



ADMINISTRATIVE PANEL DECISION

Bendigo Community Telco Ltd v IT Company Pty Ltd

Case No. LEADR-auDRP_14_04

<bct.com.au>

1. THE PARTIES

The Complainant is Bendigo Community Telco Ltd, represented internally.

The Respondent is IT Company Pty Ltd, represented internally.

2. THE DOMAIN NAME AND REGISTRAR

The disputed domain name <bct.com.au> is registered with Netfleet.com.au.

3. PROCEDURAL HISTORY

This is an administrative proceeding pursuant to the .au Dispute Resolution Policy (“auDRP”), the Rules for .au Dispute Resolution Policy (“auDRP Rules”), and the LEADR Supplemental Rules for .au Domain Name Dispute Resolution Policy (“LEADR Supplemental Rules”).

The Complaint was filed with LEADR on 14 April 2014. On 17 April 2014, LEADR transmitted by email to Netfleet.com.au a request to clarify registrant details and to lock the disputed domain name during proceedings. On 22 April 2014, Netfleet.com.au transmitted by email to LEADR a confirmation that the disputed domain name had been locked. LEADR verified that the Complaint satisfied the formal requirements of the auDRP, the auDRP Rules and the LEADR Supplemental Rules, and on 24 April 2014 notified .au Domain Administration Ltd and the Respondent of the Complaint.

In accordance with the auDRP Rules, the due date for Response was 14 May 2014. On 13 May 2014 the Respondent submitted its response.

On 16 May 2014, LEADR appointed Andrew F. Christie as the sole panelist in this matter. The Panel has submitted the Statement of Impartiality and Independence, as required by LEADR to ensure compliance with paragraph 7 of the auDRP Rules.

On 16 May 2014, the Panel issued Procedural Order No. 1, in which the Panel: (i) requested the Complainant to provide full details and substantiating evidence of when the Complainant began trading under the name “Bendigo Community Telco”, of assertions made in the Complaint regarding the use of the name “BCT”, and of the Complainant’s claim that the Respondent had offered to sell or rent the disputed domain name to the Complainant; and (ii) requested the Respondent to provide full details and substantiating evidence of when it first registered the disputed domain name, of the Complainant’s claim that the Respondent had offered to sell or rent the disputed domain name to the Complainant, and of the nature and extent of the business conducted by the Respondent through the entity called “Business Concept Technologies”. Pursuant to Procedural Order No. 1, both submissions were due by 20 May 2014 and both parties were given the opportunity to make a further submission on any evidence provided by the other party pursuant to the Order by 22 May 2014.

Both the Complainant and the Respondent provided information in response to Procedural Order No. 1 by the due date; neither party made any submissions in relation to the information provided by the other party.

4. FACTUAL BACKGROUND

The Complainant is a public company, listed on the National Stock Exchange (“NSX”), which is Australia’s second-largest stock exchange. The Complainant is a regionally-based, community-focused, commercially-operated telecommunication carriage and service provider serving Bendigo and its surrounding region.

The Complainant registered the business name “Bendigo Community Teleco” under the provisions of the *Business Names Act 1962* (Vic) on 7 June 2001 – at which time, presumably, it operated under a different company name (although the information supplied by the Complainant did not make this clear). The Complainant obtained registration of the trade mark BENDIGO COMMUNITY TELCO under the provisions of the Trade Marks Act 1995 (Cth) on 15 October 2002. The Complainant registered the business name “BCT” under the provisions of the *Business Names Act 1962* (Vic) on 4 February 2014, after it had unsuccessfully engaged in discussions with the Respondent to purchase the disputed domain name.

The Respondent asserted, and the Complainant did not dispute, that it registered the disputed domain name on 12 April 2013. No evidence was provided about the registrant or the use of the disputed domain name prior to its registration by the Respondent. From the Panel’s own investigation, it appears that from 2001 until at least 2009 (and possibly until 2012) the disputed domain name was used to resolve to a website for an entity entitled “Bunbury City Transit”. The Complainant asserted, and the Respondent did not dispute, that the Respondent made no use of the disputed domain name from registration in April 2013 until just prior to commencement of these proceedings. Just before the Complainant filed the Complaint, the Respondent commenced using the disputed domain name to resolve to a website for an entity called “Business Concept Technologies”.

