

## **.nz Dispute Resolution Service**

**DRS Reference: 338**

### **A1 Radiator & Airconditioning Specialists Limited v RegistryWeb**

Key words

*Domain name* – a1radiators.co.nz

*Identical or similar trade mark or name* – business name – not wholly descriptive of Complainant's business and, in any event, secondary meaning established

*Rights* – no use to date – assertions of intended future use

*Unfair registration* – unfair advantage of or unfairly detrimental to the Complainant's Rights – blocking registration – unfairly disrupting Complainant's business

*Procedure* – remedies – transfer

#### **1. Parties**

##### **Complainant:**

A1 Radiator & Airconditioning Specialists Limited  
PO Box 13357  
Christchurch  
New Zealand

##### **Respondent:**

RegistryWeb  
PO Box 334  
Turramurra  
NSW 2074  
Australia

#### **2. Domain Name/s**

a1radiators.co.nz ("the Domain Name")

#### **3. Procedural history**

3.1 The Complaint was lodged on 20 October 2008. The Domain Name Commission (DNC)<sup>1</sup> notified the Respondent of the validated Complaint by letter dated 20 October 2008. The domain was locked on 20 October 2008, preventing any changes to the record until the conclusion of this case.

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<sup>1</sup> Domain Name Commission Limited is a company wholly-owned by InternetNZ (the Internet Society of New Zealand Inc) responsible for the day-to-day oversight of the .nz domain name registration and management system.

- 3.2 The letter from the DNC to the Respondent dated 20 October 2008 attached a copy of the Complaint and a copy of the InternetNZ Dispute Resolution Policy (“the Policy”)<sup>2</sup> and Procedure. The letter advised the Respondent as follows:

In accordance with the Procedure, you have 15 working days, **ie until Wednesday, 12 November 2008** to respond to the complaint. In order to be valid, your response must comply with the Procedure, and must be received by the DNC in both hard copy and electronic form.

If you respond within the deadline, the Complainant will be given an opportunity to submit a written reply, and the matter will then be referred for mediation. The Domain Name Commission makes no charge for this service. If mediation is not successful, the matter may be referred to an independent expert for a decision.

**Please note that no decision has been made at this stage.**

**Do not ignore this letter. If you do not submit a response by the deadline, this matter may be referred to an independent expert for a decision without further reference to you, which may result in the transfer, suspension or cancellation of the domain name(s).**

- 3.3 The Respondent did not submit a Response to the Complaint. By letter dated 13 November 2008, the DNC advised the Respondent that the Complaint would be referred to an independent expert for decision if the Complainant paid the appropriate fees by 27 November 2008. The Complainant paid the appropriate fees on 14 November 2008.
- 3.4 Mr Terence Stapleton, the undersigned, confirmed to the DNC that he knew of no reason why he could not properly accept the 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. On 14 November 2008, Mr Stapleton was appointed to act as the independent expert in this case (“the Expert”) pursuant to paragraph 9 of the Policy.

#### **4. Factual background**

- 4.1 The Complainant was incorporated under the Companies Act 1955 on 25 March 1981 under the name A1 Radiator Specialists Limited. On 10 June 1996, under the Companies Act 1993, the Complainant changed its name from A1 Radiator Specialists Limited to A1 Radiator & Airconditioning Specialists Limited (its present name). As at the date of this decision, Graham Stanley Stevens is the Complainant’s sole director. Mr Stevens holds 59,501 of the Complainant’s 350,000 shares, the remaining shares being held by the Estate of Glenys Elizabeth Stevens (174,999 shares) and by Mr Stevens and Rocky Trustee Limited jointly (115,500 shares).
- 4.2 The search details of the Domain Name on the New Zealand Domain Name Registry Limited’s website record that the Domain Name was registered on 22 August 2001. The search details record:

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<sup>2</sup> Words beginning with uppercase letters in this decision indicate terms defined in paragraph 3 of the Policy.

