

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

Domain Name: GREYBROOK.CA

Complainant: Greymbrook Capital

Registrant: Moskowitz Capital

Registrar: Go Daddy Domains Canada, Inc.

Panelists: Rob A. Fashler, Sharon Groom, Teresa Scassa (Chair)

Service Provider: Resolution Canada, Inc.

DECISION

A. The Parties

1. The Complainant is the company Greymbrook Capital, with its principal place of business in Mississauga, Ontario.
2. The Registrant is Brian Moskowitz of Moskowitz Capital, which has its principal place of business in Toronto, Ontario.

B. The Domain Name and Registrar

3. The disputed domain name is <greybrook.ca>. The Registrar for the domain name is Go Daddy Domains Canada, Inc. The disputed domain name was registered on April 7, 2011.

C. Procedural History

4. This is a proceeding under the Canadian Internet Registration Authority (CIRA) *Domain Name Dispute Resolution Policy* (Version 1.3) (the *Policy*) and the CIRA *Domain Name Dispute Resolution Rules* (Version 1.4) (the *Rules*).
5. The Complainant submitted this Complaint to the Domain Name Dispute Resolution Provider, Resolution Canada, Inc. The date of commencement of the proceedings was January 20, 2014. The Provider served notice of the Complaint to the Registrant as required by paragraph 4.3 of the *Rules*, and the Registrant was given

a 20 day period in which to file a response to the Complaint. A response was duly filed. This panel was constituted to hear the matter on February 13, 2014.

6. Neither party to this dispute was represented by legal counsel. The panel made two requests pursuant to Rule 11.1 for further evidence from the Complainant. This evidence was required in order to establish that the Complainant met the Canadian presence requirements and was licensed to use the registered trademark that formed the basis for the Complainant's claim to rights in a mark.

6. The Complainant requests, as a remedy, that the disputed domain name be transferred to it. The Registrant requests, in its response, the sum of \$1700, pursuant to paragraph 4.6 of the Policy as compensation for the alleged bad faith of the Complainant in filing the complaint.

D. Panelist Impartiality and Independence

7. As required by paragraph 7.2 of the *Rules* the panelists have submitted to the Provider their declarations of impartiality and independence in relation to this dispute.

E. Canadian Presence Requirements

8. The Complainant is a corporation incorporated under the laws of Ontario, and has its head office located in Richmond Hill, Ontario. The panel concludes that the Complainant meets the *Canadian Presence Requirements for Registrants* (Version 1.3).

F. Background

9. The Complainant is a subsidiary of Greybrook Corporation, which is the owner of the Canadian registered trademark GREYBROOK (TMA760260). The Complainant has a non-exclusive licence to use this trademark. The GREYBROOK trademark was registered on February 25 2010 for a broad range of financial services provided in relation to real estate transactions. The domain name <greybrook.com> resolves to the Greybrook Capital website.

10. The Registrant, Brian Moscovitz registered the disputed domain name <greybrook.ca> on April 7, 2011. He is associated with the company Moscovitz Capital, which also offers financial services provided in relation to real estate transactions, and which is also based in the Toronto area.

11. According to the Complainant in early 2013, the disputed domain name resolved to the Moskovitz capital website, located at <moscowitzcapiial.com>. The Complainant did not provide a screen shot or other visual evidence in support of this claim. According to the Complainant, on March 13, 2013, it sent the first of a series of emails to Moskovitz Capital raising concerns about their registration and use of the disputed domain name. No copies of this correspondence were provided to the panel. The Complainant also states that it received no response to its numerous emails until

November 27, 2013, when it received a response from Brian Moscovitz indicating that he would consider forwarding the domain name to a different web page. No copies of this correspondence were provided to the panel.

12. The Registrant's response to the claim was brief. He wrote:

Grey Brook is a small river in New Brunswick (Latitude: 46°21'15.48" Longitude: -65°34'18.48"). We originally purchased the domain name greybrook.ca due to our activity in New Brunswick, particularly the Moncton area. Twenty-four percent of our business is in New Brunswick. We are entitled to use the greybrook.ca name due to Clause 3.6(f) of the CIRA Domain Name Dispute Resolution Policy. At the time of registering the URL, we were unaware of the existence of Greybrook Capital.

We don't consider Greybrook Capital to be in our field of business. We have never had a domain name dispute. We are not domain name predators.

No proof was provided of the existence of a stream named Greybrook in New Brunswick other than the pair of geographic co-ordinates. The disputed domain name <greybrook.ca> currently resolves to a website titled Geoview.info. The landing page contains a Google map image with a red line superimposed, and text which reads "Grey Brook is next to Grey Brook and is located in New Brunswick, Canada. Grey Brook has a length of 0.54 kilometres. But it is splittet in seperate ways." [sic]

G. *CIRA Domain Name Dispute Resolution Policy* Requirements

13. Paragraph 4.1 of the *Policy* provides that to succeed, a Complainant must establish 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;

The Complainant is also required to provide "some evidence" that:

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

H. Analysis

Confusingly Similar

14. Under paragraph 3.1(a) of the *Policy*, the Complainant must establish on a balance of probabilities that the disputed domain name is confusingly similar to a mark in which the Complainant had rights; that the Complainant had rights in that mark prior to the date of registration of the domain name; and that it continues to have such rights.

