

ADMINISTRATIVE PANEL DECISION

Body Corporate for Como Noosa Community Titles Scheme 24487

v

Susanne Elizabeth Wood

[auDRP_23_10](#)

[<comonoosa.com.au>](#)

1 Executive Summary

For the reasons set out below the Complaint is upheld and the Panel orders that the Disputed Domain Name be transferred to the Complainant. It also declines to make a finding of attempted Reverse Domain Name Hijacking.

2 The Parties

The Complainant is the Body Corporate for Como Noosa Community Titles Scheme 24487 of Noosaville, QLD. It is represented in the proceedings by Mr Brent Hansen, its Treasurer.

The Respondent is Susanne Elizabeth Wood as trustee for the OSW Business Trust (the **Trust**) of Noosaville, QLD. She is represented by Ms Nicole Murdoch of Eaglegate Lawyers in Brisbane.

3 The Disputed Domain Name and Registrar

The Disputed Domain Name is [<comonoosa.com.au>](#). The registrar is Domain Directors Pty Ltd trading as Instra.

4 Procedural History

This is an administrative proceeding pursuant to the .au Dispute Resolution Policy originally adopted by auDA on 13 August 2001, and subsequently amended on 1 March 2008, re-issued on 15 April 2016 (as 2016-01) and updated on 29 September 2022 (“**auDRP**” or “**Policy**”); the associated auDA Rules for .au Dispute Resolution Policy (“**Rules**”) and the Resolution Institute Supplemental Rules for .au Domain Name Dispute Resolution Policy (“**RI Supplemental Rules**”).

A Domain Name Dispute Complaint Form was filed with Resolution Institute (**RI**) on 4 November 2023. This was forwarded to the registrar on 13 November 2023 with a request that the registration particulars be confirmed, and the Disputed Domain Name be locked. On the following day RI received an email from the registrar naming as registrant Ms Susanne Elizabeth Wood (**Ms Wood**), being a different person to the respondent named in the original Complaint, namely, Bluewater Break Pty Ltd (**Bluewater**). The Disputed Domain Name was server locked at the same time. auDA was notified of the Complaint on 15 December 2023 and the following day RI utilised the contact particulars

advised by the registrar purportedly to notify Bluewater of the Complaint. That resulted in a copy of the Complaint being furnished to Ms Wood and Mr Dominic O'Shaughnessy.

Under Rule 5(a) a Response was due 20 calendar days after the proceeding commenced. The Rules make no allowance for weekends or public holidays. Under Rule 4(c) the proceeding is taken to have commenced on the date on which RI completed its responsibilities under Rule 2(a) in forwarding the Complaint to the Respondent. Under Rule 2(g) times are calculated from the date a communication was first made under Rule 2(f) – in this case, 16 November 2023. Accordingly, the last date for filing a Response was 6 December 2023. On 21 November 2023 Ms Murdoch advised RI that the Respondent had not received the annexures to the Complaint and asked that the time within which to lodge a Response be extended. In fact a Response was submitted on 6 December 2023, included in which was a request for a three-member Panel. Three persons from RI's list of panellists were nominated by the Respondent. The Complainant was furnished with a copy of the Response on 7 December 2023 and invited to nominate three panellists from RI's list. In accordance with clause 6(e) of the Rules RI proceeded to appoint one panellist from the list of candidates provided by the Complainant and one panellist from the list provided by the Respondent. RI then appointed a third panellist from RI's list of panellists to chair the Panel. The Panel finds that it was duly appointed in accordance with the Rules, and each panellist furnished RI with a Declaration of Independence and Statement of Impartiality.

On 21 December 2023 the parties were notified of the Panel's appointment and RI transmitted the case file to the Panel.

On 27 December 2023, after the Christmas/Boxing Day long weekend, the Panel realised that the case file did not include a copy of the WhoIs record for the Disputed Domain Name nor a copy of the registrar verification response. Upon checking the WhoIs record the Panel noted that the registrant of record was not the respondent named in the Complaint. A copy of the Registrar verification response was subsequently provided to the Panel, confirming that Ms Wood was the registrant of the Disputed Domain Name and not Bluewater. Accordingly, the Panel directed RI to invite the Complainant to file an amended Complaint nominating the registrant of the Disputed Domain Name, namely, Ms Wood, as the respondent. That was duly done on 29 December, following which the Panel issued an administrative order directing the Respondent to indicate by 3 January 2024 whether she wished to amend the Response consequential on the changes made to the original Complaint and, if so, how much time she needed to do so.

On 30 December 2023 Ms Murdoch indicated that the Respondent would be able to provide her amended Response by 5 January 2024. The Panel subsequently issued a further administrative order:

- (i) allowing the Respondent until 5:00 pm Brisbane time on Friday 5 January 2024 to file and serve an amended Response to the amended Complaint;
- (ii) requiring the Respondent to file and serve by 5:00 pm Brisbane time on Friday 5 January 2024, pursuant to clause 12 of the Rules, a copy of any document recording the names of each person or company that has been the trustee of the OWS Business Trust since 12 April 2022 and the duration of such trusteeship, or a statement in lieu that sets out such information;
- (iii) requiring the Respondent to file and serve by 5:00 pm Brisbane time on Friday 5 January 2024, pursuant to clause 12 of the Rules, a statement declaring whether or not she conducts a letting agent business for the *Como Noosa Community Titles Scheme 24487* within the meaning of s.16(2) of the *Body Corporate and Community*

- Management Act 1997 (Qld)* and, if so, whether she claims to be a letting agent for the scheme within the meaning of s.16(1); and
- (iv) extending until 29 January 2024 the time within which the Panel is to render its decision.

