

**IN THE MATTER OF A COMPLAINT MADE PURSUANT TO THE CANADIAN  
INTERNET REGISTRATION AUTHORITY DOMAIN NAME DISPUTE  
REGISTRATION RESOLUTION POLICY (v 1.3) AND RULES (v 1.5)**

**Complainant:**

Crescent Point Energy Corp.  
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Canada  
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(the "Complainant")

**Complainant's Representative:**

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**Registrant:**

Dallas Paisley  
4195 Davis Road,  
Prince George, British Columbia, V2N5L2,  
Canada  
(the "Registrant")

**Disputed Domain Name:**

[crescentpointenergy.ca](http://crescentpointenergy.ca)  
(the "Domain Name")

**Registrar:**

Go Daddy Domains Canada Inc.

**Single Member Panel:**

R. John Rogers

**Service Provider:**

British Columbia International  
Commercial Arbitration Centre (the "BCICAC")

**BCICAC File:**

DCA-2039-CIRA

## **PROCEDURAL HISTORY**

The BCICAC is a recognized service provider pursuant to the Domain Name Dispute Resolution Policy (v 1.3) (the “Policy”) and Rules (v 1.5) (the “Rules”) of the Canadian Internet Registration Authority.

On November 27, 2018, the Complainant filed a complaint dated November 23, 2018 (the “Complaint”) with the BCICAC. In the Complaint, the Complainant seeks an order in accordance with the Policy and the Rules directing that the registration of the Domain Name be transferred from the Registrant to the Complainant.

The BCICAC determined the Complaint to be in administrative compliance with the requirements of Rule 4.2 and, by way of an emailed letter dated November 27, 2018 (the “Transmittal Letter”), forwarded a copy of the Complaint to the Registrant to serve as notice of the Complaint in accordance with Rules 2.1 and 4.3. The Transmittal Letter determined the date of the commencement of proceedings in accordance with Rule 4.4 to be November 27, 2018. The Transmittal Letter advised the Registrant that in accordance with the provisions of Rule 5, a Response to the Complaint was to be filed within 20 days of the date of commencement of proceedings, or December 17, 2018. Delivery of this email to the Registrant was confirmed by the BCICAC on November 27, 2018.

By an email dated December 20, 2018, the BCICAC advised the Complainant that as the BCICAC had not received a Response to the Transmittal Letter by December 17, 2018 as required by Rule 5.1, that pursuant to Rule 6.5 the Complainant had the right to elect that the panel in this matter be converted from a three member panel to a single member panel.

The Complainant elected to proceed with a single member panel and the undersigned was appointed by the BCICAC as the Single Member Panel by letter dated December 21, 2018, copies of which letter were sent by email to both the Complainant and the Registrant. The undersigned has confirmed to the BCICAC that he can act impartially and independently as the Single Member Panel in this matter.

The undersigned determines that he has been properly appointed and constituted as the Single Member Panel to determine the Complaint in accordance with the Rules.

## **CANADIAN PRESENCE REQUIREMENTS**

Section 1.4 of the Policy requires that in order to initiate the Complaint, the Complainant at the time of the initiation of the Complaint must satisfy the Canadian Presence Requirements for Registrants v 1.3 (“Presence Requirements”) unless the Complaint relates to a trade-mark registered in the Canadian Intellectual Property Office and the Complainant is the owner of that trade-mark.

The Presence Requirements require that to be permitted to apply for registration of, and to hold and maintain the registration of, a .ca domain name, the applicant must meet at least one of the criteria listed as establishing a Canadian presence. Section 2(d) of the Presence Requirements specifies that a corporation incorporated under the laws of Canada or any province or territory of Canada has the requisite Canadian presence.

As the Complainant is a corporation incorporated under the laws of the Province of Alberta, the Complainant meets the Presence Requirements and, in turn, satisfies the provisions of Section 1.4 of the Policy.

### **ALL TECHNICAL REQUIREMENTS MET**

Based upon the information provided by the BCICAC and the Complainant, I find that all technical requirements for the prosecution of this proceeding have been met.

