

LEADR DOMAIN NAME DISPUTE ADMINISTRATIVE PANEL

auDRP_14_12

Single Panellist Decision

Pivotel Group Pty Ltd

v

Switch Telecom Pty Ltd

thinktelecom.com.au

.au Dispute Resolution Policy – Administrative Panel Decision

1. Parties

- 1.1 The **Complainant** is Pivotel Group Pty Limited ACN 102 274 322.
- 1.2 The **Respondent** is Switch Telecom Pty Ltd ACN 138 282 587.
- 1.3 The **Registrar** is NetRegistry.
- 1.4 The domain name is thinktelecom.com.au.
- 1.5 The **Provider** is LEADR ABN 69 008 651 232.
- 1.6 The Sole Panellist is Steve White of Suite 604, 109 Pitt Street Sydney NSW 2000 and Suite 838, 419 Collins Street, DOCKLANDS VIC 3008
www.computerlaw.com.au, www.arbitrator.com.au.

2. Whois Searches

2.1 Whois searches conducted by the **Panellist** disclose the following:

Domain Name	thinktelecom.com.au
Last Modified	05-Nov-2014 03:48:12 UTC
Status	serverUpdateProhibited (auDRP)
Status	serverTransferProhibited (auDRP)
Status	serverDeleteProhibited (auDRP)
Status	serverRenewProhibited (auDRP)
Status	clientDeleteProhibited
Status	clientUpdateProhibited
Registrar Name	<u>NetRegistry</u>
Registrant	SWITCH TELECOM PTY LTD
Registrant ID	ACN 138282587
Eligibility Type	Company
Registrant Contact ID	WHLU1095
Registrant Contact Name	Richard Boothby
Registrant Contact Email	rich@switchtelecom.com.au
Tech Contact ID	WHLU1095
Tech Contact Name	Richard Boothby
Tech Contact Email	rich@switchtelecom.com.au
Tech Contact ID	AUTC510085
Tech Contact Name	Richard Boothby

3. Procedural History

- 3.1 On 27 October 2014 a **Complaint** was received by the **Provider** in relation to thinktelecom.com.au ("**Domain Name**").
- 3.2 On 28 October 2014 the **Provider** sent an acknowledgement.
- 3.3 On 28 October 2014 a non-compliance notification was sent to **Complainant** by the **Provider**
- 3.4 On 28 October 2014 a complaint with the required rectifications was received by the **Provider**
- 3.5 On 28 October 2014 the complete application was received by the **Provider**.
- 3.6 On 28 October 2014 the **Provider** sent a further acknowledgement to the **Complainant**.
- 3.7 On 29 October 2014 a copy of the **Complaint** was submitted to the **Registrar**.
- 3.8 On 29 October 2014 a request to clarify the **Respondent's** details and lock the domain name during proceedings was emailed to the **Registrar**.
- 3.9 On 5 November 2014 the **Registrar** confirmed via email that the domain name in dispute had been locked.
- 3.10 On 6 November 2014 the **Provider** advised **auDA** of the complaint via e-mail.
- 3.11 On 6 November 2014 the **Provider** sent the **Respondent** an email and written notification of the **Complaint**. The **Complainant** was copied in on these notifications.
- 3.12 On 4 December 2014 the **Provider** approached the **Panellist**.
- 3.13 On 4 December 2014, the **Panellist** confirmed his availability, informed the **Provider** that he had no conflict issues with the parties and accepted the matter.
- 3.14 On 4 December 2014, the case file and relevant correspondence was forwarded onto the **Panellist**.
- 3.15 On 4 December 2014, the parties to the dispute were notified of the **Panellist's** allocation.
- 3.16 The parties filed the following submissions:
 - (a) **Complainant** 28 October 2014 ["**CS28OCT14**"]; and
 - (b) **Respondent** 25 November 2014 ["**RS25NOV14**"];

5. Complainant's submissions

- 5.1 This **Complaint** is made pursuant to .au Dispute Resolution Policy, Policy No. 2010-05 ("auDRP"), p4(a).¹
- 5.2 The **Complainant** is one of four Australian licensed mobile telecommunications companies.
- 5.3 The **Complainant** provides high quality mobile satellite services including voice and data communications across Australia as well as satellite phone plans.²
- 5.4 The **Complainant** has over 500 dealers and retail points of presence around Australia who are well versed on the products on offer.
- 5.5 The **Complainant's** brands are Pivotel, Think Mobile, TracerTrak, Reward Mobile, Just Mobile and Vanilla Telecom.³
- 5.6 The **Complainant** is the proprietor of the following word marks (together **Think Mobile Marks**):⁴
- (a) Registration No. 1461933 - "Think Mobile" (**Think Mobile Mark**); and
 - (b) Registration No. 1418751 – "Think Mobile Simply Better" (**Think Mobile Simply Better Mark**).
- 5.7 The **Think Mobile Mark** is registered in class 38: Cellular telecommunications services and was registered from 28 November 2011.⁵ Annexed and marked "**CS28OCT14A**" is a copy of the trade mark details in respect of the **Think Mobile Mark** from the IP Australia website.
- 5.8 The **Think Mobile Simply Better Mark** is registered in class 9: Mobile phones and class 38: Cellular telecommunications services and was registered from 7 April 2011.⁶ Annexed and marked "**CS28OCT14B**" is a copy the trade mark details in respect of the **Think Mobile Simply Better Mark** from the IP Australia website.⁷
- 5.9 The **Complainant** is the registrant of the domain name <thinkmobile.com.au> (**Think Mobile Domain Name**) which contains the **Think Mobile Mark**.⁸
- 5.10 The entity Think Mobile Pty Limited ("**Think Mobile**") is an authorised user of the Think Mobile Mark and Think Mobile Simply Better Mark, pursuant to Trade Marks Act 1995 (Cth), s8(1).⁹
- 5.11 The **Complainant** brings this **Complaint** as it is¹⁰:
- (a) the proprietor of the **Think Mobile Mark** and **Think Mobile Simply Better Mark**; and
 - (b) registrant of the **Think Mobile Domain Name**.
- 5.12 The **Respondent** is Switch Telecom Pty Ltd ACN 138 282 587.
- 5.13 The **Respondent** is the registrant of the domain name <thinktelecom.com.au> (**Domain Name**).

¹ CS28OCT14, p1

² CS28OCT14, p2

³ CS28OCT14, p3

⁴ CS28OCT14, p4

⁵ CS28OCT14, p5

⁶ CS28OCT14, p6

⁷ CS28OCT14, p7

⁸ CS28OCT14, p8

⁹ CS28OCT14, p9

¹⁰ CS28OCT14, p10

- 5.14 Annexed and marked “**CS28OCT14C**” is a copy of the Whois query for the **Domain Name** performed on 27 October 2014.¹¹
- 5.15 The **Domain Name** is the subject of this **Complaint**.¹²
- 5.16 The **Complainant’s** lawyers have communicated with the **Respondent** and the **Respondent’s** lawyers in respect of the **Complaint** since November 2013.¹³
- 5.17 Much of the correspondence between the **Complainant’s** lawyers and the **Respondent’s** lawyers was made on a without prejudice basis in order to try to resolve the dispute.
- 5.18 The **Complainant** does not propose to annex that correspondence.¹⁴
- 5.19 When the **Complainant’s** lawyers first wrote to the **Respondent**, the **Respondent** was known and trading as “Think Telecom Pty Ltd” and using the **Domain Name** in respect of its business as a supplier of certain telephony services.¹⁵
- 5.20 In or about June 2014 the **Respondent** changed its name to “Switch Telecom Pty Ltd”.
- 5.21 The **Respondent** now trades from the domain name <switchtelecom.com.au>.¹⁶
- 5.22 Since about 30 June 2014, the **Domain Name** has not contained any content.
- 5.23 The **Domain Name** is effectively a blank webpage.¹⁷
- 5.24 On 26 May 2014, the **Respondent’s** lawyers agreed that they would disable the **Domain Name** on or by 30 June 2014.¹⁸ This did not occur.
- 5.25 As a result, the **Complainant’s** lawyers wrote to the **Respondent’s** lawyers on 9 July 2014 asking why the **Domain Name** was still active.¹⁹
- 5.26 The **Respondent’s** lawyers wrote to the **Complainant’s** lawyers on 10 July 2014 disputing that the **Domain Name** has not been disabled.²⁰
- 5.27 On 26 August 2014 the **Complainant’s** lawyers wrote to the **Respondent’s** lawyers seeking that the **Respondent** write to the Registrar of the **Domain Name** to effect the disabling of the **Domain Name**.²¹
- 5.28 The **Complainant’s** lawyers have not received a response to this correspondence.²²
- 5.29 Annexed and marked “**CS28OCT14D**” is all correspondence between the parties during the period 20 May 2014 to 26 August 2014.²³
- 5.30 As at the date of filing of this **Complaint** the **Domain Name** is still active.
- 5.31 Annexed and marked “**CS28OCT14E**” is a copy of the **Domain Name** at 27 October 2014.²⁴

