainant had rights in the BEHAVIOUR Marks for about eight years before the Domain name was adopted by the Registrant.
22. For the purposes of determining that the domain name is “Confusingly Similar” the Domain Name, omitting the “.ca” portion, is compared to the BEHAVIOUR Marks. According to well-established practice under the Policy, the respective usage is not taken into account, only the domain name and the mark are compared. This comparison shows that the Domain Name and the Complainant’s mark BEHAVIOUR are identical and therefore Confusingly Similar.

### Bad Faith

23. The Complainant also has to show, on the balance of probabilities, that the Domain Name was registered in bad faith. Paragraph 3.5 of the Policy deals with the grounds which constitute bad faith and it must be noted that these are not exhaustive; it is open to the panel to find other grounds which lead to a conclusion of bad faith conduct.
24. The Complaint first submits that the Domain Name was registered primarily for the purpose of selling, renting, licensing or otherwise transferring the Domain Name to the Complainant, or the Complainant’s licensor or licensee of the BEHAVIOUR Marks, or to a competitor of the Complainant for valuable consideration in excess of the Registrant’s actual costs in registering or acquiring the Domain Name, in contravention of Section 3.5(a) of the Policy;
25. The Complaint’s second allegation of bad faith is that that the Registrant has engaged in a pattern of registering domain names in order to prevent persons who have rights in trademarks from registering the marks as domain names, and registered the Domain Name or acquired the Domain Name in order to prevent the Complainant from registering the BEHAVIOUR Marks as a domain name, in contravention of Section 3.5(b) of the Policy;
26. The Complainant’s third and final allegation of bad faith is “The use of BEHAVIOUR in the Domain name creates an undue association between the Registrant and the Complainant in contravention of Section 3.5(d) of the Policy. The use of BEHAVIOUR in the Domain name is attracting internet users who would be looking for Complainant’s website and online video games, and would assume that the Registrant was affiliated with the Complainant.”
27. In support of these positions, the Complainant submits that the Registrant has registered 3240 domain names. It says that according to its search report, all domain names have fewer than five web pages and are undeveloped (it is not clear to the panel from reviewing the search report how these conclusions were reached). The Complaint alleges

that “several of those domain names consist of, or feature, well-known or famous trademarks of third parties or descriptive words, including:

<Canuck.ca>                      <shear.ca>                      <jardin.ca>  
 <ehealth.ca>                      <archive.ca>                      <primeminister.ca>  
 <shoedepot.ca>                      <girlscouts.ca>                      <ticket-master.ca>”

28. The Registrant says it had never heard of the Behaviour Marks when it registered the domain name. The Complaint makes no allegation of conduct which shows awareness by the Registrant of its marks at any time.
29. The Registrant acknowledges ownership of “many” domain names. It says: “Owning many domains is not proof of “Bad Faith” registration. The vast majority of our domains are generic, many education related and none are listed for sale. The purpose for owning a large domain portfolio is for business diversification and other proprietary business practices.” “We have registered many .ca domains for future use, in areas related to Education, Training, Counselling. Some redirect to our Education Websites, and others redirect to 401.ca. For Example: [TEACHER.ca](#), [SOCIALSKILLS.ca](#), [SCHOOLING.ca](#), [MATHEMATICIAN.ca](#), [DEGREE.ca](#), [VOCATIONAL.ca](#), [FAMILYCOUNSELLOR.ca](#), [PYSCHOLOGICAL.ca](#), [LESSONPLANS.ca](#), and many more.”
30. The panel notes that the Registrant does not deny the allegation that it owns some domain names that consist of or feature well known trademarks of others. Nor does it explain what role any of its registrations play in its vaguely characterized “business diversification and other proprietary business practices.”
31. The Registrant denies that it has acquired the Domain Name for the purposes of transferring it for gain. It says that none of its domain names are listed for sale. It says it has already rebuffed an inquiry from a third party to purchase the disputed Domain Name.
32. No details of the alleged inquiry or of the response to it were provided. It is not clear that the sale did not take place because the Domain Name was not for sale. There is equally no allegation in this case that the Registrant has attempted to deal in any of its many domain names
33. The Respondent says that “We registered Behaviour.ca as part of an ongoing Education Initiative dating back to 1997”. No further detail is provided. There is no information as to how, if at all, the Domain Name was used or its role in the again vaguely characterized project.
34. Although the Registrant’s explanation of their reasons for owning their portfolio of trademarks is somewhat thin, the Complainant bears the burden of demonstrating on a balance of probabilities that the Domain Name was registered in bad faith. The panel finds that on the balance of probabilities the Domain Name, being a noun forming part of

the English language that is capable of lawful use by the Registrant, and that has been held without misuse since 2008, was not registered in bad faith.

### Legitimate Interest

35. In order to succeed, the Complainant has to provide some evidence that the Registrant does not have a legitimate interest in the Domain Name. Paragraph 3.4 lists six possible ways in which a Registrant may have a legitimate interest in a domain name which are as follows:
- 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 registered 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 registered 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.
36. This list of legitimate interests is not exhaustive as it is said to be "without limitation".
37. The Complaint submits: "Considering that the Registrant is not using the Domain name in association with any wares, services, business or non-commercial activity, that BEHAVIOUR is not the legal name of the Registrant and that the Registrant has no rights in trademarks comprised of the word component BEHAVIOUR, the Registrant has no legitimate interests in the Domain name within the meaning of Section 3.4 of the Policy."
38. This argument overlooks that the word "behaviour" is an ordinary word in the English language. As such it is *publici juris*: the property of all. The Registrant has a legitimate interest in the use of the word "behaviour" except such use as trespasses upon the

Complainant's trademark rights. In the absence of evidence of likelihood of confusion or depreciation of goodwill (there is no such evidence in the Complaint), the Complainant's trademark rights are limited to the exclusive right to use BEHAVIOUR as a trademark in Canada in connection with the goods and services listed in the trade mark registrations. The Registrant is making no such use and has not threatened to make any such use.

39. Accordingly, the Panel concludes that the Registrant has a legitimate interest in the Domain Name.

### I. Conclusion and Decision

40. In conclusion, the panel finds that the Domain Name is confusingly similar with a Mark in which the Complainant had rights prior to the registration of the domain name by the Registrant, that the registration was not in bad faith, and that the Registrant has a legitimate interest in the domain name.

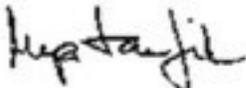
41. The Complaint is therefore dismissed.

Dated: December 19, 2019



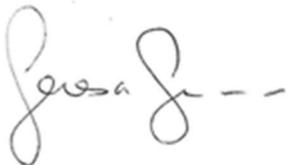

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