

1. The Parties

The Complainant is Lyndell John Munday, as The trustee for Boathaven Superannuation Fund. represented by Mr Ryan Craig of Blackstorm Software.

The Respondent is Travel Publishing Network which appears to be a business name. No representative has been identified.

2. The Domain Name and Registrar

The disputed domain name < boathavenbeachhouse.com.au > is registered with Netfleet.com.au (the "Registrar").

3. Procedural History

The Complaint was submitted to Resolution Institute ("RI") in an incomplete form on 23 January 2017. The procedural difficulties were addressed by the Complainant and the completed Complaint was submitted on 2 February 2017 to RI. On the 7th of February 2017, the fees were paid and the Registrar a request for registrar verification in connection with the disputed domain name was issued on 9 February 2017. On 10 February 2017, the Registrar transmitted by email to RI its verification response confirming that the Respondent is listed as the registrant and providing the Respondent's contact details and locking the domain name.

RI verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the "Policy"), the Rules for .au Dispute Resolution Policy (the "Rules"), and the RI Supplemental Rules for .au Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), RI formally notified the Respondent of the Complaint, and the proceedings commenced on 13 February 2017. In accordance with the Rules, paragraph 5(a), the due date for Response was 5 March 2017. RI received no communication from the Respondent and the Respondent did not file a formal Response.

RI appointed Scott Pettersson Stone as the sole panellist in this matter on 9 March 2017. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

The rules require the Complaint to be decided on or before 23 March 2017.

4. Factual Background

The Complainant, asserts it operates a small holiday recreational facility in South Australia. In this respect, the Complainant is the proprietor of the business name Boathaven Beach House in Australia, registered from 22 October 2007.

The disputed domain name was registered by the Respondent on 24 November 2016 and was appears to market dresses and possibly a wedding venue business. I note that google maps reflects

the relevant address of the wedding venue to be a suburban residence in the Sydney suburb of Epping. Further basic information located in the public domain indicates it is a four bedroom residence purchased in December 2016. The site meta data discloses: *"If you are looking for the perfect low-key wedding venue to show off your multiway dress, then make sure you get in contact with Boat Haven Beach House today."*

It is clear from the material provided that the Complainant operated an active website at the contested domain name from 2008 until secured by the Respondent in 2016.

5. Parties' Contentions

A. Complainant

The Complainant alleges that it has been the legal and beneficial owner of the business name 'Boathaven Beach House' since 2007. That assertion is supported by an ASIC extract. The Complainant contends that the business name are well recognised and associated with the Complainant and its facility.

The Complainant's contentions are as follows:

- That the disputed domain name is identical or confusingly similar to the registered business name in which the Complainant has rights. The disputed domain name was previously registered to the Complainant and contains all of the words contained in the business name;
- That the Respondent has no rights or legitimate interests in respect of the disputed domain name and the disputed domain name has been procured with the intention of resale to the Complainant. The commonality of names and prior use of the Domain by the Claimant is misleadingly and diverts Internet traffic away from the Complainant; and
- That the disputed domain name was registered and is used in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Panel may find in favour of the Complainant in this proceeding and order a transfer of the disputed domain name, < boathavenbeachhouse.com.au >, provided the Complainant demonstrates that:

- (i) The disputed 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 has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or subsequently used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided evidence of its registration and use of the business name. The Complainant's registered business name is very similar to the disputed domain name, with the home page of the domain being identical save for the differing only in the addition of the space between Boat and Haven. The Panel finds that the identical words and the addition of a space on the home page does not alter the meaning or interpretation sufficiently to vitiate the finding that the disputed domain name is confusingly similar to the Complainant's business name.

The Panel finds that the Complainant has satisfied the condition set out in the Policy, paragraph 4(a)(i), and that the disputed domain name is confusingly similar to a registered business name in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the non-exhaustive criteria which determine whether a domain name registrant has rights or legitimate interests in a domain name, including if it has:

- (i) Prior bona fide offering of goods or services;
- (ii) Common association with the disputed domain name; or
- (iii) Legitimate non-commercial use.

In relation to paragraph 4(c)(i) above, the Respondent is using the site to promote the sale of dresses and a wedding venue. The Complainant alleges that the Respondent has no interest in recreational accommodation. The single address for contact is not a holiday or wedding venue and no prior affiliation with this business area is evidenced. The physical location and the absence of any detail regarding a possible venue casts doubt on the legitimacy of the use of the disputed domain name.

The Panel notes that in previous decisions where the overall circumstances demonstrate that the products or services appear to be without substance there has been a finding of no legitimate interest even where the respondent has registered a trade mark (*Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. D2000-0847).¹

With regards to paragraph 4(c)(ii) above, the Complainant contends that the Respondent has no common association with the disputed domain name and the Respondent has not provided evidence to rebut this.

The Respondent appears to have been using the disputed domain name to promote an unrelated product or for the purpose of diverting Internet traffic away from the Complainant's business. It follows therefore the Respondent has no identifiable legitimate use for the name under paragraph 4(c)(iii) above.

The Panel concludes that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. Once the Complainant has established this, the burden shifts to the Respondent to establish such rights or interests in the disputed domain name¹. The Respondent has not provided a response. The Panel finds that the Complainant has established the second element under paragraph 4(a)(ii) of the Policy.

¹ See for example *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455)

C. Registered or Subsequently Used in Bad Faith

Paragraph 4(b) of the Policy sets out the non-exhaustive criteria for a finding of bad faith, which include registering the disputed domain name to:

- (i) Sell, rent or otherwise transfer the disputed domain name to the complainant for a profit;
- (ii) Prevent the owner of the trade mark from reflecting the mark in a corresponding domain name;
- (iii) Disrupt the business of a competitor; or
- (iv) Intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, affiliation or endorsement of a website or location or of a product or service on a website or location.

Further, evidence of bad faith will include where the representations or warranties as to eligibility or third-party rights given on application or renewal are, or subsequently become, false or misleading.

The Panel notes that the Complainant contends that this registration is for profit and the same legal entity has secured a number of domains for the purpose of sale. I also note the telephone contact number of the Respondent on the domain registration record is 00000000 and is the owner of approximately 26 other domain names. Those assertions are not individually fatal to the Respondent, however, taken as a whole and uncontested the submissions becomes persuasive.

The Panel notes that when there have been previous decisions on similar facts, in order to operate in a fair, effective and predictable manner, the decisions should be consistent².

Further, in offering a wedding venue from the disputed domain name, the Respondent is arguably attempting to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's trade mark.

The Panel finds that the criteria in paragraph 4(b) of the Policy are fulfilled and that there is sufficient evidence to find that the Respondent registered and is subsequently using the disputed domain name in bad faith.

7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name < boathavenbeachhouse.com.au > be transferred to the Complainant.

Scott Pettersson
Panellist
23 March 2017

² See for example (Geobra Brandstätter GmbH & Co KG v. Only Kids Inc, WIPO Case No. D2001-0841).