



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE
DOMAIN NAME DISPUTE
ADMINISTRATIVE PANEL
DECISION

CIIDRC case number:	15576-CDRP	Decision date: July 14, 2021
Domain Name:	fpl.ca	
Panel:	Douglas M. Isenberg (Chair) Tina Cicchetti Gerald Levine	
Complainant:	Forest Protection Limited	
Complainant's representative:	Steven Hansen	
Registrant:	1687734 Ontario Inc.	
Registrant's representative	Zak Muscovitch	

1. PROCEDURAL HISTORY

The procedural history of this case was set out in a letter from the Canadian International Internet Dispute Resolution Centre to the Panel:

- a. On June 1, 2021, Mr. Hansen filed a Complaint on behalf of Forest Protection Limited, the Complainant, pursuant to the Policy and Resolution Rules.
- b. CIRA was notified of this proceeding on June 2, 2021, and, on the same date, CIRA transmitted its verification response confirming Registrant's identity. CIRA also confirmed that the disputed domain name was placed on a Registrar LOCK.
- c. On June 8, 2021, CIIDRC confirmed compliance of the Complaint with CIRA's requirements under Resolution Rule 3.2, and commencement of the dispute resolution process.

Domain Name: fpl.ca
15576-CDRP

- d. Pursuant to Resolution Rule 4.4, CIIDRC notified the Registrant of this administrative proceeding and forwarded the Complaint to the Registrant on June 8, 2021. The Complaint with the attachments was filed via email; CIIDRC delivered the Complaint to the Registrant by email and express post.
- e. Counsel for the Registrant, Zak Muscovitch, filed the Registrant's Response, in compliance with the Policy and Resolution Rules, on June 28, 2021.
- f. The Complaint and the Response were filed in English, which shall be the language of the proceeding.
- g. CIIDRC appointed Douglas M. Isenberg (chair), Tina Cicchetti, and Gerald Levine as panelists on June 30, 2021.

The domain name <fpl.ca> (the "Disputed Domain Name") was registered on December 8, 2005.

This matter is conducted pursuant to the Canadian Dispute Resolution Policy (the CDRP) and the Canadian Dispute Resolution Rules (the Resolution Rules) of the Canadian Internet Registry Authority.

2. FACTS ALLEGED BY THE PARTIES

Complainant states that it was incorporated in 1952 and has a mandate "to protect forests with services such as fire management, pest management and aerial surveys"; that "primary role of Forest Protection Limited's fleet is to provide quick initial response to wildfires"; that it employs between 40 and 100 staff depending on the season; and that it is a private company owned by a group of New Brunswick Forest Stakeholders.

Complainant further states that it is the owner of Canadian Trademark Reg. No. TMA759642 for the mark FPL (the "FPL Trademark"), which claims a first use date in Canada of September 6, 1952, a filing date of October 21, 2008, and a registration date of February 16, 2010.

Registrant states that it "is a corporation incorporated pursuant to the laws of the Province of Ontario and was incorporated on April 26, 2006"; that it "is the successor corporation to Artbravo Incorporated..., an Ontario corporation incorporated on January 13, 2000, of which Carmine Lofaro was also the sole officer, director and shareholder"; that "Carmine Lofaro on behalf of ArtBravo Incorporated, registered the domain name, FPL.ca... on or about December 8, 2005"; that "Carmine Lofaro voluntarily dissolved ArtBravo Incorporated... as part of a restructuring to facilitate the sale of real estate then owned by ArtBravo Incorporated and transferred all domain names owned by ArtBravo Incorporated, including the [Disputed] Domain Name, to the Registrant"; that "[t]he Registrant purchased the Domain Name on December 8, 2005 – over 15 years ago – because it corresponded to a short, three-letter potential acronym that the Respondent intended to use for its own website or for eventual resale as an investment"; that "Mr. Lofaro, through his aforementioned corporations, invests in generic, descriptive, and acronym domain names on a part-time basis in addition to his full-time employment"; and that "[t]he [D]isputed Domain Name forms part of his company's stock-in-trade of such generic, descriptive, and acronym domain names."

