



**Lieblich
& Associates**
Innovative Technology Business Catalysts

Decision in a Mandatory Administrative Proceeding
Under
.au Dispute resolution Policy No. 2008-01, published 1/3/2008

DATE	23 May 2008
CASE NUMBER	3160
PANELLIST	Steve Lieblich



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1 Decision

In accordance with Rules p15 I render the following decision on 23 May 2008.

The domain name www.clearvision.com.au, registered to the Respondent, shall be transferred to the Complainant, because the Complainant has shown that the dispute is subject to the provisions of the Policy, and the Respondent has not shown otherwise.

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Signed by Steve Lieblich
Panellist
23 May 2008

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2 Definitions

In this Decision the following words and phrases shall, subject to the .au Dispute Resolution Policy No. 2008-01, have the meanings given to them as follows:

word or phrase	meaning
“auDRP”	the .au Dispute Resolution Policy No. 2008-01.
“Complainant”	the person described in section 5.2 below.
“Complaint”	the document described in section 5.6.1 below.
“Domain Name”	the domain name described in section 5.5.1 below
“License”	the license for the domain name described in section 5.5.1 below.
[n]	refers to a document, where “n” is the document number listed in section 5.6 Reference Documents.
“Party”	the Complainant or the Respondent
“Policy”	the .au Dispute Resolution Policy No. 2008-01.
“Provider”	means the person described in 5.2 below.
“p<n>”	refers to paragraph <n> of the Policy Schedule A or B, where “<n>” is the number of the paragraph.
“Respondent”	the person described in section 0 below.
“Response”	the document described in section 0 below.
“Rules”	Schedule B of the Policy
“Schedule B”	Schedule B of the Policy
“Schedule A”	Schedule A of the Policy
“IAMA Supplemental Rules”	The Supplemental Rules to the Policy, as published on the Institute of Arbitrators and Mediators Australia web site.
“s<n>”	refers to section <n> of the Policy, where “<n>” is the number of the section.



3 Application of the auDRP

3.1 License

Neither Party denies that the License is a 2LD license that was issued or renewed after 1 August 2002 in accordance with s2.2

3.2 Dispute

By “seeking resolution of the situation of a domain name...” [5.6.1.1] under the auDRP, the Complainant contends that the domain name dispute meets the requirements of s2.2. Specifically, S2.2 refers to Policy Schedule A p4(a) and requires that each of the following conditions shall be met.

- (i) **The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights.** In this instance, the Domain Name www.clearvision.com.au is identical or confusingly similar to the Business Name “Clear Vision Laser Clinic” a Business Name which the Complainant has registered with the WA Department of Consumer & Employment Protection [5.6.1.2]
- (ii) **The Respondent has no rights or legitimate interests in respect of the Domain Name.** The Respondent has claimed no such rights except to note that it “was properly and legally obtained ...and had the required necessary connection to our product offering under AUDA rules” [5.6.6]. However for the purposes of the Policy, auDA has determined that “rights or legitimate interests in respect of the domain name” are not established merely by a registrar's determination that the Respondent satisfied the relevant eligibility criteria for the domain name at the time of registration. Respondent offers no other evidence of any similarity of the Domain Name with its company, business or other legal or trading name, as registered with the relevant Australian government authority; or any personal name associated with the Respondent.
- (iii) **The Domain Name has been registered or subsequently used in bad faith.** The Complainant contends that the Domain Name “remains unused and is forwarded / linked to their website www.lasik.com.au” [5.6.1.1]. Respondent has said that it “has been used in the past as a search driven landing page...” and “is currently not in use as a distinctive URL but has paid search driven by it ...” [5.6.6]. The Respondent thus verifies that the Domain Name is used to attract traffic searching for terms similar to “clearvision” or “clear vision”, and describes no other use of the URL.

In response to my letter of Inquiry [5.6.4], the Complainant states that he is “not aware of...” the dispute being subject to another action [s2.3]. The Respondent does not claim that it is.



4 Mandatory Administrative Procedure

4.1 Complaint

Neither Party denies that the Complaint was prepared and served on the Provider on 16 April 2008 in accordance with s4, viz. in accordance with s4.2 (including Rules p3) and the Provider's Supplemental Rules.

