



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE
DOMAIN NAME DISPUTE
ADMINISTRATIVE PANEL
DECISION

CIIDRC case number:	15519-CDRP	Decision date: August 9, 2021
Domain Name:	nunavutparks.ca	
Panel:	R. John Rogers	
Complainant:	Government of Nunavit, Nunavit Parks and Special Places Division, Department of the Environment	
Complainant's representative:	Jakub Garbarczyk and James Barsby	
Registrant:	Kenny Tripura	
Registrar:	Go Daddy Domains Canada, Inc.	

1. PROCEDURAL HISTORY

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

On June 8, 2021, the Complainant filed a complaint (the “Original Complaint”) with CIIDRC. In the Original Complaint, the Complainant sought an order in accordance with the Policy and the Rules directing that the registration of the domain name <nunavutparks.ca> (the “Domain Name”) be transferred to the Complainant.

As the identity of the owner of the Domain Name is redacted for privacy in the WHOIS database, in the Original Complaint the Complainant did not identify the owner of the Domain Name. CIRA subsequently identified the owner of the Domain Name as above set out (the “Registrant”) and the contact details to be as follows:

Domain Name: nunavutparks.ca
15519-CDRP

Kenny Tripura
40-50 Pearldale Ave.
North York, ON
M9L 2H1
Canada
Email : ken ken100@hotmail.com

Once it was notified of the identity of this owner, the Complainant, pursuant to the provisions of Paragraph 11.1 of the Rules, amended the Original Complaint to identify the Registrant and filed an amended complaint dated June 21, 2021 (the “Complaint”).

CIIDRC determined the Complaint to be in administrative compliance with the requirements of Paragraph 3.2 of the Rules and by way of an emailed letter dated June 21, 2021 (the “Transmittal Letter”) forwarded a copy of the Complaint to the Registrant at the email address for the Registrant as set out in the WHOIS database to serve as notice of the Complaint to the Registrant in accordance with Paragraphs 2.1 and 4.3 of the Rules. The Transmittal Letter determined the date of the commencement of proceedings in accordance with Paragraph 4.4 of the Rules to be June 21, 2021. The Transmittal Letter advised the Registrant that in accordance with the provisions of Paragraph 5 of the Rules, a Response to the Complaint was to be filed within 20 days of the date of commencement of proceedings, or July 12, 2021.

The Registrant failed to file a response to the Complaint by July 12, 2021, and CIIDRC advised the Complainant that as CIIDRC had not received a Response to the Transmittal Letter from the Registrant as required by Paragraph 5.1 of the Rules, that pursuant to Paragraph 6.5 of the Rules, 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 advised CIIDRC that it wished to exercise this right and to have a single member panel appointed.

Following the Complainant’s election to proceed with a single member panel, the undersigned was appointed by CIIDRC as the Single Member Panel by letter dated July 21, 2021. The undersigned has confirmed to CIIDRC 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 (the “Panel”) to determine the Complaint in accordance with the Rules.

Concurrently with the appointment of the Panel, the Registrant emailed CIIDRC on July 21, 2021 to advise that:

1. He owned the Domain Name which he had purchased at auction,
2. He had not been aware of previous emails from CIIDRC concerning the filing of the Complaint with respect to the Domain Name, and
3. He was looking for advice as to how to resolve the Complaint.

CIIDRC, in an email dated July 22, 2021, responded to the Registrant’s email of July 21, 2021 by sending to the Registrant the three emails previously sent by CIIDRC to the Registrant, advising the Registrant that if he wished he could submit a written request to the Panel seeking further time to

file a late submission, and advising the Registrant that if he had any questions, that he should not hesitate to contact CIIDRC.

In response to CIIDRC's email of July 22, 2021, the Registrant, by way of an email dated July 28, 2021, acknowledged receipt of a copy of the Complaint and advised that the website to which the Domain Name resolves had been changed to delete any reference to Nunavut parks. He asked if this change would be sufficient to resolve the Complaint.

The Panel, in an email dated July 29, 2021, responded to the Registrant's email of July 28, 2021 advising the Registrant that under the Policy and the Rules a response to the Complaint was required by the Registrant and advised the Registrant that, if the Registrant so requested, the Panel would include in the consideration of its decision a response from the Registrant provided that such a response was filed in a timely manner.

