



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

CIIDRC case number:	18227-UDRP	Decision date:
Domain Name:	<b>baseballcoachtraining.com</b>	
Panel:	<b>Michael Erdle</b>	
Complainant:	<b>Malcolm “Duke” Baxter</b>	
Respondent:	<b>Christopher Kelly</b>	

## 1. PROCEDURAL HISTORY

The Domain Name was registered on 2017-07-03.

This matter is conducted pursuant to the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) of the Internet Corporation for Assigned Names and Numbers (ICANN).

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. On September 10, 2022, Mr. Malcolm Baxter filed a Complaint pursuant to the UDRP and the UDRP Rules.
2. The Registrar, GoDaddy.com, LLC, was notified of this proceeding, and on September 13, 2022, the Registrar transmitted by email to CIIDRC its verification response informing CIIDRC of the identity of the Registrant, the Respondent in this administrative proceeding. The Registrar also confirmed that the disputed domain name was placed on a Registrar LOCK.

3. On September 13, 2022, CIIDRC advised Complainant that the Complaint is not in administrative compliance with the UDRP Rules. In accordance with UDRP Rule 4 (d), Complainant had five days to correct all instances on non-compliance.
4. On September 19, 2022, Complainant submitted a revised Complaint.
5. On September 20, 2022, CIIDRC, confirmed compliance of the Complaint with the UDRP Rules and commencement of the dispute resolution process.
6. Pursuant to UDRP Rule 4 and Supplemental Rule 5, CIIDRC notified Respondent of this administrative proceeding and forwarded a Notice with a login information and the link to the Complaint to Respondent on September 20, 2022.
7. Respondent failed to file its response by the due date of October 10, 2022.
8. Complainant has elected for a single-member Panel.
9. On October 14, 2022, CIIDRC appointed me as the sole panel member in this matter.

## **2. FACTS ALLEGED BY THE PARTIES**

Complainant, Malcolm “Duke” Baxter, owns and operates a baseball coaching and training business in Bridgewater, New Jersey, USA, under the name “Zoned Inc.” The business also operates under the trade names “Zoned Sports Academy” and “Dominate the Diamond”. Complainant states that he is the owner, director and officer of the business.

Complainant states that he engaged Respondent in 2017 to create a website and online content for his coaching and training business (the “Project”). Complainant and Respondent entered into a contract (the “Contract”) under which all of the deliverables relating to the Project would be owned solely by Complainant. The Domain Name was registered by Respondent in order to perform the services relating to the Project and to host the resulting website. Complainant alleges that the Domain Name was one of the Project deliverables to be owned by Complainant.

The website was completed and has been actively used in connection with Complainant’s business since 2017. Upon completion, the Project became known as “Dominate the Diamond”. Complainant states that DOMINATE THE DIAMOND is a registered trademark and that the Domain Name is a common law trademark, as it’s been used in commerce since the inception of the program in 2017.

Complainant alleges that he subsequently terminated the Contract for convenience in accordance with the terms of the Contract. He requested that the Respondent hand over all of the Project deliverables including the Domain Name registration, in accordance with the terms of the Contract. The Respondent has not done so.

The Respondent did not respond to the Complaint within the time limits under the Rules and has not disputed any of the facts alleged by the Complainant.

### **3. CONTENTIONS OF THE PARTIES**

- **Complainant**

Complainant submits that it has common law trademark rights in the Domain Name, that Respondent has no rights to the Domain Name, and that Respondent registered and is using the Domain Name in bad faith.

- **Respondent**

Respondent did not file a response to the Complaint.

- **Remedy Sought**

Complainant requests the Domain Name be transferred to him.

### **4. DISCUSSION AND FINDINGS**

#### **4.1 Requirements**

In accordance with Paragraph 4 of the Policy, the onus is on the Complainant to prove:

1. That the Domain Name is Identical or Confusingly Similar to a trademark or service mark in which the Complainant has rights;
2. That the Respondent has no rights or legitimate interests in the Domain Name; and
3. That the Domain Name has been registered and being used in bad faith.

The Panel will consider each of these requirements in turn.

