

## **.nz Dispute Resolution Service**

**DRS References: 619 and 623**

**(1) DRS619: Golden Homes Ltd v Steel Timber**

**(2) DRS623: Golden Homes Holdings Ltd v Steel Timber**

Key words

*Domain names* – goldenhomes.net.nz and zog.net.nz

*Identical or similar trade mark or name* – registered marks – identical

*Rights* – no legitimate or fair use

*Unfair registration* – unfairly disrupting the business of the Complainant – likely to confuse, mislead or deceive – unfair advantage of or unfairly detrimental to Complainants' Rights – pattern of registration

*Procedure* – remedies – transfer

### **1. Parties**

#### **Complainants:**

- (1) Golden Homes Limited  
245 Beach Road  
Matua  
Tauranga 3110  
New Zealand
- (2) Golden Homes Holdings Limited  
245 Beach Road  
Matua  
Tauranga 3110  
New Zealand

#### **Respondent:**

Steel Timber  
PO Box 6666  
Auckland 1001  
New Zealand

### **2. Domain Names**

goldenhomes.net.nz and zog.net.nz

### **3. Two Complaints**

3.1 This decision considers and determines two Complaints.

- 3.2 The first Complaint is about the goldenhomes.net.nz Domain Name. The parties to that Complaint are Golden Homes Limited and Steel Timber.
- 3.3 The second Complaint is about the zog.net.nz Domain Name. The parties to that Complaint are Golden Homes Holdings Limited and Steel Timber.
- 3.4 Paragraph B2.4 of the InternetNZ Dispute Resolution Service Policy (“the Policy”)<sup>1</sup> provides that *“The Complaint may relate to more than one Domain Name, provided that those Domain Names are registered in the name of the Respondent”*. DRS459<sup>2</sup> is an example of a case in which one Complaint was made in relation to more than one Domain Name. In that case, the Complaint related to two Domain Names, duracell.co.nz and braun.co.nz. The Gillette Company was the Complainant in respect of duracell.co.nz. Braun GmbH was the Complainant in respect of braun.co.nz. The two Domain Names were registered in the name of the Respondent in that case, Houses.co.nz Ltd.
- 3.5 The Expert in this case was the Expert in DRS459. In the course of the decision in that case, notwithstanding the fact that the Complaint complied with paragraph B2.4 of the Policy, the Expert made the following observations:
- “3.8 Although the Complainants are part of Procter & Gamble, they are separate entities, located in different parts of the world, asserting different rights in respect of different trade marks, and their Complaints are in respect of different Domain Names. In essence, the Complainants’ Complaints are separate Complaints. To ensure the proper consideration and determination of such cases, it may be desirable for complainants or their representatives to submit a separate Complaint for each domain name dispute. Any commonality in the factual background can be addressed by referring the separate Complaints to the same expert for decision. That course will also avoid the prospect of inconsistent decisions on the separate Complaints.
- 3.9 As the Expert in this case, it is essential that I consider the Complaint relating to duracell.co.nz separately from the Complaint relating to braun.co.nz and, in particular, imperative in considering and determining each Complaint that I consider only matters which are relevant to, and admissible in relation to, that Complaint. Accordingly, the Expert considers first the Complaint relating to duracell.co.nz, and secondly the Complaint relating to braun.co.nz. The parties to the Duracell Complaint are The Gillette Company and the Respondent. The parties to the Braun Complaint are Braun GmbH and the Respondent.”
- 3.6 In DRS459, The Gillette Company and Braun GmbH were part of the Procter & Gamble Company group of companies. In this case, there are clear links between Golden Homes Limited (907246) which was incorporated on 11 May 1998 and Golden Homes Holdings Limited (906906) which was incorporated on 27 May 1998. The companies have the same registered office and

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<sup>1</sup> Words beginning with upper case letters in this decision include terms defined in paragraph 3 of the Policy.