5. PARTIES' CONTENTIONS

A. Complainant

The Complainant contends that: (i) the disputed domain name is identical to a business name that it owns and is identical to its NSX stock trading symbol; (ii) it is the registered holder of the business name "BCT", and "intends to change its actual trading name to 'BCT' and to use the domain bct.com.au if this application is successful"; (iii) the current registrant offered to sell or rent the disputed domain name to the Complainant; and (iv) that once the Respondent discovered that the Complainant was going to lodge the Complaint it constructed a "sham website" the sole purpose of which was "to give the impression that the disputed domain is now in legitimate use".

In response to Procedural Order No. 1, the Complainant provided: (i) various documents in which it was referred to as "BCT"; and (ii) admitted that, contrary to the implication in the Complaint, it approached the Respondent offering to purchase the disputed domain name in mid-January 2014.

B. Respondent

The Respondent contends that: (i) "BCT" is a short and general abbreviation for many phrases; (ii) the Respondent has never approached anyone, including the Complainant, to buy or rent the disputed domain name as it did not register it for this purpose or list it for sale; (iii) in fact, the Complainant approached the Respondent many times and made various offers to buy the disputed domain name between 22 January 2014 and 11 April 2014; (iv) having failed to purchase the disputed domain name, the Complainant then registered "BCT" as a business name to make a more substantive claim for the disputed domain name; (v) the Complainant was trading as "Region Telco" or "Regional Telco" until 3 February 2014; (vi) the Respondent has not offered the disputed domain name for sale or rent because it has been using it for a website for "Business Concept Technologies", a brand name; and (vii) the Respondent has built a website resolving from the disputed domain name to promote its brand.

In response to Procedural Order No. 1, the Respondent stated it was "offering IT Services and Solutions through "Business Concept Technologies" and we use multiple websites to promote multiple channels to get more business".

6. DISCUSSION AND FINDINGS

A. Identical or Confusingly Similar

Because the Complainant has established the requirement of paragraph 4(a)(i) of the auDRP by virtue of its registered business name "BCT" (as explained below), the Panel is not required to, and does not, make any finding on the Complainant's claims that it has rights to a "name" for the purposes of that paragraph by virtue of either its NSX stock trading symbol or its reputation in the acronym of its corporate name.

The Complainant is the registrant of the business name "BCT", registered under the provisions of the *Business Names Act 1962* (Vic). As footnote 1 of the auDRP makes clear, a "name ... in which the complainant has rights" for the purposes of the auDRP includes "the complainant's company, business or other legal or trading name, as registered with the relevant Australian government authority". The disputed domain

name is identical to the Complainant's registered business name "BCT", once the second-level and top-level domain extensions are disregarded. The fact that the Complainant registered the business name after the Respondent registered the disputed domain name is not relevant; there is nothing in paragraph 4(a)(i) of the auDRP that requires the Complainant to have acquired its rights to a name prior to the Respondent registering the disputed domain name.

Accordingly, the Panel finds that the disputed domain name is identical to a name in which the Complainant has rights. The Complainant has, therefore, established the requirement of paragraph 4(a)(i) of the auDRP.

B. Rights or Legitimate Interests

The Respondent appears to claim it has rights or legitimate interests in the disputed domain name by virtue of it being "short and a general abbreviation for many phrases". The Panel accepts that the Respondent registered the disputed domain name because, being short, it is commercially attractive. The Panel assumes that the Respondent has a business model of registering short domain names in anticipation of being able to sell or rent them to other parties. While such a motivation for registration of a domain name is not, of itself, inappropriate, it does not follow that it gives rise to rights or legitimate interests in it. If it were otherwise, then the mere fact of registration of a domain name would give rise to rights or legitimate interests in the domain name because it must be assumed that every registered domain name is commercially attractive to the registrant for some reason.

