

# CANADIAN INTERNET REGISTRATION AUTHORITY

## DOMAIN NAME DISPUTE RESOLUTION POLICY

### COMPLAINT

Dispute Number:  
Domain Name: teac.ca  
Complainant: TEAC Corporation and TEAC Canada Ltd.  
Registrant: Monique Shapiro  
Registrar: DomainsAtCost Corp.  
Arbitrator: David Wotherspoon  
Service Provider: British Columbia International Commercial Arbitration Centre

### DECISION

#### A. THE PARTIES

1. The **Complainants** are TEAC Corporation and TEAC Canada Ltd (collectively referred to as “TEAC”). TEAC Corporation is a company incorporated under the laws of Japan, having a principle office at 1-47 Ochiai, Tama-shi, Tokyo 206-8530, Japan. TEAC Canada Ltd. is the Canadian subsidiary of the TEAC Corporation and markets and sells TEAC products under license.
2. The **Registrant** is listed as Shapiro Monique, with the administrative and technical contact listed as Monique Shapiro, an individual with a listed mailing address of 732 Kipling Ave, Etobicoke, Ontario, M8Z 5G5.

#### B. THE DOMAIN NAME AND REGISTRAR

3. The Domain at issue is teac.ca.
4. The Registrar of this domain is DomainsAtCost Corp.
5. The Domain was registered on July 20, 2004.

#### C. PROCEDURAL HISTORY

6. The British Columbia International Commercial Arbitration Centre (“BCICAC”) is a recognized service provider pursuant to paragraph 1.5 of the CIRA Domain Name Dispute Resolution Policy v. 1.2 (the “Policy”) of the Canadian Internet Registration Authority (“CIRA”).

7. The **Complainants** filed a complaint in relation to the Domain pursuant to the Policy on June 27, 2008 (“the Complaint”).
8. In a letter dated June 30, 2008, BCICAC, as Service Provider, confirmed compliance of the Complaint and commencement of the dispute resolution process.
9. The BCICAC made attempts to contact to the **Registrant** pursuant to paragraph 2.1 of the CIRA Domain Name Dispute Resolution Rules v. 1.3 (“the Rules”), but neither the BCICAC nor I have received any response from the **Respondent**.
10. As a result, and as permitted under Rule 6.5, the **Complainant** has elected to convert from a panel of three to a single arbitrator. I have been appointed as the sole arbitrator pursuant to Rule 6.5. The process followed in appointing an arbitrator complied with the requirements of Rules 6.5 and 6.8.
11. I have reviewed the material submitted by the **Complainants** and I am satisfied that they are eligible **Complainants** under paragraph 1.4 of the Policy and the Rules.
12. I have received no further submissions from either party since my appointment as arbitrator.
13. Pursuant to Rule 12.2, in the absence of any exceptional circumstances, I am required to submit my decision to BCICAC by September 4, 2008.
14. I am not aware of any other legal proceeding or other arbitration in relation to the Domain which would give rise, under Rule 13.2, to a need to alter the progress of these proceedings.

**D. FACTS**

15. The Complainants submissions set out the following facts.
16. TEAC Corporation is a leading global supplier of recording technology ranging from magnetic recording devices to digital and optical equipment. TEAC products include consumer audio devices, computer data storage devices, disk publishing equipment and flight data recorders for aerospace applications. TEAC produces products which are sold in several international markets, including Canada, the United States, Japan, Europe, the United Kingdom and Mexico.
17. TEAC Canada markets and sells TEAC products in Canada. In the Canadian market, sales of TEAC products generate more than \$10 million dollars annually.
18. TEAC Corporation is the owner of three Canadian trade-marks, as follows (the “TEAC Marks”):
  - (a) TMA 219570, registered March 18, 1977;
  - (b) TMA 462648 registered August 30, 1996; and

