

## **DISPUTE RESOLUTION SERVICE**

**D00013417**

### **Decision of Independent Expert**

**DCM (Optical Holdings) Limited**

**and**

**Ms Sasha Rodoy**

#### **1. The Parties:**

Complainant: DCM (Optical Holdings) Limited  
The Ca'd'oro  
45 Gordon Street  
Glasgow  
G1 3PE  
United Kingdom

Respondent: Ms Sasha Rodoy  
London  
United Kingdom

#### **2. The Domain Name(s):**

opticaexpressruinedmylife.co.uk

#### **3. Procedural History:**

I 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.

15 October 2013 12:16 Dispute received

15 October 2013 12:44 Complaint validated

16 October 2013 10:59 Notification of complaint sent to parties

04 November 2013 01:30 Response reminder sent  
05 November 2013 09:50 Response received  
08 November 2013 09:01 Response received  
08 November 2013 09:07 Notification of response sent to parties  
13 November 2013 01:30 Reply reminder sent  
15 November 2013 13:44 Reply received  
15 November 2013 13:50 Notification of reply sent to parties  
18 November 2013 10:49 Mediator appointed  
18 November 2013 13:39 Mediation started  
25 November 2013 09:43 Mediation failed  
25 November 2013 09:45 Close of mediation documents sent  
02 December 2013 09:42 Expert decision payment received

#### **4. Factual Background**

This is the second complaint under the DRS system between the same parties relating to this Domain Name. The decision of the expert in the first complaint (Mr Keith Gymer), DRS 11721, directed that no action be taken in relation to the complaint. The decision was given on 3 August 2012, and was not appealed. The Complainant has sought to adopt and rely on certain aspects of that decision, rather than repeating background material in its Complaint in these proceedings, none of which has been provided to this Expert.

Mr Gymer recorded the following by way of factual background in the DRS 11721 decision:

“The Complainant, DCM (Optical Holdings) Limited was established in 1993. The company provides medical ophthalmic treatment services, including laser surgery and intraocular lens implants, and retail sales of optical goods under the OPTICAL EXPRESS name and mark through various subsidiaries.

The Complainant has a number of trade mark registrations for OPTICAL EXPRESS, including, by way of example, UK 2556901 dating from 2010 in classes 5, 9, 10, 35, 37 & 44.

The Complainant operates a website promoting its services at [www.opticalexpress.co.uk](http://www.opticalexpress.co.uk).

The Respondent, Mrs Sasha Rodoy, is a private individual. She registered the Domain Name “opticalexpressruinedmylife.co.uk” under the alias “serendipity” on 19 April 2012.”

#### **5. Parties’ Contentions**

##### **Complainant**

As to having Rights under the DRS Policy, the Complainant relies upon Mr Gymer’s previous findings in its favour on that point.

The Complainant says that credible and material additional information unavailable to it at the time of the prior complaint has been made available and/or has come to

its attention. As such, the making of this second complaint and its examination is “required and justified pursuant to section 10(g) of the [DRS Policy]”.

The Complainant identifies four categories of such additional information:

