



## **DOMAIN NAME DISPUTE ADMINISTRATIVE PANEL**

**auDRP\_22\_2**

### **Single Panellist Decision**

**TI Gotham Inc**

**v.**

**Digital Web Solutions Pty Ltd ABN/ACN 611 225 980**

#### **1. The Parties**

1.1 The Complainant is TI Gotham Inc of Des Moines, Iowa in the United States of America ("the Complainant").

1.2 The Respondent is Digital Web Solutions Pty Ltd of Epping in the State of New South Wales, Australia ("the Respondent").

#### **2. Domain Name, Registrar and Provider**

2.1 The domain name upon which complaint is based is [www.instylemag.com.au](http://www.instylemag.com.au) (the Domain Name).

2.2 The Registrar of the Domain Name is GoDaddy.com LLC ("the Registrar").

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

#### **3. Procedural History**

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 (Policy) and Schedule B (Rules); and
- (ii) the Provider's supplemental rules for the .au Domain Name Dispute Resolution Policy.

3.2 The Complainant lodged a complaint with the Resolution Institute ("the Provider") on 3-05-2022 together with a schedule of attachments relating to the Complaint.

3.3 The documents supplied by the Complainant comprise the complaint and schedule of Annexures relating to the Complaint, namely:

- A - auDA whois record identifying the Respondent as licensee of [www.instylemag.com.au](http://www.instylemag.com.au)
- B - Trade marks on which the Complaint is based
- C - Archive.org landing page for [www.instylemag.com.au](http://www.instylemag.com.au)
- D - Archive.org captures for www.instylemag.com.au in 2009
- E - Archive.org captures for www.instylemag.com.au in 2011
- F - Archive.org captures for www.instylemag.com.au in 2013
- G - Archive.org captures for www.instylemag.com.au in 2015
- H - Archive.org captures for www.instylemag.com.au in 2017
- I - Archive.org captures for www.instylemag.com.au in 2019
- J - Archive.org captures for www.instylemag.com.au in 2020
- K - Email from licensee: advertisers enquiring about website
- L - Approach by Respondent to sell domain name to licensee
- M - ASIC search of Respondent
- N - Download of landing page from www.instylemag.com.au on 25.2.22
- O - Downloads of pages from www.instylemag.com.au on 25.2.22
- P - Examples of Respondent's content
- Q - auDA whois record identifying the Respondent as licensee of [www.wellmadeclothes.com.au](http://www.wellmadeclothes.com.au)
- R - Examples of Respondent's content on [www.wellmadeclothes.com.au](http://www.wellmadeclothes.com.au)
- S - Copy of Policy applicable

3.4 On 8.05.2022 the Provider notified the Registrar of the Domain Name complaint.

3.5 On 12.05.2022 the Respondent was Notified by the Provider of the Domain Name Dispute Complaint, with a copy of that Notification also sent to the Complainant and the Registrar, and auDA was also notified of the complaint.

3.6 On 13.05.2022 the Registrar confirmed that the Domain Name in dispute had been locked.

3.7 Pursuant to 5(a) of Schedule B of the auDRP Rules, the Respondent was required to submit a response to the Provider no later than 1.06.2022, this being twenty (20) days after the date of commencement of the administrative proceeding.

3.8 The Respondent's Response of 31 May 2022 was received on 1 June 2022. Annexures omitted from the Response were subsequently received by the Panel on 8 June 2022 and comprised:

- 1 – Invoice #110860 dated 22.12.21 (due date 24.12.21) provided by Trillian Pty Ltd (trading as Drop.com.au).
- 2 – Copy of Certificate of Incorporation of the Respondent.

3.9 The Resolution Institute appointed Rowena McNally as the sole panellist in the matter on 1-6-2022. The Panellist has confirmed that she has no conflict of interest in relation to the matter. All procedural requirements appear to have been satisfied.

#### **4. Background**

4.1 The Complainant seeks a transfer of the Domain Name.

4.2 The Complainant is a corporation of Delaware organised under the laws of the United States, being previously called Time, Inc, and is part of the Meredith Group ("Meredith").

4.3 The Complainant says that until recently, the website had been registered in the name of Pacific Magazines Pty Limited ("Pacific"), an exclusive licensee of the Complainant and that at all relevant times, use of the website [www.instylemag.com.au](http://www.instylemag.com.au) by Pacific had taken place under the terms of the exclusive licence granted to Pacific by the Complainant.

