

DISPUTE RESOLUTION SERVICE

DRS 9744

Decision of Independent Expert

Squadron Medical Ltd

and

Mr Dave Medus

1. The Parties:

Complainant: Squadron Medical Ltd
Griffin Close
Ireland Industrial Estate
Staveley
Derbyshire
S43 3LJ
United Kingdom

Respondent: Mr Dave Medus
177 Prospect Road
Chesterfield
Derbyshire
S41 9DQ
United Kingdom

2. The Domain Name(s):

squadronmedical.co.uk

3. Procedural History:

30 March 2011 10:48 Dispute received
30 March 2011 12:31 Complaint validated
30 March 2011 12:38 Notification of complaint sent to parties
18 April 2011 02:30 Response reminder sent
19 April 2011 15:30 Response received
19 April 2011 15:30 Notification of response sent to parties
26 April 2011 09:00 Reply received
26 April 2011 09:01 Notification of reply sent to parties
26 April 2011 09:03 Mediator appointed
03 May 2011 14:31 Mediation started
01 June 2011 12:00 Mediation failed
01 June 2011 12:01 Close of mediation documents sent
06 June 2011 11:32 Expert decision payment received

4. Factual Background

The Complainant has traded under the name Squadron Medical Limited since 1995 and has continued to do so following its acquisition in 2008 by DCC plc. The Respondent was an outside contractor, and subsequently an employee of the Complainant, until February 2011. The Respondent registered the Domain Name in 1999 at the Complainant's request.

At the date of the Complaint, the Domain Name resolved to the Complainant's website.

5. Parties' Contentions

The Expert summarises the submissions of the Parties as follows:

5.1 Complainant

Squadron Medical Limited was incorporated on the 20th July 1995. Its business relates to the distribution of medical consumables and devices to hospitals around the UK. In 2008 Squadron Medical were winners with Guys and Thomas Hospital in London of the Supply Chain Innovation Award.

The company has been using the Domain Name for email since 1999 and all email correspondence with customers and suppliers is conducted through it. A significant percentage of customer orders is received by email. The company specialises in a Just In Time delivery service of critical medical supplies and any disruption to the email service has significant impact on customers and their patients. The site to which the Domain Name resolves is the Complainant's only web site.

In 2008 Squadron Medical was acquired by DCC Plc and has continued to trade under the Squadron Medical name.

In March 2010 the Complainant was awarded a storage and warehousing services contract by the LPP procurement group in London. The Domain Name is stated as the contact domain for the Complainant in the award statement.

The Respondent was retained by the Complainant and its predecessor in business in a Finance and IT role on a contract basis from 1999 until November 2007 and on a permanent basis from then until February 2011. The Respondent registered the Domain Name in 1999 on behalf of the Complainant.

At the time of the transfer of ownership of the company to DCC Plc, the Respondent was asked to transfer the Domain Name to the Complainant. He committed to do this as evidenced by his email to Emma Garth of Pinsent Solicitors, acting on behalf of the then owner of Squadron Medical Ltd. This transfer evidently did not happen.

On the 11th March 2011 the Complainant received an invoice from the Respondent for £1200 for use of the Domain Name for email and web access for the month of April 2011. This came as a complete surprise as there had been no prior communication on the matter.

On 26th March the Complainant received complaints that emails sent to the Domain Name were being rejected. When trying to create a Nominet account to lodge this Complaint on March 27th, the email with the account details did not come through to jonathan.brocklehurst@squadronmedical.co.uk, despite a couple of attempts by Nominet staff, and had to be sent to an alternative address. The Complainant has no evidence that these issues result from any action taken by the Respondent; however there was disruption to the business and this has raised the urgency of having the Domain Name transferred.

The Respondent should have named himself as the contact rather than registrant in the initial registration and did not transfer the Domain Name when requested in 2007. His recent submission of an invoice for continued use of the Domain Name is an abuse of his position as registrant of the Domain Name, in which he has no rights.

5.2 Respondent

The Domain Name was registered by the Respondent on 13 August 1999 (the Complainant being a client) and has been administered and serviced by the Respondent since then.

There were discussions regarding transfer of the Domain Name and other matters but this was prior to the acquisition by the Complainant in 2008.

The Complainant confirms that the transfer did not take place, the Complainant registering squadronmedical.com on 19 March.

The Complainant demonstrates that they agreed to this arrangement by their reference to the LPP Procurement Contract of March 2010. It was important that there was an uninterrupted communications link and both the Customers and the Complainant had comfort in using the Domain Name rather than their own squadronmedical.com.

The Complainant has not proved and cannot prove any abuse of the registration or lack of integrity on the part of the Respondent over the past 12 years.

The source code for the Domain Name web site is held on the Complainant's own server with the domain hosting pointing to the IP address. There would have possibly been complaints by Customers to the Complainant as the source code had been changed by the Complainant. The `mailto:` script has been amended so that when a visitor to the web site clicks on a contact email address for Squadron Medical the email template contains the recipient address of a company other than Squadron Medical.

Email is handled directly by the Complainant on the Complainant's own server by way of MX Records. The Complainant refers to an incident on 26 March 2011 regarding rejected emails and while admitting that there is no evidence in support of their allegations, nevertheless points a finger at the Respondent.

The Complainant fails to mention that on the 25 March 2011 they registered the domain squadronmedical.org. The Respondent's opinion is that the Complainant's own IT department may have been carrying out maintenance on their server during the dates in question.

