



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE
DOMAIN NAME DISPUTE
ADMINISTRATIVE PANEL
DECISION

CIIDRC case number:	16879-CDRP	Decision date: April 2, 2022.
Domain Name:	swim4life.ca	
Panel:	Alan Limbury (Chair), Richard Levy, Anton Melnyk, QC	
Complainant:	Royal Life Saving Society, Alberta and Northwest Territories Branch	
Complainant's representative:	Heather Barnhouse of Dentons Canada LLP	
Registrant:	Karina Reynaud / Nager pour la vie	
Registrant's representative	Karine Lefebvre of Morency Société d'avocats, LLP	

1. PROCEDURAL HISTORY

This matter is conducted pursuant to the Canadian Dispute Resolution Policy (the CDRP) and the Canadian Dispute Resolution Rules (the Resolution Rules) of the Canadian Internet Registry Authority (CIRA).

The procedural history of this case was set out in a letter from the Canadian International Internet Dispute Resolution Centre (CIIDRC) to the Panel:

- 1.1 On February 8, 2022, Ms. Heather Barnhouse filed a Complaint on behalf of the Royal Life Saving Society, Alberta and Northwest Territories Branch. Upon a review of the Complaint, CIIDRC determined that the Complaint was not in administrative compliance with Rule 3.2. On February 9, 2022, CIIDRC notified counsel for the Complainant of the instances of non-compliance and set a deadline to re-submit of the Complaint.
- 1.2 On February 14, 2022 counsel for the Complainant re-submitted the Complaint. Upon a review of the Complaint, CIIDRC determined that the Complaint is in administrative compliance with Rule 3.2.

- 1.3 CIRA was notified of this proceeding on February 8, 2022 and, on the same date, CIRA transmitted its verification response confirming the Registrant's identity. CIRA also confirmed that the disputed domain name was placed on a Registrar LOCK.
- 1.4 On February 15, 2022, CIIDRC confirmed compliance of the Complaint with CIRA's requirements under Resolution Rule 3.2, and commencement of the administrative proceeding.
- 1.5 Pursuant to Resolution Rule 4.4, CIIDRC notified the Registrant of this administrative proceeding and forwarded the Complaint to the Registrant on February 15, 2022. As the Complaint with the attachments was filed via email, CIIDRC delivered the Complaint to the Registrant by email and by express post.
- 1.6 On March 3, 2022, counsel for the Registrant submitted a written request for an extension of the period for delivery of a Response. CIIDRC granted a 4-day extension, until March 11, 2022, to deliver the Registrant's Response.
- 1.7 On March 11, 2022, the Registrant filed its Response, in compliance with the Policy and Resolution Rules.
- 1.8 The Complaint and the Response were filed in English, which shall be the language of the proceeding.
- 1.9 In accordance with Paragraph 6 of the Rules, the Provider appointed a three-member Panel, with consideration to the nominees of the parties, and selected a Chair.
- 1.10 CIIDRC named **Richard Levy** and **Anton Melnyk, QC** as Panelists and **Alan Limbury** as Chair of the Panel. Each member of the Panel accepted the appointment and completed a statement of impartiality and independence as required under Paragraph 7 of the Rules.

2. FACTS ALLEGED BY THE PARTIES

- **Complainant**

The Complainant is a well-known national, independent, charitable organization that works to prevent drowning and water-related injury through its training programs in Canada. The trademark SWIM FOR LIFE has been used in Canada by the Complainant since at least as early as April, 2002 and was registered on October 18, 2006 for use in association with organizing and conducting instruction in water safety and swimming and the provision of education and training in aquatic safety.

The Registrant has used the <**swim4life.ca**> domain name, which was registered on August 8, 2012, to advertise for sale to the public services relating to water safety and swimming instruction.

- **Registrant**

In 2012 Karina Renaud developed a swimming program named NAGER POUR LA VIE AVEC KARINA RENAUD or in English SWIM FOR LIFE WITH KARINA RENAUD to teach children how to swim. She started referring to it as NAGER POUR LA VIE or in English SWIM FOR LIFE. The domain name was registered as belonging to "Nager pour la vie". On November 28, 2013, Karina Renaud registered herself as a Sole Proprietorship with the Registraire des entreprises du Québec and added the tradenames NAGER POUR LA VIE AVEC KARINA RENAUD or in

English SWIM FOR LIFE WITH KARINA RENAUD. On August 1st, 2017, Karina Renaud incorporated her business under the legal name “Nager pour la vie avec Karina Renaud inc.” and its English version, “Swim for life Karina Renaud inc.”

