

ADMINISTRATIVE PANEL DECISION

Ampol Management Services Pte. Ltd. v. Australia Online Case No. D2022-3942

1. The Parties

The Complainant is Ampol Management Services Pte. Ltd., Singapore, represented by McCullough Robertson Lawyers, Australia.

The Respondent is Australia Online, United States of America (“United States”), represented by Arthur R. Lehman L.L.C., United States.

2. The Domain Name and Registrar

The disputed domain name <ampol.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 21, 2022. On October 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 24, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 31, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 4, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 28, 2022. On November 25, 2022, the Respondent requested an extension of time to submit Response and the due date for Response was extended until December 2, 2022. The Response was filed with the Center on December 2, 2022.

The Center appointed Steven A. Maier as the sole panelist in this matter on December 22, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The named Complainant is a subsidiary of an Australian registered company named Ampol Australia Petroleum Pty Limited, which is itself a subsidiary of a company named Ampol Limited. These entities are collectively referred to as the Complainant in the remainder of this Decision. The Complainant is a petroleum company headquartered in Sydney, Australia.

The Complainant is the registrant of numerous trademarks which comprise or include the name AMPOL. Those registrations include:

- Australia trademark registration number 77845 for the word mark AMPOL, registered from March 27, 1941, in International Classes 1, 3, 4, and 5.
- Australia trademark registration number 93510 for the word mark AMPOL, registered from November 21, 1947, in International Class 4.

While the Complainant owns a variety of other word and figurative marks comprising or including the name AMPOL, including United States and International trademarks, the vast majority of these were registered after the date of registration of the disputed domain name and are therefore of limited significance in that respect.

The Complainant operates a website at “www.ampol.com.au”, which it states has functioned since at least December 27, 1996.

The disputed domain name was registered on July 25, 1996.

According to evidence submitted by the Complainant by way of screenshots from the “Wayback Machine”, the disputed domain name has resolved at various times to content including the following:

- On December 3, 1998, to a website headed “Welcome to Australia Online!!! The Australian Magazine on the Internet”. The website included links to “Travel”, “News”, “Sport”, and “Contact Us”, and also the logos of a number of commercial providers including Qantas, Telegroup, and Austravel.
- On October 4, 2006, to a page headed “Related Categories” and apparently containing links to “Petroleum”, “Mobil Gas Stations”, “Exxon Mobil Credit Card”, “Sunoco Stations”, and other similar links.
- On June 30, 2007, to a Network Solutions parking page stating “This site is under construction” and including links to a variety of third-party providers.
- On February 4, 2016, to an incomplete webpage bearing the name “ampol.com” and featuring a green and black design together with some partial images of a microphone and guitars.

5. Parties’ Contentions

A. Complainant

The Complainant states that it is listed on the Australian stock exchange and is the nation’s leader in transport fuels, having the largest branded petroleum share in Australia. It states that its activities also

extend to Singapore, the United States, New Zealand and the Philippines. The Complainant claims earnings of over 631 million dollars in 2021 (although it is not clear whether these are Australian or United States dollars). It claims currently to provide over 1,900 branded sites and other facilities supplying fuel to over 80,000 customers across Australia.

The Complainant submits that AMPOL is an invented name which has been used since 1936, originally by its predecessor, Australian Motorists Petrol Company, which was also known as AMPOL and changed its name to Ampol Petroleum Limited the following year. The Complainant traces its corporate history including a merger with another company, Caltex, in 1995, following which it states it continued to use the AMPOL mark in conjunction with the Caltex brand. It states that the Caltex name ceased to be used in 2020 with relevant assets being rebranded with the AMPOL mark.

The Complainant submits evidence of its business history and profile, including extracts from corporate reports branded AMPOL dating back to the 1940s and media coverage mentioning the AMPOL name.

The Complainant submits that, as a result of its long history and business profile under the AMPOL mark, that mark has obtained the status of a well-known and distinctive trademark both in Australia and internationally, and has become a household name.