The Complainant mentions the incident of 26 March 2011 as the underlying reason for the Complaint without justification and therefore the Complaint must fail.

5.3 Complainant's Reply

The Complainant exercised its right under the DRS Policy to reply to points raised by the Respondent.

The squadronmedical.com domain was registered in March 2008 for use with a new business system that was being implemented at the time. For technical reasons the Domain Name could not be used. No customer or supplier has ever contacted the company using the `.com` domain and there is no reference to it on the contact page of the company's website.

The Respondent undertook to transfer ownership of the Domain Name prior to the acquisition of the company. He confirms this but does not say why this did not happen.

The Complainant did not accuse the Respondent of being responsible for the problems experienced with email to the Domain Name on March 25th 2011. The Complaint stated "We have no evidence that these issues are as result of any action taken by Mr Medus..."

The Complainant registered the .org domain on March 25th in case the problems customers were experiencing with the Domain Name escalated to the point where serious business disruption occurred and it became necessary to switch to an alternate domain. Switching domains is not a decision taken lightly as it would cause significant disruption to customers and suppliers with consequent damage to the Complainant's business and reputation, given the just in time nature of the service it provides.

The underlying reason for the Complaint is that the Respondent is demanding £1,200 per month for continued usage of the Domain Name. He acquired the Domain Name as part of his role with the company but should have registered the company as the registrant and himself as the contact.

6. Discussions and Findings

In order to succeed in these proceedings, paragraph 2.b of the Policy requires the Complainant to prove on the balance of probabilities that both elements of the test set out in paragraph 2.a are present, namely that:

- i. the Complainant has Rights in respect of names or marks which are identical or similar to the Domain Name; and*
- ii. the Domain Name, in the hands of the Respondent, is an Abusive Registration.*

Complainant's Rights

The Complainant has provided evidence of use of its trading name, together with supporting information about its clientele and business reputation. No arguments have been put forward to contest the Complainant's rights in its name. The Expert finds that the Complainant has rights in a name which is identical or similar to the Domain Name.

Evidence of Abusive Registration

The Policy requires the Complainant to show that the Domain Name is an Abusive Registration. Paragraph 1 of the Policy defines "Abusive Registration" as a Domain Name which either:

- i. was registered or otherwise acquired in a manner which, at the time the registration or acquisition took place, took unfair advantage of or*

*was unfairly detrimental to the Complainant's Rights; or
ii. has been used in a manner which has taken unfair advantage of or
has been unfairly detrimental to the Complainant's Rights.*

The question of unfair detriment to the Complainant's Rights is expanded upon in Paragraph 3a of the DRS Policy, setting out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration in the hands of the Respondent. Sub-paragraph 3.a.V contemplates a situation where

*The Domain Name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant:
A. has been using the Domain Name registration exclusively; and
B. paid for the registration and/or renewal of the Domain Name registration.*

In the present Complaint, there is no dispute that the Domain Name was registered as a result of a relationship between Squadron Medical Limited and the Respondent, namely his engagement by the company first as a consultant and subsequently as an employee. Furthermore, A is not contested. As to B, the question of who paid for the Registration of the Domain Name is not clear from the Parties' submissions, but it seems likely, in the absence of information to the contrary, that the Complainant, or its predecessor in business, would have paid. In the Expert's view, the present Complaint falls thus within the contemplation of this Paragraph 3.a.V of the Policy.

For the sake of completeness, the Expert offers the following additional comments on the submissions of the Parties.

The Complainant states that the Respondent failed to transfer the Domain Name from his own name to that of the Complainant's successor in business when asked to do so. No evidence is submitted by the Respondent to contradict this, or to justify retaining registration in his name, save perhaps for the LPP Procurement contract documentation of March 2010. In these documents, the Domain Name was used as the online contact address, in spite of the existence of two other domain names using the Complainant's trading name at .org and .com. The Respondent seeks to imply that leaving the Domain Name registration in his name delivered benefits to the Complainant arising from continuity and avoidance of confusion. The Complainant has however explained its reasons for registering its name with other domains, which are unconnected to its trading activity. In any event, it appears that there was no communication between the Parties to make clear that the request for transfer of the Domain Name had not been acted upon.

The Respondent's case relies upon his assessment of two aspects of the Complainant's behaviour. Firstly, he says that the Complainant was content to leave the registration of the Domain Name in his name in spite of the earlier request to transfer it. Evidence for this view can be found, he claims, in the Complainant's conscious use of the Domain Name in its contracting documents some two years after the discussions about its transfer.

Secondly, the Respondent argues (unsupported by evidence) that the Complainant bases the Complaint solely upon its view of the incident of 26 March 2011 involving rejected emails – an interpretation implying bad faith on the part of the Respondent. As the incident is a source of conjecture for both Parties, it cannot, the Respondent says, be a proper basis for the Complaint.

The Complainant addresses these matters in its Complaint and in its Reply to the Response by pointing out that it was not known to them that the Respondent had not transferred the Domain Name. The Complainant denies imputations of bad faith against the Respondent and states that the Respondent errs in thinking that this is the sole basis of the Complaint. These arguments have no relevance to the question of Abusive Registration and do not bear upon the Expert's decision. In effect, no case has been advanced to justify the Respondent's continued possession of the Domain Name which has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights. The Expert accordingly considers that the Domain Name is an Abusive Registration.

7. Decision

The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration. The Expert therefore determines that the Domain Name be transferred to the Complainant.

Signed: Peter Davies

Dated: 11 July 2011