

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

<b>Complainant:</b>	<b>LIBERTY PROCUREMENT CO. INC.</b>
<b>Registrant:</b>	ANTONIA OJO
<b>Panel:</b>	Barry C. Effler
<b>Service Provider:</b>	British Columbia International Commercial Arbitration Centre
<b>BCICAC File Number:</b>	DCA-2169-CIRA

**DECISION**

**The Parties, Domain Names and Registrar**

1. The Complainant is LIBERTY PROCUREMENT CO. INC., a New York corporation.
2. The Registrant is ANTONIA OJO, with an address in British Columbia, Canada.
3. The Domain Name at issue is **bedbathbeyond.ca**.
4. The Registrar is BareMetal.com Inc.
5. The Domain Name was registered by the Registrant on January 10, 2007.

**Procedural History**

6. The procedural history of this matter was set out in a letter from the British Columbia International Commercial Arbitration Centre to the Panel herein dated February 11, 2020:

1. On January 14, 2020 the above-named Complainant filed a Complaint pursuant to the CDRP and the Rules.

2. The CIRA department has been notified of this proceeding and has confirmed to BCICAC that the disputed domain was placed on a Registrar LOCK.

3. In a letter dated January 16, 2020, the Centre as Service Provider, confirmed compliance of the complaint and commencement of the dispute resolution process.

4. As the Complaint with the attachments was filed exclusively online; therefore, the Centre delivered the Complaint to the Registrant only by email.

5. The Complaint was successfully delivered to the Registrant on January 16, 2020. (delivery notification enclosed).

6. The Registrant has not provided a Response. As permitted given the absence of a Response, the Complainant has elected under Rule 6.5 to convert from a panel of three to a single arbitrator.

7. The Centre hereby appoints you, Barry C. Effler, C. Arb Fellow, as sole arbitrator in the above referenced matter.

7. As required by the Rules, I have declared to BCICAC that I can act impartially and independently in this matter as there are no circumstances known to me which would prevent me from so acting.

8. I am not aware of any other legal proceeding or other arbitration in relation to the Domain Name that would give rise, under paragraph 13 of the Rules, to a need to stay or terminate the progress of this proceeding.

#### Eligibility of Complainant

9. I have reviewed the material submitted by the Complainant and am satisfied that the Complainant is an eligible complainant under paragraph 1.4 of the Policy. It is the owner of a registered Canadian trade-mark in which the distinguishing word component of such trade-mark is within the Domain Name in dispute.

#### Relief Requested

10. The Complainant requests that the Domain Name be transferred from the Registrant to the Complainant.

#### Applicable Law

11. As directed by paragraph 12 of the Rules, I will render my decision based upon the rules and principles of the laws of Ontario, and the laws of Canada. The Complainant requested in the Complaint that the applicable law be that of Victoria, British Columbia.

12. I not able to grant this request for a change in the applicable law. In Rule 12 under the heading of “Applicable Law” is the following “. . . if a preference for the laws of another province or territory has been indicated by both parties, the laws of the other province or territory and, in any event, the laws of Canada applicable therein.”
13. The Rule requires the preference to be indicated “by both parties.” As the Registrant has chosen to not participate in this dispute resolution process, there is not a request from both sides. Accordingly, the applicable law shall be that of Ontario and Canada.

#### Background Facts

14. Background facts alleged by the Complainant and accepted by me as probative are summarized here from the Complaint:

The Complainant is the owner of several Canadian Trade-mark registrations upon which the Complaint is based on which include or incorporate the words BED BATH & BEYOND registered at the Canadian Intellectual Property Office (CIPO):

[i.] BED BATH & BEYOND, TMA450180, registered November 17, 1995 for Retail store services in the field of linen products, housewares, home furnishings, small electrical appliances, children's toys and books.

[ii.] BED BATH & BEYOND DESIGN, TMA449865, registered November 10, 1995 for Retail store services in the field of linen products, housewares, home furnishings, small electrical appliances, children's toys and books.

The Complainant has trademark rights based on use in Canada since at least as early as February 14, 1993, as indicated in the trademark registrations listed above.