An Amended Response was received at 3:52 pm Brisbane time on 5 January 2024. A Further Amended Response was received at 4:21 pm in which one paragraph of the Amended Response was amended by changing the number of unit owners the Respondent referred to from “five (5)” to “five (6)” and by adding reference to an additional Unit number. The Panel assumes that “five (5)” was intended to be changed to “six (6)” and reads the amended paragraph accordingly. The Further Amended Response formally distinguishes between Ms Wood as the “Recorded Registrant” and Bluewater as the “True Registrant” but otherwise refers to them throughout as the undifferentiated “Respondents”, occasionally as the “Respondent(s)” and sometimes as the “Respondents (or either of them)” or “Respondent” (singular).

Paragraph 3(b)(v) of the Rules requires the recorded registrant of a domain name to be the named respondent to an administrative proceeding under the Policy. Despite Ms Wood’s submissions to the contrary, the Policy and Rules do not accommodate the concept of a “recorded registrant” and a different “true registrant”. Where proxies have been named in published “WhoIs” information the practice is for a Complainant to be invited to amend the Complaint to name the true registrant once that has been revealed by a registrar to a Provider. However in those cases the true registrant was simply the undisclosed recorded registrant – the use of the proxy name in the WhoIs information being usually as a privacy shield. There is no suggestion here that Ms Wood was only named in the public WhoIs information as a proxy for Bluewater for privacy or any other purpose – she is and always was both the recorded registrant and the true registrant for the purposes of the Policy. If, as Ms Wood now claims, her being recorded as the registrant of the Disputed Domain Name is the result of a clerical error, it is a matter for the relevant registrar, in accordance with well-settled procedures published by both auDA and ICANN, to correct the recorded particulars, and the onus is on registrants to ensure that their recorded particulars are up to date and accurate.

Evidence was submitted to substantiate the claim that Ms Wood became registrant of the Disputed Domain Name in 2022 as a result of a miscommunication/clerical error by ComX – her agent. ComX indicated to Ms Wood and Mr O’Shaughnessy on 5 May 2022 that it would submit as registrant the proprietor of the business name “COMO NOOSA” (the **Business Name**), being the basis on which eligibility was asserted. That is exactly what it did on 6 May 2022, using the ABN 69 842 971 347. The ABN of Bluewater is 43 605 540 574. It appears that ComX did not accede to a request to record as registrant Mr O’Shaughnessy – presumably because eligibility was based on ownership of the Business Name and the ABN of the proprietor of the Business Name did not belong to Mr O’Shaughnessy. The Australian Business Register (maintained by the Australian Tax Office) shows that ABN 69 842 971 347 belongs to “The Trustee of the OSW Business Trust” and that the trustee owns both the Business Name and the business name SUNSET COVE NOOSA. The Australian Business Register does not name the trustee but, erroneously, simply records its role as its name. This may explain why ComX submitted the same name as the eligibility name instead of the Business Name.

The Trust Deed is in evidence and it records Bluewater as the trustee of the Trust from its inception on 30 April 2015. So the submission that Ms Wood should not have been recorded as the registrant of the Disputed Domain Name is explicable. However, the Respondent has also submitted a formal statement from the former registrant of the

Disputed Domain Name stating that she “gifted” the Disputed Domain Name to Ms Wood and Mr O’Shaughnessy after her agreement with the Complainant was terminated in April 2022. That leaves the Response in a state of confusion on this issue.

The Panel has no authority to disregard paragraph 3 of the Rules, which makes clear in multiple places that the “domain name holder” must be the named respondent in administrative proceedings under the Policy. Nor does the Panel have authority to correct the register. Under the Policy and auDA’s agreement with registrars a disputed domain name must be server locked once an administrative proceeding has commenced. That occurred in this case and precludes any change being made to the registration particulars until at least 10 days after the Panel’s decision has been published to the parties. As noted above, the onus is on registrants to ensure that their recorded particulars are up to date and accurate. Accordingly, the Panel has determined that Ms Wood must be regarded as the sole Respondent to these proceedings and the Complaint correctly assumed that to be the position.

Further references to the “Complaint” in this decision are to the amended Complaint filed on 29 December 2023 in substitution for the original Complaint. The Further Amended Response will be referred to as the “Response” except where otherwise indicated, and references to the “Respondent” mean Ms Wood.

On 8 January 2024 the Panel decided, over the Respondent’s objection, to receive certain parts of the Complainant’s supplementary submission (**Reply**) dated 21 December 2023 (which was replaced on 29 December 2023 with a version in which references to Bluewater were simply replaced by references to Ms Wood). The Panel took the view that two aspects of the Response could not reasonably have been anticipated and therefore clause 10(b) of the Rules required the Complainant to be afforded the opportunity to respond to that. The extent to which the Panel has taken any notice of the amended Reply is interpolated in the form “[*interpolation*]” in the Panel’s below summary of the Respondent’s submissions. All other parts of the Reply and amended Reply have been ignored.

On 11 January 2024 Mr Hansen sent an email to the chair of the Panel (copied to Ms Murdoch) refuting a statement made by Ms Bull in Annexure 3 to the Complaint. Given the lateness of the submission and the fact that the Panel’s deliberations were already complete the Panel declines to receive the material and takes no account of it.

All other procedural requirements in relation to the proceedings appear to have been satisfied.

5 **Factual Background**

These background facts appear to be non-contentious between the parties or have been ascertained/verified from publicly available information in addition to the evidence filed by the parties.

Como is a rural locality in the Shire of Noosa, Queensland, with postcode 4571. “Como Noosa” is a strata titled accommodation complex in Noosaville, about 35 km from Como but also in the Shire of Noosa, with postcode 4566. It comprises 12 apartments, each of which has a private owner, set in “resort” style grounds. Under s. 22 of the Queensland *Body Corporate and Community Management Act 1997* (the **Act**) the complex is designated as a Community Title Scheme called the “Como Noosa Community Title Scheme 24487” (the **Scheme**).

The Complainant is a body corporate established under Part 2 of Chapter 2 of the Act on or about 3 December 1997 upon its registration as proprietor of the common property comprised in Building Units Plan No. 106600 at the Land Titles Office. By s. 33 of the Act the Complainant's formal name comprises the words "Body Corporate for" followed by the name of the Scheme. As reflected in entries in the Australian Business Register maintained by the Australian Taxation Office, the Complainant's name is more usually rendered as "Body Corporate for Como Noosa CTS 24487".

