



## **ADMINISTRATIVE PANEL DECISION**

**Grayson's International Pty Ltd**

v

**Leafscreeener (NSW) Pty Ltd**

**auDRP\_20\_04**

**<leafscreeener.com.au>**

### **The Parties**

- 1 The Complainant is Grayson's International Pty Ltd 74 Peter Street, Box Hill North 3129, Victoria, Australia. It is represented by Mr Grayson O'Connor.
- 2 The Respondent is identified in the complaint as Leafscreeener (NSW) Pty Ltd. Its address is given as 47 Menin Road, Oakville, New South Wales.

### **The disputed Domain Name and Registrar**

- 3 The Disputed Domain Name is <leafscreeener.com.au>.
- 4 The Registrar of the Disputed Domain Name is Synergy Wholesale Pty Ltd.

### **Procedural History**

- 5 This is an administrative proceeding pursuant to the .au Dispute Resolution Policy originally adopted by auDA on 13 August 2001, and subsequently amended on 1 March 2008 ("auDRP" of "Policy"), the auDA Rules for .au Dispute Resolution Policy ("Rules"), which is Schedule B of the Policy and the Resolution Institute Supplemental Rules for .au Domain Name Dispute Resolution Policy ("RI Supplemental Rules").
- 6 A Domain Name Dispute Complaint dated Saturday 9 May 2020 was lodged by the Complainant with Resolution Institute via email on Saturday 9 May 2020. An Acknowledgement of Receipt of the Complaint dated Sunday 10 May 2020 was emailed to the Complainant on that day. A Notice of Non-Compliance dated 10 May 2020 was

- emailed to the Complainant that day. A Rectified Domain Name Dispute Complaint dated Monday 11 May 2020 was lodged by the Complainant via email on that date.
- 7 A copy of the Rectified Complaint was emailed to the Registrar on Monday 11 May 2020 with a request to confirm the Respondent Registrant's details and lock the domain name pending the final decision of the domain name dispute proceedings.
- 8 On Thursday 14 May 2020 the Registrar confirmed via email details of the Respondent Registrant. The Registrar subsequently confirmed that the email had been locked.
- 9 Resolution Institute advised auDA of the Rectified Complaint on Thursday 14 May 2020 via email.
- 10 On Thursday 14 May 2020 2020, Resolution Institute emailed the Respondent with the Notification of the Rectified Complaint lodged in respect of the domain name in dispute. The Complainant and the Registrar was copied in on this notification. The email was sent to < [peter@leafscreeener.com.au](mailto:peter@leafscreeener.com.au) >.
- 11 The due date for the Response was noted to be Wednesday 3 June 2020.
- 12 On Thursday 4 June 2020, the Provider approached the Panellist. The Panellist confirmed his availability, informed the Resolution Institute that he had no conflict issues with the Parties and accepted the matter on Friday 5 June 2020.
- 13 The Case file and relevant correspondence was forwarded onto the Panellist on Friday 5 June 2020.
- 14 The Parties to the dispute were notified of the Panellist's allocation on Friday 5 June 2020.
- 15 On 7 June 2020 a Peter Whittle sent an email from 'peter@leafscreeener.com.au' addressed to Resolution Institute saying:

Acknowledged, and thank you.

Further, I assume both you and Mr Ellis are conversant with the history of Leafscreeener as outlined in the ABOUT US section on my website.

The Leafscreeener domain was established with Melbourne IT at pretty much the inception of .au domains some 20 years ago and was subsequently moved by me to Crazy Domains where it remains registered in my name.

Regards to you both.

Peter Whittle

16 Resolution Institute replied:

Thank you for your email of 7 June 2020 below.

We note that following on from earlier email correspondence, we have not received a formal Response in respect of the domain name dispute complaint which was due on 3 June 2020.

