

## Selling .au Domain Names

auDA, the Australian Domain Name Administrator, has recently relaxed the cumbersome registrant transfers policy to allow the transfer of Australian domain names to other eligible entities.

### BACKGROUND

The difference between trade marks and business, company and domain names sometimes causes confusion for both traders and the public. Like a business or company name, there are no proprietary rights in a domain name. Only registration of a trade mark can give you that kind of protection.

Instead of 'owning' the domain name, the registrant has a licence to use the domain name for a specified time period. Effective from 1 June 2008, the new Transfers (Change of Registrant) Policy (the **Policy**) allows the transfer of a domain name licence to another eligible person in certain circumstances.

### KEY FEATURES OF THE POLICY

Key features of the new Policy are:

- Registering a domain name for the sole purpose of resale or transfer to another party is still not allowed.
- Registrants cannot transfer their domain name within 6 months of the initial registration except in limited circumstances under which auDA may authorise a transfer. This prohibition does not apply to renewed or transferred domain names.
- After 6 months have elapsed, registrants can offer their domain name for sale/transfer by any means.

For example, advertising the domain name for sale in a newspaper.

- Normal eligibility and allocation rules apply to the new registrant.

For example, to be eligible to hold a *.com.au* domain name, the registrant must be an Australian registered company, trading under a registered business name in any Australian State or Territory, an Australian partnership or sole trader, a foreign company licensed to trade in Australia, an owner of an Australian Registered Trade Mark, an applicant for an Australian Registered Trade Mark, an association incorporated in any Australian State or Territory, or an Australian commercial statutory body. In addition, Domain names in the *com.au* 2LD (a **second level domain**) must be an exact match, abbreviation or acronym of the registrant's name or trademark, or otherwise closely and substantially connected to the registrant.

- All registrant transfers will be processed using a standard transfer form.

- The transfer will result in a new 2 year domain name licence being issued to the new registrant.
- Parties to a transfer will be asked to disclose the sale method and price, on a confidential and voluntary basis so that auDA may collect aggregated statistical data.

### WHAT DOES THIS MEAN FOR YOU?

- From 1 June 2008, domain name holders can offer their domain name licences for transfer or sale by any means and for any reason to another eligible entity.
- New registrants or transferees of domain name licences must comply with normal eligibility and allocation rules.
- If special circumstances apply, you may receive auDA's authorisation to transfer the domain name licence within 6 months from the date of initial registration. Otherwise, you cannot transfer the domain name licence within the first 6 months.

## Chinese Domain Names Fraud

Recently, reports of a new scam have emerged which involves a Chinese domain registration firm contacting an Australian business and asking the business owner to register domain names and/or trade marks through them since a third party is trying to register them.

### KEY FEATURES OF THE SCAM

- You 'own' a domain name.
- An alleged Chinese organisation, typically one that claims to be a domain name registration firm, contacts an Australian business by email which is generally addressed to the owner or CEO of the business.
- The email is usually alleged to be from a Registrar or Sponsoring Registrar or somebody in a similar capacity.
- The email informs you that the Chinese firm has received an application from a third party for registration of a similar domain name which is an obvious variant to your domain name. For example, you own [www.123.com](http://www.123.com). The variant domain name could be [www.123.net](http://www.123.net) or [www.123.org](http://www.123.org).
- In addition to variant domain name applications, the email informs you that the third party is also applying for registration of a trade mark which is usually identical to your business or company name.
- The Chinese firm informs you that it has sent the email because they wanted to offer you the opportunity to register the variant domain names and/or trade marks first through them, giving you protection by securing the variant domain names and/or trade marks.
- The email requests you to contact them to confirm whether you want to register the variant domain names and/or trade marks or whether you provide your consent to the third party to proceed with its applications.
- The Chinese firm usually sends more than one email following up on their earlier email if you do not respond to their email.

### DIFFERENCES BETWEEN DOMAIN NAMES AND TRADE MARKS

- The registration of a domain name does not in itself give you a trade mark.
- As mentioned above, only trade marks offer you protection and give you proprietary rights in a brand name or mark associated with your business.
- Domain names are registered through various domain name registration firms within Australia and abroad. Trade marks in Australia are registered through IP Australia only.
- A trade mark is used to distinguish your goods or services from those of other traders. Registration of a trade mark gives you exclusive use of the trade mark throughout

Australia. Domain name registration is not limited to Australia because its purpose is to hold a website address on the Internet.

### WHAT DOES THIS MEAN FOR YOU?

- Do not fall for this scam.
- Domain name registration firms, whether in Australia or abroad, do not contact domain name owners if a third party is trying to register a similar domain name. Any email received from domain name registration firms should generally be treated with suspicion.
- If a domain name is available, it can be registered immediately after conducting the domain name search.
- If you are the 'owner' of a particular domain name, you should consider whether it is commercially beneficial for you to register obvious variant domain names to your registered domain name. This will avoid those variant domain names being snapped up by domainers, competitors or even scammers similar to the ones that have just been mentioned. The key question for you is whether competitors, using an obvious variant domain name, could dilute your brand in any way.
- Consider registering a trade mark for your brand name or mark.

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