NOMINET

DISPUTE RESOLUTION SERVICE

D00029204

Decision of Independent Expert

Especial Ltd

and

Behrendt Professional Corporation

1. The Parties:

Complainant: Especial Ltd
264 Banbury Road
Oxford
OX2 7DY
United Kingdom

Respondent: Behrendt Professional Corporation
314-370 Metcalfe Street
Ottawa
ON
K2P 1S9
Canada

2. The Domain Names:

<especial.co.uk>
<especial.uk>

3. Procedural History:

3.1 I have confirmed to Nominet that I am independent of each of the parties and that, to the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

3.2 The procedural history of this matter is as follows:

13 May 2026 14:38 Dispute received
14 May 2026 14:33 Complaint validated
14 May 2026 14:38 Notification of complaint sent to parties
15 May 2026 09:53 Response received
15 May 2026 09:53 Notification of response sent to parties
18 May 2026 12:32 Reply received
18 May 2026 12:34 Notification of reply sent to parties
18 May 2026 12:34 Mediator appointed
21 May 2026 10:54 Mediation started
21 May 2026 15:41 Mediation failed
27 May 2026 12:36 Close of mediation documents sent
05 June 2026 09:34 Expert decision payment received

4. Factual Background

4.1 The Complainant is a company incorporated in the United Kingdom on 30 April 2001. It has used the term "Especial" as part of its registered name and in connection with its business since its incorporation.

4.2 The Complainant promotes its business from a website using the domain name <especialuk.com>. Whois details for that domain name suggest that it was registered on 4 November 2022. Otherwise, the nature and extent of the Complainant's use of the term "Especial" is addressed later on in this decision.

4.3 The Respondent is a company incorporated and operating in Ontario, Canada. It is engaged in the business of acquiring and selling domain names.

4.4 The Respondent acquired the Domain Names on 20 July 2017 by way of "drop catching"; i.e. the registration of domains immediately upon their becoming available following a previous registrant's failure to renew.

4.5 Thereafter, the <especial.co.uk> domain name was offered for sale on the AmazingDomains.co.uk website at a price of £4,388 and the <especial.uk> domain name on the DomainForSale.uk website at a price of £2,188.

4.6 On 17 March 2026 an individual acting on behalf of the Complainant but not disclosing that fact made an enquiry by email of the Respondent as to whether it owned the Domain Names. The Respondent responded by email on 18 March 2026 confirming that it owned the Domain Names and offered a 10% discount if both Domain Names were purchased.

4.7 On 19 March 2026 the Complainant responded to the Respondent's email. That email contained the following statement:

> "*I am writing on behalf of Especial Ltd. We are a UK-registered company and have been trading under the name "Especial" since 2001.*

As you will appreciate, both especial.co.uk and especial.uk directly correspond to our registered company name and long-established trading identity. We note that the domains have been held for a considerable period without active use and are being offered for sale.

We are open to acquiring both domains and would prefer to reach an amicable agreement directly. However, any acquisition would need to reflect a fair and pragmatic valuation given the circumstances.

We are prepared to make an offer of £1,250 for both domains as a combined purchase, with the transaction completed promptly via escrow.

We are also currently reviewing our position in respect of Nominet's Dispute Resolution Service, in light of our longstanding rights in the name.

That said, our preference is to resolve this matter efficiently and without the need for formal proceedings."

4.8 The Respondent did not reply to the email or subsequent follow-up emails from the Complainant, including one dated 22 April 2026 that stated:

> "In the absence of a response or being able to reach an agreement, we will look to proceed via Nominet's Dispute Resolution Service."

4.9 The Respondent was also previously named as a respondent in DRS28760 in relation to the domain name <kn.uk>. This proceeded to a decision in the Respondent's favour on 15 April 2026.

5. Parties' Contentions

The Complaint

5.1 The Complaint contends that it has traded continuously under the name "Especial" for over two decades. It claims to have established a "multi-million pound turnover business".

