

Domain Names: *hellobello.com.au*

Name of Complainant: *Unconditional Love Incorporated*

Name of Respondent: *MGM Projects Pty Ltd* ABN 2462927934

Provider: *Resolution Institute*

Single Member Panellist: *Dennis Liner*

1. The Parties

- 1.1 The Complainant in this proceeding is Unconditional Love Incorporated registered in United States of America (“the Complainant”) (UCL).
- 1.2 The Respondent in this proceeding is MGM Projects Pty Ltd ABN 24629279634 (“the Respondent”) (MGM).

2. The Domain Name, Registrar and Provider

- 2.1 The Domain Name subject to this proceeding is **hellobello.com.au** (“the Domain Name”).
- 2.2 The Registrar of the Domain Name is Web Address Registration 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 by way of an email and received by the Provider on Thursday 13 August 2020 (the Complaint). The email with the Complaint attached supporting documentation is referred to below.

(ii) On Monday 17 August 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 Sunday 6 September 2020.

(iii) The Provider received an email on Saturday 5 September 2020 with the Response and attached supporting documentation as referred to below.

(iv) 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 which the Panellist takes into consideration in making this Determination. I have perused the documents and I am satisfied that the service of the documents and the time for service of the documents complies with the Rules.

(v) On Monday 14 September the Complainant sent an email to the Provider asking whether it could provide a response to the Respondent's Response, such email being provided to the Panel to reply. The Panel, having a discretion as to whether to permit such reply, emailed the Complainant that day requesting the Complainant to show relevance of such reply and whether there were any exceptional circumstances. The Complainant forwarded to the Panel an email letter on Wednesday 16 September 2020. The Panel, having considered the contents thereof declined to exercise its discretion to permit such reply advising that although there was relevance shown, there was nothing to evidence exceptional circumstances.

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

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

- i) Resolution Institute Domain Name Dispute Complaint Application Form dated 13 August 2020.
- ii) Complaint .
- iii) Annexure A: Press coverage from the launch of HELLO BELLO.
- iv) Annexure B: Use of HELLO BELLO on Complainant's website and Walmart.com website.
- v) Annexure C: Use of HELLO BELLO on various social media sites.
- vi) Annexure D: Use of HELLO BELLO on social media sites of Kristen Bell and Dax Shepard.
- vii) Annexure E: Screen shots of talk show appearance in respect to one year of HELLO BELLO.
- viii) Annexure F: Australia Trade Mark registrations in name of Complainant, 1967768 , 7 June 2018 (Classes 1,3) and 2095105, 31 October 2019 (Class 35) .

- ix) Annexure G: Email confirmation that the Domain Name was registered 11 May 2020.
- x) Annexure H: Whois lookup with details of the Domain Name registration.
- xi) Annexure I: "404 Page Not Found" screen shot.
- xii) Annexure J: Copy of .au Dispute Resolution Policy.

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

Response by way of email to which the documents set out below were attached:

- (i) Annexure A: Registration of business name Hello Bello 11 May 2020 (the business name).
- (ii) Annexure B: ASIC notification 15 June 2020 in respect to transfer of the Business name.
- (iii) Annexure C: ASIC notification 20 August 2020 as to registration of the business name.
- (iv) Annexure D: Screen shot of web page of the site under the Domain Name showing "under construction".
- (v) Annexure E: Copies of proposed art work utilising Hello Bello .
- (vi) Annexure F: Offer of Purchase of business and copy of Lawyer's account in respect thereto.

Factual background and submissions

FACTS ALLEGED BY THE CLAIMANT AND SUBMISSIONS

- 4.1 The Complainant launched a range of baby products on 25 February 2019 under and by reference to the Hello Bello trade Mark . The launch received various media attention as evidenced in Annexure A
- 4.2 Since such date the Complainant has sold its Hello Bello products in Walmart stores across United States of America (USA) and via its website <https://helloworld.com/collections>. On 6 March 2020 the Complainant received the Walmart Supplier of the Year award for the baby category. Annexure B evidences examples of the use of Hello Bello on the Complainant's website, on Walmart's website and the Walmart award.
- 4.3 The Complainant uses Hello Bello on its Facebook and Instagram accounts as evidenced in Annexure C.
- 4.4 The Complainant has advertised Hello Bello on the personal social media sites of Kristen Bell and Dax Shepard, the founders of the Complainant (the founders) as shown on Annexure D.
- 4.5 The founders have promoted the Hello Bello brand on several high profile shows including the Ellen Show, the Today Show and Good Morning America. Exhibit E shows screen shots of them discussing Hello Bello on such shows.
- 4.6 As a result of the facts in paragraphs 4.1 to 4.5 inclusive the Complainant has accrued a significant and valuable goodwill and reputation in Hello Bello in USA, such that members of the Australian public seeing the Hello Trade Mark used or in association

with baby products or for similar or different goods, will associate those goods exclusively with the Complainant.