Neither Karina Renaud nor the Registrant has ever been aware of the Complainant’s Trademark and Complainant’s use of the Trademark until receipt of the Complainant’s cease-and-desist letter in 2020.

3. CONTENTIONS OF THE PARTIES

- **Complainant**

The Complainant submits that it is the owner of the trademark SWIM FOR LIFE (TMA675245) registered on October 18, 2006 with the Canadian Intellectual Property Office (“**CIPO**”) (the “Trademark”). The Trademark has been used in Canada since at least April 2002 in association *inter alia* with organizing and conducting instruction in water safety and swimming; organizing and conducting leadership training and certification; and the provision of education and training in aquatic safety. The Complainant had developed a national reputation and goodwill with respect to the trademark and its associated goods and services well before the registration of the disputed domain name on August 8, 2012.

The <**swim4life.ca**> domain name is confusingly similar to Complainant’s Trademark because 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 Registrant has no legitimate interests in the domain name for the following reasons:

- (a) a search of the CIPO online database did not disclose any application for or registration of “swim4life”.
- (b) the disputed domain name was not clearly descriptive of the character or quality of any goods, services, or business (i.e., water safety and swimming instruction), the conditions of or the persons employed in, production of the goods, performance of the services, or operation of the business (i.e., lifeguards and similar roles), nor the place of origin of the goods, services, or business (i.e., Québec). If the domain name was clearly descriptive of any of the foregoing, then so too would be the Trademark; however, it was permitted to successfully register at CIPO and thus cannot be clearly descriptive of the character or quality of its goods or services.
- (c) the disputed domain name was not understood to be the generic name of any of the associated goods, services, or business, which relate to water safety and swimming instruction, as “swim4life” is not a generic name;
- (d) the disputed domain name was not used in association with a non-commercial activity, as the Registrant has used the domain name to advertise services relating to water safety and swimming instruction that are for sale to the public;
- (e) the disputed domain name did not comprise the legal name or otherwise the name, surname or other reference by which the Registrant was commonly identified; and

- (f) the domain name was not a geographical name of the location of the Registrant's non-commercial activity or place of business, as "swim4life" is not a geographical name of any location, and the disputed domain name related to a commercial business.

The disputed domain name has been registered in bad faith for the following reasons:

(i) The Registrant registered the disputed domain name primarily for the purpose of disrupting the business of the Complainant, a competitor of the Registrant. The Registrant is disrupting the Complainant's business by using the disputed domain name and the Trademark to provide competitive services to the Complainant's, and to divert potential customers away from the Complainant.

Further, the registration and use of the disputed domain name are causing the Complainant to miss a portion of Internet traffic that it would otherwise receive by users who are trying to find or connect with the Complainant.

(ii) The Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website, by creating a likelihood of confusion with the Trademark as to the source, sponsorship, or endorsement of the Registrant's website. The Complainant is not the source, nor does it sponsor or endorse the Registrant's website.

The Registrant is attempting to take advantage of the Complainant's goodwill and reputation in its use of the disputed domain name. The Registrant's website, falsely posing as a Complainant website or a website associated with or endorsed by the Complainant, defeats the ability for the Complainant to choose how it is represented online.

(iii) The Registrant advertises that it is a "member" of the national organization ("Société de Sauvetage"), and thus is clearly aware of the goods and services provided by the Complainant and the confusingly similar circumstances that have been created by the registration of the disputed domain name. The fact that the disputed domain name was registered, and continues to be in use at present, despite the Registrant's undeniable and actual knowledge of the Complainant's business and Trademark, is evidence of the Registrant's bad faith. The disputed domain name could have been registered and continued to be used for no reason but to disrupt the business of the Complainant and to attract Internet users to the Registrant's website for commercial gain.

- **Registrant**

The Registrant submits that in 2012, Karina Renaud, a Canadian resident, developed a swimming program to prevent drowning by teaching young children how to swim. Karina Renaud thought of the name NAGER POUR LA VIE AVEC KARINA RENAUD or in English SWIM FOR LIFE WITH KARINA RENAUD and because the name is very long, she started referring to the program as NAGER POUR LA VIE or in English SWIM FOR LIFE. This name made sense because the program's mission was to offer swimming classes that enable a child to learn how to swim and not drown and, therefore save its life.

