IN THE MATTER OF A COMPLAINT PURSUANT TO THE CANADIAN INTERNET REGISTRATION AUTHORITY ("CIRA") DOMAIN NAME DISPUTE RESOLUTION POLICY ("POLICY") AND DOMAIN NAME DISPUTE RESOLUTION RULES ("RESOLUTION RULES")

Complainant:	Zuffa, LLC
Complainant's Representative:	Carol Anne O'Brien Barrister & Solicitor Toronto ON
Disputed Domain Name:	ufc.ca
Registrant:	Daniel Cox Calgary AB
Registrar:	Namespro Solutions Inc.
Panel:	Denis Magnusson (sole panellist)
Service Provider:	Resolution Canada

DECISION

Parties

The Complainant is Zuffa, LLC, a Nevada limited liability company with its principal place of business in Las Vegas, Nevada, USA.

The Registrant is Daniel Cox of Calgary, Alberta.

Disputed Domain Name and Registrar

The disputed domain name is **ufc.ca**, registered by Daniel Cox on July 4, 2007. The Registrar is Namespro Solutions Inc.

The Complainant

The Complainant is Zuffa, LLC a limited liability company incorporated under Nevada law with a principal place of business in Las Vegas, Nevada, USA. The Complaint describes the Complainant as

> "the leading world-wide producer and promoter of mixed-martial arts events. Zuffa produces television programs that are based on these events for broadcast and, though authorized licensees, distributes a wide range of UFC-branded products world-wide, including in Canada."

The Complaint states that the Complainant has been using its "UFC" mark in association with its products in Canada since at least as early as 1993. It applied for registration of "UFC" as a trademark in the CIPO in 2002 which mark was registered in 2005. The Complaint also notes that it began using two design marks incorporating "UFC" in Canada as early as 2001 which marks were registered in the CIPO as trademarks in 2005.

Eligible Complainant
Policy 1.4 provides that a Complainant may submit a Complaint which relates to a trade-mark registered in the Canadian Intellectual Property Office ("CIPO") of which the Complainant is the owner. The Complainant relies on the trademark "UFC" registered in the CIPO in August, 2005 by the Complainant Zuffa, LLC and of which the Complainant is the present registered owner.

The Registrant
The Registrant is Daniel Cox, a resident of Calgary Alberta. As noted above, the Registrant registered the disputed domain name ufc.ca on July 4, 2007

At the time of the Complaint the Registrant was using the registered domain name ufc.ca to resolve to a site headed "Ultimate Fan Center". First under that title was a link "UFC 124 Fight Card" which linked to another site at TicketsCanada.com further described as having "the most up to date UFC 124 Fight Card online". "UFC 124" refers to a mixed martial arts match staged in Montreal by the Complainant on December 11, 2010.

Procedural History
This dispute proceeds on the basis that the Registrant has filed no Response.

From the record of interaction between the Registrant and the Provider the Panel infers that the Registrant might protest that he attempted to file a Response but was ultimately unable to do so because of what he saw as the unreasonable demands he faced under the Policy and Resolution Rules. In these circumstances the Panel, somewhat unusually, canvases the interaction between the Provider and Registrant leading up to the no Response outcome. While some of the facts will not previously have been disclosed to the Complainant, the Panel believes that this review of the procedural background does not unfairly prejudice the Complainant as the substance of the dispute is considered and decided solely on the basis that no Response has been filed as required under the Policy.

Sometime prior to October 31, 2010 the Complainant discovered that the disputed domain name had been registered by another person which domain name was being used in association with a web site containing material which overlapped the Complainant's field of business.

The name of the domain name Registrant was not discoverable on a Whois search. This reflected CIRA privacy policy under which the names and contact information for Registrants of dot-ca domain names who are individuals are not disclosed on Whois or otherwise by CIRA. This is the default position, though Registrants can opt to have their names and other identifying information disclosed, which it appears this Registrant did not opt to do.

The Complainant used the CIRA's message delivery service which enables a communication to be sent to a Registrant whose identity is undisclosed. The Registrant replied disclosing his identity to the Complainant. A further exchange occurred between Complainant and Registrant (considered further below) which did not conclude to the Complainant's satisfaction.