1. Circumstantial evidence regarding the registration and use of the Domain Name, suggesting that the site was set up and funded by a competitor of the Complainant, Optimax. This means that the [www.opticalexpressruinedmylife.co.uk](http://www.opticalexpressruinedmylife.co.uk) website (the OERML website) is effectively an undisclosed “advertorial” for Optimax, which would be contrary to the Consumer Protection from Unfair Trading Regulations 2008. The evidence relied upon in support of this contention is an email from the Respondent to the Complainant dated 5 July 2013 which is headed “FYI”, and reads as follows: “Russell Ambrose paid Pitman’s £900 legal bill re Stephen Hannan’s ‘wanted poster’ + £1200 cash for the OERML site. All recorded and documented should you require proof ;). Russell Ambrose is the person ultimately responsible for the operation of the Optimax business. The Complainant also relies upon a link from the website to another website at [mybeautifuleyes.co.uk](http://mybeautifuleyes.co.uk). which it says in turn advertises commercial legal services. The website (the MBE website) is also operated by the Respondent and “it is reasonable to assume that the Respondent is benefiting from the presence of this advertisement”. The Respondent also highlights a link from a forum posting on the OERML website to the MBE website, and a link on a Guardian newspaper discussion forum (now deleted).
2. Content on the OERML website which is untrue or inaccurate, offensive, unrelated to the site’s purpose, defamatory, or otherwise objectionable. The Complainant produces spreadsheets of such material. In summary, it is broken down into categories of (a) material suggesting criminal activities on the part of the Complainant, such as threats, fraud and bribery, (b) allegations regarding the Complainant’s financial stability, (c) allegations regarding deliberate delays in treatment, (d) biased and unbalanced material not giving the Complainant the opportunity to reply, (e) allegations regarding the owner of the Complainant, (f) factual inaccuracies, (g) allegations relating to patient procedures and treatments, (h) examples of defamatory material, unrelated to treatment, and (i) “fake” postings. There is a general complaint about lack of substantiation for the material. The material is part of a “personal vendetta”, which is unfairly driving custom away from the Complainant. All this material is new, because at the time of the original complaint the Domain Name resolved to a holding page, and the Complainant could not know what the Respondent’s intentions were.
3. Content posted or made available by the Respondent upon other websites. Again, a spreadsheet of such material is provided, showing how the Respondent has posted and emailed material of an objectionable nature, which further evidence of the abusive nature of the Respondent’s activities.
4. Evidence of the Respondent’s practices in promoting the OERML website. Here the Complainant provides a spreadsheet with links which show the use of large-scale article marketing or guest posting campaigns with keyword-rich anchor text links, links with optimized anchor text in articles, and forum comments with optimized links in the post or signature, all of which are said to fall within Google’s list of manipulative linking practices.

In summary, the Respondent is said to have carried out an organised campaign of hate, falsity, business interruption and defamation, probably with funding from a competitor of the Complainant, Optimax. As a result the Complainant says there has been significant and unfair disruption to its business.

## **Respondent**

The Respondent says that she had made legitimate non-commercial use and fair use of the Domain Name, before becoming aware of the Complainant's cause for complaint, under DRS Policy 4.a.i.C, and relies upon 4.b which says fair use may include sites operated solely in criticism of a person or business.

She does not provide an item-by-item response to the Complaint, citing lack of time to respond to the detail of the items raised. She does provide a copy of her Response to the DRS 11721 proceedings, but that document is itself a response to the complaint in those proceedings, which the Expert has not seen. It is not therefore a straightforward task working out what the Respondent's case is in response to these proceedings.

The Respondent originally complained about laser refractive eye surgery performed by Optimax, which had left her with defective and uncorrected vision. She started legal action against Optimax in 2011 seeking damages against Optimax. She discovered she was not alone in complaining, and set up the website [optimaxruinedmylife.co.uk](http://optimaxruinedmylife.co.uk) (the Optimax site), inviting people to share experiences. Those experiences included patients' complaints about treatment by Optical Express. She then started to lobby for legislation seeking to regulate the qualifications of all those in the industry conducting such surgery. At first she says that she tried to assist Optical Express patients in their discussions with Optical Express. Optical Express then refused to cooperate further, and that (and requests from Optical Express patients) led her to setting up the OERML site as part of her campaign against the industry in general, although with specific reference to Optical Express patients. She has never claimed to be a patient of the Complainant herself. The site receives an average of 5,500 views per month.

Contrary to the Complainant's suggestion that the site was only a holding page, the site did go live during the first proceedings, and hosted patients' personal accounts. However, before the Response in those proceedings, the material was removed following a complaint from the Complainant to the ISP involved. The Respondent changed ISP after the conclusion of the first proceedings.

Since the first proceedings, the Respondent has reached a settlement with Optimax, which contains a confidentiality clause, which restricts her as to what she can say in respect of Optimax. The Optimax site no longer exists, and the domain name was transferred to Optimax in September 2012. However, another Optimax patient set up a site at [optimaxruinedmylife.com](http://optimaxruinedmylife.com) in December 2012. A Bill has been introduced to Parliament by John McDonnell MP in November 2013 seeking to regulate the refractive eye surgery industry. The MP has provided a letter vouching for the Respondent's "genuine and heartfelt campaign".

The Respondent describes the MBE website as her campaign and free advisory service. The website is yet to be developed, and she says its content is not relevant to

these proceedings. It links both to the OERML website and to the new Optimax site. The Respondent has provided an email from the solicitors firm which advertises on the MBE site, confirming that she has helped the firm with contact to a number of potential ophthalmic cases, including potential claims against Optimax and the Complainant.

