

.ie Alternative Dispute Resolution
NETNEUTRALS DISPUTE RESOLUTION SERVICE

Decision of Independent Specialist

Case Number: 636

1. The Parties:

Complainant:	Daft Media Limited
Registrant:	Eamon Lynch

2. The Domain Name(s):

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

I can confirm that I am independent of each of the parties. I have disclosed my prior involvement in providing legal advice to another entity in the Distilled Media group to the parties who have indicated that they do not wish for me to recuse myself. To the best of my knowledge and belief, there are no other 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	3 rd February 2022
Complaint validated	3 rd February 2022
Notification of complaint sent to Complainant	4 th February 2022
Notification of complaint sent to Respondent	4 th February 2022
Neutral Appointed	4 th March 2022
Neutral accepted by both parties	4 th March 2022
Forum Opened	11 th February 2022
Complaint Form received	22 nd February 2022
Response received	24 th February 2022
Forum Closed	24 th March 2022
Adjudication Started	25 th March 2022
Adjudication Decision Posted	28 th March 2022
Specialist Decision published	28 th March 2022

4. Factual Background

The Complainant is a well-known Irish company which provides online property advertising and related services. It launched the website Daft.ie in 1997. The Complainant holds a European Union Trade Mark number 004621991 on the term “Daft” in the following classes:

35. Advertising services relating to real property and the sale, rental, letting and sharing of real property, including the provision and rental of on-line advertising space on the Internet, and the provision of on-line classified advertising; business management; business administration; office functions.

36. Insurance; financial affairs; monetary affairs; real estate affairs.

42. Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; legal services.

That mark was applied for in September 2005 and granted in September 2006.

The Complainant has operated an informational “Daft Mortgage Centre” on its website from approximately 2007.

Distilled Financial Services Ltd. is a sister company of the Complainant which was set up in May 2018 to trade as a mortgage broker under the name Daft Mortgages. It registered “Daft Mortgages” as a business name in January 2020. It operates its mortgage broker service at www.daft-mortgages.daft.ie.

The Registrant is a financial services broker and is owner and director of IPS Financial Advice Ltd. trading as Mortgage123. The Registrant carries out business through that firm on the website Mortgage123.ie. The Registrant registered the domain name in October 2010 but has not hosted any content on the domain name since then. The Registrant holds various other mortgage, finance and property related domains in the .ie space, and commendably volunteered in the course of the proceedings that these also include daftmortgage.ie and daftmoney.ie, both of which he registered in October 2018.

5. Parties' Contentions

Complaint

A summary of the Complaint is as follows:

The Complainant states that:

- The domain name was primarily registered to sell it to the Complainant at a price greater than the registration fee.
- The Registrant is squatting on the domain name.
- Where the Registrant to establish any mortgage related business on the domain name they would be in violation of the Complainant's rights under the EU Trade Mark.
- The Complainant is hindered in building its Daft Mortgages brand as users entering what they believe to be the domain name in the address bar see what appears to be a technical error, and the Complainant believes that this is causing reputational damage.
- The Complainant also asks for a decision in relation to daftmortgage.ie and daftmoney.ie.

Response

A summary of the Response is as follows:

The Registrant states that:

- He was aware of the Daft name in relation to property but was not aware that the Complainant had any protection in relation to that term.
- The term daft is a generic one meaning silly, unpredictable, etc. The use of "daft mortgages" as a term is comparable to the use of other common phrases such as "crazy house prices".
- He intends to use the domain name for a new mortgage application platform once it has been debugged and fully automated. That platform is currently in use on Mortgage123.ie.
- He has never sold a domain name and does not intend to. He has allowed approximately 30 domains to lapse where he has not used them for his business.

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 provides that:

A Complainant may submit a complaint if it can show it has rights in the domain name, or in marks or identifiers sufficiently close to the domain such that there would be a strong likelihood of confusion. Any legal or other enforceable right can be considered, including but not limited to: Trade and service marks protected in the island of Ireland [...]

The Complainant has established that it has a trade mark for the term Daft and must in addition show that this is “sufficiently close to the domain that there would be a strong likelihood of confusion”. “Likelihood of confusion” is not defined in the ADRP itself but a useful summary from the case law is whether the domain name would be “giving a wrongful impression of an impression with the [Complainant’s] business” (*Per Laffoy J. in Guinness Ireland Group v Kilkenney Brewing Company* [1999] IEHC 100, para. 25.) While the Registrant has argued that the term Daft is generic in itself, I accept the Complainant’s arguments that there is a very high likelihood of confusion given the prominence of the Daft.ie website, the various mortgage services it has provided on its website since approximately 2007, and the evidence that the sister company Distilled Financial Services Ltd. has operated a site at www.daft-mortgages.daft.ie since 2018.

(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 also 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 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 [...]
- 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 [...]

Paragraph 4.1.C also provides that:

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.

I accept the Registrant's evidence that the domain name was not intended for resale and was registered in the honest belief that he was entitled to use the name for his own business. Nevertheless, the definition of abusive registration under the ADRP ("a domain name which was registered ... to take unfair advantage of ... the Complainant's Rights") does not require any finding of subjective dishonesty or awareness of wrongdoing on the part of the Registrant and a registration may be abusive even though the registrant, through lack of legal knowledge, does not realise this. (Compare *Guinness Ireland Group v Kilkenny Brewing Company* [1999] IEHC 100 at para. 16 in which Laffoy J. held that it was irrelevant, for the tort of passing off, that a name "was chosen innocently and without any consciousness of the

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possibility of confusion being created in consumers' minds of a connection".) While the Registrant may have honestly believed that he was entitled to use Daft Mortgages as a trading name, it is nevertheless the case that he was aware of the Daft brand when registering the domain name, was or should have been aware of the likelihood of confusion, and registered the domain name intending to make use of it in a way which would clearly infringe on the European Union Trade Mark held by the Complainant at the time of registration. I therefore find that the Complainant has met its burden of proof to show that the domain name was registered abusively.

7. Decision

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

The Complainant has asked that a decision also be made in relation to the domains daftmortgage.ie and daftmoney.ie. However as no complaint has been made under the ADRP in relation to those domains I have no jurisdiction to decide on them.

Signed: TJ McIntyre

Dated: 26 March 2022