The Complainant then filed this Complaint with the Provider, Resolution Canada, which found the Complaint in compliance with the Resolution Rules.

As the identity of the Registrant was not disclosed the Provider requested the disclosure of the name, postal address and email address of the Registrant from CIRA on November 5, 2010 for the purpose of proceeding with the Complaint. The Provider received such notification on November 8, 2010 and on that date the Provider forwarded notice of the Complaint to the Registrant at the disclosed email address together with attached electronic copies of the Complaint with its schedules. This notice stated that hard copies of this material would be delivered by courier to the disclosed postal address. The formal Notice of Complaint stated further :

> In accordance with CIRA Dispute Resolution Rule 5.1, you have twenty (20) days from the Date of Commencement of the Proceeding on November 8, 2010 to file five (5) copies of a Response to the Complaint with Resolution Canada Inc. in accordance with the CIRA Policy and Resolution Rules.

On or before November 11, 2010 the Provider received a reply from the Registrant by email which is reproduced in its entirety here:

> Hello. Here is my response. Please confirm copies
>
> ufc
> In response to a misterious and deceptive email I recieved about my domain decided to take down the site right away until we clear this trade mark issue up. The complainant shows I own some mis-types of brand name domains and yes i do own some. I use domain drop software that grabs expiring domains with traffic and the software logs these names for registration. She did not mention that I also own many generic domains like cuba.net trucks.net primeminister.com toys.net and many more. I also own over 300 3 letter .ca domains. 3 letter domains have always been generic and safe to regisister. There could be thousands of legitimate companies that have the same 3 letter combination in there name. United Farmers Coop is just one that has the same letters.
>
> Now in 2005 or so when zuffa was using a terrible long domain with a dash in it like ufc-fighting.com or whatever it was, there was talk in the domain name forums that zuffa paid a lot of money for ufc.com I guess they understood it didn't belong to them and they bought it.
>
> And then there is ufc.org which was up for sale at sedo.com and ufc.net I would like to ask zuffa why whey haven't taken these domains to WIPO? I think. we know why. and the answer is they would lose. This is nothing more than reverse domain high jacking.
>
> I ask this board to concider all that facts regarding generic 3 letter domains and award me to keep my domain.

On November 11, 2010 the Provider replied by email that on review "the Response you filed . . . is not in administrative compliance with the Policy and Resolution Rules."[1] This reply went on to draw the Registrant's attention to attached links to CIRA Domain Name Dispute Resolution Rules (link included) and CIRA Domain Name Dispute Resolution Policy (link included).

This reply further requested that the Registrant provide the information required for a Response as per Paragraph 5 of the Rules, and specifically for "the signed Certificate of the Registrant, which is Appendix B of the Rules" by the deadline, November 28, 2010.

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[1] The Provider was acting pursuant to **Rules 5.6 Deficient Response:** "If the Provider is not satisfied that: (b) the Response is otherwise in administrative compliance with the Policy and the Resolution Rules: . . .the Provider shall give notice to the Registrant . . . of the nature of all instances of non-compliance. "

On November 12, 2010 the Registrant sent a short email reply to the Provider which began with "so I just copy my little response 5 times and send you all 5? if I don't get it all correct you will just hand over my domain? nice ..." This reply went on to refer to refer to an earlier dispute over a dot-com domain before WIPO, noted that the Registrant refused to hire a lawyer for such arbitration disputes, and noted that the Registrant was on vacation in the Philippines which created problems meeting deadlines.

On November 16, 2010 the Registrant sent the Provider a very short email which began "still no reply or help?" and concluded with an allegation of Provider bias.

That same day the Provider responded with an email noting the Provider's earlier reply on November 11.

The next day, November 17, 2010 the Registrant sent an email protesting that the earlier reply was not responsive to the Registrant's issues with the process, and asking why his first reply did not constitute a Response, and why the Registrant had to submit 5 hard copies of its response. This same email also complained about unreasonable time deadlines, and about the legalese of the Policy and Rules with which the Registrant had difficulty.