<sup>2</sup> The Gillette Company v Houses.co.nz Ltd and Braun GmbH v Houses.co.nz Ltd.

address for service. The companies have the same directors and shareholders and shareholding structure. In each case, all shares in the company are held equally by two trusts. Golden Homes Limited was incorporated as Golden Homes (1998) Limited and changed its name to Golden Homes Limited on 15 June 2009.

- 3.7 In considering and determining the Complaints in this case, the Expert adopts and applies the observations which he made in paragraphs 3.8 and 3.9 of the decision in DRS459. It is essential that the Expert considers the Complaint relating to goldenhomes.net.nz separately from the Complaint relating to zog.net.nz and, in particular, imperative in considering and determining each Complaint that the Expert considers only matters which are relevant to, and admissible in relation to, that Complaint. Accordingly, the Expert considers first the Complaint about goldenhomes.net.nz, and secondly the Complaint about zog.net.nz.

## **goldenhomes.net.nz**

### **4. Procedural history**

- 4.1 The Complaint was lodged by the Complainant's representative (John Shingleton of Malley & Co at Christchurch) on 15 December 2010. The domain was locked on 20 December 2010 preventing any changes to the record until the conclusion of this case. The .nz Domain Name Commission ("DNC")<sup>3</sup> notified the Respondent of the validated Complaint by letter dated 20 December 2010.
- 4.2 The letter from the DNC to the Respondent dated 20 December 2010 attached a copy of the Complaint and a copy of the Policy and Procedure. The letter advised the Respondent as follows:

**"In accordance with the Procedure, you have 15 working days, ie until Tuesday, January 25, 2011 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."**

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<sup>3</sup> Domain Name Commission Limited is a company wholly-owned by Internet NZ (Internet NZ Inc) responsible for the day-to-day oversight of the .nz domain name registration and management system.

- 4.3 The Respondent did not submit a Response to the Complaint. By letter dated 31 January 2011, 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 14 February 2011. The Complainant paid the appropriate fees by that date.
- 4.4 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 relation to the Complaint 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. Mr Stapleton was appointed to act as the independent expert in this case (“the Expert”) pursuant to paragraph 9 of the Policy.

## **5. Factual background**

- 5.1 The Complainant is a well-known building and construction company. The Complainant has been building single level and multi level solid exterior homes for many years.
- 5.2 Golden Homes Holdings Limited is the proprietor of, and has licensed the Complainant to use, the following registered trade marks:
- (a) trade mark number 278268 for the words Golden Homes is registered in class 4/42 for the design, supply and sale of houses, building components (including building frameworks), building materials, and fittings and fixtures for houses and property, and other matters. The trade mark was filed on 13 June 1997, registered on 15 May 1998 and is renewed until 13 June 2014;
  - (b) trade mark number 278269 for the words Golden Homes is registered in class 4/37 for building construction, building construction supervision, building insulating, maintenance and repair. The trade mark was filed on 13 June 1997, registered on 15 May 1998 and is renewed until 13 June 2014;
  - (c) trade mark number 278270 for the words Golden Homes is registered in class 4/19 for houses, transportable buildings, building materials (not of metal) and frame work for buildings. The trade mark was filed on 13 June 1997, registered on 15 May 1998 and is renewed until 13 June 2014.
- 5.3 On 29 September 1998, about four months after it was incorporated, the Complainant registered the goldenhomes.co.nz Domain Name which the Complainant uses for its website ([www.goldenhomes.co.nz](http://www.goldenhomes.co.nz)).
- 5.4 The search details on the New Zealand Domain Name Registry Limited website record that the goldenhomes.net.nz Domain Name (“the Domain Name”) was registered at 22:47 on 13 September 2010. The search details record the registrant, admin and technical contact names as the Respondent

and the registrant, admin and technical contact emails as timbervssteel@gmail.com.