- (a) the registrant contact name as the Respondent and the registrant contact email as info@whois.registryweb.com;
  - (b) the admin contact name as the Respondent and the admin contact email as info@whois.registryweb.com;
  - (c) the technical contact name as Heat Exchanger Services Limited and the technical contact email as heatexchangerservices@owner-handle.com.
- 4.3 The search details of the Domain Name on the Respondent's website record that the Domain Name is registered for Heat Exchanger Services Limited, that the registrant contact is Julian Parbery, and that the registrant and administrative contact emails are heatex@ihug.co.nz.
- 4.4 Heat Exchanger Services Limited ("HES") was incorporated under the Companies Act 1993 on 16 March 1998. As at the date of this decision, the directors of HES are James Kirtland Parbery and Julian David Parbery, who each hold 50 of HES's 100 shares.
- 4.5 On 12 August 2003, almost two years after the registration of the Domain Name on 22 August 2001, A1 Radiators Intercoolers and Oilcoolers Limited ("ARIO") was incorporated under the Companies Act 1993. As at the date of this decision, Julian Parbery is ARIO's sole director and shareholder (100 shares).
- 4.6 In view of the details contained in the search details of the Domain Name on the New Zealand Domain Name Registry Limited's and the Respondent's websites, and the search details from the Companies Office for HES and ARIO, the Expert finds that the persons named Julian Parbery in the Respondent's search details, Julian David Parbery in HES's search details, and Julian Parbery in ARIO's search details, are the same person ("Mr Parbery").
- 4.7 In the Complaint, in asserting that the Complainant has enforceable Rights in the A1 Radiator name, the Complainant set out details of the Complainant's business history and attached annexures demonstrating the Complainant's business use of the A1 Radiator name since the late 1970s. As the Respondent did not take issue with any of these details by filing a Response with annexures to the contrary, the Expert accepts them as facts and now reproduces them as part of the factual background to this case:
- 7. For a number of years the Complainant has been involved in the radiator repair industry. It is also involved in the servicing and manufacturing of radiator cores, and also in the servicing and manufacturer of other automotive parts, such as intercoolers and airconditioners.
  - 8. The Complainant's business was purchased in the late 1970s by its current proprietor. The phrase 'A1 Radiator' was part of that business at the time. In March 1981 the Complainant was incorporated and since that time it has been trading with the words

'A1 Radiator' in its name. (Annexure "A"). The inclusion of the word 'airconditioning' in its name occurred during the 1990s when the Complainant became more involved in the servicing and manufacture of automotive airconditioning systems.

9. This is also shown by Annexures "B", "C", and "D", which are examples of letter head and the use of the name 'A1 Radiator' in the 1980s and also the 1990s.
  10. Annexed and marked 'E' are copies of the company's advertisement in the Christchurch Yellow Pages telephone directory for the years 1983, 1989, 1997, and 2008.
  11. The Complainant's name is distinctive, and it has built up an excellent reputation during its nearly 30 years in business. The Complainant is the only AA Licensed and MTA assured radiator specialist in the Canterbury region. The website [a1radiator.net.nz](http://a1radiator.net.nz) shows how the Complainant uses its name and relies upon it.
  12. The name 'A1 Radiator' has been prominently displayed on the premises of the Complainant since the 1970s. Annexure "F" are photographs of the company's business premises, showing the display of signage over the years.
  13. Since the year 2000 the Complainant has used an 0800 number which is 0800 A1 Rads.
  14. The Complainant is often referred to by customers and people it is dealing with in business as either 'A1' or 'A1 Radiators'.
  15. 'A1 Radiator' or 'A1 Radiators' or 'A1 Rad' or 'A1 Rads' are all suggestive of the Complainant, and also of the type of work that it does.
  16. To the knowledge of the Complainant there is only one other business in New Zealand that uses the name 'A1 Radiator' and is engaged in the same line of work. That company is based in Palmerston North. The scope of its work is much more limited than the Complainants. It services just the local area. It has the permission of the Complainant to use the name for trading purposes.
- 4.8 In 2006, the Complainant established a website ([www.a1radiator.net.nz](http://www.a1radiator.net.nz)). The registration of the Domain Name prevented the Complainant from using [www.a1radiators.co.nz](http://www.a1radiators.co.nz) as its website address. By letter dated 18 June 2008, the Complainant's assistant general manager (Damien Scott) wrote to Mr Parbery advising that the Complainant wanted the Domain Name returned, and offering \$99 (the registration fee) for the return of the Domain Name. Mr Scott's letter concluded by advising Mr Parbery that if he did not agree to release the Domain Name by 20 July 2008, then a claim would be lodged with the DNC.
- 4.9 By letter on ARIO's letterhead dated 2 July 2008, Mr Parbery replied to Mr Scott's letter as follows:

Re: [www.a1radiators.co.nz](http://www.a1radiators.co.nz)

The purpose of this letter is to draw your attention to the fact that we are the legal owners of a registered company called A1 Radiators intercoolers and oil coolers Ltd we are also the legal owners of the associated internet domain name [www.A1radiators.co.nz](http://www.A1radiators.co.nz).

