



## ADMINISTRATIVE PANEL DECISION

**General Television Pty Limited**

v

**Laszlo Till**

**LEADR Case No.**

**Domain Names:** **heyheyitssaturday.com.au**

**heyheyitssaturday.net.au**

**Name of Complainant:** **General Television Pty Ltd**

**Name of Respondent:** **Laszlo Till**

**Provider:** **LEADR**

**Panel:** **Anthony P. Alder (Chair)**

**Philip N. Argy**

**Jon Kenfield**

### **1. THE PARTIES**

1.1 The Complainant is **General Television Pty Ltd** represented by the Corporate Counsel of Nine Network Australia Pty Ltd.

The Respondent is **Laszlo Till** represented by Jim Davies of Wrays Lawyers Pty Ltd.

### **2. THE DOMAIN NAMES AND PROVIDER**

2.1 The current Complaint is in connection with the domain names heyheyitssaturday.com.au & heyheyitssaturday.net.au (collectively the "Domain Names").

2.2 The provider in relation to this proceeding is LEADR ("Provider").

### **3. PRELIMINARY MATTERS**

3.1 Schedule A of the *.au Dispute Resolution Policy* ("auDRP") applies to disputes which meet the requirements set out in Paragraph 4(a) of Schedule A of the auDRP. This subparagraph 4(a) requires that any party holding a domain name licence "...submit to a

*mandatory administrative proceeding in the event that a third party (a “Complainant”) asserts to the applicable Provider, in compliance with the Rules of Procedure that:*

- (i) *the domain names are identical or confusingly similar to a name, trademark or service mark in which the complainant has rights; and*
- (ii) *[the Respondent] no rights or legitimate interests in respect of the domain names; and*
- (iii) *the domain names have been registered or subsequently used in bad faith.*

*In an administrative proceeding, the complainant bears the onus of proof.”*

#### **4. PROCEDURAL HISTORY**

- 4.1 LEADR has appointed three Panellists for the Panel in this matter. The Panel collectively has had no prior association with either party and no conflict of interest.
- 4.2 All procedural requirements appear to have been satisfied. The Panel has been properly constituted.
- 4.3 Paragraph 15(a) of the auDRP Rules states:  
*“A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy [the auDRP], these Rules and any rules and principles of law that it deems applicable”.*
- 4.4 The Panel, in consideration of this proceedings, acknowledged and accepted the additional submissions of both the Complainant and Respondent to maintain procedural fairness to both parties.

#### **5. FACTUAL BACKGROUND**

- 5.1 From about 1971 to 1999, “Hey Hey It’s Saturday” was used as the title and slogan of a long running television program (herein referred to as the “Program”) in Australia. The Complainant, or its predecessors in title, was the producer of the Program. Several books were also published during this period using the same title.
- 5.2 The Complainant has filed and registered numerous trade marks for the title of the Program including: Australian Trade Mark Registrations Nos 288050, 288051, 567187, 591890, 591891, 641318, & 643494.
- 5.3 There were no television broadcasts of the Program on Australian television between 2000-2006.

- 5.4 On 25<sup>th</sup> November 2005, the Complainant authorised or published DVDs depicting selected portions of the Program. These DVDs were available for sale, at the time, and were called “Hey Hey It's Saturday – By Request”.
- 5.5 On 25<sup>th</sup> December 2005 the Respondent applied for and registered both Domain Names.
- 5.6 From June 2006 to July 2009, a limited series of television broadcasts were shown on Australian television depicting selected portions of the Program from various years prior to 1999.
- 5.7 On 7<sup>th</sup> November 2008, the Respondent registered a company, Heyheyitssaturday Pty Ltd (ACN 134071695) under the Corporations Act 2001. The Respondent is the sole shareholder and director of this company.
- 5.8 After July 2009, it became public knowledge that the Program was to be re-established on Australian television with a series of reunion specials as well as the possibility of ongoing regular broadcasts of the Program.
- 5.9 The Complainant has never registered any domain names relevant to this matter.

## **6 PARTIES' SUBMISSIONS**

- 6.1 In essence, the Complainant asserts that it has rights over the name “Hey Hey it's Saturday” as a result of: (a) having a number of similarly styled registered trademarks; (b) through broad public recognition of its association with the title and slogan after many years broadcasting a television show of this name, and (c) as a consequence of producing books and DVDs bearing similar or associated names more recently.
- 6.2 The Complainant asserts that by registering the two domains the Respondent wrongfully denied the Complainant unfettered commercial enjoyment of said names, titles and slogans.
- 6.3 In its defence, the Respondent argues that: (a) there had been no active use of the relevant name for approximately six years before he registered the two domains, and (b) that at the time of registration there was no apparent likelihood of the name ever being used again.
- 6.4 The Respondent asserts that the name had genuine commercial appeal for its intended social networking website and that the two domains were registered for this purpose .

## **7 DISCUSSION AND FINDINGS**

### **Elements of a successful complaint**

- 7.1 According to Paragraph 4(a) of the auDRP, a person is entitled to complain about the registration or use of a domain name where:
- (i) *The domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights; and*
  - (ii) *The respondent to the complaint has no rights or legitimate interests in respect of the domain name; and*
  - (iii) *The respondent's domain name has been registered or subsequently used in bad faith.*
- 7.2 It is to be noted that the three elements of a complaint under Paragraph 4(a) of the auDRP are cumulative; all of them must be proved if the complaint is to be upheld.
- 7.3 In these administrative proceedings, the Complainant bears the onus of proof regarding each of the separate components required by Paragraph 4(a) of the auDRP.

