

## **.nz Dispute Resolution Service**

**DRS Reference: 701**

### **The Centrepiece Limited v Ottewill Group Limited**

Key words -

Registered mark - unregistered mark - similar - generic – descriptive - legitimate non-commercial or fair use – generic – descriptive – fair use – likely to confuse, mislead or deceive - pattern of registration –unfairly disrupting the business of the complainant – blocking registration

#### **1. Parties**

Complainant:

The Centre Piece Limited  
17/46 Ellice Road, Glenfield  
Auckland  
New Zealand  
Represented by: Mr Richard Stone

Respondent:

Ottewill Group Limited  
PO Box 106-439  
Auckland City Postshop 1143  
Auckland  
NEW ZEALAND  
Represented by:

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

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

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

- 3.1 The Complaint was lodged on 22/08/2011 and Domain Name Commission (DNC), notified the Respondent of the validated Complaint on 25/08/2011. The domain was locked on 23/08/2011, preventing any changes to the record until the conclusion of these proceedings.
- 3.2 The Respondent filed a Response to the Complaint on 13/09/2011 and the DNC so informed the Complainant on 14/09/2011. The Complainant filed a Reply to the Response on 29/09/2011. The DNC informed the parties on 26/10/2011 that informal mediation had failed to achieve a resolution to the dispute.

- 3.3 The Complainant paid Domain Name Commission Limited the appropriate fee on 27/10/2011 for a decision of an Expert, pursuant to Paragraph 9 of the .nz Dispute Resolution Service Policy (“the Policy”).
- 3.4 Ms Sheana Wheeldon, the undersigned, (“the Expert”) confirmed to the DNC on 3/11/2011 that she knew of no reason why she could not properly accept the invitation to act as expert in this case and that she knew of no matters which ought to be drawn to the attention of the parties, which might appear to call into question her independence and/or impartiality.

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

- 4.1 The factual background is taken from information submitted by the Complainant and the Respondent.

#### ***The Complainant***

- 4.2 The Complainant is a company by the name of The Centre Piece Limited. It is a decorative hire company that offers “centrepiece design including floral, feather, traditional and modern styled table centrepieces for large and small corporate and wedding events”, together with delivery, set up and pack down services. It was incorporated on 28 February 2005.
- 4.3 According to the Complaint, the Complainant registered the domain name centrepiece.co.nz in November 2004 and “was started by Tiffany Cosmann in 2004”, so presumably the business had been started before the Complainant was incorporated.
- 4.4 The Complainant says its business has progressively expanded and it enjoys a significant reputation in the hire and event industry throughout New Zealand, employing three full-time employees. It estimates that it is the largest supplier of decorative tableware in New Zealand and says it has defied global economic pressures to grow in 2009, 2010 and 2011.
- 4.5 The Complainant says that its website has been an integral part of its business since 2005, has been displayed at [www.centrepiece.co.nz](http://www.centrepiece.co.nz) continually since then, and was redeveloped in 2010. The Complainant says the new website incorporated its trade mark. In April 2009 its website had an average of 67 visits per day, and by June 2011 its redeveloped website attracted 108 unique visits per day.
- 4.6 No information has been provided by way of turnover or sales figures, that would have indicated the scale and geographical penetration of the Complainant’s business. Some limited information was provided on its advertising and promotional expenditure, which the Complainant states was \$11,147 in the 2011 financial year and \$9,063 in the 2012 financial year. No figures were provided for earlier years.

- 4.7 The Complainant has provided a list of its advertising which it says has increased steadily as its budget has allowed, since promotional expenditure began in 2005. Most of this advertising activity appears to have taken place since 2009. It largely appears to comprise magazine advertisements, Bridal Shows and website directory listings. No examples have been provided of any advertisements or listings, nor any images showing how the Complainant presented itself at Bridal Shows or other events.
- 4.8 The Complainant says that it uses [www.centrepiece.co.nz](http://www.centrepiece.co.nz) extensively on items such as packaging, staff clothing, vehicles and signage. No examples or images showing any of this use were provided.
- 4.9 The Complainant invited the Expert to view a promotional video it produced which it said illustrates the extensive use of “centrepiece” branding, and the Expert did so. The description of the video is “Behind the scenes at Centrepiece Hire”.
- 4.10 The Complainant owns two trade mark registrations, nos. 832002 and 835432. Each of these comprises the word “centrepiece” in a relatively simple font, superimposed over a relatively large stylised letter “C” which extends above and below the word “centrepiece”, as shown below.