Registrant further states, and provides a declaration in support thereof, that “at no time prior to the aforesaid registration date of December 8, 2005, had he ever heard of the Complainant or its alleged Mark” and “that the first time that he heard of the Complainant was when he received the CDRP Complaint.” Registrant also states that “[i]n the intervening years subsequent to the Registration, the Respondent parked the Domain Name and it was automatically populated with automatically generated links, none of which to the Respondent’s knowledge ever infringed any trademark rights of the Complainant.”

3. CONTENTIONS OF THE PARTIES

- **Complainant**

Complainant contends that the Disputed Domain Name is confusingly similar to a trademark or service mark in which it has rights, citing its ownership of Canadian Trademark Reg. No. TMA759642.

Complainant contends that Registrant has no legitimate interests in the Disputed Domain Name because “FPL.ca is currently a placeholder/generic webpage advertising that ‘FPL.ca may be for sale.’”

Complainant contends that the Disputed Domain Name has been registered in bad faith for the following reasons: “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.... Forest Protection Limited has tried to reach the current registrant by phone at [redacted] and via the website form currently listed at fpl.ca. To date, Forest Protection Limited has not received a response. The Registrant registered the domain name or acquired the Registration in order to prevent the Complainant, or the Complainant’s licensor or licensee of the Mark, from registering the Mark as a domain name, provided that the Registrant, alone or in concert with one or more additional persons 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.”

- **Registrant**

Registrant contends that “[t]he fact that the Complainant’s 2010 trademark registration cites 1952 as a date of first use does not prove that it was in fact so used since such claims of first use do not undergo any examination by CIPO”; that “numerous parties throughout Canada and the world... all share FPL in business,” which means “there is no evidentiary basis whatsoever to conclude that the Complainant was the primary or predominant user of the acronym at the time of registration of the [Disputed] Domain Name” and “[t]he WIPO Global Brand Database shows nearly 150 FPL-formative trademarks, for companies all over the world for all manner of goods and services that have nothing whatsoever to do with the Complainant”; “[a] trademark

registered after the Domain Name does not count under the CDRP pursuant to Paragraph 3.1(a)” and “the claimed date of first use in the trademark registration itself doesn’t count either absent corroborating evidence.”

Registrant contends that “[n]o allegation of infringement of the Complainant’s alleged mark has been made”; “the Complainant admits that it is a ‘placeholder/generic webpage’ and seems to complain that the Registrant’s use or non-use of the Domain Name and its general offer of possible sale, is somehow illegitimate, without providing any additional evidence or argumentation”; “[c]ontrary to the Complainant’s apparent complaint however, registering and speculating in certain domain names is entirely permissible under the Policy”; and “[t]he trade in generic, descriptive, and otherwise non-infringing domain names is a perfectly lawful and legitimate business.”

Registrant contends that it did not receive any inquiries about the Disputed Domain Name from Complainant before the Complaint was filed; “[t]he Complainant appears to be a highly localized business in a niche industry that is located nearly 1,500 kilometers away in a different and distance province, in a rural area”; “[t]here is no reason for the Respondent to have ever heard of the Complainant or its marks”; “[t]he evidence of the Registrant’s contemporaneous registrations of comparable domain names and its acquisition, development, and trademarking of NPL.ca/NPL demonstrate that it is far more likely that the Respondent registered the Domain Name simply because it was an inherently valuable and attractive domain name, than to target the unknown Complainant and its then non-existent trademark”; and “[t]here is no basis to give the Complainant a monopoly over a common acronym nor is there any basis to conclude that the Complainant’s alleged Mark was targeted in any way.”

- **Remedy Sought**

The Complainant requests the Domain Name be transferred to it.