4.2 Notification of Complaint

The Provider forwarded the complaint to the Respondent, in the manner prescribed by Rules p2(a), on 16 April 2008, being within three (3) calendar days following receipt of the fees to be paid by the Complainant in accordance with Rules p19, and thus, in accordance with Rules p4(c), the 16 April 2008 is the date of commencement of the administrative proceeding.

4.3 Response

The Response was not received by the Provider, in accordance with Rules p5(a), on 6 May 2008, being no later than twenty (20) days after the date of commencement of the administrative proceeding.

Thus I am making this Decision in the absence of any Response to the Complaint from the Respondent, in accordance with Rules p5(e).

4.4 Appointment of Panel

The Provider appointed me as Panellist in this matter, in accordance with Rules p6(b), on 9 May 2008, being within five (5) calendar days following 6 May 2008, the lapse of the time period for the submission of the response.

4.5 Letter of Inquiry

In accordance with the Rules p10, I issued a letter of inquiry to the parties [5.6.4] inviting their responses by 16 May 2008. The Complainant responded on 13 May [5.6.5]. The Respondent responded partially on 14 May, advising that he was awaiting further advice before responding in full on [5.6.6] then again, partially, on 16 May [5.6.7].

4.6 Impartiality and Independence

I know of no circumstances giving rise to justifiable doubt as to my impartiality or independence in this matter.

Neither party has claimed that there are any circumstances giving rise to justifiable doubt as to my impartiality or independence in this matter.



5 Particular Information in the Matter

NB Some information in this section of the Decision may not be suitable for publication, for reasons of privacy.

5.1 Case Number

Case Number 3160

5.2 Provider

Institute of Arbitrators and Mediators (IAMA)

5.3 Complainant

Clear Vision Laser Clinic,
160B Cambridge St,
West Leederville, WA 6007
Email: eyes@visionclinic.com.au
Attn: Mr Michael English

5.4 Respondent

Laser Sight Centres Australasia Pty Ltd,
Ground Floor, 35 Astor Terrace,
Spring Hill, QLD, 4004
Email: yhutchins@lsca.com.au
Attn: Ms Yvonne Hutchins

5.5 Domain Name

5.5.1 Domain name

www.clearvision.com.au

5.5.2 Registrant

The Respondent

5.5.3 Registration Date

(not provided)

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5.6 Reference Documents

5.6.1 Email from IAMA, dated 1/4/08

Email from IAMA Trust Administrator, with attached facsimile containing a copy of the following

5.6.1.1 Letter from the Complainant to IAMA, CEO dated 1 April 2008

5.6.1.2 Certificate of registration of Business Name "Clear Vision Laser Clinic", dated 31 October 2005

5.6.1.3 Certificate of registration of Business Name "Cambridge Eye Clinic", dated 31 August 1994

5.6.1.4 Printout of Whois Domain search of "clearvision.com.au"

5.6.1.5 Letter from the Complainant to Respondent dated 18 December 2007

5.6.1.6 Letter from the Complainant to IAMA CEO dated 13 February 2007

5.6.1.7 Printout of Whois Domain search of "visionclinic.com.au"

5.6.1.8 Copy of IAMA Supplemental Rules to auDRP

5.6.1.9 Email from the Complainant to IAMA NSW dated 5 February 2007

5.6.2 Letter from IAMA to Respondent dated 16 April

Letter advising receipt of complaint, commencement of administrative proceeding and inviting response.

5.6.3 Letter from IAMA to Panellist dated 9 May

Letter advising receipt of complaint, nomination of panellist, etc and providing copy of complaint documents (all included in item 5.6.1 above)

5.6.4 Letter of Inquiry from Panellist to Parties dated 13 May 2008

Letter advising nomination of panellist, and requesting further information.

5.6.5 Letter from Complainant dated 13 May 2008, in response to Panellist's letter of Inquiry.

5.6.6 Email dated 14 May 2008 from Respondent to Panellist

Letter responding to Panellist's letter of inquiry, advising that respondent is awaiting advice and attaching copy of a response to IAMA "posted 7/5/08" in response to the Complaint.

5.6.7 Email dated 16 May 2008 from Respondent

Email advises that Respondent is not in a position to respond to Panellist's Letter of Inquiry.