- 4.11 The Respondent has made its own investigations into the history of the Complainant’s website, using the Internet Archive website Way Back Machine. The Respondent provided printouts of what appear to be the home page of the Complainant’s website [centrepiece.co.nz](http://centrepiece.co.nz) from each of the years 2005 to 2011 inclusive. In all of these other than 2011 there are references to “The Centre Piece”.
- 4.12 In the years 2007-2010 inclusive the stylised letter “C” that forms part of the Complainant’s registered trade mark appears behind the words “The Centre Piece”. In 2011, presumably after the website redevelopment the Complainant describes, the word “centrepiece” appears in the same font as it does in the Complainant’s trade mark registrations (though without the stylised letter “C” behind it) and the business is referred to as “Centrepiece”.

### ***The Respondent and the Domain Name***

- 4.13 The Respondent was incorporated on 11 June 1991 and, amongst other things, runs a party hire business under the trading name “Helium Balloons & Event Hire”. It says that it has a 20 year history in providing “decorative centrepieces” for birthdays, weddings and events.

- 4.14 It too has enjoyed growth over the years. It has not provided any information as to its turnover but says that it spent substantially more than \$12,000 yearly with one advertising source (being the Yellow Pages) for numerous years. The Yellow Pages advertising appears to have ceased after 2005. The Respondent says that it attracted 5,724 unique visitors from just one of its party hire websites in the month of June 2011.
- 4.15 The Respondent registered the Domain Name on 4 November 2008. It says that it had for some time been “planning to provide a dedicated website for its table centrepieces which were already displayed on partyhire.co.nz”. The first crawl date for the Domain Name was 7 January 2009. The Respondent holds other domain names including candybuffet.co.nz, heliumballoons.co.nz and partyhire.co.nz.
- 4.16 The Respondent has also supplied positive character references, including letters from a lawyer who has acted for its directors, and from its accountants.

***Pre-commencement communication between the Parties***

- 4.17 The Complainant, through its solicitor, sent the Respondent a letter dated 7 July 2011 alleging that the Complainant had traded as “The Centrepiece” and “CentrePiece” throughout New Zealand since early 2005 and during that time had developed and enjoys significant and valuable goodwill in its “business name”. The letter alleged that the insertion of the letter “s” in the Domain Name, to pluralise the Complainant’s Domain Name centrepiece.co.nz was “a deliberate attempt by you to unlawfully pass off the Infringing Domain Names or your website as having some association with [the Complainant], and thus trade off [the Complainant’s] established goodwill.”
- 4.18 It was also alleged that the Respondent’s use of the Domain Name and its website amounted to breaches of the Fair Trading Act and trade mark infringement. Various undertakings were sought including a transfer of the Domain Name to the Complainant, full contact details in writing of all parties to whom goods or services had been provided since 4 November 2008, and an undertaking not to use “the trademark ‘centrepiece’ in any way whatsoever”.
- 4.19 The Respondent replied on 15 July 2011 denying the Complainant’s allegations. There was then some further correspondence which essentially reiterated the parties’ positions.

## Parties' contentions

### 5.1 Complainant

#### 5.1.1 The Complainant contends that:

- (a) The Complainant's use of [www.centrepiece.co.nz](http://www.centrepiece.co.nz) and "centrepiece" since 2005 demonstrates that that brand has become distinctive of its business.
- (b) The Complainant has Rights in its brand, which is identical or similar to the Domain Name.
- (c) The Respondent registered the Domain Name in bad faith, as a blocking registration against a name or mark in which the Complainant has Rights, and for the purpose of unfairly disrupting the business of the Complainant.
- (d) The Complainant's website [www.centrepiece.co.nz](http://www.centrepiece.co.nz) has featured prominently in internet search results since early 2005, this was attractive to the Respondent, so the Respondent registered the Domain Name and sought to use it in a way which was likely to confuse, mislead or deceive people into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant.
- (e) The Respondent does not use "centrepiece" as a brand exclusively to identify its business and has no goodwill in the Domain Name.
- (f) The Respondent's registration and use of the Domain Name was a deliberate attempt to divert search results away from the Complainant, steal its internet traffic and damage its valuable reputation.
- (g) The Respondent is engaged in a pattern of registrations where it is the registrant of domain names which correspond to well-known names or trade marks in [which] it has no apparent rights, and the Domain Name is part of that pattern.

