

**CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY**

COMPLAINT

Dispute Number: DCA-1400-CIRA
Domain Name: www.petdepot.ca
Complainant: Labrador II, Inc., and Labrador Franchises, Inc., doing business as
PET DEPOT Canada, ULC # 2013360264
Registrant: Anna Sparkles
Registrar: DomainPeople, Inc.
Panel: Michael D. Manson
Service Provided: British Columbia International Commercial Arbitration Centre

DECISION

A. THE PARTIES

1. The Complainant is Labrador II, Inc. (Labrador Franchises, Inc.) 2001 Financial Way #102 Glendora, California 91741, United States of America.
2. The Registrant is the individual, Anna Sparkles, of P.O. Box 84036, Calgary, Alberta, T3A 5C4, and who has a domain name address at petdepot.ca, c/o Anna Sparkles. The Provider reported a copy of the complaint to the Registrant via express post and that mail was returned to the Centre. No response to the complaint was filed or served by the Registrant.

B. THE DOMAIN NAME AND REGISTRAR

3. The domain name at issue is petdepot.ca. The domain name is registered with DomainPeople, Inc.

C. PROCEDURAL HISTORY

4. The Complainant submitted this complaint to the British Columbia International Arbitration Centre as service provider in respect of the *CIRA Domain Name Dispute Resolution Policy* of the Canadian Internet Registration Authority (CIRA). The complaint was originally delivered on June 7, 2012, but was determined that it was not in administrative compliance. The Complainant was given ten days to remedy all instances of non-compliance. The Complainant again delivered its complaint on June 11, 2012, and by letter dated June 14, 2012, the Provider confirmed compliance of the complaint and commencement of the dispute resolution process. No response to the complaint was received from the Registrant. The Complainant elected to have the complaint heard by a single panelist, as permitted under Rule 6.5 of the *CIRA Rules*. The service provider appointed Michael D. Manson as the single panel member for this complaint.

D. PANEL MEMBER IMPARTIALITY AND INDEPENDENCE STATEMENT

5. As required by the *CIRA Rules*, paragraph 7.1, I, Michael D. Manson, have declared to the Provider that I can act impartially and independently in respect of this matter, as there are no circumstances known to me which would prevent me from so acting.

E. BASIS FOR DECIDING THE COMPLAINT

6. Since the Registrant has not submitted a response to the complaint, paragraph 5.8 of the *CIRA Domain Name Dispute Resolution Rules* applies, namely that the panel shall decide the proceeding on the basis of the complaint filed.

F. FACTUAL BACKGROUND

7. The BCICAC has certified that the Complainant has complied with the formal requirements of the CDRP under the Resolution Rules.
8. The BCICAC has certified and I accept that it has complied with the provisions of the CDRP and the Resolution Rules in attempting to deliver the complaint to the Registrant by express post. Pursuant to paragraph 2.6 of the Resolution Rules, given that the express post was returned to the BCICAC, the Registrant is deemed to have received the complaint and has failed to respond to the complaint.
9. Materials submitted by the Complainant shows that the Complainant satisfies *CIRA*'s Canadian presence requirement for registrants, being the owner of Canadian Trade-mark Registration No. TMA744,221 for trade-mark PET DEPOT. The Complainant has also made the uncontradicted submission that it has a business address under the name PET DEPOT Canada, ULC # 2013360264, and an address at Suite 1600, 480 University Avenue, Toronto, Ontario, Canada, M5G 1V2.
10. The Materials submitted by the Complainant include a complaint, together with an Annex to the complaint, as alleged evidence in support of the representations made in the complaint. Other than a "Whois Lookup" with respect to the domain name petdepot.ca, being registered by the Registrant on May 27, 2004, and correspondence with the Canadian Trade-marks Office, relating to the registration of PET DEPOT, by Labrador II, Inc., and a photocopy of the front page of the trade-mark registration for PET DEPOT, namely TMA744,221, there is no evidence filed by the Complainant in respect of this complaint. While the complaint makes reference to a number of other registrations owned by Labrador II, Inc. in the United States of America, China, Japan, and alleged registration pending at the Office of Harmonization for International Markets, these foreign registrations or pending applications are irrelevant for purposes of this complaint.
11. It is important to note that many of the statements made by the Complainant in the complaint have not been supported by any evidence. For example, there is no evidence supporting the registration of PET DEPOT Canada, ULC in Alberta, nor is there any evidence to support the allegation of the Complainant's alleged businesses in Canada, making use of the PET DEPOT trade-mark. In fact, reference to the

Alberta Corporate Registry indicates that PET DEPOT Canada, ULC was incorporated on July 10, 2007.

