

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

Dispute Number: DCA-1693-CIRA
Domain Name: <zevia.ca>
Complainant: Zevia LLC
Registrant: Cook Creative.
Registrar: Go Daddy Domains Canada, Inc
Panel: Elizabeth Cuddihy, Q.C., ICA, Claude Freeman LL.M. (ADR), C.Med., C.Arb. and
The Honourable Neil Anthony Brown QC (Chair)
Service Provider: British Columbia International Commercial Arbitration Centre

DECISION

THE PARTIES

1. The Complainant in this proceeding is Zevia LLC, 10200 Culver Blvd., Culver City CA 90232, United States of America (“The Complainant”).
2. The Registrant is Cook Creative, 10-2488 160th Street, PO Box 38065, Morgan Heights, Surrey, British Columbia, V35 6RS (“the Registrant”).

THE DOMAIN NAME AND REGISTRAR

3. The Domain Name in issue in this proceeding is <zevia.ca> (“the disputed domain name”).
4. The Registrar is Go Daddy Domains Canada, Inc. The disputed domain name was registered by or on behalf of the Registrant on September 8, 2008.

PROCEDURAL HISTORY

5. The British Columbia International Commercial Arbitration Centre (“BCICAC”) is a recognized service provider to the CIRA Domain Name Dispute Resolution Policy (“the Policy”) of the Canadian Internet Registration Authority (“CIRA”).
6. According to the information provided by the BCICAC:
 - (a) The Complainant filed a Complaint with respect to the disputed domain name in accordance with the Policy on June 24, 2015.
 - (b) The Complaint was reviewed and found to be compliant. By letter and email dated June 25, 2015, the BCICAC as service Provider confirmed compliance of the Complaint and commencement of the dispute resolution process on that date.

(c) The Complaint together with the schedules thereto was sent by BCICAC as service provider to the Registrant electronically by email on June 25, 2015 and delivered on that date; a successful mail delivery report was subsequently furnished, enabling the Panel to conclude that the Complaint and its schedules were duly delivered to the Registrant. By the same communication the Registrant was informed that it could file a Response in the proceeding on or before July 15, 2015

(d) The Registrant did not reply to that communication and did not provide a Response.

(e) Under Rule 6.5 of CIRA Domain Name Dispute Resolution Rules (“the Rules”) the Complainant was entitled to elect to convert from a panel of three to a single arbitrator which it declined to do, whereupon BCICAC proceeded to appoint a three-person panel.

(f) On July 27, 2015, BCICAC named Elizabeth Cuddihy, Q.C., ICA, Claude Freeman LL.M. (ADR), C.Med., C.Arb. and The Honourable Neil Anthony Brown QC (Chair) as the Panel. Each member of the Panel has signed an Acceptance of Appointment as Arbitrator and Statement of Independence and Impartiality.

(g) The Panel has reviewed all of the material submitted by the Complainant and is satisfied that the Complainant is an eligible Complainant under the Policy and the Rules.

(h) In accordance with Rule 5.8, where, as here, no Response is submitted, the Panel shall decide the Proceeding on the basis of the Complaint.

FACTS

7. The facts set out below are taken from the Complaint.

8. The Complainant is a United States company incorporated in California. Under the name Zevia, it produces and markets beverages containing no sugar or artificial sweeteners and it has done so since 2007. It has been very successful, has expanded its business from the United States into Canada and, since 2007, it has also sold its products online through its website.

9. It operates under its ZEVIA trademark which was registered in the United States on October 23, 2007. Its business expanded into Canada and it lodged an application with the Canadian Intellectual Property Office to register the ZEVIA trademark in Canada on June 16, 2008. It will be recalled that, three months later, the disputed domain name was registered, on September 8, 2008. However, the Canadian application did not result in the trademark being registered until 24 September 24, 2010.

10. Without the permission of the Complainant, the Registrant registered the Disputed Domain Name on September 8, 2008. It is alleged that being aware of the Complainant’s global expansion, the Registrant registered the disputed domain name in the Canadian extension “.ca” to prevent the Complainant from reflecting its trademark in that extension the same way that it had registered other infringing domain names in various extensions to take improper advantage of other parties’ trademarks.

