

## ADMINISTRATIVE PANEL DECISION

LEADR Case No. auDRP\_14\_02

Domain Names: <bluelinehygienics.com.au> and <seatease.com.au>  
Name of Complainant: Blueline Hygienics Pty Ltd 31 131 447 946

**Name of Respondent** I Like It Pty Ltd  
ACN: 36147338565  
ABN: 43 052 715 725

**Provider:** LEADR

**Panellist :** The Honourable Neil Anthony Brown QC

### THE PARTIES

The Complainant is Blueline Hygienics Pty Ltd ACN 31 131 447 946 of 20 Warran Road, Yaroomba, Q'ld.

The Respondent is I Like It Pty Ltd ACN: 36147338565 of 43 Boundary Road, Mortdale, NSW 2223.

### THE DOMAIN NAMES, REGISTRAR AND PROVIDER

The disputed domain names are <bluelinehygienics.com.au> and <seatease.com.au> ("the disputed domain names"), which are registered with Crazy Domains.

LEADR is the Provider in relation to this administrative proceeding.

### PROCEDURAL HISTORY

The Complaint was submitted for decision in accordance with the auDRP Policy ("the Policy"), the auDRP Rules ("the Rules") that were approved by auDA in 2001 and commenced operation on August 1, 2002 and the Provider's Supplemental Rules.

The Provider received the Complaint on February 26, 2014 and an acknowledgement of receipt of complaint was emailed to the Complainant on February 26, 2014. A copy of the complaint was sent to the Respondent.

On March 3, 2014 a copy of the complaint was submitted to the Registrar by email together with a request to clarify the Respondent details and to lock the domain name during proceedings.

On March 5, 2014 the Registrar confirmed to the Provider that the Domain Name had been locked.

On March 6, 2014 LEADR advised auDA of the complaint via e-mail.

On March 6, 2014 the Provider sent the Respondent by email a written notification of the Complaint. The Complainant was advised of these notifications. Acknowledgement of the notification was received by the Provider from the Respondent on March 7, 2014.

The due date for filing of the Response to the Complaint was determined to be March 26, 2014.

On March 26 , 2014 the Respondent filed a Response to the Complaint.

On March 27, 2014, the Provider forwarded the documents to the Panellist, having ascertained the Panellist was available, was in a position to accept the matter and had no conflict issues with the parties.

The Panel is satisfied that it was properly appointed.

## **FACTUAL BACKGROUND TO THE DISPUTE**

### **THE COMPLAINANT'S POSITION**

The Complainant Blueline Hygienics Pty Ltd is a company registered in 2008. It is the registered owner of two trademarks, BLUE HYGIENICS and SEATEASE.

It is also the owner of the domain name <bluelinehygienics.com> registered in 2008. Its email addresses are info@bluelinehygienics.com, sales@bluelinehygienics.com and others that resolve from the domain name @bluelinehygienics.com.

Blueline Hygienics Pty Ltd claims to be Australia's largest supplier of disposable toilet seat covers and it also sells washroom equipment. One of its products is a disposable toilet seat cover travel pack that is named SeatEase (spelt on occasions Seatease). The Complainant also supplies commercial packs of disposable toilet seat covers with dispensers. It has a competitor, the Respondent, which also sells disposable toilet seat covers.

The Complainant maintains that in November 2013, it became aware that the Respondent had registered the domain names <bluelinehygienics.com.au > ,<seatease.com> and <seatease.com.au> and had started using the website www.bluelinehygienics.com.au as a gateway to its website. It will be understood that this proceeding relates only to <bluelinehygienics.com.au > and <seatease.com.au> and not to <seatease.com> which is a domain name issued under the generic top level domain ".com" which is not subject to the auDRP Policy, but to the Uniform Domain Name Dispute Resolution Policy (" the UDRP").

