

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

Decision of Independent Specialist

Case Number: 615

1. The Parties:

Complainant:	Alan Barry
Respondent:	Ross Geoghegan

2. The Domain Name(s):

Tus.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	28 th April 2021
Complaint validated	28 th April 2021
Notification of complaint sent to Complainant	29 th April 2021
Notification of complaint sent to Respondent	29 th April 2021
Reminder sent to respondent	10 th May 2021
Phone calls to respondent	13 th May 2021 unable to take call – left a message 18 th May 2021 unable to take call – left a message Respondent called back and confirmed he will respond this week
Case Accepted by Respondent	Respondent updated contact details on 20 th May 2021
Forum Opened	3 rd May 2021
Complaint Form received	3 rd May 2021
Response Form received	20 th May 2021
Forum Closed	25 th May 2021 17:00

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Action	Comment / date
Adjudication Started	26 th May 2021
Adjudication Decision Posted	31 st May 2021
Specialist Decision published	31 st May 2021

4. Factual Background

The Respondent registered the domain name Tus.ie on 6 November 2019. The Respondent concedes that the domain name has not been used since registration.

The Complainant is a new technological university formed on the merger of Athlone Institute of Technology and Limerick Institute of Technology, given the legal name Technological University of the Shannon: Midlands Midwest. The name of the university was formally announced on 19 May 2021.

5. Parties' Contentions

Complaint

A summary of the Complaint is as follows:

The sole ground of complaint identified by the Complainant in its complaint form submitted on 3 May 2021 is that the domain name has been unused since registration.

The Complainant states in the complaint form that the domain name is crucial to the branding of the new university.

Response

A summary of the Response is as follows:

The Registrant asserts that the domain name was registered in good faith with the intention of using it to promote start-up consultancy services; that it corresponds to the Irish word 'Tús' meaning beginning, which is appropriate for such consultancy; and that the word is in commonly used and recognised as such. The Registrant concedes that the domain has not been used to date, citing the Covid 19 pandemic as a contributing factor.

The Registrant asserts that the Complainant has misunderstood the IEDR Domain Dispute policy and process, and that the Complainant has failed to provide any evidence of bad faith registration or use of the domain name by the Registrant.

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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
	<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.

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:

The Complainant has established that it would ordinarily be eligible to register the domain name in question if it were not already registered by the Registrant.

The Complainant has established that it has rights in the domain name or in marks or identifiers very similar to it.

The Complainant has not established that its rights in the domain name are negatively impacted by the registration or use of the domain name by the Registrant.

The Complainant has not established that the domain name has been registered or used abusively or in bad faith by the Registrant.

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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 established that the domain name is generic or descriptive.

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I therefore readily conclude:

The key issue in this dispute is whether the failure by the Registrant to use the domain name to date constitutes bad faith use of the domain name by the Registrant.

It is the case that non-use of a domain name can in certain circumstances constitute bad faith use of the domain; particularly where the rights of the complainant in the name exist at the time of registration, and the when the complainant is widely associated with the name.

In the instant case, however, the fact that the Complainant was only named some two weeks prior to this decision, and the fact that the Complainant did not exist at the time of registration of the domain name, weigh strongly against any finding of bad faith in the use or registration of the domain name by the Registrant. The Complainant has provided no further evidence to support such a finding.

Use by the Registrant of the domain name to promote a start-up consultancy business would constitute a fair use of a generic domain name. The Respondent has provided no further evidence to substantiate his assertion of an ongoing intention to put this particular domain to such use, but may be taken at his word in the absence of contrary evidence.

I conclude therefore that the Claimant has failed to establish that the domain name has been registered or is being used in bad faith.

7. Decision

I decide that no action shall be taken against the registration.

Signed:



Dated:

31 May 2021