

ADMINISTRATIVE PANEL DECISION

Super Mall Pty. Ltd. (ACN 089 188 027) as trustee for Saving Point Unit Trust
v. Lateral Consulting and Advisory Group Pty Ltd
Case No. DAU2025-0026

1. The Parties

The Complainant is Super Mall Pty. Ltd. (ACN 089 188 027) as trustee for Saving Point Unit Trust, Australia, internally represented.

The Respondent is Lateral Consulting and Advisory Group Pty Ltd, Australia, internally represented.

2. The Domain Name and Registrar

The disputed domain name <nexuspoint.com.au> is registered with GoDaddy.com, LLC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2025. On July 1, 2025, the Center transmitted by email to GoDaddy.com, LLC a request for registrar verification in connection with the disputed domain name. On the same day, GoDaddy.com, LLC 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”), 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 July 3, 2025. In accordance with the Rules, paragraph 5(a), the due date for Response was July 23, 2025. The Response was filed with the Center on July 20, 2025.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on July 31, 2025. 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.

Following the filing of the Response, there was an exchange of correspondence between the Respondent, the Complainant and the Center on July 20, 21, 22, and 24, 2025. The exchange included several “without prejudice” settlement proposals and counter proposals. It culminated in the Complainant submitting an unsolicited supplemental filing on July 22, 2025 followed by the Respondent’s unsolicited supplemental filing in reply later that same day.

4. Factual Background

The Complainant is an Australian business which, according to the Complaint, provides freight, customs and supply-chain advisory services across Australia.

The following chronology is largely drawn from the documents filed by the Parties:

On June 19, 2020, the Respondent was incorporated.

On November 25, 2022, the Respondent registered the disputed domain name.

On March 14, 2023, the three directors and shareholders of the Respondent incorporated Nexus Point Group Pty Ltd (ABN 74 666 440 580).

On September 9, 2024, the Complainant filed Australian Trade mark Application Number 2479317, NEXUS POINT, for services in International Classes 35 and 36 for a wide range of what may be described as accounting, tax advisory and financial consulting and investment services. The trade mark was subsequently registered on April 17, 2025 and takes effect from September 9, 2024.

On May 29, 2025, the Complainant lodged an eligibility complaint with GoDaddy.com, LLC (the Registrar) under the .au Domain Administration Licensing Rules (“the Licensing Rules”). That complaint appears to have been unsuccessful and the Complainant has chosen to pursue this Complaint under the Policy.

The disputed domain name has not resolved to an active website. However, the Response includes evidence which, according to the Response, shows that a dedicated website for use with the disputed domain name is being developed on the Wix platform. The date that this development work started has not been indicated.

The Response also includes email correspondence consisting of two emails – the first on March 17, 2023 and the second on May 3, 2023 – with a party whose identity has been redacted in which the Respondent, or a closely associated entity, provided a Price & Inventory Management Service Proposal under the name “Nexus Point”.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a name, trade mark 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.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that the Panel deems applicable.

Apart from documents requested by the Panel pursuant to paragraph 12 of the Rules, neither the Policy nor the Rules expressly provide for supplemental filings. Their admissibility is therefore in the discretion of the Panel bearing in mind the requirements under paragraph 10 of the Rules to ensure that the proceeding is conducted with due expedition and both parties are treated equally, with each party being given a fair opportunity to present its case.

To support its unsolicited supplemental filing, the Complainant relies largely on the “without prejudice” settlement proposals as part of its bad faith case. It also addresses the disclosure of the Respondent’s related body corporate, Nexus Point Group Pty Ltd. Both supplemental filings were received by the Center before the Panel’s appointment so the disruption to the efficient conduct of the proceedings is not as significant as it might otherwise have been. Admitting the Complainant’s supplemental filing means fairness requires admission of the Respondent’s reply. Accordingly, to ensure that the proceeding is dealt with on the basis of the issues disclosed in the materials before the Panel, the Panel will admit both supplemental filings.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant’s name, trade mark or service mark.