4.4 The Complaint says that Covid 19 had a devastating effect on the print magazine business and that from 2020 many publishers ceased providing print magazines, at least temporarily. In Australia, the **InStyle** print magazine ceased for the time being, but the digital format continued to be available on [www.instylemag.com.au](http://www.instylemag.com.au).

4.5 The Complainant says that at about the same time, Pacific had undergone ownership changes, its exclusive licence was surrendered and in the midst of those changes, renewal of the domain name licence for [www.instylemag.com.au](http://www.instylemag.com.au) was inadvertently overlooked.

4.6 The Complainant says that this was discovered in February 2022 when the new exclusive licensee, Bashful 5 Group ("Bashful"), was organizing its launch of the digital **InStyle** magazine in enhanced format, intending to use the website [www.instylemag.com.au](http://www.instylemag.com.au) as it had been used over several years previously.

4.7 The Complainant says that it was at this stage that the Complainant learnt that its registration of [www.instylemag.com.au](http://www.instylemag.com.au) had lapsed and that the Respondent had registered the Domain Name.

4.8 As a consequence, the Complainant's licensee, Bashful, has not able to launch the digital **InStyle** magazine on the website [www.instylemag.com.au](http://www.instylemag.com.au), being the website familiar to advertisers and customers.

4.9 The Complainant says, and the Panel accepts, that the domain name incorporates the Complainant's trademark InStyle in its entirety, and that the element "mag" is recognized in Australia as an abbreviation for "magazine"

4.10 The Respondent does not assert, and the Panel accepts, that the Respondent has not been authorised or licensed by the Complainant to use the Complainant's Trademark.

## 5. Jurisdiction

5.1 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."*

5.2 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. Response

6.1. The Respondent has filed a Response to the Complaint.

6.2 The Respondent says and the Panel accepts that that when the Respondent purchased the Domain Name, the Domain Name had expired and was no longer owned by the Complainant.

6.3 The Respondent says that it purchased the Domain Name from "Drop.com.au" which it says is operated by Trellian Pty Ltd on 24.12.2021 for a total consideration of \$5,000 AUD. The submissions received on 1 June 2022 referred to a copy of the receipt as being attached to the submission. This attachment was omitted from the Respondent's Response but was subsequently provided at the request of the Provider, together with a copy of the Respondent's Certificate of Registration as a company on 8.03.2016.

6.4 The receipt from Trellian Pty Ltd records the purchase by the Respondent on 22 December 2021 of two names: the Respondent paid \$25.00 AUD (inclusive of GST) for one of the names (*fancyplantsonline.com.au*) and \$5,000.00 AUD (inclusive of GST) for the Domain Name.

6.5 The Respondent denies that there is any infringement by the Respondent to the product or Trademark of the complaint i.e., "InStyle" and denies "the reproduction or any type of similarity or deception or causing confusion in the Trademark in respect of any arrangements of words, etc."

6.6 The Respondent submits, and the Panel accepts that -

- Registration of its various **InStyle** Trademarks does not accord the Complainant the exclusive use of **InStyle** in all matters, or across all classes, noting that there are numerous other parties using the word combination "InStyle" in relation to other trade mark categories as well as in relation to other goods and services, such as the hair industry, which is one of the specific exclusions from the Complainant's Trademark in class 16 and in other classes.
- At the date the Respondent purchased the Domain Name, the Complainant had not filed its Trademark application for registration of the trademark **InStyle Mag** (which was filed for on 21 April 2022 under Class 9 for "online publications being magazines", under the category "Computer, software and scientific goods").

6.7 The Panel finds that these two submissions, while correct, do not adequately respond to the existence of the Claimant's trademarks in relation to the use of the name **InStyle** -

- since 1998 in relation to Class 16 for printed matter and publications such as general interest magazines (excluding trade magazines for the hair, beauty and retail industries); and
- since 2001 in relation to Class 41 for entertainment services including programmes made available over a global computer network, all programmes relating to general interest in the nature of those covered by magazines; publication of general interest magazines (excluding trade magazines such as trade magazines for the hair, beauty and retain industries).

6.8 The Respondent submits that the word **InStyle** has become so common to trade that no monopoly can be claimed by anybody, including the Complainant.

6.9 The Panel does not accept the correctness of this submission. To the contrary, the granting of a trademark is intended to and does, provide legal protection for the rights deriving from registration such that by virtue of its Trademarks, the Complainant currently has the exclusive right to the use of **InStyle** for those Classes, and for the specific goods and service for which the word combination **InStyle** is specifically registered.