The advice we have been given is that as we have a registered Ltd company of the same name it is un-likely that the DNC NZ would take the name away from us.

We have not retained this website to stop you using it; we purchased it to protect our company name and advertising space on the internet.

We have already been approached by another NZ radiator company who wishes to purchase this web address and they offered a lot more money to sell them the name, we still refused to sell to them.

Any attempt by your company to pursue this course action through DNC NZ will be vigorously defended.

As soon as our new radiator core manufacturing equipment is ready we will start using our new company and website which is currently under design.

4.10 By letter dated 12 August 2008, the Complainant's solicitors wrote to HES (the letter was marked for Mr Parbery's attention) as follows:

**A1 RADIATORS INTERCOOLERS & OIL COOLERS LIMITED**

1. We act for A1 Radiator & Air Conditioning Specialists Limited ("A1").
2. Company Office records show that you have formed a company A1 Radiators Intercoolers & Oil Coolers Limited. That company is also the registered owner of the domain name a1radiators.co.nz.
3. It does not appear that you have used either that company name, or the domain name you registered. You do operate Heat Exchanger Services Limited which is in competition with our client in the same industry. Our client has used its current name and similar names over many years. Its name is important to its business. Any use of the name A1 Radiators Intercoolers and Oil Coolers Limited in trade in a similar business would constitute misleading and deceptive conduct under the Fair Trading Act 1986 and also passing off. Should you, any one associated with you, Heat Exchanger Services or any new company commence using the name of A1 Radiators Intercoolers & Oil Coolers Limited in business, our client will seek an immediate injunction restraining that use of the name. It would also claim damages for any loss that it might suffer as a result of this.
4. We also advise that your holding of the domain name "a1radiators.co.nz" is illegitimate, as you have no interest in that name. So far it has not been necessary for our client to take any action in respect of your registration of that name because you have made no use of it and it has effectively been dormant. However, in your letter of 2 July 2008 to Damien Scott you indicated an intention to use the website in the near future. That constitutes a breach of the Domain Names Commission's Dispute Resolution Service Policy.
5. Accordingly, we **enclose** an appropriate form of consent for you to complete and return to us. Our client will then pay the necessary fees to have the name transferred to its ownership. Failure to return the form to us by **Monday, 18 August 2008** will see a complaint filed with the Domain Names Commissioner.
6. Whatever now happens, you are on notice that you must not use either the domain name or the name of the company formed in 2001. Should you seek to do so, it will be at your peril as far as further Court action is concerned.

