

LEADR DOMAIN NAME DISPUTE ADMINISTRATIVE PANEL

auDRP_12_02

Single Panelist Decision

PEACOCK MEDIA GROUP PTY LTD ACN 140 645 932

v.

DARRELL WILSON

1. The Parties

1.1 The Complainant is Peacock Media Group Pty Ltd ACN 140 645 932 an Australian registered company with its registered office in South Australia.

1.2 The Respondent is Darrell Wilson ABN 71 138 902 006, Brisbane Technology Park, Eight Mile Plains, Brisbane, Queensland (previously of Mt Gravatt and Carindale, Brisbane, Queensland)

2. Domain Name

2.1 The Domain Name upon which complaint is based is *www.solarquotes.net.au*.

3. Procedural History

3.1 On or about 23-02-2012, the Complainant lodged a complaint under the auDRP with LEADR. A copy of the complaint was submitted on 1-03-2012 to the Registrar (Crazy Domains) with a request to clarify Respondent details and lock the Domain Name during proceedings.

3.2 On 1-03-2012 the Registrar confirmed that the Domain Name in dispute had been locked, with notification of this sent to the Respondent at *energywisegroup@yahoo.com.au*.

3.3 The Complaint was sent by the Complainant by Express Post to the Respondent at 24 Holborn Crescent, Carindale, Queensland on 23 February 2012.

3.4 The Complaint was subsequently also sent via email by LEADR to the Respondent at 2.36 pm on 1-03-2012 to *info@energywisegroup.com.au* and *energywisegroup@yahoo.com.au* enclosing the Respondent Notification of Complaint document and a copy of the Complaint. That correspondence advised, *inter alia*, that the Respondent had 20 calendar days to respond to the Complaint.

3.5 At 4.17 pm on 1-03-2012 LEADR received a response to its email from *info@energywisegroup.com.au* which stated, "We are happy to settle this matter by removing the web site and selling the domain name as previously arranged."

3.6 LEADR replied to the Respondent same day at 4.57 pm reminding the Respondent that it had 20 calendar days to respond to the complaint and advising that written confirmation of settlement would be required to stop the adjudication process.

3.7 On 19-03-2012 at 5.28 pm the Respondent emailed LEADR saying that the "full documents" had not been received as they had been sent "to completely the wrong address" and asking that the

documents be sent to a Brisbane Technology Park address, with the email address *info@energywisegroup.com.au* and that in the light of this, "We will need an extension of time as [sic] result, we also want to check the trade mark registration and seek clarity on the process and the fact we were using *www.solarquotes.net.au* before [the Complainant] put in his application."

3.8 The Panellist notes that the email address used by the Respondent, and recorded on the Respondent's correspondence is the same email address used by LEADR previously, and to which the Respondent had previously replied.

3.9 The Dispute Resolution Policy (auDRP) makes provision for a respondent to be granted an extension of timing to file a response in exceptional cases. No such case has been made out and no extension of time agreed to.

3.10 LEADR appointed Rowena McNally as the sole panelist in the matter on 20-03-2012. The Panelist has confirmed that she has no conflict of interest in relation to the matter.

3.11 In relation to the procedural requirements, the Panellist finds that the Respondent received notification of the Complaint and the relevant documentation at latest, on 1-03-2012 when it received the Complaint from LEADR's case manager and it was separately notified by copy email by the Registrar. Accordingly, all procedural requirements appear to have been satisfied.

3.12 In accordance with auDRP paragraph 5(e), as there has not been a response submitted within the required time, the Panel is to make a decision upon the Complaint.

4. Factual Background

4.1 The Complainant owns and has been operating a business known as *SolarQuotes.com.au* (SA BN05148856) since 04-2009 and has been the licensed user of the domain *www.solarquotes.com.au* since 14-01-2009.

4.2 *SolarQuotes.com.au* specializes in advertising for the solar energy industry in Australia. It undertakes advertising and lead generation, marketing, and related services by providing three localized quotes for solar systems using what the Complainant says is a unique system of generating customized quotes based on the user's geographical area.