¹¹ **CS28OCT14**, p11

¹² **CS28OCT14**, p12

¹³ **CS28OCT14**, p13

¹⁴ **CS28OCT14**, p14

¹⁵ **CS28OCT14**, p15

¹⁶ **CS28OCT14**, p16

¹⁷ **CS28OCT14**, p17

¹⁸ **CS28OCT14**, p18

¹⁹ **CS28OCT14**, p19

²⁰ **CS28OCT14**, p20

²¹ **CS28OCT14**, p21

²² **CS28OCT14**, p22

²³ **CS28OCT14**, p23

²⁴ **CS28OCT14**, p24

5.32 **auDRP** p4(a) sets out the three elements which must be present for a proceeding to be brought against the **Respondent**, which the **Complainant** must prove to obtain the relief sought.²⁵

5.33 These elements are as follows²⁶:

- (a) the **Respondent's** domain name is identical or confusingly similar to a name, trademark or service mark in which the **Complainant** has rights ("**First Element**"); and
- (b) the **Respondent** has no rights or legitimate interests in respect of the domain name ("**Second Element**"); and
- (c) the **Respondent's** domain name has been registered or subsequently used in bad faith ("**Third Element**").

5.34 In accordance with **auDRP** p 4(a), the **Complainant** submits that²⁷:

- (a) the **Domain Name** is identical or confusingly similar to the **Think Mobile Mark** and/or the **Think Mobile Simply Better Mark**;
- (b) the **Respondent** has no rights or legitimate interests in respect of the **Domain Name**; and
- (c) the **Domain Name** has been registered or subsequently been used in bad faith.

5.35 In respect of the **First Element**, the **Complainant** submits²⁸:

- (a) while the **Domain Name** is not identical to the **Think Mobile Mark** and/or **Think Mobile Simply Better Mark**, it is confusingly similar to the **Think Mobile Mark** and/or **Think Mobile Simply Better Mark** because it contains the word "Think", which is the prominent word element or essential feature in the **Think Mobile Marks**;
- (b) The word "Mobile" in the **Think Mobile Marks** and the word "Telecom" while not similar sounding are similar in nature;
- (c) The additional word "Telecom" in the **Domain Name** is descriptive in relation to the services offered by the **Respondent** (as well as the **Complainant**) being telecommunications services;
- (d) there is a real possibility that consumers in the relevant sector of the public would be confused into thinking that there is a connection between the owner of **Think Mobile** [Marks] and the owner of the **Domain Name**; and
- (e) the services offered by the **Respondent** clearly would be classified as being the same, similar or closely related as the class of goods and services in which the **Think Mobile Marks** are registered.

5.36 **auDRP** p4(c) sets out examples of circumstances in which a respondent may establish rights or legitimate interests in a domain name in responding to a complaint.²⁹

5.37 Those circumstances include the following³⁰:

- (a) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

²⁵ **CS28OCT14**, p25

²⁶ **CS28OCT14**, p26

²⁷ **CS28OCT14**, p27

²⁸ **CS28OCT14**, p28

²⁹ **CS28OCT14**, p29

³⁰ **CS28OCT14**, p30

- (b) the respondent (as an individual, business, or other organisation) has been commonly known by the domain name, even if the respondent acquired no trademark or service mark rights; or
- (c) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the name, trademark or service mark at issue.

5.38 In respect of the **Second Element**, the **Complainant** submits that³¹:

- (a) by reason of the matters set out at paragraphs 5.20 to 5.25 and 5.30 to 5.31 above, the **Respondent** cannot provide evidence of the use of, or demonstrable preparations to use, the **Domain Name** or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services;
- (b) Further, the **Respondent's** lawyers have agreed to disable the **Domain Name**, which is inconsistent with the "use" or "demonstrable preparation to use" the **Domain Name**;
- (c) The **Domain Name** is not being used in respect of a bona fide offering of goods or services because it is a blank page;
- (d) As set out at paragraph 5.20 above, the **Respondent** has changed its name to Switch Telecom Pty Ltd.
- (e) Accordingly, the **Respondent** is not commonly known as the name of the **Domain Name**; and
- (f) Finally, it is apparent that that the **Respondent** is not making legitimate non-commercial or fair use of the **Domain Name**.

5.39 The **Third Element** requires the **Complainant** to prove the **Domain Name** has been registered or subsequently used in bad faith.³²

5.40 In respect of the **Third Element**, the **Complainant** submits³³:

- (a) the **Complainant** is not required to prove that the **Respondent** registered the **Domain Name** in bad faith, but rather only required to prove either that it was registered in bad faith **or subsequently used in bad faith**;
- (b) the **Domain Name** only resolves to a blank page;
- (c) by reason of the **Respondent's** change of name and agreement to "disable" the **Domain Name**, there is evidence that the **Respondent** does not wish to use the **Domain Name**. Further, there is no evidence of advertising, promotion or display to the public of the **Domain Name**. On the contrary, the **Respondent** has set up a new website at URL <switchtelecom.com.au> in place of the use of the **Domain Name**;
- (d) However, the relevant issue is not whether the **Respondent** is undertaking a positive action in bad faith in relation to the domain name, but instead whether, in all the circumstances of the case, it can be said that the **Respondent** is acting in bad faith³⁴;
- (e) In *Telstra Corp Pty Ltd v Nuclear Marshmallows*³⁵ the Presiding Panellist, Andrew F. Christie, said that it is possible, in certain circumstances, for inactivity by a **Respondent** to amount to the domain name being used in bad faith and ultimately

³¹ CS28OCT14, p31

³² CS28OCT14, p32

³³ CS28OCT14, p33

³⁴ *Telstra Corp Pty Ltd v Nuclear Marshmallows* WIPO Case No D2000-0003 (18 February 2000) at paragraph 7.9

³⁵ WIPO Case No D2000-0003

held³⁶, that the passive holding of the domain name by the **Respondent** amounted to the **Respondent** acting in bad faith;

- (f) Mr Christie outlined the circumstances in which he made this finding³⁷, which included that:
- (1) the complainant's trademark has a strong reputation and is widely known, as evidenced by its substantial use in Australia and in other countries; and
 - (2) the respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name;
- (g) By reason of:
- (1) all of the matters set out in paragraphs 5.2 to 5.31 above;
 - (2) the **Complainant's** strong reputation in its trade marks which have been registered since 2011;
 - (3) the fact that the **Respondent** has agreed to disable the **Domain Name**, but has not done so; and that the **Respondent** by its conduct, is simply "passively holding" the **Domain Name**, it should be concluded that the **Domain Name** is being used in bad faith.

5.41 Pursuant to auDRP, p6.1 the **Complainant** seeks that the **Domain Name** Licence be³⁸:

- (a) transferred to the **Complainant**; or
- (b) in the alternative, cancelled.

5.42 The **Complainant** will submit, with respect to any challenges to a decision in the administrative proceeding cancelling or transferring the domain name, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction³⁹.

