

ADMINISTRATIVE PANEL DECISION

Sixteen Stone Operations Pty Ltd v. Variant Technology Pty Ltd
Case No. DAU2025-0021

1. The Parties

The Complainant is Sixteen Stone Operations Pty Ltd, Australia, represented by FAL Lawyers, Australia.

The Respondent is Variant Technology Pty Ltd, Australia, represented by Davies Collison Cave, Australia.

2. The Domain Name and Registrar

The disputed domain name <sodaking.com.au> is registered with Melbourne IT Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 9, 2025. On June 12, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 13, 2025, 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. On June 23, 2025, the Center provided the Complainant with additional contact information disclosed by the Registrar that would be used for the purposes of notification of the Complaint.

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 14, 2025. In accordance with the Rules, paragraph 5(a), the due date for Response was August 3, 2025. The Response was filed with the Center on August 1, 2025.

The Center appointed Matthew Kennedy as the sole panelist in this matter on August 19, 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.

4. Factual Background

The Complainant is a subsidiary of Baillie Asset Management Ltd, a secured creditor of the Respondent's subsidiaries SodaKing Australia Pty Ltd and SodaKing IPV Pty Ltd, both now in liquidation (together referred to as the "SodaKing companies"). The Complainant continues the former business of the SodaKing companies, supplying beverage carbonation devices, soda syrups and concentrates, and replacement carbon dioxide cannisters for beverage carbonation devices. The Complainant is now the registered proprietor of the following Australian trademark registrations:

- Number 1525294 for a figurative SODAKING THE KING OF SODA MAKERS mark, registered from November 12, 2012, and specifying goods in classes 6, 21, and 32;
- Number 1951417 for a fancy SODAKING mark, registered from August 28, 2018, and specifying goods in classes 21 and 32,
- Number 1951423 for SODAKING WATER, registered from August 28, 2018, and specifying goods in classes 1, 7, 21, and 32; and
- Number 1973554 for a fancy SODAKING SPARKLING WATER YOUR WAY! mark, registered from December 5, 2018, and specifying goods in classes 1, 6, 7, 21, and 32.

The Respondent is a former registered proprietor of the above four trademark registrations. Under a Licence Agreement dated May 1, 2015, the Respondent granted SodaKing Australia Pty Ltd a license to use all its trademarks and other intellectual property. On June 18, 2015, the Respondent acquired the disputed domain name by transfer from the original registered proprietor of the figurative SODAKING THE KING OF SODA MAKERS mark. The Respondent acquired that trademark by assignment later in 2015, and subsequently obtained registration of the other three trademarks set out above. According to archived screenshots provided by the Respondent, the disputed domain name resolved from at least November 2, 2015, to a website operated by SodaKing Australia Pty Ltd that offered for sale SodaKing-branded beverage carbonation devices and other products. The website initially displayed the figurative SODAKING THE KING OF SODA MAKERS mark and, from approximately 2019, the SODAKING mark.

The Respondent executed a Deed of Assignment of Trade Marks and Designs dated November 8, 2019, which stated that the Respondent assigned all its right, title, and interest in the above trademark registrations, among others, to SodaKing IPV Pty Ltd. This subsidiary of the Respondent was incorporated on November 27, 2019, and registered as the proprietor of the above trademark registrations on January 28, 2020.

The SodaKing companies were placed into external administration on May 29, 2023, and placed into liquidation at a meeting of creditors held on August 29, 2023. The SodaKing companies entered into an Asset Sale Agreement later in 2023 under which their liquidators sold assets to the Complainant, including the SodaKing companies' business and goodwill, which was expressed to include the above trademark registrations. The Complainant was registered as the proprietor of the above trademark registrations on March 25, 2024.

Since the Asset Sale, the disputed domain name has continued to resolve to a website that offers for sale SodaKing-branded beverage carbonation devices and other products, but displays a different SodaKing logo. The website is controlled by the Complainant but the Respondent remains the holder of the disputed domain name registration.

On October 29, 2024, the Complainant sent a letter of demand to the Respondent, seeking various assets that it considers to be covered by the Asset Sale Agreement.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant submits that the disputed domain name is identical, or confusingly similar, to each of the four registered marks set out in Section 4 above.

