

**WORLD INTELLECTUAL PROPERTY ORGANIZATION  
ARBITRATION AND MEDIATION CENTRE**

RESPONSE - CASE NUMBER DAU2003-0001

**Complainant:**

**The Crown in Right of the State of Tasmania trading as “Tourism Tasmania”**

*GPO Box 399 HOBART 7001*

AUSTRALIA

-v-

**Respondent**

**Gordon James Craven**

PO Box 117

GLENORCHY TASMANIA

AUSTRALIA

Registered licensee of the domain name: [discover-tasmania.com.au](http://discover-tasmania.com.au)

**Disputed Domain Name:**    **[discover-tasmania.com.au](http://discover-tasmania.com.au)**

<http://www.Discover-Tasmania.com.au>

**RESPONSE**

(Rules, para. 5(b))

**I. Introduction**

On the **14th of February 2003** I received by email from the Complainant the Notification of Complaint and on the **26th February 2003** I was notified by the Centre that Commencement of Administrative Proceeding had commenced on the **25th February 2003**.

I received a Notification of Complaint and Commencement of Administrative Proceeding from the WIPO Arbitration and Mediation Centre (the Centre) by email on the **26th February 2003** and hardcopy by courier on the **5th March 2003** informing me that an administrative proceeding had been commenced by the Complainant in accordance with the .au Dispute Resolution Policy (the Policy), approved by the auDA Board on August 13, 2001, the Rules for .au Dispute Resolution Policy (the Rules), and the WIPO Supplemental Rules for .au Dispute Resolution Policy (the Supplemental Rules). The Centre set the **17th of March 2003** as the last day for the submission of a Response by the Respondent.

## **II. Respondent s Contact Details**

(Rules, para. 5(b)(ii) and (iii))

The Respondent s contact details are:

Name: Gordon James Craven  
Address: PO Box 117,, Glenorchy Tasmania 7010 Australia.  
Telephone: 61 3 6273 0665  
Fax: 61 3 6273 4458  
E-mail: buscard@iprimus.com.au riverside@trump.net.au

The Respondent is representing himself.

The Respondent s preferred method of communications directed to the Respondent in this administrative proceeding is:

Electronic-only material  
Method: e-mail  
Address: buscard@iprimus.com.au  
Contact: Gordon Craven

Material including hardcopy  
Method: Post  
Address: PO Box 117, Glenorchy TAS 7010, Australia  
Fax: 61 3 6273 4458  
Contact: Gordon Craven

## **III. Response to Statements and Allegations Made in Complaint**

(Policy, paras. 4(a), (b), (c); Rules, para. 3)

The Respondent hereby responds to the statements and allegations in the Complaint and respectfully requests the Administrative Panel to deny the remedies requested by the Complainant.

**A. As to the domain name being identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.**

**RESPONSE TO THE COMPLAINANT'S STATEMENTS OF FACTUAL BACKGROUND:**

- 1) Paragraph 1 of the Complainants statement of facts are accepted as correct save that the Complainant has neglected to set out that Tourism Tasmania is a Body Corporate and thus is a separate legal entity to the Tasmanian Government. Section 4 Tourism Tasmania Act 1996 <http://www.thelaw.tas.gov.au/fragview/57++1996+GS4@EN+2003031600>  
I contend that the body corporate Tourism Tasmania is not a party to this Complaint and the Complainant's standing in this matter only extend to its rights in Tourism Tasmania.
- 2) Paragraph 2 of the Complainants statement of facts are accepted as correct.
- 3) Sub paragraph 1 of paragraph 3 of the Complainants statement of facts are accepted as correct save for as limited by paragraph 1) above.
- 3.1) Sub paragraph 2 of paragraph 3 of the Complainants statements of facts are denied and re-futed and alleged to be false statements of fact. I say that:
  - (a) the Complainant has only offered a subjective interpretation of evidence to support its statement of fact apart from it stating that Discover Tasmania appears in the Title Bar of its webpages. From what the Complainants evidence appears to show, the said appearance was from a time after the launching of its latest website on 15th March 2001. From the sketchy evidence provided, between March 1995 and 15th March 2001 Discover Tasmania may well not have appeared in the Title Bar of its webpages;
  - (b) the Complainant's evidence (9.pdf) shows the Complainant is claiming rights in the term Discover Tasmania while the business name Discover Tasmania was registered to another party unconnected to this matter which used it for Tourism Publications;
  - (c) as a licensed tourism operator in Tasmania from August 1993 to August 1999 and an approved Tasmanian Visitor Information Network provider from January 1994 to October 1997 and a Internet website designer and developer from June 1996, I state as fact that I posses no knowledge of what the Complainant states at sub paragraph 2 of Paragraph 3 for the period between August 1993 to August 1999 or any time thereafter other than as set out in this Response;
  - (d) on my search, 10 March 2003 of the Complainant's corporate and tourism websites at: <http://www.tourismtasmania.com.au/search.html>  
<http://www.discovertasmania.com.au/home/index.cfm?SiteID=680&display=search>  
I can find no evidence of the purported "Discover Tasmania brand" at all, and (except as set out at (a) above) no evidence where the term "Discover Tasmania" is used as the Complainant states;
  - (e) nor can I find either of the above in the Complainant's Tourism 21 Strategic Plan at: <http://www.tourismtasmania.com.au/pdf/t212001convchall.pdf> - Annexe "1A.pdf", or the Complainant's Corporate Plan at, <http://www.tourismtasmania.com.au/pdf/corpplan2002.pdf> - Annexe "2A.pdf", or the Complainant's Annual Report 2001-2002 at; [http://www.tourismtasmania.com.au/org/ann\\_reports/annual\\_report01.html](http://www.tourismtasmania.com.au/org/ann_reports/annual_report01.html) - Annexe "2AB.pdf",