## 4.2 Analysis

### 4.2.1 That the Domain Name is Identical or Confusingly Similar to a Mark in which the Complainant has Rights

Complainant states that the Domain Name was initially registered for the sole purpose of the project that later became known as Dominate the Diamond. He states that he has acquired common law trademark rights in the Domain Name [www.baseballcoachtraining.com](http://www.baseballcoachtraining.com) through use of the mark in commerce since the inception of the program in 2017.

The evidence submitted by Complainant shows that the website associated with the Domain Name has been and continues to be actively used to market Complainant's coaching and training services.

Under the terms of the Contract between Complainant and Respondent, Complainant owns all intellectual property rights in the Project deliverables, including any common law trademark rights arising from use of the Domain Name.

Based on the evidence submitted, I find that the Domain Name is identical to a trademark or service mark in which the Complainant has rights.

### 4.2.2 That the Respondent has No Rights or Legitimate Interest in the Domain Name

Complainant states that, under the terms of the Contract, the Domain Name was to have been registered and used for the sole benefit of Complainant and his coaching and training business.

The Domain Name was to have been registered for the purpose of enabling Respondent to perform the website and content development services under the Contract. All rights to the Domain Name were assigned to Complainant under the terms of the Contract.

Therefore, the Complainant states that at no time did the Respondent have any rights or legitimate interest in the Domain Name.

The Respondent has not asserted any rights or legitimate interest in the Domain Name.

Based on the evidence submitted, I find that the Respondent has no rights or legitimate interest in the Domain Name.

### **4.2.3 That the Respondent has Registered and Used the Domain Name in Bad Faith**

Complainant alleges that the Respondent registered and used the Domain Name in bad faith.

The evidence submitted by Complainant shows that, at the time the Domain Name was initially registered in 2017, Respondent did so on behalf of the Complainant as one of the Project deliverables. The Project was completed and the website was launched in 2017.

Complainant states that he terminated the Contract for convenience in 2021. Complainant requested that the Respondent transfer the Domain Name to him so he could continue to use and update the website. Respondent did not do so.

The evidence submitted by Complainant includes correspondence between lawyers for Complainant and Respondent regarding the termination of the Contract and transfer of the Domain Name. It appears from that correspondence that Respondent demanded an additional payment as a condition of transferring the Domain Name. Complainant refused to pay the amount demanded by Respondent, but offered to pay \$2500 for the transfer of the Domain Name. Respondent refused.

It also appears from the WHOIS record submitted by Complainant that Respondent renewed the Domain Name in 2022.

Under the Policy, one of the circumstances that may be considered evidence of bad faith is:

circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name [Paragraph 4.b.i]

Based on the record before me, I find that it is reasonable to infer that Respondent registered the Domain Name in his own name, and that he renewed and/or continued to hold the Domain Name after the Contract was terminated, primarily for the purpose of transferring it to the Complainant for an amount greater than Respondent's expenses directly related to the domain name.

Bad faith registration and use of a domain name is not limited to the examples in Paragraph 4.b of the Policy. Other conduct may also be evidence of bad faith.

It is reasonable to infer that Respondent initially registered the Domain Name in his own name rather than in the name of Complainant's business in order to obtain control over the future use of the domain name and related website. It is also reasonable to infer that Respondent retained and used the Domain Name after the Contract was terminated in order to interfere with Complainant's use of the website in connection with his business.

Based on the evidence and record before me, I find that Respondent acted in bad faith with respect to the registration and use of the domain name.

#### 4 DECISION and ORDER

For the above reasons, I find that Complainant has satisfied the onus under Paragraph 4.a of the Policy and has established on a balance of probabilities that:

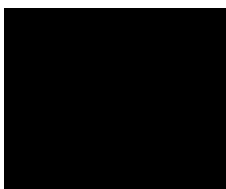
1. The Domain Name is Identical or Confusingly Similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interest in the Domain Name; and
3. The Domain Name has been registered and used in bad faith.

In accordance with the Policy and the Rules, the Panel hereby orders that:

The Domain Name shall be transferred to the Complainant.

Made at Toronto, Ontario, the 19<sup>th</sup> day of October, 2022

SIGNATURE OF PANEL



Michael Erdle,  
Sole Panelist

