

## **ADMINISTRATIVE PANEL DECISION**

### **GoodData Corporation v. Chris Gartlan**

### **Case No. DAU2023-0003**

#### **1. The Parties**

The Complainant is GoodData Corporation, United States of America, internally represented.

The Respondent is Chris Gartlan, Australia, self-represented.

#### **2. The Domain Name and Registrar**

The disputed domain name <gooddata.com.au> is registered with Web Address Registration Pty Ltd.

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 5, 2023. On January 10, 2023, the Center transmitted by email to Web Address Registration Pty Ltd a request for registrar verification in connection with the disputed domain name. On January 13, 2023, Web Address Registration Pty Ltd transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy” or “.auDRP”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 16, 2023. In accordance with the Rules, paragraph 5(a), the due date for Response was February 5, 2023. The Respondent did not submit any response by the due date. Accordingly, the Center notified the Respondent’s default on February 6, 2023. However, on the same day, the Respondent sent an email to the Center requesting an extension of the due date for the Response.

The Center appointed Matthew Kennedy as the sole panelist in this matter on February 10, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

Upon its appointment, the Panel issued Administrative Panel Procedural Order No. 1, in which it extended the due date for the Response until February 15, 2023, and granted the Complainant five calendar days to

reply to the Response. The due date for the Decision was extended by five calendar days. The Response, together with a correction, was received on February 15, 2023, and the Complainant's reply was received on February 18, 2023. On February 20, 2023, the Respondent requested an opportunity to submit a brief further reply and, on the same day, the Panel granted the Respondent two calendar days to do so. On February 28, 2023, the Respondent requested further time to submit his reply due to work travel commitments. On March 7, 2023, the Panel granted the Respondent until March 12, 2023, to submit a further reply, and extended the decision due date until March 18, 2023. On March 13, 2023, the Respondent submitted his further reply. On the same day, the Center received a communication from the Complainant.

#### **4. Factual Background**

The Complainant is a software company that provides data and analytics infrastructure, including embeddable analytics and composable data and analytics. It holds multiple Australian trademark registrations, including registration number 1485841 for GOODDATA, entered on the register on October 23, 2013, with effect from April 16, 2012, specifying certain application service provider services in class 42. That trademark registration remains current. The Complainant uses the domain name <gooddata.com> in connection with a website where it provides information about itself and its products.

The Respondent is the founder and director of Kato Solutions ("Kato"), which provides data, business intelligence, analytics and reporting solutions and services to customers. According to his LinkedIn profile, to which the Complainant made reference, his current roles are Founder, Director of Kato from February 2002 to the present, and Managing Director, GoodData from January 2013 to the present.

The Complainant and Kato entered into a distribution agreement on June 13, 2012 (the "Distribution Agreement") under which the Complainant granted Kato a license to use the Complainant's trademarks on a website and in mutually agreed-upon sales materials. Kato agreed not to adopt, use or file for any mark that was confusingly similar to the Complainant's marks, and not to adopt, use or register any mark, entity name, or domain name that contained the term "GoodData", subject to an exception regarding the company name "GoodData Pty Ltd". The Complainant and Kato later entered into a partner program agreement.

The disputed domain name was created on April 19, 2014, as verified by the Registrar.

The Complainant notified Kato of its non-renewal of their agreement by a notice dated August 31, 2018, that took effect from October 4, 2018. On October 5, 2018, while the Respondent was on family leave, the Complainant's general counsel sent an email to the Respondent's <gooddata.com> address advising that it was terminating access to its GoodData platform and requesting that he transition existing customers to the Complainant, discontinue use of the active site at the disputed domain name, transfer the registration of the disputed domain name to the Complainant within one week, and cease all further use of the Complainant's marks. On the same day, the Complainant's senior IT manager forwarded this email to the Respondent's <katosolutions.com> address, due to termination of his <gooddata.com> address, with a reminder regarding the disputed domain name transfer. Kato's customers then began reporting outages. On October 7, 2018, the Respondent replied from his <gooddata.com.au> address, requesting reinstatement of access and advising that Kato had various <gooddata.com>, <gooddata.com.au>, and <katosolutions.com> email addresses, each of which was a key admin for those of Kato's customers' projects that were using services provided by the Complainant. The Parties urgently corresponded with each other regarding the way to deal with the customer transition. Later, the Complainant acknowledged that the Respondent no longer had access to his <gooddata.com> email address.

