



## CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE

### DOMAIN NAME DISPUTE

### ADMINISTRATIVE PANEL

### DECISION

CIIDRC case number:	<b>21833-UDRP</b>	Decision date: November 6, 2023
Domain Name:	<b>Routesrezworld.com</b>	
Panel:	<b>Zak Muscovitch</b>	
Complainant:	<b>891990 Ontario Inc., DBA Routes Car Rental</b>	
Complainant's representative:	<b>Shawn Ford of Henri &amp; Wolf Inc.</b>	
Respondent:	<b>Ashish Philip</b>	
Respondent's representative	<b>Vittal BR</b>	

#### 1. PROCEDURAL HISTORY

The procedural history of this case was set out in a letter from the Canadian International Internet Dispute Resolution Centre to the Panel, dated October 31, 2023, as follows:

On September 27, 2023, Shawn Ford of Henry & Wolf Inc., counsel for the above-named Complainant, filed a Complaint via CIIDRC online platform.

On September 28, 2023, the Registrar of the disputed domain name was notified of these proceedings.

On September 29, 2023, the Registrar transmitted its verification response to CIIDRC by email, identifying the Registrant (Respondent) in this administrative proceeding. The Registrar also confirmed that the <Routesrezworld.com> domain had been placed on Registrar LOCK.

On October 6, 2023, CIIDRC confirmed compliance of the Complaint and commencement of the dispute resolution process.

Pursuant to UDRP Rule 4 and Supplemental Rule 5, CIIDRC notified the Respondent of this administrative proceeding and forwarded a Notice to the Respondent on October 6, 2023 via email.

On October 27, 2023, the Respondent requested an extension of time to file a response. The original Response delivery date was October 26, 2023. As permitted by Rule 5(b), an additional four (4) calendar days were automatically granted for responding to the Complaint.

On October 30, 2023, counsel for the Respondent filed a Response via email.

Both, the Complainant and the Respondent in these administrative proceedings have elected for a Panel consisting of a single-member.

CIIDRC hereby appointed the undersigned, Zak Muscovitch, as the single-member Panel in the above-referenced matter and set November 13, 2013 for the delivery of the decision in this matter.

This matter is conducted pursuant to the Uniform Domain Name Dispute Resolution Policy (the "Policy or "UDRP"), the Rules for the Uniform Domain Name Dispute Resolution Policy (the "Rules") of the Internet Corporation for Assigned Names and Numbers ("ICANN"), and the Supplemental Rules ("Supplemental Rules") of the Canadian International Internet Dispute Resolution Centre ("CIIDRC").

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

The Complainant states that it is that it is a car rental company with over 100 locations worldwide. It is headquartered in Mississauga, Ontario, Canada and has offices in India. The disputed domain name, RoutesRezWorld.com (the "Domain Name" or the "Disputed Domain Name") was not a public-facing domain name used by the Complainant, but rather was employed as key component of the Complainant's back-end infrastructure.

The Respondent was previously an employee of Caledon Technologies Inda PVT LTD. ("Caledon"). Caledon is affiliated with the Complainant and performed website development and IT work on behalf of the Complainant. Prior to becoming an employee of Caledon, the Respondent worked for a third party services company, namely Straightdrive Softlab LLP ("Straightdrive"), which provided Caledon with inter alia, server set-up and maintenance services. The Complainant alleges that it had retained Straightdrive to also purchase the Domain Name in 2017 and provides an invoice dated November 17, 2017 in support of this allegation. Nevertheless, the aforementioned invoice does not reference the Domain Name and accordingly it cannot be concluded from this invoice alone that Straightdrive registered the Domain Name on behalf of the Complainant in 2017.

The Complainant also alleges that the Respondent is a party to and executed a certain Professional / Intellectual Property Purchase Agreement dated February 7, 2019, with Caledon, “which included domain names within the definition of Intellectual Property” (the “IP Purchase Agreement”). It appears from the IP Purchase Agreement, that Caledon intended to manage its own website and technology rather than outsource it to Straightdrive and accordingly, was purchasing the necessary IP to do so and which was previously in the possession of Straightdrive and/or its partners, which included the Respondent. Caledon also intended to retain the Respondent to lead its technology team subsequent to the transfer. The IP Purchase Agreement does in fact include “domain names” as part of the intellectual property to be transferred, however there is no specific identification of any domain names, including the Disputed Domain Name. Accordingly, the IP Purchase Agreement not only does not demonstrate that the Disputed Domain Name was originally owned by the Respondent, but also does not demonstrate that it was to be conveyed to Caledon, which is an affiliate of the Complainant. Notably, in the event of a dispute regarding this IP Purchase Agreement, the parties agreed to arbitration under the laws of India and named an agreed arbitrator.