The Complainant asserts that the Respondent ceased to hold any rights or legitimate interests in respect of the disputed domain name when the Respondent sold all its right, title, and interest in what are now the Complainant's registered trademarks in 2019. Alternatively, the Respondent ceased to hold any rights or legitimate interests in respect of the disputed domain name when it ceased to provide IT support services to the SodaKing companies after the Asset Sale in 2023, as any trademark license that it still held was solely for the purpose of providing those IT services in support of those companies and necessarily expired when it ceased to provide them.

The Complainant asserts that the representations and warranties that the Respondent made as to its eligibility to obtain and maintain registration of the disputed domain name and as to third party rights have become false and misleading subsequently to registration of the disputed domain name, which constitutes evidence of bad faith within the terms of paragraph 4(b)(v) of the auDRP. The Respondent holds no current trademark rights or license in or to the registered trademarks set out in Section 4 above. Any continued registration or use of the disputed domain name would infringe upon the trademark rights of the Complainant in and to those registered trademarks. More generally, the failure to transfer the disputed domain name to the Complainant after the Respondent ceased to hold any association with the SodaKing brand constitutes use in bad faith.

While the Complainant has held practical control of the website associated with the disputed domain name since 2023, the Respondent remains inappropriately named as the registrant. It is this "error" that the Complainant seeks to redress.

B. Respondent

The Respondent contends that the Complainant has not satisfied any of the elements required under the Policy for a transfer of the disputed domain name and that the dispute is outside the scope of the auDRP.

Notably, the Respondent submits that, although the disputed domain name is identical to at least one of the Complainant's registered trademarks, the Complainant has not proven good title to those registered trademarks. The 2019 Deed of Assignment of those trademarks to SodaKing IPV Pty Ltd was executed 18 days prior to the incorporation of that company. As a result, it is a legal impossibility for the trademarks to have been assigned and the 2019 Deed, which is prima facie defective, puts into question the Complainant's title to the registered trademarks. As for the 2023 Asset Sale, the disputed domain name was not an asset of either vendor company and the Respondent was not a party to that transaction. Given the complexity of the contractual issues arising both in law and at equity, the Complainant has not met its onus to demonstrate ownership of the registered trademarks sufficient to justify the auDRP as an appropriate forum for resolving this dispute. It is well-established that the Policy should not be invoked for disputes involving complex contractual matters, but rather as a basis for addressing straightforward situations of cybersquatting. That is clearly not the case here as there is a wider dispute between the Parties.

The Respondent denies the allegation that it has no rights or legitimate interests in respect of the disputed domain name. The Respondent has at no stage relinquished ownership of the disputed domain name. Before receiving notice of the Complaint and before its related entities were placed into external administration, the Respondent through its related entities was making a bona fide use of the disputed domain name in connection with an offering of goods. The 2019 Deed did not include the disputed domain

name and the Respondent was not subject to the 2023 Asset Sale. Accordingly, there is nothing to suggest that the Respondent does not have a right to the disputed domain name license. Where a domain name has not been transferred in a Deed involving other intellectual property, the auDRP dispute mechanism is not an appropriate forum for resolving an ownership dispute. Although the Complaint alleges that a respondent ceases to have a legitimate interest in a domain name when a relevant trademark license ends, the present circumstances differ as the Respondent never relinquished or transferred ownership of the disputed domain name and never intended to do so. The Respondent undoubtedly has the legitimate interest in utilizing the disputed domain name for other purposes and in a way that would not infringe third party rights.

The Respondent denies that it has registered or is subsequently using the disputed domain name in bad faith. The Respondent has not sought to interfere with the continued use of the disputed domain name for the SodaKing business. There is an unbroken chain of ownership, where the disputed domain name was never transferred by the Respondent. Whilst the Respondent considers its position, it has not disrupted the Complainant's business, as confirmed by the Complainant. There is nothing in the website now associated with the disputed domain name that is likely to confuse or potentially mislead. Any dispute regarding ownership of the disputed domain name is subject matter for resolution via the Federal Court of Australia.

