

## **ADMINISTRATIVE PANEL DECISION**

Melbourne Indoor Plants Pty Ltd v. Sydfran Pty. Ltd.

Case No. DAU2025-0039

### **1. The Parties**

The Complainant is Melbourne Indoor Plants Pty Ltd, Australia, represented by Buchanan Law Firm Pty Ltd, Australia.

The Respondent is Sydfran Pty Ltd, Australia, represented by Braddon Marx Lawyers, Australia.

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

The disputed domain name <melbourneindoorplants.com.au> is registered with Melbourne IT Ltd.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 23, 2025. On the following day, the Center transmitted by email to Melbourne IT Ltd a request for registrar verification in connection with the disputed domain name. On September 25, 2025, Melbourne IT Ltd 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 “auDRP” or 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 September 30, 2025. In accordance with the Rules, paragraph 5(a), the original due date for Response was October 20, 2025. In accordance with the Rules, paragraph 5(d), at the request of the Respondent the due date for Response was extended to October 23, 2025. The Response was filed with the Center on October 23, 2025. The Complainant made an unsolicited supplemental filing with the Center on October 28, 2025.

The Center appointed Matthew Kennedy as the sole panelist in this matter on November 3, 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.

The Respondent made an unsolicited supplemental filing with the Center on November 14, 2025.

#### **4. Factual Background**

The Complainant is an Australian company that provides plant retail services. Its sole director is Michael Verge, who operated as a sole trader prior to the incorporation of the Complainant in 2021. The Complainant trades from four locations in the Melbourne metropolitan area of Australia (referred to below as “Melbourne”). Since at least December 2020, Michael Verge or a related entity has operated an online store in connection with the domain name <wearemelbourneindoorplants.com.au>. The online store displays a “Melbourne Indoor Plants Bigger | Better | Cheaper” logo that includes a double leaf device. Michael Verge or a related entity has also operated an Instagram account named “Melbourne Indoor Plants” since 2020 that displays the “Melbourne Indoor Plants Bigger | Better | Cheaper” logo on the profile page and now has over 129,000 followers. It also operates TikTok and Facebook accounts with the same name; the former displays the complete logo on the profile page while the latter does not.

The Respondent is an Australian company that provides plant hire services. Its sole director is Gerard Verge who has over 25 years’ experience in the indoor plant industry and the plant industry more generally. Another of his companies, established in 2018, is now named The Grow Centre Nursery Pty Ltd. It operates a website for The Grow Centre that offers indoor plants for sale from five locations in Sydney, Brisbane, Melbourne, and Perth and prominently displays “The Grow Centre” logo. A menu tab labelled “Plant hire” is a hyperlink to a website for Indoor Plant Solutions, operated by the Respondent, which offers indoor plants for hire from four locations in Sydney, Brisbane, Melbourne, and Perth and prominently displays an “Indoor Plant Solutions” logo. Both logos, among others presented on this website, include a double leaf device. The Grow Centre has used that device in some form since at least April 2020. It has also used the Instagram hashtags #melbourneindoorplant since at least July 2022 and #melbourneindoorplants since at least May 2023.

Michael Verge of the Complainant and Gerard Verge of the Respondent are brothers.

The disputed domain name, along with three other domain names<sup>1</sup>, was offered to the Respondent by a domain name seller on June 21, 2025. The Respondent subsequently acquired the disputed domain name, which now resolves to a website for “Plant House Melbourne”, operated by a team of plant lovers behind The Grow Centre’s location at Clayton South in Melbourne. Several blogposts regarding indoor plants have been uploaded to the website since July 2025. Menu tabs labelled “Indoor Plants” and “The Grow Centre” link to The Grow Centre website<sup>2</sup>.

#### **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 contends that it trades as “Melbourne Indoor Plants”. The disputed domain name is identical to its company name “Melbourne Indoor Plants Pty Ltd”. The Complainant also claims common law trademark rights in MELBOURNE INDOOR PLANTS.

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<sup>1</sup> These were <planthiresydney.com.au>, <indoorplanthire.com.au>, and <sydneyindoorplants.com.au>.