5.43 The **Complainant** agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain name holder and waives all such claims and remedies against⁴⁰

- (a) the dispute resolution provider and panellists, except in the case of deliberate wrongdoing,
- (b) the registrar,
- (c) the registry administrator, and
- (d) auDA, as well as their directors, officers, employees, and agents.

5.44 The **Complainant** certifies that the information contained in this **Complaint** is to the best of **Complainant's** knowledge complete and accurate, that this **Complaint** is not being presented for any improper purpose, such as to harass, and that the assertions in this **Complaint** are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good faith and reasonable argument.⁴¹

³⁶ at paragraph 7.12

³⁷ at paragraph 7.12 in Telstra

³⁸ CS28OCT14, p34

³⁹ CS28OCT14, p35

⁴⁰ CS28OCT14, p36

⁴¹ CS28OCT14, p37

6. Respondent's Submissions

- 6.1 The **Complainant** relies on two Australian trade mark registrations for the **Complainant's** right to the **Domain Name** namely⁴²:
- (a) 1461933 "THINK MOBILE" registered from 28 November 2011 and
 - (b) 1418751 "THINK MOBILE SIMPLY BETTER" registered from 7 April 2011.
- 6.2 The **Respondent's** registration of the **Domain Name** pre-dates those trade mark registrations by two years.
- 6.3 The **Respondent** was using the **Domain Name** for over four years before any complaints by the **Complainant** about use.
- 6.4 The **Respondent** uses the **Domain Name** in its own business and built up an important client base which uses the **Domain Name**.
- 6.5 In dealing with the **Complainant's** demands, the **Respondent** does not make any admissions against its interests but has in good faith moved to a different name 'switch telecom' and shut down the web-site www.thinktelecom.com.au simply to avoid the spectre of a legal dispute with significant costs and the diversion of staff resources and time⁴³.
- 6.6 Firstly, the **Domain Name** is thinktelecom.com.au and this is not the same as thinkmobile.com.au.
- 6.7 It is a different domain name.
- 6.8 It is also not a confusingly similar domain name for the overall different services offered by the **Respondent**.
- 6.9 Because of this difference, it is submitted that the **Complainant** has not properly established, or at all, a right to stop the **Respondent's** use of the **Domain Name** as it is currently being used (see below).⁴⁴
- 6.10 Secondly, the products and/or services of the parties in dispute are also not the same.
- 6.11 There is no substantial overlap or possibility that the parties' offerings are going to be confused by the domain names in future.
- 6.12 The use of the **Domain Name** by the **Respondent** is only for itself and existing clients already using the **Domain Name**.
- 6.13 And, up until the **Complainant's Complaint**, for the past four years there has been no difficulties concerning confusion in the marketplace.
- 6.14 A simple understanding of what each of the respective businesses do demonstrates this.
- 6.15 Whilst the parties are broadly in the same industry, the telecommunications industry, the **Complainant** supplies low to medium priced stand-alone mobile phone plans to consumers.
- 6.16 The **Complainant** also sells satellite phone plans.
- 6.17 The **Respondent**, however, specializes in supplying fixed line and internet data services to business customers only.
- 6.18 The **Respondent** also sells mobile plans as an auxiliary product for convenience to its customers, but mostly for the purposes of single billing.

⁴² RS25NOV14, p2

⁴³ RS25NOV14, p3

⁴⁴ RS25NOV14, p4

- 6.19 Mobiles are not part of the **Respondent's** core business and the **Respondent** usually sells higher priced plans in any event.
- 6.20 In particular, the **Respondent** does not sell satellite phone plans.⁴⁵
- 6.21 Thirdly, two years before the **Complainant's** two trade mark registrations above, on 18 May 2009, Richard Boothby, the author of **RS25NOV14**, arranged to have the business name Think Telecom registered as a business name B2184748U.
- 6.22 This facilitated the obtaining of the **Domain Name** on that same day.
- 6.23 The **Domain Name** was therefore available and adopted with no wrongful intentions.^{46,47}
- 6.24 The first use of the **Domain Name** occurred shortly thereafter on 3 June 2009.
- 6.25 On 14 July 2009, one and a half months later, the **Respondent** was registered as a company under the name Think Telecom Pty Ltd and the **Respondent** then maintained and used the **Domain Name** for its business.⁴⁸
- 6.26 The **Respondent** therefore strongly denies that its adoption and its continued use of the disputed domain name is in bad faith or is not bona fide.⁴⁹
- 6.27 Fourthly, the essence of the **Complainant's Complaint** is that the **Respondent** retains and passively holds the **Domain Name**, because the web-site www.thinktelecom.com.au is blank.⁵⁰
- 6.28 The **Respondent** agrees that it holds the disputed domain name with a blank page since 30 June 2014 at approximately 5:00pm.
- 6.29 From 28 March 2014 to 30 June 2014 it held the **Domain Name** as a forwarding site to the website www.switchtelecom.com.au but otherwise denies that it merely passively holds the disputed domain name, as alleged.⁵¹
- 6.30 The **Respondent** continues to service its clients who have previously obtained email addresses which use the format "[name]@thinktelecom.com.au" as their email addresses.
- 6.31 Those clients number about 54 persons and for business reasons they wish to continue to use their email addresses.⁵²
- 6.32 It is noted that in the **Respondent's** own business, the **Respondent** has changed all its old @thinktelecom.com.au emails, which total 24 in number, to forward to the new @switchtelecom.com.au emails.
- 6.33 However, despite several notifications to the **Respondent's** clients, (see **RS25NOV14 Attachment 3**), the **Respondent** still receives correspondence to the old email addresses.
- 6.34 This has required the **Respondent** to retain the **Domain Name** for this purpose.
- 6.35 Whilst the **Respondent** always responds from Switch Telecom emails, the **Respondent** can anticipate that a complete changeover from old to new would take the **Respondent's** clients approximately 3 to 4 years before they update their contact lists.⁵³
- 6.36 This brings the total number of this form of electronic address to 78 (54+24)⁵⁴.

⁴⁵ **RS25NOV14**, p5

⁴⁶ see **RS25NOV14, Attachment 1**- business name extract (in force to 18 May 2015) and **RS25NOV14 Attachment 2**- company name extract)

⁴⁷ **RS25NOV14**, p6

⁴⁸ **RS25NOV14**, p7

⁴⁹ **RS25NOV14**, p8

⁵⁰ **RS25NOV14**, p9

⁵¹ **RS25NOV14**, p10

⁵² **RS25NOV14**, p11

⁵³ **RS25NOV14**, p12

- 6.37 Given the differences between the parties' domain names and business offerings, and, given the limited use of the **Domain Name** as an email address @thinktelecom.com.au simply for the convenience of and to service old existing customers of the **Respondent**, the **Respondent** submits its use is bona fide and it should be able to continue with its limited use as aforesaid.⁵⁵
- 6.38 The **Respondent** has met the reasonable demands of the **Complainant** by shutting down the web-site and also not introducing any new clients to the **Domain Name** or old email address using the **Domain Name**.⁵⁶
- 6.39 The change would be detrimental to the **Respondent's** business and the **Respondent's** clients' businesses as follows⁵⁷:
- (a) There will be a real associated cost as clients will need to change their stationery, marketing collateral and email configurations.
 - (b) This will cause and result in lost time and productivity for them in their own businesses.
 - (c) This will affect the **Respondent** directly as the **Respondent** will experience similar losses in time and productivity liaising with its clients and administering changes to the back end setting configurations.
 - (d) Whilst this is possible, it is not ideal.
 - (e) There are also old business cards, letterheads and old email threads with clients and customers that may be their only information that they have for making contact with the **Respondent** and/or the **Respondent's** clients.
 - (f) If clients were not able to contact the **Respondent** or the **Respondent's** clients via previous think telecom details, that would represent significant business loss.
 - (g) By agreeing to the **Complainant's** request and de-commissioning the thinktelecom.com.au web-site there is already the very real possibility that the **Respondent** has itself experienced business loss by past contacts trying to search for the **Respondent** only to discover the website no longer exists.
- 6.40 In addition to the above, the **Respondent's** clients and the **Respondent** itself have also adopted in the past and are continuing to use @thinktelecom.com.au for username and password settings and security on ADSL connections.⁵⁸
- 6.41 Critically and importantly there are 312 clients of the **Respondent** who have purchased ADSL services from the **Respondent** from between 17 June 2009 and 25 March 2014 just before the de-commissioning of the web-site).
- 6.42 Services sold during this period rely on the **Domain Name** as part of their router configuration.
- 6.43 These clients all have individual **Domain Name** configurations programmed as part of their username and password security settings.
- 6.44 For the **Respondent** to change this, the **Respondent** would have to individually go out on site to each client and reconfigure all of these routers one by one.
- 6.45 This would present a significant loss in the form of time and money not to mention the disruption to the **Respondent's** clients' businesses.
- 6.46 The whole process would represent hundreds of hours of lost productivity and would be an unwarranted disruption to the **Respondent's** clients.⁵⁹⁶⁰

