

IN THE MATTER OF A COMPLAINT PURSUANT TO THE CANADIAN INTERNET
REGISTRATION AUTHORITY (“CIRA”) DOMAIN NAME DISPUTE RESOLUTION
POLICY AND RULES

Domain Name: RUCKUSNETWORKS.CA

Complainant: Arris International IP Ltd.

Registrant: Edward Fung

Registrar: GoDaddy Domains Canada, Inc.

Panelists: Daniel Anthony (Chair), Marcel D. Mongeon, Christian Tacit

Service Provider: Resolution Canada, Inc.

DECISION

A. The Parties

1. The Complainant in this matter is Arris International IP Ltd. and is the owner of the relevant trademark registration.
2. The Registrant for the domain name is Edward Fung, an individual with an address in Ontario, Canada.

B. The Domain Name and Registrar

- 3.. The disputed domain name is <RuckusNetworks.ca> (the “Domain Name”). The Registrar for the Domain Name is GoDaddy Domains Canada, Inc. The Domain Name was registered on March 22, 2023.

C. Procedural History

4. This is a proceeding under 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 1.6) (the “Rules”).
5. The History of the proceeding is as follows:
 - The Complainant filed its Complaint against the Registrant with Resolution Canada, Inc. on September 7, 2023, requesting that the registration for the domain name <RuckusNetworks.ca> be transferred to the Complainant.

- On September 7, 2023, the Provider served a Notice of the Complaint to the Registrant as required by paragraph 4 of the *Rules*. The Notice of Complaint informed the Registrant that it had 20 days from September 7, 2023, to respond to the Complaint.
- The Registrant filed a very brief Response, which is undated and contains no Exhibits.
- The Complainant filed Further Submissions on October 5, 2023.
- The Complainant elected to proceed by a three-member panel.

D. Panelist Impartiality and Independence

6. As required by paragraph 7 of the *Rules*, this panel has submitted to the Provider a declaration of impartiality and independence in relation to this dispute.

E. Eligibility

7. The Complainant, Arris International IP Ltd, owns a Canadian Registered Trademark for the mark RUCKUS (TMA1121310) and thereby satisfies paragraph 2(q) of the Canadian Presence Requirements for Registrants in respect of the Domain Name. Therefore, the Complainant is eligible to bring this Complaint, pursuant to paragraph 1.4 of the *Policy*.

F. Factual Background

8. According to the Complaint, it is part of a group of related companies, including Arris Enterprises LLC, among others. Its predecessor, Ruckus Networks (formerly known as Ruckus Wireless) started in 2002 in the field of in-home IPTV delivered over wireless networks. Arris International acquired Ruckus Wireless in 2017 and a company called CommScope acquired the Arris group in 2019. This is supported by press releases provided as Exhibits.

9. The Complainant owns a registration for RUCKUS in Canada (TMA1121210) for use in association with various computer network goods, including wireless routers and antennas. The application was filed on January 23, 2017 and issued to registration on March 1, 2022. The Complainant therefore enjoyed registered rights in the mark RUCKUS in Canada prior to registration of the Domain Name. The Complainant mentions other RUCKUS-formative trademark registrations owned by related entities in various countries, but the panel does not find it necessary to refer to those registrations for its decision.

10. The Complainant alleges that it and its related entities and predecessors have extensively used and made known its use of the mark RUCKUS in association with a range of wireless products and services since at least 2005 globally and January 2006 in Canada. The Complainant's main website is hosted at www.ruckusnetworks.com, and several of its social media profiles incorporate the term "ruckus networks", such as twitter.com/ruckusnetworks and facebook.com/ruckusnetworks. These allegations were supported by Exhibits in the form of website printouts and press releases. As a result, the panel finds the Complainant has established prior common law rights in Canada to the marks RUCKUS and RUCKUS NETWORKS.

11. The Registrant has not made any use of the domain name for a website. It initially pointed to a parked page, likely put up by the registrar, but no longer points to any page at all.

12. The Registrant submitted that his intention was to “set up a network of dogs (Ruckus) lovers to share information” such as humane issues, dog health tips and dog pictures. The Registrant also references a previous decision dismissing a complaint for failure to meet the Canadian Presence Requirements. Finally, the Registrant states he would like to claim \$3,000 as he sought some legal advice to put together his complaint. None of the Registrant’s statements are supported by any Exhibits.