### 5.2 Respondent

#### 5.2.1 The Respondent contends that:

- (a) It already has a successful business which has been in operation for 20 years and enjoys 1<sup>st</sup> page rankings for most of its websites.

- (b) It is not trading in domain names, having sold less than six domain names since 2005-2011 arising from a part-sale of its business in 2005, and all its domain names relate to party hire or property (it also operates a property business).
- (c) When it registered the Domain Name it had no knowledge of the Complainant, its website, its business name or any trade marks. It believed it was registering a descriptive word in which no party could claim exclusive rights. It considers the description "centrepieces" is an apt descriptor of the products it offers.
- (d) Its corporate customers use its website like a catalogue to help select centrepieces for their weddings or events, and the website is an integral part of the Respondent's business and has been in operation for just under three years.
- (e) The Respondent uses generic dictionary words to advertise and promote its products. By definition, a generic term cannot identify source. It is common to see the singular and plural of a generic name being used by two companies in the same industry, for example, motels.com and motel.com.
- (f) There is a substantial difference between the form of the Domain Name and the visually stylised look of the Complainant's registered trade mark which includes the stylised "C" in the background.
- (g) The term "centrepiece" is used commonly in the event industry.
- (h) The Complainant has no real interest in the Domain Name per se but wants the Respondent's customers and goodwill and has actively planned to discredit the Respondent.
- (i) The Complainant is misappropriating its trade mark rights in an effort to wipe out any legitimate competition. There is no infringement, confusion or brand built on a generic word.

**5.2.2** The Respondent invited the Expert to view a number of websites and some of these were inspected.

5.3 The Complainant in its Reply questions the probative value of some of the Respondent's evidence.

5.4 The Complainant also submits that:

- (a) If "centrepiece" or "centrepieces" is a generic expression it would be reasonable to expect the Respondent to refer to "centrepieces" on its website rather than, for example, "Auckland centrepiece hire", "flower centrepieces" and "themed centrepieces".
- (b) There is sufficient similarity between the Complainant's trade mark and the Domain Name that a significant number of Internet users looking for websites owned by or connected with the Complainant would be likely to mistakenly arrive at the Domain Name.
- (c) This case can be compared with *Trustbank Auckland v ASB Bank* (1989) 15 IPR 222 where the Court of Appeal at 226 stated in relation to section 9 of the Fair Trading Act, that it was a breach for a customer to be misled by a trade mark to enter bank premises even though, once in the premises, the customer may learn the real position.
- (d) None of the factors in paragraph 6.1 of the Policy apply.
- (e) In a number of trade mark cases in New Zealand and Australia, descriptive names have been held to have become distinctive through use – for example "Diesel & Turbo" and "New Zealand Insurance", and that on the evidence submitted in the Complaint, the Domain Name is an example of a descriptive word that has become distinctive through use by the Complainant.
- (f) Even if the expression "centrepiece" were regarded as generic or descriptive, paragraph 6.1.2 of the Policy would only assist the Respondent if it were making fair use of the expression "centrepieces" in a way which was "consistent with its generic or descriptive character", which the Complainant submits it is not.

## 6. Discussion and findings

### ***Relevant Provisions of the Policy***

6.1 The Complainant is required to prove that it has met the requirements in paragraph 4 of the Policy namely 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.

6.2 Paragraph 4.2 requires the Complainant to prove to the Expert that both elements are present on the balance of probabilities.

