

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

Domain Name: trxfitnessanywhere.ca
Complainant: Fitness Anywhere Inc.
Registrant: Bannerfrend
Registrar: Go Daddy Domains Canada, Inc.
Panellist: Sharon Groom
Service Provider: Resolution Canada, Inc.

DECISION

A. The Parties

1. The Complainant, Fitness Anywhere Inc. is a corporation located in the US.
2. The Registrant for the domain name is Bannerfrend, and the administrative contact is listed as Banner Frend. The address is listed as Biter St. No. 23, Loudon, (no state given), United States 32323.

B. The Domain Name and Registrar

3. The disputed domain name is trxfitnessanywhere.ca. The Registrar for this domain name is Go Daddy Domains Canada, Inc. The disputed domain name was registered on June 8, 2010.

C. Procedural History

4. This is a proceeding under the Canadian Internet Registration Authority (“CIRA”) *Domain Name Dispute Resolution Policy* (Version 1.1) (the “Policy”) and the CIRA *Domain Name Dispute Resolution Rules* (Version 1.2) (the “Rules”).
5. The history of the proceeding as provided by the dispute resolution provider, Resolution Canada, Inc., is that the Complainant filed a complaint against the Registrant with Resolution Canada, Inc. requesting that the current registration of the domain name trxfitnessanywhere.ca be transferred to Fitness Anywhere Inc. The Complaint was dated October 15, 2010.

6. Resolution Canada, Inc. served notice of the Complaint on the Registrant as required by paragraph 4.3 of the Rules. Service of the Complaint was made by e mail on October 18, 2010 and also sent by courier on that day.

7. The Registrant was given twenty days to file a response but no response was filed.

8. The Complainant has elected to proceed before a panel consisting of only one panellist.

D. Panellist Impartiality and Independence

9. As required by paragraph 7 of the Rules, I have submitted to Resolution Canada, Inc. a declaration of impartiality and independence in relation to this dispute.

E. Canadian Presence Requirements

10. The Complainant, Fitness Anywhere Inc., is a US company. However it owns two Canadian trade-mark registrations, namely registration no. 725,248 for FITNESS ANYWHERE and registration no. 726,445 for TRX, both of which are contained in the disputed domain name. (While the trade-mark registrations and the domain name registrations referred to later show the Complainant's name as Fitness Anywhere, Inc., and the Complaint refers to the Complainant as Fitness Anywhere Inc., I am going to treat the lack of a comma in the Complainant's name in the Complaint as a typo and ignore it for the purposes of these proceedings.) As such it meets the Canadian Presence Requirements under paragraph 2(q) of the CIRA *Canadian Presence Requirements for Registrants*, Version 1.3.

F. Factual Background

11. The Complainant filed applications to register the trade-marks TRX and FITNESS ANYWHERE on July 19, 2007 based on use in Canada since January 23, 2006. The marks were registered on October 21 and October 3, respectively, 2008. The mark FITNESS ANYWHERE is registered for "manually operated exercise equipment, and instructional material sold together therewith as a unit". The mark TRX is registered for "manually operated multipurpose exercise, fitness and sporting equipment, and instructional material sold together therewith as a unit; physical fitness conditioning classes; physical fitness consultation; physical fitness instruction; physical education services". The Complainant has been using the marks TRX and FITNESS ANYWHERE in association with these wares and services in Canada since January 2006.

12. The Complainant registered the domain name fitnessanywhere.com on June 7, 2004 and the domain name trxfitnessanywhere.com on May 21, 2010. These domain names both resolve to the same website advertising the Complainant's TRX fitness equipment and its fitness services.

13. The Complainant states that the domain name trxfitnessanywhere.ca is not in use and that it leads to an error message indicating that the website could not be opened.

G. CIRA Domain Name Dispute Resolution Policy

14. Under paragraph 3.1 of the Policy it requires that the Complainant establish that:

