

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

Dispute Number: DCA-2265-CIRA
Complainant: Canadian Truck Protection, ULC o/a Premium 2000+
Registrant: Paul Donofrio, 11501534 Canada Limited o/a My
Trucks Advisor
Disputed Domain Names: premium2000.ca and ctpwarranty.ca
Registrar: Netfirms, LTD.
Arbitrator: Mr. Claude Freeman, LL.M., C.Med., C.Arb.
Service Provider: British Columbia International Commercial Arbitration
Centre (the "BCICAC")

BCICAC FILE NUMBER: DCA-2265-CIRA

The Parties

1. The complainant is Canadian Truck Protection, ULC o/a Premium 2000+, of Québec City, Québec (the "Complainant").
2. The registrant is Paul Donofrio, 11501534 Canada Limited o/a My Trucks Advisor (the "Registrant").

The Disputed Domain Names and Registrar

3. The Domain Names at issue are premium2000.ca and ctpwarranty.ca (the Disputed Domain Names).
4. The original Registrar of record for the Disputed Domain Names is Netfirms, LTD.
5. The Disputed Domain Names were registered on January 6, 2020, and March 12, 2020, respectively.

Procedural History

On July 24, 2020, the Complainant filed a complaint (dated July 24, 2020) against the Registrant with the BCICAC, seeking that the Registrant's registrations of <ctpwarranty.ca and premium2000.ca> be transferred to the Complainant.

The complaint filed by the Complainant was reviewed by the BCICAC and on July 24, 2020 was found to be in administrative compliance with the Policy and Rules. On July 24, 2020, the Canadian Internet Registration Authority (CIRA) was notified of the proceeding and a lock was applied to the domain name the same day. In accordance with the provisions, and by email dated July 27, 2020, the BCICAC as

dispute resolution service provider, so advised the parties and forwarded by email a copy of the complaint to the Registrant (via his legal counsel) for his response.

On August 18, 2020, the Centre confirmed that the Registrant had not provided its Response by the due date of August 17, 2020.

As permitted under Rule 6.5, the Complainant elected a sole arbitrator to render a decision in this matter. On August 21, 2020, the BCICAC provided the appointment of the herein, sole arbitrator. This arbitrator accepted said appointment on August 22, 2020.

On August 24, 2020, counsel for the Registrant, wrote to the Centre asking this arbitrator for permission to file a late Response. The request was granted by this arbitrator on or about August 24th, 2020, on the proviso that the response was to be filed by end of business day (5 pm eastern time) August 27th, 2020.

The Response from the Registrant was received on or about August 25, 2020, and the Supplementary Reply to Registrant's Answer and Demand for fees was received on or about August 27th, 2020.

The Complaint and Responses were filed in English, which shall be the language of the proceeding.

Canadian Presence Requirements

In order for a Registrant to be permitted to apply for registration of, and to hold and maintain the registration of a dot- ca domain name, the Canadian Presence Requirements for Registrants (the Presence Requirements) require that the applicant meet at least one of the criteria listed as establishing a Canadian presence.

Though the Complainant is not the owner of any Canadian trade mark registrations, the corporate complainant is a registered British Columbia corporation. Section 2 of the Canadian Presence Requirements identifies eighteen categories of persons meeting the Canadian Presence Requirement, among which section (d) names: "a corporation under the laws of Canada or any province or territory of Canada". Accordingly, the Presence Requirements are satisfied.

The Position of the Complainant

Canadian Presence

With regard to the Canadian Presence Requirements, the Complainant submits that Canadian Complainant Canadian Truck Protection, ULC, British Columbia Corp. No. BC1145011 ("CTP") is a valid corporation existing under the laws of British Columbia, with an office in Québec City, Québec and doing business throughout Canada since 2017. Accordingly, CTP satisfies Section 2(d) CIRA's *Canadian Presence Requirements for Registrations* in respect of the domains to which this Complaint relates.

Marks on which Complaint is based

The Complainant has submitted (cites) the following information upon which to base their Complaint about the Marks.