6.3 The expressions “Rights” and “Unfair Registration” are both defined in paragraph 3 of the Policy.

6.4 The expression “Rights” includes, 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.

6.5 The Policy provides that “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.

6.6 Paragraph 5.1 of the Policy sets out a series of non-exhaustive factors which may be evidence that a Domain Name is an Unfair Registration. They include the following:

5.1.1 Circumstances indicating that 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; or
- (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 businesses or people into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;

6.7 Paragraph 6.1 of the Policy sets out a series of non-exhaustive factors which may be evidence that the Domain Name is *not* an Unfair Registration. They include the following:

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

### ***Application of the Policy in this case***

6.8 The first question is whether the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name. Rights must be enforceable under New Zealand law and may be registered or unregistered.

### ***Complainant's Rights – registered trade mark***

6.9 The Complainant has proved that it is the registered owner of the composite trade mark the subject of its registrations nos. 832002 and 835432, which comprises the word "centrepiece" together with the stylised letter "C". The Complainant therefore has Rights in that trade mark for the purposes of the Policy.

6.10 The Complainant's mark is not identical to the Domain Name. However the word "centrepiece" is the dominant component of the registered trade mark, and the fact the Domain Name comprises the pluralised version of that word is sufficient to satisfy the Expert that the Complainant's registered mark is similar to the Domain Name. The Expert is therefore satisfied that the Complainant has Rights under paragraph 4.1.1 of the Policy.

6.11 The Expert notes that the Domain Name was registered before the Complainant applied for its registered trade mark rights. This will be considered in the context of whether the Domain Name, in the hands of the Respondent, is an Unfair Registration.

### **Complainant's Rights – "centrepiece"**

6.12 The Complainant also relies on common law rights in relation to the word "centrepiece" standing alone, and says that these stem from its use of the term "centrepiece" or "Centre Piece" since 2005.

6.13 The Complainant has provided certain information on its advertising and promotional expenditure and a list of its advertising since 2005, and says its use of its Domain Name and "centrepiece" since 2005 demonstrates that that brand has become distinctive of its business.

#### *Is the term "centrepiece" wholly descriptive?*

6.14 Under the Policy a complainant is unable to rely on rights in a name or term "*which is wholly descriptive of the complainant's business*". It is the Respondent's contention that that is the case here.

6.15 If the term "centrepiece" were descriptive of the Complainant's goods and services, it may still not be *wholly* descriptive if it had acquired a secondary meaning, designating the Complainant's *particular business* rather than merely describing the general nature of the business which the Complainant conducts (see *BOP Memorials v Jones & Company Funeral Services* (DRS 108)).

6.16 Both the Complainant and the Respondent use the term "centrepiece" in a descriptive sense. For example, in its Complaint the Complainant states that it offers "centrepiece design including floral, feather, traditional and modern styled table centrepieces". The term "centrepieces" is used in a similar way on the Complainant's website.

6.17 In its Response the Respondent also uses the term "centrepieces" in a descriptive sense, describing itself as providing "decorative centrepieces" for birthdays, weddings and events.

6.18 In its Complaint, the Complainant itself states that the Respondent has used the Domain Name "wholly descriptively".

6.19 The Respondent also points to the existence of a business that appears to be trading under the name "Centrepiece Studio" at [www.centrepiecestudio.co.nz](http://www.centrepiecestudio.co.nz), and has provided an image of the home page which carries the message "Simply find the centrepiece package you like ... We will send you all you need to create a stylish evening to remember".

6.20 The Oxford Advanced Learner's Dictionary defines "centrepiece" as "a decoration for the centre of a table". The Longman English Dictionary online defines "centrepiece" as "a decoration, especially an arrangement of flowers, in the middle of a table". These definitions are consistent with the Expert's own understanding of the word.

6.21 The Expert therefore concludes that the word “centrepiece” and its plural “centrepieces” are descriptive of this type of table decoration which, as a matter of fact, both the Complainant and the Respondent supply.

*Has the term “centrepiece” acquired secondary meaning in relation to the Complainant’s business?*

6.22 As mentioned earlier the Complainant has provided no information as to its turnover or sales figures, and minimal information about its expenditure on advertising and promotion. The advertising and promotion figures for 2011 and 2012 (\$11,147 and \$9,063 respectively) are not overwhelming and, without more, do not support the Complainant’s assertion that it enjoys a significant reputation in the hire and event industry throughout New Zealand.

