



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE

DOMAIN NAME DISPUTE

ADMINISTRATIVE PANEL

DECISION

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| CIIDRC case number: | 16136-CDRP | Decision date: November 13, 2021 |
| CDRP decisions | | |
| Domain Name: | bugasalt.ca | |
| Panel: | Alan L. Limbury | |
| Complainant: | Skell Inc. | |
| Complainant's representative: | David T. Madsen, QC and Bradon Willms of Borden Ladner Gervais LLP | |
| Registrant: | Bug Asalt | |

1. PROCEDURAL HISTORY

This matter is conducted pursuant to the Canadian Dispute Resolution Policy (the CDRP) and the Canadian Dispute Resolution Rules (the Resolution Rules) of the Canadian Internet Registry Authority.

The procedural history of this case was set out in a letter from the Canadian International Internet Dispute Resolution Centre to the Panel:

1.1. On October 12, 2021, David Madsen, QC and Brandon Willms of Borden Ladner Gervais LLP filed a Complaint pursuant to the CDRP and the Resolution Rules. The identity of the Registrant is not published in the public WHOIS database. Therefore, the Registrant's name was not included in the Complaint.

1.2. CIRA was notified of this proceeding on October 12, 2021 and on the same date CIRA transmitted by email to CIIDRC its verification response naming the Registrant of the disputed domain name. CIRA also confirmed that the <bugasalt.ca> Domain Name was placed on a Registrar LOCK.

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1.3. On October 15, 2021, CIIDRC, as Service Provider, confirmed compliance of the Complaint and commencement of the dispute resolution process.

1.4. 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.

1.5. The Complaint with the attachments was filed exclusively online. Therefore, CIIDRC delivered the Complaint to the Registrant by email and by courier to the address provided by CIRA.

1.6. Pursuant to Resolution Rule 4.4, CIIDRC notified the Registrant of this administrative proceeding and forwarded a Notice with a login information and the link to the Complaint to the Registrant on October 15, 2021.

1.7. The Registrant failed to file its response by the due date of November 4, 2021.

1.8. The Complainant in this administrative proceeding has elected for a Panel consisting of a single-member.

1.9. CIIDRC appointed Alan L. Limbury as a single-member Panel in this matter on November 9, 2021. The Panel accepted the appointment and completed a statement of impartiality and independence as required under Paragraph 7 of the Rules.

2. FACTS ALLEGED BY THE PARTIES

The Complainant, Skell Inc., is the owner of Canadian registered trademarks BUG-A-SALT word and BUG-A-SALT logo. The marks were registered in 2015 and have been used in Canada in association with the Complainant's goods since at least as early as December 2012.

The <bugasalt.ca> domain name was registered on July 8, 2021. For approximately two months following its registration, the Domain Name resolved to a website displaying content purporting to advertise the Complainant's products. Subsequently all content was removed from the website.

The Registrant has made no submissions.

3. CONTENTIONS OF THE PARTIES

- **Complainant**

Under its BUG-A-SALT word and logo marks, the Complainant distributes and sells in the United States and Canada hand-operated bug killing sprayers that shoot salt, and related accessory products. Sales are made online through the Complainant's website "www.bugasalt.com" and through Amazon, as well as through independent Canadian retailers pursuant to distribution agreements which contain restrictions on their sale in Canada.

The Complainant says it has never authorized any retailer to sell its goods through the Domain Name and has never licensed its registered marks for that purpose. Without licence, authority or consent of the Complainant, and subsequent to the Complainant's use of its registered marks, the Registrant registered the Domain Name <bugasalt.ca> on July 8, 2021.

As of August 13, 2021, the Registrant purported to advertise and sell the Complainant's products through an online shop at the website to which the Domain Name resolved. In particular, the Registrant purported, without licence, authority or consent of the Complainant, to offer the Complainant's "SHRED-ER" products for sale through the Domain Name, and used images of the Complainant's authentic products for that purpose. The images used in the website to which the Domain Name resolved appear identical to images used by the Complainant on its own "www.bugasalt.com" website.

The Complainant submits that the Domain Name <bugasalt.ca> is confusingly similar to the Complainant's registered word and logo marks; that the Registrant has no legitimate interest in the Domain Name; and that the Registrant registered the Domain Name in bad faith.

As to legitimacy, the Complainant says the Registrant has no right, licence or authorization to use the Complainant's registered marks nor to advertise the Complainant's products. Therefore, the Registrant has no legitimate interest under paragraph 3.4(a) of the CDRP.

The Registrant did not register the Domain Name in good faith in association with any wares, services, or business that it has any right to offer. By purporting to offer the Complainant's products through the Domain Name, the Registrant has used the Domain Name to deceive the public by directing attention to wares that it had no authority to offer for sale and by misrepresenting its authority to do so, contrary to sections 7(b) and (c) of the *Trademarks Act* and the common law tort of passing off. Therefore, the Registrant has no legitimate interest under paragraph 3.4(b) of the CDRP.

The "BUG-A-SALT" name is not, and cannot be understood to be, the generic name of any wares, services, or business. Rather, it is a trademark owned by the Complainant used exclusively in association with the Complainant's products and its legitimate website, "www.bugasalt.com". Therefore, the Registrant has no legitimate interest under paragraph 3.4(c) of the CDRP.

The Registrant has not used the Domain Name in association with non-commercial activities such as criticism, review, or news reporting. Rather, the Registrant purported to carry out the commercial sale of the Complainant's products through the Domain Name. Therefore, the Registrant has no legitimate interest under paragraph 3.4(d) of the CDRP.

