



Domain Names: *schoolinterview.com.au , schoolinterview.net.au*

Name of Complainant: *Andrea Chick (nee Carr)*

Name of Respondent: *Countrynet Software Pty Ltd ABN 53 054 880 312*

Provider: *LEADR & IAMA*

Single Member Panellist: *Dennis Liner*

1. The Parties

- 1.1 The Complainant in this proceeding is Andrea Chick (nee Carr) of 3 Grove Gardens, Berwick, Victoria, 3806, ABN 79 101 354 815 (“the Complainant”).
- 1.2 The Respondent named in this proceeding is Countrynet Software Pty Ltd, 39 Central Coast Highway, Gosford, New South Wales 2250, ABN 53 054 880 880 312 (“the Respondent”).

2. The Domain Name, Registrar and Provider

- 2.1 The Domain Names subject to this proceeding are “*schoolinterview.com.au* and *schoolinterview.net.au*” (the Domain Names”).
- 2.2 The Registrar of the Domain Name is Net Registry of Level 4, 1 Smail Street, Ultimo, New South Wales, 2007 (PO Box 270, Broadway, New South Wales 2007) (“the Registrar”).
- 2.3 The provider in this Proceeding is LEADR & IAMA of Level 1, 13-15 Bridge Street, Sydney, NSW 2000 (“the Provider”).

3 Procedural Matters

- 3.1 This proceeding relates to the complaint submitted by the Complainant in accordance with:-
- (i) the .au Dispute Resolution Policy no.2010-05 published 13 August 2010 (“auDRP”) which includes Schedule A (Policy) and Schedule B (Rules); and
 - (ii) the Provider’s supplemental rules for the au Domain Name Dispute Policy.

- 3.2 The Provider was supplied with a copy of the ADR Domain Name Dispute Complaint Application Form on 3 June, 2015 by way of a letter dated 3 June 2015 from the Complainant, such letter containing supporting documentation referred to below.

The Provider was supplied with a copy of the Response of the Respondent lodged on its behalf by Simon Totonjian and dated 6 July 2015 together with supporting documentation referred to below and was received by the Provider on 6 July 2015, after an extension of time had been granted by the Provider until such date.

I find that the making of the Complaintt and the Response together with the supporting documentation referred to below comprise all the relevant matters submitted to the Panellist. I have perused the documents and I am satisfied that the service of the documents and the time for service of the documents complies with the Rules.

- 3.3 The documents supplied by the Complainant were as follows:-

ADR Domain Dispute Application Form comprising the letter of the Complainant dated 3 June 2015 to which the documents set out below were attached:

- i) "auDRP Complaint Appendix" ("the details of Complaint").
- ii) "auDPR Complaint Annexures" comprising Annexures A to K, inclusive, being copies of various web page screen shots. ("the Annexures")

- 3.4 The documents supplied by the Respondent were as follows:-

Response prepared by Simon Totonjian ("Simon") dated 6 July 2015 to which the documents set out below were attached:

- i) Appendix 1 being copy Central Coast News item Friday 11 May 2007.
- ii) Appendix 2 being submission by the Respondent comparing success of Respondent's business to that of the Complainant.
- iii) Appendix 3 being copies of two screen shots of unsuccessful Trade Mark applications by third parties (neither the Complainant or the Respondent)
- iv) Appendix 4 being copies of two screen shots of Australian Securities and Investments Commission (ASIC) Business Name search of "School Interviews".
- v) Appendix 5 being copies of screen shots Parent Teacher Online.
- vi) Appendix 6 being copies of screen shots of schoolinterview.com.au and schoolinterviews.com.au home pages
- vii) Appendix 7 being copies of screen shots of login pages of parentteacheronline.com.au and schoolinterviews.com.au
- viii) Appendix 8 being copies of screen shots of information pages of parentteacheronline.com.au
- ix) Appendix 9 being rebuttal of the matters contained in the Appendices of the Complainant's complaint.

