



## ADMINISTRATIVE PANEL DECISION

Bikram Yoga Australia Pty Ltd  
-v-  
Mark Reinierse

Case No. LEADR-auDRP 10/17

**Domain Name:** bikramyoga.com.au  
**Complainant:** Bikram Yoga Australia Pty Ltd  
**Respondent:** Mark Reinierse  
**Provider:** LEADR  
**Panellist:** Sara Delpopolo

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### 1. THE PARTIES

- 1.1 The complainant is Bikram Yoga Australia Pty Ltd of Level 1, 256 Crown Street Darlinghurst NSW 2010 (**Complainant**).
- 1.2 The respondent is Mark Reinierse of 1 Holtermann Street Crows Nest NSW 2065 (**Respondent**).
- 1.3 The domain name holder subject of this complaint is Aum Yoga Pty Ltd (ACN 120 120 989) of 6/12 Boronia Street Wollstonecraft NSW 2065 (**Domain Name Holder**).

### 2. THE DOMAIN NAME AND REGISTRAR

The disputed domain name is <bikramyoga.com.au> (**Domain Name**). The registrar is Domain Registration Services (**Registrar**).

### 3. PROCEDURAL HISTORY

- (a) The complaint was submitted for decision in accordance with the (auDRP) Policy and Rules, which was approved by auDA in 2001 and commenced operation on 1 August 2002 and LEADR's Supplementary Rules (LEADR is the Provider).
- (b) The initial complaint was received from the Complainant by the Provider on 27 August 2010. After reviewing the initial complaint, the Provider found that it did not comply with the auDRP Rules and the Provider's Supplementary Rules. Accordingly, the Provider requested that the Complainant rectify the deficiencies and to resubmit the complaint on 3 September 2010.

- (c) The revised complaint was received from the Complainant by the Provider on 9 September 2010.
- (d) At 4:23 pm on 16 September 2010, the Provider sent a notification email to the Registrar requesting them to confirm the Respondent is in fact the Registrant of the Domain Name and to lock the Domain Name. At 4:32 pm, the Registrar advised the Provider that the attachment of the complaint was inadvertently not attached. At 4:49 pm the Provider sent a copy of the complaint to the Registrar.

At 4:53 pm on 16 September 2010, the Registrar reminded the Provider to send the copy of the complaint and confirmed that the contact details of the Domain Name were as follows.

*“Mark Reynierse  
Aum Yoga Pty Ltd  
6/12 Boronia Street  
Wollstonecraft NSW 2065*

*Ph: 02 9436 1231  
Fx: 02 9432 1234*

*Email: petermulley@bigpond.com”*

In this email, the Registrar also stated:

*“We have also instigated steps to have the domain name locked after confirming with auDA accordingly the issue referred above.”*

- (e) At 5:02 pm on 16 September 2010, the Registrar advised the Provider via email that:

*“We have just been informed that the domain name cannot be locked for transfer however we have been able to implement a ‘client hold’ which can be confirmed [here](#).”*

- (f) At 4:56 pm on 17 September 2010, the Provider advised the Registrar via email that:

*“I have just been in contact with auDA who have informed me that ‘client hold’ does not actually stop the transfer.*

*The domain name needs to be locked as per the policy. You may need to contact the Registry to lock the domain name.”*

- (g) At 4:55 pm on 17 September 2010, the Registrar replied and confirmed that the Domain Name was locked.
- (h) On 20 September 2010, the Provider emailed the Respondent a notification letter along with a copy of the notification letter sent to the Complainant.
- (i) The Provider advised auDA of the complaint on 20 September 2010 via email confirming that:

*“The domain name in dispute is **bikramyoga.com.au***

*The Complainant is **Bikram Yoga Australia Pty Ltd** and the Respondent is **Mark Reinierse**.”*

- (j) On 7 October 2010, the Respondent submitted a response to the complaint.
- (k) On 15 October 2010, the Provider approached the Panellist. The Panellist confirmed their availability, informed the Provider that there were no conflict issues and accepted the matter on the same date.
- (l) The Panellist was informed on 15 October 2010 that the complaint was being sent for Adjudication.

#### **4. FACTUAL BACKGROUND**

##### **4.1 Facts Alleged by Complainant**

The Complainant is Bikram Yoga Australia Pty Ltd who refers to the Respondent as “Mark Reinierse”.

The Complainant alleges that it is a representative of the Bikram Yoga Schools group in Australia, which consists of about 27 schools certified by Bikram Choudhury of Bikram’s Yoga College of India.

