

CANADIAN INTERNET REGISTRATION AUTHORITY  
DOMAIN NAME DISPUTE RESOLUTION POLICY

DECISION

Domain Name: thefundingportal.ca  
Complainant: The Funding Portal Inc.  
Registrant: Josh Marshall  
Registrar: 8648255 Canada Ltd. o/a Dynadot LLC  
Service Provider: Resolution Canada Inc.  
Panel: Peter C. Cooke

THE PARTIES

The Complainant is The Funding Portal Inc. (the "Complainant") with an address at 1 Yonge Street, Suite 1800, Toronto, Ontario, M5E 1W7.

The Registrant is Josh Marshall (the "Registrant") with an address at 1109 Cliff Avenue, Vancouver, British Columbia, V5A 2J7

THE DOMAIN NAME AND REGISTRAR

The subject of this proceeding is the domain name thefundingportal.ca (the "Domain Name"), registered on April 25, 2015. The Registrar of the Domain Name is 8648255 Canada Ltd. o/a Dynadot LLC.

PROCEDURAL HISTORY

This is an administrative dispute resolution proceeding pursuant to 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 1.5) (the "Rules"). By registration of the Domain Name with the Registrar, the Registrant agreed to the resolution of this dispute pursuant to the Policy and the Rules.

According to the information provided by Resolution Canada Inc., the dispute resolution service provider, the history of the proceeding is as follows:

The Complainant filed a complaint (the "Complaint") dated June 10, 2015 with Resolution Canada Inc., requesting that the Domain Name registration be transferred from the Registrant to the Complainant. After having determined that the Complaint was in administrative compliance with the requirements of the Policy and the Rules, Resolution Canada Inc.

commenced the dispute resolution process and served notice of the Complaint on the Registrant (as required by paragraph 4.3 of the Rules) by email on June 22, 2015. No response was received from the Registrant.

The Complainant has elected to proceed before a panel consisting of one panellist. As required by paragraph 7.1 of the Rules, the panel has declared to Resolution Canada Inc. 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.

#### ELIGIBILITY OF COMPLAINANT

The Complainant satisfies Paragraph 2(d) of the CIRA *Canadian Presence Requirement for Registrants*, as the Complainant is “a corporation under the laws of Canada or any province or territory of Canada”.

#### OVERVIEW OF THE POLICY

Paragraph 4.1 of the Policy sets forth the Complainant’s burden of proof in order to succeed in the proceeding. The onus is on the Complainant to prove, on a balance of probabilities that:

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

The Registrant has registered the domain name in bad faith as described in paragraph 3.5;

And the Complainant must provide some evidence that:

The Registrant has no legitimate interest in the domain name as described in paragraph 3.4.

#### COMPLAINANT’S POSITION

The Complainant contends as follows:

The Complainant contends that “The Funding Portal” is the Complainant’s trade-mark, trade name and word element of its design mark, used in Canada by the Complainant to distinguish its services and business from those of others, and that these rights precede the date of registration of the Domain Name.

The Complainant contends that the Registrant registered and is using the Domain Name in bad faith because (i) the Registrant registered the Domain Name in order to prevent the

Complainant from registering the Domain Name; and/or (ii) the Registrant registered the Domain Name or acquired the registration primarily for the purpose of selling the registration to the Complainant for valuable consideration in excess of the Registrant's actual costs in registering the Domain Name.

The Complainant contends that the Registrant has no legitimate interest in the Domain Name, as the Registrant is a domain squatter, and that the domain has no associated commercial or non-commercial activities.

## DISCUSSIONS AND FINDINGS

### Confusing Similarity between Domain Name and Complainant's Mark

In order to satisfy this branch of the test, the Complainant must demonstrate (i) that it has rights in a mark, (ii) that the rights in its mark predate the registration date of the Domain Name, and (iii) that the mark is confusingly similar with the disputed Domain Name.

The Complainant submits that it is the owner in Canada of common law trade-mark rights in the trade-mark The Funding Portal, and that the Complainant's rights in this mark precede the registration date of the Domain Name by the Registrant, and further that the Domain Name is "confusingly similar" with the Complainant's mark.

The Complainant has established, through evidence of the display of the trade-mark and the associated activities on its website, that it has rights in the trade-mark The Funding Portal. Further, the Complainant's evidence indicates that it announced the launch of these activities under the trade-mark in 2011, well in advance of the registration of the Domain Name by the Registrant in April 2015. The Complainant's activities are clearly ongoing, such that it continues to have such rights.

As per paragraph 3.3 of the Policy, a domain name will be found to be confusingly similar with a mark if the domain name so nearly resembles the mark in appearance, sound or in the ideas suggested by the mark so as to be likely to be mistaken for the mark.

