



DOMAIN NAME DISPUTE ADMINISTRATIVE PANEL

auDRP_21_7

Single Panellist Decision

Perspective Law Pty Ltd ACN 167 483 089

v.

Usedcarnow Pty Ltd ACN 622 100 154

1. The Parties

1.1 The Complainant is Perspective Law Pty Ltd ACN 167 483 089 of c/- Xuveo Legal of Mount Gravatt, Brisbane, Queensland, Australia 4122 ("the Complainant").

1.2 The Respondent is Usedcarnow Pty Ltd ACN 622 100 154 (Usedcarnow). The Complainant has recorded that the auDA whois record for the Domain Name identifies the domain name holder as "Usedcarnow. however the Registrant ID provided in the whois record is that of the Australian Company Usedcarnow Pty Ltd ACN 622 100 154 ("the Respondent").

2. Domain Name, Registrar and Provider

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

2.2 The Registrar of the Domain Name is GoDaddy.com LLC trading as GoDaddy.com ("the Registrar").

2.3 The Provider in this Proceeding is Resolution Institute of Level 2, 13-15 Bridge Street, Sydney NSW 2000 ("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 15 April 2016 ("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 The Complainant initially lodged a complaint with the Resolution Institute ("the Provider") on 28-10-2021 together with a schedule of attachments relating to the Complaint.

- 3.3 The documents supplied by the Complainant comprise the rectified complaint and schedule of attachments relating to the Complaint, namely:
- (1) ASIC Current and Historical Extract Search of Perspective Law Pty Ltd
 - (2) IP Australia extract of the Complainant's Trade Mark
 - (3) ASIC Current and Historical Extract Search of the Respondent
 - (4) Collection of ASIC Business Name organisation searches for the Respondent's company name, ACN and ABN (no record)
 - (5) Collection of an historical Australian Names Register extract for the Respondent. searches for the Respondent's company name, ACN and ABN, showing no ASIC business names are registered to the "usedcarnow" or Usedcarnow Pty Ltd
 - (6) Copy of IP Australia trade marks search report for trade marks linked to the Respondent;
 - (7) Screen shot of the homepage of the Complainant's business website at the <perspectivelaw.com> domain name;
 - (8) Email correspondence between the listed registrant contact of the Domain Name (Peter Campbell) and Complainant's director Mr Tony Crilly;
 - (9) Screen shots of the Respondent's website linked to the Domain Name, as captured by the Web Archive Wayback Machine on or about 8 March 2020.
- 3.4 On 29.10.2021 the Provider notified auDA of the Domain Name complaint.
- 3.5 On 29.10.2021 the Respondent was Notified by the Provider of the Domain Name Dispute Complaint, with a copy of that Notification also sent to the Complainant and the Registrar.
- 3.6 On 2.11.2021 the Registrar confirmed that the Domain Name in dispute had been locked.
- 3.7 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 18.11.2021, this being twenty (20) days after the date of commencement of the administrative proceeding.
- 3.8 No response has been received from the Respondent to the Provider.
- 3.9 The Resolution Institute appointed Rowena McNally as the sole panellist in the matter on 18-11-2021. 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. Background

- 4.1 The Complainant seeks a transfer of the Domain Name.
- 4.2 The Complainant says, and I accept, that it is a registered Australian proprietary company and was incorporated on 9 January 2014 and that on or about the same date, the complainant originally registered the Domain Name, using the service provider, MelbourneIT.
- 4.3 The Complainant says that since on or about 9 January 2014 it has operated a law firm with offices based in Brisbane, Queensland.
- 4.4 The Complainant says, and I accept, that between 9 January 2014 and 25 February 2014, the Complainant's registered company name was Perspective Law Pty Ltd, however between 25 February 2014 and 18 November 2019 the Complainant operated under the registered company name of Crilly Lawyers Pty Ltd.

4.5 On 18 November 2019, the Complainant reverted to Perspective Law Pty Ltd and the Complainant says, and I accept that it has used and maintained Perspective Law Pty Ltd as its company name since that date.

