

ADMINISTRATIVE PANEL DECISION

Planika Sp. z.o.o v. The Trustee for MJNC Projects Trust
Case No. DAU2025-0030

1. The Parties

The Complainant is Planika Sp. z.o.o, Poland, represented by Harris Carlson Lawyers, Australia.

The Respondent is The Trustee for MJNC Projects Trust, Australia.

2. The Domain Name(s) and Registrar(s)

The disputed domain name <planika.com.au> is registered with Web Address Registration Pty Ltd (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 25, 2025. On July 28, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 29, 2025, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 5, 2025, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 11, 2025.

The Center verified that the Complaint together with the amended 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 August 14, 2025. In accordance with the Rules, paragraph 5(a), the due date for Response was September 3, 2025. The Respondent sent email communications to the Center on August 5 and 10, 2025, and the Response was filed with the Center on August 16, 2025.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on August 29, 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.

In the exercise of the powers conferred by paragraph 12 of the Rules, the Panel issued Procedural Order 1 on September 16, 2025, inviting the Respondent to clarify the relationship between it, Home Heating Improvement Group Pty Ltd ("HHIG") and a third company Ignition Works Pty Ltd ("Ignition Works"), and the circumstances in which Ignition Works came to apply to register Australian Trade Mark No 2311067.

The Respondent submitted a supplemental filing on September 19, 2025. As permitted by Procedural Order 1, the Complainant submitted a supplemental filing on September 29, 2025, in part objecting to the Respondent's supplemental filing and in part addressing substantive matters.

On October 1, 2025, the Center received an email which in broad terms sought permission for Ignition Works and the Respondent to submit further materials. On October 3, 2025, the Complainant submitted an email objecting to the admissibility of the Respondent's unsolicited supplemental filing. Later that same day, the Respondent submitted an unsolicited supplemental filing to the Center.

4. Factual Background

The Complainant is a company with its headquarters in Poland. Its main business is the manufacture and sale of gas, water vapour, electric, and bio-ethanol fireplaces. It distributes these products around the world, including Australia.

In Australia, it appointed the Respondent as its exclusive distributor for a five-year term on February 15, 2018. That agreement was superseded on June 1, 2023, when the Complainant appointed a company closely related to the Respondent, HHIG, as its exclusive distributor for Australia. A Christopher George is the sole director of both companies.

Both distribution agreements contained a clause imposing an obligation on the distributor to maintain a website. In the case of the 2018 agreement, the clause was as follows:

"Own a website showing Manufacturer's products (up-to-date) and the logo of Planika and having a link to Manufacturer's website. The Exclusive Distributor might show products which are no longer in the offer only if they are clearly marked e.g.: 'out of the offer', 'stock clearance', 'sale'. The Exclusive Distributor has 60 days since he was informed (via: email, newsletter, telephone call) about the changes made to Manufacturer's commercial offer to update data on his website (accordingly to Manufacturer's current commercial offer)."

The clause in the 2023 agreement was as follows:

"Distributor will run a website showing Manufacturer's up-to-date product offer. The website will display a separate category specified as BEV® fireplaces. The website will present logo of: Planika, Net-zero technology and BEV® technology."

In April 2024, the Complainant terminated the 2023 distribution agreement.

The termination of the 2023 distribution agreement is contentious between the parties, not least because of disputes about the fate of some AUD 940,000 worth of stock on hand held by HHIG on termination and entitlement to the disputed domain name.

The Complaint includes evidence that the Complainant owns registered trade marks in the United Kingdom, the European Union, the United States of America, Canada, China, and the Republic of Korea. By way of example, the earliest registration is for a slightly stylised version of PLANIKA:

- (a) United Kingdom Registered Trade Mark No. UK00912481602; and
- (b) European Union Registered Trade Mark No. 012481602,

which were both registered on July 31, 2014, with effect from January 3, 2014, in respect of a range of relevant goods and services in International Classes 9, 11, and 37.

The Complainant does not have a registered trade mark in Australia. However, it does have a pending application, No. 2549924, PLANIKA (in the slightly stylized form), in respect of:

- (a) Electric apparatus for remote control of bio fireplaces in class 9;
- (b) Heating fireplaces fueled by biofuels (bio-fireplaces), heating cartridges for bio-fireplaces, decorative heating apparatus in the form of fire points in class 11; and
- (c) Installation and repair of bio-fireplaces in class 37.

The application claims priority from April 23, 2025.