5.2 The Complaint contends that evidence supporting those contentions is attached to that document, but the only relevant material provided is a screenshot of a record for the Complainant at Companies House, showing that it is registered in the United Kingdom. Further, the Complainant does not even describe the nature of its business.

5.3 The Complainant acknowledges that "especial" is a dictionary term, but claims it is "not commonly used within ordinary UK commercial language or branding". As a consequence, it claims, by reason of its use of the term, to have acquired goodwill and enforceable rights in that name, which exactly matches the Domain Names.

5.4 The Complainant asserts and has experienced “ongoing issues” arising from the inability to operate under the Domain Names, including “customer confusion, misdirected enquiries and reputational detriment”. However, none of this is evidenced.

5.5 The Claimant refers to the fact that the Respondent is a domain name reseller and that the Domain Names have been offered for sale at “substantial prices”. However, the Claimant does not allege that the Respondent was aware or should have been aware of the Claimant’s use of that term. Instead, it appears to assume that, since at the time the Domain Names were acquired it had relevant rights, and given the alleged, but not evidenced, “customer confusion, misdirected enquiries and reputational detriment”, the Domain Name are abusive.

The Response

5.6 The Response is extensive. However, it is not necessary to set out all the contents of the same. It is sufficient to record the following:

(i) The Respondent claims that not only is “Especial” an ordinary English word, but is also a common word in Spanish and Portuguese.

(ii) The Respondent admits that it is a domain name trader but asserts that trading in domain names that comprises generic terms is lawful.

(iii) The Respondent claims that it acquired the Domain Names through drop catching in circumstances where they were selected from daily lists of expiring names for the following reasons:

(a) The generic nature of the term Especial in English, Spanish and Portuguese

(b) The Domain Names comprise the letter “e” combined with the word “special”, and that “e” is often used as a common prefix in a domain name in a similar way to that letter in the words ecommerce, email and ebusiness.

(c) Especial is a term used in a wide variety of companies. In this respect reference is made to a printout from Companies House which is said to identify 11 such businesses.

(d) “Especial” has been registered as a domain name in 28 different top-level domain extensions.

(e) The term “Especial” is a “positive, affirming and aspirational word”, which would be commercially attractive.

(iv) The Respondent claims it had no knowledge of the Complainant, the Complainant's business or any rights now asserted by the Complainant at the time the Domain Names were acquired on 20 July 2017. It

claims that it only became aware of the existence of the Complainant when contacted by the Complainant prior to the commencement of these proceedings.

(v) On the issue of price, the Respondent relies upon the statement of the Appeal Panel in DRS Appeal No. 03078 (<ghd.co.uk>) as follows:

> "Does the level of the price demanded affect the issue [of Abusive Registration]? No, once it is accepted that domain name trading is not of itself objectionable, the Respondent is free to ask any price he likes and it is up to the Complainant to pay it or not."

(vi) The Complainant's delay in pursuing the matter since the registration of the Domain Names in 2017 is said to be inconsistent with the Complainant's claims that it is suffering harm by reason of the registrations.

(vii) That not only should the Complaint be rejected but that there be a finding of reverse domain name hijacking. One of the factors said to justify that finding is that these proceedings were commenced by the Complainant having "failed to acquire the domains on commercial terms".

The Reply

5.7 In its Reply the Complainant asserts that the examples of use of the term "Especial" by companies recorded on the Companies register refers in large part to companies that have been dissolved and/or associated with the Complainant.

5.8 The Complainant also asserts that these proceedings were not brought because of "failed commercial negotiations", but because the parties were unable to meaningfully engage on the matter at all.

