

**RESOLUTION INSTITUTE DOMAIN NAME DISPUTE ADMINISTRATIVE PANEL**

**auDRP\_15\_10**

**Single Panelist Decision**

**Kathleen Chan**

**v.**

**Todd Raumer**

**cathedralplaceonline.com.au**

### Procedural history

- 1.1 The disputed domain name is <cathedralplaceonline.com.au>.
- 1.2 From the material provided to me it appears that the Complainant lodged a complaint pursuant to the .au Dispute Resolution Policy (**Policy**) with the Resolution Institute (**Institute**) on 30 October 2015.
- 1.3 A notice of non-compliance was sent to the Complainant on 14 December 2015.
- 1.4 The Institute received the amended complaint on 18 December 2015.
- 1.5 A request to clarify Respondent details and lock the domain name during proceedings was emailed to the registrar TPP Wholesale on 21 December 2015.
- 1.6 On 22 December 2015, the Registrar confirmed via email that the domain name in dispute has been locked.
- 1.7 The Institute advised auDA of the complaint on 22 December 2015.
- 1.8 The Respondent was advised of the complaint by the Institute on 22 December 2015.
- 1.9 The due date for the response to the complaint was confirmed by the Institute to be 11 January 2016.
- 1.10 On 11 January 2016, the Institute reminded the Respondent that the response was due. The Respondent responded on 11 January 2016 that the response would be submitted after 5 pm. but before midnight.
- 1.11 The response was not received by the Institute until 12:41 am on 12 January 2016.
- 1.12 However, the response would have been within time if not for the fact that the Institute is situated in NSW, while both the Complainant and the Respondent are located in Queensland.
- 1.13 The Panel was approached by the Institute to act as Panellist in this matter on 13 January 2016. The Panel signed and returned a declaration of impartiality and independence on 15 January 2016. The Panel received the file on 15 January 2016 and the Parties to the dispute were notified of the Panellist's allocation on 15 January 2016.
- 1.14 The Panel find that it was properly constituted for this complaint. The proceeding is carried out in accordance with the Policy, the Rules for .au Dispute Resolution Policy (**Rules**), and Resolution Institute Supplemental Rules for .au Domain Name Dispute Resolution Policy (**Supplemental Rules**).
- 1.15 On 21 January 2016, the Panel invited the Parties to make further submissions regarding whether the Panellist should accept the Response and the weight to be placed on the Response. The Panel requested that the Parties submit their response by midnight, Brisbane time, 27 January 2016. The Panel received submission from the Respondent on 22 January 2016. No submission was received from the Complainant.
- 1.16 Given the time differences between Queensland and NSW, and that the Respondent did write to the Institute on 11 January 2016 notifying the Institute of its intention to submit a Response, the Panel determined that the 40 minutes delay in submitting the response did

not prejudice the Complainant or cause any delay to the proceeding. The Panel will therefore give full weight and consideration to the response.

### **The Parties**

- 2.1 The named Complainant is Kathleen Chan. Attachment 5 to the complaint, an unexecuted adjudication application form, BCCM Form 15, states that Mrs Kathleen Chan is the owner and director of Landgreat Management, which operates Cathedral Place Management. The Complainant did not otherwise provide information to prove that Mrs Chan is the owner and director of Landgreat Management. Nevertheless, this fact is not contested and was admitted by the Respondent. The Panel therefore accepts that fact.
- 2.2 Landgreat Management Pty Ltd (ACN/ARBN 153761356) (**Landgreat**) is currently the registered owner of Trade Mark registration CATHEDRAL PLACE MANAGEMENT (Trade Mark No. 1055647) (**Mark**). From the facts provided by the Complainant, it appeared that Landgreat became the registered owner of the Mark on or around 17 May 2015.
- 2.3 Landgreat is also the registered owner of the business name Cathedral Place Management as well as trading name Cathedral Place Management from 17 October 2011.
- 2.4 The named Respondent is Todd Raumer (Plan B). Pan B Qld Pty Ltd (ABN 34 114 818 664) is the registered owner of business names Cathedral Place Caretaking (from 27 September 2013) and Cathedral Place Rentals (from 7 September 2013).

### **Background**

- 3.1 Much of the background is extracted from the response as the Complainant did not provide much details by way of background.
- 3.2 Cathedral Place Management is the onsite management firm of Cathedral Place. Cathedral Place is a 514 residential apartment and 24 commercial lots in Brisbane City / Fortitude Valley.
- 3.3 The complex's structure comprises of one Community Body Corporate (CBC) and six Building Unit Prescient's (BUPs): Notre Dame, Oxford and Cambridge, Canterbury and Westminster, Duhig, Kensington and Sandringham, and Cathedral Village (Commercial).
- 3.4 The Respondent asserted that he is the appointed Caretaker for Notre Dame and Kensington and Sandringham BUPs, and Cathedral Place Caretakers (under entity Ausgreenland Pty Ltd) provides caretaking services to the remaining BUP's. The Respondent submitted that Ausgreenland Pty Ltd is connected to Mrs Chan via Landgreat Management Pty Ltd.
- 3.5 I now proceed to determine this matter on the basis of the evidence before me.
- 3.6 Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statement and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. To this end, while the Policy and the Uniform Domain Name Dispute Resolution Policy (**UDRP**) are different policies, both share

substantial similarities. The Panel therefore finds it appropriate to also rely on authorities concerning the UDRP, to the extent relevant.