The Respondent says that Optimax and the Complainant are bitter rivals, yet brothers-in-arms against her. She has tried to take advantage of that by blind-copying emails, to try to divide and conquer. Following her settlement of her dispute with Optimax, she initially tried to work with Optimax to try to improve the industry. As part of those discussions, the owner of Optimax was trying to broker a deal between her and the Complainant involving the payment of compensation, and also to work with her in relation to trying to deal with patients' complaints. Optimax found that the OERML site was damaging its business, as much as the Complainant's. Optimax suggested approaching the Complainant with a suggestion of a settlement figure of £200,000, which the Respondent says she refused, as she was not prepared to give up her campaign. The initial cooperation in relation to patients' complaints ceased. She became suspicious that there were in fact discussions and some sort of agreement between Optimax and the Complainant regarding her. It was because of this, and because she hoped to try to upset any allegiance they had formed, that she sent the email of 5 July 2013 relied on by the Complainant as suggesting that Optimax helped set up and fund the OERML site. She questions why no complaint has been made to the OFT if the Complainant believes the website is really an advertorial paid for by Optimax, and points out that the OERML website forums also contain material critical of Optimax.

As regards the allegations regarding the nature of the material on the OERML website, she questions why she has not been sued for libel if the allegations are well-founded. In relation to the details of the allegations, she provides links to either individual stories from patients, or to news reports (such as to reports of the Complainant's administration), or in some cases emails, which serve to counter the Complainant's allegations. She is not responsible for the large amounts of links to other websites, which she believes may have been generated by spambots or in some other way that she is not technically competent to explain. However, she accepts that she does not provide a full reply to what she describes as the Complainant having "swamped" the Complaint with "an enormous amount of minutiae", although says that she could do so if she had more time.

### **Complainant's reply**

The Complainant relies upon the material produced by the Respondent relating to the discussions with Optimax about a possible settlement with the Complainant, as suggesting that the Respondent was involved in a scheme with Optimax, whose aim was the extraction of monies from the Complainant, and the entrapment of the Complainant. Registration and use of the Domain Name, and the creation of the OERML site, with this intention is fundamentally unfair.

The Complainant also relies upon the discussions between the Respondent and Optimax as evidence of the connection between them, whilst at the same time explaining that its contention was that effect of the OERML was "akin to a paid for

advertorial”, in that the site’s effect would be to drive custom to Optimax, by criticising the Complainant. The criticism of Optimax on the OERML site is said to be very limited.

The Complainant reinforces the assertion regarding the Respondent carrying on a personal vendetta, not operating a legitimate criticism site, because the Respondent makes unfounded allegations of hacking, perpetuating falsehoods, and registering domain names containing the name of the Complainant’s owner.

The Complainant refers to what it says is commercial use of the MBE website, in the form of a ticker box which reads “if you have suffered injury after laser eye surgery, contact our specialist lawyers [www.lasereyesurgery.co.uk](http://www.lasereyesurgery.co.uk) 0800 0803470”. This is, according to the Complainant, conduct of an unauthorised regulated activity, and an offence.

The Complainant notes that the Respondent has not responded to all the criticisms made, but says that is because there is no evidence available to do so, not due to a lack of time.

Finally, the Complainant produces further spreadsheets detailing respectively inaccuracies and errors in the evidence provided by the Respondent from individual complainants, and further unfair content added to the website since the Complaint. The provision of such one-sided and unverified material is fundamentally unfair to the Complainant.

### **Further material from the Respondent**

The Respondent sought to introduce a further document under paragraph 13.b of the Procedure, explaining that the document related to the introduction of the Bill in Parliament on 20 November 2013 relating to regulation of refractive eye surgery. The Expert decided to allow this further document, as the parliamentary material had arisen after the Response (dated 11 November 2013). This confirms that the Bill has had its first reading in Parliament, and the Hansard report records Mr McDonnell MP thanking the Respondent for her role in the campaign. The document provided by the Respondent also includes some “rebuttal” comments from the Respondent in relation to the Reply, which the Expert has read, but which do not seem to advance the arguments materially.

By a paragraph 13.a request the Expert asked the Respondent to explain whether the advertising link to the solicitors firm from the MBE was a source of commercial gain for her. She has confirmed in response that the solicitors have paid a monthly fee of £500 for the advertisement since July 2013, but that there is no other payment or commercial gain involved (and no referral fees are involved). The Respondent adds that she has received some modest voluntary contributions from patients towards the cost of running the sites, but makes no charge for her assistance, and is substantially out of pocket as a result of the costs of running her campaign.