- (f) considering the Complainant states as fact that Discover Tasmania is its most distinctive branding mark and the central component of its promotional and sales operations, the facts of (d) and (e) above are somewhat surprising.
- 3.2) Sub paragraph 3 of paragraph 3 of the Complainants statement of facts are accepted as correct save for as limited by paragraph 1) above. It is noted that the logo that includes the words, "Tasmania Discover Australia's Natural State", appears not to be registered as a trade mark and the Complainant has not specifically pleaded rights in an unregistered trade mark.
- 4) Sub paragraph 1 of paragraph 4 of the Complainants statement of facts are refuted as the evidence shows Tourism Tasmania is the current registrant of those domains. True copies of that evidence is annexed hereto and identified with the filename "**N.pdf** "
- 4.1) Sub paragraph 2 of paragraph 4 of the Complainants statement of facts are not responded to, the evidence does not show the Complainant as the registrant.
- 4.2) Sub paragraph 3 of paragraph 4 of the Complainants statement of facts are accepted as correct save for as limited by paragraph 1) above.
- 4.3) Sub paragraph 4 of Paragraph 4 of the Complainants statement of facts are not responded to.
- 4.4) Sub paragraph 5 of paragraph 4 of the Complainants statement of facts are denied and refuted to the extent that the Complainant claims existence of the said brand. I also say that the term Discover Tasmania does not appear on the text or image content of the complainants front pages of its websites nor elsewhere that I can find.
- 5) Sub paragraph 1 of paragraph 5 of the Complainants statement of facts are refuted as the Complainant's evidence (8.pdf) shows the corporation Tourism Tasmania as being the current registrant of the business name Discover Tasmania.
- 5.1) Sub paragraph 2 of paragraph 5 of the Complainants statements of facts are denied and refuted and alleged to be false statements of fact. I say that; sub paragraphs 3.1)(a), (b), (c), (d), (e) and (f) above are referred to and repeated.
- 5.2) Sub paragraph 3 of paragraph 5 of the Complainants statement of facts are not accepted as fact on the basis that the Complainant has provided no supporting evidence.

## **RESPONSE TO THE COMPLAINANT'S ALLEGATIONS - (its Legal Grounds):**

**A1.** I accept that the Complainant, insofar as it is Tourism Tasmania, has actively been engaged in promoting tourism in the State of Tasmania and the sale and reservation of travel to and within Tasmania but deny and refute that the Tasmanian Government engages in the trade and commerce as described, as they are the activities of the Body Corporate, a separate entity.

A

1.1 As to the first part of paragraph A1 of the Complainants allegations it is refuted and denied that the disputed domain name **DiscoverTasmania.com.au** is confusingly similar the trade mark **TASMANIA Discover your natural state**. I contend that the Complainant has filed no authentic evidence and no citation to support its allegation of confusion.

In support of my denial and refutation, I respectfully submit how the term **confusingly similar** has been previously determined by citing the following case histories:

(a) *Asda Group Limited v. Mr. Paul Kilgour* Case No. D2002-0857

at; what is meant by "confusingly similar"?

<http://arbiter.wipo.int/domains/decisions/html/2002/d2002-0857.html>

and in cases with a similar set of background facts;

(b) *Brisbane City Council v. Warren Bolton Consulting Pty Ltd*, Case No. D2001-0047

at; 6.10 (BRISBANE CITY WORKS)

<http://arbiter.wipo.int/domains/decisions/html/2001/d2001-0047.html>

(c) *Brisbane City Council v. Joyce Russ Advertising Pty Limited*, Case No. D2001-0069

<http://arbiter.wipo.int/domains/decisions/html/2001/d2001-0069.html>

A

1.1.1 **I make the point that the Complainant has not specifically pleaded any rights to Discover Tasmania as an unregistered trade mark.**

A

1.1.2 As to the remaining part of paragraph A1, It is denied and refuted that the Complainant's use of the trade mark **TASMANIA Discover your natural state** has caused consumers to identify the descriptive and stand alone term of **Discover Tasmania** as somehow unique and exclusively belonging to the above mark and somehow exclusively for the use of the Complainant. The Complainant has offered no evidence of:

(a) how it establishes its allegations from its subjective interpretation of evidence; or

(b) market research or similar to support how this has been accepted by the market place;  
or

(c) how the term Discover Tasmania has acquired a secondary meaning to the exclusive use of the Complainant; or

(d) how the term Discover Tasmania has distinguished the product and services of the Complainant from the products and services of others and also in this case, environmental issues;

apart from having the term Discover Tasmania appear in the Title Bar of its webpages while it does not appear in the content of those webpages, and I contend that for the Complainant to seek to establish its claims by its pleadings, and evidence in the attachments 5a and 5b or any evidence produced, is fanciful and wishful thinking.

A

1.1.3 As to the Complainants evidence bearing the domain name DiscoverTasmania.com.au, it is well accepted that unlike trade marks, domain names do not provide proprietary rights for the use of the name and therefore a reputation or right to a mark or name cannot be established by the use of a domain name as a domain name registration.

I refer to a true copy of page 5 of a current Australian Trade Marks Application Kit, annexed hereto and identified with the filename "**3A.pdf**"

A

1.1.4 Further, I contend that wording in the Title Bar of the Complainant's webpages is predominately for the benefit of what search engine pick up to place on their pages as website descriptions, and as such are there for descriptive reasons only and not for ascertaining rights in a trade mark especially where, as is the fact in this matter, the term Discover Tasmania is nowhere to be found in the text or image content of the Complainants webpages. e.g., on 15/03/03 the Title Bar at <http://www.discovertasmania.com.au> reads, *Discover Tasmania and Hobart Australia Official Travel Guide*. (see HTML in annexe below). Annexed hereto and identified with the filename "**A.pdf**" is a true copy of the Complainant's front webpages which I downloaded and saved on the 17/02/03 and 15/03/03.

A

1.1.5 I contend that if the Complainant has rights in the term Discover Tasmania (which is denied), they are limited to the same rights every other person or business in or relating to Tasmania has and are not rights exclusive belonging to the Complainant and in support of that argument I cite the following case history:

*HER MAJESTY THE QUEEN, in right of her Government in New Zealand, as Trustee for the Citizens, Organizations and State of New Zealand, acting by and through the Honourable Jim Sutton, the Associate Minister of Foreign Affairs and Trade - v - Virtual Countries, Inc* Case No. D2002-0754  
<http://arbiter.wipo.int/domains/decisions/html/2002/d2002-0754.html>

A

1.1.6 In reference to the above case (D2002-0754):

- (a) I contend that the findings made with regard to the words NEW ZEALAND should apply to the word TASMANIA, being a component of the Complainant's trade mark **TASMANIA Discover your natural state** in respect of;
  - (i) the geographical word TASMANIA belonging to the citizens, organisations and the State of Tasmania; and
  - (ii) that the same applies to TASMANIA as to its inclusion of the term Discover Tasmania; and
- (b) I contend as to the word "Discover" within the term Discover Tasmania and the term Discover Tasmania itself, that the following passage of the above case (D2002-0754) applies;

*Self-evidently, product descriptions, which are available for use by all traders in such products, cannot constitute trade/service marks.*

A

1.1.7 Further I contend that if the Complainant in fact has a reputation in the market under the term Discover Tasmania (which I deny it in fact does), the said passage above applies to all the products, services and information that the Complainant provides under that term which cannot constitute a trade mark in any event.

