

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

Decision of Independent Specialist

Case Number: 587

1. The Parties:

Complainant:	Percy Foster for CRE Composting Association of Ireland CLG
Respondent:	Shane Hanafin

2. The Domain Name(s):

brownbin.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	23 rd March 2020
Complaint validated	23 rd March 2020
Notification of complaint sent to Complainant	24 th March 2020
Notification of complaint sent to Respondent	31 st March 2020
Forum Opened	31 st March 2020
Complaint Form received	31 st March 2020
Response Form received	31 st March 2020
Forum Closed	21 st April 2020
Adjudication Started	22 nd April 2020
Adjudication Decision Posted	29 th April 2020
Adjudication Decision accepted / rejected	
Specialist Decision published	29 th April 2020

4. Factual Background

The Complainant's registration of the Domain Name expired in or around 27 March 2019. On that same day the Domain Name was acquired by the Respondent.

The registrant details in the WHOIS record were and are private.

The site has remained in "maintenance mode" since April 2019.

The Complainant has attempted to contact the Respondent to buy back the domain and replace the domain at no charge.

The Complainant has received no communication from the Respondent apart from the Respondent's submissions to the dispute forum for this case.

5. Parties' Contentions

Complaint

A summary of the Complaint is as follows:

The Complainant asserts that it has rights in the name BrownBin.ie

The Complainant asserts that within a short time of the domain being transferred to the Respondent a scraped static version of the Complainant's original website was being hosted by the new registrant. The Complainant asserts that the scraped version of the website was viewed by others, including the hosts.

The Complainant further asserts that following attempts to contact the Registrant via the new domain hosts the scraped version was replaced with a "maintenance mode" notice.

The Complainant's attempts to contact the Respondent did not receive a reply.

The Complainant asserts that the Respondent's registration of the Domain Name should be revoked as it has been registered or used abusively or in bad faith.

Response

A summary of the Response is as follows:

The Respondent asserts that the Domain Name is Generic or Descriptive.

The Respondent asserts that he bought the domain as a gift for his wife with the intent to publish a blog promoting food composting.

The Respondent asserts that circumstances intervened to distract him and his wife from realising that goal, and that the site has remained dormant in maintenance mode as a consequence.

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The Respondent asserts that he did not acquire the Domain Name or any other with a view to ransom or profit.

The Respondent points to email correspondence with the hosts regarding contact from the Complainants seeking to purchase the Domain Name. The Respondent asserts that he did not engage with the Complainants because he was not comfortable dealing privately with someone he did not know.

The Respondent provides a list of Irish websites to show that there is already more than enough information on how to use brown bins.

The Respondent asserts that he does have plans to use the Domain Name for a blog or similar when time permits.

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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 has unregistered rights in the name “Brownbin.ie” (not “Brownbin” but “Brownbin.ie”). These rights have been built up through use over a number of years and by a substantial national PR campaign supported by Government agencies.

The Complainant has established that its rights in the Domain Name have been negatively impacted by the registration and use of the Domain Name by the Respondent.

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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 / Respondent / Domain Holder has established:

That he emailed the hosting company concerning communications received via them from persons purporting to acting on behalf of the Complainants in April 2019.

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I therefore readily conclude:

“Brownbin.ie” is a brand which is highly identified with the Complainants.

The Complainants have invested significant amounts of money and effort in promoting and developing the brand. The Complainant’s brand and the Domain Name are widely linked to by other websites and other agencies and continue to be so linked, most likely on the basis that they connect to the Complainant and to information supplied by the Complainant; the Respondent, by his own admission, has certainly done nothing to attract anyone to the Domain Name since the day he acquired it, so it cannot be for that reason that anyone would be linking to or visiting brownbin.ie.

The Respondent has not shown any established rights in the Domain Name – no trade or service mark; no personal name, no unregistered rights, no prior or current use in connection with a bona fide offering of goods or services, nor proof of demonstrable preparations for such use.

The Respondent is correct that “Brown Bin” is generic or descriptive. The Respondent, however, has not established that he has been making fair use of the generic or descriptive Domain Name and the Respondent has not supplied any demonstrable proof of preparations for such use other than a vague aspiration to host “a form of blog or such.”

Moreover, a distinction has to be made in the circumstances of this dispute between “Brown Bin” (which is generic or descriptive) and “BrownBin.ie” (the brand or mark in which the Complainant through use and promotion has established rights, which is not in these circumstances descriptive or generic.) The Respondent has not established fair use of a domain name which contains or references the Complainant’s Mark.

