

## ADMINISTRATIVE PANEL DECISION

Voxson Pty Ltd v. DRS Wholesale Pty Ltd

Case No. DAU2025-0032

### 1. The Parties

The Complainant is Voxson Pty Ltd, Australia, represented by Thomson Geer,<sup>1</sup> Australia.

The Respondent is DRS Wholesale Pty Ltd, Australia, represented internally.

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

The disputed domain names <voxon.au> and <voxon.net.au> are registered with GoDaddy.com, LLC.

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 1, 2025. On August 4, 2025, the Center transmitted by email to GoDaddy.com, LLC a request for registrar verification in connection with the disputed domain names. On August 5, 2025, 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 August 6, 2025. In accordance with the Rules, paragraph 5(a), the due date for Response was August 26, 2025. The Response was filed with the Center on August 20, 2025.

The Center appointed Douglas Clark, The Hon Neil Brown KC and Rebecca Slater as panelists in this matter on September 15, 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.

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<sup>1</sup> The representative that submitted the Complaint was Pizzeys Patent and Trade Mark Attorneys, Australia; on August 27, 2025 the Center was informed of a change in representation.

## 4. Factual Background

### The Complainant

The business of the Complainant was founded in 1969. The Complainant was incorporated in Australia in 1977. It trades under the company name VOXSON and under a website at the domain name <voxson.com.au>.

The Complainant is the registered proprietor of the following Australian registered trademarks for VOXSON:

- (a) Registration No. 325369 in Class 9 for “Car cassette players and radio combinations, car stereo speakers, car amplifiers and equalisers and other accessories included in this class for inclusion in motor vehicles” with a priority date of December 29, 1978; and
- (b) Registration No. 460472 in Class 9 for “All apparatus or equipment for recording transmission, reception of sound and/or images and associated apparatus and accessories included in this class for motor vehicle, household or other use” with a priority date of February 23, 1987.

The Complainant also owns the domain names <voxson.com> and <voxon.com.au> which redirect to <voxson.com.au>.

On July 15, 2025, the Complainant filed a trade mark application in Australia for VOXSON, No. 2566923, covering certain goods in Classes 7 and 9 and certain services in Classes 35 and 40.

Since the Complainant was established, it has promoted and sold a large number of products under the VOXSON name and trademark, including cellular phones, media players, 3D TVs, car audio, home audio/visual equipment, GPS navigation systems, LED signs and other signage and display units. The Complainant has supplied these products to most of the large national retailers across Australia.

With regards to cellular phones, the Complainant produced documents showing the reputation that it had in the late 1990s and early 2000s as a maker and seller of GSM mobile phones.

On June 30, 2025, the Complainant’s Patent and Trade Mark Attorneys issued a cease and desist letter to the Respondent alleging trademark infringement and passing off. The letter stated the Complainant was within its rights to institute legal proceedings seeking injunctions and damages.

### The Respondent

The Respondent is a company incorporated in Australia on November 21, 2024. The Respondent provides telecommunications services.

On February 7, 2025, the Respondent formally applied to the Australia Securities and Investments Commission (“ASIC”) to register VOXON as its business name. On February 12, 2025, the business name VOXON was officially registered to the Respondent by ASIC.

The Respondent filed an application, No. 2575346, to register VOXON as a trademark in Class 38 (telecommunications services) on August 8, 2025.

The Respondent’s directors have made sworn declarations that they chose the name VOXON as a portmanteau of the words “VOX” and “ON” meaning “Voice” and “On”, to reflect the nature of the Respondent’s business in providing voice telecommunication services. Both directors stated they had no knowledge of the Complainant at the time they chose the name.

The Respondent currently provides a customer management portal under the disputed domain name <voxon.au> which is a service interface for its reseller clients to manage “SIP Trunks”, “Microsoft Teams” and “Cisco Webex Calling” services. The Cisco Webex Control Hub lists VOXON as a “Certified” calling provider for its services in Australia.

The disputed domain name <voxon.net.au> currently resolves to a parking page.

