

THE
INSTITUTE *of*
ARBITRATORS & MEDIATORS
——
AUSTRALIA
.au Dispute Resolution Provider

ADMINISTRATIVE PANEL DECISION

Australian Drivers Rights Association

v.

Australian Dust Removalists Association

Reference: 2351

1. The Parties

- 1.1. The Complainant is the Australian Drivers Rights Association, PO Box 766, Claremont, WA 6010 ("Complainant").
- 1.2. The Respondent is the Australian Dust Removalists Association, 1 MacLaurin Parade, Roseville, NSW 2069 ("Respondent").

2. The Domain Name and Registrar

The domain name at issue is <adra.com.au> ("Domain Name"), currently registered by the Respondent. The Registrar is Melbourne IT (www.melbourneit.com.au).

3. Procedural History

From documentation provided to the Panel by the Dispute Resolution Provider the procedural history was determined as follows:

- 3.1. The Complaint was submitted to the Institute of Arbitrators & Mediators Australia (the "Dispute Resolution Provider") by the Complainant on 14 November 2002 for resolution under the rules of the .au Domain Administration Dispute Resolution Policy (the "Rules").
- 3.2. A copy of the Complaint was then sent by the Provider to the Respondent on 18 November 2002 and also copied to the Registrar.
- 3.3. The Respondent submitted his reply to the Dispute Resolution Provider on about 8 December 2002.
- 3.4. The Dispute Resolution Provider appointed Dr John Brydon [the undersigned] as the sole panelist in this matter on 18 December 2002.
- 3.5. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Dispute Resolution Provider in compliance with paragraph 7 of the Rules.
- 3.6. The Panel finds that the Complaint complies with the requirements of the .au Domain Administration Dispute Resolution Policy, its Rules and the Supplemental Rules of the Dispute Resolution Provider.

4. Factual Background

From the evidence provided by the Parties the Panel finds the following facts:

- 4.1. The Complainant is a lobbying and interest group for Australian motorists and has been active since about September 1998.

- 4.2. The Respondent is an industry association for Australian dust removalists and has been active since about 1999.
- 4.3. Prior to about July 2002 the Complainant, through intermediary, Hospitality and Gaming Investments Challenge Pty Ltd, was the licensee of the Domain Name.
- 4.4. In about July 2002 renewal of the Domain Name license became due.
- 4.5. The Domain Name was not renewed by the Complainant and was subsequently made available to the public.
- 4.6. The Respondent registered the Domain Name in August 2002.

5. RELIEF SOUGHT

- 5.1. The Complainant requests that the Domain Name be transferred from the Respondent to the Complainant.

6. PARTIES' CONTENTIONS

Complainant

- 6.1. The Complainant stated that he was the registered owner of the Domain Name from 21 July 1998 to July 2002 when it came up for renewal. He affirmed that during this period the web site based on the Domain Name was actively used to maintain contact with the members of his association and with government and that he had spent "tens of thousands of dollars" on the Domain Name identity.
- 6.2. He asserted that he instructed Internet Registrations Australia to renew registration on 23 May 2002 but that they failed to do so and that the renewal consequently lapsed in July 2002.
- 6.3. In about September 2002 the Complainant became aware that the Domain Name had been registered by the Respondent.
- 6.4. The Complainant claims:
 - 6.4.1. that the Domain Name has been registered by the Respondent to prevent him from using his "well known" web site
 - 6.4.2. that the Respondent requested \$30,000 to transfer the site back to him, this sum being well in excess of out-of-pocket expenses directly related to the Domain Name
- 6.5. The Complainant further asserted that the Respondent was offered 2 free websites for 2 years with free hosting to relinquish the site.
- 6.6. The Complainant seeks to have the Domain Name transferred to him as soon as possible.