The Complainant, in its comments on the response to the paragraph 13.a request, has exhibited results of a Google search against both the OERML site and the MBE site to show that there are frequent overlaps between the two sites, for instance with posts on the OERML forums referring to the availability of advice from the MBE site.

The Complainant also refers extensively to the decision in *ihateryanair.co.uk* DRS 08527, and to the finding of taking unfair advantage in that case as a result of the registrant gaining commercially from a criticism site by no more than a few hundred pounds, comparing that to the £500 a month which the Respondent has admitted. The Respondent's income appears to be in excess of the out-of-pocket expenses which the Respondent has verified in connection with the OERML website. The Complainant also points out that the solicitors involved are clearly intending to generate income from the cases which they attract, suggesting that this also needs to be seen as part of overall "holistic" view of the commercial nature of the site.

## 6. Discussion and Findings

### Repeat complaint

The Complainant accepts that this Complaint can only proceed, as a repeat complaint, if it falls within paragraph 10.g of the Policy. It has been filed only just over one year after the decision in the first proceedings. Second complaints are discouraged, and only permitted in very exceptional circumstances. Following the decision of the DRS Appeal Panel in DRS 01295, *Bravissimo Limited v Anna Gardner, bravissimo.co.uk*, the DRS Policy was amended. Under paragraph 10.e of the Policy the Expert is to reject a Complaint without examining it, if the complaint is found to be a resubmission of an earlier complaint which has reached the decision stage on a previous occasion, as was the case in DRS 11721. Paragraph 10.f gives the Expert three questions to address in assessing whether the Complaint is a resubmission of an earlier complaint.

The first of these is whether the parties and the Domain Name are the same, which they are.

The second question is whether the substance of the Complaint relates to acts which occurred prior to or subsequent to the close of submissions in the previous case. This is not easy to answer in this case. According to Mr Gymer's decision, the Complainant's case in the first complaint concentrated very much on the nature of the Domain Name itself, and its alleged defamatory nature. It was also asserted that registration of such a damaging domain name was part of a pattern (with the Optimax website domain) of such registrations, taking unfair advantage of the consumer recognition of the Optical Express name, and with non-english speaking internet users being diverted by initial interest confusion. In its current case, the Complainant concentrates principally upon complaints about the defamatory or unfair nature of content on the OERML website, which it is said has been added since the first decision. However, as Mr Gymer noted at pages 10 and 11 of his decision, the content of the Optimax website and Youtube videos relied upon by the Respondent at the time would have given an indication of what could be expected to appear on the OERML site once it was live. It also looks as though such material (including patient stories) did in fact appear on the site before close of submissions, but the ISP was prevailed upon by the Complainant to remove it, apparently because it was "defamatory and actionable". Copies were not provided to Mr Gymer (nor have they been provided to this Expert). The Complainant did not seek to rely upon that content at the time. Indeed, "rather oddly", as Mr Gymer put it, the Complainant declared that use after the date of the Complaint was irrelevant (a submission which appears to be at odds with its comments in the Reply in this case, where it relies upon additions to the site since the

date of the Complaint). Therefore, it would appear that at least similar material to the majority of the material relied upon in this second Complaint was available to the Complainant on the first occasion, before the close of submissions. However, for whatever reason, the Complainant did not rely on it. It is worth noting that the Complainant refers to seeking to rely on paragraph 10.g of the Policy, which in turn refers back to sub-paragraph 10.f.iii. That sub-paragraph relates to acts which occurred prior to the close of submissions in the earlier case (not subsequent acts, which are covered by 10.f.ii). Therefore it would appear that the Complainant accepts that the answer to the second question is, in substance, that prior acts are involved, and the Expert will proceed on that basis.

