



ABN 69 008 651 232

LEADR & IAMA Domain Name Dispute

Administrative Panel Decision (single panellist) Matter: auDRP 15/04

Regarding domain names: <bluederby.com.au> and < bluederby.net.au >

Between:

Dorset Council ("Dorset") - a local government body in the State of Tasmania

and Mr Damian von Samorzewski ("Damian") - a private individual / business owner

1. The Parties

1.1 The Complainant is Dorset Council, a local government body located in North East Tasmania.

Dorset Council's contact person is Mr. Tim Watson – General Manager.

Dorset Council is represented by Mr. Sam Pratt of Coniston Legal, (an Australian Law Firm).

1.2 The Respondent is Mr. Damian von Samorzewski, a private individual and small business owner.

Mr Samorzewski is representing himself.

2. Subject Matter of Complaint

2.1 The domain names in dispute are: < bluederby.com.au > and < bluederby.net.au >.

2.2 <bluederby.com.au> was registered on 9th October 2014 by the Registrar: AussieHQ Pty Ltd. <bluederby.net.au> was registered on or around the same time with Crazy Domains Pty Ltd.

2.3 For purposes of this matter the relevant Name, Trade Mark or Service Mark is: "BlueDerby".

2.4 The authority for this reference derives from:

- The auDRP Rules and,
- .au Dispute Resolution Policy and,
- The LEADR Supplemental Rules for .au Domain Name Dispute Resolution Policy (auDRP 2010-5).

3. Jurisdiction and Basis of Determination

The complaint was submitted for determination by a single panellist under:

- (a) The provisions of Section 3 of Schedule B of the auDRP Rules (the “Rules”);
- (b) The provisions of Paragraph 4(a) of Schedule A of the .au Dispute Resolution Policy (the “auDRP”);
- (c) The LEADR Supplemental Rules for .au Domain Name Dispute Resolution Policy (auDRP 2010-5). LEADR (also known as LEADR & IAMA) is the Provider.

Section 4 of Schedule A of the auDRP covers Mandatory Administrative Proceedings.

Section 4(a) deals with Applicable Disputes and states: *“You are required to submit to a mandatory administrative proceeding in the event that a third party (a “Complainant”) asserts to the applicable provider, in compliance with the Rules of Procedure that:*

- Your domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- You have no rights or legitimate interests in respect of the domain name; and
- Your domain name has been registered or subsequently used in bad faith.

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

4. Procedural History (per LEADR & IAMA)

- 4.1 Complaint received by LEADR & IAMA on 08/05/2015.
- 4.2 Sent acknowledgement of receipt of Complaint and letter of non-compliance to Complainant on 11/05/2015.
- 4.3 Completed complaint, with required rectifications, received by LEADR & IAMA from Complainant on 11/05/2015.
- 4.4 Acknowledgement of receipt of complaint was emailed to the Complainant on 11/05/2015.
- 4.5 A copy of the complaint was submitted and a request to clarify Respondent details, and lock the domain name during proceedings, was emailed to the registrar AussieHQ Pty Ltd on 11/05/2015 (for bluederby.com.au).