4.3 The Complainant is also the owner of various Australian registered trademarks for the word "SOLARQUOTES.COM.AU" in class 35 and clause 38.

1338903 Class 35: "Arranging business introductions; advertising being the provision of product information to customers; all of the foregoing in relation to solar energy technology."

1382498 Class 38: "Electronic communication services; communication by electronic mail systems; data transmission by electronic mail; message sending; provision of access to electronic messaging systems; message storage and transmission (telecommunications); communication of information by computer; communication of information by electronic means; electronic mail; transmission of data."

1395830 *SolarQuotes.com.au* logo for "advertising and lead generation "

4.4 The Complainant says it has spent considerable time and money advertising its business with now a significant turnover and that the website *www.solarquotes.com.au* has become a trusted source for people to access reliable and useful information related to solar panel installations.

4.5 The Respondent is Darrell Wilson ABN 71 138 902 006 now of Brisbane Technology Park, Eight Mile Plains in Queensland was registered for an ABN as a sole trader on 8-02-2010, for the trading names, "Energy Wise Group" and "Solar Prices".

4.6 On 26-02-2010 Mr Wilson registered for the Complainant's solar quote referral services asserting that he was a solar panel installer; seeking additional information on how the scheme worked; advice on how to gauge whether leads were genuine and the identity of other suppliers in the area who were using the Complaint's site for leads.

4.7 A few business days later, on 3-03-2010 Mr Wilson registered the Domain Name SolarQuotes.net.au.

4.8 The Complainant's referrals to Mr Wilson, invoiced on 6-04-2010 remain unpaid.

4.9 The Complaint documents communication and subsequent negotiations for the transfer of the Domain Name to the Complainant but agreement was not concluded.

4.10 In correspondence of 23-12-2010 Mr Wilson said:

"[the Complainant] has no case to start with, I have every right to start a business even if it's similar to his, we did this because he couldn't service our needs at the time, I have every right to have the domain name I do, if he has issues with the domain name he should take it up with GOOGLE or whoever controls the release of domain names, when he does this he will need to fill [sic] against all other similar domain names to his, good luck. If he wants more domain names similar to his let me know we have 10 others very similar to his.com.au which we will sell next year to whoever wants them.

Such as

Get solar quotes

Get solar quotes and prices

Solar quotes and prices

In dot net and dot AU

There is no possibility of Trade marking Solar Quotes as its too broad and to this point has been rejected on your previous applications. I intend to do this when we are ready, I have instructed my web designer to do the works but he hasn't to this point. I will change the domain name tomorrow if I can contact the domain host, but [the Complainant] is not to use the links he is to transfer them to me?"

4.11 The Complainant says it has a substantial and valuable reputation and goodwill in the SolarQuotes.com.au brand and trademarks of which the Respondent was well aware, and, says the Complainant, provided the impetus for the Respondent's actions.

5. Complaint Elements and the Onus of Proof

5.1 Schedule A of the .au Dispute Resolution Policy (auDRP) applies to disputes which meet the requirements set out in paragraph 4(a) of Schedule A of the auDRP. Subparagraph 4(a) requires that any party holding a domain name licence issued in the 2LDs ".submit to a mandatory administrative proceeding in the event that a third party (complainant) asserts to the applicable Provider, in compliance with the Rules of Procedure that:

(i) [the] domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights; and

(ii) [the] have no rights or legitimate interests in respect of the domain name, and

(iii) [the] domain name has been registered or subsequently used in bad faith.

In an administrative proceeding, the complainant bears the onus of proof."

6. Is the Domain name identical to or confusingly similar to a name, trade name or service mark in which the Complainant has rights?

6.1 The Complainant says that the Domain Name is identical to or confusingly similar to its own website and to a trade name or trade mark to which the Complainant has rights; that the Complainant has gained significant legal rights and reputation in its name, through its use, advertising and promotion and that it has also protected the SolarQuotes name by achieving the trademark registrations.

