

DISPUTE RESOLUTION SERVICE

DRS 10390

Decision of Independent Expert

Trade Skills 4U Limited

Complainant

and

Richard Hunt

Respondent

1 The Parties

Complainant:	Trade Skills 4U Limited	
Address:	Mitre Court Fleming Way Crawley West Sussex RH10 9JY United Kingdom	

Respondent:	Richard Hunt	
Address:	Alresford Manor Alresford Road Winchester Hampshire SO21 1 HL United Kingdom	

2 The Domain Names

tradeskills4ucourses.co.uk and *tradeskills4utraining.co.uk* (the "Domain Names").

3 Procedural History

12 October 2011 Dispute received
13 October 2011 Complaint validated
13 October 2011 Notification of complaint sent to parties
1 November 2011 Response reminder sent
2 November 2011 Response received
2 November 2011 Notification of response sent to parties
7 November 2011 Reply reminder sent
10 November 2011 No reply received
10 November 2011 Mediator appointed
15 November 2011 Mediation started
30 November 2011 Dispute suspended
22 December 2011 Dispute opened
22 December 2011 Mediation failed
22 December 2011 Close of mediation documents sent
6 January 2012 Complainant full fee reminder sent
9 January 2012 Expert decision payment received.

4 Factual Background

- 4.1 The Complainant is a company incorporated on 25 April 2005 with the name Trade Skills 4U Limited. The Complainant provides training courses for electrical and, more recently, also for renewable energy trade skills. On 25 April 2005 it registered the domain name *tradeskills4u.co.uk*, which it uses to operate a website at *www.tradeskills4u.co.uk*.
- 4.2 On 26 October 2007 the Complainant registered the TRADE SKILLS 4U trade mark under the name Trade Skills 4U.
- 4.3 On 15 June 2011, the Respondent registered the Domain Names. The Respondent, Richard Hunt, is chairman of BTSC UK Limited which provides training courses for plumbers and electricians.
- 4.4 The Domain Name *tradeskills4ucourses.co.uk* is currently pointing to a domain parking page. The Domain Name *tradeskills4utraining.co.uk* does not appear to be functioning at all.
- 4.5 The Complainant and the Respondent are evidently commercial competitors, in particular in the provision of training in electrical trade skills. The Complainant provides its courses at a location in Crawley in Sussex. The Respondent is relatively nearby at Chessington in Surrey.

5 Parties' Contentions

Complaint

- 5.1 As noted above, the Complainant was incorporated under the name Trade Skills 4U Limited on 25 April 2005. On the same day it registered the domain name *tradeskills4u.co.uk* which it uses in the URL for its website at *www.tradeskills4u.co.uk*.

- 5.2 The Complainant is the proprietor of a registered word and image trade mark, which was registered on 26 October 2007 with number 2439849. The word mark is TRADE SKILLS 4U (the "Mark"). The image mark is a simple graphic depiction of a house (the "Image Mark"). The trade mark is registered in class 41 with the following specification: "providing training; providing training courses for trade skills; providing training courses for plastering, plumbing, tiling, brick laying, roofing, carpentry, home maintenance and electrics."
- 5.3 The Complainant explains that its trade mark has been registered to Trade Skills 4U (its trading name) rather than Trade Skills 4U Limited and it has applied for rectification of the register in this regard.
- 5.4 Further, the Complainant also asserts common law rights in the Trade Skills 4U name which it says it has been using "continuously and extensively since 2004" in respect of providing electrical and renewable energy training courses. It refers to its current website. However, no other evidence is provided.
- 5.5 By reason of its ownership of the registered trade mark and its common law rights, the Complainant therefore asserts that it has both registered and unregistered rights in the Trade Skills 4U mark and name.
- 5.6 The Complainant contends that the Domain Names are Abusive Registrations in the hands of the Respondent (see paragraph 2(a)(ii) of the Policy) because they are being used in a manner which takes unfair advantage of or is unfairly detrimental to the Complainant's rights and/or "they are not capable of being used meaningfully in a manner that does not takes unfair advantage of or is unfairly detrimental to the Complainant's rights" (sic).
- 5.7 The Complainant relies on the following factors in support of that contention.
- (a) The Respondent is using the Domain Names to point to websites (the "Websites"), presumably identical, which offer "electrical, plumbing, gas and renewable energy training and courses".
 - (b) While the Respondent has registered the Domain Names as an individual, in fact the Websites state that the training is provided by BTSC and that it is clear from BTSC's website at www.btsc.co.uk that Mr Hunt is its Chairman.
 - (c) The Domain Names were not registered until 15 June 2011, which was long after the incorporation of the Complainant, the registration of the Complainant's domain name, and the filing date of the Complainant's trade mark registration.
 - (d) Internet users who see the Websites are "likely to consider that these websites belong to the Complainant".
 - (e) This impression is reinforced by the fact that the Websites include an image which is identical to the Complainant's Image Mark.
 - (f) The Websites offer "the same services" as those provided by the Complainant.
 - (g) While the Websites state that the courses are provided by BSTC, internet users are likely to be confused into believing that BSTC is associated with the Complainant. This is in turn "likely to divert custom away from the Complainant". No evidence of such confusion or of such diversion of trade is provided. The Complainant relies solely on screenshots of the Websites showing the Mark, the Image Mark and the services provided.

