

CANADIAN INTERNET REGISTRATION AUTHORITY

DOMAIN NAME DISPUTE RESOLUTION POLICY

DECISION

Domain Name: iceriversprings.ca
Complainant: Ice River Springs Water Co.
Registrant: Alina Wieniawska
Registrar: NameSilo Technologies Corp.
Service Provider: Resolution Canada Inc.
Panel: Peter C. Cooke

THE PARTIES

The Complainant is Ice River Springs Water Co. (the “Complainant”) with an address at 485387 Sideroad 30, Shelburne, Ontario, Canada, L5N 3N5.

The Registrant is Alina Wieniawska, 3015 Parkerhill Road Apt. 808, Mississauga, Ontario, Canada, L5B 4B2.

THE DOMAIN NAME AND REGISTRAR

The subject of this proceeding is the domain name iceriversprings.ca (the “Domain Name”) registered on October 26, 2018. The Registrar of the Domain Name is NameSilo Technologies Inc.

PROCEDURAL HISTORY

This is an administrative dispute resolution proceeding pursuant to the Canadian Internet Registration Authority (“CIRA”) *Domain Name Dispute Resolution Policy* (version 1.3) (the “Policy”) and the CIRA *Domain Name Dispute Resolution Rules* (version 1.5) (the “Rules”). By registration of the Domain Name with the Registrar, the Registrant agreed to the resolution of this dispute pursuant to the Policy and the Rules.

According to the information provided by Resolution Canada Inc., the dispute resolution service provider, the history of the proceeding is as follows:

The Complainant filed a complaint (the “Complaint”) with Resolution Canada Inc., requesting that the Domain Name registration be transferred from the Registrant to the Complainant. After having determined that the Complaint was in administrative compliance with the requirements of the Policy and the Rules, Resolution Canada Inc. commenced the dispute resolution process on June 22, 2020 and served notice of the Complaint on the Registrant (as required by paragraph 4.3 of the Rules) by email. No response was received from the Registrant.

The Complainant elected to proceed before a panel consisting of one panelist. The Panel can act impartially and independently in this matter per Paragraph 7 of the *Rules*, as there are no circumstances known to them that would prevent them from so acting.

ELIGIBILITY OF COMPLAINANT

The Complainant is an eligible complainant under Paragraph 1.4 of the Policy, as the Complaint relates to the Complainant’s registered Canadian trademark for ICE RIVER SPRINGS, Reg. No. TMA 466,521 (the “ICE RIVER SPRINGS Registration”).

OVERVIEW OF THE POLICY

Paragraph 4.1 of the Policy sets forth the Complainant’s burden of proof in order to succeed in the proceeding. The onus is on the Complainant to prove, on a balance of probabilities that:

The Registrant’s dot-ca domain name is Confusingly Similar to a Mark in which the Complainant had Rights prior to the date of registration of the domain name and continues to have such Rights; and

The Registrant has registered the domain name in bad faith as described in paragraph 3.5;

And the Complainant must provide some evidence that:

The Registrant has no legitimate interest in the domain name as described in paragraph 3.4.

COMPLAINANT'S POSITION

The Complainant contends that "Ice River Springs" is the Complainant's trademark, registered by the Complainant on November 28, 1996. The Complainant states that it continues to own and use its trademark. The Complainant claims to be the owner of the domain name iceriversprings.com. The Complainant also claims to be the original owner of the Domain Name until October 2018 when it inadvertently allowed the registration to expire.

The Complainant alleges that the Registrant registered and is using the Domain Name in bad faith to direct Internet users to an edited copy of the Complainant's old website as it appeared in 2018. The Complainant states that the Registrant had modified the copied website to add links to websites featuring online casinos and cannabis sales, which the Complainant submits are not relevant to its business. The copied website also allegedly features the Complainant's contact information and other trademarks owned by the Complainant including its "Ice River Springs", "Osprey Organics", "Ice River Green", and "what nature provides, we have a passion to preserve" trademarks, which it has rights in. The Complainant contends that the Registrant has no legitimate interest in the Domain for similar reasons.

REGISTRANT'S POSITION

The Registrant did not file a Response to the Complaint.

DISCUSSIONS AND FINDINGS

Confusing Similarity between Domain Name and Complainant's Mark

The Complainant has demonstrated that it is the owner in Canada of the ICE RIVER SPRINGS trademark registration. The Complainant's rights in the trademark precede the October 26, 2018 registration date of the Domain Name, and the Complainant submits that the Domain Name is "confusingly similar" with the trademark.

A domain name is confusingly similar to a mark if the domain name so nearly resembles the mark in appearance sound or ideas suggested by the mark as to be likely to be mistaken for the mark, as per paragraph 3.3 of the Policy.

In applying this definition, it is important to note paragraph 1.2 of the Policy, which stipulates that:

For the purposes of this Policy, “domain name” means the domain name excluding the dot-ca suffix...”

The Panel concludes that the Domain Name iceriversprings.ca so nearly resembles the Complainant’s trademark to be likely to be mistaken for it, as the Domain Name is identical to the ICE RIVER SPRINGS trademark. The Complainant’s rights in the trademark began well before the registration date of the Domain Name, and the Complainant continues to have such rights in its ICE RIVER SPRINGS trademark.

The Panel is therefore of the view that the Complainant has succeeded in establishing confusing similarity under paragraph 4.1(a) of the Policy.

Bad Faith Registration

The Complainant must show, on a balance of probabilities, that the Domain Name was registered in bad faith pursuant to paragraph 3.5 of the Policy. The Complainant need only demonstrate bad faith under one of the grounds provided by the Policy.