The Respondent purchased the disputed domain name in 2019 from the original registrant, according to the Response. The disputed domain name redirects to the Complainant's domain name <gooddata.com>, which resolves to the Complainant's website.

## **5. Parties' Contentions**

### **A. Complainant**

The disputed domain name is identical to the Complainant's GOODDATA trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Distribution Agreement appointed Kato as an exclusive distributor of the Complainant's GoodData Platform but only granted Kato limited rights to use the GOODDATA trademark. Therefore, by registering, owning, and using the disputed domain name, the Respondent breached the terms of the Distribution Agreement, which did not grant the Respondent any rights or legitimate interests with respect to the use of the GOODDATA trademark in domain names.

The disputed domain name has been registered and is being used in bad faith. According to the Distribution Agreement, Kato expressly agreed not to adopt, use or register any domain name that contained the term "GoodData". Therefore, by registering, owning, and using the disputed domain name, the Respondent breached the terms of the Distribution Agreement and thus acted in bad faith. After the cooperation between the Complainant and Kato terminated, Kato was obligated to cease any use of GOODDATA trademarks or to further hold itself out as a representative of the Complainant. The Respondent registered the disputed domain name and renewed its registration, contrary to the Distribution Agreement. Moreover, the Respondent continues to represent himself as Managing Director of GoodData on his public LinkedIn profile. Given that the Complainant intends to strengthen its presence on the Australian market, it is in its commercial interest to take full control over the disputed domain name. However, the Respondent's unresponsiveness prevents the Complainant from doing so. The Complainant tried to contact the Respondent in order to reach a settlement but all attempts were unsuccessful. On May 4, 2021, the Complainant engaged a domain name broker to negotiate a possible transfer of the disputed domain name. On June 9, 2021, the broker informed the Complainant that the current owner of the disputed domain name had not responded to over a dozen attempts at contact via telephone, voicemail and email. On December 7, 2022, the Complainant contacted the Respondent directly via email seeking his cooperation regarding a transfer of the disputed domain name to the Complainant.

In its reply to the Response, the Complainant provides copies of emails to show that it reached out to the Respondent before filing the Complaint. The Complainant is not in position to determine based on available evidence whether the original registration of the disputed domain name by Kelvin Wee was opportunistic. However, the facts support a strong inference that the Respondent actively transferred the disputed domain name with knowledge of the Complainant's existing business and trademark registration. The Respondent participated in the partnership between the Complainant and Kato and knew, or should have known, of the use of the disputed domain name in connection with the Complainant's services and of the Complainant's Australian trademark registration for GOODDATA. The Respondent transferred the disputed domain name to himself one year after the Complainant's initial request for it without first contacting the Complainant and with knowledge of the Complainant's interest in the disputed domain name and the Complainant's registration of an identical trademark. In subsequent years, the Respondent never contacted the Complainant to discuss, or offer to transfer, the disputed domain name. A reasonable person would conclude that the Respondent transferred the disputed domain name opportunistically, with the intention of receiving a commercial benefit due to the Complainant's business interest in the disputed domain name. At this stage the Complainant perceives skeptically the Respondent's untimely offer to sell the disputed domain name in excess of the likely reasonable out-of-pocket costs of transfer of the disputed domain name. The Complainant believes that the Respondent's conduct and belated offers to sell on such terms only support the conclusion that the disputed domain name has been, and is being, used in bad faith.

### **B. Respondent**

The Respondent emphatically refutes the claim that the Complainant tried to contact him in order to reach a settlement. The first and only correspondence that the Respondent received from the Complainant regarding the disputed domain name was a copy of the Complaint.