⁵⁴ RS25NOV14, p13

⁵⁵ RS25NOV14, p14

⁵⁶ RS25NOV14, p15

⁵⁷ RS25NOV14, p16

⁵⁸ RS25NOV14, p17

- 6.47 As can be seen from the above, any such discontinuity and change can adversely affect business identity and flow of business and service to users of the email addresses "[name]@thinktelecom .com.au " and disrupt unfairly the **Respondent** and those customers who continue to use thinktelecom.com.au for username and password settings and security on ADSL connections.⁶¹
- 6.48 There is the further overarching possibility that arises from the hassle of changing domain names, that the **Respondent** will be losing clients from the disruption to their time, disruption to their service and the real possibility that the **Respondent's** reputation may be impacted during what could be a problematic change-over process.
- 6.49 In telecommunications, telcos try to keep service changes and disruptions to an absolute minimum.
- 6.50 There are already enough problems for clients from time to time from other issues such as exchange faults, outages, service disruptions, various delays, without the **Respondent** or **Complainant** needing to add any more to their list.
- 6.51 For over four years the **Complainant** did not complain about the **Respondent's** business nor the use of the now disputed **Domain Name**.
- 6.52 Accordingly, a similar amount of time of four years for the 78 email addresses and 312 clients' router configurations should be allowed for any change-over period, if that is to be the outcome of this dispute.
- 6.53 In any change-over scenario, it would be easier and a better solution to maintain and forward their old email addresses [name]@thinktelecom.com.au to any new email addresses [name]@switchtelecom.com.
- 6.54 This therefore requires the **Respondent** to retain the **Domain Name** which serves a genuine benefit and the needs of the end-user in a transition or change-over phase.⁶²
- 6.55 The **Complainant** has certified that it is not motivated by any improper purpose or to harass.
- 6.56 However, the **Respondent** cannot entirely agree.
- 6.57 The **Complainant** has been making threats of litigation to and demands of the Respondent for over a year.
- 6.58 The **Respondent** has already reasonably met those demands by shutting down the website and moving to the name switch telecom.
- 6.59 The **Complainant** would be more than aware of the realities of business operations set out in this response and the fact that there is no real damage to the **Complainant** or any confusion arising from the continuing residual activities of the **Respondent** here set out.⁶³
- 6.60 The **Respondent** considers that the domain name dispute process is being used to circumvent a legitimate negotiation that might otherwise occur for compensation to the **Respondent** for the **Respondent** and the **Respondent's** clients to immediately and completely change away from any residual on-going use of the disputed domain name.⁶⁴

⁵⁹ see **RS25NOV14, Attachment 4** - screen shot of a router configuration / settings showing service connection of domain name enabling connection to internet

⁶⁰ **RS25NOV14**, p18

⁶¹ **RS25NOV14**, p19

⁶² **RS25NOV14**, p20

⁶³ **RS25NOV14**, p21

⁶⁴ **RS25NOV14**, p22

- 6.61 If the **Respondent** is obliged to forthwith cease use of the disputed domain name thinktelecom.com.au and is obliged, as a result, to give its old clients new email addresses and new router configurations and other support (see para 6.41 above), the **Complainant** should be responsible to compensate the **Respondent** and its customers for the cost and inconvenience of such a serious discontinuity and disruption.⁶⁵
- 6.62 The **Respondent** considers the assertions in the **Complaint** are unwarranted under the Rules and under applicable law.
- 6.63 The cited *Telstra Corp v Nuclear Marshmallows* case is not applicable to the facts of this case.
- 6.64 The **Respondent's** use is not passive, nor done in bad faith.
- 6.65 It is a continuation of past use which services old clients and their on-going service contracts.⁶⁶
- 6.66 The **Respondent** agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the complainant and waives all such claims and remedies against
- (a) the dispute resolution provider and panellists, except in the case of deliberate wrongdoing,
 - (b) the registrar.
 - (c) the registry administrator, and
 - (d) auDA, as well as their directors, officers, employees, and agents.⁶⁷
- 6.67 The **Respondent** certifies that the information contained in **RS25NOV14** is to the best of **Respondent's** knowledge complete and accurate, that **RS25NOV14** is not being presented for any improper purpose, such as to harass, and that the assertions in **RS25NOV14** are warranted under the **auDRP** Rules and under applicable law, as it now exists or as it may be extended by a good faith and reasonable argument⁶⁸.

7. Reasons - General

- 7.1 In order to be entitled to a transfer of a domain name to it the **Complainant** must prove on the balance of probabilities that⁶⁹:
- (a) thinktelecom.com.au is identical or confusingly similar to a name, trade mark or service mark in which the **Complainant** has rights [note 1]; and
 - (b) the **Respondent** has no rights or legitimate interests in respect of the **Domain Name** [note 2]; and
 - (c) the **Domain Name** has been registered or subsequently used in bad faith.

Note 1 provides:

[1] *For the purposes of this policy, auDA has determined 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; or*
- b) *the complainant's personal name.*

⁶⁵ **RS25NOV14**, p23

⁶⁶ **RS25NOV14**, p24

⁶⁷ **RS25NOV14**, p25

⁶⁸ **RS25NOV14**, p26

⁶⁹ [.au Dispute Resolution Policy \(auDRP\) \(2010-05\) Schedule A Clause 4\(a\).](#)

Note 2 provides

[2] *For the purposes of this 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.*

7.2 The policy provides in relation to the interpretation of legitimate interest the following assistance.⁷⁰

Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, is to be taken to demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

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

7.3 Further the policy⁷¹ provides for the purposes of bad faith the following circumstances, in particular but without limitation, shall be evidence of the registration and use of a domain name in bad faith:

- (a) circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to another person for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name;*
- (b) the Respondent registered the domain name in order to prevent the owner of a name, trademark or service mark from reflecting that name or mark in a corresponding domain name;*
- (c) the Respondent registered the domain name primarily for the purpose of disrupting the business or activities of another person; or*
- (d) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that website or location or of a product or service on that website or location.*

7.4 Further, clauses 1 and 2 of Schedule A of the **auDRP** provides

1. Purpose. The .au Dispute Resolution Policy ("auDRP") is incorporated by reference into your Registrant Agreement, and sets forth the terms and conditions in connection with a dispute between you and any party other than us (the registrar) over the registration and use of an Internet domain name registered by you in one of the open .au second level domains (2LDs). Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for the auDRP (the "auDRP Rules"), which are at Schedule B of this document, and the selected administrative dispute resolution service provider's

⁷⁰ [.au Dispute Resolution Policy \(auDRP\) \(2010-05\) Schedule A Clause 4\(c\).](#)

⁷¹ [.au Dispute Resolution Policy \(auDRP\) \(2010-05\) Schedule A Clause 4\(b\).](#)

2. *Your Representations. By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your domain name application are complete and accurate, including those as to your eligibility for a domain name in the open 2LD; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights*

8. Findings - Is the Domain Name identical or confusingly similar to a name trademark or service mark in which the Complainant has rights

- 8.1 The **Complainant** conceded that **Domain Name** is not identical to the **Think Mobile Marks**⁷².
- 8.2 I accept the **Respondent's** submissions set out above on this issue for the reasons that it submits.
- 8.3 To the extent that the **Complainant's** submissions are inconsistent with the **Respondent's** submissions I reject those submissions.
- 8.4 In relation to this element I make the following additional observations.
- 8.5 The **Think Mobile Marks** do not contain the word Telecom.
- 8.6 The **Domain Name** does not contain the word "Mobile" which appears in both the **Think Mobile Marks**.
- 8.7 Whilst there is un-contradicted evidence of widespread use of the **Think Mobile Marks**⁷³ there is no evidence provided that any consumers at all (or any other person at all has been misled) by the **Respondent**.
- 8.8 Turning then to a visual inspection of the **Domain Name** thinktelecom.com.au and the **Think Mobile Marks** alone I am not convinced that the **Complainant** has discharged its onus to prove this element on the balance of probabilities.

