

3 July 2024

Robert Kaay
admin@assets.com.au

Subject: Review of auDA decision in relation to superannuation.com.au

Dear Robert,

I refer to your request for an internal review of auDA's decision in relation to superannuation.com.au.

Section 3.6 of the .au Domain Administration Rules: Licensing (.au Licensing Rules) allows a person affected by a decision made by auDA to apply for an internal review of that decision.

In accordance with the principles of procedural fairness I was not involved in the original investigation of your complaint or the decision that is being reviewed.

Please note that in the interests of consistency, all references to time in this letter are expressed in Australian Eastern Standard Time (AEST).

Your complaint

On 7 June 2024 auDA received a complaint from you about Drop.com.au Pty Ltd (the registrar) in relation to the domain name superannuation.com.au (the domain name).

In your complaint to auDA you provided a link to information in support of your complaint: <https://assets.com.au/auda-complaint-superannuation-com-au/>. In summary:

1. You say your company Assets Australia Pty Ltd won the domain name superannuation.com.au with a bid of \$325,000 on the registrar's domain auction platform, as evidenced by a screenshot from the registrar's website taken by you at around 1pm on 6 June 2024.
2. You say that shortly after the auction officially closed you had a conversation with a representative of the registrar about your bid and your dealings with the registrar.
3. You say that not long after the conversation with the registrar you discovered that your winning bid for the domain name had been deleted and replaced with a bid of \$250,000 from a different bidder.



4. You say a WHOIS search at around 1.30pm showed the domain name registered to Assets Australia Pty Ltd.
5. You say a subsequent WHOIS search at around 2pm showed that the domain name was registered to Money Pty Ltd.

auDA contacted you on 11 June 2024 to advise that your complaint was being investigated. In response you provided a link to further information in support of your complaint: <https://assets.com.au/auda-investigating-superannuation-com-au/>.

This further link included information about your dealings with the registrar, screenshots relating to the auction of the domain name and a copy of an invoice addressed to you.

Relevant section of the .au Licensing Rules

The following is an extract of the .au Licensing Rules as it relates to correction of registrant information by the registrar:

Correction of Registrant Information

2.18.2 A Registrant may request that a Registrar correct information relating to the Person recorded as the Registrant in the Registry Data.

2.18.3 A Registrant may only request such a correction where:

1. the inaccuracy has arisen through a genuine error made in good faith by the Registrant in supplying information to the Registrar; or
2. the inaccuracy has arisen through a genuine error made in good faith by the Registrar in recording the Registrant information;

and only in the following circumstances:

3. the Registrant submitted or through error the Registrar recorded, inaccurate data at the time of registration;
4. the Licence was incorrectly registered by the Registrar to the wrong party;
5. the Licence was incorrectly registered by the Registrar in the name of the reseller or other agent who arranged the registration; or
6. where otherwise authorised by .au Domain Administration.



2.18.4 Any request must be made within 14 calendar days of the Licence being recorded in the Registry Data.

auDA's decision

On 18 June 2024 auDA wrote to you with a decision on your complaint. In summary, auDA advised in its correspondence that:

1. The domain name was registered on 6 June 2024 at 1.30pm and underwent a correction of the registrant information at 1.37pm on the same day.
2. A registrar may make a correction to the registrant information in some circumstances.
3. A registrar may make a correction to registrant information in accordance with section 2.18.3 of the .au Licensing Rules.
4. The registrar indicated they made an administrative error that allowed the registration to occur with incorrect registrant information.
5. The registrar advised they had been in contact with the intended registrant (Money Pty Ltd) prior to the registration of the domain name, supporting the registrar's asserted intent to register the domain name to this entity.
6. The registrar subsequently corrected the registrant information for the domain name when it realised an error had been made. The correction of information on 9 June 2024 is confirmed by auDA's records.
7. The registrar advised that the correction was made due to an error made in good faith by the registrar in recording the registrant information (2.18.3(2) of the .au Licensing Rules) where the licence was incorrectly registered to the wrong party (2.18.3(4) of the .au Licensing Rules).
8. Any dispute related to an order process of a registrar is not within auDA's jurisdiction unless in direct contradiction of an auDA policy.
9. In the absence of further information explaining how the registrar has breached an auDA policy prior to or after the registration of the domain name, auDA is unable to take any further action.

Grounds for review

On 20 June 2024 you requested via email an internal review of auDA's decision. In support of your application for review you provided additional links to supporting information:

<https://assets.com.au/dbr-has-won-superannuation-com-au-for-325000/>

<https://assets.com.au/auda-invented-a-licensing-rule/>



The second of these posts provides new information in response to our letter to you of 18 June 2024.

In your email, you made the following points in support of your application for internal review:

1. You say auDA's initial decision includes a fictional .au Licensing Rules sentence (A registrar may make a correction to the registrant information in some circumstances) that makes the dismissal of your complaint invalid. This issue is the subject of the second post referred to above.
2. You say you believe the registrar contacted auDA by telephone on 6 June and auDA gave the registrar a "green light" to issue the domain name to the second bidder instead of you.
3. You say auDA confirms that the domain name was registered at 1.30pm on 6 June 2024 and underwent a correction of registrant information at 1.37pm on the same day. You say this supports your assertion that you and your company Assets Australia Pty Ltd were issued the domain name licence at that time, and the registrant details were wrongly changed.
4. You say it is clear that at 1.30pm you were the registrant on record, and you did not request the change. You say the relevant section of the .au Licensing Rules allows for correction only at the request of the registrant and you made no such request.

