



ADMINISTRATIVE PANEL DECISION

OAMPS Insurance Brokers Limited
-v-
Risk Mitigation Solutions Limited
(formerly OAMPS Credit Limited)

Case No. LEADR-auDRP 12/07

Domain Name: oampscredit.com.au
Complainant: OAMPS Insurance Brokers Limited
Respondent: Risk Mitigation Solutions Limited (formerly OAMPS Credit Limited)
Provider: LEADR
Panellist: Sara Delpopolo

1. THE PARTIES

- (a) The complainant is OAMPS Insurance Brokers Limited (ACN 005 543 920) of Wesfarmers House, 40 The Esplanade, Perth Western Australia 6000 (**Complainant**).
- (b) The respondent is Risk Mitigation Solutions Limited (formerly OAMPS Credit Limited) (ABN 85 058 206 358) of 18 Leane Drive, Eltham, Victoria 3095 (**Respondent**).

2. THE DOMAIN NAME AND REGISTRAR

The disputed domain name is <oampscredit.com.au> (**Domain Name**). The registrar is Connect West (**Registrar**).

3. PROCEDURAL HISTORY

- (a) The complaint was submitted for decision in accordance with the auDRP Policy and Rules, which was approved by auDA in 2001 and commenced operation on 1 August 2002 and LEADR's Supplementary Rules (LEADR is the Provider).
- (b) The complaint was received from the Complainant by LEADR on 29 May 2012.
- (c) On 29 May 2012, LEADR sent an acknowledgement of receipt of complaint to the Complainant via email.
- (d) The complete application was received from the Complainant by LEADR on 30 May 2012.

- (e) On 30 May 2012, a copy of the complaint, and a request to clarify the Respondent's details and lock the Domain Name during proceedings was emailed to the Registrar.
- (f) On 31 May 2012, the Registrar confirmed that the Domain Name has been locked. On the same date, LEADR advised auDA of the complaint via email.
- (g) On 31 May 2012, LEADR sent the Respondent a written notification of the complaint by email along with a copy of the notification letter sent to the Complainant.
- (h) The due date for a response to the Complaint was confirmed to be 20 June 2012.
- (i) On 20 June 2012, Simon O'Hanlon on behalf of the Respondent submitted a response to the Complaint (**Response**).
- (j) On 21 June 2012, the Provider approached the Panellist. The Panellist confirmed her availability, informed LEADR that she had no conflict issues with the parties and accepted the matter on 26 June 2012.
- (k) The Panellist was informed on 21 June 2012 that the package was being sent for Adjudication.
- (l) The parties to the dispute were notified of the panellist's allocation on 26 June 2012.

4. FACTUAL BACKGROUND

4.1 Facts Alleged by Complainant

Lander & Rogers submitted this complaint on behalf of the Complainant pursuant to paragraph 4 of the auDRP.

The Complainant is OAMPS Insurance Brokers Limited (ACN 005 543 920) which is the head trading entity of the OAMPS corporate group, and which is ultimately owned by OAMPS Limited (ACN 006 743 719) (**Holding Company**).

The Complainant, via the Holding Company, is the owner and user of the Australian Registered Trade Mark Nos. 1181243 "OAMPS" and 1181244 "OAMPS Insurance Brokers Logo", as well as the New Zealand Registered Trade Mark No. 769963 "OAMPS Insurance Brokers Logo", all registered for financial services.

The Complainant states that it is, again via the Holding Company, the applicant for the Australian pending trade mark application No. 1489010 "OAMPS CREDIT" in classes 35 and 36. Further, that it or its related entities own and use various business names and domain names containing the word "OAMPS" and specifically, that there is a business within the Complainant's corporate group called "OAMPS Credit Pty Ltd".