### **FACTS OFFERED BY THE COMPLAINANT**

The facts in the Complaint might be summarized as follows:

1. The Complainant founded in 2001 is one of Canada's largest light and medium oil producers and is based in Calgary, Alberta. Since 2002 it has provided energy asset management services, oil and gas production and treatment services, and oil and gas exploration and development services under the common law trademarks CRESCENT POINT ENERGY, CRESCENT POINT and CRESCENT POINT & design (the "Crescent Point Marks");
2. The Complainant actively promotes and advertises its offered services associated with the Crescent Point Marks through brochures, presentations, conferences and speaking events provided to customers, clients, shareholders and investors.
3. Since 2002, the Complainant has been the registrant of the domain name <creseentpointenergy.com> and the Crescent Point Marks are prominently displayed on the website to which this domain name resolves;
4. The Complainant is:
  - a. The owner of Canadian trademark application no. 1857497 for CRESCENT POINT;
  - b. The owner of US trademark application no. 87612812 for CRESCENT POINT; and
  - c. The owner of Canadian trademark application no. 1857498 and US trademark application no. 876128828 for the CRESCENT POINT & DESIGN trademark;

5. Since it commenced oil and gas production services in 2001, the Complainant has increased its production from approximately 275 boe/d to approximately 182,000 boe/d by the end of Q2 in 2018;
6. Shares of the Complainant commenced trading on the Toronto Stock Exchange in 2001 and on the New York Stock Exchange in 2014;
7. On September 7, 2018, the Registrant telephoned the Complainant and alleged that he had been injured at some point in the past while working for a third party contractor on one of the Complainant's well sites. To express his grievances concerning this injury, although he had not been employed directly by the Complainant, the Registrant purportedly registered the Domain Name on December 21, 2017;
8. During this telephone conversation, the Registrant also advised the Complainant that he had registered the domain name <crestpointenergy.co> for the same reason;
9. The Complainant claims that the Registrant's employer together with the relevant Workers' Compensation Board investigated the Registrant's allegations of injury at the Complainant's well site and neither party found evidence of the Registrant's allegations;
10. In a decision dated November 7, 2018, a WIPO Arbitration and Mediation Centre Panel in a reference to it under the Uniform Dispute Resolution Policy proceedings (*Crescent Point Energy Corp v. Dallas Paisley*, Case No. DCO2018-0029), ordered the transfer of the <crestpointenergy.co> domain name to the Complainant;
11. On September 11, 2018 the Complainant sent a letter to the Registrant objecting to the Registrant's unauthorized use of the Domain Name and the <crestpointenergy.co> domain name, demanding that the Registrant cease infringing the Crescent Point Marks and demanding that the Registrant transfer the Domain Name and the <crestpointenergy.co> domain name to the Complainant. The Registrant has not responded to this letter;
12. A search of the WhoIs database for the domain names <suncorenergy.co>, <suncor.company>, <tervita.company>, and <encana.company> show these domain names to be registered in the name of the Registrant, such domain names reflecting the names and trademarks of public Canadian oil and gas companies, Suncor Energy Inc., Tervita Corporation, and Encana Corporation, and the domain names employed by these companies, <suncor.com>, <tervita.com> and <Encana.com>, respectively;
13. The domain names <suncorenergy.co> and <suncor.company> resolve to the website [www.adjp.ca](http://www.adjp.ca) and the domain names <tervita.company> and <encana.company> resolve to the website [www.paisleyscontracting.com](http://www.paisleyscontracting.com), both of which websites are owned by the Registrant; and
14. On November 23, 2018, the Domain Name redirected users to [www.adip.ca](http://www.adip.ca), a website which references the Registrant's name and personal and company contact information.

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## **FACTS OFFERED BY THE REGISTRANT**

As was noted above, the Registrant has not responded to the Complaint nor responded to the Complainant's letter of September 11, 2018.

## **REMEDIES SOUGHT**

The Complainant seeks an order from the Panel in accordance with paragraph 4.3 of the Policy instructing the Registrar of the Domain Name to transfer the Domain Name to the Complainant.

## **THE POLICY**

The purpose of the Policy as stated in paragraph 1.1 of the Policy is to provide a forum in which cases of bad faith registration of .ca domain names can be dealt with relatively inexpensively and quickly.