6. Discussions and Findings

6.1 To succeed under Nominet's Dispute Resolution Service Policy (the "Policy"), the Complainant must prove first, that it has Rights in respect of a "name or mark" that is identical or similar to the Domain Name (paragraph 2.1.1 of the Policy) and second, that the Domain Name is an Abusive Registration in the hands of the Respondent (paragraph 2.1.2 of the Policy). The Complainant must prove to the Expert that both elements are present on the balance of probabilities (paragraph 2.2 of the Policy).

6.2 Abusive Registration is defined in paragraph 1 of the Policy as follows:

"Abusive 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. is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights."

Complainant's Rights

6.3 The Complainant does not rely upon any registered trade mark, but claims to have acquired goodwill and enforceable rights in the term "Especial".

6.4 Section 2.2 of the Experts Overview records that where the right relied upon is an unregistered trade mark:

> *"evidence needs to be put before the Expert to demonstrate the existence of the right. This will ordinarily include evidence to show that (a) the Complainant has used the name or mark in question for a not insignificant period and to a not insignificant degree (e.g. by way of sales figures, company accounts etc) and (b) the name or mark in question is recognised by the purchasing trade/public as indicating the goods or services of the Complainant (e.g. by way of advertisements and advertising and promotional expenditure, correspondence/orders/invoices from third parties and third party editorial matter such as press cuttings and search engine results)."*

6.5 Although the Complaint essentially contends it has provided evidence of this sort, it has not done so. That is, to say the least, unfortunate. Were this issue determinative, it is likely that I would have issued a Procedural Order giving the Complainant an opportunity to rectify this omission.

6.6 One of the reasons why is that online records held at Companies House for the Complainant suggest that the business of the Complainant is not an inconsiderable one. For example, in accounts filed for the year ended 31 May 2017, the business is said to have 15 employees, stocks in excess of £146,000 and debtors in excess of £550,000. Whether this is a "multi-million-pound" business, as claimed, is not clear, but it seems likely that the Complainant would be able to show, at least to some degree, unregistered trade mark rights in the term "Especial".

6.7 However, given the findings below in relation to abusive registration it is not necessary to consider this issue further.

Abusive Registration

6.8 The non-exhaustive list of factors that might evidence an abusive registration, for the most part, provides examples where a respondent is targeting the

complainant's business and rights. This is reflected in section 2.4 of the Expert Overview, which records that in Appeal decision DRS 04331 (verbatim.co.uk) it was held that, to succeed under the Policy, a respondent must be shown to have had knowledge of the complainant and/or its rights at the relevant time (subject to a possible caveat in cases of automated registration that is not relevant in this case).

6.9 The Complainant has not advanced any case to the effect that the Domain Names were registered with the Complainant in mind. Further, it does not actively dispute that the Domain Names were acquired by the Respondent as a result of drop catching, and that they were chosen to be registered because (i) the word "especial" had a generic meaning in both English and a number of other languages, and also (ii) they were inherently commercially attractive since they could be read as the prefix "e", in common use in relation to internet activity, and the word "special". Although "especial" is a somewhat archaic and unusual English word, the Respondent's explanation in this respect is a plausible one.

6.10 Further, there is no evidence, nor is it even alleged, that the scope of the Complainant's business in 2017, when the Domain Names were registered, was such that the Respondent must have been aware of the Complainant and its use of the "Especial" term when the registrations took place.

6.11 Similarly, the Complainant has advanced no evidence, nor has it alleged, that the Domain Names have been used to abusively target the Complainant since registration. They have merely been offered for sale. However, the trading in generic or descriptive domain names, where the registrant seeks merely to take advantage of the generic or descriptive nature of those domain names, is not unlawful or contrary to the DRS Policy. That such trading is not per se abusive is expressly recorded in paragraph 8.4 of the Policy.

6.12 The Complainant relies upon the price at which the Domain Names have been offered for sale, which is characterised as "substantial". The Respondent relies upon a passage in DRS Appeal No. 03078 (<ghd.co.uk>) to the effect that it can charge what it wants.