The Registrant immediately responded by email to the Panel's email of July 29, 2021 advising that:

1. He did not fully understand the Complaint,
2. He buys "a lot of domains on auctions on a monthly basis" and that the Domain Name had "no particular interest" to him as he used it mostly for "SEO (Search Engine Optimization) purposes for our marketing clients",
3. That as the website to which the Domain Name resolves had been changed to remove any reference to any trademark and to "any references to any content that was to the old site" he believed that the matter should now be resolved,
4. However, if the Complainant wished the Domain Name to be transferred to it, that the Registrant would be "open to selling" it to the Complainant, and
5. He wanted to resolve the matters as quickly as possible.

In an email to the Registrant dated July 30, 2021, the Panel suggested that it appeared that the Registrant had the following three choices:

1. He could file a response to the Complaint by August 3, 2021,
2. He could agree to have the Domain Name transferred to the Complainant and the Panel would reference this agreement in its decision, or
3. He could determine to take no action and the Panel would make its decision based upon the Complaint.

The Registrant responded to the Panel's July 30, 2021 email by an email on August 3, 2021 stating that the Registrant would be willing to sell the Domain Name to the Complainant for a price of "\$1000 + 13% HST".

FACTS ALLEGED BY THE PARTIES

The Complainant

The facts in the Complaint can be summarized as follows:

1. The Complainant's full name is the Nunavut Parks & Special Places Division of the Government of Nunavut's Department of Environment, and this is the governmental entity that manages, operates and controls the territorial parks in Nunavut. The Complainant's offices are located at P.O. Box 1000, Station 200, Iqaluit, Nunavut, Canada.
2. The Complainant is the lawful owner of all intellectual property of the territorial parks of Nunavut, including the ownership of the domain name <nunavutparks.com> from which it operates a website (the Complainant's Website") containing information about the territorial or national parks of Nunavut.
3. The *Territorial Parks Act* R.S.N.W.T. 1998 c. T-4, authorizes the Complainant on behalf of the Government of Nunavut to deal with the use, development, operation and maintenance of parks in Nunavut and, other than the Complainant, no other entity has been granted this authority.
4. The Domain Name was registered on October 10, 2018.
5. The Domain Name resolves to a website which is headed "Nunavut Parks" and contains pictures and text identical to that included on the Complainant's Website, clearly demonstrating an intent to pass off the website to which the Domain Name resolves as a website owned and operated by the Complainant.

The Registrant

Apart from the email correspondence above referenced, the Registrant has not filed a Response.

2. CONTENTIONS OF THE PARTIES

The Complainant

The Complainant submits that the purpose for registering the Domain Name was to attract parties attempting to access the Complainant's Website or other similar online locations associated with the Complainant by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the website to which the Domain Name resolves or of a product or service on this website resulting in a scenario where the Registrant holds himself out as a representative of the Complainant with no authority to do so.

The Registrant

As noted above, no Response has been filed.

The Remedy Sought

The Complainant seeks an order from the Panel in accordance with Paragraph 4 of the Policy and Paragraph 12 of the Rules that the Domain Name be transferred to the Complainant.

3. DISCUSSION AND FINDINGS

4.1 Canadian Presence Requirements

Paragraph 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 (“Canadian Presence Requirements”) unless the Complaint relates to a trademark registered in the Canadian Intellectual Property Office (“CIPO”) and the Complainant is the owner of that trademark.

Subparagraph (p) of Paragraph 1.4 provides that the following governmental entities are entitled to hold and maintain the registration of a .ca domain name:

- (p) **Government.** Her Majesty the Queen in right of Canada, a province or a territory; an agent of Her Majesty the Queen in right of Canada, of a province or of a territory; a federal, provincial or territorial Crown corporation, government agency or government entity; or a regional, municipal or local area government;

The evidence before the Panel is that the Complainant is a department of the Government of Nunavut. The Panel therefore determines that the Complainant has a Canadian presence and has satisfied the provisions of paragraph 1.4 of the Policy.

4.2 The Policy

The purpose of the Policy, as stated in Paragraph 1.1 of the Policy as referenced above, 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. The Mark qualifies as a “Mark” as defined in Paragraph 3.2 of the Policy,
2. the Complainant had “Rights” in the Mark prior to the date of registration of the Domain Name and continues to have “Rights” in the Mark,
3. the Domain Name is “Confusingly Similar” to one or more of the registrations comprising the Mark as the concept of “Confusingly Similar” is defined in Paragraph 3.3 of the Policy,
4. The Registrant does not have a “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 or an unknown third party 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.

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

Mark

In the matter at hand, the relevant portions of Paragraph 3.2 of the Policy states that for the purpose of the Policy a “Mark” is:

- (a) trademark, 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;

The Complainant has used the words "Nunavut parks" as a trade name (the "Mark") in Canada for the purpose of distinguishing the parks in Nunavut for which it is responsible before the registration of the Domain Name on October 10, 2018.

