

# CANADIAN INTERNET REGISTRATION AUTHORITY

## DOMAIN NAME DISPUTE RESOLUTION POLICY

### COMPLAINT

Dispute Number: BAT-030303-001016  
Domain Name: www.acrobat.ca  
Complainant: Acrobat Construction/ Entreprise Management Inc.  
Registrant: 1550507 Ontario Inc.  
Registrar: DomainsAtCost Corp.  
Panellists: Jacques A. Léger, Q.C., as the chair of panel, Ross Carson and Daria Strachan  
Service Provider: Resolution Canada Inc.

### DECISION

#### 1. The Parties

**Complainant** is Acrobat Construction/ Entreprise Management Inc. [hereinafter *Acrobat*], a corporation organised under the laws of Canada, having a principal place of business at 2 St. Clair Avenue, Suite 903, Toronto, Ontario, M4T 2R1.

**Registrant** is 1550507 Ontario Inc., a corporation having a principal place of business at 43 Auriga Drive, Ottawa, Ontario, K2E 7Y8.

#### 2. The Domain Name and Registrar

The Domain Name at issue [hereinafter the *Domain Name*] is:

“www.acrobat.ca”

The Registrar of the Domain Name is DomainsAtCost with an address at 43 Auriga Drive Nepean, Ontario, Canada K2E 7Y8

#### 3. Procedural History

On April 9, 2003, **Complainant** filed a Complaint [hereinafter the *Complaint*] with respect to the Domain Name with **Resolution Canada Inc.** [hereinafter the *Center*]. The

Complaint was reviewed by the Center and found to be in administrative compliance with the requirements under Rule 4.2 of the CIRA Domain Name Dispute Resolution Rules [hereinafter referred to as the *CIRA Rules*]. By letter and E-Mail dated April 9, 2003, the Center so advised the parties and forwarded a copy of the Complaint to the **Registrant**. The Center also informed the parties of the commencement of the proceeding and of the **Registrant's** twenty-day delay to respond to the Complaint.

The **Registrant** delivered its Response, in accordance with the CIRA Domain Name Dispute Resolution Policy [hereinafter referred to as the *CIRA Policy*] and the CIRA Rules, to the Center on April 29, 2003.

The Center reviewed the **Registrant's** Response and delivered same to the **Complainant** on April 30, 2003.

The Panel has reviewed the documentary evidence provided by the parties and agrees with Resolution Canada's assessment that the Complaint complies with the formal requirements of the CIRA Policy and Rules.

The Panel believes it was constituted in compliance with the CIRA Rules. Each of the panellists has completed an Acceptance of Appointment as Arbitrator and Statement of Independence and Impartiality.

The Panel has received no further submissions from either party since its formation.

The Panel is obliged to issue a decision on or prior to June 16, 2003 in the English language and is unaware of any other proceedings which may have been undertaken by the parties or others in the present matter.

#### 4. **Factual Background**

##### Complainant

The **Complainant** in this administrative proceeding, *Acrobat*, is a construction management company in Toronto, Ontario. It was incorporated in 2000 and has been operating continuously since then. In order to aver its importance, the **Complainant** submits that it has active on-going contracts with clients such as the Hospital for Sick Children and HSBC, and also makes charitable donations within the community. As a fully functioning construction management company, *Acrobat* operates a business bank account, maintains GST registration, WSIB registration, as well as maintaining comprehensive general liability insurance.

The **Complainant** obtained approval of the domain name “acrobat.ca” through Webnames.ca on November 6, 2000 at 11:38:43 PM. and “acrobat.ca” was created on November 6, 2000 at 12:03:50 PM. Since March 21, 2002, the “acrobat.ca” domain hosting is provided by Telus and still operates today. Myhosting.com has also provided the domain hosting for “acrobat.ca” from its inception until February 27, 2003, when the **Complainant** discovered a duplication in hosting for “acrobat.ca”. In other words, Acrobat still actively uses “acrobat.ca” in day-to-day business for all e-mail contacts.

