

.ie Alternative Dispute Resolution
NETNEUTRALS DISPUTE RESOLUTION SERVICE

Decision of Independent Specialist

Case Number: 572

1. The Parties:

Complainant:	O Connor Autotours Ltd
Registrant:	CONSTANTIN MORARU

2. The Domain Name(s):

wildkerry-daytours.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	7 th January 2020
Complaint validated	7 th January 2020
Notification of complaint sent to parties	10 th January 2020
Forum Opened	28 th January 2020
Complaint Form received	27 th January 2020
Response Form received	No Response
Forum Closed	26 th February 2020
Adjudication Started	27 th February 2020
Adjudication Decision Posted	1 st March 2020
Adjudication Decision accepted / rejected	
Specialist Decision published	2 nd March 2020

4. Factual Background

Complainant holds the Irish registered Trade Mark WildKerry Daytours, registered 4 November 2012, and has other rights in the mark in a business spanning 10 years. The complainant registered the domain WildKerry-Daytours.ie (“the domain name”) on 30 Aug 2010. At some point since that date the Complainant’s registration of the domain name lapsed. It came into the hands of the current registered holder on 8 November 2019. At the date of this decision the domain name resolves to a website comprising interior painting advice and a variety of painting related content apparently harvested from other websites on the internet.

5. Parties’ Contentions

Complaint

A summary of the Complaint is as follows:

Complainant states that its registration of the domain name lapsed through inadvertence when the credit card linked to autorenewal of the domain name expired.

Complainant asserts principally that:

- Registrant has opportunistically registered the domain name with a view to selling or renting it to the Complainant at a price greater than that paid by the Registrant; and/or
- The domain name was registered or is being used with the primary purpose of preventing Complainant from registering a name or mark in which it has rights; and/or
- The domain name was registered or is being used with the primary purpose of unfairly disrupting or interfering with Complainant’s business; and/or
- The domain name is registered to a Domain Holder which does not have (and never had) a connection to the island of Ireland.

Response

A summary of the Response is as follows:

The Registrant has not responded.

.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...

x	1. 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
x	2. 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
x	3. the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.

General

4. the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant, and
5. 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
6. 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:

	7. 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:
x	○ 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
x	○ Geographical indications that can prima facie be protected in the island of Ireland,

.ie Alternative Dispute Resolution
NETNEUTRALS DISPUTE RESOLUTION SERVICE

x	<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:

x	8. The domain name registration or use is misleading or confusing to its customers, or
	9. The domain name registration or use is commercially damaging to its business through activities such as passing-off, content scraping or impersonation, or
	10. The domain name is being used to circulate defamatory material relating to the Complainant, or
	11. 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:

x	12. 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
x	13. 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
x	14. The domain name was registered or is being used with the primary purpose of unfairly disrupting or interfering with the Complainant's business, or
	15. 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
	16. 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
	17. The domain name is registered to a company which currently has a dissolved company trading status, or

.ie Alternative Dispute Resolution
NETNEUTRALS DISPUTE RESOLUTION SERVICE

	18. The domain name is being used to facilitate the circulation of defamatory or racist material, or
	19. The domain name is registered to a Registrant which does not have (and never had) a connection to the island of Ireland, or
	20. 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
	21. 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:

in accordance with .ie ADR Policy that:

1. 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), specifically:
 - Trade and service marks protected in the island of Ireland,
 - Geographical indications that can prima facie be protected in the island of Ireland, and
 - Unregistered rights acquired through use.
2. the Complainant's rights are negatively impacted by the domain registration, because the the domain name registration or use is misleading or confusing to its customers, and the domain name registration or use is commercially damaging to its business.
3. The domain has been registered or is being used Abusively or in Bad Faith by the Registrant 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 with the primary purpose of preventing the Complainant registering a name or mark in which the Complainant has rights, as evidenced by the content of the website to which the domain name now resolves (a melange of information on house painting and artistic painting gathered from different parts of the internet (in different currencies and linking in many cases back to the pages from which the information appears to have been harvested) and the disconnection between the subject matter of the website and the very specific focus of the domain name.

.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:

	4. 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:
	a. Trade and service marks protected in the island of Ireland, or
	b. Personal names (including pseudonyms) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland, or
	c. Unregistered rights acquired through use.
	5. 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
	6. 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
	7. The domain name is generic or descriptive and the Registrant is making fair use of it, or
	8. The domain name is being used solely for tribute or criticism, or
	9. 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 responded. I have however given consideration to whether any of the above defences could reasonably be raised in defence but find that the balance of evidence supplied by the Complainant makes any such defence unlikely to have succeeded in any event.

I therefore readily conclude:

The Complainant has succeeded in its case.

.ie Alternative Dispute Resolution
NETNEUTRALS DISPUTE RESOLUTION SERVICE

7. Decision

The domain name shall be transferred to the Complainant.

Signed: Brian Hutchinson

Dated: 1 March 2020