- 4.6 On 12/05/2015 the Registrar confirmed via email that the domain name in dispute (bluederby.com.au) was to be locked on 14/05/2015. AussieHQ Pty Ltd confirmed that the actual Registrar for bluederby.net.au was Crazy Domains.
- 4.7 A copy of the complaint was submitted and a request to clarify Respondent details and lock the domain name during proceedings was emailed to the second registrar Crazy Domains on 14/05/2015 (for bluederby.net.au).
- 4.8 On 14/05/2015, Crazy Domains confirmed via email that the domain name in dispute was locked (bluederby.net.au).
- 4.9 LEADR & IAMA advised auDA of the complaint on 14/5/2015 via e-mail.
- 4.10 On the 14/5/2015 LEADR & IAMA sent the Respondent (Damian Von Samorzewski) an email and written notification of the complaint lodged against him. The Complainant was copied in on these notifications.
- 4.11 The due date for the response to the complaint was confirmed to be 3/6/2015.
- 4.12 No acknowledgement was received from the Respondent, therefore LEADR & IAMA sent a further email reminder to the Respondent on 26/5/2015.
- 4.13 On 28/5/2015, the Respondent (Damian Von Samorzewski – “Damian”) submitted a response to the domain name complaint.
- 4.14 On 29/5/2015 the provider approached the Panellist. The Panellist confirmed their availability, informed LEADR that they had no conflict issues with the parties and accepted the matter on 29/5/2015.
- 4.15 The Case file and relevant correspondence was forwarded onto the Panellist on 1/6/2015.
- 4.16 The Parties to the dispute were notified of the Panellist’s allocation on the 1/6/2015
- 4.17 The date on which the decision is due is 15/06/2015.
- 4.18 No further submissions were requested or received from either party.
- 4.19 The Panellist’s decision was published and sent to the Provider on 15th June 2015.

5. The Complainant's Case - Factual Background

5.1 The Complainant is Dorset Council ("Dorset"), a local government authority, based in North East Tasmania. Dorset Council is not a commercial entity.

5.2 According to Dorset's website, it represents and serves: *a vibrant community of natural living for today and tomorrow. Our Mission is to improve the quality of life of the people of Dorset, through services based on the principles of quality, equity, value and responsiveness.*

5.3 Also from Dorset's website:

Dorset Council provides community services based on the principles of quality, equity, value and responsiveness. As such Dorset Council is progressive and proactive, gaining state and national recognition for its Healthy Communities initiatives, for example.

For potential investors or new residents we are focused on providing all necessary support to facilitate sustainable developments large and small as well as a warm welcome for new arrivals.

Council has recently facilitated investment projects in tourism, education, health, renewable energy, irrigation, agriculture and National Broadband Network worth nearly \$1 billion.

.....

Council is working with state and federal governments, as well as business and residents to:

- *Support and grow local business and communities;*
- *Maximise our local economic potential;*
- *Improve the social and environmental sustainability of our local economy.*

5.4 Around May 2013, Dorset obtained a Commonwealth grant, in the sum of \$2,450,000, specifically to develop 75kms of mountain bike trails in the area as a tourism initiative (The North East Mountain Bike Project). The trails were to be constructed near the town of Derby and in the adjoining Blue Tier Forest Reserve.

5.5 World Trail won the tender to construct the trails. Work commenced in April 2014. The first section of trail was opened to the public in February 2015.

5.6 In August 2014, World Trail was engaged by Dorset to create "a branding and signage plan" for the trails.

5.7 On 2nd October 2014, Dorset attempted to register <ridebluederby> and <BlueDerby> domains. The former registration was successful, the latter failed through administrative error.

- 5.8 On 8th October 2014, the BlueDerby brand was first publicised via Facebook, by World Trail and Dorset.
- 5.9 On 9th October 2014, Damian registered the domains: bluederby.com.au and bluederby.net.au.
- 5.10 At approximately the same time he launched a Facebook page titled: "Ride Blue Derby - Official Site"
- 5.11 On 14th October 2014, Dorset registered "Blue Derby" as a Business name with ASIC.
- 5.12 On 27th February 2015 Dorset lodged trademark application #1677518 for "Blue Derby Ride Explore Live", with an associated image.
- 5.13 On 9th April 2015 Damian lodged trademark application #1685758 for "Ride Blue Derby".
- 5.14 Dorset asserts that:
- a) The Respondent has registered the domain names in dispute in order to prevent the Complainant from using a corresponding domain name.
 - b) The Respondent has registered the domain names in dispute primarily for the purpose of disrupting the activities of the Complainant and;
 - c) The Respondent has intentionally attempted to attract internet users to the domain names by creating a likelihood of confusion with the Complainant's business name (and trademark if the application is successful). The Complainant believes that the Respondent's intention in creating this confusion with domain names was for commercial gain.
- 5.15 Dorset requests the transfer of both disputed domain names to itself.

