



DOMAIN NAME DISPUTE ADMINISTRATIVE PANEL

auDRP_20_9

Single Panellist Decision

Make an Offer IP Pty Ltd ACN 642 933 051

v.

David Eckersley

1. The Parties

1.1 The Complainant is Make an Offer IP Pty Ltd ACN 642 933 051 of c/- Level 19, 480 Queen Street, Brisbane, Queensland, Australia 4000 ("the Complainant").

1.2 The Respondent is David Eckersley ("the Respondent").

2. Domain Name, Registrar and Provider

2.1 The domain name upon which complaint is based is makeanoffer.com.au (the Domain Name).

2.2 The Registrar of the Domain Name is Rebel (formerly Namescout) ("the Registrar").

2.3 The Provider in this Proceeding is Resolution Institute of Level 2, 13-15 Bridge Street, Sydney NSW 2000 ("the Provider" or "Resolution Institute").

3. Procedural History

3.1 This proceeding relates to the complaint submitted by the Complainant in accordance with:

(i) the .au Dispute Resolution Policy No. 2016-01 published 15 April 2016 ("auDRP") which includes Schedule A (Policy) and Schedule B (Rules); and

(ii) the Provider's supplemental rules for the .au Domain Name Dispute Resolution Policy.

3.2 The Complainant initially lodged a complaint with the Resolution Institute ("the Provider") on 27-08-2020 together with a schedule of attachments relating to the Complaint. A notification of non-compliance was issued to the Complainant by the Provider on 28-08-2020. A rectified complaint was lodged on 31-08-2020.

3.3 The documents supplied by the Complainant comprise the rectified complaint and schedule of attachments relating to the Complaint, namely:

- (1) ASIC Search MAKE AN OFFER IP PTY LTD
- (2) Who is Lookup Search of MAKE ME AN OFFER.COM.AU
- (3) ASIC Search (business name) MAKE ME AN OFFER@ANOTHER GALAXY
- (4) Pages of Google searches (69 pages) conducted on 10.08.2020 for the words "make an offer" site.au; "make an offer@another galaxy" site.au; "make an offer" site.au; a web.archive.org (Wayback Machine) search of <http://www.makeanoffer@anothergalaxy.com.au> for 2018 conducted on 10.08.2020
- (5) Emails sent from the Complainant's solicitor to the Respondent's email address david.eckersley.ws on 10.08.2020 and 17.08.2020; and
- (6) copy of a notice "504 Gateway Timeout: remote server did not respond to the proxy" for www.makeanoffer.com.au of 10.08.2020

3.4 On 31-08-20 a copy of the rectified complaint was submitted by the Provider to Rebel (formerly Namescout) ("the Registrar") with a request to clarify Respondent details and lock the Domain Name during proceedings.

3.5 On 2-09-2020 the Registrar confirmed that the Domain Name in dispute had been locked.

3.6 On 02.09.2020 the Provider notified auDA of the Domain Name complaint.

3.7 On 02.09.2020 the Respondent was Notified by the Provider of the Domain Name Dispute Complaint, with a copy of that Notification also sent to the Complainant and the Registrar.

3.8 Pursuant to 5(a) of Schedule B of the auDRP Rules, the Respondent was required to submit a response to the Provider no later than 22.09.2020, this being twenty (20) days after the date of commencement of the administrative proceeding.

3.9 No response has been received from the Respondent to the Provider.

3.10 The Resolution Institute appointed Rowena McNally as the sole panellist in the matter on 28-08-2020. The Panellist has confirmed that she has no conflict of interest in relation to the matter. All procedural requirements appear to have been satisfied.

4. Background

4.1 The Complainant, Make an Offer IP Pty Ltd ACN 642 933 051 is a company which was registered on 24 July 2020. It has its registered office in East Brisbane.

4.2 Other than that the Complainant was registered with ASIC on 24.07.2020, the Complainant does not assert to carrying on any business enterprise or undertaking any business or other activity that might flavour its application beyond the fact of its registration.

4.3 The Complainant says that the Domain Name is either identical or confusingly similar to the Complainant's Company Name.

4.4 The material filed on behalf of the Complainant includes:

- i. a copy of a Whois Lookup search of 10.08.2020 which indicates that the domain name "Makeanoffer.com.au" is registered to Mr David Eckersley (Registrant); Eligibility Type: "registered business"; Eligibility Name: "Make me an offer@ Another Galaxy" Eligibility ID: "WA BN 09566077"

- ii. a copy of an ASIC business names search which records that the Business Name Make Me an Offer@Another Galaxy, Registration number BN 09566077, was registered in Western Australia on 9.08.2002, but was cancelled (*date of cancellation unspecified*).
- iii. printouts of Google searches conducted on 10.08.2020 for “make an offer” site:au; “make an offer@another galaxy” site:au; “make an offer” site:au; and a copy of a web.archive.org (Wayback Machine) search conducted on 10.08.2020
- iv. and a copy of a timeout notice of 10.08.20 “504 Gateway Timeout: remote server did not respond to the proxy”.

4.5 The Complainant submits, on the basis of this, that there is no record that the Respondent (as an individual, business, business or other organisation) has commonly been known by the Domain Name and says that the Respondent’s business name is now cancelled.

4.6 The Complainant says the Respondent has not responded to numerous attempts to contact the Respondent about the use and possible transfer of the Domain Name. These attempts comprise:

- (i) one email of 10.08.2020 to the Respondent’s email address:

“Dear Mr Eckersley
Our firm represents a client who may be interested in acquiring the domain name www.makeanoffer.com.au. We note that you are listed as the registrant for this domain name through a ‘whois’ search. Would you kindly contact the undersigned or indicate via return email if you would be interested in discussing this matter further?”

and

- (ii) one email of 17.08.2020 to the Respondent’s email address:

“Dear Mr Eckersley
We are just following up from our email of 10 August (attached below). Our client has indicated that should you provide no response to this email, they will file a domain dispute under the auDRP process. However, our client is willing to discuss use of the domain should you agree, without the need to go through the dispute process. Please contact the asap to progress this matter further.”

5. Jurisdiction

5.1 Paragraph 2.1 of the auDRP states:

“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.”

5.2 The Domain Name, being “com.au” is an open 2LD within the scope of the aforementioned paragraph. It is therefore subject to the mandatory administrative proceeding prescribed by the auDRP.

6. Response

6.1. The Respondent has not responded to the Complaint.