A

1.1.8 I respectfully submit to the Panel the underlying law in Australia covering the matters pleaded by the Complainant is set out by the High Court of Australia in;  
*Hornsby Building Information Centre Pty. Ltd. v. Sydney Building Information Centre Ltd.*  
(1978) 140 CLR 216 at 229.

[http://www.austlii.edu.au/au/cases/cth/high\\_ct/140clr216.html](http://www.austlii.edu.au/au/cases/cth/high_ct/140clr216.html)

STEPHEN J. at paragraph 22 (Austlii)

Annexed hereto and identified with the filename "**HORNSBY.pdf**" is a true copy of what STEPHEN J. of the High Court said.

A

1.1.9 In summary, I contend that neither word "Discover" nor "Tasmania" can be claimed as the Complainant purports in its claim to rights in those words. Further the effect of using those words together, as the term Discover Tasmania, gives a combined effect of illegitimacy to the claim of rights in the using a descriptive word (per A1.1.6(b) above) and a geographic word (per A1.1.6(a) above) together as a stand alone term, as a component of words registered as a word component of a trade mark or in any other way and also when the order of the words is reversed as is in this case, TASMANIA Discover.

**A2.** Regarding sub paragraph 1 of paragraph A2 of the Complainants allegations. I do not dispute what the Complainant says regarding the disputed domain name having a hyphen. I contend this adds nothing to the cause of the Complainant. I allege the Complainant has made this pleading in bad faith and I refer to and repeat paragraphs at A3 below and say that Tourism Tasmania failed for almost 2 years to register the business name Discover Tasmania while it was available and then, it suddenly registers it on the same day that I register the disputed domain. Thus I allege this has been executed for the bad faith express purpose of securing rights to the disputed domain name once my Discover-Tasmania.com website was published and in furtherance of its bad faith, the Complainant is using the registration to maintain this WIPO Complaint and as such I further allege it is reliant on manufactured evidence.

**A PARTICULARS, STATED BY MYSELF TO BE FACT**

2.1 The business name Discover Tasmania was available for the period of time as is calculated from the Complainant's evidence, being the 18th January 2001 to 28th November 2002 which is 1 year 10 months 10 days.

A

2.1.1 I had the option to register that name and chose not to as I had and have, no intention of trading under that name. As a registered business I offer related information and services under that descriptive term and will be offering related products and services that are to be of a commercial nature in the future, e.g., *"Discover Tasmania, for Environmental Websites"*.

A

2.1.2 Tourism Tasmania (the corporation) has chosen to register the name Discover Tasmania after the said period of 1 year 10 months 10 days availability while it already trades under the name of Tourism Tasmania.

A

2.1.3 This date of the registration exactly coincides with the same date that I registered the disputed Discover-Tasmania.com.au as is shown by the Complainants evidence (Attachment 2.pdf and Attachment 8.pdf).

A

2.1.4 The Complainant has produced no evidence, and I can find no evidence at the Australian Business Register <http://www.abr.business.gov.au> at the date of this Response, that it or Tourism Tasmania did trade, or is trading, or intends to trade under the name Discover Tasmania apart from the registration extract (8.pdf) bearing a starting date of 26th November 2002 (for Tourism Tasmania).

A

2.1.5 There is no evidence produced of Ministerial approval for Tourism Tasmania to trade as Discover Tasmania pursuant to section 7(4)(b) Tourism Tasmania Act 1996.

<http://www.thelaw.tas.gov.au/fragview/57++1996+GS7@EN+2003010800>

A true copy of that section is annexed hereto & identified with the filename **"B.pdf"**

A

2.2 Sub paragraph 2 of paragraph A2 of the Complainants allegations are admitted.

A

2.3 Sub paragraph 3 of paragraph A2 of the Complainants allegations is admitted. However the letter did not indicate to me in any way that the Complainant or Tourism Tasmania was using or was purporting to use the term Discover Tasmania.

A

2.4 Sub paragraph 4 of paragraph A2 of the Complainants allegations is not disputed save that it is denied that I had anything published on the Complainants DiscoverTasmania.com or DiscoverTasmania.com.au sites, as at the time (pre August 1999) per the evidence given by the Complainant the Complainant was not the licensee of those domains nor did have a website at those domains and further evidence of the complainant by way of its promotional footage 5a, shows the domain used by the Complainant at the time was Tourism.tas.gov.au.

A

2.5 Sub paragraph 5 of paragraph A2 of the Complainants allegations is denied and refuted save that I was aware of the Complainants web address DiscoverTasmania.com at some time (which I cannot recall) after the Complainant published its website at DiscoverTasmania.com which was (according to the Complainants evidence) on 15 March 2001. As to the allegation that I knew of the Complainants rights to the term Discover Tasmania, I deny and refute that allegation and I refer to and repeat paragraph A1 to A1.1.9 above and B2.2(a) below.

A

2.6 Sub paragraph 6 of paragraph 2 of the Complainants allegations is denied and refuted. I allege that the "Minutes of Meeting" produced as attachment 12a by Mr. Robert Hogan, General Manager of Communications & Information Technology at Tourism Tasmania is:

- \* false in fact; or
- \* misleading or deceptive by omission; and
- \* containing opinion erroneously construed to suite the Complainants claims; and
- \* personally insulting.

**PARTICULAR, STATED BY MYSELF TO BE FACT TAKEN FROM MY CLEAR RECOLLECTION OF THE MEETING ON 4 December 2002.**

**Mr. Hogan's Minutes of Meeting are incorrect and inaccurate in that:**

(a) I did not represent, that it was one of my objectives to undermine the brand values of Tasmania and that I was reaping revenge on the Government. The conversation that took place between us touched these issues as they were led by Mr. Hogan, however they were in the context set out at (d) below. Mr. Hogan has provided his evidence of our conversation in a context that is misconstrued and is mixed with his own opinion which is erroneous and which I consider to be personally insulting.