6. Complainant's Arguments (1) [4a(i)] : The disputed domain names are identical or confusingly similar to various names, trade marks or service marks in which the Complainant has rights.

Dorset argues that:

- 6.1 The disputed domain names <bluederby.com.au> and < bluederby.net.au > are either identical or confusingly similar to the Complainant's domain: <ridebluederby.com.au> because "Blue Derby" is the name of the relevant new mountain bike trails, and therefore internet searches are likely to include the words "blue derby".
- 6.2 "Blue Derby" is a business name owned by Dorset.

7. Complainant's Arguments (2): The Respondent has no rights or legitimate interests in respect of the domain names.

Dorset argues that:

- 7.1 The Respondent attempted to register the trademark "ridebluederby", when it only owned the domains: <bluederby.com.au> and < bluederby.net.au >. Therefore, this trademark application was only made "in response to the trade mark application for "BlueDerby" lodged by the Complainant".
- 7.2 Dorset asserts its own bona fide use of "bluederby" and refers to having established a "Blue Derby Mountain Bike Trails" Facebook page in October 2014. It then explains its actions in blocking the Respondent from using its own Facebook Page: "Ride Blue Derby - Official Site".

8. Complainant's Arguments (3): The domain names have been registered, or subsequently used, in bad faith:

Dorset argues that:

- 8.1 There were active discussions between the Complainant and Respondent to transfer the disputed domains to the Complainant. (Note: these are unsubstantiated and were ultimately inconclusive).
- 8.2 The "circumstances outlined in this application" (earlier) demonstrate that the Respondent has registered the domain names in dispute in order to prevent the Complainant from using corresponding domain names and;
- 8.3 The "circumstances outlined in this application" demonstrate that the Respondent has registered the domain names in dispute primarily for the purpose of disrupting the activities of the Complainant and;
- 8.4 By using the domain names the Respondent has intentionally attempted to attract internet users to the domain names by creating a likelihood of confusion with the Complainant's business name (and trademark if the application is successful). The Complainant asserts that the Respondent's intention in creating the above confusion with domain names was for commercial gain.

9. Remedies Sought

The Complainant requests that the Respondent be required to transfer the disputed domain names to them.

10. The Respondent’s Case - Factual Background

- 10.1 Damian has been personally and professionally involved in mountain bike activities for some time. He was formerly President of the Launceston Mountain Bike Club. His website <ridetassie.com> contains a large amount of information about mountain bike riding throughout Tasmania. The domain for that site was registered in June 2014; the website itself bears a design date of 2015.
- 10.2 He claims to have had an online presence in the relevant geographic area, covering mountain biking and associated activities and services, since June 2014.
- 10.3 He asserts that he has been involved in the North East Mountain Bike Project through working parties, committee involvement and his <ridetassie> website since before acquiring the disputed domains.
- 10.4 He asserts that he has been, and continues to be, heavily involved in many mountain bikes activities in Tasmania (timing races etc).
- 10.5 Damian tried to acquire the domain <ridebluederby.com.au> in October 2014, “to compliment (sic) and connect his current business interested (sic) through <ridetassie.com>” and was not able to do so as it was then registered to Norm Douglas (Dorset’s web designer and allegedly a business owner in the area). Because he could not acquire the domain he wanted, he acquired the two disputed domains instead, believing he satisfied all regulatory requirements for so doing. At the time, Dorset did not have any registered any interests in similar names.
- 10.6 Dorset did not establish the Blue Derby Mountain Bike Trails Facebook page in October 2014 as it asserts, the first entry on the page is dated 13th January 2015.
- 10.7 Damian asserts that he was entitled to register a trademark for “ridebluederby” to protect his associated commercial interests and provided a letter from IP Australia, dated 10th February 2015, referring to an application to trademark “Ride Blue Derby”. This is several weeks before the Complainant commenced the process for registering its own trademark.
- 10.8 He makes numerous allegations about Dorset’s mala fides in respect of various aspects of this matter.

