

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

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Domain Name:           pyramydair.ca  
Complainant:           Pyramyd Air Ltd.  
Registrant:             Raman Verma  
Registrar:             Go Daddy Domains Canada, Inc.  
Panel:                 Sharon Groom  
Service Provider:      Resolution Canada, Inc.

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**DECISION**

**A.     The Parties**

1.     Pyramyd Air Ltd. (the “**Complainant**”), is a company located in Ohio, United States.
2.     The registrant for the domain name is Raman Verma (the “**Registrant**”) who is located in Ontario, Canada.

**B.     The Domain Name and Registrar**

3.     The disputed domain name is pyramydair.ca (the “**Domain Name**”). The registrar for this domain name is Go Daddy Domains Canada, Inc. (the “**Registrar**”). The disputed Domain Name was registered on November 16, 2016 by the Registrant.

**C.     Procedural History**

4.     This is a proceeding under the Canadian Internet Registration Authority (“**CIRA**”) *Domain Name Dispute Resolution Policy* (Version 1.3) (the “**Policy**”) and the *CIRA Domain Name Dispute Resolution Rules* (Version 1.5) (the “**Rules**”).
5.     The history of the proceeding as provided by the dispute resolution service provider, Resolution Canada, Inc. (“**Resolution Canada**”), is that the Complainant filed a complaint on May 6, 2021 against the Registrant with Resolution Canada requesting that the current registration of the Domain Name be transferred to the Complainant.

6. Resolution Canada served notice of the complaint on the Registrant Raman Verma as required by paragraph 4.3 of the Rules by email.

7. The Registrant was given 20 days to file a response and no response was forthcoming. The panel was appointed on June 3, 2021.

#### **D. Panel Impartiality and Independence**

8. As required by paragraph 7 of the Rules, the panel has submitted to Resolution Canada a declaration of impartiality and independence in relation to this dispute.

#### **E. Canadian Presence Requirements**

9. The Complainant is a company located in the United States. However it is the registered owner of the Canadian trademark registration for the mark PYRAMYD AIR, reg. no. 1,071,730 (the “**Trademark**”) which was registered on February 4, 2020 for use in association with:

Retail online store services featuring air guns, airsoft guns, BB guns, bows, air bows, sling shots, knives and multiple-purpose folding pocket tools, targets and ammunition, scopes, safety goggles, ear plugs and ear muffs for noise reduction, air compressors, compressors for airguns, paintball guns, airsoft guns, and high pressure tanks, boosters for air compressors, high pressure air tanks for airguns, air tanks for use with air compressors to hold compressed air, safes, and airsoft gun parts and accessories

The Domain Name consists of the exact word component of this Trademark, therefore, the Complainant satisfies the Canadian Presence Requirements under paragraph 2(q) of the CIRA *Canadian Presence Requirements for Registrants*, Version 1.3.

#### **F. Factual Background**

10. According to the affidavit of Val Gamerman, the president of the Complainant, the Complainant is engaged in the operation of a retail service offering the sale of various categories of airguns, related compressors, parts and accessories for use in recreational and tactical applications in the US, Canada and elsewhere in the world. The Complainant has been engaged in such operations since 1999. In support of this the Canadian Trademark registration for PYRAMYD AIR claims a date of first use in Canada of October 10, 1999.

11. In his affidavit Mr. Gamerman also mentions that to his knowledge the name PYRAMYD AIR has no dictionary or descriptive meaning and the word PYRAMYD is a coined spelling.

12. According to CIRA’s records, the Registrant of the Domain Name is Raman Verma. According to the Complainant’s evidence, at the time of the Complainant’s counsel’s initial contact to the anonymous presence of the Registrant in April 2020, the Domain Name resolved to the website canadashootingsupply.ca which is a website operated by Canada Shooting Supply in Whitby, Ontario. Canada Shooting Supply is a competitor of the Complainant in Canada,

selling similar products and has served as a dealer for certain products manufactured by an affiliate of the Complainant.