In this case, the Complainant has proven ownership of the Australian registered trade mark for NEXUS POINT.

In comparing the disputed domain name to this trade mark, all that is required is simply a visual and aural comparison and assessment of the disputed domain name itself to the Complainant’s trade marks: see for example, *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd.*, WIPO Case No. [DAU2002-0001](#). This test is narrower than and thus different to the question of “likelihood of confusion” under trade mark law which can require an assessment of the nature of the goods or services protected and those for which any impugned use is involved, geographical location or timing. Such matters, if relevant however, may fall for consideration under the other elements of the Policy.

Typically and as is appropriate in this case, it is permissible to disregard the country code Top Level Domain (ccTLD), “.au”, and the second-level domain, “.com”, as functional components of the domain naming system. See for example auDA Overview of Panel Views on Selected auDRP Questions Second Edition (“auDRP Overview 2.0”), section 1.11 and, for example, *Clarins v Netlocal Consulting Pty Ltd*, WIPO Case No. [DAU2023-0016](#).

Disregarding the “.com.au” domain, the disputed domain name consists of the Complainant’s registered trade mark. Accordingly, the Panel finds that the disputed domain name is identical to the Complainant’s trade mark and the Complainant has established the first requirement under the Policy.

B. Registered or Subsequently Used in Bad Faith

In the circumstances of this case, it is appropriate to consider next the third requirement under the Policy.

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been either registered or subsequently used in bad faith by the Respondent. In contrast to the Uniform Domain Name Dispute Resolution Policy, the requirements of registration or use are disjunctive. It is necessary for the Complainant to establish only one or the other. auDA Overview 2.0, section 3.1.

Paragraph 4(b) of the Policy provides that:

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to another person for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of a name, trade mark or service mark from reflecting that name or mark in a corresponding domain name; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business or activities of another person; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that website or location or of a product or service on that website or location; or

(v) if any of your representations or warranties as to eligibility or third party rights given on application or renewal are, or subsequently become, false or misleading in any manner.

The instances of bad faith set out in paragraph 4(b) of the Policy are examples only, intended to illustrate types of conduct which are caught by the Policy. See auDA Overview 2.0, section 3.1.6.

The Complainant advances four bases on which it contends the Panel should find registration or use in bad faith. First, the Complainant relies on the passive holding of the disputed domain name, contending that the single proposal evidencing use does not constitute genuine use. Secondly, the Complainant points out that the registration of the disputed domain name in the Respondent's name prevents the Complainant from registering it and so disrupts its business operations and marketing efforts. Thirdly, the Complainant contends that the Respondent was not, and is not, eligible to register the disputed domain name under the Licensing Rules. Fourthly, the Complainant characterises the offer to transfer the disputed domain name for the price claimed in the "without prejudice" settlement negotiations as exorbitant and a calculated attempt to trade on the value of the disputed domain name through its resemblance to the Complainant's trade mark.

The first problem the Complainant encounters is that the disputed domain name was registered almost two years before the Complainant applied to register its trade mark. There is also no evidence before the Panel that the Complainant had used its trade mark before making the trade mark application or that the Complainant's plans somehow became known by the Respondent before the Respondent registered the disputed domain name. See for contrary situations, e.g. *OneQode IP Pty Ltd v. Dillon Firrell, Energy Information Technology Pty Ltd*, WIPO Case No. [DAU2022-0005](#) and *Konica Corporation, Minolta Kabushiki Kaisha aka Minolta Co., Ltd. v. IC*, WIPO Case No. [D2003-0112](#). That excludes the circumstances in at least paragraph 4(b)(ii) and (iii) of the Policy and, subject to what follows, paragraph 4(b)(i).