- 4.11 In relation to the first sentence in paragraph 6 of the Complainant's solicitors' letter, the Expert notes that while the Domain Name was registered in 2001, ARIO was not formed until 2003. Just as the Respondent did not file a Response to the Complaint, Mr Parbery did not respond to the Complainant's solicitors' letter.
- 4.12 The Complainant invited the Expert to view the following websites. The Expert has done so with the following results:
- (a) [www.a1radiator.co.nz](http://www.a1radiator.co.nz): The Domainz Limited page stated that the Expert had reached the future website of a1radiator.co.nz and that the a1radiator.co.nz domain name was currently registered with Domainz Limited. The search details of the a1radiator.co.nz domain name on the New Zealand Domain Name Registry Limited's website record that the domain name was registered on 11 June 2008. The registrant contact name is HES, the admin contact name is Julian, and the registrant and admin contact emails are heatex@clear.net.nz;
  - (b) [www.a1radiators.co.nz](http://www.a1radiators.co.nz) did not take the Expert to any Domainz Limited page. The Yahoo! search results stated that Yahoo! did not find results for [www.a1radiators.co.nz](http://www.a1radiators.co.nz). As noted, the Domain Name was registered on 22 August 2001;
  - (c) [www.a1rad.co.nz](http://www.a1rad.co.nz): The Domainz Limited page stated that the Expert had reached the future website of a1rad.co.nz and that the a1rad.co.nz domain name was currently registered with Domainz Limited. The search details of the a1rad.co.nz domain name on the New Zealand Domain Name Registry Limited's website record that the domain name was registered on 18 July 2008. The registrant contact name is HES, the admin contact name is Julian, and the registrant and admin contact emails are heatex@clear.net.nz;
  - (d) [www.a1rads.co.nz](http://www.a1rads.co.nz): The Domainz Limited page stated that the Expert had reached the future website of a1rads.co.nz and that the a1rads.co.nz domain name was currently registered with Domainz Limited. The search details of the a1rads.co.nz domain name on the New Zealand Domain Name Registry Limited's website record that the domain name was registered on 18 July 2008. The registrant contact name is HES, the admin contact name is Julian, and the registrant and admin contact emails are heatex@clear.net.nz;
  - (e) in view of the results noted in paragraphs 4.12(c) and (d) above, the Expert finds that the a1rad.co.nz and a1rads.co.nz domain names were registered by Mr Parbery on 18 July 2008, about 2 weeks after his letter to Mr Scott of 2 July 2008 and about 3 weeks before the Complainant's solicitors' letter to him of 12 August 2008, but about 8 years after the Complainant started using its 0800 number 0800 A1 Rads;
  - (f) [www.a1radiators.net.nz](http://www.a1radiators.net.nz) and [www.a1radiator.net.nz](http://www.a1radiator.net.nz): Both links took the Expert to the Home page of the Complainant's website. The photograph

on the Home page is similar to the fourth photograph in annexure F of the Complainant's annexures. The text on the About Us page is set out below. The a1radiators.net.nz domain name was registered on 10 August 2005. The a1radiator.net.nz domain name was registered on 18 August 2008. In both cases, it is clear from the registrant and admin contact details that the Complainant was the registrant:

A1 Radiator & Air Conditioning Specialists Limited has been under its current ownership since 1979 and has grown to become the "one-stop-cooling-shop" for Canterbury and the rest of New Zealand.

The company started out servicing radiators and heaters, before expanding into Core Manufacturing in the late 80's. The early 90's saw Air Conditioning introduced and then importation of fully built up radiator assemblies and parts started in 1995. Since then A1 has expanded further and developed a full design, manufacture and overhaul service for Intercoolers and Oilcoolers. Our Canterbury based repair and service business is very strong and runs in tandem with our wholesale parts supply business to the many other radiator servicing companies throughout New Zealand.

With four distribution centres across the country (Whangarei, Auckland, Hamilton & Wellington) all controlled from our Christchurch location on St Asaph Street, A1 has leveraged off its considerable part sourcing power and more than 25 years of expert knowledge to become the leader in its respective fields.

A1 now has a reputation as one of the most qualified experts in the automotive radiator and air conditioning repair sector.

The competitive edge we have is that we are a local servicing centre for air conditioning and radiators, but because we manufacture, import and distribute throughout the whole country it gives us a terrific advantage over other radiator companies in the Canterbury region. Our wholesale radiator shop customers also benefit because our low overheads mean we are extremely competitive and stock range is huge.

We are the only company in New Zealand to do everything – repair radiators & air conditioning, manufacture cores intercoolers and oilcoolers, import and distribute nationally.

As certified members of the AA, MTA, the Collision Repair Association and NARSA (National Automotive Radiator Service Association), A1's credentials for vehicle owners, panel beaters, vehicle repair centers and professional radiator service shops across New Zealand are unrivalled.

4.13 Having regard to the factual background set out in paragraphs 4.1 to 4.12 above, the Expert makes the following further findings:

- (a) since the late 1970s, the A1 Radiator name has been part of the Complainant's business name;
- (b) during that time (about 30 years), the Complainant's business has been carried on from premises at 318 and 318-320 St Asaph Street, Christchurch, and has grown to become a national business as described

on the About Us page on its website with four distribution centres across the country at Whangarei, Auckland, Hamilton and Wellington, all controlled from its Christchurch premises;