11. The Respondent’s Case - Arguments

Damian provided a substantial and quite complicated response, including copies of electronic correspondence to help establish the timing of various actions. He argues that:

- 11.1 He checked that: (a) he was entitled to register the two disputed domains and (b) they did not conflict with any other registrations at the relevant time. With both

outcomes yielding satisfactory results, he proceeded to legitimately registered both domain names.

- 11.2 He applied for a “ride blue derby” trademark: (a) because he was entitled to do so to protect his business interests and (b) because there were no other competing registrations at the time (early February 2015).
- 11.3 He established his “Ride Blue Derby – Official Site” on Facebook before there were any other competing sites.
- 11.4 He has legitimate rights to register both domains under the rules and eligibility criteria.

12. Decisions, with brief reasons

- 12.1 I am required to determine whether the Complainant has established that the Respondent’s right to own and operate the disputed domains fails all three tests specified by Section 4(a) of Schedule A of the auDRP. The Complainant carries the burden of proof.
- 12.2 If I find that the complaints are justified I am required to determine whether one or both of the disputed domains should be transferred into the Complainant’s name (or have their registrations cancelled).
- 12.3 The Respondent rejects the Complainant’s complaints and demands.
- 12.4 I note that a large proportion of Damian’s argument covers extraneous moral and ethical issues that may be germane to the overall situation, but are not relevant to this determination. Similarly, his attempts to demonstrate that Dorset is wrong on many issues, in fact and at law, are generally not relevant to the determination, which is required to be made strictly in accordance with the requirements of the auDRP Rules; the .au Dispute Resolution Policy and the LEADR Supplemental Rules for .au Domain Name Dispute Resolution Policy (auDRP 2010-5).
- 12.5 In addition to my responses to issues raised by the parties to this dispute I have attached relevant extracts from Policy No: 2012-04: Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs. Publication Date: 17/12/2012. These appear as Appendix A to this determination.

13. Question 1: Per 4(a) (i) - is the domain name identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights?

- 13.1 **I find** that the disputed domain names: <bluederby.com.au> and <bluederby.net.au> are not “identical” to either the Complainant’s domain <ridebluederby.com.au>, or to its approved trademark: “blue derby ride explore live”.

- 13.2 **I find** that the disputed domain names: <bluederby.com.au> and <bluederby.net.au> could be “confusingly similar” to the name, trademark or service mark in which the Complainant has established that it has legal rights.

The name “Blue Derby” describes a specific, new mountain bike “trail network”. The words “Blue Derby” form part of the domain name: <ridebluederby>. They also form part of the approved trademark: “blue derby ride explore live”. They are both also words that are generic and in general use.

Using the two words together refers to a specific item in which the Complainant has legal rights, so there is a possibility that an ordinary internet user could be confused into associating the disputed domains with the Complainant’s domain, and into believing that there is a real connection between the disputed domains and the Complainant’s activities.

14. Question 2: Per 4(a) (ii) – has the Complainant established that the Respondent has no rights or legitimate interests in respect of the domain names?

- 14.1 Section 4(c) of Schedule A to the Policy lists three forms of evidence that may demonstrate a Respondent’s rights and legitimate interests in a disputed domain:

- (i) *before any notice to you of the subject matter of the dispute, your bona fide use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that you have acquired for the purpose of selling, renting or otherwise transferring); or*
- (ii) *you (as an individual, business, or other organisation) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or*
- (iii) *you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the name, trademark or service mark at issue.*

- 14.2 **I find** that the Respondent has proved that it has rights and legitimate interests in the disputed domain names <bluederby.com.au> and <bluederby.net.au> by virtue of the fact that: (a) before commencement of the dispute he operated at least one similar Tasmanian mountain bike information site and; (b) was an active purveyor of information on Tasmanian mountain bike activities to the public, including the Blue Derby project.