9. Findings – the Respondent has no rights or legitimate interests in respect of the Domain Name

- 9.1 I accept the **Respondent's** submissions set out above on this issue for the reasons that it submits.
- 9.2 To the extent that the **Complainant's** submissions are inconsistent with the **Respondent's** submissions I reject those submissions.
- 9.3 In relation to this element I make the following additional observations.
- 9.4 The **Complainant** made much of the correspondence between the parties' lawyers. The **Complainant** did not (and could not) submit that a settlement or contract was agreed by reason of that correspondence.
- 9.5 That the **Respondent's** lawyers advised that their client intended to disable the domain name "www.thinktelecom.com.au" is the highest the **Complainant** can put its case in this regard and that a disagreement about what "disable the domain name www.thinktelecom.com.au" means is alleged to have arisen. If the **Complainant** is not satisfied with the **Respondent's** position to appease it, it can, of course, issue legal proceedings to enforce its rights (as senior user or otherwise) as it may be advised.

⁷² See [5.35(a)] above

⁷³ See [5.2] to 5.10]

9.6 It is notable that “www” prefix is technically not a domain name at all but actually a host or machine name of a machine typically used for website hosting⁷⁴. It is plain from the **Respondent’s** submissions and evidence that it was, and is, extensively using the **Domain Name** in a bona fide manner (eg. for dns resolution including that used for emails) other than for web site hosting and that indeed its extant problem was decommissioning its use of the **Domain Name** for which it was known.

9.7 In the extant circumstances, the use of the word “disable” is also interesting when used to describe a www prefixed domain name. A number of other more technically correct words could have been used if the construction contended by the **Complainant** was to be accepted eg. surrender, transfer or deregister but which words were not used. However, without a contract or settlement arising those arguments are secondary and I query whether or not the ordinary rules of contractual construction apply to the extant case.

9.8 Accordingly, I find that the **Complainant** has not established this element.

10. Findings – the Domain Name has been registered or subsequently used in bad faith

10.1 I accept the **Respondent’s** submissions set out above on this issue for the reasons that it submits save that I do not accept that it is entitled to any compensation or costs. I make no comment in relation to those matters as they are outside my jurisdiction.

10.2 To the extent that the **Complainant’s** submissions are inconsistent with the **Respondent’s** submissions I reject those submissions.

10.3 Accordingly, I find that the **Complainant** has not established this element.

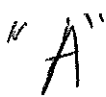
11. Orders

11.1 The **Complaint** be dismissed.



Steve White
Sole Panellist
11 December 2014

⁷⁴ It could also be a third level domain but this would be unusual.



Trade Mark Details

Trade Mark : 1461933

Word: THINK MOBILE
Image:
Lodgement Date: 28-NOV-2011
Registered From: 28-NOV-2011
Date of Acceptance: 21-JAN-2013
Acceptance Advertised: 24-JAN-2013
Registration Advertised: 09-MAY-2013
Entered on Register: 02-MAY-2013
Renewal Due: 28-NOV-2021
Class/es: 38
Status: Registered/Protected
Kind: n/a
Type of Mark: Word

Owner/s: **Pivotel Group Pty Limited**
ACN/ARBN: 102274322
PO Box 700
WAHROONGA NSW 2076
AUSTRALIA

Address for Service: **Pivotel Group Pty Limited**
PO Box 700
WAHROONGA NSW 2076
AUSTRALIA

Goods & Services

Class 38: Cellular communications services

Indexing Details - Word Constituents
MOBILE THINK

Indexing Details - Image Constituents

Trade Mark Details

Trade Mark : 1418751

Word: THINK MOBILE SIMPLY BETTER
Image:
Lodgement Date: 07-APR-2011
Registered From: 07-APR-2011
Date of Acceptance: 21-JAN-2013
Acceptance Advertised: 24-JAN-2013
Registration Advertised: 09-MAY-2013
Entered on Register: 02-MAY-2013
Renewal Due: 07-APR-2021
Class/es: 9, 38
Status: Registered/Protected
Kind: n/a
Type of Mark: Word

Owner/s: **Pivotal Group Pty Limited**
ACN/ARBN: 102274322
 PO Box 700
 WAHROONGA NSW 2076
 AUSTRALIA

Address for Service: Marque Lawyers
 Level 4
 343 George Street
 SYDNEY NSW 2000
 AUSTRALIA

Goods & Services

Class 9: Mobile phones

Class 38: Cellular telecommunications services

• Indexing Details - Word Constituents

BETTER	MOBILE
SIMPLY	THINK

Indexing Details - Image Constituents

"C"

- [Home](#)
- [Contact Us](#)

- [Whois](#)
- [Whois Check](#)
- [Recover Domain Password](#)

Whois Lookup

[Click here to perform another Whois query](#)

Whois response for **thinktelecom.com.au**:

Domain Name	thinktelecom.com.au
Last Modified	31-Aug-2014 23:09:11 UTC
Status	ok
Registrar Name	NetRegistry
Registrant	SWITCH TELECOM PTY LTD
Registrant ID	ACN 138282587
Eligibility Type	Company
Registrant Contact ID	WHLU1095
Registrant Contact Name	Richard Boothby
Registrant Contact Email	rich@switchtelecom.com.au
Tech Contact ID	WHLU1095
Tech Contact Name	Richard Boothby
Tech Contact Email	rich@switchtelecom.com.au
Tech Contact ID	AUTC510085
Tech Contact Name	Richard Boothby
Tech Contact Email	rich@thinktelecom.com.au
Name Server	dns1.potent-s5.com.au
Name Server IP	122.201.120.70
Name Server	dns2.potent-s5.com.au
Name Server IP	122.201.120.71
DNSSEC	unsigned

If you are using this service to check or change the contact details of your domain name you must contact your Registrar in order to do so. This can be done by simply clicking on the Registrar's link located next to 'Registrar Name'.

Processing Time: 102ms

"D"

Christopher Toole

From: Christopher Toole [christophert@marquelawyers.com.au]
Sent: Tuesday, 26 August 2014 10:24 AM
To: derek@hdlegal.com.au
Cc: Nathan Mattock
Subject: RE: Think Mobile & Think Telecom [IWOV-ML-File.FID34382]

Dear Mr Lippner,

We have not received a response to our email below.

Your assertion that the Think Telecom URL is disabled or deregistered is an incorrect one. For as long as the Think Telecom URL remains capable of being visited using a web browser, it is not disabled or deregistered.

As such, your client currently has a registered domain name which is identical or confusingly similar to our client's trade mark and given your client's change of name, your client has no rights or legitimate interests in respect of the domain name.

Our client requires that the domain name be deregistered, as this was agreed between the parties. Our client simply does not understand why this has not occurred and why your client is "bewildered".

If this does not occur, our client will lodge a complaint with the auDRP. This process involves a significant filing fee and both parties will incur legal costs in dealing with the dispute.

As an alternative to the filing of the dispute, your client could simply contact its Registrar, namely NetRegistry, in order to ask that the Registrar take steps to have the domain name deleted. The Think Telecom URL's registrar is listed in the "Whois Lookup" search below.

Please confirm that your client has taken steps to inform NetRegistry to delete the Think Telecom URL on or by **5pm 29 August 2014**.

Should your client not take such action, our client will be forced to contact your client's Registrar to lodge a complaint and/or file a complaint with auDRP.