#### **Test to be satisfied**

- 4.1 The test which the Complainant must satisfy in order to succeed is set out in the Policy, which may be summarised as follows:
- (a) the domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights. For the purposes of the Policy, a "name...in which the Complainant has rights" refers to the Complainant's company, business or other legal or trading name, as registered with the relevant Australian government authority, or the Complainant's personal name;
  - (b) the Respondent has no rights or legitimate interests in respect of the domain name; and
  - (c) the domain name has been registered or subsequently used in bad faith.
- 4.2 Each of these elements must be established if the Complainant is to succeed. The Complainant bears the onus of proof for establishing it has made out the elements of Policy.

#### **Identical or confusingly similar**

- 4.3 The Complainant did not identify how the domain name is identical or confusingly similar to a name, trademark or service mark in which she has rights, or indeed, what name, trademark or service mark to which the domain name is identical or confusingly similar.
- 4.4 It is unclear whether the Complainant is alleging that the disputed domain name is identical or confusingly similar because it incorporates the word "cathedral", or whether it relates to the descriptor "cathedral place", or whether it is confusingly similar to the entirety of the business name, trade name, and the Mark owned by the Complainant, directly or indirectly,
- 4.5 The Complainant and the Respondent both have business and trade name registrations with identical descriptor "Cathedral Place".
- 4.6 The disputed domain name <cathedralplaceonline.com.au> encompasses in entirety the first part of the Mark, CATHEDRAL PLACE MANAGEMENT, of which the Complainant, through Landgreat, acquired rights in or around 17 May 2015.
- 4.7 Although it is unclear when the Respondent first registered the disputed domain name, from paragraph 52 of the Response, the disputed domain name appeared to be in operation from or around 2012. Certainly the evidence presented by the Complainant proved that the domain name was in operation prior to Landgreat becoming the owner of the Mark.
- 4.8 Consensus under the UDRP is that registration of a domain name before a Complainant acquires trademark rights in a name does not prevent a finding of identical or confusing similarity. However, authorities have found that in such circumstances it may be difficult to prove that the domain name was registered in bad faith<sup>1</sup>.
- 4.9 While the Complainant failed to specify how the domain name is identical or confusingly similar to a name, trademark or service mark in which she has rights, or indeed, what name trademark or service mark to which the domain name is identical or confusingly similar, as the disputed domain name encompasses in entirety the first part of the Mark "Cathedral

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<sup>1</sup> See Digital Vision, Ltd. v. Advanced Chemill Systems, WIPO Case No. D2001-0827, <digitalvision.com>; Madrid 2012, S.A. v. Scott Martin – MadridMan Websites, WIPO Case No. D2003 – 0598, <2m12.com> inter alia.

Place" in which the Complainant has a right, the Panel is satisfied that the first limb of the Policy has been met.

### **No rights or legitimate interests**

- 4.10 The Panel is not satisfied that the Complainant has satisfied the burden of proof for the second limb as:
- (a) The Complainant submits attachment 5 as evidence to support its allegation that the Respondent is illegally running a rental agency from this domain. However, attachment 5 is a adjudication application form under Body Corporate and Community Management Act 1997, which simply sets out the Complainant's allegations in the adjudication application. It is unsigned and undated and it is not clear whether the adjudication application was actually initiated. Consequently, the document does not have evidentiary value and does not prove the Complainant's allegations of illegality. In any event, answer to the question whether the Respondent is operating a business legitimately within the premises of Cathedral Place does not necessarily have bearings on the question of rights or legitimate interests to the disputed domain name.
  - (b) The By-Laws referred to by the Complainant in its submissions under the second limb simply pointed out that the sale and letting of the lots or carparks cannot be carried out within the development . The Panel therefore accepts the Respondent's submission, at paragraph 33 of his response, that while it is agreed that the proprietor of the Management Unit can be the only onsite real estate agent, the by-law does not however give the proprietor the unfettered right, to be the only agent able to provide services to owners.
  - (c) Letter from the Complainant to the Cathedral Place Corporate Body simply repeated the same allegations, without providing any supporting evidence or authorities;
  - (d) Letter from ClarkeKann Lawyers cannot be accepted. Firstly, it is not a legal advice to the Complainant, but is addressed to Cathedral Place Community Body Corporate, to the attention of Mr Mifsud. There is no indication that the Complainant is initiating this proceeding on behalf of Cathedral Place Community Body Corporate (and if she is, there is no indication that she has the authority to act on behalf of Cathedral Place Community Body Corporate). Secondly, it is not clear what is the exact inquiry made by Cathedral Place Community Body Corporate. The applicability of the legal opinion to the current matter is therefore unclear. Finally, the letter from ClarkeKann simply sets out its legal opinion based on facts provided by Cathedral Place Community Body Corporate to ClarkeKann Lawyers, which the Panel is not privy to. The Panel is therefore not satisfied that the letter serves to prove that the Respondent has no rights or legitimate interests in respect of the domain name.
- 4.11 The Panel therefore finds that the Complainant has not satisfied the second limb of the Policy.
- 4.12 While the Complainant must satisfy all three limbs of the Policy in order to be successful in her application, to be complete and prudent, the Panel deals with the third limb of the Policy below.