**Mr. Hogan has chosen to omit the following relevant facts from his Minutes of Meeting:**

(b) that I had provided a printout dated 4 December 2002 of the then Mission Statement published at the domain name in dispute to him at the start of our meeting in order that he would have no misinterpretations as to my motives;

(i) Annexed hereto and identified with the filename "**C**" is a true copy of that mission statement handed to Mr. Hogan which he did read and apparently understood before returning it to me;

- (c) that he (Mr. Hogan) became aware of my registration of the domain name in dispute (Discover-Tasmania.com.au), by virtue of reading the above annexed mission statement;
- (d) that I told Mr. Hogan that the objective of my website at the domain Discover-Tasmania.com was to tell the other side of the environmental story and that in my opinion it was unfortunate the Government chose to hide this story as it was creating considerable polarisation and discontent within the Tasmanian community by giving a misleading image that Tasmania was clean, green & natural and that the government brings upon itself any undermining of perceived brand values as it was responsible for the truth of the matter, all I do is report it;
- (e) that he told me that 70 percent of the employees at Tourism Tasmania agreed with what was on my website Discover-Tasmania.com and that Tourism Tasmania had no issue with the content of the website;
  - (i) The latter part of the above is supported by the letter dated 4 December 2002 I received from Mr. Hogan the day after the meeting. A true copy of that letter is annexed hereto and identified with the filename **"D.pdf"**
- (f) that he required no answer to said letter (which had been mailed before the meeting took place) because we were addressing the matters contained in it at the meeting;
- (g) that he offered to purchase my domain names from me and that I replied by saying, ***"I don't care if you offer a couple of million they are not for sale"***;
- (h) that he then offered me a job with Tourism Tasmania if I would hand the domains over by saying, ***"we could set up your own little IT section where you would be in charge of such things as securing Domain Names"***;
- (i) In evidence of my abovesaid statements at (g) and (h) I annexe hereto;
  - A. the affidavit of my wife Janet Craven dated 11 March 2003 and identified with the filename **"E.pdf"**;
  - B. a true copy of an email from Mr. Nick Rushworth of Channel Nine television in reply to my email regarding the offers made by Mr. Hogan and identified with the filename **"F.pdf"**;
  - C. the affidavit of Richard Henry Holland Davis dated 6th March 2003 and identified with the filename **"G.pdf"**;
- (i) that I declined the offer of employment and expressed a concern as to the appropriateness of the offer, whereupon Mr. Hogan said words to the effect, ***"you would be surprised how many people we get to work for us"***.
- (j) that in consequence of what is set out at sub paragraph (b) and (c) above, the offers at sub paragraphs (g) and (h) above included the domain name in dispute Discover-Tasmania.com.au;
- (k) that I informed Mr. Hogan that I hoped my Discover Tasmania venture would eventually be self supporting and profitable in the long run once other like minded persons or business availed themselves of my services as I was in the website development business.
- (l) that I had stated to Mr. Hogan that the Government had no trademark in Australia or USA for Discover Tasmania, and Mr. Hogan acknowledged that fact.

A

2.6.1 I allege that the Complainant, in providing representations "12a.pdf" to the Panel, is being untruthful and misleading or deceptive for a purpose of hiding from the Panel that the meeting was executed in bad faith by Tourism Tasmania for the purpose of trying to entice me to contravene auDA provisions (Policy No: 2002-24) and show bad faith by succumbing to Mr. Hogan's offers of money and **much needed** employment. In hindsight, I also allege that the offers were non genuine and bogus (with the offer of employment possibly being made ultra vires) for the express purpose of creating evidence to maintain a WIPO Complaint and as such was attempted entrapment. If proven in a Court with jurisdiction, then a contravention of section 53B (and/or sections 52 & 75B) Commonwealth Trade Practices Act 1974 may well be found, *please see* <http://scaleplus.law.gov.au/html/pasteact/0/115/0/PA002190.htm>

A

2.6.2 In the circumstances, the above conduct of the Complainant is relied upon as evidence to my claim against the Complainant pursuant to rule 15(e) of bad faith, abuse of process and attempted Reverse Domain Name Hijacking by the Complainant as set out at part **D** below.

**A3.** Paragraph A3 of the Complainants allegations is denied and refuted. I contend that the Complainant's pleading regarding a **name** is untenable because.

(a) *Please see auDA Policy 4a(i) Note<sup>1</sup>;*

<sup>1</sup> *For the purposes of this policy, auDA has determined that a "name ... in which the complainant has rights" refers to:*

a) *the complainant's company, business or other legal or trading name, as registered with the relevant Australian government authority;*

(b) At the time of my registration of Discover-Tasmania.com.au the registered business name Discover Tasmania **did not exist**, save for where it may or may not have existed by only a matter of hours as the said business name Discover Tasmania was registered on the same day that the domain name in dispute was registered (as shown in the evidence 2.pdf & 8.pdf). I contend it is ridiculous to claim rights in a business name that may have only existed for a few hours.

(c) further, I contend there can be no rights created in a business name for the period (since 1995) that the Complainant appears to purport, as;

(i) if it has been using that business name since 1995 it would have been in contravention of its own legislation;

*Business Names Act 1962. Certain business names to be registered Sec.5*  
<http://www.thelaw.tas.gov.au/fragview/44++1962+GS5@EN+2003022700>

(ii) it cannot claim rights to a business name that it did not bother to register;

(iii) it contradicts the business name extract (at 8.pdf) which bears a business starting date of 26th November 2002;

(iv) retrospective rights are not recognised in the auDA Policy;

I refer to and repeat paragraphs A2 to A2.1.5 above and in the circumstances, I again allege that the Complainant is reliant on manufactured evidence.

A

3.1 Further or alternatively, I refer to and repeat my response at paragraphs A1.1.1 to 1.1.9 and apply that same argument to all that is set out in the Complainant's Factual Background which I have challenged at paragraphs 3.1) and 5.1) on pages 3 and 4 above.

**B. As to the Respondent having no rights or legitimate interests in respect of the domain name.**

**B1.** Paragraph B1 of the Complainants allegations are refuted and denied and I show evidence that the site is to be used commercially which the Complainant is well aware of.

**PARTICULARS, STATED BY MYSELF TO BE FACT BEFORE RECEIVING NOTIFICATION OF THE COMPLAINT**

At a time I cannot exactly recall, but approximately 2 to 3 weeks after the first publishing of the Discover-Tasmania.com.au website and at a time well prior to being notified of this Complaint, my Australian Business Number ABN 64 517 410 881 (issued per Australian Law) was entered at the bottom of the front page which was hyperlinked to show my details on the Australian Business Register (ABR). The purpose of that was to show who was operating the website and I believe the Complainant had a certain opportunity to investigate this hyperlink (link).

<http://www.Discover-Tasmania.com.au> > click on ABN 64 517 410 881

A true copy of my front webpage in the stated period is annexed hereto and identified with the filename "**H.pdf**"

B

1.1 Details at the Australian Business Registry website reveal that the trading name for my ABN is AustralianBusinessCards.com.

A true copy of those ABR details are annexed hereto and identified with the filename "**I.pdf**"

B

1.1.2 The <http://www.AustralianBusinessCards.com> website shows that I am in the business of constructing and developing websites and associated products and services.