6.23 The Complainant has operated its website at [www.centrepiece.co.nz](http://www.centrepiece.co.nz) since 2005, but it appears that until 2010 or 2011 this referred to the Complainant’s business as “The Centre Piece”.

6.24 No evidence was provided showing use by the Complainant of the term “centrepiece” as a trade mark in any publication, at any event or on any physical item such as vehicles, uniforms or packaging.

6.25 The Complainant has provided some limited evidence of confusion. This comprises three emails, all dated 26 July or 27 July 2011, addressed to the Complainant, from businesses that are either clients of the Complainant or work with the Complainant in the wedding industry. Each of these emails refers to the fact that there is another company called “Centrepiece” or “Centrepieces” and report actual or anticipated confusion on the part of customers between this other company (the Respondent) and the Complainant.

6.26 The Respondent asserts that these letters are solicited, biased and from loyal associates of the Complainant, and says it has not received any communications from third parties evidencing concerns or confusion caused by typographical errors in respect of the Domain Name.

6.27 In the *B.O.P. Memorials* case the Expert noted that the requirement under the Policy to demonstrate Rights is not a particularly high threshold and, despite very limited evidence of use of the business name “B.O.P. Memorials” concluded that there was (just) sufficient evidence to show that this name had become distinctive of the Complainant’s *particular services*.

- 6.28 In that case the Complainant had 10 years' uninterrupted business use of the name, and there was uncontradicted evidence that no-one else was using it. In addition, the use of the abbreviation "B.O.P." rather than "Bay of Plenty" rendered the name less obviously a descriptive geographical indicator. The Complainant had also provided copies of Yellow Pages advertisements, suppliers' invoices and stationery bearing the business name.
- 6.29 In the present case a key distinguishing feature is that the Respondent has also been using the term "centrepieces", both in its use of the Domain Name and descriptively, as has at least one other business, namely "Centrepiece Studio". There is also an absence of any feature to distinguish the term "centrepiece", in which the Complainant claims Rights, from a purely descriptive word that directly describes the goods and services the Complainant supplies. The extent of the Complainant's actual use of the term "centrepiece", particularly in a trade mark sense, is also not clear.
- 6.30 Weighing up the facts of this case, the Expert concludes that the Complainant has not proved that the name "centrepiece" has become distinctive of its particular services, but is in fact wholly descriptive of the goods and services it provides. The Expert therefore concludes that the Complainant does not have Rights in the word "centrepiece" standing alone.
- 6.31 In summary then, the Complainant has Rights in the composite trade mark the subject of registrations nos. 832002 and 835432, which is similar to the Domain Name, but does not have Rights in the word "centrepiece".

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

- 6.32 The Expert has found that the Complainant has no Rights in the word "centrepiece" standing alone, and its Rights in its registered trade mark date only from the relevant application dates which were 18 October 2010 and 24 December 2010.
- 6.33 Hence, at the time the Domain Name was registered the Complainant had no relevant Rights, so the first limb of the definition of "unfair Registration" is not available to the Complainant.
- 6.34 In support of its assertion that the Domain Name is an Unfair Registration, the Complainant points to the factors set out in paragraphs 5.1.1(b) and (c), 5.1.2 and 5.1.3 of the Policy.

*Paragraph 5.1.1(b) and (c)*

6.35 The Complainant has asserted that the Respondent registered the Domain Name as a blocking registration, and for the purpose of unfairly disrupting the business of the Complainant. Leaving aside the finding that at the date of registration the Complainant had no relevant Rights, there is no evidence to support these assertions. The Respondent stated that when it registered the Domain Name on 4 November 2008 it had for some time been planning to provide a dedicated website for its table centrepieces which were already displayed on partyhire.co.nz, and it had no knowledge of the Complainant or the Complainant's website at that time.

