

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

Decision of Independent Specialist

Case Number: 569

1. The Parties:

Complainant:	JustPark Parking Ltd
Registrant:	Parkpnp Ltd

2. The Domain Name(s):

justpark.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 December 2019
Complaint validated	2 nd December 2019
Notification of complaint sent to parties	5 th December 2019
Forum Opened	17 th December 2019
Complaint Form received	18 th December 2019
Response Form received	No response received.
Forum Closed	28 th January 2020
Adjudication Started	29 th January 2020
Adjudication Decision Posted	2 nd February 2020
Adjudication Decision accepted / rejected	
Specialist Decision published	23 rd February 2020

4. Factual Background

The Complainant is a limited company, registered number 04956777, incorporated in the United Kingdom. It offers a range of car parking services, predominantly in the United Kingdom, and has 4 million active customers, annual revenue of €58 million and 102 staff. It has traded as JustPark since July 2014 and in February 2015 the name of the company was changed to JustPark Parking Ltd. It holds EU Trade Mark 1251973 for the word JUSTPARK in classes 9, 35, 39 and 42 with a registration date of 29 October 2014. It also owns the domains justpark.com and justpark.co.uk. The Complainant has apps on both the Google Play store and Apple App Store titled JustPark and each of these has over one million downloads.

The Registrant is a limited company, registered number 572503, incorporated in Ireland, which also offers car parking services. It registered the domain name on 24 February 2017. At the time of this decision the domain name resolves to a generic Register365 landing page for an inactive domain. That page does not contain any advertising and does not offer to sell the domain name.

5. Parties' Contentions

Complaint

A summary of the Complaint is as follows:

The Complainant states that:

- The JustPark brand name is well known within the parking industry and has been the subject of extensive media coverage, including within Ireland.
- It intends to enter the Irish market as part of an international expansion strategy and has already begun offering parking services within Northern Ireland.
- As part of this strategy it identified the Registrant as having a very similar business model and as a potential partner within Ireland.
- On 15 February 2017 Anthony Eskinazi (CEO of the Complainant) contacted the director of the Registrant via email asking for a meeting in Dublin to discuss possible cooperation.
- No meeting took place but the domain name was registered by the Registrant on 24 February 2017, nine days later.

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- This registration was carried out by the Registrant to stop the Complainant from registering the domain name and to disrupt their entry into the Irish market as a competitor.
- Many Irish consumers will assume that the Complainant's service in Ireland is hosted on JustPark.ie. Having the domain name resolve to a parking page will lead to customer confusion.

Response

The Registrant did not file a Response or otherwise take part in these proceedings.

6. Discussions and Findings

Matters to be proved:

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) that 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

While the Complainant is not registered in Ireland, its evidence is that it manages local authority parking transactions on behalf of the Northern Ireland Department of Infrastructure, with this service having gone live on 6th January 2020. I therefore find that it has a sufficient connection with the island of Ireland as required by section 3 of the *IEDR Policy on Registration and Naming in the .IE Namespace* (effective 21 March 2018) 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

The Complainant holds the European Union Trademark 1251973 in the word mark JUSTPARK and I find that it therefore has rights in an identifier very similar to the domain name. It is not, therefore, necessary to consider any unregistered rights.

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(ii) Complainant's rights negatively impacted by registration

Having found that the Complainant has rights in the domain name it is unnecessary to consider the alternative ground that the Complainant's rights are negatively impacted by the domain registration or use.

C. Domain Used or Registered Abusively or in Bad Faith

Under paragraph 4.1 of the ADRP the Complainant must 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 and/or to act in a way which is in breach of the Registrant's contractual obligations (as stated in the Registrant Terms and Conditions)

Paragraph 4.1.C of the ADRP includes a non-exhaustive list of examples of abuse and bad faith, and so far as relevant provides as follows:

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 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, [...]

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 alleges that the Registrant has acted in bad faith in the ways contemplated by the two examples quoted, i.e. that it registered the domain name to stop the Complainant doing so and to disrupt its entry into the parking market in the island of Ireland.

I accept this argument. The uncontested evidence that the Registrant is a direct competitor to the Complainant, knew of the Complainant's business, registered a name identical to the trade mark held by the Complainant, and did so very shortly after being contacted by the Complainant regarding entry to the Irish market permits no other conclusion other than that the Registrant registered the domain name in bad faith.

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In reaching this conclusion I bear in mind that the Registrant has not taken part in these proceedings, and have considered the factors in paragraph 4.2(A) of the ADRP which it might have put forward as countering bad faith. However there is no evidence that any of these apply. In particular, there is no evidence that the Registrant used the domain name for any purpose at all, let alone the purposes contemplated by paragraph 4.2(A). The fact that the domain name was held passively and that there was no offer to sell the domain name or to redirect traffic to a competitor does not preclude a finding of bad faith (see e.g. Case No. D2016-0315, *National Hockey League v. Jean Lucas, Domcharme Group* and paragraph 3.2 of the *WIPO Overview of WIPO Panel Views on Selected UDRP Questions*, Second Edition).

I therefore find that the Complainant has met its burden of proof to establish that the domain name has been registered or used in bad faith.

7. Decision

For the foregoing reasons the Complaint is upheld and I direct that the domain name be transferred to the Complainant.

Signed: **TJ McIntyre**

Dated: **31 January 2020**