13. The Complainant filed Further Submissions in Reply. There is no right of reply in a CDRP proceeding. That said, panels have the discretion to request further information from the parties as they see fit. Panels may also accept unsolicited submissions in appropriate circumstances, such as where a fresh issue that could not have been anticipated is raised in the Response and the Complainant is able to file new evidence or argument narrowly directed to that issue. In the present case, the panel exercises its discretion to reject the Complainant’s reply submissions, and will not make any reference to them.

14. In its Complaint, the Complainant advised the panel that a proceeding regarding <RuckusNetworks.ca> was initiated by Arris Enterprises LLC on June 16, 2023, and a decision was issued on August 11, 2023 finding that the Canadian presence requirements were not met. The panel notes there is no prohibition to refiling a CDRP Complaint where the second Complaint is materially different from the first such that there is no abuse of process. This may occur when there is a different party, different facts (e.g. a key trademark registration has now issued), or different evidence (e.g. a pattern of bad faith is uncovered).

G. CIRA Domain Name Dispute Resolution Policy Requirements

13. Paragraph 3.1 of the *Policy* requires that the Complainant establish that;

- a) 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;
- b) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4; and
- c) the Registrant has registered the domain name in bad faith as described in paragraph 3.5.

14. According to paragraph 4.1 of the *Policy*, the Complainant must establish elements (a) and (c) above on a balance of probabilities. The Complainant must also provide “some evidence” that the Registrant has no legitimate interest in the Domain Name.

H. Analysis

Confusingly Similar to Complainant's prior Mark

15. The Complainant must first establish that the disputed Domain Name is confusingly similar to a Mark in which the Complainant had rights in Canada prior to the date of registration of the Domain Name, and that it continues to have such rights as of the date of the Complaint.

16. The Complainant asserted the registered trademark RUCKUS and the common law marks RUCKUS and RUCKUS NETWORKS (hereinafter the "RUCKUS Marks"). Based on the evidence, it is abundantly clear that a business called Ruckus Networks and using the primary trademark RUCKUS has operated in the wireless network space for several years, including in Canada. This panel finds that the Complainant has established that the RUCKUS Marks are "Mark[s]" pursuant to subparagraph 3.2(a) of the *Policy* and that it enjoys prior rights and continues to have such rights.

17. According to paragraph 3.3 of the *Policy*, a domain name is confusingly similar to a Mark when it "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." The Domain Name in dispute is <RuckusNetworks.ca>. As noted in *Coca-Cola Ltd v Amos B Hennan*, BCICAC Case No 00014, "[f]or the purposes of this Policy, 'domain name' means the domain name excluding the 'dot-ca' suffix." Applying that definition, the domain name is identical to the Complainant's common law mark RUCKUS NETWORKS and confusingly similar to the Complainant's registered and common law mark RUCKUS. Therefore, this panels finds that the Complainant has met its burden of establishing, on a balance of probabilities, that the Domain Name is confusingly similar to a Mark, in which the Complainant had rights prior to the date of the registration of the Domain Name and continues to have rights.

Legitimate Interest

18. The Complainant submits that the Registrant did not have any rights in the RUCKUS Marks, that the Domain Name is not a generic or descriptive name, is not used in association with any good faith non-commercial activity, is not the Registrant's legal name, and is not a geographical name. The panel agrees and finds the Complainant has met the test to provide "some evidence" that "the Registrant has no legitimate interest in the Domain Name" and that none of the six circumstances set out in paragraph 3.4 of the *Policy* are present.

19. The Registrant did not provide any responding submissions that would establish a legitimate interest.

20. As a first point, a bald statement of intent is insufficient to establish a legitimate interest of good faith non-commercial activity. Any Registrant can advance a purported good faith intention after the fact, but a vague intention (even if true) is insufficient if no concrete steps are taken to put it into action. It should be recalled that establishing a legitimate interest is a full defense to a domain arbitration proceeding. As such, in cases where a Registrant had a legitimate good faith non-commercial intention, but has no concrete evidence in support of it, it will normally not be

able to prove that legitimate interest on a balance of probabilities. Such a Registrant may still take the position it did not act in bad faith, which is the Complainant's burden to establish on the balance of probabilities.