6.10 As to the merits of the Complaint, the Respondent submits that the Complainant's allegations should be rejected on the basis that they are "false, illegal, baseless, devoid of any merit and unsustainable in law and fact".

6.11 The Respondent also asserts that the Complaint has been made solely for the purpose of harassing and causing financial damage to the Respondent.

6.12 The Panel is mindful that the Complainant has not have the opportunity to respond the Respondent's assertions but observes that there is no evidence or material before the Panel, including from the Respondent, which supports these assertions.

6.13 The Panel will turn now to consider the specific elements of the Complaint.

## **7. Complaint Elements and the Onus of Proof**

7.1 Schedule A of the auDRP applies to disputes which meet the requirements set out in paragraph 4(a) of Schedule A of the auDRP. Subparagraph 4(a) requires that any party holding a domain name licence issued in the 2LDs "*..submit to a mandatory administrative proceeding in the event that a third party (complainant) asserts to the applicable Provider, in compliance with the Rules of Procedure that:*

- (i) *[the] 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] domain name has been registered or subsequently used in bad faith.*

7.2 In this proceeding, the Complainant bears the onus of proof and all three of these elements are required to be satisfied under subparagraph 4(a).

## **8. Whether the Domain name identical to or confusingly similar to a name, trade name or service mark in which the Complainant has rights: para. 4(a)(i)**

8.1 The Complainant says it is the registered proprietor in Australia of several trademarks consisting of or including "**InStyle**" including:

- 763933 - **InStyle** in class 16, dated 3 June 1998,
- 869859 - **InStyle The Look** in class 41, dated 20 March 2001,
- 869860 - **InStyle Makeover** in class 16, dated 20 March 2001,
- 869861 - **InStyle Weddings** in class 16, dated 20 March 2001,
- 869862 - **InStyle Entertaining** in class 16 dated 20 March 2001; and
- 869869 - **InStyle** in class 41, dated 20 March 2001.

8.2 The Complainant says it is also the applicant for registration in Australia of the trademark No. 2264861 **InStyle Mag** in class 9 for 'online publications being magazines'.

8.3 The Complainant has provided copies of these various registrations issued by the Australian Government agency, IP Australia, at Annexure B to the Complaint.

8.4 The Complainant says, and the Panel accepts that it holds these registered Trademarks in relation to:

- Class 16\* for printed matter and publications such as general interest magazines

- Class 41\* for entertainment services (including) programmes made available over a global computer network, all programmes relating to general interest in the nature of those covered by magazines, publication of general interest magazines

(\*both registrations specifically exclude trade magazines for the hair, beauty and retain industries).

8.5 The Complainant's Trademarks are deemed to have accrued to the Complainant as of the priority date, which is defined, in the context of the registration of a trademark under the *Australian Trademarks Act*, in respect of particular goods or services as either:

- (a) if the trade mark is registered-the date of registration of the trade mark in respect of those goods or services; or
- (b) if the registration of the trade mark is being sought-the day that would be the date of registration of the trade mark in respect of those goods or services if the trade mark were registered.

8.6 The Complainant says, and the Panel accepts, that the Trademark **InStyle** has been registered in Australia since 1998 and has been in continuous use in the USA for magazines since at least 1994 and in other countries for at least 20 years, with the Trademark in use on both print magazines and on magazines in digital format, available on websites.

8.7 The Complainant says, and the Panel accepts, that as a result of widespread use over many years, the **InStyle** trade mark has gained broad recognition and has accumulated substantial good will such that in many countries, including Australia, the **InStyle** magazine is a well-known source of up to date information concerning celebrity lifestyles and events, entertainment news, fashion, beauty and culture.

8.8 The Complainant says that in Australia, the trademark **InStyle** has been used for many years on print magazines as well as on digital magazines since at least 2009, using the website [www.instylemag.com.au](http://www.instylemag.com.au) and the Complainant has produced (in Annexure C) a download of the [www.archive.org](http://www.archive.org) landing page for the website, showing that it had been saved 581 times between 1 April 2001 and 11 February 2022.

8.9 The Complainant says that the digital **InStyle** magazine in Australia has contained a mixture of content provided by the Complainant and content provided by local Australian journalists, with an illustration of what the Complainant categorises as "typical content" is shown in Annexure D to the Complaint, being a copy of downloads via a 23 January 2009 capture in [www.archive.org](http://www.archive.org) from the website [www.instylemag.com.au](http://www.instylemag.com.au).