Mark	Goods or Services
CTP Warranty	Extended warranties and extended warranty insurance on used commercial trucks
Premium 2000+	Extended warranties and extended warranty insurance on used commercial trucks

Canadian Truck Protection, or CTP, is the corporate brand of the Complainant's warranty company, the direct subsidiary of American Truck Protection, LLC / *atpwarranty.com*, and indirect subsidiary of National Truck Protection Co., Inc. / *ntpwarranty.com* ("NTP"). NTP is the leading provider of extended warranties on used commercial trucks in the United States. Like its US parent, CTP Warranty issues warranties (or alternatively, vehicle warranty insurance products, in the provinces that so classify them) under the brand names "Premium 2000+" and "National Truck Protection." Premium 2000+ is CTP's predominant warranty brand in Canada, *premium2000.com*. A copy of CTP's insurance licence in Saskatchewan, reflecting both Marks, was attached to the Complaint. Both Marks are also pending registration as trademarks in Canada (Files 1948690, 2041797), and the current Mark is also a registered trademark in the United States (Reg. No. 5750440).

Complainant's submissions about the historical overview of the dispute

Premium 2000+ has been a leading brand in the used commercial truck warranty business in the United States since its founding by former owner Gateway Management, LTD ("Gateway") in 1995, and in Canada since 2010. French and English language Premium 2000+ warranty contracts have been sold in Canada in 2014 and 2016, respectively, copies of which are attached to the Complaint.

NTP formed CTP on December 13, 2017 in anticipation of its January 16, 2018 acquisition of the Premium 2000+ business from Gateway. On January 16, 2016, NTP acquired all of Gateway's Premium 2000+ business in the United States, and CTP acquired all of its Premium 2000+ business in Canada, including the Mark "Premium 2000+." CTP has exclusively operated both the Premium 2000+ and National Truck Protection brands in Canada ever since.

Registrant Paul Donofrio and his company, 11501534 Canada Limited o/a My Trucks Advisor ("MTA"), served as one of two regional sales directors for CTP from January 18, 2019 through April 1, 2020 inclusive. Without authorization from CTP, the Registrant registered *premium2000.ca* on January 6, 2020 and *ctpwarranty.ca* on March 12, 2020, approximately three weeks before his April 1, 2020 departure from the company. Four months later, on July 14, 2020, CTP learned of the Disputed Domains, with *ctpwarranty.ca* then displaying only a stock "starter" web site with stock photos and "lorem ipsum" filler text for use by a generic company (and no actual information filled in except the Registrant's phone number), and *premium2000.ca* directing to Registrant and MTA's "My Trucks Advisor" site. CTP contacted the Registrant on July 15, 2020 about the possibility of transferring back the domains for a reasonable fee of \$500, which should have well exceeded any reasonable costs the Registrant might have incurred in obtaining and registering the Disputed Domains. Instead, the Registrant asserted that he, not CTP, was the legitimate owner of both names, along with two other domains he had not registered himself (both *canadiantruckprotection.ca* and *canadiantruckprotection.com* belong to the Complainant), and demanded \$5,500.00 per domain and an additional \$15,500.00 for his putative "business" that purportedly owned them.

CTP declined the Registrant's request for \$11,000.00 for two domains based on its own brands, reiterated its offer for \$500.00, and advised the Registrar of its intent to arbitrate the domain names if this request was not honored. The Registrant responded and redirected both Disputed Domains to CTP's principal competitor, Truckmaster Warranty. Screen shots of the redirected ctpwarranty.ca and premium2000.ca web sites are attached with the Complaint. On Wednesday, July 22, 2020, at the request of Truckmaster Warranty, the Registrant ceased redirecting the domains to Truckmaster's web site. As of the date of the Complaint (July 24, 2020), Premium2000.ca once again redirects to MTA's site while ctpwarranty.ca no longer directs to anything at all.

Registrant's Domains Are Confusingly Similar to Complainant's

In support of its argument regarding Similarly Confusing Domain names, the Complainant submits as follows.

1. CTPWarranty.ca is Confusingly Similar to CTP Warranty.

Since its incorporation in 2017, CTP has been the leading issuer of extended warranty service contracts on used trucks in Canada. Its principal competitors are Trunorth Warranty and Truckmaster. No known competitors have or use names sounding anything like "Canadian Truck Protection," "CTP" or "CTP Warranty," all of which are unique to CTP. The most similar names in the market, "NTP Warranty" and "ATP Warranty," are used solely by CTP itself or its affiliates, National Truck Protection Co., Inc. and American Truck Protection, LLC. Upon information and belief, no other company sells warranty or service contracts of any kind, certainly not in the used commercial truck warranty space, under a name similar to "Canadian Truck Protection" or "CTP" anywhere in Canada. The sole connection of the name "CTP Warranty" is to CTP's warranty business itself. The Registrant is not in the warranty business, except formerly as a sales representative of CTP and now currently, upon information and belief, as a sales representative of its direct competitor, Truckmaster. Neither has any legitimate, non-infringing use for the name "CTP Warranty." Consumers are likely to expect ctpwarranty.ca to direct to a Canadian division or affiliate of ntpwarranty.com or atpwarranty.com, i.e., to CTP Warranty itself. The possibility that "careful research by the customer "could later remedy confusion does not mean that no confusion ever existed or that it would not continue to exist in the minds of consumers who did not carry out that research." *Masterpiece c. Alavida Lifestyles*, 2011 SCC 27, 390.

