



26 August 2022

ADMINISTRATIVE PANEL DECISION

Betts Group Pty Ltd (ABN 41 008 675 929)

v

Taxrelief.cc Pty Ltd (CAN 44 161 013 734)

auDRP_22_7

<zeroe.com.au>

The Parties

- 1 The Complainant is Betts Group Pty Ltd which is not legally represented.
- 2 The Respondent is Taxrelief.cc Pty Ltd which is not legally represented.

The disputed Domain Name and Registrar

- 3 The Disputed Domain Name is: -
 - (a) <zeroe.com.au>
- 4 The Registrar of the Disputed Domain Name is Web Address Registration Pty Ltd trading as CrazyDomains.

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 in Schedule B of the Policy and the Resolution Institute Supplemental Rules for .au Domain Name Dispute Resolution Policy ("RI Supplemental Rules").
- 6 The Complaint consisted of:
 - (a) A Domain Name Dispute Complaint was lodged by the Complainant with the Resolution Institute ("Provider") by email on Wednesday the 29 June 2022.
 - (b) The Provider emailed the Complainant on Tuesday the 05 July 2022 requesting additional information to make the Complaint compliant.
 - (c) The Complainant emailed the additional documentation required by the Provider to the Provider on Tuesday the 05 July 2022.
 - (d) The Provider acknowledged receipt of the Complaint and additional documentation to the Complainant by email dated Friday the 08 July 2022.

- (e) The Provider notified the Registrar of Domain Name Dispute Complaint by email on Wednesday the 13 July 2022.
- (f) The Registrar responded to the Provider by email on Friday the 15 July 2022 with Respondent registrant details and lock on Domain Name.
- (g) The Provider by email on the Monday the 18 July 2022 notified auDA of the Domain Name Dispute Complaint.
- (h) By email on Monday the 18 July 2022, the Provider notified the Respondent of the the Domain Name Dispute Complaint with copies to the Complainant and the Registrar indicating that a response to the Provider and Complainant was due to be received on or before Sunday the 7 August 2022.
- (i) By email, on Friday 12 August 2022, the Provider approached the Panellist. The Panellist formally confirmed his availability and that he had no conflict issue with the Parties.
- (j) The Panellist accepted the matter on Monday the 15 August 2022.
- (k) The Case file and relevant correspondence were delivered by email to the Panellist on Monday the 15 August 2022.
- (l) The Parties to the dispute were notified by email of the Panellist's allocation on Monday the 15 August 2022.
- (j) The date on which the decision is due is 14 calendar days thereafter being Monday the 29 August 2022.

Background

7 The Complainant has produced a copy of correspondence from IP Australia and addressed to the Complainant stating that the trademark <zeroe> is registered in class 25 with respect to "footwear" registration being effective from the 25th of November 2020. The Registration Notice points out in part that "now that this trademark is registered it is the owner's responsibility to protect it from infringement or removal action".

8 On the 13 June 2022, John Schofield (indicating that his email address was john@taxreliefcc) forwarded to Todd Willner a document described as a Bill of Sale which read in part as follows:

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"IN CONSIDERATION of Todd WILMER of Perth, WA (the 'Purchaser') providing AUD 5,000.00 plus GST plus the necessary domain transfer fees (the 'Purchase Price'), the receipt and sufficiency of which consideration is hereby acknowledged to John Philip Curtis SCHOFIELD of 34 Stanton St, Doncaster VIC 3108, Australia (the 'Seller'), the Seller hereby seels and delivers the Property to the Purchaser.

PAYMENT METHOD: The Purchaser will pay the Purchase Price to the Seller by electronic funds transfer to BSB/Account: 733054/582235 (Account Name: Schofield)

PROPERTY: The Seller will sell and deliver to the Purchaser the following property (the 'Property'):

The Domain name: ZEROE.com.au from CrazyDomains account manager (customer id 4322351) to the Domain provider nominated by the Buyer which is, on the understanding that necessary Transfer Fees are Payable by the Buyer."

9 It is clear from this correspondence and the response that there had been previous communications between John Schofield from the Claimant and Todd Willner from the Complainant.

10 On the 13 June 2022, the Complainant replied to the Respondent at the email address previously provided by the Respondent in the following terms: -

“Hi John,

Thanks for the email. I have offered \$2000 as that would be the cost for us to complete the process of attaining the domain name through the documented appeals process.

The offer was made to you in good faith.

Please advise if you would like to proceed with the sale for \$2000 or would prefer us to go down the appeal avenue.”

11 On the 20 June 2022, the Complainant again (forwarding a copy of the previous email of the 13 June 2022) emailed the Respondent requesting: -

“please advise on the below”.

12 On the 24 June 2022, the Complainant again emailed the Respondent (as the email address provided by the Respondent) in these terms: -

“I have not heard from you, hence we will be raising an appeal in regards to the <zeroe.com.au> domain”.