In applying this definition, it is important to note paragraph 1.2 of the Policy which stipulates that: "For the purposes of this Policy domain name means the domain name excluding the dot-ca suffix..."

The test to be applied when considering whether a mark and domain name are "confusingly similar" is one of first impression and imperfect recollection. The Complainant must prove, on a balance of probabilities, that a person, as a matter of first impression, knowing the Complainant's corresponding mark, and having an imperfect recollection of the mark, would likely confuse the Domain Name for the Complainant's mark based upon the appearance, sound or the ideas suggested by the mark.

In this case the Domain Name is not merely similar to the Complainant's common law trade-mark but is identical to it.

The Panel can therefore conclude that the Domain Name is confusingly similar with the Complainant's common law trade-mark, given that the Domain Name so nearly resembles the trade-mark in appearance, sound and in the ideas suggested so as to be likely to be mistaken for the mark.

The Panel thus finds that the Domain Name is confusingly similar with a trade-mark in which the Complainant had rights prior to the registration date of the Domain Name, and continues to have such rights.

### Bad Faith Registration

The Complainant submits that the Registrant has registered and is using the Domain Name in bad faith because (i) the Registrant registered the Domain Name in order to prevent the Complainant from registering the Domain Name; and/or (ii) the Registrant registered the Domain Name or acquired the registration primarily for the purpose of selling the registration to the Complainant for valuable consideration in excess of the Registrant's actual costs in registering the Domain Name.

With regard to the Complainant's first claim, paragraph 3.5 (b) of the Policy states that the following circumstance, if found by the Panel to be present, shall be evidence that a Registrant has registered a domain name in bad faith:

...

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 (emphasis mine)*

As the Complainant has not provided evidence 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, the other claim will be considered.

With respect to the Complainant's second claim, paragraph 3.5 (a) of the Policy states that the following circumstance, if found by the Panel to be present, 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.* (again, emphasis mine)

The Complainant provided evidence in the form of a record of an email exchange which indicates that, when contacted, the Registrant responded with an offer to sell the Domain Name stating "We are willing to sell. We need only \$10,000 to cover current investment".

An offer to sell is not by itself evidence of bad faith, nor is the fact that the Registrant appears to be engaged in the business of buying and selling domain names. However, the requested \$10,000 would appear to exceed the Registrant's actual costs in registering the Domain Name, particularly given that little over a month had passed between the date the Domain Name was acquired by the Registrant and the date of the offer to sell.

Accordingly, the Panel can conclude that bad faith exists as per paragraph 3.5 (a). The Panel finds that the Complainant has established that the Registrant registered the Domain Name in bad faith, pursuant to paragraph 3.5 (a) of the Policy.

#### No Legitimate Interest in the Domain Name

Paragraph 3.4 of the Policy requires that the Complainant must provide *some* evidence that the Registrant has no legitimate interest in the Domain Name. Once this onus has been discharged by the Complainant, the Registrant may still succeed if it can show, on a balance of probabilities, that it has a legitimate interest in the Domain Name pursuant to paragraph 3.4.

The Complainant has submitted that the Registrant has no legitimate interest in the Domain Name, as the Complainant is a domain squatter and the domain has no associated commercial or non-commercial activities.

Although screen shots or similar evidence of the Registrant's use of the domain would have been preferred, the Complainant's unchallenged statements are that no commercial use or non-commercial use is being made of the domain.

The decision in *Coca-Cola Ltd. V. Hennan* (CIRA -00014) in addition to the decision in *Viacom International Inc. v. Harvey Ross Enterprises Ltd.* (CIRA – 00015) support the position that evidence that a domain name is not associated with an active website can be sufficient to demonstrate that a registrant has no legitimate interest in a domain name. The Complainant has therefore satisfied its initial burden.

It then becomes incumbent on the Registrant to show that it has a legitimate interest in the Domain Name. The Registrant has failed to provide a response to the Complaint.

In view of the above, the Panel must conclude that the Registrant has no legitimate interest in the Domain Name.

#### CONCLUSION AND DECISION

The Complainant has proven, on a balance of probabilities, that the 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 in which the Complainant continues to have such Rights.

The Complainant has proven, on a balance of probabilities, that the Registrant registered the Domain Name in bad faith.

The Complainant has adduced some evidence that the Registrant has no legitimate interest in the Domain Name.

The Registrant did not file a response disputing the Complainant's submissions, or justifying its registration of the Domain Name.

For these reason, the Complaint regarding the Domain Name is successful.

#### ORDER

The Panel orders, pursuant to paragraph 4.3 of the Policy, the transfer of [thefundingportal.ca](http://thefundingportal.ca) to the Complainant.



Peter C. Cooke  
Dated August 7, 2015