As previously stated, any formal Response must abide by the provisions set out in Part 5 of Schedule B of the auDRP Rules attached with further information found on the Resolution Institute website:

<https://www.resolution.institute/resolving-disputes/domain-name/auda-process>

### Domain name disputes in Australia - Resolution Institute

Resolution Institute will release the decision to both parties, the concerned registrar(s) and auDA within 3 calendar days of receiving the panellist's decision. Application. Before you begin your application: Check when the domain name licence was issued. Domain name licences that were issued or renewed in the open 2-Level-Domains are ...

[www.resolution.institute](http://www.resolution.institute)

We note that any response at this stage will be subject to consideration only at the discretion of the Panelist appointed in this matter.

17 There were no further communications from Mr Whittle and no communications on behalf of the respondent. A response was not received.

18 The date on which the decision is due 14 calendar days thereafter being Friday 19 June 2020.

19 Paragraph 5(a) of the Rules provides that, if a respondent does not submit a response, the panel shall decide the dispute based on the complaint, in the absence of exceptional circumstances.

### **Background**

20 The respondent identified in the complaint is 'Leafscreener (NSW) Pty Ltd'. The complaint also gives the Australian Company Number of the respondent, ACN 114 559 741.

- 21 The applicant provided a copy of an ASIC search in respect of the company 'Leafscreeener Pty Ltd', which is in respect of the ACN 114 559 741. That search reveals that the name of the company changed from 'Leafscreeener (NSW) Pty Ltd' to 'Leafscreeener Pty Ltd' on 8 August 2008. The primary means of identifying an Australian company is by its Australian Company Number. It appears that the company with ACN 114 559 741, changed its name from 'Leafscreeener (NSW) Pty Ltd' to 'Leafscreeener Pty Ltd' on 8 August 2008. 'Leafscreeener (NSW) Pty Ltd' and 'Leafscreeener Pty Ltd' are one and the same company.
- 22 As the complaint used the ACN and provided a copy of the ASIC search showing the change of name, the fact that the complaint used a name which had been abandoned by the respondent at the time the complaint was made does not vitiate the application.
- 23 The ASIC search also reveals that the respondent was deregistered on 21 October 2009. It no longer exists.
- 24 The application did not contain a copy of the Lookup details in respect of the domain name. I conducted a search in respect of the domain name at <https://whois.auda.org.au/>. The results of that search were as follows:

Domain Name: LEAFSCREENER.COM.AU  
Registry Domain ID: D407400000002042893-AU  
Registrar WHOIS Server: whois.auda.org.au  
Registrar URL:  
Last Modified: 2019-07-04T06:34:24Z  
Registrar Name: Synergy Wholesale Pty Ltd  
Registrar Abuse Contact Email: abuse@synergywholesale.com  
Registrar Abuse Contact Phone: +61.383999483  
Reseller Name:  
Status: serverRenewProhibited <https://afiliass.com.au/get-au/whois-status-codes#serverRenewProhibited>  
Registrant Contact ID: R-000303682-SN  
Registrant Contact Name: Peter Whittle  
Registrant Contact Email: leafscreeener@aapt.net.au  
Tech Contact ID: C-000801156-SN

Tech Contact Name: Peter Whittle  
Tech Contact Email: peter@leafscreeener.com.au  
Name Server: NSB.CLIXPERT.COM.AU  
Name Server IP: 178.79.139.191  
Name Server: NSA.CLIXPERT.COM.AU  
Name Server IP: 202.130.32.11  
DNSSEC: unsigned  
Registrant: LEAFSCREENER (NSW) PTY LTD  
Registrant ID: ACN 114 559 741

- 25 I have looked at the ‘About Us’ section of the ‘Leafscreeener.com.au’ website. It does not contain any information about Mr Whittle or the respondent. The rest of the website does not, so far as I could ascertain, contain any reference to Mr Whittle at all. I could find no information on the website about which entity conducts the business associated with it.