- 14.3 **I find** that the Complainant has not established that the Respondent lacks rights or legitimate interests in respect of the disputed domain names <bluederby.com.au> and <bluederby.net.au>.

14.8 I refer to WIPO Arbitration and Media Center and Administrative Panel decision in: Emirates, Emirates Group vs Bluecom Consulting Group Pty Ltd, Case No.DAU2008-0004. This referred to a dispute relating to <emirates.com.au>.

That complaint was denied because the Complainant failed to establish that the Respondent did not have legitimate rights in the disputed domain name, for the following reasons:

- (a) The Respondent had expended considerable effort and expense in an attempt to establish a legitimate business with tangible connections to the Emirates region; and
- (b) There are many companies around the world that include the word "Emirates" in their business and domain names as a reference to the geographic region described by the word "Emirates"; and
- (c) The Complainant's acknowledged trade mark rights could not, in themselves, absolutely prevent other businesses from using the word "Emirates", as an accepted name for a geographic region, simply as a result of the rights that attach to its trade and other marks.

14.9 On a substantially simplified basis, the circumstances in this case are quite similar.

14.10 The complaint therefore fails on this item.

15. Question 3: Per 4(a) (iii) – has the Respondent registered or subsequently used its domain name in bad faith?

15.1 Although not necessary to do so, since the complaint has already been judged to fail, I have also assessed the final cause of complaint.

15.2 Section 4(b) of Schedule A to the Policy lists four forms of evidence of registration and use of a domain in bad faith. In respect of the Respondent:

- (i) *circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to another person for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or*
- (ii) *you have registered the domain name in order to prevent the owner of a name, trademark or service mark from reflecting that name or mark in a corresponding domain name; or*
- (iii) *you have registered the domain name primarily for the purpose of disrupting the business or activities of another person; or*
- (iv) *by using the domain name, you have intentionally attempted to attract, for*

commercial gain, Internet users to a web site or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that web site or location or of a product or service on that web site or location.

- 15.3 **I find** that the Complainant has failed to establish that the Respondent registered the domain names in bad faith.
- 15.4 The Complainant has not established that the domain names were acquired for purposes of selling, renting or otherwise transferring the domain name registrations ... for valuable consideration. 4(b)(i).
- 15.5 The Complainant has not established that the domain names were acquired to prevent them from reflecting the subject names or marks in a corresponding domain name, nor has it established that the Respondent had any intention of disrupting the Complainant's business or other activities by use of the disputed domain names, nor has it established that the Complainant's activities have, in any way, been disrupted or adversely affected by the disputed domain names. 4(b) (ii and iii).
- 15.6 The Complainant has not established that the domain names were acquired to attract internet users to the Respondent's site for commercial gain, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that web site ... 4(b)(iv). I do, however note in passing that the Respondent's blocked Facebook site, which claimed to be the "Official Site" for the Blue Derby, could have created more of an issue in this regard, as mentioned by the Complainant's trademark solicitor in his complaint to Facebook. Since this is a different matter to the domain name dispute, it doesn't fall under my jurisdiction.
- 15.7 The Respondent registered the disputed domains before the Complainant had any legal rights in corresponding names, trademarks or service marks. As there is no "hierarchy of rights" in domain registrations (only eligibility requirements), and since registrations are issued on a "first come first served basis", the Respondent was entitled to do this, provided he met the eligibility requirements. It's the Registrar's responsibility to monitor and enforce these requirements. The Complainant has not established any cause for objection in this regard.
- 15.8 I accept the Respondent's assertion that he wanted to register the domain <ridebluederby.com.au> and was compelled to register the disputed domain names instead when the former domain was taken. I consider that his offer to swap both disputed domain names in return for <ridebluederby.com.au> supports his claim to be bona fide. Although I will not order this outcome, as I'm not fully aware of the possible ramifications, I invite the parties to consider whether this would be an attractive alternative consensual outcome to this dispute. If they agree this outcome they can either make their own arrangements, or can request that LEADR & IAMA advise the Registrars accordingly.