### **Is the Domain Name identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights?**

- 7.4 The Panel must determine whether, on the basis of the facts set out in Section 5 above, the Complainant has rights in a relevant name, trade mark or service mark.
- 7.5 The auDRP states: *“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;*
  - (b) *The complainant's personal name.”*
- 7.6 The Disputed Domain Names comprise the complainant's trademark (without the apostrophe) suffixed by the generic second level domain signifier “.com” and “.net”. They are therefore identical or at least confusingly similar to trade marks in which the Complainant has rights.
- 7.7 The Respondent alleges that the non-use of the trade marks between 1999 and 2005, would allow the trade marks to be subject to removal from the Australian Trade Marks Register for non-use as per s92 of Trade Marks Act 1995. This assertion is irrelevant to this determination because the trade marks have not actually been so expunged, therefore this argument was rejected by the Panel.

7.8 The Complainant in these proceedings bears the onus of proving the requirements and ownership under auDRP. On the basis of our findings in 7.6 above, the Panel determines that the Complainant has satisfied the requirement of Paragraph 4(a)(i) of the auDRP.

**Does the Respondent have any rights or legitimate interests in respect of the Domain Name?**

7.9 Paragraph 4(c) of the auDRP sets out particular circumstances (without limitation), which can demonstrate a Respondent's "rights or legitimate interests to the domain name for purposes of Paragraph 4(a) (ii)."

7.10 The Respondent registered an Australian company, Heyheyitssaturday Pty Ltd (ACN 134071695) on 7<sup>th</sup> November 2008 and submitted to this Panel that he intends to publish a social networking website at the address of the Domain Names in the near future.

7.11 The Respondent also submitted draft plans to the Panel for said website in the form of an initial Project Brief dated 17th January 2006, and subsequent upgrades to same, dated 2006. We were also provided with a more comprehensive, although still incomplete, draft project plan, which does not bear any creation date.

7.12 The Respondent further submitted a page containing four "HH" logos.

7.13 The proposed website of the Respondent is not operational at the time of these proceedings.

7.14 The Panel found it difficult to make a finding in regard to "Legitimate Interest" of the Respondent, because there was a lack of relevant evidence from both Parties. At the time of these proceedings, the Respondent: (a) has provided the above draft project briefs to support his assertions of intended (eventual) legitimate use of the domain names in support of his company of similar name and (b) he has not published any materials, or commercialised any products or services, that indicated to the Panel that his interest was not legitimate.

7.15 The Panel notes that the registration of the Company does not automatically grant the Respondent any right to represent the name or slogan in a domain name as the Respondent is not the same legal entity as the Company. Nevertheless, for all practical purposes they are one and the same, and these are supposed to be practical and pragmatic proceedings. Whether the Respondent has demonstrated that his conduct was bona fide on behalf of a company to be formed at a later date requires more than mere assertion and the Panel makes no judgement on that issue.

7.16 The Complainant has asserted that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names, but has failed to persuade the Panel with its arguments. In the Panel's view the Complainant has not discharged its obligation to prove the second ground of the auDRP and formally finds that Paragraph 4(a)(ii) of the auDRP has not been satisfied by the Complainant.

**Has the Domain Name been registered or subsequently used in bad faith?**

7.17 Paragraph 4(b) of the auDRP sets out certain circumstances which can be taken as "evidence of the registration and use of a domain name in bad faith". It is important to note that it is a non-exhaustive list of circumstances such that, for example, the Panel is not necessarily constrained from a finding of bad faith should it arise (also by example) from not only any one or other of them, but from a combination of them, or indeed, upon the basis of other reliable material before the Panel inclusive of the illustrated list.

7.18 The Complainant alleged that TL had acted in "bad faith" and attempted to demonstrate this by highlighting that TL was redirecting web traffic from heyheyitssaturday.com.au to another website at baselinesystems.com.au.

7.19 The Panel notes that web traffic from heyheyitssaturday.net.au was not similarly diverted.

7.20 The website at baselinesystems.com.au offers goods or services that are not likely to be confused with the Program or goods sold under license from the Complainant. Additionally, the website at baselinesystems.com.au does not seem to be benefiting from the diverting web traffic; nor does the website seem to be generating advertising revenues for TL.

7.21 The Panel is not satisfied that there is sufficient evidence for a finding with respect to Paragraph 4(b) of the auDRP. The onus of proof of this requirement rests with the Complainant and the Complainant has failed to establish the requirements of Paragraph 4(a)(iv) of the auDRP.

7.22 The Complainant has not demonstrated that the Respondent either registered or used the Domain Names in "Bad Faith".

7.23 At the time the Disputed Domain Names were registered, it could not be said that the Respondent's belief, that the Program had no prospect of returning, was unreasonable. And the use being made of them does not seem to reflect the cybersquatting behaviour to which the auDRP is directed. Whilst testing of the Respondent's credit in more formal

proceedings might lead to a different conclusion, the Complainant has not discharged its burden of proof in this proceeding.

## **8 DECISION**

8.1 The Panel concludes for the reasons stated that:

- (a) The Domain Names are confusingly similar to the registered trade marks owned by the Complainant. The Complainants have demonstrated that they have legitimate rights to the slogan HEY HEY ITS SATURDAY;
- (b) The Complainant failed to persuade the Panel that the Respondent does not have any legitimate rights in the Domain Names. The Panel notes that this does not mean that LT did have legitimate rights to use or register the Domain Names; and,
- (c) The Complainant failed to persuade the Panel that the Respondent acted in bad faith by registering or using the Domain Names.

8.2 For the reasons outlined, the Complainant has not satisfied the elements of the auDRP.

## **9 RELIEF**

### **Transfer of the Domain Name**

9.1 The Panel orders that the Complaint be dismissed.

Dated this 15<sup>th</sup> day of October 2009

**Anthony P. Alder (Chairman)**

**Philip N. Argy**

**Jon Kenfield**