



## **ADMINISTRATIVE PANEL DECISION**

**The Link Collective Pty. Ltd.**

**v.**

**Acquire BPO Pty Ltd**

**auDRP\_20\_02**

**<link.com.au>**

### **1. The Parties**

The Complainant is The Link Collective Pty. Ltd., of Fortitude Valley, Queensland represented internally.

The Respondent is Acquire BPO Pty Ltd, of Melbourne, Victoria, represented internally.

### **2. The Disputed Domain Name and Registrar**

The disputed domain name is <link.com.au> ("the Domain Name"). The Registrar of the Domain Name is TPP Wholesale Pty Ltd.

### **3. Procedural History**

This is an administrative proceeding pursuant to the 2016-01.au Dispute Resolution Policy published by auDA on April 15, 2016 ("auDRP" or "Policy"); the auDA Rules for .au Dispute Resolution Policy ("Rules") and the Resolution Institute Supplemental Rules for .au Domain Name Dispute Resolution Policy ("RI Supplemental Rules").

The Complaint was received by Resolution Institute ("RI") via email on Wednesday, January 15, 2020 and acknowledged on Friday, January 17, 2020. On Monday, January 20, 2020 a Notice of Non-Compliance was emailed to the Complainant. A Rectified Domain Name Dispute Complaint was lodged with RI by the Complainant on Thursday, February 6, 2020. Next day a copy of the Complaint was emailed to the Registrar with a request to clarify the Respondent's details and to lock the Domain Name pending the final decision in this proceeding. On Thursday, February 13, 2020 the Registrar confirmed via email the Respondent's contact details and that the Domain Name has been locked. That day RI advised auDA of the Complaint via e-mail and, by email and express post, notified the Respondent of the Complaint lodged against it. These notifications were copied to the Complainant and its representative. The due date for a Response was Wednesday, March 4, 2020. That day the Respondent's representative submitted a Response. On Thursday, March 5, 2020, RI approached the Panellist, who that day confirmed his availability, informed RI that he has no conflict issues with the parties and accepted the matter. The case file and relevant correspondence were forwarded to the Panellist that day. On Wednesday, March 4 and Wednesday March 11, 2020 the Complainant made further unsolicited submissions by email to RI. These

were forwarded to the Panellist by RI and have been taken into account by the Panellist pursuant to paragraph 12 of the Rules.

#### **4. Factual Background**

The Complainant, The Link Collective Pty Ltd, incorporated on July 31, 2017, is one of a group of several companies having a common director and using the word “link” as part of its company name, including Linkbookkeeping Pty Ltd, incorporated on July 1, 2012; Link Advisors Pty Ltd, incorporated on September 23, 2016; Link Living Pty Ltd incorporated on February 22, 2017; and Link Bookkeeping HQ Pty Ltd, incorporated on September 1, 2019. One member of this group of companies, Future8 Pty Ltd, incorporated on November 28, 2014, registered the business names “Link Digital Marketing” on March 30, 2017 and “Link Pixel” on June 5, 2018. Another group member, Dellit & Webb Wealth Services Pty Ltd, incorporated on October 14, 2016, registered the business name “Link Advance” on October 18, 2018. Linkbookkeeping Pty Ltd registered the business names “Link Strategies Group” on July 2, 2015; “The Link Dot Group” on April 12, 2017; and “The Link Collective” on April 14, 2017.

The Complainant owns the figurative Australian registered trademark No.1862641 THE LINK COLLECTIVE, registered on 1 August 2018. The Complainant says Linkbookkeeping Pty Ltd owns the Australian registered trademark No.1677851 LINK BOOKKEEPING, which the Complainant’s Annexure 11 shows was registered on 19 January 2016 in the name Link Bookkeeping IP Holding Pty Ltd, which the Panel infers is a member of the group.

The Complainant registered the business name “link.com.au” with ASIC on January 7, 2020.