The Respondent subsequently resigned from Caledon on or about August 31, 2021 and agreed in writing as part of his resignation letter, to hand over all codes, passwords, tools, etc. There is however, no specific mention of the Domain Name or any account holding the Domain Name.

The Complainant nevertheless alleges that prior to the Respondent’s resignation, the GoDaddy account ostensibly holding the Domain Name “was transferred by Sam Athwal of Routes”, seemingly indicating that Mr. Athwal requested and arranged for the transfer of the Domain Name to his control on behalf of the Complainant. This would indicate that this was the first instance of the Domain Name being registered to, and under the control of, the Complainant, however there is no document provided by the Complainant to support the fact that the Domain Name was transferred to the Complainant prior to the Respondent’s resignation in 2021 and in any event, it appears to be inconsistent with the subsequent transfer of the Domain Name two years later wherein the Complainant alleges that Mr. Athwal obtained the transfer of the Domain Name and provides a confirmation email from GoDaddy as its Annex 8. This email from GoDaddy dated, August 11, 2023 states that “your requested change is complete” and that the RoutesRezWorld.com domain name has “been transferred to your account (the account apparently being owned by Mr. Athwal on behalf of the Complainant). No details have been provided as to who transferred the Domain Name to Mr. Athwal. Normally a transfer request by the transferee would be notified to the registrant and the registrant would have an opportunity to agree to or to refuse the transfer. In the circumstances, it is unclear whether the transfer request was received by the Respondent or rather by the Complainant itself who may have had access to the GoDaddy account holding the Domain Name as a result of the alleged transfer “by Sam Athwal” as aforesaid.

In any event, as of August 11, 2023, there is apparent documentary evidence demonstrating that the Domain Name was registered to the Complainant. It appears likely that prior to this point in time, the Domain Name

was registered to someone else, likely the Respondent who had likely registered it in his personal capacity on behalf of Caledon in his capacity as an employee of StraightDrive. It also appears likely but not certain, that when the Respondent executed the IP Purchase Agreement and was hired by Caledon, that it was contemplated that he would transfer the Domain Name to Caledon as part of the deal, even though it was not specifically mentioned in either his employment contract or the IP Purchase Agreement.

The Complainant alleges that the day after it obtained the transfer of the Domain Name, its IT systems went down and its operations ceased for 24-36 hours resulting in a substantial loss of revenue estimated to be "150k" for each 24 hours. The Complainant was however, able to recover its operations by utilizing another domain name for its IT systems, the implication being that something happened on August 12, 2023 to its Domain Name and that it had lost control of it. The Complainant alleges that the Domain Name was somehow transferred away from it and that this should not have been possible since the Complainant had multifactor authentication enabled for its GoDaddy account. The Complainant communicated with GoDaddy to try to resolve the matter and regain control of the Domain Name but was ultimately unsuccessful and has now brought this proceeding to recover the Domain Name.

There is some indication of what may have transpired from the documentary evidence attached to the Response. The Respondent's Annex 10 is email correspondence from GoDaddy dated August 12, 2023 showing that the Respondent was "all set to become the registrant for RoutesRezWorld.com", apparently after filing a complaint with the Godaddy "Account Recovery Team" on August 9, 2023. It is unclear what exactly transpired, but it appears that the Respondent lost control of the Domain Name on or about August 9, 2023 and was able to recover it on or about August 12, 2023 with the assistance of GoDaddy.

The Respondent alleges that he purchased the Domain Name in his personal capacity on October 28, 2019 and provides a confirmation from GoDaddy. This confirmation however, is not in respect of a new registration, but rather in respect of a "renewal" of the Domain Name. Accordingly, it appears that despite the Respondent's contention, he in fact had registered the Domain Name prior to 2019 and subsequently renewed it in 2019.

