

.ie Alternative Dispute Resolution
NETNEUTRALS DISPUTE RESOLUTION SERVICE

Decision of Independent Specialist

Case Number: 641

1. The Parties:

Complainant:	Quick Homes Manufacturing Limited
Registrant:	Tony Boyle

2. The Domain Name(s):

quickhomes.ie	("the Domain Name")
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3. Procedural History:

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future that need be disclosed as they might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

The procedural history is as follows:

Action	Comment / date
Dispute received	6 th May 2022
Complaint validated	6 th May 2022
Notification of complaint sent to Complainant	9 th May 2022
Notification of complaint sent to Respondent	9 th May 2022
Reminder sent to respondent	13 th May 2022, 8 th August 2022
Phone calls to respondent	30 th May 2022
Letter sent to respondent	2 nd June 2022
Forum Opened	11 th May 2022
Complaint Form received	11 th May 2022
Response received	No Response
Forum Closed	14 th August 2022
Adjudication Started	23 rd August 2022
Adjudication Decision completed	24 th August 2022
Specialist Decision published	26 th August 2022

4. Factual Background

The Complainant is an Irish registered timber frame construction company. In 2019 the Complainant engaged the Registrant to develop a web site for it and the Registrant did so, registering the domain name in his own name. There is no formal agreement in place between the Complainant and the Registrant. At the time of this decision the domain name does not resolve to a website.

5. Parties' Contentions

Complaint

A summary of the Complaint is as follows:

The Complainant states that:

- The Complainant paid for registration of the domain name, renewal of the domain name, and all outstanding sums in relation to the development of the website.
- It was understood that the Registrant would register the domain name in the name of the Complainant.
- In early 2022 the Complainant indicated to the Registrant that it wished to move to another web developer.
- In April 2022 the Registrant disabled the website.
- On 9 June 2022 the Registrant instructed the website hosting provider to change the contact email for the hosting to an address controlled by him.
- On 21 July 2022 the Complainant asked the Registrant to transfer the domain name to the Complainant, and the Registrant has not done so.
- The Registrant has refused to answer emails, text messages and telephone calls from 21 July 2022.
- The inability to access the website has prevented the Complainant from handling business inquiries from customers, and from accessing a grant worth €2,500 issued by South Dublin County Council.

Response

A summary of the Response is as follows:

The Registrant has declined to engage with the dispute resolution process.

6. Discussions and Findings

Matters to be proved:

Under paragraph 4.1 of the Alternative Dispute Resolution Policy (“ADRP”) the burden of proof is on the Complainant who must prove three elements, specifically that:

- A. the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant, and
- B. the Complainant
 - (i) has rights in the domain name or in marks or identifiers very similar to it, or
 - (ii) the Complainant’s rights have been negatively impacted by the registration, and
- C. the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.

A. Complainant Eligibility to Register the Domain Name

The Complainant is an Irish company and would be eligible to register the domain name if it was not already registered.

B. Complainant’s Rights in the Domain Name

(i) Rights in the domain name or in marks or identifiers very similar to it

Paragraph 4.1.B(i) of the ADRP defines the term “rights” as follows:

Any legal or other enforceable right can be considered, including but not limited to:

- Trade and service marks protected in the island of Ireland, or
- Personal names (including pseudonyms) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland, or
- Geographical indications that can prima facie be protected in the island of Ireland,
- Unregistered rights acquired through use.

In this case the Complainant does not have a trade mark, service mark, personal name or protected geographic indicator. In order to succeed the Complainant must therefore establish an “unregistered right acquired through use” or some other “legal or enforceable right”. In general this requires the Complainant to show that it could bring a passing off action in respect of the use of the domain name.

.ie Alternative Dispute Resolution

NETNEUTRALS DISPUTE RESOLUTION SERVICE

The standard for a passing off action in this context is that the complainant runs a business on the island of Ireland and has goodwill in this business, and that the unregistered trade mark is a distinctive identifier of that business.

For guidance regarding whether there is the necessary goodwill and whether an unregistered trade mark is a distinctive identifier the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) can be taken into account except where the .IE policy or Irish law differ (see e.g. Case No. DIE2019-0001, *Puma SE v. Stephen Connell, Puma Transport Ireland Limited*).

Paragraph 1.3 of the WIPO Overview 3.0 provides as follows:

What does a complainant need to show to successfully assert unregistered or common law trademark rights?

To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services.

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.

(Particularly with regard to brands acquiring relatively rapid recognition due to a significant Internet presence, panels have also been considering factors such as the type and scope of market activities and the nature of the complainant’s goods and/or services.)

Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning.

The Complainant has provided evidence of significant use of the term “Quick Homes” since 2019 through its own website and also through Facebook, Instagram, LinkedIn, Google Business Profile, and trade shows, and the Registrant has not challenged this evidence nor argued that the term is generic. I accept therefore that the Complainant has rights in the domain name for the purpose of the ADRP.

(ii) Complainant's rights negatively impacted by registration

I do not need to consider the alternative ground that the Complainant's rights were negatively impacted by registration.

C. Domain Used or Registered Abusively or in Bad Faith

Under paragraph 4.1 of the ADRP the Complainant must prove that "the registration of the domain should be revoked as it has been registered or used abusively or in bad faith". These terms are defined in paragraph 1 of the ADRP which provides that:

"Abusively registered" refers to a domain name which was registered or used to take unfair advantage of or was unfairly detrimental to the Complainant's Rights; [and]

"Bad Faith" means a domain name which was registered or used without legitimate intent, and/or to engage in deceptive conduct [...]

Paragraph 4.1.C of the ADRP includes a non-exhaustive list of examples of abuse and bad faith, and so far as relevant provides that:

A Complainant can demonstrate that the domain has been registered or is being used Abusively or in Bad Faith by the Registrant if it can provide evidence that [...] The domain name was registered as a result of a relationship between the Complainant and the Registrant, and the Complainant a) has been using the Domain Name registration exclusively; and b) paid for the registration and/or renewal of the Domain Name registration.

In the current case it is undisputed that the domain name was registered because the Complainant engaged the Registrant to set up a web site for it, that the Complainant has used the domain name exclusively, and that the Complainant paid for registration and renewal. It is also undisputed that the Registrant has prevented the domain name from resolving to the Complainant's website and has failed to transfer the domain name to the Complainant when asked to do so. As the Registrant has not taken part in this process I have considered the possible countervailing factors under paragraph 4.2.A, but I have concluded that there is no question of any of these applying. I therefore find that the Complainant has established abuse and bad faith.

.ie Alternative Dispute Resolution
NETNEUTRALS DISPUTE RESOLUTION SERVICE

7. Decision

For the foregoing reasons the Complaint succeeds and I direct that the domain name be transferred to the Complainant.

Signed: TJ McIntyre

Dated: 24 August 2022