Kelvin Wee registered the disputed domain name prior to any relationship with, or knowledge of, the Respondent, Kato, or GoodData Pty Ltd, prior to any knowledge of the Distribution Agreement, and prior to any Australian trademark registration by the Complainant. Kelvin Wee was a web developer sole trader at the time of registration of the disputed domain name; he approached Kato for a data analyst role in February 2013 and was engaged as a subcontractor with GoodData Pty Ltd until January 2017. In 2019, the Respondent was able to negotiate the transfer of this domain from Kelvin Wee across to himself as a private individual. The disputed domain name has never been used for any commercial website activity and has always redirected to the Complainant's website since the Respondent gained control and technical access to it in 2019. The Respondent purchased the disputed domain name with the sole purpose to ensure it was not sold to other interested local companies that had the words "Good Data" in their trading names and therefore could not be utilized by any third party in relation to the local clients that the Respondent has in the Asia-Pacific marketplace. The Respondent submits a list of other trading names in Australia for which the disputed domain name could be applicable. Neither the Respondent nor Kato was involved in the original registration of the disputed domain name nor has used it in any commercial capacity; it only came under the Respondent's personal control after the Distribution Agreement had ceased. No breach of the terms of the Distribution Agreement has occurred. The Respondent was not aware there was a dispute over the disputed domain name until he received the Complaint. Along with the Complainant's stated intent, the Respondent would also welcome the sale of the disputed domain name to the Complainant, for fair market value and consideration for the Respondent's expenses including his personal acquisition costs and the continued redirection to <gooddata.com>. The Respondent has acted in good faith with the disputed domain name at all times.

Neither the Respondent nor Kato registered, owned or used the disputed domain name whilst under the terms of the Distribution Agreement. In fact, it was not known that the disputed domain name was actually registered until a year after the Distribution Agreement had ceased. No bad faith usage of the disputed domain name has occurred, not currently nor in the past. The disputed domain name is parked; it has never had a website associated with it, and it has a redirect in place to the Complainant's website, which is maintained by the Respondent in an act of good faith and for zero commercial gain. The Complainant infers that Kato and the Respondent are in some way holding themselves out as representatives of the Complainant. This is not the case; the disputed domain name is not being used actively. The Respondent thanks the Complainant for bringing to his attention that his LinkedIn profile shows his GoodData role as current still. He is not a regular user of LinkedIn and was not aware that this role did not show a cessation date and will change it as soon as possible. The mentioned role was suggested by the Complainant's CEO in 2013. No updates have been made to that listing whereas Kato Founder and CEO show as the Respondent's current role. The Respondent fails to see how this is related to the disputed domain name. The disputed domain name was purchased locally in order to protect the business that Kato and the Respondent had built up and ensure it could not be used for incorrect purposes relating to the cessation of GoodData Pty Ltd. It is in no way being used for commercial gain and it does not affect the Complainant's Australian market presence.

The Respondent fails to see evidence where the Complainant has acted in the manner it has presented in the Complaint. No contact has been made to the Respondent ever by the Complainant regarding the disputed domain name until receipt of the Complaint. It feels like the Complaint, with its unsubstantiated claims and inferences that the Respondent has undertaken activities that breached the Distribution Agreement, is aimed at presenting a case and a range of suggestive behavior that puts undue pressure on the disputed domain name holder, all without any prior communication. The Respondent find this to be very strange behaviour by a large corporate enterprise that is almost Reverse Domain Name Hijacking, except that the Respondent would be okay with working through a sale option with the Complainant.

In his further reply, the Respondent alleges that the picture presented by the Complainant is an incomplete outline of the facts, and occurrences relating especially to the communications presented. Nothing has been breached by the Respondent. The disputed domain name was clearly not purchased for commercial gain and has never been used in bad faith. The disputed domain name was purchased by the Respondent from the original [registrant] in 2019 in order to protect the Respondent's business interests and its Australian customers. The Respondent continues to maintain that the disputed domain name was purchased locally in

order to protect the business that Kato and the Respondent had built up and ensure it could not be used for incorrect purposes relating to the cessation of GoodData Pty Ltd. It is in no way being used for commercial gain and does not affect the Complainant's market presence in the Australian market, as the disputed domain name has never been used as a website. To the Respondent's knowledge, the Complainant has no presence in Australia and does not have domain names in other countries.

