

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

Domain in Dispute: <auroradrops.ca>
Complainant: Aurora Cannabis Inc.
Registrant: Byron Smith
Registrar: Web Hosting Canada (7081936 Canada Inc.)
Panel: Douglas M. Isenberg, Esq.
Provider: British Columbia International Commercial Arbitration Centre
BCICAC File: DCA-2076-CIRA

DECISION

1. The Parties

The Complainant is Aurora Cannabis Inc. of Edmonton, Alberta, Canada (“Complainant”), represented by Parlee McLaws LLP of Edmonton, Alberta, Canada.

According to the Complainant, the Registrant is Byron Smith of Victoria, British Columbia, Canada (“Registrant”).

2. The Domain Name and Registrar

The disputed domain name is <auroradrops.ca> (the “Disputed Domain Name”), which was created on April 20, 2017. The registrar is Web Hosting Canada (7081936 Canada Inc.) (“Registrar”).

3. Governing Policy and Rules

This is a proceeding filed with the British Columbia International Commercial Arbitration Centre (“BCICAC” or “Centre”) under the CIRA Domain Name Dispute Resolution Policy, Version 1.3 (August 22, 2011) (“CDRP” or “Policy”) and the CIRA Domain Name Dispute Resolution Rules, Version 1.5 (July 28, 2014) (“Rules”). Paragraph 1.8 of the Policy states: “The version of the Policy in effect at the time a Proceeding is initiated will apply to the Proceeding.” Paragraph 1.2 of the Rules states: “The version of the Resolution Rules in effect at the time a Proceeding is initiated will apply to that Proceeding.”

4. Procedural History

The history of this proceeding, according to the information provided by BCICAC, is as follows:

- a. On March 18, 2019, the Complainant filed a Complaint pursuant to the CDRP and the Rules.
- b. In a letter dated March 20, 2019, the Centre as Service Provider, confirmed compliance of the complaint and commencement of the dispute resolution process.
- c. The Complaint was successfully delivered to the Registrant by electronic transmission. The deadline for the Registrant’s response was set for April 9, 2019.

- d. The Registrant did not provide a Response by its due date. On April 9, 2019, the Centre notified the parties that the Registrant failed to submit the Response; therefore, under Rule 6.5, the Complainant may elect to convert from a three-person tribunal to a single-member Panel.
- e. Counsel for the Complainant contacted the Centre on April 9, 2019 and then again on April 14, 2019 with a request to temporarily suspend the proceeding, since the parties were exploring settlement options.
- f. On June 13, 2019, counsel for the Complainant requested to reinstate the subject domain name dispute. The Registrant received copies of all communications between the Centre and counsel for the Complainant.
- g. On June 14, 2019, counsel for the Complainant advised the Centre that the Complainant has elected under Rule 6.5 to convert from a three-member Panel to a single-member Panel.
- h. The Centre appointed Douglas M. Isenberg, Esq., as a single-member Panel on June 19, 2019.

The Panel finds that it was properly constituted and appointed in accordance with the CDRP and the Resolution Rules. Based upon the information provided by BCICAC, the Panel finds that all technical requirements for the commencement and maintenance of this proceeding have been met.

5. Eligible Complainant

Paragraph 1.4 of the CDRP states: “The person initiating a Proceeding (the ‘Complainant’) must, at the time of submitting a complaint (the ‘Complaint’), satisfy the Canadian Presence Requirements for Registrants (the ‘CPR’) in respect of the domain name that is the subject of the Proceeding unless the Complaint relates to a trade-mark registered in the Canadian Intellectual Property Office (‘CIPO’) and the Complainant is the owner of the trade-mark.” Paragraph 2(d) of the CPR states that “[a] corporation under the laws of Canada or any province or territory of Canada” is permitted to apply to CIRA (through a CIRA certified registrar) for the registration of, and to hold and maintain the registration of, a .ca domain name.

Complainant states that it satisfies the CPR because it “is a corporation registered pursuant to the laws of British Columbia, Canada, and has a corporate access number of 2118863717.”

As a result, the Panel finds that, based on the Complaint, Complainant is an eligible complainant under paragraph 1.4 of the CDRP.