<sup>2</sup>The Panel notes its general powers articulated inter alia in paragraphs 10 and 12 of the Rules and has visited the website associated with the disputed domain name to verify the Complainant’s allegations regarding the website content and the links to other websites. The Panel considers this process of verification useful in assessing the case merits and reaching a decision.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent's competing plant retail business is operated by Gerard Verge from the State where he is resident, New South Wales, with one retail location in greater Melbourne. The Respondent's business trades as "The Grow Centre". While the Respondent does have one retail store in Melbourne, its true motivation in registering and using the disputed domain name is to divert online traffic away from the Complainant's business to the Respondent's business. When an Internet user clicks on the "Indoor Plants" menu option on the website associated with the disputed domain name, they are redirected to the Respondent's website. This conduct endeavors illegitimately to redirect traffic. Consumer confusion is exacerbated when the Internet user is presented with numerous displays of the Respondent's logo that incorporate a leaf design bearing a striking resemblance to the Complainant's logo.

The disputed domain name has been registered or is subsequently being used in bad faith. Although the two brothers are estranged and do not maintain a positive relationship, Gerard Verge is well aware of Michael Verge's "Melbourne Indoor Plants" business and was well aware of the Complainant's extensive use of "Melbourne Indoor Plants" at the time that he directed the Respondent to register the disputed domain name. The purpose of registering and using the disputed domain name is to redirect traffic away from the Complainant to the Respondent. Consumer confusion is exacerbated by the use of a very similar leaf device in a similar logo. Such conduct is clearly designed to disrupt the Complainant's business within the meaning of paragraph 4(b)(iii) of the auDRP and intentionally to redirect traffic to the Respondent's business for commercial gain within the meaning of paragraph 4(b)(iv) of the auDRP. It is enough that the Respondent registered the disputed domain name to facilitate an initial confusion. However, in this case, the Respondent has gone one step further in using a similar logo to appear like the Complainant. Such conduct only further displays the intent of the Respondent to trade off the reputation of the Complainant.

In its supplemental filing, the Complainant submits that (i) the Respondent had no relevant trading presence in Melbourne when the Complainant established its indoor plants business there. Although the Response refers to a business location in Melbourne in April 2020, that nursery was the Respondent's customer at that time. Nor does the Response disclose any sales revenue associated with The Grow Centre business for 2020; (ii) the Response asserts use of a logo with a double leaf as early as April 2020 but does not address the adoption of graphics "strikingly similar" to the Complainant's logo at later dates; and (iii) the Respondent asserts that it acquired the disputed domain name as a result of an offer from a domain name seller but omits that it did not purchase others that it was offered, even though it was based in Sydney, not Melbourne; and the disputed domain name wholly incorporates the Complainant's name.

## **B. Respondent**

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name and requests that the Panel deny the Complaint.

Notably, the Respondent contends that the disputed domain name comprises a geographical location and two dictionary words. It is directly descriptive of the goods being offered for sale and sold by the Complainant and the activities of the Complainant. The Complaint is an attempt to impermissibly claim a monopoly in wholly descriptive words, being words that also aptly describe the longstanding and extensive undertakings of the Respondent. The Complainant does not have registered trademark rights. It has a company name but that does not give any "rights" in the words that comprise the company name and, in the circumstances where the words are directly descriptive, they should be treated in the same way as trademarks on the United States Patent and Trademark Office Supplemental Register, which are expected to show secondary meaning before satisfying the standing requirement under paragraph 4(a)(i). With respect to the Complainant's claim of common law rights, its evidence falls well short of what would be required to displace the directly descriptive nature of the words "Melbourne Indoor Plants". The very website, store, and social media presence relied upon by the Complainant show the use of a different trademark (i.e., a "Melbourne Indoor Plants Bigger Better Cheaper" logo). The Complainant has no relevant rights in "Melbourne Indoor Plants". Further, given that "Melbourne Indoor Plants" is wholly descriptive, the disputed domain name is not confusingly similar to the Complainant's corporate name.

