

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

Dispute Number: DCA-1355-CIRA
Domain Name: www.ebeam.ca
Complainant: Luidia, Inc.
Registrant: Paterasp Nirumvala
Registrar: Think Profits.com, Inc.
Panelist: Elizabeth Cuddihy, QC, ICA
Service Provider: British Columbia International Commercial Arbitration Centre

DECISION

The Parties

1. **The Complainant is Luidia, Inc. of 125 Shoreway Road, Suite D, San Carlos, CA 94070, U.S.A., hereinafter referred to as the "Complainant".**
2. **The Registrant is Paterasp Nirumvala of Paterasp & Associates Holdings (Canada) Inc., 5487 Kingsway, Burnaby, BC, V5H 2G1, Canada, hereinafter referred to as the "Registrant".**

The Domain Name and Registrar

3. **The Domain Name at issue hereinafter referred to as the "Disputed Domain Name" is www.ebeam.ca.**
4. **According to the Complaint, the Registrar for the Disputed Domain Name is Think Profits.com, Inc.**

Procedural History

5. **The British Columbia International Commercial Arbitration Center, hereinafter referred to as "BCICAC" is a recognized service provider to the Domain Name Dispute Resolution Policy, hereinafter referred to as the "Policy" of the Canadian Internet Registration Authority, hereinafter referred to as "CIRA".**
6. **On November 23, 2011, the Complainant filed a complaint with respect to the Disputed Domain Name, hereinafter referred to as the "Complaint", which Complaint was deemed by BCICAC to be in administrative compliance and the Complainant to be eligible.**

7. By letter dated November 28, 2011, BCICAC notified the Registrant of the compliant Complaint and of the commencement of the dispute resolution process in respect of the Complaint.
8. The Registrant did not file a compliant Response according to the Rules.
9. BCICAC advised the parties that no Response had been received within the timeframe permitted by the Policy, and extended, as permitted in Rule 6.5, the Complainant elected to convert to a single arbitrator.
10. On January 26, 2012, BCICAC appointed Elizabeth Cuddihy, QC, ICA, as sole arbitrator to determine the matter in accordance with the Policy and the Rules.
11. The Panelist has delivered to BCICAC a Statement of Impartiality and Independence as required by the Rules.
12. Absent exceptional circumstances, the Panel was required to deliver its decision by February 15, 2012.
13. The Panel finds that it was properly constituted and appointed in accordance with the Policy and the Rules.
14. As the Registrant did not submit a Response within the period as extended for submission of a Response, the Rules require that the Panel shall decide the Proceeding on the basis of the Complaint.

Complainant Eligibility

15. Pursuant to paragraph 1.4 of the Policy and paragraph 2(q) of the CIRA Policies, Procedures and Guidelines, Canadian Presence Requirements for Registrants, Version 1.3, the Complainant is the owner of the Canadian registered trade mark, EBEAM which was registered in the Canadian Intellectual Property Office (CIPO) on February 13, 2003 under registration No TMA575455. The Disputed Domain Name, www.ebeam.ca includes the exact word component of the Complainant's registered trade-mark. The Complainant satisfies the Canadian Presence Requirements as prescribed by the Policy.

Complaint and requested relief

16. The Complainant is the owner of numerous proprietary marks including the trade-mark EBEAM which it has used in connection with its products in Canada since at least January 2003. The Complainant creates interactive technology for capturing and sharing ideas. The technology powers an ecosystem of interactive hardware and software for education, business

and entertainment. The products transform flat surfaces into interactive and collaborative workspaces. The Complainant estimates its sales in Canada since 2008 to be in excess of US\$148,000.

17. The Complainant owns the trade- mark EBEAM which was registered in the Canadian Intellectual Property Office, hereinafter referred to as "CIPO" under Trade-mark Registration No TMA575455 on February 12, 2003.

18. The Complainant invests in the promotion and development of its EBEAM products and services through its website www.luidia.com, trade shows, print media and the internet and maintains control over the character and quality of its goods and services associated with the EBEAM mark globally, including Canada.

19. The Complainant and Paterasp & Associates Holdings (Canada) Inc., a company alleged to be owned by the Registrant, were formerly parties to a Distributor Agreement governing distribution of the Complainant's goods and services in Canada. The Complainant alleges that the Registrant continues to use the Disputed Domain Name and to hold himself out as the authorized distributor of the Complainant's goods and services in Canada, notwithstanding the Complainant's objections in writing.

20. The Complainant further alleges that the Registrant agreed to cease use of the Disputed Domain Name and to make it available to the Complainant, and subsequently re-registered the Disputed Domain Name, offered it for sale to the Complainant for the sum of US\$250,000 and further advised that if the Complainant was not prepared to buy it, the Registrant would continue to use the Disputed Domain Name to sell other products.

21. The Complainant claims that the Disputed Domain Name is confusingly similar to its trade-mark EBEAM in which it had rights prior to the registration of the Disputed Domain Name, and continues to have such rights, that the Registrant registered the Disputed Domain Name in bad faith and that the Registrant has no legitimate interest in the Disputed Domain Name and requests that the Panel order the transfer of the Disputed Domain Name from the Registrant to the Complainant.

Analysis and Findings

22. Paragraph 4.1 of the Policy provides:

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 3.5; and the Complainant must provide some evidence that:
- (c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4

Even if the 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 3.4.

Disputed Domain Name

23. With respect to the registration of the Disputed Domain Name, the Complainant alleges in the Complaint, certain particulars of registration of the Disputed Domain Name based on information and belief. The Complaint does not provide any evidence in support of its allegations in respect of registration of the Disputed Domain Name.

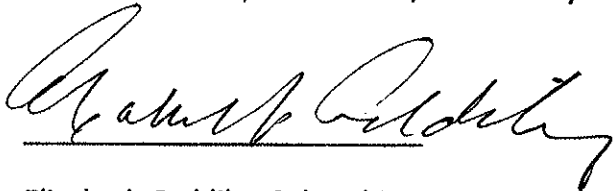
24. In the Panel's view, it is not sufficient for a Complainant to merely make allegations as to the registration of a Disputed Domain Name. A Complainant must support such allegations by evidence of registration of the Disputed Domain Name. This has not been done.

25. Based on the record and for the reason stated above, the Panel finds that the Complainant has not satisfied the requirements of the Rules and the Policy in respect of registration of the Disputed Domain Name.

Decision and Order

26. The Complaint as filed is dismissed.

Dated at Chester, Nova Scotia, this 6th day of February 2012.



Elizabeth Cuddihy, Sole Arbitrator