

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

CASE NO.: DCA-1684-CIRA  
DISPUTED DOMAIN NAMES: *www.albertahonda.ca*  
COMPLAINANT: 499813 Alberta Ltd. O/A Alberta Honda  
REGISTRANT: More to Your Door /Alexander Hanus  
SERVICE PROVIDER: British Columbia International Commercial Arbitration  
Centre (BCICAC)  
PANEL: James E. Redmond , (Chair);  
Anton Melnyk  
Barry C. Effler

**DECISION**

**The Parties**

1. The Complainant is 499813 Alberta Ltd. O/A Alberta Honda, 127 Avenue NW Edmonton, AB T5E 6M7, contact person Corey Pearson. The Registrant is More to Your Door, whose contact person and principal is Alexander Hanus, 1128 Lake Vista Dr. Sherwood Park, AB T8H 1J7.

**Procedural History**

2. The Disputed Domain Name, *albertahonda.ca* was registered on October 24, 2014. The Complaint was filed on June 24, 2015.
3. The Complaint was reviewed by the Service Provider and found to be compliant. By letter and email dated June 25, 2015, the Service Provider so advised the Parties and forwarded a copy of the Complaint to the Registrant.

4. The Registrant delivered a Response on July 15, 2015. The Service Provider reviewed the Response and delivered it to the Complainant on July 16, 2015. The BCICAC then named as Panelists James E. Redmond, as Chair, Anton Melynk and Barry C. Effler.
5. Following an initial review of the Complaint and the Response, the Panel concluded that further information was required in order to be able to render a Decision, and requested the Service Provider to advise the parties that the Panel required certain information from each of the parties, that the deadline for delivery of the information would be August 24, 2015, and that the time for delivery of the Decision would be extended to August 31, 2015.
6. On August 24, 2015, the Service Provider forwarded to the Panel the replies received from the Complainant and the Registrant.

#### **Factual Background**

7. The Complainant's evidence is that 499813 Alberta Ltd was incorporated on July 10, 1991, for the purpose of conducting business as a Honda dealership under the trade-name "**ALBERTA HONDA**". The Complainant asserts that "**ALBERTA HONDA**" has been a known name in the automotive industry in its locality for over 20 years and has developed "a genuine widely known brand recognition as one of the prominent Honda dealerships in all of Edmonton." Since December 7, 1998, the Complainant has also operated a primary website under the Domain Name *albertahonda.com*.
8. The evidentiary materials submitted with the Complaint include the registration form for the trade-name **ALBERTA HONDA** pursuant to the Alberta *Partnership Act*. Also included is a form under the Alberta *Business Corporations Act* entitled "Articles of Amendment", showing that the name of 499813 Alberta Ltd. was changed on November 2, 1994 to Zane Holdings Ltd.
9. The Complainant asserts that the Disputed Domain Name resolves to the website of an automotive dealership, Sherwood Park Chev., "<http://sherwoodparkchev.com>". Although the Registrant denied this in its reply to the questions from the Panel, the Complainant's contention is clearly borne out by a "screen shot" which the Registrant included in his

Response, which he describes as “my analytics showing the referral traffic from AlbertaHonda.ca”. The Registrant also asserts that the proper name of the Registrant is Alexander Hanus. In the Registrant’s reply to the Panel’s questions, Mr. Hanus says “I previously worked for Sherwood Park Chev as a Salesperson”, but does not disclose by whom he is presently employed.

## **Discussion and Findings**

### **(i) Jurisdiction**

10. The Complainant is a corporation, under the laws of Alberta, and therefore satisfies the Canadian Presence Requirements for Registrants and is an Eligible Complainant under paragraph 1.4 of the Policy. Although the Complaint describes the Complainant as 499813 Alberta Ltd., the name of that corporation was changed in 1994 to “Zane Holdings Ltd.”, but it remains the same corporate entity that has carried on business under the trade-name **ALBERTA HONDA** since its inception. The Panel does not consider that the use of the original name to describe the Complainant in any way affects the validity of the Complaint.

### **(ii) Onus of Proof**

11. Under paragraph 4.1 of the Policy, the Complainant must prove on a balance of probabilities that:
- (a) The Registrant’s dot-ca Domain is confusingly similar to a Mark in which the Complainant had Rights prior to the date of the registration of the Domain Name, and continues to have such rights;
  - (b) The Registrant has registered the Domain Name in bad faith, as described in paragraph 3.5 of the Policy;

and the Complainant must provide some evidence that:

- (c) The Registrant has no legitimate interest in the Domain as described in paragraph 3.4 of the Policy.

Even if the Complainant proves (a) and (b) and provides some evidence of (c) the Registrant will succeed if the Registrant proves, on a balance of probabilities, that the Registrant has a legitimate interest in the Domain Name as described in paragraph 3.4.

**(iii) Confusingly Similar**

12. Paragraph 3.3 of the Policy provides as follows:

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.

