

**.au Dispute Resolution Policy – Administrative Panel Decision**

**jjdavies.com.au**

**JJ Davies & Sons Pty Ltd v Australian Felt Specialists Pty Ltd**

**Reference: 2864**

**Parties**

1. The Complainant in this dispute is JJ Davies and Sons Pty Ltd ACN 073 542 686 of 1299 North Road, HUNTINGDALE VIC 3167.
2. The Respondent in this dispute is Australia Felt Specialists Pty Ltd ACN 007 037 523 of 8 Roger Court, NUNAWADING VIC 3131.
3. The Registrar is Melbourne IT.
4. The Provider is the Institute of Arbitrators & Mediators Australia of Level 1, 190 Queens Street, Melbourne Victoria.
5. The Sole Panellist is Steve White of Suite 1601, 1 William Street, Melbourne.
6. The Domain Name is jjdavies.com.au (“the Domain Name”)

**Procedural History**

7. On 17 August 2005 the Complainant requested a decision in accordance with the .au Dispute Policy and the .au DRP rules.
8. On 29 August 2005 the Provider sent to the Respondent by post and by email (colin@felt.com.au) a copy of the complaint.
9. No response was received from the Respondent.

**Findings**

10. The Complainant asserts in its complaint:
  - (a) The domain name registered by the Respondent is identical to the identifying feature of the Complainant's name and is thus deceptive and confusingly similar to the name under which the Complainant carries on business;
  - (b) The Respondent has no right or legitimate interest in the domain name and its only connection with the name is that a director and shareholder of the Respondent was formerly an employee of the Complainant
  - (c) The Complainant is the Respondents major competitor in the felt distribution business;
  - (d) The Respondent has registered the domain name in bad faith:
    - (i) in order to prevent the Complainant from using its name as a domain name
    - (ii) for the purpose of disrupting or limiting the business activities of the Complainant

- (e) The Respondent has warranted to the relevant domain name registrar that it has a close and substantial connection with the domain name, in that the domain name refers to a product which the Respondent sells. The Respondent sells no product bearing the name 'JJ Davies' and if it did would be engaging in passing off and misleading and deceptive conduct in using in this fashion the name of the Complainant, which is a well known and long established name in the felt distribution business;
  - (f) Subsequent to the registration of the domain name, the Respondent registered under the Business Names Act 1962 a business name 'JJDaviesfelt' with the intention of supporting the domain name registration; and
  - (g) The Respondent does not carry on business under that name and could not do so without engaging in passing off and misleading and deceptive conduct.
11. I find that in the absence of any material in reply that the Complainant has discharged its burden of proof that
- (a) the Respondent is subject to the .au Dispute Resolution Policy ("auDRP") by reason of:
    - (i) the agreement entered into by it with the Registrar; and
    - (ii) the domain name being a sub-domain of the .com.au domain to which the auDRP applies;
  - (b) the Respondent is subject to mandatory administrative proceeding in accordance with the Schedule A, clause 4(a) of Schedule A of the auDRP;
  - (c) the Domain Name is identical or similar to a name , JJ Davies, in which the Complainant has rights;
  - (d) the Respondent has no rights or legitimate interests in respect of the Domain Name;
  - (e) the Domain Name has been registered in bad faith:
    - (i) in order to prevent the Complainant registering that Domain Name;
    - (ii) the Domain Name has been registered primarily for the purpose of disrupting the business activities of the Complainant.

#### **Orders**

12. In accordance with paragraph 4(i) of Schedule A of the auDRP I order that the domain name registration for jjdavies.com.au be transferred to the Complainant.

Steve White  
Sole Panellist

20 October 2005