

.nz Dispute Resolution Service

DRS Reference: 420

First Direct Limited v Eva Romanowska

Key words -

Registered mark; device element; Domain Name suggestive or descriptive; Domain Name identical to suggestive or descriptive word elements of Complainant's mark; whether likely to confuse, mislead or deceive; whether genuine use before knowledge of cause for Complaint; effect of respondent's bona fide registration and use of Domain Name before Complainant's Rights acquired.

1. Parties

Complainant:

First Direct Limited
29 Walker Street
Christchurch
New Zealand

Respondent:

Ms Eva Romanowska
40 Cypress Drive
Wellington
New Zealand

2. Domain Name

Ecocabs.co.nz ("the Domain Name")

3. Procedural history

The Complaint was lodged on 5/08/2009, and Domain Name Commission (DNC) notified the Respondent of the validated Complaint on 5/08/2009. The Domain Name was locked on 5/08/2009, preventing any changes to the record until the conclusion of these proceedings.

The Respondent filed a Response to the Complaint on 26/08/2009, and the DNC so informed the Complainant on 27/08/2009. The Complainant filed a Reply to the Response on 7/09/2009. The DNC informed the parties on 24/09/2009 that informal mediation had failed to achieve a resolution of the dispute.

On 9/10/2009 the Complainant paid Domain Name Commission Limited the appropriate fee for a decision of an Expert, pursuant to Paragraph B20.1 of the .nz Dispute Resolution Service Policy (“the Policy”).

Mr Warwick Smith (“the Expert”) confirmed to the DNC on 16/10/2009 that he knew of no reason why he could not properly accept an invitation to act as expert in this case, and that he knew of no matters which ought to be drawn to the attention of the parties, which might appear to call into question his independence and/or impartiality. The Expert was appointed by the DNC under paragraph 9 of the Policy, on 16/10/09.

4. Factual background

The Complainant

The Complainant, First Direct Limited, operates a taxi fleet in Christchurch. Some of the vehicles in its fleet are hybrid petrol/electric-powered taxis, and the Complainant refers to these vehicles as its “Eco Cabs”. According to the Complaint, the Eco Cabs have been in service in Christchurch for one year, and during that time a significant level of goodwill has been established in the “Eco Cabs” name. The goodwill is said to be evidenced by feedback received from regular taxi users and visitors to Christchurch.

The Complainant stated that its Eco Cabs are distinctively branded with an “Eco Cabs” trade mark. A picture of one of the Complainant’s Eco Cabs appears on the website which the Complainant operates at www.firstdirect.net.nz (the Complainant’s website”), on a sub-page which is dedicated to the Complainant’s Eco Cab vehicles. On the front door of the taxi there appears a “First Direct” logo consisting of a small circle device immediately above the (much larger) words “First Direct”. Immediately below “First Direct”, there is a telephone number followed by the word “Taxi”. On the rear door of the taxi, there appear, in smaller lettering, the words:

*“Low Carbon Taxi
Eco-Cabs”*

A logo consisting of the words “First Direct” immediately beneath the small circle device, and above the expression “Eco Cabs” and a picture of a taxi, also features more generally on the Complainant’s website. The Complainant also uses the strapline “Ask for an Eco-Cab”.

The material produced by the Complainant with its Complaint shows that its first trade use of the expression “Eco-Cabs” would not have been before February or March of 2008. In an email to Land Transport New Zealand dated 4 February 2008, the Complainant’s Mr Jackman advised (with reference to the Complainant’s fleet of hybrid taxis) that “the name of the fleet is either Eco-Cabs or Eco-Taxis. The names are now being used by us in the public domain, and we will soon be submitting proposed livery to you for LTNZ approval.”

The Complainant produced some examples of cards and print-media advertising material it has used for its Eco Cabs. It said that this printed material has been widely distributed throughout Christchurch, including in hotels. The printed material prominently featured the name "First Direct", immediately above the expression "Eco-Cabs". The small circle device appeared immediately above the words "First Direct".

The Complainant did not say when the cards and printed advertising material were first used. However, an article published in the Christchurch Press on March 26, 2008, said (in respect of the Complainant's fleet of Eco-Cabs):

"The new vehicles were launched yesterday under the name Eco-Cabs ..."

