



RESOLUTION INSTITUTE DOMAIN NAME DISPUTE
ADMINISTRATIVE PANEL

.au Dispute Resolution Policy: auDRP_16_01
Single Panellist Decision

Between:

IELTS Australia Pty Ltd (Complainant)

-and-

KROMOSOME Pty Ltd (Respondent)

Decision

of

PATRICK WEAVER

ielts.com.au

1. Parties

- 1.1. The Complainant is: IELTS Australia Pty Ltd (Dario Paolini).
- 1.2. The Respondent is: KROMOSOME Pty Ltd (Shiva Malhotra).
- 1.3. The Registrar is: NetRegistry.
- 1.4. The Domain Name is: ielts.com.au.
- 1.5. The Provider is: Resolution Institute ABN 69 008 651 232
- 1.6. The Sole Panellist is: Patrick Weaver.

2. Procedural History

- 2.1. The procedural history is set out in Attachment 1.
- 2.2. In addition to the procedural history, the Complainant provided the following Appendix:
 - 2.2.1. Appendix 1 - Trademark Details
 - 2.2.2. Appendix 2 - Screenshots of Current Website
 - 2.2.3. Appendix 3 - Letter to S Malhotra - 10 March 2016
 - 2.2.4. Appendix 4 - Email to Respondent - 27 February 2016
 - 2.2.5. Appendix 5 - Email to Respondent - 1 March 2016
 - 2.2.6. Appendix 6 - Whois Records - December 2016
 - 2.2.7. Appendix 7 - Email and Letter to Mr Fischer
 - 2.2.8. Appendix 8 - Response from Mr Fischer
 - 2.2.9. Appendix 9 - NetFleet Sale Record
 - 2.2.10. Appendix 10 - Whois Records - 18 February 2016
 - 2.2.11. Appendix 11 - Prior Dispute History
 - 2.2.12. Appendix 12 - Domains Currently for Sale
 - 2.2.13. Appendix 13 - Other Domain Affiliations
 - 2.2.14. Appendix 14 - Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs
 - 2.2.15. Appendix 15 - auda-2016-01

3. Summary of Complainant's Submissions

The complainant has made the following submissions:

- 3.1. The domain uses the registered trade mark 'IELTS', to which IELTS Australia Pty Ltd holds intellectual property rights. This submission is accepted.
- 3.2. The respondent has no rights of legitimate interests in respect of the domain name. This submission is contested.
- 3.3. The domain name has been registered in bad faith. This submission is contested.

4. Summary of Respondent's Submissions

The respondent has made the following submissions

- 4.1. The respondent has legitimate rights and interests in the domain.
- 4.2. The domain was not registered in bad faith.

5. Consideration of issues

- 5.1. **The IELTS trademark and business name.** It appears to be common ground between the parties that the trademark IELTS has been associated with the business of IELTS Australia Pty Ltd and the delivery of training and examinations since 1990. The fact the IELTS trademark was registered in 1998 supports this contention.
- 5.2. **The original registration of ielts.com.au.** Although not directly relevant to this matter, the original registration of ielts.com.au by 'aus ielts English college' and its subsequent sale after IELTS Australia Pty Ltd had contacted Mr Fisher (and contrary to his undertakings) was clearly in breach of the auDA rules and was a sale for profit. However, there is no indication that the respondent, or Mr Shiva Malhotra were aware of these facts.
- 5.3. **The use of the domain ielts.com.au by the Respondent.** It appear to be common ground that ielts.com.au was purchased on the 18th February 2016 by the respondent for \$2872.00. Assertions by the claimant that the respondent engages in trading domain names has not been disputed. The website as currently established does not appear to support any form of active business.
- 5.4. **Proposed use of the ielts.com.au by the Respondent.** The respondent asserts he is in the business of conducting not-for-profit workshops to assist people prepare for their IELTS examinations. The website is intended to facilitate this business. In support of this contention, evidence of various 'meetup' meetings have been provided. However, the activities appear to be undertaken in the personal capacity of Shiva (Paul) Malhotra, not the domain owner KROMOSOME Pty Ltd, or the domain contact, Saurabh Sing.
- 5.5. **Rights of KROMOSOME Pty Ltd to use IELTS.** KROMOSOME Pty Ltd may have rights to use the domain name ielts.com.au if at the time of registration it was undertaking (or was in the process of establishing) a business to which the 'ielts' acronym applied. KROMOSOME Pty Ltd has failed to show:
 - 5.5.1. That the domain name is an exact match, abbreviation or acronym for the registrant's name. (Schedule C 2012-04 2 a)
 - 5.5.2. That the domain name is otherwise closely and substantially connected to the registrant. (Schedule C 2012-04 2 b)
 - 5.5.3. Registrants may also register domain names that relates to the subject matter of the website, whilst this requirement appears to have been met in part by Shiva (Paul) Malhotra, there is no indication of how this relates to KROMOSOME Pty Ltd. Furthermore, this provision is conditional (Schedule C 2012-04 3 b) on the fact the domain name does not incorporate 'an entity name or a brand name' in existence at the time the domain was registered.