The Complainant submitted that the Respondent purchased the Domain Name in around 2006 from Bikram Yoga Crows Nest, a licensed Bikram Yoga School which was certified by Bikram Choudhury of Bikram’s Yoga College of India.

After purchasing the business, the Respondent diverted the Domain Name to the Respondent’s website <www.mantrayoga.com.au> (**Mantra Yoga**). The Complainant states that the following announcement was posted on the Domain Name website:

*“Bikram Yoga Crows Nest has evolved. We are now Mantra Yoga. Our classes are for all levels and are taught in a warm room. Please wait, you are now being redirected to Mantra Yoga.”*

The complaint refers to the fact that Mantra Yoga does not teach Bikram Yoga but offers Vinyasa Yoga, Zumba, Hatha Yoga and Pilates (as stated on the website).

The Complainant has knowledge that “Mark Reinierse” is not licensed to teach Bikram Yoga in Australia.

*“Mark Reinierse has no connection to the Bikram Yoga method nor does his school represent in any way Bikram Yoga.*

*His school, Mantra Yoga, is neither an exact match, abbreviation nor acronym of [www.bikramyoga.net.au](http://www.bikramyoga.net.au)”*

The Complainant also referred to an earlier “complaint” lodged with auDA in 2007 (Case No. C2007/08/000007) seeking an order that the Respondent was in breach of the *Domain Name Eligibility and Allocation Policy Rules* (**Eligibility Policy**). auDA found in the “complaint” that the Respondent was not in breach of the Eligibility Policy

as the Respondent warranted it offered Bikram Yoga services, and the matter was dismissed.

The Complainant states that it contacted “Mark Reinierse” on a number of occasions requesting he give up the Domain Name, but he refused on the grounds that:

*“It brings a lot of traffic”*

The sum of \$3,000.00 was also offered to “Mark Reinierse” to purchase the Domain Name on behalf of the group to which he replied:

*“you are a big group, you should be able to afford more”*

The Complainant submits that the Respondent is using the Domain Name in bad faith, namely as bait advertising as the Respondent has never provided Bikram Yoga services in connection with the Domain Name.

The Complainant seeks to have the Domain Name transferred to it under this complaint.

#### 4.2 **Facts Alleged by the Respondent**

A company called Aum Yoga Pty Ltd trading as Mantra Yoga submitted a response to the complaint (**Response**) within the time required under paragraph 5 of *.au Dispute Resolution Policy (auDRP)*.

Aum Yoga Pty Ltd confirms in the Response that:

*“We never represented that Mark Reynierse was “certified Bikram Yoga teacher”, and we have never represented that we are a “Bikram affiliated school” nor conduct “Bikram Yoga method classes” (Page 4).”*

Until about November 2005, Porter’s Yoga Pty Limited (ACN 098 740 240) traded as Bikram Yoga College of India – Crows Nest (BN 98130029) (**Bikram Yoga Crows Nest**) and the Domain Name was used in relation to that business.

On or about November 2005, Porter’s Yoga Pty Limited changed its trading name to Solar Lotus Yoga (BN 981 772 91) (**Solar Lotus**). Subsequently the Domain Name was used to redirect former customers of Bikram Yoga Crows Nest to the new Solar Lotus website <www.solarlotusyoga.com>.

On 4 July 2006, Aum Yoga Pty Ltd purchased the business including the Domain Name and the registered business names referred to above from Porter’s Yoga Pty Limited. Since Aum Yoga Pty Ltd purchased the business from Porter’s Yoga Pty Ltd, it continued to use the Domain Name to redirect customers to the Solar Lotus website which had also been purchased.

On 16 October 2006, Aum Yoga Pty Ltd changed its trading name to “Mantra Yoga” and set up the website <www.mantrayoga.com.au>. Since then, the Domain Name has been used to redirect former customers of Bikram Yoga Crows Nest and Solar Lotus to the Mantra Yoga website.

Aum Yoga Pty Ltd submits that at no time, from its purchase of the Domain Name to date, has it represented that either Solar Lotus or Mantra Yoga offer Bikram Yoga classes.