Given that the Complainant owns the registered marks, which are associated with the Complainant's products, the Domain Name cannot comprise the legal name of the Registrant nor a reference by which the Registrant is commonly identified. Therefore, the Registrant has no legitimate interest under paragraph 3.4(e) of the CDRP.

The Domain Name is not the geographical name of any location. Therefore, the Registrant has no legitimate interest under paragraph 3.4(f) of the CDRP.

As to bad faith, the Domain Name was registered without the knowledge or authorization of the Complainant, and for the purpose of wrongfully purporting to advertise and sell the Complainant's products. The Registrant has demonstrated a pattern of bad faith by registering the Domain Name, displaying content purporting to advertise the Complainant's products for a period of time, and then removing all content from the website within approximately two months of its initial registration. This pattern of behaviour shows that the Registrant (1) registered the Domain Name to prevent the Complainant from using it; (2) registered the Domain Name to disrupt the Complainant's business; (3) intentionally sought to attract Internet users to the Domain Name for the Registrant's own commercial gain by creating a likelihood of confusion with the Complainant's registered marks; or (4) pursued a combination of these purposes. Therefore, the record establishes bad faith under paragraphs 3.5(b)-(d) of the CDRP.

The Registrant's registration of the Domain Name prevents the Complainant from using it as its official website for Canadian business operations, notwithstanding that the Domain Name is identical in appearance, sound and ideas to the Complainant's registered marks, product name and existing <bugasalt.com> registration, which the Complainant registered nearly twelve years before the Respondent registered the Domain Name. Given that the Registrant is not authorized to use the registered marks nor to advertise or sell the Complainant's products, the only available inference is that the Registrant sought to achieve one of the bad faith purposes described above. Therefore, the requirements of registration of the Domain Name in bad faith as set out in paragraphs 3.1(c), 3.5, and 4.1(b) of the CDRP are fulfilled.

- **Registrant**

The Registrant, Bug Asalt, failed to file a response to the Complaint.

Remedy Sought

The Complainant requests that the Domain Name be transferred to it.

4. DISCUSSION AND FINDINGS

4.1 Eligibility

As the owner of Canadian registered trademarks BUG-A-SALT word (Registration No. TMA 898561) and BUG-A-SALT logo (Registration No. TMA 898562), the Complainant is an eligible complainant under paragraph 1.4 of the CDRP and therefore satisfies CIRA's Canadian Presence Requirements for Registrants.

4.2 Requirements

In accordance with Paragraph 3.1 of the CDRP, the onus is on the Complainant to prove:

That the Domain Name is Confusingly Similar to a trademark or service mark in which the Complainant has rights:

That the Registrant has no legitimate interests in the Domain Name; and

That the Domain Name has been registered in bad faith.

The Panel will consider each of these requirements in turn.

4.3 Analysis

4.3.1 That the Domain Name is Confusingly Similar to a Mark in which the Complainant has Rights

The Complainant's Canadian BUG-A-SALT word and logo marks were both registered on March 12, 2015 in association with the goods of a hand-operated bug killing device in the nature of a sprayer that shoots salt. The Panel finds the Respondent's <bugasalt.ca> domain name to be confusingly similar to both of the Complainant's marks, since, apart from the omission of the hyphens, it comprises the entirety of the word mark and the word element of the logo mark. The omission of the hyphens does nothing to distinguish the Domain Name from the marks. Policy para. 1.2 provides that for the purposes of the CDRP, the term "domain name" means the domain name excluding the "dot-ca" suffix.

The Complainant has established this element.

4.3.2 That the Registrant has No Legitimate Interest in the Domain Name

The Panel finds that the Registrant has never been licensed or authorized to use either of the Complainant's marks. Although the Domain Name is registered in the name Bug Asalt, there is no evidence that the Registrant is commonly known or identified by that name, nor is Bug Asalt a geographical name. Moreover, there is no evidence that the Registrant has used, is using, or is preparing to use, the Domain Name in good faith in connection with any bona fide goods or services, or for a legitimate non-commercial use. Rather, for a short time after registration, the Domain Name resolved to a website masquerading as a website of the Complainant and purporting to offer the genuine goods of the Complainant, despite the Registrant having no permission from the Complainant to do so.

The Complainant needs only to raise a reasonable challenge to the legitimacy of the Domain Name registration to establish its case, in the absence of any showing of legitimacy by the Registrant. Such reasonable challenge is achieved by the Complainant's ownership of its registered Canadian marks, given that the registration of the Domain Name does not appear to fit within any of the circumstances set out in paragraph 3.4 of the CDRP. See CIIDRC Decision 15909-CDRP, *loxone.ca*, at p 7. As a result, the Complainant has established that the Registrant lacks any legitimate interest in the Domain Name.

4.3.3 That the Registrant has Registered the Domain Name in Bad Faith

The Panel finds that the Domain Name was registered and has been used to mislead Internet users into the false belief that the website to which the Domain Name resolved for a short period after it was registered was that of the Complainant or was endorsed, sponsored or approved by the Complainant. This demonstrates that the Registrant was fully aware of the Complainant's word or logo marks at the time the Registrant registered the Domain Name and did so in one or more of the circumstances set out in the Policy, paragraphs 3.5 (c) or (d).

5 DECISION and ORDER

For the above reasons, in accordance with Paragraph 4 of the CDRP, Paragraph 12 of the Resolution Rules, the Panel orders that the Domain Name be transferred to the Complainant

Made as of November 13, 2021.

SIGNATURE OF PANEL

Alan L. Limburg