6. Findings

- 6.1. **The domain name is identical to or confusingly similar to both a name and a trademark in which the Complainant has rights.** At the time of purchase of ielts.com.au by KROMOSOME Pty Ltd, the business of IELTS Australia Pty Ltd had been making use of the trademark IELTS in conjunction with its international partners for a period 25 years. The IELTS training, examination and business were well known to Mr Shiva Malhotra.
- 6.2. **At the time the domain name was registered, it did not match, and was not closely and substantially connected to any aspect of the business of KROMOSOME Pty Ltd.** The domain name has no ascertainable relationship to the registrant's business name or the activities of the registrant; and
- 6.3. **At the time the domain name was registered by KROMOSOME Pty Ltd it incorporated an existing entity name and a brand name.** The entity name IELTS Australia Pty Ltd was in existence on the 18th February 2016. The brand name IELTS was in existence as a registered trademark 18th February 2016.
- 6.4. **Consequently, further to 6.2 and 6.3, the Registrant has no rights or legitimate interests in respect of the domain name.**
- 6.5. **The registration of ielts.com.au by KROMOSOME Pty Ltd was in bad faith.** Based on my findings in 6.1 through 6.3, I have decided the initial registration of ielts.com.au by KROMOSOME Pty Ltd breached auDA registration policies. Consequently 'bad faith' has been established pursuant to clause 4.b.(v) of the auDRP.
- 6.6. Based on my finding in 6.5 above I do not have to make any findings in respect of the other allegations put by the Claimant.

7. Decision

- 7.1. I, Patrick Weaver acting as a Single Panellist under the .au Dispute Resolution Policy: auDRP_16_01, hereby decide that the domain name **ielts.com.au** shall be transferred to the Claimant as soon as practical.
- 7.2. I note and endorse the proposed gesture of good will contained in Section 5 of the Claimants complaint.

DATED: 27th June 2016



.....
Patrick Weaver

Procedural History

[ielts.com.au]
[auDRP_16_04]

1. The complete application was received from the Complainant by Resolution Institute on **23/5/2016**.
2. An acknowledgement of receipt of complaint was emailed to the Complainant on **24/5/2016**.
3. A copy of the complaint was submitted and a request to clarify Respondent details and lock the domain name during proceedings was emailed to the registrar **NetRegistry** on **24/5/2016**
4. On **26/5/2016** the Registrar confirmed via email that the domain name in dispute has been locked.
5. Resolution Institute advised auDA of the complaint on **26/5/2016** via e-mail.
6. On the **26/5/2016** Resolution Institute sent the Respondent (**KROMOSOME Pty Ltd**) an email and written notification of the complaint lodged against them. The Complainant was copied in on these notifications.
7. The due date for the response to the complaint was confirmed to be **15/6/2016**.
8. On **15/6/2016**, **Shiva Malhotra** on behalf of the Respondent (**KROMOSOME Pty Ltd**) submitted a response to the domain name complaint.
9. On **16/6/2016**, **Shiva Malhotra** on behalf of the Respondent (**KROMOSOME Pty Ltd**) sent a copy of their response to the Complainant.
10. On **17/6/2016** the provider approached the Panellist. The Panellist confirmed their availability, informed Resolution Institute that they had no conflict issues with the parties and accepted the matter on **20/6/2016**.

11. The Case file and relevant correspondence was forwarded onto the Panellist on **17/6/2016**.

12. The Parties to the dispute were notified of the Panellist's allocation on **20/6/2016**.

13. The date on which the decision is due is **4/7/2016**.

From: [Dario Paolini](mailto:Dario.Paolini@idp.com)
To: nominations@resolution.institute
Subject: Domain dispute application - ielts.com.au [EMAIL 1 OF 3]
Date: Monday, 23 May 2016 4:47:58 PM
Attachments: [ielts.com.au domain dispute - complaint details.pdf](#)
[ielts.com.au domain dispute - cover sheet.pdf](#)

To whom it may concern,

We seek to initiate a domain dispute for ielts.com.au with a single person panel. Full details of the complaint are in the attached documents.

Referenced appendices are to follow in a second and third email.

We wish to pay via credit card. I will phone to make the payment.

Kind regards,



Dario Paolini
Marketing Manager, Australasia
IDP Education Ltd
Level 3, 535 Bourke St
Melbourne VIC 3000
AUSTRALIA

Direct: +61 (0) 3 9612 4556
Mobile: +61 (0) 457 768 938
Email: dario.paolini@idp.com

IDP Website: www.idp.com
IELTS Website: www.ielts.org
IELTS Website for test takers: www.IELTSessentials.com



Important Notice

This e-mail and any attachments to it are intended to be read or used by the addressee. It is confidential and may contain legally privileged information and/or copyright material of IDP Education Ltd or third parties. If you receive this e-mail in error, please immediately delete it from your system and notify the sender. You should only retransmit, distribute or commercialise this material if you are authorised to do so. You must not disclose, copy or use any part of this e-mail if you are not the intended recipient. IDP Education Ltd will not be responsible for any claim arising from the unauthorised usage of, or alterations to this e-mail or any attachment to it. Please note the views expressed in this email are those of the individual sender and are not necessarily the views of IDP Education Ltd.



