

## **ADMINISTRATIVE PANEL DECISION**

QSA Brands Pty Ltd. v. Domain Administrator, Internet Service Consultants Pty Ltd.

Case No. DAU2022-0008

### **1. The Parties**

The Complainant is QSA Brands Pty Ltd., Australia, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Domain Administrator, Internet Service Consultants Pty Ltd., Australia.

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

The disputed domain names <questeastmelbourne.com.au>, <questonkingwilliam.com.au>, <queststkildabayside.com.au>, and <questtownsville.com.au> are registered with Domain Directors Pty Ltd (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 27, 2022. On April 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 9, 2022, the Registrar 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 May 10, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was May 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 7, 2022.

The Center appointed Alistair Payne as the sole panelist in this matter on June 21, 2022. 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.

#### 4. Factual Background

The Complainant operates serviced apartment facilities under a franchise model in Australia and in several other countries under the QUEST mark. It owns various trade mark registrations in Australia and internationally for the QUEST mark including Australian trade mark registration 705835 dated April 3, 1996. The Complainant's primary website is at "www.questapartments.com.au".

The disputed domain names were registered on the following dates: <queststkildabayside.com.au> - October 26, 2021; <questtownsville.com.au> - October 26, 2021; <questonkingwilliam.com.au> - October 29, 2021; <questeastmelbourne.com.au> - October 26, 2021. The first three disputed domain names resolve to websites that feature simple links to competing third party websites featuring for example, links to "accommodation" and to "homes for rent to own near me". The disputed domain name <questeastmelbourne.com.au> ostensibly resolves to an apartment booking website but also includes links to competing third party accommodation sites, including hotels.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant submits that it owns registered trade mark rights for its QUEST mark as set out above. It says that each of the disputed domain names wholly incorporates its QUEST mark and is therefore confusingly similar to its QUEST mark. It notes that the additional geographic name in each of the disputed domain name reflects the location of one of the Complainant's serviced apartment complexes.

The Complainant submits that the Respondent is not commonly known by any of the disputed domain names and that it has not licensed, authorised, or permitted the Respondent to register any domain names incorporating the Complainant's trade marks.

It says that the Respondent is using the disputed domain names to resolve to websites that feature links to competing third party websites which feature, for example, links through terms such as "accommodation", "hotel bookings website", "booking a hotel online", and "homes for rent to own near me". The Complainant suggests that these are "pay-per-click" links to competing sites which are not consistent with a *bona fide* offering of goods or services that would give rise to rights or legitimate interests in a disputed domain name. It notes also that the website at the disputed domain name <questeastmelbourne.com.au> features in addition information on accommodation for backpackers and travellers. This, says the Complainant, is in the circumstances inconsistent with the Respondent having rights or legitimate interests in the disputed domain names and is indicative of opportunistic bad faith.

The Complainant also says that the posting of a "Buy this domain" link at the top of the websites to which the disputed domain names <questonkingwilliam.com.au>, <queststkildabayside.com.au>, and <questtownsville.com.au> resolve takes an Internet user to another website where the user is able to submit information to the Respondent, including an "Offer Price" for the disputed domain name concerned. It says that posting this link to the Respondent's websites and exhibiting a willingness to accept solicitations to purchase the disputed domain names strongly suggest that the Respondent does not have any rights or legitimate interests in the disputed domain names.

According to the Complainant, its QUEST mark and business is well known across Australia and it notes that its QUEST mark was registered long before any of the disputed domain names. Therefore, says the Complainant, the Respondent must have been aware of the Complainant and of its business at the date of registration of each of the disputed domain names.

The Complainant submits that the Respondent has created a likelihood of confusion with the Complainant and its trade marks in terms of paragraph 4(b)(iv) of the Policy by registering not one but four domain names that incorporate the Complainant's QUEST trade mark in its entirety, followed by the Complainant's location

of operations across Australia *i.e.* “East Melbourne”, “King William”, “St Kilda”, and “Townsville” and this, says the Complainant demonstrates that the Respondent is using the disputed domain names to confuse unsuspecting Internet users looking for the Complainant’s services and to mislead Internet users as to the source of the disputed domain names and websites. Creating this likelihood of confusion between the Complainant’s trade marks and each of the disputed domain names leads to misperceptions as to the source, sponsorship, affiliation, or endorsement of each of the disputed domain names says the Complainant which demonstrates an intent to capitalise on the fame and goodwill of the Complainant’s trade marks in order to increase traffic to the websites to which each of the disputed domain names resolve for the Respondent’s own pecuniary gain. The Complainant says that the disputed domain names can only be taken as intending to cause confusion among Internet users as to their source and must be considered as having been registered and used in bad faith pursuant to Policy, paragraph 4(b)(iv), with no good faith use possible.

The Complainant also submits that the Respondent’s use of each of the disputed domain names constitutes a disruption of the Complainant’s business and qualifies as bad faith registration and use under Policy, paragraph 4(b)(iii) because each of them is confusingly similar to the Complainant’s QUEST trade mark and the website at each of the disputed domain names features links to accommodation or apartment booking services potentially with the Complainant’s competitors.

The Complainant also submits that the Respondent has registered and used the disputed domain name <questeastmelbourne.com.au> for the purposes of launching a phishing attack, which according to the Complainant is clear evidence of bad faith registration and use. It says that after first creating a strong likelihood of confusion by misappropriating the Complainant’s trade mark in this disputed domain name, the Respondent then created an apartment booking website in order to solicit personal information. This attempt to masquerade as the Complainant in an attempt to solicit sensitive, financial information from unsuspecting people certainly constitutes fraud according to the Complainant, which must be considered as bad faith registration and use.