The Respondent, Acquire BPO Pty Ltd, was incorporated on September 14, 2005.

It is unclear when the Domain Name <link.com.au> was created. Screenshots provided by the Complainant show that on October 26, 2011 it resolved to a website of Quantum Multimedia Communications which displayed the trademark LINK:Q. On May 20, 2013 it did not resolve to an active website. On April 14, 2014 it redirected to “www.acquireap.com”. Since December 18, 2014 it has resolved to the Respondent’s active website “www.acquirebpo.com.au”, which promotes “Business Process Outsourcing Automation”.

#### **5. Parties’ Contentions**

##### **Complainant**

The Complaint is based on the word LINK in the Domain Name <link.com.au>. The Respondent does not trade as LINK, has no registered trademark in relation to LINK and has no business relating to LINK. The Complainant has many businesses trading as LINK and has trademarks including the word LINK. The Complainant intends to trade under the following names on an ongoing basis: Link, Link Strategies, Link Advisors, Link Advance, Link Pixel, Link Living, Link Co and Link Collective.

According to the 2012-04 Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs Sch C, para 2a, the 2LD must be an exact match, abbreviation or acronym of the registrant’s name or trademark. The registrant’s legal name is Acquire BPO Pty Ltd. LINK is not an exact match, similar or acronym for this entity name. The registrant has one registered business name: “Back of the Truck”. LINK is not an exact

match, similar or acronym for this name. A search of IP Australia records indicates that no trademarks which refer to the word LINK are held by the registrant.

The Complainant has many active trading businesses which use the word LINK in some form (entity name, ASIC registered business name or a combination of these). All of these businesses have a common Director. These businesses also have the registered trademarks LINK BOOKKEEPING and THE LINK COLLECTIVE.

The Domain Name has not been used for anything referring to the word LINK for many years. An <archive.org> search shows that the last time this Domain Name was scraped with LINK content was on October 26, 2011.

The registrant has not been commonly known as LINK.

LINK is a critical part of the Complainant's brand identity. It is known by its clients as LINK and is known in the local and wider communities as LINK. The Domain Name <link.com.au> would allow the Complainant to simplify its domain administration and tie its LINK brands together more tightly and reduce the administrative burden of having different domains for email addresses across the group. The Complainant is able to provide a myriad of supporting documentation and collateral to support its extensive (and exponentially increasing) use of the word LINK since 1 July 2012.

The Complainant is not speculating on this Domain Name or holding it for resale. It wants to use it actively as the hub for its LINK group of businesses.

The remedy the Complainant is seeking from this complaint is transfer of the Domain Name <link.com.au> to the group entity The Link Collective Pty Ltd. This entity is eligible to hold the Domain Name under the auDA eligibility rules.

## **Respondent**

Founded in 2005, the Respondent is an Australian business process outsourcing firm that specialises in back office support, customer acquisition, customer service, technical support, lead generation and software development.

The Respondent acquired the Domain Name and the registered trademarks LINKQ, LINK:Q and several other registered trademarks and business names containing the word "link" from Quantum Multimedia Communications Pty Ltd (Receivers Appointed) (Administrators Appointed) ("Quantum") pursuant to a Purchase Agreement dated November 30, 2011. Those trademarks were registered between July 2004 and November 2006 and their registrations were allowed to lapse by the Respondent, through administrative error, in 2013. Quantum operated under the business name "Link:Q" and was also known in the industry as "Link Communications Corporation".

The Respondent acquired the registered trademarks from Quantum on 30 November 2011, prior to the Complainant ever using the word "LINK", which the Complainant says it has used since 1 July 2012.

The Complainant contends that the Domain Name is confusingly similar to the Complainant's various trading names. However, the Complainant is known in the market as Link Collective and not as LINK and therefore the Domain Name and the Complainant's name are not identical.