- 5.5 The search details on the New Zealand Domain Name Registry Limited website record that the zog.net.nz Domain Name was registered at 22:41 on 13 September 2010, six minutes before the Domain Name was registered. As with the Domain Name, the search details for the zog.net.nz Domain Name record the registrant, admin and technical contact names as the Respondent and the registrant, admin and technical contact emails as timbervssteel@gmail.com.
- 5.6 The Respondent is using the Domain Name to compare timber framing and steel framing (www.goldenhomes.net.nz). As the Complainant uses only steel framing, and not timber framing, for building homes, the Respondent's use of the Domain Name is confusing the Complainant's customers and suppliers.
- 5.7 The Complainant invited the Expert to view a number of websites. The Expert viewed the websites noted in paragraphs 5.3 and 5.6 of this decision, but did not find it necessary to view the other websites in considering and determining the Complaint.

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

- 6.1 The Complainant contends that the registration of the Domain Name is an Unfair Registration as follows:
- (a) the Respondent registered the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant;
  - (b) 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.

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

- 7.1 As noted, the Respondent did not submit a response to the Complaint.

## **8. Relevant provisions of Policy and elements of Complaint**

- 8.1 The determination of the Complaint 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

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;

5.1.3 The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the Registrant of domain names (under .nz or otherwise) which correspond to well-known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;

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8.2 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).

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

9.1 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 and 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.

9.2 In view of the facts set out in part 5 and elsewhere in 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:

- (a) Rights in respect of the words Golden Homes in trade marks 278268, 278269 and 278270 as licensee from Golden Homes Holdings Limited as proprietor of those marks;
- (b) statutory Rights in relation to the Golden Homes name such as under s 22 of the Companies Act 1993 and for misleading or deceptive conduct under the Fair Trading Act 1986;
- (c) common law Rights in relation to the Golden Homes name capable of protection by proceedings for passing off.

9.3 The Expert is satisfied on the balance of probabilities that the Complainant's Rights set out in paragraph 9.2 of this decision were well-established and had existed for many years before the registration of the Domain Name on 13 September 2010.

9.4 In view of the facts set out in part 5 and elsewhere in this decision, the Expert is satisfied on the balance of probabilities that:

- (a) the Golden Homes name is not a name or term which is wholly descriptive of the Complainant's business;
- (b) in any event, the Golden Homes 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. The Golden Homes name is distinctive of the Complainant's business.

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

10.1 It is well-established that Rights in a name cover all conceivable forms<sup>4</sup> in which the name might be used.

10.2 The Expert is satisfied on the balance of probabilities that the facts set out in part 5 and elsewhere in this decision demonstrate that the Golden Homes name in all its conceivable forms is identical or similar to the Domain Name.

## **11. Unfair Registration**

11.1 The Expert is satisfied on the balance of probabilities that, in all the circumstances, the Domain Name is an Unfair Registration because the facts set out in part 5 and elsewhere in this decision demonstrate that:

- (a) there are circumstances indicating that the Respondent registered the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant (para 5.1.1(c)); and/or
- (b) there are 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 (para 5.1.2); and/or
- (c) the Domain Name was registered or otherwise acquired by the Respondent 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 which were well-established and had existed for many years at the date of registration on 13 September 2010 (para 3); and/or
- (d) the Domain Name has been, or is likely to be, used by the Respondent in a manner which took or will take unfair advantage of, or was or will be unfairly detrimental to, the Complainant's Rights which were well-

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<sup>4</sup> Including upper and lower cases and singular and plural.



established and had existed for many years at the date of registration on 13 September 2010 (para 3); and/or

- (e) there is no evidence before the Expert that demonstrates that the Domain Name is not an Unfair Registration as set out in paragraphs 6.1.1 and 6.1.2 of the Policy.

11.2 There is no evidence before the Expert that the Respondent has any apparent rights in the Golden Homes name and trade marks. In the circumstances, especially given the timing of the registration of the Domain Name at 22:47 on 13 September 2010 and the zog.net.nz Domain Name six minutes earlier at 22:41 on 13 September 2010, the Expert draws the Respondent's attention to paragraph 5.1.3 of the Policy reproduced in paragraph 8.1 of this decision.

## 12. Decision

12.1 In view of the findings made in this decision, the Expert directs that the Domain Name goldenhomes.net.nz be transferred to the Complainant.