- (c) TMA 463212 registered September 6, 1996.
19. The TEAC marks all incorporate “TEAC” as part of the mark. TMA 219570 is the word mark TEAC (“the TEAC mark”).
  20. The **Complainants** marks have been used continuously in Canada since at least 1967. The marks continue to be used in Canada in relation to the products of the **Complainants**.
  21. The **Complainants** operate several websites to promote TEAC products. TEAC operates the website [www.teac.com](http://www.teac.com), which is the American site, and is used as its primary English-language website. Other subsidiaries of TEAC also operate national websites, including [www.teac.co.jp](http://www.teac.co.jp), [www.teacmexico.net](http://www.teacmexico.net) and [www.teac.co.uk](http://www.teac.co.uk). TEAC Canada operates the website [www.teac-ca.com](http://www.teac-ca.com), which lists Canadian Authorized Service Centers, and links to other TEAC websites, including [www.teac.com](http://www.teac.com), which provides information on TEAC products.
  22. The websites of the **Complainants** and their related subsidiaries generate substantial internet traffic. In 2007, the average number of monthly unique visitors to [www.teac.com](http://www.teac.com) was 35,000, amounting to a yearly total of over 420,000 visitors.
  23. The **Registrant** is an individual, with a registered address in Canada. The Domain was originally registered on July 20, 2004.
  24. At the time of the complaint, the Domain redirected to the website electronicsforless.ca. This website contained promotional materials for numerous consumer electronics products, including the productions of the **Complainants**, as well as products of a type similar to those made by the **Complainants** made by other manufacturers.
  25. There is no evidence of any relationship ever existing between the **Registrant** and the **Complainants**, including but not limited to any licence to use any of the TEAC Marks.
  26. In a letter dated May 16, 2008, the **Complainants**, through counsel, informed the **Registrant** of its prior rights in the TEAC Marks and requested that the **Registrant** cease and desist from all unauthorized use or display of the TEAC Marks, including use of the Domain. The **Complainants** did not receive any response.

## **E. COMPLAINANT’S SUBMISSIONS**

### **(I) Confusingly Similar**

27. The **Complainants** assert that the Domain is confusingly similar to the **Complainants** trade-mark TMA 219570. In accordance with section 1.2, the **Complainants** claim that the Domain should be considered without the .ca suffix.
28. The **Complainants** additionally assert that, in accordance with sections 3.4 and 3.2 of the Policy, the domain teac.ca is identical to the **Complainants** trade-mark, and thus meets the standard to be considered confusingly similar.

29. The **Complainants** further assert that they had rights to the mark prior to the registration of the Domain, and continue to have rights, under the TEAC Marks, and thus, that the Domain meets the standard set out in paragraph 3.1 (a) of the Policy, which states:

3.1 Applicable Disputes. A Registrant must submit to a Proceeding if a Complainant asserts in a Complaint submitted in compliance with the Policy and the Resolution Rules 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;

## **(II) Bad Faith**

30. The **Complainants** further assert that the Domain was registered in bad faith, in line with paragraph 3.1(c) of the Policy, which states:

(c) the Registrant has registered the domain name in bad faith as described in paragraph 3.7.

31. To establish this, the **Complainants** claim that the **Registrant** registered the Domain to prevent them from effecting the registration of a trade-mark in which they held rights and that the **Registrant** has engaged in a pattern of behaviour similar to this, or in the alternative, that the **Registrant** registered the Domain to disrupt the business of the **Complainants**.

### **(1) Preventing Registration as Part of a Pattern of Behaviour**

32. In establishing the bad faith registration, the **Complainants** assert that the **Registrant** has registered the Domain so as to prevent them from registering it, and has engaged in a pattern of behaviour consistent with bad faith registration, consistent with the indicator of bad faith enumerated at paragraph 3.7(b) of the Policy.
33. The **Complainants** point out that because the **Registrant** has registered the Domain, they are prevented from registering their trade-mark "TEAC" as a domain name with a .ca suffix.
34. To demonstrate that the **Registrant** has engaged in a pattern of behaviour demonstrating bad faith, the **Claimants** first indicate that the Domain, at the time of the Complaint, instantly and automatically redirected to the website [www.electronicforless.com](http://www.electronicforless.com).
35. Additionally, the **Complainants** rely on the registration of two other domains by the **Registrant**: [www.dalite.ca](http://www.dalite.ca) and [www.studiotech.ca](http://www.studiotech.ca). In each case, the **Complainant** presents uncontested evidence that the **Registrant** is the current registrant of both domains, and that each similarly resolves to the website [www.electronicforless.ca](http://www.electronicforless.ca).
36. The **Complainants** further present evidence, at paragraph 38 of the Complaint, of a Canadian trade-mark for "Da-Lite", UCA037573, which is registered to Da-Lite Screen Company Inc. ("Da-Lite"), a company incorporated under the laws of the United States. They present evidence that the domain [www.dalite.ca](http://www.dalite.ca) redirects users to the domain

[www.electronicforless.ca](http://www.electronicforless.ca), where the products of Da-Lite are displayed alongside those of their competitors, including Everik, B-Tech and MSET.