The Respondent claims rights and legitimate interests in the Domain Name, saying the Domain Name resolves to its website “www.acquirebpo.com.au” and the Respondent is intending to use the Domain Name to market a new Australian contact centre which it is in the process of acquiring, in the same field as Link Communications Corporation.

The Respondent notes that the Complaint does not assert that the Respondent registered or is using the Domain Name in bad faith.

### **Complainant’s additional submissions**

On March 4, 2020 the Complainant replied to the Response (in summary):

The Complainant is clearly running an active, multi-disciplinary business known as LINK to its clients all across Australia and its suppliers. It has 2 registered trademarks containing the word LINK and multiple registered business names containing the word LINK.

The Respondent acquired a lapsed trademark many years ago with which it has done nothing. The Respondent or those acquired entities mentioned have no registered business names with the word LINK. The Respondent has no presence on the internet referring to the word LINK. LinkQ is clearly not Link. The Respondent clearly did not previously value its trademark if it neglected to renew it. Redirection of <link.com.au> to another URL with no relationship whatsoever is clearly use in bad faith and not in the spirit of the auDA Policy. Link Communications Corporation has no value since it was wound up by its creditors many years ago. Setting up a similar business with a different name has no relevance to LINK at all.

On March 11, 2020 the Complainant further submitted (in summary):

The Complainant’s current website “www.linkco.com.au” shows how the Complainant refers to itself as Link in the market. This page lists the group businesses, which have been running for various durations, the oldest running from 2012. Link is a common theme in the name of the business units in the Complainant’s group. It makes sense for the group URL to be link.com.au. One of the business unit websites, Link Advisors, “www.linkadvisors.com.au” shows the prominence of the Link brand name.

## **6. Discussion and Findings**

The Panel has jurisdiction to determine this dispute pursuant to Paragraph 2.1 of the auDRP:

“All domain name licences issued or renewed in the open 2LDs from 1 August 2002 are subject to a mandatory administrative proceeding under the auDRP. At the time of publication, the open 2LDs are as.au, com.au, id.au, net.au and org.au.”

Further, RI is an approved Provider under Paragraph 3 of the auDRP and the Panel has been duly appointed by RI.

Paragraph 15(a) of the Rules instructs the Panel as to the principles it is to use in determining this dispute:

“A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.”

Paragraph 4(a) of the auDRP requires the Complainant to prove each of the following three elements:

- (i) the Domain Name is identical or confusingly similar to a name (Note 1), 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 Domain Name (Note 2); and
- (iii) the Domain Name has been registered *or* subsequently used in bad faith.

**Note 1**

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.

**Note 2**

For the purposes of this policy, auDA has determined that “rights or legitimate interests in respect of the domain name” are not established merely by a registrar’s determination that the respondent satisfied the relevant eligibility criteria for the domain name at the time of registration.

**Rights**

The Complainant and other companies within the same group have rights in several corporate names, business names and trademarks incorporating the word “link”, including the business name “link.com.au”, which the Complainant registered with ASIC a few days before filing its Complaint.

**Identity or confusing similarity**

The auDA Overview of Panel Views on Selected auDRP Questions First Edition (“auDA auDRP Overview 1.0”), paragraph 1.4 states:

“The auDRP 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 auDRP, although this fact may be relevant to determining whether the second and third requirements of the Policy are satisfied.

The relevant time by which a complainant must establish its rights is at the time of the filing of the complaint.”

For present purposes it is sufficient to consider the Complainant’s “link.com.au” business name. The Domain Name is clearly identical to the Complainant’s “link.com.au” business name.

The Complainant has therefore established this element.

### **Legitimacy**

Paragraph 4c of the auDRP provides:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, is to be taken to demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to you of the subject matter of the dispute, your bona fide use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that you have acquired for the purpose of selling, renting or otherwise transferring); or
- (ii) you (as an individual, business, or other organisation) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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, trademark or service mark at issue.