4. DISCUSSION AND FINDINGS

4.1 Eligibility

The Complainant is an eligible complainant under paragraph 1.4 of the CDRP because it was incorporated under the laws of the Province of New Brunswick, Canada, and this dispute relates to a trademark registered in the Canadian Intellectual Property Office.

4.2 Requirements

In accordance with Paragraph 3.1 of the CDRP, the onus is on the Complainant to prove:

- That the Domain Name is Confusingly Similar to a trademark or service mark in which the Complainant has rights;

- That the Registrant has no legitimate interests in the Domain Name; and
- That the Domain Name has been registered in bad faith.

The Panel will consider each of these requirements in turn.

4.3 Analysis

4.3.1 That the Domain Name is Confusingly Similar to a Mark in which the Complainant has Rights

Paragraph 4.1(a) of the CDRP requires a complainant to prove “on a balance of probabilities” that “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.” In this case, the only trademark rights for which Complainant has provided any evidence is Canadian Trademark Reg. No. TMA759642, which, as stated above, claims a first use date in Canada of September 6, 1952, a filing date of October 21, 2008, and a registration date of February 16, 2010. Importantly, the Disputed Domain Name was registered on December 8, 2005 – prior to the date on which Complainant’s application for the FPL Trademark was filed or registered. Although the trademark registration claims a first use date that precedes registration of the domain name, Complainant has provided no evidence of such usage and, therefore, it is unclear from the record in this proceeding whether Complainant actually “had Rights prior to the date of registration of the domain name.” Without such evidence, the Panel cannot conclude that Complainant has satisfied its burden of proof on this element of the CDRP.

4.3.2 That the Registrant has No Legitimate Interest in the Domain Name

Paragraph 4.1(b) of the CDRP requires a complainant to prove “on a balance of probabilities” that “the Registrant has registered the domain name in bad faith as described in paragraph 3.5.” Complainant specifically cites language that appears in subsections 3.5(a) and 3.5(b) of the CDRP, namely, that (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; and (b) “the Registrant registered the domain name or acquired the Registration in order to prevent the Complainant, or the Complainant’s licensor or licensee of the Mark, from registering the Mark as a domain name, provided that the Registrant, alone or in concert with one or more additional persons 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.”

However, with respect to subsection 3.5(a), Complainant has provided no evidence, other than a parking page stating that the Disputed Domain Name “may be for sale,” regarding Registrant’s purpose in registering the Disputed Domain Name, Registrant’s interest in transferring the Disputed Domain Name to anyone in particular, or Registrant’s asking price for the Disputed Domain Name. On the contrary, Registrant has provided a plausible explanation for registration of the Disputed Domain Name and has denied any knowledge of Complainant or the FPL Trademark prior to its receipt of the Complaint.

Registrant’s denial is also relevant to subsection 3.5(b). Further, Complainant has failed to provide any evidence that 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.”

Therefore, on a balance of probabilities, Complainant has failed to establish that Registrant registered the Disputed Domain Name in bad faith.

4.3.3 That the Registrant has Registered the Domain Name in Bad Faith

Paragraph 4.1(c) of the CDRP requires a complainant to “provide some evidence” that “the Registrant has no legitimate interest in the domain name as described in paragraph 3.4.” Here, however, Complainant has provided no evidence other than a screenshot of the website associated with the Disputed Domain Name, which contains what appears to be a monetized parking page along with a statement that the Disputed Domain Name “may be for sale.” The links on the page appear to be unrelated to Complainant or the FPL Trademark. Accordingly, this screenshot is irrelevant and effectively constitutes no evidence on the issue of legitimate interests, which means that Complainant has failed to meet its burden under paragraph 4.1(c) of the CDRP.

5 DECISION and ORDER

For the above reasons, in accordance with Paragraph 4 of the CDRP, Paragraph 12 of the Resolution Rules, the Panel orders that the Disputed Domain Name shall remain with Registrant.

Made as of July 14, 2021

SIGNATURE OF PANEL

Douglas M. Isenberg (Chair)

Tina Cicchetti

Gerald Levine