



ADMINISTRATIVE PANEL DECISION

CruiseMart Pty Ltd v. Debretts Travel Services

Case No. LEADR-auDRP_12_06

<cruiseholidays.com.au>

1. THE PARTIES

The Complainant is CruiseMart Pty Ltd, represented by its Managing Director, Mr Les Farrar.

The Respondent is Debretts Travel Services, represented by Ms Denise Monk, CEO, Debretts Travel Trust.

2. THE DOMAIN NAME AND REGISTRAR

The disputed domain name <cruiseholidays.com.au> is registered with Melbourne IT Limited.

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 16 May 2012. On 18 May 2012, LEADR transmitted by email to Melbourne IT Limited a request for registrar verification in connection with the disputed domain name. On 21 May 2012, Melbourne IT Limited transmitted by email to LEADR its verification response. LEADR verified that the Complaint satisfied the formal requirements of the auDRP, the auDRP Rules and LEADR Supplemental Rules, and on 21 May 2012 notified .au Domain Administration Ltd and the Respondent of the Complaint.

In accordance with the auDRP Rules, the due date for Response was 10 June 2012. On 5 June 2012 the Respondent’s representative expressed an interest in submitting a Response but was unsure it would be completed in time. No Response was received by the due date.

On 14 June 2012, LEADR appointed Andrew F. Christie as the sole panelist in this matter. On 15 June 2012, the Panel issued Procedural Order No. 1, in which the Panel: (i) requested the Complainant to supply information about the franchise agreement referred to in the Complaint and about its assertion that the disputed domain name is not currently being utilised; and (ii) provided the Respondent with the opportunity to make a submission on any evidence provided by the Complainant by 21 June 2012.

On 16 June 2012 the Respondent requested an extension of time to file a Response. On 18 June 2012 the Panel issued Procedural Order No. 2, in which the Panel: (i) extended to 25 June 2012 the date by which the Respondent was permitted to make submissions on the assertions and evidence filed by the Complainant; and (ii) extended to 5 July 2012 the date by which the Panel would render a Decision.

The Respondent did not submit a Response by the revised due date. The Respondent did, however, send an email to LEADR on 28 June 2012.

4. FACTUAL BACKGROUND

The Complainant is a licensed international travel agent trading since November 2003. It is a cruise specialist with a national client base built up predominantly from use of its website. It operates two retail stores in South East Queensland.

The Complainant has signed a master franchise agreement with Travel Leaders Franchise Group, LLC of the United States of America, which is the owner of various trademarks, including an Australian trademark registration for a composite trademark containing the words CRUISE HOLIDAYS. The master franchise agreement provides the Complainant with the exclusive license to use, within Australia, the trademarks and the associated names, logos and business systems of Travel Leaders Franchise Group, LLC.

The Complainant has registered the business names CRUISE HOLIDAYS and CRUISE HOLIDAYS AUSTRALIA under the *Business Names Act 2002* (NSW). Its registration of the business name CRUISE HOLIDAYS is valid from 14 February 2012 to 14 February 2015, and its registration of the business name CRUISE HOLIDAYS AUSTRALIA is valid from 30 March 2012 to 30 March 2015.

The Respondent claims to have owned the disputed domain name for more than 14 years. It currently resolves to a parking page with automatically generated links to various websites, some of which appear to be unrelated to cruise holidays.

5. PARTIES' CONTENTIONS

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights because: (i) it is the registered owner of the business names CRUISE HOLIDAYS and CRUISE HOLIDAYS AUSTRALIA; and (ii) it is the exclusive licensee of an Australian registered composite trademark containing the words CRUISE HOLIDAYS, owned by Travel Leaders Franchise Group, LLC.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name because: (i) the disputed domain name “is not currently being utilised by any individual or company at the time of this application”; and (ii) the current registered holder of the disputed domain name once operated a licensed travel agency but is no longer actively involved in the travel industry. In its response to the Panel’s Procedural Order No. 1, the Complainant contends that the landing page of the website to which the disputed domain name resolves features links to various travel companies, none of which are associated with the registrant of the disputed domain name, and some of which have nothing to do with cruise holidays.