### Registrant

The **Registrant** carries on the business of operating a web site on the Internet under the domain name “pool.com” which provides up-to-date information to Internet users on current affairs as well as a search engine which enables users to locate and access other web sites containing information of interest to them. The **Registrant** generates revenue through its “pool.com” service when internet users click on the links identified in the list of the search results using the pool.com search engine. As part of its business, the **Registrant** registers domain names that are released by administrators of top level and country code domain names and that have traffic generated to them, which are detected automatically by multiple queries conducted by its search engines.

The **Registrant** registered the Domain Name after CIRA released the domain name for registration by the general public. The **Registrant** has used the domain name “acrobat.ca” since or prior to March 1, 2003 to direct Internet users to results of a search of the word “acrobat” using its “pool.com” search engine for commercial purposes.

There has never been any relationship between the **Complainant** and the **Registrant**, and the **Registrant** has never been licensed or otherwise authorised to use the marks, in Canada or otherwise, in any manner, including in or as part of a domain name.

## 5. Parties’ Contentions

### A. Complainant alleges that:

- It actively used “acrobat.ca” in its day to day business for all e-mail contacts until March 19, 2003.
- The evidence of numerous business items, namely, letterhead, business cards, cheques, envelopes and references, business banking accounts, GST and WSIB registration all illustrate use of its trade name *Acrobat Construction/Entreprise Management Inc.*
- It is listed in the “City of Toronto Bell White Pages”, in the “Toronto Telus Super Pages”, in construction trade directories such as the “2002 Construction Book”, the “Toronto Construction Association 2003 Membership Directory and Buyers Guide” and the “Link2build construction network”.

- Webnames.ca, its registrar, sent one undated paper renewal notice, which did not give the amount of payment due, for renewal by December 1, 2002. The paper notice made reference to e-mail reminders however these were never received. Unfortunately, this single notice was over-looked by the accounting service. It never received another notice and was not aware that the domain name had expired because the *Acrobat* e-mail continued to work until at least March 4, 2003. When it uncovered the single paper notice in February, it tried to make payment over the internet, and it was then that it discovered that the Domain Name had been reassigned one month after the due date for payment on the single notice sent.
- It spoke to the **Registrant** by telephone, to address its concern over the Domain Name registration, but to no avail. Since it last spoke to the **Registrant** at the beginning of March 2003, it asserts that the **Registrant** has a new e-mail address which is its numbered company.
- The **Registrant** has updated his domain servers (DNS servers) to dns.pool.com and dns2.pool.com, which provides links to third party businesses while simply searching for someone to sell the domain name to.

**B. Registrant alleges that:**

- The domain name “acrobat.ca” is not confusingly similar to a mark in which the **Complainant** has rights. The **Complainant** has not shown that it is the owner of any trademark registration or that any notice has been given in its favour pursuant to section 9(1)(n) of the *Trademarks Act*. Accordingly, for the **Complainant** to establish that it has rights in a mark pursuant to the Policy, it must show that it has used the mark in accordance with section 3.5 of the Policy.
- It admits that by virtue of continuous use since its incorporation date in September 2000 in Canada, the **Complainant** is the owner of the *Acrobat Construction/Entreprise Management Inc.* Mark, as defined in section 3.2(a) of the Policy and that, as a result, the **Complainant** has shown rights in the Mark *Acrobat Construction/Entreprise Management Inc.*, according to section 3.3(a) of the Policy.
- However, the **Complainant** has not furnished any evidence of use of *Acrobat* as a Mark contemplated by section 3.5 of the Policy. The only evidence showing the display of the word “acrobat” apart from the **Complainant’s** trade name is as a component of e-mail addresses of its employees, such as [pdowsett@acrobat.ca](mailto:pdowsett@acrobat.ca) The use of the e-mail addresses shown in the evidence is not the use of a mark to distinguish the wares, services or business of the **Complainant** from those of another as contemplated by section 3.5 of the Policy.