The third question depends upon the answer to the second. As noted above, when prior acts are involved, 10.f.iii requires the Expert to consider whether there are “any exceptional grounds for the rehearing or reconsideration, bearing in mind the need to protect the integrity and smooth operation of the Policy and Procedure”. Paragraph 10.g gives a non-exhaustive list of examples which “may be exceptional enough to justify a rehearing under 10.f.iii”. Those include “the discovery of credible and material evidence which could not have been reasonably foreseen or known for the Complainant to have included it in the evidence in support of the earlier complaint”. The Complainant refers to “credible and material additional information” previously unavailable to it, and therefore presumably relies upon this example. However, there is no further explanation or argument provided by the Complainant, and no reasoning as to why the material was previously unavailable, and it could not have been reasonably foreseen or known. Nor is there any attempt to identify the “exceptional grounds”, beyond the assertion that the material is all new, because the Domain Name previously resolved to a holding page which, as the Expert has noted above, is not an accurate explanation, as it ignores the material which the ISP was persuaded to remove. The Respondent does not address any arguments specifically to these points either, although she is clearly annoyed at the inconvenience of having to deal with another substantial and detailed complaint in a short period of time, being unrepresented, and facing a Complainant who has legal representation. The Complainant’s case is primarily based upon the alleged defamatory, or unfair nature of the material on the OERML site, set against what it says is a context of a personal vendetta. The Complainant has gone to considerable lengths to produce detailed spreadsheets of such material, and surrounding “context”. However, as Mr Gymer explained in the first decision, a DRS complaint is not an appropriate forum for assessing such material. He said:

“Copies of the actual content complained of were not provided by the Complainant. Whether such content might or might not have been defamatory would not be appropriate for determination under the DRS in any event.

As the Appeal Panel in *Rayden Engineering* (DRS 06284) commented:  
*"We consider that there is a limit to how much significance can be placed on the content of the protest website by an Expert. As countless Experts and Appeal Panels have remarked, the DRS is intended to be a relatively simple, low cost and efficient system for resolving domain name complaints. The system does not contemplate a detailed analysis of factual disputes or the forensic weighing up of conflicting accounts. There is limited scope for adducing witness evidence or for the Expert to test the truthfulness of the evidence being presented in cases where it is bitterly contested. Protest sites classically carry personal, emotive versions of events, often expressed in deliberately shocking or vitriolic terms intended to attract attention to the cause. The statements may well be*

*libellous in legal terms, but it is unlikely to be possible or appropriate for the Expert to determine in the context of the paper based DRS whether the statements are in fact true so that the defence of justification would be available.” “*

Despite this, the Complainant has put forward a large quantity of such material in this second complaint. If that were all that were involved, then the Expert would have little difficulty in deciding there are no exceptional circumstances involved, which would justify a rehearing. There is little point in proceeding to a decision which would repeat much of what Mr Gymer said the first time round. He would have been able to deal with the actual content of the website if the Complainant had not decided to disregard such material as “irrelevant”. No doubt the material on the site and in the surrounding “context” is not identical to what was available at the time of the first complaint, but in substance it is likely to be the same, or what could have been predicted from the material appearing on the Optimax site at the time. The Complainant has not tried to explain what could not reasonably have been foreseen at the time of the first complaint, nor why it is now complaining of material which it could have complained about before. Its only explanation is that material was not previously available, which in substance is not the case. Therefore, that part of its current Complaint does not justify any rehearing. However, although the Complainant does not distinguish them separately in its arguments as to whether there are exceptional circumstances, there are additional features of this second complaint, which perhaps should be addressed separately in the context of paragraph 10.f.iii, as they may go beyond the arguments as to the allegedly libellous and/or unfair material.

The first is the allegation that the OERML site was set up and funded by a competitor of the Complainant (Optimax), with the intention of unfairly disrupting the business of the Complainant. If that were the case, then the dispute would take on a new, and very different complexion. However, even the Complainant accepts that the evidence in support of this contention is “circumstantial”. In reality it amounts to no more than the email from the Respondent in July 2013, and material in the Response which shows that the Respondent was in correspondence and discussions with Optimax, following the settlement of her dispute with Optimax. In relation to the latter, in its Reply the Complainant also seeks to suggest that extraction of monies from it and entrapment are involved. The Respondent’s email in July 2013 falls far short of being convincing evidence for what the Complainant contends. It suggests only that Optimax has paid a legal bill, and “£1,200 for the OERML site”. Bearing in mind that the Respondent is bound by a confidentiality clause in her settlement with Optimax, this email is explained by the Respondent as being an attempt to try to drive a wedge between the Complainant and Optimax. It was also sent long after the site was originally set up, which was at a time when the Respondent was not only suing Optimax, but also running the Optimax site, in criticism of Optimax. It is not clear how the Complainant can hope to persuade anyone that Optimax would therefore have been instrumental in setting up the OERML site in the first place. The OERML site as it stands contains some material which is critical of Optimax. Even though that may be a relatively small proportion, why would Optimax now want to fund a site which contains such material? The suggestion that there is some kind of plot to extract money from the Complainant also seems fanciful in the extreme – the Respondent has explained the context in which discussions took place, and volunteered the material which the Complainant now seeks to turn against her. Surely she would not have done so, if there had been some underlying plot. Her explanation seems plausible to the Expert. The suggestion that there is some kind of plot involved with Optimax

