

**IN THE MATTER OF THE COMPLAINT PURSUANT TO THE CANADIAN INTERNET  
REGISTRATION AUTHORITY DOMAIN NAME DISPUTE RESOLUTION POLICY**

Domain Name: [www.gotomeeting.ca](http://www.gotomeeting.ca)

Complainant: Citrix Online LLC

Registrant: Mediavision Network Inc  
Registrar: (10dollar.ca) 10 Dollar Domain Names Inc

Panellist(s): Myra J. Tawfik

Service Provider: Resolution Canada

**DECISION**

**1. The Parties:**

The Complainant is Citrix Online LLC, a US corporation with its head office in Santa Barbara, California. It is represented in these proceedings by the Toronto law firm of Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, Ontario,

The Registrant is Mediavision Network Inc, a Canadian corporation with its head office in Mississauga, Ontario. A WHOIS database search indicates the administrative contact as Naveed Yusuf and a postal address in Ontario as 202-6045 Creditview Road, Mississauga, Ontario L5V 0B1

**2. The Domain Name and Registrar**

The disputed domain name is [www.gotomeeting.ca](http://www.gotomeeting.ca) on January 8, 2005 and the Registrar is (10dollar.ca) 10 Dollar Domain Names Inc

**3. Procedural History**

On September 9, 2011, the Complainant initiated a complaint with Resolution Canada under the Canadian Internet Registration Authority (CIRA) Dispute Resolution Policy (CDRP) and the CIRA Domain Name Dispute Resolution Rules (the Rules) in which it requested the transfer to the Complainant of the domain name [www.gotomeeting.ca](http://www.gotomeeting.ca).

Resolution Canada is an approved Dispute Resolution Service Provider under the CDRP.

Pursuant to Rule 5.1, the Registrant was notified by Resolution Canada that it had 20 days from the Date of Commencement of the Proceedings, namely September 9, 2011, to file 5 copies of a Response to the Complaint.

The Registrant did not file a Response within the stipulated delay.

On October 7, 2011, further to Rule 6.5, Resolution Canada appointed Myra J. Tawfik as sole panellist on the complaint after having received from her a declaration of impartiality and independence. A notice of selection of panellist was sent to all parties at that date.

As the Registrant has not responded to the Complaint, according to Rule 5.8, the Panel shall decide the proceeding on the basis of the Complaint.

#### 4. Eligible Complainant

Under Paragraph 1.4 of the CDRP, a Complaint may be initiated by a Complainant who is the trademark owner of a trademark registered in the Canadian Intellectual Property Office (“CIPO”). The Complainant is the registered trademark owner in Canada of a trademark that consists of all or part of the domain name that is the subject of this Complaint.

#### 5. Parties’ Contentions

##### A. The Complainant:

The Complainant alleges the following:

1. That it is the global leader in online solutions that facilitate collaborations between individuals at remote distances from each other
2. That it is the owner of the GOTO family of trademarks and that it is the registered trademark owner in Canada of the trademark GOTOMEETING and the trademarks GOTOMYPC and GOTOASSIST
2. That on or about January 3, 2005, the Registrant entered into an affiliate agreement with a third party, acting on behalf of the Complainant.
3. That the affiliate agreement expressly forbids affiliates from registering domain names that contain trademarks owned by the Complainant
4. That in contravention of this undertaking and the CDRP, the Registrant registered the domain name GOTOMEETING.CA on January 8, 2005
5. That when the Complainant learned of the registration, in March 2011, it sent a demand letter through its lawyers requesting that the Registrant transfer the domain name GOTOMEETING.CA to the Complainant
6. That it has received no reply to this demand letter

7. As a result, it filed a Complaint under the CDRP requesting the transfer to the Complainant of the domain name GOTOMEETING.CA.

B. The Registrant:

The Registrant has not responded to the Complaint.