- (c) Mr Parbery resides at 28 Dunn Street, Somerfield, Christchurch. As HES is in competition with the Complainant in the same industry, it is probable that Mr Parbery knew of the Complainant's name, business and reputation when HES was incorporated on 16 March 1998, and certain that he knew of those matters about 3½ years later when the Domain Name was registered on 22 August 2001;
- (d) the assertions in Mr Parbery's letter to Mr Scott of 2 July 2008 are contrary to the facts. In that letter Mr Parbery states that ARIO has not retained the Domain Name/website to stop the Complainant using it; "*we purchased it to protect our company name and advertising space on the internet*". Contrary to Mr Parbery's assertion that the Domain Name was registered to protect the ARIO company name, the facts are that the Domain Name was registered on 22 August 2001, almost 2 years before ARIO's incorporation on 12 August 2003;
- (e) the Domain Name has not been used since registration on 22 August 2001 and ARIO has not traded since incorporation on 12 August 2003;
- (f) ARIO will not start trading and using the Domain Name until its new radiator core manufacturing equipment is ready and its website (which was said to be under design as at 2 July 2008) is completed.

## **5. The Complainant's contentions**

### **5.1 The Complainant contends:**

- (a) the Complainant has enforceable Rights in the A1 Radiator name, arising from the Complainant's long use of the name and the length of time that the Complainant has been trading under its name, such that the A1 Radiator name is readily identifiable within New Zealand with the Complainant's business;
- (b) the Domain Name is identical or similar to the A1 Radiator name that is readily identifiable within New Zealand with the Complainant's business;
- (c) the registration of the Domain Name is an Unfair Registration in terms of paragraphs 3(ii) and 5.1.1(b) and (c) of the Policy;
- (d) the Respondent cannot demonstrate that the Domain Name is not an Unfair Registration in terms of paragraphs 6.1.1(a), (b) and (c) of the Policy.

## **6. The Respondent's contentions**

### **6.1 As noted, the Respondent has not filed a Response to the Complaint.**



## 7. Relevant provisions of Policy and elements of Complaint

7.1 The dispute is governed by the Policy. Relevant provisions of the Policy in this case are as follows:

### 3. Definitions

**Rights** includes, but is not limited to, rights enforceable under New Zealand law. However, a Complainant will be unable to rely on rights in a name or term which is wholly descriptive of the Complainant's business;

**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;

### *Part A – Policy*

### 4. Dispute Resolution Service

4.1 This Policy and Procedure applies to Respondents when a Complainant asserts to the DNC according to the Procedure that:

4.1.1 The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

4.1.2 The Domain Name, in the hands of the Respondent, is an Unfair Registration.

4.2 The Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.

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### 5. Evidence of Unfair Registration

5.1 A non-exhaustive list of factors which may be evidence that the Domain Name is an Unfair Registration is set out in paragraphs 5.1.1 – 5.1.5:

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

- (a) 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;
  - (b) as a blocking registration against a name or mark in which the Complainant has Rights; or
  - (c) for the purpose of unfairly disrupting the business of the Complainant;
- or

...

### 6. How the Respondent may demonstrate in its Response that the Domain Name is not an Unfair Registration

6.1 A non-exhaustive list of factors which may be evidence that the Domain Name is not an Unfair Registration is set out in paragraphs 6.1.1 – 6.1.4:

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

- (a) 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;
- (b) been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;
- (c) made legitimate non-commercial or fair use of the Domain Name;

7.2 For an Expert to uphold a Complaint, the Expert must be satisfied that the Complainant has proved the following elements on the balance of probabilities:

- (a) Rights in respect of a name or mark (para 4.1.1);
- (b) identity or similarity between that name or mark and the Domain Name (para 4.1.1);
- (c) Unfair Registration in the hands of the Respondent (para 4.1.2).

## **8. Rights in respect of a name or mark**

8.1 It is well-established that:

- (a) the requirement for a Complainant to prove Rights in respect of a name or mark is not a particularly high threshold test;
- (b) it is not necessary for a Complainant to prove that it holds a registered trade mark or service mark; rather, it is sufficient for a Complainant to prove that its Rights in respect of the name or mark are capable of protection, such as under s 22 of the Companies Act 1993 or by proceedings for passing off or for misleading or deceptive conduct under the Fair Trading Act 1986;
- (c) while a Complainant is unable to rely on rights in a name or term which is wholly descriptive of the Complainant's business, an otherwise descriptive name or term is not wholly descriptive of the Complainant's business if the Complainant proves that the name or term has acquired a secondary meaning designating the Complainant's business and distinguishing the Complainant's business from other businesses of the same general kind. The Complainant must prove that the name or term is distinctive of the Complainant's business.

