

Dispute Resolution Service

DRS9865

Decision of Independent Expert

Training for the Future (2008) Limited

and

Mr. Richard Griffiths

1. Parties

Complainant : Training for the Future (2008) Limited

The Brick Barn

Pontrobert

Meifod

Powys

SY22 6HX

United Kingdom

Respondent : Richard Griffiths

Coppice House

Onibury

Craven Arms

Shropshire

SY7 0PG

United Kingdom

2. Domain Name

trainingforthefuture.co.uk (the "Domain Name")

3. Procedural Background

On 6th May 2011 the Complaint was lodged with Nominet UK Limited (“Nominet”) and was validated. On 9th May 2011 Nominet sent the notification of the complaint letter to the Respondent by e-mail and post, advising him to log into his account to view the details of the Complaint and giving him 15 working days within which to lodge a Response on or before 31st May 2011.

The Respondent responded on 30th May 2011. On 31st May 2011 Nominet informed the Complainant that the Response was available to be viewed via the Complainant’s online services account and inviting it to Reply to the Response on or before 7th June 2011. On 8th June 2011 Nominet informed the Respondent that the Reply was available to be viewed via the Respondent’s online services account. Mediation documents were generated for the Complaint and mediation commenced on 13th June 2011. Mediation was unsuccessful and concluded on 27th July 2011.

On 12th August 2011 the Complainant paid the appropriate fee for a Decision to be made by an Expert pursuant to paragraph 6 of Nominet’s DRS Policy (“the Policy”).

On 13th August 2011 Mr. Niall Lawless (“the Expert”) was selected and on 25th August 2011 was formally appointed to act as Expert in this dispute, having confirmed that he knew of no reason why he could not properly accept the appointment and knew of no matters which ought to be drawn to the attention of the parties which might appear to call in to question his impartiality and -/- or independence. He is required to give his Decision by 16th September 2011.

4. Outstanding Formal -/- Procedural Issues

There are no outstanding formal or procedural issues.

5. Factual background

The Complainant Training for the Future (2008) Limited is a training provider specialising in courses for the agriculture and construction industries. In April 2008 the Complainant purchased the company Training For The Future Limited together with any of its associated goodwill.

The Respondent Mr. Richard Griffiths is the Registrant of the Domain Name and offers the supply of computers, peripherals and IT services through 3C Computers. The Respondent had a long standing relationship with Training For The Future Limited and was responsible for the purchase of the Domain Name and managing e-mail and the website resolved by it.

In July 2010 the Complainant entered into a contract whereby the Respondent was to supply computer equipment and services. That contract led to disagreement about performance and money due and as a result damaged the relationship between the parties.

The disagreement over the supply of computer equipment and services has led to a dispute about the control and ownership of the Domain Name and the Complainant seeks transfer of the Domain Name to it.

6. The Parties' contentions

The Complainant

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under Nominet's Dispute Resolution Service Policy (the "Policy") because:-

- the Domain Name was associated with and used by Training For The Future Limited from 2002 to 2008.
- the Domain Name was purchased by it when it purchased Training For The Future Limited.
- the Domain Name is identical to the name associated with its business name.
- it has been using the Domain Name since it purchased the assets of Training For The Future Limited in 2008.
- it has paid the Respondent all hosting fees and registration fees for the Domain Name since 2008 when it purchased Training For The Future Limited.
- the Respondent denied the Complainant use of the Domain Name by changing passwords and usernames; it also modified the content of the website resolved by the Domain Name. The result of this was confusion which caused the Complainant to lose business and suffer financial damage.
- the Respondent is refusing to transfer control of the Domain Name with the primary purpose of stopping the Complainant using it.

The Respondent

The Respondent says that the Domain Name controlled by him is not an Abusive Registration under Nominet's DRS Policy because :-

- he purchased the Domain Name in 2005; at that time it appeared that he would be associated with Training For The Future Limited for the foreseeable future. At a later date using his own name he subsequently renewed registration of the Domain Name.
- the Domain Name was not offered for sale by Training For The Future Limited because it did not own it.
- when the Complainant asked for access to use the Domain Name the Respondent provided this purely out of goodwill and not because the Complainant owned it.
- as part of the hosting arrangements for the Domain Name www.123-reg.co.uk offers use of up to 15 e-mail addresses and the Respondent is using some of these for other clients who now rely upon them.

7. Discussions and Findings

7.1 General

The Policy requires that for a Complaint to succeed the Complainant must prove to the Expert on the balance of probabilities that:-

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

Rights include, but are not limited to, rights enforceable under English Law.

In order to show that the Domain Name is an Abusive Registration, the Complainant must prove that the Domain Name either:-

- i. 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 used in a manner, which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

The Complainant is required to prove to the Expert that the Complainant has Rights and that the Domain Name in the hands of the Respondent is an Abusive Registration; both elements must be present.

7.2 Complainant's Rights

Without the suffix (2008) the Complainant's name is identical to the Domain Name. The Complainant has conducted business under the name "Training For The Future", among other things running courses and it has previously used the Domain Name to support its business through branded e-mail and to resolve to its website. Also in 2008 the Complainant bought the company Training For The Future Limited which had been using the Domain Name since 2002. Because of that I decide that the Complainant has Rights in respect of a name or mark which is similar to the Domain Name.

7.3 Abusive Registration

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under the Policy, but it does not state under which part of the Policy. Under Paragraph 3 - Evidence of Abusive Registration - guidance is given as to what factors may evidence that the Domain Name is an Abusive Registration.