That same day the Provider responded by email. This reply noted the role of the Provider under the CIRA Policy and Rules, observing that in this role the Provider had to conform to the Policy and Rules. This reply noted that links to the Policy and Rules had been provided in earlier communication. The reply concluded by restating that the original email sent by the Registrant on November 11 could not be accepted by the Provider as a Response complying with the Rules, and stating that "hard copy" is a printed copy, and the requirement for 5 hard copies came from Rules, Paragraph 5.3.

Later that same day, November 17, 2010, the Registrant sent an email to the Provider asking for an extension of time to file a Response because he was on vacation and because he believed he "wasn't given the full 20 days".

The next day, November 18, 2010, the Provider responded by email that extensions of time to file a Response "can only be granted under exceptional circumstances" and that the Provider did not consider the circumstances the Registrant had pointed to as meeting this requirement and thus the request for an extension was denied.[2]

On November 21, 2010 the Registrant replied, protesting his perceived unfairness of the denial of the extension.

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[2] The Provider was making this decision under the constraints of the Rules, in particular, paragraph 1.3: "Time Unless otherwise expressly provided in the Resolution Rules or by a Panel, the time limits set out in the Resolution Rules or in an order of the Panel are mandatory" and paragraph 5.4: "Extension of Time: At the written request of the Registrant and made before the Response is due to be submitted the Provider may, in exceptional cases, extend the period of time for the filing of the Response .... The Provider may exercise its discretion in determining whether there are such exceptional circumstances which warrant an extension ..." [Emphases added].

November 28, 2010, the deadline for receipt of a Response, elapsed with no further communication.

Under Resolution Rules 6.5, no Response conforming to the requirements of the Resolution Rules having been received within the deadline, the Complainant had the option of having the dispute decided by a single member Panel rather than a three member panel. The Complainant chose the single member Panel option.

The Provider appointed the undersigned, Denis Magnusson, as the sole Panellist to decide this dispute.

Relief Requested
The Complainant requested that the Panel order that ownership of the domain name be transferred from the Registrant to the Complainant.

Procedural History Considered
The Registrant's initial reply to the standard Notice of Complaint and accompanying Complaint sent to him by the Provider described that communication as "misterious and deceptive".

As a condition of being able to register its dot-ca domain name, the Registrant agreed to be bound by the terms of the CIRA Registrant Agreement ["Agreement"], Article 1.1 of which provides that "[t]his Agreement between the Registrant and CIRA applies to all Domain Names registered by CIRA for the Registrant [that is, all dot-ca domain names]." The Agreement, in Article 2.1, further provides:

> . . . The Registrant acknowledges that it has read, understood, and agrees to be bound by all the terms and conditions of this Agreement . . . which CIRA may establish and amend from time to time.

The Agreement requires the Registrant to submit to the CIRA Domain Name Dispute Resolution Policy, under which this proceeding is held. Article 7.3 of the Agreement provides:

> ". . . CIRA may also, in its sole discretion and at its sole option, upon notice to the Registrant suspend and/or delete a Domain Name Registration in the event . . . that:
>
> . . .
>
> g) the deletion, transfer or suspension of a Domain Name Registration is required by an order or decision under CIRA's Domain Name Dispute Resolution Policy

The CIRA Domain Name Dispute Resolution Policy ["Policy"] itself provides in paragraph 3.1:

> **Applicable Disputes.** A Registrant must submit to a Proceeding if a Complainant asserts in a Complaint submitted in compliance with the Policy and the Resolution Rules that (there follows three necessary assertions all of which were made by the Complainant in this Complaint as required) [emphasis added]

Policy paragraph 1.3 further provides: "Rules. A dispute resolution proceeding initiated under the Policy (a "Proceeding") is also subject to the CIRA Dispute Resolution Rules (the "Resolution Rules")".

In the exchanges with the Provider the Registrant's objections appear to have been to the requirement that he comply with the Policy and Resolution Rules with which he had agreed to comply as a condition of his being able to register a dot-ca domain name. In this regard the Registrant complained that he did not get sufficient "help" from the Provider. The Provider, as

the manager what must be and be seen to be an unbiased arbitration process, must take care not to act or be seen to be acting as a legal adviser in the dispute to either Complainant or Registrant. The Provider must take care that it is not perceived to be assisting Complainant or Registrant in the specific content and shaping of the submissions to be made in either Complaint or Response. That said, the Provider should be ready to assist the parties in locating the rules which govern the arbitration process, which the Provider was attempting to do in this case.