6. Findings

Under paragraph 4.1 of the CDRP, the burden is on the Complainant to prove, on a balance of probabilities, that

- 1) 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
- 2) The Registrant has registered the domain name in bad faith
- 3) Some evidence that the Registrant has no legitimate interest in the domain name

Under Rule 12.1, the Panel shall render its decision based on the CDRP and Rules, the evidence and arguments submitted and any relevant rules and principles of the laws of Ontario and the laws of Canada. Further, inferences can be drawn about the Registrant's motives in registering the domain name from the Registrant's conduct or other surrounding circumstances including the uses to which the domain name is put. *See Canadian Broadcasting Corp v. Quan* CIRA Dispute #00006 (2003); *Government of Canada v. Bedford* CIRA Dispute #00011 (2003)

6.1. Is the Registrant's domain name confusingly similar to a Mark in which the Complainant had Rights prior to the date of registration of the domain name and in which Complainant continues to have such Rights?

The Registrant registered the domain name 5 years prior to the Complainant's trademark registration of GOTOMEETING. The Complainant's trademark registration of the GOTOMEETING trademark only occurred in 2010. In addition, the Complainant's Trademark Registration of GOTOMEETING was based on a US Patent and Trademark Office Registration of GOTOMEETING registered in 2006 – The registration in Canada was not based on prior use in Canada.

The Complainant has not filed any evidence of use of the trademark GOTOMEETING in Canada prior to the date of registration of the domain name. However, the evidence filed by the Complainant includes a multitude of print and online references to the GOTOMEETING trademark commencing as early as February 2004. These references, that included press releases and product reviews of the GOTOMEETING software, were

published in a number of magazines, especially online magazines, that circulate regularly in Canada such as, PC World, PC Magazine, FT.Com, CNET and Small Business Computing.com.

Under Canadian trademark law, common law trademark rights can be acquired either through use in Canada or through making the trademark known in Canada. The Panel finds that the trademark GOTOMEETING was ‘made known’ in Canada by 2004 and that, as a result, the Complainant had acquired common law trademark rights in Canada prior to the registration of the domain name.

In addition, the Complainant is the owner of a family of marks that begins with the term GOTO. It owns registered trademarks in Canada for GOTOASSIST and GOTOMYPC. In the case of GOTOASSIST, the CIPO Registration establishes that the Complainant had used the trademark in Canada since 2000 on wares and services including computer software and computer services. In the case of GOTOMYPC, the CIPO Registration establishes use in Canada since 2001 on wares, namely computer software. Given the fact that GOTOMEETING had been made known in Canada prior to the registration of the domain name and the fact that the Complainant had already established itself in Canada through use of two related trademarks that include the family of GOTO marks, the Complainant has established that it had Rights in the Mark prior to the registration of the domain name.

The domain name is confusingly similar to the Mark given that it is identical to the Complainant’s Mark. In assessing whether a domain name is Confusingly Similar, the dot-ca suffix is ignored.

As a result of the above, the Panel is satisfied on the facts of this case that the disputed domain name is confusingly similar to a Mark in respect of which the Complainant had Rights prior to the date of registration and in which it continues to have Rights.

#### 6. 2 The Registrant has registered the domain name in bad faith

Under the revised CDRP policy that took effect on August 22, 2011, the enumerated examples of bad faith contained in paragraph 3.5 of the CDRP are not exhaustive.

The Complainant alleges that the Registrant registered the domain name in bad faith

- 1) to prevent it from registering the mark as a domain name (paragraph 3.5(b) CDRP) and
- 2) primarily with a view to disrupting its business (paragraph 3.5(c) CDRP).

In respect of the first ground of bad faith alleged by the Complainant, paragraph 3.5(b) requires a finding that the Registrant “...has engaged in a pattern of registering domain names ...”. As the Complainant has not adduced any evidence to suggest that the Registrant has engaged in such a pattern, this ground is rejected.