A true copy of the front page of that website is annexed hereto and identified with the filename "**J.pdf**"

B

1.1.3 My method of attracting website clients is a previously established method by me as shown at my AusFloristDirect.com <http://www.AusFloristDirect.com> website that is being repeated at my Discover-Tasmania.com.au website. That florist site was established shortly after my registering the AusFloristDirect.com domain which according to WHOIS was registered on 20th March 2001. At the top right hand corner of the front page marked "Custom Website Services" a button links potential customers to products and services offered.

A true copy of the front page of that website and receipt for the domain name AusfloristDirect.com is annexed hereto and identified with the filename "**K.pdf**"

B

1.1.4 As to Complainant being well aware of the above facts by its monitoring of my websites:

**PARTICULARS, STATED BY MYSELF TO BE FACT**

The following evidence below shows that the IP addresses 202.7.15.24, 202.7.15.25, 202.7.15.26 and 202.7.15.31 have been regularly visiting my websites at AusralianBusinessCards.com and AusFloristDirect.com.

True copies of the logs for AusralianBusinessCards.com and AusFloristDirect.com showing the IP addresses of 202.7.15.24, 202.7.15.25, 202.7.15.26, 202.7.15.31 are annexed hereto and identified with the filename "**L-abc.pdf**" and "**L-afd.pdf**". This is for a period of 19 November 2002 to 13 February 2003.

B

1.1.5 The following evidence below shows that the said IP addresses 202.7.15.24, 202.7.15.25, 202.7.15.26, 202.7.15.31 belong to the Complainant.

Annexed hereto and identified with the filename "**M.pdf**" are true copies of the reverse name lookup for those IP addresses.

B

1.1.6 The said true copies of reverse name lookup obtained at,

<http://www.zoneedit.com/lookup.html> also show that the following IP addresses 202.7.15.13, 202.7.15.10, 202.7.15.61 as belonging to the Complainant.

B

1.1.7 On searching the <http://whois.ausregistry.net.au> WHOIS and a .com WHOIS for the Complainant's domains DiscoverTasmania.com.au and DiscoverTasmania.com, it is revealed that the said IP addresses 202.7.15.13, 202.7.15.10 belong to Tourism Tasmania.

True copies of those said searches WHOIS are annexed hereto and identified with the filename "**N.pdf**"

B

1.1.8 At my meeting with Robert Hogan as set out at paragraph A2.6 above, I informed the Complainant via Mr. Hogan that my business of designing and developing websites was to be applied to the disputed domain as shown by my statement of fact at paragraph A2.6(k) above which is partially acknowledged in the Hogan Minutes (12a).

B

1.1.9 In reliance of my statement of facts above, I allege that the Complainant at the time of making its Complaint was well aware that I am in the business of designing and developing websites and that I am in the business of attracting clients as shown by the above method and the Complainant would have been well aware that I am to use the disputed domain for directory purposes, free services and purposes connected with developing Tasmanian business, tourism and environmental websites.

B

1.1.10 As such, I allege that the Complainant well knows that its pleading B1 is spurious and as such I allege it to be made in bad faith.

**B2.** Paragraph B2 of the Complainants allegations are refuted and denied and I set forth my factual account of the matter as to my registering the domain in dispute.

**PARTICULARS, STATED BY MYSELF TO BE FACT**

At a time which I (the Respondent) cannot exactly recall which was a time AFTER the Complainant had published its websites at the domains DiscoverTasmania.com and DiscoverTasmania.com.au, I became aware of the Complainant's website at those addresses and did notice that the common term to the domains that the Complainant was using was DiscoverTasmania and that it was a descriptive term. Until that time I thought the Complainants website address had been, www.Tourism.tas.gov.au.

**B**

2.1 At the time, I thought the term Discover Tasmania to be a good descriptive term that would be adaptable to any aspect of Tasmania. Upon searching Google and other search engines, I noticed that the term was used a lot in the search engine descriptions of websites that included the Complainant's websites but was not used exclusively by the Complainant. I registered the domain (that has been repeatedly referred to in the Complaint) Discover-Tasmania.com on the 2nd of November 2002 and published an environmental website named (in the webpage content) DISCOVER... TASMANIA at that domain address on Tuesday 19 November 2002. A true copy of the receipt for the Discover-Tasmania.com domain is annexed hereto and identified with the filename **"O.pdf "**

**B**

2.1.1 The reasons for publishing the website relates to an environmental controversy of public interest in Tasmania that the Complainant and a number of its statutory corporations have a stakeholding in. The public interest is inter alia evidenced by:

- (a) A true copy of just some newspaper articles for a period of 10 February 2003 to 15 February 2003 are annexed hereto and identified with the filename **"P "**; and
- (b) The Channel Nine Sunday Show of 9 February 2003, details at; [http://sunday.ninemsn.com.au/sunday/cover\\_stories/article\\_1205.asp](http://sunday.ninemsn.com.au/sunday/cover_stories/article_1205.asp)  
A true copy of that webpage is annexed hereto and identified with the filename **"Q ".pdf "**

**B**

2.1.2 By the end of the following week my website had been mentioned in various newspaper articles in Tasmania in relation to that controversy and consequently one of those articles had been reproduced in a substantial amount of national and regional newspapers around Australia giving public awareness to my interpretation of discovering Tasmania at Discover-Tasmania.com.

**B**

2.1.3 Almost immediately Discover-Tasmania.com occupied the 5th position when Discover Tasmania was typed into Google. It appears to have permanently retained that position.

B

2.1.4 On 19 November 2002 I searched the name registry at the Australian Securities & Investment Commission (ASIC) for the name Discover Tasmania. The registry provided 2 instances where that name had been registered and both had been subsequently deregistered. There was no current registration for the business name Discover Tasmania at that time of my checking.

True copies of the printout I made bearing the date 19 November 2002 are annexed hereto and identified with the filename **"R.pdf "**

B

2.1.5 On 21 November 2002 I searched the Australian Trade Mark registry for words that include Discover as no information appeared for Discover Tasmania when searched. I found the trade mark **"TASMANIA Discover your natural state"** and found none that were identical to Discover Tasmania and none that I considered similar enough to cause confusion with the stand alone term Discover Tasmania.

True copies of the printout of the search I made bearing the date 21 November 2002 (top right hand corner) are annexed hereto and identified with the filename **"S.pdf "**

B

2.1.6 Also, at around the same time as that set out above, I checked all the current (at the time) Tasmanian telephone White Pages printed and on-line versions and did not find an entry for the term Discover Tasmania.

B

2.1.7 Also, at around the same time as that set out above, I checked the availability of Discover-Tasmania.com.au and found it to be available.

B

2.1.8 Also, at around the same time as that set out at above, I visited the Complainant's websites at DiscoverTasmania.com and DiscoverTasmania.com.au. On those websites which appeared to me to be identical, it was evident to me that the term Discover Tasmania did not appear anywhere in the text or image content of the front webpages apart from the descriptive term Discover Tasmania appearing in the Title Bar of both those webpages.