6.2 The Complainant says that to achieve registration of its trademark it had to show extensive and continuous evidence of use of the words "SolarQuotes" and "SolarQuotes.com.au" and that the Complainant holds "clear and exclusive rights to use the words "SolarQuotes" in an Australian domain setting for the services claimed."

6.3 The Complaint includes examples of correspondence from customers expressing confusion and querying whether the Respondent's correspondence was from the Complainant and the Panelist accepts the Complainant's assertion that the Domain Name is confusingly similar to a name, trade name or service mark in which the Complainant has rights.

7. Does the Respondent have a right or legitimate interest in the Domain name (4(a)(ii))?

7.1 The Respondent is not affiliated to the Complainant who has various trade marks which incorporate the words "SolarQuotes" in the relevant categories.

7.2 The Respondent has not filed a Response to the Complaint but has expressed a view in correspondence as to his entitlement to the domain name, expressed in 4.10, above.

7.3 In order to register a domain name in the net.au 2LD, the name must be either an exact match, abbreviation or acronym of the registrant's name or trademark; or be otherwise closely and substantially connected to the registrant.

7.4 Applicants for a domain name are required to warrant, *inter alia*, that to their knowledge the registration of the domain name will not infringe upon or otherwise violate the rights of any third party.

7.5 It is apparent from the documentation contained in the complaint that the name "SolarQuotes" had no connection with Mr Wilson at the time the Domain Name was registered and that Mr Wilson only launched the SolarQuotes.net.au domain with knowledge of the Complainant's use of that name, of the nature of the Complainant's business and after he had researched the Complainant's business, including communicating with the Complainant, registering for referrals and gaining information on how the Complainant's business worked.

7.6 The Panelist finds that Mr Wilson, while now carrying on the business "EWG" or "Energy Wise Group" which activities are similar to those of the Complainant, does not have a right or legitimate interest in the Domain Name. The Panelist notes from the Complaint that the home page for www.solarquotes.net.au is now badged as "SOLAR PRICES & QUOTES.COM.AU".

8. Has the Domain Name been registered or subsequently used by the Respondent in bad faith: (4(a)(iii))?

8.1 The Complainant says that the Respondent has engaged on a course of conduct that has included replicating the Complainant's website and attempting to confuse the Complainant's customers including:

- replicating whole paragraphs of text and pictures from the Complainant's SolarQuotes.com.au website (denied by the Respondent but removed after complaint by the Complainant)
- sending emails directly to the Complainant's customers in what the Complainant says was "an effort to poach customers and promote [the Respondent's] new website's services" and that as a result, the Complainant's customers were confused, including a circulated email with a PDF attachment containing the words, "Darrell Wilson - Founder www.solarquotes.com.au" (denied as deliberate and retracted by the Respondent after complaint by the Complainant)

8.2 The Complainant says, and the Panellist finds the Respondent's conduct supports the assertion that the Respondent deliberately utilised the Complainant's name, brand, goodwill and efforts to develop his own like-concept website, attempted to utilise the Complainant's own customers as leads for his business and used the Complainant's Google ad text in an effort to develop and promote a business similar to the Complainant's.

8.3 The Panellist finds that the Respondent registered the Domain Name with the intention of attracting, for commercial gain, Internet users to the Domain Name 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 evidenced by the confusion among the Complainant's customers and consumers.

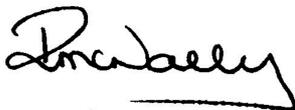
8.4 The Complainant asserts and the Panellist accepts that the Domain Name was registered and has been subsequently used by the Respondent in bad faith.

9. Decision

9.1 The Complainant seeks the transfer to it of the Domain Name on the basis that the Domain Name is (a) identical or confusingly similar to a name, trade mark or service mark in which the Complainants have rights, (b) the Respondent has no rights or legitimate interests in the Disputed Domain Name, and (c) the Domain Name was registered or subsequently used in bad faith.

The Panelist upholds the Complainant's Complaint and application and finds that the Domain Name should be transferred to the Complainant.

DATE: 2 April 2012



Rowena McNally
Panelist