6.13 In my view, the Respondent seeks to read too much into the words used in that Appeal decision. If a domain name has been legitimately registered and held without the intention to take advantage of the rights of a third party, then the registrant can indeed sell it for the price that it wants. However, frequently the price at which a domain name is offered may of itself be evidence of the reasons why the domain was registered and held, particularly if the price sought only makes sense by reference to the existence of those third-party rights.

6.14 Nevertheless, this is not a case where the price sought for the Domain Names (i.e. £4,388 and £2,188) only makes sense because of the Complainant's claimed rights in the relevant terms. These offers for sale do not amount to evidence of abusive use.

6.15 Indeed, the Complainant's main contention is that the Domain Names are abusive because it is using the "Especial" term in the UK and has been prevented from acquiring and using the Domain Names. However, in circumstances where the words in a domain name have a generic meaning that might legitimately be used by other businesses, that of itself is not enough.

6.16 Finally, although the Complainant has alleged that the Domain Names have led to "customer confusion, misdirected enquiries and reputational detriment", there is simply no evidence of this being the case. This is notwithstanding that section 3.4 of the Expert's Overview v.3 states as follows:

> "*If one is contending that there is evidence available to demonstrate that actual confusion has taken place, the Expert will expect to see that evidence. If the contention is that confusion is likely to occur, an explanation should be given as to how that confusion is likely to arise.*"

6.17 Further, I accept that there is some force in the Respondent's contention that the fact that the Complainant has left it nearly 10 years to bring these proceedings or otherwise complain about these Domain Names is not consistent with the Complainant's contention that their registration has caused significant commercial difficulty.

6.18 In the circumstances, I find that the Complainant has failed to demonstrate that the Domain Names in the hands of the Respondent are abusive registrations.

Reverse Domain Name Hijacking

6.19 The Respondent has requested a finding of Reverse Domain Name Hijacking ("RDNH"). RDNH is defined in paragraph 1 of the DRS Policy as:

> "*using the DRS in bad faith in an attempt to deprive a Respondent of a Domain Name*"

6.20 What constitutes RDNH was recently considered by an Appeal Panel in DRS Appeal 28377 (<quickquid.uk>), which stated as follows:

> *"The Policy definition requires "bad faith", which imports a subjective element of improper motive. The question is whether the Complainant prosecuted this Complaint in bad faith with the purpose of depriving the Respondent of a legitimately held domain name. Bad faith in the opinion of the Panel requires a deliberate attempt to use the DRS process as a tool to bully or intimidate a legitimate domain name holder, or a knowingly baseless complaint.*
>
> *A finding of RDNH may be warranted where a complainant has brought a complaint in bad faith, such as to harass the respondent or to secure the transfer of a domain name using the Policy without a plausible legal or factual foundation, and where the complainant knew or should have known that its case had no realistic prospect of success."*

6.21 There is perhaps a tension between the language of the first of these paragraphs, which suggests that the test is entirely subjective, and the second, where the use of the words "should have known" seems to encompass situations where a complainant genuinely but wrongly thought that it was entitled to bring proceedings, but should have known the case was bound to fail.

6.22 However, I am satisfied that an RDNH finding can be reached in cases where a complainant genuinely thought that it was entitled to bring proceedings, if it ought to have known it could not succeed under the Policy under any fair interpretation of facts reasonably available and taking into account both the text of the Policy and guidance to be found in the Expert Overview. The reasons for this are as follows:

(i) Whilst the majority of previous DRS cases in which RDNH has been held have involved some form of additional wrongdoing on the part of the Complainant, it is nevertheless an approach that appears to be at least consistent with other previous DRS cases in which RDNH has been found. A recent example of such a case is DRS28147 (<secretcellar.co.uk>) where the expert dismissed the suggestion that a finding of RDNH was not justified where the failure in the complainant was due to a:

> *"a failure to follow the ample guidance provided on the Nominet website rather than malice"*

and went on to state that:

> "*experts are entitled to assume that parties to proceedings under the Policy have studied the guidance materials made available by Nominet on its website. To have read those materials and failed to follow them with the appropriate evidence shows that at the very least the Complainant has shown a reckless disregard for the merits of its case*."[1]

(ii) It is an approach that puts complainants and respondents on an equal footing. A respondent cannot avoid a finding of abusive registration merely on the basis that it wrongly thought that it was entitled to register and hold a domain name.