It appears that when an internet user types www.bluelinehygienics.com.au into a computer, it is linked to another website associated with the Respondent, namely maxcare.com.au .The Complainant is concerned that this indicates an attempt to take " direct aim" at its, the Complainant's, business conducted under the name Blueline Hygienics Pty Ltd.

The Complainant also maintains that the Respondent has used its disputed domain name <bluelinehygienics.com.au> for the email addresses info@bluelinehygienics.com.au and sales@bluelinehygienics.com.au, as an attempt to confuse potential customers of the Complainant and seize its business from customers who are in fact seeking not that address but the internet address of the Complainant.

In that regard, the Complainant maintains that there have been specific situations when the Respondent has received email orders from potential customers of the Complainant, sent to the Respondent by mistake, but where the Respondent has held onto them rather than refer them on to the Complainant, thus depriving the Complainant of business.

The Complainant also claims that the Respondent has now placed the wording Blueline Hygienics on some of the Respondent's packaging, allegedly to confuse the Complainant's customers.

The Complainant's then solicitors, Rigby-King, sent the Respondent a letter dated 13th January 2014 alleging the above and other infringements.

The Complainant maintains that these matters show that the Respondent has registered and used the disputed domain names in breach of the Policy on the grounds that:

- (a) they are identical or confusingly similar to the trademarks BLUE HYGIENICS and SEATEASE; and
- (b) the Respondent has no rights or legitimate interest in the disputed domain names; and that
- (c) the Respondent has registered or used the disputed domain names in bad faith.

## **THE RESPONDENT'S POSITION**

The Respondent maintains that it is the registered licensee of the two disputed domain names <bluelinehygienics.com.au> and <seatease.com.au>, that they have been registered according to auDA policy and that auDA reviewed them and determined that they comply with auDa Policy Rules.

To protect its rights, the Respondent has applied for trademark registration for the word trademarks BLUE LINE HYGIENICS and SEATEASE.

The Complainant has claimed that auDA "is not a legal body nor court of law" although it is prepared to acknowledge auDA when it, the Complainant, makes a claim.

The Respondent has also explained to the Complainant that "It is my understanding that you and your clients have confused between your client's business name BLUELINE HYGIENICS PTY LTD and our website name BLUE LINE HYGIENICS PERSONAL CARE. The names are not identical and according to ASIC, business name "BLUE LINE HYGIENICS PERSONAL CARE" is available for registration and trade in Australia."

The Respondent also maintains that it made itself clear on its website [www.bluelinehygienics.com.au](http://www.bluelinehygienics.com.au) that it was BLUE LINE HYGIENICS PERSONAL CARE and its website was distinct from the website of the interests associated with the Complainant, Mr and Mrs Failor.

It was also never the intention of the Respondent to create consumer confusion. To that end, email addresses such as sales@ are commonly used in Australia for businesses. However, the Respondent changed its primary email address to quotes@bluelinehygienics.com.au, after it received LEADR's letter and became aware of Mrs Failor's concern.

The Respondent also submits that by means of representations from the Complainant's solicitors, Mr and Mrs Failor were bullying the Respondent and threatening it to transfer its domain names.

The Complainant's actions are alleged to have caused a big interruption to the Respondent's operation, as it cannot afford to employ solicitors and has to spend many hours to research and prepare the Response in this proceeding.

The Respondent maintains that it registered the domain name <seatease.com.au> on 26 Nov 2013 as a mean of fight back to the Complainant's cyber bullying. However, it had trademarked the words only "SEAT EASE" and was planning to use it in its business.

The Respondent also submits that it is a small business owner with limited resources, it is trying hard to build up and run the business, its website is its most powerful advertising and promotion tool and that Mr and Mrs Failor were trying to take away its domain name which is the same as killing the Respondent's business to avoid fair competitions.

The Respondent concludes by submitting that its belief is that all business, regardless of its size should have a fair go and that it looks forward to a "fair dinkum" decision from LEADR.

