



**Lieblich**  
& Associates

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

DATE	20 December 2022
CASE NUMBER	auDRP_22_13
PANELLIST	Steve Lieblich



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## 1 Decision

For the reasons set out below, I have decided that the registration of the Domain Names to the Respondent shall be transferred to the Complainant.

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Signed by Steve Lieblich, Panellist  
20 December 2022



## 2 Definitions

In this Decision the following words and phrases shall, subject to the .au Dispute Resolution Policy No. 2008-01, have the meanings given to them as follows:

word or phrase	meaning
"auDRP"	the <a href="#">.au Dispute Resolution Policy No. 2016-01, published 15/04/2016</a>
"Complainant"	the person described in section 6.2 below.
"Complaint"	the document described in section 6.6.1 below.
"Domain Names"	the domain names described in section 6.5.1 below
"License"	the license for the domain name described in section 6.5.1 below.
"Party"	the Complainant or the Respondent
"Policy"	the <a href="#">.au Dispute Resolution Policy No. 2016-01, published 15/04/2016</a>
"Provider"	means the person described in 6.2 below.
"Respondent"	the person described in section 6.4 below.
"Response"	the document described in section 6.6.2 below.
"Rules"	<a href="#">Resolution Institute Supplemental Rules for .au Domain Name Dispute Resolution Policy (auDRP 2016 -01)</a>
"Schedule A"	Schedule A of the Policy
"Schedule B"	Schedule B of the Policy
"A<n>"	refers to paragraph <n> of the Policy Schedule A, where "<n>" is the number of the paragraph.
"B<n>"	refers to paragraph <n> of the Policy Schedule B, where "<n>" is the number of the paragraph.
"R<n>"	refers to paragraph <n> of the Rules, where "<n>" is the number of the paragraph.
"S<n>"	refers to section <n> of the Policy, where "<n>" is the number of the section.
"D<n>"	refers to refers to Document <n> of the Reference Documents listed in section 6.6, where "<n>" is the number of the Document.



### 3 Application of the auDRP

#### 3.1 License

Neither Party denies that the License is a 2LD license that was issued or renewed after 1 August 2002 in accordance with s2.1

#### 3.2 Dispute

S2.2 states that the auDRP only applies to disputes which meet the requirements set out in A4(a), which states that the Respondent is required to submit to a mandatory administrative proceeding if the Complainant asserts that:

- (i) respondent's domain name is identical or confusingly similar to a name [Note 1], trademark or service mark in which the complainant has rights; and
- (ii) respondent has no rights or legitimate interests in respect of the domain name [Note 2]; and
- (iii) respondent's domain name has been registered or subsequently used in bad faith.

The Complainant has so asserted [D6.6.1], and so **the auDRP applies**. In an administrative proceeding, the complainant bears the onus of proof.

Notes:

[1] For the purposes of this policy, auDA has determined that a "name ... in which the complainant has rights" refers to:

- a) the complainant's company, business or other legal or trading name, as registered with the relevant Australian government authority; or
- b) the complainant's personal name.

[2] For the purposes of this policy, auDA has determined that "rights or legitimate interests in respect of the domain name" are not established merely by a registrar's determination that the respondent satisfied the relevant eligibility criteria for the domain name at the time of registration.

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## 4 Mandatory Administrative Procedure

### 4.1 Procedural History

Document/ Correspondence	From	To	Mode & Date of Submission
Domain Name Dispute Complaint dated Tuesday, 1 November 2022	Complainant	Provider	Online application Tuesday, 1 November 2022
Acknowledgement of receipt and outcome of compliance check	Provider	Complainant	Email Monday, 7 November 2022
Lodgement of additional information to make complaint compliant	Complainant	Provider	Email Wednesday, 9 November 2022
Acknowledgement of receipt of the complete complaint	Provider	Complainant	Email Friday, 11 November 2022
Registrar Notification of Domain Name Dispute Complaint dated 1 November 2022	Provider	Registrar	Email Friday, 11 November 2022
Registrar response with registrant details and confirmation of lock on Domain Name	Registrar	Provider	Email Friday, 11 November 2022
auDA notification of Domain Name Dispute Complaint	Provider	auDA	Email Thursday, 17 November 2022
Notification to respondent of Domain Name Dispute Complaint	Provider	Respondent (copied to Complainant, Registrar & auDA)	Email Thursday, 17 November 2022
Response submitted	Respondent		Email,



		Provider (and copied to complainant)	Tuesday, 6 December 2022
Reply from complainant to issues raised in response	Complainant	Provider (and copied to respondent)	Email Wednesday, 7 December 2022
Panellist statement of independence & impartiality issued	Provider	Panellist	Email Thursday, 8 December 2022
Reply from respondent to correspondence of 7 December 2022 submitted by complainant	Respondent	Provider (and copied to complainant)	Email Friday, 9 December 2022
Case File	Provider	Panellist	Email Friday, 9 December 2022
Notice of nomination of panellist	Provider	Parties (and copied to auDA & Registrar)	Email Friday, 9 December 2022

#### **4.2 Response**

The Response was received by the Provider, in accordance with Rules p5(a), on 6 December 2022, being no later than twenty (20) days after the date of commencement of the administrative proceeding.

#### **4.3 Appointment of Panel**

the Provider appointed me as Panellist in this matter, in accordance with Rules p6(b), on 9 December 2022, being, within five (5) calendar days following receipt 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 Reasons for the Decision

### 5.1 Domain Names: Similarity to Trademarks

The Complainant asserts that:

- he has held Trademarks relating to the names, as well as abbreviated terms for a substantial period of time and provided a copy of the Trademark registration dated 3 August 2001;
- he has held the cmca.net.au domain for a significant amount of time; and
- most regional towns in Australia display CMCA RV signs referring to the Complainant's services and provides a link to a Google image search that shows many examples using the four-letter acronym "CMCA" in relation to the Complainant's services.