Resolution Institute Domain Name Dispute Complaint Application Form

Complainant Name:	IELTS Australia Pty Ltd
ABN/ACN:	84 008 664 766
Contact Person:	Dario Paolini
Address:	Level 8, 535 Bourke Street Melbourne VIC 3053
Phone Number:	Direct: 03 9612 4556 Mobile: 0432 997 673
Fax Number:	-
Email:	dario.paolini@idp.com
Preferred method of communication (electronic):	<input checked="" type="checkbox"/>
Preferred method of communication (hard copy):	<input type="checkbox"/>
Representative authorised to act for Complainant in the administrative proceeding (if applicable):	Same as "contact person"
Contact Person:	
Address:	
Phone Number:	
Fax Number:	
Email:	
Preferred method of communication (electronic):	<input type="checkbox"/>
Preferred method of communication (hard copy):	<input type="checkbox"/>

Respondent Name: (domain name holder)	KROMOSOME PTY LTD
ABN/ACN:	168 791 357
Contact Person:	Shiva Malhotra
Address:	Unit 8, 45 Shirley Road Wollstonecraft NSW 2065
Phone Number:	-
Fax Number:	-
Email:	kromosome@rbvd.com domains@rbvd.com
Preferred method of communication (electronic):	<input checked="" type="checkbox"/>
Preferred method of communication (hard copy):	
Representative authorised to act for Respondent in the administrative proceeding (if applicable):	
Contact Person:	
Address:	
Phone Number:	
Fax Number:	
Email:	
Preferred method of communication (electronic):	
Preferred method of communication (hard copy):	

Domain Name in Dispute:	ielts.com.au	
Registrar:	NetRegistry	
Name(s), Trademark(s) or Service Mark(s) on which the complaint is based (Sch B, Para 4 (viii)):	<p>IELTS Australia is the registered owner in Australia of the word "IELTS" in respect of class 41, "education; training; testing including testing of languages skills" (refer Registration No. 735622).</p> <p>IELTS is a test of English language skill that is used for migration, study and professional purposes around the world, with more than 2.7 million IELTS tests being taken annually.</p> <p>IELTS has existed in Australia since 1990 and in those 26 years of operation has established a substantial reputation and goodwill in both its business and trade mark, attracting the attention and trust of the consumer public at large.</p> <p>IELTS also has a range of support products either already launched or planned for the future, some of which are specific to Australia, which make use of the trade mark as part of their name. These products include IELTS Masterclass, IELTS Assist, IELTS Edge, IELTS Customer Connect and IELTS Focus.</p>	
Complainant seeks a Panel of: (refer to LEADR Supplemental Rule 11 for obligations) Please Tick:	<input checked="" type="checkbox"/>	One (1) Panelist
	<input type="checkbox"/>	Three (3) Panelists
Has the copy of this complaint, along with complaint application form been sent to the Respondent? Please Tick:	<input type="checkbox"/>	Yes
	<input checked="" type="checkbox"/>	No

Payment Options:

By direct deposit:	Account Name: LEADR & IAMA BSB: 032-024 Account Number: 579 164
By credit card:	Over the phone

The Complainant hereby requests that the complaint be submitted for decision in accordance with the .auDRP Policy, Rules and Resolution Institute Supplemental Rules.

Complainant/Representative Signature:	
Name:	Dario Paolini
Date:	19 May 2016

Submission of your application shall be made either:

- i. By electronic email to nominations@resolution.institute
- ii. By facsimile to (02) 9251 3733

1.0 Summary of Complaint

In relation to the domain name, 'ielts.com.au', we assert that:

1. The domain uses the registered trademark, "IELTS", to which IELTS Australia Pty Ltd holds intellectual property rights
2. The Respondent has no rights or legitimate interests in respect of the domain name
3. The domain name has been registered in bad faith

We request that the Complaint is reviewed by the Panel for a decision in accordance with the '.au DISPUTE RESOLUTION POLICY (auDRP)' and the 'RULES FOR .au DISPUTE RESOLUTION POLICY (auDRP Rules)' (see *Appendix 15 - auda-2016-01*).

Each of these assertions is explored in this document, together with referenced supporting documentation.

2.0 The domain name ielts.com.au comprises the entire business trading name and trademark "IELTS"

IELTS Australia is the registered owner in Australia of the word "IELTS" in respect of class 41, "education; training; testing including testing of languages skills" (Registration No. 735622 as shown in *Appendix 1 – Trademark Details*).

IELTS is a test of English language proficiency and is used for migration, study and professional purposes around the world, with more than 2.7 million IELTS tests being taken annually.

IELTS has existed in Australia since 1990, and in those 26 years of operation has established a substantial reputation and goodwill in both its business and brand mark, attracting the attention and trust of the consumer public at large.

IELTS has a range of support products that incorporate the word 'IELTS' and are either already launched or planned for the future, including but not limited to: IELTS Masterclass, IELTS Assist, IELTS Edge, IELTS Customer Connect and IELTS Focus.

3.0 The Respondent has no rights or legitimate interests in respect of the domain name

3.1 History of the word 'IELTS'

Use of the word "IELTS", a word that is an acronym (International English Language Testing System) and is not found in the English language, as the sole text of a .com.au domain

name implies an endorsement and affiliation with IELTS Australia Pty Ltd business and is misleading to website visitors.