The Complainant has alleged that the Registrant registered the Domain Name in bad faith as the Registrant had republished a copy of the Registrant’s old website with additional links to websites featuring online casinos and cannabis sales that the Complainant claims are unrelated to its business.

In support of the foregoing, the Complainant has provided screenshots of the Registrant’s website that the Complainant claims were taken on June 16, 2020. However, the screenshots are undated except for a copyright notice that states, “© 2020 ICE RIVER SPRINGS, ALL RIGHTS RESERVED”. The Complainant has also provided no evidence of how its previous website appeared in order to support its allegations that the Registrant has simply republished the Complainant’s old website. There is also no evidence to support the Complainant’s assertion that it previously owned the Domain Name.

Nonetheless, as the Registrant registered the Domain Name in 2018 and the screenshots were captured in 2020, per the copyright notice, the Panel is willing to accept that the Complainant took the screenshots of the website while the Registrant had control of the Domain Name. The website features the ICE RIVER SPRINGS trademark used in the marketing and promotion of

bottled water which goods are identical to those covered by the Complainant's ICE RIVER SPRINGS registration. The Registrant's website also includes the Complainant's full contact information.

Taken together, the evidence leads the Panel to conclude a person encountering the Registrant's website is likely to believe the website is owned by the Complainant or otherwise is sponsored or affiliated with the Complainant.

The Registrant's website also features the following statements that the Complainant claims has no relevance to its business:

- "Ice River Springs supplies loads of nearby commercial operations, including a new agreement with casinos in Ontario, Canada. Our bottled water in these local Canadian casinos is 100% free to keep patrons hydrated while they play all sorts of casino games, ranging from slots, blackjack and roulette games";
- "The recent agreement has helped increase the exposure of the Ice River Springs in casinos in Ontario – a true bonus for the recognition of our green bottled water";
- "We can suggest you some of the best online casinos based in Canada and the USA...click here to view the finest Canadian no deposit casinos";
- "We here at Ice River Springs Water encourage everything that is natural and organic, weed being one of those things"; and
- "...many traders are giving a shot to create, by its nature, an everyday better online solution. That's exactly what you are able to do with Weed Millionaire, making a purchase as easy as possible. Click it, stock it, you won't regret it".

The foregoing statements suggest that the Registrant is attempting to impersonate the Complainant and is using the Complainant's ICE RIVER SPRINGS trademark to falsely suggest an affiliation with or endorsement by the Complainant for various websites featuring online casinos and cannabis sales, presumably for the Registrant's own commercial benefit.

Paragraph 3.5(d) of the *Policy* states that a Registrant will have registered a domain name in bad faith if:

(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.

The Panel finds that the Complainant has established, on a balance of probabilities, that the Registrant's website is being used for the Registrant's own commercial gain, by both falsely suggesting that it is the Complainant, and by creating a likelihood of confusion with the Complainant's ICE RIVER SPRINGS trademark which suggests the Complainant has an affiliation with or otherwise endorses the goods and services of the Registrant. As such, the Panel is satisfied that the Complainant has established that the Registrant registered the Domain Name in bad faith pursuant to paragraph 3.5(d) of the Policy, and continues to use the Domain Name in bad faith.

No Legitimate Interest in the Domain Name

Paragraph 3.4 of the Policy provides a non-exhaustive list of criteria that the Panel may rely on to find that a Registrant has a legitimate interest in the Domain Name. Paragraph 4.1(c) of the Policy requires that the Complainant provide *some evidence* that the Registrant has no legitimate interest in the Domain Name.

Paragraph 3.4 identifies six circumstances that may amount to a legitimate interest, which include:

- (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 registered 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 registered 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.

The Complainant has submitted that the Registrant has no legitimate interest in the Domain Name as the Registrant has used the Complainant's trademarks without permission and has copied its previous website with modifications to add links to websites featuring online casinos and cannabis sales. As previously discussed, the Panel is satisfied that the Complainant has established, on a balance of probabilities that the Domain Name was both registered and used in bad faith. This precludes a finding that the Registrant had a legitimate interest in the Domain Name for circumstances requiring good faith, such as those under Paragraphs 3.4(a)-(d) of the Policy.

Furthermore, the Registrant cannot rely on Paragraphs 3.4(e) and 3.4(f) of the Policy, as ICE RIVER SPRINGS is neither the legal name nor identifier of the Registrant nor is there any evidence that it is the geographical name of the Registrant's business.

The Panel is satisfied that the Complainant has met its onus in providing some evidence that the Registrant has no legitimate interest in the Domain Name. It therefore becomes incumbent on the Registrant to provide evidence that it has a legitimate interest in the Domain Name. Since the Registrant has failed to provide a Response to the Complaint, the Registrant has failed to meet its onus.

CONCLUSION AND DECISION

The Complainant has proven, on a balance of probabilities, that the Domain Name is confusingly similar to the ICE RIVER SPRINGS trademark in which the Complainant had rights prior to the date of registration of the Domain Name and in which the Complainant continues to have such rights.

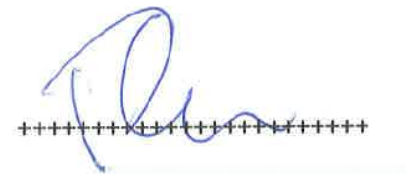
The Complainant has proven, on a balance of probabilities, that the Registrant registered the Domain Name in bad faith.

The Complainant has adduced some evidence that the Registrant has no legitimate interest in the Domain Name.

The Registrant did not file a Response disputing the Complainant's submissions, or justifying its registration of the Domain Name.

For these reasons, the Complaint regarding the Domain Name is successful and the panel orders, pursuant to paragraph 4.3 of the Policy, that the registration of the Domain Name be transferred to the Complainant.

Dated August 11, 2020



Peter C. Cooke