

ADMINISTRATIVE PANEL DECISION

FFD100 Pty Ltd and Strata Town Pty Ltd v. Bellcourt Strata Management Pty Ltd trading as B Strata
Case No. DAU2022-0033

1. The Parties

The Complainants are FFD100 Pty Ltd (“First Complainant”), Australia, and Strata Town Pty Ltd (“Second Complainant”), Australia, represented by Cooper Mills Lawyers, Australia.

The Respondent is Bellcourt Strata Management Pty Ltd trading as B Strata, Australia, internally represented.

2. The Domain Name and Registrar

The disputed domain name <stratatown.au> is registered with GoDaddy.com, LLC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 7, 2022. On the same day, the Center transmitted by email to GoDaddy.com, LLC a request for registrar verification in connection with the disputed domain name. On November 8, 2022, GoDaddy.com, LLC transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “auDRP” or “Policy”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 15, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was December 5, 2022. The Response was filed with the Center on December 5, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on January 6, 2023. 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 First Complainant is the registered proprietor of Australian trademark registration number 2102769 for STRATA TOWN, entered on the register on February 18, 2021, with priority from July 10, 2020, specifying strata scheme management and other services in classes 35, 36, and 37. That trademark registration remains current. The Second Complainant is a company based in Perth, Western Australia, that operates a strata management business. It registered the domain names <stratatown.com.au> and <strata.town> on October 30, 2019, and uses the former to redirect to the latter, which resolves to a website where it provides information about itself and its strata management services. The Second Complainant also registered the Australian business name “Strata Town” on June 5, 2020.

The Respondent is a company based in Perth, Western Australia, that has operated a strata management business since 1996. It has registered various business names including “BSTRATA” and “B Strata” (registered on December 17, 2019, and June 2, 2020, respectively). It has also registered the domain name <bstratawa.com.au> that it uses in connection with a website where it provides information about itself and its strata management services. Its managing director is Mr. Scott Bellerby.

The disputed domain name was registered on October 3, 2022, as part of a purchase of six .au domain names. The disputed domain name resolves to a landing page hosted by the Registrar, the content of which is discussed in section 6.2.B below.

The Complainants’ legal representative sent a letter dated October 12, 2022, to the Respondent alleging infringement of their rights in the STRATA TOWN trademark and demanding the transfer of the disputed domain name. The Respondent replied by email on the same day denying the Complainants’ claims. The Complainants’ legal representative sent another letter dated October 13, 2022, reiterating their claims and offering to pay the Respondent’s out-of-pocket expenses incurred in acquiring the disputed domain name in exchange for its transfer. The Respondent replied again by email on the same day denying the Complainants’ claims.

5. Parties’ Contentions

A. Complainants

The disputed domain name is identical to the First Complainant’s STRATA TOWN trademark and to the Second Complainant’s company name “Strata Town Pty Ltd” that is registered with the Australian Securities and Investments Commission (“ASIC”). The Second Complainant has also registered the corresponding business name. The First Complainant has licensed the STRATA TOWN trademark to the Second Complainant, which is a subsidiary of the First Complainant.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. There are no trademarks or business names incorporating the term “Strata Town” registered in the name of the Respondent. The Respondent has not been commonly known by the disputed domain name. The Complainants have not consented to, or licensed, the use of the STRATA TOWN trademark to the Respondent. The use of a domain name to resolve to a Pay-Per-Click (“PPC”) links landing page is not a *bona fide* use in connection with an offering of goods or services.

The disputed domain name was registered and subsequently used in bad faith. The Respondent is a direct competitor of the Complainants located in the same city as the Complainants. The Respondent must have known of the Complainants. The Respondent registered the disputed domain name to prevent the Complainants from reflecting their STRATA TOWN mark in a corresponding domain name, and primarily for the purpose of disrupting the business of the Complainants. Any use of the disputed domain name by the Respondent almost certainly implies an affiliation with the Complainants that does not exist.

B. Respondent

The Respondent has a well-established and highly reputable West Australian business presence and has been trading for over 26 years. The owner of the STRATA TOWN trademark (the First Complainant) is not known to the Respondent. The relationship between the First and Second Complainants is not known to the Respondent, nor is the trademark licensing agreement between them.

A person who has an Australian presence may apply for a licence with any domain name on a first-come, first-served basis, subject to availability. The Respondent meets the criteria to apply to license any domain name subject to it being available to purchase. The Respondent, being eligible to do so, purchased the disputed domain name through the Registrar. The Respondent purchased other industry-related domains in the same transaction.