11. The disputed domain name is currently inactive, but it is alleged that if it were ever to be used for a website, it would confuse internet users in view of the fact that it is identical to the

Complainant's ZEVIA trademark and users would wrongly assume the website was endorsed by the Complainant.

CONTENTIONS OF THE PARTIES

A.COMPLAINANT

12. The Complainant submits as follows:

1. CANADIAN PRESENCE REQUIREMENTS

Article 2 of CIRA's Canadian Presence Requirement for Registrants provides a list of conditions allowing entities to hold the registration of a .CA domain name. The Complainant submits that it falls within condition (q) which provides that:

"A Person which does not meet any of the foregoing conditions [conditions (a) to (p)], but which is the owner of a trade-mark which is the subject of a registration under the Trade-marks Act (Canada)R.S.C. 1985, c.T-13 as amended from time to time, but in this case such permission is limited to an application to register a .ca domain name consisting of or including the exact word component of that registered trade-mark".

The Complainant is the owner of the Canadian trade mark registration No. TMA778107 in the term ZEVIA registered in the Canadian Intellectual Property Office ("CIPO"). The Complainant has adduced evidence to that effect (See Annex 1 to the Complaint.).The Complainant therefore submits that it satisfies CIRA's Canadian Presence Requirement for Registrants in respect of the Domain Name.

2. THE REGISTRAR

The Registrar of record in respect of the disputed Domain Name registration is Go Daddy Domains Canada, Inc. The Complainant has adduced evidence to that effect (see Annex 2 to the Complaint for a copy of the Registry's WHOIS for the Domain Name).

3. THE COMPLAINANT'S RELEVANT TRADEMARK RIGHTS

The Complainant has secured ownership of several trademark registrations for ZEVIA including Canadian trade mark No. TMA778107, registered on 24 September 2010 for the following goods: "Dietary supplements, namely herbal beverages and soft drink beverages; Soft drinks". A copy of this trademark registration is attached at Annex 1 to the Complaint.

4. THE GROUNDS ON WHICH THE COMPLAINT IS MADE

(a) The Complainant

The Complainant is an American company incorporated in California, United States. It produces zero calorie beverages with no sugar or artificial sweeteners, but only natural sweeteners.

Since it was founded the Complainant has constantly grown. At the end of 2008, at a time when the company had increased its revenue to almost one million dollars, the marketing consultant AC Nielsen stated that ZEVIA was the highest growing product in the United States in terms of sales (see Annex 3 to the Complaint).

The Complainant, seeing that its business was expanding quickly, added an online store

feature to its website at www.zevia.com as early as October 2007 (see Annex 4 to the Complaint). Reflecting its online presence, the Complainant has owned, since 2006 and to date, a number of domain names consisting of the term ZEVIA in various extensions. (See Annex 5 to the Complaint). The Complainant's website at www.zevia.com includes a section specifically dedicated to Canada, identified with a Canadian flag.

The term ZEVIA is exclusively associated with the Complainant.

(b) The Registrant.

The WHOIS record for the disputed domain name does not disclose the identity of the Registrant. The Complainant attempted to contact the Registrant via CIRA's online platform allowing users to contact the Registrant's administrative contact but did not receive a reply. The Complainant therefore made a request to CIRA to obtain the Registrant's contact details. CIRA revealed that the Registrant's contact details were as follows:
Name of Registrant: Cook Creative Postal Address of Registrant: 10 – 2488 160th Street, PO Box 38065, Morgan Heights, Surrey, British Columbia, V3S 6R3
Email Address of Registrant: pbob450@gmail.com.

The Complainant conducted a preliminary search on the Registrant and found that, in addition to the disputed domain name, the Registrant was also the registered owner of around 1,800 domain names, including a number of domain names that potentially infringe the rights of third parties in the drug or pharmacy industry (see Annex 10 to the Complaint).

On 9 May 2014, the Complainant's lawyers sent a letter by registered mail and by email to the Registrant, requesting it to cease and desist any and all activity conducted in relation to the Domain Name as well as transfer the Domain Name to the Complainant within seven days. (See Annex 12 to the Complaint). The Registrant did not reply to this letter.

(c) The Disputed Domain Name

The disputed domain name was registered by the Registrant on 8 September 2008 (see Annex 2 to the Complaint), approximately a year after the Complainant started its activities. The disputed domain name is currently not pointing to an active website. The Complainant asserts that the Registrant is violating the terms of Paragraph 4.1 of the CIRA Domain Name Dispute Resolution Policy (the "Policy").