She started this program by teaching swimming lessons in her backyard and afterwards at the YMCA, where she rented a space. On August 8, 2012, Karina Renaud purchased the domain name <swim4life.ca> to market her

swimming program. On the same date, she also purchased the French versions of the domain name: <nagerpouurlavie.ca> and <nagerpouurlavie.com> to market her swimming program. The domain name <**swim4life.ca**> was therefore registered by the Registrant's principal as a home start-up business and with a *bona fide* intention to provide her swimming program under this name.

The domain name <swimforlife.com> was already registered since February 1, 2002 and <swimforlife.ca> and <swim4life.com> were already registered since 2006. None of these domain names were registered by the Complainant. This led Karina Renaud to opt for <**swim4life.ca**> as a way to reference her program. As businesses associated with the aforementioned domain names did not seem to be operating in Canada and the <**swim4life.ca**> domain name was available, she proceeded with the registration of that domain name along with its French equivalent.

On November 28, 2013, as the start-up was expanding, Karina Renaud registered herself as a Sole Proprietorship (an unincorporated business owned by one individual) with the Registraire des entreprises du Québec. She also registered with the Registraire des entreprises du Québec the tradenames NAGER POUR LA VIE AVEC KARINA RENAUD and in English SWIM FOR LIFE WITH KARINA RENAUD, as other names used in Québec.

In 2017, after the success of the program, Karina Renaud decided to incorporate her business. The Registrant, Nager pour la vie avec Karina Renaud inc. and its English version: Swim for life with Karina Renaud inc. was incorporated on July 31st, 2017 pursuant to the *Business Corporations Act* (Québec). Karina Renaud is the President and sole shareholder of the Registrant. During incorporation, no similar name was identified. The Sole Proprietorship was cancelled on June 18, 2018.

The Registrant has a legitimate interest in the domain name because it refers to the Registrant's swimming program and is a reflection of the Registrant's corporate name or tradename, derived without any knowledge of the Complainant's Trademark and use of its Trademark. According to Section 3.4(a) of the Policy, the Registrant has a legitimate interest in the domain name as the domain name is a Mark, as defined in the Policy, in which the Registrant has rights and the Registrant has used the Mark since 2012 in good faith for the purpose of distinguishing the services of the Registrant.

It is very clear from the Registrant's website that the services are provided by Karina Renaud and have nothing to do with the Complainant. The Registrant's website does not falsely pose as the Complainant's website or a website associated with or endorsed by the Complainant. Throughout the entire use of the Registrant's swimming program SWIM FOR LIFE WITH KARINA RENAUD and its legal names which incorporate the term SWIM FOR LIFE, no confusion had ever been reported to the Registrant. Furthermore, although not always used with the addition of the name "Karina Renaud", the Registrant's swimming program always references Karina Renaud in some way on the Registrant's website. Therefore, there is no confusion between the programs of the Complainant and the Registrant, as there is a low likelihood that a consumer will believe that the Registrant is affiliated with the Complainant.

The Registrant gives its swimming lessons in Karina Renaud's garage in the City of Pointe-Claire, Province of Québec, as well as on some occasions in Québec City. It is a very local business and therefore cannot have the object of disrupting the business of the Complainant, which says on its website that its courses are given in Alberta and the Northwest Territories. The Registrant only wants to help children learn how to swim and decrease drowning in Québec.

The Québec branch of the Lifesaving Society, which uses the French version of the name, Société de Sauvetage, started using the mark SWIM FOR LIFE in Québec only in 2022. Hence the Registrant had virtually no possibility of knowing of the existence of the Complainant's swim program under that mark prior to her receipt of the cease-and-desist letter in 2020 from the Complainant. A search on Wayback Machine did not reveal any use by the Société de Sauvetage of the term Swim for Life or Nager pour la vie prior to January 14, 2022. The Registrant had never been told about the existence of the Complainant's Trademark or Trademark use prior to 2020 and no actual confusion has ever been identified to the Registrant

Furthermore, in light of the fact that various other websites use the term "Swim for life" or a very similar phrase in relation to swim classes, it is clear that the Registrant had no intention of disrupting the business of the Complainant. Nothing would lead to the conclusion that the Registrant's business and services originate with the Complainant or were endorsed, sponsored or approved by the Complainant.