In addition, says the Complainant, the Respondent is currently offering to sell the disputed domain names <questonkingwilliam.com.au>, <queststkildabayside.com.au>, and <questtownsville.com.au>, which constitutes bad faith under paragraph 4(b)(i) of the Policy because the Respondent has demonstrated an intent to sell, rent, or otherwise transfer the disputed domain names for valuable consideration in excess of its out-of-pocket expenses.

Finally, the Complainant notes that the Respondent has ignored its pre-action cease and desist letters and that this is another relevant factor towards a finding of bad faith registration and use of each of the disputed domain names.

## **B. Respondent**

The Respondent did not reply to the Complainant’s contentions.

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Complainant has demonstrated that it owns Australian trade mark registration 705835 dated April 3, 1996 for its QUEST mark. Each of the disputed domain names wholly incorporates the Complainant’s QUEST registered trade mark and each of them is therefore confusingly similar to this mark. The addition of other terms in each of the disputed domain names does not prevent a finding of confusing similarity.

As a result, the Panel finds that the Complaint succeeds under the first element of the Policy.

## **B. Rights or Legitimate Interests**

The Complainant has submitted that the Respondent is not commonly known by any of the disputed domain names and that it has not licensed, authorised, or permitted the Respondent to register any domain names that incorporate the Complainant's QUEST trade mark.

The Respondent is using each of the disputed domain names to resolve to websites that feature links to competing third party websites advertising accommodation or hotels amongst other services. These appear to be "pay-per-click" links to competing sites and they are not therefore consistent with a *bona fide* offering of goods or services that would give rise to rights or legitimate interests in each of the disputed domain names. The website at <questeastmelbourne.com.au> features in addition information on and links to third party accommodation sites for backpackers and travellers. The inclusion of links to third party competing accommodation providers through this site is also inconsistent with the Respondent having rights or legitimate interests in the disputed domain name.

The Respondent also appears to have made all of the disputed domain names available for sale excluding <questeastmelbourne.com.au> by including a link that takes Internet users to another website where the user is able to submit information to the Respondent, including an "Offer Price" for the disputed domain name concerned. The Panel finds that posting this link to the websites to which each of the relevant disputed domain names resolves and exhibiting a willingness to accept solicitations to purchase the disputed domain names are, in the circumstances, a further indication that the Respondent does not have any rights or legitimate interests in each of the relevant disputed domain names.

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in any of the four disputed domain names. The Respondent has failed to respond to explain by pre-action correspondence or to rebut the Complainant's case. The Panel accordingly finds that the Complaint also succeeds under this element of the Policy.

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

Each of the disputed domain names was registered in 2021, long after the registration of the Complainant's Australian trade mark 705835 for QUEST in 1996. The QUEST mark is very well reputed across Australia in relation to serviced apartment accommodation and based on the manner in which the Respondent has attempted to masquerade under the "Quest" name and mark on the website at the disputed domain name <questeastmelbourne.com.au> the Panel considers that the Respondent must have been aware of the Complainant and of its business at the date of registration of each of the disputed domain names.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration or use of a disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website

The Respondent has registered four disputed domain names that incorporate the Complainant's QUEST trade mark in its entirety and then respectively incorporates the location of operations of four of the Complainant's facilities across Australia, namely "East Melbourne", "King William", "St Kilda", and "Townsville". When Internet users are led by each of the disputed domain names it is to a website which features links to competing accommodation amongst other services. In the case of three of the disputed domain names (<questonkingwilliam.com.au>, <queststkildabayside.com.au>, and <questtownsville.com.au>) the links appear to be "pay per click" links and in the case of the fourth, namely <questeastmelbourne.com.au> the Panel notes that there is also information and links to specific competing accommodation providers. The Panel finds in all cases that this amounts to using each of the disputed domain names to intentionally attract, for commercial gain, Internet users to the website at the particular disputed domain name by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website in terms of paragraph 4(b)(iv) of the Policy and is evidence of registration and use in bad faith.

It also appears to the Panel that the Respondent has blatantly sought to use each of the disputed domain names to either prevent the Complainant from registered a domain name containing its QUEST mark in terms of paragraph 4(b)(ii) of the Policy, or has sought to disrupt the Complainant's business by leading Internet users to other accommodation sites in terms of paragraph 4(b)(iii) of the Policy. Even if business disruption was not the Respondent's primary aim, it is clear that the Respondent is currently offering to sell three of the disputed domain names being <queststkildabayside.com.au>, <questtownsville.com.au> and <questonkingwilliam.com.au>. From the link at the top of the website to which each of these disputed domain names resolve Internet users are taken to another website where the user is able to submit information to the Respondent, including an "Offer Price" for the disputed domain name concerned. The Panel finds that it is reasonable to infer that in each case the Respondent has demonstrated an intent to sell the relevant disputed domain name for valuable consideration in excess of its out-of-pocket expenses, which is also indicative of bad faith.

It may also be, as submitted by the Complainant, that the Respondent has registered and used the disputed domain name <questeastmelbourne.com.au> for the purposes of launching a phishing attack, however there is no actual evidence of this occurring on the record and it is not necessary in the circumstances of the bad faith registration and use findings already made to consider this submission further.

The fact that the Respondent has ignored the Complainant's pre-action cease and desist letters and has failed to respond to the Complaint reinforces the Panel's view of the Respondent's bad faith in relation to each of the disputed domain names.

Accordingly, the Panel finds that in terms of the Policy the Respondent has registered and used each of the disputed domain names in bad faith and therefore that the Complaint also succeeds under this element of the Policy.

## **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 names, <queststkildabayside.com.au>, <questtownsville.com.au>, <questonkingwilliam.com.au>, and <questeastmelbourne.com.au>, be transferred to the Complainant.

*/Alistair Payne/*

**Alistair Payne**

Sole Panelist

Date: June 30, 2022