'IELTS' has been in use as a business name for 26 years and a registered trademark in Australia since 1997. There is no other use of this word in common language, and therefore no other reason to make use of it as a domain name other than convey a product or service that is affiliated with IELTS.

The Respondent has no rights in respect of this trade mark and therefore no rights in respect of the use ielts.com.au as a domain name.

3.2 Current use of the domain

There is a website currently live at www.ielts.com.au (see *Appendix 2 - Screenshots of Current Website*). The site claims to be a non-profit initiative to help IELTS test takers find each other and practice together. We question the validity of these claims because:

- The website and claims were not published until after a legal letter was sent (see *Appendix 3 - Letter to S Malhotra - 10 March 2016*) and contains language that specifically counters the issues raised in that letter
- There is only one study event listed. This event, if true, took place in the past (16 March, 2016) and there are no new study events planned.
- There is limited contact information and missing functionality
- A non-profit group should make use a .org.au domain

If the domain is being used for the purposes of an IELTS study group, there should be greater, fuller and more up to date demonstration of the activities that would take place in a group of this kind. Absence of this display of activity suggests the group is not genuine.

IELTS Australia Pty Ltd made contact with the Respondent via email on February 27, 2016 (see *Appendix 4 - Email to Respondent - 27 February 2016*) however after explaining our interests in the domain on March 1, 2016 (see *Appendix 5 - Email to Respondent - 1 March 2016*), there has been no further response.

The use of IELTS in the domain name implies endorsement by the trademark holder and is misleading.

4. The domain name ielts.com.au has been registered in bad faith

In December 2015, Whois records for ielts.com.au showed the domain was registered to 'aus ielts english college' (see *Appendix 6 - Whois Records - December 2016*). An email and letter was sent to the registrant contact, 'Mr Fischer' (see *Appendix 7 – Email and Letter to Mr Fischer*) and in response, Mr Fischer agreed to make the domain name available to us (see *Appendix 8 – Response from Mr Fischer*).

On 18 February, 2016, ielts.com.au was sold through domain auction site, NetFleet, for the sum of \$2872 (see *Appendix 9 – NetFleet Sale Record*) and the Whois records were updated on 18 February, 2016 to show the new registrant, KROMOSOME PTY LTD (see *Appendix 10 – Whois Records – 18 February 2016*).

On 10 March, 2016, we sent an email and letter to S Malhotra of KROMOSOME PTY LTD (the Respondent) (see *Appendix 3 - Letter to S Malhotra - 10 March 2016*) requesting transfer of registration of ielts.com.au to IELTS Australia Pty Ltd. There was no response to this communication.

A web search of KROMOSOME PTY LTD and Mr S Malhotra reveals three past domain name disputes (see *Appendix 11 – Prior Dispute History*), at least two domains that are affiliated with the Respondent and are currently for sale (see *Appendix 12 – Domains Currently for Sale*) and between 18 and 22 other domains affiliated or registered to Mr Malhotra (see *Appendix 13 – Other Domain Affiliations*).

We assert that:

- The purchase of ielts.com.au through a domain trading marketplace such as NetFleet rather than domain registrar shows that the Respondent has acquired the domain for commercial reasons, including but not limited to the future sale and transfer of the domain for a profit. NetFleet is a domain trading marketplace where domain names that have a commercial value can be placed for auction but is not a registrar where one would search for and register a new domain name.
- The purchase price of ielts.com.au at \$2872 is significantly higher than (more than 95 times) the price that would be paid for a new domain name through a domain registrar. A reasonable person establishing a not-for-profit study group would not pay this amount for its domain name and would instead register a new domain name through a domain registrar. A new .org.au domain name can be registered for two years for \$29.95 at CrazyDomains.com.au.
- The significant financial investment in the registration of ielts.com.au demonstrates a future commercial use for the domain by some form of monetisation.
- The website published at www.ielts.com.au is a direct response to our contact made on 10 March, 2016 (see *Appendix 3 - Letter to S Malhotra - 10 March 2016*) and is not a reflection of any real IELTS study group. The claims made on the site are false and have been implemented to impede a genuine claim to the domain.
- The Respondent's affiliation (as either the owner or contact) with an excessive number of domains, some of which are currently for sale, demonstrates a likelihood that ielts.com.au has also been registered with commercial intentions.
- It is not reasonable for an individual to be associated with the number of disputes that the Respondent has been associated with. This further connects the Respondent to activities that are in breach of domain registration rules and adds to the likelihood

that the domain has been registered in bad faith, for the purposes of commercial gain through our registered trade mark.

According to Schedule C of 2012-04 - *Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs* (see Appendix 14 – *Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs*) we further assert that the Respondent has made false claims as to its eligibility to register ielts.com.au. This demonstrates registration of the domain in bad faith.

- According to the Policy, 'the .com.au 2LD is for commercial purposes'. In order to register ielts.com.au, the Respondent has accepted that their registration of the domain name would be for commercial purposes.
- Conversely, in order to interfere with our rights to the domain name, the Respondent has published a website that claims the site is being run for the purposes of a not for profit study group.
- If the intended use is for the purposes of running a not for profit study group, then the domain is not being used for commercial purposes and the Respondent has therefore made false claims as to the commercial intent for the domain.
- If the intended use of the domain is for commercial purposes, then the Respondent is seeking to attempt to attract, for commercial gain, Internet users to the website by creating an implied association, affiliation or endorsement with the our registered trademark, "IELTS".

