



## CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE

### DOMAIN NAME DISPUTE

### ADMINISTRATIVE PANEL

### DECISION

CIIDRC case number: 13942-CDRP

Decision date: November 9, 2020

Panelist: Melvyn J. Simburg

Domain Name in Dispute: neatfreak.ca

Complainant: Neatfreak Group Inc.

Counsel for the Complainant: Richard Levy, Levy IP Law and Dispute Resolutions

Registrant: Tanya Rezaei / NeatFreak

Registrar: Tucows.com Co.

#### 1. PROCEDURAL HISTORY

1.1 On October 1, 2020 the above-named Complainant filed a Complaint pursuant to the Canadian Internet Registration Authority (“CIRA”) Domain Name Dispute Resolution Policy (“CDRP” or “Policy”), and the Resolution Rules (“Rules”). The identity of the Registrant is not published in the public WHOIS database; therefore, the Registrant’s name was not included in the Complaint.

1.2 CIRA was notified of this proceeding on October 1, 2020. On the same date, CIRA transmitted by email to CIIDRC its verification response informing who is the Registrant of the disputed domain name. CIRA also confirmed that the <neatfreak.ca> domain name was placed on a Registrar LOCK.

1.3 On October 1, 2020, CIIDRC, confirmed compliance of the Complaint and commencement of the dispute resolution process.

1.4 Pursuant to Paragraph 11.1 of the Rules: “*where the Registrant’s identity is not published in the public WHOIS database, the Complainant shall have a right to make a further submission to the Panel, including adducing further evidence, with respect only to the issue of the Registrant’s legitimate interest (or lack thereof) in a domain name.*” The Complainant did not file any further submission.

1.5 Pursuant to Rule 4.4, CIIDRC notified the Registrant of this administrative proceeding and forwarded a copy of the Complaint to the Respondent on October 2, 2020.

1.6 The Respondent failed to file its response by the due date of October 22, 2020.

1.7 The Complainant in this administrative proceeding has elected for a Panel consisting of a single-member.

1.8 On October 29, 2020, CIIDRC appointed Melvyn J. Simburg, as a single-member Panel in the above-referenced matter.

1.9 On November 2, 2020, Melvyn J. Simburg accepted the appointment. As required by paragraph 7.1 of the Rules, the Panellist has declared that he can act impartially and independently in this matter as there are no circumstances known to him that would prevent him from so acting.

1.10 The Panel is not aware of any other legal proceeding or other arbitration in relation to the Domain Name that would under paragraph 13.2 of the Rules result in a need to stay or terminate this proceeding.

## **2. FACTS ALLEGED BY THE PARTIES**

2.1 For more than 30 years Neatfreak Group has been designing, manufacturing and distributing home organisation, storage and laundry products and for 12 years has been doing so under the tradename Neatfreak and the trademark NEATFREAK. It distributes and sells its NEATFREAK products in Canada, the U.S., and around the world.

2.2 Promotion of Neatfreak Group's products bearing the trademark NEATFREAK can be found on its official website at [www.neatfreak.com](http://www.neatfreak.com). The website includes a newsletter and videos on home organising, decluttering, and cleaning. The Complainant also has a Facebook page featuring its products. Its distinctive design mark (logo) is found on that website and the Facebook page.

2.3 Neatfreak Group has used the mark in Canada since at least as early as December 31, 2008, which predates the creation date of the domain name, NEATFREAK.ca on September 18, 2019. In its product packaging and its marketing, Neatfreak Group displays its distinctive design mark NEATFREAK.

2.4 Many of Neatfreak Group's products are available for purchase online, as shown on its website <https://ca.neatfreak.com/collections/available-online>. Its products are also available at many of the most prominent retailers operating in Canada, such as Amazon.ca, Costco, Walmart, Canadian Tire, Linen Chest, The Home Depot, Home Hardware, Hudson's Bay, and many others.

2.5 The Complainant accessed the website connected with the Domain Name [neatfreak.ca](http://neatfreak.ca) on September 1, 2020. The website is offering for sale the exact kinds of organization and closet products as the Complainant. Moreover, on one page, the notation © 2020 NeatFreak is printed.

2.6 The home page has the notation: "Hi there I'm your personal assistant ready to answer any question you may have". It also had a notation next to this invitation to "chat" indicating that they will reply immediately to any question. The Complainant's representative asked a question, but never received a reply, despite checking for several successive days. The same non-response occurred when the Complainant's representative asked a relative to go on this chatline.

2.7 When the Complainant's representative sought to access the website linked with the Domain Name on September 30, 2020, the landing page displayed the message: "This site can't be reached."

## **3. CONTENTIONS OF THE PARTIES**

- **Complainant**

The Domain Name **NEATFREAK.CA** is confusingly similar to the mark **NEATFREAK**.

The Registrant has no legitimate interest in the domain name.

The registration of **NEATFREAK.CA** was done in bad faith.

- **Registrant**

Registrant did not respond.