12. While various CDRP panels have considered the issue regarding admissible evidence in a CDRP proceeding, and have, in a number of decisions, indicated that a panel may admit evidence, whether or not given or proven under oath or affirmation or admissible as evidence in the Court, and may admit evidence that the Arbitrator considers relevant to the issues in dispute, nevertheless, there must be some evidence to support bald allegations made in a complaint. Absent any such evidence, in my opinion such allegations should be given little or no weight.

Best Western International, Inc. v. Montanbault, (2007), 55 C.P.R. (4th) 340

Google Inc. v. Fraser, (2005), 42 C.P.R. (4th) 560

Acrobat Construction/Enterprise Management Inc. v. 1550507 Ontario Inc., (2003), 29 C.P.R. (4th) 261

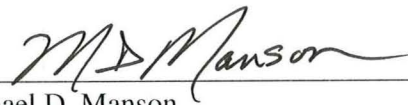
13. It is also important to note that the Complainant recognizes in its submissions that the Registrant conducted a pet supply internet sales business during the dates of “approximately 2004 through 2010” in Canada. These dates, together with the date of registration of the domain name petdepot.ca (May 27, 2004), are important, for the reasons that follow.
14. In order for the Complainant to succeed, the Complainant must prove, on a balance of probabilities, that:
 - (a) The Registrant’s dot-ca domain name is confusingly similar to a trade-mark in which the Complainant had rights **prior** to the date of registration of the domain name and continue to have such rights; and
 - (b) The Registrant has registered the domain name in bad faith, as described in paragraph 3.5 of the *CIRA Domain Name Dispute Resolution Policy* (the “Policy”); and there must be some evidence that
 - (c) The Registrant has no legitimate interest in the domain name, as described in paragraph 3.4 of the Policy.
15. Even if the Complainant proves (a) and (b) above, and proves some evidence in (c), the Registrant will succeed in a proceeding if the Registrant proves, on a balance of probabilities, that the Registrant has a legitimate interest in the domain name, as described in paragraph 3.4 of the Policy.
16. While the Registrant provided no evidence, the Complainant itself has alleged that there has been use, at least over the internet in Canada, by the Registrant of the petdepot.ca domain name to conduct business and make sales from the period from approximately 2004 through 2010. Notwithstanding that such use was allegedly made with the knowledge of the Complainant’s presence in Canada and the United States of America, I accept as being true that the business of the Registrant was conducted during that time frame.

17. The Complainant fails under the first prong of its basis for a complaint, namely that the trade-mark registration the Complainant relies upon (Canadian Trade-mark Registration No. TMA744,221) for the trade-mark PET DEPOT was not only registered, but also filed, subsequent to the use and registration of the petdepot.ca domain name by the Registrant. Accordingly, the Complainant fails to satisfy the requirement under 3.1(a) of the Policy.
18. Further, the Complainant has not satisfied me that the Registrant has no legitimate interest in the domain name, as described in 3.4 of the Policy. The Registrant registered the domain name in Canada prior to the filing and registration of the Complainant's trade-mark for PET DEPOT in Canada, and even before the Complainant appears to have registered its corporate name in July, 2007. There is no evidence before me to support any common law rights of the Complainant in the trade-mark PET DEPOT, through use by the Complainant in Canada, prior to registration of the domain name by the Registrant, and accordingly, I find that the Registrant may have used the mark in good faith and may have had legitimate rights to use the PET DEPOT trade-mark in Canada, prior to the alleged rights asserted by the Complainant in this matter.
19. I also accept that when one attempts to access the Registrant's website, it merely forwards to Anna Sparkles, with no apparent business being conducted. However, this is insufficient evidence support the allegations of bad faith by the Complainant, as set out in the complaint. There is no evidence to support the allegation that the Registrant has engaged in a pattern of registering domain names, in order to prevent persons who have rights in marks from registering the marks as domain names, nor is there any evidence to support the allegation that the Registrant registered the domain name or acquired the registration primarily for the purpose of disrupting the business of the Complainant. Similarly, no evidence was filed to support the allegation of competition by the Registrant with the Complainant.
20. Given that the Complainant has a registered trade-mark for PET DEPOT in Canada and that the Registrant appears to have ceased use of the domain name petdepot.ca, as well as having filed no response to the complaint, I do not find any bad faith by the Complainant in filing the complaint in this matter.

G. CONCLUSION AND ORDER

21. In view of the findings above, I conclude that the complaint concerning the domain name www.petdepot.ca is not successful and is dismissed.

Executed at Vancouver, British Columbia, Canada, this 23rd day of July, 2012.



Michael D. Manson
Sole Panel Member