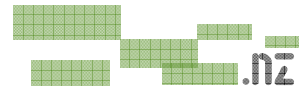


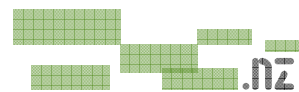
## An Overview of .nz Decisions

Domain Name ADR Workshop  
South Africa, September 2008



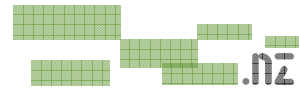
## Statistics

- 37 disputes have been referred to Experts
  - 29 ordered transferred
  - 6 dismissed
  - 1 ordered cancelled
  - 1 dispute involving 2 names had one transferred and 1 dismissed



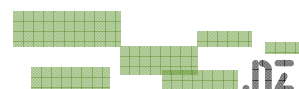
## Why cancelled?

- Expert determined complainant had rights in the name and that the registration was unfair - DRS 156
- But there was a third party, unrelated to the dispute, who had a trade mark which wholly incorporates the operative part of the domain name
- Decided to cancel but would now, following WIPO case D2007-1079, transfer without prejudice to any rights which might be in future asserted by the trade mark owner



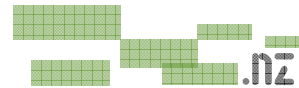
## Why dismissed?

- 6 complaints dismissed
  - [wwwwharcourts.co.nz](http://wwwwharcourts.co.nz) and [umbro.co.nz](http://umbro.co.nz) had incorrect complainants so no “rights”
  - [fleetpartnersnz.co.nz](http://fleetpartnersnz.co.nz) – “first come, first served” defence and found not to be unfair
  - [mountainbuggy.co.nz](http://mountainbuggy.co.nz) – found not to be unfair
  - [tradefree.co.nz](http://tradefree.co.nz) – no rights in the name as copyright not created from single word or combination of two words
  - [aucklandairport.co.nz](http://aucklandairport.co.nz) – no rights in the name as descriptive of business



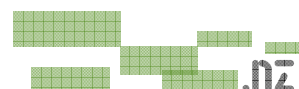
## Of those ordered transferred...

- Some cases of interest:
  - kbb.co.nz – DRS 204
  - harveynormans.co.nz – DRS 256
  - private.co.nz – DRS 244
  - kitomba.co.nz – DRS 260



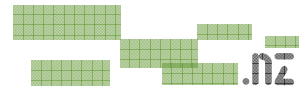
## kbb.co.nz

- KBB Music complainant
  - Rights with KBB being an abbreviation of its name but arguably still identifiable with it
- Short, poor quality complaint
- No website up when viewed by Expert
- Screen shot taken on receipt of complaint
- This used by Expert to find unfair registration



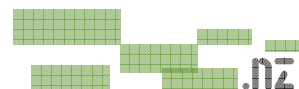
## harveynormans.co.nz

- Harvey Normans – chain of retail outlets
- Mr Harvey Normans – supposedly who the respondent registered the name for.....
- Evidence of a pattern of similar registrations from a Domain Supermarket site offering all for sale
- This name offered for \$15,000
- According to respondent – a fair price given “the Adsense income that is generated by the URL”



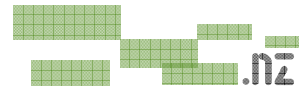
## private.co.nz

- First real generic word in a .nz dispute
- Complainant a subsidiary company of Private Media Group Inc
- Respondent was previously a distributor
- No formal response received
- “Informal” correspondence considered by Expert
- Finding was that the initial registration was reasonable but that when ceased being a distributor name should have been handed over or ceased



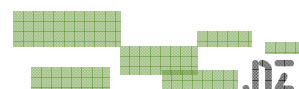
## kitomba.co.nz

- Complaint included a screen shot showing name being offered for \$10,000
- No other company using that trading name
- Discussion around what respondent intended when he registered the name
- Only likely buyer of the domain name is the complainant
- Overwhelming inference is that only registered to sell to the complainant at a high profit



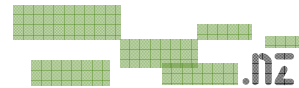
## Some other points of interest

- In intercity.co.nz the Expert noted that it would be unfair to prevent the complaint from proceeding where the registrant name was not current
- Even in bitter disputes both parties can agree on something – usually at the expense of the administrator – monarchnaturalhealth.co.nz



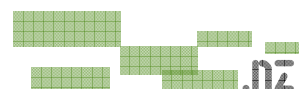
## What haven't we had yet?

- Unfair registration finding where the complainant has demonstrated that the respondent has knowingly given false contact details to a registrar and/or the DNC
- Defence that not an unfair registration based on it being a fair use as site operated solely in tribute to or in criticism of a person or business



## Knowingly given false contact details

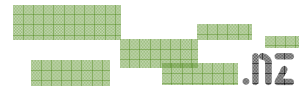
- Tried in one dispute – skype.co.nz DRS150
- Not successful
- Expert not satisfied that the complainants had demonstrated to the necessary standard that the respondent knowingly gave false contact details
- Clear that more than an assertion is required



## .uk and false details

### ○ DRS 03700 – volvo.co.uk

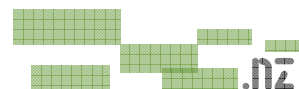
- “the evidence would also strongly suggest that the respondent has given false contact details to Nominet or has been intentionally misleading in failing to update the various contact details on the register and in identifying himself as a UK individual...”



## WIPO UDRP and false details

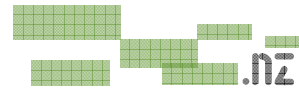
### ○ Case D2000-0003 – telstra.org

- expert commented when outlining the particular circumstances in the case that lead to a conclusion of bad faith:  
“the respondent has taken active steps to conceal its true identity by operating under a name that is not a registered business name”



## Tribute or criticism site

- Untested in the .nz DRS yet
- Aware of decision in citroen.co.za which is going to be discussed in detail
- Arguments advanced in that are likely to also be the type considered in .nz, particularly the references to the .uk appeals



<http://dnc.org.nz>

<http://dnc.org.nz/drs>

<http://dnc.org.nz/drs-decisions>