## **DISCUSSION OF THE ISSUES**

Pursuant to Rule 15 of the Rules, a Panellist is required to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that the Panellist deems applicable.

Paragraph 4(a) sets out those matters that are required to be established by a Complainant, namely that

- (i) (the Respondent's) 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 domain name; and
- (iii) (the Respondent's) domain name has been registered or subsequently used in bad faith."

All of the elements of paragraph 4(a)(i), (ii) and (iii) must be met and the Complainant bears the onus of proof in this respect.

The Panel now turns to examine the various elements of paragraph 4(a) in turn.

**Identical or confusingly similar.**

The Complainant's case is that it has "a name, trademark or service mark in which (it) has rights." In support of that submission, the Complainant has adduced evidence of two applications for trademarks in BLUELINE HYGIENICS, the first, No. 1593893 having been applied for by the Complainant on December 4, 2013 and the second having been applied for by the Complainant on January 6, 2014. However, those trademarks have, as the evidence shows, not been registered. It has been generally understood in proceedings under the UDRP that are analogous to proceedings under the auDRP, that trademark applications alone are not sufficient to establish trademark rights and that the trademark relied on must be registered.

It is nevertheless sufficient to show common law or unregistered trademark rights if they can be made out on the evidence. The evidence in the present case shows that the Complainant has been a company under the name Blueline Hygienics Pty Ltd since 2008, that it has owned the domain name <bluelinehygienics.com>, also since 2008, uses that domain name in its business and is a large supplier of disposable toilet seat covers and washroom equipment. Its product, flushable toilet seat covers, are sold under the name Seatease, but the name Blueline Hygienics Pty Ltd is prominently displayed on its promotional literature and it is clear from the public presentation of the company that the Complainant's name is associated with the product and must be seen by the public as the source of these goods. The Panel therefore finds that the Complainant has common law or unregistered trademark rights to BLUELINE HYGIENICS.

In any event, under the note to the auDA Policy it is clear that the Complainant's name itself gives it standing to bring this application as it provides that a "name...in which the complainant has rights" refers to (a)the complainant's company, business or other legal or trading name, as registered with the relevant Australian government authority;...". The evidence is that the Complainant is registered on the Australian Business Register, registered with the Australian Taxation Office for GST purposes in its own name and has an Australian Company Number ( ACN) and it therefore more than meets those requirements.

The Complainant therefore has a "name in which the complainant has rights." Consequently, it has rights to bring the present application with respect to the disputed domain name <bluelinehygienics.com.au>.

With respect to the disputed domain name <seatease.com.au>, the Complainant also has trademark rights as it has adduced evidence of a registered trademark for SEATEASE. That trademark is No. 1245359 and it was registered on June 10, 2008. The trademark is registered in the name of Juile Failor which is apparently a misspelling of Julie Failor. The evidence shows that Julie Failor is a director of the Complainant and clearly associated with the company and its activities. Proceedings in this field are often brought in the name of a different company or personal entity from the name of the party in whose name a trademark

is registered, if the evidence shows a close relationship between the two and in the present case the Panel finds on the evidence that although the trademark is in the name of Julie Failor, it is held by her on behalf of the Complainant.

The Complainant therefore has rights in the trademark of the Complainant for SEATEASE that are sufficient to bring the proceeding with respect to the domain name <seatease.com.au>.

The next question that arises with respect to each of the disputed domain names is whether they are identical or confusingly similar to the Complainant's common law trademark or name for BLUE HYGIENICS in the case of the domain name <bluelinehygienics.com.au> or the trademark for SEATEASE in the case of the domain name <seatease.com.au> .

The Panel finds that the domain name <bluelinehygienics.com.au> is identical to the common law or unregistered trademark for BLUELINEHYGIENICS as the whole of the trademark is included in the domain name. The Panel also finds that, formal parts omitted, the domain name is identical to the name of the Complainant.