The Respondent submits [D6.6.2, section A] that the Complaint does not include sufficient evidence and cites WIPO Case No. DAU2015- 0004.

The Complainant further submitted [D6.6.3] that

- he "holds relevant trade marks and existing brands relating specifically to "CMCA"; and
- the case presented has no relevance to this case because "CMCA" is a widely branded (and trademarked) brand used extensively across Australia in towns, government signs, local councils and so on, while the case cited does not have any examples as this including brand awareness or trademarks.

The Complainant has provided significant evidence that the domain names are identical or confusingly similar to his name, trademark or service mark

A Google search for "CMCA" leads to the Complainant's web site, first of 1.3 million results. I also note, in contrast, that neither the terms "Small Business Central" nor "cmca.com.au" appear in any of the first ten pages of search results for "CMCA".

I don't consider the case cited by the Respondent as similar to this case because the four-letter acronym in the disputed domain names is evidently commonly associated with Complainant's services, although such an association with brief acronyms is not always the case.

Therefore, I determine that **the disputed domain names are identical or confusingly similar to the Complainant's name, trademark or service mark.**

### 5.2 Legitimate Interests in the Domain Names

The Complainant asserts that:

- The Respondent has no registered entity or reference to anything even close to "CMCA"; and



- there is no identified service, product, company or property that references or is associated with the disputed domain name.

The Respondent submits that:

- he is using the acronym without intending to take advantage of any rights the Complainant may have in CMCA;
- his rights or legitimate interests can arise where the disputed domain name consists of an acronym and is used to host advertising links genuinely related to the acronym, and not to trade off the Complainant's trademark; and
- he has rights in <cmca.com.au> because the website at that URL includes links to: Construction Management Consulting Australia; Civil Marriage Celebrant Australia; and Certified Management Consultant Australia.

If one follows all five links on the cmca.com.au web site (including the three mentioned above), each one leads to a page with links to the web site of a business with no discernible use of the CMCA acronym. The links have apparently been created by choosing businesses that can be described by a term which has the same acronym as is used in the disputed domain names. However, the linked businesses don't appear to use the acronym, nor is there any reason to believe that prospective customers associate those businesses with that acronym.

Therefore, I determine that **the Respondent has no rights or legitimate interests in respect of the domain name.**

### **5.3 Reasons for Registration**

The Complainant asserts that:

- The Respondent has purchased the domain and subsequently blocked access to cmca.au for the sole purpose of selling the domain;
- the hosting site used by the Respondent specifically states that the domain is for sale;
- the Respondent sent threatening and demanding emails (when approached about the domain) to the Complainant demanding over \$10,000 AUD for the purchase of the domain

The Respondent submits that:

- he registered the disputed domain names because of their intrinsic value as short domain names;
- because most 2, 3 and 4 letter acronyms such as CMCA are not distinctive, he did not conduct a trademark search in respect of the disputed domain names; and
- there are many organisations and businesses that use (or could use) CMCA, demonstrating that CMCA is not unique or distinctive.

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I accept that the Respondent may not have been aware of the strong association of the CMCA acronym with the Complainant's business when he registered the disputed domain names, and that his failure to conduct a search for such an association is not necessarily an indication of bad faith. However, once this association was brought to his attention by indirect and direct communications with the Complainant, that strong association is obvious from the most cursory research.

Apparently, the Respondent registered the dispute domain names primarily for the purpose of selling, renting, or otherwise transferring their registration to another person for profit because:

- he continued to assert rights in the disputed domain names after the Complainant's rights in them (easily verifiable by a simple search) were brought to his attention;
- the hosting site he uses specifically and prominently states that the domain is for sale;
- the content and tone of his indirect and direct communications with the Complainant, are clear evidence that he seeks valuable consideration, in excess of his out-of-pocket costs.

Therefore, I determine that **the Respondent registered interest or acquired the disputed domain names primarily for the purpose of selling, renting, or otherwise transferring the registration for valuable consideration in excess of his documented out-of-pocket costs.**

#### **5.4 Decision**

For the reasons given in section 5.1, I determine that **the disputed domain names are identical or confusingly similar to the Complainant's name, trademark or service mark.**

For the reasons given in section 5.2, I determine that **the Respondent has no rights or legitimate interests in respect of the domain name.**

For the reasons given in section 5.3, I determine that **the Respondent registered interest or acquired the disputed domain names primarily for the purpose of selling, renting, or otherwise transferring the registration for valuable consideration in excess of his documented out-of-pocket costs.**

Thus, I decide that that **the registration of the Domain Names to the Respondent shall be transferred to the Complainant.**



## **6 Particular Information in the Matter**

### **6.1 Case Number**

auDRP\_22\_13

### **6.2 Provider**

The Resolution Institute

### **6.3 Complainant**

Campervan and Motor Home Club of Australia Limited

### **6.4 Respondent**

Small Business Central Pty Limited

### **6.5 Domain Name**

6.5.1 Disputed Domain names: "cmca.com.au" and "cmca.au"

6.5.2 Registrant: Synergy Wholesale Accreditations Pty Ltd

6.5.3 Registration Date: 2017

### **6.6 Reference Documents**

6.6.1 Complaint: 4-page summary and attachments, submitted 1 November 2022

6.6.2 Response: 12-page document submitted 6 December 2022

6.6.3 Complainant's Reply: email sent 7 December 2022 7:43 AM with 3 attachments

6.6.4 Respondent's Sur-Reply: 3-page document sent by email 9 December 2022 11:58 AM

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