(d) Confusingly Similar.

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 (Policy, Paragraph 4.1(a)).

The Complainant must prove, on a balance of probabilities, that the disputed 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.

Paragraph 3.2 of the Policy provides a definition of the term "Mark" as follows:

A "Mark" is:

(a) a trade-mark, including the word elements of a design mark, or a trade name that has been used in Canada by a person, or the person's predecessor in title, for the purpose of distinguishing the wares, services or business of that person or predecessor or a licensor of

that person or predecessor from the wares, services or business of another person;

[...]

(c) a trade-mark, including the word elements of a design mark, that is registered in CIPO;

[...].

The Complainant's ZEVIA trade mark was registered in the Canadian Intellectual Property Office on 24 September 2010, about two years after the date of registration of the disputed domain name.

Regardless of this, the Complainant is able to rely upon Paragraph 3.2(a) of the Policy, which requires the Complainant to establish that the ZEVIA trade mark was used in Canada by the Complainant or its predecessor in title prior to 8 September 2008 for the purpose of distinguishing the wares, services or business of the Complainant or its predecessor from the wares, services or business of another person.

The ZEVIA trade mark has been used in Canada as early as May 2007. Indeed, DrinkZevia Ltd, the Complainant's predecessor, sold Zevia products to a Canadian customer in Winnipeg, Manitoba, in May and July 2007, which shows that Zevia's reputation reached Canada from in May and July 2007, which shows that Zevia's reputation reached Canada from the very beginning of the Complainant's activities. (See Annex 13 to the Complaint). The Complainant can therefore demonstrate that it has, and continues to have, Rights prior to the registration of the disputed domain name, in accordance with the Policy.

In addition, the Complainant submits that it filed its application for the ZEVIA Canadian trade mark on 16 June 2008, before the disputed domain name was registered, based on a US trade mark registered on 23 October 2007.

Paragraph 4.1(a) of the Policy requires the Complainant to show that the disputed domain name is Confusingly Similar to the Complainant's prior trade mark Rights. The disputed domain name differs from the Complainant's registered trade mark only by the ccTLD ".ca". For the purpose of determining whether a domain name is confusingly similar to a mark, paragraph 1.2 of the Policy indicates that the "dot-ca" suffix of the domain name should be excluded. Apart from the "dot-ca" suffix, the Complainant's trade mark and the Domain Name are identical.

Paragraph 3.3 of the Policy provides that a domain name is "Confusingly Similar" to a trade mark if the domain name so nearly resembles the trade mark "*in appearance, sound or the ideas*" suggested by the domain name is identical to the Complainant's trade mark ZEVIA in appearance and sound and is therefore Confusingly Similar thereto in accordance with the requirements of the Policy.

(e) Bad Faith

Paragraph 3.5 of the Policy sets out a non-exhaustive list of circumstances demonstrating that a .CA domain name has been registered in bad faith.

(i) The Complainant submits that the Registrant's conduct falls within Paragraph 3.5(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".

The Registrant prevented the Complainant from registering the Domain Name. It is submitted that the Registrant has registered the Domain Name in order to prevent Zevia from reflecting its trade mark in the corresponding .CA domain name.

The Complainant uses the ZEVIA trade mark in connection with the products it sells and, for that purpose, as mentioned above, it has registered numerous domain names consisting of the ZEVIA trade mark.

Being aware of the Complainant's global expansion, it is submitted that the Registrant anticipated that the Complainant would be interested in registering the term ZEVIA under the .CA extension and thus registered the disputed domain name to prevent the Complainant from reflecting its activities in the disputed domain name.

The Registrant has also engaged in a pattern of illegitimate registration.

The factual background of this case has led the Complainant to believe that the Registrant has registered many infringing domain names in bad faith. In addition to the disputed domain name, the Complainant has also discovered that the Registrant has also registered at least 18 domain names that potentially infringe the rights of third parties, details of which are provided in Annex 10 to the Complaint.