The Panel also finds that the domain name <seatease.com.au> is identical to the registered trademark SEATEASE as the whole of the trademark is contained in the domain.

The Complainant has thus made out the first of the three elements that it must establish.

#### **Rights or legitimate interests**

The question here is: does the Respondent have a right or legitimate interest in respect of the domain names.

It is now well established that the Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain names under paragraph 4(a)(ii) of the Policy and then the burden shifts to Respondent to show it does have rights or legitimate interests. See *Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) (holding that the complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under UDRP ¶ 4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name); see also *AOL LLC v. Gerberg*, FA 780200 (Nat. Arb. Forum Sept. 25, 2006) ("Complainant must first make a *prima facie* showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interests in the subject domain names.").

The Panel finds that the Complainant has established a *prima facie* case as required. This is based on the following considerations:

- (a) the Respondent has chosen to take the Complainant's trademark BLUELINE HYGIENICS and its company name Blueline Hygienics Pty Ltd and to use them in its domain name <bluelinehygienics.com.au> which is identical to the trademark and the company name and without making any alteration, thus giving the impression that the domain name is an official domain name of the Complainant and that it will

lead to a website that is an official website of the Complainant, neither of which is true;

- (b) the Respondent had then used the domain name to lead internet users to the Respondent's own website which is at [www.bluelinehygienics.com.au](http://www.bluelinehygienics.com.au), which promotes goods that are similar to and in some cases the same as those sold by the Complainant;
- (c) the Respondent has engaged in these activities without the knowledge or consent of the Complainant.

Having established that there is a *prima facie* case against the Respondent it remains to be seen if the Respondent can rebut it and establish that it does in fact have a right or legitimate interest in the domain name.

The case advanced by the Respondent to show that it has such a right or legitimate interest is a slight one and unpersuasive and the Panel does not accept it. In so far as the case exists at all it is contained in a letter from the Respondent to the Provider dated March 24, 2014. The Respondent makes a number of points in that letter, only one of which the Respondent seems to rely on to show that it may have a right or legitimate interest in the domain name <[bluelinehygienics.com.au](http://bluelinehygienics.com.au)>. That point is that the name that the Respondent has put on its website, to which the disputed domain name resolves, is BLUE LINE HYGIENICS PERSONAL CARE and not BLUELINE HYGIENICS PTY LTD. But that is a distinction without a difference. The two names are very similar, the internet user would probably think they belong to the one company, the products advertised are very similar and, above all, the website promotes a product of the same name as the Complainant's product SEATEASE. Any reasonable observer would therefore conclude that this is in fact the website of the Complainant, which it is not. Thus the Panel concludes that this difference in name cannot give right or legitimacy to what is in effect a wrongful and illegitimate use by the Respondent of the Complainant's name, trademark and business presentation.

The Respondent has also relied on the submission that it has applied for trademarks on BLUE LINE HYGIENICS and SEAT EASE. But whatever the outcome of those applications, a mere application for a trademark cannot create a right or legitimacy in a domain name just as it does not, by itself, establish a trademark, mainly because it has not been examined.

Nor is there any evidence to show that the Respondent can bring itself within any of the criteria in paragraph 4 (c) of the Policy that may be relied on to show a right or legitimate interest in the domain name, namely that the Respondent was using the domain name for a *bona fide* offering of goods or services; that the Respondent is commonly known by the domain name; or that it is making a legitimate non-commercial or fair use of the domain name. All of the evidence is to the contrary of each of those criteria.

Nor is there any other ground relied on by the Respondent.