37. The **Complainants** also assert that StudioTech is a trademark of a US Company that manufactures contemporary entertainment center furniture. The **Complainants** present evidence that the domain [www.studiotech.ca](http://www.studiotech.ca) redirects users to [www.electronicforless.ca](http://www.electronicforless.ca), where products identified with the brand StudioTech are advertised alongside other products which the **Complainants** assert are competitors of StudioTech, including Everik and Bello.
38. To further demonstrate that the **Registrant** has engaged in a pattern of behaviour, the **Complainants** provide evidence that the **Registrant** is listed as the registrant of the domain names [www.crosleycanada.ca](http://www.crosleycanada.ca), [www.crosleyradio.ca](http://www.crosleyradio.ca) and [www.crosleystore.ca](http://www.crosleystore.ca). They provide evidence that CROSLEY is a registered Canadian trade-mark of the Canadian company Moffat and Co. The **Claimants** assert that these three websites show identical images, and have captions saying: "Welcome to Crosley Canada. Soon to be your number one source for Crosley Radio goods in Canada."
39. The **Complainants** submit that this evidence establishes that the **Registrant** registered the Domain to prevent them from registering the Domain, and that the **Registrant** has engaged in a pattern of behaviour similar to this, which is sufficient to demonstrate bad faith registration.

## (2) Primarily for the Purpose of Disrupting the Complainant

40. In the alternative, the **Complaints** submit that because the Domain was registered primarily for the purpose of disrupting the business of the **Complainants**, and because the **Registrant** can be considered a competitor of the **Complainant**, the **Registrant** acted in bad faith in registering the Domain, pursuant to s.3.7(c) of the Policy.
41. In support of this assertion, the **Complainants** submit evidence which demonstrates that the website to which the Domain automatically redirects—[www.electronicforless.ca](http://www.electronicforless.ca)—promotes for sale the goods of direct competitors of the **Complainants**, including ONKYO, Phillips, Samson and Emerson. The claimants suggest that this demonstrates that the **Registrant** is a competitor of the **Complainants**.
42. The **Complainant** then asserts that the actions of the **Registrant** constitute disruption of the **Complainants** business.
43. First, the **Complainants** claim that disruption is established where a domain, such as in this case, redirects consumers to the website of a competitor.
44. Secondly, the **Complainants** submit that where consumers may conclude that the business of the **Registrant** is associated with the business of the **Complainants**, such action is sufficient to be considered a disruption of the business of the **Complainants**. Given that the domain is identical to the trade-mark of the **Complainants**, it is contended

that internet consumers are likely to confuse the business of the two parties, and that such confusion is disruptive to the business of the **Complainants**.

45. The **Complainants** thus assert that by preventing them from registering the Domain and engaging in a pattern of similar behaviour, or in the alternative, by disrupting their business by creating confusion, the **Registrant** has acted in a way which demonstrates a bad faith registration under paragraphs 4.1(b) and 3.7 of the Policy.

### **(III) No Legitimate Interest**

46. The **Complainants** finally assert that the **Registrant** has no legitimate interest in the Domain. To demonstrate this, the **Complainants** contend that they must only demonstrate some evidence that the **Registrant** has no legitimate interest.
47. The **Complainants** argue that there is no evidence that the **Registrant** meets any of the criteria for demonstrating legitimate interest set out in paragraph 3.6 of the Policy.
48. The **Complainants** first assert that because the website automatically forwards to a separate site, the **Registrant** cannot have registered the Domain “for the purpose of distinguishing wares, services or business of [the] person or predecessor or a licensor of that person or predecessor from the wares, services, or businesses of another person” as set out in paragraph 3.6(a) of the Policy.
49. Second, the **Complainants** claim that the Domain is neither used in good faith association with any wares, services of business, nor is it clearly descriptive in any relevant sense, as per paragraph 3.6(b) of the Policy.
50. Third, the **Claimants** suggest that the name is not descriptive, nor has the **Registrant** used it in good faith or for a *bona fide* purpose, as set out in paragraph 3.6(c) of the Policy.
51. Fourth, the **Claimants** argue that paragraph 3.6(d) of the Policy does not apply, as the **Registrant** has not used the Domain in association with a non-commercial activity, nor in good faith.
52. Fifth, the **Complainants** contend that Domain is not a name, surname or reference by which the **Registrant** is commonly identified, and as such does not qualify under paragraph 3.6(e).
53. Sixth, the **Complainants** conclude that the Domain is neither a geographical name nor location where the **Registrant** carries on business, and hence the **Registrant** cannot claim the benefit of paragraph 3.6(f).
54. Given these six arguments, the **Complainants** submit that they have demonstrated, to the standard required under the Policy—“some evidence”—that the **Registrant** has no legitimate interest in the Domain.

