

Domain Name: *cityldv.com.au*

Name of Complainant: *Ateco Automotive Pty Limited*

Name of Respondent: *The Trustee for the M & NP Family Trust*

Provider: *Resolution Institute*

Single Member Panellist: *Dennis Liner*

1. The Parties

1.1 The Complainant in this proceeding is Ateco Automotive Pty Limited (“the Complainant”).

1.2 The Respondent in this proceeding is The Trustee for the M & NP Family Trust (“the Respondent”).

2. The Domain Name, Registrar and Provider

2.1 The Domain Name subject to this proceeding is “*cityldv.com.au*” (the Domain Name”).

2.2 The Registrar of the Domain Name is TPP Wholesale Pty Ltd (“the Registrar”).

2.3 The provider in this Proceeding is Resolution Institute of Level 2, 13-15 Bridge Street, Sydney, NSW 2000 (“the Provider”)

3 Procedural Matters

3.1 This proceeding relates to the complaint submitted by the Complainant in accordance with:-

(i) the .au Dispute Resolution Policy no.2016-01 published 15 April 2016 (“auDRP”) which includes Schedule A (the Policy) and Schedule B (the Rules);

and

(ii) the Provider’s supplemental rules for the au Domain Name Dispute Policy.

3.2 (i) The Provider was supplied with an ADR Domain Name Dispute Complaint Application Form dated 6 April 2020 by way of an email and received by the Provider on Thursday 9 April 2020. (Replacing the non-compliant Application dated Tuesday 31

March 2020). The email with such Complaint attached supporting documentation is referred to below.

(ii) On Thursday 9 April 2020 the Provider emailed the Respondent a copy of the Complaint and written notification of the Complaint lodged against it and advised that a Response to the Complaint would be due Wednesday 29 April 2020.

(iii) The Respondent did not provide a response to the Complaint within the time required, but forwarded an email on Tuesday 5 May 2020 which purported to be a Response to the Complaint. The email with such Response attached supporting documentation referred to below.

(vi) In light of the present Corona-19 virus pandemic at present, many businesses are either not operating or operating with reduced capacity and creating difficulty for businesses in complying with various procedural matters. In the interest of procedural fairness, I will give the benefit of doubt as to the reason for late lodging of the Response and accordingly find that I will take into account the Response lodged, notwithstanding that it was not served within the relevant time.

(vii) I find that the making of the Complaint and the Response, together with the supporting documentation referred to below comprise all the relevant matters submitted to the Panellist. I have perused the documents and I am satisfied that the service of the documents and the time for service of the documents (as accepted herein) complies with the Rules.

3.3 The documents supplied by the Complainant were as follows:-

Domain Dispute Name Complainant by way of email to which the document set out below was attached:

- i) Resolution Institute Domain Name Dispute Complaint Application Form dated 6 April 2020.
- ii) Details of Complaint .
- iii) Copy Trade Mark 1492619 for "LDV" ("the Trade Mark")

3.4 The documents supplied by the Respondent were as follows:-

- i) Response by way of email to which the document set out below was attached:
- ii) Copy ASIC extract of Business Name "City Light Duty Vehicle"

Factual background and submissions

FACTS ALLEGED BY THE CLAIMANT AND SUBMISSIONS

4.1 The Trade Mark is used to market, distribute and sell LDV branded vehicles in Australia.

4.2 The Domain Name is identical or similar to a name or Trade Mark in which the Complainant has rights, whether registered or unregistered.

- 4.3 The owner of the Trade Mark is SAIC Motor Corporation Limited (“SAIC”).
- 4.4 The Complainant is the exclusive licensed importer in Australia of the LDV range of motor vehicles and parts pursuant to a Distribution Agreement with SAIC (being a Company incorporated in Peoples Republic of China).
- 4.5 No other person or entity except the Complainant is licensed to use the LDV intellectual property (including but not limited to trademarks, logos and colour schemes) in Australia except with the written authorisation of the Complainant. The Complainant has not given such authorisation to the Respondent.
- 4.6 The Respondent has no right or legitimate interest in respect of the Domain Name as the Complainant has no relationship with the Respondent and the Complainant has not authorised the use of the Trade Mark or the Domain Name.
- 4.7 The Domain Name has been registered or subsequently been used in bad faith as the Respondent has registered the Domain Name using the Trade Mark and it is misleading and/or deceptive in that it represents to others that the Respondent has an affiliation or association with the Complainant.