8.10 The Complainant has provided various examples of content of the digital **InStyle** magazine over the years in various annexures to the Complaint, namely Annexure E (March 2011 capture), Annexure F (January 2013 capture), Annexure G (March and August 2015 captures), Annexure H (March 2017 capture), Annexure I (February 2019 capture) and Annexure J (December 2020 capture), noting that not all captures retained photos and videos,

8.11 The Complainant says that as a result of many years of use of the website [www.instylemag.com.au](http://www.instylemag.com.au) in Australia as the source of the digital **InStyle** magazine, customers and advertisers are accustomed to entering that website in their browsers to access the digital **InStyle** magazine.

8.12 The Complainant says that the Domain Name incorporates the Complainant's trademark **InStyle** in its entirety and that the substance of the Domain Name is identical to the Complainant's trademark in application 2264861.

8.13 The Complainant says that the identity or confusing similarity between the Domain Name and the Complainant's trademark is exacerbated by content appearing on the website since it has been registered in the name of the Respondent, which has included:

- Using a masthead "InStyle Mag" on the Respondent's landing page;
- Including content similar to that appearing on the same website when it was used to publish the Complainant's digital **InStyle** magazine;
- Copying or adapting from content published by the Complainant in USA on its website or by its licensee in Australia between 2017-2019

which the Complainant says was designed by the Respondent to confuse internet users.

8.14 Sub-paragraph 4(a)(i) contains a number of elements and requires that the Domain Name is identical to or confusingly similar to a name, trade name or service mark in which the Complainant has rights.

8.15 The Complainant says, and The Panel accepts, that the Domain Name consists of the Complainant's trademarked words "InStyle" followed by "mag" and the second-level domain (2LD) suffix ".com.au".

8.16 The Complainant submits that –

- (a) the Complainant has legal rights in and to the name "**InStyle**" derived through its long-standing use of the name InStyle and the registration and use of the Complainant's Trademark; and
- (b) that the Domain Name is substantially identical, or confusingly similar to the Complainant's s Trademark.

8.17 The Panel accepts the Complainant's submissions and finds that the Domain Name is substantially identical to or confusingly similar to a name, trade name or service mark in which the in which the Complainant has rights.

## **9. Whether the Respondent has a right or legitimate interest in the Domain name: para. 4(a)(ii)**

9.1 The Complainant says the Respondent has no right or legitimate interest in the domain name, which it says is currently being used by the Respondent to divert traffic to another website, namely [www.wellmadeclothes.com.au](http://www.wellmadeclothes.com.au) for the Respondent's commercial purposes.

9.2 The Complainant says that:

- the Respondent was not eligible to apply for a licence in respect of the Domain Name, and nor is the Respondent currently eligible to continue to hold the licence;
- The Domain Name is not a match or acronym for any of the requirements of Licensing Rule 2.4.4(2) nor is the Respondent commonly known by the Domain Name; and
- The Respondent has no right to use the trademark in the Domain Name.

9.3 In reply the Respondent says that it has fulfilled all obligations which are required to be satisfied, and that the registrar is entitled to rely on a person's warranty that a domain name can be allocated to them.

9.4 The Respondent says that it is engaged in the business of a "full service digital marketing agency that specializes in SEO, PPC, Web Design & development and video production" since its inception in Australia; that it conducts its business in this field in Australia and around the world and "has gained/established its reputation in the worldwide market in the aforesaid fields".

9.5 The Respondent says that it has gained "maximum popularity" due to its high quality products/services; that its products/services have maintained competitiveness and that their products/services are well received by the purchasing public.

9.6 In so far as the Respondent asserts that it has a or legitimate interest in the Domain name, these interests are identified by the Respondent as follows:

- "The Domain name **www.instylemad.com.au** [sic] is applied under 2.4.4.(f) a match or an acronym of a name of an activity that the person facilitates, teaches or trains."
- "Through this website we are facilitating business for fashion and accessories by giving them leads. We will be generating leads by adding resource guides on fashion and accessories and then ranking them on top of SERP".

9.7 Having regard to the submissions and material provided by the Complainant and Respondent, the Panel finds that:

- (a) the Domain Name is not a match or acronym of a name of an activity in which the Respondent "facilitates, teaches or trains", as submitted for by the Respondent;
- (b) the Respondent did not hold, and does not hold, any business name or company name, nor any registered or pending Australian trademark for which the Domain Name is, or was, an exact match, abbreviation or acronym;
- (c) the Respondent had, and has, no legitimate or bona fide interest or rights in or to the name "**InStyle**", in which the Complainant holds trademarks;
- (d) There was and remains no close or substantial connection between the Domain Name and the Respondent, or the Respondent's business activities as they have been identified by the Respondent; and
- (e) the Respondent was aware, or ought to have been aware, of the matters in sub-paragraphs (b) – (d) above.