- x) Appendix 10 being copies of the screen shots of the booking page of the Complainant and the Respondent.
- xi) Appendix 11 being a list of domain names claimed to be used by Simon.
- xii) Appendix 12 being a copy of a screen shot of parentteacheronline.com.au and providing a Guarantee by the Respondent.
- xiii) Appendix 13 being copies of two 2007 emails from Rod Burke in respect to instructions to schools in relation to <http://pto.countrynet.net.au>.
- xiv) Appendix 14 being copies of information in respect to “parent Teacher Online Lite”.
- xv) Appendix 15 being a copy of screen shot of schoolinterviews.com.au pricing.
- xvi) Appendix 16 being copies of various emails between various schools and the Complainant.
- xvii) Appendix 17 being copies of screen shots of access pages for each of the parties.
- xviii) Appendix 18 being copies of screen shots of the login pages of the Complainant.
- xix) Copies of correspondence in respect to Victorian Small Business Commissioner Complaint, Reference 15/11436.

4 Factual background

FACTS ALLEGED BY THE CLAIMANT

- 4.1 The Claimant states that it provides a school interview booking service under the name “School Interviews”, such service being used for parent-teacher interviews, enrolment interviews, subject selection counselling interviews, pathway interviews and also other interviews via its web site www.schoolinterviews.com.au (“the Complainant’s domain name”).
- 4.2 The Complainant is licensed to use the brand name, images and booking system for schools in the Asia Pacific region. Such services are identical in appearance to those offered by licensees in U.K, New Zealand and Canada, where they operate domain names www.schoolinterviews.co.uk; www.schoolinterviews.co.nz and www.schoolinterviews.ca.
- 4.3 The Respondent is a competitor that provides a school based interview booking service for Parent-Teacher interviews only under the “brand name” Parent Teacher Online Lite or PTO Lite which are accessed via the Domain Names.
- 4.4 The Respondent provides a fully serviced product “Parent Teacher Online (PTO)” via www.parentteacheronline.com.au.
- 4.5 The Complainant’s product “School Interviews” is Australia’s most popular online booking system for school based interviews (statistics provided).
- 4.6 The sites of the Complainant and the Respondent differ, as follows:

- (i) The Complainant's domain name is identified by the website title "School Interviews" and matching logo flavicon at:-

www.whois.domaintools.com/schoolinterviews.com.au.

The Respondent's domain names are identified with the website title "PTO Lite" and matching PTO Lite logo flavicon at:-

www.whois.domaintools.com/schoolinterview.com.au; and
www.whois.domaintools.com/schoolinterview.net.au.

- (ii) The Complainant's schools administer their accounts via the Complainant's web site.

The Respondent's schools administer their accounts via:-

<https://bookings.parentteacheronline.com.au>.

- (iii) The Complainant uses its logo and icons on all sites and communications.

The Respondent often utilises the PTO Lite logo.

- 4.7 In January 2009 Virtual Industries Group created an online booking system known as "School Interviews", using schoolinterviews.co.nz. On 30 June 2009 that Company registered the Complainant's domain name. In April 2010 an Australia licensee was appointed as proprietor of the name "School Interviews" brand and system in Australia.
- 4.8 In January 2011, when the Complainant had 550 schools as customers, the Respondent registered "School Interviews" in NSW, applied for a trade mark in that name, registered the domain names and established blank web pages and set up a new site under schoolinterviews.net.au. This last domain was subject to a complaint and a Panel found that the use of such name by the Respondent was in bad faith.
- 4.9 The Respondent's domain names are essentially the same as those of those of the Complainant and those referred to in Clause 4.2 above. The Complainant's brand name, business name and product name are all recognisable within the Respondent's domain names, only with the "s" missing.
- 4.10 The Complainant has the right to the name "School Interviews" ("the name") for the following reasons:
- (i) it asserts "common law or unregistered trademark rights" to the name;
 - (ii) the Complainant has been trading under the name since 2010;
 - (iii) the name is an integral part of the Complainant's advertising and as part of an identifiable logo;
 - (iv) since 2011 the Complainant has been utilising the Complainant's domain name in publications and advertising and various publications have referred to it.

- (v) Although the words school, interview and interviews are generic, together they become “School Interviews”, being the business of the Complainant and would be used by schools in specific searches and would be prominent in searches being conducted for the Complainant’s business.
- (vi) the only reason for the Respondent to register the domain names for their brand of “PTO Lite” is to “trade on the goodwill of the Complainant’s business and product, to divert traffic to the Respondent’s product – PTO Lite or to cause disruption to the Complainant’s product School Interviews”.