Next it is appropriate to consider paragraph 4(b)(v) of the Policy. When it registered the disputed domain name, the Respondent represented that it met the eligibility requirements under the Licensing Rules: clause 2.10.1(2). Correspondingly, when it submitted the Respondent's application to .au Domain Administration, the Registrar represented it was satisfied the Respondent met the eligibility requirements: clause 2.3.1. The information before the Panel does not indicate the basis on which the Registrar was so satisfied.

For present purposes, clause 2.4 "Eligibility and Allocation Criteria" of the Licensing Rules requires a person applying for a licence to a domain name in the ".au" domain space:

1. To have an Australian Presence (defined in clause 1 to include a company registered under the Corporations Act); and
2. To satisfy any eligibility and allocation criteria for the relevant namespace – here, ".com.au".

As an Australian proprietary company registered under the Corporations Act, the Respondent facially satisfies the Australian Presence requirement. The eligibility requirements for the “.com.au” namespace specified in clause 2.4.4 of the Licensing Rules, therefore, require the Respondent to be a commercial entity (which it is as a company registered under the Corporations Act) and the disputed domain name to be:

- “(a) a Match of the Person’s company, business, statutory or Personal name; or
- (b) an Acronym of the Person’s company, business, statutory or Personal name; or
- (c) a Match of the Person’s Australian Trade Mark; or
- (d) a Match to or an Acronym of a name of a Related Australian Body Corporate or
- (e) a Match or an Acronym of a name of:
 - (i) a partnership of which the Person is a partner;
 - (ii) a trust of which the Person is a trustee; or
- (f) a Match or Synonym of the name of:
 - (i) a Service that the Person provides;
 - (ii) Goods that the Person sells (whether retail or wholesale);
 - (iii) an event that the Person registers or sponsors;
 - (iv) an activity that the Person facilitates, teaches or trains;
 - (v) premises which the Person operates and which that Person is providing at the time of the application.”

Clause 2.4.5 further provides that a registrant which relies on an Australian Trade Mark to establish an Australian Presence must register an exact match to the Australian Trade Mark.

For present purposes, it is sufficient to note from the definitions in clause 1 that the disputed domain name will be “Match” for the Respondent’s name if it is identical to one, some or all of the words or numbers used in the Respondent’s name and in the same order and an “Acronym” is an abbreviation formed from the initial letters of the relevant name. In addition, “Australian Trade Mark” means “a pending trade mark application or a registered trade mark that appears on IP Australia’s trade mark database” which, it appears, may be presented in roman or non-roman characters.

The Respondent contends it satisfies the eligibility requirements through clause 2.4.5.

The first difficulty is that neither the posited use of sending the proposal nor Nexus Point Group Pty Ltd itself existed when the Respondent registered the disputed domain name. Of course, the Panel recognises that both occurred within a relatively short time of registration of the disputed domain name – approximately four months.

Secondly, there is no evidence before the Panel that either the Respondent or Nexus Point Group Pty Ltd has registered NEXUS POINT as a trade mark or applied to register it.

Thirdly, it is not entirely clear from the Response and the materials submitted with it whether the Price & Inventory Management Service proposal was sent by the Respondent or Nexus Point Group Pty Ltd. The emails sent to the prospective client in March and May 2023 and to which the “Nexus Point” pricing brochure was attached were sent on signature blocks identifying the Respondent as the sender, not Nexus Point Group Pty Ltd. The front page features a “logo”: “NEXUS POINT A developer-centric sales approach”

and beneath that is the website “www.nexuspoint.com.au” although it is common ground the website was not active. The proposal does include an organizational chart or flow chart identifying certain individuals as being from “Nexus Point”. On the basis of the sending of the emails, therefore, it could be that the Respondent was using the term “Nexus Point”.

The Respondent appears to contend, however, that the proposals were sent by Nexus Point Group Pty Ltd and it is also developing the website. In that connection, the Respondent points out that each of its directors and shareholders are also all the directors and shareholders of Nexus Point Group Pty Ltd.

