

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

Decision of Independent Specialist

Case Number: 653

1. The Parties:

Complainant:	FUJIFILM CORPORATION - EUTM 000232868
Registrant:	Tool Domains OOD

2. The Domain Name(s):

fujifilm.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	30 th August 2022
Complaint validated	30 th August 2022
Notification of complaint sent to Complainant	2 nd September 2022 Complainant and billing details changed 8 th September 2022 Complainant details changed for Forum 14 th September 2022
Notification of complaint sent to Registrant	14 th September 2022
Reminder sent to registrant	30 th September 2022 4 th October 2022 5 th October 2022 13:23
Forum Opened	2 nd September 2022
Complaint Form received	14 th September 2022
Response received	7 th October 2022
Forum Closed	14 th October 2022
Adjudication Started	15 th October 2022

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

4. Factual Background

The Complainant is a Japanese company which is part of a well known international imaging and photography business. It holds an EU trademark in the term FUJIFILM in classes 1, 7, 9, 10, 16 and 40. The Registrant is a Bulgarian marketing company specialising in domain names. The Registrant registered the domain name on 21 November 2021. As of 14 October 2022 the domain name resolved to a website which was branded as FUJIFILM and displayed information on cameras and photography.

5. Parties' Contentions

Complaint

A summary of the Complaint is as follows:

The Complainant states that the domain name is not affiliated with it in any way. It states that the domain name is confusing customers by leading them to believe that the website displayed on fujifilm.ie is an official website. It states that this is particularly the case as the domain name is the second result on Google behind the official website for Fujifilm Ireland.

Response

A summary of the Response is as follows:

The Respondent states the the domain name and website is being used by a client for SEO purposes and that they have nothing to do with it. It states that it does not want to bear any responsibility for their actions, and it has not put in any response on the client's behalf.

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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 a Japanese company which trades in Ireland and holds an EU trademark. I accept that it 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 an EU trademark in the terms of the domain name. I accept therefore that the Complainant has rights in the domain name for the purpose of the ADRP. I disregard the capitalisation of the trademark for this purpose.

(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

I accept that the use of the Fujifilm branding and overall look and feel on the website to which the domain resolves makes it likely to confuse consumers that the Fujifilm.ie domain name is connected with the Complainant. There are no countervailing factors under paragraph 4.2.A.

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