

# **DISPUTE RESOLUTION SERVICE**

**D00013417**

## **Decision of Appeal Panel**

**DCM (Optical Holdings) Limited**

and

**Ms Sasha Rodoy**

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

Complainant/Appellant:

DCM (Optical Holdings) Limited  
Glasgow  
United Kingdom

Respondent:

Ms Sasha Rodoy  
London  
United Kingdom

### **2. The Domain Name:**

<opticaexpressruinedmylife.co.uk> (“the Domain Name”)

### 3. Procedural History

The main steps in the procedure to date in this case have been as follows:

15 October 2013	Complaint received and validated
16 October 2013	Notification of Complaint sent to parties
08 November 2013	Response received
08 November 2013	Notification of Response sent to parties
15 November 2013	Reply received and Notification of Reply sent to parties
18 November 2013	Mediator appointed and Mediation commenced
25 November 2013	Mediation failed
02 December 2013	Expert decision payment received
01 January 2014	Expert decision issued
27 January 2014	Appeal Notice received
11 February 2014	Appeal Response received
21 February 2014	Appeal Panel appointment

Tony Willoughby, Anna Carboni and Nick Gardner (together, “the Panel”) have each made a statement to the Nominet Dispute Resolution Service in the following terms:

*“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 a such a nature as to call in to question my independence in the eyes of one or both of the parties.”*

This is an appeal against the decision of Bob Elliott (the “Expert”) issued on 1 January 2014 in favour of the Respondent.

### 4. The Nature of This Appeal

Paragraph 10(a) of the Policy provides that: *“the appeal panel will consider appeals on the basis of a full review of the matter and may review procedural matters”*. The Panel concludes that insofar as an appeal involves matters other than purely procedural complaints the appeal should proceed as a re-determination on the merits.

In addition to the decision under appeal, the Panel has read the Complaint filed on 15 October 2013, the Response filed on 8 November 2013, the Reply filed on 15 November 2013, the further submissions of the parties at first instance, the Appeal Notice filed on 27 January 2014 and the Appeal Response filed on 11 February 2014. As is discussed further below some of these documents have been accompanied by a voluminous amount of further material. The Panel has read such of that material as appeared to it to be pertinent but has not attempted to read each and every document. The Panel has also read the decision of the Expert in the earlier DRS case between the same parties also relating to the Domain Name (case number DRS 11271). This case is referred to in this decision as the “First Case”.

## 5. Formal and Procedural Issues

This is a re-filed (or repeat) complaint in relation to the Domain Name, brought by the same Complainant against the same Respondent, as envisaged by paragraph 10.f.i. of the Policy. The First Case was dealt with in DRS 11271. The complaint in the First Case was dismissed on the basis that, while the Complainant had relevant Rights in a name or mark similar to the Domain Name, the Domain Name was not an Abusive Registration. No Appeal was filed in relation to that decision.

Ordinarily, pursuant to sub-paragraph 10.e. of the Policy, if a complaint has reached the Decision stage on a previous occasion, it will not be re-considered otherwise than by way of an appeal under paragraph 10.a. of the Policy and paragraph 18 of the Procedure. However, there may be exceptional circumstances justifying a re-hearing, guidance on which is to be found in sub-paragraphs 10.f. and 10.g. of the Policy, which read as follows:

*f. In determining whether a complaint is a resubmission of an earlier complaint, or contains a material difference that justifies a re-hearing the Expert shall consider the following questions:*

*i. Are the Complainant, the Respondent and the domain name in issue the same as in the earlier case?*

*ii. Does the substance of the complaint relate to acts that occurred prior to or subsequent to the close of submissions in the earlier case?*

*iii. If the substance of the complaint relates to acts that occurred prior to the close of submissions in the earlier case, are there 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?*

*iv. If the substance of the complaint relates to acts that occurred subsequent to the close of submissions in the earlier decision, acts on which the re-filed complaint is based should not be, in substance, the same as the acts on which the previous complaint was based.*

*g. A non-exhaustive list of examples which may be exceptional enough to justify a re-hearing under paragraph 10(f)(iii) include:*

*i. serious misconduct on the part of the Expert, a Party, witness or lawyer;*

*ii. false evidence having been offered to the Expert;*

*iii. 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;*

*iv. a breach of natural justice; and*

*v. the avoidance of an unconscionable result.*

The Panel addresses these issues in section 8 below.

