

## **Nominet UK Dispute Resolution Service**

**DRS 5063**

### **Childcare Corporation Plc v Brainfire Group**

#### **Decision of Independent Expert**

##### **1. Parties**

Complainant: Childcare Corporation Plc  
Address: St Pancras House  
Jacobs Yard  
Basingstoke  
Hampshire  
RG21 7PE

Respondent: Brainfire Group  
Address: P O Box 68229  
28 Crowfoot Terrace  
NW Calgary  
Alberta  
T3G 3N8  
Canada

##### **2. Domain Name**

kiddicaru.co.uk

##### **3. Procedural Background**

On 14 September 2007 the Complaint was lodged with Nominet. In accordance with the Dispute Resolution Service Policy hard copies of the Complaint were received in full on 14 September 2007.

On 17 September 2007 the Complaint documents were generated for service upon the Respondent. No Response was subsequently received from the Respondent by the due date of 10 October 2007.

Mr Clive Thorne was selected as Expert on 19 October 2007. He has completed the necessary Declaration of Impartiality and Independence.

##### **4. Facts**

In the absence of a Response the facts upon which the Complaint is based are those set out by the Complainant in its Complaint. Since the evidence is unchallenged the Expert takes the Complainant's evidence as true.

The Complainant is in the business of operating childrens nurseries. It trades under the name "Kiddi Caru" and has done so since 2001. Evidence is adduced

by the Complainant of its trading activity in Exhibits 1a, 1b and 1c to the Complaint. In particular Exhibit 1a is a prospectus under the UK EIS scheme. It should be noted that on page 7 of that document there is a reference to the trading name "Kiddi Caru" where it states:

"The Company intends to use the same trading style and trading names as the other Childcare Corporation Companies. A licence has been granted by Childcare 1 which holds the relevant intellectual property rights, so as to permit the Company to do so. The Directors therefore intend to operate their Companies in purpose built nurseries under the name "Kiddi Caru".

Exhibit 1b is a newsletter dated summer 2003 containing references to the use of the name and logo "Kiddi Caru".

Exhibit 1c is a brochure showing the "Kiddi Caru" brand and logo as well as information about the childcare services offered by the Claimant's nurseries.

Exhibit 1d contains images of nursery exteriors showing "Kiddi Caru" signage.

The Claimant owns the UK trademark "Kiddi Caru" (No. 2293147) which was registered on 26<sup>th</sup> July 2002. This is evidenced as Exhibit 3 to the Complaint and shows that the mark in logo form is registered in Classes 16, 21, 25, 28 and 41.

Exhibit 3 is also evidence that the Complainant provides goods and services under the name "Kiddi Caru" including printing materials and publications, eating and drinking utensils, articles for the storage of foodstuffs, baby clothing, games and toys and educational services.

Evidence of the Respondent's activities is set out at Exhibit 5 to the Complaint. This is an extract from the Respondent's website [www.kiddicar.co.uk](http://www.kiddicar.co.uk) which shows a number of advertisement links which in turn lead to other childcare and nursery related activities. The Complainant contends that because it is well known to the public as trading under the mark "Kiddi Caru" any jobseeker or individual seeking information on the placement of their child in a day nursery could visit the Respondent's website and be unable to locate the real site that they seek i.e. the Complainant's website.

The Complainant also draws attention to the evidence from the Nominet UK Dispute Resolution Service to show that the Respondent has been adjudged by an independent expert to have registered Abusive Domain Names in six separate cases over the last two years. The relevant case numbers are DRS 02908, DRS 03386, DRS 03817, DRS 04001, DRS 04551 and DRS 04575. In each case the Respondent appears to have selected the name of well known brand and or company including Lambert & Butler, British Credit Trust and General Dynamics.

## **5. Discussion and Findings**

Under paragraph 2(a) of the DRS Policy a Complainant must show that:

1. The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
2. The Domain Name, in the hands of the Respondent, is an Abusive Registration.

The Complainant is required to prove to the Expert that both elements are present on the balance of probabilities. The Expert therefore proceeds to deal with each element in turn.

**(i) The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name**

Having considered the evidence adduced by the Complainant the Expert is satisfied that the Complainant has a valid and subsisting trademark registration for the mark "Kiddi Caru". It is also satisfied that the evidence of the Complainant's trading activity establishes that it has a trading goodwill in the mark "Kiddi Caru".

The Expert therefore finds that the Complainant has rights in respect of a name or mark which is identical or similar to the Domain Name in dispute. The Domain Name in dispute is "kiddicar.co.uk". The main distinction between "Kiddicar" and "Kiddi Caru" as used by the Complainant is the separation of "Kiddi" and "Caru" which in the Expert's view is of no consequence.

**(ii) The Domain Name, in the hands of the Respondent is an Abusive Registration**

"Abusive Registration" is defined in paragraph 1 of the DRS Policy as meaning a domain name which either:

- (1) 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
- (2) Has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's rights.

The Complainant submits that the Domain Name automatically qualifies as an Abusive Registration because the Respondent has been found to have made an Abusive Registration in three or more Dispute Resolution Service cases in the two years before the Complaint was filed. The Complainant therefore relies upon paragraph 3c of the Dispute Resolution Service Policy. The Expert notes that paragraph 3c is purely a presumption which can be rebutted. However in the present case there is no Response filed and no evidence in support of the Respondent to rebut the presumption. Accordingly in the Expert's view the Complainant is entitled to rely upon the presumption in paragraph 3c. It therefore follows that the Complainant succeeds in showing that the Domain Name in the hands of the Respondent is an unlaidd Abusive Registration.

It also follows that the Complainant has succeeded in proving its case.

**6. Decision**

The Complainant has requested that the disputed Domain Name should be transferred from the Respondent to the Complainant. Accordingly, the Expert orders that the Domain Name "kiddicar.co.uk" be transferred from the Respondent to the Complainant.

Clive Duncan Thorne  
Expert

2 November 2007