The Complainant's Service Mark

On 4 August 2008, the Complainant applied to register a device mark which incorporated the expressions "Eco" and "Cabs". The two expressions were separated by a small circle device which appears to be the same as that appearing on the Complainant's Eco Cabs and on the Complainant's website. The application, in international class 39, was for "transport services using low-emission vehicles". The application does not appear to have been opposed by the Respondent, and it proceeded to registration on 5 February 2009.

The Respondent and the Domain Name

The Complaint asserted that the Respondent is a shareholder in Green Cabs Limited ("Green Cabs"). That was not denied in the Response, which was filed on behalf of the Respondent by Mr Callum Brown of Green Cabs.

The Domain Name was registered on 22 August 2007, and it resolves to the Green Cabs website at www.greencabs.co.nz ("the Green Cabs website").

According to the Response, Green Cabs was incorporated in February 2007. It commenced taxi service operations in Wellington in November of that year, and began operating in Auckland in December of 2007 and in Christchurch in April or May of 2008. It operates a fleet of hybrid petrol/electric taxis in those cities.

The Response stated, and the Complainant did not in its Reply deny, that at the time the Domain Name was registered, Green Cabs also registered a number of other domain names, including "<ecotaxi.co.nz>". Mr Brown explained that the names "ecocabs" and "eco taxis" were considered particularly important to Green Cabs' online strategy, as it had been determined early that customers wanting an eco cab would most likely run their Internet searches on one of the following:

“Green Cabs (or cab)”
“Green Taxis (or taxi)”
“Eco Cabs (or cab)”
“Eco Taxis (or taxis)”

Mr Brown said that he wanted Green Cabs to come up as an option for people to be able to select “as the most well-known brand in eco friendly taxis in New Zealand”.

Mr Brown stated that Green Cabs is not interested in handing over the Domain Name, which is still considered to be an important part of its online strategy. He described Green Cabs as an “eco cab company”, and said that the Domain Name was purchased in good faith and used by Green Cabs before the Complainant started its Eco Cabs operations. He stated that Green Cabs’ Wellington Yellow Pages advertising has used the expression “eco cabs”, and that that expression has also been used by Green Cabs elsewhere (although not in Christchurch).

The Respondent did not produce any examples of the Yellow Pages advertising referred to, nor state when Green Cabs first used the expression “eco cabs” in its advertising.

In its Reply, the Complainant denied that there has been any direct marketing by Green Cabs of “Eco Cabs”. According to the Complainant, any marketing carried out has only been in relation to “Green Cabs”.

Pre-Commencement Communication between the Parties

Prior to the commencement of this proceeding, the Complainant’s representative endeavoured to have the Domain Name transferred to the Complainant, so as to prevent what it described as breaches of trade mark and misrepresentations. The Complainant stated, and the Respondent did not deny, that in a telephone conversation of 1 July 2009, Mr Brown refused to transfer the Domain Name to the Complainant unless the Complainant was prepared to pay “an unascertained sum of money”.

5. Parties’ contentions

a. Complainant

The Complainant contended:

1. The Domain Name is identical or similar to a name or mark in which it has Rights.
2. The Domain Name in the hands of the Respondent is an Unfair Registration.

3. Green Cabs operates in competition with the Complainant, using similar low carbon-emission vehicles. Green Cabs has not used the brand "Eco cabs", or anything similar, in its trading activities.
4. Green Cabs, in registering the Domain Name and linking it to the Green Cabs website, is misappropriating the goodwill that the Complainant has established in its Eco Cabs business. That has caused direct financial loss to the Complainant, in the form of lost revenue from Internet traffic being diverted from the Complainant to the Green Cabs website (where an online taxi booking form is provided).
5. It is generally assumed that a trade mark and a domain name will be held by the same party. In this case, the Respondent's actions constitute a misrepresentation to the general public that the Complainant's Eco Cabs business is owned and operated by Green Cabs.
6. The registration of the Domain Name by the registrant is intended to prevent the Complainant enjoying the goodwill it has established in its Eco Cabs taxi business, and to dilute the distinctive character of the Complainant's service mark.

b. Respondent

The Respondent contended:

1. At the time the Domain Name was registered, the Complainant did not have any "Eco Cabs" division. The Complainant's use of "Eco Cabs" in its branding only started in late April 2008.
2. The Complainant's relevant branding is not in fact "Eco Cabs" – it is known and referred to by nearly everyone, including the Complainant, as "First Direct Eco Cabs".
3. Green Cabs should be entitled to ownership of the Domain Name because it is an eco cab company, and the Domain Name was purchased in good faith and used by Green Cabs before the Complainant's Eco Cabs business was started.
4. The Complainant's recent use of its "Eco Cabs" logo is too close to Green Cabs' own logo, which is also trade marked. Green Cabs is considering legal action over the Complainant's use of its logo.
5. Green Cabs is not sitting on the Domain Name looking to make some money off it. The Domain Name relates directly to the nature of its business.

6. Discussion and findings

A. General – Relevant Provisions of the Policy

The Policy applies to a Respondent when a Complainant asserts that:

- “(i) *The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and*
- “(ii) *The Domain Name, in the hands of the Respondent, is an Unfair Registration.*” (Policy, paragraph 4.1)

The Complainant is required to prove, on the balance of probabilities, that both elements are present (Policy, paragraph 4.2).

The expressions “Rights” and “Unfair Registration”, are both defined in paragraph 3 of the Policy. The expression “Rights” is defined to include (but is not limited to), rights enforceable under New Zealand law. The definition continues:

However, a Complainant will be unable to rely on rights in a name or term which is wholly descriptive of the Complainant’s business.”

The expression “Unfair 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) has been, or is likely to be, used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’s Rights.”

At paragraph 5.1, the Policy sets out a non-exhaustive list of factors which may be evidence that a domain name is an “Unfair Registration”. The list includes the following:

“5.1.1 Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

- (i) for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly associated with acquiring or using the Domain Name;*

...

- 5.1.2 *Circumstances demonstrating that the Respondent is using the Domain Name in a way which is likely to confuse, mislead or deceive people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant.*"

Paragraph 6.1 of the Policy sets out a list of factors which may be evidence that the Domain Name is *not* an Unfair Registration. This list, which is again non-exhaustive, contains the following:

"6.1.1 Before being aware of the Complainant's cause for complaint (not necessarily the Complaint itself), the Respondent has:

- (i) *used or made demonstrable preparations to use the Domain Name or a Domain Name which is similar to the Domain Name in connection with a genuine offering of goods or services;*

...

- 6.1.2 *The Domain Name is generic or descriptive and the Respondent is making fair use of it in a way which is consistent with its generic or descriptive character."*

B. Application of the Policy in this Case

Rights

The Expert is satisfied that the Complainant has made out its case under paragraph 4.1.1 of the Policy – it has Rights in respect of a name or mark which is identical or similar to the Domain Name.

The Complainant has proved that it is the registered proprietor of an "Eco Cabs" device mark, and it therefore has "Rights" in that mark for the purposes of the Policy. The Complainant's mark is not identical to the Domain Name: it is a device mark, which incorporates the small circle device which could not be incorporated into a domain name. However, the Expert is satisfied that the dominant components of the Complainant's registered mark are the expressions "ECO" and "CABS". Those are the components which convey the principal meaning, or impression of the mark, and the incorporation of those two expressions in the Domain Name renders the Domain Name and the Complainant's registered mark similar, both visually and aurally. That is sufficient for the Complainant to satisfy the "Rights" requirement of the Policy.

Before leaving the "Rights" issue, the Expert notes two matters. First, the fact that the Domain Name was registered before the Complainant acquired its Rights is not relevant to the inquiry under this part of the Policy. It will, however, be an important matter to consider in the inquiry as to whether the Domain Name, in the hands of the Respondent, is an Unfair Registration.

