

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

Decision of Independent Specialist

Case Number: 718

1. The Parties:

Complainant:	David Dillon on behalf of Dillon Auctioneers Limited – CRO: 431008
Respondent:	Troy Christopher Bannon

2. The Domain Name(s):

dillonauctioneers.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	9 th February 2024
Complaint validated	9 th February 2024
Notification of complaint sent to Complainant	12 th February 2024
Notification of complaint sent to Respondent	12 th February 2024
Reminder sent to respondent	14 th March 2024
Phone calls to respondent	19 th March 2024, called 3 times no response
Forum Opened	12 th February 2024
Complaint Form received	21 st February 2024
Response received	No Response
Forum Closed	26 th March 2024
Adjudication Started	27 th March 2024
Adjudication Decision Posted	3 rd April 2024
Specialist Decision published	4 th April 2024

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4. Factual Background

The Complainant is an Irish registered company carrying on business as auctioneers in Dunshaughlin, Co Meath, Ireland. The Complainant has been using the domain name for up to 20 years and it features in the company marketing and signs.

The Complainant missed the renewal for the domain name and it subsequently became registered to the Respondent Registrant.

The domain name defaults to a cloned version of the Complainant's site, except the phone number was changed and at one point it linked to an online casino.

The Respondent Registrant has remained uncommunicative and has not engaged with this procedure despite the many efforts of the Complainant and the secretariat of NetNeutrals to contact him.

5. Parties' Contentions

Complaint

A summary of the Complaint is as follows:

The Complainant contends that the Respondent Registrant has primarily registered the domain name to unfairly disrupt its business, or threatening to unfairly disrupt its business, because clients are unable to connect to the Complainant via the website which has incorrect and out of date information. The Complainant further contends that the domain name is used by the Respondent Registrant in a way which has already confused people into thinking that the domain name was registered, or controlled, or operated, or authorised by, or otherwise connected to the Complainant.

The Complainant seeks transfer of the Domain to it.

Response

A summary of the Response is as follows:

The Respondent Registrant has not engaged in this process.

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

General

	<ul style="list-style-type: none">• the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant, and• 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• the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.
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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">• 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:
	<ul style="list-style-type: none">○ Trade and service marks protected in the island of Ireland, or
	<ul style="list-style-type: none">○ Personal names (including pseudonyms) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland, or
	<ul style="list-style-type: none">○ Geographical indications that can prima facie be protected in the island of Ireland,
	<ul style="list-style-type: none">○ 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.

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

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

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

The Complainant has established:

<ol style="list-style-type: none">1. That Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant; indeed, the Complainant as the prior registrant of the domain name;2. That the Complainant has rights in the domain name which is the registered corporate name of the Complainant, and that the Complainant's rights have been negatively impacted by the registration, in that confusion has been created in the minds of customers and in that customers can no longer connect to the Complainant via the contact details supplied on the website.3. That registration of the domain should be revoked as it has been registered or used abusively or in bad faith; in that it comprises a cloned version of the Complainant's website but contains misleading and out of date information and at some point contained a link to an online gambling site unrelated to the Complainant.4. That the domain name was registered or is being used with the primary purpose of unfairly disrupting or interfering with the Complainant's business.5. That 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.

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

The Registrant has established:

The Registrant has not engaged in this process.

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I therefore readily conclude:

The onus of proof lies on the Complainant. The Complainant has furnished screenshots, company registration information, marketing and signage evidence, and supporting documentation dating back to 2006 to establish its use of the domain name and the abuse of the domain name by the Registrant Respondent. I am persuaded by the evidence supplied by the Complainant in support of its claim that the domain name is being used abusively and in bad faith.

7. Decision

The domain name shall be transferred to the Complainant.

Signed: G Brian Hutchinson

Dated: 3 April 2024