(ii)The Complainant also submits that the Registrant's conduct falls within Paragraph 3.5(d), which reads as follows:

"....the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

Even though the Domain Name is currently inactive, if it was ever put to use it would certainly confuse end users as to source or affiliation, given that it exactly matches the Complainant's very distinctive trade mark. As such, it would be difficult to conceive of a good faith use of the Domain Name.

(f) Legitimate Interest.

The Registrant has no legitimate interest in the Domain Name (Policy, Paragraph 4.1(c))

The Complainant has made investigations within public records and has not found any indication that the Registrant could have a legitimate interest in the disputed domain name. The Complainant's ZEVIA trade mark is highly distinctive and has been continuously used since 2007. The Registrant is not an authorized dealer, distributor, or licensee of the Complainant, nor has the Registrant been otherwise allowed by the Complainant to make any use of the ZEVIA trade mark.

The Registrant's right or legitimate interest could be proven on the basis of using the Domain

Name in a manner described in Paragraph 3.4 of the Policy. However, these conditions have not been met given that (i) the Registrant has never had any rights to the term ZEVIA; (ii) the disputed domain name has not been registered in good faith in association with any wares, services or business or in association with a non-commercial activity; (iii) ZEVIA is neither the Registrant's legal name nor a name, surname or other reference by which the Registrant is or was commonly identified; and (iv) ZEVIA is not the geographical name of the location of the Registrant's non-commercial activity or place of business.

The Registrant is not using the disputed domain name as part of an offer of goods or services. Indeed since its registration on 8 September 2008 to date, the disputed domain name has never been used to point to any active website (see Annex 15 to the Complaint.).

The fact that the disputed domain name has never associated with any active website should be considered sufficient for the Complainant to satisfy its burden under Paragraph 4.1(c) of the Policy. Therefore, in light of the above, the Complainant submits that the Registrant does not have any legitimate interest in the disputed domain name in accordance with Paragraph 4.1(c) of the Policy.

B. THE REGISTRANT

13. The Registrant did not file a Response in this proceeding.

DISCUSSION OF THE ISSUES

CANADIAN PRESENCE REQUIREMENTS

14. Pursuant to paragraph 1.4 of the Policy, and paragraph 3.2 (f) of the Rules, the Complainant is required to satisfy CIRA's Canadian Presence Requirements for Registrants. Article 2 of CIRA's Canadian Presence Requirement for Registrants provides a list of conditions allowing entities to hold the registration of a .CA domain name. The Complainant submits that it falls within condition (q) set out above, as it is:

"A Person which does not meet any of the foregoing conditions [conditions (a) to (p)], but which is the owner of a trade-mark which is the subject of a registration under the Trade-marks Act (Canada) R.S.C. 1985, c.T-13 as amended from time to time, but in this case such permission is limited to an application to register a .ca domain name consisting of or including the exact word component of that registered trade-mark".

The Complainant submits that it is the owner of the Canadian trade mark registration No. TMA778107 in the term ZEVIA registered in the Canadian Intellectual Property Office ("CIPO"). The Complainant has adduced evidence to that effect (See Annex 1 to the Complaint) and the Panel accepts that evidence. The Panel therefore finds that Complainant satisfies CIRA's Canadian Presence Requirement for Registrants in respect of the Domain Name and that it was eligible to file the Complaint.

CONFUSINGLY SIMILAR

15. As the Complainant submits, it is required to prove that the disputed domain name is "Confusingly Similar" to a "Mark" in which the Complainant had Rights prior to the date of

registration of the disputed domain name and continues to have such rights. The Complainant must therefore show that it has rights to a mark and that it had those rights before the disputed domain name was registered. The Complainant submits that it can meet those requirements.

16. The Panel finds that the disputed domain name is confusingly similar with a trademark in which the Complainant had rights prior to the date of registration of the domain name and continues to have such rights, namely the ZEVIA trade-mark referred to above. The ZEVIA mark is clearly a mark as defined by Paragraph 3.2 of the Policy and coming within the meaning of paragraph 3.2(a), as the evidence shows that the Complainant's United States mark was a trademark that it used for the specified purpose in Canada when it expanded its business from the United States into Canada. The United States ZEVIA trademark is thus "a trade-mark... that has been used in Canada..." within the meaning of Paragraph 3.2 of the Policy.

17. Moreover, as well as being a trademark, ZEVIA is also a trade name of the Complainant, used in Canada for the purpose of distinguishing the source of goods and services. So the trade name also comes within the meaning of Paragraph 3.2 of the Policy.