8.2 In view of the factual background and the findings of fact set out in part 4 of this decision, the Expert is satisfied on the balance of probabilities that the Complainant has Rights in respect of a relevant name or mark, namely the A1

Radiator name, which are capable of protection by proceedings for passing off or for misleading or deceptive conduct under the Fair Trading Act 1986. In terms of s 22 of the Companies Act 1993, it is likely that the Registrar took the view that notwithstanding the partial commonality between the names, there were sufficient differences between the rest and the whole of the Complainant's and ARIO's names (A1 Radiator & Airconditioning Specialists Limited and A1 Radiators Intercoolers and Oilcoolers Limited respectively) for the Registrar to conclude that the Registrar could reserve ARIO's name in 2003 because it was not identical or almost identical to the Complainant's name registered in 1981 and changed in 1996.

8.3 The Expert is satisfied on the balance of probabilities that the Complainant's Rights set out in paragraph 8.2 of this decision were established and had existed for some years before the registration of the Domain Name on 22 August 2001.

8.4 In view of the factual background and the findings of fact set out in part 4 of this decision, the Expert is satisfied on the balance of probabilities that the A1 Radiator name is not a name or term which is wholly descriptive of the Complainant's business because:

- (a) the A1 Radiator name is not a name or term which is wholly descriptive of the Complainant's business;
- (b) in any event, the A1 Radiator name has acquired a secondary meaning designating the Complainant's business and distinguishing the Complainant's business from other businesses of the same general kind;
- (c) in any event, the A1 Radiator name is distinctive of the Complainant's business.

## **9. Identity or similarity between the relevant name or mark and the Domain Name**

9.1 It is well-established that Rights in a name cover all conceivable forms<sup>3</sup> in which the name might be used. In this case, the conceivable forms in which the A1 Radiator name might be used include a1radiator and all conceivable forms of the A1 Radiator and a1radiator names.

9.2 The Expert is satisfied on the balance of probabilities that the A1 Radiator name in all its conceivable forms is identical or similar to the Domain Name.

## **10. Unfair Registration**

10.1 The Expert is satisfied on the balance of probabilities that, in all the circumstances, the Domain Name is an Unfair Registration because the factual background and the findings of fact set out in part 4 of this decision demonstrate that:

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<sup>3</sup> Including upper and lower cases and singular and plural.

- (a) if the Domain Name is used in future, then it is likely to be used in a manner which takes unfair advantage of or is unfairly detrimental to the Complainant's Rights in the A1 Radiator name in all its conceivable forms which were established and had existed for some years before the registration of the Domain Name (para 3(ii)); and/or
- (b) the Domain Name was registered as a blocking registration against a name or mark in which the Complainant had Rights, namely the A1 Radiator name in all its conceivable forms, which were established and had existed for some years before the registration of the Domain Name (para 5.1.1(b)); and/or
- (c) the Domain Name was registered primarily for the purpose of unfairly disrupting the business of the Complainant in New Zealand (para 5.1.1(c)); and/or
- (d) the Respondent has not demonstrated in any of the manners specified in paragraphs 6.1.1(a), (b) and (c) of the Policy that the Domain Name is not an Unfair Registration.

10.2 The Expert notes that if the Complainant had so contended, then the Expert would have been satisfied on the balance of probabilities that, in all the circumstances, the Domain Name is an Unfair Registration because the factual background and the findings of fact set out in part 4 of this decision demonstrate that when the Domain Name was registered on 22 August 2001, the registration took unfair advantage of or was unfairly detrimental to the Complainant's Rights in the A1 Radiator name in all its conceivable forms which were established and had existed for some years at the date of registration.

## 11. Decision

11.1 In view of the findings made in this decision, and as requested by the Complainant in the Complaint, the Expert directs that the Domain Name a1radiators.co.nz be transferred to the Complainant.

**Place of decision** Wellington

**Date** 28 November 2008

**Expert Name** Mr Terence Stapleton

**Signature**

A handwritten signature in black ink, appearing to read 'T. Stapleton', written over a horizontal line.