- **Remedy Sought**

Complainant requests that the panel order the immediate transfer of the domain name NEATFREAK.CA by the Registrar, Tucows.com Co, from the Registrant to the Complainant Neatfreak Group

## 4. DISCUSSION AND FINDINGS

### 4.1 Eligibility

Paragraph 1.4 of the Policy requires that the person initiating a Complaint must, at the time of submitting the Complaint, satisfy the Canadian Presence Requirements for Registrants (“CPR”) in respect of the domain name, unless the Complaint related to a trademark registered with the Canadian Intellectual Property Office (“CIPO”) and the Complainant is the owner of the trademark.

The Complainant states that it satisfies the CPR because it is a corporation incorporated under the laws of Ontario and qualifies under paragraph 2(d). In addition, the Complaint relates to Complainant’s trademarks registered with CIPO that predate the Registrant’s registration of the domain name.

### 4.2 Requirements

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

- 1) That the Domain Name is Confusingly Similar to a trademark or service mark in which the Complainant has rights;
- 2) That the Registrant has no legitimate interests in the Domain Name; and
- 3) That the Domain Name has been registered in bad faith.

### 4.3 Analysis

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

Evidence shows that Complainant is the owner of Complainant’s Mark, that Complainant’s Mark was in use when the Disputed Domain Name was initially registered, and Complainant continues to have its trademark rights and continues to use the Mark. The relevant definition of “Mark” requires that a trade-mark be “used”. The term “use” is no longer defined in the Policy. The Complainant has been advertising and selling its services in Canada, thereby using the Mark. The Complainant therefore meets the use requirement.

In accordance with paragraph 3.3 of the Policy, a domain name is confusingly similar to a Mark if the domain name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely mistaken for the Mark. In assessing the domain name, the dot-ca suffix is ignored. It is the narrow resemblance that is applied. The Disputed Domain Name incorporates the entire words of the dominant features of Complainant’s Mark.

In the case of *Great Pacific Industries v. Ghalib Dhala*, 00009 (CIRA Apr. 21, 2003), the Panel stated that the test of confusing similarity is whether the average Internet user, with an imperfect recollection of the Mark who wishes to access a website operated by Complainant, either by entering a domain name including the

Mark into the address bar of an Internet browser or by entering the key terms of the domain name into an Internet search engine, would likely be confused as a matter of first impression.

Internet users who wish to access a website operated by the Complainant, either by entering a domain name including the Trade-mark into the address bar of the Internet browser, or by entering the key term of the Domain Name into an Internet search engine, would likely find the Disputed Domain Name as a matter of first impression.

The Domain Name **NEATFREAK.CA** is confusingly similar to the mark **NEATFREAK** because the distinctive part of the domain name, “NEATFREAK”, is identical to the mark in which the Complainant has registration rights. The domain name is confusingly similar to the mark because in the present complaint, the Mark and the registered domain name are identical.

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

Paragraph 3.4 states that for the purposes of paragraphs 3.1(b) and 4.1(c) of the CDRP, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all the evidence presented, shall demonstrate that the Registrant has a legitimate interest in the domain name:

- a. the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;
- b. the Registrant registered the domain name in Canada in good faith in association with 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 registered 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 or 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 paragraph 3.4(d) “use” by the Registrant includes, but is not limited to, use to identify a website.

Paragraph 4.1(c) of the Policy requires that the Complainant provide “some evidence” that the Registrant has no legitimate interest in the Domain Name. The onus is then on the Registrant to show that the Registrant does have a legitimate interest.

The Registrant does not appear to meet any of the six criteria outlined in section 3.4 of the Policy. The Registrant has no rights in the Mark. The Domain Name is not descriptive. It is not a generic name of the goods or the business. It is not used in connection with a non-commercial activity. The Registrant is not commonly identified by the Domain Name. And, the Domain Name is not the geographical name of the Registrant’s place of business.

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

Paragraph 3.5 of the Policy states that for the purposes of paragraph 3.1(c) and 4.1(b), any of the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence that a Registrant has registered a domain name in bad faith:

...

- c. The Registrant registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of Complainant, or Complainant's licensor or licensee of the Mark, who is a competitor of the Registrant; or
- d. The Registrant has intentionally attempted to attract, for commercial gain, internet users to the Registrant's website or other location, by creating a likelihood of confusion with 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.

The Registrant does not have and never had a license or other form of authorization from Neatfreak Group to use the domain name NEATFREAK.ca. It chose to keep all its identifying information "private" with its registrar. It has no identifying information on its website or means of contacting it, other than a chat feature. Attempts by Complainant to contact it through this feature were unsuccessful.

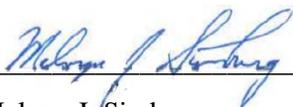
Registrant knew or ought to have known that the mark NEATFREAK is strongly associated with the Complainant and its storage and home organization products, as well as its services. The Registrant appears to have registered the domain name primarily for the purpose of disrupting the business of Complainant, or has intentionally attempted to attract, for commercial gain, internet users to the Registrant's website, by creating a likelihood of confusion with Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or of a product or service on the Registrant's website or location.

## 5 DECISION and ORDER

For the above reasons, in accordance with Paragraph 4 of CDRP and Paragraph 12 of the Resolution Rules, the Panel decides in favor of Complainant and orders the transfer forthwith of the Disputed Domain Name to Complainant.

Made as of November 9, 2020.

SIGNATURE OF PANEL

  
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 Melvyn J. Simburg