The word count limit for a complaint is 5000 words (paragraph 3.c.i. of the Procedure) and the annexes are expressly excluded from the word count. Regrettably, this has led some complainants and their advisers to circumvent the word count by way of the annexes.

In this case the word count for the Complaint was 2275 (i.e. well within the limit). However, the 14 annexes to the Complaint numbered over 240 pages and the 8 annexes to the Complainant's Reply numbered a further 187 pages.

The purpose of the word count is to keep the paperwork (and hence the case) within bounds. Had the Complainant chosen to do so, it could have made good use of the unused 2725 words in the Complaint to reduce the need for the 240 pages of annexes. In failing to do so and in failing seemingly to exercise any control over the number of pages annexed to the Reply, the Complainant has rendered it extraordinarily difficult for the Expert at first instance and for the Panel on appeal to work their way through the material in a timely fashion. The Respondent, who is an unrepresented individual, has also noted that she has found it very difficult to deal in the time available with the volume of material that has been deployed by the Complainant.

The DRS procedure is intended to be a relatively simple, straightforward, speedy and cost-efficient method of dispute resolution. The Panel surmises that the cost to the Complainant of putting this Complaint together must have been eye-wateringly high in time alone. Moreover, as a general rule, if the factual matrix underlying a dispute is so complex that it requires this mountain of paperwork to support it, it is unlikely to be a dispute suitable for resolution under the DRS Policy. The level of detail contained within the material filed by the Complainant cannot sensibly be analysed by an Expert or this Panel. For example Annex 4 to the complaint is a spreadsheet which contains 145 individual entries, each entry comprising a hyperlink reference to the Respondent's website with an extract from the text found at that part of the site. This material is said to be evidence that there is "*content contained upon the site which is untrue or inaccurate, offensive, unrelated to the site's purpose, defamatory or otherwise objectionable*". Two other similarly dense spreadsheets have also been filed by the Complainant relating to other matters it refers to in its Complaint. The Panel has looked at this material in the round to the extent it considers necessary to determine this Appeal, but has not attempted to analyse each and every point that has been made in this way. In future parties who wish to ensure that specific points they wish to rely on are addressed by an Expert or an Appeal Panel, should ensure that such points are squarely made within the body of the appropriate filing, and not dealt with in the Annexes or in internet entries to which the Annexes link.

That said, none of the deficiencies in the way the materials in this case have been presented has played a part in the outcome of or rationale for the Panel's decision.

The final point to deal with in relation to formal and procedural issues is that the Respondent invited the Panel to take into account two non-standard submissions when considering the appeal, filed on 18 February and 14 March 2014 respectively. In each case, the Respondent submitted a separate paragraph describing what she wanted the Panel to take into account, purportedly pursuant to paragraph 13.b. of the Procedure. However, paragraph 13.b. requires that such an explanatory paragraph sets out "a brief explanation of why there is an exceptional need for the non-standard submission", whereas the explanatory paragraphs in this case merely requested that the Panel consider certain additional items (a Parliamentary Bill and a broadcast on BBC Radio 5) without explaining why this was necessary. In the Panel's view, it was being invited to admit an even greater amount of material into a case which was already suffering from overload, without any explanation as to why this was needed to determine the appeal. In those circumstances, the Panel chose not to consider the material which was referred to in the non-standard submissions.

## **6. The Facts**

The Panel in this section sets out the facts which are either uncontested or which appear clear from the material which has been filed. In doing so the Panel is conscious that a significant aspect of the Complainant's case is to say that there is more to the Respondent's activities than appears from this material and that not all is as it seems to be. This aspect of the case is addressed further below, and in recounting the facts as they appear to the Panel, the Panel reserves its decision on the issues the Complainant has raised.

The Complainant was established in 1993 and is engaged in the provision of medical ophthalmic treatment services, including laser surgery and intraocular lens implants. These services along with the retail sale of optical goods are conducted under and by reference to its OPTICAL EXPRESS trade mark. It operates a website promoting its services at [www.opticalexpress.co.uk](http://www.opticalexpress.co.uk).

The Respondent, a private individual, is the prime mover behind a campaign for legislation to regulate those engaged in optical surgery, she claiming to have suffered serious difficulties in the course of laser refractive eye surgery carried out by Optimax (a competitor of the Complainant). Originally, her campaign was targeted at Optimax and she set up a website connected to her <[optimaxruinedmylife.co.uk](http://optimaxruinedmylife.co.uk)> domain name ("the OPTRML website") inviting people to share experiences. This attracted people claiming to have suffered at the hands of the Complainant and led her, as part of her wider campaign, to register the Domain Name on 19 April 2012.