The Complainant goes on to explain that it together with OMP Insurance Brokers Limited (a wholly owned subsidiary of the Complainant) (**OMPIB**), the Respondent and John Natsis (a director of the Respondent) (**Mr Natsis**) entered into a Share and Unit Sale Agreement (**SUSA**) with the Respondent on 23 December 2011. Under the

SUSA, the Respondent agreed to not use any OAMPS Intellectual Property and Mr Natsis procured that the Respondent would not use or apply to register any OAMPS Intellectual Property. In this regard, the Respondent would have no continuing legitimate interest in the Domain Name after the expiry of the transition period set out in clause 7.6(b) of the SUSA, which the Complainant states ended on 22 March 2012.

The Complainant asserts that the Respondent registered the Domain Name on 17 May 2011 with the full knowledge that it would soon be required to relinquish all rights in the word OAMPS.

In April 2012, after the expiry of the transition period, the Respondent wrote to the Complainant to say that the Domain Name was being used solely to redirect emails received from the Respondent's existing clients who were still using email addresses reflecting the Domain Name.

On 2 May 2012, the Complainant checked the website www.oampscredit.com.au and discovered content that was essentially advertising the Respondent's business. After receiving a written request from the Complainant, the Respondent did remove the content although it denied having any knowledge as to how the material came to be placed upon this site.

The Respondent has told the Complaint that it continues to use the email addresses connected with the Domain Name for the redirection purposes. However, the Complainant claims that the continued use of the Domain Name by the Respondent as a functioning email address constitutes use of the Domain Name in bad faith because it is preventing the Complainant from registering a domain name that is legitimately linked to its business. Further, the Complainant asserts that use of the Domain Name would mislead the relevant members of the public into believing that they are sending emails to the Complainant when in fact they would be corresponding with the Respondent, or that there was a connection between the services offered by the Respondent and the Complainant.

The Complainant therefore seeks to have the Domain Name transferred to it under this complaint.

4.2 Facts Alleged by the Respondent

Simon O'Hanlon & Associates submitted a Response on behalf of the Respondent within the time required under paragraph 5 of the auDRP.

The Response provides the historical relationship between the Complainant and the Respondent, which is set out below.

The Respondent was originally registered under the name Zuellig Credit Insurance Brokers Limited and then changed its name to ZIB Credit Limited (**ZIB**) in around 1992. The sole director of ZIB was Mr Natsis.

On 17 February 2005, ZIB, Mr Natsis and ZIB Insurance Brokers Limited (**ZIBIB**) entered into an agreement (**Agreement**) whereby Mr Natsis held 49% of the shares in ZIB whilst ZIBIB owned 51% of the shares in ZIB. The Agreement also included a provision that Mr Natsis was entitled to exercise a call option to acquire the remaining 51% of the shares in ZIB.

On 17 February 2006 [sic], the Complainant acquired from ZIBIB the 51% of the shares in ZIB. The remaining 49% of the shares still remained with Mr Natsis. Following this acquisition, ZIB changed its name to OAMPS Credit Limited (**OAMPS Credit**) and its employees then commenced using <oamps.com.au> email addresses. Mr Natsis remained as the operational director of OAMPS Credit although the Complainant appointed its nominee directors to OAMPS Credit.

The Respondent states that the Complainant then transferred its shares in OAMPS Credit to the OMPIB, a wholly owned subsidiary of the Complainant.

On 18 December 2006, Wesfarmers Insurance Investments Pty Limited (**Wesfarmers**) acquired the Holding Company. As a result, the 51% of the shares in OAMPS Credit held by the OMPIB has been controlled by Wesfarmers via the Complainant and the Holding Company.

On 31 March 2011, Mr Natsis gave notice to Wesfarmers that he wished to exercise the call option under the Agreement to acquire the remaining 51% of the shares in OAMPS Credit held by OMPIB and controlled by Wesfarmers (as well as by the Holding Company and the Complainant).

On 17 May 2011, in contemplation of the call option being completed, the Respondent registered the Domain Name. The Respondent states that the Domain Name was selected because both that it was available to register at the time and that the Respondent knew that it could not use the existing domain name <oamps.com.au> if the call option had been successfully completed.

The Respondent further states that the Domain Name is consistent with its former company name "OAMPS Credit".