B

2.1.9 Owing to my interest in the law as evidenced by my being the registrant of Peoples-law.com.au and the developer of the website at that address, I was aware of the law in Australia as I have set out at paragraph A1.1.8 above.

A true copy of the WHOIS <http://whois.ausregistry.net.au> for Peoples-Law.com.au is annexed hereto and identified with the filename **"T.pdf "**

B

2.1.10 Thus, from the above evidence and legal knowledge available to me at the time, I believed that all usage of the term Discover Tasmania was for nothing other than a descriptive term and that that's all it could be used for in any event.

B

2.1.11 I further considered that no-one, including the Complainant had any trade mark or business name or common law rights in the term Discover Tasmania and that if anyone had the belief that they did have such rights (such as the Tourism Tasmania Board of Directors) they would surely have exercised competence and prudence to attempt to establish and legally protect those rights for the descriptive and multi-use term Discover Tasmania.

B

2.1.12 Therefore after reading and understanding the auDA Policy No.2002-07 for making application, I made application to register the domain name Discover-Tasmania.com.au to the registrar at NetRegistry Pty. Ltd. whereupon it became registered as the Complainant's evidence shows at 2.pdf.

B

2.1.13 I considered that my application under schedule C of the Policy would be appropriately made under parts 1 b) and/or 1 c) for which I provided my registered business name being Tasmanian registered AustralianBusinessCards.com and my Australian Business Number ABN 64 517 410 881.  
Annexed hereto and identified with the filename "**U.pdf**" are true copies of my ABR and Tasmanian registration certificates for AustralianBusinessCards.com

B

2.1.14 I also considered that my application under schedule C of the Policy would be appropriately made under parts 2 c) (i) and (ii) of the Policy and I provided the following statement of reasons and description to NetRegistry Pty Ltd:  
*I provide a website that informs people about environmental issues across Tasmania which will also be facilitating the marketing of environmentally sustainable products & services of Tasmania via the internet and print media.*

B

2.1.15 As I am a person with considerable tourism experience (as the pleadings show), the said statement's purpose was twofold:

- (1) A directory website for Tasmanian businesses (with websites) that were environmentally conscious, to have a free listing, e.g., insofar as booking and reservations are mentioned, as the website states, this is to be a **directory** of bookings and reservations and not a facility for those activities.
- (2) For a limited time, offer free web page construction, hosting & display to Tasmanian business as a marketing exercise with the intention of building up a portfolio of clients that will showcase my style and ability which would hopefully attract paying clients for website construction and hosting.  
My intention was that the website at the disputed domain would become self supporting & profitable by my construction and development of websites and associated products & services as are advertised at my website, <http://www.AustralianBusinessCards.com> and <http://www.AustralianBusinessCards.com.au> which are business activities that the Complainant does not engage in and therefore there is no competition between us in these said products or services.  
Annexed hereto and identified with the filename "**V.pdf**" is my brochure and business card for this abovesaid business.

B

2.1.16 Visitors to the site can access the above services set out at B2.1.15(2) by clicking on the link "LIST YOUR TASMANIAN WEBSITE FOR FREE", <http://www.discover-tasmania.com.au/submitto.html> . Due to this WIPO Complaint, those services have been disrupted and the following message is displayed:

*PLEASE NOTE*

*that the above FREE PAGE OFFER has been temporarily withdrawn and its continuation is subject to the outcome of a complaint by the "Crown in Right of the State of Tasmania trading as Tourism Tasmania" to the World Intellectual Property Organization (WIPO) Arbitration and Mediation Centre regarding Discover-Tasmania.com.au domain.*

A true copy that webpage is annexed hereto and identified with the filename "**X.pdf**"

B

2.1.17 Up until the abovesaid notice was published on the website, as a direct result of my Discover Tasmania activities I have:

- (a) constructed 1 free page for The Possum Shed at, <http://www.Discover-Tasmania.com.au/possum-shed.html> which is reached from and displayed where it is hosted by myself for free at, <http://www.Discover-Tasmania.com.au/brand.html> ; and
- (b) been commissioned to construct a similar page for the business *Something Wild* which has been put on hold in order to address this Complaint to the WIPO; and
- (c) constructed and host 1 website at the domain <http://www.Tasmanian-Farms-For-Sale.com> which was a commercial produced website published on 23rd January 2003; and
- (d) been commissioned to produce a major Tasmanian tourism website, the details of which cannot be released for reasons of confidentiality of the owner which has been put on hold in order to address this Complaint to the WIPO.

B

2.1.18 This "*putting on hold*" is detrimental to my business activities and my training and employment creation program which are both supported and assisted by Centrelink the Commonwealth Government Agency for unemployed, and is also putting me to considerable work for which I receive no remuneration and I am also being put to expense for the incidentals involved.

B

2.1.19 On the approval of the registration of Discover-Tasmania.com.au, I published a mission statement on the site. The site has been continually developed since then to its current state.

A true copy of the then mission statement is already reproduced at annexure "**C.pdf**"

B

2.1.20 At a time well before my being notified of this Complaint, the Mission Statement had been further developed to read:

*Discover-Tasmania.com.au*

*A Directory to assist people in discovering environmental issues across Tasmania and to assist in the ending of Clearfelling of Old Growth Forests in Tasmania, coupled with the facilitation of the marketing of environmentally sustainable products, services and businesses of Tasmania.*

At the time I believed the use of the descriptive term Discover Tasmania in the domain name was fair use of that term which also corresponded to the content of the website at that domain.

B

2.1.21 At a time well prior to being notified of this Complaint the Mission Statement was further qualified by further statements published on the website. Annexed hereto and identified with the filename "**H.pdf**" is a true copy of the front page of the website at the domain name in dispute bearing the said statements before I received any notice of the Complaint.