The Complainant is providing a one-sided, manipulated interpretation of their limited recount of the events, contact points, their expense and communication attempts to purchase the domain from the current owner, who has purchased this domain legitimately from the original [registrant]. When the Complainant sent emails on October 5, 2018, it cut off all system access to its platform and access to its <gooddata.com> email. However, it continued to send emails to the Respondent's <gooddata.com> email addresses even though they were inaccessible by the Respondent and his staff. During the process of getting the Respondent's company and its major customers' mission-critical daily data back online, the only place that the disputed domain name was being used or referenced was for certain username access to the Complainant's platform. The Complainant's senior IT manager added the Respondent's <katosolutions.com> email address to the email thread because the Complainant's general counsel was continually sending emails to the Respondent's <gooddata.com> email address that had been cut off. No acknowledgement was provided to the Complainant regarding the disputed domain name because the email had not been received from the Complainant's general counsel, nor was it read or actioned due to the major customer outages occurring at that point in time. The Respondent did not receive the Complainant's email of October 8, 2022, because it was sent to an email address that is not active. The Respondent replied to the notification of Complaint because it was sent to his <katosolutions.com> email address.

The Complainant is presenting a false position that extreme effort and cost was undertaken for it to purchase the disputed domain name from the Respondent after he purchased it from the original registrant. However, the Complainant has produced one email from October 2018 forwarded to the Respondent's <katosolutions.com> address relating to the disputed domain name. No further communication attempts, records of phone calls, meetings, discussions of any type have been put forward of supporting evidence showing the Complainant's efforts to directly resolve the matter. The domain name broker engaged by the Complainant did not confirm who was the owner that it contacted nor what contact information was used.

## **6. Discussion and Findings**

### **6.1. Preliminary Issues**

#### **A. Identity of the Respondent**

Paragraph 1 of the Rules defines the Respondent as "the registered holder of a domain name against which a complaint is initiated". The Complaint was initiated against Kelvin Wee and Chris Gartlan. However, Web Address Registration Pty Ltd verified that the registrant name of the disputed domain name is Chris Gartlan, even though Kelvin Wee trading as Trigger Solutions also appears in the public Whois database record. The Response was filed by Chris Gartlan, who clarified that Mr. Wee created the disputed domain name and later transferred it to him. Accordingly, the Panel finds that the proper Respondent in this dispute is Chris Gartlan (referred to in this Decision as the "Respondent").

#### **B. Late Submission of the Respondent's Further Reply**

The Complainant notes that the Respondent's further reply was received after midnight on March 13, 2023, and asks whether the Panel will accept or consider it in this Decision. The Respondent alleged that his further reply was "sent across on End of Day March 12, 2023".

Paragraph 10(a) of the Rules provides that "[t]he Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules". Further, paragraph

10(b) of the Rules provides that “[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case”.

The Panel notes that the due date for submission of the Respondent’s further reply was extended to March 12, 2023, at the request of the Respondent, and that the Respondent failed to comply with that deadline. However, given that (i) the Complainant has already submitted a reply to the Response; (ii) the Respondent’s further reply partly addresses newly presented factual allegations; (iii) the Respondent’s further reply was late only by a matter of hours (it was received by the Center at 5:30am, Central European Time); and (iv) accepting the Respondent’s further reply does not prejudice either Party; the Panel exercises its discretion to accept the Respondent’s further reply and will consider it according to its relevance, materiality and weight.

## 6.2. Substantive Issues

Paragraph 4(a) of the auDRP provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered or subsequently used in bad faith.

The burden of proof of each element is borne by the Complainant.

### A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the GOODDATA mark.

The disputed domain name wholly incorporates the GOODDATA mark. Its only additional element is the open Second-Level Domain (“2LD”) extension “.com.au”. This element may be disregarded in a comparison between the disputed domain name and the trademark for the purposes of the first element of paragraph 4(a) of the auDRP. See *BT Financial Group Pty Limited v. Basketball Times Pty Ltd*, WIPO Case No. [DAU2004-0001](#).

Therefore, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the auDRP.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the auDRP sets out circumstances which, without limitation, if found by the Panel to be proven based on its evaluation of all evidence presented, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the auDRP:

- (i) before any notice to [the respondent] of the subject matter of the dispute, [the respondent's] *bona fide* use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with an offering of goods or services (not being the offering of domain names that [the respondent has] acquired for the purpose of selling, renting or otherwise transferring); or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or

- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Given that the second element of paragraph 4(a) of the auDRP is expressed in the present tense, the Panel will assess the existence of rights and legitimate interests in light of circumstances prevailing at the time of filing of the Complaint.