On 23 December 2011, the Respondent, Mr Natsis, the Complainant and OMPIB entered into the SUSA for the sale of the remaining 51% of the shares in OAMPS Credit from OMPIB to Mr Natsis. As a result, OAMPS Credit was wholly owned by Mr Natsis. The Respondent then changed its name to Risk Mitigation Solutions Limited.

The Respondent submits that the reference to the SUSA by the Complainant is likely to be a breach of the SUSA because there has been no consent sought, or indeed given, by all parties to the disclosure of any of its terms or conditions for the purpose of this complaint. Specifically, the Respondent argues that for the reasons it sets out in the Response, any reference to the SUSA should be excluded by the Panel in determining this complaint.

Despite this, under the assumption that an interpretation of the SUSA may be in fact be used to determine this complaint, the Respondent claims that any use by it of the acronym "OAMPS" during the transition period (which it states is from 23 December 2011 to 23 March 2012), would be for the limited purpose of transitioning to the Respondent's new name. In this respect, the Respondent confirms that the Domain Name has in the past, is at present, and will in the future, be used solely for redirecting emails to the Respondent. The Respondent states that the Complainant also agreed to redirect all emails it received between 23 December 2011 and 23 December 2013 which were intended for the Respondent.

In relation to the Respondent using the Domain Name to redirect viewers to an active website, the Respondent confirms that it caused the content to be removed from the website as soon as it was notified by the Complainant and that the content was placed there without the Respondent's authority or consent.

The Respondent asserts that contrary to the Complainant's submissions, the Domain Name was registered when the Respondent's name was OAMPS Credit which was well before the SUSA was entered into.

The Respondent further asserts that as Mr Natsis paid full and fair value for the shares held by OMPiB, the public should not be misled into believing that anyone other than the Respondent is carrying on the business that was previously known as OAMPS Credit Ltd. The Respondent then goes on to state that there would be potential confusion in the minds of the public if the Domain Name was transferred to the Complainant for use in respect of the OAMPS Credit Pty Limited business, as consumers would assume they were contacting the Respondent.

The Respondent also claims that as the Complainant never registered the Domain Name, it indicates a lack of interest by the Complainant in this name. Further, the Complainant is now seeking a transfer of the Domain Name to it only because it now intends to enter into and compete with the Respondent. This was evidenced by the email newsletter "InsuranceNewsAustralia.com" which includes an announcement headed "OAMPS sallies into trade credit".

The Respondent finally submits it has rights or legitimate interests in the Domain Name and that it was not registered or subsequently used in bad faith, and it is 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, or trade mark at issue.

The Respondent therefore seeks to have the Complaint dismissed.

5. DISCUSSION AND FINDINGS

In order to have the Domain Name either transferred to it or cancelled, the Complainant must make out each of the following elements under the paragraph 4(a) of Schedule A of the auDRP:

- (i) the Respondent's Domain Name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights (**paragraph 4(a)(i)**);
- (ii) the Respondent has no rights or legitimate interests in the Domain Name (**paragraph 4(a)(ii)**); and
- (iii) the Respondent registered or subsequently used the Domain Name in bad faith (**paragraph 4(a)(iii)**).

The onus of proof is on the Complainant in relation to all three of these elements.

5.1 **Paragraph 4(a)(i)**

The Panel must determine whether, on the basis of the facts set out in paragraph 4(a)(i) above, the Complainant has rights in a relevant name, trade mark or service name.

The footnote 1 of the paragraph 4(a)(i) states:

"For the purposes of this policy, auDA has determined that a "name ... in which

the complainant has rights” refers to

(a) the complainant’s company, business or other legal or trading name, as registered with the relevant Australian government authority; or

(b) the complainant’s personal name.”

The Complainant asserts that it owns a various trade marks and business name via the Holding Company or other entities belong to OAMP Group. Setting aside the issue of the identity or similarity between the Domain Name and the trade marks and/or business names, the Panel has to determine whether the Complainant has rights in the names.

