

DISPUTE RESOLUTION SERVICE

D00012739

**Decision of Independent Expert
(Summary Decision)**

Industrie Clothing Pty Limited

and

Mr Christopher Tomas Eaton

1. The Parties:

Lead Complainant: Industrie Clothing Pty Limited
55 Railway Parade
Marrickville
Australia
2204
Australia

Respondent: Mr Christopher Tomas Eaton
60 The Wick
Bengeo
SG14 3HR
United Kingdom

2. The Domain Name(s):

industrie.co.uk

3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the complaint to the respondent in accordance with paragraphs 2 and 4 of the Procedure.

Yes No

4. Rights

The complainant has, to my reasonable satisfaction, shown Rights in respect of a name or mark which is identical or similar to the Domain name.

Yes No

5. Abusive Registration

The complainant has, to my reasonable satisfaction, shown that the domain name industrie.co.uk is an Abusive Registration

Yes No

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances

Yes No

7. Comments (optional)

The problem for the Complainant here is that it cannot find anything to criticise the Respondent for, except having had the registration of the Domain Name for 12 years (since March 2001), and having done nothing with it. Paragraph 3(b) of the DRS Policy makes it clear that, under the DRS, failure to use the Domain Name is not in itself evidence that the Domain Name is an Abusive Registration. The Complainant tries to suggest that there must have been some motive of registering the Domain Name for the purposes of renting it out, and that just holding onto the Domain Name, unused, for 12 years can only be indicative of other motives, However, the Complainant does not suggest that the Respondent must have had it (or a competitor) in mind when the registration took place in March 2001. Indeed, it would appear most improbable that would have been the case. The Complainant's business historically has been primarily in Australia, and only more recently outside Australasia. Although the business began in 1999, the Brand Profile attached to the Complaint says that it was only in 2001 that the Complainant opened its first clothing store, which was in Australia. Internet sales do not appear to have commenced until 2010, and even then seem to have been aimed principally at the US and New Zealand. There is nothing in the Complaint to suggest that, in 2001, someone in the UK would have chosen to register this Domain Name with improper motives which might have had anything to do with a relatively new business just starting up on the other side of the world. The Expert also notes that "industrie" is (he believes) relatively well-known as the German, French and Dutch equivalent of the English word "industry", and therefore at least arguably generic.

In coming to his decision the Expert has had regard to section 4.7 of the Experts' Overview, and the previous DRS cases referred to there. Although the Complainant's Australian trade mark rights (from 1999) pre-date the registration of the Domain Name, the equivalent International rights, including in the UK, did not arise until some years after the registration of the Domain Name. The Respondent does not appear to have altered his behaviour in any way over time, as the Complainant has become more widely known outside Australia. The page at the Domain Name just says "Soon, More", there is nothing else on the page, and there are no links to third party sites. There is no evidence provided that the Respondent has been trying to sell the Domain Name (nor indeed that there has been any kind of attempt by the Complainant to contact the Respondent). In short, the Expert cannot see that there is any evidence against the Respondent beyond the non-use of a name which the Complainant would now wish to use in connection with internet sales in the UK. As already noted, that is not in itself evidence of an Abusive Registration under the DRS. Therefore, although the Respondent has not taken an active part in these proceedings and not filed a Response, the Expert does not consider that the Complainant has proved that there is a case for him to answer, and therefore directs that there should be no action taken.

8. Decision

Transfer	<input type="checkbox"/>	No action	<input checked="" type="checkbox"/>
Cancellation	<input type="checkbox"/>	Suspension	<input type="checkbox"/>
Other (please state)	<input type="checkbox"/>		

Signed: Bob Elliott

Dated: 17 May 2013