4.6 The Complainant has provided ASIC company searches in support of its above submissions.

4.7 The Complainant has produced a copy of registered Australian Registered Trade Mark No. 1657688 for the word mark “PERSPECTIVE LAW” (“Complainant’s Trade Mark”) in respect of various legal services in class 45, namely, “Legal advice; Legal consultancy services; Legal enquiry services; Legal services; Legal services relating to wills” and “Personal legal services”.

4.8 The Complainant says, and I accept, that the priority date of the Complainant’s Trade Mark is 13 November 2014, which pre-dates the Domain Registration Date by approximately four and a half years.

4.9 The Complainant submits that pursuant to section 20 of the *Trade Marks Act 1995* (Cth) (TMA) the Complainant, being the registered owner of the Complainant’s Trade Mark, has had, and continues to have:

- (a) the exclusive right to use, and to authorise other persons to use, the Complainant’s Trade Mark in relation to the services for which the Complainant’s Trade Mark is registered; and
- (b) the right to obtain relief under the TMA if the Complainant’s Trade Mark is infringed.

4.10 The Complainant says that the rights conferred upon the Complainant as the registered owner of the Complainant’s Trade Marks are taken to have accrued to the Complainant as of the priority date, namely 13 November 2014, pursuant to sections 20(3) and 72(1) of the TMA.

4.11 The Complainant has conducted and provided copies of various searches of the Respondent which indicate as follows:

- (a) The Respondent was registered as an Australian proprietary limited company on 6 October 2017, which the Complainant notes is after the priority date of the Complainant’s Trade Mark and after the date of incorporation of the Complainant;
- (b) The auDA whois record for the Domain Name identifies the domain name holder as “Usedcarnow”, however the Registrant ID provided in the whois record is that of the Australian Company Usedcarnow Pty Ltd CAN 622 100 154.
- (c) since its incorporation, the Respondent has remained registered with the company name “Usedcarnow Pty Ltd”, with the ASIC search records that the company was subject to a strike off action in 2020 which appears to have been rectified.
- (d) an historical Australian Business Register search; various ASIC Business Name organisation searches for the Respondent’s company name, CAN and ABN show no business names are registered to the Respondent;
- (e) an IP Australia trade marks search report indicates that there are no pending or registered Australian trade marks linked to the Respondent.

4.12 Between 2014 and about early 2019 the Complainant held registration of the Domain Name.

4.13 The Complainant says that at some time in early 2019 the Complainant’s registration of the Domain Name inadvertently lapsed.

4.14 The Complainant says that this was due to the Complainant not receiving a renewal reminder in respect of the Domain Name and was not the result of a deliberate act or intention to abandon the Domain Name on the party of the Complainant, and in fact and the Complainant continued making monthly payments to MelbourneIT for hosting services connected with the

Domain Name in the belief that the Domain Name was still registered, without realising that the Domain Name had lapsed.

4.15 The Complainant says that prior to the lapsing of the Complainant's registration of the Domain Name, the Complainant had begun to take steps to develop and launch a website for use with the Complainant's business which was to be rebranded to Perspective Law from the then current trading name Crilly Lawyers.

4.16 The Complainant says that when it discovered the inadvertent lapsing of the Domain Name it attempted to re-register the Domain Name only to discover that the Domain Name had been registered by the Respondent during the lapsed period.

4.17 The Complainant says that it proceeded with the rebranding of the Complainant's business to "Perspective Law" and since about 18 November 2019 the Complainant has operated its business by reference to:

- (a) the Complainant's Trade Mark;
- (b) the Complainant's Company Name; and
- (c) a website using the domain name <perspectivelaw.com>, which domain name the Complainant has continuously held since 2013.

4.18 The Complainant says that in an attempt to recover the Domain Name, the Complainant engaged in correspondence between late December 2019 and January 2020 with the listed registrant contact of the Domain Name, namely Peter Campbell.

4.19 The Complainant says that in the course of those communications the Complainant advised the Respondent that it held registration of the Company Name and Trade Mark and offered the Respondent first \$50.00 and then \$500.00 to transfer the Domain Name to the Complainant.