In support of its claim to the Domain Name, the Complainant produced a corporate tree which sets out the relationship of the entities within OAMPS Group. The Complainant erroneously states that it is the owner of the trade marks which incorporate the word “OAMPS” and therefore it has rights to the Domain Name. However, considering the obvious association of the Complainant as one of several companies within the OAMPS Group, the Panel is satisfied that the Complainant is an authorised licensee of these trade marks and therefore entitled to bring this complaint. The Respondent also recognises the Complainant’s relationship with the trade mark owner does indeed exist.

The Respondent’s argument that the Domain Name is not identical or confusingly similar to the Complainant’s name, and that it would not be closely or substantially connected to the Complainant because it never used the Domain Name, is rejected by the Panel. A domain name which includes a prominent or significant element of a trade mark, such as the word “OAMPS”, would be considered substantially identical or confusingly similar to the Complainant’s name. This would only be emphasised by the fact that the companies within the OAMPS Group (of which Complainant is one) offer a variety of financial services, so that a consumer would reasonably conclude this to include credit services.

The Panel therefore finds that paragraph 4(a)(i) is satisfied.

5.2 ***Paragraph 4(a)(ii) of Schedule A of the auDRP:***

The Panel must determine whether, on the basis of the facts set out in paragraph 4(a)(ii) above, the Respondent has rights or legitimate interests in the Domain Name.

The Complainant claims that the Respondent has no right to the Domain Name under the SUSA, and refers to the intellectual property clauses of that agreement in support of this fact. On the other hand, the Respondent acknowledges the existence of the SUSA but claims that it should not be considered by the Panel because of a breach of confidentiality by the Complainant in having including reference to it for the purpose of this complaint.

The Panel was not provided with a copy of the SUSA, but the complaint refers to certain clauses which establish that the Respondent was relinquishing its rights in and to the name “OAMPS”, and any trade marks including that name. Having regard to the well established trade mark principals, this would then extend to the use of trade marks that were substantially identical or deceptively similar to “OAMPS”.

The issue of a breach of confidentiality is clearly not an issue for the Panel. However, the Respondent failed to provide any evidence that it does have rights or a legitimate

interest in the Domain Name. Indeed, the Respondent acknowledges that on 22 March 2012 it changed its name from “OAMPS Credit Ltd” to “Risk Mitigation Solutions Limited” and that the Complainant had agreed to divert any emails intended for the Respondent to it. Again, the Panel has not been provided with a copy of any evidence in support of this fact and relies on the submissions put forward by the parties in this complaint.

Particularly, the Panel found some “agreed facts” in both the Complaint and the Response, namely:

- (a) Mr Natsis was to procure, within 3 months from 23 December 2011, that the Respondent refrains from using the acronym “OAMPS” or any name, mark or logo which is similar to or includes “OAMPS” in the conduct, marketing, advertising or promotion of its business and in any publication for the purpose of conducting, marketing, advertising or promoting that business;
- (b) the Purchaser (being the Respondent or Mr Natsis) acknowledges and agrees that any name, trade mark and logo used by the Respondent after 23 December 2011 must differ substantially from “OAMPS”; and
- (c) any use of the acronym “OAMPS” by the Respondent between 23 December 2011 and 23 March 2012 would only be for the limited purpose of transitioning to a new name for the Respondent and the business conducted by it.

The Panel refers to *Overview of WIPO Panel Views on Selected UDRP Questions*¹ and notes that if the Complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interest, the evidential burden of demonstrating rights or legitimate interests in the domain name then shifts to the Respondent to rebut that *prima facie* case: *Croatia Airlines d.d v Modern Empire Internet Ltd* (WIPO D2003-0455) and *Transfer Belupo d.d. v WACHEM d.o.o* (WIPO D2004-0110).

