



DOMAIN NAME DISPUTE ADMINISTRATIVE PANELLIST

auDRP_23_11

Single Panellist Decision

Austroads Ltd ACN 136 812 390; ABN 16 245 787 33

v.

Daria Sinyuto ABN 80 803 172 089

1. The Parties

1.1 The Complainant is Austroads Ltd ABN 16 245 787 33 of Sydney, New South Wales, 2000 (“the Complainant”).

1.2 The Respondent is Daria Sinyuto of Oakleigh in the State of Victoria, 3166 (“the Respondent”).

2. Domain Name, Registrar and Provider

2.1 The domain name upon which complaint is based is *nevdis.au* (the Domain Name).

2.2 The Registrar of the Domain Name is Synergy Wholesale Accreditations Pty Ltd (“the Registrar”).

2.3 The Provider in this Proceeding is Resolution Institute of Suite 602, Level 6, Tower B, Zenith Centre, 821-843 Pacific Highway, Chatswood, NSW 2067 (“the Provider” or “Resolution Institute”).

3. Procedural History

3.1 This proceeding relates to the Complaint submitted by the Complainant in accordance with:

- (i) the .au Dispute Resolution Policy No. 2016-01 published 29 September 2022 (“auDRP”) which includes Schedule A (Policy) and Schedule B (Rules); and
- (ii) the Provider’s supplemental rules for the .au Domain Name Dispute Resolution Policy.

3.2 Paragraph 3.2 of the auDRP provides that a Complainant should ensure that they have read the entire auDRP and auDRP Rules at Schedules A and B of this document before filing their Complaint and that the Complaint must meet the requirements set out in Paragraph 3 of the auDRP Rules in Schedule B of this document, as well as any requirements detailed in the Provider's Supplemental Rules (available from the Provider's website).

3.3 The Provider is required by Rule 4 of Schedule B to review the Complaint for administrative compliance with the Policy and Rules.

3.4 Rule 3 of Schedule B sets out the procedural requirements of the Complaint and requires, *inter alia*, that the Complainant describe, in accordance with the Policy, the grounds on which the complaint is made, including a discussion of any aspects of the Policy that are applicable (ix) and annex any documentary or other evidence, including a copy of the Policy applicable to the domain name(s) in dispute and any name, trademark or service mark registration upon which the complaint relies, together with a schedule indexing such evidence (xv)."

3.5 The Complainant initially lodged a complaint with the Provider on 11-12-2023

3.6 The Complaint, with the submissions and the schedule of attachments relating to the Complaint were sent to the Provider on 11.12.23 and acknowledged by the Provider on 15.12.23.

3.7 The documents supplied by the Complainant comprise the complaint and attachments, namely:

- (1) IP Australia extract of the Complainant's Trademark;
- (2) Screenshot /Google Search of *nevdis.au*
- (3) Master Services Agreement and annexures

3.8 On 15.12.2023 the Respondent was Notified by the Provider of the Domain Name Dispute Complaint, with a copy of that Notification also sent to the Complainant, the Registrar and auDA.

3.9 On 20.12.2023 the Registrar confirmed that the Domain Name in dispute had been locked.

3.10 Pursuant to 5(a) of Schedule B of the auDRP Rules, the Respondent was required to submit a response to the Provider no later than 18.12.2022, this being twenty (20) days after the date of commencement of the administrative proceeding.

3.11 The administrative proceeding was suspended following advice from the Respondent's representative that the Respondent agreed to cancel registration of the domain name, with a copy of this advice provided to the Provider and copied to the Complainant, Registrar and auDA on 3 January 2024.

3.12 There has been no further action by the Respondent to cancel registration of the Domain Name notwithstanding further correspondence from the Provider (copied to the auDA and Registrar) on 11 January 2024, on 24 January 2024 and 14 February, 2024, and from the Complainant to the Respondent (copied to the Provider, Registrar and auDA) on 25 January 2024 and 31 January 2024.

