

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

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**Decision of Independent Specialist**

**Case Number: 666**

**1. The Parties:**

<b>Complainant:</b>	David Kennedy on behalf of Natural Hygiene Limited – CRO: 663360
<b>Respondent:</b>	Dave Lahart

**2. The Domain Name(s):**

naturalhygiene.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	2 <sup>nd</sup> December 2022
Complaint validated	5 <sup>th</sup> December 2022 6 <sup>th</sup> December 2022 with new email addr
Notification of complaint sent to Complainant	8 <sup>th</sup> December 2022
Notification of complaint sent to Respondent	8 <sup>th</sup> December 2022
Reminder sent to respondent	10 <sup>th</sup> January 2023
Phone calls to respondent	10 <sup>th</sup> January 2023, 22 <sup>nd</sup> December 2022
Letter sent to respondent	22 <sup>nd</sup> December 2022
Forum Opened	13 <sup>th</sup> December 2022
Complaint Form received	13 <sup>th</sup> December 2022
Response received	22 <sup>nd</sup> December 2022
Forum Closed	31 <sup>st</sup> January 2023
Adjudication Started	1 <sup>st</sup> February 2023
Adjudication Decision Posted	13 <sup>th</sup> February 2013
Specialist Decision published	13 <sup>th</sup> February 2013

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**4. Factual Background**

The Complainant seeks transfer of the Domain Name, which is identical to the Complainant's mark, from a former Employee.

**5. Parties' Contentions**

**Complaint**

A summary of the Complaint is as follows:

The Complainant contends that the Domain Name was registered prior to incorporation of the Complainant by the Respondent on its behalf. The Complainant contends that all the costs and expenses associated with registration of the domain were paid by the Complainant and that the Registrant made no payments. The Complainant points to the contract of employment it had with the Registrant and in particular clause 39 thereof which provides that title to certain Confidential Information remains with the Employer and that the Employee shall have no right, title nor interest in them.

**Response**

A summary of the Response is as follows:

The Registrant has declined an opportunity to respond.

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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"><li>• 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</li></ul>
	<ul style="list-style-type: none"><li>• 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</li></ul>
	<ul style="list-style-type: none"><li>• the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.</li></ul>

### **General**

	<ul style="list-style-type: none"><li>• the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant, and</li><li>• 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</li><li>• the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.</li></ul>
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### **Complainant’s Rights**

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

	<ul style="list-style-type: none"><li>• 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:</li></ul>
	<ul style="list-style-type: none"><li>○ Trade and service marks protected in the island of Ireland, or</li></ul>
	<ul style="list-style-type: none"><li>○ Personal names (including pseudonyms) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland, or</li></ul>
	<ul style="list-style-type: none"><li>○ Geographical indications that can prima facie be protected in the island of Ireland,</li></ul>
	<ul style="list-style-type: none"><li>○ 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.</li></ul>

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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"><li>• The domain name registration or use is misleading or confusing to its customers, or</li></ul>
	<ul style="list-style-type: none"><li>• The domain name registration or use is commercially damaging to its business through activities such as passing-off, content scraping or impersonation, or</li></ul>
	<ul style="list-style-type: none"><li>• The domain name is being used to circulate defamatory material relating to the Complainant, or</li></ul>
	<ul style="list-style-type: none"><li>• 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</li></ul>

***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"><li>• 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</li></ul>
	<ul style="list-style-type: none"><li>• 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</li></ul>
	<ul style="list-style-type: none"><li>• The domain name was registered or is being used with the primary purpose of unfairly disrupting or interfering with the Complainant’s business, or</li></ul>
	<ul style="list-style-type: none"><li>• 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</li></ul>
	<ul style="list-style-type: none"><li>• 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</li></ul>
	<ul style="list-style-type: none"><li>• The domain name is registered to a company which currently has a dissolved company trading status, or</li></ul>
	<ul style="list-style-type: none"><li>• The domain name is being used to facilitate the circulation of defamatory or racist material, or</li></ul>
	<ul style="list-style-type: none"><li>• The domain name is registered to a Registrant which does not have (and never had) a connection to the island of Ireland, or</li></ul>

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	<ul style="list-style-type: none"><li>• 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"><li>a) has been using the Domain Name registration exclusively; and</li><li>b) paid for the registration and/or renewal of the Domain Name registration; or</li></ul></li></ul>
	<ul style="list-style-type: none"><li>• 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.</li></ul>

**The Complainant has established:**

The Complainant has established that it would ordinarily be entitled to register the Domain Name were it not already registered by the Registrant. The Complainant is an Irish incorporated company.

The Complainant has established that it has rights in the name. This is shown in multiple items of evidence bearing the Natural Hygiene name.

The Complainant has established that the Registrant does not hold rights in the name.

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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"><li>• 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:</li></ul>
	<ul style="list-style-type: none"><li>○ Trade and service marks protected in the island of Ireland, or</li></ul>
	<ul style="list-style-type: none"><li>○ Personal names (including pseudonyms) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland, or</li></ul>
	<ul style="list-style-type: none"><li>○ Unregistered rights acquired through use.</li></ul>
	<ul style="list-style-type: none"><li>• 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</li></ul>
	<ul style="list-style-type: none"><li>• 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</li></ul>
	<ul style="list-style-type: none"><li>• The domain name is generic or descriptive and the Registrant is making fair use of it, or</li></ul>
	<ul style="list-style-type: none"><li>• The domain name is being used solely for tribute or criticism, or</li></ul>
	<ul style="list-style-type: none"><li>• The domain name contains or references the Complainant's mark but the Registrant is making fair use of it.</li></ul>

**The Registrant has established:**

The Registrant has not participated in these proceedings.

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**I therefore readily conclude:**

I conclude that the Complainant has succeeded in proving (i) that it would be entitled to register the Domain Name; (ii) that it holds rights in the Domain Name; and (iii) that the Domain Name has been registered or is being used Abusively or in Bad Faith by the Registrant.

As regards the third point – bad faith – I note that in the contract of employment the Registrant effectively agrees that the domain shall be the property of the Complainant, and the Registrant agrees to do all things necessary to vest these rights in the Complainant. Clauses 39-41 of the Contract of Employment provide:

*39: The Employee acknowledges and agrees that all rights, title and interest in any Confidential Information will remain the exclusive property of the Employer. Accordingly, the Employee specifically agrees and acknowledges that the Employee will have no interest in the Confidential Information, including, without limitation, no interest in know-how, copyright, trade-marks or trade names, notwithstanding the fact that the Employee may have created or contributed to the creation of the Confidential Information.*

*40: The Employee waives any moral rights that the Employee may have with respect to the Confidential Information.*

*41: The Employee agrees to immediately disclose to the Employer all Confidential Information developed in whole or in part by the Employee during the Employee's term of employment with the Employer and to assign to the Employer any right, title or interest the Employee may have in the Confidential Information. The Employee agrees to execute any instruments and to do all other things reasonably requested by the Employer, both during and after the Employee's employment with the Employer, in order to vest more fully in the Employer all ownership rights in those items transferred by the Employee to the Employer.*

In the circumstances I find on balance that there can be no good faith use of the Domain Name by the Registrant.

**7. Decision**

The domain shall be transferred to the Complainant.

**Signed:**



**Dated:**

10 February 2023