"A non-exhaustive list of factors which may evidence that the Domain Name is an Abusive Registration is as follows :-

3(a)(i). Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily :-

3(a)(i)(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;

3(a)(i)(B). as a blocking registration against a name or mark in which the Complainant has Rights; or

3(a)(i)(C). for the purpose of unfairly disrupting the business of the Complainant;

3(a)(ii). Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant ...

3(a)v. 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.

Background to the Dispute

The Respondent has been connected with the Domain Name since 2002. The “Training For The Future” Directors Meeting which took place on 10th December 2002 was attended by David Lowe, David Sanders, Elaine Rees and the Respondent Richard Griffiths. Minutes of the Meeting record :-

“Website & email

Email address set up as info@trainingforthefuture.co.uk

Website to be looked at”.

The Minutes of the Steering Group Meeting which took place on 19th March 2008 attended by Arthur Ratcliffe, Clive Millington, Robert Povall, David Lowe, David Sanders, Elaine Rees and the Respondent Richard Griffiths record :-

“Chairman’s Report

Company takeover – The directors recommended the proposal put to the group to sell the trading name Training For The Future Ltd to Robert Evans as a going concern for the fee of £500 & 50% of all transfer costs, this was agreed by the rest of the steering group”.

The Invoice dated 30th April 2008 from Training For The Future Ltd to the Complainant (Training For The Future (2008) Ltd) records the Service Details to be “Purchase of company to include goodwill” for the amount £500 plus VAT.

It is not in dispute between the parties that this transaction took place, however they do disagree as to what “Purchase of company to include goodwill” means. The Complainant says that the Domain Name was purchased by it when it purchased Training For The Future Limited. The Respondent says that the Domain Name was not offered for sale by Training For The Future Limited because it did not own it.

For over two years subsequent to 30th April 2008 the Complainant was able to use the Domain Name without problem. However in July 2010 the Complainant entered into a contract whereby the Respondent was to supply new computers and help with the migration of databases from old to new computer systems. That contract led to disagreement about performance and money due and as a result of this damaged the relationship between the parties.

There is an invoice for services which the Respondent says is outstanding and for which the Complainant is liable. The Respondent has changed user-names and passwords for the Domain Name and has denied the Complainant access to the Domain Name until the outstanding invoice is paid.

Relationship between the Complainant and the Respondent

One of the factors which may evidence that the Domain Name is an Abusive Registration is that :-
3(a)v. 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.

As set out above the Respondent has been connected with the Domain Name since 2002. The minutes of the 10th December 2002 Directors Meeting also record that the Domain Name would be purchased for use by Training For The Future Limited (“Limited company should be set up with Companies House within the next week”).

It is clear to me that :-

- when in April 2008 the Complainant purchased Training For The Future Limited one of the company’s assets was the use of the Domain Name. The rights and entitlement to use the Domain name will have passed from Training For The Future Limited to Training For The Future (2008) Limited.
- the Complainant has been using the Domain Name registration exclusively.
- the Complainant has paid for the registration and/or renewal of the Domain Name registration.

Because of the above I decide that in the control of the Respondent the Domain Name is an Abusive Registration.

Unfairly Disrupting the Complainant's Business

The Complainant says that the Respondent has used the Domain Name to disrupt its' business in that the Respondent changed the passwords and login details so that the Complainant no longer had access to its e-mails or the website resolved by the Domain Name.

The Complainant says that when the disagreement over the provision of computer equipment and services arose the Respondent published a malicious statement on the website which remained there until December 2010. The Respondent denies editing the website content but accepts that he took the website offline for a week to try and get the Complainant to see reason. The website is currently available in its original format but the Complainant does not have the ability to update it.

The Complainant says that it paid hosting fees for the Domain Name directly to the Respondent's business 3C Computing. The Respondent says that any charge made by 3C Computers was purely to compensate it for the costs incurred by it and no margin was included.

The Nominet Experts Overview says that *"unfair disruption of the Complainant's business by way of a domain name is very likely to constitute an abusive use of the domain name (DRS 02223 itunes.co.uk)"*.

It is enough for the Complainant to show that the 'abuse' occurred at any time during the 'life' of the domain name - so it may be that :-

- there was an 'unfair' motive when it was registered;
- there was an 'unfair' use after registration but it has now stopped;
- there was an 'unfair' motive at transfer;
- there is something 'unfair' going on now;
- the domain name is inherently 'unfair' (similar to the concept of an "instrument of fraud" in the Court of Appeal case [One In a Million](#));
- any combination of these.

Nominet's Policy states that 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. has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;

It is clear that by changing the passwords and login details the Respondent has denied the Complainant access to its e-mails and the website resolved by the Domain Name. This has disrupted the Complainant's business and to try and compensate for this the Complainant has registered and used the domain name www.training4thefuture.co.uk.

This is unfair and I decide that the Domain Name has been used in a way which has been unfairly detrimental to the Complainant's Rights. I decide that in the control of the Respondent the Domain Name is an Abusive Registration.

7.4 Conclusion

The Expert finds on the balance of probabilities that the Complainant has Rights in respect of a name identical or similar to the Domain Name and that the Complainant has proved, on the balance of probabilities, that the Domain Name in the hands of the Respondent is an Abusive Registration.

8. Decision

For the reasons set out in detail above, having decided that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name be transferred to the Complainant.

Niall Lawless, Nominet Expert

2nd September 2011