Visitors to the website of the Domain Name were informed as follows:

*“Bikram Yoga Crows Nest has evolved. We are now Mantra Yoga. Our classes are for all levels and are taught in a warm room. Please wait, you are now being redirected to Mantra Yoga.”*

Aum Yoga Pty Ltd acknowledged that on 8 August 2007, a “complaint” was lodged with auDA relating to the Domain Name to which Aum Yoga Pty Ltd replied as follows:

*“We own a Yoga Studio that has previously been a Bikram Yoga studio. Bikram Yoga is a subset of Hatha Yoga, which is practiced in a heated room along with other specific practices and we provide Hatha Yoga and have kept the element of providing a heated room.”*

The auDA found that the Domain Name complied with the Eligibility Policy and dismissed the complaint.

Aum Yoga Pty Ltd also refers to a second “complaint” lodged with auDA in May 2010 in which the same statements as above were submitted. Again, auDA dismissed the complaint.

Aum Yoga Pty Ltd states that it has been in the process of selling the Domain Name since 2008. However, it denies that it refused the sale of the Domain Name to the Complainant on the basis that *“it brings a lot of traffic”*. Aum Yoga Pty Ltd alleges that it rejected the Complainant’s offer of \$3,000.00 to sell the Domain Name as it had received considerable interest from a number of third parties offering a higher purchase price for the Domain Name.

The Aum Yoga Pty Ltd did not expressly specify what remedy it seeks in the Response.

## 5. DISCUSSION AND FINDINGS

### 5.1 FURTHER STATEMENTS

After reviewing all materials presented to the Panel, the Panel found that there were numerous inconsistencies in the statements and evidence submitted by both parties.

Firstly, the Complainant states in the complaint that:

*“His school, Mantra Yoga, is neither an exact match, abbreviation nor acronym of [www.bikramyoga.net.au](http://www.bikramyoga.net.au)”*

Secondly, the Response was in fact made by Aum Yoga Pty Ltd trading as Mantra Yoga and not by the Respondent.

Thirdly, Aum Yoga Pty Ltd submitted a copy of “Contract for the Sale of Business (**Contract**)” as an annexure in Response, but the Contract was unsigned and there were no other attachments (namely, as the business name registration certificates and documents evidencing rights to the internet domain names). Further, the

Contract for Sale of the Business showed the address for Aum Yoga Pty Ltd as 110 Alexander Street, Crows Nest and the premises listed on the document was "Ground Floor, 110 Alexander Street, Crows Nest".

In order to clarify the apparent inconsistencies, the Panel requested the following information from the parties via the Provider on 1 November 2010 under paragraph 12 of Schedule B of Rules For .au Dispute Resolution Policy (**auDRP Rules**):

***From the Complainant:***

*Clarification of whether <www.bikramyoga.net.au> or <www.bikramyoga.com.au> is the subject of this complaint.*

***From the Respondent:***

1. *Copy of the signed Contract for Sale complete with the following attachments:*
  - *business name registration certificates*
  - *document evidencing rights to internet domain names*
  - *Lease of Premises (in order to clarify business premises)*
2. *Evidence of the 2 previous complaints made against the Respondent in August 2007 and May 2010 respectively.*

On 2 November, the Panel received the following supporting information from the Complainant via the Provider:

*"My complaint is in regard to www.bikramyoga.com.au"*

On 5 November 2010, the Panel received from the Respondent via the Provider a copy of the following:

- The front page of the signed Contract for Sale dated 4 July 2006;
- Certificate of Registration of a Company certifying that Aum Yoga Pty Ltd was registered on 9 June 2006 with ASIC;
- Certificate of Registration of .au Domain Name for bikramyoga.com.au registered to Aum Yoga Pty Ltd on 25 July 2010; and
- Email from auDA to the Registrar dated 5 May 2010 confirming the "complaint" made by the Complainant (auDA Complaint Ref: C100374) in 2010 was dismissed; and
- The Lease of Premises

However, the Respondent did not provide evidence of the "complaint" made against the Respondent in August 2007, stating:

*"Everything is here except the complaint from August 2007. Unfortunately we lost it in a computer crash. Auda said they cannot find it but it would be archived."*

The documents provided by the Respondent to the Panel did not include any business name certificates or the certificate of registration of the Domain Name (which was stated to be attached to the Contract at that time it was made). Further, the Lease of Premises provided to the Panel was in relation to a completely different

property, which had expired in 2009.