Our client will rely on this correspondence in respect of any unnecessary costs it incurs.

Regards,
Chris

Whois Lookup

[Click here to perform another Whois query](#)

Whois response for **thinktelecom.com.au**:

Domain Name thinktelecom.com.au

Last Modified 23-May-2013 07:38:56 UTC

Registrar ID [NetRegistry](#)

Registrar Name [NetRegistry](#)

Status ok

Registrant R.M BOOTHBY && S.P BOOTHBY && C.A DERMOTT

Registrant ID ABN 59927165343

Eligibility Type Partnership

Registrant Contact ID BOR11068

Registrant Contact Name Richard Boothby

Registrant Contact Email info@thinktelecom.com.au

Tech Contact ID AUTC510085

Tech Contact Name Richard Boothby

Tech Contact Email rich@thinktelecom.com.au

Name Server dns1.potent-s5.com.au

Name Server IP 122.201.120.70

Name Server dns2.potent-s5.com.au

Name Server IP 122.201.120.71

From: Christopher Toole [<mailto:christophert@marquelawyers.com.au>]
Sent: Monday, 14 July 2014 12:34 PM
To: derek@hdlegal.com.au
Cc: Nathan Mattock
Subject: RE: Think Mobile & Think Telecom [IWOV-ML-File.FID34382]

Mr Lippner,

Our client requested, and we understood that your client agreed that it would deregister the Think Telecom URL, namely www.thinktelecom.com.au. In this regard, you assert in your email dated 26 May 2014 that the www.thinktelecom.com.au domain does not exist.

The fact that the link is directed to a page, albeit a blank one, indicates that the Think Telecom URL page still exists.

As such, we do not understand how you claim to be "bewildered" in circumstances in which your client has not done what was agreed and deregistered the Think Telecom URL.

Please confirm that your client will attend to deregistering the Think Telecom URL such that it no longer exists.

Regards,
Chris

From: Derek Lippner [<mailto:derek@hdlegal.com.au>]
Sent: Thursday, 10 July 2014 11:23 AM
To: Christopher Toole
Cc: Nathan Mattock
Subject: RE: Think Mobile & Think Telecom [IWOV-ML-File.FID34382]

Dear Sir

We are bewildered as to what you are referring to as we have this morning attempted to access the web site and it is clear such is disabled.

Yours faithfully,

H. Derek Lippner
Principal

hdl legal & consulting pty ltd

Head Office

Level 3
145 Flinders Lane
Melbourne VIC 3000

P: (03) 9001 6909
F: (03) 8640 0710

E: derek@hdlegal.com.au

M: 0410 549 241

Mornington Office

Level 1
315 Main Street
Mornington VIC 3931

P: (03) 9001 6918
F: (03) 8678 3066

"Liability limited by a scheme approved under Professional Standards Legislation"

Any information contained in this e-mail including any attachments is strictly confidential and may be subject to copyright and legal privilege. If you are not the intended recipient, you must not save, copy, disseminate or rely on the information contained in this e-mail or any attachment, and any legal privilege, copyright and confidentiality attached to it is not waived or lost by reason of its mistaken delivery to you. If you have received this e-mail in error please notify us immediately and permanently delete the message and any attachments. We do not guarantee the integrity of this e-mail, or that it is virus free and we recommend that you scan the e-mail and any attachments for viruses before opening same. We do not accept any liability for loss or damage that results from a computer virus or a defect in the transmission of this e-mail or any attachment.

From: Christopher Toole [<mailto:christophert@marquellawyers.com.au>]
Sent: Wednesday, 9 July 2014 6:25 PM
To: derek@hdlegal.com.au
Cc: Nathan Mattock
Subject: RE: Think Mobile & Think Telecom [IWOV-ML-File.FID34382]

Dear Mr Lippner,

We refer to your email below.

Despite your client's agreement to disable the domain, www.thinktelecom.com.au (Think Telecom URL) by COB 30 June 2014, this has not occurred.

Please confirm that your client has or will take immediate steps to permanently disable the Think Telecom URL.

Kind regards,
Chris

From: Derek Lippner [<mailto:derek@hdlegal.com.au>]
Sent: Monday, 26 May 2014 9:03 AM
To: Christopher Toole
Cc: Nathan Mattock
Subject: RE: Think Mobile & Think Telecom [IWOV-ML-File.FID34382]

Dear Sir

We are instructed, as per previous correspondence, that our client will disable the Domain: www.thinktelecom.com.au by COB on Monday the 30th of June 2014.

Our client again strenuously denies that they are infringing your client's trademark.

Furthermore, your client must appreciate that it is essentially impossible for an individual to accidentally access the "thinktelecom" website as:

- a) it doesn't exist;
- b) one would physically need to type in the URL www.thinktelecom.com.au (even if it did exist) to realise that it isn't the think mobile website; and
- c) think mobile, THINK Telecom & SWITCH Telecom all have different URLs.

We trust the above is satisfactory to your client.

Yours faithfully,

H. Derek Lippner
Principal

hdl legal & consulting Pty Ltd

Head Office

Mornington Office

Level 3
145 Flinders Lane
Melbourne VIC 3000

Level 1
315 Main Street
Mornington VIC 3931

P: (03) 9001 6909
F: (03) 8640 0710

P: (03) 9001 6918
F: (03) 8678 3066

E: derek@hdlegal.com.au

M: 0410 549 241

"Liability limited by a scheme approved under Professional Standards Legislation"

Any information contained in this e-mail including any attachments is strictly confidential and may be subject to copyright and legal privilege. If you are not the intended recipient, you must not save, copy, disseminate or rely on the information contained in this e-mail or any attachment, and any legal privilege, copyright and confidentiality attached to it is not waived or lost by reason of its mistaken delivery to you. If you have received this e-mail in error please notify us immediately and permanently delete the message and any attachments. We do not guarantee the integrity of this e-mail, or that it is virus free and we recommend that you scan the e-mail and any attachments for viruses before opening same. We do not accept any liability for loss or damage that results from a computer virus or a defect in the transmission of this e-mail or any attachment.

From: Christopher Toole [<mailto:christophert@marquellawyers.com.au>]

Sent: Tuesday, 20 May 2014 8:56 AM

To: derek@hdlegal.com.au

Cc: Nathan Mattock

Subject: Think Mobile & Think Telecom [IWOV-ML-File.FID34382]

Dear Mr Lippner,

We refer to the above matter.

We note that your client has changed its company name to Switch Telecom Pty Ltd and has started using a new website, namely www.switchtelecom.com.au (**Switch URL**).

However, it is still apparent that your client has not ceased use of the URL www.thinktelecom.com.au (**Think Telecom URL**). This use is apparent as when the Think Telecom URL is typed into a web browser, as it redirects to your client's Switch URL. Your client's continued use of the Think Telecom URL is inconsistent with your client's conduct in ceasing to use the word "Think", and constitutes infringement of our client's trade marks. We have already explained several times the bases on which our client asserts that this is so.

Should your we not receive confirmation that your client has taken steps to deregister the Think Telecom URL and to stop the redirection from the Think Telecom URL to the Switch URL, we have received our client's instructions to lodge a claim under the auDRP with au Domain Administration Limited, where our client will seek the deregistration of the Think Telecom URL and may result in the transfer of the Think Telecom URL.

Please let us have this confirmation on or by 5pm 27 May 2014.

Kind regards,
Chris

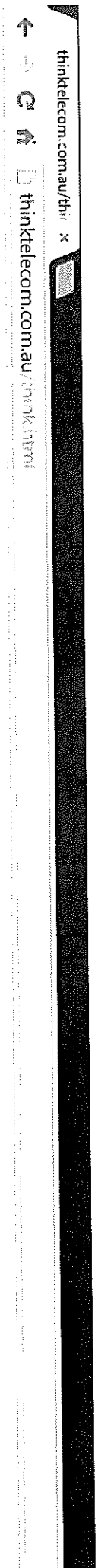
Christopher Toole
Senior Associate
MARQUE Lawyers Pty Ltd

P: +612 8216 3023 / M: 0418 673 920
Level 4, 343 George St, Sydney NSW 2000
www.marquelawyers.com.au

We do not disclaim anything about this email. We're quite proud of it, really.