2. Premium2000.ca is confusingly similar to Premium 2000+.

As noted above, Premium 2000+ has been the leading used truck extended warranty brand in Canada since at least 2014, originally through Gateway and now through CTP. Upon information and belief, no other company except Gateway through 2017, or CTP itself from 2018, has sold any warranty or service contracts of any kind under a name similar to "Premium 2000" or challenged registration of its trademark "Premium 2000+" which is pending in Canada. Consumers are likely to expect *premium2000.ca* to direct to a Canadian division or affiliate of *premium2000.com*, i.e., to CTP itself, even though subsequent research by the customer may or may not be able to remedy such confusion in certain individual cases. *Masterpiece c. Alavida, supra*.

Registrant has no legitimate interest in the domain names ctpwarranty.ca. and premium2000.ca.

In support of their Complaint regarding Legitimate Interest, the Complainant has submitted as follows.

The Registrant registered the Disputed Domains while working for CTP, but did so without CTP's knowledge or consent, and never used them to promote CTP's products. Now the Registrant works for CTP's competitor, Truckmaster, while maintaining a non-warranty business of his own under MTA. Neither business has any legitimate use for the name "CTP" or "Premium 2000." As noted above, neither Disputed Domain has in fact been used for any legitimate business ends, either; only to periodically redirect to Registrant's MTA site, to Truckmaster's competing warranty site, to uncompleted "starter" site, or nowhere at all. The Registrant's sole apparent purpose for registering the Disputed Domains was to sell back to CTP or its competitor at a profit or, alternatively, to promote that competitor's products for profit.

Registrant registered the domains in bad faith.

In support of their Complaint regarding Bad Faith, the Complainant submits as follows.

As noted above, the Registrant acquired both Disputed Domains shortly before – and likely in anticipation of – his departure from CTP. Neither Disputed Domain was ever used or even attempted to be used under colour of any legitimate purpose. The Registrant never used the domains for any purpose other than to redirect traffic to his own MTA domain, Truckmaster's, or nowhere. When CTP requested the domains for a very reasonable offer of \$500.00, the Registrant responded by implausibly claiming to be the legitimate owner himself of both domains and of two others owned by CTP, and by demanding an unreasonable sum of at least \$11,000 for the two domains in question. This indicates that the Registrant registered the marks primarily "for the purpose of selling, renting, licensing or otherwise transferring the Registration[s] to the complainant ... for valuable consideration in excess of the Registrant's actual costs in registering the domain name, or acquiring the Registration[s]." Rule 3.5(a). When CTP declined the Registrant's request for \$11,000 for the domains, the Registrant, who now works for Truckmaster, redirected both domains to Truckmaster, which now used them to disrupt the business of the Complainant. Rule 3.5(c). In so doing, currently using both domains to attract, for commercial gain, Internet users to the Registrant's website by creating a likelihood of confusion with the Complainant's Mark(s) as to the source, sponsorship, affiliation or endorsement of the Registrant's website or location." Rule 3.5(d). This evidences three separate examples of bad faith pursuant to Rule 3.5, and no evidence of any good faith use of the Marks by the Registrant.

Summary

In short, the Complainant submits that the disputed domain names are:

- 1) Confusingly similar
- 2) Registrant has no right or legitimate interest in the domain names, and
- 3) The domain names were registered and used in bad faith.

Remedy Sought

The Complainant respectfully requests that this Complaint be submitted for decision in accordance with the CIRA *Domain Name Dispute Resolution Policy* and the CIRA *Domain Name Dispute Resolution Rules*, and that ownership of both Disputed Domains be transferred

from the Registrant to the Complainant.

The Position of the Registrant

In support of their position regarding Canadian Presence, Legitimate interest and Bad Faith the Registrant has submitted the following.