Not only is that so, but the totality of the evidence, unless it is rebutted, shows that it would be virtually impossible for the Respondent to show that it has any right or legitimate interest in the disputed domain names. In this regard this is probably a suitable time to give a chronology of the significant events in this matter, drawn from the only dates that the

parties have highlighted, as it shows how unlikely it is that the Respondent adopted the two domain names out of any notion of right or legitimacy. The significant dates are as follows:

2008	Complainant started Blueline Hygienics Pty Ltd
30 April 2008	Domain name <bluelinehygienics.com> registered to Complainant <sup>1</sup>
12 May 2008	Mr and Mrs Failor traded under the name Blueline Hygienics from this date <sup>2</sup>
20 June 2008	Complainant applied for ABN registration no later than this date <sup>3</sup>
1 July 2008	Complainant obtained GST registration no later than this date <sup>4</sup>
2009	
12 December 2009	Website for www.bluelinehygienics.com promotes Complainant and its products <sup>5</sup>
2013	
26 November 2013	Respondent registered domain name <seatease.com.au> <sup>6</sup> .
26 November 2013	Record created for Respondent's domain name <bluelinehygienics.com.au"
4 December 2013	Complainant applied for BLUELINE HYGIENICS Trademark Class11 <sup>7</sup>
2014	
6 January 2014	Complainant applied for BLUELINE HYGIENICS Trademark Class 16 <sup>8</sup>
13 March 2014	Respondent applies for BLUELINE HYGIENICS Trademark Class 35 <sup>9</sup>
13 March 2014	Respondent applies for SEAT EASE Trademark Class 35 <sup>10</sup>

This chronology shows that the Complainant had a functioning business from at least 2008-2009; its name was its present name which it clearly used as a business name and at least from 12 December 2009 and probably earlier it promoted its products in the public domain and particularly its product under the name SEATEASE. In using the word SEATEASE it declared to the world from that date, by affixing the sign "TM" after the word "Seatease", that it had a trademark over the word. There seems to be no sign of activity from the Respondent until 26 November 2013 when it registered the domain name <seatease.com.au><sup>11</sup>, which appears to be a brazen adoption of the Complainant's Trademark and when, on the same day, it registered the Complainant's own name as the

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<sup>1</sup> Complainant's attachment 7a

<sup>2</sup> Complainant's attachment 3

<sup>3</sup> Complainant's attachment 3

<sup>4</sup> Complainant's attachment 2

<sup>5</sup> www.archive.org; Wayback Machine at

<https://web.archive.org/web/20091212113906/http://www.bluelinehygienics.com/>

<sup>6</sup> Response of 24 March 2014

<sup>7</sup> Complainant's attachment 4

<sup>8</sup> Complainant's attachment 5

<sup>9</sup> Response of 24 March 2014

<sup>10</sup> Response of 24 March 2014

<sup>11</sup> Response of 24 March 2014



domain name that it has since used to sell the same or very similar products as the Complainant.

Unless there is some other explanation, it is impossible to describe the history of the Respondent's activities as giving rise to any sort of right or legitimate interest in either of the two disputed domain names.

What is perhaps worse is that the Respondent has omitted facts that are clearly relevant, in particular any explanation for the remarkable co-incidence between , on the one hand, the Complainant's name and the name of its product SEATEASE and, on the other hand, that the Respondent has taken both of those names, used them for his domain names to promote products that compete with the Complainant and, in the case of the name Blueline Hygienics has used it as the name of the Respondent's own range of products. This raises the inevitable conclusion that the Respondent embarked on a calculated plan to copy the Complainant's names, to give the impression that it was the Complainant and that it sold products the same as or very similar to those of the Complainant and to confuse potential customers and to divert them from the Complainant's website to the Respondent's website.

The only explanation that the Respondent gives to avoid this conclusion is that it has added the words "Personal Care" after "Blueline Hygienics" on its website, which of course does nothing to avoid the inevitable confusion between the two names.

Accordingly, there is nothing in the evidence to suggest that the Respondent has or ever had a right or legitimate interest in either of the two disputed domain names.

It should also be noted that the Respondent relies on the fact that auDA has made a decision to the effect that the domain names were registered "according to auDA policy". At that stage, however, auDA was not determining the respective rights of the parties under the dispute resolution policy , a function that auDA has delegated to the providers of dispute resolution services, one of which is LEADR, the provider for this proceeding.