3.13 In the absence of any further response from the Respondent and the Complainant has requested that the matter proceed in accordance with the Complaint.

3.14 The Complainant seeks that the Domain Name licence be transferred to the Complainant.

3.15 The Resolution Institute appointed Rowena McNally as the sole Panellist in the matter on 20-2-2024. The Panellist has confirmed that she has no conflict of interest in relation to the matter. All procedural requirements appear to have been satisfied.

4. Jurisdiction

4.1 Paragraph 2.1 of the auDRP states:

“All Domain Name licences issued or renewed in the open 2LDs from 1 August 2002 are subject to a mandatory administrative proceeding under the auDRP.”

4.2 The Domain Name, being “.au” is within the scope of the paragraph and is subject to the mandatory administrative proceeding prescribed by the auDRP.

4.3 The purpose of the auDRP is to provide a cheaper, speedier alternative to litigation for the resolution of disputes between the registrant of a .au domain name and a party with competing rights in the domain name.

4.4 A successful Complaint is likely to result in an interference with the ownership of the disputed domain name, usually by the cancellation of the domain name, or the transfer of the disputed domain name to the complainant so a complainant is required to comply with the auDRP and satisfy three key criteria:

- The domain name must be identical with or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- The domain name holder has no rights or legitimate interests in respect of the domain name; and
- The domain name has been registered or subsequently used in bad faith.

4.5 The onus is on the Complainant in respect of each of these elements.

4.6 The auDRP requires that the Panellist decide a complaint in accordance with the Policy, Rules and any rules and principles of law that it deems applicable, with the decision to be made based on the statements and documents submitted by the complainant and the respondent.

5. The Complaint

5.1 The Complainant is Austroads Ltd ACN 136 812 390, ABN 16 245 787 33.

5.2 The Complainant says:

5.2.1 The Complainant is the holder of Australian Trademark Number 743083 trademarking the word “NEVDIS”;

5.2.2 “NEVDIS” is the acronym for the “National Exchange of Vehicle and Driver Information System”, which name is owned and used exclusively by the Complainant; and

5.2.3 The Complainant is it is the peak organisation of the Australian and New Zealand government road transport agencies, and that the Complainant operates NEVDIS which exchanges information about vehicles and driver licenses across Australian state borders on behalf of state transport agencies.

5.3 The Complainant says that is the holder of Australian Trademark Number 743083 trademarking the word “NEVDIS” and has provided documentation from IP Australia, an Australian Government entity, confirming that the trademark is registered to the Complainant.

5.4 The Complaint says that the Complainant is the owner of the Australian Business name “NEVDIS” and owns the domain names “*nevdis.com.au*” and “*nevdis.com*”.

5.5 The Complainant says that it entered into a Master Services Agreement with the Respondent for use of the NEVDIS service. A copy of the Master Service Agreement entered into by the Complainant and the Respondent (*Daria Sinyuto trading as CheckVIN*) on 5 March 2021 for a three year term has been provided with the Complaint.

5.6 There is no suggestion that the Complainant has authorised or licenced the Respondent to use the Complainant’s Trademark.

5.7 To the contrary, pursuant to clause 13 of the Master Services Agreement, the Complainant expressly retained, *inter alia*, all intellectual and property rights and interests in Australia and throughout the world and the right to apply for and maintain registration for such rights and provides an express provision that nothing in the agreement was intended to give the Customer (Respondent) any intellectual property or other rights in NEVDIS data or materials.

6. The Response

As outlined in 3.11, the Respondent has not provided a Response beyond indicating to the Provider and the Complainant (copied to the Registrar and auDA) on 3 January 2024 that the Respondent agreed to cancel registration of the Domain Name.

7. Complaint Elements and the Onus of Proof

7.1 Schedule A of the auDRP applies to disputes which meet the requirements set out in paragraph 4(a) of Schedule A of the auDRP. Subparagraph 4(a) requires that any party holding a domain name licence “...submit to a mandatory administrative proceeding in the event that a third party (complainant) asserts to the applicable Provider, in compliance with the Rules of Procedure that:

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

In an administrative proceeding, the complainant bears the onus of proof.”