Canadian Presence Requirements:

In order to succeed against a domain Registrant, the Complainant must meet the three-part test:

- a) The Registrant's domain name is confusingly similar to a trademark in which the Complainant had rights in Canada prior to the domain name being registered.
- b) The Registrant has no legitimate interest in the domain name registration; and
- c) The Registrant has registered the domain name in bad faith.

A. ctpwarranty.ca

With respect to the domain **ctpwarranty.ca** Complainant has no rights in Canada or anywhere else in or to any trademark that is confusingly similar to **ctpwarranty.ca** and has provided no evidence to the contrary. There is nothing in any of the exhibits that would lead to a legal conclusion or even inference that the Complainant has rights in the mark **ctpwarranty**. No trademark registrations, no demonstrated use.

A google search for "ctpwarranty" or "ctp warranty", results in ads and sites for: "Costex Tractor Parts", All CTP laser printers, Content Theft Protection, Courtesy Transportation Program, CTP Automotive Distributors, but no results at all connected to the Complainant. Some of these companies are in the same or similar industries to the Complainant, further undercutting any claim by the Complainant to trademark rights in the "ctpwarranty" Complainant does not gain any rights in or to the mark ctpwarranty by virtue of Complainant defining itself as "CTP" in the Complaint.

Any claim of common law trademark rights by the Complainant in the mark **ctpwarranty** is without any legal or evidentiary foundation and not based on use, reputation or recognition in Canada.

The Complainant fails to establish on the balance of probabilities that the Domain Name is Confusingly Similar to a Mark in which the Complainant had Rights prior to the date of registration of the Domain Name

Registration by the Registrant:

On June 6, 2019, the Registrant registered the business name Canadian Truck Protection in Ontario. The Registrant registered the domain **ctpwarranty.ca** on March 12, 2020.

No evidence has been provided demonstrating use of the mark in Canada by the Complainant prior to registration by the Registrant.

Rights in the Trademark

The Complainant had no rights in Canada in the mark **ctpwarranty** prior to the registration of the domain name **ctpwarranty.ca** by Registrant.

No Bad Faith by Registrant

There is no evidence of bad faith registration by Registrant. The fact that the Complainant offered to buy the domain is not evidence of bad faith by the Registrant. The fact that Complainant used the phrase "transfer back" in referring to the domain name is entirely misleading and has no basis in the fact situation as Complainant never owned the domain. Registrant asking for an unreasonable sum to sell the domain to Complainant is similarly not evidence of bad faith registration. Registrant is in the truck warranty business and has a business name registration similar to the domain name.

As the Complainant fails to meet any of the 3 mandatory Canadian Presence Requirements, Complainant's complaint regarding the domain name **ctpwarranty.ca** should be dismissed.

Costs – it is argued that the Complainant has no colour of right and no reasonable expectation of successfully challenging Registrant's registration of the domain name **ctpwarranty.ca**, and therefore should be responsible for Registrant's costs in the amount of \$2,000.

B. premium2000.ca

1. There is little doubt that the U.S. entity National Truck Protection Co., Inc. ("U.S. Entity") has rights in and to the mark **premium 2000+** which is confusingly similar to the domain name **premium2000.ca**. The Complainant has provided ample evidence of the same.

The question is, does the Complainant have any such rights in or to the mark **premium2000+** in Canada?

As the onus is on the Complainant to prove on a balance of probabilities that the domain name is confusingly similar to Complainant's trademark, the Complainant must demonstrate that it has rights in the trademark.

It is argued that the Complainant company Canadian Truck Protection, ULC, British Columbia Corp. No. BC1145011 with an office in Québec City, Québec does not, as it is a sham company with no office or presence in Canada, no employees, no Canadian contact person or information, and no evidence of any connection whatsoever with the mark in any form or media either in Complainant Exhibits or online.

It is argued that incorporation by the U.S. entity of a Canadian subsidiary alone does not establish Canadian presence and does not establish rights in and to the mark **premium2000+** by the Complainant. Complainant has not presented any evidence of use of the mark by the Complainant, or transfer or license of the mark by the U.S. Entity to the Complainant.

Nothing has been presented by the Complainant in the Exhibits and there is no evidence whatsoever that the Complainant has ever used the mark or has any rights in the mark.

Nothing in the Complainant's Exhibits demonstrates any connection between the Complainant and the mark, in fact neither the Complainant Company name, nor address appears in any of the Exhibits in which the mark appears. Nothing in the Exhibits links the Canadian entity with marks that the Domain names are confusingly similar to. Premium2000+ is not a mark that the Canadian ULC has any demonstrable rights in.