4.11 In respect to the Respondent’s right to the domain names, the Complainant alleges:

- (i) Although the Respondent (sic) registered the business name “School Interviews” in NSW in 2012, mere registration does not of itself confer rights or legitimate interests in a domain name, the issue is whether one has traded under that business name in good faith.
- (ii) The purpose of the Respondent in registering that business name was because it was “confusingly similar” to the Complainant’s domain name.
- (iii) The Respondent would also have to satisfy the relevant eligibility for the domain name to be registered.

4.12 The Complainant maintains that the Respondent registered the domain name in bad faith for the following reasons:

- (i) The Complainant and the Respondent have distinctive brand names that distinguish their products from each other. Everything on the Respondent’s website refers to a distinctive and identifiable product – PTO Lite. There is no mention of School Interviews by name or a product on its websites, only upon a search of “PTO Lite” are the words “School Interviews” mentioned.
- (ii) The Respondent has published “misleading, defamatory, slanderous, deceitful and disingenuous” comments on the Respondent’s page: http://schoolinterview.com.au/the_story-so-far, thereby evidencing bad faith. (approximately eight articles described).
- (iii) The Respondent’s registration of the domain names that contains the name disrupts the business of the Complainant and the disruption of others, such as the schools, and the parents, especially if they accidentally misspell the Complainant’s domain name. Similarly, The Respondent’s schools and parents are also disrupted by the confusion caused and by the different codes used.
- (iv) The Respondent wants to cause disruption, attract customers for commercial gain by creating confusion with the Complainant’s domain name, pass off the Respondent as the Complainant and obtain benefit by trading on the goodwill and popularity of the Complainant’s service and domain name.

FACTS ALLEGED BY THE RESPONDENT

- 4.13 The Respondent was the Respondent in a previous dispute, namely auDRP_12_03 and the findings in such determination and are a useful precedent for this dispute.
- 4.14 The Complainant is required to prove all three paragraphs (i), (ii) and (iii) Schedule 4.a of the auDRP Policy as referred to in Paragraph 3.1 (i) above.
- 4.15 The Respondent agrees that the Domain Names are identical or confusingly similar to the Complainant's domain name, as determined in auDPR_12_03. However, this is not sufficient to satisfy the Complainant's case.
- 4.16 The Respondent has rights and legitimate interests in the Domain Names upon the following reasons:
- i) The findings in auDRP_12_03 , specifically paragraphs 18.3, 18.5 and 19.9 confirmed the panellist's view in that case that the Respondent had a legitimate interest in the name "school interviews", and by similarity "school interview". (Paragraphs quoted).
 - ii) Whilst the Respondent mainly used the name "Parent Teacher Online" (PTO) it also used the generic and descriptive term "school interviews" as part of describing its services.
 - (iii) The Complainant does not own the brand "School Interviews" in Australia because the words are generic and descriptive.
 - (iv) The Respondent registered the Business Name "School Interviews" in NSW 28 October 2011, six months before the Complainant registered the exact same name in Victoria on 9 May 2012.
- 4.17 The Respondent denies that the Domain Names have been registered or are being used in bad faith for the following reasons:
- (i) The Respondent has built its business, specifically PTO over nine years. Its business, and that of the Complainant have many competitors.
 - (ii) Certain code and format used by the Respondent was used by the Complainant three years later.
 - (iii) The Respondent never attempted to sell the Domain Names for monetary gain, but registered them and others relating to its business of online educational services.
 - (iv) The Respondent denies that it is attempting to disrupt the business of the Complainant, as to do so, would also disrupt its own business.
 - (v) The Respondent has adhered to auDA policies in utilising the Domain Names.

- (vi) The Respondent has differentiated its sites from the Complainant's by various means, including appearance by use of different design and colour;
- (vi) The Respondent cautions users that they may have inadvertently used the incorrect web site and directing them to that of the Complainant;
- (vi) The Respondent offers to repay money to any user who is not satisfied with the Respondent's services, including inadvertently using its sites instead of that of the Complainant.

