

**.ie Alternative Dispute Resolution
NETNEUTRALS DISPUTE RESOLUTION SERVICE**

Decision of Independent Specialist

Case Number: 620

1. The Parties:

Complainant:	Jamie Murphy
Respondent:	Tool Domains OOD

2. The Domain Name(s):

jam.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	27 th July 2021
Complaint validated	27 th July 2021
Notification of complaint sent to Complainant	28 th July 2021
Notification of complaint sent to Respondent	28 th July 2021
Reminder sent to respondent	18 th August 2021 23 rd August 2021
Phone calls to respondent	23 rd August 2021 at 15:45 and 17:00 – no answer
Letter sent to respondent	
Forum Opened	28 th July 2021
Complaint Form received	5 th August 2021
Response received	24 th August 2021 15:42
Forum Closed	26 th August 2021 at 5pm Option of extension to 12 noon on 27 th August 2021 was not taken by Domain Holder.

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Action	Comment / date
Adjudication Started	27 th August 2021
Adjudication Decision Posted	3 rd September 2021
Adjudication Decision accepted / rejected	
Specialist Decision published	3 rd September 2021

4. Factual Background

Complainant provides IT/DevOps engineering services to several companies from Ireland.

Respondent is a domain name supplier registered in Bulgaria.

5. Parties' Contentions

Complaint

A summary of the Complaint is as follows:

Complainant asserts that the domain name is being used in bad faith by the Respondent. Specifically, Complainant asserts that the domain name has been registered primarily for the purposes of selling, renting or otherwise transferring it to Complainant or a competitor at a price greater the registration fees. Complainant asserts that Respondent has no legitimate business interest related to jam and that the two lines of dietary guidance provided on the jams.ie website:

"Jam is bad for your health if it contains sugar.
Try natural jams with no sugar added.
Questions about jam?
Write us at info@tool-domains.com"

do not create a legitimate interest, but rather support the argument that the real purpose of the Respondent is to hold the domain for resale above the price paid for it.

Complainant further asserts that the website advertises the Respondent's domain supply business e-mail address rather than the e-mail associated with the domain name, and Complainant supplies correspondence received via the email address advertised on the website, in support of the argument that the only interest of the Respondent in the domain name is to sell it at a profit.

Complainant further asserts that the business model of the Respondent is "Drop Catching" whereby expiring registrations are opportunistically snapped up with a view to selling them back to the original registrants or others at a profit, and provides examples of

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the Respondent's history in this regard in connection with other domains, including the Respondent's catalogue of domain names for sale and decisions against it in other complaints.

Response

A summary of the Response is as follows:

Respondent asserts that:

1. The domain jam.ie is not listed for sale;
2. Respondent did not offer the domain for sale to Complainant;
3. The non-profit website has an important message regarding public health, and the website existed prior to this complaint;
4. The Complainant has not understood Respondent's motives of improving public health and is only concerned for itself and its personal profit in this case;
5. The Complainant has 'zero' rights to this domain which was legally registered on a first come - first serve basis. The Complainant enjoys no trademark or even company name in the domain name, and has presented only vague plans about forming a business that are not in any way directly connected to this generic domain and can be executed using any domain.
6. The Complainant's name is not Jam or Jam.ie, it's Jamie, which is not the same as the domain name.
7. The domain name is generic and the Complainant has not understand how generic domains and trademarks work - selling apples on Apple.ie, for example, would be perfectly legal as this is outside of the Trade Mark classes enjoyed by the electronic manufacturer.

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6. Discussions and Findings

The burden of proving a complaint under the ADRP is on the Complainant.

Matters to be proved:

Complaint Submission

The Complainant has proved in accordance with .ie ADR Policy that...

	<ul style="list-style-type: none">the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant. This means that the complainant must prove its identity and it must prove that it has a substantive connection with the island of Ireland. If the complainant has other .ie domains registered in their own name this requirement is satisfied automatically; and
	<ul style="list-style-type: none">the Complainant has rights in the domain name or in marks or identifiers very similar to it, or that the Complainant's rights have been negatively impacted by the registration, and
	<ul style="list-style-type: none">the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.