The Société de Sauvetage knew of the existence of the Registrant and its swimming program and never indicated any problems with such use. Karina Renaud and Raynald Hawkins, General Manager of the Société de Sauvetage, were interviewed on May 20, 2013 for a CBC segment on Karina Renaud's Program which they referred to as Nager pour la vie (French version of Swim for life). Also, both the Société de Sauvetage and the Registrant are members of the ARAQ (Association des responsables aquatiques du Québec) and attend annual meetings together. Both Raynald Hawkins and Karina Renaud were interviewed for an article entitled "Apprendre à nager à l'âge des premiers pas, une folie?", published in the "Enfant Québec" magazine dated March 26, 2014. Although Mr. Hawkins is quoted as not being in favour of aspects of the Registrant's approach, there is no mention of confusion between the Complainant's and Registrant's marks. Furthermore, Raynald Hawkins has never mentioned to Karina Renaud the Swim for Life program of the Complainant.

The Registrant contends that the Complainant and the Société de Sauvetage, nationally never approached the Registrant prior to 2020 about her use of "Swim For Life" or swim4life.ca because there was no likelihood of confusion. But since the Canadian Red Cross announced in January 2022 that it is winding down its swim and lifeguard programming and is encouraging its water safety training partners to transition to the swim and lifeguarding programs of the Lifesaving Society, the Complainant feels the need to obtain the Disputed Domain Name.

The Registrant contends that because she teaches the swimming lessons, it is normal that she would mention that she has obtained her certification as a lifeguard. The Registrant contends that this is not proof of bad faith by the Registrant nor that the disputed domain name was registered intentionally to attract, for commercial gain, internet

users to the Registrant's website, by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, or endorsement of the Registrant's website. Furthermore, the Registrant contends that a Google search clearly identifies the Registrant's website as "Swim for Life with Karina Renaud."

For the reasons indicated above, the Registrant contends that the Registrant did not register the disputed domain name primarily for the purpose of disrupting the business of the Complainant nor intentionally to attempt to attract, for commercial gain, internet users to the Registrant's website, by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, or endorsement of the Registrant's website.

The Registrant requests that the Panel reject the transfer of the Disputed Domain Name to the Complainant.

- **Remedy Sought**

The Complainant requests that the Disputed Domain Name be transferred to it.

The Registrant requests that she be awarded costs of \$5000 to defray her expenses incurred in submitting material in the proceeding, pursuant to paragraph 4.6 of the CDRP and Rule 5.2(g).

DISCUSSION AND FINDINGS

3.1 Eligibility

The Complainant is an eligible complainant under paragraph 1.4 of the CDRP. The Complaint relates to a trademark registered in the Canadian Intellectual Property Office ("**CIPO**") and the Complainant is the owner of the trademark.

3.2 Requirements

In accordance with Paragraph 4.1 of the CDRP, the onus is on the Complainant to prove:

That the Domain Name is Confusingly Similar to a trademark or service mark in which the Complainant has rights; and

That the Domain Name has been registered in bad faith.

The Complainant must also provide some evidence that the Registrant has no legitimate interests in the Domain Name. Once that is done, the onus shifts to the Registrant to prove, on a balance of probabilities, that the Registrant has a legitimate interest in the Domain Name as described in paragraph 3.4 of the CDRP.

The Panel will consider each of these requirements in turn.

3.3 Analysis

3.1 Whether the Domain Name is Confusingly Similar to a Mark in which the Complainant has Rights

The Complainant has shown that it is the owner of the trademark SWIM FOR LIFE (TMA675245), registered with the **CIPPO** on October 18, 2006 pursuant to the *Trademarks Act* RSC 1985, c T-13.

Under paragraph 3.3 of the CDRP, in determining whether a domain name is “Confusingly Similar” to a Mark, the Panel shall only consider whether the domain name 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 country code top level domain (ccTLD) ‘.ca’ may be ignored.

Applying this test, the Panel finds the Domain Name <**swim4life.ca**> to be confusingly similar to the Complainant’s SWIM FOR LIFE trademark.

The Complainant has established this element.

3.2 Whether the Registrant has No Legitimate Interest in the Domain Name

For the purposes of paragraphs 3.1(b) and 4.1(c) of the CDRP, any of the following circumstances, in particular, but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate that the Registrant has a legitimate interest in a domain name:

- 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.

