

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

Domain Names: MOLD.CA; MOULD.CA  
Complainant: Mold.Ca Inc

Registrant: According to CIRA, Michel-Ange Romelus  
According to Complainant, Bharati Gangapersaud

Registrar: GoDaddy Domains Canada Inc.

Panellists(s): Sharon Groom  
Eric Macramalla  
Myra J. Tawfik (Chair)

Service Provider: Resolution Canada Inc.

**DECISION**

**1. The Parties:**

The Complainant is a company incorporated pursuant to the Ontario Business Corporations Act having its registered office address at 77 King Street West, Toronto, Ontario M5K 1P2.

The Complainant is represented by Shaya Silber, Zvulony & Co P.C 28 Finch Avenue West, Suite 208, Toronto, Ontario M2N 2G7.

The Registrant is Michel-Ange Romelus with a contact address at 145 Mammoth Hall Train, Toronto, Ontario M1B 1P8.

**2. The Domain Name and Registrar**

The disputed domain names are MOLD.CA and MOULD.CA and the Registrar is GoDaddy Domains Canada Inc.

**3. Procedural History**

On April 19, 2012, the Complainant initiated a complaint with Resolution Canada under the Canadian Internet Registration Authority (CIRA) Dispute Resolution Policy (CDRP)

and the CIRA Domain Name Dispute Resolution Rules (the Rules) requesting that the Complaint be submitted for decision in accordance with the CDRP and the Rules and requesting the transfer of the domain names MOLD.CA and MOULD.CA (“The Domains”).

Resolution Canada Inc is an approved Dispute Resolution Service Provider under the CDRP.

Pursuant to Rule 5.1, the Registrant was notified by Resolution Canada that it had 20 days from April 19, 2012 to file a Response to the Complaint. The Registrant duly submitted a Response to the Complaint.

Further to Rule 6.5, Resolution Canada appointed a three-member Panel consisting of Myra J. Tawfik (Chair), Sharon Groom and Eric Macramalla to adjudicate on the dispute and a notice of selection of the panelists was sent to all parties on May 17, 2012. Each panelist submitted a declaration of impartiality and independence prior to his or her appointment.

#### 4. Eligible Complainant

The Complainant meets the Canadian Presence Requirements for Registrants (2003) (the “CPR”) as an eligible complainant under s 2(d). It is a corporation incorporated under the laws of Ontario. The Complainant has filed copies of its Certificate of Incorporation for Mold.ca.Inc as Schedule A and its Certificate of Incorporation for Mould.ca as Schedule B.

#### 5. Parties’ Contentions

##### A. The Complainant:

The Complainant alleges the following:

It is a corporation registered in November 2010 under the laws of Ontario in the business of mold detection and removal. Its sole owner and operator is Gregg Dalrymple.

On July 16, 2010, the Complainant’s Information Technology Manager, Ross Sullivan, purchased the domains on behalf of the Complainant and that the funds for the purchase were provided by Gregg Dalrymple. In November 2010, the Complainant developed its website under the domains. In December 2010, it commenced advertising its services to the public under the domains.

Sometime during 2011, Ross Sullivan left the Complainant and transferred the domains to the Registrant. Sullivan refuses to cooperate with the Complainant.

On February 3, 2012, the Complainant received an anonymous email notice advising that the domains would be redirected away from the Complainant's website. The Complainant contacted the Registrant to reach an amicable agreement but the Registrant has been uncooperative.

As a result, the Complainant filed this complaint under the CDRP requesting the transfer of the domains.

### B: The Registrant

The Registrant alleges the following:

He acquired the domains from Ross Sullivan, a partner in the Complainant's business, sometime in September 2011 and has been paying renewal fees and other costs associated with the domains since that time. He has acquired a number of mold-related domain names for the purpose of developing a website with information, business to business contact, consumer to business contact in relation to the words mold and mould. He has provided proper notice to the Complainant about the redirection.

He acknowledges that the Complainant had been in contact with him about the purchase of the domains but he has no intention of selling them. He is not a business competitor of the Complainant and has no personal or competitive interest in the Complainant's business.