55. Together, the **Claimants**, relying on their assertions that the Domain is confusingly similar, that the **Registrant** registered the Domain in bad faith, and has no legitimate interest in the Domain, request that the Domain be transferred to TEAC Canada.

**F. DISCUSSION AND FINDINGS**

56. In considering the substance of the Complaint, it is necessary to review the standard set out in the Policy. At paragraph 4.1 of the Policy, it states that:

4.1 Onus. To succeed in the Proceeding, the Complainant must 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;

and the **Complainant** must provide some evidence that:

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

57. However, even if the **Complainants** provide sufficient evidence to establish, to the degree prescribed, each of (a) (b) and (c), the **Registrant** will nonetheless be permitted to retain its registration if it can establish, on a balance of probabilities, that it has a legitimate interest in the Domain, as described in paragraph 3.6.

58. I will consider each of these factors, in turn.

**(I) Confusingly Similar**

59. A paragraph 3.4 the Policy states that:

3.4 “Confusingly Similar”. A domain name is “Confusingly Similar” to a Mark if 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.

60. Under paragraph 3.2 of the Policy, a “Mark” is defined as:

3.2 Mark. A “Mark” is:

...

(c) a trade-mark, including the word elements of a design mark, that is registered in CIPO;

61. Paragraph 3.3 of the Policy establishes what is considered a right, stating:

3.3 Rights. A person has “Rights” in a Mark if:

...

(b) in the case of paragraph 3.2(c), the Mark is registered in CIPO in the name of that person, that person’s predecessor in title or a licensor of that person;

62. Additionally, paragraph 1.2 of the policy indicates that:

2.2 ... For the purposes of this Policy, “domain name” means the domain name excluding the “dot-ca” suffix and the suffixes associated with all third and fourth level domain names accepted for registration by CIRA.

63. Given the evidence presented by the **Complainant**, I find that it has established that TEAC is a “Mark” under the definition in paragraph 3.2(c) of the Policy. I have further concluded that the Domain teac.ca, considered without its suffix, is identical to, and hence confusingly similar with the TEAC Mark.
64. In relation to paragraph 3.3(b) of the Policy, I find that the **Complainants** have established that they acquired requisite rights on the date of the registration of the TEAC Mark. I find that such rights vested in the **Complainants** no later than March 18, 1977, when the TEAC trade-mark was registered, which was prior to the Domain registration on July 20, 2004, and that these rights have been maintained continuously until the date of the Complaint.
65. I therefore find that the **Complainants** have met their burden under paragraph 4.1(a), and that the **Registrant’s** Domain 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

## **(II) Bad Faith Registration**

66. Pursuant to paragraph 4.1 of the Policy, the **Complainants** must also demonstrate, on a balance of probabilities that:
  - (b) the **Registrant** has registered the domain name in bad faith as described in paragraph 3.7;
67. Paragraph 3.7 of the Policy enumerates the three indicia of bad faith:

3.7 Registration in Bad Faith. 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.
68. First, it is important to note that this list is an exhaustive one. Thus, if the **Complainants** cannot establish bad faith within the bounds of one of these three sub-paragraphs, then a

finding of bad faith is not open to me. However, if the **Complainants** establish any one of the three, that is sufficient.

69. The **Complainants** have argued that the **Registrant** obtained the Domain in order to prevent the registration of the Domain by the **Complainants**, and has engaged in a pattern of behaviour to this end. The **Complainants** are obviously prevented from registering the Domain, but the more difficult question is whether they have done so to prevent the **Complainants** from effecting registration.
70. Given that three domains registered to the **Registrant**, including the disputed Domain redirect to a website which appears to be intended to promote various consumer electronics, including those of the **Complainants**, I find that the **Registrant** was or should have been aware of the **Complainants'** trade-marks, and that the registration would prevent the registration of the TEAC trade-mark.
71. As has been pointed out in previous cases, demonstrating actual bad faith is quite difficult:
- [I]t 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.
- Canadian Broadcasting Corporation/Société Radio-Canada v. William Quon, CDRP Dispute Number 00006. (*CBC v. William Quon*)
72. The circumstances presented by the **Complainants** which support a finding of bad faith registration include:
- (a) The Domain automatically redirects to the website [www.electronicsforless.ca](http://www.electronicsforless.ca);
  - (b) The **Registrant** has registered domains related to three other manufacturers of consumer electronics: Da-Lite, StudioTech and CROSLEY;
  - (c) At least two these are registered trade-marks in Canada: Da-Lite and CROSLEY;
  - (d) Two of these domains—[www.dalite.ca](http://www.dalite.ca) and [www.studiotech.ca](http://www.studiotech.ca)—forward to the same website that the Domain is forwarded to: [www.electronicsforless.ca](http://www.electronicsforless.ca); and,
  - (e) The website that all three domains forward to is a website which promotes the sale of electronics from all three manufacturers, alongside the products of their competitors.
73. I should note at this point that while there was only evidence of three other similar instances presented, the test is on all the surrounding circumstances of the case. In the past, other panels have found as few as two additional examples to be sufficient to establish a pattern: eg. *CBC v. William Quon, supra*.
74. Together, I find that these facts are sufficient for me to find, on a balance of probabilities, that the **Registrant** registered the Domain to prevent the **Complainants** from registering