On 27 April 2012 the Complainant lodged the earlier complaint in the First Case (DRS 11271) and the decision in that case was issued on 3 August

2012. It is clear from that decision that the Complainant appreciated that the Respondent's plans for the Domain Name were likely to be to develop a site broadly similar in style and content to the OPTRML website, but with content directed at the Complainant and its activities rather than at Optimax. At the time the earlier complaint was filed the website connected to the Domain Name ("the OERML website") had briefly been used for that purpose, but the Respondent's web host had been prevailed upon to remove the content on the basis that the content was allegedly "defamatory and actionable". At the date of the original decision the website was inactive. In concluding his decision the expert in the First Case stated:

*"For the reasons discussed above the Expert considers that, having regard to all the circumstances, the registration and putative critical use of this Domain Name do not, on the balance of probabilities, render it an Abusive Registration.*

*To borrow again a quote from the "ihateryanair.co.uk" domain name decision<sup>1</sup>:*

*"...the Domain Name itself makes it abundantly clear that there is no connection between the Domain Name and the trade mark holder and leaves internet users in no doubt as to what type of content to expect when accessing the corresponding website. The Domain Name does not exactly match the Complainant's trade mark and neither is it likely to cause any confusion in the minds of internet users."*

The Respondent changed ISPs following the earlier DRS proceeding and the OERML website is now active. It features advice to those who have suffered damage as a result of eye surgery, news on the campaign for regulatory legislation and material highly critical of the Complainant and its activities. The website also features links to another website also operated by the Respondent, [www.mybeautifuleyes.co.uk](http://www.mybeautifuleyes.co.uk) ("the MBE website"), which in turn features links to a new OPTRML website now operated by another campaigner at [www.optimaxruinedmylife.com](http://www.optimaxruinedmylife.com).

It appears that the reason the Respondent's OPTRML website no longer exists is that following litigation between Optimax and the Respondent a settlement agreement has been reached which has involved, amongst other matters, the Respondent's OPTRML website ceasing to operate. The MBE website also features an invitation to those who have suffered damage as a result of laser eye surgery to contact the Respondent's specialist solicitors at [www.lasereyesurgeryclaim.co.uk](http://www.lasereyesurgeryclaim.co.uk). For this advertising the Respondent receives £500 per month from the solicitors in question.

By his decision dated 1 January 2014, the decision under appeal, the Expert found the Complaint to be a resubmission of the First Case (DRS 11271) and that there were no exceptional grounds which would justify a rehearing.

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<sup>1</sup> DRS08527

## 7. The Parties' Contentions

The Complainant acknowledged that its Complaint in this case was a second complaint in relation to the same Domain Name, same Complainant and same Respondent as in DRS 11271. However, it maintained that a rehearing was justified pursuant to paragraph 10.g. of the Policy because "credible and material additional information ..., unavailable to the complainant at the date of the prior complaint, has since the date of the prior complaint been made available and/or has come to the attention of the complainant". The alleged additional information was said to fall into four categories, namely:

- (1) Circumstantial evidence to suggest that the OERML website was set up and funded by Optimax, a competitor of the Complainant, with the intention of unfairly disrupting the Complainant's business;
- (2) Untrue, inaccurate, offensive, defamatory and otherwise objectionable content of the OERML website, which is unrelated to the website's stated purpose;
- (3) Content including commercial advertising posted or made available by the Respondent on other websites which were linked to from the OERML website, being further evidence of the abusive nature of the Respondent's activities;
- (4) Evidence of the Respondent's promotional activities in relation to the OERML website, which are said to fall within Google's list of manipulative linking practices.

In the Appeal Notice, however, the Complainant only relies upon two matters, namely (a) the Respondent's alleged acceptance of what it describes as "a highly questionable" and "substantial" cash payment from Optimax in relation to the OERML website (i.e. (1) above) and (b) the ticker advertisement placed on the Respondent's MBE website by solicitors hoping to attract clinical negligence business for which the Respondent receives £500 per month (i.e. one aspect of (3) above).

Points (2) and (4) above have not been pursued in the Appeal and the Appeal Panel does not propose to consider them further, other than to note that, had it been necessary to do so, the Panel would have reached similar conclusions to those that the Expert reached, for similar reasons.