Part 1 of Chapter 3 of the Act sets out the rights and obligations of the Complainant and s. 45 provides that all real and personal property owned by the Complainant is held beneficially. Importantly, whilst s. 96 prohibits the Complainant from carrying on a business, it is permitted to engage in business activities to the extent necessary for carrying out its functions.

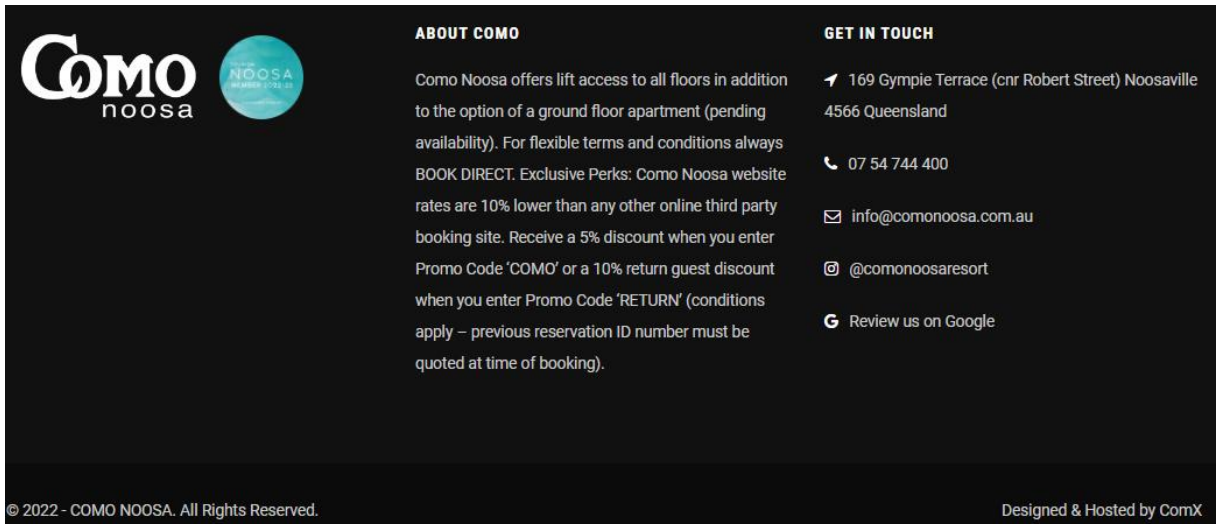
Ms Wood is a licensed real estate agent in Queensland under licence number 3936319. Bluewater is a licensed real estate agent in Queensland under licence number 3936320. Ms Wood is the sole director and shareholder of Bluewater and the only beneficiary of the Trust. Her address recorded with ASIC is the same as Bluewater's address, namely, the Sunset Cove Noosa Resort at 6 Robert Street, Noosaville, Queensland. According to Google Maps, that address abuts Como Noosa, which is on the corner of Gympie Terrace and Robert Street. The Scheme's location and property name are clearly shown in this screenshot from Google Streetview:




Bluewater is the letting agent for the owners of 3 of the 12 apartments in the Scheme, but it has no office on the Scheme property, instead providing those services from its office at the Sunset Cove Noosa Resort where it is the resident letting agent for that resort. Bluewater operates the website to which the Disputed Domain Name resolves (the **Website**).

The banner of the Website appears as follows, with "Como Noosa" used with the same logo and font as appears in the above photo:

At the foot of every page of the Website the following standard text is repeated:





COMO noosa 


ABOUT COMO


Como Noosa offers lift access to all floors in addition to the option of a ground floor apartment (pending availability). For flexible terms and conditions always BOOK DIRECT. Exclusive Perks: Como Noosa website rates are 10% lower than any other online third party booking site. Receive a 5% discount when you enter Promo Code 'COMO' or a 10% return guest discount when you enter Promo Code 'RETURN' (conditions apply – previous reservation ID number must be quoted at time of booking).


GET IN TOUCH

 169 Gympie Terrace (cnr Robert Street) Noosaville
4566 Queensland

 07 54 744 400

 info@comonoosa.com.au

 @comonoosaresort

 Review us on Google

© 2022 - COMO NOOSA. All Rights Reserved. Designed & Hosted by ComX

Ms Wood expressly admits in her filed evidence that neither she nor Bluewater is a letting agent for the Scheme within the meaning of s. 16(1) of the Act, and formally states that neither she nor Bluewater conducts a letting agent business for the Scheme within the meaning of s. 16(2) of the Act.

The date on which the Disputed Domain Name was first registered, or by whom, has not been made available to the Panel. However, the first capture of the Website recorded by the Wayback Machine¹ was on 24 January 2019. At that time Ms Jan Bull was the letting agent and caretaker of the Scheme pursuant to agreements with the Complainant. As noted above, the Respondent became registrant of the Disputed Domain Name on 6 May 2022.

On 24 February 2023 Bluewater applied to register the words “Como Noosa” as an Australian trademark in class 43 in respect of “Accommodation rental agency services (holiday apartments); rental of holiday accommodation” (the **Trade Mark**). IP Australia issued an adverse examination report on 8 May 2023, on multiple grounds, which remains unanswered.

6 Parties’ Contentions

Complainant

The Complainant contends that:

- a) the Disputed Domain Name is identical or confusingly similar to “Como Noosa” which it also claims as its common law trademark;

¹ www.archive.org

- b) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- c) the Disputed Domain Name has been registered or subsequently used in bad faith.