A more specific concern expressed by the Registrant in the exchange with the Provider appears to be his belief that in some way he did not receive the full time specified by the Policy and Resolution Rules in which to make his Response. The Provider secured the name and email address of the administrative contact listed for the Registrant's disputed domain name on November 8, 2010 and on that date sent the Notice of Complaint with attached Complaint and schedules. Resolution Rules, paragraph 2.1 provides: "Notice will be deemed to be given by the Provider if the Complaint, including Schedules, is: (b) transmitted electronically via the Internet, . . .to (i) the e-mail addresses for the administrative contact of record in the Registrant . . .". Resolution Rules, paragraph 2.6 further provides: "Deemed Receipt. . . . every communication provided for under the Resolution Rules . . . will be deemed to have been received by the person to whom the communication is sent: . . . (c) if transmitted electronically via the Internet, on the date that the communication was transmitted, provided that a record of transmission, which includes the contents of the email and the date of transmission, is verifiable." Resolution Rules paragraph 4.4 defines the Commencement of Proceeding: "Notice of Commencement of Proceeding. Upon the actual or deemed receipt of the Complaint by the Registrant pursuant to paragraph 2.6, the Provider shall immediately give notice to the Parties, the relevant Registrar(s) and CIRA of the commencement of the Proceeding [emphasis added]. Resolution Rules paragraph 5.1 provides for and strictly limits the time within which the Registrant must file any Response: "**Response.** Within twenty (20) days of the Date of Commencement of the Proceeding, the Registrant shall respond to the Complaint by filing with the Provider a Response in accordance with the Policy and the Resolution Rules." The Provider, Complainant and Registrant are all bound by these stipulated time limits. The Notice of Complaint and Complaint were sent by email on November 8th, under the Resolution Rules this date constituted the Commencement of the Proceeding and, as the Notice of Proceeding expressly informed him, the Registrant had 20 days from that date to file a Response, that is, to November 28th .

Panel Responsibilities

Rules paragraph 9.1 stipulates that the Panel must proceed in accordance with the Policy and the Resolution Rules:

> **9.1 The Panel shall:**
> **(a) conduct the Proceeding in such manner as it considers appropriate in accordance with the Policy and the Resolution Rules;**
> **4.2 Decision and Amendment to a Decision. The panel appointed to decide the Proceeding (the "Panel") will consider all the evidence presented in the Proceeding and will render its decision in accordance with the Policy and the Resolution Rules . . ..**

The Provider has found that the Registrant has failed to submit a Response conforming to the requirements of the Resolution Rules within the time limit stipulated in the Resolution Rules.

The Resolution Rules paragraphs 11.4 and 11.5 instruct the Panel how to proceed in the light of this failure:

> 11.4 Failure to Comply with Time Periods. After the Date of Commencement of a Proceeding, in the event that a Party, in the absence of exceptional circumstances, does not comply with any time period established by the Resolution Rules or the Panel, the Panel shall proceed to a decision on the Complaint.
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> 11.5 Failure to Comply with Rules. If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Resolution Rules or any request from or order of the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

The Resolution Rules paragraph 5.8 also stipulate how the Panel is to proceed when no Response had been filed by the Registrant:

> 5.8 No Response. If a Registrant does not submit a Response within the period for submission of a Response . . . , the Panel shall decide the Proceeding on the basis of the Complaint . . .

Onus on Complainant

Policy 4.1 requires that:

> the Complainant must prove, on a balance of probabilities, 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; and
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> (b) the Registrant has registered the domain name in bad faith as described in paragraph 3.7;
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> and the Complainant must provide some evidence that:
>
> (c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.6.
>
> [Emphases added]

(a) Confusingly Similar

Marks in Which Complainant Had and Has Rights

Policy 3.2(c) defines "Mark" as including a trademark registered in the Canadian Intellectual Property Office ("CIPO"). The Complainant relies on its ownership of a trademark registered in the CIPO[1], "UFC" registered for use with the services of the production of entertainment shows for distribution via television, cable, satellite and other means and for use in association with numerous types of wares including audio-video discs, posters and types of clothing such as tee-shirts. That trademark was registered in the CIPO on August 2, 2005. That date is prior to the date of the registration disputed domain name ufc.ca, which was July 4, 2007. The Complainant remains the registered owner that trademark registration.