The Panel also notes that paragraph 4(c) of Schedule A of the auDRP provides a list of circumstances to be taken as demonstrating a registrant’s rights or legitimate interest to the domain name for purpose of paragraph 4(a)(ii) of Schedule A of the auDRP:

- (i) the registrant’s bona fide use of, or demonstrate preparations to use, the domain name in connection with an offering of goods or service (not being the offering of domain names that the registrant has acquired for the purpose of selling, renting or otherwise transferring); or
- (ii) the registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if the registrant has acquired no trade mark or service mark rights; or
- (iii) the registrant is 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, trade mark at issue.

The Respondent’s submissions that the SUSAs should be disregarded does not assist at all having regard to the conduct, which included use of the Domain Name to promote the Respondent’s business. The Respondent’s claim that use of the Domain Name as its website was a mysterious and unauthorised occurrence is not supported

¹ <http://www.wipo.int/amc/en/domains/search/overview/index.html> at 2.2

by any evidence that the Panel could reasonably take into consideration. The owner of the Domain Name is responsible for its use. Further, the Respondent has failed to demonstrate to the Panel that it requires the Domain Name legitimately, other than so consumers can email the Respondent. This is clearly use of a trade mark in the course of trade and, whether or not the SUSA is considered, the Complainant has correctly established its rights in and to the name "OAMPS". Again, the Respondent has acknowledged that the Complainant was, under its agreement, redirecting customers intending to reach the Respondent. The Respondent has provided no evidence that the Complainant has not been complying with this arrangement, or that this was an arrangement at all.

The Respondent's statement that the Complainant had not thought to register the Domain Name itself and therefore it has no rights to the Domain Name, is an incorrect interpretation of the auDRP and a misunderstanding of the intellectual property issues upon which this complaint turns.

Taking the above into consideration, the Panel finds that the Respondent has not established any right to or legitimate interest in the Domain Name, and as such, the Complainant satisfies paragraphs 4(a)(ii) of Schedule A of the auDRP.

5.3 **Paragraph 4(a)(iii) of Schedule A of the auDRP:**

Paragraph 4(a)(iii) of Schedule A of the auDRP requires that the Domain Name has been registered or subsequently used in bad faith. It also sets out a non-exhaustive list of circumstances which can be taken as "*evidence of the registration or use of a domain name in bad faith*". The grounds under paragraph 4(b) include:

- (i) circumstances indicating that the Respondent has registered or has 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 the Respondent documented out-of-pocket costs directly related to the domain names; or
- (ii) the Respondent has 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) the Respondent has registered the domain name primarily for the purpose of disrupting the business or activities of another person; or
- (iv) 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.

Although specific circumstances constituting bad faith are expressly identified above, bad faith is not exhaustively defined in the auDRP: *ADHD (Aust) Inc v ADDulTs with ADHD (NSW) Inc* (LEADR auDA 05_07).

The Complainant claims that the Respondent registered the Domain Name on 17 May 2011 with the full knowledge that it would soon be required to relinquish all rights in the word OAMPS (by entering into the SUSA). The Respondent submits that it knew it could not use the Domain Name upon successful completion of the call option. Notwithstanding this, the Respondent asserts that the use of the Domain

Name has been and will be solely used for redirecting emails. Again, it is unclear as to why the Respondent's customers would continue to use an email containing "OAMPS" when the Respondent rebranded in March (and presumably notified its customers of this name change, although this has not been stated).

Irrespective of the reason, any continued use of the Domain Name by the Respondent (or the Respondent allowing its customers to continue to use the Domain Name in the course of trade), is clearly use of the Complainant's name and trade mark by the Respondent.

Thus, the issue is that the mode of use of the Domain Name for redirecting emails by the Respondent is indeed using it in the course of trade and this therefore meets the third and fourth elements of Paragraph 4(b) of Schedule A of the auDRP. As a result it will be use in bad faith.

The Panel therefore concludes that the Domain Name has been registered and subsequently used in bad faith. Thus, the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the auDRP.

6. DECISION

I find that the Complainant has made out all of the elements of paragraph 4(a) of the auDRP. Accordingly, the Domain Name should be transferred to it.

Sara Delpopolo
Sole Panelist

24 July 2012