General

	<ul style="list-style-type: none">the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant, and
	<ul style="list-style-type: none">the Complainant has rights in the domain name or in marks or identifiers very similar to it, or that the Complainant's rights have been negatively impacted by the registration, and
	<ul style="list-style-type: none">the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.

Complainant's Rights

The meaning of "Rights" is defined in the .ie ADR Policy as follows:

	<ul style="list-style-type: none">the Complainant has rights in the domain name, or in marks or identifiers very similar to it (sufficiently close to the domain that there would be a strong likelihood of confusion), or that the Complainant's rights have been negatively impacted by the registration. Any legal right or entitlement can be considered, including but not limited to:
	<ul style="list-style-type: none">Trade and service marks protected in the island of Ireland, or
	<ul style="list-style-type: none">Personal names (including pseudonyms) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland, or
	<ul style="list-style-type: none">Geographical indications that can prima facie be protected in the island of Ireland,
	<ul style="list-style-type: none">Unregistered rights acquired through use; and the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.

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Complainant Rights Negatively Impacted

The Complainant rights are negatively impacted by the domain registration or use as shown by:

	<ul style="list-style-type: none">• The domain name registration or use is misleading or confusing to its customers, or
	<ul style="list-style-type: none">• The domain name registration or use is commercially damaging to its business through activities such as passing-off, content scraping or impersonation, or
	<ul style="list-style-type: none">• The domain name is being used to circulate defamatory material relating to the Complainant, or
	<ul style="list-style-type: none">• The domain name is being used for the purpose of making unauthorised use of material in which the Complainant has a copyright or another protected interest

Domain Used or Registered Abusively or in Bad Faith

.ie ADR Policy defines “Abusively Registered” as:

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;

The domain has been registered or is being used Abusively or in Bad Faith by the Registrant as evidenced by:

	<ul style="list-style-type: none">• The domain name was registered or is being used with the primary purpose of selling or renting it specifically to the Complainant (or a competitor) for more than the Registrant paid for it, or
	<ul style="list-style-type: none">• The domain name was registered or is being used with the primary purpose of preventing the Complainant registering a name or mark in which the Complainant has rights, or
	<ul style="list-style-type: none">• The domain name was registered or is being used with the primary purpose of unfairly disrupting or interfering with the Complainant's business, or
	<ul style="list-style-type: none">• The domain name is being used in a way that is likely to confuse people or businesses into believing that it is registered to, operated or authorised by, or otherwise connected with the Complainant, or
	<ul style="list-style-type: none">• The domain name was registered or is being used for an unlawful purpose (e.g. it is engaging in suspected fraudulent activity, engaging in other criminal/illegal online activity), or
	<ul style="list-style-type: none">• The domain name is registered to a company which currently has a dissolved company trading status, or
	<ul style="list-style-type: none">• The domain name is being used to facilitate the circulation of defamatory or racist material, or
	<ul style="list-style-type: none">• The domain name is registered to a Registrant which does not have (and never had) a connection to the island of Ireland, or

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	<ul style="list-style-type: none">• The domain name was registered as a result of a relationship between the Complainant and the Registrant, and the Complainant<ul style="list-style-type: none">a) has been using the Domain Name registration exclusively; andb) paid for the registration and/or renewal of the Domain Name registration; or
	<ul style="list-style-type: none">• Failure by the Registrant to use the Domain Name for the purposes of email or a web site, the Registrant offering a domain name for sale, or use of domain parking services that may include advertising related to the keyword content of the domain name are not of themselves evidence of abuse or bad faith, however the Specialist may consider these issues in combination with other factors when deciding a case.

The Complainant has established:

The Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Respondent Registrant.

The Complainant has been trading using the personal name or pseudonym Jamie and has an established business under that name.

