

**CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY**

DECISION

Domain Name: rescue7.ca
Complainant: Rescue 7 Inc.
Registrant: Martin Andrews
Registrar: WHC Online Solutions Inc.
Service Provider: Resolution Canada
Panelist: Eric Macramalla

A. THE PARTIES

1. The Complainant is Rescue 7 Inc. (the “Complainant”).
2. The Registrant is Martin Andrews (the “Registrant”).

B. DISPUTED DOMAIN NAME

3. The disputed domain name is rescue7.ca (the “Domain Name”).

C. PROCEDURAL HISTORY

4. This is a dispute resolution proceeding initiated pursuant to the *CIRA Domain Name Dispute Resolution Policy* (the “Policy”) and the *CIRA Policies, Rules, and Procedures - CIRA Domain Name Dispute Resolution Rules* (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.
5. The Complainant filed its complaint (the “Complaint”) on May 10, 2024. The Date of Commencement of the proceeding was June 5, 2024.
6. The Registrant failed to file a Response.
7. On July 11, 2024, the Panel was appointed. As prescribed by the Policy, the Panel has declared to the Provider that it can act impartially and independently in connection with this matter, and that there are no circumstances known to the Panel which would prevent it from so acting.

D. CANADIAN PRESENCE REQUIREMENTS: ELIGIBILITY OF THE COMPLAINANT

8. The Complainant is an Ontario corporation. The Panel is therefore satisfied that the Complainant is eligible to initiate these proceedings.

E. THE POSITIONS OF THE PARTIES

The Complainant’s Position

9. The Complainant’s submissions include the following:

10. The Complainant is a Canadian health and safety training, compliance and program management company. The Complainant offers for sale a comprehensive set of emergency response products, including AEDs and accessories, specialized chairs and devices, professional trauma bags, First Aid/CPR training accessories, and other related safety products.
11. The Complainant is the owner of the trademark RESCUE 7, the trade name Rescue 7 Inc., the domain name Rescue7.net, and the website www.rescue7.net (collectively, the "Complainant's Marks").
12. The Complainant registered the business name Rescue 7 Emergency Training Services Inc. on December 22, 1999. On June 21, 2005, the Complainant changed its name from "Rescue 7 Emergency Training Services Inc." to "Rescue 7 Inc.". The Complainant has used the business name Rescue 7 Inc. in Canada since June 21, 2005.
13. The Complainant has owned the Rescue7.net domain and the website at www.rescue7.net since at least February 2000. The Complainant has continued to use the Rescue7.net domain and the website at www.rescue7.net to date.
14. The Complainant previously owned the Domain Name having registered it over a decade ago. The Domain Name was inadvertently not renewed and registered by the Registrant.
15. The Registrant is a competitor of the Complainant. The Registrant is an individual entity acting as a sole proprietorship located in Barrie, Canada with a website at www.aed.ca/. The Registrant offers for sale and sells medical equipment and supplies, AEDs, pads, batteries, cabinets, and accessories. The Registrant registered the business name AED.CA on December 22, 2021.
16. The Registrant acquired the Domain Name on July 23, 2020 and has resolved it to his business' website located at aed.ca.
17. A representative of the Complainant asked the Registrant to stop using the domain name, in an email dated October 21, 2020. The email of October 21, 2020, is as follows:

Mr. Andrews, We have been informed you have registered rescue7.ca in July and have rerouted to your website aed.ca. We have notified our lawyers of this and legal action will be taken if you do not cease and desist immediately. We will also inform our clients and the public of how your proceed to do business.

18. The Registrant responded as follows that same day:

Hello John, Thanks for your email. We simply purchased an available domain, which is smart business. I would be happy to phone if you would like to give me a call.

Thanks much,

Martin Andrews

19. The next day, the Complainant responded as follows:

Martin,

I have now left you two voice messages to call me. I would like to have this situation cleared up between us but if I do not hear from you today, I will be

left with no other choice but to have my lawyer (copied on this email) involved. Unfortunately, for both of us, lawyers will cost both of us more than we wish.