4.20 The email correspondence provided by the Complainant indicates that the Respondent offered on 7 January 2020 to transfer the Domain Name to the Complainant for twice the Complainant's offer, noting that legal or auDRP processes would be more expensive for the Complainant to pursue than paying the Respondent the amount requested.

4.21 The Complainant complains that on a date unknown to the Complainant, but some time between 21 May 2019 and 8 March 2020, the Respondent caused to be published a website at the Domain Name.

4.22 The Respondent's website as captured by the Wayback Machine reveals:

- (a) in the header of each page – the title "Perspective Law" and the tag line "The fast and affordable way to deal with legal issues involving vehicles, finance and Australian Consumer Law."
- (b) on the Homepage – an "Under Construction" notice;
- (c) on the "contact Us" page – a contact form displaying the Respondent's registrant contact email address; and
- (d) in the footer of each page – a purported copyright notice stating "Copyright © 2020 Perspective Law – Lyrical A WordPress theme by GoDaddy."

4.23 The Complainant says, and I accept, that it has not authorised or licensed the Respondent to use the Complainant's Trade Mark.

5. Jurisdiction

5.1 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.”

5.2 The Domain Name, being “com.au” is an open 2LD within the scope of the aforementioned paragraph. It is therefore subject to the mandatory administrative proceeding prescribed by the auDRP.

6. Response

6.1. The Respondent has not responded to the Complaint.

6.2 Pursuant to 5.3 of the auDRP Policy, a respondent is not obliged to file a Response however if no Response is received, unless there are exceptional circumstances, the Panel shall decide the dispute based on the information provided in the Complaint.

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 issued in the 2LDs “..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.”*

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’s name was registered with ASIC on 9 January 2014 and the Complainant’s Trade Marks are deemed to have accrued to the Complainant as of the priority date, (namely 13 November 2014) pursuant to sections 20(3) and 72(1) of the TMA.

8.2 The Complainant says that its registration satisfies 4(a)(i) on the basis that that the Domain Name which has now been registered by the Respondent is identical to, or confusingly similar to the Complainant’s Company Name and Trade Mark.

8.3 The Complainant says that it has become aware of several instances where clients and other contacts of the Complainant have mistakenly sent emails to addresses at the Domain Name, instead of the <perspectivelaw.com> domain name.

8.4 The Complainant says that such instances are likely to continue into the future unless the Complainant regains the Domain Name and submits that the Respondent has caused and maintains registration of the Domain Name in order to prevent the Complainant from reflecting the Complainant’s Trade Mark or Company Name in a corresponding domain name and/or to disrupt the Complainant’s legitimate business.

8.5 Sub-paragraph 4(a)(i) contains a number of elements and requires that the Domain Name is identical to or confusingly similar to a name, trade name or service mark in which the Complainant has rights.

8.6 The Complainant says, and I accept, that the Domain Name consists of the words “Perspective Law” followed by the second-level domain (2LD) suffix “.com.au”.

8.7 The Complainant says, and I accept, that the Complainants’ Trade Mark consists of the words “PERSPECTIVE LAW”, as does the Complainant’s Company Name, with the corporate denomination “Pty Ltd”, which refers to the Complainant’s status as a proprietary limited company.

8.8 The Complainant says, and OI accept, that on a direct comparison (ignoring the non-distinctive 2LD suffix of the Domain Name and the non-distinctive corporate denomination fo the Complainant’s Company7 Name) the Domain Name is substantially identical to the Complainant’s Trade Mark and the Complainant’s Company Name.

8.9 The Complainant submits that –

- (a) the Complainant has legal rights in and to the name “PERSPECTIVE LAW” derived d through its use of the Complainant’s Company Name and the registration and use of the Complainant’s Trade Mark; and
- (b) the Domain Name is substantially identical, or confusingly similar o the Complainant’s Company Name and the Complainant’s Trade Mark.

8.10. I accept the Complainant’s submissions and find that the Domain Name is identical to or confusingly similar to a name, trade name or service mark in which the in which the Complainant has rights.