The Panel is of the view that the Respondent must show something other than mere commercial attractiveness of the disputed domain name to establish rights or legitimate interests in it. In particular, the Respondent must establish some *bona fide* connection between its activities (actual or proposed) and the disputed domain name, such as those specified in paragraph 4(c) of the Policy – that is, such as by using the disputed domain name in connection with a *bona fide* offering of goods or services, being commonly known by the disputed domain name, or making a legitimate non-commercial or fair use of the disputed domain name.

The Respondent's claim to a right or legitimate interest in the disputed domain name by virtue of its operation of website for an entity called "Business Concept Technologies" is fanciful. The timing of the establishment of the website, and the nature and purpose of it (as admitted by the Respondent), is such as to persuade the Panel of the correctness of the Complainant's assertion that the Respondent established this website as a sham, once alerted to the impending filing of this Complaint, in an attempt to provide a basis for claiming rights or legitimate interests in the disputed domain name. (This conclusion is supported by the Panel's own investigation, which shows that the name "Business Concept Technologies" does not appear to be either a company name or a registered business name. Under the business names legislation of the Australian States and Territories, it is an offence for a person to carry on business under a name that is not the person's name unless that name is registered as a business name. It thus appears that the Respondent is not entitled to carry on a business in Australia under the name "Business Concept Technologies".) The Respondent's use of the disputed domain name to resolve to the website of "Business Concept Technologies" is not a *bona fide* use of the disputed domain name.

Accordingly, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(a)(ii) of the

auDRP. The Complainant has, therefore, established the requirement of paragraph 4(a)(ii) of the auDRP.

C. Registered or Used in Bad Faith

The Complainant's case in relation to the requirement of paragraph 4(a)(iii) of the auDRP is that the Respondent registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant for an amount in excess of documented out-of-pocket expenses. The Complainant cited in support of this claim the fact that the Respondent offered to sell the disputed domain name to the Complainant for a sum "around low to mid 5 figures".

The Panel accepts that an unsolicited offer by the Respondent to sell the disputed domain name to the Complainant for such an amount might, in appropriate circumstances, be evidence that the Respondent registered the disputed domain name in bad faith. However, this is not the situation in this case. Contrary to the implication in the Complaint, the Respondent's offer to sell was not unsolicited. As the Complainant subsequently admitted in response to Procedural Order No. 1, the Respondent's offer to sell was made only after the Complainant approached the Respondent seeking to purchase the disputed domain name – that is, the Respondent's offer to sell was solicited by the Complainant.

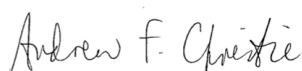
The Panel is of the view that a *solicited* offer to sell the disputed domain name does not, of itself, establish that the Respondent registered the disputed domain name in bad faith. According to the information in the case record currently before the Panel, there is no evidence of any other circumstances that establish the Respondent registered the disputed domain name in bad faith. Accordingly, the Panel does not find that the disputed domain name has been registered in bad faith.

For the reasons given in section 6B above, the Panel is of the view that the Respondent's use of the disputed domain name to resolve to a website for an entity called "Business Concept Technologies" was not *bona fide* use of the disputed domain name. However, a non-*bona fide* use of a domain name is not the same thing as a use of the domain name in bad faith. For there to be a finding of bad faith use of a domain name, something more is required – such as a use of the type specified in paragraph 4(b)(iv) of the auDRP. The case record currently before the Panel discloses no such use by the Respondent. Accordingly, the Panel does not find that the disputed domain name has been used in bad faith.

The Complainant has, therefore, failed to establish the requirement of paragraph 4(a)(iii) of the auDRP.

7. DECISION

For the foregoing reasons, the Complaint is denied.



Andrew F. Christie
Sole Panelist
Date: 30 May 2014