

ADMINISTRATIVE PANEL DECISION

Royal Life Saving Society, Alberta and Northwest Territories Branch v. Karina Renaud

Case No. D2022-0547

1. The Parties

The Complainant is Royal Life Saving Society, Alberta and Northwest Territories Branch, Canada, represented by Dentons Canada LLP, Canada.

The Respondent is Karina Renaud, United States of America, represented by Morency Société d'avocats s.e.n.c.r.l., Canada.

2. The Domain Name and Registrar

The disputed domain name <nagerpourelavie.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 16, 2022. On February 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 18, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 18, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on February 23, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 21, 2022. Further to the Respondent's request dated March 18, 2022, the due date for submission of the Response was extended until March 25, 2022, in accordance with paragraph 5(b) of the Rules. The Response was filed with the Center on March 25, 2022.

The Center appointed Jane Seager as the sole panelist in this matter on April 5, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is an incorporated society based in Alberta, Canada. The Complainant forms part of The Royal Life Saving Society Canada – a Canadian charity organization engaged in the prevention of water-related injuries through the provision of training programs, public education, drowning-prevention research, safety management, and overseeing the sport of lifesaving.

The Complainant is the owner of Canadian Trademark Registration No. TMA675245, SWIM FOR LIFE, registered on October 18, 2006.

The Respondent is a Canadian resident. In 2012, the Respondent developed a swimming program aimed at preventing drowning by teaching young children how to swim. On November 28, 2013, the Respondent registered herself as a sole proprietorship in Quebec, Canada, together with the trade name “Nager pour la vie avec Karina Renaud”. On July 31, 2017, the Respondent incorporated her business as “Nager pour la vie avec Karina Renaud Inc.” in Quebec. The Respondent offers swimming lessons under the same name, or shortened to “Nager pour la vie” (“Swim for Life” in English). The Respondent is also the registrant of the domain names <nagerpourelavie.ca> and <swim4life.ca>.

The disputed domain name was registered on August 8, 2012. From around 2013 to January 2022, the disputed domain name resolved to a website providing information about the Respondent’s swimming lessons. In 2020, the Complainant sent a cease-and-desist letter to the Respondent. Since January 2022, the disputed domain name has redirected to the website “www.swimmentor.com”, which also provides information about the Respondent’s courses.

On January 20, 2022, the Complainant filed a trademark infringement proceeding against the Respondent before the Federal Court of Canada. The Complainant has also filed Complaint under the CIRA Domain Name Dispute Resolution Policy (“CDRP”) for recuperation of the domain name <swim4life.ca>.

5. Parties’ Contentions

A. Complainant

The Complainant asserts rights in the SWIM FOR LIFE trademark. The Complainant submits that the disputed domain name is confusingly similar to its SWIM FOR LIFE trademark in that it consists of a direct translation of the trademark into French.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that it has been offering its goods and services under the SWIM FOR LIFE trademark since 2002, and as a result, the Complainant has established goodwill and reputation associated with the trademark. The Complainant argues that the Respondent is using a direct translation of the Complainant’s SWIM FOR LIFE trademark to offer the same or confusingly similar goods and services to those offered by the Complainant, thereby infringing the Complainant’s trademark rights. The Complainant submits that the Respondent is attempting to take advantage of the Complainant’s goodwill and reputation to divert potential customers away from the Complainant. The Complainant observes that the Respondent does not hold any trademark applications or registrations for “nager pour la vie” or “swim 4 life”. The Complainant asserts that the phrase “nager pour la vie” is not understood to be the generic name of any of the associated goods or services related to water safety and swimming instruction. The Complainant denies knowledge of the Respondent’s use of the disputed domain name prior to 2020.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant observes that the disputed domain name was registered on August 8, 2012, some ten years after the Complainant's first use of its SWIM FOR LIFE trademark, and six years after the Complainant's registration of the mark. The Complainant submits that the Respondent's use of a direct translation of the Complainant's SWIM FOR LIFE trademark constitutes bad faith on the part of the Respondent. The Complainant notes that its parent organization has a chapter in Quebec, and submits that the Respondent is attempting to capitalize on the Complainant's goodwill and reputation in Quebec. The Complainant asserts that the Respondent's knowledge of the Complainant may be inferred from the Respondent's reference to being a "member" of the Complainant's organization, as displayed on the website to which the disputed domain name redirects. The Complainant submits that the Respondent's redirection of the disputed domain name to the website "www.swimmentor.com" demonstrates the Respondent's continuing attempts to confuse Internet users and to take advantage of the Complainant's brand. The Complainant submits that the Respondent's registration of the domain names <nagerpourelavie.ca> and <swim4life.ca> provide further evidence of the Respondent's bad faith.

The Complainant requests transfer of the disputed domain name.

B. Respondent

The Respondent does not address the first element of the Policy.

The Respondent submits that she has rights or legitimate interests in the disputed domain name in that prior to any notice of the present dispute, the Respondent had used the disputed domain name in connection with a *bona fide* offering of goods or services, and in that she has been commonly known by the disputed domain name. The Respondent submits that she has a legitimate interest in the disputed domain name as it is being used to refer to the Respondent's swimming program, offered under the same name. The Respondent asserts that the disputed domain name is also a reflection of her corporate name, by which the Respondent is commonly identified. The Respondent claims that the disputed domain name was derived without ever having been aware of the Complainant's SWIM FOR LIFE trademark, and that the Respondent only became aware of the trademark upon receipt of the Complainant's cease-and-desist letter in 2020. The Respondent asserts that the redirection of the disputed domain name to the website "www.swimmentor.com" occurred after having been notified of a trademark infringement proceeding filed by the Complainant before the Federal Court of Canada, and that the Respondent did so in order to avoid further problems with the Complainant, with a view to stopping any potential confusion between the Respondent's services and those offered by the Complainant.