The Complainant has rights in the domain name or in marks or identifiers very similar to it because of a legitimate “domain hack” (where both sides of a domain name are combined to spell the name of the registrant) of his personal name (including pseudonym) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland.

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Domain Holder Response

Showing that a Registration is not Abusive or in Bad Faith

The Registrant may provide information to counter any statements within the complaint and can submit its own evidence to show that its registration and/or use of the domain is not unreasonable, including but not limited to demonstrating any of the factors below:

	<ul style="list-style-type: none">• The Registrant has established rights in the domain name, or in marks or identifiers very similar to the domain name including but not limited to:
	<ul style="list-style-type: none"><ul style="list-style-type: none">○ Trade and service marks protected in the island of Ireland, or
	<ul style="list-style-type: none"><ul style="list-style-type: none">○ Personal names (including pseudonyms) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland, or
	<ul style="list-style-type: none"><ul style="list-style-type: none">○ Unregistered rights acquired through use.
	<ul style="list-style-type: none">• Prior to any notice of the dispute, the Registrant used the domain name or a name reasonably corresponding to the Domain Name in connection with a bona fide offering of goods or services or made demonstrable preparations for such use, or
	<ul style="list-style-type: none">• The Registrant (as an individual, business, or other organization) has been commonly known by the domain name or similar name, even in the absence of a registered trademark, or
	<ul style="list-style-type: none">• The domain name is generic or descriptive and the Registrant is making fair use of it, or
	<ul style="list-style-type: none">• The domain name is being used solely for tribute or criticism, or
	<ul style="list-style-type: none">• The domain name contains or references the Complainant's mark but the Registrant is making fair use of it.

The Registrant has established:

The Respondent Registrant has not established that it holds established rights in the domain name or marks or identifiers very similar to it.

The Respondent has not established that prior to the notice of the dispute it used the domain name in connection with a bona fide offering of goods or services. The Respondent's assertions that it has public health motives and that the website sends an important public health message are not capable of belief. No credible evidence has been supplied, and the assertions are greatly contradicted by the history of the Respondent and the correspondence between the parties, as well as the by the fact that the e-mail address on website itself demonstrates more of an interest in domain sales than public health.

The Respondent has established that the domain name is generic or descriptive – which is not in dispute – but has not established in a credible way that it is making fair use of it.

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The Respondent has not established that it did not 'offer' the domain name for sale. The Respondent's business is the sale of domains. It may argue that it did not make the first move in approaching the Complainant with regard to the sale of the domain name – however it supplied an email address resolving directly to its domain sales business, and it engaged in negotiation relating to a potential sale.

I therefore readily conclude:

Having reviewed the evidence and submissions of the parties I conclude that Complainant would have been entitled to register the domain name but for the registration by the Respondent. I further conclude that the Complainant has legitimate established rights in the domain name. They may not be as strong as those of a Trade Mark holder, but they are nonetheless legitimate and established.

I further conclude that the registration of the domain name by the Respondent was most likely an exercise in "drop catching" with a view to selling the domain name to a person having a legitimate established interest in the name at a later stage and at a price above that paid for the domain. The Respondent has demonstrated no credible interest in a legitimate business or purpose connected with the domain name.

I conclude that the Respondent has no established rights in the domain name, or in marks or identifiers very similar to the domain name, and that the Respondent has not been making fair use of the domain name.

I find that the Respondent did not necessarily have the Complainant specifically in mind when it acquired the domain name and that it is unlikely to have acquired the domain name specifically with the aim at the time of offering the domain name to the Complainant. Nevertheless, I find that the overwhelming evidence is that the Respondent intended to sell the domain name to persons who though unknown at the time of registration had legitimate rights to the domain name, including the then unknown Complainant or his competitors.

In the circumstances I find that the Respondent registered and or used or is using the domain name in bad faith.

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7. Decision

The Domain Name shall be transferred to the Complainant.

Signed:

Dated:

3 September 2021