Under the auDA auDRP Overview 1.0, paragraph 2.1:

“A complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. The complainant will usually make out a prima facie case by establishing that none of the paragraph 4(c) circumstances are present. Once such a prima facie case is made, the burden of production shifts to the respondent, requiring it to provide evidence or plausible assertions demonstrating rights or legitimate interests in the domain name. If the respondent fails to provide such evidence or assertions, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy ... If the respondent does provide some evidence or plausible assertions of rights or legitimate interests in the domain name, the panel then weighs all the evidence – with the burden of proof always remaining on the complainant”.

Although the appropriate process to determine the Complainant’s contention that the Respondent is ineligible to hold its licence for the Domain Name pursuant to the auDA 2012-04 Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs Sch C, para 2 is set out in the auDA 2004-01 - Complaints (Registrant Eligibility) Policy, the Panel accepts that the Complainant’s assertion of ineligibility, together with the Complainant’s other assertions, are together sufficient to constitute a prima facie case of absence of rights or legitimate interests on the part of the Respondent.

The word “link” is an ordinary descriptive word. The Domain Name and the trademarks LINKQ and LINK:Q were acquired in 2011 by the Respondent from its previous registrant prior to the first use by the Complainant or any of its associated companies of any name, mark or domain name incorporating the word “link”. Since December 18, 2014 the Respondent has used the Domain Name to resolve to its website “www.acquirebpo.com.au”, which promotes its legitimate business, “Business Process Outsourcing Automation”, albeit without use of the word “link”. There is no evidence that the Respondent was aware of the Complainant or any of its associated companies prior to the filing of the present Complaint. Under

these circumstances the Panel is satisfied that, before any notice to it of the subject matter of this dispute, the Respondent has made bona fide use of the Domain Name in connection with an offering of services.

The Complainant has failed to establish this element.

### **Bad faith**

For the reasons given above, the Respondent could not have had the Complainant nor any of the names, marks or domain names of the Complainant or any of the members of its group in mind when registering the Domain Name. It follows that the Complainant has failed to establish that the Respondent registered the Domain Name in bad faith.

The Panel does not accept the Complainant's assertion that the mere redirection of a domain name to a website which has no relationship to the domain name, without more, constitutes bad faith. For bad faith to be shown, there must be present some intent on the part of the registrant to take advantage of a complainant's name or mark.

The Respondent's Domain Name has been used to resolve to its website "www.acquirebpo.com.au" since December 18, 2014. There is no evidence that the only name or mark of or owned by any of the Complainant's group of companies that was registered before that date, namely the corporate name Linkbookkeeping Pty Ltd, incorporated on July 1, 2012, had achieved such distinctiveness that the Respondent is likely to have had the Linkbookkeeping Pty Ltd name in mind when it began such use of the Domain Name. There is no evidence that such use has changed since that date. The Complainant has not shown that it or any of its associated group of companies have or have had such a reputation in the word "link" that the public is or has been likely to be confused into thinking that the Domain Name <link.com.au> is associated with any of those names, marks or domain names .

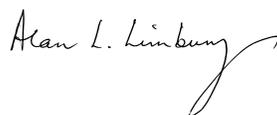
It follows that the Complainant has failed to show that the Respondent has at any time used the Domain Name with intent to take advantage of any reputation the Complainant's group of companies may have in any of their names, marks or domain names. Accordingly, despite the absence of any use on the Respondent's website of the word "link", and despite the Respondent's failure in 2013 to renew the registration of the trademarks it acquired in 2011 incorporating the word "link", the Panel is not satisfied that the Respondent has used the Domain Name in bad faith.

The Complainant has failed to establish this element.

### **7. Decision**

The Complainant having failed to establish all three elements required to entitle it to relief, the Panel orders that the Domain Name <link.com.au> remain with the Respondent.

Dated this 16th day of March, 2020.

A handwritten signature in black ink, reading "Alan L. Limbury". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Alan L. Limbury, Panellist