21. As a second point, the Registrant's legitimate interest argument was not credible and not proven. The Registrant stated his intention was "to set up a network of dogs (Ruckus) lovers to share information". However, the word "ruckus" does not mean "dogs", but "a disturbance or commotion". It appears that the Registrant may have (wrongly) believed that ruckus = dogs based on the fact that Complainant's logo contains a depiction of a dog beside the word RUCKUS and that dog imagery is included throughout the Complainant's website and social media. However, the Complainant's use of dogs appears to be entirely arbitrary, rather than descriptive in any way. It is also noted that the Registrant capitalized the word "Ruckus", which points to a trademark use, rather than descriptive or generic use. Finally, even if ruckus = dog (which is not established), the logical domain string for a network of ruckus (dog) lovers would be ruckusnetwork.ca, rather than the plural of ruckusnetworks.ca. None of this is properly explained in the Response, with the result that the Registrant's assertion of a legitimate interest based on good faith non-commercial activity lacks credibility and is also unsupported by evidence of concrete steps taken to realize that activity.

Bad Faith

23. Several non-exhaustive bases for a finding of bad faith are set out in paragraph 3.5 of the *Policy*. The Complainant has advanced arguments for bad faith under subparagraphs 3.5(c) and 3.5(d) of the *Policy*.

24. Subparagraphs 3.5(c) and (d) of the *Policy* provide:

(c) The Registrant registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of the Complainant, or the Complainant's licensor or licensee of the Mark, who is a competitor of the Registrant.

(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.

25. The Complainant argues that the Registrant uses the Domain Name to divert traffic from the Complainant's website to the registrar landing page, and that they are competitors in that they compete for web traffic. The Complainant also argues that the Registrant must have known about the Complainant since there is only one company using RUCKUS with "network technology" and a simple web search would have confirmed this fact. According to the Complainant, the Respondent will therefore benefit from increased traffic, which would increase its site value and traffic.

26. The panel is not convinced that the GoDaddy landing page was in any way controlled by the Registrant, and there is no evidence of any active use of the domain name, such as a website,

or pay-per-click advertising. The parties are also not obviously competitors. Therefore, a finding of bad faith does not sit squarely within either subparagraph 3.5(c) or 3.5(d). Nevertheless, the finding of bad faith is clear based on the evidence as a whole and the submission of the Complainant.

27. The enumerated bad faith factors are non-exhaustive, and a general finding of bad faith is available. In the present case, a combination of factors contained in the Complainant’s submissions leads the panel to an immediate and inevitable conclusion of bad faith intent: (i) the Complainant’s rights in the RUCKUS Marks predate the domain name registration by several years, (ii) the Complainant has significant use of the RUCKUS Marks and has developed a reputation in them, (iii) the Complainant has a relatively unique mark – RUCKUS NETWORKS – which would not easily be arrived at coincidentally, (iv) the Complainant’s own website is ruckusnetworks.com and the Domain Name is identical except that the extension is changed to .ca, and (v) the Complainant’s marketing materials include significant dog imagery (arbitrarily) and the Registrant curiously and erroneously equated the word “ruckus” to “dogs” in its Response, which error suggests familiarity with the Complainant’s website. Based on the above, this is a clear case of bad faith domain registration.

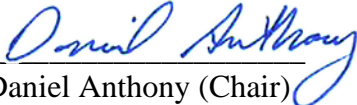
I. Conclusion and Decision

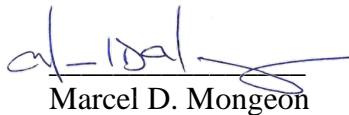
30. This panel finds that the Complainant has prior rights in the marks RUCKUS and RUCKUS NETWORKS. The Domain Name is confusingly similar to these marks, the Registrant had not established any legitimate interest in the Domain Name, and the Domain Name was registered in bad faith.

J. Remedy

31. The Domain Name should be transferred to the Complainant in accordance with paragraph 4.3 of the *Policy*.

Dated November 9th, 2023.


Daniel Anthony (Chair)


Marcel D. Mongeon


Christian Tacit