13. In fact the president of the Complainant became aware of the Domain Name and its redirect to Canada Shooting Supply well before these proceedings were commenced and in September 2017 had an email exchange with the Registrant where he requested that the Domain Name be transferred to the Complainant. The Registrant responded in an email to Mr. Gamerman that he had discussed it with his business partners and that the domain name “was purchased intentionally and is not for sale to help protect our business from future competition threat from large company like Pyramydair”.

14. During the later exchanges with the Registrant in April 2020, a representative of the Registrant stated in response to an email from Complainant’s counsel that “we registered this domain name in 2015 – 2016 as we are planning on selling Air balloons online. Nothing to do with guns or anything like that.” At some point during this time the link/redirect to the Canada Shooting Supply website was removed and a placeholder page was put up referencing a “coming soon” business to sell “Cool Air Balloons”. At the time of the complaint this was still the message on the website corresponding to the Domain Name.

15. In his affidavit Mr. Gamerman confirms that the Registrant has never been given any permission to use the PYRAMYD AIR Trademark nor to register any domain name incorporating this Trademark.

**G. CIRA Domain Name Dispute Resolution Policy**

16. Paragraph 4.1 of the Policy requires that the Complainant establish 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;

(b) the Registrant has registered the domain name in bad faith as described in section 3.5; and

(c) the Registrant has no legitimate interest in the domain name as described in section 3.4.

17. The Complainant must prove points (a) and (b) above on the balance of probabilities and for point (c) it must provide some evidence that the Registrant has no legitimate interest in the domain name. 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 section 3.4 of the Policy.

## H. Analysis

### Rights to a Mark

18. Under paragraph 4.1(a) of the Policy, the Complainant has to show, on the balance of probabilities, that it had rights (and continues to have rights) in a mark that was confusingly similar to the domain name, prior to the date of registration of the disputed domain name.

19. The Domain Name was registered on November 16, 2016, therefore this is the earliest possible relevant date for this analysis.

20. A “Mark” is defined in paragraph 3.2(c) of the Policy as:

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

21. The Complainant has submitted evidence of its registration of the Trademark PYRAMYD AIR that was still active at the time of submitting the complaint. This application was filed on October 24, 2017 which is after the registration date of the Domain Name, but claims use in Canada since October 10, 1999. The Complainant has submitted the original Certificate of Registration of the Trademark and according to s. 54 of the *Trademarks Act*, R.S.C., 1985, c. T-13, a copy of any entry in the register purporting to be certified to be true by the Registrar is evidence of the facts set out therein. Therefore the panel finds that the Complainant has established that it had rights in the mark PYRAMYD AIR prior to the date of registration of the Domain Name, and continues to have these rights.

22. The Domain Name (apart from the .ca component) consists solely of the term PYRAMYDAIR, which is the same as the Complainant’s Trademark. Therefore, pursuant to paragraph 3.3 of the Policy, the panel finds that the Domain Name is confusingly similar to the mark PYRAMYD AIR as it so nearly resembles the Trademark in appearance, sound and in the idea suggested by the Trademark as to be likely to be mistaken for the Trademark.

### Bad Faith

23. The Complainant also has to prove, on the balance of probabilities, that the Domain Name was registered in bad faith. Paragraph 3.5 of the Policy deals with the grounds which constitute bad faith and these are not exhaustive; it is open to the panel to find other grounds which lead to a conclusion of bad faith conduct.

24. The Complainant argues that the Registrant’s conduct constitutes bad faith pursuant to paragraphs 3.5(c) and/or (d) of the Policy which state:

(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.

(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.

25. With regard to paragraph 3.5 (c) of the Policy, in order to succeed on this ground the Complainant has to prove, on the balance of probabilities, that the Registrant registered the Domain Name primarily for the purpose of disrupting the business of the Complainant, and the Complainant must be a competitor of the Registrant.

26. In this case the Registrant was contacted by the president of the Complainant in 2017 and admitted that the Domain Name had been purchased intentionally to reduce the threat to his business from a large company like the Complainant. Given the fact that the Domain Name is an exact replica of the Complainant's Trademark, which is distinctive since it is written in a unique spelling and the usual meaning of the word "pyramid" bears no relation to the services, it follows that the purpose in registering this particular Domain Name must have been to protect the Registrant's business specifically from the Complainant.