6.36 The Expert therefore finds that paragraphs 5.1.1(b) and (c) of the Policy do not apply.

*Paragraph 5.1.2*

6.37 The issue here is whether 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.

6.38 Based on the evidence and an inspection of the Respondent's website at centrepieces.co.nz, the Expert concludes that the Complainant has not proved on the balance of probabilities that this factor applies. The key reasons for this finding are:

- (a) The Respondent is using the Domain Name in the context of its business which, amongst other things, hires out centrepieces. The home page of its website under centrepieces.co.nz is headed up "Helium Balloons & Event Hire". It does not appear to be using the word "centrepieces" as the name of its business, but only in a descriptive sense. Indeed, the Complainant noted in its Complaint that the Respondent does not use "centrepiece" as a brand to identify its business.
- (b) The Complainant's Rights are in the composite trade mark which it has registered, not in the word "centrepiece" standing alone. There is no evidence to suggest that the Respondent is using the word "centrepiece" or "centrepieces" in a form that resembles the Complainant's registered trade mark.
- (c) Both the Complainant and the Respondent use the word "centrepieces" descriptively in relation to the supply of centrepieces for use on tables at events such as weddings. The Expert accepts the Respondent's arguments that consumers do not see generic terms as identifying source, and that ordinary consumers looking at the

Domain Name would not be confused into thinking it was referring to the Complainant's registered trade mark.

- (d) To the extent that there may be confusion amongst consumers as a result of the letter "s" being the only difference between the Complainant's website address and that of the Respondent, this is due to the fact that both companies have chosen to use website addresses comprising wholly descriptive terms.

*Paragraph 5.1.3*

6.39 The Complainant has asserted that the Respondent is engaged in a pattern of registrations which correspond to well-known names or trade marks in which it has no apparent Rights, and the Domain Name is part of that pattern.

6.40 There is no evidence to support this assertion. The Respondent has registered a number of different domain names but the Expert, having considered these, accepts the Respondent's assertion that they all relate to one or other aspect of the Respondent's business. Further, there is no evidence that any of these domain names corresponds to a well-known name or trade mark. In fact most of them appear to comprise descriptive terms.

6.41 Therefore the Expert finds that paragraph 5.1.3 of the Policy does not apply.

6.42 The Respondent points to factors it says are evidence that the Domain Name is not an Unfair Registration, and in particular paragraphs 6.1.1(a) and (b), and 6.1.2 of the Policy.

*Paragraph 6.1.1*

6.43 From the evidence it appears the Respondent became aware of the Complainant's cause for Complaint when it received the letter dated 7 July 2011 from the Complainant's lawyers. The Expert is satisfied that at that time the Respondent had, for over two years, been using the Domain Name in connection with a genuine offering of goods or services being the Respondent's party hire business which included the hire of centrepieces. Therefore paragraph 6.1.1(a) of the Policy applies.

6.44 There is no evidence that the Respondent has been commonly known by the name "centrepieces" or connected with a mark identical or similar to the Domain Name, so paragraph 6.1.1(b) of the Policy does not apply.

6.45 In the Expert's view the Respondent had, before July 2011, made fair use of the Domain Name, having used it in relation to its centrepiece hire business. Therefore the Expert finds that paragraph 6.1.1(c) of the Policy applies.

*Paragraph 6.1.2*

6.46 Given the finding that the word “centrepiece” is wholly descriptive the Expert inevitably takes the view that the Domain Name, being the word “centrepieces”, is generic and descriptive.

6.47 The Expert also finds that the Respondent is making fair use of the Domain Name in a way which is consistent with its generic or descriptive character. In particular, the Respondent is using the Domain Name centrepieces.co.nz to promote its centrepiece hire business. There is nothing about the Respondent’s use of the Domain Name that refers to the Complainant, the Complainant’s registered trade mark or the Complainant’s business.

6.48 Therefore the Expert finds that paragraph 6.1.2 of the Policy applies.

**7. Decision**

7.1 For the foregoing reasons, the Expert finds that the Complainant has Rights in respect of its registered trade mark, the Complainant does not have Rights in the word “centrepiece”, and that the Domain Name, in the hands of the Respondent, is not an Unfair Registration.

7.2 Accordingly the Complaint is denied.

**Place of decision** Auckland

**Date** 17 November 2011

**Expert Name** Ms Sheana Wheeldon

**Signature**