In paragraph 3.4(d), “use” by the Registrant includes, but is not limited to, use to identify a web site.

Paragraph 3.2 of the CDRP defines a “Mark” as including “a trade name that has been used in Canada by a person, or the person’s predecessor in title, for the purpose of distinguishing the wares, services or business of that person or predecessor or a licensor of that person or predecessor from the wares, services or business of another person”.

The Registrant’s submissions proceed on the basis that when Karina Reynaud’s organization changed, a corresponding change to the name of the Registrant was made. However, according to the Registrar of the Disputed Domain Name, the Registrant of the <**swim4life.ca**> domain name is Karina Reynaud, and her organization is Nager Pour La Vie. Accordingly, the Panel notes that although Karina Reynaud has shown that she is President and sole shareholder of the company Nager pour la vie avec Karina Renaud inc. (in English Swim for life with Karina Renaud inc.), she herself remains the Registrant and that her name appears prominently on the website to which the domain name resolves.

The Complainant’s SWIM FOR LIFE trademark was registered with CIPO 6 years before the registration of the Registrant’s <**swim4life.ca**> domain name. The Complainant’s website (Annex 9 to the Response) states that the Complainant’s Swim for Life programs are offered at aquatic and recreational facilities across Alberta and the North Western Territories, which the Panel notes are, at a minimum, about 4000 kilometers away, by road, from Montreal, Québec, where the Registrant provides her services.

The Panel notes that when she registered the <**swim4life.ca**> domain name, the Registrant also registered the domain names <nagerpourelavie.ca> and <nagerpourelavie.com> and that she was aware that the domain names <swimforlife.com>, <swimforlife.ca> and <swim4life.com> were already registered by others.

The mark registered by the Complainant, in essence, describes swim instruction services that can save a trainee’s life. If not “clearly” descriptive, it is highly suggestive. It corresponds to the English trade name of the Registrant’s company, the Registrant being a native French speaker whose business is based on the island of Montreal (albeit on the “West Island” which is majority English-speaking). These circumstances support the Registrant’s assertions that, when she registered the <**swim4life.ca**> domain name, the Registrant, although she is a member of the Québec branch of the Lifesaving Society, was unaware of the use and registration of the SWIM FOR LIFE trademark by its Alberta-North West Territories branch. She registered her business and later incorporated it under Québec law, which, the Panel notes, does not require applicants for incorporation to initially submit a nation-wide trademark and business name search report (sometimes called a NUANS report), as Canadian federal incorporation practice does.

The Panel finds that the Registrant used the mark “SWIM FOR LIFE” from 2012 to 2020, without any notice from the Complainant, as a trade name and corporate name for pre-school swim instruction, without misleading visitors of her website into believing that she is affiliated with or endorsed by the Complainant.

Accordingly, the Panel finds that the Disputed Domain Name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark.

The Panel finds that the Registrant has proven, on a balance of probabilities, that she has a legitimate interest in the Disputed Domain Name

3.3 Whether the Registrant has Registered the Domain Name in Bad Faith

For the purposes of paragraphs 3.1(c) and 4.1(b) of the CDRP, 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:

- a. the Registrant registered the domain name, or acquired the Registration, primarily for the purpose of selling, renting, licensing or otherwise transferring the Registration to the Complainant, or the Complainant's licensor or licensee of the Mark, or to a competitor of the Complainant or the licensee or licensor for valuable consideration in excess of the Registrant's actual costs in registering the domain name, or acquiring the Registration;
- 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.

The Panel finds that, on the balance of probabilities the Registrant did not register the Disputed Domain Name in bad faith and that the Complainant has failed to establish this element.

4 DECISION and ORDER

For the above reasons, in accordance with Paragraph 4 of the CDRP, Paragraph 12 of the Resolution Rules, the Panel dismisses the Complaint and orders that the domain name <swim4life.ca> remain with the Registrant.

The Panel also finds that the Registrant did not prove, on a balance of probabilities, pursuant to paragraph 4.6 of the CDRP, that the Complaint was commenced by the Complainant for the purpose of attempting, unfairly and without colour of right, to obtain a transfer of the Registration subject to the Proceeding. Accordingly, the Panel dismisses the request of the Registrant to be paid for an amount to defray its costs incurred.

Made as of April 2, 2022.

SIGNATURES OF PANELISTS