27. The fact that the Domain Name resolved to the Canada Shooting Supply website indicates that this is the business the Registrant was seeking to protect. Upon seeing this Domain Name which replicated the Complainant's Trademark, potential customers seeking the Complainant's business would likely assume that the website to which the Domain Name resolved was associated with the Complainant, and might do their online shopping there, which would have the effect of disrupting the Complainant's business. It has been established by the Complainant that Canada Shooting Supply is a competitor of the Complainant. The fact that the Domain Name no longer resolves to that website does not alter the analysis of the initial intention of the Registrant at the time the Domain Name was registered. Therefore the panel finds that the Complainant, on the balance of probabilities, has demonstrated that the Registrant registered the Domain Name in bad faith according to paragraph 3.5(c) of the Policy.

28. The Complainant also alleges that the Registrant has demonstrated bad faith pursuant to paragraph 3.5 (d) of the Policy. This required that the Registrant intentionally attempted to attract, for commercial gain, internet users to the Registrant's website by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website.

29. As mentioned before, the Registrant admitted to intentionally registering the Domain Name to assist its own commercial business. In addition, the fact that the Domain Name replicates the Trademark, which is distinctive, was likely to create confusion as to the source of the goods and services on the website to which this Domain Name used to resolve. The fact that the Domain Name utilizes the Complainant's Trademark means that potential customers would be likely to assume that the Registrant's website offered the Complainant's services, or was associated with the Complainant. Therefore, the panel finds that the Complainant has proven, on

the balance of probabilities, that the registration of the Domain Name was done in bad faith, as set out in paragraph 3.5(d) of the Policy.

### Legitimate Interest

30. In order to succeed the Complainant has to provide some evidence that the Registrant does not have a legitimate interest in the Domain Name. Paragraph 3.4 of the Policy lists six possible ways in which a Registrant may have a legitimate interest in a domain name which are as follows:

- (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.

This list is not exhaustive as it is said to be "without limitation". Therefore neither party is bound by only those criteria.

31. The Complainant has established that it has rights in the mark PYRAMYD AIR, which comprises the Domain Name, and the Registrant has not shown that it had any interest in this Trademark. In fact the Complainant states that at no time was the Registrant licensed or permitted to use the Trademark. Therefore there can be no legitimate interest under subsection (a). The term PYRAMYD AIR has not been used in good faith by the Registrant in association with any wares, services or business and the term is not clearly descriptive as referred to in subsection (b), nor is it a generic term, therefore subsection (c) does not apply either. There is no evidence that the Registrant has used the term in good faith for a non-commercial activity including, criticism, review or news reporting, so subsection (d) is not applicable. Finally, the

Domain Name is not the name of the Registrant nor is it the name of a geographic place, therefore neither subsections (e) or (f) apply.

32. The onus is on the Complainant to show “some evidence” that there is no legitimate interest. In this case, in addition to addressing each of the categories set out in paragraph 3.4, the Complainant has demonstrated that it owns a registration for the Trademark PYRAMYD AIR which forms the totality of the Domain Name, and that the Registrant was aware of this Trademark since it had been contacted by the Complainant and indicated that the registration of the Domain Name was done intentionally to assist the business of the Registrant. The purpose that the Registrant provided for registering the Domain Name does not create a legitimate interest. Therefore, the panel finds that the Complainant has provided some evidence that the Registrant does not have a legitimate interest in the Domain Name.

33. The Registrant has not rebutted the Complainant’s evidence with any evidence of its own, therefore he has not proven, on the balance of probabilities, that he has a legitimate interest in the Domain Name.

#### **I. Conclusion and Decision**

34. In conclusion, the panel finds that the Complainant has rights in the mark PYRAMYD AIR which predate the registration of the Domain Name. The panel also finds that the Domain Name is confusingly similar to the Complainant’s Trademark, that the Domain Name was registered in bad faith and that the Registrant has no legitimate interest in the Domain Name.

35. The panel therefore orders, pursuant to paragraph 4.3 of the Policy, that the registration of the Domain Name pyramydair.ca be transferred to the Complainant.

Dated: June 18, 2021

A handwritten signature in black ink, appearing to read "Sharon Groom", written over a horizontal line.

By: Sharon Groom (Sole Panellist)