6. Factual Background and Parties’ Contentions

Complainant states that “Complainant, as well as Aurora Marijuana Inc., and Aurora Cannabis Enterprises Inc., are all related companies. Aurora Marijuana Inc. and Aurora Cannabis Enterprises Inc. are corporations registered pursuant to the laws of Alberta, Canada, and have corporate access numbers, 2017704152, and 2017555174, respectively.”

Complainant states, and provides evidence to support, that Aurora Marijuana Inc. is the owner of Canadian Trademark. Reg. No. TMA1010578 (filed May 16, 2014; registered December 6, 2018) for the mark AURORA for use in connection with “[m]arijuana”; “[a]pparatus for the use of marijuana, namely rolling papers, pipes, vapourizers and grinders”; “[e]ducation services regarding the cultivation of marijuana, sale of marijuana, and health benefits associated with the use of marijuana”; “[c]onsulting services, namely consulting services in the field of cultivating and selling marijuana”; and “[l]aboratory testing services relating to the examination and analysis of marijuana.” Complainant further states that it, along with its related companies identified above, “has used the AURORA Mark in Canada since at least as early as January 4, 2016, in association with the sale of medical marijuana to patients that have a physician approved prescription” and “since at least as early as November 11, 2015 in association with the registered services” listed above. These statements are supported by relevant evidence.

Complainant states that Registrant previously “had setup the Domain Name to redirect visitors to the website, <https://aphria.ca/cannabis-oil/>, which is a competitor of the Complainant that operates in the same industry as the Complainant,” which was “a clear attempt to pass off other cannabis products for those of the Complainants.” Complainant further states that “Registrant’s primary intent in registering the [Disputed] Domain Name is to sell” it, as shown by an email from Registrant asking whether an unspecified party “would be interested in acquiring” the Disputed Domain Name.

Complainant contends that, as a result of the trademark registration described above, Complainant has rights in the AURORA Trademark and that it “is confusingly similar to the AURORA Mark... because the [Disputed] Domain Name wholly incorporates the term AURORA” and “the addition of the term ‘drops’ is merely a generic or descriptive term and should not be enough to avoid a finding of confusion” and “the [Disputed] Domain Name resembles the AURORA Mark in appearance, sound and connotation, and that a casual consumer somewhat in a hurry would confuse the AURORA Mark with ‘auroradrops’, particularly given that the [Disputed] Domain Name consists of the element ‘aurora’ as its first word or component.”

Complainant contends that Registrant has no legitimate interest in the Disputed Domain Name because, *inter alia*, “the Registrant has never used, or prepared to use, the Domain Name or a name corresponding to the [Disputed] Domain Name in connection with a bona fide offering of goods or services”; and “Registrant’s primary intent in registering the [Disputed] Domain Name is to sell [it].”

Complainant contends that the Registrant should be considered as having registered the Disputed Domain Name in bad faith because, *inter alia*, “the Registrant’s primary intent in registering the [Disputed] Domain Name is to sell [it]”; and “the Registrant had setup the Domain Name to redirect visitors to the website, <https://aphria.ca/cannabis-oil/>, which is a competitor of the Complainant that operates in the same industry as the Complainant,” which “is a clear attempt to pass off other cannabis products for those of the Complainants.”

Complainant requests that the Disputed Domain Name be transferred from the Registrant to the Complainant, Aurora Cannabis Inc.

7. Discussion and Findings

To obtain a transfer of the Disputed Domain Name, Complainant must, as set forth in paragraph 4.1 of the CDRP, 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 3.5;

and the Complainant must provide some evidence that:

(c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4.

Rights and Confusingly Similar

With respect to paragraph 3.1(a) of the CDRP, it is obvious based on Complainant’s reference to its Canadian trademark registration and its use of the AURORA Trademark that Complainant had rights in the AURORA Trademark prior to the date of registration of the Disputed Domain Name and continues to have such rights.

Paragraph 3.3 of the CDRP states: “In determining whether a domain name is ‘Confusingly Similar’ to a Mark, the Panel shall only consider whether the domain name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark.” It is apparent that the Disputed Domain Name contains the AURORA Trademark in its entirety. “[I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark” WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.7.¹

Accordingly, the Panel finds that Complainant has met its burden of proof with respect to paragraph 3.1(a) of the CDRP.