In support of the first of those grounds the Complainant submits that:

1. the words “Como Noosa” form part of the community title scheme called “Como Noosa CTS 24487”.
2. The property the subject of the Scheme is branded and well-known simply as “Como Noosa”.
3. The application for the Trade Mark is still under examination by IP Australia.
4. The Complainant intends to oppose the application for the Trade Mark should it proceed to acceptance.
5. By seeking to register the Trade Mark in class 43 the Respondent is causing confusion because some residential units in the complex are owner-occupied and are not for holiday rental. Furthermore, the Complainant does not operate as an accommodation rental agency service and does not have an agreement with anyone to provide such a service.
6. Registration of the Business Name confers no exclusive rights in favour of the Respondent in relation to the words “Como Noosa” and its use infringes the Complainant’s common law trademark.
7. The Respondent has never been commonly known as or referred to as “Como Noosa” or any variation thereof.
8. The words “Como Noosa” are prominently displayed at the front of the Scheme complex.
9. A reasonable person is likely to conclude that the Disputed Domain Name is confusingly similar or indeed identical to a name, trade mark or service [sic] in which the Complainant has rights.

In support of the second ground the Complainant submits that:

1. the Respondent is a licensed real estate agent in Queensland.
2. The Respondent in that capacity manages short stay accommodation for three out of the 12 apartments within the Scheme.
3. A number of apartments in the Scheme are owner-occupied and others are available for rent but are managed by independent third-party real estate agents.
4. The Respondent has no physical or business presence at the Scheme property.
5. The Respondent’s use of the Disputed Domain Name does not:
 - a. match the Respondent’s name;

- b. match any trademark owned by the Respondent;
 - c. match any service that the Respondent provides at the Scheme property.
6. The registration of the Business Name or the application for the Trade Mark does not confer any right or legitimate interest in respect of the Disputed Domain Name.
 7. The Respondent's engagement by the owners of three apartments in the Scheme for the short-term letting of those apartments does not confer on her any inherent right or interest to use/own the words "Como Noosa" and/or register the Disputed Domain Name.
 8. A reasonable person would not conclude that a real estate agent has an explicit or implicit right to or legitimate interest in owning the domain name of a building/business/strata complex in which they have been contracted by some owners to manage their private rentals but, if that not be the effect of the law, any implied right should not supplant the natural rights of legal owners of the property.
 9. The Respondent has an exclusive Management and Letting Rights Agreement for the Sunset Cove Noosa Resort with its owners' body corporate from which rights and legitimate interests in respect of the <sunsetcove.com.au> domain name accrue. This exclusivity has a financial and commercial value which was purchased by the Respondent.
 10. The Respondent does not and has never had similar management/letting rights or otherwise with the Complainant. The Complainant has made allegations against the Respondent of breach of the Australian Consumer Law, passing-off, false and misleading conduct/advertising for attempting to convey that such an arrangement is in place. The Respondent is in effect seeking to monetise the benefits of a formal Management and Letting Rights Agreement with the Complainant for zero cost when none exists.
 11. The Respondent is aware that such an agreement was surrendered and legally extinguished on 26 April 2022 following a resolution of the members of the Complainant to that effect. Shortly thereafter, on 6 May 2022, the Respondent registered the Disputed Domain Name "without proper right or proper legitimacy and without the knowledge of" the Complainant.
 12. The Disputed Domain Name was used by past owners of the Management and Letting Rights Agreement for many years to promote the Scheme. The Disputed Domain Name was "routinely acquired" by the Respondent from the holder of the prior Management and Letting Rights Agreement.
 13. There was a reasonable belief by owners of apartments in the Scheme that the Disputed Domain Name formed part of the Management Letting Rights Agreement and they were not consulted/advised of any potential change of "ownership".
 14. The subsequent legal surrender and extinguishment of that Agreement carried with it an implication to those owners that the Disputed Domain Name (and related commercial website content and activity) would now fall silent as the property would no longer need to be "marketed" as it had been when exclusive management and letting rights legally existed and were attached to the Scheme's community title by-laws.

15. Furthermore, the Respondent:

- a. did not acquire the Disputed Domain Name for bona fides purposes;
- b. registered the Disputed Domain Name “on an unfair basis”;
- c. registered the Disputed Domain Name with the intent of obtaining a commercial advantage and financial gain by leveraging off the good name of the Scheme property and the Complainant’s common law trademark “Como Noosa”.

In support of the third ground of the Policy the Complainant submits that:

1. the Disputed Domain Name was intentionally registered and is currently being used in bad faith by the Respondent only because of its importance in extracting financial gain and leverage for the Respondent. This has the undeniable effect of disrupting the business and commercial activities of other apartment owners and any other contracted third-party real estate agent who forgo letting commission.
2. The Respondent’s financial gain comes directly from paying customer patronage via the Website. Financial leverage/coercion is applied in the form of a direct financial loss for those apartment owners in the Scheme who did not engage the real estate letting services of the Respondent, as is their right. Those owners’ apartments are intentionally excluded by the Respondent from being advertised on the Website and are therefore unable to secure online bookings directly via the Website or indirectly via other service providers such as Booking.com, Trivago etc who in turn link to the Website. This effect is exacerbated by the Respondent having acquired from the previous management agent the phone number that was used to book accommodation.
3. The Respondent’s use of the Disputed Domain Name:
 - a. creates confusion with the Complainant’s name and trademark; and
 - b. intentionally disrupts the legitimate commercial interests of other apartment owners in the Scheme who are seeking to let their apartment.
4. The Respondent’s conduct does not represent a legitimate or non-commercial use of the Disputed Domain Name.
5. Potential customers who intend to stay at the Scheme property are misled by the Website as to the total availability of accommodation and are then deceptively diverted to <sunsetcove.com.au> to potentially fill any vacancies that Bluewater may have in its role as letting agent for the Sunset Cove Noosa Resort – which apparently does not have river views or a lift (the latter being important for elderly and less mobile guests). This potentially has the effect of tarnishing the Como Noosa name and reputation if potential patrons subsequently find out that they have been deceived about the accommodation availability within the Scheme as a whole. None of this can reasonably be deemed fair use of the Disputed Domain Name.
6. The presumed redundant Como Noosa reception/office booking telephone number was also co-opted by the Respondent without the knowledge of the Complainant. This in turn is being used for the same deceptive purpose – people think that they are calling the Scheme when they are in fact calling the Respondent-operated reception

area of Sunset Cove Noosa Resort, thus adding another layer of deception and confusion.

