.ie Alternative Dispute Resolution
NETNEUTRALS DISPUTE RESOLUTION SERVICE

Decision of Independent Specialist

Case Number: 741

1. The Parties:

Complainant:	**Richard Fitzsimons on behalf of Lisney Limited, CRO 352391**
Respondent:	**Fergal McCabe**

2. The Domain Name(s):

lisney.ie	("the Domain Name")

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	30th August 2024
Complaint validated	30th August 2024
Notification of complaint sent to Complainant	3rd September 2024
Notification of complaint sent to Respondent	12th September 2024
Reminder sent to respondent	8th October 2024
Phone calls to respondent	17th and 18th October 2024 – No Answer
Letter to respondent	21st October 2024
Forum Opened	3rd September 2024
Complaint Form received	12th September 2024
Response received	
Forum Closed	8th December 2024
Adjudication Started	9th December 2024
Adjudication Decision Posted	9th December 2024
Adjudication Decision accepted / rejected	
Specialist Decision published	9th December 2024

4. Factual Background

The Complainant is a well-known firm of property and real estate professionals incorporated and operating in Ireland, company number 352391, having its registered address at St Stephen's Green House, Earlsfort Terrace, Dublin 2, D02PH42, Ireland.

The Registrant/Respondent, listed by WHOIS as Fergal McCabe, Chapel Road, Haggardstown, Dundalk, Co. Louth, Ireland, did not engage in this process.

5. Parties' Contentions

Complaint

A summary of the Complaint is as follows:

The Complainant complains that having been the registered owner of the domain Lisney.ie for some time, it allowed, for reasons unknown, the registration to lapse, and that it has come to be registered by Respondent who, the Complainant alleges, has registered it for the sole purpose of selling it to the Complainant for an inflated price.

Response

A summary of the Response is as follows:

The Respondent did not respond or engage in this process.

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…

	• 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
	• 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.

General

- 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.

Complainant's Rights

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

	• 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:
	○ 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; and the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.

Complainant Rights Negatively Impacted

The Complainant rights are negatively impacted by the domain registration or use as shown by:

	• The domain name registration or use is misleading or confusing to its customers, or
	• The domain name registration or use is commercially damaging to its business through activities such as passing-off, content scraping or impersonation, or
	• The domain name is being used to circulate defamatory material relating to the Complainant, or
	• 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:

	• 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, or
	• 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
	• The domain name is registered to a company which currently has a dissolved company trading status, 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, or

	• 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; or
	• 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:

At the outset it should be noted that the Complainant, despite having been advised to do so by the Net Neutrals case manager on more than one occasion, did not use the template complaint form supplied by Net Neutrals for the purposes of presenting its case. The onus of proof rests on the Complainant, and failure to use the form has the disadvantage of potentially leaving the specialist without particular information which may be important to the decision; moreover, it can place the Respondent at a disadvantage in making a response.

I note however, that the ADRp does not mandate use of the form specifically. I note further that the Complainant has supplied certain information through the initiating complaint form, and has supplied evidence and argument through the Net Neutrals case discussion forum for this case, and that the case manager has held the forum open for longer than would be normal in order to give the Respondent sufficient opportunity to respond and be heard. The Respondent has not taken this opportunity.

The Complainant has established that it would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant. This is proved by the fact that it was previously the registered holder of the domain name. The Complainant has further, through its company registration, address, and website at Lisney.com, proved its identity and that it has a substantive connection with the island of Ireland.

The Complainant has established that it has rights in the domain name or in marks or identifiers very similar to it; this is proved by the fact that the company name and domain name are identical and that the Complainant has been trading via the domain name and the corresponding Lisney.com domain since at least 2009 and apparently as far back as the late 1990s.

The Complainant has further established that the domain has been registered in bad faith. The Complainant has supplied evidence that until recently the domain name was not used by the Registrant and moreover that it was advertised for sale for the sum of $10,099.00. Subsequently, it would appear that the domain now resolves to the domain https://www.ancestry.co.uk/name-origin?surname=lisney#:~:text=possibly%20from%20Anglo-

Norman%20French,in%20Britain%20and%20Ireland,%202016 – a page on Ancestry.com which provides basic information about the Lisney family name. However, such a link and page can be generated for any family name, and I determine that the link in question is no more than an attempt to thinly disguise the primary purpose and intent of the registration – ie. that of selling or renting it specifically to the Complainant (or a competitor) for more than the Registrant paid for it.

I have given consideration to the fact that the Registrant has not directly contacted the Complainant to offer the domain name for sale. However, weighing this against the fact that the domain has been publicly offered for sale at a high price; the fact that it was previously held by the Complainant; the fact that the Complainant's brand is well known and highly recognisable, if not unique, in Ireland; and the fact that the domain has not been put to use by the Registrant other than laterally to redirect to a publicly available website having no apparent connection with the Registrant; I find that the primary purpose and intent of the registration was that of selling or renting it specifically to the Complainant (or a competitor) for more than the Registrant paid for it.

Accordingly, I find that the Complainant has established that the domain has been registered and used abusively or in bad faith.

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:

	• 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:
	○ 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
	○ Unregistered rights acquired through use.
	• 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
	• 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
	• The domain name is generic or descriptive and the Registrant is making fair use of it, or
	• 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.

The Registrant has established:

The Registrant has not engaged in this process, as is its right – the onus of proof rests on the Complainant.

I have further given consideration to any factors the Registrant might have established in its favour to show that its registration and/or use of the domain is not unreasonable, including but not limited to demonstrating any of the factors listed above. On the limited evidence available I do not find that the Registrant might have established any of these – particularly any which relates to fair use – but, as already noted, in any event, the Registrant has not taken the opportunity to respond.

I therefore readily conclude:

The registration of the domain should be revoked as it has been registered or used abusively or in bad faith.

7. Decision

The domain shall be transferred to the Complainant.

Signed: **G Brian Hutchinson**

Dated: **9 December 2024**