7.2 I will turn now to consider the Complaint in relation to each of these elements.

8. Is the Domain name identical to or confusingly similar to a name, trade name or service mark in which the Complainant has rights?

8.1 The Complainant bears the onus of proving that the Domain name is identical to or confusingly similar to a name, trademark or service mark in which the Complainant has rights.

8.2 As to this element, the Complainant says that the Domain Name is identical to or confusingly similar to the word "NEVDIS" in which the Complainant owns the Australian Trademark Number 943083, and that the Complainant also owns the registered business name NEVDIS, and the Domain names "nevdis.com.au" and "nevdis.com".

8.3 The Panellist accepts that the Domain Name is identical to or confusingly similar to the Complainant's Trademark, business name and other domain names registered to the Complainant, being "*nevdis.com.au*" and "*nevdis.com*."

8.4 The Panellist finds that the Domain Name is "identical to or confusingly similar to" a name, trade name or service mark in which the Complainant has rights.

9. Does the Respondent have a right or legitimate interest in the Domain name (para. 4(a)(ii))?

9.1 Although the Respondent has not provided any submission indicating that it has any right or legitimate interest in the Domain name, the Complainant nonetheless bears the onus of proving the second element, namely that the Respondent does not have a right or legitimate interest in the Domain Name.

9.2 The Complainant says that the Respondent has no rights or legitimate interests in respect to the domain name *nevdis.au*.

9.3 In support of its Complaint, the Complainant has provided documentation confirming that the Complainant owns the trademark rights to the name "NEVDIS" and submits that it is also the owner of the business name and two domain names, *nevdis.com.au*, and *nevdis.com*.

9.4 The Complainant has also provided a copy of the Master Services Agreement which it entered into with the Respondent. That Agreement provides:

9.4.1 That the Complainant would provide services to the Respondent for a period of period of three years (unless earlier terminated);

9.4.2 It was an express term of the Agreement that the Complainant retained, *inter alia*, all intellectual and property rights and interests in Australia and the right to apply for and maintain registration for such rights;

9.4.3 It was an express term of the Agreement that the Respondent would not be entitled to Intellectual Property Rights associated with NEVDIS.

9.5 The Panellist finds that the Respondent did not meet the eligibility and allocation rules and does not have rights and legitimate interests in respect of the Domain Name.

10. Has the Domain Name been registered or subsequently used in bad faith: (para. 4(a)(iii))?

10.1 The third limb of sub-paragraph 4(a) is whether the Domain Name has been registered or subsequently used by the Respondent in bad faith (4(a)(iii)) and again, the Complainant bears the onus of demonstrating that the Domain Name was registered by the Respondent or has subsequently been used in bad faith.

10.2 The Complainant has de Master Services Agreement was entered into by the Respondent in March 2021.

10.3 The Panellist notes that the launch of .au direct names was on 24 March 2022, that is, subsequent to the Respondent's entry into the Master Services Agreement.

10.4 The Panellist is satisfied that at the time the Domain Name was registered by the Respondent, the Respondent was aware, and was contractually precluded from any action that was inconsistent with the Complainant's asserted Intellectual Property Rights in the name NEVDIS.

10.5 The Complainant says, and the Panellist accepts, that the Complainant has satisfied its onus in respect of any of the bad faith grounds set out under clause 4(b) of Schedule A of the auDRP.

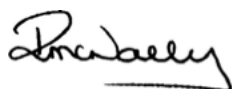
10.6 All three components of paragraph 4(a) are required to be satisfied for the Complaint to be upheld.

10.7 As the Panellist has found that the Complainant has discharged its onus of proof in relation to all three elements of paragraph 4(a) it follows that the Complaint is upheld.

11. Decision

The Panellist finds that the Complaint should be upheld and the Domain Name transferred to the Complainant.

DATE: 3 March 2024



Rowena McNally
Panellist