The Complaint noted that the Registrant in prior correspondence with the Complainant's representative had raised the issue of trademark rights in acronyms such as the UFC Mark at issue here. The Registrant had written "3 letter domains are rarely trade markable . . .check wipo decisions if you like . . ." – effectively the Registrant was submitting that the Complainant is unlikely to have Rights in the Mark UFC because it is simply a three letter acronym.

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[1] CIPO registration TMA645242

In the Complaint the Complainant observed, correctly this Panel finds, that Policy 3.2 defines what constitutes Rights in a Mark for all disputes over dot-ca domain names. Policy 3.2 provides that a Complainant has Rights in a Mark which is registered as a trademark in the CIPO and "UFC" was registered as a trademark in the CIPO by the Complainant two years before the Registrant registered the domain name. Thus, it is clear under the Policy that the Complainant has Rights in its registered trademark UFC.

On this point the Complaint referred to an earlier decision under the Policy concerning the MTV.ca domain name.[4] In that decision the three member Panel ruled that the fact that the Complainant in that case had registered its Mark MTV as a trademark in the CIPO determined the issue of whether the Complainant had Rights in that Mark under Policy 4.1(1) and 3.2(c). The Panel also found that the Registrant's submissions that the registered trademark was not distinctive could not affect the issue of Rights under the Policy – when a Mark is registered as a trademark in the CIPO, the trademark registrant has Rights in that Mark under the Policy.[5]

In the prior exchange between the Registrant and the Complainant the Registrant makes reference to "wipo decisions". Presumably that was a reference to decisions under ICANN's Uniform Domain Name Dispute Resolution Policy ("UDRP") which governs domain name disputes under dot-com and some other top level domains, but of course not the dot-ca domain. The World Intellectual Property Organization ("WIPO") is one of the approved dispute resolution service providers for disputes under the UDRP.

There are significant differences in the content of the Policy (CIRA Dispute Resolution Policy) which exclusively governs all disputes involving dot-ca domain names and the UDRP. Thus, prior decisions under the UDRP by WIPO or other service providers can be used as a guide to decision making under the Policy only with great caution as they may well be inapplicable in numbers of respects.

In particular, the unlike the Policy, the UDRP does not explicitly and without qualification define a trademark registration in a national trademarks office as creating Rights, and does not have the effect of then expressly deeming mere identity between such registered mark and the domain name to cause confusing similarity. The UDRP provides that a complainant can succeed when the domain name is confusingly similar with a trademark in which the complainant has rights without explicitly defining "trademark", "rights" or "confusingly similar". This may yield the possibility under the UDRP, unlike the Policy, that where a complainant relies on its rights in a registered trademark the domain name owner might argue that in considering confusingly similar a panel can consider submissions that the registered trademark is not distinctive.[6]

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[4] CDRP Decision No. 00015, October 15, 2003.

[5] The Registrant's comment noted by the Complainant above about "3 letter domains not being trade markable" seems, in the circumstances of the Complainant having a registered trademark, an argument that the trademark is not distinctive. Issues of trademark registration invalidity for reasons of lack of distinctiveness or otherwise are beyond the Policy and must be addressed to the courts. Trademarks Act, R.S.C., 1985, c. T-13, ss. 18, 57

[6] However, some panels under the UDRP and commentators have strongly disagreed with this view https://udrpcommentaries.wordpress.com/2010/05/24/trademark-validity-not-an-issue-in-udrp-proceeding/

While beyond the scope of this proceeding, the Panel notes that the Registrant appears to have a misapprehension about acronyms and the acquisition of trademark rights, whether in unregistered or registered trademarks. Contrary to the Registrant's apparent beliefs it is quite possible for a three letter mark, when used by a trader such that it has come to identify the trader as a source, to be protected under passing off law as a trademark. Also many such marks will be readily registrable as trademarks in the CIPO as the many current registrations of such marks illustrates.