The Respondent has rights and legitimate interests in respect of the disputed domain name. The disputed domain name aptly describes the areas of operation of the Respondent which have been undertaken for more than 25 years by the Respondent, its predecessors, associated entities and its sole director Gerard Verge. The Respondent launched The Grow Centre brand in April 2020 under which indoor plants and products were sold throughout Australia, with locations in Sydney, Melbourne, Brisbane, and Perth. It has used the double leaf design in its logo since that time. It purchased a plant nursery in Melbourne in December 2021 and began operating it as The Grow Centre in March 2022. It commenced trading as "Indoor Plant Solutions" in May 2024. It established "Plant House Melbourne" in June 2025 but has not yet registered that name. The Grow Centre, Indoor Plant Solutions and Plant House Melbourne are all based in Melbourne. Total retail sales figures for the Respondent's businesses, excluding Indoor Plant Solutions, show that, since 2021, approximately 24 per cent of all sales have come from Melbourne. The Plant House Melbourne website provides a comprehensive website with advice, education, and recommendations about growing indoor plants and styling, with a focus on Melbourne given its unique climate. This website is in aid of the Respondent's multifaceted commercial activities in its indoor plant businesses based in Melbourne. There is a link to The Grow Centre but there is nothing wrong with websites being used together to provide consumers with a range of complementary services as part of its long-established business. The disputed domain name was offered to the Respondent in the course of another transaction. Given that the Respondent has used the hashtag #melbourneindoorplants in promotions since 2021, it considered the disputed domain name a great way to expand its presence in Victoria. The hashtag has been posted and reposted over 5,000 times. The Respondent's operations are firmly based in Melbourne (amongst other places around Australia) and are squarely in the area of indoor plants. The disputed domain name is descriptive of the operations of the Respondent.

The disputed domain name has not been registered or is being used in bad faith. None of the factors in paragraph 4(b) of the auDRP is applicable. The Respondent is using the disputed domain name for legitimate purposes associated with its longstanding indoor plants businesses that are located in Melbourne. At its core, the Complaint is motivated by familial animosity of the director of the Complainant to the director of the Respondent, rather than truly being within the remit of the Panel.

In its supplemental filing, the Respondent submits that (i) it has a longstanding presence in Melbourne and shared a business location there in April 2020 with a customer; (ii) the Complainant is unable to maintain its allegation that it was first to use the leaf design in its logo and, plainly, the Respondent has not copied the Complainant's logo; and (iii) the Complainant has admitted that it decided not to register the disputed domain name itself but has not revealed why it did not file an auDRP complaint against the domain name seller from whom the Respondent purchased the disputed domain name.

## **6. Discussion and Findings**

### **6.1 Unsolicited Supplemental Filings**

On October 28, 2025, the Complainant made an unsolicited supplemental filing, in which it sought to address what it characterized as new allegations and material matters in the Response that could not reasonably have been anticipated at the time of filing the Complaint.

On November 14, 2025, the Respondent made an unsolicited supplemental filing, in which it objected to admission of the Complainant's supplemental filing and responded to statements and allegations made therein.

The Panel recalls that paragraph 12 of the Rules provides that "[i]n addition to the complaint and the response, the Panel may request or permit, in its sole discretion, further statements or documents from either of the Parties". At the same time, paragraphs 10(b) and (c) of the Rules require the Panel to ensure that "the Parties are treated with equality and that each Party is given a fair opportunity to present its case" and that "the administrative proceeding takes place with due expedition".

The Panel notes that the Complainant's supplemental filing responds to specific allegations and evidence in the Response regarding the geographic scope of the Respondent's business, the use of the Respondent's logo, and the Respondent's acquisition of the disputed domain name. Some of these issues are material and might not reasonably have been anticipated at the time of the Complaint. The Respondent has taken the opportunity to reply to the Complainant's supplemental filing. The supplemental filings are relatively brief. Therefore, the Panel decides to admit both Parties' supplemental filings and will consider them according to their relevance, materiality, and weight.

## 6.2 Substantive Issues

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; 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.

The burden of proof of each element is borne by the Complainant. Failure to prove any one element will result in denial of the Complaint.

### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the auDRP allows a complaint to be based not only on a trademark or service mark in which a complainant has rights, but also on a "name" in which a complainant has rights. In the present case, the Complainant claims rights in both a name and a trademark.

First, the Complainant relies on its company name "Melbourne Indoor Plants Pty Ltd". According to Note 1 to the auDRP, for the purposes of this policy, "a name [...] in which the complainant has rights" refers to the complainant's "company, business or other legal or trading name, as registered with the relevant Australian government authority". The Complainant has registered its company name with the Australian Securities & Investments Commission ("ASIC"), which is the relevant Australian government authority for the registration of company names. That company name was registered in 2021, long before the filing of the Complaint.