Schedule C of 2012-04 - *Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs* states that:

2. Domain names in the com.au 2LD must be:

- a) an exact match, abbreviation or acronym of the registrant's name or trademark; or*
- b) otherwise closely and substantially connected to the registrant, in accordance with the categories of "close and substantial connection" set out in the Guidelines on the Interpretation of Policy Rules for the Open 2LDs.*

The ielts.com.au domain name is neither an exact match nor abbreviation of the registrant's name or trademark, nor is it closely and substantially connected to the registrant. This further demonstrates misleading representations by the Respondent as to its eligibility to register the domain name, which is further evidence of registration in bad faith.

Schedule C of 2012-04 - *Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs* also states that:

3. A domain name may also be registered in the com.au 2LD under paragraph 2(b) for the purpose of domain monetisation, in accordance with the explanation of "domain monetisation" set out in the Guidelines on the Interpretation of Policy Rules for the Open 2LDs, provided that the following conditions are met:

- a) the content on the website to which the domain name resolves must be related specifically and predominantly to subject matter denoted by the domain name; and*
- b) the domain name must not be, or incorporate, an entity name, personal name or brand name in existence at the time the domain name was registered*.*

If the ielts.com.au domain ielts.com.au was registered with the intent of domain monetisation, it would be ineligible for registration because it includes the registered mark, "IELTS" which was in existence at the time the domain name was registered to the Respondent. This further demonstrates misleading representations by the Respondent as to its eligibility to register the domain name, which is further evidence of registration in bad faith.

5.0 Remedy sought

The remedy sought for the complaint presented herein is for the domain name licence for ielts.com.au to be transferred to IELTS Australia Pty Ltd as follows:

Registrant	IELTS Australia Pty Ltd
Registrant ID	ABN 84 008 664 766
Eligibility Type	Company
Registrant Contact Name	Dario Paolini
Registrant Contact Email	dario.paolini@idp.com
Tech Contact Name	Dario Paolini
Tech Contact Email	dario.paolini@idp.com

As a gesture of goodwill, we offer to reimburse the Respondent for the cost of the licencing of an alternative domain name of their choosing (to a maximum of \$100) through an Australian domain registrar such as CrazyDomains. Currently available domains that are suited to the running of an IELTS study group are:

- ieltsstudygroup.org.au
- ieltsgroup.org.au

5.0 Challenges to a decision

IELTS Australia Pty Ltd 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 Jurisdiction.

6.0 Conclusion

IELTS Australia Pty Ltd's agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution are solely against the domain name holder 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.

IELTS Australia Pty Ltd certifies that the information contained in this Complaint is to the best of its 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.

Dario Paolini
Marketing Manager, Australasia
IDP Education Ltd and IELTS Australia Pty Ltd

dario.paolini@idp.com
0432 997 673
Level 8, 535 Bourke Street
Melbourne 3000

Schedule A – Definitions

In this document:

Our refers to IELTS Australia Pty Ltd, ABN 84 008 664 766

Respondent refers to Shiva Malhotra of KROMOSOME PTY LTD, ACN 168 791 357

The domain name refers to ielts.com.au

Us refers to IELTS Australia Pty Ltd, ABN 84 008 664 766

We means IELTS Australia Pty Ltd, ABN 84 008 664 766

Schedule B – Appendices

Appendix 1 - Trademark Details

Appendix 2 - Screenshots of Current Website

Appendix 3 - Letter to S Malhotra - 10 March 2016

Appendix 4 - Email to Respondent - 27 February 2016

Appendix 5 - Email to Respondent - 1 March 2016

Appendix 6 - Whois Records - December 2016

Appendix 7 - Email and Letter to Mr Fischer

Appendix 8 - Response from Mr Fischer

Appendix 9 – NetFleet Sale Record

Appendix 10 – Whois Records – 18 February 2016

Appendix 11 – Prior Dispute History

Appendix 12 – Domains Currently for Sale

Appendix 13 – Other Domain Affiliations

Appendix 14 – Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs

Appendix 15 – auda-2016-01

From: [Dario Paolini](#)
To: nominations@resolution.institute
Subject: Domain dispute application - ielts.com.au [EMAIL 2 OF 3]
Date: Monday, 23 May 2016 4:50:35 PM
Attachments: [ielts.com.au - Appendices 1 to 8.zip](#)

To whom it may concern,

Please find attached Appendices 1-8 of 15. One final email will follow with the remaining appendices.