**zog.net.nz**

## 13. Procedural history

13.1 The Complaint was lodged by the Complainant's representative (John Shingleton of Malley & Co at Christchurch) on 15 December 2010. The domain was locked on 21 December 2010 preventing any changes to the record until the conclusion of this case. The DNC notified the Respondent of the validated Complaint by letter dated 21 December 2010.

13.2 The letter from the DNC to the Respondent dated 21 December 2010 attached a copy of the Complaint and a copy of the Policy and Procedure. The letter advised the Respondent as follows:

"In accordance with the Procedure, you have 15 working days, **ie until Thursday, January 27, 2011** 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."**

- 13.3 The Respondent did not submit a Response to the Complaint. By letter dated 1 February 2011, 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 15 February 2011. The Complainant paid the appropriate fees by that date.
- 13.4 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 relation to the Complaint 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. Mr Stapleton was appointed to act as the independent expert in this case (“the Expert”) pursuant to paragraph 9 of the Policy.

#### **14. Factual background**

- 14.1 Golden Homes Limited is a well-known building and construction company which has been building single level and multi level solid exterior homes for many years. Golden Homes Limited uses only steel framing, and not timber framing, for building homes. The steel framing is Zog steel framing which is supplied by the Complainant to Golden Homes Limited.
- 14.2 The Complainant is the proprietor of the following registered trade marks:
- (a) trade mark number 752131 for the device “ZOg steel frames of the future today” is registered in class 8/6 for metal building materials, metal hardware, structural material including steel frames, and trusses, supports and struts and in class 8/37 for building construction services and information, advisory and consultancy services in relation thereto. The trade mark was filed on 27 July 2006, registered on 1 February 2007 and is renewed until 27 July 2016;
  - (b) trade mark number 752132 for the word Zog is also registered in classes 8/6 and 8/37 as specified above. The trade mark was filed on 27 July 2006, registered on 1 February 2007 and is renewed until 27 July 2016.
- 14.3 On 31 July 2006, four days after the Complainant's trade marks specified in paragraph 14.2 of this decision were filed, the zog.co.nz Domain Name was registered. The search details on the New Zealand Domain Name Registry Limited website record the registrant and admin contact names as NZ Building Supplies Limited. The search details on the New Zealand Companies Office website record that the directors of NZ Building Supplies Limited are the same persons who are the directors of Golden Homes Limited and the Complainant, namely Gillian Elza Helms and Lennard Trevor Helms, both of 245 Beach Road, Matua, Tauranga 3110, New Zealand.
- 14.4 The search details on the New Zealand Domain Name Registry Limited website record that the zog.net.nz Domain Name (“the Domain Name”) was registered at 22:41 on 13 September 2010. The search details record the

registrant, admin and technical contact names as the Respondent and the registrant, admin and technical contact emails as [timbervssteel@gmail.com](mailto:timbervssteel@gmail.com).

- 14.5 Golden Homes Limited, the Complainant and NZ Building Supplies Limited are clearly associated or related entities. The websites at [www.goldenhomes.co.nz](http://www.goldenhomes.co.nz) (Golden Homes Limited) and [www.zog.co.nz](http://www.zog.co.nz) (NZ Building Supplies Limited) provide information about Zog steel frame technology in identical terms as follows (on each website, the text records that the word Zog is a registered trade mark):

“More people everyday are choosing to build their homes with a Zog steel house frame, gaining the benefits of no harsh chemicals to protect it’s (sic) future.

A Zog steel frame home will not twist, shrink or warp, significantly reducing the chance of unsightly plaster cracking, saggy ceilings, bowed walls and jamming doors or windows.

Zog steel frames and trusses will not burn and are electrically safe, largely reducing the flammable materials in your home.”

- 14.6 The Respondent is using the Domain Name to compare timber framing and steel framing ([www.zog.net.nz](http://www.zog.net.nz)).<sup>5</sup> As the Complainant supplies steel framing, and not timber framing, to Golden Homes Limited for building homes, the Complainant contends that the Respondent’s use of the Domain Name is an Unfair Registration.
- 14.7 The Complainant invited the Expert to view a number of websites. The Expert viewed the websites noted in paragraphs 14.5 and 14.6 of this decision, but did not find it necessary to view the other websites in considering and determining the Complaint.