To the extent that the Respondent's contentions in her Appeal Response are relevant to the Panel's considerations, they are dealt with in section 8 below. In essence the Respondent denies that she has ever received any support from the Complainant's competitor, Optimax, and contends that there is nothing abusive about her use of the Domain Name, which she claims is used exclusively for the benefit of her campaign for regulation of the industry in which the Complainant is engaged. She also claims that the commercial advertising the MBE site carries is a legitimate aspect of that campaign.

## **8. Discussion and Findings**

### General

In general terms in a DRS proceeding a Complainant has to show, pursuant to paragraph 2 of the Policy on the balance of probabilities, first, that it has “Rights” (as defined in paragraph 1 of the Policy) in respect of a name or mark identical or similar to the Domain Name and, secondly, that the Domain Name, in the hands of the Respondent, is an “Abusive Registration” (as defined in paragraph 1 of the Policy). There has not been any serious dispute either in the First Case or in this case, that the Complainant has Rights in respect of a name or mark identical or similar to the Domain Name. The Expert in the First Case determined that the registration was not an Abusive Registration. He did so on the basis that the intended use of the site was as a genuine protest site and that the Domain Name itself indicated this was the likely content of any site which was to be linked to the Domain Name, adopting the reasoning in this regard of the Appeal decision in raydenengineering.co.uk (DRS 06284).

The Expert in the present case determined that this case was a resubmission of a complaint already made and there were no exceptional grounds justifying a rehearing. He did not therefore proceed to consider the substantive issues raised in this case.

This Appeal Panel accordingly has to consider the following:

- 1) Is this case a resubmission of a complaint already made, or does it contain a material difference such as to justify a rehearing?
- 2) If it does contain such a material difference, then does the Complainant have Rights in respect of a name or mark identical or similar to the Domain Name?
- 3) If yes, is the registration of the Domain Name an Abusive Registration?

As has already been discussed, it appears to be common ground that item (2) is satisfied. Item (3) only needs to be determined if item (1) is determined in favour of the Complainant, so item (1) must be examined first.

The Complainant openly accepts that both parties to the Complaint and the Domain Name are the same as in the First Case, and appears also to accept that the substance of the Complaint relates to acts that occurred prior to the close of submissions in the First Case. But it relies on paragraphs 10.f.iii. and 10.g.iii. of the Policy in asserting that it is now presenting credible and material additional information that has only come to the attention of the Complainant since the original complaint, and on this basis there are “exceptional grounds” that justify a rehearing or reconsideration. The Panel goes on to consider whether this assertion is made out.

### **Are there exceptional grounds such as to justify a rehearing?**

As indicated above two matters are pursued in this regard in this Appeal, either of which are said to be such as to justify a rehearing. These are considered separately below.



### Optimax payment to the Respondent.

The substance of the allegation in this regard is, as the Panel understands it, an allegation that the OERML website is not as it appears, a *bona fide* protest site operated by the Respondent as part of her campaign against what she perceives as deficiencies in the way refractive eye surgery is practised and regulated. Instead the Complainant alleges that the OERML web site and/or the Respondent are being covertly funded by its bitter competitor Optimax, and this is part of a covert campaign intended to damage the Complainant and, presumably, to benefit Optimax.

This is an extremely serious allegation. It seeks to impugn the honesty and integrity of the Respondent. It also raises matters which it seems to the Panel could well give rise to civil liability and could also possibly raise issues of criminal liability (the Complainant specifically alleges that the Respondent's activities are in breach of the Consumer Protection from Unfair Trading Regulations 2008 and the Panel notes that these Regulations contain various provisions imposing criminal liability).

As a preliminary matter it should be noted that the DRS procedure is inherently unsuitable for addressing such matters. The DRS does not involve any obligations on parties to provide disclosure of documents. Whilst the DRS procedure does provide a mechanism for an in-person hearing (under paragraph 14 of the Procedure) such a mechanism has never been used, not least because any such hearing would not solve the problems that arise in relation to allegations of this nature – there is no mechanism under the DRS for the compulsion of witnesses, or for the giving of evidence under oath (with corresponding provisions for perjury) or the cross-examination of witnesses. More generally the DRS procedure is intended to be relatively quick and straightforward, and with correspondingly modest fees and costs involved. None of this would be the case with a hearing seeking to address these types of issue, even without the other problems noted.