The Complainant contends that the disputed domain name has been registered or subsequently used in bad faith because, while the Respondent first registered the disputed domain name when holding the business name CRUISE HOLIDAYS, the Respondent no longer holds that business name registration.

B. Respondent

The Respondent did not file a Response by the extended due date.

In an email sent by the Respondent to LEADR on 28 June 2012, the Respondent asserted: (i) it has owned the disputed domain name for 14 years; (ii) until late 2010 it had used the disputed domain name to resolve to a website which “operated successfully as the cruise search engine and cruise finder”; (iii) in late 2010 “technology and management ... changed”; (iv) it is “currently working on a new platform and changing over IT companies and until it is all completed, we are unable to upload anything”; (v) “the new site has taken considerably longer than anticipated” but the Respondent has always had the intention of re-activating the site as a cruising website and is much closer to this now; (vi) the Complainant had enquired of the Respondent’s interest in selling the disputed domain name, to which the Respondent replied in the negative; (vii) the fact that the Complainant has now registered the business name CRUISE HOLIDAYS should not be of any consequence to the ownership of the disputed domain name; and (viii) the Respondent’s representative has spent more than 35 years in the travel industry, and has been a company owner and manager with more than 35 staff and more than \$35 million in turnover.

The Respondent did not provide any evidence to prove any of its claims.

6. DISCUSSION AND FINDINGS

A. Identical or Confusingly Similar

The Complainant is the exclusive licensee in Australia of the trademarks owned by Travel Leaders Franchise Group, LLC, which include an Australian registered composite trademark that contains the words CRUISE HOLIDAYS. The Complainant also holds current registrations of the business names CRUISE HOLIDAYS and CRUISE HOLIDAYS AUSTRALIA with the New South Wales Office of Fair Trading, pursuant to that State’s business names legislation.

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

B. Rights or Legitimate Interests

The Respondent is not a licensee of, or otherwise affiliated with, Travel Leaders Franchise Group, LLC, and has not been authorized by Travel Leaders Franchise Group, LLC to use any of its trademarks comprising or containing the words CRUISE HOLIDAYS. The Respondent is not called “Cruise Holidays”, and no longer holds a registration of the business name CRUISE HOLIDAYS. 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 “Cruise Holidays”.

The Respondent provided no evidence in support of its assertions that it had, until 2010, operated a “cruise search engine and cruise finder” using the disputed domain name. In any event, the Respondent acknowledged that no such website now operates. Currently, the disputed domain name resolves to a parking page with automatically generated links to various websites, some of which appear to be unrelated to cruise holidays and none of which appear to be connected to a business operated by the Respondent. According to the present record, the disputed domain name is not being used in connection with a *bona fide* offering of goods and services, or for a legitimate noncommercial or fair use.

The Complainant has made out a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name, and the Respondent has failed to rebut that case. Accordingly, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name. Thus, the Complainant has established the requirement of paragraph 4(a)(ii) of the auDRP.

C. Registered and Used in Bad Faith

The Respondent has used the disputed domain name to resolve to a parking page website with what appears to be pay-per-click links to various websites unconnected to the Respondent. In the context of the Panel’s findings that the disputed domain name is identical to a name in which the Complainant has rights, and that the Respondent has no rights or legitimate interests in the disputed domain name, the Panel is satisfied that this use of the disputed domain name is an intentional attempt to attract, for commercial gain, Internet users to a website by creating a likelihood of confusion with the Complainant’s name.

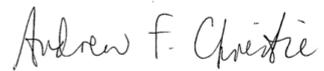
Under paragraph 4(b)(iv) of the auDRP, such a use of the disputed domain name is use in bad faith. Accordingly, the Panel finds that the Respondent has used the disputed domain name in bad faith. Thus, the Complainant has established the requirement of paragraph 4(a)(iii) of the auDRP.

D. Complainant’s Eligibility

Given the business name registrations held by the Complainant, the Complainant appears to satisfy the eligibility requirements for registration of the disputed domain name.

7. DECISION

For all the foregoing reasons, in accordance with paragraph 4(i) of the auDRP and paragraph 15 of the auDRP Rules, the Panel orders that the disputed domain name <cruiseholidays.com.au> be transferred to the Complainant.



Andrew F. Christie
Sole Panelist
Dated: 5 July 2012