"E"

Christopher Toole





Order number: 25336494
 Your Reference: endota group
 25/11/14 12:06

THINK TELECOM

ASIC - National Business Names - Current & Historical Extract

Business Name Details

Business Name: THINK TELECOM
 Current Status: Registered
 Regulator: ASIC
 Registered Date: 18/05/2009
 Renewal Date: 18/05/2015
 Former Registration Details: VIC B2184748U

Current Address for Place of Business

Address: UNIT 2 / 19 TOM ROBERTS PDE
 Point Cook VIC 3030
 Start Date: 01/04/2012

Former Address for Place of Business

Address: 19 Waight Ct
 Tarneit VIC 3029
 Start Date: 18/05/2009
 End Date: 01/04/2012

Current Address for Service of Notices

Address: PO BOX 1188
 Werribee VIC 3030
 Start Date: 18/05/2009

Current Holder Details

Name: BOOTHBY RICHARD, BOOTHBY STEVEN, BOOTHBY GRAHAM
 Holder Type: Partnership
 Start Date: 18/05/2009

Current Partners

Name: BOOTHBY, GRAHAM
 Start Date: 01/04/2012
 Name: BOOTHBY, RICHARD
 Start Date: 18/05/2009
 Name: BOOTHBY, STEVEN
 Start Date: 18/05/2009

Former Partners

Name: DERMOTT, CARL
 Start Date: 18/05/2009
 End Date: 01/04/2012

*** End of extract ***

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 60 of the Business Names Registration Act 2011. Please advise ASIC of any error or omission which you may identify.



Order number: 25336615
Your Reference: endota group
25/11/14 12:08

SWITCH TELECOM PTY LTD 138 282 587
ASIC - Current & Historical Extract - SWITCH TELECOM PTY LTD ACN: 138 282 587

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001.
Please advise ASIC of any error or omission which you may identify.

IDENTIFICATION

ACN: 138 282 587
ABN: 83 138 282 587
Current Company Name: SWITCH TELECOM PTY LTD
Registered in: Victoria
Place of Registration:
Registration Date: 14/07/2009
Previous State Number:
Governance Type:
Review Date: 14/07/2015

CURRENT COMPANY DETAILS

Name: SWITCH TELECOM PTY LTD Doc# 7E5842196
Period from: 17/02/2014
Name Start: 17/02/2014
Status: REGISTERED
Type: AUSTRALIAN PROPRIETARY COMPANY
Class: LIMITED BY SHARES
Subclass: PROPRIETARY COMPANY
Disclosing Entity: N

FORMER COMPANY DETAILS

Name: THINK TELECOM PTY LTD Doc# 5E2150711
Period from: 14/07/2009 to 16/02/2014
Name Start: 14/07/2009
Status: REGISTERED
Type: AUSTRALIAN PROPRIETARY COMPANY
Class: LIMITED BY SHARES
Subclass: PROPRIETARY COMPANY
Disclosing Entity: N

CURRENT COMPANY ADDRESS

Address Type: Registered Office Doc# 028 428 752
Address: 78 WESTLEIGH DRIVE
WERRIBEE VIC 3030
Period from: 18/06/2013

Address Type: Principal Place of Business Doc# 028 428 752
Address: 78 WESTLEIGH DRIVE
WERRIBEE VIC 3030
Period from: 05/06/2013

FORMER COMPANY ADDRESS

Address Type: Registered Office Doc# 7E3335510
Address: NEGOTIIS PTY LTD
SUITE 806 LEVEL 1
5 MAIN STREET
POINT COOK VIC 3030
Period from: 09/12/2010 to 17/06/2013

Address Type: Registered Office Doc# 7E2840812
Address: 'ENTRANCE C5' LEVEL 1

2 MAIN STREET
POINT COOK VIC 3030

Period from: 27/04/2010 to 08/12/2010

Address Type: Registered Office

Doc# 7E2597112

Address: 'C5' SUITE 205 LEVEL 1
2 MAIN STREET
POINT COOK VIC 3030

Period from: 17/12/2009 to 26/04/2010

Address Type: Registered Office

Doc# 5E2150711

Address: 3 CULGOA COURT
WERRIBEE VIC 3030

Period from: 14/07/2009 to 16/12/2009

Address Type: Principal Place of Business

Doc# 7E2840812

Address: 'ENTRANCE C5' LEVEL 1
2 MAIN STREET
POINT COOK VIC 3030

Period from: 05/12/2009 to 04/06/2013

Address Type: Principal Place of Business

Doc# 5E2150711

Address: 3 CULGOA COURT
WERRIBEE VIC 3030

Period from: 14/07/2009 to 04/12/2009

CURRENT COMPANY OFFICERS

Role: Director

Doc# 5E2150711

Name: BOOTHBY, STEVEN

Address: UNIT 1
34 GOLDEN AVENUE
HOPPERS CROSSING VIC 3029

Date of Birth: 14/09/1983

Place of Birth: NEWCASTLE NSW

Appointment Date: 14/07/2009

Cease Date:

Role: Director

Doc# 7E5837267

Name: BOOTHBY, GRAHAM

Address: UNIT 2
22 FRANCIS STREET
WERRIBEE VIC 3030

Date of Birth: 30/06/1954

Place of Birth: HULL UNITED KINGDOM

Appointment Date: 01/01/2011

Cease Date:

Role: Director

Doc# 7E5837267

Name: BOOTHBY, RICHARD

Address: 78 WESTLEIGH DRIVE
WERRIBEE VIC 3030

Date of Birth: 12/07/1981

Place of Birth: NEWCASTLE NSW

Appointment Date: 14/07/2009

Cease Date:

Note: Appointment of secretary is optional. In the event no secretary is appointed the director(s) assume the responsibilities under the Law

FORMER COMPANY OFFICERS

Role: Director

Doc# 026 179 400

Name: DERMOTT, CARL ANTHONY

Address: 53 MANNY PAUL CIRUIT
BURNSIDE HEIGHTS VIC 3023

Date of Birth: 20/12/1981

Place of Birth: WIGAN LANCASHIRE UNITED KINGDOM

Appointment Date: 14/07/2009
 Cease Date: 01/12/2010

CURRENT SHARE CAPITAL

Class: ORD ORDINARY SHARES Doc# 7E3450935
 Number of Issued "Shares" : 100
 Amount Paid: \$100.00
 Amount Due: \$0.00

Note: For each class of shares issued by a proprietary company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

CURRENT(SHAREHOLDERS/MEMBER)

Class: ORD Doc# 7E3450935
 Number of Shares Held: 45
 Beneficially Owned: Y
 Fully Paid: Y
 Name: BOOTHBY, STEVEN
 Address: UNIT 1
 34 GOLDEN AVENUE
 HOPPERS CROSSING VIC 3029
 Joint Holding: N

Class: ORD Doc# 7E5837267
 Number of Shares Held: 45
 Beneficially Owned: Y
 Fully Paid: Y
 Name: BOOTHBY, RICHARD
 Address: 78 WESTLEIGH DRIVE
 WERRIBEE VIC 3030
 Joint Holding: N

Class: ORD Doc# 7E5837267
 Number of Shares Held: 10
 Beneficially Owned: Y
 Fully Paid: Y
 Name: BOOTHBY, GRAHAM
 Address: UNIT 2
 22 FRANCIS STREET
 WERRIBEE VIC 3030
 Joint Holding: N

FORMER(SHAREHOLDERS/MEMBER)

Class: ORD Doc# 7E2905604
 Number of Shares Held: 1
 Beneficially Owned: Y
 Fully Paid: Y
 Name: DERMOTT, CARL
 Address: 53 MANNY PAUL CIRCUIT
 BURNSIDE HEIGHTS VIC 3023
 Joint Holding: N

DOCUMENTS RELATING TO EXTERNAL ADMINISTRATION AND/OR APPOINTMENT OF CONTROLLER

Note: This extract may not list all documents relating to this status. State and Territory records should be searched.
 No record

SATISFIED CHARGES

Note: On January 30, 2012 the Personal Property Securities Register (PPS Register) has commenced. The details of current charges will only be available from the PPS Register and the details of satisfied charges (as at 30th January 2012) can be obtained from ASIC. Further information can be obtained from www.ppsr.gov.au.
 No record

ASIC DOCUMENTS (except charges)

Notes:

- A date or address shown as UNKNOWN has not been updated since the ASIC to over the records in 1991.
- Data from Documents with no Date Processed are not included in the Extract.
- Documents with "****" pages have not yet been imaged and are not available via DOCIMAGE. Imaging takes approximately 2 weeks from date of lodgement.
- Documents already listed under charges are not repeated here.