Accordingly it is likely to be in only the most clear-cut cases where there is no real dispute about allegations of dishonesty, or where a party fails to avail itself of the opportunity to respond to such allegations, or where a party's case is inherently incredible, that an Expert or Appeal Panel is likely to be able to reach a conclusion that dishonesty has been established. None of the matters raised in the present case are of this nature, so the Panel proceeds with caution and having regard to the fact that *“the more serious the allegation, the more that the Expert [or Appeal Panel] will be looking for in the way of evidence to support the allegation”*. See DRS 07599 <chiesi.co.uk> and paragraph 2.1 of the Experts' Overview, both of which are accessible at the Nominet website.

The case the Complainant seeks to make is as follows. At an early stage Optimax and the Respondent were in dispute as to (1) the laser treatment provided to the Respondent by Optimax and (2) the Respondent's OPTRML website. It appears that those areas of dispute were settled by way of a confidential agreement, which apparently involved *inter alia* transfer of the <optimaxruinedmylife.co.uk> domain name to Optimax.

That there must have been a settlement seems clear from the fact that it is admitted that for a period thereafter the Respondent and Optimax worked alongside each other in the handling of some of the complaints against Optimax. The Respondent has not provided any real details of the terms of any such settlement, saying that confidentiality provisions within it prevent her from doing so. The Complainant for its part challenges whether that is indeed the case and alleges that in any event the Respondent acts in breach of any such restrictions when it suits her to do so, and alleges that she is simply using such alleged confidentiality as a convenient excuse for obfuscating the true facts.

It may be that any such settlement with Optimax involved a payment to the Respondent, but the Panel has no information on the matter. The fact that there may have been a payment has no bearing on this case unless there is credible evidence to suggest that the payment was such as to compromise the Respondent's *bona fides*. There is none. Any such payment may simply have been in settlement of the Respondent's claims against Optimax for the harm she claims she suffered at Optimax's hands. The Panel simply does not know. The Panel also does not know whether any such agreement contained terms relating to the Respondent's OPRML website and if so what those terms were. The Panel is also unable to determine what if any restrictions exist in relation to confidentiality provisions in any settlement agreement the Respondent may have come to with Optimax.

A matter that has however come to light since the date of the earlier complaint is an email to the Complainant from the Respondent and dated 5 July 2013 in which she says: "*Russell Ambrose [who is a director of Optimax] 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*". On the face of it, accepting £1200 cash from Optimax in respect of the OERML website was a most extraordinary thing for the Respondent to have done, if the Respondent wished to retain any credibility in her campaign. On its face it demonstrates an astonishingly amoral approach for someone purporting to want to clean up the industry. Moreover, disclosure of the 'fact' to the Complainant was calculated to expose her for the fraud that she appeared to be.

The Respondent's answer is that while she did in fact send that email, the reference to the £1200 for the OERML website was a lie. She says she sent the email hoping to drive a wedge between Optimax and the Complainant. The Panel is unable to determine what the truth is in relation to this email and the matters to which it refers. For the reasons identified above these types of allegation and counter-allegation are not ones that the DRS procedure is suitable for resolving. On balance, the Panel is not able to reach a conclusion that the Respondent's explanation is so obviously incredible as to justify a finding that it must be untrue – indeed the Panel (without deciding the point) notes that the Respondent's explanation seems to fit with the Respondent's uncompromising 'end-justifies-the-means' approach in support of her campaign.

Accordingly the Panel is unable to reach a finding that either the OERML website or the Respondent are covertly funded by Optimax. If the Complainant wishes to pursue an allegation of that nature it should do so in a forum more suitable for determining serious and disputed allegations of integrity and dishonesty against someone who on the face of matters appears to be pursuing a *bona fide* protest campaign. The Panel therefore does not consider that this allegation amounts to exceptional grounds which justify a rehearing of this Complaint.

#### Commercial advertising on the MBE (<mybeautifuleyes.co.uk>) website

The MBE website is another website operated by the Respondent and devoted to the Respondent's campaign. It is a simple site featuring the text "*My Beautiful Eyes does not advocate laser or any other non-essential eye surgery. All our team have personally suffered debilitating results following refractive eye surgery, willing to share their stories and experiences with you. If no-one on our team has the answer we will do our best to refer you to someone who does*". There is then a link to an email address.

Further down the page and following some more text indicating that they will respond to enquiries as quickly as possible, there are links to the OERML website, a Facebook link and a link to the 'new' OPTRML website, which is not operated by the Respondent. Below those links is a BBC House of Commons video clip to an MP introducing a 10 Minute Rule Bill to regulate refractive eye surgery.

Below the video clip is a ticker advertisement reading: "*If you have suffered injury after Laser Eye Surgery contact our specialist lawyers: [www.lasereyesurgeryclaim.co.uk](http://www.lasereyesurgeryclaim.co.uk)*" and providing a contact telephone number.

