

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

Domain Name: FAMILYHONDA.CA

Complainant: Family Honda
Registrant: Mr Chris Bartello and Mr Chris Cario
Registrar: Namespro Solutions Inc.

Panel: Paul Donovan
Hugues Richard
David Lametti (Chair)

Service Provider: Resolution Canada

DECISION

A. The Parties

1. The Complainant is Family Honda, an Ontario business corporation with its business address listed as 4 Maritime Ontario Boulevard, Brampton, Ontario, L6S 0C2. The Complainant's contact is Mr Randy M. Katzman, CA.
2. The Registrant/Respondent(s) is Mr Chris Bartello, and (or perhaps aka) Mr Chris Cario. The listed address is 2 Traymore Street, Brampton, Ontario, L7A 2G3.

B. The Domain Name and Registrar

3. The domain name at issue is FAMILYHONDA.CA
4. The domain name is registered with Namespro Solutions Inc.

C. Procedural History

5. The Complainant submitted this Complaint to the Domain Name Dispute Resolution Provider, Resolution Canada on 19 October 2009. The Provider served notice of the Complaint to the Registrant as required by paragraph 4.3 of the *CIRA Domain Name Dispute Resolution Rules* ["Rules"]. The Complainant elected to have the Complaint heard by a panel of three as permitted under paragraph 6.4 of the Rules, and nominated potential panelists. The Provider selected panelists Paul Donovan and Hugues Richard, and David Lametti as Chair.

D. Panel Member Impartiality and Independence Statement

6. As required by paragraph 7.1 of the Rules, the panelists have each declared to the Provider that they can act impartially and independently in this matter as there are no circumstances known to them which would prevent any of them from so acting.

E. Canadian Presence Requirement

7. The Complainant's evidence indicates that FAMILY HONDA is a registered business name owned by 1738135 Ontario Inc., an Ontario corporation. As such, in our view the Complainant thus satisfies the Canadian Presence Requirement under paragraph 1.4 of the CIRA Domain Name Dispute Resolution Policy (Policy).

F. Factual Background

8. The domain name FAMILYHONDA.CA was registered by the Registrant on 22 December 2006.

9. The Complainant's business, Family Honda was incorporated on 6 June 2007, having been granted a franchise right from Honda Canada in 2006, and after apparently posting a sign stating "New Home of Family Honda" on the current property. The name "Family Honda" was registered in the Province of Ontario on 23 July 2007.

10. The Complainant believes that the Registrant registered the domain name on same day as the sign was placed and the announcement made that the dealership would open. The Complainant claims to have been in contact a number of times with the Registrant, who is alleged to have asked for \$12,000 to transfer the domain name. The Complainant alleges that the Registrant stated he was going to operate a used car facility, which he ultimately never did. The Complainant also claims that the Registrant posted pictures of two Toyota Corollas for six months. The Complainant alleges that the Registrant has no legitimate interest in the site, not having permission from Honda Canada to use the name and not having shown any real interest in developing the site. The Complainant also claims bad faith on the part of the Registrant.

G. CIRA Domain Name Dispute Resolution Policy Requirements

11. The Policy sets out at paragraph 4.1 what the Complainant must establish in order to successfully prove the complaint:

To succeed in the Proceeding, the Complainant must prove, on a balance of probabilities, that:

- (a) 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; and

- (b) the Registrant has registered the domain name in bad faith as described in paragraph 3.7;
and the Complainant must provide some evidence that:
- (c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.6. [Our emphasis.]

H. Does the Complainant have Rights in a Mark that might be Confusingly Similar to the Domain name prior to the date of registration?

12. We need only deal with paragraph 4.1 (a), i.e., the paragraph emphasized above. The Complainant, effectively as a pre-condition, must establish rights in a mark or name that precede the domain name registration date.

13. In this case, the Complainant did not have any registered right prior to the registration of the domain name – either a registered trademark, trade name, or a common law right in the same. The registration of the business name on 23 July 2007 came only well after the registration of the domain name on 22 December 2006. Only scant evidence is offered of a sign stating "New Home of Family Honda" being erected in 2006 and a "belief" that the Registrant registered the domain name on the day the sign went up. No actual evidence was adduced as to the precise date that the sign was, in fact, erected, nor was any evidence adduced showing that the Complainant may have had some common law right in the trade name in this same period prior to its registration. This is insufficient in terms of both argument and evidence to establish rights in the name prior to the registration of the domain name.


14. The Complainant has thus failed to show prior rights in a mark or name. As such, the Complaint fails and we need not go any further.

I. Conclusion and Decision

15. The Panel hereby rejects the Complaint.

Paul Donovan
Panelist

Hugues G. Richard
Panelist

A handwritten signature in black ink, reading "David Lametti". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

David Lametti
Chair

14 December 2009