The Complainant continues to so use the Mark in Canada.

The Panel finds that the Complainant has established that the Mark qualifies as a "Mark" for the purposes of Paragraph 3.2(a) of the Policy.

Rights

Paragraph 3.1 of the Policy requires that the Complainant has "Rights" in the Mark. Unfortunately, the term "Rights" is not defined in the Policy.

However, given the evidence before the Panel of the Complainant's ownership and use of the Mark in Canada, the Panel finds that the Complainant has "Rights" in the Mark for the purpose of Paragraph 3.1 of the Policy.

Confusingly Similar

The Policy in Paragraph 3.3 provides that the Domain Name will be found to be "Confusingly Similar" to the Mark only if the Domain Name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as likely to be mistaken for the Mark.

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 "nunavutparks" is the portion of the Domain Name relevant for consideration.

As this portion of the Domain Name is the same as the Mark, the Panel finds that the Complainant has met the onus placed upon it by Paragraph 3.3 of the Policy and has demonstrated that 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.

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

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 Name 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 website.

It is to be noted that with respect to the matter at hand, in Paragraphs 3.4(a), (b), (c), and (d), there is a requirement that the Registrant acts "in good faith". There is no evidence before the Panel that the Registrant used the Domain Name and the website to which the Domain Name resolves in good faith. Rather, there is a strong suggestion that the Registrant used the Domain Name to 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 evidence before the Panel that the Registrant had any relationship with Nunavut to suggest that the Domain Name was a geographical reference to the location of the Registrant's non-commercial activity or place of business. Therefore, the provisions of Paragraph 3.4(e) and Paragraph 3.4(f) do not apply.

The Panel finds that the Complainant has provided some evidence that the Registrant has no legitimate interest in the Domain Name.

4.5 That the Registrant has Registered the Domain Name in 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(d) is the one most applicable to the matter at hand.

Paragraph 3.5(d) provides as follows:

- (d) the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website or other on-line location, 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.

Based upon the evidence before the Panel with respect to the Registrant's actions following the filing of the Complaint, including:

1. Removing any reference to any trademark that might be owned by the Complainant and to any content that referenced parks in Nunavut, and
2. Offering to sell the Domain Name to the Complainant,

the Panel finds that the Complainant has satisfied the provisions of Paragraph 3.5 (d) of the Policy by establishing that that the Registrant has intentionally attempted to attract for commercial gain traffic to the website to which the Domain Name resolves by creating a likelihood of confusion with the Mark as to the source, sponsorship, affiliation, or endorsement of such website.

5 DECISION and ORDER

5.1 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.

The Panel finds that the Complainant has satisfied this onus with respect to all three of these items by demonstrating that the Mark qualifies as a Mark in accordance with Paragraph 3.2 of the Policy; that the Domain Name is Confusingly Similar to the Mark; and that the Registrant has registered the Domain Name in bad faith in accordance with the provisions of Paragraph 3.5 of the Policy.

The Panel also finds 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.

The Panel therefore finds 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.

5.2 Order

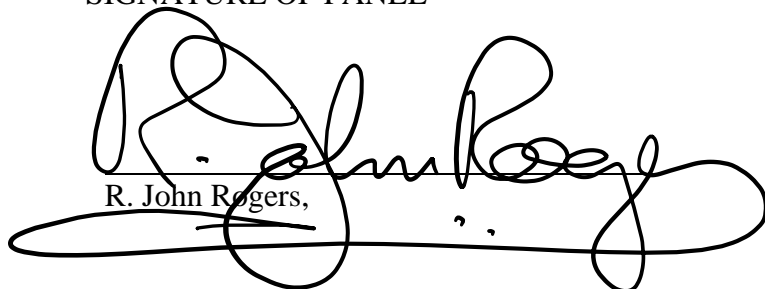
The Complainant in the Complaint seeks an order in accordance with the Policy and the Rules directing that the registration of the Domain Name be transferred from the Registrant to the Complainant.

Section 2 of the Canadian Presence Requirements lists the types of individuals and entities who are permitted to apply for the registration of and to hold and maintain the registration of a .ca domain name. As referenced above, the Complainant is a department of the Government of Nunavut and is, therefore, under the Policy and the Rules permitted to hold and maintain the registration of the Domain Name.

For the above reasons, in accordance with Paragraph 4 of the Policy and Paragraph 12 of the Rules, the Panel orders that the domain name <nunavutparks.ca> be transferred to the Complainant.

Made as of August 9, 2021.

SIGNATURE OF PANEL


R. John Rogers,