9.8 Having regard to these matters, the Panel finds that the Respondent's registration of the Domain Name did not, and does not, satisfy the requirements of Rules 2.4.4 or 2.4.5 of the auDA .au Domain Administration Rules: Licensing (Licensing Rules) in force for domains renewed or registered on or after 12 April 2021.

9.9 Having regard to the Eligibility Policy, the elements of the complaint indicate that the Respondent's registration of the Domain Name, did not, and does not, satisfy:

- (a) Schedule C paragraph 2 (a) of the Eligibility Policy – in that the Domain Name was not, and is not, an "exact match, abbreviation or acronym of the [Respondent's] name or trademark"; or
- (b) Schedule C, para. 2(b) of the Eligibility Policy – in that the Domain Name was not, and is not, "otherwise closely or substantially connected to the [Respondent]"; or



- (c) Rule 2.4.4(2)(a) and (b) of the Licensing Rules – in that the Domain Name was not, and is not, “a match of the [Respondent’s] company, business, [or] statutory...name” or “an acronym of the [Respondent’s] company, business, [or] statutory...name”; or
- (d) Rule 2.4.4(2)(c) of the Licensing Rules – in that the Domain Name was not, and is not, “a match of the [Respondent’s] Australian Trademark”; or
- (e) Rule 2.4.4(2)(f) of the Licensing Rules – in that the Domain Name was also not, and is not “a match or synonym”, as suggested by the Respondent, for “(iv) an activity that the [Respondent] facilitates, teaches or trains”.

9.10 In light of these matters and on the basis of the material provided by the Complainant and the Respondent, the Panel finds that the Respondent was not, either as at the Domain Name Registration Date; nor as at the date of this Complaint, and nor at any material times eligible to hold the Domain Name under the Eligibility Policy or the Licensing Rules.

9.11 It follows that the Panel finds that the Respondent did not and does not currently have any right or legitimate interest in the Domain Name.

#### **10. Whether the Domain Name been registered or subsequently used by the Respondent in bad faith: para. 4(a)(iii)**

10.1 The third limb of sub-paragraph 4(a) is whether the Domain Name has been registered or subsequently used by the Respondent in bad faith (4(a)(iii)).

10.2 The auDRP Policy set out some of the circumstances which, if found to be present by the Panel, will be evidence of the registration and use of a domain name in bad faith. These include where:

- Circumstances indicate that a party has registered or acquired a 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 their documented out-of-pocket costs directly related to the domain name; or
- Where a party has 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
- Where a party has registered a domain name primarily for the purpose of disrupting the business or activities of another person; or
- Where, by using the domain name, a party 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; or
- Where a party’s representations or warranties as to eligibility given on an application or renewal are, or subsequently become, false or misleading in any manner.

10.3 The Complainant says that it became aware in February 2022 that the Domain Name had not been renewed in December 2021 and had been registered by the Respondent.

10.4 The Complainant asserts that the Respondent registered the domain name primarily for the purpose of selling the domain name registration to another person for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name.

10.5 The Complainant says that it communicated to the Respondent through its lawyers in February and March 2022 to express its concerns about the Respondent's use of the website [www.instylemag.com.au](http://www.instylemag.com.au) and seeking the transfer of the website, and that the parties unsuccessfully engaged in discussions of a *without prejudice* nature in the intervening period for the transfer of the website.

10.6 The Complainant points to this as evidencing the Respondent's intention to sell or otherwise transfer the domain name registration for valuable consideration in excess of the Respondent's documented out-of-pocket expenses directly relating to the Domain Name, these being in the sum of \$5,000 AUD (including GST).

10.7 This is denied by the Respondent, who nevertheless says that "...it may be possible that the director of the respondent company, Mr. Vaibhav Kakkar may have contacted the Complainant to sell the said domain name, but the complainant must have also expressed his willingness to buy the said domain, it is nothing but a normal course of business. The principle is that if any party needs to buy or sell some business products / assets of any other party for their interest, they contact each other, this is not an unusual process."

10.8 The Respondent relies on the Complainant's admission that the renewal of the Domain Name was inadvertently overlooked such that the Domain Name became legally available for sale.