You request that auDA promptly fix the error that you believe was made by the registrar in changing the registrant information without a request from you, and change the licensing and ownership of the domain name to Assets Australia Pty Ltd. Due to your account at Drop.com.au being banned you request that the domain name be transferred to your Synergy Wholesale Register account.

My assessment

The domain auction platform and the .au Licensing Rules

The .au Licensing Rules do not cover the commercial context in which the registrar operates its domain auction platform. The registrar's commercial interactions with you in that context include the registrar's terms and conditions for taking part in an auction, your access to the domain auction platform and the operation of the auction. These matters are not covered by the .au Licensing Rules.

The registrar's decision as to which party it entered into a contract with for the domain name licence was also made in a commercial context, and is not subject to the .au Licensing Rules or this review.



Who became the registrant of the domain name?

The information provided by you and the registrar indicates that:

1. Following the end of the auction there was a conversation between you and a representative of the registrar about your participation in the auction and the outcome of the auction.
2. There was no agreement made between you and the registrar in that conversation that the domain name would be secured for your purchase.

I understand that there was a period of two hours between the end of the auction and the time the domain name was due to drop from the registry and become available for registration.

The registrar advises that after the end of the auction and prior to the domain name dropping, it contacted and reached agreement with Money Pty Ltd on the purchase of the domain name.

The registrar confirms that it erred in not updating its own database before the domain name dropped. The registrar's database continued to reflect the details of the highest auction bid rather than the contracting party, which led to the domain name being registered in the name of Assets Australia Pty Ltd, rather than in the name of the contracted registrant, Money Pty Ltd. Registrar error following the auction also resulted in an incorrect invoice being issued to Assets Australia Pty Ltd.

As noted above, the .au Licensing Rules do not cover the commercial context in which the registrar operates its domain auction platform. The information provided to auDA supports the conclusion that Money Pty Ltd reached agreement with the registrar on the purchase of the domain name and in doing so became the contracted registrant. The registry was updated with the details of Assets Australia Pty Ltd as a result of registrar error.

Was the registrar permitted to correct its error?

Section 2.18.3 of .au Licensing Rules refers specifically to circumstances in which, as a result of a genuine error made in good faith by a registrar, a domain name licence is incorrectly registered by the registrar to the wrong party.

Sections 2.18.2 and 2.18.3 of the .au Licensing Rules allows a registrant to request that the registrar correct registry data in those circumstances.

The registrar advised auDA that during discussions with Money Pty Ltd to confirm the purchase of the domain name, it was agreed that the registrar would update its own



database so that Money Pty Ltd was automatically recorded as the registrant when the domain name dropped.

As the registrar failed to make the change to its own database in time, a correction of the registrant information was made to give effect to the agreement that had been reached between the registrar and Money Pty Ltd.

I find that the registrar acted reasonably and in compliance with the .au Licensing Rules when it corrected the registry data to replace Assets Australia Pty Ltd with Money Pty Ltd as the registrant of the domain name.

The correction of the registry data occurred within the 14 day time frame specified in section 2.18.4 of the .au Licensing Rules.

Did auDA's decision include incorrect information about the .au Licensing Rules that would invalidate the decision?

auDA's letter of 18 June 2024 states that a registrar may make a correction to the registrant information in some circumstances.

This statement is presented as the view of the letter writer, and I believe it is an accurate overview of section 2.18.3 of the .au Licensing Rules. It does not purport to be a quote from the .au Licensing Rules. The letter goes on to quote section 2.18.3 of the .au Licensing Rules in its entirety.

Your claim in the application for review, that auDA's letter includes a fictional .au Licensing Rule sentence that invalidates auDA's decision, is not supported.

Contact between the registrar and auDA

In your application for review you claim that the registrar contacted auDA on 6 June 2024 and auDA gave a "green light" to the action taken by the registrar in this matter.

In response to this claim I note that:

1. auDA encourages any registrar or member of the public to contact auDA if they require assistance with understanding and applying the .au Licensing Rules. This is a confidential process, and communications are not made public.
2. As detailed above, section 2.18.3 of the .au Licensing Rules sets out the circumstances in which a registrar can make a correction to registrant information, and the registrar acted in accordance with the .au Licensing Rules.



My decision

I agree with the auDA decision of 18 June 2024 that the registrar has acted in accordance with the .au Licensing Rules.

Further action

If you do not agree with the outcome of my review, you can request an external review of the decision by the Licence Review Panel (LRP). You must make your application for external review within 10 calendar days of receiving my decision.

Please note that a fee applies to an application for an external review by the LRP. You can find out more here: [Licence Review Panel | auDA](#).

Regards

Barbara Schade
Senior Compliance Policy Officer
auDA