Form Type	Date Received	Date Processed	Effective Date	Pages	Doc No
205 Notification of Resolution Changing Company Name	17/02/2014	17/02/2014	14/02/2014	2	7E5842196
484 Change to Company Details Change Officeholder Name or Address Change Member Name or Address	14/02/2014	14/02/2014	14/02/2014	3	7E5837267
484 Change to Company Details Change of Registered Address Change of Principal Place of Business (Address)	11/06/2013	12/06/2013	12/06/2013	2	028 428 752
484 Change to Company Details Appointment or Cessation of a Company Officeholder Changes to Share Structure Notification of Share Issue Changes to (Members) Share Holdings	03/02/2011	03/02/2011	03/02/2011	3	7E3450935
484 Change to Company Details Appointment or Cessation of A Company Officeholder	02/12/2010	02/12/2010	02/12/2010	2	7E3335570
484 Change to Company Details Change of Registered Address Changes to Share Structure Notification of Share Issue Changes to (Members) Share Holdings	02/12/2010	02/12/2010	02/12/2010	3	7E3335510
309 Notification of Details of a Charge	13/10/2010	14/10/2010	23/09/2010	7	027 154 308
309 Notification of Details of a Charge	13/10/2010	14/10/2010	23/09/2010	6	027 154 307
309 Notification of Details of a Charge	13/10/2010	14/10/2010	23/09/2010	7	027 154 305
484 Change to Company Details Change Member Name or Address	20/05/2010	20/05/2010	20/05/2010	2	7E2905604
484 Change to Company Details Change of Registered Address Change of Principal Place of Business (Address)	20/04/2010	20/04/2010	20/04/2010	2	7E2840812
484 Change to Company Details Change Officeholder Name Or Address	14/12/2009	14/12/2009	14/12/2009	2	026 179 400
484 Change to Company Details Change of Registered Address	10/12/2009	10/12/2009	10/12/2009	2	7E2597112
201 Application For Registration as a Proprietary Company	14/07/2009	14/07/2009	14/07/2009	3	5E2150711

PRE-ASIC DOCUMENTS

No record

ANNUAL RETURNS

No record

FINANCIAL REPORTS

No record

CURRENT CONTACT ADDRESS FOR ASIC USE ONLY

Note: Section 146A of the Corporations Act 2001 states 'A contact address is the address to which communications and notices are sent from ASIC to the company.'

Address Type: Contact address for ASIC use only

Address: PO BOX 6561
POINT COOK VIC 3030

Period from: 24/07/2012

FORMER CONTACT ADDRESS FOR ASIC USE ONLY

Note: Section 146A of the Corporations Act 2001 states 'A contact address is the address to which communications and notices are sent from ASIC to the company.'

Address Type: Contact address for ASIC use only

Address: PO BOX 6561
POINT COOK VIC 3030

Period from: 02/12/2010 to 23/07/2012

Address Type: Contact address for ASIC use only

Address: PO BOX 42
WERRIBEE VIC 3030

Period from: 03/02/2010 to 02/12/2010

Bulletin Board

Think Telecom has made the big Switch!

- After 5 years we've thought a lot about Telecommunications and the more we've thought about it the more reasons we've found why people would want to make the Switch.
- The same owners and the same team of thinkers with the same focus on providing exceptional service to all of our valued clients has Switch-ed names.
- We're so positive people should make the switch we decided we would too... so let us introduce Switch Telecom.
- Switch-to wholesale single billing, Switch-ing your office location or Switch-on your business with Switch Telecom.
- People used to switch to Think - now they think about making the Switch!

Our new website www.switchtelecom.com.au has switch-ed on!

Bulletin Board

Think Telecom are about to make a big Switch!

After 5 years we've thought a lot about Telecommunications and the more we thought about it the more reasons we've found why people would want to make the switch to a responsive,

- We're so positive people should make the switch we decided we would too... so let us introduce Switch Telecom.
- The same team of thinkers, with the same focus on providing exceptional service to all of our valued clients, is Switch-ing names.
- People used to switch to Think - now they'll think about making the Switch!

Our new website www.switchtelecom.com.au will switch-on May 1st.

RICHARD BOOTHBY | business account manager

Think Telecom has made the big Switch ... the same team of thinkers, with the same focus on providing exceptional service to all of our valued clients has Switch-ed names. People used to switch to Think – now they think about making the Switch



mobile +61 422 192 501 | rich@switchtelecom.com.au | switchtelecom.com.au
copper 1800 800 723 | customer care 1800 800 723 | [facebook 1800 800 723](http://facebook.com/switchtelecom)
switch telecom Pty Ltd | ACN 138282387 | GPO Box 4222 Melbourne VIC 3030

Please consider the environmental leader printing this email

Simon

From: THINK Telecom [customerservice=switchtelecom.com.au@mail61.atl91.mcsv.net] on behalf of THINK Telecom [customerservice@switchtelecom.com.au]
Sent: Wednesday, 9 April 2014 8:54 AM
To: Richard
Subject: THINK Telecom to SWITCH Telecom

Dear, Richard

Think Telecom are about to make a big **Switch**...the same owners and the same team of **thinkers**, with the same focus on providing exceptional service, is **Switch-ing** names!
 So let us introduce...



☎ 1800 800 723 🖨 1800 800 726 📧 GPO Box 4222, Melbourne Vic 3000 📍 customerservice@switchtelecom.com.au

People used to **switch** to **Think** - now they'll **think** about making the **Switch**.
 Call **NOW** to make the **switch... 1800 800 723**



customerservice@switchtelecom.com.au | switchtelecom.com.au
 sales 1800 800 723 | customer care: 1800 800 723 | facsimile 1800 800 726
 Switch Telecom Pty Ltd | ACN 138282587 | GPO Box 4222 Melbourne VIC 3030

This email was sent to rich@switchtelecom.com.au
[why did I get this?](#) [unsubscribe from this list](#) [update subscription preferences](#)
Switch Telecom - GPO Box 4222 Melbourne Vic 3030 Australia



Attachment 4

Internet Access >> PPPoE / PPPoA

PPPoE / PPPoA Client Mode

PPPoE/PPPoA Client Enable Disable

DSL Modem Settings

Multi-PVC channel Channel 1

VPI 8

VCI 35

Encapsulating Type LLC/SNAP

Protocol PPPoA

Modulation Multimode

PPPoE Pass-through

For Wired LAN

For Wireless LAN

Note: If this box is checked while using the PPPoA protocol, the router will behave like a modem which only serves the PPPoE client on the LAN.

VLAN Enable

VID 0 (0~4095)

Priority 0 (0~7)

WAN Connection Detection

Mode App Detect

Ping IP

TTL:

MTU 1442 (Max: 1492)

Bridge Mode

Enable Bridge Mode

WAN Backup Setup

Dial Backup Mode Disable Enable

ISP Access Setup

ISP Name

Username 0397427075@hinet.tw

Password *****

PPP Authentication PAP or CHAP

Idle Timeout -1 second(s)

IP Address From ISP WAN IP Allocation

Fixed IP Yes No (Dynamic IP)

Fixed IP Address

Default MAC Address

Specify a MAC Address

MAC Address: 00 · 1D · AA · 37 · 82 · 19

Index(1-15) in [Schedule Setup](#):

OK