The Respondent registered the disputed domain name on June 12, 2018. Since around that date, the disputed domain name has resolved to a website from which the Complainant's products have been offered for sale. The screen capture by the Wayback Machine on October 15, 2024 (that is, after the distribution agreement with HHIG had been terminated by the Complainant) features images of the same "hero" fireplace setting seen on screen captures for 2023 and 2021 (during the currency of the 2018 and 2023 agreements) and references to "Our Planika Net Zero Range" (amongst other things). The website also included the text:

"In over 100 countries Planika is the leading net zero emission fireplaces in the world."

At the time of writing, it resolves to a website which appears to promote "Planika net zero emission fireplaces-electric only connection and flu-free products". The website also includes a notice "be referred to a retail partner now" with a phone number and a link to contact a "second" outlet store. (Both of these elements were displayed on the screen captures from October 2024, 2023, and 2022). At the foot of the current website landing page, there is a Website Disclaimer:

"Planika Net Zero Emission Fireplace® is a registered trademark used under licence. All use of the trademark on this website is authorised and in accordance with a formal licensing agreement. We are not the Polish manufacturer. We simply promote and sell genuine Planika fireplaces supplied to us which are disclosed as new, used, refurbished or ex-display (as per the ACCC & ACL). © 2025 All rights reserved."

The reference to a registered trade mark is a reference to Australian Registered Trade mark No 2311067, PLANIKA NET ZERO EMISSION FIREPLACE, which has been registered since October 28, 2022, in respect of: fireplace inserts; fireplaces; domestic appliances for heating; domestic heating appliances; electric heating appliances other than for medical use; electrical appliances for heating; electrically operated appliances for heating in class 11.

The trade mark is not registered in the name of the Complainant or the Respondent. Instead, it is registered in the name of Ignition Works.

According to information provided by the Respondent, the trade mark was originally registered by HHIG and assigned to Ignition Works on July 19, 2024. (That is, some three months after the (contentious) termination of the 2023 agreement and five months before HHIG was placed under external administration on December 2, 2024.)

On October 7, 2024, Ignition Works and the Respondent entered into a Trademark Licence Agreement, by which Ignition Works purported to grant the Respondent a non-exclusive, non-transferable licence to use the trade mark in Australia, solely in connection with the marketing, sale and servicing of BEV products and accessories, including the use of the domain <planica.com.au>.

The director of Ignition Works is Aimee Atkins. Ms. Atkins is also the sole director and shareholder of the majority shareholder in Ignition Works.

Although not disclosed by the Respondent, it appears that Mr. George and Ms. Atkins are partners. The address for Ms. Atkins recorded by the Australian Securities Investment Commission (ASIC) is the same as the address in ASIC records for both the Respondent and Mr George. Also, on January 6, 2025, an "Aimee Atkins" and a "Chris George" created a baby registry on "myregistry.com" for their forthcoming "bundle of joy".

The principal place of business of Ignition Works recorded with ASIC is located in Hamilton in Queensland. From Google Street View,¹ this is the business premises of Haus Collective. That is confirmed by Haus Collective's website at <hauscollective.com.au>. From its website, Haus Collective offers for sale, natural stone, fireplaces and water products including baths, basins, outdoor showers and pool accessories. The fireplaces offered include gas fireplaces, wood-fired fireplaces, bioethanol fireplaces, electric fireplaces, outdoor fires, pellet fireplaces and accessories. The electric fireplaces offered include the brands Kalfire, Charlton & Jenrick, Visionline, Planika, Kalora and Rinnai. At the time the decision is being prepared, the bioethanol fireplaces link is inactive.

The Complainant has initiated an action to remove Ignition Works' registered trade mark on the grounds of non-use.

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.

¹ See the Overview of Panel Views on Selected auDRP Questions, Second Edition ("auDA Overview 2.0"), section 4.8.

A. Supplemental Filings

While the Complainant disputes that the Respondent's supplemental filing is responsive to Procedural Order 1, the Panel proposes to admit both supplemental filings. The Panel considers the Respondent's supplemental filing is sufficiently responsive to Procedural Order 1 to be admitted, and the Complainant has also addressed the substance of the supplemental filing.

After receipt of the Complainant's supplemental filing, the Respondent requested permission to file further documentation in rebuttal of the Complainant's allegations of "bad faith", "lack of trading activity", and "sham corporate structures". The documentation the Respondent proposed to submit included invoices and transaction records confirming bona fide secondary market sales, distributor and reseller correspondence evidencing active trading activity, and marketing and catalogue materials demonstrating showroom, website, and promotional use.

In support of its request, the Respondent contends that procedural timing should not be permitted to outweigh fairness. The Panel accepts that fairness is a very important objective of the Policy. In particular, paragraph 10(a) of the Rules provides:

"In 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."