- 4.7 The Complainant is the owner of Trade Marks as referred to in Annexure F and has the exclusive rights to use such Trade Marks in Australia for goods in Classes 3 and 5 (various baby products).
- 4.8 The Complainant is the owner of Hello Bello Trade Mark registration and applications in numerous territories throughout the world.
- 4.9 Exhibit G and H confirm that the Domain Name was registered by the Respondent 11 May 2020 and details thereof
- 4.10 The Domain Name is not being used by the Respondent and directs to a "404 page not found" landing page. Annexure I is a screen shot showing this.

FACTS ALLEGED BY THE RESPONDENT AND SUBMISSIONS

- 5.1 The business name "Hello Bello was registered on 11 May 2020 to an associated company, DBM Group Pty Ltd and was transferred to the Complainant on 15 June 2020 (Annexures A, B, C).
- 5.2 The Complainant registered the Domain Name on 11 May 2020 and posted on the site "Under Construction – Coming Soon" (Annexure D).
- 5.3 The Respondent has undergone significant business preparations using the business name and the Domain Name within the Australian market operating under Class 42 – Restaurant services relating to pizza. (Annexure E).
- 5.4 The Respondent had negotiated to purchase a restaurant business in November 2019 and had engaged business advisory firms and lawyers in respect thereto (Annexure F). Such business was to be relaunched using the business name and the Domain name. The purchase did not proceed and the Respondent is seeking a new location and planning to proceed with the launch of Hello Bello in 2020/21.
- 5.5. The Complainant has no significant brand presence in Australia. The Complainant has not produced any evidence in respect to this, has not shown any Australian media coverage, only overseas media outlets. The Complainant has no current trading history in Australia, with only overseas retail stores shown to stock its products. The Complainant took no steps to register the Domain Name or register a business name in the name of Hello Bello Bello in more than 12 months from the Trade Mark registration. The Complainant has not evidenced any public announcements of expansion into the Australian market.
- 5.6. The Trade Mark protects the name in respect to a different Class to that of the intended use by the Respondent. It is in respect to Classes 3 and 5, relating to baby products,

whereas the Respondent intends to use the Domain Name for a business of a different Class.

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 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.

It is noted 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 to the Trade Mark registered in the name of the Complainant .

The Respondent contends that its business is of a different Class and that the Complainant does not carry on business in Australia.

The Panel finds that the contention of the Respondent is not relevant to this aspect and that the Domain Name is identical or confusingly similar to the Trade Mark in which the Complainant has rights. 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 and submissions as set out in Paragraph 4, and the Respondent has not made bona fide use of the Domain Name in connection with offering goods or services as the website resolves to a page displaying an error message, the Respondent has not been known by the name of the Domain Name, and is not making a legitimate non-commercial or fair use of the Domain Name as the website displays no content.

The Respondent contends that the website does not resolve to an error message and that it intends to use the Domain Name and the registered business name for a future pizza restaurant business. and it accordingly has a legitimate interest and upon the basis of the facts and submissions as set out in Paragraphs 5.

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.*

Upon evaluating all the evidence provided to me and considering the facts and submissions as set out above, I find that the Respondent demonstrates that it is preparing to use the Domain Name for services in connection with the Domain Name, is not yet commonly known by the Domain Name and is making a legitimate use of the Domain Name. Accordingly, I find that paragraph 4(a)(ii) is not satisfied.

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

The Complainant and the Respondent both made detailed submissions in respect to this matter.

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.*

The Complainant relies only upon the contention that the website resolves to an error message and that accordingly the Domain Name is being parked. Otherwise the Respondent provides no other contentions as to the Respondent registering or subsequently using the Domain Name in bad faith. Upon the submissions, documents and evidence supplied I find that paragraph 4 (a)(iii) is not satisfied.

8. Decision.

8.1 As I have found that not all elements of 4(a) have been proven, the Complainant is dismissed.

8.2 Accordingly, for the above reasons, I direct that no action be taken in respect of the Domain Name.

Dated 19 September 2020

Dennis Liner. Panellist