



ADMINISTRATIVE PANEL DECISION  
AUTRONIC AUTOMOTIVE CONTROLS PTY LIMITED AND AIR POWER  
SYSTEMS

Domain Name: [www.autronic.com.au](http://www.autronic.com.au)  
Name of Complainant: Autronic Automotive Controls Pty Limited  
Name of Respondent: Air Power Systems Pty Limited  
Provider: LEADR  
Sole Panellist: David Lieberman

### 1. The Parties

- a. The complainant in this proceeding is Autronic Automotive Controls Pty Limited of c/o Voitin Walker Davis Suite 2, Level 1, 119 – 121 Ocean Beach Road, Sorrento, Victoria, 3943 (the “Complainant”);
- b. The respondent is Air Power Systems Pty Limited of c/o Prior and Co, Level 14 , 200 Queen Street, Melbourne, Victoria, 3000 or 73-79 Merrindale Drive, Croydon South, VIC 3136 (the “Respondent”).

### 2. The Domain Name, Registrar and Provider

- a. The domain name subject to this proceeding is [www.autronic.com.au](http://www.autronic.com.au) (the “Domain Name”)
- b. The registrar of the Domain Name is Melbourne IT Limited Level 2, 120 King St, Melbourne Victoria 3000 (the “Registrar”)
- c. The provider in this proceeding is LEADR of Level 9,15- 17 Young Street, Sydney, 2000, NSW (the “Provider”)

### 3. Procedural Matters

The Provider made available to me a summary document entitled “Procedural History” substantially as below.

- a) The complaint was submitted for decision in accordance with the (auDRP) Policy and Rules, which was approved by auDA in 2001 and commenced operation on 1 August 2002 and LEADR's Supplementary Rules.
- b) The complete application was received from the Complainant by LEADR on **12 March 2007**

- c) On **15 March 2007**, LEADR contacted the Registrar requesting email contact details for the Respondent. On **15 March 2007**, LEADR emailed a copy of the complaint to the Respondent to the email address provided by Melbourne IT
- d) On **15 March 2007** LEADR send by **express post to** the Respondent a dispute notification letter and a copy of the application. On **20 March 2007** LEADR received a phone call indicating that an express post package had been sent incorrectly to the address at 8/97 Bayfield Road Bayswater VIC 3000. LEADR requested that the package be marked return to sender.
- e) On **15 March 2007** LEADR also sent an email to the Respondent attaching the application including annexures and a copy of the dispute notification letter. The Respondents via their lawyers Rush and Fialla responded by email to the Provider which indicates that the Respondent had received the materials from the Provider.
- f) A copy of the application and a copy of the dispute notification letter were also posted to the registrar **Melbourne IT** on **15 March 2007**. The Registrar confirmed that the website was locked on **16 March 2007**
- g) LEADR advised auDA of the complaint on **15 March 2007** via e-mail.
- h) On **20 April 2007** LEADR approached the Panellist. The panellist confirmed **his** availability, informed LEADR that he had no conflict issues with the parties and accepted the matter on **20 April 2007**.
- i) The response from the Respondent was due on or about 5 April. By email to the Provider dated 10 April 2007 from the solicitors for the Respondent, third paragraph "If the offer is not accepted by Mr Boglis's client [the Complainant] then you should treat this email as

my clients Response.” That offer was an undertaking to transfer the Domain Name to the Complainant or cancel the Domain Name.

- j) The Panellist received the complaint and response on 23 April 2007

#### **4. Complainant’s position**

- a. The Complainant, Autronic Automotive Controls Pty Limited, was formed in 1987 and states that it is widely know in the automotive industry simply as “Autronic”. It produces, among other things, engine management systems for cars and boats.
- b. The name *Autronic* is a registered trade mark of Mr Aubert and his wife. Mr Aubert is a director of the Complainant.
- c. Mr Aubert and the Complainant state that they have spent considerable time, effort and money in developing their product range and have built a substantial reputation in the automotive industry.
- d. The Complainant wrote on 3 occasions to the Respondent advising that the registration of Autronic by the Respondent was in breach of the auDA rules and stating that the renewal of registration of the domain name [www.autronic.com.au](http://www.autronic.com.au) was in breach of the auDA rules.

#### **5. Request by Complainant**

- a. The Complainant seeks to have the Respondent transfer the Domain Name to the Complainant.

#### **6. Response by Respondent**

- a. The Respondent:
  - i. states that the Domain Name was renewed in August 2006 without the Respondent’s knowledge;
  - ii. states that the Respondent only became aware of the renewal after making further inquiries after receiving the Complaint; and,
  - iii. states that “it does not require the Domain Name and that it can be taken up by [the Complainant] either by direct transfer or by Application upon my client providing to [the Complainant] a Form 10 (Termination and Deletion)”.
  - iv. otherwise makes no statement in respect of the matters raised by the Complainant.

#### **7. Jurisdiction**

- a. Jurisdiction for this Panel flows from clause 2.1 a) of the *.au Dispute Resolution Policy (auDRP)* (“Rules”).

- b. The Domain Name is an open 2LD and its registration was renewed in August 2006 and is therefore subject to the mandatory administrative proceedings prescribed by the auDRP.
- c. The Panel makes no determination regarding any possible trade mark infringement or other possible actions such as passing off.
- d. Paragraph 15(a) of the Rules states:

“A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy (auDRP Policy), these Rules and any rules and principles of law that it deems applicable.”

## 8. - Consideration

- a. Paragraph 4(a) of the Rules provides that a person is entitled to complain about the registration or use of a domain name where the following criteria are satisfied:
  - i. the 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 to the complaint has no rights or legitimate interests in respect of the domain name; and
  - iii. the respondent’s domain name has been registered or subsequently used in bad faith.