The contracts and invoices attached as Exhibits by the Complainant contain: U.S information, U.S dollars, State and Zipcode (rather than province and postal code), U.S. phone numbers and contacts, U.S. dispute resolution clauses, no HST or GST information or charges.

Name of contact person is U.S based lawyer Jeffrey W. Bishop Telephone: (336) 354-1261 Fax: (336) 245-1425.

The Warranty forms in the Complaint advise customers to COMPLETE AND SUBMIT TO PREMIUM 2000+™ Via Fax: (336) 759-3353 or Email: Inspections@premium2000.com MUST BE APPROVED IN WRITING BY PREMIUM 2000+™ PRIOR TO WARRANTY SALE (note U.S. phone number)

The Address contained in Complainants Exhibits is: 7990 North Point Blvd.Suite 108
Winston-Salem, NC 27106 or:
190 Charlois Blvd,
Suite 200B Winston-Saiem NC
27103

Additionally there is no evidence online connecting the mark and the Complainant.

A google search for "Premium 2000 Canada" only links back to the U.S. entity.

Jeff Bishop, U.S. based counsel for the U.S. Entity was the party negotiating with the Registrant regarding the domains and apparently (by virtue of Mr. Bishop's email markings) always on behalf of the U.S. Entity and never stated otherwise.

Mr. Bishop's listed telephone number has a Winston-Salem (366) area code. Mr. Bishop's emails (attached to Complaint) always included the U.S. National Truck Protection Logo never the Canadian truck Protection ULC No mention or address anywhere for Canadian Truck Protection ULC. No mention of representing the Complainant.

By virtue of the foregoing, the Complainant fails to discharge the onus of proving the Complainant has any rights in the mark. The Complaint should be dismissed on that basis.

Registration by the Registrant:

In early January, 2020, the Registrant registered the business name Premium 2000 in Ontario and registered the Domain name premium2000.ca.

No evidence has been provided demonstrating use of the mark in Canada by the Complainant prior to registration by the Registrant.

Rights in the Trademark

The Complainant had no rights in Canada in the mark premium2000+ prior to the registration of the domain name premium2000.ca by Registrant.

No Bad Faith by Registrant

There is no evidence of bad faith registration by Registrant. The fact that the Complainant offered to buy the domain premium2000.ca is not evidence of bad faith registration by the Registrant. The fact that Complainant used the phrase "transfer back" in referring to the domain name is entirely misleading and has no basis in the fact situation as Complainant never owned the domain. Registrant asking for an unreasonable sum to sell the domain to Complainant is similarly not evidence of bad faith registration. Registrant is in the truck warranty business and has a business name registration similar to the domain name.

As the Complainant fails to meet any of the 3 mandatory Canadian Presence Requirements, Complainant's complaint regarding the domain name premium2000.ca should be dismissed.

Costs – it is argued that the Complainant has no colour of right and no reasonable expectation of successfully challenging Registrant's registration of the domain name ctpwarranty.ca and therefore should be responsible for Registrant's costs in the amount of \$2,000.

1. Confusingly Similar

The first test is whether the Disputed Domain Names are confusingly similar to Complainant's domain name.

The evidence before us shows that in Canada, the Complainant has been using the marks corporately for business since 2014.

In order to address the issue of confusion with the standard legal test prevailing in Canada, one can find that in determining whether or not there exists a reasonable likelihood of confusion between the trademarks at issue, the Registrant must have regard to all the surrounding circumstances, including non-exhaustively, those specifically enumerated in Subsection 6 (5) of the Canadian Trademarks Act.

- a) inherent distinctiveness of the trademarks, and the extent to which they have become known;
- b) length of time the trademarks have been in use;
- c) nature of wares, services or business;
- d) nature of the trade; and
- e) degree of resemblance between the trademarks in appearance or sound in the ideas suggested by them.

A generally accepted principle when applying the test of confusion is looking at the trademarks from the point of the unwary consumer – comparing similarities as opposed to differences. Can the consumer be

easily misled by error or otherwise – and perhaps not even know? Could this also impact not only on the consumer, but also on other potential commercial relationships being sought with the Complainant?

This Arbitrator concludes on this issue that the Complainant has met the onus of demonstrating that the disputed domain name is “confusingly similar” – as also supported in part by the “tests” applied by Subsection 6 (5) of the Canadian Trademarks Act (“a” to “e” above).