The Respondent has not deliberately targeted the Complainants; the Respondent has many registered business names and domain names. The Second Complainant uses <strata.town> as its primary domain name. The disputed domain name was available for registration and as such was registered by the Respondent. The Complainants did not register the disputed domain name during the priority registration period. The disputed domain name was granted to the Respondent according to standard auDA rules after the priority status period expired.

The Respondent categorically states that the disputed domain name is not in use and has not been used by the Respondent at any time since it was purchased. The Respondent cannot disrupt the business or activities of Strata Town by purchasing a domain name that has never been used. There is no “confusing similarity” as the disputed domain has not been used. The Respondent has not permitted or authorized any other business or entity to use the disputed domain name in any way whatsoever since acquiring it. The evidence provided by the Complainants is insufficient and does not support the Complainants’ claim that the disputed domain name is in use or has been used. Screenshots provided by the Complainants of the resolution of the disputed domain name are undated and cannot be substantiated. The disputed domain name resolves as shown in the Response. The Respondent has no control over the Registrar’s business practices and the landing pages it provides. The accusation of revenue-generating via PPC advertising resolving from the disputed domain name is completely false and untrue. There is no substantive evidence to support this accusation, and the Respondent refutes this claim.

The Respondent has absolutely no intention of trading off the Complainants’ business reputation and/or goodwill. The industry reputation of the Respondent far outweighs that of the Second Complainant. The Respondent is a member of the Strata Community Association and is a Strata Management Practice Standard Certified member, one of only eight in Western Australia. As such, the Respondent and its representatives adhere to a Code of Conduct ensuring they act with integrity and high ethical standards where breaches of the Code can result in disciplinary procedures. The Respondent categorically states that the disputed domain name would never be used by the Respondent in bad faith. False, misleading, and defamatory comments have been made in the Complaint by the Complainants. The Respondent asked for these accusations to be withdrawn by the Complainants prior to the initiation of this dispute.

6. Discussion and Findings

6.1. Multiple Complainants

The Complaint was filed by the two Complainants against the single Respondent. The First Complainant owns a trademark registration for STRATA TOWN. The First Complainant alleges that it is the parent company of the Second Complainant and that it has licensed the Second Complainant to use its STRATA TOWN trademark but both these allegations are challenged by the Respondent. It is unnecessary for the Panel to issue a procedural order inviting the Complainants to substantiate either or both of these allegations because the Second Complainant has rights in the name “Strata Town” for the purposes of the auDRP by virtue of its business name, as discussed in section 6.2.A below. On that basis, the Panel finds that the

Complainants have a common grievance against the Respondent for the purposes of the auDRP and that it is efficient to permit the consolidation of their complaints. Therefore, the Complainants are referred to below jointly and separately as the “Complainant” except as otherwise indicated.

6.2. Substantive Issues

Paragraph 4(a) of the auDRP provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights; and
- (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 or subsequently used in bad faith.

The burden of proof of each element is borne by the Complainant.

A. Identical or Confusingly Similar

The first element of paragraph 4(a) of the auDRP provides that “[the disputed] domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights”. Footnote 1 provides that, for the purposes of the auDRP, “auDA has determined that ‘a name ... in which the complainant has rights’ refers to [...] the complainant’s company, business or other legal or trading name, as registered with the relevant Australian government authority”.

In the present case, based on the evidence submitted, the Panel finds that the Complainant has rights in the STRATA TOWN trademark. The Panel also finds that the Complainant has rights in the company name “Strata Town Pty Ltd” and the business name “Strata Town”, both of which have been registered with the relevant Australian government authority, *i.e.*, ASIC.

The disputed domain name wholly incorporates the STRATA TOWN trademark and name. The only additional element in the disputed domain name is the .au country code Top-Level Domain. As a standard requirement of domain name registration, this additional element may be disregarded in the assessment of identity or confusing similarity for the purposes of the auDRP. See *BT Financial Group Pty Limited v. Basketball Times Pty Ltd*, WIPO Case No. [DAU2004-0001](#).

