

Challenger fails in bid to block website

EXCLUSIVE

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INTELLECTUAL PROPERTY

CHALLENGER has failed in an attempt to quash a controversial website set up by an aggrieved former business associate of chief executive Brian Benari, with an international technology body ruling against the wealth giant.

In May, Challenger filed a complaint to the World Intellectual Property Organisation arbitration and mediation centre in an attempt to attain a domain featuring the "Challenger" name, held by Perth businessman Sean Butler.

Mr Benari and Mr Butler were formerly business partners in a handful of West Australian pubs. But the business unravelled following the global financial crisis when financier Bankwest called in receivers Taylor Woodings.

Mr Benari and Mr Butler sharply disagree over the reasons behind the collapse of the busi-



Brian Benari

ness. Even so, Mr Butler has since waged a long battle against Bankwest, the Challenger chief executive and Taylor Woodings.

Mr Butler registered the website last year, which explains his version of dealings between himself and the Challenger chief and casts "unflattering aspersions" of Mr Benari and his ethics, WIPO said. Challenger, which has \$50 billion in funds under management, declined to comment.

In its judgment late last month, a three-person panel from WIPO found Challenger had failed to convince the global intellectual property group the domain name should be taken away from

Mr Butler. It also noted Mr Butler's right to draw attention through the "criticism site" to the debate surrounding dishonest management in financial services companies since the crisis.

"Recent public controversies concerning Australian financial institutions have raised prominently not merely the misconduct of employees and management attempts to cover up that misconduct, but also the issue of the ethical standards of those in management," the WIPO ruling says.

However, a dissenting member of the panel took aim at Mr Butler, accusing him of "intentional trickery" for the choice of domain name and that his conduct was "not legitimate and clear evidence of bad faith".

"Incorporating the complainants' mark into the domain name is an admittedly unauthorised, and in my opinion, highly improper use that will visit harm upon a third party that (so far as the record shows) had nothing to do with the matter being criti-

cised," said the dissenting panel member, Richard Lyon.

To win, Challenger had to establish the domain name was "identical or confusingly similar" to its own trademark, that Mr Butler had "no rights or legitimate interests" in the name and it had been registered and used in "bad faith".

While Challenger convinced the panel of the first requirement, it failed on the final two. Challenger, represented by law firm Baker & McKenzie, needed to meet all three criteria to succeed.

"On balance, taking into account all of these considerations, the panel majority has concluded that the respondent's use of the domain name demonstrates a right or legitimate interest in the domain name for the purpose of making genuine criticism of the complainants," the panel said.

On the third point of bad faith, WIPO said: "The panel majority concludes that the complainants have failed to establish that the domain name was registered and is being used in bad faith."