7. The Respondent has laid claim to or is seeking to lay claim to various “Como Noosa” social media accounts/sites such as Instagram.
8. The Respondent, through the Website, controls or seeks to control not only Como Noosa online/digital/telecommunication platforms but also its historic brand and identity. The consequences of this are being borne by all Scheme owners – not just those seeking to let their apartments.
9. Registration of the Disputed Domain Name was done as part of a broader intentional attempt by the Respondent to exert control/influence over Scheme members with the aim of extracting financial gain for herself, which is in bad faith.
10. The Respondent registered the Business Name prior to the legal extinguishment of the Management and Letting Rights Agreement even though the Respondent had no history or relationship with the name or the Scheme, thus showing bad faith intent.
11. The Complainant alleges that the Respondent’s pre-emptive registration of the Business Name was aimed at giving greater claim to her planned registration of the Disputed Domain Name.
12. By acquiring the business of the terminated Management and Letting Agent including the Website, and becoming registrant of the Disputed Domain Name, all potential short-term rental availability/business enquiries for properties in the Scheme were directed to the Respondent. Once the three Scheme apartments, whose owners the Respondent represented, are fully booked, the Website intentionally and misleadingly indicates that none of the other 9 apartments within the Scheme are available to rent. The effect of this behaviour is a significant wealth transfer, from those apartment owners who have appointed other real estate agents to let their apartments, to the apartment owners who have appointed the Respondent to manage their apartment lettings (and to the Respondent herself).
13. The Complainant on 3 May 2023 and again on 1 June 2023 complained to the Respondent in writing about the conduct of concern but received no response.
14. On 15 August 2023 the Complainant’s solicitor also wrote to the Respondent asking her to desist from misleading and deceptive conduct but that correspondence was ignored.
15. In representing the Sunset Cove Noosa Resort the Respondent refers to the Scheme property as “our sister resort” despite there being no such affiliation or relationship.
16. The Respondent has offered to transfer the Disputed Domain Name to the Complainant for \$100,000 which is well in excess of the cost of registering the Disputed Domain Name.

The Complainant seeks transfer of the Disputed Domain Name to itself.

Respondent

The Respondent asks the Panel to deny the remedies sought by the Complainant, in support of which request she contends as follows:

1. Prior to the Respondent acting as a “property manager” for [3] private owners in the Scheme there was a letting agent² by the name of Jan Bull who had a Management Rights Agreement with the Complainant in respect of the whole Scheme.
2. The Complainant decided in early 2022 that the manager was no longer needed and extinguished the Agreement in April 2022. [The Complainant says that this occurred at the manager’s request after the Complainant’s Committee declined to make her an offer for the caretaking agreement].
3. Prior to its transfer to the Respondent the Disputed Domain Name had been held in the name of the previous manager. It has never been held in the name of the Complainant.
4. The Complainant’s contention that Bluewater’s trademark application is filed in the wrong class is both incorrect and immaterial to this proceeding.

Dealing with the Complainant’s submissions in relation to the first of the three grounds it must satisfy under the Policy, the Respondent says as follows:

5. The Complainant does not satisfy the first condition, namely, that “Como Noosa” is a name, trademark or service mark in which the Complainant has rights.
6. Whilst the complex is badged with the COMO NOOSA sign, the sign itself does not identify the Complainant nor establish that the Complainant is known by the name COMO NOOSA and nor does the sign give the Complainant any rights in that name. The Respondent also denies that the Complainant has established “common law use of” COMO NOOSA.
7. The Complainant has provided no evidence that its full name or its abbreviated name is identical or confusingly similar to the Disputed Domain Name. It has thus failed to discharge its onus of making good ground one under the Policy. In support of this contention the Respondent cites *The Trustee of NRS Unit Trust v Bradley Gregory Thompson* – a decision of a previous RI administrative panel (auDRP_22_5).

In support of her claim to have rights or legitimate interests in respect of the Disputed Domain Name the Respondent says as follows, relying on paragraph 4(c) of the Policy.

8. Before any notice of the Complaint the Respondent had *bona fide* offered goods and services under the Disputed Domain Name (through the Website) by providing letting services to members of the Complainant. At no stage does the Respondent claim to be an exclusive agent for letting at the Scheme and she acknowledges three other letting agents that represent the owners of apartments 1, 2, 4, 6 (recently [agreed to be] sold by Mr Hansen), 7, 8 and 12 who have chosen not to use the services of the Respondent. She says nevertheless that in acting as a letting agent for three of the owners she is entitled to use the Disputed Domain Name by reason of the close and substantial connection rule.
9. The Respondent claims to be commonly known by the Disputed Domain Name because people wishing to book at Como Noosa “visit the Disputed Domain Name to make bookings”. In support of the proposition the Respondent supplied numerous

² Within the meaning of s. 16(1) of the Act

extracts from the Website which she says evidences that she is “known by the Disputed Domain Name”.

