ABN: 69 008 651 232

Administrative Panel Decision

Domain Name:	**people.net.au**
Name of Complainant:	People Telecom Limited (ACN 091 714 699)
Name of Respondent:	A Marshall Computer Services Pty Ltd
Provider:	LEADR
Panel:	Anthony Alder

1. The Parties

The Complainant in this administrative proceeding is People Telecom Limited (ACN 091 714 699) of Level 9, 76 Berry Street, North Sydney, NSW, 2060.

The Respondent in this administrative proceeding is A Marshall Computer Services Pty Ltd of 9 Cleveland Court, Dandenong, VIC, 3175.

2. The Domain Name, Registrar and Provider

The domain name at dispute is 'people.net.au' (herein referred to as the 'Domain Name').

The Registrar of the Domain Name is auDA (herein referred to as the 'Registrar').

The Provider in relation to this administrative proceeding is LEADR (herein referred to as the 'Provider').

3. Procedural History

The complaint was submitted for decision in accordance with the .au Dispute Resolution Policy No. 2002/22 (herein referred to as 'auDRP') and LEADR's Supplementary Rules.

The Complainant lodged the complaint with the Provider on 18 May 2004.

As there were no listed contact address details for the Respondent, Tina Suvajac ('TS'), on behalf of the Provider, contacted the Registrar for the details. The Registrar responded giving TS the Respondent's listed contact address. This was completed on 18 and 19 May 2004. All correspondence to the Respondent was sent to this address.

The Respondent was sent the Complaint and the explanatory covering letter on 19 May 2004 by post. The Respondent was advised that they had 20 days from 19 May 2004 to submit all materials they wish to have considered by the Panelist. A copy of the Notification

Letter was forwarded to the Complainant and the Registrar was sent a copy of the Notification Letter and Complaint.

The Provider advised auDA of the complaint on 19 May 2004.

The Registrar was additionally advised by email to lock the website 'people.net.au' on 19 May 2004.

On 19 May 2004, the Panel was approached by the Provider and accepted the appointment that same day providing a statement of acceptance and that there was no conflict of interest.

No response from the Respondent was received by the end of the 20 days, which expired 8 June 2004.

The Panel was informed on 9 June 2004 that the package was being sent by express post.

The Panel received on 16 June 2004 a response from the Respondent.

4. Factual Background

The Complainant submitted that they own common law trade marks for the terms PEOPLE and PEOPLE TELECOM in respect of telecommunication services and have used these trade marks in Australia continuously since 2001. The Complainant is a large company with a customer base of more than 10,000 customers.

The Respondent operated under the Victorian business name People on the Net and the name A Marshall Computer Services between 1997 and 2003. The Respondent ceased trading under the business names People on the Net and A Marshall Computer Services in 2003. The Respondent in their response dated 16 June 2004 consented to the transfer of the Domain Name to Complainant.

No formal written settlement has been executed, at the date of this decision.

5. Parties' Contentions

A. Complainant

The Complainant has asserted that:

1. The Domain Name is identical or confusingly similar to trade marks in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the Domain Name;
3. The Domain Name has been registered in bad faith; and
4. The Domain Name should be transferred to them.

B. Respondent

The Respondent failed to file a timely response with the Provider. The Panel has chosen to allow the response lodged by the Respondent on 16 June 2004 to allow for procedural fairness in this matter.

The Respondent asserted that:

1. they have been trading as People on the Net since 1997 under a Victorian business name;
2. both A Marshall Computer Services and People on the Net ceased trading in 2003 and are no longer being used; and
3. they have no objections to transferring the Domain Name to the Complainant.

6. Discussion and Findings

The Panel in this administrative proceeding has applied the auDRP. This administrative proceeding is limited to the remedies set out in Clause 4i of Schedule A of the auDRP limiting the remedies to cancellation or transfer of the Domain Name.

The Respondent has asserted that they would have no objections to transferring the Domain Name to the Complainant. It is important to note that at the time of this decision, no formal settlement had been agreed upon between the parties and therefore, Rule 17(a) of the auDRP fails to come into effect and the administrative proceedings have not been terminated.

Rule 10 of auDRP provides the Panel with general powers to conduct the administrative proceedings in such a manner as it considers appropriate in accordance with the Policy and the Rules. Additionally, the Panel is empowered to ensure that the Parties are treated equally. Rule 15 of auDRP states that "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and rules and principles of law that it deems applicable."

The Panel has the general power to grant the transfer of the Domain Name based on the facts and Rule 15. The Complainant is eligible to register the Domain Name, due its use of the common law trade mark PEOPLE TELECOM; and the Respondent is willing to transfer the Domain Name to the Complainant. The Panel finds, as Respondent is willing to transfer the Domain Name, that there is no need to discuss the other contentions between the Parties and that the Domain Name should be transferred.

Please note that other issues relating to Clause 4 of Schedule A of the auDRP are not relevant as both Parties have agreed to the transfer of the Domain Name. There is no need to discuss the other issues further.

7. Decision

For the aforegoing reasons, the Panel hereby instructs the Registrar to transfer the Domain Name from the Respondent to the Complainant.

Dated: 18 June 2004

Anthony Alder
Panelist - LEADR