The Respondent denies having registered or used the disputed domain name in bad faith. The Respondent claims to have been unaware of the Complainant's "Swim for Life" swimming program at the time she registered the disputed domain name, as the Complainant's Quebec chapter did not offer swimming programs under that name until 2022. The Respondent asserts that her business is a local business and is simply aimed at helping to lower the incidence of drowning in Quebec. The Respondent submits that it is clear from the websites to which the disputed domain name has resolved that the Respondent is not purporting to offer services offered by the Complainant. The Respondent explains that her mention of the Complainant on her website is due to the Respondent having completed certification with the Quebec chapter of the Complainant's organization. The Respondent asserts that representatives of the Quebec chapter of the Complainant's organization were aware of her activities, as they were both members of the same association (Association des responsables aquatiques du Québec), had attended annual meetings together, and had appeared as interviewees in the same article in the magazine *Enfant Québec*, published in 2014. The Respondent submits that her registration of the domain name <swim4life.ca> was not intended to take advantage of the Complainant's brand and reputation in a way that misleads and confuses consumers for her own benefit. Rather, the Respondent registered the domain name <swim4life.ca> as the English version of her swimming program, it being common for Quebec-based enterprises to register both English and French versions of their names.

6. Discussion and Findings

In order to prevail, the Complainant must demonstrate on the balance of probabilities that it has satisfied the requirements of paragraph 4(a) of the Policy:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights in the trademark SWIM FOR LIFE, the registration details of which are provided in the factual background section above.

The disputed domain name consists of what may be read as a French translation of the Complainant's SWIM FOR LIFE trademark. Prior UDRP panels have held that a domain name that consists or is comprised of a translation or transliteration of a trademark will normally be found to be identical or confusingly similar to such trademark for purposes of standing under the Policy, where the trademark – or its variant – is incorporated into or otherwise recognizable, through such translation/transliteration, in the domain name; see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.14.

In light of the Panel's findings under the second element, the Panel does not consider it necessary to enter a finding under the first element of the Policy.

B. Rights or Legitimate Interests

As noted above, the Complainant asserts that the Respondent registered and has used the disputed domain name in an attempt to misleadingly divert consumers away from the Complainant for the Respondent's commercial benefit. Conversely, the Respondent asserts that she has a legitimate interest in the disputed domain name flowing from her use of the disputed domain name in connection with a *bona fide* offering of goods or services, and that she has been commonly known by the disputed domain name.

Prior UDRP panels have held that non-exhaustive examples of prior use of a domain name in connection with a *bona fide* offering of goods or services may include: (i) evidence of business formation-related due diligence/legal advice/correspondence, (ii) evidence of credible investment in website development or promotional materials such as advertising, letterhead, or business cards (iii) proof of a genuine (*i.e.*, not pretextual) business plan utilizing the domain name, and credible signs of pursuit of the business plan, (iv) *bona fide* registration and use of related domain names, and (v) other evidence generally pointing to a lack of indicia of cybersquatting intent; see [WIPO Overview 3.0](#), section 2.2.

As noted above, in addition to registering the disputed domain name in 2012, the Respondent took steps to establish a genuine business under the name "Nager pour la vie avec Karine Renaud", including registering the same with the Quebec business authorities, first as a sole proprietorship, and later as a company. Evidence has been produced that the Respondent has offered swimming lessons under the same name for several years. A comparison of the Complainant's website and the websites to which the disputed domain name has resolved is not, in this Panel's view, indicative of an attempt to create confusion amongst Internet users as to the source of the Respondent's services. Notably absent from the Complaint is evidence of actual consumer confusion. The Panel finds that these factors combined support a legitimate claim of the Respondent having used the disputed domain name in connection with a *bona fide* offering of goods or

services, and that the Respondent is commonly known by a name corresponding to the disputed domain name, within the meaning of paragraphs 4(c)(i) and 4(c)(ii) of the Policy.

The Panel further notes that the Complainant makes reference to having sent the Respondent a cease-and-desist letter, having filed a Complaint under the CDRP for recuperation of the domain name <swim4life.ca>, and having filed a claim of trademark infringement before the Federal Court of Canada (none of which was provided as an annex to the Complaint). The Panel is of the view that the present dispute is not limited to the disputed domain name, but that the disputed domain name forms part of a broader trademark dispute between the Parties. As such, the Panel considers the present dispute to go beyond the relatively limited scope of the Policy, and finds that it would be more appropriately suited to determination before a court of competent jurisdiction. The findings of the present case are without prejudice to the outcome of any future legal proceedings between the Parties, including any pending trademark infringement proceedings concerning the Complainant's SWIM FOR LIFE trademark before the Federal Court of Canada.

For reasons set out above, the Panel finds that the Complainant has failed to satisfy the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Noting that the Complaint has not succeeded under the preceding element, the Panel declines to make a finding under the third element of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Jane Seager/

Jane Seager

Sole Panelist

Date: April 28, 2022