16. Remedies Requested and Determination

- 16.1 In accordance with Section 6 of the auDRP, the Complainant requests a decision that transfers the disputed domain names to themselves 6.1(b).
- 16.2 **I determine**, for the reasons given above, that the Complainant has failed to prove its case and accordingly I decline to order the transfer of the disputed domains from the Respondent to the Complainant.
- 15.9 I leave it open to the parties to agree to swap both disputed domain names in return for <ridebluederby.com.au> as an alternative consensual outcome to this dispute.

Signed as a Determination

A handwritten signature in black ink, appearing to read "Jon Kenfield". The signature is written in a cursive style with a large, sweeping flourish at the end.

Jon Kenfield

Panellist

Melbourne, 15th June 2015

2012-04 - Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs

Policy No: 2012-04

Publication Date: 17/12/2012

2. DOMAIN NAME LICENCES

2.3 There is no hierarchy of rights in the DNS. For example, a registered trade mark does not confer any better entitlement to a domain name than a registered company or business name.

Domain name licences are allocated on a 'first come, first served' basis. Provided the relevant eligibility and allocation rules are satisfied, the first registrant whose application for a particular domain name is submitted to the registry will be permitted to license it.

SCHEDULE A

ELIGIBILITY AND ALLOCATION RULES FOR ALL OPEN 2LDS

First come, first served

Domain name licences are allocated on a 'first come, first served' basis. It is not possible to pre-register or otherwise reserve a domain name.

SCHEDULE C

ELIGIBILITY AND ALLOCATION RULES FOR COM.AU

The com.au 2LD is for commercial purposes.

The following rules are to be read in conjunction with the Eligibility and Allocation Rules for All Open 2LDs, contained in Schedule A of this document.

2. Domain names in the com.au 2LD must be:

- a) an exact match, abbreviation or acronym of the registrant's name or trademark; or
- b) otherwise closely and substantially connected to the registrant, in accordance with the categories of "close and substantial connection" set out in the Guidelines on the Interpretation of Policy Rules for the Open 2LDs.

3. A domain name may also be registered in the com.au 2LD under paragraph 2(b) for the purpose of domain monetisation, in accordance with the explanation of "domain monetisation" set out in the Guidelines on the Interpretation of Policy Rules for the Open 2LDs, provided that the following conditions are met:

- a) the content on the website to which the domain name resolves must be related specifically and predominantly to subject matter denoted by the domain name; and
- b) the domain name must not be, or incorporate, an entity name, personal name or brand name in existence at the time the domain name was registered*.

** Definitions:*

"entity name" means the name of an Australian registered company or incorporated association as listed with the Australian Securities and Investment Commission (ASIC), or the name of an Australian government body. It does not include a registered business name;

"personal name" means the given name(s) and/or last name of a person; and

"brand name" means the name of an identifiable and distinctive product or service, whether commercial or non-commercial.

(The rules for domains ending in <.net.au> are similar to those for <.com.au>.)

2012-05 - Guidelines on the Interpretation of Policy Rules for Open 2LDs

Policy No: 2012-05

Publication Date: 17/12/2012

1. BACKGROUND

1.1 This document sets out guidelines on the interpretation of the Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs (2012-04). At the time of publication, the open 2LDs are asn.au, com.au, id.au, net.au and org.au.

2. PURPOSE OF GUIDELINES

2.1 The policy rules for the open 2LDs are divided into two types of criteria:

a) Eligibility - is the registrant eligible to license a domain name in the requested 2LD?;

and

b) Allocation - can the requested domain name be allocated to the registrant?

2.2 The Eligibility criteria require the registrant to provide the relevant identification details for the 2LD that they want to license their domain name in. For example, if the registrant wants to license a domain name in com.au, they must provide identification details such as Australian registered company name and Australian Company Number (ACN).