- The **Complainant's** use of the mark *Acrobat Construction/Entreprise Management Inc.* does not support the **Complainant's** allegation of use of either of the marks *Acrobat* or *acrobat.ca*. Accordingly, to determine whether the domain name "acrobat.ca" is confusingly similar to a mark in which the **Complainant** has rights, the domain name must be assessed in relation to the **Complainant's** trade name *Acrobat Construction/Entreprise Management Inc.* and not the marks *Acrobat* or *acrobat.ca*
- The proper test to be applied is whether the domain name "acrobat.ca" is confusingly similar to the marks of the **Complainant**. It relies on a test of "confusingly similar" which incorporates principles of confusion, namely that the function of a trademark is to distinguish the products originating from one business from the products originating from other businesses.
- The word "acrobat" is a common word in the English language having a well defined meaning, which is used by a variety of third parties. It therefore has little inherent distinctiveness and should be given limited scope of protection. Further, according to a search in the NUANS database, the word "acrobat" is a common element in trade names —registered by many third parties but not by the **Complainant**— and business names for corporations organised under the laws of Canada and various provinces. Moreover, numerous other businesses are listed under the name "acrobat" in the Toronto White Pages telephone directory.
- The nature of the wares, services and business of the parties differs dramatically. As a result, a prospective purchaser or Internet user would not likely conclude that the Internet services offered by the **Registrant** under the domain name "acrobat.ca" are offered by the same person who offers construction management services under the trade name *Acrobat Construction/Entreprise Management Inc.*
- Having regard to all of these facts, the domain name is not confusingly similar. If the Panel concludes that the test of "confusingly similar" is one of resemblance, the Mark *Acrobat Construction/Entreprise Management Inc.* does not so nearly resemble the domain name "acrobat.ca" in sound or appearance so as to be likely to be mistaken for it. If, contrary to the submissions of the **Registrant**, the test of "confusingly similar" is one of resemblance and the **Complainant** has established Rights in either of the Mark *Acrobat* or the Mark *Acrobat.ca*, there is a sufficient resemblance between the domain name "acrobat.ca" and the Marks *Acrobat* and *Acrobat.ca* to meet the requirement of section 3.1(a) of the Policy.
- It has not registered the domain name "acrobat.ca" in bad faith. It did not have any knowledge of the existence or activities of the **Complainant** as of January 8, 2003, the date it registered the domain name "acrobat.ca". It did not register

the domain name primarily for the purpose of selling or otherwise transferring the domain name to the **Complainant** for valuable consideration, nor has it ever attempted to sell or advertise that the domain name “acrobat.ca” was available to be purchased.

- Similar to above, it did not have any knowledge of the **Complainant** prior to the date that it registered the domain name “acrobat.ca”. It did not register the domain name in order to prevent the **Complainant** from registering the domain name but rather in furtherance of its own *bona fide* business plan and objectives and in fact commenced commercial use of the site on or prior to March 1, 2003, well in advance of the date that this complaint was filed, namely April 9, 2003. In view of the foregoing, there is no pattern of the **Registrant** registering domain names in order to prevent persons who have rights in similar marks from registering the marks as domain names.
- Moreover, as the **Complainant** is in the construction management business and as the **Registrant** provides Internet information services, the **Complainant** and **Registrant** are not competitors.
- It has a legitimate interest in the Domain Name and has registered the Domain Name in good faith. More specifically, it satisfies the CIRA Policy conditions under paragraph 3.6a) in that:
  - (a) The domain name was a Mark, the Registrant used the Mark in Canada in good faith and the Registrant has rights in the Mark.
- As its use of the web page located at [www.acrobat.ca](http://www.acrobat.ca) was in good faith and in furtherance of its business plan and objectives, it was using the domain name “acrobat.ca” as a Mark. As the Mark “acrobat.ca” was used in association with its business and in association with the provision of its services, it acquired rights in the mark. Accordingly, it has a legitimate interest in the domain name acrobat.ca.
- As to the claim for costs, it claims \$4,000 for costs incurred in preparing for and filing material in this proceeding. The **Complainant** commenced these proceedings for the purpose of attempting, unfairly and without colour of right, to cancel or obtain a transfer of the registration of the domain name “acrobat.ca” when in fact its claim, if any, is against its Registrar for providing insufficient notice of the expiry of its domain name registration.

