



Lieblich
& Associates
Innovative Technology Business Catalysts

Decision in a Mandatory Administrative Proceeding
Under
.au Dispute Resolution Policy No. 2016-01, published 15/04/2016

DATE	17 August 2022
CASE NUMBER	auDRP_22_8
PANELIST	Steve Lieblich



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1 Decision

For the reasons set out below, I have decided that the registration of the domain name “buddyrider.com.au” to the Respondent shall be transferred to the Complainant.

A handwritten signature in blue ink, appearing to read 'Steve Lieblich', is positioned above the typed name. The signature is fluid and cursive, with a prominent initial 'S' and a long, sweeping underline.

Signed by Steve Lieblich
Panelist
17 August 2022



2 Definitions

In this Decision the following words and phrases shall, subject to the .au Dispute Resolution Policy No. 2016-01, have the meanings given to them as follows:

word or phrase	meaning
“auDRP”	the .au Dispute Resolution Policy No. 2016-01.
“Complainant”	the person described in section 7.2 below.
“Complaint”	the document described in section 7.6.1 below.
“Domain Name”	the domain name described in section 7.5 below
“D<x>”	The Reference Document described in subsection <x> of section 7.6 below.
“License”	the license for the domain name described in section 7.5 below.
“Party”	the Complainant or the Respondent
“Policy”	the .au Dispute Resolution Policy No. 2016-01.
“Provider”	means the person described in 7.2 below.
“p<n>”	refers to paragraph <n> of the Policy Schedule A, where “<n>” is the number of the paragraph.
“Respondent”	the person described in section 7.4 below.
“Response”	the document described in section 7.6.3 below.
“Rules”	Schedule B of the Policy.
“Rule<n>”	refers to the Rule in Schedule B, where “<n>” is the number of the Rule.
“s<n>”	refers to section <n> of the Policy, where “<n>” is the number of the section.
“Schedule A”	Schedule A of the Policy
“Schedule B”	Schedule B of the Policy
“Supplemental Rules”	The Supplemental Rules to the Policy, as published on the Resolution Institute web site at https://www.resolution.institute/documents/item/1622 .
“Supplemental Rule<n>”	refers to the Rule in Supplemental Rules, where “<n>” is the number of the Rule.



3 Application of the auDRP

3.1 License

The Complainant asserts, and the Respondent does not deny, that the subject Domain Name was registered by the Respondent in August 2017; and that registration expires on 17 August 2022. Thus, the License is a second level domain (“2LD”) license that was issued or renewed after 1 August 2002 in accordance with s2.1.

3.2 Dispute

The Complainant asserts [D7.6.2, paragraph 3,4 and 5], and the Respondent does not deny, that the conditions described in Schedule 4, s4(a)(i), (ii), and (iii) are satisfied and thus the domain name dispute meets the requirements of s2.2.

The Complainant asserts [D7.6.2, paragraph 6], and the Respondent does not deny, that the dispute is not subject to another action, in accordance with s2.3.



4 Mandatory Administrative Procedure

4.1 Complaint

The Complaint was prepared and served on the Provider on 30 June 2022 in accordance with s4, specifically in accordance with s4.2 (including Rule 3) and Supplemental Rule 6.

The Provider forwarded the Complaint to the Respondent, in accordance with Rule 4(c), on 18 July 2022, which is therefore the date of commencement of the administrative proceeding.

4.2 Response

The Response was not received by the Provider, in accordance with Rule 5(a), by 7 August 2022, being twenty (20) days after the date of commencement of the administrative proceeding. Thus, I am making this Decision in the absence of any Response to the Complaint from the Respondent, in accordance with Rule 5(e)

4.3 Appointment of Panel

The Provider appointed me as Panelist in this matter on 12 August 2022, in accordance with Rule 6(b), being within five (5) calendar days following the lapse of the time period for the submission of the Response.

4.4 Impartiality and Independence

I know of no circumstances giving rise to justifiable doubt as to my impartiality or independence in this matter.



5 Decision

In accordance with Rule 15, and for the reasons given in section 6, below, I have rendered the following decision on 17 August 2022:

That the registration of the domain name “buddyrider.com.au” to the Respondent shall be transferred to the Complainant.