If the user was in fact Nexus Point Group Pty Ltd, the close corporate connection between the two from their common directorships and shareholders would not appear formally to satisfy the requirements of the Policy. The Licensing Rules define a Related Australian Body Corporate as a related body corporate within the meaning of section 50 of the Corporations Act 2001 (Cth).

Unlike the definition of “related entity” in section 9 of the Corporations Act (which does appear to cover the relationship between the two companies), the definition of “related body corporate” in section 50 is very narrow. Section 50 provides:¹

“Where a body corporate is:

- (a) a holding company of another body corporate; or
- (b) a subsidiary of another body corporate; or
- (c) a subsidiary of a holding company of another body corporate;

the first-mentioned body and the other body are related to each other.”

In general terms, this requires that one or other company must hold more than half the shares in the other company, or control the composition of the other company’s board of directors or control a company which has those powers over the other company. That is, the fact that both companies have the same directors and same natural persons as the shareholders does not qualify them as related bodies corporate under the definition.

Accordingly, even after the incorporation of Nexus Point Group Pty Ltd and on the assumption that the proposal and website were that company’s, the Respondent does not appear formally to meet the eligibility requirements.

Paragraph 4(b)(v) is expressed to be evidence of bad faith registration or use. It can be, and often is, powerful evidence of bad faith for the purposes of the Policy that the registrant is, or does not appear to be, eligible to hold the disputed domain name under the Policy. It is not in itself, however, necessarily conclusive.

In the decisions under the Policy since the Licensing Rules came into force where a respondent’s ineligibility under the Licensing Rules has been a factor, the prior panels also found that the respondent had been targeting the complainant’s trade mark. See e.g. *Discovery Holiday Parks Pty Ltd v. B2B Network Pty Ltd*, WIPO Case No [DAU2021-0027](#), and *OneQode IP Pty Ltd v. Dillon Firrell, Energy Information Technology Pty Ltd*, supra.

Conversely, in decisions under the former eligibility rules, panels were prepared to waive eligibility non-compliance in the absence of evidence of targeting a complainant or its trade mark. See e.g. *Three Best Rated Pty Ltd v. Signature Profit LLC*, WIPO Case No. [DAU2020-0006](#) and *Lance John Picton v. KK Factory Seconds Online / Dean James Mackin*, WIPO Case No. [DAU2007-0005](#).

¹See “<https://jade.io/article/216652/section/298>”.

While the regime under the Licensing Rules has been clarified to promote objectivity and transparency, the severity of the consequences of non-compliance have also been modified to an extent by the introduction of a power of suspension, not just cancellation, in recognition of the importance of domain names to the ability of a business to participate in the digital economy.² So, amongst other things, clause 2.16.4 provides that a licence will be suspended (not cancelled) where the registrant has not complied with the Licensing Rules and the compliance is not of a severity that warrants cancellation of the licence. In that case, the registrant has 30 days to rectify the non-compliance in default of which the licence will be cancelled: clauses 2.16.6 and 2.16.7. In addition, even where a licence has been cancelled, clause 2.16.12 reserves to .au Domain Administration the right to restore a licence where a new licence has not been issued to another person.

Bearing in mind the dates when the disputed domain name was registered, Nexus Point Group Pty Ltd was incorporated and the proposals to the prospective customer, the element of targeting the Complainant or its trade mark or otherwise seeking to interfere with the Complainant's exercise of its trade mark is not and (on the evidence before the Panel) cannot be present in this case at least at the stage of registration.

Accordingly, in the circumstances of this case, the Panel is not prepared to find that the disputed domain name was registered in bad faith.

As noted above, however, that is not an end to the matter as the Complainant may succeed if it can show that the disputed domain name has been used in bad faith.

In that connection, the Complainant's contentions regarding passive holding and the settlement offer to transfer the disputed domain name for a sum larger than the out-of-pocket expenses in registering it are particularly relevant.

Under the UDRP, panels have been prepared to have regard to settlement offers in such circumstances in considering issues of bad faith. See e.g. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 3.10. auDA Overview 2.0, section 3.10 takes a similar position although, arguably, the decisions on this issue are less clear because it is clear that genuine settlement offers would not be admissible in court proceedings.