20. The Registrant responded as follows that same day:

Hi John, It was good to talk to you.

I think it would be best if we used a broker service if you would like to purchase the domain. I have used them before and it only cost me \$100.00.

<https://ca.godaddy.com/help/domain-broker-service-a-buyers-roadmap-5686>

Thanks,

Martin Andrews

21. The Complainant ultimately offered the Registrant \$3000 for the Domain Name. In response, the Registrant indicated he was open to selling the Domain Name for “50K to 100K.”
22. The Domain Name is confusingly similar with the RESCUE 7 trademark and trade name, the Registrant does not have a legitimate interest in the Domain Name and the Registrant registered the Domain Name in bad faith.

The Registrant’s Position

23. The Registrant did not file a Response.
24. Since the Registrant has not submitted a response to the Complaint, the Panel shall decide the Proceeding on the basis of the Complaint. Notwithstanding the absence of a response, the proceedings shall be decided on the merits of the case.

F. DISCUSSION & REASONS

25. In accordance with paragraph 4.1 of the Policy, to succeed in this proceeding, the Complainant must prove, on a balance of probabilities, that:
- (a) the Registrant’s 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
 - (b) the Registrant has registered the domain name in bad faith as described in paragraph 3.5 of the Policy;

and the Complainant must provide some evidence that:

- (c) the Registrant has no legitimate interest in the Domain Name as described in paragraph 3.4 of the Policy.

CONFUSINGLY SIMILAR - PARAGRAPH 3.3

- 26. In order to satisfy this branch of the test, the Complainant must demonstrate (i) that it has rights in a mark, (ii) that the rights in its mark predate the registration date of the Domain Name, and (iii) that the Domain Name is confusingly similar with the disputed domain name.

Rights in the Marks & Rights that Predate the Domain Name Registration Dates

- 27. As per paragraph 3.2(a), a complainant may rely on its trade name or common law trademark rights when seeking to establish the requisite Rights as prescribed by the Policy.
- 28. Under the circumstances, the Panel accepts that the Complainant has rights in the trade name Rescue 7 and common law trademark rights in the trademark RESCUE 7. Furthermore, the Panel accepts that these rights precede the July 23, 2020 registration of the Domain Name.
- 29. The Panel concludes that the Complainant has established rights that precede the registration date of the Domain Name.

Confusingly Similar

- 30. As per paragraph 3.3 of the Policy, a domain name will be found to be confusingly similar with a mark if the domain name so nearly resembles the mark in appearance, sound or in the ideas suggested by the mark so as to be likely to be mistaken for the mark.
- 31. Pursuant to paragraph 1.2 of the Policy, a domain name is defined as the second level domain (the portion that immediately precedes the dot-ca suffix).
- 32. The test to be applied when considering “confusingly similar” is one of first impression and imperfect recollection. The Complainant must prove, on a balance of probabilities, that a person, as a matter of first impression, knowing the Complainant’s corresponding marks only, and having an imperfect recollection of the marks, would likely confuse the Domain Name for the Complainant’s marks based upon the appearance, sound or the ideas suggested by the mark.
- 33. It should be noted that the test for confusion under the Policy is not the same test for confusion set out under the Canadian *Trade-marks Act*. Under the Section 6(5) of the *Trade-marks Act*, when assessing the likelihood of confusion between marks, the factors to consider are as follows: (a) the inherent distinctiveness of the marks and the extent to which they have become known; (b) the length of time the marks have been in use; (c) the nature of the wares, services, or businesses; (d) the nature of the trade; (e) the degree of resemblance between the marks in

appearance or sound or in the ideas suggested by them; and (f) the surrounding circumstances.

34. In contrast, the Policy provides that confusion is established if a domain name so nearly resembles a mark in appearance, sound or in the ideas suggested. This is similar to the test set out under Section 6(5)(e) of the *Trade-marks Act*. However, the remaining factors as set out under the *Trade-marks Act* do not apply to the assessment of confusion under the Policy. The Policy's summary proceedings are ill-suited for the in-depth and traditional confusion analysis contemplated by the *Trade-marks Act*.
35. The Panel concludes that the Domain Name is confusingly similar with the Complainant's RESCUE 7 trademark and trade name given that the Domain Name so nearly resembles the RESCUE 7 trademark and Rescue 7 trade name in appearance, sound and in the ideas suggested so as to be likely to be mistaken for them. The Domain Name is comprised exclusively of RESCUE 7, and as a result, the Registrant cannot escape a finding of confusion.