On 8 November 2010, the Panel requested the following further information from the Respondent via the Provider:

***“From the Respondent:***

*Business Name Certificates for Bikram’s Yoga College of India and Solar Lotus Yoga (marked as attached on the original contract of sale); and*

*Documents evidencing the rights to the domain name www.bikramyoga.com.au (marked as attached on the original contract of sale)”*

On 9 November 2010, the Panel received a copy of the following documents from the Respondent via the Provider:

- A copy of the NSW Certificate of Registration of Business Name for Solar Lotus Yoga issued on 17 July 2006;
- A copy of the NSW Certificate of Registration of Business Name for Bikram’s Yoga College of India – Crows Nest issued on 31 July 2006; and
- A copy of the Certificate of Registration of .au Domain Name for <bikramyoga.com.au> registered to Aum Yoga Pty Ltd on 25 July 2010.

## 5.2 PROCEDURAL DEFICIENCY

### 5.2.1 INCORRECT RESPONDENT

Before discussing the substantial issues, the Panel refers to the complaint which states “Mark Reinierse” is the Respondent.

More importantly, the Panel confirmed that the Certificate of Registration of .au Domain Name for the Domain Name (which was provided by the Respondent) clearly indicates that the holder of the Domain Name is Aum Yoga Pty Ltd.

Thus, the Panel must discuss the critical issue of who is the “Respondent” in this complaint (as opposed to who the Respondent should have been).

Paragraph 1 of auDRP Rules provides the definition of the term “Respondent” as:

***“Respondent means the holder of a domain name registration against which a complaint is initiated.”***

It is the Complainant’s obligation to ensure all requirements under the auDRP are met when it brings a complaint in relation to a .au domain name. In this regard the Panel refers to paragraph 4.2 of the auDRP clearly states:

*“The complaint should ensure that they have read the entire auDRP and auDRP Rules at Schedules A and B of this document before filing their complaint. ...*

*The complaint must meet the requirements set out in Paragraph 3 of the auDRP Rules in Schedule B of this document, as well as any requirements detailed in the provider’s supplemental rules (available from the provider’s*

website).”

Paragraph 3(b)(v) of the auDRP Rules further requires the Complainant to provide the name of the Respondent as follows.

*“The complaint including any annexes shall be submitted in electronic form and shall provide the name of the Respondent (domain name holder) and all information (including any postal and email addresses and telephone and fax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the Provider to send the complaint as described in paragraph 2(a).”*

Clearly, a complaint must be made against the domain name holder and a complainant bears the responsibility for this. In this Complaint, the Complainant nominated “Mark Reinierse” as the Respondent but he is clearly not the Domain Name Holder.

The Panel thus finds that the complaint was not made in accordance with the auDRP, auDRP Rules and the Provider’s Supplementary Rules.

## 5.2.2 ONUS OF PROOF

Paragraph 4(a) of Schedule A of the auDRP provides that:

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

A complainant must therefore make out all elements under paragraph 4(a) of the auDRP in accordance with the auDRP Rules and the Provider’s Supplementary Rules. Once a complaint is made in accordance of the above Policy and Rules, the onus will be shifted to a respondent.

The Panel points to the Response, which was submitted by Aum Yoga Pty Ltd trading as Mantra Yoga. There is no evidence that it is being lodged by “Mark Reinierse” nor does the Response confirm that it is even being made on behalf of the named Respondent. (the nominee of the complaint). Nevertheless, the Panel accepted by the Statements contained therein the inference that it was in fact made on behalf of “Mark Reinierse” who surname was is spelt “Reymierse”.

In this regard, the Panel refers to the Contract for Sale which was entered into on 4 July 2006 between Porter’s Yoga Pty Limited and Aum Yoga Pty Ltd. The signature on the Contract appears to be that of an “M Reynierse”. From this the Panel concluded that the person named as the Respondent (“Mark Reinierse”) in the complaint is possibly a director and/or secretary of Aum Yoga Pty Ltd or at the very least authorised to sign the Contract on behalf of Aum Yoga Pty Ltd.

However, if “Mark Reynierse” is indeed a director and/or secretary of Aum Yoga Pty Ltd, he is not the Respondent pursuant to the auDRP Rules. The Panel notes that even if the Response supports that “Mark Reinierse” is a representative of Aum Yoga Pty Ltd (i.e. the Domain Name Holder) the evidence provided by the Respondent cannot be relied on by the Complainant in discharging its onus. The purpose of the Response is to rebut the Complainant’s claims. The onus of proof falls squarely on the complainant.

The Panel thus concludes that the Response does not therefore cure the deficiency of the complaint being brought against someone other than the Domain Name Holder.