Paragraph 4.1 of the Policy puts the onus on the Complainant to demonstrate this "bad faith registration" by proving on a balance of probabilities that:

1. one or more of the Crescent Point Marks qualifies as a "Mark" as defined in paragraph 3.2 of the Policy;
2. the Complainant had "Rights" in the Crescent Point Marks prior to the date of registration of the Domain Name and continues to have "Rights" in the Crescent Point Marks,
3. the Domain Name is "Confusingly Similar" to the Crescent Point Marks as the concept of "Confusingly Similar" is defined in paragraph 3.3 of the Policy;
4. the Registrant has no "legitimate interest" in the Domain Name as the concept of "legitimate interest" is defined in paragraph 3.4 of the Policy; and
5. the Registrant has registered the Domain Name in "bad faith" in accordance with the definition of "bad faith" contained in paragraph 3.5 of the Policy.

If the Complainant is unable to satisfy this onus, bad faith registration is not demonstrated and the Complaint fails.

## **MARK**

In the matter at hand, the relevant portion of paragraph 3.2 of the Policy states that for the purpose of the Policy a "Mark" is:

- (a) a trade-mark, including the word elements of a design mark, or a trade name that has been used in Canada by a person, or the person's predecessor in title, for the purpose

of distinguishing the wares, services or business of that person or predecessor or a licensor of that person or predecessor from the wares, services or business of another person;

Since at least 2002 and well before the registration of the Domain Name, the Complainant has used one or more of the Crescent Point Marks in Canada to distinguish its provision of wares, services or business from another provider of similar wares, services or business.

The Complainant continues to use the Crescent Point Marks.

The Crescent Point Marks clearly qualify as a “Mark” pursuant to paragraph 3.2(a) of the Policy.

## **RIGHTS**

The paragraph 3.1 of the Policy requires that the Complainant have “Rights” in the Crescent Point Marks. Unfortunately, the term “Rights” is not defined in the Policy.

However, given the evidence before me of the Complainant’s ownership and use of the Crescent Point Marks in Canada, I find that the Complainant has “Rights” in the Crescent Point Marks for the purpose of paragraph 3.1 of the Policy.

## **CONFUSINGLY SIMILAR**

Policy paragraph 3.3 provides that the Domain Name will be found to be “Confusingly Similar” to the Crescent Point Marks only if the Domain Name so nearly resembles one or more of the Crescent Point Marks in appearance, sound or the ideas suggested by the Crescent Point Marks as likely to be mistaken for one or more of the Crescent Point Marks.

The Domain Name consists of the words contained in the trade-mark “CRESCENT POINT ENERGY” owned by the Complainant, but without the space between the words CRESCENT, POINT and ENEGY and includes the .ca suffix. As paragraph 1.2 of the Policy defines the Domain Name for the purpose of this proceeding to exclude the .ca suffix, the portion of the Domain Name consisting of “crescentpointenergy” is the portion relevant for consideration.

Therefore, to satisfy the onus placed upon it by the Policy, the Complainant must demonstrate that the “crescentpointenergy” portion of the domain name so nearly resembles the trade-mark “CRESCENT POINT ENERGY” in appearance, sound or the ideas suggested by the trade-mark as likely to be mistaken for the trade-mark.

It is clear from decisions of other panels that where, apart from the omission of a space, a trade-mark uses the same words as the domain name under consideration, that the domain name and the mark are considered “identical”. See for example, *Discovery Toys, Inc. v. Ebenezer Therasagayam* (CIRA Dispute Resolution Decision # 00118), *Extreme Fitness Inc. v. Gutam*

*Relan* (CIRA Dispute Resolution Decision # 0019), and *Ford Motor Co. of Canada Ltd. v. Lefebvre* (CIRA Dispute Resolution Decision #00314).

I find that the spacing difference between the wording of the trade-mark “CRESCENT POINT ENERGY” and the Domain Name is not sufficient to render the Domain Name different from the trade-mark for the purpose of the Policy and that, therefore, the Domain Name is for the purpose of paragraph 3.3 likely to be mistaken for the trade-mark “CRESCENT POINT ENERGY” owned by the Complainant.

I therefore find that the Complainant has satisfied the onus placed upon it by paragraph 3.3 of the Policy and has demonstrated that the Domain Name so nearly resemble one or more of the Crescent Point Marks in appearance, sound or the ideas suggested by the Crescent Point Marks as to be likely mistaken for one or more of the Crescent Point Marks.