Confusingly Similar

Policy 3.4 defines "Confusingly Similar":

> A domain name is Confusingly Similar to a Mark if the domain name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark.

The Mark is the registered trademark UFC. The domain name in dispute is **ufc.ca**. In assessing Confusingly Similar the dot-ca suffix is ignored, as is capitalization. The Mark and the domain name are identical and so are Confusingly Similar under the definition in Policy 3.4 which governs this aspect of the dispute.

b) Bad Faith

Policy 3.7 has a restrictive definition of what can constitute the Registrant's necessary Bad Faith in registering the domain name. That definition states that there will be Bad Faith, "*if, and only if*" one or more of three specific circumstances obtain.

The Complainant submits that the Registrant registered the domain name in Bad Faith under Policy 3.7(a):

> (a) the Registrant registered the domain name, or acquired the Registration, primarily for the purpose of selling, renting, licensing or otherwise transferring the Registration to the Complainant, or the Complainant's licensor or licensee of the Mark, or to a competitor of the Complainant or the licensee or licensor for valuable consideration in excess of the Registrant's actual costs in registering the domain name, or acquiring the Registration

In finding what was the Registrant's intent in registering ufc.ca as a domain name the Panel must make inferences from the general context in which that registration was made and from the evidence of the use to which the Registrant put the domain name after registration. Given a twenty-six letter alphabet, there are 17576 possible combinations of three letters. Why would the Registrant have chosen "ufc", in particular.

The Complainant's trademark "UFC" is an acronym derived from the full name of its business "Ultimate Fighting Championship". By July, 2007, when the Registrant registered the domain name, the Complainant's business had acquired some notoriety, especially in the U.S., and its reputation had extended to Canada among mixed martial arts fans here, with the Complainant having filed a trademark application with the CIPO in July, 2002 relying on use of the mark in Canada as early as 1993.

It is reasonable to infer that at the time the Registrant registered the domain name in July, 2007, the Registrant was well aware of the existence of the Complainant's business brand Ultimate Fighting Championship and its widely used brand acronym UFC. This inference is strongly

supported by the use to which the Registrant put the domain name after registration. The Registrant's web page featured a link entitled "UFC 124 Fight Card". "UFC 124" refers to a mixed martial arts match staged in Montreal by the Complainant on December 11, 2010. The link on the Registrants' web page resolves to a site at TicketsCanada.com entitled "Tickets Canada: Where Canadians Buy Tickets". At that site there was an advertisement for the Complainant's UFC 124 match with the indication that tickets for the match might be purchased at that site.

What can we infer about the Registrant's primary purpose in making the domain name registration? The Complainant submits that we can derive some further insight into that purpose by the exchange which occurred between the Complainant's representative and the Registrant prior to the Complainant filing this Complaint.

In late October, 2010, as the Registrant's identity was not discoverable by Whois, the Complainant used CIRA's Message Delivery Service to contact the Registrant. The Registrant Daniel Cox replied identifying himself as the owner of the ufc.ca domain registration. The Complainant's representative informed the Registrant that she represented "the owner of the trade-mark UFC" and enquired about acquiring the domain name from the Registrant. The Registrant replied "3 letter domains are rarely trade markable . . . check current wipo decisions if you like . . . which of the 14 trademarks do you represent", including a link to the CIPO registered trademark database. The Complainant's representative replied that she represented "Zuffa, LLC, the owner of UFC registered in Canada as TMA645242 and a number of UFC design marks, also registered in Canada". The Complainant's representative concluded by asking "Please let me know if you would be willing to transfer the registration for ufc.ca to my client, and if so, what would be your cost, to do that." The Registrant replied "you must be joking . . . as i understand it zuffa paid a lot of money for ufc.com . . . it wasn't handed to them on a platter . . . excuse me while I go clean the scum from my tub".