The Respondent requests a finding of Reverse Domain Name Hijacking. The Complaint was brought primarily to harass the Respondent. This dispute involves a genuine claimant to the disputed domain name and is therefore not amenable to resolution under the auDRP.

6. Discussion and Findings

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;
- (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

The Complainant is the registered proprietor of the SODAKING mark and the three other trademark registrations set out in Section 4 above. Accordingly, the Panel finds that the Complainant has provided prima facie evidence of its rights in those trademarks for the purposes of the auDRP.

The Respondent alleges that a prior assignment of those trademark registrations was defective and that this "puts into question" the validity of the Complainant's rights. The alleged defect concerns a 2019 Deed of Assignment from the Respondent to a subsidiary (the Complainant's immediate predecessor-in-title) that was executed days before that subsidiary was incorporated. However, pre-incorporation contracts are not necessarily invalid, according to section 131 of the Corporations Act 2001 (C'th). The Respondent does not address the possibility that the assignment was ratified by the subsidiary. Shortly after the incorporation of the subsidiary, the Respondent or the subsidiary (who shared the same sole director and secretary) applied to record the assignment, at which time it would have represented to the Registrar of Trade Marks that the trademarks had indeed been assigned. Even now, the Respondent does not assert that it retains title to the trademarks (as opposed to the disputed domain name), as it presumably would if the 2019 Deed were invalid. The Respondent does note that the 2015 license prohibited assignments – by the licensee – but that did not prevent the Respondent as licensor from assigning its trademark rights. Accordingly, the Panel does not find that the Respondent has rebutted the prima facie evidence of the Complainant's rights in the SODAKING trademarks.

Turning to the comparison with the Complainant's trademarks, it suffices for the purposes of the first element of the auDRP to note that the disputed domain name incorporates the textual element of the SODAKING mark. The only additional element in the disputed domain name is an open Second-Level Domain ("2LD") extension (".com.au"). This 2LD extension is generally disregarded in an assessment of identity or confusing similarity between a domain name and a trademark for the purposes 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 you have 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.

The Panel will assess the existence of any rights or legitimate interests as at the time of the filing of the Complaint. This approach is based on the use of the present tense and present perfect tense in paragraphs 4(a)(ii) and 4(c) of the auDRP, and the temporal clause at the beginning of paragraph 4(c)(i).

The disputed domain name resolves to a website (for the Complainant) offering for sale SodaKing-branded goods. There is no dispute that the Complainant has not licensed or authorized the Respondent to use any of its trademarks in the disputed domain name or otherwise. Neither the Respondent nor any of its related companies is any longer the registered proprietor of any relevant trademark. These circumstances indicate that the Respondent is not making a bona fide use of the disputed domain name in connection with an offering of goods or services. Nor is this a legitimate noncommercial or fair use of the disputed domain name. Further, the Registrar has confirmed that the Respondent's name is "Variant Technology Pty Ltd", which does not resemble the disputed domain name. The Respondent holds no business name similar to the disputed domain name. Nothing on the record indicates that the Respondent itself has been commonly known by 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, it submits that it has not relinquished ownership of the disputed domain name, either in the 2019 Deed or the 2023 Asset Sale Agreement. However, the fact that the Respondent remains the registrant of the disputed domain name is the very premise of this proceeding. The registration or continued registration of a domain name, without more, does not demonstrate rights or legitimate interests for the purposes of the auDRP, otherwise no complaint could ever succeed, which would be an illogical result. The Complainant has not acquiesced in the Respondent's retention of the disputed domain name either.

The Respondent argues that it was formerly making a bona fide use of the disputed domain name via a subsidiary in connection with an offering of goods. However, that use ceased in 2023 before the filing of the Complaint in 2025. The Respondent does not claim rights in the current offering of goods associated with the disputed domain name. It argues that it retains an ongoing interest in the disputed domain name and “will determine how it will be used in due course”. It also argues that it has a legitimate interest in utilizing the disputed domain name for “other purposes” in a way that would not infringe third party rights. The Respondent does not indicate what those purposes might be. The Respondent asserts that it has no intention of unsettling the business of the Complainant. However, its registration of the disputed domain name, which is identical to the Complainant’s SODAKING mark, is already preventing the Complainant from reflecting that mark in the “.com.au” 2LD. Even though the Respondent is currently permitting the Complainant to use the disputed domain name in connection with the Complainant’s business, there remains a risk that the disputed domain name will be put to some other use with the potential to harm that business as long as the registration of the disputed domain name remains outside the Complainant’s control.

