

**ADMINISTRATIVE PANEL DECISION**  
**LEADR Case No. auDRP\_13\_03**

**Domain Name:** cameroskiboats.com.au

**Name of Complainant:** Sterling Marine Pty Ltd ABN 13 008 025 223

**Name of Respondent:** Etolin Pty Ltd ABN 87 008 222 428

**Provider:** LEADR

**Panellist:** RC McNally

**THE PARTIES**

The Complainant is Sterling Marine Pty Ltd ABN 13 008 025 223 trading as Camero Ski Boats of 14 Aldershot Road, Lonsdale, South Australia.

The Respondent is Etolin Pty Ltd ABN 87 008 222 428 trading as Elite Ski Boats, 130 Sir Donald Bradman Drive, Hilton, South Australia.

**THE DOMAIN NAME, REGISTRAR AND PROVIDER**

The disputed domain name is cameroskiboats.com.au, which is registered with Melbourne IT. LEADR is the Provider in relation to this administrative proceeding.

**PROCEDURAL HISTORY**

The Complaint was submitted for decision in accordance with the auDRP Policy (“the Policy”), the auDRP Rules (“the Rules”) that were approved by auDA in 2001 and commenced operation on 1/8/02 and the Provider’s Supplemental Rules. The Provider received the Complaint on 25/2/2013 and a copy of the complaint was sent to the Respondent. On 18/3/2013 the Registrar confirmed that the Domain Name had been locked. On 28/3/2013 the Respondent advised the Provider the Complaint had been referred to its solicitor. The Respondent has not lodged a Response, indicating to the Provider that it would await the outcome of the Complaint. On 9/4/2013 the Provider forwarded the documents to the Panellist, having ascertained the Panellist was available, was in a position to accept the matter and had no conflict issues with the parties.

**FACTUAL BACKGROUND TO THE DISPUTE**

The Complainant owns a business called Camero Ski Boats. The Respondent was previously involved in marketing and website direction for the Complainant and is engaged in servicing and selling second hand ski boats, including Camero Ski Boats.

**THE RULES**

Pursuant to Rule 15 of the Rules, a Panellist is required to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that the Panellist deems applicable. Paragraph 4(a) sets out those matters that are required to be established by a Complainant, being that:

- [the Respondent’s] domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- [the Respondent has] no rights or legitimate interests in respect of the domain name; and

- [the Respondent's] domain name has been registered or subsequently used in bad faith.”

All of the elements of para. 4(a)(i), (ii) and (iii) must be met and the Complainant bears the onus of proof in this respect. I turn now to examine the various elements of para. 4(a) in turn:

***Is the Domain Name identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights: 4(a)(i)?***

The Complainant says it owns the "Camero" trademark No. A581510, registered continuously since 1992 in respect of "power boats" (being goods included in Class No. 12) and is also the registered owner of the business name Camero Ski Boats ABN 13 008 025 223 which it submits is an exact match to the domain. It also holds <camero.com.au> and <camero-skiboat.com.au>.

On the basis of the Complainant's submission and material, and in the absence of any contradictory evidence or submission by the Respondent, the Panellist accepts that the Domain Name is identical to a name in which the Complainant has rights.

***Does the Respondent have a right or legitimate interest in respect of the domain name: 4(a)(ii)?***

The Respondent has not provided a response to the Complaint but complains in its 16/7/2012 email to the Complainant that it used to "handle" their marketing and website until being (it says) "summarily dismissed without cause" when the Complainant decided to undertake these directly.

The Respondent also indicated in that email that it continued to service and sell used Camero Ski Boats for clients. The Panellist does not accept, if this was the Respondent's proposition, that the mending or sale of used goods brings with it a proprietary right or interest in respect of the brand name of the second-hand item being repaired or sold.

On the basis of the Complainant's submission and material, and in the absence of any contradictory evidence or submission by the Respondent, the Panellist is satisfied that the Respondent does not have any right or legitimate interest in respect of the Domain Name.

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

The Respondent's email of 16/7/2012 indicates that when the Domain Name was registered in 2007, the Respondent was "handling" the Complainant's marketing and website, with this arrangement ceasing in 2008. The Complainant does not assert that the Domain name was initially registered by the Respondent in bad faith but says that the Respondent has subsequently used the Domain Name for spiteful reasons and/or for the reason of financial gain associated with the sale of the Domain Name to the Complainant and is therefore using the Domain Name in bad faith.

The Complainant says it offered to pay the Respondent \$500 for the transfer of the Domain Name but this was refused. The Respondent has since offered (email of 16/7/2012) to transfer the Domain Name upon payment of a commercial sum reflective of the value of the Domain Name to the Complainant.

The Panellist accepts the Complainant's submission that an offer to sell can amount to "use" of the Domain Name, even if that offer constitutes the Respondent's only use of the name, and that an offer alone may amount to "use" sufficient to ground a finding of bad faith.

On the basis of the Complainant's submissions and material, and in the absence of any contradictory evidence or submission by the Respondent, the Panellist accepts that the Respondent's conduct since 2008 is capable of, and has amounted to, a subsequent use of the Domain Name by the Respondent in bad faith, for the purposes of para. 4(a)(iii).

## **FINDINGS**

The Panellist makes the following findings:

1. The Complainant has made out each of the above elements of paragraph 4 of Schedule A of auDRP, namely:
  - (i) That the Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
  - (ii) That the Respondent has no rights or legitimate interests in respect of the Domain Name; and
  - (iii) That the Domain Name has been used in bad faith.

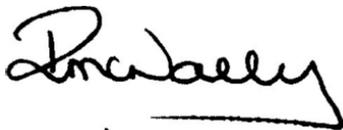
## **RELIEF**

The Complainant has requested that the Domain Name be transferred to it pursuant to Clause 6.1(b) of the Policy.

## **DECISION**

I direct that the Domain Name be transferred to the Complainant.

RC McNally  
Sole Panellist



16 April 2013