playing an active part is also inconsistent with the Complainant's own assertions that the Respondent is pursuing a personal vendetta. Although the Expert only has limited material available to him, without the benefit of disclosure, hearing witnesses or cross-examination, the material relied upon by the Complainant in support of its assertions does not appear to be credible, in the sense of supporting the Complainant's contentions, and therefore does not justify a repeat complaint.

The second is the question of whether there is any commercial gain to the Respondent from the OERML site, and whether this is something would justify a repeat complaint. The Complainant has relied upon a ticker advertisement on the MBE site, placed by lawyers, which the Respondent has confirmed has produced revenue in the amount of £500 a month. The Complainant also suggests that there is illegality involved, in the sense of conducting unauthorised regulated business, but that seems entirely speculative, and without merit. The advertisement was placed by lawyers hoping to attract business for clinical negligence claims. Commercial gains made through a criticism site can, in cases such as *ihateryanair.co.uk* DRS 08527, lead to a finding of unfair advantage against the registrant. Although the Respondent relies heavily upon that decision, the Expert agrees with Mr Gymer, in his comments on that case in relation to the first complaint, that there needs to be a sense of proportion in assessing the commercial activity in the context of a criticism website as a whole, and a degree of flexibility. However, in this case, it needs to be borne in mind that the website which is under attack for misuse of the Complainant's name is the OERML site, not the MBE site. The OERML site has no direct link to lawyers, and no advertisements. Its wording expressly invites criticism, queries or comments relating to the Complainant through that site, not through the MBE site. The wording accompanying the link to the MBE site says "If you have problems with any other refractive eye surgery clinic, please contact My Beautiful Eyes advisory service". In other words, it is suggesting that those other than the Complainant's patients should follow that link. It is possible that the Complainant's patients may also follow the link, and the Respondent has produced evidence from the results of a Google search to show that there is an overlap between the sites. However, the apparent intention is to use the OERML site for issues relating to the Complainant. The Respondent has explained that the MBE site is as yet undeveloped and intended as a campaign and free advisory service. The MBE site has links both back to the OERML site, and to the new Optimax site. There are, therefore connections between the sites, and it is not entirely irrelevant to consider this issue, as the Respondent suggests. Nevertheless, whilst remembering that the test he has to apply at this stage is whether a rehearing is justified, not whether the registration is unfair, the Expert does not feel that the OERML site is tainted by the relatively small amounts earned through the MBE site in a way that gives an unfair advantage. If it was clear that the Complainant was deliberately seeking to use the OERML site itself for commercial gain, then that might justify a rehearing. However, the Expert does not consider that is the case. Use of the Complainant's name as part of the Domain Name might help the Respondent attract the Complainant's patients to the OERML site. Unlike the MBE site, it is fully developed, and intended to deal with issues around the Complainant's treatment of patients. Although the Complainant disagrees with much of its content, it seems on its face to be a genuine criticism site, aimed at the Complainant, and part of a wider campaign which includes lobbying for regulatory legislation. It does not seem to be somehow a stalking horse for the MBE site, designed to draw patients in, and then pass them on to lawyers to the Respondent's commercial advantage. Therefore, the Expert does not consider that the mere fact there are links to a connected site, which does not have the Complainant's name as part of its domain name, but which earns a

relatively modest amount of commercial income, is an exceptional ground for rehearing or reconsideration.

In conclusion, this is an attempt at a second bite of the cherry, within a short period after an unsuccessful first attempt. For the reasons stated above, the Expert does not consider that there are exceptional grounds which would justify a rehearing. Therefore in accordance with paragraph 10.e of the Policy, the Complaint is rejected.

## **7. Decision**

The Expert finds that this is a resubmission of a Complaint already made, in substance, in DRS 11271, and that there are no exceptional grounds which would justify a rehearing. The Complaint is therefore rejected.

**Signed Bob Elliott**

**Dated 1<sup>st</sup> January 2014**