No Legitimate Interest

With respect to paragraph 3.1(b) of the CDRP, regarding a lack of legitimate interests, the Panel is satisfied that the Complainant has established, on a balance of probabilities, that the Registrant does not have a legitimate interest in the Disputed Domain Name. By failing to submit a Response, the Registrant has not made any attempt to rebut Complainant’s allegations or argue that it has a legitimate interest in the Disputed Domain Name under any of the six elements described in paragraph 3.4 of the CDRP, nor is there any evidence that demonstrates Registrant has a legitimate interest in the Disputed Domain Name. See, e.g., *Cointreau v. Netnic Corporation*, CIRA Case No. 00180 (“[t]here is no evidence from the ‘customer’ about its ‘interest’ in the Domain Name”); and *General Motors LLC v. Tony Wilson*, CIRA Case No. 00182 (“the Complainant has provided some

¹ Although WIPO Overview 3.0 addresses the Uniform Domain Name Dispute Resolution Policy (“UDRP”), Paragraph 3.2(l) of the CIRA Domain Name Dispute Resolution Rules expressly allows references to “dispute resolution proceedings which apply to domain names registered under any other top level domain which the Complainant considers persuasive.”

evidence that the Registrant has no legitimate interest in the Domain Name and this evidence has not been rebutted by the Registrant”).

Accordingly, the Panel finds that Complainant has met its burden of proof with respect to paragraph 3.1(b) of the CDRP.

Bad Faith

The Panel evaluates whether the Complainant has established that Registrant has registered the Disputed Domain Name in bad faith, as defined by the CDRP. Pursuant to paragraph 3.5 of the CDRP, the following “shall be evidence that a Registrant has registered a domain name in bad faith”:

- (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;
- (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;
- (c) the Registrant registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of the Complainant, or the 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 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.

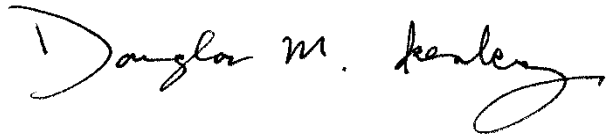
The Panel is persuaded that bad faith exists pursuant to paragraph 3.5(d), given that Complainant has stated, and Registrant has not denied, that “the Registrant had setup the Domain Name to redirect visitors to the website, <https://aphria.ca/cannabis-oil/>, which is a competitor of the Complainant that operates in the same industry as the Complainant,” which “is a clear attempt to pass off other cannabis products for those of the Complainants.” As previous panels have found, redirecting a domain name, under the circumstances present here, to a website offering goods or services that compete with those associated with the relevant trademark, creates a likelihood of confusion. See, e.g., *Compagnie Generale des Etablissements Michelin v. Jason Hughes*, Case No. DCA-1812-CIRA (finding bad faith where “the Disputed Domain Name ‘resolve[s] to a separate website... which advertises the sale of, and operates as an e-commerce site for, a wide variety of auto parts, including Michelin tires, alongside the products of [Complainant’s] direct competitors”); and *Americana International Ltd. v. Bench Clothing Store Inc.*, CIRA Case No. 00238 (finding bad faith where the disputed domain name was used to sell clothing in competition with complainant, because “the Registrant would appear to be motivated by commercial gain to attract to its websites

internet users who are searching for the Complainant's products" and "[i]t has done so by creating a likelihood of confusion not only in its choice of domain name, but also in the presentation of information on its website").

In light of the above, the Panel finds that Complainant has met its burden of proof with respect to paragraph 3.1(c) of the CDRP.

8. Decision

For all the foregoing reasons, in accordance with paragraph 4.3 of the CDRP, the Panel orders that the Disputed Domain Name <auroradrops.ca> be transferred to Complainant, Aurora Cannabis Inc.

A handwritten signature in black ink that reads "Douglas M. Isenberg". The signature is written in a cursive style with a large, sweeping initial 'D' and a long, horizontal flourish at the end.

Douglas M. Isenberg, Esq. (Sole Panelist)

Dated: June 25, 2019