

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

Decision of Independent Specialist

Case Number: 646

1. The Parties:

Complainant:	Sarah Njodi on behalf of Radox Teoranta – CRO: 460557
Registrant:	UDITH AROSHANA KURUPANAWA GAMAGE

2. The Domain Name(s):

randoxhealth.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	12 th August 2022
Complaint validated	12 th August 2022
Notification of complaint sent to Complainant	15 th August 2022
Notification of complaint sent to Registrant	15 th August 2022
Phone calls to complainant	6 th September 2022, Complaint form not posted
Reminder sent to complainant	24 th August 2022, Complaint form not posted Follow up email 13 th September 2022 Follow up email 17 th September 2022 Follow up email 20 th September 2022
Forum Opened	15 th August 2022
Complaint Form received	20 th September 2022
Response received	24 th August 2022 21 st September 2022
Forum Closed	13 th October 2022

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Action	Comment / date
Adjudication Started	14 th October 2022
Adjudication Decision Posted	17 th October 2022
Specialist Decision published	18 th October 2022

4. Factual Background

The Complainant is a company registered in the Republic of Ireland, Radox Teo., which is part of a wider corporate group including the UK companies Radox Health Ltd. and Radox Health Checks (NI) Ltd., both with registered addresses in Northern Ireland. Radox Health Checks (NI) Ltd. holds EU and UK trademarks on the term Radox Health in classes 9, 42 and 44, in each case registered in January 2013. The group operates the domain name radoxhealth.com and is well known for provision of COVID-19 PCR testing services and has a high profile generally (for example, it has sponsored the Grand National since 2017).

The Registrant registered the domain name radoxhealth.ie in December 2021. The domain name was initially redirected to the Complainant's site, radoxhealth.com but now does not resolve to any server. In reply to this complaint the Registrant has offered to sell the domain name to the Complainant for £10,000 STG or one Bitcoin.

5. Parties' Contentions

Complaint

A summary of the Complaint is as follows:

The Complainant alleges that the domain name was registered in bad faith in that the Registrant has no affiliation with it, registered the domain name with the purpose of selling it to the Complainant, and has asked for payment considerably in excess of the registration fees paid.

The Complainant also alleges that the Registrant has acted deceptively. Because the domain name initially resolved to the Complainant's own web site, individuals trusted that the domain name belonged to the Complainant. The Complainant alleges that this has since caused confusion and disrupted its business. In addition, the Complainant alleges that the Registrant could take advantage of this consumer confusion to fraudulently exploit visitors.

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Response

A summary of the Response is as follows:

The Registrant has not engaged with the complaint in any meaningful way. The following is a typical example of the response:

“I am not giving up on my domain i have paid for it, you have no legal base to take away my domain i have purchased it legally. I have right to purchase availble domains. and resell it at any time.

Your company is not TRADE mark

and if any time soon it will become a trade mark you still have NO RIGHT on my domain as i purchased it before you become trade mark. Also i am not hosting anything on this domain (not just yet but can any time HOST and will display this full converstation and unfair business prcatice of yours so public see who and what are HARRASSORS and DISCRIMINATIONALIST !

Also evidence you have provided has nothing to do with my domain. You are register company separtate from my domain name. If you want to purchase this domain be my guest i already named price.

If you still will attempt to take it away ill take you to court on a bases of harassmtent discrimination and vailation of business law (fair trade).

Domain belongs to me and you need to move off. It is availbe for sale and if you want to purchase i already named price. once again £10,000.00 Pay and get it NO PAY NO GET SIMPLE”

It should be noted that in the response the Registrant states that they are willing to sell the domain to a third party.

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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.

The Complainant has registered both EU and UK trademarks in the exact terms of the domain name. 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.

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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 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 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
- The domain name was registered or is being used with the primary purpose of unfairly disrupting or interfering with the Complainant's business, 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

In the current case, given the high profile of the Complainant, the offer to sell the domain to the Complainant for £10,000, the threat to sell to a third party, and the lack of any explanation for the registration from the Registrant, I find that the domain name was registered with the primary purpose of selling or renting it specifically to the Complainant (or a competitor) for more than the Registrant paid for it.

As the Registrant has not taken part in this process in any meaningful way 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.

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7. Decision

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

Signed: Dr. TJ McIntyre

Dated: 17 October 2022