## 6. Discussion and Findings

Paragraph 4.1 of the CIRA Policy sets forth the **Complainant**’s burden of proof in order to succeed in the proceeding. The onus is on the **Complainant** to 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; and
- (b) the **Registrant** has registered the Domain name in *bad faith* as described in paragraph 3.7;

A **Complainant** must also provide some evidence that:

- (c) the **Registrant** has no *legitimate interest* in the Domain name as described in paragraph 3.6.

### *Preliminary remarks on procedure*

Although the **Complainant** has not satisfied the rules of evidence as it has failed to provide an affidavit, the Panel is of the opinion that, in the circumstances and given that this is an arbitration, it should not be too stringent as to procedural rules and therefore resolves to maintain an open attitude and to allow the “evidence” to be taken on its face.

Paragraph 4.1 of the CIRA Policy further provides that even if a **Complainant** proves (a) and (b) and provides some evidence of (c), the **Registrant** will succeed in the proceeding if the **Registrant** proves, on a balance of probabilities, that the **Registrant** has a legitimate interest in the Domain name as described in paragraph 3.6. In other words, once the **Complainant** has met its evidentiary burden under sub-paragraphs 4.1 (a) and (b), either by positive or negative evidence, the onus is shifted to the **Registrant** who must then prove, on a balance of probabilities, that he is making legitimate use of the Domain name.

The three elements found in paragraph 4.1 must be proven cumulatively by the **Complainant** albeit with a different burden of proof imposed in sub-paragraph 4.1 (c) (legitimate interest). These three elements are considered below.

#### *a) Confusing Similarity*

The CIRA Policy not only contemplates protection for registered trade-marks, but also for unregistered trade-marks. More specifically, the wording of sub-paragraph 3.2 (a) is broad enough to capture unregistered trade-marks, particularly in view of the fact that sub-paragraph 3.2 (c) expressly contemplates the protection of registered trade-marks apart from the protection of trade-marks generally, as provided for in sub-paragraph 3.2 (a). Sub-paragraph 3.2 (a) makes also reference to a “trade name that has been used in Canada by a person [...] for the purpose of distinguishing the wares, services or business of that person [...] from the wares, services or business of another person”.

Paragraph 3.4 of the CIRA Policy provides a definition of the term Confusingly Similar. It requires a finding that the Mark at issue is likely to be mistaken for the Domain name at issue because of the resemblance in “appearance, sound or the ideas suggested by the

Mark”. In *Air Products Canada Ltd/Prodair Canada Ltée* (CRDP Decision No not yet available), the Panel adopted a test which incorporates principles of confusion, although as such, the test is not one of confusion, as is normally found in Canadian trade-mark jurisprudence, but of resemblance

In this case, the **Complainant** did not submit sufficient evidence in order to establish that the trade name *Acrobat* per se has been used in Canada for the purpose of distinguishing its wares, services or business from the ones of another person. At the very best, it has presented evidence showing use of the trade name *Acrobat Construction/Entreprise Management Inc.* The Federal Court of Appeal was clear when it stated in *Registrar of Trade marks v. Compagnie internationale pour l’informatique CII Honeywell Bull, Société anonyme et al.* (1985), 4 C.P.R. (3d) 523, on page 525, that when using a composite mark, one does not use only a part of it. The Panel adopts the view examined in the BCICAC Decision *Cheap Tickets and Travel Inc. v. Emall.ca Inc.* (CRDP Decision No. 4) where the Panel concluded that the use of the trade-mark CHEAP TICKETS AND TRAVEL & Design and the term “Cheap tickets and Travel” were materially different from, and did not constitute use of the trade-mark CHEAP TICKETS.

Hence, there can be no analysis of confusing similarity between the **Registrant’s** “*acrobat.ca*” mark and the **Complainant’s** mark since the latter did not establish its right in the Mark “*acrobat*”, let alone, “*acrobat.ca*”. Indeed, as indicated by the **Registrant**, as many as six other businesses are listed in the Toronto Bell White Pages under the name “acrobat”. Furthermore, the word “acrobat” is a common word in the English language which is used by a variety of third parties; in addition, according to a search in the NUANS database, the word “acrobat” is a common element in trade names and business names for corporations organised under the laws of Canada and various provinces.

