



## ADMINISTRATIVE PANEL DECISION

**The Trustee for NRS Unit Trust**

v

**Bradley Gregory Thompson**

**auDRP\_22\_5**

**<auraproperty.com.au>**

**<aurapropertymanagement.com.au>**

**<aurapropertygroup.com.au>**

### **The Parties**

- 1 The Complainant is The Trustee for NRS Unit Trust (NRS) of 27 Flinders Lane, Maroochydore QLD. It is represented by Tavis Callard.
- 2 The Respondent is Bradley Gregory Thompson who is represented by Clinton Bothma of CMB Lawyers of suite 307 55 Plaza Parade, Maroochydore QLD.

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

- 3 The Disputed Domain Names are:
  - a <auraproperty.com.au>
  - b <aurapropertymanagement.com.au>
  - c <aurapropertygroup.com.au>
- 4 The Registrar of the Disputed Domain Name is Web Address Registration Pty Ltd trading as Crazy Domains.

### **Procedural History**

- 5 This is an administrative proceeding pursuant to the .au Dispute Resolution Policy originally adopted by auDA on 13 August 2001, 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 4 May 2022 was lodged by the Complainant with Resolution Institute via email on 20 May 2022. An Acknowledgement of Receipt of the Complaint was emailed to the Complainant on 20 May 2022. The Complaint consisted of:
  - (a) Resolution Institute Domain Name Dispute Complaint Application Form date 20 May 2022
  - (b) Complaint letter dated 4 May 2022
  - (c) Whois Lookup - Domain name search subject to the complaint
  - (d) ABN Lookup for The Trustee for NRS Unity Trust -ABN 77 981 015 914, showing registration of 3 business names relating to Aura Property
  - (e) ABN Lookup of Bradley Gregory Thompson - ABN83 680 712 043, Business Name search
  - (f) ASIC search – Business Name Holder in relation to Bradley Gregory Thompson
- 7 A copy of the Complaint was emailed to the Registrar by Resolution Institute (RI) on 20 May 2022 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 24 May 2022 the Registrar confirmed via email details of the Respondent and confirmed that the Disputed Domain Names had been locked.
- 9 RI advised auDA of the Complaint on 25 May 2022 via email.
- 10 On 25 May 2022, RI emailed the Respondent with the Notification of the Complaint lodged in respect of the Disputed Domain Name. The Complainant and the Registrar were copied in on the notification. The due date for the Response was noted to be 14 June 2022.
- 11 On 14 June 2022, the Respondent provided its Response, consisting of:
  - (a) Submission from CMB Lawyers dated 14 June 2022
  - (b) Whois Lookup - Domain name searches subject of the complaint

- (c) ABN Lookup of The Trustee for NRS Unity Trust -ABN 77 981 015 914, showing registration of 3 business names relating to Aura Property
- (d) ABN Lookup of Bradley Gregory Thompson - ABN83 680 712 043, Business Name search
- (e) Whois Lookup - Domain name searches of names registered to Brad Thompson:
  - i auranewhomes.com.au
  - ii aurainvestmentsales.com.au
  - iii aurabuildingmaintenance.com.au
- (f) Whois Domains registered on 5 November 2005 to Brad Thompson:
  - i aurarealty.com
  - ii aurafirsthomebuyers.com
  - iii aurainvestmentproperties.com
  - iv auranewhomes.com
  - v aurapropertymanagement.com
  - vi aurabuildingmaintenance.com
- (g) Whois Lookup - Domain name searches of names registered to Brad Thompson
  - i harmonyhomesales.com registered 17 December 2017
  - ii harmonyrealty.com.au
- (h) IP Australia searches of:
  - i Aura Sunshine Coast
  - ii Aura Real Estate
  - iii Aura Property Sunshine Coast
  - iv Aura Property Group Queensland
  - v Aura Property Group (Qld)
  - vi Aura Property Group

- vii aura property group
- viii Aura Properties Group
- (i) ASIC company searches:
  - i Aura Properties Pty Ltd
  - ii Aura Advisory Group Pty Ltd
  - iii Aura Constructions QLD Pty Ltd
- 12 On 20 June 2022, the Provider approached the Panellist. The Panellist formally confirmed his availability and that she had no conflict issues with the Parties. The Panellist accepted the matter on 20 June 2022.
- 13 The Case file and relevant correspondence were delivered by email to the Panellist on Tuesday 21 June 2022.
- 14 The Parties to the dispute were notified by email of the Panellist's allocation on 21 June 2022.
- 15 The date on which the decision is due is 14 calendar days thereafter being Tuesday 5 July 2022.