the Domain, which is the same as their trade-mark, and that the **Registrant** has engaged in a pattern of registering domain names to prevent persons who have Rights in Marks from registering the Marks as domain names.

75. In the alternative the **Complainants** contend that the **Registrant** is a competitor of the **Complainant**, and that the **Registrant** registered the Domain primarily for disrupting the business of the **Complainant**, pursuant to paragraph 3.7(c) of the Policy.
76. A competitor in an online environment is somewhat different than in traditional business. It has been accepted in previous disputes that a competitor may merely be competing with a complainant for internet traffic: *Amazon.com Inc. v. David Abraham*, CDRP Number 00018. Competitor has also been defined as a party who sells the complainants' products alongside products made by competitors: *Glaxo Group Limited v. Defining Presence Marketing Group Inc. (Manitoba)* CDRP Number 00020.
77. In a similar case, the use of a domain to link to goods of a competitor has been considered a "disruption" of the business of a complainant: "the effect of the Registrant's use of the Confusingly Similar domain name with this web page offering products directly competing with the Complainant's business would disrupt the business of the Complainant.": *Sleep Country Canada Inc. v. Pilfold Ventures Inc.* CDRP Number 00027.
78. Taking this evidence together, I find that the **Complainants** have established, on a balance of probabilities that the **Registrant** registered the Domain primarily for the purpose of disrupting the business of the **Complainants**.
79. Thus, I find that the **Complainants** have established, on a balance of probabilities, in line with paragraph 3.7 of the Policy, that the **Registrant** registered the Domain in bad faith.

### **(III) No Legitimate Interest**

80. Under paragraph 4.1(c) of the Policy, the **Complainant** must provide some evidence that the **Registrant** had no legitimate interest in the Domain. The six categories of legitimate interest under the Policy are laid out in paragraph 3.6, which states:

3.6 Legitimate Interests. The Registrant has a legitimate interest in a domain name if, and only if, before the receipt by the Registrant of notice from or on behalf of the Complainant that a Complaint was submitted:

- (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 used 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 used 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 paragraphs 3.6 (b), (c), and (d) "use" by the Registrants includes, but is not limited to, use to identify a web site.

81. The evidence presented by the **Complainants** is sufficient to meet the burden upon them to present some evidence that the **Registrant** has no legitimate interest under any of the categories of paragraph 3.6 of the Policy.

82. As the **Registrant** has not provided a reply, the **Complainants** have met the burden assigned to them under paragraph 4.1(c), and I accordingly find that the **Registrant** has no legitimate interest in the Domain.

#### **G. CONCLUSION**

83. I have found that the **Complainants** have met all of the burdens assigned to them under paragraph 4.1 of the Policy. They have demonstrated, on a balance of probabilities that the Domain is confusingly similar to a trade-mark of the **Complainants**, in which they have had rights since before the registration, and continue to have rights. They have demonstrated, on a balance of probabilities, that the **Registrant** registered the Domain in bad faith. Finally, the **Complainants** have provided some evidence, sufficient to satisfy me that the **Registrant** has no legitimate interest in the Domain, and the **Registrant** has not presented any evidence to rebut this.

84. I accordingly find that the **Complainants** have established their claim, and should have the order that they seek.

#### **H. ORDER**

85. At paragraph 61 of the Complaint, the **Complainants** seek to have the domain teac.ca transferred to TEAC Canada.

86. Having established the requisite elements for this proceeding under paragraph 4.1 of the Policy, I order, in accordance with 4.3 of this policy that the domain teac.ca be transferred to TEAC Corporation or TEAC Canada as they may prefer.

---

**David Wotherspoon**

Sole Arbitrator  
September 3, 2008