13 On the 05 July 2022, the Complainant again emailed the Respondent utilising two email addresses and obtaining confirmation of delivery from Microsoft Outlook and on this occasion the email read: -

“Further to the below, we are required to “Accompany the complaint with a cover sheet in the form of a Resolution Institute complaint application form available online”, which you will find attached titled Resolutions.Applications.pdf.”

14 Despite the number of emails which have been forwarded to the Respondent by the Provider or by the Complainant (referred to as above), I am satisfied that the Respondent has not communicated further with the Complainant or in any way with the Provider.

15 On the 05 July 2022, the Complainant wrote to the Provider confirming that “a copy of the Compliant has been sent to the Respondent, in addition a copy of the delivery receipt is attached”. In the same email, the Complainant stated its position (the word “procession” was obviously intended to be “possession”) in these terms: -

“As the lawful owner of the “zeroe” trademark Betts Group believes it has a right to the zeroe.com.au domain. In addition the Respondent has been in procession of the domain and does not own a trademark nor business name resembling “zeroe”. In fact the Respondent has sought to profiteer from cybersquatting on the domain. As per the attached correspondence, it can be seen that Betts Group in good faith offered the Domain Name Dispute Complaint fee to the Respondent to circumvent having to raise a formal complaint. In turn the Respondent has sought a higher value ie attempted to profiteer. This can be seen through the DocuSign contract sent by the Respondent to the Complainant requesting \$5,000.”

- 16 The Complainant sought by way of remedy that the Domain Name <zeroe.com.au> be transferred to Betts Group Pty Ltd.
- 17 Significantly, see above, the Respondent has not sought to oppose the Application.

The Policy

- 18 The basis of the Complaint is clear and 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.
- 19 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.
- 20 In this instance, no evidence has been provided as to when the Domain Name was registered, but having regard to the history of the matter, this occurred (on the balance of probabilities) after the date of filing of the Trademark Application on the 25 November 2020, if not after its having been granted on the 23 May 2022.
- 21 It is necessary to consider each of the paragraph 4(a) elements in turn.

Element 4(a)(i): Confusing similarity

- 22 The first element, under paragraph 4(a)(i) of the Policy, has two components. First, the Disputed Domain Name must be confusingly similar to a 'name, trademark or service mark'. Second, the Complainant must have rights in respect of those names.
- 23 The disputed Domain Name is clearly confusingly similar to the Complainant's registered trademark.
- 24 The registration of the Complainant's trademark (whether it was achieved with or without opposition from the Respondent is not clear) creates the necessary rights in respect of the name.
- 25 In these circumstances, the Panellist is satisfied that the Complainant has established that the Domain Name is 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

- 26 Paragraph 4(a)(ii) requires the Complainant to establish that the Respondent has "no rights or legitimate interests in respect of the domain name".
- 27 Paragraph 4(c) of the Policy provides a non-exhaustive list of circumstances in which as Respondent will be taken to have a 'right or legitimate interest' in the Domain Name.
- 28 The onus is on the Complainant. The Respondent made no attempt on the 13 June 2022 to fortify a claim for payment on the basis that there was any contemplated or existing use by the Respondent. The Respondent has not suggested that it owns a trademark or business name resembling <zeroe> and the inference to be drawn from the name of the Respondent, in the absence of anything to the contrary, is that it does not carry out business of the type covered by class 25 trademark registration.

- 29 The fact that the email of the 13 June 2022 seeks payment in favour of “John Phillip Curtis Schofield” as “Seller” (see above) only serves to further weaken the Respondent’s position and suggest that the Respondent has no equity in the Domain Name regardless of other considerations.
- 30 Paragraph 4(c)(ii) further provides that it is open to a Respondent to demonstrate its legitimate interest in a Domain Name by responding to a Complaint with evidence that the Respondent has been “commonly known by the Domain Name” even if no trademark or service mark rights have been acquired.
- 31 Alternatively it is open to a Respondent to indicate that it is making a legitimate non-commercial or fair use of the Domain Name without intent for commercial gain, to mistakenly divert customers or to tarnish the name, trademark or service mark at issue.
- 32 No effort has been made by the Respondent to meet any of these criteria.
- 33 The Panellist considered, therefore, that the Respondent does not 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

- 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 It is sufficient for a Complainant to establish one only of the enumerated grounds including: -
- (a) circumstances indicating that you have registered or you have acquired the Domain Name primarily for the purpose 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/
- 36 The test is “primarily”. In the absence of there being evidence of any other purpose or response to the Complainant’s assertion in the email of 13 June 2022 that a payment of \$5,000 (+GST) would be excessive the conclusion (on the balance of probabilities) is that the respondent registered the Domain Name in bad faith.
- 37 The Panellist accordingly finds that there is evidence of bad faith registration of the Disputed Domain Name by the Respondent.

Order

- 38 The Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy and accordingly I order that the disputed Domain Name be transferred to the Complainant.



JOHN EMMET McDERMOTT
SOLE PANELLIST

26 AUGUST 2022