The Respondent produced invoices showing that it had commercial dealings in 2025 with the telecommunications carriers Symbio Wholesale Pty Ltd and Nuwave Communications (Australia) Pty Ltd.

On May 15, 2025, the Respondent contacted the Complainant to seek an assignment of the domain name <voxon.com.au>. The Complainant refused that request.

## 5. Parties' Contentions

### A. Complainant

Identical or confusingly similar

The Complainant contends that VOXON is confusingly similar to its trademark VOXSON and therefore the disputed domain names <voxon.au> and <voxon.net.au> are confusingly similar to its trademark. The Complainant asserts that VOXSON and VOXON sound identical when spoken and in script they differ by only one letter, being is the letter "S", which is placed after the "X" in the middle of the word.

Rights or Legitimate Interests

The Complainant contends the Respondent has no rights or legitimate interests in the disputed domain names. The Complainant has not granted the Respondent any permission or license to use the disputed domain names. The Respondent has not been commonly known by the disputed domain names. The Respondent was only incorporated in November 2024 and established its website at the <voxon.au> disputed domain name in February 2025. The contact the Respondent made to the Complainant (in May 2025) to seek a transfer of the <voxon.com.au> disputed domain name shows knowledge of the Complainant.

The Complainant contends that there is a close connection between the services offered by the Respondent under the disputed domain names and the Complainant's business offering. The tools/services offered by the Respondent are, like the Complainant's business, focused on the information technology ("IT") industry.

The Complainant further contends that because the Complainant's use of its VOXSON name and trademarks predates the registration of the disputed domain names this constitutes prima facie evidence of the absence of the Respondent's rights or legitimate interests in the disputed domain names and therefore the evidentiary burden shifts to the Respondent to rebut this by providing evidence of its rights or legitimate interests in the disputed domain names. To the extent that the Respondent might say that its use that commenced prior to any notice to it of the dispute the Complainant notes that such use must also be bona fide, and a party who deliberately uses another person's mark, or a similar mark does not do so bona fide. The Complainant cites to *Agfa-Gevaert N.V. v. Perfect Privacy, LLC /Prof. Diwakar Vaish, AgVa Healthcare*, WIPO Case No. [D2021-3420](#). As noted in that decision the words "bona fide" must encompass the Respondent's knowledge and motives in choosing the name in question – if, as has been done here, the name is chosen deliberately to trade off or take advantage of the Complainant's name or reputation then the bona fide requirement is not met.

The Complainant also relies on the fact that LED Screens of the kind offered by the Complainant can be seen on the Respondent's website at the <voxon.au> disputed domain name.

Registered or Subsequently Used in Bad Faith

The Complainant argues the Respondent registered the disputed domain names primarily for the purpose of trading off the Complainant's well-established reputation. The Respondent is not making legitimate non-commercial or fair use of the disputed domain names. Rather, it is using the disputed domain names with intent for commercial gain to misleadingly divert customers of the Complainant.

The Complainant asserts that the decision to use the name VOXON with knowledge of the Complainant's well established reputation in the name VOXSON and the VOXSON trademarks in the IT space shows that by using the disputed domain names the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website at the <voxon.au> disputed domain name by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that website and/or the services offered on it.

The Complainant asserts that the website at the <voxon.au> disputed domain name falsely suggests affiliation with the Complainant as the trademark owner because:

- (a) The marks used correlate significantly and are confusingly similar, both being made-up words, and differing by only the letter "S", which is not pronounced when the word is spoken, which is unlikely to be noticed when the word is written, and which is likely to be omitted when persons familiar with the Complainant are searching for it on the internet.
- (b) The type of service that the Respondent is offering is IT focused and very closely related to the IT products and services offered by the Complainant over many years.
- (c) The Complainant is very well known in the IT space in Australia under its VOXSON name.