The panel conducted, *proprio motu*, a search on the Internet using Google as a search engine and by typing in the “Google Search” box the word “acrobat”, found no reference as to neither the **Complainant** nor the **Registrant** but rather to third parties.

Plus, the nature of the wares, services and business of the parties differs dramatically.

The Panel is therefore of the opinion that the **Complainant** has not met its burden of proof as established by sub-paragraph 4.1 (a) of the CIRA Policy.

However in this matter, while the three elements have to be proven cumulatively, the Panel has elected to pursue it analysis.

#### ***b) Bad Faith***

Pursuant to sub-paragraph 4.1 (b) of the CIRA Policy it is first incumbent upon the **Complainant** to prove, on the balance of probabilities, that the **Registrant** has registered the Domain Name in bad faith. Paragraph 3.7 of the CIRA Policy states that a **Registrant** will be considered to have registered the Domain name in bad faith if, and



only if the **Registrant** registered the Domain for one of the purposes identified in subparagraphs 3.7 (a), (b) or (c) that state:

For the purposes of paragraph 3.1 (c), a **Registrant** will be considered to have registered a Domain name in bad faith if, and only if:

- (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; or
- (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**.

Of course, it is quite difficult, usually, if not impossible, to actually show bad faith with concrete evidence. The Panel is therefore of the opinion that it can take into consideration surrounding circumstances and draw inferences to determine whether or not the **Registrant**'s actions are captured by paragraph 3.7. For example, the Panel may consider surrounding circumstances to decide whether or not the **Registrant** has registered the Domain Name primarily for the purpose of selling it to the **Complainant** or a competitor. To require the **Complainant** to provide direct evidence of the **Registrant**'s bad faith intentions would allow a **Registrant** with a certain level of skill to easily evade the application of the CIRA Policy, hence rendering its application moot or irrelevant. This reasoning is consistent with the recent CIRA decision *Biogen, Inc. v. Xcalibur Communication*, CIRA, Dispute Number 00003, wherein the Panel considered the surrounding circumstances of the case to conclude bad faith.

Therefore, once the **Complainant** has presented sufficient evidence to establish one of the situations in 3.7, it is incumbent upon the Respondent to either respond or explain why its conduct should not be considered bad faith. The Panel's understanding of the Policy is that although the initial burden to prove (on a balance of probabilities) the Respondent's bad faith in the registration of the disputed Domain Name lies squarely on the shoulders of the **Complainant**, such obligation does not need to be more than to make out a *prima facie* case, maintaining a number of decisions rendered under the ICANN

Policy<sup>1</sup>, and once it has done so, the Panel may find in certain circumstances, that there is a shift of onus and it is then incumbent upon the Respondent to either justify or explain its conduct, if not to demonstrate the contrary.

However, in light of the particular circumstances of the case and of the evidence submitted by the **Registrant** regarding the fact that it has never attempted to sell or advertise that the domain name “acrobat.ca” was available to be purchased, the Panel concludes that the **Registrant** has not, as defined in sub-paragraph 3.7 (a), 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 to a competitor of the **Complainant** [...], neither has it done it in order to prevent the **Complainant** from registering the Mark as a domain name, according to sub-paragraph 3.7 (b).

As the **Complainant** is in the construction management business and as the **Registrant** provides Internet information services, the **Complainant** and **Registrant** are not competitors, and relying on the CRDP decision *Trans Union LCC v. 1491070 Ontario Inc.* (Dispute number TRA-030423-001011), the Panel agrees that it is difficult to conceive that “competitor” could be simply “one who acts in opposition to another” without any requirement that the transferee be a commercial business competitor to the **Complainant** or someone who sells competing products.

Moreover, according to the decision in *Tribeca Film Center, Inc. v. Lorenzo Brusasco-MacKenzie* (WIPO D2000-1772), a respondent can disrupt the business of a competitor only if it offers goods or services that can compete with or rival the goods or services offered by the trademark owner. Furthermore, in *Britannia Building Society v. Britannia Fraud Prevention*, (WIPO D2001-0505), the Panel followed *Tribeca* and affirmed that a competitor for purposes of the Policy is a person or entity in competition with a Complainant for the provision of goods or services, and not merely any person or entity with an interest oppositional to that of a mark holder. In that sense, the Registrant did not register the domain name “acrobat.ca” primarily for the purpose of disrupting the business of the **Complainant**, who is a competitor of the **Registrant**, following sub-paragraph 3.7 (c).