## **Background**

- 16 The Complainant states that the NRS Unit Trust currently operates a real estate business on the Sunshine Coast and trades as Aura Property Sunshine Coast. The NRS Unit Trust under the ABN 77 981 015 914 currently holds the business names:
  - a Aura Property Agents, registered 12 October 2021,
  - b Aura Property Group (QLD), registered 11 September 2021, and
  - c Aura Property Sunshine Coast, registered 12 July 2019
- 17 The Complainant states that the Disputed Domain Names were created:
  - a [www.auraproperty.com.au](http://www.auraproperty.com.au) on 5 November 2015
  - b [www.aurapropertymanagement.com.au](http://www.aurapropertymanagement.com.au) on 26 February 2016
  - c [www.aurapropertygroup.com.au](http://www.aurapropertygroup.com.au) on 5 November 2015
- 18 The Complainant relies on the following grounds:

- a None of the domain names which are subject to the complaint are currently in use.
  - b The Respondent does not currently have any registered business or company names that remotely resemble "Aura Property" in it does not relate to the respondent's personal name.
  - c The Respondent does not have rights or legitimate interest in respect of the domainnames subject to the complaint.
  - d The NRS Unit Trust currently trades under the business name Aura PropertySunshine Coast.
  - e The NRS Unit Trust currently has 3 business names registered which all contain "AuraProperty' in them.
  - f The NRS Unit Trust currently operates a residential property management businesswith over 700 clients.
  - g The NRS Unit Trust has a legitimate interest in the domain names which are subjectto the complaint.
- 19 The Complainant seeks the transfer of all three domain names to the Trustees for NRS Unit Trust ABN 77 981 015 914.
- 20 The Respondent states that:
- a He is a businessman, operating businesses on the Sunshine Coast and currently holds a real estate agent's licence and a builder's licence. He is a beneficiary shareholder of the Thompson Group of Companies of which Thompson Sustainable Homes (THS) forms a major part. TSH is the residential section of the Thompson Building Group who, the Respondent claims, have been operating in the building industry for over 50 years as a family business. The Panel notes from the search of Bradley Gregory Thompson - ABN83 680 712 043, that he has been operating businesses in Queensland postcode 4032 since at least 1 February 2003 and in postcode 4575 (Sunshine Coast area) since 20 February 2008.
  - b He is part of the Thompson Building Group which is now in its third generation of family involvement in building and property development in Queensland, including the Sunshine Coast.

- c Amongst other developments, that THS has constructed homes across the Sunshine Coast, including the Stockland Residential Development known as ‘Aura’ (Aura).
- d In 2015 the Respondent registered domain names including ‘Aura’ as part of an overall marketing campaign for the Thompson Group with the sole intention of using the domain names in conjunction with his current and or future legitimate business interests.

### **The Policy**

26 Although the Complainant lists five grounds on which it relies, the Policy sets out the elements that the Complainant must establish to be entitled to relief in paragraph 4(a):

- (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 The Complainant must establish each of the elements identified in paragraph 4(a) of the Policy. One or two is not enough to succeed. The standard of proof is the balance of probabilities. The Panel will consider each of these elements in turn.

### **Element 4(a)(i): Confusing similarity**

29 The first element, under paragraph 4(a)(i) of the Policy, has two components. First, the Disputed Domain Names must be confusingly similar to a ‘name, trademark or service mark’. Second, the Complainant must have rights in respect of those names.

30 Ignoring top level suffixes, the Disputed Domain Names are comprised of the expression ‘auraproperty’ and ‘aurapropertymanagment’, and ‘aurapropertygroup’

31 The Complainant doesn’t specifically complain that the Disputed Domain Names are confusingly similar. The Panel notes however, that the Complainant holds the business names, Aura Property Agents, Aura Property Group (QLD), and Aura Property Sunshine

Coast. It also notes that all were registered some years after the Respondent had registered his domain names.