15. The GREYBROOK trademark was registered in Canada on February 25, 2010. This predates the registration of the disputed domain name, which took place on April 7, 2011. A letter supplied by Greybrook Corporation states that Greybrook Capital has been licensed to use the GREYBROOK mark since before the date of its registration.

16. If one disregards the .ca domain suffix, the disputed domain name reproduces exactly and in its entirety the GREYBROOK trademark. No additional language forms part of the domain name. The disputed domain name is clearly “confusingly similar” to a trademark in which the Complainant has rights.

Bad Faith

17. The Complainant must also establish on a balance of probabilities that the disputed domain name was registered in bad faith. Paragraph 3.5 of the *Policy*, sets out 4 broad categories of bad faith, but this is not a closed list of circumstances in which bad faith registration may be found.

18. The Complainant argues that the Registrant has acted in bad faith within the meaning of paragraphs 3.5(c) and (d) of the *Policy*. These paragraphs provide that a finding of bad faith will be made where the Complainant establishes that:

(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.

19. As noted earlier, the Complainant has stated in its Complaint that for a significant period of time the domain name resolved to the website of Moscowitz Capital, and that the Registrant did not respond to a series of emails sent by the Complainant beginning in March 13, 2013. According to the Complainant, no response was received until November 27, 2013. No documents were submitted in support of these claims. The Complainant does offer as evidence a printout that shows that a search in the Google search engine for “greybrook.ca” returns as the first result the website of Moskowitz

Capital. Both companies offer similar services and are based in the same general geographic area.

20. The Registrant, in his response neither addresses nor contests the assertions regarding the original landing site for the domain name or the assertions regarding his lack of response to a long series of emails, or his eventual response on November 27, 2013. The Registrant asserts instead that he was not aware of the existence of Greybrook Capital prior to the registration of the domain name, and that the stream named Grey Brook, located in New Brunswick, is connected to his business.

21. We note that neither party is represented by legal counsel and observe that parties to a CIRA dispute resolution proceeding should, to the extent possible, provide documentation in support of any assertions they make in their submissions.

22. We find that, on a balance of probabilities, the Complainant has established that the domain name was registered in bad faith. In this regard we note that the Complainant did provide some documentation in the form of a printout of Google search results to support its claims that there was an attempt to use the domain name to redirect those interested in its services to the website of Moscowitz Capital.

Legitimate Interest

23. Under paragraph 4.1(c) of the CDRP, the Complainant must provide *some evidence* that “the Registrant has no legitimate interest in the domain name”. Paragraph 3.4 describes six circumstances in which a legitimate interest may arise, although this is not a closed list. In this case, the Complainant asserts that their company and its services are well known, and that the Registrant should have been aware of them at the time it registered the domain name. It also asserts that the Registrant has “no products, services, companies, locations and or employees that have any relation to the mark GREYBROOK”.

24. The Registrant asserts a legitimate interest under paragraph 3.4(f) which allows for a finding of legitimate interest where:

(f) *the domain name was the geographical name of the location of the Registrant’s non-commercial activity or place of business.*

25. The Registrant asserts that almost a quarter of its business is based in New Brunswick and that the name was chosen for this reason. We note that the Registrant’s main place of business is Toronto, and that it has provided no evidence that it has business in New Brunswick, nor that this business is in any way linked to an obscure stream, the name of which, quite by hazard, also happens to be the same as a registered trademark used by a competitor. Further, the Registrant has not alleged that it carries on any “non-commercial activity” anywhere, let alone New Brunswick. We are not persuaded that the Registrant has any legitimate interest in the name Greybrook.

I. Conclusion and Decision

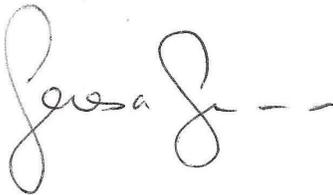
26. We find that the Complainant has rights in the mark GREYBROOK, and that the disputed domain name, <greybrook.ca> is confusingly similar with this mark. We also conclude that the Registrant has no legitimate interest in the domain name, and that he registered the domain name in bad faith.

27. Because the Registrant was not successful in this case, we do not need to consider his claim for \$1700 to offset the costs of preparing his response. Under clause 4.6 of the Policy an amount up to \$5000 is available only where the Registrant is successful in refuting the claim of bad faith registration and can also show that the Complaint itself was brought in bad faith. This is not the case here.

28. We therefore find that the registration of the domain name <GREYBROOK.CA> should be transferred to the Complainant Greybrook Capital.

Dated: March 6, 2014

Teresa Scassa (Chair), Rob A. Fashler, Sharon Groom

A handwritten signature in cursive script, appearing to read "Teresa Scassa", followed by two horizontal dashes.

Teresa Scassa (Chair) for the panel