### **NO LEGITIMATE INTEREST**

Paragraph 4.1 of the Policy requires that to succeed in the Complaint, the Complainant must provide some evidence that the Registrant has no legitimate interest in the Domain Names as the concept of “legitimate interest” is provided for in paragraph 3.4 of the Policy.

Paragraph 3.4 of the Policy provides that the Registrant has a legitimate interest in a domain name if:

- a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;
- b) the Registrant used the domain name in Canada in good faith in association with any wares, services or business and the domain name was clearly descriptive in Canada in the English or French language of:
  - (i) the character or quality of the wares, services or business;
  - (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or
  - (iii) the place of origin of the wares, services or business;
- c) the Registrant used the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language;
- d) the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;
- e) the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or
- f) the domain name was the geographical name of the location of the Registrant’s non-commercial activity or place of business.

In paragraph 3.4(d) “use” by the Registrant includes, but is not limited to, use to identify a web site.

It is to be noted that in paragraphs 3.6(a), (b), (c), and (d), there is a requirement that the Registrant use the Domain Name “in good faith”. The evidence before me, as referenced below,

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is not that the Registrant used the Domain Name in good faith, but rather to the contrary, that the Registrant used the Domain Names to disrupt and trade upon the goodwill of the Complainant without a license to do so. Therefore, the provisions of these paragraphs do not apply.

The Registrant's name is not included in the Domain Name nor is there a geographical reference so the provisions of paragraphs 3.6(e) and 3.6(f) do not apply.

I therefore find that the Complainant has provided some evidence that the Registrant has no legitimate interest in the Domain Name.

## **BAD FAITH**

Under paragraph 3.5 of the Policy, the Registrant will be considered to have registered the Domain Name in bad faith if, and only if, the Complainant can demonstrate that the Registrant in effecting the registration of the Domain Name was motivated by any one of the four general intentions set out in paragraph 3.5.

Of these intentions, the form of intention contained in paragraph 3.5(b) is the one most applicable to the matter at hand.

Paragraph 3.5(b) provides as follows:

- (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;

The Complaint states that in a telephone conversation with the Complainant on September 7, 2018 the Registrant indicated that the purpose for his registration of the Domain Name was to express his grievances stemming from an alleged worksite injury. This, if proven, would alone indicate bad faith on the Registrant's behalf.

However, specifically relevant to the provisions of paragraph 3.5(b) is the evidence presented in the Complaint by the Complainant to the effect that a search of the WhoIs database demonstrates that the Registrant has engaged in a pattern of conduct of improperly registering and using domain names which incorporate the trademarks of other recognizable public companies operating in the Canadian energy industry, including the domain names <suncoreenergy.ca>, <suncor.company>, <tervita.company> and <encana.company>.

I therefore find that the Complainant has satisfied the provisions of paragraph 3.5 (b) of the Policy by establishing that the Registrant registered the Domain Name in order to prevent the Complainant from registering one or more of the Crescent Point Marks as a domain name, and

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that the Registrant has engaged in a pattern of registering domain names in order to prevent recognizable Canadian public companies active in the oil and gas industry from registering their trademarks as domain names;

## **DECISION**

As was above set out, paragraph 4.1 of the Policy provides that to be successful in the Complaint the Complainant has the onus of proving on a balance of probabilities three specific items and of providing some evidence that the Registrant has no legitimate interest in the Domain Name.

I find that the Complainant has satisfied this onus with respect to all three of these items by demonstrating that one or more of the Crescent Point Marks qualifies as a Mark in accordance with paragraph 3.2 of the Policy; that the Domain Name is Confusingly Similar to one or more of the Crescent Point Marks; and that the Registrant has registered the Domain Name in bad faith in accordance with the provisions of paragraph 3.5 of the Policy.

I have also found that the Complainant has shown some evidence that the Registrant does not have a legitimate interest in the Domain Name in accordance with the provisions of paragraph 3.4 of the Policy.

I therefore find that the Complainant has satisfied the onus placed upon it by paragraph 4.1 of the Policy and is entitled to the remedy sought by it.

## **ORDER**

I order that the domain name, "crescentpointenergy.ca" be transferred to the Complainant.

Dated: January 7, 2019.

"R. John Rogers"  
\_\_\_\_\_  
R. John Rogers  
Single Member Panel