Kind regards,



Dario Paolini
Marketing Manager, Australasia
IDP Education Ltd
Level 3, 535 Bourke St
Melbourne VIC 3000
AUSTRALIA

Direct: +61 (0) 3 9612 4556
Mobile: +61 (0) 457 768 938
Email: dario.paolini@idp.com



IDP Website: www.idp.com
IELTS Website: www.ielts.org
IELTS Website for test takers: www.IELTSessentials.com



IELTS

Important Notice

This e-mail and any attachments to it are intended to be read or used by the addressee. It is confidential and may contain legally privileged information and/or copyright material of IDP Education Ltd or third parties. If you receive this e-mail in error, please immediately delete it from your system and notify the sender. You should only retransmit, distribute or commercialise this material if you are authorised to do so. You must not disclose, copy or use any part of this e-mail if you are not the intended recipient. IDP Education Ltd will not be responsible for any claim arising from the unauthorised usage of, or alterations to this e-mail or any attachment to it. Please note the views expressed in this email are those of the individual sender and are not necessarily the views of IDP Education Ltd.

From: [Dario Paolini](#)
To: nominations@resolution.institute
Subject: Domain dispute application - ielts.com.au [EMAIL 3 OF 3]
Date: Monday, 23 May 2016 4:50:31 PM

To whom it may concern,

Please find attached Appendices 9-15 of 15.

Kind regards,



Dario Paolini
Marketing Manager, Australasia
IDP Education Ltd
Level 3, 535 Bourke St
Melbourne VIC 3000
AUSTRALIA

Direct: +61 (0) 3 9612 4556
Mobile: +61 (0) 457 768 938
Email: dario.paolini@idp.com



IDP Website: www.idp.com
IELTS Website: www.ielts.org
IELTS Website for test takers: www.IELTSessentials.com



Important Notice

This e-mail and any attachments to it are intended to be read or used by the addressee. It is confidential and may contain legally privileged information and/or copyright material of IDP Education Ltd or third parties. If you receive this e-mail in error, please immediately delete it from your system and notify the sender. You should only retransmit, distribute or commercialise this material if you are authorised to do so. You must not disclose, copy or use any part of this e-mail if you are not the intended recipient. IDP Education Ltd will not be responsible for any claim arising from the unauthorised usage of, or alterations to this e-mail or any attachment to it. Please note the views expressed in this email are those of the individual sender and are not necessarily the views of IDP Education Ltd.

From: [Nominations Resolution Institute](#)
To: "domains2@netregistrygroup.com.au"; "domains@netregistry.com.au"
Subject: auDRP_16_04 Domain Name Dispute ielts.com.au
Date: Tuesday, 24 May 2016 3:08:00 PM
Attachments: [ielts.com.au domain dispute - cover sheet.pdf](#)
[ielts.com.au domain dispute - complaint details.pdf](#)
[ielts.com.au - Appendices 1 to 8.zip](#)
[ielts.com.au - Appendices 9 to 15.zip](#)
Importance: High

Good afternoon,

DOMAIN NAME DISPUTE NOTIFICATION

Resolution Institute is a Provider under the .au Dispute Resolution Policy.

Resolution Institute has received a request for determination of a dispute pursuant to the auDRP. The domain name in dispute is:

ielts.com.au

You are disclosed as the Registrar of the domain name in the application.

I attach for your information a copy of the complaint received.

In accordance with the auDRP you are requested to:

- Confirm that the above domain name is in fact registered with you
- Clarify that the Respondent is in fact the Registrant of the above domain name and details within the complaint attached are correct
- Provide all contact details (phone, fax, email, postal address) of the Respondent in order for Resolution Institute to ensure contact with the Party
- Confirm that the domain name will be locked pending determination of the dispute

In view of the tight timeframes under the Policy, we request that you provide that above information within 2 calendar days of receipt of this email.

Thank you in advance.

Kind regards,

Lian Drinan
Nomination Services Officer



www.resolution.institute
combining LEADR and IAMA

T +61 2 9251 3366 F +61 2 9251 3733

From: accounts@netregistry.com.au
To: nominations@resolution.institute
Subject: #00618523 : auDRP_16_04 Domain Name Dispute ielts.com.au
Date: Thursday, 26 May 2016 12:35:46 PM

Hi,

- Confirm that the above domain name is in fact registered with you

Yes the domain name is registered with Netregistry

- Clarify that the Respondent is in fact the Registrant of the above domain name and details within the complaint attached are correct

The respondent is the registrant of the domain name ielts.com.au.

- Provide all contact details (phone, fax, email, postal address) of the Respondent in order for Resolution Institute to ensure contact with the Party

Registrant Contact: MASH3285

Name Shiva Malhotra
Organisation S Malhotra
Street 8/45 Shirley Road
City Wollstonecraft
State/Province NSW
Post Code 2065
Country Australia (au)
Contact Details
Email Address Domains@rbvd.com
Telephone Number +61.280344783

Technical Contact: NFQ7UDJ8JYNQPRJH

Name Shiva Malhotra
City Wollstonecraft
Country Australia (au)
Contact Details
Email Address kromosome@rbvd.com

- Confirm that the domain name will be locked pending determination of the dispute

The domain name has been locked pending determination of this dispute.

Kind Regards,
Cindy

The Netregistry Team

From: [Nominations Resolution Institute](#)
To: "Lujia Chen"
Subject: auDRP_16_04 Notification of Dispute Application
Date: Thursday, 26 May 2016 2:47:00 PM
Importance: High

Hi Lujia,

I hope you're having a great week.

