

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

Decision of Independent Specialist

Case Number: 717

1. The Parties:

Complainant:	Andrew Goodey on behalf of Your Healthcare Abroad Ltd CRO: 715782
Registrant:	Noel Smith

2. The Domain Name(s):

healthcareabroadexposed.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 nd February 2024
Complaint validated	2 nd February 2024
Notification of complaint sent to Complainant	9 th February 2024
Notification of complaint sent to Registrant	9 th February 2024
Reminder sent to respondent	
Phone calls to respondent	
Letter sent to respondent	
Forum Opened	9 th February 2024
Complaint Form received	11 th - 12 th February 2024
Response received	23 rd February 2024
Forum Closed	18 th March 2024
Adjudication Started	19 th March 2024
Adjudication Decision Posted	20 th March 2024
Specialist Decision published	21 st March 2024

4. Factual Background

The Complainant is a company registered in Ireland, number 715782, incorporated on 22 March 2022. It is in the business of arranging for Irish residents to receive healthcare in other European Union countries under the Cross Border Directive. It is run by members of the Goodey family. It promotes its services under the name Healthcare Abroad and using a website at healthcareabroad.ie. It registered that domain on 23 July 2022 and has publicly advertised its services since July 2022. There is a pending application for a trademark in relation to a graphic mark containing the terms “HEALTHCARE ABROAD LOOKING AFTER YOU” in respect of Class 44 (healthcare and related) in the name of Andrew Goodey.

According to the Complainant (whose account the Registrant has not disputed): The Registrant is an individual who runs a rival company called Surgery Now which is registered in Malta and/or Spain and similarly targets the Irish market. That company was previously associated with the owners of the Complainant and was, the Complainant alleges, wrongfully taken over by the Registrant who had previously been an employee. The Registrant is said to be resident in Spain with no other connections to Ireland.

The Registrant is said to be motivated by a desire to defame and harm the Complainant. At the time of the complaint the Domain Name resolved to a website, the front page of which had “Be Aware” superimposed over the HealthcareAbroad logo. The page started by stating “You should never trust a company that doesn’t have Facebook reviews permitted. You can fake reviews on other platforms, but not Facebook.” It then summarised and linked to a number of media stories about Chris Goodey. Those stories reported that Mr. Goodey has been investigated by police in relation to alleged financial crimes. The front page of the website also contained two posts in a comments section alleging other wrongdoing on the part of Mr. Goodey, including an allegation of theft against him. The Complainant has supplied a Spanish court judgment dismissing this allegation of theft, which was made by the Registrant as part of the Registrant’s business dispute with Mr. Goodey.

The Registrant states that “healthcareabroadexposed.ie is a single page website that provides links to news articles related to the company Healthcare Abroad and the people that run this company. This web page does not contain any defatory [sic] statements or false information. This page is important for people to read before deciding if they should use this company. The web page allows for comments to be submitted to dispute any of the news articles that are linked.”

The Complainant has previously succeeded in an ADRP claim against the Registrant in relation to the domain name healthcare-abroad.ie (case number 681, decision of May 2023). In that case the Independent Specialist found that “the domain name is confusingly similar to the complainant’s mark and that the registrant is using the domain in bad faith with the primary purpose of unfairly disrupting or interfering with the Complainant’s business” and directed that the domain name be transferred to the Complainant.

5. Parties' Contentions

Complaint

A summary of the Complaint is as follows:

The Complainant states that:

- The Domain Name is misleadingly similar to healthcareabroad.ie.
- The Registrant is a Spanish resident with no connections to Ireland and no rights to a .ie domain name.
- The Domain Name was registered to unfairly disrupt its business by providing false, misleading and defamatory information, which would appear before the Complainant's website in search results.

Response

A summary of the Response is as follows:

The Respondent states that:

- "The fact of the matter is that Chris Goodey is not disputing the accuracy of the content of the articles linked on the website. The website was created to expose the truth behind Chris Goodey and his company by sharing news articles about Chris Goodey and Healthcare Abroad. This website is doing exactly what the domain name suggests. There are no grounds to shut this website down, just because the truth is inconvenient. Please ensure that the freedom to share news articles is not eliminated because of baseless claims and accusations."

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6. Discussions and Findings

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 “right”, as far as relevant to this case, providing that:

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 [...]
- Unregistered rights acquired through use.

Trade and service marks

As the trademark application is still pending I disregard it under this heading.

