



Administrative Panel Decision

LEADR Case Number 04 of 2004

Domain Names: **abclearningcentres.com.au; abclearningcenters.com.au**
Name of Complainant: ABC Learning Centres Limited (ACN 079 736 664)
Name of Respondent: MJ Central Pty Ltd (ACN 096 048 716)
Provider: LEADR
Panel: John Royle

1. The Parties

The Complainant in this administrative proceeding is ABC Learning Centres Limited (ACN 079 736 664) of 20 Metroplex Avenue, Murarrie, Queensland 4172.

The Respondent in this administrative proceeding is MJ Central Pty Ltd (ACN 096 048 716).

2. The Domain Names, Registrar and Provider

The domain names in dispute are 'abclearningcentres.com.au' ("First Domain Name") and 'abclearningcenters.com.au' ("Second Domain Name") (together, 'the Domain Names').

The Registrar of the Domain Names is NetRegistry (the 'Registrar').

The Provider in relation to this administrative proceeding is LEADR ('LEADR').

3. Procedural History

The complaint in relation to the First Domain Name was submitted for decision in accordance with the .au Dispute Resolution Policy No. 2002/22 ('auDRP') and LEADR's Supplementary Rules.

The Complainant lodged that complaint with the LEADR on 25 June 2004.

LEADR advised the Registrar of the complaint on 25 June 2004 by email.

The Respondent was sent the Complaint and the explanatory covering letter on 25 June 2004 by post. The Respondent was advised that it had 20 days from 25 June 2004 to submit all materials it may wish to have considered by the Panelist. Also on 25 June 2004, a copy of the Notification Letter was forwarded to the Complainant and the Registrar was sent a copy of the Notification Letter and Complaint.

The Registrar was additionally advised by email to lock the website 'abclearningcentres.com.au' on 25 June 2004.

On 25 June 2004, the Panel was approached by LEADR and accepted the appointment that same day, providing a statement of acceptance and that there was no conflict of interest.

Between 25 June 2004 and 15 July 2004, email correspondence passed between the Complainant, the Respondent and LEADR, as a result of which both parties on 15 July 2004 requested:

- that 'www.abclearningcenters.com.au' would be added to the complaint; and
- consensual transfer of the Domain Names.

The Complaint, Notification Letter, copy of the Request for Consensual Transfer and the Procedural History were sent to the Panel on 15 June 2004.

4. Factual Background

The Complainant submitted that it is the owner, either directly or via a wholly owned subsidiary, of the registered company names "ABC Learning Centres Limited" and "ABC Developmental Learning Centres Pty Ltd", and also of Australian Registered Trademark Number 599635 for "ABC Developmental Learning Centres" (with device) in Class 42 and the registered domain names "abclearningcentres.com" and "abclearningcentres.co.nz". The complainant is a publicly listed company which is in the business of providing childcare services.

The creation date of the First Domain Name is 2 February 2004. Prior to the locking of the First Domain Name on 25 June 2004, the First Domain Name was linked to a domain parking site through which the Respondent could earn fees. The First Domain Name was also advertised for sale on the same site.

Following receipt of the Notification Letter sent 25 June 2004, the parties agreed that the Second Domain Name would be dealt with in this administrative proceeding.

The Second Domain Name has a creation date of 1 July 2004.

In an email dated 15 July 2004, the Respondent consented to the transfer of the Domain Names to the Complainant. As at the date of this decision, no formal written settlement has been executed.

5. Parties' Contentions

A. Complainant

The Complainant has asserted that:

1. Each of the Domain Names is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of either of the Domain Names;

3. Either or both of the Domain Names have been registered or subsequently used in bad faith by the Respondent; and
4. The Domain Names should be transferred to the Complainant.

B. Respondent

In response to the Complaint, the Respondent has engaged in correspondence with both the Complainant and with LEADR.

The Respondent asserted that it will consent to the transfer of the Domain Names to the Complainant.

6. Discussion and Findings

The Panel in this administrative proceeding has applied the auDRP. This administrative proceeding is limited to the remedies set out in Clause 4i of Schedule A of the auDRP limiting the remedies to cancellation or transfer of the Domain Names.

The Respondent has asserted that it would consent to the transfer of the Domain Names to the Complainant. It is important to note that at the time of this decision, no formal settlement had been agreed upon between the parties and therefore, Rule 17(a) of the auDRP fails to come into effect and the administrative proceedings have not been terminated.

Rule 10 of auDRP provides the Panel with general powers to conduct the administrative proceedings in such a manner as it considers appropriate in accordance with the Policy and the Rules. Additionally, the Panel is empowered to ensure that the Parties are treated equally. Rule 15 of auDRP states that "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and rules and principles of law that it deems applicable."

The Panel has the general power to grant the transfer of the Domain Names based on the facts and Rule 15. The Complainant is eligible to register the Domain Names, on the basis of the facts set out in Section 4 above; and the Respondent is willing to transfer the Domain Names to the Complainant. The Panel finds, as the Respondent is willing to transfer the Domain Names, that the Domain Names should be transferred.

Please note that other issues relating to Clause 4 of Schedule A of the auDRP are not relevant as both Parties have agreed to the transfer of the Domain Names. There is no need to discuss any other issues.

7. Decision

For the foregoing reasons, the Panel hereby instructs the Registrar to transfer the Domain Names from the Respondent to the Complainant.

Dated: 2 August 2004
John Royle
Panelist - LEADR