10.9 On the evidence available, the Respondent recognised what it considered to be a considerable commercial opportunity when the **InStyle** Domain Name was deregistered and appeared on the Drop.com.au site, which the Respondent says was for the purpose of increasing its presence and maximising its customer base.

10.10 Even if this is correct however, the evidence indicates that the manner in which the Respondent has sought to do this is by diverting visitors to the Domain Name website [www.instylemag.com.au](http://www.instylemag.com.au), to another online location, namely, [www.wellmadeclothes.com.au](http://www.wellmadeclothes.com.au) in a manner that creates a likelihood of confusion with the Complainant's **InStyle** 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.

10.11 The Complainant says that the Respondent has done this in various ways including:

- by incorporating the Complainant's trademark **InStyle** in its entirety such that internet users entering the website into their browsers and expecting to access a digital version of **InStyle** magazine would be likely to assume an affiliation with **InStyle** Magazine; and
- by the deliberate use by the Respondent of content which originated from the Complainant or its licensee.

10.12 The Complainant has included in its Complaint several examples of pages from the Respondent's site, [www.wellmadeclothes.com.au](http://www.wellmadeclothes.com.au), where content published by the Complainant in the USA or by its licensee in Australia, has been copied and republished on its website [www.instyle.com](http://www.instyle.com).

10.13 Also included in the Complainant's Complaint are examples showing in each case the article published by the Complainant or its licensee and the corresponding article downloaded from the website [www.wellmadeclothes.com.au](http://www.wellmadeclothes.com.au) after being diverted from [www.instylemag.com.au](http://www.instylemag.com.au).

10.14 The Complainant says that a number of advertisers had also contacted the Complainant's licensee, Bashful, regarding advertising on the [www.instylemag.com.au](http://www.instylemag.com.au) website and has provided a copy of an email from Bashful to the Complainant in relation to this.

10.15 In any event, the Panel is satisfied that having regard to the communication between the Complainant and the Respondent that the Respondent was, from at least February 2022 (if not earlier) unequivocally aware of the Complainant's circumstances including its long-standing use of **InStyle**, its long-standing publication of **InStyle** Magazine, its previous ownership and use of the Domain Name and the existence of the Complainant's various trademarks incorporating use of **InStyle**.

10.16 What is also clear from the material provided is that notwithstanding the Respondent's knowledge of these matters, the Respondent has continued to use the Domain Name to attract, for commercial gain, internet users to [www.instylemag.com.au](http://www.instylemag.com.au), for diversion to the Respondent's "wellmadeclothes" website, by creating the impression that the website, and the site to which the Respondent diverted internet users, were affiliated with or endorsed by **InStyle** Magazine.

10.17 The Panel finds that:

- The Complainant did not authorise the creation of the Respondent's Website;
- At the time the Respondent registered the Domain Name the Respondent had no right or legitimate interest in the Domain Name;
- The Respondent registered the Domain Name in bad faith for the purpose of selling, or otherwise transferring the Domain Name registration to another person for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Domain Name, in contravention of paragraphs 4(a)(iii) and 4(b)(i) of the auDRP;
- The Respondent has attempted to sell the Domain Name to the Complainant for a price greater than the Respondent's legitimate out-of-pocket expenses.
- The Respondent has used the Domain, for commercial gain, to attract 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 Respondent has continued to use the Domain Name in bad faith and in a manner likely to infringe the Complainant's Trade Mark, in contravention of paragraphs 2(b), 4(a)(iii) and 4(b)(iv) of the auDRP notwithstanding that it had been put on notice of the Complainant's rights in relation to the **InStyle** trademark and its concerns regarding the Respondent's use of the Domain Name.

10.18 It follows from this that I find that the Domain Name was registered and/or has subsequently been used by the Respondent in bad faith.

10.19 All three components of paragraph 4(a) are required to be satisfied for any Complaint to be upheld. As I have found that the Complainant has discharged its onus of proof in relation to each element of paragraph 4(a) it follows that I find the Complainant's Complaint should be upheld.

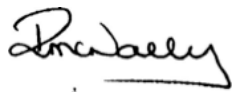
10.20 The Complainant says that the grounds for the Complaint have been made out and seeks that the Domain Name be transferred to the Complainant.

10.21 The Panellist agrees.

## **11. Decision**

The Panellist finds that the Domain Name should be transferred to the Complainant.

DATE: 10 June 2022

A handwritten signature in black ink, appearing to read 'Rowena McNally', with a horizontal line underneath the name.

**Rowena McNally**  
**Panellist**