

**In the Matter of a Complaint Pursuant to  
Canadian Internet Registration Authority  
Domain Name Dispute Resolution Policy**

**Dispute Number:** DCA-1031-CIRA  
**Domain Name:** Clearlylasik.ca and Clearly-lasik.ca  
**Complainant:** Clearly Lasik  
**Registrant:** Adrien Boelen  
**Registrar:** Netfirms Inc  
**Panelist:** Elizabeth Cuddihy, QC, ICA  
**Service Provider:** British Columbia International Commercial Arbitration Centre

**DECISION**

***The Parties***

1. **The Complainant is** Clearly Lasik of 900 SW 16<sup>th</sup> Street, Suite 320, Renton, WA 98057, USA
2. **The Registrant is** Adrien Boelen of 2085 Lakeshore Blvd, Dorval QC H4W1X7 Canada

***The Domain Name and Registrar***

3. The Domain Names at issue in this proceeding hereinafter collectively referred to as the “Disputed Domain Names” are Clearlylasik.ca and Clearly-lasik.ca.
4. The Registrar for the Disputed Domain Names is Netfirms Inc of 5160 Yonge Street, Suite 1800, Toronto ON M2N6L9, Canada.
5. The exact date of registration of the Disputed Domain Names has not been provided. According to the Complaint it was registered by the Registrant in 2006.

***Procedural History***

6. The British Columbia International Commercial Arbitration Centre (“BCICAC”) is a recognized service provider to the Domain Name Dispute Resolution Policy (“Policy”) of the Canadian Internet Registration Authority (“CIRA”).
7. On November 9, 2007, the Complainant filed a complaint with respect to the Disputed Domain Names (“Complaint”), which Complaint, BCICAC deemed to be in administrative compliance and the Complainant appeared to be eligible.

8. By way of letter dated November 13, 2007, BCICAC so notified the Registrant of commencement of the dispute resolution process in respect of the Complaint by way of electronic mail and hard copy by Fed Ex courier.
9. The Registrant did not file a Response within the timeframe provided by the Rules
10. On December 12, 2007, BCICAC advised the parties that no Response had been received by BCICAC within the timeframe permitted therefor and as permitted in Rule 6.5, that the Complainant may elect to convert to a single arbitrator, which the Complainant elected to do.
11. Sometime following the December 12, 2007 communication to the parties, solicitors for the Registrant contacted BCICAC concerning the dispute and on December 19, 2007 requested leave for time from BCICAC to provide the Registrant's Response outside the timeframe of twenty (20) days provided in the Rules, which request was denied by BCICAC.
12. On January 3, 2008, BCICAC appointed Elizabeth Cuddihy, QC, ICA as sole arbitrator to determine the matter in accordance with the Rules.
13. On January 3, 2007, solicitors for the Registrant advised that it would request on behalf of the Registrant on January 7, 2008 a formal request to the sole arbitrator for relief of the Registrant's default to file a Response within the time allowed and a retroactive extension of time to allow the filing of a Response due to exceptional circumstances.
14. The Registrant's request through its solicitors was considered and was denied. An order to that effect with the basis on which the decision was made has been communicated to the parties.
15. Accordingly, pursuant to Rule 5.8, there being no Response to consider, the sole arbitrator will determine the matter on the basis of the Complaint as filed.

### ***The Complaint***

- 16 The Complainant, whose address is 900 SW 16<sup>th</sup> Street, Suite 320, Renton, WA, USA, asserts that the Disputed Domain Names are confusingly similar to a Mark in which the Complainant had Rights prior to the date of registration of the Disputed Domain Names.
- 17 It further asserts that it holds the trade-mark to Clearly Lasik in the US and Canada for laser vision and eye surgery

### ***Eligibility of Complainant***

18. In accordance with 1.4 of the Policy,

“The person initiating a Proceeding ( the “Complainant”) must, at the time of submitting a complaint (the ”Complaint”), satisfy the Canadian Presence Requirements for Registrants (the “CPR”) (currently available at [http://www.cira.ca/en/cat\\_Registration.html](http://www.cira.ca/en/cat_Registration.html)) in respect of the domain name that is the subject of the Proceeding unless the Complaint relates to a trade-mark registered in the Canadian Intellectual Property Office (“CIPO”) and the Complainant is the owner of the trade-mark.”

19. Based on the record, the Complainant, whose address is stated as Renton WA, USA, claims that “it holds the trade-mark to the name ‘Clearly Lasik’ in Canada and carries on business in Canada under that name. The Complainant has not provided any evidence as to the registration or the ownership of the trade- mark or otherwise as required by the Rules and the Policy in respect of Canadian Presence Requirements for Registrants.

20. Based on the record and for the reason stated above, the Panel finds that the Complainant has not satisfied the Canadian Presence eligibility requirements of the Rules and the Policy.

### ***Order***

21. The Complaint as filed is hereby dismissed.

DATED at Chester, Nova Scotia, this 11th day of January, 2008

(sgd) Elizabeth Cuddihy, QC, ICA  
Sole Arbitrator