The Respondent argues that, where a company name is comprised of directly descriptive words, a complainant should also be required to show that its company name has acquired secondary meaning to demonstrate that it has "rights" in that name under the first element of the auDRP. However, the Panel observes that Note 1 expressly clarifies that, for the purposes of the auDRP, the complainant's company name, as registered with the relevant Australian government authority, is a name in which the complainant has "rights". See *Allianz Australia Insurance Limited and Allianz Australia Limited v. Throne Ventures Pty Limited*, WIPO Case No. [DAU2010-0012](#). For the purposes of the auDRP, the Complainant in the present case has rights in its company name.

Second, the Complainant claims unregistered trademark rights in MELBOURNE INDOOR PLANTS. The Panel recalls that in order to establish unregistered rights in a trademark, a complainant must demonstrate that the claimed mark has acquired "secondary meaning" such as to become a distinctive identifier associated with itself or its goods or services. Under the auDRP, those rights must exist in Australia. In the present case, the claimed mark consists of the dictionary words "indoor plants" preceded by the place name "melbourne". This phrase describes the supply of indoor plants (or information about them) in Melbourne. The Complainant uses the claimed mark in connection with its plant retail business which is, more specifically, the supply of indoor plants. That business operates from four locations, all in Melbourne. Accordingly, the claimed mark is a phrase that describes the services in connection with which it is used and the place from which those services are supplied. Given the descriptive nature of the claimed mark, clear evidence will be required to show that the phrase has become distinctively associated with the Complainant

and its services. See *Michael Arnold, Lorimax Pty Ltd v. Tolling Customer Ombudsman Pty Ltd*, WIPO Case No. [DAU2016-0036](#).

The evidence shows that the Complainant's business has been in operation for at least five years. Its gross sales were over AUD 5 million in the last financial year and it has over 129,000 followers on Instagram. The Complainant alleges that it trades under the name "Melbourne Indoor Plants". The evidence shows that an online store is associated with the domain name <wearemelbourneindoorplants.com.au>, which is registered by "Melbourne Indoor Plants Bigger Better Cheaper", which is a business name registered by "The Trustee for Melbourne Indoor Plants", which is a discretionary trading trust represented by Michael Verge. The Complainant is evidently affiliated with that entity but the online store prominently and consistently uses a "Melbourne Indoor Plants Bigger | Better | Cheaper" logo, rather than the claimed mark. Photographs show that signage at a retail location and staff uniforms also display the logo, although an archived screenshot shows the claimed mark in a spray-painted mural. The business's three social media account names consist of the claimed mark but two of its profile pages display the "Melbourne Indoor Plants Bigger | Better | Cheaper" logo alongside it. A caption on one social media post uses the claimed mark to refer to the business. There is no evidence of product labels, sales dockets, other advertising, media coverage, or other public recognition. Moreover, the Panel has not determined that the Respondent's use of the claimed mark in the disputed domain name indicates that it operates as an indication of source, for the reasons set out in Section 6.2C below. Based on this record, the Panel is unable to determine that the claimed mark has become a distinctive identifier associated with the Complainant or its goods or services.

In view of the above findings, the Panel will assess identity or confusing similarity by reference to the Complainant's company name only.

The disputed domain name contains the Complainant's company name except its commercial status identifier ("Pty Ltd"). The only additional element in the disputed domain name is a Second-Level Domain ("2LD") extension (".com.au") which, as a standard requirement of domain name registration, may be disregarded in the comparison for the purposes of the first element of the auDRP. There are no differences between the disputed domain name and the Complainant's company name that would prevent a finding of identity or confusing similarity for the purposes of the first element of the auDRP.

The Respondent argues that the disputed domain name cannot be confusingly similar to the Complainant's company name where the latter is wholly descriptive. However, in the Panel's view, the test of identity or confusing similarity for the purposes of the first element of the auDRP is a relatively straightforward side-by-side comparison. The Panel will consider the descriptive nature of the Complainant's company name in relation to bad faith in Section 6.2C below.

Therefore, the Panel finds that the Complainant has satisfied the first element of the auDRP.

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

Given the Panel's findings in Section 6.2C below, it is unnecessary to consider the second element of the auDRP.