2.3 The Allocation criteria require the registrant to give a reason why the requested domain name can be allocated to them. The reasons available in each 2LD are:

a) exact match, abbreviation or acronym of registrant's name; or

b) otherwise closely and substantially connected to the registrant (known as the "close and substantial connection rule").

4. RULES FOR ALL OPEN 2LDS

4.1 Before determining that a domain name application meets the specific Eligibility and Allocation criteria for the particular 2LD, registrars must check that each domain name

application complies with the general rules that apply in all open 2LDs.

4.2 Domain names are allocated on a “first come, first served” basis. Provided that the registrant meets the relevant policy rules, the registrar may process the application, submit the registration to the registry and issue a domain name licence to the registrant. Registrars are not required to decide whether or not the domain name potentially infringes the rights of a third party.

10. ALLOCATION CRITERIA - “OTHERWISE CLOSELY AND SUBSTANTIALLY CONNECTED”, OR THE “CLOSE AND SUBSTANTIAL CONNECTION” RULE

10.1 The “close and substantial connection” rule is where the requested domain name is connected to the registrant in accordance with the listed categories for each 2LD.

10.2 The purpose of the close and substantial connection rule is to allow some flexibility for registrants who do not want to license a domain name that is directly related to their name (or cannot do so, because the domain name has already been licensed by another registrant with the same or similar name). It is important to note that this rule is NOT intended as a “free for all”, and the degree of flexibility is limited by the categories of close and substantial connection outlined below, as well as the specific conditions of use outlined in the policy rules.

10.3 At the point in the application form where a registrant indicates that they are eligible for a domain name under the close and substantial connection rule, registrars must provide a link to a page that sets out the criteria for the close and substantial connection rule.

11. ALLOCATION CRITERIA – “DOMAIN MONETISATION” IN COM.AU AND NET.AU

11.1 In the com.au and net.au 2LDs, in addition to the categories of close and substantial connection listed in paragraph 10.5 above, it is also permissible to register a domain name for the purpose of domain monetisation under the close and substantial connection rule. Examples of domain monetisation include:

- a) resolving the domain name to a website or landing page containing pay per click advertising links (also known as “parked pages”);
- b) resolving the domain name to a website or landing page containing content such as general information, news articles, product reviews, blog posts and images, with the primary intent of generating revenue from third party affiliate or commission programs or pay per click advertising;
- c) resolving the domain name to a website that contains directory listings;
- d) redirecting the domain name to another domain name under a third party affiliate or commission program;
- e) using the domain name to provide featured advertising services; and
- f) using the domain name for traffic optimisation purposes.

11.2 Registrants who register domain names for the purpose of domain monetisation do not fall into any of the categories of close and substantial connection outlined in paragraph 10.5. For example, a registrant who registers “shoes.com.au” for domain monetisation purposes does not actually sell or manufacture shoes; their intention is to earn revenue from the domain name in one of the ways listed in paragraph 11.1. The policy rules allow people to register domain names for the purpose of domain monetisation under the close and substantial connection rule, but with two conditions of use to ensure that the intent and integrity of the close and substantial connection rule is maintained.

11.3 The first condition is that “the content on the website to which the domain name resolves must be related specifically and predominantly to subject matter denoted by the domain name”. This is intended to ensure that the close and substantial connection between the registrant and the domain name is visible and meaningful to users. If the content of the website does not relate to the domain name in any discernible way, then the close and substantial connection rule is not satisfied. auDA uses a “reasonableness test” to determine whether the content on the website satisfies the condition, ie. would a reasonable person regard the content as related specifically and predominantly to the domain name?

11.4 The second condition is that “the domain name must not be, or incorporate, an entity name, personal name or brand name in existence at the time the domain name was registered”. This condition is intended to ensure that domain monetisation is not used as a cover for cybersquatting or other misleading or fraudulent activity. In determining whether a registrant is in breach of this condition, auDA will take into account whether the domain name is a generic word or may have an alternative meaning which is not related to a specific entity, person or brand.