(iii) It is an approach that is consistent with what constitutes RDNH in proceedings under the Uniform Domain Name Dispute Resolution Policy (the "UDRP"), where RDNH is defined in virtually identical terms. (As to how RDNH is understood in UDRP cases, see section

[1] On appeal the finding of RDNH was overturned, and the appeal panel defined RDNH by reference to a "subjective element of improper motive". However, significantly for present purposes, it also concluded that that the complainant had not acted "in flagrant disregard of clear principles under the Policy". In other words, according to the appeal panel this was not a case where the complainant ought to have known that its complaint would fail.

4.16 of the WIPO Overview 3.1). There are plenty of cases under the DRS which point out that there are differences between the DRS and the UDRP and that reference to UDRP precedent is generally unhelpful, and generally I would fully agree with that observation. Nevertheless, the DRS was strongly influenced by the UDRP, and I see no good reason why the approach under the Policy and under the UDRP in relation to this particular issue should diverge.

6.23 A common feature of many RDNH cases is that the complainant has failed to demonstrate that it held relevant rights as at the date the disputed domain name was registered and that there has been no change in usage of the domain name thereafter.

6.24 The Complainant failed to demonstrate that it owned relevant rights at the time of registration. Nevertheless, for the reason given earlier in this decision, I am prepared to assume that the Complainant could have shown these rights. Accordingly, this alone does not justify a finding of RDNH, although it is perhaps of itself indicative of a failure properly to consider the DRS and the content of the Expert Overview when the Complaint was prepared.

6.25 However, there is no good explanation for the Complainant's failure properly to consider and address whether it could satisfy the test of abusive registration and in particular whether it could demonstrate that the Domain Names were acquired to target the Complainant. Similarly, there is no good explanation for the Complainant's failure to bring forward evidence to support its claims of confusion.

6.26 Further, even if the Complainant's conduct can be excused by the fact that the Respondent did not provide a description of the circumstances surrounding its acquisition of the Domain Names until its Reply, at that point the Complainant would have known that, in the absence of evidence to the contrary, these proceedings were bound to fail, and yet rather than withdraw these proceedings it persisted in its position in its Reply (as to which see, for example, DRS26299 (<bgc.uk>) and c.f. DRS16050 (<mascot.co.uk>)).

6.27 There is also the issue of the email correspondence between the parties prior to commencement of DRS proceedings as to the possible purchase of the Domain Names. There are a number of cases where RDNH has been found because proceedings were commenced by a complainant in frustration at not being able to acquire the domain name at a price it considered reasonable, particularly if this is done in the hope that by doing so the respondent would be coerced into offering a better price.

6.28 In the relevant correspondence the Complainant essentially took a position similar to that which it has adopted in these proceedings: that it was essentially entitled to the Domain Names simply because they corresponded to its "registered company name and long-established trading identity". It then subsequently threatened DRS proceedings because the Respondent refused to engage in negotiations over the price. In short, the Complainant was attempting to use the DRS process to coerce the Respondent into agreeing to

sell the Domain Names at a lower price in circumstances where it should have known that it had no basis to do so.

6.29 Accordingly, I make a finding of RDNH.

7. Decision

7.1 I find that the Complainant has not shown that the Domain Names, in the hands of the Respondent, are abusive registrations. Accordingly, I determine that the Complaint be rejected.

7.2 I further make a finding of reverse domain name hijacking.

Signed …………………….. Dated 16 June 2026
Matthew Harris