

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

Decision of Independent Specialist

Case Number: 578

1. The Parties:

Complainant:	Jacque Branagan for Births Deaths Marriages Limited
Respondent:	Highbird Limited

2. The Domain Name(s):

Irishcerts.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	9 th January 2020
Complaint validated	9 th January 2020
Notification of complaint sent to parties	13 th January 2020
Forum Opened	2 nd February 2020
Complaint Form received	29 th January 2020
Response Form received	No Response
Forum Closed	1 st March 2020
Adjudication Started	2 nd March 2020
Adjudication Decision Posted	2 nd March 2020
Adjudication Decision accepted / rejected	
Specialist Decision published	2 nd March 2020

4. Factual Background

The domain name was registered by the Registrant on 30 June 2009. The Complainant, Births Deaths and Marriages Ltd, is an Irish private company limited by shares formed and registered on 15 March 2000 and carrying on trade through the domain birthsdeathsandmarriages.ie (registered 27 April 2000) and irishcerts.com (registered 30 September 2009). The Complainant holds the Registered Business Name “Irish Certs”. (registered 22 October 2009).

The Registrant, Highbird Ltd, was a Single Member Private Limited Company Limited by Shares, registered on 15 June 2009 and dissolved on 6 April 2012.

A third party, Orla/Orflaith Reynolds, a sibling of the owner of Highbird Ltd, has come forward purporting to be the successor in title to the domain name on the basis of a transfer of the domain name to her by Highbird Ltd on 1 March 2012. It is her position that the domain name and the associated website are now the property of the company Aspen Blue Ltd, an Irish private company limited by shares, which she registered on 8 October 2018.

5. Parties’ Contentions

Complaint

A summary of the Complaint is as follows:

The Complainant complains that the domain name has been primarily registered to unfairly disrupt its business, including to circulate defamatory material about the Complainant, and is used by the Domain Holder in a way which has already confused people into thinking that the domain name was registered, or controlled, or operated, or authorised by, or otherwise connected to the Complainant. The Complainant also complains that the domain holder is a dissolved company and that the domain has been used for an unlawful purpose.

Response

A summary of the Response is as follows:

The third party asserts that she acquired the domain name and website in 2012 and continued to pay the registration fees without devoting much attention to the site until 2018 when she invested in updating and redesigning the site. She asserts that the allegedly misleading and/or defamatory material was corrected when attention was drawn to same.

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

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	<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

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	<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
	<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; and b) 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 was not already registered by the Registrant.

The Complainant has established that it has rights in the name Irish Certs insofar as it has a registered business name "Irish Certs".

The Complainant has further established that it has rights in the name "IrishCerts.com." The latter redirects to its principal website at birthdeathsmarriages.ie.

The Complainant has established that the irishcerts.ie website did at some point make a specific reference to the Complainant, identifying it by name and address and in a manner which the Complainant alleges was unprofessional and defamatory.

The Complainant has established that the irishcerts.ie website appears not to be meeting its mandatory legal obligations in some respects.

The Complainant has established that there is sometimes confusion among people that the irishcerts.ie website is connected with the Complainant's business.

The Complainant has established that the domain name is formally registered to a company which is dissolved.

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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 third party has established that she has prima facie acquired rights in the domain name as successor in title to the registered holder, those rights being unregistered rights acquired through the use of the domain name and irishcerts.ie website since 2009.

The third party has established that prior to any notice of the dispute, the Registrant and its successors in title used the domain name in connection with a bona fide offering of goods or services.

The third party has established that the domain name has been associated with the Registrant's and its successors' business since 2009 even in the absence of a registered trademark.

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I therefore readily conclude:

I conclude that Complainant has not established that the domain name irishcerts.ie has been registered or used in bad faith.

I find that the Complainant has failed to establish that the domain name was primarily registered to unfairly disrupt the Complainant's business.

I further find that the Complainant has failed to establish that the domain name is primarily used to disrupt the Complainant's business. I find that the isolated though apparently lengthy incidence of alleged unprofessional/defamatory reference to the Complainant's business is insufficient to give rise to an inference that the primary use of the domain name is to disrupt the Complainant's business. The reaction in taking down the offending material suggests the contrary.

I further find that whilst there has been confusion in some people's minds that the domain name was registered, or controlled, or operated, or authorised by, or otherwise connected to the Complainant, the Complainant has failed to establish that the domain name is used by the domain holder in this way – indeed, the alleged unprofessional/defamatory wording expressly distinguishes the businesses of the Complainant and the domain holder.

I further find that the Complainant has not established that the domain name is being used for an unlawful purpose; the purpose it is being used for appears similar to that of the Complainant. Failures to meet regulatory requirements alone do not make the purpose unlawful.

I further find that the domain holder has rights in the Irish Certs name which are not trumped by the Complainant's Business Name Registration (which does not confer an exclusive right or trade mark in any event) or by the Complainant's rights to IrishCerts.com. Indeed the domain holder's only mark appears to be Irish Certs, whereas the Complainant's primary mark is Births Deaths Marriages. I stress again that a right to trade under a registered business name does not confer an exclusive right to that name.

Finally, I find that whilst literally the domain is registered to a company which is dissolved, I find that this is not a case where the domain is lying dormant because of the dissolution of the Registrant such as would warrant cancellation or transfer of the domain to the Complainant. On the contrary the third party has come forward; has established prima facie entitlement to the domain; has demonstrated control of the domain and has taken responsibility for it as effective domain holder. In such circumstances, the mere fact alone that the domain register has not been updated to reflect the successor in title is not in my opinion sufficient ground for the transfer or cancellation of the domain to the Complainant.

I would add that it came to my attention in preparing my decision that posts were made to the dispute resolution forum apparently after the close of the time for submissions. The administrators have explained to me that the posts were received by e-mail ahead of

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the closing time, but were uploaded subsequently. I confirm that I saw the posts in advance of making my decision. I further confirm that they had no material effect on my decision herein, which would be the same regardless of the posts in question.

7. Decision

I direct no change to the registration

Signed: Brian Hutchinson

Dated: 2 March 2020