### 6. Findings

Under paragraph 4.1 of the CDRP, the burden is on the Complainant to prove, on a balance of probabilities, that:

- 1) 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;
- 2) The Registrant has registered the domain name in bad faith;

And to provide some evidence that:

- 3) The Registrant has no legitimate interest in the domain name.

Under Rule 12.1, the Panel shall render its decision based on the CDRP and Rules, the evidence and arguments submitted and any relevant rules and principles of the laws of Ontario and the laws of Canada. Further, inferences can be drawn about the Registrant's motives in registering the domain name from the Registrant's conduct or other surrounding circumstances including the uses to which the domain name is put.

6.1. Is the Registrant's domain name confusingly similar to a Mark in which the Complainant had Rights prior to the date of registration of the domain name and in which Complainant continues to have such Rights?

The complainant, Mold.Ca Inc was incorporated under the laws of Ontario in November 2010. The Complainant claims use of the Mark since December 2010. It has adduced evidence of use in the form of invoices, emails and other material bearing the Mark MOLD.CA. The Panel finds that the Complainant has established that it had acquired common law trademark rights in the Mark MOLD.CA commencing in December 2010.

Registrant acquired the domains from Ross Sullivan in September 2011.

The Panel finds that the Registrant's domains, MOLD.CA and its variant, MOULD.CA are confusingly similar to a Mark in which Complainant had rights and continues to have rights.

6.2 The Registrant has registered the domain name in bad faith

The Complainant must prove, on a balance of probabilities, that the domains were registered by the Registrant in bad faith. The Registrant acquired the domains from the previous registrant, Ross Sullivan. The Complainant alleges that Ross Sullivan was its IT Manager and that the domains were acquired by Sullivan on behalf of the Complainant. The Registrant claims that Sullivan was a partner in the business and that he retained ownership of the domains upon his departure from the Complainant.

There is some evidence, adduced by the Complainant itself, that Sullivan may have been more than the IT Manager. The Complainant's Schedules J, M, and O are email communication exchanges with clients in which Gregg Dalrymple, principal of the Complainant, copied Ross Sullivan on the exchanges. These communications did not appear to involve any IT related matters and seem to suggest that Sullivan had a more active business role with the Complainant. That said, both parties to the Complaint have been less than forthcoming in relation to this essential element of the claim and it is difficult for the Panel to draw any clear conclusions regarding the exact nature of Sullivan's relationship to the Complainant.

More importantly, neither side adduced any evidence relating to the circumstances under which the domains, legitimately acquired by Sullivan and which remained registered in his name, were purchased by or transferred to the Registrant. The Complainant alleges that Sullivan transferred the domains to the Registrant within the last 12 months and that he now refuses to cooperate. The Registrant alleges that the domains "remained Ross Sullivan's property... until he gave it to us approximately September 2011".

The burden of demonstrating bad faith rests with the Complainant. In light of the fact that the acquisition of the domains by Ross Sullivan in 2010 had been made in good faith, that

they remained registered in his name, that his status in the company was not clearly explained nor were the terms and conditions of his departure, the Panel finds that the Complainant has not satisfied its burden of showing, on a balance of probabilities, that the Registrant acquired the domains in bad faith.

### 6.3 The Registrant has no legitimate interest in the domain name

The Complainant must provide some evidence that the Registrant had no legitimate interest in the domain names. A Registrant has a legitimate interest for the non-exhaustive reasons set out in paragraph 3.4 of the CDRP.

Paragraphs 3.4 (a)-(d) each require good faith use of the Marks or the domain name. Paragraphs 3.4(e) –(f), though not expressly tied to good faith, require that the domain name comprise the legal name of the Registrant or the geographical name of the location of the Registrant’s non-commercial activity or place of business.

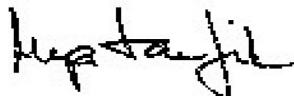
Since the Panel cannot conclude that there was bad faith on the part of the Registrant in the acquisition of the domain names and that the factors in sub-paragraphs (e)-(f) are not applicable on the facts, the Complainant has not met its burden under this paragraph of the CDRP.

### 7. Decision

For the reasons set out above, the Panel dismisses the Complaint.

Dated June 6, 2012

Sharon Groom  
Eric Macramalla  
Myra Tawfik



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Myra Tawfik (Chair) for the Panel