At all times, the **Registrant** used the domain name “acrobat.ca” for legitimate commercial purpose, and as it was decided in *Allocation Network GmbH v. Gregory*, WIPO D2000-0016 and in *Micron Technology Inc. v. Mull International Research Center*, WIPO D2001-0608, the mere registration of a number of domain names does not necessarily constitute a pattern of conduct to establish bad faith.

For the foregoing reasons, the Panel finds that the **Complainant** has not met its second burden of proof and the **Registrant** has adequately rebutted the evidence presented by the

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<sup>1</sup> See for example : *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO, Case No. D2000-0270); *Volvo Trademark Holding AB v. Cup International Limited*, WIPO, Case No. D2000-0338; *Voicestream Wireless Corporation v. Phayze 1 Phayze 2; Phayze Inc.*, WIPO, Case No. D2002-0636.

**Complainant.** Accordingly, the Panel concludes that **Registrant's** registration has not been made in bad faith pursuant to paragraph 3.7 of the CIRA policy.

*c) Legitimate Interest*

As indicated above, sub-paragraph 4.1 (c) of the CIRA Policy also requires the **Complainant** to provide some evidence that the **Registrant** has no legitimate interest in the Domain name as described in paragraph 3.6 which states that the **Registrant** has a legitimate interest in a Domain name if, and only if, the **Registrant** satisfies one of the six listed classes of recognised legitimate interests. In particular, sub-paragraph 3.6 (a) holds that a **Registrant** has a legitimate interest if the domain name was a mark, the **Registrant** used the mark in good faith and the Registrant had rights in the mark

The **Registrant's** commercial use of the web site located at [www.acrobat.ca](http://www.acrobat.ca) commenced on or prior to March 1, 2003, well in advance of the date that this complaint was filed, namely April 9, 2003. As the **Registrant's** use of the web page located at [www.acrobat.ca](http://www.acrobat.ca) was in good faith and in furtherance of its business plan and objectives, the **Registrant** was using the domain name "acrobat.ca" as a Mark. As the Mark "acrobat.ca" was used in association with the **Registrant's** business and in association with the provision of its services, the **Registrant** acquired rights in the Mark. The evidence reveals that the Domain Name has been and continues to be associated with the **Registrant's** business and in association with the provision of its services, and as a result the **Registrant** acquired rights in the Mark.

In *Emilio Pucci SRL v. Mailbank.com Inc.*, WIPO D2000-1786, the Panel wrote that "the Respondent Mailbank.com Inc. registered the Domain Name along with a large number of other domain names comprising surnames with a view primarily to renting them out to members of the public for e-mail use. [...] While it did not propose to conduct business under the name, it expected to use the Domain Name to derive legitimate income from persons with the surname Pucci." In the case at hand, the Panel adopts that finding and is of the view that the activities of the **Registrant** seem therefore to be legitimate.

The Panel is of the opinion that the **Complainant** has not met its burden under section 3.3 (a) of the Policy as it has failed to provide evidence as to its rights in the Mark "acrobat". As a consequence, the **Complainant** has not met its burden under section 3.4 of the Policy either and therefore, the Complaint has no chance to succeed.

*d) Costs*

As to the request for costs by the **Registrant**, the Panel has not been persuaded that this Complaint was launched in bad faith and constitute an abuse of the administrative process and therefore will not grant the request.

**8. Decision**

For the foregoing reasons, the Panel decides:

- that the Domain Name registered by the **Registrant** is not confusing with a Mark in which the **Complainant** has rights;
- that the **Registrant** has a legitimate interests in respect of the Domain Name; and
- the Domain Name has not been registered by the **Registrant** in bad faith.

The Complaint is dismissed.

The request for costs by **Registrant** is dismissed.

Jacques A. Léger, Q.C., Ross Carson and Daria Strachan

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Jacques A. Léger, C. Q.  
Chair

Dated: June 16, 2003