Respondent

- 6.7. The Respondent stated that he registered the Domain Name through Melbourne IT in good faith and checked that the Domain Name was "free and unencumbered".
- 6.8. He asserted that in anticipation of operating a website based on the Domain Name he had prepared and widely distributed literature bearing its name to councils and government department libraries in New South Wales.
- 6.9. The Respondent refuted the Claimant's allegation that he had registered the Domain Name to prevent the Claimant from using his site, asserting that the name of the Respondent, the Australian Dust Removalists Association, was chosen in 1999, that the Domain Name was an obvious acronym of its title and that he was unaware of the existence of the Complainant's association prior to this dispute.
- 6.10. The Respondent acknowledged he had been offered 2 free websites for 2 years with free hosting to relinquish the site back to the Complainant but says he rejected it because it only covered "a fraction" of his expenses. The Respondent claimed that the previously mentioned \$30,000 figure was an "off the cuff" figure of fair

compensation for the preparatory work involved, that the actual expenses had not been documented but were believed justifiable. Further, the Respondent stated that it was not his intention or preference to sell the Domain Name because of the time and cost inconvenience and also because the name was "perfect" for his association.

- 6.11. The Respondent stated that he would be happy to put on his web site home page a prominent link to a new web-address of the Complainant.
- 6.12. The Respondent seeks restoration of his suspended rights to the Domain Name as early as possible.

7. Discussion

The rules governing the resolution of this dispute include the following:

- 7.1. Section 4(a) of Schedule A requires a successful Complainant to prove all of the following:
 - 7.1.1. the domain name in question is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, *and*
 - 7.1.2. the Respondent has no rights or legitimate interests in respect of the domain name, *and*
 - 7.1.3. the domain name in question has been registered or subsequently used in bad faith.
- 7.2. In Section 4(b) the following are deemed, non-exhaustively, to be evidence of registration or use in bad faith:
 - 7.2.1. circumstances indicating that the domain name has been registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to another person for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name, *or*
 - 7.2.2. the domain name has been registered in order to prevent the owner of a name, trademark or service mark from reflecting that name or mark in a corresponding domain name, *or*
 - 7.2.3. the domain name has been registered primarily for the purpose of disrupting the business or activities of another person; or the domain name has been used to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that website or location or of a product or service on that website or location.
- 7.3. Section 4(c) states that, in responding to a complaint, rights to and legitimate interest in a domain name may be demonstrated by a Respondent evidencing *one* of the following, non-exhaustive, situations:
 - 7.3.1. before any notice of the subject matter of the dispute, *bona fide* use, or demonstrable preparations were made to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names acquired for the purpose of selling, renting or otherwise transferring), *or*
 - 7.3.2. he (as an individual, business, or other organisation) has been commonly known by the domain name, even if he has acquired no trademark or service mark rights, *or*
 - 7.3.3. he is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the name, trademark or service mark at issue.

8. Findings

- 8.1. The Domain Name, <adra.com.au>, is substantially identical to the name, ADRA, to which the Complainant has rights.
- 8.2. The Respondent, ADRA, however, also has a legitimate interest in the Domain Name in that prior to notice of the current dispute the name was being used by the Respondent in connection with an offering of services other than the purpose of selling, renting or otherwise transferring domain names.
- 8.3. Also, the Panel finds that the registration of the Domain Name by the Respondent was not in bad faith. In particular:
 - 8.3.1. No substantial evidence was presented of the Domain Name being registered or acquired primarily for the purpose of selling, renting, or otherwise transferring its registration to another person for valuable consideration.
 - 8.3.2. No substantial evidence was presented that the Domain Name has been registered in order to prevent the Complainant from reflecting his name or mark in a corresponding domain name.
 - 8.3.3. No substantial evidence was presented that the Domain Name has been registered primarily for the purpose of disrupting the business or activities of the Complainant or that the Domain Name has been used to intentionally attempt to attract Internet users to a website or other online location, by creating a likelihood of confusion with the Complainant's name.
- 8.4. While it is noted that the Complainant's former registrar, Internet Registrations Australia, appears not to have acceded to his request in May 2002 to renew his registration of the Domain Name, thereby allowing it to lapse, the Panel does not find this a relevant reason, under the Rules, for the Domain Name to be returned to the Complainant.

9. Decision

- 9.1. The Panel finds that the three elements required by abovementioned Section 4(a) of Schedule A of the Rules were not all proven. The Complainant's request for relief is consequently denied.
- 9.2. It is therefore ordered that the license for Domain Name, <adra.com.au>, remain the property of the Respondent.

Dr John Brydon

Sole Panelist

Date: 3 January 2003