

ADMINISTRATIVE PANEL DECISION

S3 Consortium Pty Ltd trading as StocksDigital v. Bilal Zeitoune

Case No. auDRP_17_12

stocksdigital.com.au

1. THE PARTIES

The Complainant is S3 Consortium Pty Ltd trading as StocksDigital, represented internally.

The Respondent is Bilal Zeitoune.

2. THE DOMAIN NAME AND REGISTRAR

The disputed domain name <stocksdigital.com.au> is registered with Web Address Registration Pty Ltd (“Registrar”).

3. PROCEDURAL HISTORY

This is an administrative proceeding pursuant to the .au Dispute Resolution Policy (“Policy”), the Rules for .au Dispute Resolution Policy (“Rules”), and the Resolution Institute Supplemental Rules for .au Domain Name Dispute Resolution Policy (“Supplemental Rules”).

The Complaint was filed with Resolution Institute (“RI”) on 10 October 2017. On 11 October 2017, RI sent to the Complainant a Notification of Non-Compliance informing that the Complaint did not comply with the Policy. On 11 October 2017, the Complainant filed with RI a rectified Complaint. A copy of the rectified Complaint, together with a request to confirm the Respondent’s details and to lock the disputed domain name, was transmitted by RI to the Registrar on 16 October 2017. On 23 October 2017, the Registrar confirmed by email to RI that the disputed domain name had been locked. On 20 October 2017, RI notified .au Domain Administration Ltd and the Respondent of the Complaint. Further notification of the Complaint (with amendment) was sent to the Respondent on 25 October 2017.

In accordance with the Rules, the due date for Response was 9 November 2017. The Respondent sent communications to RI in response to the notification of the Complaint on 24, 25, 26, 27 and 31 October 2017.

On 10 November 2017, RI appointed Andrew F. Christie as the sole panelist in this matter. The Panel has submitted the Statement of Impartiality and Independence, as required by RI to ensure compliance with paragraph 7 of the Rules.

On 10 November 2017, the Panel issued Administrative Panel Procedural Order No. 1, in which the Panel: (i) requested the Complainant to provide full details and substantiating evidence in relation to the business conducted by the Complainant under the registered business name “StocksDigital”, the past and current relationship between the Complainant and the Respondent, the assertion in the Complaint about the activities of the Respondent, and the communications between the Complainant and the Respondent prior to the filing of the Complaint; and (ii) provided the Respondent with the opportunity to make a submission on any matter provided by the Complainant pursuant to the Order.

In response to Administrative Panel Procedural Order No. 1, the Complainant provided certain information and the Respondent sent a brief email, both of which occurred on 14 November 2017.

4. FACTUAL BACKGROUND

The Complainant registered the business name “StocksDigital” on 26 February 2013. The Complainant, trading under that business name, provides services to companies listed on the Australian stock exchange, with a particular focus on “small caps” – *i.e.*, companies with a capitalised value of no more than \$100 million. Its services are primarily marketing services, and include the development of promotional material that is posted to one of a number of websites owned by the Complainant.

The Complaint is notable for its paucity of information. In response to the Administrative Panel Procedural Order No. 1, the Complainant provided a screenshot showing that the disputed domain name redirected to the website at “https://smallcaps.com.au” on 21 September 2017. The Complainant stated that this is the website of a competitor, and that the redirect was terminated at some unspecified time after it made an approach to the competitor.

5. PARTIES’ CONTENTIONS

A. Complainant

The Complainant contends that the disputed domain name is identical to its registered business name “StocksDigital”, and that the Respondent’s use of the disputed domain name to redirect to the website of a competitor of the Complainant is use of the domain name in bad faith.

B. Respondent

The Respondent in his various communications with RI asserted that he did not own or control the disputed domain name, expressing this in the terms: “I do not own the domain name in question”, “The domain name is not in my account”, and “This domain name is not owned by me”.

6. DISCUSSION AND FINDINGS

A. Identical or Confusingly Similar

Footnote 1 of the Policy states that a “name ... in which the complainant has rights” for the purposes of the Policy includes “the complainant’s company, business or other legal or trading name, as registered with the relevant Australian government authority”. In relation to a business name registration, the relevant government authority is the Australian Securities and Investments Commission (“ASIC”). According to ASIC’s records, the Complainant is the registrant of the business name “StocksDigital”. Thus, the Complainant has rights in a name to which the Policy applies.

The Complainant registered its business name on 26 February 2013. The date on which the Respondent registered the disputed domain name was not identified. It is possible that the Respondent registered the disputed domain name prior to the Complainant registering its business name. However, that possibility is not relevant to determining whether the Complainant has established the first requirement for a remedy under the Policy. As paragraph 1.4 of the auDA Overview of Panel Views on Selected auDRP Questions, First Edition (“auDRP Overview 1.0”) explains, the Policy makes no specific reference to the date on which the owner of the trademark or name must have acquired rights so as to satisfy the requirements of paragraph 4(a)(i) of the Policy. It follows that registration of a domain name before a complainant acquires rights in a trademark or name does not prevent a finding of identity or confusing similarity under the Policy, although this fact may be relevant to determining whether the second and third requirements of the Policy are satisfied.

The disputed domain name is identical to the Complainant’s registered business name, once the second-level and top-level domain extensions are disregarded (as is appropriate in this case). Accordingly, the Panel finds that the disputed domain name is identical to a name in which the Complainant has rights for the purposes of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

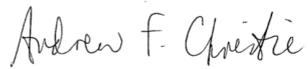
The Respondent makes no claim to having rights or legitimate interests in the disputed domain name. Indeed, by virtue of his various assertions to the effect that he does not own or control the disputed domain name, the Respondent expressly acknowledges that he has no rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy.

C. Registered or Used in Bad Faith

The Complainant’s case in relation to the requirement of paragraph 4(a)(iii) of the Policy is that the Respondent, in redirecting the disputed domain name to the website of a competitor of the Complainant, has used the disputed domain name in bad faith. This use falls squarely within paragraph 4(b)(iv) of the Policy, which provides that it is evidence of registration and use of the domain name in bad faith to use it to attract, for commercial gain, Internet users to a website by creating a likelihood of confusion with the Complainant’s name. Accordingly, the Panel finds that the Respondent has used the disputed domain name in bad faith for the purposes of paragraph 4(a)(iii) of the Policy.

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 <stocksdigital.com.au> be transferred to the Complainant.



Andrew F. Christie

Sole Panelist

Date: 26 November 2017