10. Next the Respondent contends that she is making “legitimate fair use” of the Disputed Domain Name without intent to “commercially gain to misleadingly divert consumers or tarnish” the name, trade mark or service mark at issue. She says that offering a service to those who wish to stay at Como Noosa is a legitimate fair use of the Disputed Domain Name. Furthermore, she says that she and the Complainant are not commercial competitors; rather “the Complainant [sic] acts as the Treasurer of the Body Corporate Committee”. The Complainant does not, in itself, provide rental accommodation or booking services. A community titles scheme would not ordinarily have a website or indeed any online presence. Thus, there is no diversion of Internet users to the Respondent and there is no misleading conduct.
11. The Respondent registered the Business Name on 13 April 2022 which is well in advance of the filing of the Complaint. The Business Name has been utilised “for the legitimate needs to promote and advertise its services”.
12. The Respondent says she also gains entitlement to the Disputed Domain Name through being applicant for the Trade Mark. It does not matter that the Trade Mark is pending in terms of rights held by the Respondent – if it becomes registered then the Respondent will be able to enforce rights to the priority date of that application. The Trade Mark is the exact same as the Disputed Domain Name and was applied for on 24 February 2023 – well in advance of the filing of the Complaint.
13. The Respondent has been commonly known as and/or traded as Como Noosa and (thereby) has rights and legitimate interests in [sic] the Disputed Domain Name.
14. The Respondent submits that the Complaint is an abuse of the auDRP process because it arises from a dispute over the Respondent offering accommodation at Como Noosa and one other (now prior) property owner raising objections in that respect. The Respondent then submits that “Federal cases” have held that letting agents, including non-exclusive letting agents, are entitled to domain names containing property names and the letting agent does not need to be the exclusive letting agent in that respect. She cites *Mantra Group Pty Ltd v Tailly Pty Ltd (No 2)* [2010] FCA 291 in support of the proposition.
15. She notes that Mr Hansen sold his apartment on 29 November 2023 and that “upon settlement” he will no longer be associated with the Complainant.
16. The Respondent says that at the time of “decoupling of the management rights” in 2022 there was no value seen in the Disputed Domain Name. She says that the Complainant’s cease-and-desist letters demanded that the Respondent cease use and deregister the Disputed Domain Name and there was no demand to transfer the licence to the Disputed Domain Name to the Complainant.

The Respondent denies that she registered or is using the Disputed Domain Name in bad faith and submits as follows.

17. The Respondent says that the Complainant has not made out the third ground of the Policy.

18. She says that on 26 April 2022 “the Como Noosa complex underwent a legal decoupling of the Management and Letting Rights Agreement” that the Complainant had with Jan Bull and that thereafter the Complainant did not express any interest or intention in registering the Disputed Domain Name and nor did the Respondent receive any formal complaint regarding her registration of the Disputed Domain Name until February 2023 when the owner of one of the apartments at Como Noosa raised the issue with her.
19. The Respondent says she did not register the Disputed Domain Name in bad faith at the time she registered it on 6 May 2022 and that the Complainant did not raise, and had not raised, any issues or objections to her registration.
20. The Respondent says she is using the Disputed Domain Name for the sole purpose of advertising the availability of holiday letting for the Como Noosa apartments that the Respondent is contractually obligated to advertise for holiday and accommodation purposes. She says it is entirely open for the other owners of Como Noosa apartments to ask her to let their apartments, at which time they would be advertised on the Website and available for booking via the Website. She says she is not in competition with the Complainant and is not disrupting any business of the Complainant.
21. Furthermore, the Respondent says that the Complainant has not provided any evidence to prove that she has:
 - a. disrupted the business and commercial activities of other persons through her use of the Disputed Domain Name;
 - b. gained an unfair financial benefit through her use of the Disputed Domain Name;
 - c. caused a direct financial loss to the Complainant through her use of the Disputed Domain Name;
 - d. caused confusion of, or has intentionally disrupted, the legitimate commercial interests of other unit owners in the complex through her use of the Disputed Domain Name;
 - e. diverted consumers or potential customers from other apartments in the Como Noosa complex through her use of the Disputed Domain Name;
 - f. registered the Disputed Domain Name in an attempt to “exert control/influence over Como Noosa owners with the stated aim of extracting financial gain” for herself;
 - g. misled or diverted consumers or potential customers to the Sunset Cove website; or
 - h. offered the Complainant or its committee and amount to assign the Disputed Domain Name.
22. The Respondent acknowledges that not all owners have their properties listed for letting on the Website but says that in itself does not amount to bad faith – it is a decision for each individual owner as to whether they wish to use the Respondent for letting or even to let their apartment at all. The Respondent should not be “punished” because not all owners wish to let their properties.

23. Noting that domain names are allocated on a first-come first-served basis the Respondent says that is not proper to draw any inference that merely because someone has reserved a domain name first they have reserved it or used it in bad faith. It is improper for the Complainant to use this proceeding to obtain a domain name simply because it failed to reserve a domain name it now desires.

The Respondent also requests a finding of attempted Reverse Domain Name Hijacking against the Complainant on the following grounds:

24. the Complaint is made in bad faith by the owner of one property after the Respondent refused to comply with the Complainant's unreasonable demands. [At all times the Complainant's committee voted unanimously to pursue a complaint under the Policy].

25. The Complainant does not actually want or need the Disputed Domain Name as evidenced by the fact that it did not ensure its transfer on the decoupling of the management rights and nor did it demand transfer of the Disputed Domain Name when making demands upon the Respondent.

26. The Complainant delayed filing the Complaint which shows that it did not see value in the Disputed Domain Name until the Respondent created goodwill in it.

27. The Complaint is merely a "Plan B" if the Complainant was not able to intimidate the Respondent through negotiations.

28. In the circumstances the Complaint must fail and the complainant has used the Policy in bad faith to deprive a registered domain name holder of a domain name. The Respondent formally seeks a finding of attempted Reverse Domain Name Hijacking.

7 Discussion and Findings

1. Paragraph 4(a) of the auDRP requires the Complainant to prove that:

- (i) the Disputed Domain Name is identical or confusingly similar to a name, trade mark or service mark in which it has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered *or* subsequently used in bad faith.

2. The Complainant must prove that all of the elements of the Policy are satisfied, at least on the balance of probabilities.

3. The Panel notes at the outset that the Policy is poorly adapted to deal with multi-faceted commercial disputes of the kind which has led to this proceeding. Nevertheless the Panel is required by paragraph 15(a) of the Rules to decide the matter on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Identical or confusingly similar to a name or trade/service mark in which the Complainant has rights

4. The Complainant went to some lengths to substantiate its assertion that it had accrued common law trademark rights in COMO NOOSA. In most circumstances that might

well be a viable argument but where, as here, there is a statutory prohibition on the Complainant carrying on any business³, and a common law trademark is essentially goodwill based on use of a mark in the course of trade over a long period, that is not a submission the Panel can accept.