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

Paragraph 4(a)(iii) of the auDRP contains two requirements that apply disjunctively. The Complainant may satisfy this element by demonstrating either that the disputed domain name has been registered in bad faith, or that it has been subsequently used in bad faith, but not necessarily both.

As regards registration, the disputed domain name was acquired by the Respondent in 2025, after the registration of the Complainant's company name in 2021. While the disputed domain name contains the Complainant's company name (minus its commercial status identifier), the only evidence of the company name on the record is an ASIC search extract. The Complainant alleges that the Respondent was aware of the Complainant's business and rights in "Melbourne Indoor Plants" when it acquired the disputed domain

name. The Respondent does not deny prior awareness of the Complainant's business or company name. The Parties' respective sole directors are brothers, well known to each other, and both sell indoor plants. In view of these circumstances, the Panel will accept *arguendo* that the Respondent was aware of the Complainant's company name when the Respondent acquired the disputed domain name.

Actual awareness of the Complainant's company name is not sufficient to establish a bad faith intention in this case because there is an alternative explanation for the Respondent's acquisition and use of the disputed domain name. The disputed domain name consists of a phrase that describes the supply of indoor plants (or information about them) in Melbourne. The Respondent uses the disputed domain name with a website presenting a blog about indoor plants in Melbourne and hyperlinks to another website supplying indoor plants for sale, which operates from various locations, including one in Melbourne. Ostensibly, the disputed domain name describes the information and services in connection with which the Respondent uses it and one place from which those services are supplied, with no additional component besides a 2LD extension.

The Complainant submits that the Respondent's real purpose is to divert online traffic from the Complainant's business to its own business. It points out that neither the Respondent nor its sole director is based in Melbourne and that the linked website supplies services interstate. However, the Complainant concedes that one of the Respondent's retail locations is in Melbourne (at Clayton South). A customer seeking the supply of indoor plants in Melbourne can visit the website associated with the disputed domain name and click through to the linked website, which offers to supply indoor plants in Melbourne, among other places. The Respondent's figures show that 24 per cent of its sales come from its Melbourne location. In the Panel's view, the fact that the Respondent also supplies services in other places does not mean that the Respondent is not using the disputed domain name in its descriptive sense.

The Complainant also argues that the use of double leaf designs in logos on the Respondent's websites "exacerbates" confusion with the Complainant's business. The double leaf designs resemble a small part of the Complainant's "Melbourne Indoor Plants Bigger | Better | Cheaper" logo. It appears that the Respondent used such a design first but, in any case, the Parties' respective logos are so different overall that the Panel does not consider this similarity to suggest an affiliation likely to generate confusion.

The Panel has considered the genuineness of the website associated with the disputed domain name. It is operated by a team behind the Respondent's Clayton South location about whom there are no details. The Respondent argues that it is a "comprehensive" website but it has relatively little content so far, comprising 7 posts recycled for the blog tab, the styling tips tab, and the plant tips button. The Respondent argues that this website is in aid of its "multifaceted" commercial activities but it is not clear what it is intended to achieve that the Clayton South page on The Grow Centre website could not. The Respondent's director is presumably aware of the Complainant's competing business in Melbourne operated by his brother. The Respondent does not operate a similar website for any of its other locations, which are all far from the Complainant. In view of these circumstances, the website associated with the disputed domain name is potentially a mere pretext disguising an intention to use it as an indication of source targeting the Complainant.

Nevertheless, the auDRP is not an appropriate procedure to reach a determination on this issue in the context of a business dispute between two family members and their respective companies, where the Panel does not have the benefit of witness testimony, disclosure of documents, or the other appropriate instruments that are typically available to assist a court to resolve a dispute between the Parties.

Therefore, the Panel has decided to deny the Complaint, not on the merits, but on the broader ground that the case regarding the disputed domain name is part of a wider, more complex dispute that exceeds the scope of the auDRP. The wider dispute can be addressed by a court of competent jurisdiction.

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

The Respondent impugns the motivation behind the Complaint. However, even though the Complaint has been unsuccessful, the Panel does not consider that it was brought in bad faith or that it constitutes an abuse of the administrative proceeding.

#### **7. Decision**

For all the foregoing reasons, the Complaint is denied.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: November 14, 2025