2. Legitimate Interest

A sufficient and initial proof brought on by the Complainant and pertaining to the Registrant’s lack of legitimate interest forces the Registrant to rebut, explain, or otherwise plead this issue, for which the Registrant has not done so. Failing to do so permits the Arbitrator to make a negative inference.

As described above, the Complainant must provide “some evidence” that the Registrant has no legitimate interest in the domain name(s), as described in Policy paragraph 4.1(c). If the Complainant satisfies this evidentiary burden, the onus shifts to the Registrant to prove on a balance of probabilities that the Registrant has a legitimate interest in the challenged domain name, for which again the Registrant has not done so.

Policy paragraph 3.4 sets forth an exhaustive list of criteria for determining whether a registrant has a legitimate interest in a domain name. It provides as follows:

- The Registrant has a legitimate interest in a domain name if, and only if, before the receipt by the Registrant of notice from or on behalf of the Complainant that a complaint was submitted.*
- (a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant has Rights in the Mark;*
 - (b) the Registrant used 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 used 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 of 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.*

In paragraphs 3.4(b), (c), and (d) “use” by the Registrant includes, but is not limited to, use to identify a web site.

The legitimate interest criteria set forth in Policy paragraphs 3.4 (a), (b), (c), and (d) are satisfied only if the Registrant’s use was in “good faith”, a term which is not defined by the Policy. This Arbitrator notes

that "good faith" as used in Policy paragraph 3.4 is not necessarily the opposite of "Bad Faith" as defined in Policy paragraph 3.5.

This Arbitrator has reviewed submissions by both the Complainant and the Registrant and finds that the Complainant has provided very adequate support for having a Legitimate Interest in both Domain Names in dispute.

3. Registration in Bad Faith

The following facts lead this Arbitrator to conclude that the disputed domain names were registered in bad faith:

- 1) The Registrant has himself registered these confusingly similar names.
- 2) The Registrant registered those names whilst still employed for the Complainant.
- 3) The Registrant's business activities since the termination of his employment with the Complainant are in direct competition with the Complainant's activities (including past name branding) and the disputed websites, adding to potential confusion with both buyers of the warranties sold by the Complainant and the dealers offering same to their potential clients.
- 4) The Registrant seemed to be willing to dispense with the Domain Names in dispute for significant financial gain, rather than for slightly more than the apparent liquidated costs associated with those registrations.
- 5) Where the Registrant would seemingly have some justification for the registrations, the Registrant has put forward no evidence from a corporate or other prior and historical perspective to support that the Registrations belong to the Registrant, and thereby only denying that the Complainant has no rights in them.
- 6) The Registrant has in his Response admitted that "there is little doubt" that Complainant or its parent NTP-US, has rights in the mark Premium 2000+ or even that the **premium2000.ca** domain name is confusingly similar to it, yet maintains that only NTP-US, not the Complainant (which NTP indirectly owns), has any rights to enforce in the mark in Canada.

Balance of Probabilities

Even if a complainant has met the burdens of proof contained in Paragraph 4.1, a complaint will be dismissed if the registrant is able to prove on a balance of probabilities that the registrant has a legitimate interest in the disputed domain name. Again, such "legitimate interest" must meet one or more of the six tests set out in Paragraph 3.4.

This balance of probabilities test in Paragraph 4.2 of the Policy deals with the situation where even though a complainant has satisfied all of the burdens of proof contained in Paragraph 4.1, an Arbitrator believes that justice requires the Registrant to succeed. In finding against a Registrant, the Arbitrator is depriving that Registrant of a property interest. Such a decision should not be, and is not taken lightly. Therefore, even if an Arbitrator finds that a complainant has satisfied the rather heavy burdens of proof placed on it by Paragraph 4.1, if the Arbitrator is satisfied that on a balance of probabilities the registrant has a legitimate interest in the disputed domain name(s), the Arbitrator must find for the registrant and dismiss the complaint. The Registrant has not sufficiently refuted the allegations made by the Complainant.

In the case at hand, this Arbitrator is satisfied that on a balance of probabilities, based upon the evidence before him, the Registrant has no legitimate interest in the Disputed Domain names.

Decision and Order

I find that the Complainant has succeeded in this proceeding, initiated under the Policy.

I therefore direct that the registrations of <ctpwarranty.ca and premium2000.ca> be transferred to the Complainant: Canadian Truck P, ULC o/a Premium2000+.

Since the Registrant has not succeeded, no costs are due by the Complainant to the Registrant.

Dated this 7th day of September, 2020.



Claude Freeman, LL.M., C.Med., C.Arb.