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

9.1 The Complainant says the Respondent has no rights or legitimate interests in the domain name.

9.2 In the absence of a response from the Respondent, I am entitled to rely upon the information contained in the Complaint, however the Complainant still bears the onus of satisfying the Panel that the Respondent does not a right or legitimate use in the Domain Name.

9.3 The Complainant says that at the time the Respondent first registered (and at any time the Respondent subsequently renewed) the Domain Name:

- (a) the Respondent did not hold, and does not hold, any business name or company name, nor any registered or pending Australian trade mark for which the Domain Name is, or was, and exact match, abbreviation or acronym;
- (b) the Respondent had, and has, no legitimate or bona fide interest or rights in or to the name “Perspective “Law”;
- (c) There was and remains no close or substantial connection between the Domain Name; and the Respondent, or the Respondent’s business activities as they can be discerned and
- (d) the Respondent was aware, or ought to have been aware, of the matters in sub-paragraphs (a) – (c) above.

9.4 Having regard to these matters, the Complainant submits that the Respondent’s registration (and any subsequent renewal) or the Domain Name did not, and does not, satisfy the requirements of:

- (a) Schedule C to the auDA Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs (2012-04) (Eligibility Policy) as in force for domains renewed or registered prior to 12 April 2021; or
- (b) Rules 2.4.4 or 2.4.5 of the auDA .au Domain Administration Rules: Licensing (Licensing Rules) in force for domains renewed or registered on or after 12 April 2021.

9.5 In particular, says the Complainant, the Respondent's registration (and any subsequent renewal) of the Domain Name, did not, and does not, satisfy:

- (a) Schedule C paragraph 2 (a) of the Eligibility Policy – in that the Domain Name was not, and is not, an “exact match, abbreviation or acronym of the [Respondent's] name or trade mark”; or
- (b) Schedule C, para. 2(b) of the Eligibility Policy – in that the Domain Name was not, and is not, “otherwise closely or substantially connected to the [Respondent]”; or
- (c) Rule 2.4.4(2)(a) and (b) of the Licensing Rules – in that the Domain Name was not, and is not, “a match of the [Respondent's] company, business, [or] statutory...name” or “an acronym of the [Respondent's] company, business, [or] statutory...name”; or
- (d) Rule 2.4.4(2)(c) of the Licensing Rules – in that the Domain Name was not, and is not, “a match of the [Respondent's] Australian Trade Mark”; or
- (e) Rule 2.4.4(2)(f) of the Licensing Rules – in that the Domain Name was not, and is not “a match or synonym of: (i) a service that the [Respondent] provides; (ii) goods that the [Respondent] sells (whether retail or wholesale); (iii) an event that the [Respondent] registers or sponsors; (iv) an activity that the [Respondent] facilitates, teaches or trains; or (v) premises which the [Respondent] operates” which the Respondent provided at the time of application for (or renewal of) the Domain Name.

9.6 The Complainant says that in light of these matters (above) the Respondent was not, either as at the Domain Registration Date (and any subsequent renewal); nor as at the date of this Complain, and nor at any material times, was ever eligible to hold the Domain Name under the Eligibility Policy or the Licensing Rules.

9.7 The Complainant says, and I accept, that the Respondent's warranties as to eligibility given upon registration (and any subsequent renewal prior to the date of the Complainant's complaint) of the Domain Name were, and remain, false or misleading, in contravention of paragraph 2(a) of the auDRP and in contravention of the warranties contained in Rule 2.10.1(1), (2) and (6) of the Licensing Rules.

9.8 The Complainant says that its submission is supported by the failure of the Respondent to use the Domain Name at any time prior to the date of the Complainant's complaint for a website (except in the circumstances described at paras. 4.20-4.21 above) or to redirect the Domain Name to another internet address or website.

9.9 The Complainant says, having regard to the searches it has undertaken, it has not found any use of the name “Perspective Law” by the Respondent (except in the circumstances described at paras. 4.20-4.21 above) and submits that the Respondent has no legitimate right or interest in the Domain Name, and has not put the Domain Name to any legitimate use.