In the present case, the Respondent has been afforded two clear opportunities to put forward its case. In the circumstances, the Panel does not consider it necessary or appropriate for further supplemental filings.

B. 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.

The Complainant's pending trade mark application in Australia does not qualify as trade mark rights for the purposes of the Policy. auDRP Overview 2.0, section 1.1.5. In this case, however, the Complainant has proven ownership of the several registered trade marks for PLANIKA (in the slightly stylised fashion) including in the United Kingdom and the European Union. For the purposes of the Policy, it is not necessary that the registrations be registered trade marks in Australia. auDA Overview 2.0, section 1.1.2.

Bearing in mind that the Complainant's products bearing its trade mark have apparently been on sale in Australia since at least 2018, the Complainant may well also be able to claim rights in Australia as an unregistered trade mark. As the entitlement to the benefit of that use appears to be in dispute between the parties and the Complainant does have admissible registered trade marks, it is not necessary to resolve that issue in the present proceeding.

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") and second level domain, ".com.au", as a functional component of the domain name system. See for example auDA Overview 2.0, section 1.11.

It is also usual to disregard the design elements of a trade mark under the first element as such elements are generally incapable of representation in a domain name. See for example, auDRP Overview 2.0, section 1.10.

Disregarding the “.com.au” ccTLD, therefore, the disputed domain name is identical to the Complainant’s trade mark.

Accordingly, the Panel finds the Complainant has established the first requirement under the Policy.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances may be situations in which a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Previous panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent under this head and an evidential burden will shift to the respondent to rebut that prima facie case. The ultimate burden of proof, however, remains with the Complainant. See e.g., *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, WIPO Case No. [DAU2002-0001](#); auDA Overview 2.0, section 2.1.1.

There is no dispute between the parties that the Complainant it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent any longer affiliated with it. Further, the disputed domain name is not derived from the Respondent’s name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. These matters are sufficient to raise a prima facie case that the Respondent does not have rights or a legitimate interest in the disputed domain name given the disputed domain name is identical to the Complainant’s proven trade mark.

The Respondent contends, however, it has rights and legitimate interests in the disputed domain name because it was originally registered with the Complainant’s consent. The Respondent also contends it is making a good faith offering of goods under a valid trade mark licence from Ignition Works (the owner of Registered Trade Mark No. 2311067). Thirdly, the Respondent contends the disputed domain name is necessary to enable the Respondent to sell stock on hand following the termination of HHIG’s distribution agreement.

There is a dispute between the parties whether the Respondent was authorised to register the disputed domain name under the 2018 agreement. That issue is addressed to an extent in Section 5D below. For present purposes, it is sufficient to note that a registrant's rights or legitimate interests to a disputed domain name in general fall to be determined under the Policy at the time the Complaint is filed. See auDA Overview 2.0, section 2.11.

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" of the trade mark for that purpose 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 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).

On that basis, the registration of the trade mark in Ignition Works' name would likely be invalid as contrary to Trade Marks Act 1995 (Cth) s 58. The application to register Trade Mark No. 2311067 was made by HHIG on October 28, 2022. That is almost ten months before the Complainant appointed HHIG to be the Complainant's exclusive distributor pursuant to the 2023 agreement (and also while the 2018 agreement with the Respondent was still in force). HHIG was not the "author" of the trade mark at that time. On the materials before the Panel, the first use would appear to have been in 2018 pursuant to the 2018 distribution agreement. While the 2018 agreement does not contain provisions about ownership of the trade mark, the offering for sale and sale of the Complainant's products by reference to its trade mark constitutes use of the trade mark in Australia by the Complainant. See *E & J Gallo Winery v Lion Nathan Australia Pty Ltd* [2010] HCA 15; 241 CLR 144.

In these circumstances, the Panel considers that the trade mark licence from Ignition Works cannot provide the Respondent with rights or legitimate interests in the disputed domain name under the Policy.

The Panel accepts that the disputed domain name can assist in the sale of stock on hand. However, maintenance of the disputed domain name cannot be said to be essential to that end. Nonetheless, it is well-established that a reseller may have rights or legitimate interests in a disputed domain name. auDA Overview 2.0, section 2.8.6. This requires the Respondent to establish that its use is a "fair use" for the purposes of paragraph 4(c)(iii). Typically, this requires the Respondent to comply with these conditions:

- (i) the respondent must actually be offering goods or services related to the trade mark/name in respect of which the domain name is confusingly similar;
- (ii) the respondent must offer only those goods or services in connection with the domain name;
- (iii) the respondent must have disclosed its true relationship with the owner of the trade mark/name to which the domain name is identical or confusingly similar, prior to notice of the dispute; and
- (iv) the respondent must not have attempted to "corner the market" in domain names that reflect the complainant's trade mark/name.