Conspicuously absent from the Response, is any explanation whatsoever as to why the Respondent would have any reason to have registered the Domain Name, RoutesRezWorld.com. It of course is not a coincidence that he selected this Domain Name for registration at some point prior to 2019 and it is readily assumable that it was related to his work on behalf of the Complainant, likely when he was a partner in StraightDrive. In other words, the Respondent's registration of the Domain Name was very likely to have been originally done on behalf of the Complainant or its affiliate, Caledon, who he was performing IT services for.

### 3. DISCUSSION AND FINDINGS

#### 3.1 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 Registrant 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.

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

The Complainant claims three (3) trademarks as follows:

- |           |   |
|-----------|---|
| a) USA    | Mark: Routes Auto Sales<br>Class: 012<br>Owner: ROUTES CAR RENTAL USA INC.<br>Document number: 20231875926    |
| b) Canada | Mark: CaledonRez<br>Category: Literary<br>Owner: Caledon Technologies India Private Limited<br>Reg #: 1181120 |
| c) Canada | Mark: ROUTES CAR & TRUCK RENTALS<br>Class: 039<br>Owner: 891990 Ontario Inc.<br>Reg #: TMA947727              |

The Complaint provided no documentary evidence of any of these claimed marks such as the registration certificates.

The first claimed trademark (a), is not found in the USPTO trademark registry, its “document number” does not appear to be a USPTO registration number, and in any event is not alleged to be owned by the Complainant. It may be a state trademark registration of an affiliated company, but no information is provided.

The second claimed trademark (b) is not found in the CIPO trademark database and appears to be a copyright registration. It too is not owned by the Complainant.

The third registration (c) for ROUTES CAR & TRUCK RENTALS does appear in the CIPO trademark database and is registered to the Complainant. It encompasses both words and a design and bears a registration date of August 29, 2016. Notably, this is before even the “Creation Date” of the Domain Name of November 15, 2017. The dominant element in this trademark is clearly, ROUTES, and for the purposes of the standing requirement

under the first part of the three-part UDRP test, the Domain Name is considered to be confusingly similar to the Complainant's trademark due to the inclusion of the dominant term, ROUTES, in both.

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

The Complainant's entire contention under this element is set out below:

"As mentioned above (Annex 6 – Professional and Intellectual Property Purchase Agreement), Routes purchased the Disputed Domain within their IP Purchase Agreement and is the rightful owner. Routes is unsure of how the TA was able to transfer the registration of the Disputed Domain out of Routes' control. Therefore, the Respondent has no rights or legitimate interest in the domain name."

Accordingly, the Complainant did not allege the absence of any of the enumerated bases for demonstrating rights and legitimate interests under Paragraph 4(c) of the Policy, nor did it make out any allegation other than claiming that the Domain Name was somehow removed from its account, thereby implicitly denying that anyone else has any rights or legitimate interests in the Domain Name which the Complainant had used for its business and which corresponds to its brand name.

The Respondent on the other hand, claims that he has rights or legitimate interests in the Domain Name because he "purchase the domain name on October 28, 2019 under this personal name and as personal property by making the payment for the purchase price from his personal account and personal savings with the intention to use the domain name for his personal purposes".

Just because a Domain Name was purchased with personal funds does not give rise to a right in a domain name, particularly when it is clear that the Respondent has been associated with the Complainant, very likely registered the Domain Name on behalf of the Complainant, and provides no explanation whatsoever as to how he could possibly "use the domain name for his personal use" when it clearly corresponds to the Complainant's brand and has been an integral part of the Complainant's IT infrastructure for many years. To accept the Respondent's contention would amount to accepting that it was a coincidence that the Respondent just happened to register this Domain Name and this is simply unbelievable in the circumstances.

The Complainant has put into question on a prima facie basis, the absence of any rights or legitimate interest in the Domain Name by the Respondent and the Respondent has failed to rebut this question by providing any reasonable basis for his rights or legitimate interest, other than he bought it. If that were a defense under the UDRP, every cybersquatter would succeed merely by having paid a registration fee.