It should also be noted that on the website at [www.bluelinehygienics.com.au](http://www.bluelinehygienics.com.au) ( i.e. Respondent's website) there is a reference to "Disposable Toilet Seat Covers" which is a hyperlink and which, when clicked on, takes the user to another website promoting that type of product; the Complainant maintains that that website is also the website of the Respondent's business and this has not been denied by the Respondent. That series of facts must lead the Panel to concluding that the Respondent has used the Complainant's company name and trademark to entice internet users to its website where it may sell products in competition with those of the Complainant. There is no way in which such conduct could be described as giving rise to a right or legitimate interest in the disputed domain names.

The Complainant has thus made out the second of the three elements that it must establish.

#### **Registration or use in bad faith**

The foregoing observations apply equally to this issue. There is no need to repeat them here. The evidence leads to the conclusion that the Respondent both registered and has used the

domain names in bad faith, although only one or the other of those criteria must be established.

It is clear that to establish bad faith for the purposes of the Policy, Complainant must show that the disputed domain names were registered in bad faith or that they have been used in bad faith. It is also clear that the criteria set out in Paragraph 4(b) for establishing bad faith are not exclusive, but that Complainants in UDRP proceedings may also rely on conduct that is bad faith within the generally accepted meaning of that expression.

Having regard to those principles, the Panel finds that the disputed domain names were registered and used in bad faith. That is so for the following reasons.

First, the conduct of the Respondent and the clear intention behind it brings the case within paragraph 4(b)(ii) for the intention of the Respondent must be inferred to have been to prevent the Complainant from becoming the registrant or owner of both domain names <bluelinehygienics.com.au> and <seatease.com.au>.

Secondly, with respect to the domain name <bluelinehygienics.com.au> the facts also come within paragraph 4(b)(iii), because the equally clear intention of the Respondent in registering and using that domain name must have been to disrupt the Complainant's business by taking its name and product name, entice internet users on their way to visit the Complainant's site to go to the Respondent's site instead and then to sell them the same or similar products that they were minded to buy from the Complainant, so that the Complainant's business was thereby damaged.

Thirdly, again with respect to the domain name <bluelinehygienics.com.au>, the facts also bring the case squarely within paragraph 4(b) (iv) as the intention in using the domain name was clearly to confuse internet users to believe that the Respondent's website was in fact the Complainant's site, that the site was approved by the Complainant or endorsed by it and that the products on the site were those of the Complainant or being sold with its endorsement, all of which were false. It should also be noted that the Complainant adduced evidence of actual confusion by potential customers and that the Panel accepts this evidence.

Finally, with respect to the domain names <bluelinehygienics.com.au> and <seatease.com.au>, in addition and having regard to the totality of the evidence, the Panel finds that, in view of Respondent's registration of the disputed domain names using the BLUELINE HYGENIECS and SEATEASE marks respectively and in view of the conduct that Respondent has engaged in when using them, Respondent both registered and used the disputed domain names in bad faith within the generally accepted meaning of that expression.

The Complainant has thus made out the third of the three elements that it must establish.

## FINDINGS

The Panel makes the following findings:

1. The Complainant has established each of the three elements of Paragraph 4 of Schedule A of auDRP, namely:

- (i) That the Domain Names are identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- (ii) That the Respondent has no rights or legitimate interests in respect of the Domain Names; and
- (iii) That the Domain Names were registered or have been used in bad faith.

## RELIEF

The Complainant has requested that the Domain Names be transferred to it pursuant to Clause 6.1(b) of the Policy.

## DECISION

I order and direct that the Domain Names <bluelinehygienics.com.au> and <seatease.com.au> be transferred to the Complainant.



The Honourable Neil Anthony Brown QC  
Panelist

Date : April 7, 2014