See auDA Overview 2.0, section 2.8.

The Complainant contends that the Respondent's use of the disputed domain name fails at least the third requirement. The Respondent points to the disclaimer on its website:

"Planika Net Zero Emission Fireplace® is a registered trademark used under licence. All use of the trademark on this website is authorised and in accordance with a formal licensing agreement. We are not the Polish manufacturer, we simply promote and sell genuine Planika fireplaces supplied to us which are disclosed as new, used, refurbished or ex-display (as per the ACCC & ACL).© 2025 All rights reserved."

This disclaimer is problematic for a number of reasons. It does disclose that the operator of the website is not “the Polish manufacturer”. It does not, however, clearly disclose the relationship between the Respondent and the Complainant – that is, that the Respondent is no longer associated with the Complainant. In these circumstances, the Panel does not consider the disclaimer is adequate for the purposes of this limb of the Policy.

Moreover, as the disputed domain name contains the Complainant’s trade mark in its entirety without any embellishment or qualifiers, there is a very high risk of implied affiliation from the disputed domain name alone. That effectively precludes the Complainant from use of its trade mark alone. To the extent that the Respondent is currently selling products made and branded by the Complainant, the Respondent’s use can be seen as descriptive. However, the use of what is the Complainant’s trade mark alone directly conveys a false implied affiliation with the Complainant. In these circumstances, the Panel considers the Respondent has not rebutted the Complainant’s prima facie case that the Respondent does not have rights or legitimate interests.

Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

D. Registered or Subsequently Used in Bad Faith

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.

There is no dispute between the parties that the Respondent were well aware of the Complainant’s trade mark when the Respondent registered the disputed domain name.

The Complainant contends, first, that the Respondent was not entitled to register the disputed domain name under the 2018 agreement. According to the Complainant, the Respondent was required to maintain a website which bore the Complainant’s logo and a link to the Complainant’s website but the 2018 agreement did not authorise the Respondent to register the Complainant’s trade mark in a domain name. Secondly, the Complainant contends that the content of the website did not comply with the Respondent’s obligations under the 2018 agreement. It did not include a link to the Complainant’s website and it did not disclose the contractual relationship with the Complainant. Thirdly, the Complainant contends that the content of the website was liable to mislead the public into thinking that the Respondent was in fact the Complainant.

The Respondent disputes these matters and the underlying premises.

The central difficulty with the Complainant’s contentions is that the Complainant must have known of these matters during the five years the 2018 agreement was in operation. Moreover, the Complainant granted the 2023 distribution agreement to the Respondent’s closely related company, HHIG, and does not seem to have insisted on any of these matters being addressed. In these circumstances, irrespective of whether the matters raised by the Complainant are found to have been breaches, the Panel is not prepared to find that the disputed domain name was registered in bad faith. At the very least, the Complainant appears to have tolerated the registration of the disputed domain name by the Respondent during the term of the 2018 agreement and also during its use by HHIG until termination of the 2023 agreement.

The question whether the disputed domain name is being used in bad faith is more difficult.

The Complainant contends that the disputed domain name is being used in bad faith for a number of reasons. First, the Complainant contends that the Respondent and HHIG lost any right to use the disputed domain name (which contains the Complainant’s trade mark) on termination of the distribution agreements.

Secondly, the Complainant contends that the continued offering for sale of products from the website to which the disputed domain name resolves misrepresents a false association with the Complainant.

Thirdly, in response to a cease and desist letter from the Complainant, the Respondent has offered to “sell” the disputed domain name and email hosting to the Complainant – or, more precisely, has invited the Complainant to make a financial offer to purchase those assets.

Fourthly, on February 18, 2025, an email was sent from an address using the disputed domain name – [...]@planika.com.au – from someone purporting to be from “Planika Fireplaces” seeking to withdraw from inclusion in a multi-residential dwelling development the Complainant’s product on the grounds that Planika Fireplaces was not interested in supplying the project: “The Planika fireplace is not warranted for multi- res projects.” According to the Complainant, this is false and seriously damaging to the reputation and goodwill associated with its trade mark.

At the very least, this last mentioned conduct (which has not been denied by the Respondent) constitutes use in bad faith under the Policy. It evidences use of the disputed domain name to disrupt the Complainant’s business. In these circumstances, bearing in mind that the disputed domain name is identical to the Complainant’s trade mark conveying a strong implied affiliation with the Complainant, the Respondent has subsequently used the disputed domain name in bad faith under the Policy.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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 <planika.com.au> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: October 6, 2025