Based on the above, the Panel considers that the Respondent has failed to rebut the Complainant’s prima facie showing.

Therefore, based on the record of this proceeding, the Panel finds that 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 is sufficient for a complainant to demonstrate that a disputed domain name has been registered in bad faith or has been subsequently used in bad faith, but not necessarily both.

In the present case, there is no indication that the disputed domain name was registered in bad faith. The Respondent acquired it in 2015 around the time that it acquired its earliest mark for use in connection with the website later operated by its subsidiary.

As regards use, the Panel refers to its findings regarding rights and legitimate interests in Section 6.B above. The disputed domain name is identical to the Complainant’s SODAKING mark, of which the Respondent is well aware. The Respondent appears to have no commercial or other rationale for its continued use of the disputed domain name, other than to prevent the Complainant from reflecting its SODAKING mark in the “.com.au” 2LD. The Respondent declined to indicate any specific good faith use that it might make of the disputed domain name in future. This conduct is similar to that set out in paragraph 4(b)(ii) of the auDRP, except that the bad faith intention arose after the liquidation of the Respondent’s subsidiaries rather than prior to the time of registration. Although the conduct is not identical to that set out in paragraph 4(b)(ii), paragraph 4(b) is not an exhaustive list of circumstances in which bad faith may be found. See *Hill & Smith Limited v. LB International Pty Ltd*, WIPO Case No. [DAU2014-0008](#).

Further, paragraph 4(b)(v) of the auDRP provides that bad faith registration or use may be shown “if any of [the respondent’s] 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.” Paragraph 2 of the auDRP states that by applying to register the domain name, or by requesting maintenance or renewal of the domain name registration, the respondent warrants inter alia that statements that it made in the domain name application are complete and accurate, including those as to eligibility for the domain name, and that, to its knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party. In the present case, the Respondent no longer holds any rights in any relevant trademark and no longer has any connection to the SodaKing business, whereas the Complainant now does. Consequently, the warranties that the Respondent made as to its eligibility for the disputed domain name on renewal have become false and misleading. See eligibility and allocation criteria for the “.com.au” namespace in sub-paragraph 2.4.4(2) of the auDA Policy 2019-01 “.au Domain Administration Rules: Licensing”.

The Respondent argues that this case is part of a wider dispute between the Parties involving contractual issues not suitable for resolution under the auDRP. However, the Complainant's claim to the disputed domain name is severable from its ongoing attempts to obtain other assets of the Respondent's subsidiaries in liquidation. The Panel is not called upon to determine whether the disputed domain name itself was covered by the 2019 Deed or the 2023 Asset Sale. The Complainant is the registered proprietor of the trademarks set out in Section 4 above and the Respondent has not rebutted the prima facie evidence of the Complainant's title to those trademarks. Nor is the Panel called upon to determine whether the Respondent has retained any rights to trademarks or an associated business under a distribution agreement or other arrangement. The Respondent never had any such agreement or arrangement with the Complainant; rather, the Complainant is a vehicle established by a secured creditor to maintain the SodaKing business as a going concern. Accordingly, the Panel has found that it is able to determine the three elements of paragraph 4(a) of the auDRP on the basis of the Parties' respective written submissions.

Therefore, the Panel finds that the disputed domain name has been used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the auDRP.

D. Reverse Domain Name Hijacking

The Respondent requests a finding of Reverse Domain Name Hijacking. The Panel declines to make such a finding as it has upheld the Complaint.

The Panel confirms that, in accordance with paragraph 4(k) of the auDRP, nothing in this Decision prevents either Party from submitting this dispute to a court of competent jurisdiction for independent resolution.

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 <sodaking.com.au> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: August 29, 2025