Prior decisions in domain name disputes under the Rules have found that all three criteria of this Paragraph 4(a) are required to be proven for any complaint to be upheld.

The Complainant bears the onus of proof in respect of these matters.

## 9. Basis of decision

Each of the above criteria is considered in light of the materials provided by the parties

### ***Criteria i) The Domain Name is identical and confusingly similar to names or trade marks***

- a. When applying to register a domain name, the applicant represents and warrants to auDA that the Respondent is eligible to register for the domain name in the open 2LD and that to the applicant’s knowledge the registration will not infringe upon or otherwise violate the rights of any third party.(See auDRP Schedule A Paragraph 2)
- b. In the Panel’s view, there is little doubt that a person seeing the Domain Name would associate the Domain Name with the name of the Complainant, *Autronic Automotive Controls Pty Limited* and the registered Trade Mark *Autronic*.

- c. The Panel finds that the Domain Name is confusingly similar to the Complainant's name and the trade mark used by the Complainant. The Panel for these reasons finds that criteria i) is satisfied.

**Criteria ii) Respondent has no rights or legitimate interests in respect of the Domain Name**

- d. The Complainant has established that it has a legitimate right in the name “autronic” through its continued use since 1987 as a company name and in association with the registered Trade Mark.
- e. The Complainant states that the Respondent has never used the website for commercial trade, business or for any other activity
- f. The Respondent’s name “Air Power Systems Pty Limited” bears no relationship to the Domain Name nor is it closely or substantially connected to the registrant of a trade mark.
- g. The Respondent has not put forward any circumstances to seek to justify its use of the Domain Name such as those circumstances set out in Paragraph 4 c of Schedule A of the auDRP.
- h. It is noted that in order to be eligible to be allocated a domain name in the com.au 2Ld space under AuDA Policy *Domain Name eligibility and Allocation for Open 2LDs (Policy number 2005-01)* the domain name must:
  - 1. exactly match, acronym or abbreviations of the registrant’s company or trading name, organisation or association name or trademark; or
  - 2. be otherwise closely and substantially connected to the registrant.
- i. Based on the above, the Panel is of the opinion that the Respondent has no rights or legitimate interests in respect of the Domain Name. . The Panel therefore finds that Criteria ii above is satisfied.

**Criteria iii) Domain Name was registered or is being used in Bad Faith**

- j. Paragraph 4.b of the Rules sets out considerations, without limitation, which may be taken into account to determine if the “Domain Name was registered or is being used in “Bad Faith”. In particular subparagraph 4.b.(ii) states:

*4(b) (ii) you have registered the domain name in order to prevent the owner of a name, trade mark or service mark from reflecting that name or mark in a corresponding domain name;*
- k. The Complainant states that to its “knowledge, the domain [www.autronic.com.au](http://www.autronic.com.au) has not been used by the {R}espondent since its initial registration”
- l. Despite having been sent letters by facsimile by the Complainant on 16 February and 6 July 2007, the Respondent went ahead and renewed registration of the Domain Name.
- m. It is noted that in its response sent to the Provider on 10 April 2007 by its solicitors, the renewal is stated to have taken place without the

Respondent's knowledge. The Respondent, it is stated, only became aware of the renewal after receiving this complaint.

- n. Given that two letters from the Complainant's solicitors had preceded the renewal, the Panel is of the view that the Respondent was more likely than not to have been aware that the Domain Name was coming up for renewal prior to the date of renewal and of the Complainant's legitimate interest in the Domain Name.
- o. I note that the solicitors for the Respondent in their above email have stated that

*“ my client does not require the Domain Name and that it can be taken up by [the Complainant] either by a direct transfer or by Application upon my client providing to [the Complainant] a Form 10 (Termination and Deletion). “*

The Panel is of the view that at the time of the renewal of registration of the domain name Respondent was fully aware of Complainant's reputation and interest.

- p. Based on the above, the Panel finds that the Complainant has satisfied Criteria iii of the Rules and that the Domain Name has been registered in bad faith by the Respondent.

## 10. Decision

- a. The Complainant is an eligible registrant for the Domain Name in accordance with the rules set out in auDA's Domain Name Eligibility and Allocation Rules for Open 2LDs.
- b. The Complainant has satisfied all of the requirements for the Complaint to be upheld and it has requested that the Domain Name be transferred to it.
- c. The Respondent has in its response not addressed the allegations raised by the Complainant and thus, in the Panel's view, the allegations are taken as having been admitted by the Respondent. Further, the Respondent has, in its response, stated that it is willing to transfer the Domain Name to the Complainant.
- d. In many respects this matter is similar to Proceeding No LEADR-auDRP04/04 (see <http://www.ada.org.au/audrp/proceedings-archive/> ) (“ABC Learning Centres Limited”).where the parties were in agreement regarding the transfer of the domain name. In that matter the Panel determined that it was open to the Panel to make a finding to transfer the domain name on the basis of that agreement. This Panel agrees with that approach in those circumstances.
- e. While the Respondent in this matter indicated, through its lawyers, that it was prepared to transfer the Domain Name, there did not appear to be the

same level of co-operation as existed in the ABC Learning Centres Limited proceedings.

- f. Based on the information provided by the parties and for the abovementioned reasons, the Panel directs and orders the Registrar to transfer the Domain Name from the Respondent to the Complainant.

Note the lawyers for the Respondent sought clarification as to the Panel's powers in relation to awarding of costs. The Panel has no power to make any order as to costs.

Signed

David Lieberman  
Panellist  
3 May 2007