## **15. The Complainant’s contentions**

- 15.1 The Complainant contends that the registration of the Domain Name is an Unfair Registration as follows:
- (a) the Respondent registered the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant;
  - (b) 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.

## **16. The Respondent’s contentions**

- 16.1 As noted, the Respondent did not submit a response to the Complaint.

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<sup>5</sup> The contents of the timber and steel comparison charts on the websites at [www.goldenhomes.net.nz](http://www.goldenhomes.net.nz) and [www.zog.net.nz](http://www.zog.net.nz) are identical.

## **17. Relevant provisions of Policy and elements of Complaint**

- 17.1 The determination of the Complaint is governed by the Policy. The relevant provisions of the Policy in this case are set out in paragraph 8.1 of this decision.
- 17.2 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).

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

- 18.1 The well-established principles are set out in paragraph 9.1 of this decision.
- 18.2 In view of the facts set out in part 14 and elsewhere in 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:
- (a) Rights in respect of the device “ZOg steel frames of the future today” in trade mark 752131 and the word Zog in trade mark 752132 as proprietor of those marks;
  - (b) statutory Rights in relation to the Zog name such as under s 22 of the Companies Act 1993 and for misleading or deceptive conduct under the Fair Trading Act 1986;
  - (c) common law Rights in relation to the Zog name capable of protection by proceedings for passing off.
- 18.3 The Expert is satisfied on the balance of probabilities that the Complainant’s Rights set out in paragraph 18.2 of this decision were well-established and had existed for some years before the registration of the Domain Name on 13 September 2010.
- 18.4 In view of the facts set out in part 14 and elsewhere in this decision, the Expert is satisfied on the balance of probabilities that the Zog name is not a name or term which is wholly descriptive of the Complainant’s business.

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

19.1 It is well-established that Rights in a name cover all conceivable forms<sup>6</sup> in which the name might be used.

19.2 The Expert is satisfied on the balance of probabilities that the facts set out in part 14 and elsewhere in this decision demonstrate that the Zog name in all its conceivable forms is identical or similar to the Domain Name.

## **20. Unfair Registration**

20.1 The Expert is satisfied on the balance of probabilities that, in all the circumstances, the Domain Name is an Unfair Registration because the facts set out in part 14 and elsewhere in this decision demonstrate that:

(a) there are circumstances indicating that the Respondent registered the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant (para 5.1.1(c)); and/or

(b) there are 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 (para 5.1.2); and/or

(c) the Domain Name was registered or otherwise acquired by the Respondent 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 which were well-established and had existed for some years at the date of registration on 13 September 2010 (para 3); and/or

(d) the Domain Name has been, or is likely to be, used by the Respondent in a manner which took or will take unfair advantage of, or was or will be unfairly detrimental to, the Complainant's Rights which were well-established and had existed for some years at the date of registration on 13 September 2010 (para 3); and/or

(e) there is no evidence before the Expert that demonstrates that the Domain Name is not an Unfair Registration as set out in paragraphs 6.1.1 and 6.1.2 of the Policy.

20.2 There is no evidence before the Expert that the Respondent has any apparent rights in the Zog name and trade marks. In the circumstances, especially given the timing of the registration of the Domain Name at 22:41 on 13 September 2010 and the goldenhomes.net.nz Domain Name six minutes later at 22:47 on 13 September 2010, the Expert draws the Respondent's attention to paragraph 5.1.3 of the Policy reproduced in paragraph 8.1 of this decision.

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<sup>6</sup> Including upper and lower cases and singular and plural.

**21. Decision**

21.1 In view of the findings made in this decision, the Expert directs that the Domain Name zog.net.nz be transferred to the Complainant.

**Place of decision** Wellington

**Date** 1 March 2011

**Expert Name** Mr Terence Stapleton

**Signature**

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