An offer to transfer the disputed domain name for a sum greater than out-of-pocket expenses can be evidence of use in bad faith as it can reveal an intention to take advantage of the Complainant's rights or reputation in its trade mark. The sum proposed in this case, AUD 16,500 (GST included) could satisfy that criterion.

It would almost certainly do so in cases where a respondent had no rights to the domain name or an underlying trade mark which was reflected in the domain name. The analysis would be different, however, where a respondent had rights in the domain name or the underlying trade mark. Such a respondent could legitimately seek whatever price it considered appropriate.

The facts in the present case do not fit squarely within the second situation described above as, for the reasons already given, it appears the Respondent would not itself be eligible to hold the disputed domain name under the Policy. On the other hand, the associated company, Nexus Point Group Pty Ltd, a related entity, is at least prima facie entitled to be registered as the holder of the disputed domain name on the grounds of both first registration of the disputed domain name and first use of the trade mark for that company's services.

In that connection, Australian trade mark law vests entitlement to a trade mark in relation to particular goods or services in the "author" of that trade mark. The "author" is the first person to use the trade mark in good faith in connection with those goods or services (or the same kind of thing). Alternatively, if there has been no use in respect of the relevant goods or services, the "author" is the first in time to apply to register the

² *Explanatory Guide: .au Domain Administration Rules – Licensing* published by .au Domain Administration in conjunction with the adoption of the Licensing Rules. Pp. 35 – 36.

trade mark for those goods or services. See for example the summary in *Hemmes Trading Pty Limited v Establishment 203 Pty Ltd* [2024] FCA 1100; 179 IPR 315 at [28] (Jackman J).

The use must be in good faith. The Complainant challenges this on the basis of the very limited use: providing a proposal by reference to NEXUS POINT on only one or, perhaps, two occasions in March and May 2023 and the draft website.

The Respondent has not indicated whether there has been other use of the trade mark, either by itself or by its related entity Nexus Point Group Pty Ltd. Nor has the Respondent offered any explanation for the lapse of time since May 2023 or progress in developing the website.

Generally, a charge that demonstrated use is not in good faith requires a showing that the use was not intended to be part of or result in a profit-making enterprise or was otherwise a colourable attempt to take advantage of, or abuse, some other person's trade mark. However, neither the Policy nor trade mark law in Australia requires use on a scale to generate reputation in the sign to qualify as genuine use and very slight use indeed can be sufficient to establish trade mark rights. In trade mark law, for example, a single use in good faith has been found sufficient. See e.g. *Thunderbird Products Corporation v Thunderbird Marine Products Pty Ltd* (1974) 131 CLR 592 at 601–2 (Jacobs J).

Each case of course depends on its own facts. In the present case, the Panel is not prepared to infer that the use which has been put forward was not in good faith. Acknowledging that the evidence of use or, in the case of the website, preparations for use is very limited, there cannot be any suggestion that the use in March and May 2023 was in some attempt to take advantage of the Complainant's trade mark or forestall the Complainant from registering the disputed domain name.

In these circumstances, it appears that Nexus Point Group Pty Ltd is legitimately entitled to claim ownership of the trade mark for the services it was apparently offering to provide. Given that and the very close relationship between the Respondent and Nexus Point Group Pty Ltd, the Panel considers the Respondent cannot be impugned for asking the price it proposed to transfer rights to the disputed domain name.

Accordingly, the Panel is not prepared to find that the Respondent registered or subsequently used the disputed domain name in bad faith.

Therefore, the Complainant has not established the third requirement under the Policy and cannot establish all three requirements under the Policy.

C. Rights or Legitimate Interests

As the Complainant cannot establish all three requirements under the Policy, no good purpose would be served by considering the second requirement under the Policy.

6. Decision

For all the foregoing reasons, the Complaint is denied.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: August 21, 2025