Conclusion - Confusion

36. The Panel finds that the Domain Name is confusingly similar with the RESCUE 7 trademark and trade name in which the Complainant had rights prior to the registration date of the Domain Name, and continues to have such rights.

LEGITIMATE INTEREST

37. As per paragraph 4.1 of the Policy, the Complainant must provide "some evidence that the Registrant has no legitimate interest in the domain name as described in paragraph 3.6".
38. Once this onus has been discharged by the Complainant, the Registrant may still succeed if it can show, on a balance of probabilities, that it has a legitimate interest in the Domain Name pursuant to paragraph 3.4.
36. The Panel finds that the Complainant has provided sufficient evidence that the Registrant does not have a legitimate interest in the Domain Name. The Complainant did not authorize the registration and the Domain Name is likely to mislead the public into believing that the Registrant is affiliated with, or endorsed by, the Complainant. The Registrant is also a direct competitor of the Complainant, which undermines any claim of rights. Also supporting a finding of no rights is the Registrant's attempted sale of the Domain Name to the Complainant.
37. Accordingly, the Panel finds that the Registrant does not have a legitimate interest in the Domain Name.

BAD FAITH REGISTRATION

38. There is little doubt that the Registrant's activities fall squarely within Paragraph 3.5(b), (c) (d):

3.5 Registration in Bad Faith. For the purposes of paragraphs 3.1(c) and 4.1(b), any of the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence that a Registrant has registered a domain name in bad faith: ...

(b) the Registrant registered the domain name or acquired the Registration in order to prevent the Complainant, or the Complainant's licensor or licensee of the Mark, from registering the Mark as a domain name, provided that the Registrant, alone or in concert with one or more additional persons has engaged in a pattern

of registering domain names in order to prevent persons who have Rights in Marks from registering the Marks as domain names;

(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; or

(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.

39. The Complainant's claim as per Paragraph 3.5(b) is based upon the Registrant indicating as follows: *"I buy and sell domains as a side business. I have lots of them"*.
40. Buying and selling domain names by itself is an insufficient basis to support a claim as per Paragraph 3.5(b). It must be shown that the Registrant has registered domain names that are comprised of, contain, or are confusing with, third party trademarks. This has not been done by the Complainant, and as a result, the claim advanced as per Paragraph 3.5(b) does not meet with success.
41. In keeping with Paragraph 3.5(c), the Panel notes that the Domain Name is identical to the Complainant's trade name and trademark and resolves to the Registrant's website, a direct competitor of the Complainant. Such use is likely to disrupt the business of the Complainant.
42. Under the circumstances, the Panel concludes that the registration of the Domain Name by the Registrant constitutes a straightforward case of cybersquatting pursuant to Paragraph 3.5(c).
43. The Panel also finds bad faith as per Paragraph 3.5(d), namely that the Registrant has intentionally attempted to attract, for commercial gain, Internet users its website by creating a likelihood of confusion with the Complainant's mark as to the source or sponsorship. The Registrant is piggybacking on the Complainant's name with a view to redirecting Internet traffic to its site for commercial gain.

44. It was open to the Complainant to also rely upon Paragraph 3.5(a) as there is strong evidence that the Registrant registered the Domain Name to sell for a profit.
45. The Panel therefore concludes that the Registrant has operated in bad faith as per the Policy.

DECISION & ORDER

46. For the reasons set out herein, the Panel decides this dispute in favour of the Complainant. Pursuant to paragraph 4.3 of the Policy, the Panel orders the transfer of the domain name rescue7.ca to the Complainant.

Dated at Ottawa, Ontario, Canada, this 7th day of August, 2024.



Eric Macramalla
Sole Panelist