As per the governing regulations, I am notifying you of a lodged complaint. A complete application was received on **23/5/2016** by Resolution Institute.

The domain name in dispute is **ielts.com.au**

The matter number is **auDRP_16_04**

The Complainant is **IELTS Australia Pty Ltd** and the Respondent is **KROMOSOME Pty Ltd**.

NetRegistry, has been identified as the registrar of the above domain name. They have been sent the relevant complaint and attachments and have clarified the Respondent's details.

The Respondent is to be contacted today.

Please send a return e-mail to confirm you have been notified of the dispute.

Please contact the office directly or via e-mail if you have any queries regarding the matter.

Kind regards,

Lian Drinan
Nomination Services Officer



www.resolution.institute
combining LEADR and IAMA

T +61 2 9251 3366 F +61 2 9251 3733
nominations@resolution.institute

Level 2, 13 – 15 Bridge Street Sydney NSW 2000
Resolution Institute ABN 69 008 651 232

Concepts, ideas and material in this email or its attachments remain the property of Resolution Institute. The email or its attachments may also contain information that is confidential and privileged, and intended only for the addressee. You must not use, disseminate or copy this information without prior written consent of the sender. If you have received this email in error please notify Resolution Institute immediately.

From: [Nominations Resolution Institute](#)
To: "kromosome@rbvd.com"; "domains@rbvd.com"
Cc: "[Dario Paolini](mailto:Dario.Paolini)"; "accounts@netregistry.com.au"
Subject: auDRP_16_04 Notification of Complaint Lodged (ielts.com.au)
Date: Thursday, 26 May 2016 3:01:00 PM
Attachments: [auDRP_16_04 Respondent Notification of Complaint Lodged.pdf](#)
[ielts.com.au domain dispute - cover sheet.pdf](#)
[ielts.com.au domain dispute - complaint details.pdf](#)
[ielts.com.au - Appendices 1 to 8.zip](#)
[ielts.com.au - Appendices 9 to 15.zip](#)
[.auDRP-2016-01.pdf](#)
[Resolution Institute Supplemental Rules for auDRP \(2016_01\).pdf](#)
Importance: High

Dear Shiva,

Email 1 of 1

Attachments:

- (1) Respondent Notification of Complaint Lodged**
- (2) Application for ielts.com.au complaint**
- (3) .au Dispute Resolution Policy 2016-01**
- (4) Resolution Institute Supplemental Rules for .auDRP**

Please see the complaint attached regarding the domain name **ielts.com.au**

Resolution Institute is a provider authorised by the auDA to conduct and administrate domain name disputes under the .au Dispute Resolution Policy 2016-01 and the Resolution Institute Supplemental Rules (attached).

I draw your attention to our letter dated 26 May 2016(attached) which indicates the further process involved in this matter.

As per schedule B, paragraph 4(c) of the .au Dispute Resolution Policy, the date of commencement is the **26 May 2016**.

This correspondence has also been sent via express post today to **Unit 8, 45 Shirley Road, Wollstonecraft NSW 2065**.

Please confirm receipt of this information when received.

Kind regards,

Lian Drinan
Nomination Services Officer



www.resolution.institute
combining LEADR and IAMA

T +61 2 9251 3366 F +61 2 9251 3733
nominations@resolution.institute

Level 2, 13 – 15 Bridge Street Sydney NSW 2000
Resolution Institute ABN 69 008 651 232

From: [RB VD](#)
To: nominations@resolution.institute
Subject: auDRP_16_04. Respondent: Shiva Malhotra
Date: Wednesday, 15 June 2016 11:56:19 PM
Attachments: [auDRP_16_04.pdf](#)
[DomainNameDisputeApplicationFORM \(1\).pdf](#)

Dear Lian,

Please find my response in regards to the above complaint.

I would appreciate you could let me know if any further information is required.

Regards.
Shiva Malhotra.
0404775411.

From: [RB VD](#)
To: nominations@resolution.institute
Cc: [IELTSAustralia](#)
Subject: auDRP_16_04. Respondent: Shiva Malhotra
Date: Thursday, 16 June 2016 9:21:13 AM
Attachments: [auDRP_16_04.pdf](#)
[DomainNameDisputeApplicationFORM \(1\).pdf](#)

Dear Lian,

I have just CCed the same email to the respondent.
Please disregard as you will receive the same email again.

Sorry but I cannot send my driver's license (for verifying my name) to a third party (complainant). If you need it I am happy to provide you.

Regards.
Shiva Malhotra.
[0404775411](#).

Dear Sir/Madam,

I had tried my best to present my reasons below. As I am not a lawyer I would request you to forgive me in advance if you see my language digressing from the main course of discussion.

Reason for initiating this website: IELTS is a necessary evil for anyone looking to migrate to Australia/extend their visa/apply for a student visa etc. I arrived in Australia about 9 years ago, as a student. I have gone through the tedious and very expensive process of preparing and registering for IELTS. Having spent thousands of dollars (in preparation) I could finally get through and apply for the Permanent Visa which allowed me to stay here. With IELTS.com.au I wanted to give it back to the society by creating a free platform where test takers can find other test takers, discuss and study together.