## Registration or use in bad faith

- 4.13 General consensus of authorities is that when a domain name is registered by a respondent before a complainant's relied-upon trademark rights is shown to have been established, the registration of the domain name would not have been in bad faith because the registrant could not have contemplated the complainant's then non-existent right.
- 4.14 However, in certain circumstances, when the respondent is clearly aware of the complainant, and it is clear that the aim of the registration was to take advantage of the confusion between the domain name and any potential complainant rights, bad faith can be found.
- 4.15 Further, the third limb of the test requires the Panel not only to consider whether the domain name is registered in bad faith, but also and separately, whether the domain name is used in bad faith.
- 4.16 Circumstances listed by the Policy as an example of bad faith includes:
- (a) registration of the domain name primarily for the purpose of disrupting the business or activities of another person (to this the Panel also adds use of the domain name primarily for the purpose of disrupting the business or activities of another person);
  - (b) by using the domain name, (the Respondent) has intentionally attempted to attract, for commercial gain, internet users to a website 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 website or location or of a product or service on that website or location. As the disputed domain name was registered by the Respondent substantially earlier than the Complainant acquiring the rights to the Mark, and the Panel is satisfied that the Respondent has registered the Mark in relation to its role as the caretaker of Cathedral Place, the Panel is satisfied that the Respondent has not registered the disputed domain name in bad faith.
- 4.17 The question is whether the Respondent uses the domain name in bad faith. Was the domain name **primarily** used for the purpose of disrupting the business or activities of the Complainant? By using the domain name, has the Respondent intentionally attempted to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant's name or mark.
- 4.18 The Complainant alleges that the website is being used as a platform for propaganda against Cathedral Place Management and to advertise false and defamatory information about the legal operators of Cathedral Place Management.
- 4.19 The Panel accepts, on the basis of information before the Panel, that at some stage, the website operated under the disputed domain name contained information which may bring the Complainant's reputation into question. The Panel has not received any additional information, however, other than attachments 7, 8 and 9 to the Complaint, which points to the fact that the website is used as a platform for propaganda against Cathedral Place Management or to advertise false and defamatory information about the legal operators of Cathedral Place Management, and there is no information before the Panel as to whether the website continues to contain that information (a quick browse of the website shows otherwise).

- 4.20 While the Respondent used the domain name in relation to its services as the caretaker of Cathedral Place, it appears that at some stage, the Respondent, at least in part, was no longer the caretaker of the entire Cathedral Place, but the Respondent asserted that he is the appointed Caretaker for Notre Dame and Kensington and Sandringham BUPs, and that the domain is still registered for the purpose of:
- (a) providing an information portal to relevant stakeholders;
  - (b) delivering a high level of customer service;
  - (c) ensuring individuals are aware of their specific obligations;
  - (d) creating a communication flow/exchange between the parties; and
  - (e) fulfilling the requirements of his role.
- 4.21 The information before the Panel is insufficient to prove or disapprove the Respondent's submissions that the Respondent continues to be the caretaker for Notre Dame and Kensington and Sandringham BUPs (Appendix K, page 6 of the response appears to show that the Caretaking Agreement between the Proprietors of 'Notre Dame" BUP and Plan B has been terminated as of 12 January 2015. No information was provided to evidence the re-establishment of Caretaking Agreement with Plan B at a later date). However, that was not the basis of the Complainant's submission for bad faith and the Panel has no ground to question the truthfulness of the Respondent's submissions.
- 4.22 On the basis of the Complainant's submission for bad faith and the information before the Panel, the Complainant has not satisfied the burden of proof that the Respondent has used the disputed domain name primarily for the purpose of providing false or defamatory information, or as a platform for propaganda against Cathedral Place Management. I therefore find that the third limb of the Complaint fails.

## Decision

- 5.1 For the reasons set out in this determination the Panel orders that the complaint be denied.

DATE: 1 February 2016

Name I-Ching Tseng  
Panelist