

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

**Domain Name:** VIROX.CA

**Complainant:** Virox Technologies Inc.  
**Registrant:** Nameshield Inc.  
**Registrar:** dot-ca-registry.ca (Burmac Systems Ltd.)

**Panel:** David Allsebrook (chair), Teresa Scassa, Eric Macramalla  
**Service Provider:** ResolutionCanada Inc.

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**DECISION**

**A. The Parties**

1. The Complainant **Virox Technologies Inc.** is a corporation incorporated pursuant to the laws of Ontario, Canada having its head office in Oakville, Ontario. Its authorized representative in this dispute is Dolly Kao Professional Corporation.
2. The Registrant is Nameshield Inc., with a postal address in Charlottetown, PEI. Its representatives are Daniel Mullen and Mark Ready.

**B. The Domain Name and Registrar**

3. The domain name at issue is **VIROX.CA**.
4. The domain name is registered with dot-ca-registry.ca (Burmac Systems Ltd.)

**C. Panel Member Impartiality and Independence Statement**

5. As required by paragraph 7 of the Rules, the undersigned panel has declared to the Provider that they can act impartially and independently in this matter, as there are no circumstances known to them that would prevent them from so acting.

## **D. Canadian Presence Requirement**

6. The Complainant is a Canadian corporation with its head office in Canada. It therefore complies with the Canadian presence requirements which qualify it to hold .ca domain name registrations and to lodge complaints under the CIRA Dispute Resolution Policy (CDRP or the “Policy”).

## **E. Factual Background**

7. The Complainant obtained Canadian trade mark registration TMA 935502 for the trade mark VIROX and Design on April 20 2016. The Complainant obtained Canadian trade mark registration TMA 911409 for the trade mark VIROX TECHNOLOGY INC. and Design on August 17 2015.
8. Nameshield registered the domain name virox.ca on October 7 2015.
9. Virox Technologies Inc. does research and development in the field of disinfectants and cleansers, manufactures disinfectant and cleansers, and provides education and training in relation to them.
10. The Complainant relies upon the trade marks shown in its two registrations as well as its trade name Virox. It says it has used its name continuously since at least June 1998, and that its trade marks have been used by it continuously since at least December 31, 2000.
11. The Registrant “accepts” that it is the nominal registrant of the domain name.
12. The Registrant says the domain was “re-registered” on October 7, 2015, “having been first registered many years prior”. No alternative registration date is suggested. October 7, 2015 is the registration date given on the WHOIS search report. Nameshield says it acquired the domain name after having been given instructions to do so by Diversey, Inc. and placing virox.ca in a database to be automatically registered by Nameshield in the event that it became available. Before October 7, 2015 virox.ca had been registered by Diversey.
13. Nameshield says that Virox cannot rely on its trade mark registration for VIROX and Design, which was registered later than the domain name, and that the trade mark it can rely on, VIROX TECHNOLOGIES INC. and Design, is not identical to the domain name.
14. Nameshield advises that it is the nominal owner of the domain name on behalf of Diversey Inc., and that Diversey Inc. is a prior user of the name Virox and owner of a Canadian trade mark registration for the trade mark VIROX. TMA 730254. The attached copy of registration TMA 730254 shows the same VIROX and Design trade mark as the Complainant’s 2016 registration TMA 935502.

15. Registration TMA 730254, as provided by the Registrant, shows that a VIROX and Design trade mark registration stood in the name of Diversey, Inc. and was cancelled in 2014 pursuant to a request made by Virox Technologies Inc. under section 45 of the Trade-Marks Act. This section permits interested parties to require an owner of a registered trade mark to demonstrate that the trade-mark is in use, failing which demonstration the registration is cancelled.
16. Nameshield advises that Diversey is selling a disinfectant cleaner called Virox 5. It filed a Material Safety Data Sheet dated March 24, 2015, headed with the Diversey name, pertaining to the product.
17. Virox has filed an affidavit sworn by Andrew R. Aranda, who identifies himself as an officer of Diversey, Inc. He says that he has made appropriate inquiries and that Diversey Inc did not authorize, instruct, or engage Nameshield Inc. to register the domain name virox.ca on October 7, 2015. He further states that Diversey is the licensee of trade marks owned by Virox including the registered trade marks Virox and design (TMA 953,502 and Virox Technologies and Design TMA 911, 409).
18. The Registrant provided a partially articulated and strident narrative from which few relevant issues emerged. Some allegations, such as the allegation that “Complainant exists in an alternative universe”, are even less helpful. We have tried to identify and address issues which may assist the Registrant.

