

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

---

**Decision of Independent Specialist**

**Case Number: 731**

**1. The Parties:**

<b>Complainant:</b>	<b>Gavin Mc Auliffe on behalf of Accutool Limited, CRO 106566</b>
<b>Respondent:</b>	<b>Derek McDonnell</b>

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

<b>radcovers.ie</b>	<b>("the Domain Name")</b>
---------------------	----------------------------

**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:

<b>Action</b>	<b>Comment / date</b>
<b>Dispute received</b>	15 <sup>th</sup> April 2024
<b>Complaint validated</b>	15 <sup>th</sup> April 2024
<b>Notification of complaint sent to Complainant</b>	16 <sup>th</sup> April 2024
<b>Notification of complaint sent to Respondent</b>	16 <sup>th</sup> April 2024
<b>Forum Opened</b>	16 <sup>th</sup> April 2024
<b>Complaint Form received</b>	2 <sup>nd</sup> May 2024
<b>Response received</b>	21 <sup>st</sup> May 2024
<b>Forum Closed</b>	31 <sup>st</sup> May 2024
<b>Adjudication Started</b>	1 <sup>st</sup> June 2024
<b>Adjudication Decision Posted</b>	4 <sup>th</sup> June 2024
<b>Specialist Decision published</b>	5 <sup>th</sup> June 2024

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

---

**4. Factual Background**

The Complainant is a supplier of interior improvements including radiator covers. The Respondent is engaged in the same industry.

**5. Parties' Contentions**

**Complaint**

A summary of the Complaint is as follows:

The Complainant complains that his business had traded using the domain name for many years and that through an oversight the registration lapsed during which time the Respondent, who already trades using an almost identical domain name, secured the registration.

**Response**

A summary of the Response is as follows:

The Respondent responds that it acquired and is using the domain name legitimately. The Respondent makes criticisms of the Complainant's business, literacy, and conduct.

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

---

## 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>
--	---

### 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>

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

---

***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>

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

	<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, on the balance of probabilities, on his own evidence and on the evidence of photographs and screenshots supplied, that he has rights in the domain name having used it and having traded using it over a number of years.

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

---

**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 Respondent Registrant has established that it acquired the domain legitimately and that it has rights in the name having traded using an almost identical name for a number of years and is commonly known by the domain name or similar name.

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

---

**I therefore readily conclude:**

In order to succeed the Complainant is required to establish that the domain was registered or is being used in bad faith.

The Complainant has failed to establish that the domain was registered in bad faith or that the domain is being used in bad faith. In particular:

1. The Complainant has not proved 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;
2. The Complainant has not proved that 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;
3. The Complainant has not proved that the domain name was registered or is being used with the primary purpose of unfairly disrupting or interfering with the Complainant's business;
4. The Complainant has not proved 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;
5. The Complainant has not proved that 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);
6. The Complainant has not proved that the domain name is registered to a company which currently has a dissolved company trading status;
7. The Complainant has not proved that the domain name is being used to facilitate the circulation of defamatory or racist material;
8. The Complainant has not proved that the domain name is registered to a Registrant which does not have (and never had) a connection to the island of Ireland;
9. The Complainant has not proved that the domain name was registered as a result of a relationship between the Complainant and the Registrant, and the Complainant a) has been using the Domain Name registration exclusively; and b) paid for the registration and/or renewal of the Domain Name registration;
10. The Complainant has not proved failure by the Registrant to use the Domain Name for the purposes of email or a web site.

The Respondent Registrant has established that it acquired the domain legitimately and that it has rights in the name having traded using an almost identical name for a number of years and is commonly known by the domain name or similar name.

The Respondent's other criticisms of the Complainant are unwelcome and unnecessary. They carry no weight in this decision and do not reflect kindly on the Respondent.

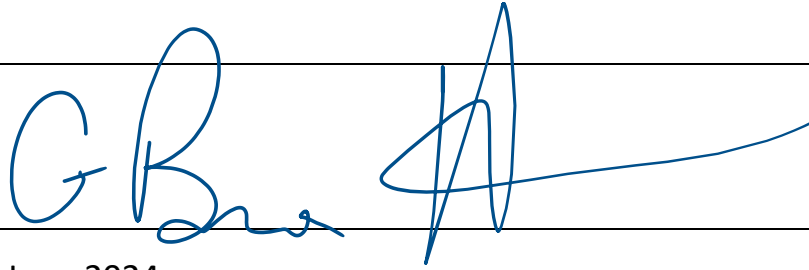
**.ie Alternative Dispute Resolution  
NETNEUTRALS DISPUTE RESOLUTION SERVICE**

---

**7. Decision**

The Complainant's claim fails.

**Signed:**

A handwritten signature in blue ink, appearing to be 'G. B. A.', written over a horizontal line.

**Dated:**

4 June 2024

---