13. In this case, the evidence shows that **ALBERTA HONDA** is a trade name that has been used in Canada by the Complainant for the purpose of distinguishing the wares, service or business of the Complainant from the wares, services or business of another person, and therefore constitutes a Mark under paragraph 3.2 of the Policy (see: *The Exite Group Inc. v. Zucker International Marketing Inc.*, Case No. CIRA 176, 2011).
14. Paragraph 1.2 of the Policy provides that for the purposes of the Policy, “**domain name**” means the domain name excluding the “dot-ca” suffix. Therefore, for the purposes of determining whether the Disputed Domain Name is Confusingly Similar to the Complainant’s Mark, the dot-ca suffix is to be excluded from consideration. Since the Disputed Domain Name is identical to the Complainant’s trade-name, except for the dot-ca suffix, the Disputed Domain Name is clearly Confusingly Similar to the Complainant’s trade name **ALBERTA HONDA**.

**(iv) Registration in Bad Faith**

15. The Complainant submits that the Disputed Domain Name was registered in bad faith, and that the Registrant “registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of the Complainant ...”. The Complaint further asserts that “By having the AlbertaHonda.ca (sic) website direct to their own site, it is clear that they are attempting to driving (sic) focussed traffic from AlbertaHonda.com to their own website.”

16. The Registrant acknowledges in his Response that at the time of registration of the Disputed Domain Name, "I had considered the possibility of utilizing my skills in search engine optimization to create a website promoting pre-owned vehicles within the market of Alberta, including used Hondas". He further acknowledges that "there would have been an attempt to drive focussed traffic to my pre-owned Honda inventory." In fact, from the information provided in the "screen shot" referred to above, the Disputed Domain Name was set up to resolve to the website of Sherwood Park Chev, an automobile dealer carrying on business in the same locality as the Complainant.
17. In the view of the Panel, while the evidence provided to the Panel by both parties is very skimpy, as are the legal submissions, the evidence is sufficient to show that the Registrant registered a domain name which incorporated in its entirety the Complainant's well-known trade name, with the likely result that persons familiar with the Complainant's business would be likely to click on that domain name when looking for information relating to the Complainant's business. It is further the view of the Panel that, although the Registrant argues that his "analytics" show no referral traffic actually passed from the Disputed Domain to the Sherwood Park Chev website, the fact that the Disputed Domain resolved to a competitor's website indicates an intention on the part of the Registrant, in registering the Disputed Domain Name, to use to his advantage the Complainant's well-known trade-name.
18. The Panel concludes that the evidence is adequate to satisfy the onus upon the Complainant to support a finding of bad faith on the part of the Registrant in registering the Domain Name, under paragraph 3.5(c) of the Policy which provides that it is evidence of registration of a Domain Name in bad faith 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 ...
19. The Panel further is of the view that the fact that the Registrant had in mind using the Disputed Domain Name for the purposes of a business to be involved in selling used Honda vehicles, and that in fact the Domain Name was set up to resolve to the website of

the Complainant's competitor Sherwood Park Chev is sufficient to lead to a reasonable inference that in registering the Disputed Domain Name, the Registrant intentionally attempted to attract, for commercial gain, internet users to the Registrant's website 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, within the terms of paragraph 3.5(d) of the Policy.

20. The Panel finds that the Registrant has registered the Disputed Domain Name in bad faith.

**(v) Legitimate Interest**

21. The Policy, in paragraph 3.4, lists circumstances which, in particular but without limitation shall demonstrate that the Registrant has a legitimate interest in a domain name. The evidence before this Panel does not show that any of the circumstances listed in paragraph 3.4 of the Policy exist in this case:

- (a) the Disputed Domain Name was not a Mark, in which the Registrant had Rights or which was used in good faith (3.4(a));
- (b) the Registrant did not register the Domain Name in good faith in association with any wares, services or business and the Domain Name was not clearly descriptive of the character or quality of the wares, services or business, the conditions of, or the persons employed in, productions of the wares, performance of the services or operation of the business, or the place of origin of the wares, services or business (3.4(b));
- (c) the Disputed Domain Name was not registered by the Registrant in good faith in association with any wares, services or business nor was it understood to be the generic name thereof in any language (3.4(c));
- (d) the Disputed Domain Name was not used in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting (3.4(d));

- (e) the Disputed Domain Name did not comprise the legal name of the Registrant and was not a name, surname or other reference by which the Registrant was commonly identified (3.4(e));
  - (f) the Disputed Domain Name was not the geographical name of the location of the Registrant's non-commercial activity or place of business (3.4(f)).
22. The Panel concludes that the evidence as outlined above is sufficient to satisfy the onus upon the Complainant to provide some evidence that the Registrant has no legitimate interest in the Domain Name. This is supported by the fact that the Registrant's bad faith conduct in registering the Disputed Domain Name serves to negate the presence of good faith as required in each of the subparagraphs of paragraph 3.4.
23. The Registrant has not provided any evidence to show on a balance of probabilities that the Registrant has a legitimate interest in the Disputed Domain Name.
24. The Panel therefore finds that the Registrant has no legitimate interest in the Disputed Domain Name.

**(vi) Decision and Order**

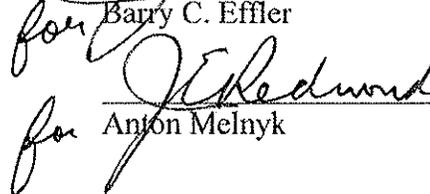
25. The Panel finds that the Complaint is successful, and it is ordered and directed that the Registration of the Disputed Domain Name be transferred to Zanc Holdings Ltd., the current name of the Complainant corporation.



James E. Redmond, Chair



for Barry C. Effler



for Anton Melnyk

DATED August 29, 2015