The whole idea for me to invest time and money in this domain was to provide IELTS takers a non profit and non sectarian community where they can find other test takers with spending a dime. Institutes like IDP (IELTS Australia PTY LTD is IDP) are making millions by running paid courses to conduct IELTS training. My approach was to help people achieve the same goal of IELTS preparation FREE.

The majority of IELTS exam takers would like to save the hefty amounts they have to pay for hiring a teacher or enrolling in one of these IELTS preparation courses offered by IDP.

I have been running IELTS study groups to help others for a long time (more than 1.5 years) (please go back in the group meetups and you can see all the past IELTS events) . Below are some examples of these groups with my picture (please note that I have used my English name PAUL on the meetup forum). To prove that I am the same person I have attached by driver's license with this email.

<http://www.meetup.com/Sydney-english/events/227376159/>

<http://www.meetup.com/Sydney-english/events/227322265/>

<http://www.meetup.com/Sydney-english/events/227322168/>

<http://www.meetup.com/Sydney-english/events/226231490/>

Website Development: I am not an IT professional but still tried my best to put up a basic website. I have already hired a developer and they have initiated the development of the new forum. The jury should understand the time and investment it takes to develop a forum.

Trademark Infringement: On the website we have clearly stated -

- Our non-association with any commercial (for profit) company like Navitas.
- Our non profit and social initiative and objective on various pages of our website.
- The website has never (in the past) asked for money and never will in future.

- The website has never sold any service and never will in future.

This domain name is not registered in bad faith because:

1) I have never approached any potential buyer (including the complainant) for the sale of this name and never will in future.

2) The IELTS trademark was approved on Sept 1997

(http://pericles.ipaustralia.gov.au/atmoss/falcon_details.show_tm_details?p_tm_number=735622&p_search_no=1&p_ExtDisp=D&p_detail=DETAILED&p_rec_no=1&p_rec_all=2). The

.com.au domains were open for registrations since 2002. IELTS.com.au was first registered in the year 2007 (<http://whois.domaintools.com/ielts.com.au>). If the complainant was serious they would have not waited for 5 years to registered their name. By registering this name I am not hindering the complainant to reflect their mark. Dario Paoloi (the name mentioned in the complaint) sent me the email from the following email address - dario.paolini@idp.com. He eventually works for IDP and IDP holds more than 170 other domains

(<http://whois.domaintools.com/idp.com>).

IELTS Australia is a commercial front of IDP.

3) By registering this name I have not in any way disrupted or affected the business of complainant.

4) The wordings are quite clear on the website I have put up that this website is not associated with any money making enterprise and is purely a non profit initiative. Hence I am not misleading any user accessing IELTS that I am the complainant (or I have any affiliation with the complainant).

My efforts are truly of genuine nature to help others save money and time in achieving their IELTS score. I do not want to see IELTS exam takers to spend so much money on their preparation.

Kind Regards.
Shiva Malhotra.
0404775411.

Resolution Institute Domain Name Dispute Complaint Application Form

Complainant Name:	IELTS Australia PTY LTD
ABN/ACN:	84008664766
Contact Person:	Dario Paolini
Address:	
Phone Number:	
Fax Number:	
Email:	dario.paolini@idp.com
Preferred method of communication (electronic):	
Preferred method of communication (hard copy):	
Representative authorised to act for Complainant in the administrative proceeding (if applicable):	
Contact Person:	
Address:	
Phone Number:	
Fax Number:	
Email:	
Preferred method of communication (electronic):	
Preferred method of communication (hard copy):	

Respondent Name: (domain name holder)	SHIVA MALHOTRA
ABN/ACN:	168791357
Contact Person:	SHIVA MALHOTRA
Address:	8/45 SHIRLEY ROAD, WOLLSTONECRAFT, NSW.
Phone Number:	0404775411
Fax Number:	
Email:	au@rbvd.com
Preferred method of communication (electronic):	
Preferred method of communication (hard copy):	
Representative authorised to act for Respondent in the administrative proceeding (if applicable):	
Contact Person:	
Address:	
Phone Number:	
Fax Number:	
Email:	
Preferred method of communication (electronic):	
Preferred method of communication (hard copy):	

Domain Name in Dispute:		
Registrar:	Netregistry	
Name(s), Trademark(s) or Service Mark(s) on which the complaint is based (Sch B, Para 4 (viii)):	IELTS.com.au	
Complainant seeks a Panel of: (refer to LEADR Supplemental Rule 11 for obligations) Please Tick:	<input checked="" type="checkbox"/>	One (1) Panelist
	<input type="checkbox"/>	Three (3) Panelists
Has the copy of this complaint, along with complaint application form been sent to the Respondent? Please Tick:	<input checked="" type="checkbox"/>	Yes
	<input type="checkbox"/>	No

Payment Options:

By direct deposit:	Account Name: LEADR & IAMA BSB: 032-024 Account Number: 579 164
By credit card:	Over the phone

The Complainant hereby requests that the complaint be submitted for decision in accordance with the .auDRP Policy, Rules and Resolution Institute Supplemental Rules.

Complainant/Representative Signature:	
Name:	
Date:	

Submission of your application shall be made either:

- i. By electronic email to nominations@resolution.institute
- ii. By facsimile to (02) 9251 3733