## **B. Respondent**

Identical or confusingly similar

The Respondent argues that the disputed domain names are not confusingly similar to the VOXSON trademarks when the "vastly different goods and services are considered". The Respondent relies on the fact that there are different fields of activity, a lack of local reputation and independent meaning. It contends that VOXON is a legitimate portmanteau of "VOX" and "ON" meaning "Voice on". The Respondent contends its positions are supported by WIPO precedent in the case *ARSENE v. arsene*, WIPO Case No. [DAU2024-0019](#) (discussed below).

Rights or Legitimate Interests

In support of its argument that it has rights and legitimate interests, the Respondent contends that it chose the name VOXON based on the portmanteau VOX plus ON meaning "voice on". This is supported by two statutory declarations from its directors.

The Respondent relies on the fact that on February 7, 2025, the Respondent formally applied to the ASIC to register VOXON as its business name; on February 12, 2025, the business name VOXON was officially registered to the Respondent by ASIC; and, that the Respondent has since filed its own application to register VOXON as a trademark in Class 38 (telecommunications services) on August 8, 2025.

The Respondent further relies on the fact the Cisco Webex Control Hub, lists VOXON as a "Certified" calling provider for its services in Australia and that the Respondent had business dealings with two telecommunications carriers, Symbio and Nuwave.

With regard to the LED screens that can be seen on the website at the <voxon.au> disputed domain name, the Respondent states the image in question is a generic, public domain stock photo of a bus stop shelter with blank advertising hoardings.

Registered or Subsequently Used in Bad Faith

The Respondent states that the the Complainant's allegations of bad faith are speculative. The Respondent relies on its registration of its business name in February 2025. It states there is an illogical premise that an action taken by the Respondent in May 2025 to seek a transfer of the <voxon.com.au> domain name can provide a motive for what occurred in February 2025. It states that the contact with the Complainant was a consequence of the Respondent's legitimate business formation, not the cause of it.

## Reverse Domain Name Hijacking

The Respondent alleges the proceedings have been filed in bad faith and seeks a finding of reverse domain name hijacking on the following bases:

- (a) The Complainant had been found in breach of auDA policy, by registering a contrived business name (“Visual Operations Xenial Optical Networks”) for the sole purpose of retroactively justifying its claim to the name VOXON. (The correspondence produced does show there had been a breach by the Complainant but did not make mention of the contrived business name. It also showed the breach had been remedied.)
- (b) The Complainant used a process server to serve a cease and desist letter. This was a disproportionate act of intimidation.
- (c) The Complainant had not (even in its July 2025 trademark application) sought to cover telecommunications services in Class 38.

## 6. Discussion and Findings

To succeed, the Complainant must demonstrate that all the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- the disputed domain names are identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- the disputed domain names have been registered or subsequently used in bad faith.

The onus of proving these elements is on the Complainant.

### A. Procedural Issue: Supplemental Filing

After the filing of the Response, the Complainant through its new representatives sought to make a supplemental filing to respond to issues in the Response. The Respondent objected.

Paragraph 4.6 of the Overview of Panel Views on Selected auDRP Questions, Second Edition (“auDRP Overview 2.0”) states:

“Generally, panels will only accept an unsolicited supplementary filing in ‘exceptional’ circumstances – such as where the information or evidence was unanticipated as relevant, or was unavailable, at the time of the original filing. The party submitting a supplemental filing would normally need to show its relevance to the case and why the circumstances are exceptional. Panels that have accepted a supplemental filing from one side typically allow the other party the opportunity to file a reply to such supplemental filing.”

There was nothing in the supplemental filing that was exceptional or can be said to be unanticipated. The Panel does not accept the supplemental filing.

### B. Identical or Confusingly Similar

There is no real dispute that for the purposes of the Policy the disputed domain names are confusingly similar to the Complainant’s registered trademark VOXSON. The only difference is that there is no “S” between VOX and ON in the disputed domain names.

The goods for which a trademark is registered and the use made of the trademark, and indeed if the test for trademark infringement is satisfied, are not relevant for the purposes of the auDRP.