18. Both the mark and the trade name were used in Canada prior to the date on which the disputed domain name was registered, namely 8 September 2008. That is so because the unchallenged evidence is that the ZEVIA trade mark has been used by the Complainant in Canada since as early as May 2007 and that the trade name has likewise been so used by the Complainant.

19. Pursuant to paragraph 3.3 of the Policy, a domain name will be found to be confusingly similar with a mark if it so nearly resembles the same in appearance, sound or in the ideas suggested so as to be likely to be mistaken for the mark. The test to be applied when considering "confusingly similar" is one of first impression and imperfect recollection and the "dot-ca" suffix should be excluded from consideration (see *Coca-Cola Ltd. v. Amos B. Hennan*, BCICAC Case No. 00014). When those principles are applied, the disputed domain name is confusingly similar to the Complainant's ZEVIA mark.

20. In particular, the disputed domain name consists of the entirety of the ZEVIA mark and nothing else and the Registrant cannot avoid confusion by incorporating the entire mark in the domain name. If the trademark is included in a disputed domain name, as it is in the present case, a Registrant cannot avoid a finding of confusion by appropriating another's entire mark in a domain name: *RGIS Inventory Specialists v. AccuTrak Inventory*, BCICAC Case No. 00053; *Glaxo Group Limited v. Defining Presence Marketing Group Inc. (Manitoba)*, BCICAC Case No. 00020.

21. Accordingly, the disputed domain name is confusingly similar with the ZEVIA trade-mark and as it so nearly resembles the trade-mark in appearance, sound and in the ideas suggested so as to be likely to be mistaken for same. The same may be said of the ZEVIA trade name.

22. The Panel therefore concludes that the disputed domain name is confusingly similar with the ZEVIA trade-mark and trade name in which the Complainant had rights prior to the registration date of the disputed domain name and continues to have such rights. The Complainant has thus established the first element that it must prove.

REGISTRATION IN BAD FAITH

23. The Panel now turns to consider whether the disputed domain name was registered in bad faith.

24. The Panel finds, on the grounds relied on by the Complainant and generally, that the Registrant registered the disputed domain name in bad faith. The Panel finds that the Registrant has registered the disputed domain names in bad faith as described in paragraph 3.5 of the Policy. That is so for the following reasons.

25. Pattern of Unauthorized Domain Name Registrations - Paragraph 3.5(b)

The Panel finds that the Registrant has within the meaning of paragraph 3.5(b) of the Policy, engaged in a pattern of registering domain names that contain trade-marks to which he is not entitled, and has prevented the Complainant from registering the domain names as such.

26. As the Complainant submits, the relevant provision of the Policy to establish this ground of bad faith registration is Paragraph 3.5 (b) which provides as follows:

"...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."

27. First, the Panel finds that the Registrant registered the domain name to prevent the Complainant, from registering the Mark as a domain name. That is so because it is the only inference that the Panel can draw from the fact that the Registrant has registered a domain name in the same terms as the Complainant's trademark, that it did so on 8 September 2008, that that date was only 3 months after the Complainant applied for its Canadian trademark on 16 June 2008, that ZEVIA is clearly an invented and distinctive term and that there is no other reasonable explanation for the Registrant having done so. Had there been any such reasonable explanation, it was always open to the Registrant to say what it was, but it has foregone its right to file a Response and to present its case on this and other issues.

28. Secondly, the Panel finds 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. That is so because the unchallenged evidence is that the Registrant has registered at least 18 domain names that clearly are attempts to register domain names reflecting other parties' trademarks, thereby preventing the respective trademark owners from registering their trademarks as domain names. Moreover, the evidence is that 3 successful claims have been brought against the Registrant by trademark owners, decisions in which are included in Annex 14 to the Complaint.

Paragraph 3.5 (b) has therefore been satisfied.

Intentionally Attract Traffic For Commercial Gain - Paragraph 3.5(d)

29. The Complainant also relies on paragraph 3.5(d) of the Policy and submits that the Registrant intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the ZEVIA trade-mark as to the source,

sponsorship, affiliation or endorsement of the contents of Registrant's website. The Panel agrees with that submission.