Secondly, there is a question as to whether the expression “eco cabs” might be regarded as wholly descriptive of a particular kind of taxi, namely one which is regarded as “environmentally friendly” for one reason or another, probably because of its low carbon emissions. Again, that is a question which will weigh in the Expert’s consideration of the Unfair Registration issue, but does not affect the Expert’s conclusion on the “Rights” issue. That is because the Complainant has succeeded in obtaining a New Zealand trade mark registration for its ECO CABS device mark, and the Expert is satisfied that the Domain Name is similar to that mark. The threshold for a complainant to establish that it has Rights under the Policy is relatively low (see this Expert’s discussion of that issue in the New Zealand DRS case of *BOP Memorials v Jones & Company Funeral Services* (DRS 108)), and it is not for the Expert in an administrative proceeding such as this to second guess the decision made by the Intellectual Property Office of New Zealand that the Complainant’s device mark is registrable.

Is the Domain Name, in the hands of the Respondent, an Unfair Registration?

Clearly, the Complainant cannot rely on the first limb of the definition of “Unfair Registration”. That limb is directed at the circumstances pertaining at the time a disputed domain name is registered. In this case the Domain Name was registered in August 2007, and on its own account the Complainant could not have acquired any Rights in the expression “Eco Cabs” before February or March of 2008. There could not have been any relevant unfairness affecting the Complainant’s Rights before those Rights existed. If the Complaint is to succeed, the Complainant must therefore make out its case under the second limb of the definition of Unfair Registration (Domain Name has been, or is likely to be, used in a manner which takes unfair advantage of, or is unclearly detrimental to, Complainant’s Rights).

How *has* the Domain Name been used in this case? It is common ground that the Domain Name has been pointed to the Green Cabs website, where Green Cabs markets its environmentally friendly taxi services, which compete with the Complainant’s Eco Cabs in the Christchurch market. But the evidence does not show when the Respondent or Green Cabs first began using the Domain Name in that way. All the Expert has on the point, is a statement in the Response that: “the domain name was purchased in good faith and used by us before First Direct Eco Cabs even started”. The Complainant did not take issue with that statement in its Reply: the Reply denied that there had been any direct marketing by Green Cabs of “Eco Cabs”, but it did not deny that the Domain Name was pointed to the Green Cabs website before the Complainant had established its own Eco Cabs operations.

The onus of proof is on the Complainant (Policy, paragraph 4.2), and the Complainant has failed to persuade the Expert that the Domain Name was first pointed to the Green Cabs website at some time after March 2008 (being the earliest point in time at which the Complainant might argue that it had acquired, through use, common law Rights in the expression “Eco Cabs”). Green Cabs quite clearly *thought* of the expression “eco cabs” before the

Complainant commenced its Eco Cabs operations, without any apparent reference to the Complainant or its business: that much is evident from the registration of the Domain Name. At the same time, Green Cabs or the Respondent registered <ecotaxis.co.nz>. Green Cabs' choice of those domain names is not particularly surprising as, in the Expert's view, "eco cabs" and "eco taxis" both convey the impression of an environmentally friendly cab, or taxi, and the provision of such services is precisely what Green Cabs does. It is therefore entirely plausible that Green Cabs, having registered the Domain Name, would have pointed it to its principal website (the Green Cabs website) not long after the registration. Secondly, the Complainant did not in its Reply challenge the Respondent's statement that the Domain Name was used by Green Cabs before the Complainant's Eco Cabs business even started. Having regard to those factors, the Expert finds, on the balance of probabilities, that the Respondent's first use of the Domain Name occurred at a point in time before the Complainant could have claimed any Rights in the expression "Eco Cabs".

There is nothing in the evidence to show that the nature of the Respondent's use of the Domain Name has since changed.

Having made those findings, the next question is whether the use of the Domain Name as just described has taken unfair advantage of, or been unfairly detrimental to, the Complainant's Rights, or whether the use is likely to bring about either of those two situations.

At paragraph 5, the Policy lists certain factors which may be evidence that a Domain Name is an Unfair Registration. The only factor which might be relevant for present purposes, is that listed paragraph 5.1.2:

"Circumstances demonstrating that the Respondent is using the Domain Name in a way which is likely to confuse, mislead or deceive people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant."

