



.au Dispute Resolution Provider

## ADMINISTRATIVE PANEL DECISION

**Mr. Tim (Hatem) Shatim v. Dr. Douglas Ralph Morris**

**Case No. auDRP 01/03**

### **1. The Parties**

The Complainant is Mr. Tim (Hatem) Shatim of Shop 14, Woodcroft Town Centre, Cnr. Bains Road & Panalatinga, Woodcroft, South Australia 5162.

The Respondent is Dr. Douglas Ralph Morris of Unit 30, 1 Millennium Circuit, Caloundra, Queensland 4551.

### **2. The Domain Names and Registrar**

The disputed domain names are <cigarettes.com.au> and <tobacco.com.au>. The registrar is auDA.

### **3. Procedural History**

This is an administrative proceeding pursuant to the .au Dispute Resolution Policy (“auDRP”) adopted by auDA on 13 August 2001, which commenced operation on 1 August 2002; the auDA Rules for .au Dispute Resolution Policy (“auDRP Rules”) and the LEADR Supplemental Rules to Rules for .au Domain Name Dispute Resolution Policy (“LEADR Supplemental Rules”).

The Complaint was lodged with LEADR on 17 February 2003. That day receipt was acknowledged and a copy of the Complaint was mailed to Respondent by LEADR, which also informed the registrar of the Complaint. On 18 February 2003 the registrar locked the disputed domain names for the period of the determination. The Response was lodged with LEADR by email on 5 March 2003 and in hard copy on 7 March 2003. The Panelist was appointed on 10 March 2003 having provided orally a statement of acceptance and of impartiality, which the Panelist confirmed in writing on 14 March 2003.

#### **4. Factual Background**

The Complainant has worked in the cigarettes industry since 1994. As a director of Shahin Investments Pty Ltd, the trustee for the Hatem Shatim Family Trust, he owns and operates a tobacconist business at Woodcroft Town Centre, South Australia, under the registered business name Smokemart Woodcroft. There are over 150 Smokemart stores across Australia, all of which are family owned.

On 13 February 2003, the Complainant registered a proprietary company called E-Australia Consortium Pty Ltd.

The Respondent is a medical practitioner in Queensland and a director of a proprietary company called Pelican Road Pty Ltd, which was registered on 1 July 2002.

In April 2001 the Complainant attempted unsuccessfully to register the domain names <tobacco-tobacco.com.au> and <cigarettes-cigarettes.com.au>. The registrations were denied because, at the time, generic names were not accepted for registration in the .au domain. This policy changed with the publication by auDA on 8 May 2002 of its “Domain Name Eligibility and Allocation Policy Rules for Open Second Level Domains” (Policy No: 2002-07) (“the eligibility policy”), following which the domain name <cigarettes.com.au> was registered in the name of the Respondent and the domain name <tobacco.com.au> was registered in the name of Pelican Road Pty Ltd.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The sole purpose of E-Australia Consortium Pty Ltd is selling tobacco and cigarettes on the internet. Approval has been sought from the ATO for exemption from excise on cigarettes sold on the internet.

Pelican Road Pty Ltd has no involvement with the tobacco industry in Australia nor involvement with the resale of tobacco products. The disputed domain names have not been used since they were registered, shortly after the new regulations were put in place.

Pelican Road Pty Ltd is in breach of Australian domain name policies, specifically paragraphs 2A, 2B and 2C of the eligibility policy. The disputed domain names should be de-registered and made available for re-registration to be used for commercial purposes.

##### **B. Respondent**

Pelican Road Pty Ltd was established in July 2002 with a view to involvement in various internet-based e-commerce businesses, including building websites to

provide both health related information concerning cigarettes and tobacco and online sale of tobacco. The disputed domain names were registered on behalf of Pelican Road Pty Ltd. The Respondent is currently designing websites to be hosted at those addresses. He has registered over the past 2 years other tobacco-related domain names in other countries.

Accordingly the eligibility criteria have been met and the disputed domain name registrations, having been registered on a first-come-first-served basis for commercial purposes, should be retained.

## **6. Discussion and Findings**

### Procedural issue

Although the domain name <tobacco.com.au> is registered in the name of Pelican Road Pty Ltd, the Respondent has addressed both disputed domain names in his Response. Having regard to the view that the Panel has formed that these proceedings are misconceived, the failure of the Complaint to name Pelican Road Pty Ltd as a Respondent is of no consequence.

### Substantive issues

This Complaint must be regarded as having been brought under the auDRP: the Complaint included a completed “LEADR Domain Name Dispute Complaint Form” in accordance with Appendix A to the LEADR Supplemental Rules, which relate expressly to the auDRP.

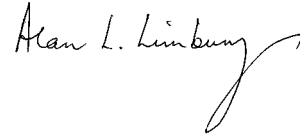
The auDRP applies only to disputes in which a complainant asserts that a disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights; that the registrant has no rights or legitimate interests in respect of the domain name and that the domain name has been registered or subsequently used in bad faith: auDRP paragraph 4(a).

The Complainant does not assert that either of the disputed domain names is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights. On the material provided to the Panel there is no basis on which any such contention could be upheld. Accordingly this Complaint must fail.

Clearly the issue between the parties is whether the Respondent has complied with the eligibility requirements of paragraphs 2(a), 2(b) or 2(c) of Schedule C to the eligibility policy, relating to com.au. That issue cannot be resolved in an administrative proceeding under the auDRP but rather under the auDA Complaints (Registrant Eligibility) Policy published on 27 August 2002 (Policy No: 2002-25).

**7. Decision**

Pursuant to auDRP Rule 15(e), the Panel finds that the dispute is not within paragraph 4(a) of the auDRP and accordingly the Complaint is denied.

A handwritten signature in black ink that reads "Alan L. Limbury". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

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Alan L. Limbury  
Panelist

Dated: 16 March 2003