B

2.2 Pursuant to my aforesaid statement of facts in this matter at paragraphs B1 to B1.1.8 and B2 to B 2.1.21, I contend that I have legitimate rights in the use of the domain name in dispute for the following reasons:

- (a) I had made adequate inquiries to establish in my mind that no-one else had rights in the name Discover Tasmania and in those circumstances I cite:  
*Micron Technology, Inc. v. Null International Research Center* Case No. D2001-0608  
<http://arbiter.wipo.int/domains/decisions/html/2001/d2001-0608.html>
- (b) By naming the site DISCOVER... TASMANIA at <http://www.Discover-Tasmania.com>, I have established common law rights in the term Discover Tasmania to any extent that there can be such rights.
- (c) Before any notice to me by the Complainant, I have made bona fide use of the domain name by offering free services that I am to further develop into the offering of paid services and products to environmentally sustainable businesses of Tasmania that are and will be promoted on the website. (see Possum Shed example at paragraph 2.1.17(a) above) and paragraph 4 of the affidavit annexed hereto "**G.pdf**"
- (d) Before any notice to me by the Complainant I have made fair use of the domain name as per the mission statement published on the website and reproduced above at paragraph B2.1.20 and further qualified as per paragraph B2.1.21 above.
- (e) The Complainant and myself are not competitors in the same market as regards any products or services that are in trade or commerce as I do not offer the products and services in trade and commerce that the Complainant engages in, and insofar as the Complainant being the Government, it does not engage in trade and commerce.
- (f) I provide environmental information as to the state of things that are NOT natural (per definition of natural "*in the usual course of nature*" and "*not altered or improved in any way*" by The New Shorter Oxford Dictionary 1993) that exist in the State of Tasmania. The Complainant does not provide information in that arena. Annexed hereto and identified with the filename "**Y.pdf**" is a true copy definitions of the word "**natural**" by, The New Shorter Oxford Dictionary 1993.

B

2.2.1 The website at the domain name in dispute does not bear the content that the Complainant is objecting to, it simply links to another website at the domain Discover-Tasmania.com.

B

2.2.2 In any event, if the Complainant considers that its reputation and trade mark is being tarnished it brings that upon itself. I do not facilitate the clearfelling of Native and Old Growth Forests in Tasmania and turn them into Woodchips whilst Poisoning Tasmania's Native and Protected Wildlife in the process. It is a fact that the Complainant does facilitate those things via some of its statutory corporations. All I do is inform as to the other side of the story by the use of **freedom of speech** to report the **truth** to the public what is previously evidenced as **public interest** matters (at paragraph B2.1.1) and (as is evident from the website) do that in a way that links to what other reputable individuals and organisations say on the matters. The website has considerable support around the world and in the Tasmanian community and in particular from the Tasmanian Tourism Operators for Forests and the Tasmanian Timber Workers for Forests Incorporated, as is evidenced at the domain Discover-Tasmania.com. **A defence to tarnishment, as with defamation, is truth and in some jurisdictions a public interest factor is also required. If the truth is published a party is not defamed or tarnished, but is merely exposed.** Insofar as my entitlement to legitimate use of the disputed domain name for the exercise of free speech, I cite; *Bridgestone Firestone, Inc., Bridgestone/Firestone Research, Inc., and Bridgestone Corporation v. Jack Myers*, Case No. D2000-0190 <http://arbiter.wipo.int/domains/decisions/html/2000/d2000-0190.html>

B

2.2.3 As to the alleged matter of the disparaging of the Complainants trade mark image. It is spurious of the Complainant to allege this.

**I STATE AS FACT** that the trade mark image with words **TASMANIA Discover your natural state**, has never appeared on the website as per the allegation.

B

2.2.4 What did appear was a component of the Complainant's trade mark containing the Tasmanian Tiger stylised image and the word TASMANIA.

I believe this format represents the Complainant only and does not represent the statutory corporation Tourism Tasmania as the words **Discover your natural state** have never been displayed. Annexed hereto & identified with the filename "**Z.pdf**" is a true copy of the webpage that was displaying the image in issue at the time of receiving the Complaint.

B

2.2.5 It is true as my evidence shows that the word extinct appeared across the face of that Tasmanian Tiger stylised image, however in my defence of that:

- (a) it is taken as fact that the Tasmanian Tiger is extinct, which is evidenced by the Complainants own webpage at; <http://www.dpiwe.tas.gov.au/inter.nsf/WebPages/BHAN-53777B?open> Annexed hereto with the filename "**Z1.pdf**" is a true copy of that webpage
- (b) it is common knowledge and shown in the above evidence that this extinction was in part brought about by the activities of the Complainant in past years by putting a bounty on this unfortunate animal (1888 to 1909 Government Bounty Scheme); and
- (c) by my evidence at paragraphs A2.6(e) the Complainant implied that it had no issue with the content of the webpages at Discover-Tasmania.com, **therefore I was led to believe by the Complainant that it did not take issue with the display of that image.**

B

2.2.6 Notwithstanding paragraph 2.2.5(c), I have removed the image in good faith having been given constructive notice that the Complainant does take issue with the image by way of the pleadings in its WIPO Complaint. My first notice of the Complaint was on the evening of the 14th of February 2003 and the image in issue was removed at around midday on the 15th of February 2003. On the 17th February 2003 I notified the Complainant by letter attached to an email that the image had been removed and by what method. Annexed hereto and identified with the filename "**Z2pdf**" is a true copy of that letter.

B

2.2.7 On further understanding the Complainant's WIPO Complaint I considered I also had constructive notice that the Complainant considered I was passing off the website at the disputed domain to be associated or affiliated with the Complainant. Notwithstanding that this allegation was to be, and is denied and the Complainant had not notified me of its displeasure before I received its Complaint, in good faith and in denial of any liability, on the 18th of February 2003 I inserted a disclaimer on the website at the domain in dispute. Annexed hereto and identified with the filename "**Z3.pdf**" is a true copy of that webpage with the current disclaimer added on the 18th of February 2003.

**B3.** Paragraph B3 of the Complainants allegations are refuted and denied save that I did register the domain name DiscoverTasmania.au.com as a result of a promotional offer by NetRegistry.

**B4.** Paragraph B4 of the Complainants allegations is refuted and denied and I refer to and repeat the above paragraphs B2 to B2.1.21 and paragraph B2.2.

B

4.1 Sub paragraph 2 of paragraph B4 of the Complainants allegations is responded to by referring to and repeating paragraphs B1 to B1.1.10 and paragraphs B2 to B2.1.21 and paragraph B2.2. Further the Complainants allegation is spurious by it being well aware of the matters set out at paragraphs B1 to B1.1.8 and B2.2(b) to (f) above.

B

4.2 Sub paragraph 3 of paragraph B4 of the Complainants allegations is accepted.

B

4.3 Sub paragraph 4 of paragraph B4 of the Complainants allegations is spurious and as such is denied and refuted. I refer to and repeat the above paragraphs 2.1.13 and 2.1.14. **The said facts set out at paragraphs 2.1.13 and 2.1.14 were always available to the Complainant if it had bothered to check with myself or the registrar at NetRegistry Pty Ltd.**

B

4.4 Sub paragraph 5 of paragraph B4 of the Complainants allegations is spurious and as such is denied and refuted. I refer to and repeat paragraph B4.3 above.