5. The Complainant put almost no emphasis on the fact that the auDRP, unlike the UDRP, accommodates a name as well as a trade mark or service mark as the threshold element of the first ground. Here “Como Noosa” forms part of the Complainant’s name by force of the Act, because it identifies the property the subject of the Community Management Statement that applies to it. The evidence shows categorically that Como Noosa is the name of the property – it appears on multiple signs around the perimeter of the property and the Respondent herself refers to the property by that name both in her submissions and on the Website. Given the statutory role of the Complainant in respect of that land and the embedding of the property’s name in the Complainant’s name (surrounded by standard statutory text which is identical across all Community Title Schemes), the Panel is comfortably satisfied that COMO NOOSA is a property name in which the Complainant has rights.
6. The second element of the first ground of the Policy requires the Complainant to show that the Disputed Domain Name is identical or confusingly similar to the name in which it has been found to have rights. Here the Disputed Domain Name comprises that very name, to which is appended “.com.au”. The second level domain is conventionally ignored when conducting what is essentially a character string comparison between the Disputed Domain Name and the name in which the Complainant has been found to have rights. Apart from omission of the space between COMO and NOOSA the Disputed Domain Name is identical to the property name COMO NOOSA and the Panel so finds.

No Rights or Legitimate Interests in respect of the Disputed Domain Name

7. The Respondent claims to have a right or legitimate interest in respect of the Disputed Domain Name by virtue of her registration of the Business Name. However, under Australian law, a person doing business under a name other than their actual name is required to register the business name so that those with whom it engages in trade are able to identify the person or entity with whom they are dealing. A business name registration does not confer any rights to the use of the name even though its presence on the register precludes others from registering an identical name as a business or company name.
8. The enquiry under this limb of the Policy in the present context is essentially to ascertain whether there is some legitimate basis on which the Respondent can rely in establishing her right to continue to use the Disputed Domain Name.
9. In a footnote to paragraph 4(a)(ii) of the Policy auDA records its determination that whilst a registered business name might satisfy the eligibility criteria for the registration of a domain name, that is not sufficient to confer on the registrant a right or legitimate interest in respect of that domain name. Accordingly, the Respondent’s submission to the contrary cannot be accepted. Similarly, Bluewater’s Trade Mark might establish its eligibility to register a domain name but that is insufficient *per se* to confer on it a right or legitimate interest in respect of that domain name.

³ S. 96 of the Act

10. Paragraph 4(c) of the Policy sets out a number of circumstances which, if found by the Panel to be proved, are deemed to establish the requisite rights or legitimate interests. Here the Respondent calls in aid all three sub paragraphs of paragraph 4(c) of the Policy, which the Panel will consider in turn:
11. To satisfy subparagraph 4(c)(i) of the Policy the Respondent needs to demonstrate *bona fide* use of the Disputed Domain Name, before she had notice of the subject matter of the dispute, in connection with an offering of goods or services. The Respondent says the content of the Website and the way she uses it in her business meets the requirements of that deeming provision. The Panel respectfully disagrees, having come to the view that the use the Respondent has made of the Website (and continues to make) was and remains false, misleading, deceptive and unconscionable, and therefore not *bona fide*.
12. As the Respondent concedes, she essentially continued using the Website in the way that it had been used by her predecessor, Jan Bull. However, unlike Ms Bull, the Respondent has never had an agreement with the Complainant, nor operated any letting services from an office at the Como Noosa resort, nor had any responsibility for the overall marketing and promotion of the Como Noosa resort. On the contrary, she was and remains the resident letting agent for the Sunset Cove Noosa Resort next door to Como Noosa. Whilst three out of the 12 owners of properties at Como Noosa have appointed her as their letting agent, she is aware that seven of the remaining nine owners have appointed other agents as their letting agent. In fact the Response recites which other owners have appointed which other letting agent.
13. Both the Complainant and the Respondent have furnished the Panel with multiple screenshots from the Website in addition to the sample depictions provided in the Background above. But they are all to the same effect: the Respondent is offering a booking service to potential guests of the Como Noosa resort without disclosing that she is only the letting agent for three of the 12 owners. As can be seen from the Website page footer depicted in the Background above, the Respondent does not disclose that Bluewater is the letting agent for only 3 of the 12 apartments but, rather states, *inter alia*, that “Como Noosa luxury riverside apartments offer two and three bedroom self-contained apartments...”, and that the resort has “LIFT ACCESS to all apartments”. It also offers a facility for bookings to be made, under the heading “Como Noosa”. Those statements create the impression that potential customers may use the booking service for all 12 apartments, all luxury riverside apartments and all apartments with lift access (meaning the entire facility) when that is manifestly not the case.
14. Furthermore, the Website extols the virtues of the Como Noosa resort in such a way as to create the impression that the Respondent is responsible for marketing the resort and that bookings for the resort made through the Website obtain the benefit of rates that no other letting agent for Como Noosa apartments can offer. It is quite disingenuous for the Respondent to submit that the seven properties for whose owners she is not the letting agent *could* be booked through the Website if they were to appoint her as their letting agent. Self-evidently the converse is occurring. As the Respondent has formally disclaimed being the letting agent for the Scheme, the Panel’s view is that any legitimate interest “in respect of the Disputed Domain Name” has thereby been lost. None of the arguments put forward in support of the Response can overcome the fact that the Respondent’s interest, at its highest, is as a letting agent for three members of the Scheme – she expressly admits that she does not represent the Scheme or the Scheme property. The Panel cannot discern from that tenuous

connection the necessary nexus with the Scheme that would be needed to support her claim. Certainly the Panel rejects as completely self-serving any contention that the operation of the Website creates in the Respondent (or Bluewater or the Trust if that be relevant) a legitimate right or interest in respect of the Disputed Domain Name. That is the very crux of the matter – it is precisely because the Website is being conducted in a way that *falsely* represents the Respondent as having such an interest that her submissions must fail.