Unregistered rights acquired through use

To establish an unregistered right, a complainant must show that it would be entitled to bring an action for passing off in relation to the disputed domain name. This requires that the complainant runs a business on the island of Ireland and has goodwill in this business, and that the unregistered trade mark is a distinctive identifier of that business. (See Case No. DIE2013-0002, *Budget Energy Limited (Budget Energy ROI) and Budget Energy Limited (Budget Energy NI) v. Prepay Power Limited.*)

For guidance regarding whether there is the necessary goodwill and whether an unregistered trade mark is a distinctive identifier the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) can be taken into account except where the .IE policy or Irish law differ (see e.g. Case No. DIE2019-0001, *Puma SE v. Stephen Connell, Puma Transport Ireland Limited.*)

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Paragraph 1.3 of the WIPO Overview 3.0 provides as follows:

What does a complainant need to show to successfully assert unregistered or common law trademark rights?

To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services.

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.

(Particularly with regard to brands acquiring relatively rapid recognition due to a significant Internet presence, panels have also been considering factors such as the type and scope of market activities and the nature of the complainant's goods and/or services.)

Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning.

A company name does not itself satisfy this criterion and the term "healthcare abroad" is relatively generic. However the Complainant has provided evidence that it has traded under the name Healthcare Abroad for two years, including its website and a link to coverage on RTÉ News, and has provided evidence that the Intellectual Property Office has allowed an application to register a mark incorporating this name to proceed on the basis of acquired distinctiveness. On balance therefore I find that it has the necessary goodwill and that the term is a distinctive identifier so that consumers in the relevant market would associate the term with it, so that it has an unregistered right acquired through use.

(ii) Complainant's rights negatively impacted by registration

It is not necessary to consider the alternative ground that the Complainant's rights have been negatively impacted by the domain 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 in every case 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 as far as is relevant to this case 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 unfairly disrupting or interfering with the Complainant’s business, or [...]
- The domain name is being used to facilitate the circulation of defamatory or racist material, or
- The domain name is registered to a Registrant which does not have (and never had) a connection to the island of Ireland [...]

Paragraph 4.2.A provides that a Registrant can demonstrate that a registration is not abusive or in bad faith if:

- The domain name is being used solely for tribute or criticism, or
- The domain name contains or references the Complainant’s mark but the Registrant is making fair use of it.

In this case the Complainant argues that the Domain Name was registered or used by the Registrant in bad faith to disrupt its business, that it is being used to defame the Complainant, and that the Registrant has no connection to Ireland. The Respondent in effect argues that the domain name is solely being used for criticism of the Complainant and that there is an important freedom of expression issue involved.

In considering these arguments I take into account the following factors:

- This case arises out of a business dispute between the parties. The Registrant has said that he is motivated to inform potential customers of the Complainant, but also stands to benefit indirectly if potential customers are deterred from using the Complainant’s service.
- The Complainant has succeeded in a previous ADRP complaint against the Registrant in which the decision maker found that “the domain name is confusingly similar to the complainant’s mark and that the registrant is using the domain in bad faith with the primary purpose of unfairly disrupting or interfering with the Complainant’s business”.

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- The Domain Name in the current case is significantly different from the domain in the earlier case (healthcareabroadexposed.ie rather than healthcare-abroad.ie). It indicates on its face that it is critical of the Complainant and is not likely to cause consumer confusion with the Complainant. (Compare e.g. Case No. D2015-2062, *Titan Enterprises v Dale Cross*.)
- There is no allegation that the look and feel of the website resembles that of the Complainant's website.
- Using a domain name solely for the purposes of criticism is a factor showing that the registration is not abusive or in bad faith under Paragraph 4.2.A ADRP.
- The majority of the allegations on the website summarise and link to stories in prominent media outlets and the Complainant has not challenged the accuracy of those stories. In the comments section the website makes some further allegations without supporting material. One comment states that Mr. Goodey faces theft charges in Spain but has not been updated to clarify that these have since been dismissed by the court. However these comments are secondary to the main allegations which are supported by links to reputable reporting.
- While the Registrant does not appear to live in Ireland he has connections with Ireland in that he similarly targets the Irish market through his Surgery Now business.

On balance, therefore, I find that the Complainant has not met its burden to establish that the Domain Name has been registered or used in bad faith. While it is a close case and aspects of the website may be defamatory, it is not the role of the decision maker under the ADRP to make a finding of defamation in a purely paper-based process where there are significant factual disputes between the parties, particularly where the core of the Complainant's case is that the Registrant has linked to media coverage which has not itself been challenged.

7. Decision

For the foregoing reasons the Complaint is denied.

Signed: **Dr. TJ McIntyre**

Dated: **20 March 2024**