In order for the Complainant to succeed it must be found, however, that the Domain Name is being or has been used or registered abusively or in bad faith. The Complainant has not proved that the Respondent registered or is using the Domain Name for an unlawful purpose; or is registered to a company which currently has a dissolved company trading status; or is used to facilitate the circulation of defamatory or racist material, or is registered to a Registrant which does not have (and never had) a connection to the island of Ireland. Nor has the Complainant shown any prior relationship between the Complainant and the Registrant of a kind that would give rise to an inference of bad faith.

The Complainant alleges that the Respondent uploaded a static scraped copy of the Complainant’s original site to the new hosting site upon acquiring the Domain Name. The Complainant has supplied various emails and statements from its agent in support of this allegation. The Complainant asserts correctly that uploading scraped content shows a bad faith purpose or intent and would be evidence that the Respondent intended to hold the Complainant to ransom for the Domain Name by selling or renting it specifically to the Complainant (or a competitor) for more than the Registrant paid for it, or was intended to

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confuse people or businesses into believing that the Domain Name is still registered to, operated or authorised by, or otherwise connected with the Complainant. The question, however, is did the Respondent upload such content? The Complainant has supplied no technical evidence beyond the word of its agent, echoed by its chief executive, and a copy of the agent's browser history to show he visited the site on particular dates in 2019. The Respondent denies uploading anything other than "some cut and paste stuff" to show to his wife, but he does not supply that material, claiming it is beyond his reach since he has not renewed the hosting package, nor does he supply any other material or evidence to rebut the allegation.

None of the one-sided communication (the Respondent didn't engage with the Complainant) indicates an immediate intent to hold the Complainant to ransom for the domain name – indeed the Respondent would say it shows the opposite, particularly seen in the light of communications between the Respondent and the hosters. Instead of approaching the Complainants for a ransom, the Respondent has avoided communicating with them at all, even when approached plainly with terms of negotiation, and has kept his identity from them until these proceedings

I find it very difficult therefore to conclude, on the above evidence alone, that the Respondent acquired the Domain Name with a view to holding the Complainants to ransom, i.e. that the Domain Name was abusively registered by the Respondent.

Likewise, however, I find it impossible to believe that the Respondent was unaware of the Complainant's history of using the Domain Name, or that he was unaware of the Complainant's brand association with the Domain Name, upon acquisition of same or shortly thereafter. The Respondent acknowledges having been contacted by the Complainant's agent on 23 April 2019. The email forwarded by the hosters listed contacts for the Complainant's executive as well as for the Complainant's agent. The email invited the Respondent to contact either. It beggars belief that the Respondent would be unaware after that date, if not before, of the Complainant's rights or interests in the Domain Name. If the Respondent had doubts about the genuineness of the e-mail or its contents, a quick communication with the executive of the complainants could have confirmed.

Weighing up the evidence, then, I find a Complainant who has established rights in the domain name and a Respondent who has none or virtually none beyond being registered as the Domain Name holder, and who cannot demonstrate fair use of the Claimant's unregistered Trade Mark and who could yet capitalize on the Complainant's brand in the Domain Name because of its connection with the Complainant in the minds of others; a Complainant who has made efforts to recover the Domain Name, and a Respondent who has made no efforts to engage with the Complainant even after having been contacted; a Respondent who has kept the domain name passively (in maintenance mode – possibly having uploaded scraped material before that) for over a year and who has supplied

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nothing in support of his assertion that he intends to put the website to a legitimate use. Whilst passive holding (i.e. failure by the Registrant to use the Domain Name for the purposes of email or a web site) is not on its own sufficient to constitute use in bad faith, it may be considered with other factors in deciding a case. And “use” of a domain name does not have to involve an active website – a domain name can be “used” by sitting on it and preventing the brand rights holder from benefiting from their rights

If the Respondent is to be believed, both he (or at least his wife) and the Claimants have a shared interest in promoting composting. If that were truly the case then the solution proposed by the Claimants in the dispute forum (by which time the genuineness of the Complainant cannot have been in doubt) would have been in furtherance of that mutual goal; the Complainants would have had their brand restored and could continue the good work they have done in promoting its cause, the Respondent could have received in return another “generic or descriptive” domain (which he implies he was happy enough with in the first place when he took brownbin.ie) at the Respondent’s expense; and they could both proceed into the future promoting the benefits of composting . The Respondent, whilst within his rights to refuse this offer, had already chosen to argue that there are enough Irish sites out there related to ‘recycling, brown bins, composting and other similar topics’ already – which casts doubt on his true vision, and indeed even that which he has proposed for his wife.

Considering all these factors, I find that the Domain Name is being held and used by the Respondent in bad faith. Consequently, I will decide that the Domain Name shall be transferred to the Complainant.

7. Decision

The Domain Name shall be transferred to the Complainant.

Signed: Brian Hutchinson

Dated: 29 April 2020