In relation to the allegation of bad faith based on paragraph 3.5(c), the Panel finds that the activities of the Registrant were primarily intended to disrupt the business of the Complainant. The website to which the domain refers is a blank page. Canadians familiar with the Complainant would likely try to locate the Complainant through the GOTOMEETING.CA domain name and would find themselves unable to locate the Complainant. This diversion of potential customers disrupts the business of the Complainant. See *Fluor Corp v. Schneider CIRA Dispute #00156 (2010)*

However, are the Complainant and the Registrant competitors as contemplated by paragraph 3.5 c)?

Generally speaking, the term ‘competitor’ has been given a narrow interpretation under the CDRP. It is difficult to find, on the facts, that the Registrant is a business competitor of the Complainant given that the domain name opens into a blank page. Further, the Registrant’s own website at [www.mvn.ca](http://www.mvn.ca) is currently under construction and it is difficult to identify the precise nature of the Registrant’s business.

That said, given that the enumerated examples of bad faith are no longer exhaustive, there are sufficient facts upon which to establish bad faith even if the Registrant is not a business competitor of the Complainant.

As a preliminary matter, the Complainant refers to an affiliate agreement purportedly entered into between the Registrant and a third party acting on behalf of the Complainant prior to the registration of the domain name. This agreement purportedly bound the Registrant not to register a domain name using the Complainant’s trademarks. Unfortunately, the Complainant did not provide clear evidence to show that the Registrant had in fact entered into such an affiliate agreement. Had there been more evidence, the affiliate agreement would have provided a very strong ground upon which to find bad faith.

Nevertheless, even though the Panel could find no binding affiliate agreement between the parties, the Panel is prepared to infer from the facts set out in the Complaint and certified to be true by a representative of the Complainant, that there was, at the very least, a pre-existing relationship between the Complainant and the Registrant. The Registrant therefore had knowledge of the Complainant’s Mark prior to its registering the domain name.

Further, the fact that the domain name was registered by the Registrant very close to the time it engaged with the Complainant and the fact that the domain name opens into a blank page that prevents Internet users from locating the Complainant are factors from which the Panel can conclude that the Registrant registered the domain name in bad faith.

In addition, although not conclusive on its own, the fact that the Registrant did not reply to the Complainant’s demand letter is a relevant factor in assessing bad faith. The Panel is guided by the UDRP decision in *LEGO Juris A/S v. Wioletta Balcerak Case No. D2011-1320*

As a result, the Panel finds that the Registrant registered the domain name in bad faith.

### 6.3 The Registrant has no legitimate interest in the domain name

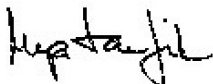
The Complainant must provide some evidence that the Registrant had no legitimate interest in the domain name. A Registrant has a legitimate interest in the domain name for the non-exhaustive reasons set out in paragraph 3.4 of the CDRP.

Paragraphs 3.4 (a)-(d) each require good faith use of the Marks or the domain name. Paragraphs 3.4(e) –(f), though not expressly tied to good faith, require that the domain name comprise the legal name of the Registrant or the geographical name of the location of the Registrant’s non-commercial activity or place of business.

The Panel has found that the Registrant was acting in bad faith when it registered the domain name GOTOMEETING.CA. Further, the disputed domain name is not the legal name of the Registrant nor is it the geographical name of the location of the Registrant’s non-commercial activity or place of business. In addition, there are no other factors in this case that would suggest that the Registrant had a legitimate interest in the domain name. As a result, the Panel finds that the Registrant did not have a legitimate interest in the domain name GOTOMEETING.CA.

### 8. Decision:

The Panel concludes that the Complainant has established its entitlement to a remedy under paragraph 4.3 of the CDRP. The Complainant has requested a transfer to it of the domain name [www.gotomeeting.ca](http://www.gotomeeting.ca) and the Panel so orders.



Myra J. Tawfik  
Sole Panellist  
October 28, 2011