The Complainant submits that the disputed domain name is identical to its AMPOL trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has not licensed the Respondent to use its AMPOL trademark, that the Respondent has no independent trademark rights in that name and that it has not been commonly known by the disputed domain name. The Complainant submits that its trademark AMPOL has no common or descriptive meaning and that the Respondent can have had no motivation for choosing that name to promote its goods or services otherwise than to create an association with the Complainant. It contends that the Respondent has used the disputed domain name for the purpose of promoting its own "Australia Online" website, located at "www.australia-online.com", for commercial gain. It further submits that (apart from the partial webpage available in 2016 as mentioned above) the disputed domain name has been inactive since 2007.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant submits in particular that AMPOL is an iconic Australian trademark which dates back to 1941 and that the Respondent must have been aware of that trademark when registering the disputed domain name.

In addition to its contention that the Respondent has used the disputed domain name to redirect to the "Australia Online" website, the Complainant also submits that the Respondent registered the disputed domain name primarily for the purpose of selling it to the Complainant for valuable consideration in excess of its out-of-pocket costs directly associated with the disputed domain name (paragraph 4(b)(i) of the Policy). In support of this contention, the Complainant provides evidence that it anonymously approached the Respondent in 2020, through a domain name broker, offering to purchase the disputed domain name for AUD 5,000 and then AUD 10,000. The Complainant exhibits correspondence with the broker, who reports that the Respondent was initially unresponsive but later replied that it was not interested in a sale. After some further discussion, however, the Respondent apparently said that if it were to reconsider its position there would need to be a six-figure offer. The Complainant concludes that the Respondent has been passively holding the disputed domain name and waiting for the Complainant to make an offer for it.

The Complainant also refers to a decision under the UDRP in the case of *Elders Limited v. Australia Online*, WIPO Case No. [D2007-1027](#), in which it submits that the same Respondent was found to have registered another domain name in bad faith.

The Complainant submits in addition that the Respondent has attempted to hide its identity behind a privacy service, which is further evidence of bad faith.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent submits that it registered the disputed domain name before the Complainant registered its domain name <ampol.com.au> and was therefore the first to file any domain name including the name AMPOL.

The Respondent contends that the Complainant's trademark AMPOL was virtually unknown in the United States in 1996 and was not a household name, whether then or now. It adds that it is "without information or belief as to the non-US trademarks allegedly owned by Complainant". The Respondent notes that the Complainant offers no evidence of its sales revenues or advertising expenditure in the United States at the material time.

The Respondent submits that the name AMPOL is "widely used" in the United States including, without limitation, in the following instances:

- by American Pollution Control Corporation, a Louisiana-based corporation established in 1993, which registered the domain name <ampol.net> in December 1997.
- by Ampol Group International Limited, an Illinois-based corporation, which registered the domain name <ampolgroup.com> in April 2012.
- by Am-Pol Eagle, a periodical publication aimed at the American-Polish community, which registered the domain name <ampoleagle.com> in November 2006.

While the Respondent concedes that the term AMPOL as used in the disputed domain name is identical to the Complainant's trademark, it denies that it is confusingly similar to that trademark owing to the prevalence of other uses of the AMPOL name. The Respondent adds that the Complainant has provided no evidence of actual confusion, and also that the Respondent's own website was not generally available to the public as further explained below.

The Respondent contends that it has rights or legitimate interests in respect of the disputed domain name by virtue of having used it, initially, as a document repository for information of interest to "the Australia Online community", including for example school reunion pages, births, children, driving directions for events and personal family usage. The Respondent states that the website was not publicly accessible and that its use for sub-directories (e.g., "www.ampol.com/xxx/yyy/zz") was notified to users by email in 1999.

The Respondent denies that it has used the disputed domain name to redirect to or promote its "Australia Online" website. It states that the disputed domain name briefly redirected to that site between December 1998 and February 1999 owing to a programming error that was quickly corrected. The Respondent states that it did not control the Network Solutions landing page which appeared in 2007 and that it has no knowledge of the material which appeared on the website in 2016.

The Respondent states that it used the disputed domain name "as a means to communicate materials of interest to the Australia Online community" and submits that its use of the disputed domain name for a document repository was noncommercial, did not obstruct the Complainant's use of its own website, and did not confuse members of the public. It states that its activities constituted a *bona fide* offering of goods or services and were not covered by any national trademarks registered by the Complainant.

