

**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: <pensketruck.ca>
Complainant: Penske Truck Leasing Co., L.P.
Registrant: Catalin Giurgia
Registrar: Go Daddy Domains Canada, Inc.
Panel: Douglas M. Isenberg, Esq.
Provider: British Columbia International Commercial Arbitration Centre
BCICAC File: DCA-2041-CIRA

DECISION

1. The Parties

The Complainant is Penske Truck Leasing Co., L.P. of Reading, Pennsylvania, USA (“Complainant”), represented by Davies Ward Phillips & Vineberg LLP of Montreal, QC.

According to the Complaint, the Registrant is unknown. However, the case file provided to the Panel identifies the registrant as Catalin Giurgia of Kitchener, ON (“Registrant”).

2. The Domain Name and Registrar

The disputed domain name is <pensketruck.ca> (the “Disputed Domain Name”), which was created on August 18, 2018. The registrar is Go Daddy Domains 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 November 30, 2018 Complainant filed a Complaint pursuant to the CDRP and the Rules.
- b. In a letter dated December 3, 2018, the Centre as Service Provider, confirmed compliance of the complaint and commencement of the dispute resolution process.
- c. As the Complaint with the attachments was filed exclusively online; therefore, the Centre delivered the Complaint to the Registrant only by email.

- d. The Complainant did not file any further submissions with respect to the issue of the Registrant's legitimate interest (or lack thereof) in the disputed domain name, as permitted by section 11.1 of the CIRA Domain Name Dispute Resolution Rules Version 1.5.
- e. Attempts to deliver the Complaint to the Registrant were unsuccessful.
- f. The Registrant did not provide a Response. As permitted given the absence of a Response, the Complainant elected under Rule 6.5 to convert from a panel of three to a single arbitrator.
- g. The Centre appointed Douglas M. Isenberg, Esq., as sole arbitrator on January 3, 2019.
- h. Absent exceptional circumstances, and pursuant to Rule 12.2, the Panel's decision is to be delivered to BCICAC by January 25, 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."

Complainant states that it satisfies the CPR because "Complainant, through its affiliate companies, owns, is a licensee of and uses a number of trade-marks registered in Canada for the trade name 'PENSKE', including registrations TMA488615, TMA460514, and TMA954948." Elsewhere in the Complaint, Complainant lists eight Canadian trademark registrations that Complainant says it, "through its affiliate companies, owns, is a licensee of and uses": TMA488615, TMA460514, TMA702359, TMA688205, TMA954948, TMA899058, TMA954950, and TMA688491.

However, according to records from the Canadian Trademarks Database provided by Complainant as exhibits to the Complaint, all of the trademark registrations cited by Complainant are owned by Penske System, Inc. – not by Complainant (Penske Truck Leasing Co., L.P.). Accordingly, while Complainant may be a licensee of and use these trademarks, Complainant does not appear to be "the owner of the trade-mark[s]" as required by paragraph 1.4 of the CDRP. Nor does Complainant satisfy paragraph 2(q) of the CPR, which similarly applies only to "the owner of a trade-mark which is the subject of a registration under the Trade-marks Act (Canada) R.S.C. 1985, c.T-13 as amended from time to time." Again, Penske System, Inc. – not Complainant – is the owner of the trademark registrations cited by Complainant.

Complainant does not make any other arguments as to how it is an eligible complainant under the CDRP. Although Complainant states that it "operates directly, or through representatives, wholly-owned affiliates, and/or licensees, facilities in Canada including the facility at 1610 Enterprise

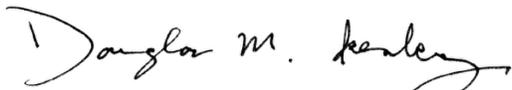
Road, Mississauga, Ontario, L4W 4L4,” Complainant does not explain whether or how this is relevant to the CDRP or the CPR, and the Panel fails to understand how it might be.

While it is not a panel’s obligation to determine whether or how a complainant may be an eligible complainant outside of any arguments set forth in a complaint, this Panel has reviewed the long list of relevant “individuals and entities” in paragraph 2 of the CPR and does not believe that Complainant satisfies any of them. Clearly, many of those listed are not even worthy of consideration here, because Complainant is most obviously not, to cite just a few examples, a political party; an educational institution; or a hospital. Indeed, the only label that the Panel seriously considered (and, again, which Complainant itself did not argue) is whether Complainant might be a “corporation under the laws of Canada or any province or territory of Canada.” However, the Complaint states that Complainant is based in Reading, Pennsylvania, USA, and the Panel’s independent reference to the online database of the United States Patent and Trademark Office indicates that Complainant is a Delaware (USA) limited liability company.

As a result, the Panel finds that, based on the Complaint, Complainant is not an eligible complainant under paragraph 1.4 of the CDRP. As a result, the Panel need not further consider the Complaint.

6. Decision

For all the foregoing reasons, the Panel orders that the Disputed Domain Name <pensketruck.ca> remain with the Registrant. Nothing in this decision shall be construed as prohibiting a future complaint being filed with respect to the Disputed Domain Name, provided, of course, that the complainant therein is an eligible complainant under paragraph 1.4 of the CDRP.



Douglas M. Isenberg, Esq. (Sole Panelist)

Dated: January 25, 2019