As set out in paragraph 1.7 of the auDRP Overview 2.0:

“The first element of the auDRP functions primarily as a standing requirement. The standing (or threshold) test for identity or confusing similarity involves a reasoned but relatively straightforward comparison between the complainant’s trademark or name, on the one hand, and the domain name, on the other hand.

The test is *not* about whether the domain name infringes the complainant’s trademark rights. Thus, the goods and/or services for which a registered trademark is registered or used, and for which an unregistered trademark (or a name) is used, is not considered to be relevant to the first element test. This is also the case for the filing date, the priority date, and the date of registration of a registered trademark (or a name), and for the date of claimed first use of a registered or unregistered trademark (or a name). However, these factors may be relevant to the issues that arise for consideration under the second and third elements of the Policy.”

Indeed, in *ARSENE v. arsene*, WIPO Case No. [DAU2024-0019](#), cited by the Respondent, the Panel made the same finding in relation to confusing similarity:

“On the question of identity or confusing similarity, what is required is simply a visual or 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.”

The Complainant succeeds on the first element of the Policy.

### **C. Rights or Legitimate Interests/Registered or Subsequently Used in Bad Faith**

The real issue in this case is whether the Respondent has rights or legitimate interests in the disputed domain names and whether it has registered or subsequently used the disputed domain names in bad faith.

The purpose of the auDRP is described in paragraph 1.2 of auDRP Policy No. 2016-01 as being “to provide a cheaper, speedier alternative to litigation for the resolution of disputes between the registrant of a .au domain name and a party with competing rights in the domain name”.

However, as noted in the auDRP Overview 2.0 at paragraph 4.14.3:

“Panels recognise that the auDRP is not designed to address all disputes concerning a .au domain name. Rather, the Policy is crafted to apply to a particular, rather limited type of dispute about a domain name – ‘cybersquatting’ (abusive registration or use of a domain name). As a result, panels have refused to apply the auDRP to complex business or contractual disputes that raise issues beyond those which the Policy was designed to address.”

The Panel can see why as a matter of trademark law and passing off the Complainant has asserted the case it did in its cease and desist letter. The Panel also accepts that the Complainant had bona fide grounds to bring this auDRP complaint.

The Respondent has, however, provided a plausible explanation supported by two statutory declarations as to how it chose the name VOXON. The products and services dealt with by the parties do not directly overlap. The Complainant’s evidence of use in relation to communications devices dates back 25 years and is not current.

There are clearly issues between the parties that are best determined by a court in trademark and passing off proceedings. A court has the proper tools for pleading as well as adducing, challenging and testing the evidence of the parties, including discovery, interrogatories and cross-examination of witnesses, compared to the simplified procedures of domain name dispute proceedings under the auDRP.

The Panel therefore declines to find that the Respondent has no rights or legitimate interests or that it registered the disputed domain names in bad faith or subsequently used them in bad faith.

The Panel notes that in the case cited by the Complainant of *Agfa-Gevaert N.V. v. Perfect Privacy, LLC /Prof. Diwakar Vaish, AgVa Healthcare*, WIPO Case No. [D2021-3420](#) the Panel did make findings in relation to rights or legitimate interests and bad faith even though trademark opposition proceedings were pending between the parties. However, in that case there was a direct overlap between the domain name in dispute and the services provided by the Complainant, making it possible to infer the domain name in dispute had been registered to trade off or take advantage of the Complainant's name or reputation.

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

The Panel does not consider this an appropriate case to make a finding of Reverse Domain Name Hijacking ("RDNH"). While the Complainant has not succeeded, there is a genuine dispute between the parties. A finding of RDNH will be rarely found where there is a genuine dispute. (auDRP Overview 2.0, paragraph 4.16.3.)

#### **7. Decision**

For all the foregoing reasons, the Complaint is denied.

*/Douglas Clark/*

**Douglas Clark**

Presiding Panelist

*/The Hon. Neil Brown KC/*

**The Hon. Neil Brown KC**

Panelist

*/Rebecca Slater/*

**Rebecca Slater**

Panelist

Date: September 24, 2025