30. The disputed domain name does not resolve to an active website. But the disputed domain name incorporates the whole of the ZEVIA trade-mark. As a result, if the disputed domain name is put to active use, there is a clear likelihood of potential consumers being confused or misled into believing that the Registrant is somehow affiliated with, or endorsed by, the Complainant. This is particularly the case given the extensive goodwill associated with the ZEVIA trade-mark in Canada, which is also supported by the evidence. As well, the offering of competing goods and services would confuse or mislead internet users as to source or sponsorship, as end users are likely to believe that the disputed domain name resolves to an authorized website of the Complainant.

Paragraph 3.5 (d) has therefore been satisfied.

Surrounding Circumstances

31. Apart from the specific provisions of the Policy and having regard to the manner on which the disputed domain name has been registered using the ZEVIA trademark and the lack of any explanation from the Registrant for its conduct, the Panel finds that the disputed domain name was registered in bad faith within the generally accepted meaning of that expression.

32. The Complainant has verified the above matters by detailed evidence and the Panel accepts the whole of that evidence. The Complainant's authorised representative has also certified that the information contained in the Complaint is to the best of the Complainant's knowledge complete and accurate. The Registrants have filed no response to the Complaint and, accordingly, the Registrants have provided no evidence on the issue of bad faith.

The Complainant has therefore established the second element that it must prove.

NO LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

33. Paragraph 4.1 of the Policy provides that the Complainant must provide some evidence that "... (c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4." The Panel finds that the Complainant has provided evidence that the Registrant has no legitimate interest in the disputed domain name. The Complainant has provided the following evidence to that effect which in each case the Panel accepts.

(a) Paragraph 3.4(a)

34. The Complainant has shown that the disputed domain name was not acquired in good faith or for a *bona fide* purpose and that is the only conclusion the Panel can reach on the evidence. The clear intention of the Registrant was to misappropriate the Complainant's trade-mark. This completely undermines any claim of good faith or legitimate interest.

(b) Paragraph 3.4(b)

35. The Complainant has shown that Registrant has not registered the disputed domain name in good faith.

(c) Paragraph 3.4(c)

36. The Complainant has shown that the Registrant has not registered the disputed domain name in good faith.

(d) Paragraph 3.4(d)

37. The Complainant has shown that the Registrant has never used the disputed domain name in association with a non-commercial activity, and therefore cannot invoke paragraph 3.4(d) of the Policy. In any event and as previously noted, the disputed domain name has not been used in good faith. The Registrant has not used the disputed domain name for a non-commercial fan or information website.

(e) Paragraph 3.4(e)

38. It is apparent from the evidence that ZEVIA and <zevia.ca> are not legal names, surnames, or other references by which the Registrant is commonly identified, and accordingly, the Registrant cannot rely on paragraph 3.4(e) of the Policy.

(f) Paragraph 3.4(f)

39. The disputed domain name is not the geographical name of the location of the Registrant's non-commercial activity or place of business.

40. Moreover, the Registrant has not filed a response to the Complaint or sought to rebut the above evidence and has thus provided no evidence of legitimate use. If the Registrant had any evidence that it had any legitimate interest in the disputed domain name, it could have brought that evidence forward but it has not done so. In addition, in view of the facts set out above, it is inherently unlikely that the Registrant could establish a legitimate interest in the disputed domain name when its *modus operandi* in this matter in registering a domain name by misappropriating the Complainant's trademark without permission has been improper.

41. In light of the foregoing, the Panel finds that the Registrant does not have a legitimate interest in the disputed domain name and that it is therefore removed from the application of paragraph 3.4 of the Policy.

CONCLUSION

42. The Panel finds that the constituent elements of the Policy have been made out, that the Complainant is entitled to the relief it seeks and that the Panel will order that the disputed domain name be transferred to the Complainant.

DECISION

43. The Panel finds that the Complainant has satisfied the requirements of Paragraph 4.1 of the Policy and that it is entitled to the remedy it seeks.

ORDER

44. The Panel directs that the registration of the disputed domain name <zevia.ca> be transferred from the Registrant to the Complainant.

Date: August 15, 2015

For the Panel

A handwritten signature in black ink, appearing to read 'Neil Anthony Brown', written over a horizontal line.

The Honourable Neil Anthony Brown QC (Chair)
Panelist