The Complainant has not licensed, authorized, or permitted Registrant to register a domain name incorporating Complainant's Mark. Registrant is not sponsored by or legitimately affiliated with Complainant in any way. Complainant has not given Registrant permission to use Complainant's Mark in a domain name.

Registrant is using the disputed Domain Name to redirect unsuspecting Internet users to a parked page and generates revenue from third-party links, some of which directly compete with Complainant's business.

The Complainant owns the domain name BEDBATHANDBEYOND.CA, registered April 10, 2005.

Liberty Procurement Co. Inc., formerly Bed Bath & Beyond Procurement Co. Inc., is a wholly owned subsidiary of Bed Bath & Beyond Inc., which, was formed in 1971 and today operates a chain of domestic merchandise retail stores across United States, Puerto Rico and Canada. Complainant announced in December 2007 that it would open its first retail location in Richmond Hill, ON and currently has 62 retail locations throughout Canada in all ten provinces.

## Discussion and Findings

15. Rule paragraph 4.1 sets forth the onus on a complainant. It provides as follows:
16. The Policy provides a definition of the term “Mark” (but as amended no longer defines Rights):

3.2 **Mark.** A “Mark” is:

- (a) *a trade-mark, including the word elements of a design mark, or a trade name that has been used in Canada by a person, or the person’s predecessor in title, for the purpose of distinguishing the wares, services or business of that person or predecessor or a licensor of that person or predecessor from the wares, services or business of another person; ...*

17. The Complainant is the owner of a registered Canadian trade-mark in which the exact word component is included within the Domain Name. The Complainant established that it has rights in a trade-mark that was a “Mark” prior to the date on which the Domain Name was registered. The Bed Bath & Beyond trade-marks were all registered earlier than the January 10, 2007 date of registration of the Domain Name.
18. The relevant definition of “Mark” requires that a trade-mark be “used”. The term “use” is no longer defined in the Policy. As indicated in the Background Facts set out above, the Complainant has asserted use in Canada since as early as 1993. The Mark use continues to today, as evidenced by the currently open retail stores.
19. The Complainant therefore meets this requirement.

I am satisfied that the Domain Name is confusingly similar to the Complainant’s Mark. The relevant key words “Bed”, “Bath” and “Beyond” in the Domain Name are the same words as in the Mark, with the “&” symbol and spaces between the words omitted. These omissions do not affect the overall resemblance of the Domain Name to the Mark.

20. I am satisfied that the Complainant has established bad faith by the Registrant for the purposes of paragraphs 4.1 of the Policy by showing circumstances meeting paragraphs 3.5 (d) of the Policy.

Paragraph 3.5 of the Policy:

**3.5 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:*

...

*(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.*

The Complainant's evidence contained screen shots of the Registrant's website for bedbathbeyond.ca. It shows links to other business websites which include several selling competing products to those of the Complainant. The Complainant states it has no business relationship with the Registrant, see Background Facts, above.

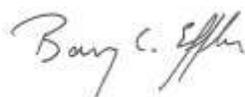
21. The use of the words "Bed", "Beyond" and "Beyond" on the Registrant's commercial website meets the circumstances outlined for bad faith in paragraph 3.5 (d) of the Policy. The Registrant has no business relationship with the Complainant and the Registrant's website is clearly attempting to profit from an implication that it is a website of the Complainant or an authorized dealer.
22. There is no evidence that any of the circumstances outlined in paragraph 3.4 of the Policy regarding legitimate interest apply and I am satisfied that the Registrant has no legitimate interest in the Domain Name.

23. I am satisfied that the Complainant has met the onus on it to succeed, as required by paragraph 4.1 of the Policy.

Order

24. For the reasons set forth above, I order the Domain Name in issue to be transferred to the Complainant.

Dated: March 3, 2020

A handwritten signature in black ink that reads "Barry C. Effler". The signature is written in a cursive style with a horizontal line at the end.

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Barry C. Effler, LL.B., LL.M., C. Arb. (Fellow)  
Sole Panellist