The Respondent argues that there is no confusing similarity because the disputed domain name has not been used. However, the Panel recalls that, for the purposes of the first element of paragraph 4(a) of the auDRP, the comparison between a domain name and a trademark or name involves a relatively straightforward side-by-side comparison; other factors regarding marketing and use that might be taken into account in a case of trademark infringement or misleading and deceptive conduct do not need to be considered under this element. See *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, WIPO Case No. [DAU2002-0001](#). The Panel will consider the use to which the disputed domain name is put under the second and third elements of paragraph 4(a) of the auDRP.

Therefore, the Panel finds that the disputed domain name is identical to a trademark and to a name in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the auDRP.

B. Rights or Legitimate Interests

The Panel notes that paragraph 4(a)(ii) of the auDRP is phrased in the present tense. Therefore, the Panel will assess the existence of any rights or legitimate interests that the Respondent may have in respect of the disputed domain name as at the time when the Complaint was filed.

Paragraph 4(c) of the auDRP sets out circumstances which, without limitation, if found by the Panel to be proven based on its evaluation of all evidence presented, shall demonstrate that the Respondent has rights to, or legitimate interests in, the disputed domain name, for the purposes of paragraph 4(a)(ii) of the auDRP. These are:

- (i) before any notice to [the respondent] of the subject matter of the dispute, [the respondent's] *bona fide* use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with an offering of goods or services (not being the offering of domain names that [the respondent has] acquired for the purpose of selling, renting or otherwise transferring); or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate non-commercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Parties disagree as to whether and how the disputed domain name is being used but it is clear from both Parties' evidence that the disputed domain name resolves to a webpage hosted by the Registrar, which shows that it is not passively held. The Panel accepts the Complainant's evidence showing that at some point between its registration on October 3, 2022, and the filing of the Complaint on November 7, 2022, the disputed domain name was parked at a landing page hosted by the Registrar displaying PPC links relating to management and rental management, among other things, with a button that read "Get this domain". Although the Complainant's evidence also purports to show that the disputed domain name resolved at the same time to a webpage displaying advertisements for property management services, the Panel gives the copy of this webpage little weight as it appears to be separate from the Registrar's landing page and shows no originating URL. The Panel also notes that the Respondent's evidence shows that on the day when the Response was filed, December 5, 2022, the disputed domain name resolved to a landing page without any PPC links that invited interested parties to contact the Registrar's domain broker service regarding a possible registration of the disputed domain name. The Panel observes that the landing page has since resumed displaying PPC links regarding – depending on one's location – condo rentals, among other topics.

The Respondent submits that it has no control over the Registrar's business practices and the landing pages that it provides. However, as the registrant, the Respondent is responsible for the way in which the disputed domain name is used. There is no evidence that the Respondent took any steps prior to the filing of the Complaint to have the PPC links removed.

In view of the above, the Panel finds that, at the relevant time, the disputed domain name resolved to a landing page displaying PPC links relating to management, which includes the type of services offered by the Complainant, together with a link to enquire about purchasing the disputed domain name. Later, it resolved to a landing page without PPC links. With respect to the first circumstance set out above, the Panel does not consider that that constitutes a use, *bona fide* or otherwise, of the disputed domain name in connection with an offering of goods or services that would generate rights and legitimate interests for the purposes of the auDRP. Nor does it constitute a legitimate non-commercial or fair use of the disputed domain name for the purposes of the auDRP.

With respect to the second circumstance set out above, the Respondent's name is Bellcourt Strata Management Pty Ltd, trading as B Strata. The Respondent has registered other business names but none of them is "Strata Town". The Respondent's managing director is named Scott Bellerby. There is no suggestion that the Respondent as an individual, business or other organization has been commonly known by the disputed domain name.

The Complainant submits that it has not consented to, or licensed, the use of STRATA TOWN by the

Respondent, which is not disputed. Despite this, the disputed domain name is identical to the STRATA TOWN mark and name, which creates a high risk of implied affiliation with the Complainant. Based on the above, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Turning to the Respondent's contentions, it notes that it obtained the registration of the disputed domain name on a first-come, first-served basis, and it provides proof of its purchase of the registration. However, the Panel considers that the mere registration of a domain name does not create rights or legitimate interests for the purposes of the second element of the auDRP, otherwise no complaint could ever succeed, which would be an illogical result.

The Respondent denies that it receives any revenue from the disputed domain name. However, assuming that to be true, the PPC links displayed on the landing page to which the disputed domain name resolved would still operate for the commercial gain of the operators of the linked websites. This is not a non-commercial or fair use of the disputed domain name.