## **F. Analysis**

19. The Complaint alleges that the domain name is Confusingly Similar (as defined in the CDRP) to its trade marks, was adopted in bad faith and that the registrant has no legitimate interest in it. Once such allegations are made in a Complaint, the Registrant must submit to a proceeding under the CDRP. The Complaint requests the transfer of the domain name to it.
20. To succeed, a CDRP complainant must demonstrate the three factors specified in paragraph 4.1 of the CDRP, namely:
  - “**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.

21. “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”

*Confusing Similarity issue*

22. The Policy 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;

**3.3 “Confusingly Similar”.** In determining whether a domain name is “Confusingly Similar” to a Mark, the Panel shall only consider whether 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.

23. The test of Confusing Similarity involves timing and comparison.
24. The Complainant says it has used its name continuously since at least June 1998, and that its trade marks have been used by it continuously since at least December 31, 2000. The Complainant obtained Canadian trade mark registration TMA 911409 for the trade mark VIROX TECHNOLOGY INC. and Design on August 17 2015. Nameshield registered the domain name virox.ca on October 7 2015.
25. The Complainant says that the domain name virox.ca is Confusingly Similar with its trade marks Virox and Design, Virox Technologies Inc. and Design, and its business name Virox Technologies Inc. All of these are Marks as defined in the Policy.
26. The Registrant says that these Marks are not identical to the domain name Virox.ca. Section 3.3, quoted above, speaks to a degree of resemblance rather than a requirement for the competing terms to be identical. In reaching a conclusion Panels are required to disregard the presence of the suffix “.ca”. (Policy, s. 1.2). As well, the distinctive element “virox” sufficiently outweighs the generic terms “Technologies” and “Inc.” that the panel concludes that the domain name is confusingly similar with the trade name and trade mark “Virox Technologies Inc.”
27. The Panel concludes that the Complainant had Rights in the Marks Virox and Design, Virox Technologies Inc. and Design and Virox Technologies Inc. before

the registration date, and that the Marks are confusingly similar to the domain name virox.ca.

***Bad Faith Issue***

28. The second test is whether the trade mark has been registered in bad faith. The Complaint relies particularly upon sections 3.5(b) and (d) of the Policy:

**“Registration in Bad Faith.** For the purposes of paragraphs 3.1(c) and 4.1(b), any of the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence that a Registrant has registered a domain name in bad faith:

(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;

(d) the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant’s website or other on-line location, by creating a likelihood of confusion with the Complainant’s Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant’s website or location or of a product or service on the Registrant’s website or location.

29. With respect to 3.5(b), the Complaint lists approximately fifteen CDRP and WIPO decisions holding that Nameshield Inc. and its representative Daniel Mullen have registered marks of third parties as domain names, in bad faith.

30. With respect to section 3.5(d), Virox says that visitors to virox.ca are sometimes directed to links to cleaning and disinfectant products other than Virox products. This is a “pay per click” scheme for which the Registrant receives a payment for each click by web site visitors on the links advertised on virox.ca.

31. The Registrant states, as we understand it, that Nameshield Inc. is the nominal holder of the virox.ca registration on behalf of Diversey, Inc, that Diversey, Inc. has a legitimate interest in the Virox trade mark, and that Nameshield Inc. does not itself make money from the click farming.

32. The Complainant filed a Further Submission in response to the Registrant’s statement that it is a “nominee registrant for Diversey Inc.”, including the

affidavit referred to at paragraph 17 above. The Panel invited Nameshield Inc. to respond to the Further Submission but no response was received from Mr. Mullen.

33. The CIRA Registrant Agreement states:

**ARTICLE 4**  
**CERTAIN REGISTRANT OBLIGATIONS**  
4.1 Certain Registrant Obligations.

**Certain Registrant Obligations.** Throughout the Term of this Agreement, the Registrant shall comply with and abide by all provisions of this Agreement and the Registry PRP. Furthermore, the Registrant shall, in accordance with this Agreement and the Registry PRP:

(g) not allow any third party to use or operate any Domain Name Registration registered in the name of the Registrant and not register any Domain Name as agent for, or on behalf of, any third party in any manner whatsoever, including without limiting the generality of the foregoing, for the purposes of lending, leasing, licensing or otherwise granting rights in such Domain Name Registration to any third party for monetary or nonmonetary consideration, unless such third party: (i) otherwise qualifies under the applicable Registry PRP including without limitation CIRA's Canadian Presence for Registrants which is located on CIRA's website at [www.cira.ca/assets/Documents/Legal/Registrants/CPR.pdf](http://www.cira.ca/assets/Documents/Legal/Registrants/CPR.pdf); or (ii) is an Affiliate of the Registrant. For this purpose, "third party" means any Person other than CIRA and the Registrant.