There is no dispute that the ticker advertisement was placed with the approval of the Respondent and that she receives from the solicitors £500 per month for the advertisement.

This raises a number of issues. There is a wealth of domain name jurisprudence under the DRS dealing with so-called 'gripe sites' and commercial content on those sites. Notably the decision in relation to [ihateryanair.co.uk](http://ihateryanair.co.uk) (DRS 08527) attracted widespread publicity. In that case the Expert concluded that a registration which was being used in relation to what would otherwise be a *bona fide* criticism site, was rendered Abusive by reason of the Complainant receiving a modest sum (£322) in respect of "click through" advertising revenue. That decision was not appealed and accordingly this Appeal is the first time this issue has come squarely before a Nominet Appeal Panel. It should be noted in this context that both the Expert in the First Case and the Expert in the present case expressed views that the decision in relation to [ihateryanair.co.uk](http://ihateryanair.co.uk) might be unduly harsh. That decision can be contrasted to other cases where the generation of revenue through a website said to be a mere fan site is more central to the Respondent's activity, for example, as was the case in DRS 00389 ([scoobydoo.co.uk](http://scoobydoo.co.uk)) where the Respondent sold Scooby Doo merchandise and offered 'scoobydoo.co.uk' email addresses to internet users, and thus generated income through the website. Of course, another difference in that case was that the use of the

name in which the complainant had rights was unadulterated by such add-ons as “ihate” or “ruinedmylife”. The first point to note about the allegation of commercial gain in this case is that the advertisement is not on the site connected to the Domain Name. To reach the advertisement one first has to use the MBE link on the OERML website. Does this matter? Does it mean that the advertisement is an irrelevance? The Panel does not believe so. If commercial endeavour/gain is an objective of the Respondent, it would make a mockery of the system if the Respondent could simply by-pass the issue by incorporating a link to another site under the Respondent’s control. In this case the Panel prefers to address the issue as if the advertisement appeared directly on the OERML website, the website connected to the Domain Name. Whether this approach is appropriate in other cases may depend upon the specific facts of a given case.

The Respondent’s campaign in relation to laser eye surgery comprises several elements, namely: (i) to highlight what she perceives as a problem; (ii) to advise or frighten off others intending to go down the non-essential eye surgery route; (iii) to provide assistance to those who have already suffered by going down that route; and (iv) to pressure politicians to introduce regulatory legislation covering those practising in the area. In the view of the Panel the advertisement in question and the website to which the advertisement refers fall fairly and squarely within element (iii), i.e. to enable those who have been adversely affected to obtain assistance in the form of specialist legal advice.

Accordingly, there is nothing abusive about the advertisement *per se* or its inclusion as part of the Respondent’s campaigning website. So the next question is whether the fact that the Respondent is receiving from the solicitors concerned £500 per month for the advertisement renders the advertisement an abusive use of the Domain Name.

The Panel cannot (nor does it seek to) lay down a hard and fast rule as to whether the receipt of advertising or other commercial revenue will render a registration which is being used in respect of what is otherwise a *bona fide* protest site, abusive. It is likely to be a question of fact and degree and need assessing on a case by case basis. Inevitably, there will be circumstances where an expert may reasonably come to the conclusion that charging for an advertisement or some other commercial link renders abusive what would otherwise be non-abusive. However, in this case the Panel adopts the view of both experts who have issued decisions in relation to the Domain Name to the effect that one must adopt a proportionate approach. Where, as is the case here, the advertisement so naturally fits in with the Respondent’s campaigning objective and the income received is relatively modest, and the Respondent is clearly expending very significant time and effort, and presumably at least some out of pocket costs, in promoting her campaign (including operating these websites), it would in the opinion of this Panel be unreasonable to brand this use of the Domain Name as abusive.

Accordingly the Panel declines to find that the receipt of advertising revenue of £500 per month in the circumstances of this case amounts to an exceptional ground justifying a rehearing of this Complaint.

In summary, the Panel concludes that no exceptional grounds have been established so as to justify such a rehearing. The Panel does not therefore need to go on to consider separately whether or not the various matters relied upon by the Complainant would amount to the Domain Name being found to be an Abusive Registration.

## **9. Decision**

For the above reasons the Appeal is dismissed.

**Signed:**

**Tony Willoughby**

**Anna Carboni**

**Nick Gardner**

**Dated: 31 March 2014**