5 Discussion

JURISDICTION

5.1 Paragraph 2.1 of the auDRP states:

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

5.2 Each Domain Name is an open 2LD within the scope of the aforementioned paragraph. They are therefore subject to the mandatory administrative proceeding prescribed by the auDRP.

Basis of Decision

5.3 Paragraph 15(a) of the Rules state:

"A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy (auDRP Policy), these Rules and any rules and principles of law that it deems applicable."

5.4 Paragraph 4(a) of the Policy provides that a person is entitled to complain about the registration or use of a Domain Name where:

- i) the Domain Name is identical or confusingly similar to a name, Trade Mark or service mark in which the complainant has rights; and*
- ii) the respondent to the complaint has no rights or legitimate interests in respect of the Domain Name; and*
- (iii) the respondent's Domain Name has been registered or subsequently used in bad faith.*

I note that all three components of Paragraph 4(a) are required to be proven for any Complaint to be upheld.

i) Domain Name is identical and confusingly similar to names or Trade Marks

5.5 The Complainant claims, inter alia, at paragraph 4.9 that, apart from the “s” the Domain Names are identical or confusingly similar to that of the Complainant’s Domain Name.

5.6 The Respondent at paragraph 4.15 agrees that the Domain Names are identical or confusingly similar to the Complainant’s Domain Name.

5.7 I have compared the Domain Names with the Complainant’s Domain Name and, as the Complainant and the Respondent concur, I find clause 4 a (i) requirement satisfied.

Note, however, that the second and third requirements of the Policy are to be satisfied and I refer to my comments below. Clearly, in this instance, both the Complainant and the Respondent (and others) could all claim that the Domain Name is confusingly similar.

ii) Respondent has no rights or legitimate interests in respect of the Domain Name

5.8 The Respondent registered the business name “School Interviews” as a business in New South Wales on 28 October 2011 and the Complainant registered the business name “School Interviews” on 9 May 2012. Both the Complainant and the Respondent attempted to register trade marks of the same name but both were rejected due to the generic nature of the words used.

5.9 The Respondent has used the Domain Names in conjunction with other Domain Names and seems to have done so for many years. The findings in auDRP_12_03 as referred to in paragraph 4.16 claims that the panel in such case found that the Respondent had a legitimate interest in the Domain Names. The Respondent in that case was Simon Totonjian. It seems that he is the nominee for the Respondent and the Respondent and this person seem to be interchangeable, but for the purpose of this dispute I do not find it relevant to distinguish between the Respondent and this person.

Although the Complainant has also used the Complainant’s Domain Name the Respondent was using the Domain Names simultaneously. It is not surprising, given the generic use of the words “teacher” “interview” and “interviews”. Although registering a business name is not adequate for the purposes of paragraph 4 (a) (ii) registration and use for a period of time would, in the light of the detailed material provided by the Respondent, substantiate that the Respondent has rights and legitimate interests in the Domain Names.

iii) The Domain Name was registered or was being used in bad faith

5.10 The Complainant claims that the Respondent registered the business names for the purpose of disrupting the Complainant’s business and to attract customers by

creating confusion and also pass off the Complainant's name for its own purposes and accordingly the Respondent registered the Domain Names in bad faith. The Complainant provides evidence of confusion and maintains that the Respondent utilises Domain Names for directing traffic to one or more other sites maintained by the Respondent.

5.11 In response the Respondent claims that it has carried on business for many years and acknowledges that it competes with the Complainant in similar businesses but denies attempting to disrupt the business. The Respondent also has differentiated its site by different site and colour and cautions users of the site that if they have inadvertently accessed the Respondent's site seeking the Complainant's site, then they are redirected to the Complainant's site and, furthermore, offers to repay money to users in such circumstances.

5.12 It is unfortunate that this dispute has arisen due to the generic words of the various Domain Names. There is obvious vigorous business competition between the Complainant and the Respondent. However, I do not find that the Domain Names were registered or that they were being used in bad faith.

6 Decision

6.1 Accordingly, I find that the Complainant has not substantiated that all three components of paragraph 4 (a) have been proven.

6.2 For the above reasons I direct that the Complaint should be dismissed.

Dated this 16th day of July 2015.

Dennis Liner

Panellist