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

The first question that needs to be determined here is 'when did the Respondent register the Domain Name'. The Respondent had GoDaddy return the Domain Name to the Respondent's account on or about August 12, 2023, however this was not technically a "registration" per se since the Respondent did not register the Domain Name

at that time. Rather he registered it before and GoDaddy merely returned the Domain Name to him at that time. Moreover, this would not be an appropriate point in time to evaluate the Respondent's good or bad faith since this point in time does not correspond to a point in time that correlates to the Respondent's original intention in registering the Domain Name. On the other hand however, there is apparent evidence that the Domain Name was registered to the Complainant as of August 11, 2023, albeit for an apparent limited period of time before the Domain Name was transferred to the Respondent by GoDaddy. If we accept August 12, 2023 as the Respondent's "registration date", then we would need to delve into the Respondent's claimed basis for having GoDaddy transfer the Domain Name to the Respondent. This would likely involve an examination of the legal arrangements between the parties and would likely be outside the scope of the UDRP which is limited to cybersquatting and not business disputes. On the other hand, if the Respondent in bad faith arranged for the Domain Name to be transferred to him, then that could qualify under this part of the UDRP test.

If however, we look at the Respondent's original claimed registration date of 2019, this date would appear to be false since the Respondent's evidence showed a renewal with GoDaddy in 2019 rather than a new registration receipt. The Complainant has not provided any evidence of an earlier registration date but claims that the Domain Name was used by the Complainant since 2017, which corresponds to the Creation Date of the Domain Name. If we were to presume a registration date of prior to the Respondent's claimed date of October 28, 2019, then it seems likely that it would have been at a point in time where the Respondent was engaged by the Complainant through the Respondent's firm, StraightDrive. If this is the case, then the Respondent possibly registered the Domain Name with the permission of the Complainant, i.e. was instructed to register the Domain Name on the Complainant's behalf, and this could possibly be good faith registration despite the ultimate possible bad faith conversion of the Domain Name as alleged by the Complainant. Alternatively, the Respondent may have registered the Domain Name under his own name in contravention of the Complainant's instructions and understanding, though this would seem to be at odds with the IP Purchase Agreement which the Complainant claims was intended to convey the Domain Name from the Respondent to the Complainant.

The Panel is not in a position to know exactly what transpired here due to the nature of this proceeding which is generally far more abbreviated than court procedures which generally have far more robust discovery and examination procedures than what are available in the UDRP.

Moreover, the Panel is concerned that despite both parties notifying the Panel in their respective pleadings that a lawsuit has been commenced by the Respondent in respect of the Domain Name and other related issues between the parties, neither party has provided a copy of the lawsuit to the Panel. Both parties appear to acknowledge that this lawsuit covers issues arising from the Domain Name to one extent or another and accordingly, the Panel is inclined to defer to the more robust abilities of a court to determine the just outcome in this dispute.

This is particularly so given that the Panel is unable to determine whether the Domain Name was registered in good or in bad faith as aforesaid. The Panel is very troubled by some of the dubious claims of the Respondent and has sympathy for the Complainant since it is difficult to imagine any contingency where the Disputed Domain

Name should belong to the Respondent rather than the Complainant, but the issue of how and why the Domain Name was transferred back to the Respondent also raises questions that would need to be answered before the Panel is in a position to comfortably transfer the Domain Name to the Complainant who clearly has a right and legitimate interest in it as a result of its longstanding use for its business, particularly in contrast to the Respondent who has absolutely no apparent right and legitimate interest in the Domain Name.

Ultimately, it is with some frustration and regret that the Panel must decide to deny the Complaint in the circumstances of this case since it is just not well suited for adjudication under the UDRP. The Panel is nonetheless satisfied that with the more robust and suitable procedures available to the parties in a court proceeding, that the parties will be able to obtain an appropriate determination of this dispute which appears to involve a somewhat broader business dispute rather than a discrete and straightforward case of cybersquatting.

#### **4. DECISION and ORDER**

For the above reasons, in accordance with Paragraph 4 of the Policy, Paragraph 15 of the Rules, and Rule 10 of the Supplemental Rules, the Panel orders that the Complaint is denied.

Made as of November 6, 2023

SIGNATURE OF PANEL

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Zak Muscovitch