However, paragraph 6 of the Policy, which lists a number of factors which may be evidence that the Domain Name is *not* an Unfair Registration, includes the following:

"6.1.1 Before being aware of the Complainant's cause for complaint (not necessarily the Complaint itself), the Respondent has:

- (i) used or made demonstrable preparations to use the Domain Name or a Domain Name which is similar to the Domain Name in connection with a genuine offering of goods or services ...";*

and

6.1.2 *The Domain Name is generic or descriptive and the Respondent is making fair use of it in a way which is consistent with its generic or descriptive character.*"

In this case, the Expert considers that there *is* likely to be some level of confusion, particularly among Christchurch users or would-be users of the Complainant's Eco Cabs service, who may key the Domain Name into their Internet browsers when they are looking for the Complainant's website. Such users may be confused into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant. Accordingly, the Expert believes that the Complainant *has* shown circumstances falling within paragraph 5.1.2 of the Policy.

On the other hand, the Expert considers that the circumstances also fall within at least one of the subparagraphs of paragraph 6 of the Policy, which lists factors which may constitute evidence that the Domain Name is *not* an Unfair Registration. Specifically, before being aware of the Complainant's cause for complaint, the Respondent has, by permitting Green Cabs to point the Domain Name to the Green Cabs' website, "used or made demonstrable preparations to use the Domain Name ... in connection with a genuine offering of goods or service" (Policy, paragraph 6.1.1(a)). There can be little doubt that, prior to the Complainant's commencement of its Eco Cabs' operations in Christchurch in or about March of 2008, the pointing of the Domain Name to the Green Cabs website constituted a use of the Domain Name "in connection with a genuine offering of goods or services". The Green Cabs' business obviously involved the offering of genuine services, and the expression "eco cabs" was a reasonably apt descriptor of those services. And the Respondent, a shareholder of Green Cabs, presumably had and still has a legitimate interest in Green Cabs' marketing and its presence on the Internet (the Complainant has not suggested otherwise).

At very best for the Complainant, the expression "eco cabs" is a suggestive expression, and it would be very close to the "purely descriptive" borderline if not actually over that line. That is a factor which must weigh in the Respondent's favour in considering questions of fairness (within the defined expressions "took unfair advantage of", and "was unfairly detrimental to"). And if the expression is generic or descriptive within paragraph 6.1.2 of the Policy, the Expert would have no hesitation in finding on the evidence produced that the use made of it, particularly at the stage before the Complainant commenced its Eco Cabs operations, was consistent with the generic or descriptive character of the expression.

How is an expert to resolve a case where both paragraph 5.1.2 and paragraphs 6.1.1 (or 6.1.2) look as though they might apply? The following statement made by a United Kingdom Appeal Panel in an appeal decision under the provisions of the United Kingdom Nominet dispute resolution policy (which is, in material respects, almost identical to the Policy), provides helpful guidance:

“8.12 *The Policy states that the factors set out in paragraph 3 [the UK equivalent of paragraph 5 in the Policy] ‘may be evidence’ that the Domain Name is an Abusive Registration*” ... it is clear that no single factor, without any additional ingredients, will necessarily establish abuse. Some factors in the list are more likely to lead to a conclusion of abuse than others, since the factors themselves include an abusive element. Others may be insufficient on their own. For example ... use that causes confusion with the Complainant will generally be insufficient where there is nothing else in the evidence to indicate abuse: other questions must be asked, such as how well-known the Complainant’s relevant Rights are, whether the Respondent was aware of them, and whether the Respondent intended confusion to arise. The Expert’s role is then to consider the materiality and weight of all the evidence in determining whether it is sufficient to establish that the domain name is an Abusive Registration.”
 (see *Verbatim Limited v Michael Toth*, Nominet Appeal Panel Decision No. DRS 04331; 31 July 2007).

The Appeal Panel in the *Verbatim* decision also noted that proof of abusive intention on the part of a respondent is not required for a complainant to bring itself within the UK equivalent of paragraph 5.1.2 of the Policy. The test is more objective than that. However “some knowledge of the Complainant or its name/brand is a pre-requisite”.