As regards the first circumstance set out above, the disputed domain name redirects to the Complainant's website. The disputed domain name consists only of the Complainant's GOODDATA mark and a 2LD extension, which creates a high risk of implied affiliation with the Complainant. Yet the Respondent's company is no longer the Complainant's distributor. Regardless of its use in email addresses, in the Panel's view, the redirection of the disputed domain name is likely to mislead Internet users into believing that it is still affiliated with the Complainant's business. In the Panel's view, this is not a use in connection with a *bona fide* offering of goods or services that would create rights or legitimate interests for the purposes of the auDRP.

As regards the second circumstance set out above, the Respondent's name is Chris Gartlan and his company is named Kato Solutions Pty Ltd, not the disputed domain name. Although it appears that one of his companies was formerly named GoodData Pty Ltd, the evidence on the record is not sufficient to find that the Respondent (as an individual, business or organization) has been commonly known by the disputed domain name.

As regards the third circumstance set out above, the disputed domain name redirects to a commercial website. That is not a noncommercial or fair use of the disputed domain name.

Based on the above, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Turning to the Respondent's arguments, he alleges that his company currently provides full-service management to data products that utilize the Complainant's platform and that the Parties and their respective support staff work together on a regular basis. The Panel takes note that termination of the Parties' agreement did not apparently terminate the rights of customers to use the Complainant's platform nor the Respondent's company's right to continue to support its existing customers. However, that does not create an entitlement for the Respondent to use a domain name identical to the Complainant's mark which creates a high risk of implied affiliation with the Complainant, when the Respondent no longer has such an affiliation. Accordingly, the Panel finds that the Respondent has not rebutted the Complainant's *prima facie* case.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has satisfied the second element in paragraph 4(a) of the auDRP.

### **C. Registered or Subsequently Used in Bad Faith**

The third element of paragraph 4(a) of the auDRP contains two requirements that apply disjunctively. It suffices for the Complainant to demonstrate either that the disputed domain name has been registered in bad faith, or that it has subsequently been used in bad faith, but not necessarily both.

Paragraph 4(b) of the auDRP provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration or use of a domain name in bad faith, although it is not an exhaustive list of such circumstances. The first and second circumstances are as follows:

- (i) circumstances indicating that [the respondent has] registered or [the respondent has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] domain name registration to another person for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or
- (ii) [the respondent] has registered the [disputed] domain name in order to prevent the owner of a name, trademark or service mark from reflecting that name or mark in a corresponding domain name.

As regards registration, bad faith is assessed as at the time when the current registrant acquired the disputed domain name. The Respondent submits that he acquired the disputed domain name in 2019. This was after the registration of the Complainant's Australian trademark in 2013. At that time, the Respondent had actual knowledge of the Complainant and its GOODDATA trademark because he had been CEO of the Complainant's authorized Australian distributor from 2012 to 2018. The disputed domain name contains only the Complainant's GOODDATA mark and a 2LD extension. In view of these circumstances, the Panel finds that the Respondent had the Complainant's mark specifically in mind when he acquired the disputed domain name.

The Respondent notes that the disputed domain name was created by Kelvin Wee and argues that this occurred prior to Mr. Wee having any knowledge of the Respondent, Kato, the Complainant or the Complainant's mark. However, Mr. Wee's state of knowledge is not relevant because he is not the current registrant. In any case, the disputed domain name was created in 2014, after Mr. Wee allegedly approached Kato, which was the Complainant's distributor at the time.

The Respondent submits that he did not breach the Distribution Agreement when he acquired the disputed domain name from Mr. Wee. Indeed, the Panel notes that the agreement between the Complainant and Kato was no longer in force at the time of that transfer in 2019. However, this does not assist the Respondent because he has demonstrated no entitlement to register the disputed domain name consisting only of the Complainant's mark and a 2LD extension. Although the Panel gathers from communications between the Parties that the Complainant may have tolerated the registration and use of the disputed domain name while it had an agreement in place with Kato, the Complainant expressly requested a transfer of the registration to itself when that agreement terminated in its email to the Respondent of October 5, 2018. While that email was initially sent to an address to which the Respondent no longer had access, it was forwarded by another employee of the Complainant on the same day to one of the Respondent's active email addresses, with a reminder regarding the disputed domain name transfer. Despite the Respondent's denial, it is clear that these emails were received and read because the Respondent replied to them two days later. Nothing in the record shows that the Complainant later withdrew its request for a transfer of the disputed domain name to itself, even if the Respondent prioritized the issue of customer transition. Based on the written communications on record, the Panel has reason to find that the Respondent was aware from that point on that the Complainant did not consent to the continued registration of the disputed domain name by any party other than itself. Despite this, the Respondent proceeded to acquire the registration in his own name.