15. The Respondent’s submissions are essentially that she is so successfully passing herself off as “Como Noosa” using the Disputed Domain Name (in the form of both the Website and email addresses) that the Panel must find that she thereby has a legitimate right or interest in respect of the Disputed Domain Name. The Panel rejects any such submission. It defies common sense apart from being contrary to well-established legal principles which, ironically, are referred to in the Federal Court case that the Respondent cites in support of her Response⁴.
16. One scenario well illustrates why the Panel cannot accept the Respondent’s arguments. Should a potential guest seek to make a booking at the Como Noosa resort through the Website for a time when none of the three properties for whom the Respondent is the letting agent are available, they are informed that there are “no vacancies” at Como Noosa for that time even if, to take an extreme case, all seven of the properties for whose owners the Respondent is not the letting agent are available for booking. The Panel cannot condone such conduct by accepting the Respondent’s contention that it is engaged in *bona fide*. It is not to the point that her conduct does not divert business from the Complainant; as noted above, the Complainant is not permitted by the Act to carry on a business. However, it is entitled to engage in business activities in furtherance of its statutory rights and functions. The Panel is comfortably of the view that the Complainant is entitled to engage in business activities designed to alleviate the mischief the Respondent is creating, and thereby help preserve the value and amenity of the property of the Scheme both for itself and its members. Indeed it seems to the Panel that the most expedient way for the Complainant to do this is to control the delegation of the Disputed Domain Name and the use of any email addresses in which it is embedded.
17. To the extent to which the Respondent asserts any laches or delay-based estoppel against the Complainant, this is rejected. For the better part of the last 12 months the Respondent has ignored “cease and desist” correspondence first from the Complainant and then from its solicitors. The Panel does not regard the Complainant’s asserted slow realisation of the ramifications of the untidy “unwinding” of its relationship with Ms Bull as in any way disentitling.
18. The Panel accordingly finds that the benefit of subparagraph 4(c)(i) of the Policy is not available to the Respondent.
19. The Respondent is even less entitled to the benefit of subparagraph 4(c)(iii) because, as the Complainant submits, guests misled into believing that there are no vacancies at the Como Noosa resort are then offered by the Website’s booking system the option of making a booking for an apartment at the Sunset Cove Noosa Resort, for whom the Respondent is the resident letting agent. That is clearly the kind of diversion which disqualifies the Respondent from obtaining the benefit of that subparagraph - in

⁴ *Mantra Group Pty Ltd v Tailly Pty Ltd (No 2)* [2010] FCA 291

addition to the fact that such conduct could not be regarded as a legitimate non-commercial or fair use of the Disputed Domain Name.

20. In relation to subparagraph 4(c)(ii) the Respondent had to show that she has been commonly known by the Disputed Domain Name. Whilst she has shown that both the Business Name and the Trade Mark have been used in the operation of her business, the evidence shows that she is in fact known as Sunset Cove Noosa because that is where she resides and trades under that business name. For the reasons given above, the Panel cannot accept a submission that relies on the Respondent's misleading and deceptive conduct to establish her reputation in the name Como Noosa. In any event, the Panel is not persuaded that the Respondent is known as Como Noosa anywhere but on her own Website.
21. For the foregoing reasons the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.
22. Should it be relevant, the Panel makes the same finding in relation to Bluewater, for essentially the same reasons. This to a large extent flows from the Respondent's decision to file a Response that does not differentiate between them and to supply formal statements to the Panel referring to Bluewater and herself indistinguishably as "we".

Was the Disputed Domain Name registered or subsequently used in bad faith?

23. Given the Panel's finding in relation to the second limb of the Policy and what we say further below, it is not necessary to determine whether the circumstances in which the Respondent first became registrant of the Disputed Domain Name were *bona fide*. The evidence provided by Ms Bell that the Disputed Domain Name was "gifted" by her to the Respondent and Mr O'Shaughnessy is not determinative given the subsequent use to which it has been put.
24. Both the operation of the Website and the use of the Disputed Domain Name in email addresses flagrantly and falsely convey an association with the Scheme that the Respondent does not have⁵.
25. It is plain that the Respondent has been using the Disputed Domain Name in bad faith by misleading consumers as to her role, the availability of apartments at Como Noosa for booking, and the potential diversion of prospective guests to Sunset Cove Noosa – even when there are vacancies for superior properties at Como Noosa for whom she is not the letting agent. That is more than sufficient use in bad faith to satisfy the third limb of the Policy.

8 Order

The Complainant having discharged the onus of proving the three grounds of the Policy, and the Panel being of the view that the Complainant is an eligible transferee, it orders

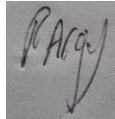
⁵ In addition to the Website screenshots extracted in the Background above, see, for example, the "About Us" page on the Website: <https://www.comonoosa.com.au/about-us/> and the email address and telephone number there referred to. See also (i) the operation of the Bookings system and the false use of the Scheme address on the Website: <https://www.onlinebooking.direct/property/como-noosa> and (ii) the use on the Website of photographs of the Complainant's property: <https://www.comonoosa.com.au/gallery/> and of apartments in the Scheme for which the Respondent is not the letting agent.

pursuant to paragraphs 4(i) of the Policy and 15(a) of the Rules that the domain name <comonoosa.com.au> be transferred to the Complainant.

9 Reverse Domain Name Hijacking

Given the above findings and order it is apparent that the Panel is of the view that the Complaint was justified. Accordingly, no finding of attempted Reverse Domain Name Hijacking can be made against the Complainant.

Dated this 11th day of January 2024



Philip N Argy
Presiding Panellist



Jennifer Scott
Panellist



The Hon Neil Brown KC
Panellist