34. The "nominal" ownership of domain names on behalf of others is a breach of the Registration Agreement. Mr. Mullen, a frequent spokesman for Nameshield, in response to CDRP disputes, knew this at least as early as February 2014 when he was a participant the amextravel.ca CDRP decision (CIRA Decision 00248). Nameshield is in the business of owning, click farming and trading in .ca domain names and knew or ought to have known what was in the Registrant Agreement.

35. The Further Submission also refers to correspondence that is plainly directed towards settlement between the parties (Exhibit 18). The Panel adopts the policy of the Courts and respects the privilege they accord to settlement communications. We will not consider Exhibit 18.

36. For the reasons advanced by the Complainant, the Panel finds that the domain name virox.ca was registered in bad faith by Nameshield, Inc.

### *Legitimate Interest Issue*

37. The third test under the policy is whether the Registrant has no legitimate interest in the domain name as described in paragraph 3.4. Paragraph 3.4 reads as follows:

**“3.4 Legitimate Interests.** For the purposes of paragraphs 3.1(b) and 4.1(c), any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate that the Registrant has a legitimate interest in a domain name: (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 registered 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 registered 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 paragraph 3.4(d) “use” by the Registrants includes, but is not limited to, use to identify a web site.”

38. Paragraph 4.1 deals with the issue of onus of proof:

“...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.”

39. The Complaint says that the use of virox.ca in bad faith cannot lead to a finding of a legitimate interest in the domain name. It can find no other use by the Registrant of the name Virox.

40. In its Further Submission the Complainant says that as a nominal owner, the Registrant has no legitimate interest in the domain name. As in the amextravel.ca decision cited by the Complainant (a decision rendered by the present Panel

members in 2014), the Registrant has not asserted an interest. The Complainant filed an affidavit in which Diversey Inc., for whom Nameshield says it is holding the domain name, disclaims any such arrangement or claim to the domain name.

41. The Registration Agreement between all owners of .ca domains specifically and clearly prohibits the registration of .ca domain names on behalf of someone else (section 4.1 quoted above). Accordingly, a registrant claiming to hold a domain name for third party, as Nameshield does, can have no legitimate interest in the domain name.

## **H. Conclusion and Decision**

42. The Panel concludes that the domain name is Confusingly Similar to the Complainant's Marks, that the registration was obtained in bad faith, and that the Registrant has no legitimate interest in the registration of virox.ca as a domain name.
43. The Panel directs that the domain name virox.ca be transferred to the Complainant.

Dated at Toronto, Ontario this 3rd day of October, 2017

Panelists David Allsebrook (Chair), Teresa Scassa and Eric Macramalla.



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David Allsebrook (Chair) for the panel



## Appendix A

Hello Applicant,

With 40,000 employees connected across the globe, Fluor delivers some of the most challenging and complex projects in dynamic industries across Canada and around the world. Fluor serves over 600 clients globally in 81 countries on 6 continents

Fluor offers exciting opportunities and flexible career solutions to help fulfill your goals. Are you ready to join a team of world-class professionals? You should apply with an attachment of your CV sent to [hrd@fluorcorporation.ca](mailto:hrd@fluorcorporation.ca), as there are numerous vacancy position available now.

**Job Title: PROJECT CONTROLS - COST SPECIALIST**

**Company: FLUOR**

The position will be responsible for all cost functions as assigned by the Construction Project Controls Manager, for the project

Responsibilities:

- maintain Work Breakdown and Project Coding Structures for control and integrity of work defined by the contract set-up and maintain labor reporting system; by

Direct, Indirect, Supervision, Etc., as well as Craft Mix

- support management reporting of labor metrics
- oversees inputting of cost related, Field and Home Office generated data into Payroll/Tracking, ensuring proper coding, etc., are utilized
- responsible for reconciliation of data on a monthly basis and preparing comprehensive reports and analysis of planned vs actual cost information
- prepares and updates summary cash flow information for various construction categories and overall project
- oversee processing of all trends, budget shifts, change orders, etc.
- prepares detailed and summary Cost Control Reports that provide information on the status of costs (planned, actual, committed, forecast, etc.) and provides

analysis of data as required

- monitors and analyzes daily cost expenditures of the Hook-up & Commissioning S/C. Prepares the Sensitivity Analysis for Management
- analyzes variances in cost and schedule performance against the plan
- recommend solutions or recovery plans to schedule/cost impact or delays and communicates the reasons for the issuance of variance and proposed mitigation plans

to Project Management

- coordinates estimate development with the Project Estimator
- provides Status of Reserves and Contingencies
- participates in the review of Project Risk Analysis with management and provides status reporting
- possesses practical experience in the use of the automated cost management systems
- skilled in the import/export of data, required for support of actuals and forecast
- provides meaningful, accurate historical data
- other duties as assigned

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