9.10 While the Respondent's “Under Construction” website also suggests that it is capable of providing advice on legal issues “involving vehicles, finance and Australian Consumer Law”, I note that the Respondent's entitlement, capability or qualifications to provide advice on legal issues is neither clarified on the website, nor asserted in the Respondent's email exchanges with the Complainant.

9.11 I am satisfied on the basis of the material provided by the Complainant that the Respondent did not and does not currently have any right or legitimate interest in the Domain Name.

10. Has the Domain Name has been registered or subsequently used by the Respondent in bad faith: (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)).

10.2 The Complainant says that at some time between 21 May 2019 and 8 March 2020, the Respondent caused to be published a website at the Domain Name with the following elements:

- (a) in the header of each page – the title “Perspective Law” and the tag line “The fast and affordable way to deal with legal issues involving vehicles, finance and Australian Consumer Law.”
- (b) on the Homepage – an “under Construction” notice;
- (c) on the “contact Us” page – a contact form displaying the Respondent’s registrant contact email address; and
- (d) in the footer of each page – a purported copyright notice stating “Copyright © 2020 Perspective Law – Lyrical A WordPress theme by GoDaddy.”

10.3 The Complainant submits that the Respondent has registered and subsequently used the Domain in bad faith on the following basis:

- (a) The Respondent has registered, and maintained the Domain Name to prevent the Complainant from reflecting its name or trade mark and/or to disrupt the Complainant’s business, in contravention of paragraphs 4(a)(iii), 4(b)(ii) and 4(b)(iii) of the auDRP;
- (b) The Respondent registered or acquired the Domain Name primarily for the purpose of selling, or otherwise transferring the Domain Name registration to another person for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly related to the Domain Name, in contravention of paragraphs 4(a)(iii) and 4(b)(i) of the auDRP;
- (c) The Respondent has intentionally used the Domain Name in bad faith and in a manner likely to infringe the Complainant’s Trade Mark, in contravention of paragraphs 2(b), 4(a)(iii) and 4(b)(iv) of the auDRP; and/or
- (d) The Respondent’s warranties as to the Respondent’s eligibility to hold the Domain Name were, or have become, false and misleading, in contravention of paragraphs 2(a) and 4(a)(iii) and 4(b)(iv) of the auDRP.

10.4 I accept the Complainant’s submissions that it:

- (a) did not authorise the creation of the Respondent’s Website;
- (b) did not authorise or license the Respondent to use the Complainant’s Trade Mark or Company Name on the Respondent’s website;
- (c) has conducted searches but not located any prior use of the name “Perspective Law” by the Respondent;
and that:
- (d) at the time the Respondent registered the Domain Name the Respondent had no right or legitimate interest in the Domain Name;
- (e) the Domain Name purports to provide legal advice under the name Perspective Law, which is a trademark held by the incorporated legal entity Perspective Law Pty Ltd
- (f) the Respondent continued to assert an intention to continue to use the Domain Name even after the Complainant had advised the Respondent of the Complainant’s registered Company

- Name, prior use of the Domain Name, continuing use of <perspectivelaw.com> and the Complainant's registered Trade Mark;
- (g) the Respondent has attempted to sell the Domain Name to the Complainant at a cost greater than the Respondent's legitimate expenses.

10.5 It follows from this that I find that the Domain Name was registered and/or has subsequently been used by the Respondent in bad faith.

10.6 All three components of paragraph 4(a) are required to be satisfied for any Complaint to be upheld. As I have found that the Complainant has discharged its onus of proof in relation to each element of paragraph 4(a) it follows that I find the Complainant's Complaint should be upheld.

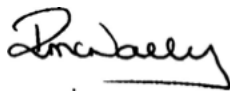
10.7 The Complainant says that the grounds for the Complaint have been made out and seeks that the Domain Name be transferred to the Complainant.

10.8 The Panellist agrees.

11. Decision

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

DATE: 2 December 2021



Rowena McNally
Panellist