## **C. As to the domain name being registered or being subsequently used in bad faith**

- C1.** I make no response to paragraph C1 of the Complainants allegations
- C2.** Paragraph C2 of the Complainants allegations as to bad faith are refuted and denied for the reasons and set out previously in this Response.
- C3.** Paragraph C3 of the Complainants allegations are refuted and denied for the reasons set out previously in this Response, in particular paragraph 2.2.2. Further as regards to sub paragraph 2 of paragraph C3 the allegation is spurious for the reasons previously set out at paragraphs B2.2.3 and B2.2.4
- C4.** Paragraph C4 of the Complainants allegations are refuted and denied for the reasons set out previously in this response. Further:
- (a) If the Complainant's TM image is disparaged as the Complainant alleges in its Complaint, that image for obvious reasons cannot display an affiliation with the Complainant. In support of that I cite:  
*Asda Group Limited v. Mr. Paul Kilgour* Case No. D2002-0857  
<http://arbiter.wipo.int/domains/decisions/html/2002/d2002-0857.html>
  - (b) The Complainant's allegation that I am linking to the Complainant's site carrying official endorsements which suggest an endorsement or affiliation is spurious. The Complainant has failed to particularise or offer evidence to support this allegation. I allege that to suggest such a ridiculous allegation is a pleading made by the Complainant in bad faith.

### **PARTICULARS, STATED BY MYSELF TO BE FACT**

There are no such links and never have been such links that would suggest endorsement or affiliation to the Complainant from either the websites at the domain in dispute or the Discover-Tasmania.com domain.

**D. The Respondent requests the Panel to make a finding of, bad faith, abuse of process, attempted reverse domain name hijacking and harassment against the Complainant.**

**D1.** Pursuant to rule 15(e), I respectfully request the Panel to make a findings of bad faith, abuse of process, attempted Reverse Domain Name Hijacking and harassment by the Complainant and I provide the following pleadings to support my request:

D

1.1 Statements of fact by the Complainant have been falsely made and should more appropriately have been made as contentions. In support of this allegation I refer to and repeat all of paragraphs 3.1) and 5.1) of my Response to the Complainant's Statements of Background Facts.

D

1.2 The Complainant has made selective disclosure in its Complaint to the Panel and as such is malicious intent or recklessness by the Complainant. Supporting these allegations;

(a) I refer to and repeat paragraphs A2.6 to A 2.6.2 which shows a lack of transparency in the Complainant's Complaint in putting into evidence an incomplete and inaccurate or false record of a meeting; and

(b) I refer to and repeat paragraphs B1 to B1.1.10, where the Complainant has failed to acknowledge its monitoring of my websites showing a further lack of transparency;

D

1.3 Before lodging the Complaint, the Complainant knew or had the means of knowledge, that I had a legitimate interest in the domain name in dispute and that I had legitimate reasons for registering that domain. In support of this allegation;

(a) I refer to and repeat paragraphs A2.6(b), A2.6(d), A2.6(k), B1 to B1.1.10, B2.2(b) to (f), B4.3 & B4.4;

(b) the Complainant was well aware that I was not cybersquatting in that I was offering free website services at a professional directory website at the domain in dispute;

(c) I refer to and repeat paragraph A2.6(l) as evidence that prior to the Complaint, the Complainant had never brought into discussion or correspondence with me, matters regarding registered trade mark infringement or confusion;

(d) I refer to the Hogan (12a.pdf) minutes of meeting that show that the Complainant was well aware of my commercial intentions by the, *linking to my commercial sites*.

D

1.4 The Complainant is reliant on manufactured evidence to maintain its Complaint. In support of this allegation I refer to and repeat paragraphs A2 to A2.1.5, A2.6.1 and A2.6.2 and A3

D

1.5 The Complainant has maliciously or recklessly made spurious allegations to maintain its Complaint. In support of this allegation I refer to and repeat paragraphs A2.6, B1.1.9, B1.1.10, B2.2.3, B2.2.4, B2.2.5(c), B4.1, B4.3, B4.4, C3 and C4(b).

**D2.** In furtherance of the above conduct at D1 to D1.5, the Complainant has wrongly certified its Complaint as being complete and accurate. I cite the case history;

*G. A. Modefine S.A. v. A.R. Mani* Case No. D2001-0537

<http://arbiter.wipo.int/domains/decisions/html/2001/d2001-0537.html>

**D3.** By the Complainant's delinquent conduct in making its Complaint, I have been put to expense and other losses. In support of this allegation I refer to and repeat paragraph B2.1.18

#### **IV. Administrative Panel**

(Rules, paras. 5(b)(iv) and (b)(v) and para. 6; Supplemental Rules, para. 7)

The Respondent nominates the following 3 panelists:

- 1. Keith GYMER**  
Page Hargrave  
Manfield House  
1 Southampton Street  
London WC2R 0LR  
United Kingdom  
Telephone: +44 20 7240 6933  
Fax: +44 20 7379 0268  
E-mail: london@pagehargrave.co.uk
  
- 2. Dr. Dan HUNTER**  
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Telephone: +1 215 573 7154  
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Email: hunterd@wharton.upenn.edu
  
- 3. Debrett Gordon LYONS**  
Berwin Leighton Paisner  
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London Bridge  
London EC4R 9HA  
United Kingdom  
Telephone: +44 207 760 1000  
Fax: +44 207 760 1111  
email:debrett.lyons@blplaw.com

#### **V. Other Legal Proceedings**

(Rules, para. 5(b)(xi))

**Nil**

## **VI. Communications**

(Rules, paras. 2(b), 3(b)(xii); Supplemental Rules, para. 3)

- \* A copy of this Response together with a Schedule of Annexes and Citations and all the Annexes has been transmitted by email to the Complainant on 16th March 2003.
- \* A copy of this Response together with a Schedule of Annexes and Citations and all the Annexes, has been submitted to the Centre by email on 16th March 2003.
- \* Five hardcopy sets (1 original and 4 copies) of the Response together with a Schedule of Annexes and Citations and the Annexes only insofar as they are originals (as listed in the Schedule) are submitted to the Centre together with 5 CD Roms of same containing all the Annexes, are forwarded by EMS Courier to the WIPO Arbitration and Mediation Centre on 17th March 2003.

## **VIII. Certification**

(Rules, para. 5(b)(viii), Supplemental Rules, para. 12)

I (the Respondent) agrees that my claims and remedies concerning the registration of the domain name, the dispute, or the dispute resolution shall be solely against the Complainant and waives all such claims and remedies against (a) the Centre and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator and (d) auDA, as well as their directors, officers, employees and agents.

I (the Respondent) certifies that the information contained in this Response is to the best of the Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully submitted,



Gordon James Craven - 16th March 2003

RESPONDENT