

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

DECISION

Domain Name: dxracer.ca

Complainant: Jiangyin Dexin Auto Parts (Chair) Co., Ltd.

Registrant: Neil Saunders

Registrar: GoDaddy Domains Canada, Inc.

Service Provider: Resolution Canada

Panelist: Daria Strachan

A. THE PARTIES

1. The Complainant, Jiangyin Dexin Auto Parts (Chair) Co., Ltd. (the “Complainant”), is a corporation located in China.
2. The Registrant for the domain name is Neil Saunders (the “Registrant”), located in Richmond, BC.

B. DISPUTED DOMAIN NAME AND REGISTRAR

3. The disputed domain name is dxracer.ca (the “Domain Name”).
4. The Registrar for this domain name is GoDaddy Domains Canada, Inc. (the “Registrar”).
5. The disputed domain name was registered on August 19, 2012.

C. PROCEDURAL HISTORY

6. 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 1.5* (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.
7. The Complainant filed its Complaint on June 15, 2017 (the “Complaint”). The date of commencement of the proceeding was June 27, 2017.

8. The provider, Resolution Canada, served notice of the Complaint on the Registrant as required pursuant to Paragraph 4.3 of the Rules. Service of the Complaint was made by e-mail on June 27, 2017.
9. The Registrant did not file a response.
10. On August 24, 2017, the Panel was appointed. As prescribed by Paragraph 7 of the Rules, the Panel has declared to Resolution Canada that it can act impartially and independently in connection with this matter, and that there are no circumstances known to the Panel that would prevent it from so acting.

D. CANADIAN PRESENCE REQUIREMENTS: ELIGIBILITY OF THE COMPLAINANT

11. The Complainant is a Chinese company. It owns a Canadian trademark registration for the mark DXRacer, Registration No. TMA875335 (the “dxracer Trademark”). The dxracer Trademark includes Chinese characters above the term “dxracer”, the identical term contained in the disputed dot-ca domain name. The Complainant registered the dxracer Trademark on April 19, 2014, and has used the trademark in Canada since at least August 15, 2010.
12. The Complainant operates various websites promoting the sale of its dxracer branded products, including websites located at dxracer.com (U.S.) and dxracer-europe.com (Europe). As such, the Complainant meets the Canadian presence requirements in accordance with Paragraph 2 (q) of the CIRA *Canadian Presence Requirements for Registrants*.

E. THE POSITION OF THE COMPLAINANT

13. Established in 2001, the Complainant sells office chairs and premium gaming chairs. The Complainant’s dxracer branded gaming chairs are available worldwide in North America, Europe, Asia, South America and Africa. The Complainant states that it has made continuous use of the dxracer Trademark in Canada since at least August 15, 2010 and as such, that it is the owner of common law Trademark rights that precede the Domain Name registration date of August 19, 2012.
14. The Complainant submits that it has generated millions of dollars in revenue worldwide in association with the dxracer Trademark, including approximately \$50,000 in connection with the sale of dxracer branded products between 2010 and August 2012 when the Registrant registered the Domain Name.
15. The Domain Name presently redirects Internet users to www.gamingchairdeals.com, a website selling gaming chairs from Clutch Chairz as well as DXRacer chairs. These chairs are competitors of one another.