The Respondent provides no explanation of any proposed good faith use of the disputed domain name, although it does submit that it has registered various industry-related domain names. The Panel can discern no valid assertion by the Respondent of any rights or legitimate interests in respect of the disputed domain name – which is the name of a direct competitor – for the purposes of the second element of the auDRP.

Accordingly, the Panel finds that the Respondent has not rebutted the Complainant's *prima facie* case.

Therefore, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the auDRP.

C. Registered or Subsequently Used in Bad Faith

Paragraph 4(b) of the auDRP provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, although it is not an exhaustive list of such circumstances. The third circumstance is as follows:

- (iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business or activities of another person.

With respect to registration, the disputed domain name was registered in October 2022, after the registration of the Complainant's STRATA TOWN trademark and Strata Town business name, and after the Complainant began trading under that name. The disputed domain name is identical to that mark and name. Given that the Parties are direct competitors in the strata scheme management market in Perth, Western Australia, it is likely that the Respondent was aware of the Complainant and its Strata Town name at the time when it registered the disputed domain name. Indeed, the Respondent acknowledged within days of registering the disputed domain name in pre-Complaint correspondence that it was well aware of the Complainant's advertising for Strata Town. Even though the Respondent may have registered other industry-related domain names at the same time, the Respondent provides no clear explanation as to why it chose the disputed domain name. Despite the Respondent's denial of targeting the Complainant, the Panel does not consider it a coincidence that the disputed domain name is identical to the business name of one of the Respondent's direct competitors. In view of these circumstances, the Panel finds that the Respondent had the Complainant's business name in mind when it registered the disputed domain name.

With respect to use, the disputed domain name, which is identical to the Complainant's Strata Town mark and business name, resolved at relevant times to a landing page hosted by the Registrar displaying PPC links including links related to management, which includes the type of service offered by the Complainant. The Complainant is actively involved in business in Australia. Although it is not a requirement under the auDRP, it is pertinent that the Parties are direct competitors. The Panel finds that the most likely explanation for the use of the disputed domain name is that it was intended to divert Internet users searching for the

Complainant's website even if it would eventually be clear to those who reached the landing page that it was not the Complainant's website. In view of these circumstances and the findings in Section 6.2B above, the Panel finds that the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business or activities of another person within the terms of paragraph 4(b)(iii) of the auDRP.

The Respondent submits that it has absolutely no intention of trading off the Complainant's business reputation and/or goodwill and that its own industry reputation far outweighs that of the Complainant. However, the Panel notes that the Respondent offers no clear alternative explanation of its purpose in registering the disputed domain name when it is identical to the business name of a direct competitor, if it was not to disrupt the business of the Complainant.

The Respondent notes that the Complainant uses the domain name <strata.town> as its primary domain name. However, the Complainant is not limited to using a single domain name on the Internet. Customers who are not familiar with the Complainant's exact website address could be diverted by the disputed domain name to the landing page, particularly since the Complainant already uses the domain name <stratatown.com.au>, containing the same operational element as the disputed domain name, to redirect to <strata.town>.

The Respondent notes that the Complainant did not reserve the disputed domain name during the priority registration period. However, this circumstance does not imply that the Complainant waived or renounced its rights under the auDRP to prevent the bad faith registration or use of any other domain name identical or confusingly similar to its STRATA TOWN trademark and business name.

The Respondent categorically states that the disputed domain name would never be used by it in bad faith. The Panel notes that even if the disputed domain name had only been passively held, as the Respondent has maintained since pre-Complaint correspondence with the Complainant, that would not have precluded a finding of bad faith. See *Produits Berger v. Lay Tee Ong*, WIPO Case No. [DAU2004-0008](#), citing *Telstra Corporation Limited v. Nuclear Marshmallows*, [WIPO Case No. D2000-0003](#). In the present case, the fact that the disputed domain name is identical to the name of a direct competitor who was known to the Respondent at the time of registration, the lack of any clear explanation for the decision to register the disputed domain name, and the difficulty in conceiving of any use of the disputed domain name that would not be likely to cause confusion, are all indications of bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the auDRP.

D. Whether the Complaint was Brought in Bad Faith

The Respondent submits that false, misleading, and defamatory comments have been made in the Complaint by the Complainant.

The Panel does not consider that the Complaint was brought in bad faith. On the contrary, the Panel has upheld the Complaint.

7. Decision

For all 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 <stratatown.au> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: January 20, 2023