32 The Respondent has provided evidence that there are other companies and businesses on the Sunshine Coast that also use the term ‘aura’ in their name, and that therefore it is not a term exclusively used by the parties to this dispute.

33 The Panel is satisfied that the Disputed Domain Names are clearly similar to the Complainant’s business names, but the Complainant has not provided any evidence to suggest they are confusingly similar.

34 In these circumstances the Panel is not satisfied that the Complainant has established that identical or confusingly similar to a name, trademark, or service mark in which the complainant has rights

**Element 4(a)(ii): Right or legitimate interest**

35 Paragraph 4(a)(ii) requires the Complainant to establish that the Respondent has “no rights or legitimate interests in respect of the domain name”.

36 Paragraph 4(c) of the Policy provides a non-exhaustive list of circumstances in which a Respondent will be taken to have a ‘right or legitimate interest’ in the domain name. Paragraph 4(c)(i) provides:

- a before any notice to you of the subject matter of the dispute, your bona fide use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that you have acquired for the purpose of selling, renting, or otherwise transferring)

37 The Complainant claims that the Respondent does not have any registered business or company names that remotely resemble "Aura Property" and therefore has not legitimate interest in the Disputed Domain Names. In response to this claim, the Respondent has provided detailed evidence that his family group of companies, the Thompson Group, has been legitimately using the term ‘aura’, which is a key part of the Dispute Domain Names, for some of its property developments, and currently the Stockland Residential

Development situated on the Sunshine Coast is known as and being marketed as Aura Estate. The Panel also notes that the Respondent had registered several domain names 'with the term 'aura' in 2015, again, some years prior to the Complainant registering its business names.

38 The Panel accepts that the Complainant is legitimately carrying on a real estate business trading as 'Aura Property Sunshine Coast'. The Respondent, through his family companies also is carrying on property development businesses in the Sunshine Coast and has done so prior to the Complainant registering its business names.

39 The Panel considers that the scope of a *legitimate* interest under paragraph 4(b) should have regard to the scope of paragraph 4(c)(i) of the Policy, that is, where the domain name closely reflects the name or style under which the Respondent's business is actually carried on. The link between the Disputed Domain Names and some of the Respondent's family businesses, specifically the Aura residential development, is sufficiently close to give rise to a legitimate interest in the use of the names.

40 The Panel considers, therefore, that the Respondent does have a right or a legitimate interest in the use of the Disputed Domain Names for the purposes of paragraph 4(a)(ii) of the Policy.

### **Bad Faith**

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

42 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.

- a 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
- b 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



- c you have registered the domain name primarily for the purpose of disrupting the business or activities of another person; or
- d 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
- e 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.

43 The Claimant does not specifically provide details or evidence in relation to a claim of bad faith. It is, however, clear from the various searches attached to Response, that the Respondent had registered the Disputed Domain Names in 2015-16. The Complainant had not registered its business names until 2019-21. Further, the Respondent has provided evidence, which the Panel accepts, that the business involves property developments, including the Aura Estate on the Sunshine Coast.

44 As Complainant has not provided any evidence that the Disputed Domain Names were registered for the purpose of preventing or disrupting the Complainant's business or for using them for commercial gain, the Complainant fails in proving this limb of the Policy.

45 The Panel finds there is no evidence of bad faith registration or subsequent use of the Disputed Domain Names by the Respondent.

**Order**

46 The Complainant has failed to prove all the three limbs of the Policy which it is required to prove under paragraph 4(a) of the Policy. Accordingly, the Panel orders, pursuant to paragraphs 4(i) of the Policy and 15(a) of the Rules, that the Complaint be dismissed and that the Registry lock on the Disputed Domain Name be removed.

**Decision**

47 For the foregoing reasons, in accordance with paragraph 4(a) of the Policy and paragraph 15 of the Rules, the Complaint must be dismissed.

Jennifer Scott

Sole Panellist

Date: 3 July 2022