The Respondent further submits that it planned to use the disputed domain name for commercial purposes upon its principal retiring from his position as a financial services executive. The Respondent states that the plans were not well-developed but were referred to in third-party correspondence in 2015 and 2016 concerning the disputed domain name. The Respondent exhibits communications including an email dated December 15, 2015, which says:

“Thank you for your continued interest in ampol.com.

We continue to work on our business and are increasingly confident that we have a strong offer for our target markets around the world.

I am not able to nominate a number that we would sell the domain name for, as the name is intrinsically linked to our product platform.

It is entirely up to you should you wish to make an offer to us, however I need to make plain that we are not traders or squatters of domain names, and in that context the offer would need to represent a return to us on the time and investment we have made to date. It is a substantial figure.

I understand that it’s difficult for you to make an offer without clear price parameters, however given the commercial in confidence nature of our business I am not able to offer you any guidance.

In no way should this email be interpreted as an invitation to make an offer; nor should it be interpreted as an expression of interest to sell ampol.com.

We cannot prevent you making an offer to us but will not feel under any obligation to respond.”

The Respondent also exhibits an email dated October 12, 2016, stating:

“We currently have plans for the domain and have invested a lot of time and assets developing those plans.

We have no plans to sell the domain but will consider any offer put to us. We have had numerous interested parties approach us over the years but as we have plans for the domain we did not engage with their offers.”

The Respondent denies that the disputed domain name was registered or has been used in bad faith and contends that the Complainant has offered no meaningful, non-conclusory evidence in this regard.

The Respondent denies that it has ever sought to hide its identity and contact information. It states that these details were available until it initiated a privacy service in 2018 or 2019 in order to limit junk communications.

The Respondent denies that it registered the disputed domain name for the purpose of selling it to the Complainant (or a competitor) for valuable consideration in excess of its out-of-pocket costs directly related to the disputed domain name. It states that the Complainant has made only a “boilerplate” allegation in this regard, without supporting evidence, and that the Respondent has in fact rejected all enquiries to purchase the disputed domain name since its registration. It points to the Complainant’s own anonymous efforts to buy the disputed domain name via a “stealth buyer” and its rejection of the offers so received.

The Respondent however accepts that, while it has never solicited a sale of the disputed domain name, it has agreed to review offers and reconsider its position for the right price. It submits that an offer to sell a domain name for a high price in response to an enquiry is not of itself evidence of bad faith (see *e.g.*, *Barlow Lyde & Gilbert v. The Business Law Group*, WIPO Case No. [D2005-0493](#)).

The Respondent denies that the *Elders Limited* case cited by the Complainant is relevant to this matter. It states that it did not receive notification of that proceeding and the finding against it was therefore a “default” decision. It adds that it subsequently commenced United States court proceedings against the complainant in that case claiming Reverse Domain Name Hijacking (“RDNH”) and that that case was settled. The Respondent further submits that, in any event, one adverse finding would not constitute a “pattern” of trademark-abusive registrations and that every case must be decided on its own merits.

The Respondent points out that the disputed domain name was registered some 26 years ago and states that this proceeding is the first indication in that period of any objection by the Complainant to that

registration. It states that, having registered its own <ampol.com.au> domain name in 1996, and having made various approaches to the Respondent over the years to purchase the disputed domain name, the Complainant must have been aware of the registration. It contends that, in these circumstances, the Complainant's failure to object should be viewed as acquiescence in the Respondent's use of the disputed domain name.

The Respondent submits in conclusion that the Complainant cannot meet the burden of establishing that the disputed domain name was both registered and has been used in bad faith. It reiterates in particular that the Complainant has failed to tender any facts in support of the allegation of registration in bad faith.

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established that it has registered trademark rights in respect of the mark AMPOL.