16. On May 16, 2017, the Complainant's solicitor sent a demand letter to Absolute Office Furniture Industries. Following receipt of the demand letter, the Domain Name was deactivated and Absolute Office Furniture Industries refaxed the coversheet of the facsimile with a handwritten note stating that the "website has been taken down." The Complainant alleges that this deactivation and facsimile response are evidence of the fact that the Registrant recognized it had engaged in unlawful activities.
17. The Complainant submits that the Registrant's dot-ca name is confusingly similar with a Trademark in which the Complainant had rights prior to the date of the Domain Name registration. Accordingly, the Complainant states that it has rights in these Marks in accordance with Paragraph 3.2 (c) of the Policy. The Complainant states that the Domain Name is confusingly similar to its Trademark and is likely to be mistaken for the Mark.
18. The Complainant further states that the Registrant has appropriated the Complainant's entire Mark into the Domain Name. It is noted that the domain name dxracer.ca is nearly identical to the dxracer Trademark, save the Chinese characters which cannot be translated into English or French. Not only are the Mark and Domain Name likely to be mistaken for one another, the website linked to the Domain Name has already been mistaken as the Complainant's website by consumers.
19. This confusion is illustrated by criticism received online by consumers who mistakenly believed that the Registrant was authorized to act on the Complainant's behalf, or that the Complainant was selling their gaming chairs via the dxracer.ca website. For example, a commentary from an irate consumer complained that he "never received a chair", followed by derogatory language targeting the Complainant and their "shady business partners". Other consumers referred to the Complainant as operating a "scam" website connected to the Domain Name.
20. The Complainant highlights the fact that the Domain Name redirects potential consumers to a pay-per-click website that showcases competing products alongside those of the Complainant. The Complainant alleges that potential consumers are likely to be misdirected resulting in a disruption to the Complainant and its business. Accordingly, the Complainant submits that the circumstances support a finding of bad faith as per paragraph 3.5 (c) of the Policy.
21. The Complainant also submits that the Registrant intentionally attempted to attract commercial gaming internet users to its website by creating a likelihood of confusion with the dxracer Trademark.
22. The Complainant clarifies that bad faith can be found whether the commercial benefit is attributed directly to the Registrant or the commercial gain is attributed to another party in association with the use of the Domain Name. By redirecting potential

consumers to websites promoting the sale of competitor products, the Registrant is placed in a position to enjoy a financial benefit through that affiliation.

23. The Complainant alleges that the Registrant had actual knowledge of the Complainant's Mark at the time it registered the Domain Name, which reinforces a finding of bad faith.
24. Lastly, the Complainant submits that the Respondent has no legitimate interest in the Domain Name. The Complainant emphasizes that there is no relationship between the two parties whatsoever, that the Domain Name was not acquired in good faith or for a *bona fide* purpose, that it is not a descriptive term, that dxracer.ca is not generic of any wares, services or business, that the Domain Name has never been used by the Registrant in a non-commercial activity, that it is not a legal name by which the Registrant is commonly identified, and that Domain Name is not the geographical name of the location of the Registrants non-commercial activity place of business (Paragraph 3.4 (a)-(f) of the Policy). For these reasons, the Complainant submits that the Registrant does not have a legitimate interest in dxracer.ca and is therefore removed from the application of Paragraph 3.6 of the Policy.
25. The Complainant requests that the Domain Name be transferred from the Registrant to the Complainant.

F. DISCUSSION AND REASONS

26. 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 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 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

27. In order to satisfy this branch of the test the Complainant has to show that it has rights in a Mark that pre-dates the registration date of the Domain Name and that the Domain Name is confusingly similar with the disputed Mark.

28. The Domain Name was registered on August 19, 2012.
29. The Complainant registered the DXRACER Trademark (TMA875335) on April 19, 2014, but had been using the dxracer Trademark in Canada since August 15, 2010. While not a registered Trademark in Canada, the Complainant contends that it is the owner of common-law Trademark Rights that precede the August 19, 2012 Domain Name registration. To demonstrate that usage, the Complainant stated that it generated approximately \$50,000.00 in connection with the sale of dxracer branded products in Canada between 2010 and August 2012. Moreover, the Complainant has generated millions of dollars in revenue worldwide in association with the dxracer Trademark. For these reasons, the dxracer Trademark satisfies the definition of "Mark" in Paragraph 3.2 (a) of the Policy.
30. As the owner of the dxracer Trademark, the Complainant has rights in the Mark and continues to have such rights in accordance with Paragraph 3.2 (c) of the Policy. It is also the owner of common-law Trademark rights, which proceed the domain registration date. The Panel does not find that the stylized Chinese characters included in the Trademark registration distinguish the disputed Domain Name from the Complainant's Trademark.
31. The Panel accepts the Complainant's position, and finds that the Domain Name is likely to be mistaken for the Complainant's dxracer Trademark. Therefore the Complainant has established, on a balance of probabilities, the facts required to support the requirements of Paragraph 4.1 (a) of the Policy.