As regards use, the Complainant submits that the Respondent's holding of the disputed domain name prevents it from taking full control over the disputed domain name and strengthening its presence on the Australian market. The Panel notes that the disputed domain name consists only of the Complainant's GOODDATA mark and the ".com.au" 2LD extension and thereby has the effect of preventing the Complainant from registering its mark in that 2LD. The Respondent submits that his sole purpose in purchasing the disputed domain name was to ensure that it was not sold to other interested local companies that had the words "Good Data" in their trading names and therefore could not be utilized by any third party in relation to the local clients that the Respondent has in the Asia-Pacific marketplace. However, if that was the Respondent's purpose, he could have achieved it by transferring the disputed domain name to the GOODDATA trademark owner, *i.e.*, the Complainant, instead of himself. Nothing indicates that the Complainant is ineligible to hold the disputed domain name in the ".com.au" 2LD. Nor is it clear how the



Respondent's holding of the disputed domain name protected Kato's business when it was no longer entitled to use the GOODDATA mark and was later to cease trading as GoodData Pty Ltd. Given the findings in Section 6.2B above and the Respondent's position as CEO of the Complainant's former Australian distributor, there is a strong inference that, while he claims to have acquired the disputed domain name as a defensive measure against other interested parties, it was the Complainant that he primarily sought to prevent from reflecting its trademark in the ".com.au" 2LD.

The Respondent argues that Kato still provides full-service management to a major customer's data product that uses the Complainant's platform, and that the Parties' respective support staff work closely together. However, given that Kato is no longer affiliated with the Complainant and that the Complainant does not consent to third party control of the disputed domain name, Kato's continued interaction with the Complainant in providing customer support creates no entitlement for the Respondent to hold a domain name that creates a high risk of implied affiliation by consisting only of the Complainant's trademark and a 2LD extension. The evidence on record does not show that the Parties' respective support staff's ongoing interaction has given the Respondent reason to believe that the Complainant consented to his use of its trademark or the disputed domain name. The fact that the Respondent uses the disputed domain name to redirect to the Complainant's own website offers no justification either, as the Respondent's continued holding of the disputed domain name prevents the Complainant from exercising control and using the disputed domain name in any other way that it may wish to do, including entering or expanding in the Australian market without the Respondent's involvement. The disputed domain name is not passively held because it redirects to an active website but, even if it were passively held, that would not preclude a finding of bad faith use under the auDRP. See *Produits Berger v. Lay Tee Ong*, WIPO Case No. [DAU2004-0008](#), citing *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

In view of these circumstances, the Panel is persuaded that the Respondent has acquired the disputed domain name in order to prevent the Complainant from reflecting its GOODDATA mark in the corresponding domain as envisaged by paragraph 4(b)(ii) of the auDRP.

The Panel takes note that the Respondent stated in the Response that he would welcome the sale of the disputed domain name for fair market value and consideration for the Respondent's expenses including his personal acquisition costs and the redirection. These terms, taken as a whole, indicate that the Respondent envisages a price likely to be in excess of his out-of-pocket costs directly related to the disputed domain name. However, in the circumstances of this case described above, it is not clear that this was his primary purpose when he acquired the disputed domain name in 2019, as envisaged in paragraph 4(b)(i) of the auDRP.

For the above reasons, the Panel finds that the Respondent has registered and subsequently used the disputed domain name in bad faith. The Complainant has satisfied the third element of paragraph 4(a) of the auDRP.

#### **D. Reverse Domain Name Hijacking**

The Respondent alleges that the Complainant's behaviour is almost Reverse Domain Name Hijacking. The Complainant strongly disagrees and submits that this allegation is unsubstantiated.

As the Panel has upheld the Complaint, the Panel does not consider that it was brought in bad faith either as an attempt at Reverse Domain Name Hijacking or otherwise. While the Complainant originally alleged breaches of the Distribution Agreement, it did so prior to the disclosure that the current registrant, the Respondent, acquired the disputed domain name when that agreement was no longer in force.

## 7. Decision

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

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: March 13, 2023