The Complainant obtained a search report from CIRA identifying the domain names registered by the Registrant. More that 1,000 such domains have been registered by the Registrant. The Complaint further submits:

> These domain names include many that reflect either the trade-marks of third parties, or typographical errors for such trade-marks, such as: aaircanada.ca ; aairmiles.ca ; aamericanexpress.ca; airmiles.ca ; airrmiles.ca; amaericanexpress.ca; amaricanexpress.ca; amaricanexpress.ca; americanexpress.ca ; americanexpress.ca; bluecross.ca; bluecrosscanada.ca ; bmobank.ca; canwestglobal.ca ; cbcports.ca ; cbcspors.ca; cbcsport.ca ; ticetmaster.ca ; ticketmasrer.ca ; torntosun.ca; torontostar.ca; torontsun.ca; tidwaterhouse.ca; tticketmaster.ca ; travelocity.ca ; ttsn.ca ; vidiotron.ca; videotreon.ca; videotro.ca ; vidiotron.ca; viza.ca ; vonoge.ca; vontage.ca ; wwwblockbuster. ca; wwwford .ca; wwwpanasonic.ca ; wwwvisa.ca ; and yamahacanada.ca. The fact that a significant proportion of the Registrant's domain name registrations consist of typographical errors for famous trade marks provides, in the Complainant's submission, conclusive evidence that the Registrant has registered the Domain Name, along with over 1,000 other domain names, primarily for the purpose of selling, renting, licensing or otherwise transferring those registrations to trade-mark owners, such as the Complainant.

This Panel finds that the Registrant's apparent knowledge of the UFC brand at the time of the domain name registration which knowledge is confirmed by the manner of the Registrant's subsequent use of the domain name, the Registrant's use of the domain name with a site featuring mixed martial arts material showing that the Registrant understood the potential value

of the domain name to the Complainant, the exchange between the Complainant's representative and the Registrant in which the Registrant indicated that he was very conscious of the potential for extracting value from the Complainant for assigning the domain name to it, the Registrant's pattern of registering many domain names which reflect the trademarks of well-known businesses or typographical errors for such trademarks, coupled with the fact that the Registrant does not have any Legitimate Interest in the domain name (see below), indicate that the Registrant did register the domain name in Bad Faith as defined in under Policy 3.7(a).

As a final comment on the finding of Registrant's Bad Faith the Panel notes that in the exchange between the Registrant and the Complainant's representative the Registrant stated that "3 letter domains are rarely trade markable . . .check wipo decisions if you like . . .". The fact that the Registrant may have had an honest, though mistaken, belief that three letter marks were generally not protectable trademarks, and thus that the Complainant's UFC trademark was not a Mark in which the Complainant had Rights under the Policy, cannot change the finding of Bad Faith under the Policy. There is nothing in the wording of the Policy, which must govern the dispute, which would permit the Panel to use such mistaken honest belief to negate or qualify the finding of Bad Faith in the circumstances of this dispute.

Further, the Panel believes that the Policy should not qualify the Bad Faith requirement by reference to a Registrant's honest, but mistaken belief that the Complainant had no Rights in the Mark. Very commonly under law, when a person violates the legal rights of another with a mistaken belief that the other has no such legal rights, the violator is nevertheless liable in law for that violation. Under trademark law, for example, the fact that a defendant in a passing off or trademark infringement lawsuit did not know that the plaintiff had a legally protected trademark and/or did not intend to deceive consumers does not prevent the defendant from being liable for to the trademark owner for causing such deception.

c) Legitimate Interest

To succeed, the Complainant must offer some evidence that the Registrant has no Legitimate Interest in the domain name as defined in Policy 3.6. Policy 3.6 states that the Registrant has a Legitimate Interest in a domain name "if and only if" at least one of six specified interests is shown.

The Complaint notes that in this case

> the only sources of information about the Registrant's interests or business available to the Complainant are the WHOIS record for the Domain Name, the contents of the Disputed Site, and e-mails from the Registrant to the Complainant's authorized representative.

As the Complaint submits, there is nothing in this material to support any claim to a Legitimate Interest in the domain name by the Registrant under any of the six heads of interest in Policy 3.6. The Complainant has met the burden of proof under this requirement.

DECISION AND ORDER

The Complaint succeeds.

The Panel orders the ownership of the disputed domain name ufc.ca be transferred to the Complainant.

December 19, 2010

Denis N. Magnusson
Sole Panel Member