FACTS ALLEGED BY THE RESPONDENT AND SUBMISSIONS

- 5.1 The Respondent provided a copy of the ASIC extract showing City Light Duty Vehicles is registered to Winderee Investments Pty Ltd, of which Mark Pidcock (the sender of the email of Tuesday 5 May 2020) is a Director.
- 5.2 The Domain Name was registered “for the purpose of business website for City Light Duty Vehicles”.

6 Jurisdiction

- 6.1 Paragraph 2.1 of the auDRP states:
- “All Domain Name licences issued or renewed in the open 2LDs from 1 August 2002 are subject to a mandatory administrative proceeding under the auDRP.”
- 6.2 The Domain Name, being “com.au”, is an open 2LD within the scope of the aforementioned paragraph. It is therefore subject to the mandatory administrative proceeding prescribed by the auDRP
- 6.3 In registering the Domain Name the Respondent became subject to the Policy and the Rules in respect to any dispute in regard to the Domain Name, and in registering the Domain Name under the .au process, it has agreed to be so bound. Accordingly the Panel finds that pursuant to the Policy and the Rules it has jurisdiction to determine the Complaint in respect to the Domain Name.

7 Basis of Decision

7.1 Paragraph 15(a) of the Rules state:

“A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy (auDRP Policy), these Rules and any rules and principles of law that it deems applicable.”

7.2 Paragraph 4(a) of the Policy provides that a person is entitled to complain about the registration or use of a Domain Name where:

i) the Domain Name is identical or confusingly similar to a name, Trade Mark or service mark in which the complainant has rights; and

ii) the respondent to the complaint has no rights or legitimate interests in respect of the Domain Name; and

(iii) the respondent’s Domain Name has been registered or subsequently used in bad faith.

I note that all three components of Paragraph 4(a) are required to be proven for any Complaint to be upheld.

- **Domain Name is identical and confusingly similar to names or Trade Marks in which the Complainant has rights.**

The Complainant contends that the Domain Name is identical or similar to the Trade Mark of the Complainant.

The Domain Name includes the word “city” before LDV, but apart from that it is identical and therefore I find that it is similar to the Trade Mark.

Accordingly, I find that Paragraph 4(a) (i) is satisfied.

- **Respondent has no rights or legitimate interests in respect of the Domain Name**

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Domain Name upon the basis of the facts as set out in paragraph 4.1 to 4.6 inclusive.

The Respondent contends that it has a right and legitimate interest arising from the Business Name (Clause 3.3ii), but apart from this, takes no issue with the submissions of the Complainant.

It is noted that the Business Name (registered nearly two years after the registration of the Domain Name) is NOT identical to or similar to the Domain Name, apart from the word “City”.

Pursuant to Schedule A of auDRP the Respondent is required to demonstrate its rights or legitimate interests in respect to the Domain Name by inter alia, any of the following:

- *before any notice to the respondent of the subject matter of the dispute, the respondent's bona fide use of, or demonstrable preparations to use, the domain name or a domain name corresponding to the domain name in connection with an offering of goods or services(not being the offering of domain names that it has acquired for the purpose of selling, renting or otherwise transferring); or*
- *the respondent (as an individual, business, or other organisation) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or*
- *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.*

The Respondent has not provided any submission or documents to support any of these matters set out in Schedule A.

Upon evaluating all the evidence provided to me I find that the Respondent does not offer goods or services in connection with the Domain Name, is not commonly known by the Domain Name or making a legitimate use of the Domain Name. Accordingly I find that paragraph 4(a)(ii) is satisfied.

- **The Domain Name was registered or was subsequently used in bad faith**

The Complainant contends that the Domain Name was registered in bad faith as it incorporated the Trade Mark in the Domain Name, and using it is misleading and deceptive.

It is noted that the Respondent did not take issue with such submissions.

Pursuant to Schedule A of auDPR the following circumstances, inter alia, shall be evidence of the registration and use of a domain name in bad faith:

- (i) *circumstances indicating that the domain name has been registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to another person for a profit; or*
- (ii) *the registration of 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; or*
- (iii) *registering the domain name primarily for the purpose of disrupting the business activities of another person; or*

- (iv) *using the domain name to intentionally attempt 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.*

Upon the submissions, documents and evidence supplied, I find that that the Domain Name was registered or subsequently used in bad faith in accordance with Schedule A , namely sub-clause, (iii) and (iv) are satisfied

In accordance with the above findings, I find that Paragraph 4(a)(i), (ii) and (iii) are satisfied.

8. *Decision.*

- 8.1 As I have found that as each element of Paragraph 4(a) has been proven, the Complainant is upheld.
- 8.2 Accordingly, for the above reasons, I direct that the Domain Name be transferred to the Complainant.

Dated 8 May 2020

Dennis Liner

Panellist