### **The Policy**

- 26 The Policy sets out the elements that the Complainant must establish in order to be entitled to relief in paragraph 4(a). The Complainant must establish on the balance of probabilities that:
- (i) [the Respondent’s] domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights; and
  - (ii) [the Respondent has] no rights or legitimate interests in respect of the domain name; and
  - (iii) [the Respondent’s] domain name has been registered or subsequently used in bad faith.

- 27 I will consider each of these elements in turn.

### **Confusing similarity**

- 28 The first element, under paragraph 4(a)(i) of the Policy, has two components. First, there must be a “name, trademark or service mark” in which the Complainant has rights. Second, the dispute domain name must be “identical or confusingly similar” to it.
- 29 The complainant provided copies of extracts from two trademark registrations, no 831484 and 849621, one for the expression ‘Leafscreeener’ on a wave like screen, and the other apparently just for the expression ‘leafscreeener’. The complaint asserts that the trademarks

were applied for in 2000. The complainant asserted that they were assigned to the complainant on 4 May 2020. It appears from the Register of Trade Marks that mark 831484 was entered on the register on 9 July 2002 and 849621 was entered on the register on 19 May 2003.

30 The domain name is effectively identical to trade mark 849621. It is confusingly similar to trade mark 831484.

31 I find that the first element is made out.

### **Legitimate interest**

32 Paragraph 4(b) requires the Complainant to establish that the respondent has “no rights or legitimate interests in respect of the domain name”.

33 The respondent is not a legally recognised entity. It can have no rights or interests. Although it appears from the leafscreeener website that someone carries on business using or associated with the website, a response was not provided which explained or attempted to justify the use of the domain name.

### **Bad faith**

34 The third element which the Complainant must establish is that the Respondent registered or subsequently used the Disputed Domain Name in bad faith.

35 Paragraph 4(b) provides a non-exhaustive list of circumstances in which there will be found to have been bad faith registration and use of the domain name.

- (i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business or activities of another person; or
- (iv) by using the domain name, you have 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; or

- (v) if any of your representations or warranties as to eligibility or third party rights given on application or renewal are, or subsequently become, false or misleading in any manner.

36 I am not able to make any findings about the registration of the Disputed Domain name.

37 I understand the reference to representations as to eligibility in paragraph (v) above are representations about the eligibility of the registrant to be or remain registered in respect of the disputed domain name. The eligibility requirements set out in Policy 2012-04 - Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs. It provides:

1. To be eligible for a domain name in the com.au 2LD, registrants must be:
  - a) an Australian registered company; or
  - b) trading under a registered business name in any Australian State or Territory; or
  - c) an Australian partnership or sole trader; or
  - d) a foreign company licensed to trade in Australia; or
  - e) an owner of an Australian Registered Trade Mark; or
  - f) an applicant for an Australian Registered Trade Mark; or
  - g) an association incorporated in any Australian State or Territory; or
  - h) an Australian commercial statutory body.

38 The respondent does not meet these requirements, because the respondent is not an Australian registered company. It has not been a registered company since 21 October 2009, which it was deregistered.

39 This conclusion reflects the conclusion of the panel in *Compagnie Générale des Establishment Michelin v Thomas Panagiotopolous*<sup>1</sup> and *BT Financial Group Pty Ltd v Basketball Times Pty Ltd*.<sup>2</sup>

40 The third element of paragraph 4(a) has been made out as well.

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<sup>1</sup> WIPO Case No DAU 2013-0011 (31 May 2013).

<sup>2</sup> WIPO case No DAU2004-0001 (1 June 2004)

**Decision**

41 For the foregoing reasons, in accordance with paragraph 4(a) of the Policy and paragraph 15 of the Rules, I order that the Domain Name, < **leafscreener.com.au** >, be transferred to the Complainant.

A handwritten signature in blue ink, appearing to read 'DS Ellis', with a small flourish at the end.

DS Ellis

Sole Panelist

Date: 19 June 2020