### 5.2.3 ADMINISTRATIVE ERRORS

The Panel also reviewed all materials provided by the Provider so as to glean whether there were any administrative errors in relation to this Complaint due to the Procedural History provided that was.

Paragraph 4 of the auDRP Rules provides that:

- “(a) *The Provider shall review the complaint for administrative compliance with the Policy and these Rules and, if in compliance, shall send Written Notice of the complaint ...*
- (b) *If the Provider finds the complaint to be administratively deficient, it shall promptly notify the Complainant and the Respondent of the nature of the deficiencies identified. The Complainant shall have five (5) calendar days within which to correct any such deficiencies, after which the administrative proceeding will be deemed withdrawn without prejudice to submission of a different complaint by Complainant.”*

The Panel further refers to paragraph 5 of the Provider’s Supplementary Rules, which provides that:

- “(a) *Upon receipt of the complaint, LEADR’s Case Manager appointed shall within five (5) calendar days review the complaint for administrative compliance with the Policy, Rules and Supplemental Rules.*
- (b) *LEADR will advise the Complainant of any deficiencies within the application which must be rectified within five (5) calendar days as per Paragraph 4(b) of the Rules. ...”*

The terms “administrative compliance” or “administratively deficient” are not defined in the Policy and Rules under the auDRP, and the Provider’s Supplementary Rules. However, it is not the Provider’s obligation to check the accuracy of the party names on the complaint because that is beyond of the scope of “administrative” matters.

Even if this is interpreted as falling under the Provider’s responsibility which the Panel does not support, the Provider is protected by the exclusion clauses in paragraph 20 of the auDRP Rules and paragraph 15 of the LEADR’s Supplementary Rules (being except in the case of deliberate wrongdoing). Clearly, this is not applicable in this Complaint. The Complainant provided the applicable warranty to the Provider in the complaint upon which the Provider is entitled to rely.

The Panel also investigated whether there were any administrative errors made by the Registrar which could affect the outcome of this Complaint.

In an email of 16 September 2010, the Registrar advised the Provider (upon a request by the Provider to clarify that the Respondent is in fact the Registrant of the Domain Name as per the Rules) as follows.

*“The current Registrant contact details are we have on file are referred below:*

Mark Reynierse  
Aum Yoga Pty Ltd  
6/12 Boronia Street  
Wollstonecraft NSW 2065

Ph: 02 9436 1231

Fx: 02 9432 1234

Email: [petermulley@bigpond.com](mailto:petermulley@bigpond.com)”

The Panel notes that the Registrar did not refer to the fact that the Domain Name Holder was in fact Aum Yoga Pty Ltd (and not “Mark Reinierse”). Rather, it advised the Provider of the contact details of the Domain Name by way of confirmation, and that it would attend to locking the Domain Name. At this point the Registrar had not received the copy of the complaint because it stated in the email that:

*“As referred in our previous email, we did not receive any attached document...”*

After the Provider sent a copy of the complaint to the Registrar, the Registrar confirmed that the Domain Name was locked. Here the question arose as to how and (why) the Registrar locked the Domain Name, considering that the named Respondent is not the Domain Name Holder and moreover, the name of the Domain Name Holder (Aum Yoga Pty Ltd) did not appear in the complaint at all.

In relation to this, the Panel refers to paragraph 1.3 of auDRP – Clarification of Registrar Obligation (**Registrar Obligations Policy**) which provides that registrars are required to cooperate with the auDRP provider to ensure the efficiency and effectiveness of the proceeding.

Further, paragraph 2.2 of the Registrar Obligations Policy provides that:

*“On receipt of a copy of the auDRP complaint, the registrar must request AusRegistry to place a server lock on the domain name(s) in question”*

Even though there seems to be confusion on the Registrar’s part as “Mark Reynierse” is only listed as the domain contact person, the Registrar Obligations Policy does not clearly specify what the Registrar’s obligations are when it locks a domain name as requested by a Provider. Furthermore, paragraph 1.3 of the Registrar Obligations Policy provides that:

*“... the Registrar does not bear any liability for the outcome of the proceeding.”*

Therefore, the Panel notes that the Complainant is not entitled to make any claims against either the Provider or the Registrar as there was no deliberate wrongdoing in this case.

In conclusion, there was no administrative error that could affect the outcome of this complaint.

**6. Decision**

The Panel therefore finds that the complaint was not made in accordance with the Policy and Rules under the auDRP and the Complaint is accordingly dismissed.

Sara Delpopolo  
Sole Panellist

3 December 2010