

DISPUTE RESOLUTION SERVICE

DRS 19663

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

ETM Window Blinds

Complainant

and

Cindy E Toth

Respondent

1 The Parties

Complainant:	ETM Window Blinds
Address:	3a Lythgoes Lane, Warrington, Cheshire WA2 7XE United Kingdom

Respondent:	Cindy E Toth
Address:	2 Lower Lamphey Road Pembroke Pembrokeshire SA71 4AB United Kingdom

2 Domain Name

etmwindowblinds.co.uk (the "Domain Name")

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 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)

1 This appears to be yet another unfortunate example of a Complainant, who might have had a perfectly good claim, not focusing sufficiently on the DRS Policy and other helpful materials on Nominet's website before filing its complaint, and therefore failing to make out its case.

2 To succeed under the DRS Policy, the Complainant must prove on the balance of probabilities, first, that it has Rights (as defined in the Policy) in respect of a name or mark that is identical or similar to the Domain Name (paragraph 2.1.1 of the Policy), and, secondly, that the Domain Name is an Abusive Registration in the hands of the Respondent (paragraph 2.1.2). That burden of proof must be discharged even in a 'no response' case such as this one.

3 Mere assertion is not the same as proof. The Complainant must provide enough information, supported by evidence, to demonstrate to the Expert that it has – on the balance of probabilities – a strong enough claim to satisfy both the Rights and the Abusive Registration tests.

4 The Complainant's case on Rights is that (a) "*we have owned this domain for several years and thought our registration was set to auto renew but unfortunately it wasn't*", and (b) "*our business is called ETM Window Blinds and we also own the www.etmwindowblinds.com domain which points to the website we have run for several years*".

5 Placing a generous interpretation on the Complainant's case, it appears to be saying that it is a business called ETM Window Blinds Limited and indeed such a company is listed at Companies House. The only evidence in support of the Complaint is a letter to the Respondent which appears to demonstrate that the Complainant is known as ETM Window Blinds. So it just about gets home on Rights.

6 Abusive Registration is defined in paragraph 1 of the Policy in the following terms:

"Abusive Registration means a Domain Name which either:

(i) was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or

(ii) is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights."

7 The DRS Policy sets out, in section 5, a non-exhaustive list of factors which may be evidence that the domain name in question is an Abusive Registration (as defined). They are easily understood by a layperson. The Experts' Overview, also on Nominet's website, provides detailed and user-friendly guidance on how the Experts tend to approach various issues when adjudicating on Complaints.

8 The Complainant's case on Abusive Registration is that it does not *"believe that the Respondent has a window blinds business linked to this domain"* and that *"the domain name may have been registered with the primary purpose of selling or renting it back to us for profit"*. No explanation or any evidence is provided to support either of those somewhat tentative propositions. Indeed, it is the Complainant's case that it wrote to the Respondent requesting transfer in return for out-of-pocket expenses, and received no response, which is the reverse of what might have been anticipated if the Domain Name had indeed been registered for the purpose of selling it.

9 Accordingly, the Complainant has failed to prove on the balance of probabilities, as required under paragraph 2.1.2 of the DRS Policy, that the Domain Name is an Abusive Registration in the hands of the Respondent.

10 The Complaint therefore fails.

8 Decision

I refuse the Complainant's application for a summary decision. The domain name registration will therefore remain with the Respondent.

David Engel

Signed:

Dated: 6 February 2018