6 Reasons for the Decision

6.1 *The Domain Name is identical to a name, trademark or service mark in which the Complainant has rights*

The Complainant asserts [D7.6.2, paragraph 2], and the Respondent does not deny, that the condition described in auDRP Policy – 4(a)(i) is satisfied as follows:

- the Complainant is the owner of a registered trademark for “Buddyrider” and has been since 16 June 2021; and
- by entering into an Exclusivity Agreement between the parties, the Respondent acknowledged and was aware as at 5 December 2017 that the Complainant held the unregistered trade mark “Buddyrider”; and
- the Domain Name is identical to the trademark owned by the Complainant.

6.2 *The Respondent has no rights or legitimate interests in respect of the domain name*

The Complainant asserts [D7.6.2, paragraph 3], and the Respondent does not deny, that the condition described in (auDRP Policy – 4(a)(ii)) is satisfied because from 9 September 2020, being the date of termination of the Distribution Agreement between the parties:

- the Respondent was no longer operating a business that advertised and sold Buddyrider products, and thus the Respondent had no rights or legitimate interest in respect of the Domain Name;
- the Complainant, not the Respondent, is the owner of the trademark “BuddyRider”;
- the Respondent is not known by the name “BuddyRider”; and
- the Respondent no longer operates a business under the name “BuddyRider”.

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6.3 The domain name is being used in bad faith

The Complainant asserts [D7.6.2, paragraph 3.3 and 4], and the Respondent does not deny, that the condition described in (auDRP Policy – 4(a)(iii)) is satisfied, as follows:

- the Respondent operates a competing business being Dinky Dog Products, selling similar products in direct competition with the Complainant;
- since at least 2 September 2020, the Respondent has used the Domain Name to redirect traffic to the website www.dinkydog.com.au – which offers for sale products which are similar to and in direct competition with the Complainant’s products known by the name “BuddyRider”;
- the re-direction of consumers from the buddyrider.com.au site to dinkydog.com.au site creates a likelihood of confusion and consumers are likely to mistaken Dinky Dog as a brand or product with the Complainant’s sponsorship, affiliation, or endorsement;
- the effect of the re-direction is for consumers who intend to purchase the Buddyrider product to be presented with and purchase the Dinky Dog product instead; and
- the redirection is apparently an intentional attempt by the Respondent to attract Internet Users to the Dinky Dog website, for commercial gain.

The Complainant further provides evidence [D7.6.2, paragraph 4.7 and 4.8] of “customers who were in fact confused” by the above-mentioned redirection; and asserts that thus the use of the Domain Name by DinkyDog to redirect traffic is an act of bad faith as it is being used by the Respondent to *“intentionally ... 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 the source, sponsorship, affiliation, or endorsement of that website or location or of a product or service on that website or location”*, pursuant to paragraph 4(b)(iv) of the auDRP.



7 Particular Information in the Matter

NB Some information in this section of the Decision may not be suitable for publication, for reasons of privacy.

7.1 Case Number

Resolution Institute Matter No auDRP_22_8

7.2 Provider

Resolution Institute (“RI”)

7.3 Complainant

Buddy Ventures International Ltd, of 221-99 Chapel Street Nanaimo, BC, Canada V9R 5H3; represented by McLachlan Thorpe Partners, of Level 19, 1 Castlereagh Street, Sydney New South Wales 2000; contact - Juliana Ng; jng@mtpartners.com.au

7.4 Respondent

Wayne Paul Kelly, of 2 Bourke Street St Carrington NSW 2294

7.5 Domain Name

<http://www.buddyrider.com.au/>

7.5.1 Registrant

The Respondent

7.5.2 Registration Date

Registered August 2017 – expires 17 August 2022

7.6 Reference Documents

7.6.1 Complaint

RI Complaint Form, dated 15 June 2022

7.6.2 Complainant’s Letter

Covering letter from McLachlan Thorpe Partners: 8 pages with attachments A-N

7.6.3 Response

No Response was received.

7.6.4 Procedural Case History

RI Procedural Case History: auDRP_22_8