At what point in time must a respondent have that knowledge? A very recent decision of the UK Nominet Appeal Panel, *Whistle Blowers Press Agency Limited and Commercial and Legal Services (UK) Limited v Ketts News Service Limited* (Nominet Appeal Panel Decision No. DRS 07066; Decision 20 October 2009) is helpful. The Appeal Panel in the *Whistle Blowers* case endorsed the statement made by the expert whose decision was under appeal, that it is normally necessary for a complainant to demonstrate as an opener that the respondent had knowledge of the complainant and/or its rights at the relevant time. When the issue is over the respondent’s use of the disputed domain name (as opposed to the respondent’s action in registering or acquiring the disputed domain name), *the relevant time is when the respondent commenced the use of which complaint has been made*. The respondent must have some knowledge of the complainant and/or its rights at that point in time. As the Appeal Panel put it in its summary of its conclusions in the *Whistle Blowers* case:

“... ordinarily, some level of respondent knowledge of the complainant or its rights at time of registration (or commencement of the offending use) of the domain name is a **necessary pre-requisite** to getting a successful complaint off the ground” (this Expert’s emphasis).

In this case, the Respondent and Green Cabs presumably knew of the Complainant when the Domain Name was first pointed to the Green Cabs website, but they would have had no knowledge of any Right the Complainant might have asserted in the expression "Eco Cabs", for the simple reason that no such right then existed. In the Expert's view, it is knowledge of the existence or otherwise of a relevant *Right* which is the important matter in this case; in August 2007, and when the Domain Name was first pointed to the Green Cabs website, there would have been nothing in the name "First Direct", or in the nature of the business then conducted by the Complainant, which could have rendered "unfair" the decision of the Respondent to point the Domain Name to the Green Cabs website.

Weighing the various factors discussed above, the Expert is not satisfied that the Complainant has proved that the Domain Name, in the hands of the Respondent, is an Unfair Registration. In summary, the Complainant has failed to show that the Domain Name was registered or acquired unfairly, or that it had acquired any relevant "Rights" before the Respondent commenced good faith use of the Domain Name. The Domain Name itself is a perfectly apt descriptor of the Green Cabs business, and the Complainant has no rights in any "Eco Cabs" word mark. The fact that the expression "eco cabs" is at very least highly suggestive of an "environmentally friendly" taxi service (if it is not actually descriptive of it), also weighs against the determination of this proceeding in favour of the Complainant – when a party holds a trade mark which is well towards the descriptive end of the spectrum of possibly registrable marks (i.e. the spectrum ranging from fanciful, or made-up expressions at one end, to wholly descriptive expressions at the other), the trade mark holder has to accept that relatively small deviations from the mark may have to be tolerated (see in that regard the decision of the House of Lords in *Office Cleaning Services v Westminster Window and General Cleaners* (1946) 63 R.P.C 39 – where marks consist of descriptive elements, small differences may be sufficient to distinguish them). This is not a trade mark action, but in the Expert's view similar considerations may be taken into account on the issue of the fairness or otherwise of a disputed registration. Here, the Respondent and Green Cabs appear to have done no more than use as a domain name a suggestive or descriptive expression which is perfectly apt to describe their business, and the Expert is in no position to say whether the registrability of the Complainant's mark may have depended on the inclusion within it of the device element. The dispute seems better suited to resolution by litigation than in a summary administrative proceeding such as this.

The Expert emphasises that this decision is a decision made under the terms of the Policy alone. The Complaint is not an action for trademark infringement, or an action for passing off or breach of the Fair Trading Act. The Policy is only concerned with the issue of whether the "first-come-first-served" domain name registration starting principle should be displaced on the request of a third party complainant who holds a relevant Right, because the registration is an "unfair" one as defined in the Policy. The Expert has not been persuaded in this case that it should.

For completeness the Expert notes that the Complainant's reference to the telephone conversation with Mr Brown on 1 July 2009 cannot assist its case. People refuse to sell domain names if they consider that the price offered is too low, every day of the week. The relevant matter under the Policy (paragraph 5.1.1) is whether the Respondent *registered or acquired* the Domain Name *for the purpose* of selling, renting, or otherwise transferring it to the Complainant, or to a competitor of the Complainant, at a profit. The Respondent could not have had that intention in this case, as there is no evidence that the Respondent knew or should have known in August 2007 that the Complainant would acquire rights in an "Eco Cabs" service mark.

7. Decision

For the foregoing reasons, the Complaint is denied.

Place of decision Auckland

Date 2 November, 2009

Expert Name Mr Warwick Smith

Signature