The disputed domain name is identical to that trademark and the Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

As a preliminary matter, the Respondent asserts that the name AMPOL is "widely used" in the United States. However, its evidence in support of that assertion includes only one entity which was in existence at the date of registration of the disputed domain name, and which does not appear to have had an online presence until after the registration of the disputed domain name. The Panel does not therefore find that the evidence submitted supports the claim that the name AMPOL was widely used in the United States at the date of registration of the disputed domain name. Indeed, the Panel's conclusions based on the evidence available to it are that the name AMPOL is an invented term first registered by the Complainant in 1941, that it does not have any dictionary or generic meaning and that, certainly in 1996, it had no established meaning in commerce other than to refer to the Complainant and its business.

The Respondent claims that it has used the disputed domain name for the purpose of a repository of documents of interest to the "Australia Online community", that its website has not been publicly available and that its noncommercial use of the disputed domain name in this manner gives rise to rights or legitimate interests in the disputed domain name. It further submits that it had plans to develop the disputed domain name for commercial use in the future. It exhibits correspondence stating that its business represents "a strong offer for target markets around the world", that the disputed domain name is "intrinsically linked to our product platform" and that "we currently have plans for the domain and have invested a lot of time and assets developing those plans".

What the Panel finds remarkable about the Respondent's submissions, however, is that nowhere in its detailed Response does it provide any explanation for its choice of the disputed domain name, how the disputed domain name may have been relevant to the purpose of document depository, or how the disputed domain name may be relevant to its future business plans. Nor does the Respondent provide any information or evidence concerning the nature of those plans. In the view of the Panel, these are glaring

omissions. The disputed domain name is not a dictionary or generic term and the Panel has found that it had no established meaning at least at the date of registration of the disputed domain name other than to refer to the Complainant. In these circumstances, it is insufficient for the Respondent simply to vaguely describe its supposedly planned activities under the disputed domain name without explaining its choice of the disputed domain name and its claimed connection with those activities. In the absence of such explanations, the Panel can divine no legitimate connection between the disputed domain name and the Respondent's activities and/or stated plans and finds in the circumstances that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Respondent correctly identifies that the element of bad faith under the Policy gives rise to a conjunctive requirement, namely, to show that the disputed domain name was both registered and has been used in bad faith.

The Respondent submits that the Complainant has not presented any facts or evidence upon which the Panel could determine that the disputed domain name was registered in bad faith as long ago as in 1996. The Panel does not agree. In order to establish registration in bad faith, a complainant needs to demonstrate, on the balance of probabilities, that the respondent was aware of the complainant's trademark at the date the disputed domain name was registered and registered it with the intention of taking unfair advantage of the complainant's rights in that trademark. Since it is in many cases difficult to know with certainty what was in a respondent's mind at the date of registration (and here, as noted above, the Respondent somewhat surprisingly does nothing to assist the Panel in that regard), panels may be called on to draw inferences from all the surrounding circumstances.

In this case, the Panel finds on balance that the Respondent is likely to have been aware of the Complainant's AMPOL trademark at the date of registration of the disputed domain name and moreover registered it with the intention of taking unfair advantage of the Complainant's rights in that mark. The Panel makes these findings principally for the following reasons:

1. The Panel has found the Complainant's trademark AMPOL to be an invented term with no dictionary or generic meaning and which, at least in 1996 and according to the evidence presented, had no significant meaning in commerce other than to refer to the Complainant and its business.
2. The Complainant submits, and the Respondent does not seriously contest, that the Complainant has traded in Australia under the AMPOL mark for nearly a century and that the AMPOL mark is widely recognized by consumers in Australia as indicating the Complainant and its business.
3. The disputed domain name is identical to the AMPOL trademark without any adornment.
4. The Respondent submits that the Complainant had no relevant AMPOL trademarks outside Australia in 1996, that the Respondent is located in the United States, that it is "without information or belief as to the non-US trademarks allegedly owned by Complainant" and that the AMPOL mark was effectively unknown in the United States at the date the disputed domain name was registered. However, the Respondent's awareness or otherwise of the Complainant's trademark is not a matter of constructive notice based on whether or not the mark was registered in any particular national jurisdiction; it is simply a question of whether, in all the circumstances, the Respondent is more likely than not to have had actual knowledge of the trademark in question. In this case, it is impossible to escape the facts that, while the Respondent may be based in the United States, it is in fact named "Australia Online", has operated a website under that name including reference to major Australian corporations, and claims to have used the disputed domain name for repository of resources of interests to "the Australia Online community". In these circumstances the Panel would find it remarkable if the Respondent had not been aware of the Complainant's AMPOL trademark and business in Australia at the date of registration of the disputed domain name and infers on the balance of probabilities that it was indeed so aware.