Legitimate Interest

32. Paragraph 3.4 provides six (6) possible ways in which a Registrant may have a legitimate interest in a domain name, which the Complainant outlined in its submissions.
33. The Complainant has adduced evidence that the Domain Name defaults to a pay-per-click website located at www.gamingchairdeals.com, which sells gaming chairs that compete directly with those of the Complainant. The Panel does not believe that such use shows that the Domain Name was used in good faith by the Registrant or that the Registrant had rights in the Mark. Therefore Paragraph 3.4 (a) of the Policy is not satisfied. Moreover, the Panel similarly does not believe that the disputed Domain Name was registered in good faith in association with any wares, services or business, so the Registrant's use cannot fall under Paragraphs 3.4 (b) or (c) of the Policy. The Registrant was not using the disputed Domain Name in good faith in association with criticism, review or new reporting, as set out at Paragraph 3.4 (d) of the Policy. The disputed Domain Name is not the legal name or a name, surname or other reference by which the Registrant was commonly identified as required pursuant to Paragraph 3.4 (e) of the Policy. Lastly, the domain name is not the geographical name of the location of the Registrant's place of business, as required under Paragraph 3.4 (f) of the Policy. As a

result, none of the criteria set out under Paragraph 3.4 has been satisfied. The Panel finds that the Complainant has provided some evidence that the Registrant has no legitimate interest in the disputed domain name.

Bad Faith

34. The Complainant must show, on the balance of probabilities, that the disputed Domain Name was registered in bad faith. Paragraph 3.5 of the Policy deals with the grounds that constitute bad faith. These grounds are not exhaustive; rather it is left open for the Panel to conclude that there are other grounds that lead to a finding of bad faith conduct.
35. The Complainant provided numerous examples of the Registrant's conduct constituting bad faith in accordance with Paragraph 3.5 (d) of the Policy. Paragraph 3.5 (d) of the Policy states that a finding of bad faith registration of a domain name is evidenced where:

The Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website or other online 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.
36. Perhaps the most compelling example is one where there has already been actual confusion. Specifically, the comments provided by a consumer who stated "Do not buy from gamingchairdeals.com" as they do not list a contact number on their website and the chair ordered by said consumer was never delivered. This particular consumer assumed that dxracer.ca was either the Complainant's website or a "shady business partner" of the Complainant.
37. It is clear to the Panel that the Respondent registered dxracer.ca as a domain name with a view to attracting business from those who have come to recognize the Complainant's Mark, with the purpose of disrupting the Complainant's business.
38. The fact that dxracer.ca website redirects potential consumers to a pay-per-click website further illustrates the bad faith conduct of the Respondent.
39. It is the Panel's view that the Registrant intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website and other online locations, by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website, in accordance with Paragraph 3.5 of the Policy.

G. CONCLUSION AND DECISION

40. For the reasons set out above, the Panel finds that the Complainant does have rights in the dxracer Trademark, which pre-date the registration of the disputed Domain Name. It also finds that the Domain Name is confusingly similar to the Complainant's Mark and that the Registrant had no legitimate interest in the Domain Name. The Panel further finds that the Complainant has shown that the Registrant registered the domain name in bad faith pursuant to Paragraph 3.5 (d) of the Policy.
41. The Panel therefore orders, pursuant to Paragraph 4.3 of the Policy, that the registration of the domain name dxracer.ca be transferred to the Complainant.

Dated September 13, 2017.



Daria Strachan, Sole Panelist