5. Taking all of these matters together with the Respondent's failure to provide any explanation for its choice of the disputed domain name, or of how the disputed domain name may be relevant to its past or intended future activities (or indeed to provide any evidence of those future plans), the Panel further infers that the Respondent registered the disputed domain name with the intention of taking unfair advantage of the Complainant's rights in its AMPOL trademark.

It is convenient at this juncture to consider two matters that have been raised by the Respondent. The first is the question of the apparent delay of 26 years between the registration of the disputed domain name and the Complainant having commenced the present proceeding. The second matter concerns the Complainant having approached the Respondent (albeit anonymously) seeking to purchase the disputed domain name and having commenced this proceeding failing a satisfactory conclusion.

Regarding the question of delay, there is nothing in the Policy or Rules that expressly identifies a delay in bringing a complaint as a matter to be considered in assessing the merits of the case. Furthermore, it is generally accepted in jurisprudence under the UDRP that no doctrine of acquiescence of "laches" is typically applicable and that relevant cases must be decided on their merits under the Policy regardless of the timing of the complaint (see section 4.17 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and the previous decisions cited thereunder). However, it is to be noted of course that panels have generally accepted that the longer a delay between the registration of a disputed domain name and the commencement of a proceeding, the more difficult a complainant may find it to establish that the disputed domain name was originally registered in bad faith. Secondly, a number of panels have commented that a material issue might arise if a complainant had affirmatively led a registrant to believe that its use of the disputed domain name was unobjectionable and the registrant had acted to its detriment (e.g., by investing further in the disputed domain name) in reliance on that position.

The Panel does not find either of these countervailing arguments to be of relevance in this case. The Panel has explained above the basis upon which it infers that the Respondent was aware of the Complainant's trademark at the date it registered the disputed domain name. Nor does the Panel consider that the Complainant's non-objection, even for a period of years, amounted to an affirmative indication to the Respondent that its use of the disputed domain name was unobjectionable. There is also no evidence of the Respondent having incurred any significant expense, or having otherwise acted materially to its detriment, in reliance on the Complainant's non-objection.

Concerning the second matter, of the Complainant's anonymous attempts to buy the disputed domain name from the Respondent and its commencement of this proceeding only when those approaches were unsuccessful, the Panel does not find these circumstances to undermine the merits of the Complainant's case under the Policy. The Complainant may have had a number of reasons why it preferred first to attempt to obtain the disputed domain name on agreed commercial terms rather than enter into a legal dispute. Nor does the Panel consider that the Complainant's attempts to purchase the disputed domain name can be regarded as an affirmative non-objection to the Respondent's use of the disputed domain name (also noting that such approaches were anonymous).

While in certain cases of alleged RDNH a respondent may show that a complainant brought proceeding in bad faith having failed in its attempts to purchase the disputed domain name legitimately, those are cases in which the complainant knew or ought to have known that its complaint had no reasonable prospect of succeeding, which is not the position in the present case.

While the Respondent submits evidence of several instances over the years on which it has rejected approaches for the disputed domain name, it accepts in its Response that it has been prepared to consider substantial offers for the disputed domain name and appears also to have indicated that any such offer would need to be in six figures. While the Respondent is right to say that asking a high price for a domain name is not evidence of bad faith *per se*, the Panel has difficulty in discerning to whom, other than the Complainant, the Respondent believed it might sell the disputed domain name for a sum in six figures.

On full consideration of the circumstances, therefore, the Panel concludes on the balance of probabilities that the Respondent is most likely to have registered the disputed domain name in the hope of selling it to the Complainant.

In view of the Panel's findings as above, it is unnecessary for the Panel to engage in any further consideration of the Respondent's actual use of the disputed domain name by reference to its website content at any particular time.

The Panel finds in the circumstances that the disputed domain name has been registered and is being used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <ampol.com>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: January 5, 2023