- (h) Internet users looking for the Complainant's website are likely to enter the character string "trade skills 4u" into a search engine, which is likely to take them to the Websites, which in turn is "likely to divert custom away from" the Complainant. Again, no evidence is provided of any of this.

Response

- 5.8 The Response is concise. It makes three points.
- 5.9 First, the Respondent states that "*the reasoning behind the domain names being set up is that when you googled "building trade skills centre – the 1st google ad was of tradeskills4u.co.uk (see attached)*". A Google search result is attached which appears to demonstrate that when a search was carried out against the character string "building trade skills centre" a sponsored link was shown to the Complainant's website (along with the websites of other businesses apparently offering similar services). The highest ranked organic search results on the screenshot are for the Respondent's website at *www.btsc.co.uk* and a number of other websites which appear to refer to the Respondent's business.
- 5.10 Secondly, the Respondent says that on a number of occasions it has "*found out that our competitor sales teams or recruitment officers are bad mouthing 'BTSC UK' and making derogatory and untrue comments about our business, this comments were noticed when mystery shoppers were asked to attend our competitors college*" (sic).
- 5.11 Thirdly, the Respondent says that it has "*already taken down any content on the 2 domains in question*".

Reply

- 5.12 No Reply was served by the Complainant.

6 Discussions and Findings

General

- 6.1 To succeed under the Policy, the Complainant must prove on the balance of probabilities, first, that he has Rights (as defined in the Policy) in respect of a name or mark that is identical or similar to the Domain Name (paragraph 2(a)(i) of the Policy), and secondly, that the Domain Name is an Abusive Registration in the hands of the Respondent (paragraph 2(a)(ii) of the Policy).
- 6.2 Abusive Registration is defined in paragraph 1 of the Policy in the following terms:
- "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 took unfair advantage of or was unfairly detrimental to the Complainant's Rights."*

Complainant's rights

- 6.3 Paragraph 2(a)(i) of the Policy requires the Complainant to prove that it "*has Rights in respect of a name or mark which is identical or similar to the Domain Name*". "Rights" means "*rights*

enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning".

- 6.4 The Complainant's evidence of common law rights in the Trade Skills 4U name is very thin, being confined to a reference to its website. This is a common failing of submissions under the DRS. Complainants, and those drafting Complaints on their behalf, will ordinarily wish to adduce evidence which demonstrates that the Complainant has acquired trading goodwill in the name in question. That might include evidence of turnover, expenditure on and evidence of marketing and advertising by reference to the name, and other evidence which shows that the Complainant has indeed built up sufficient goodwill in the name in question to be able to rely on common law rights.
- 6.5 In this case, fortuitously for the Complainant, it is also able to rely on its registered trade mark. True it is that the registered proprietor of that trade mark is Trade Skills 4U rather than Trade Skills 4U Limited but, given that the Complainant has explained that this was a mistake and has applied for rectification of the register, and in light of the other evidence of trade mark registration, the Complainant has, on the balance of probabilities, discharged the burden of proving that it has Rights in the Mark.
- 6.6 Turning to the second limb of the test under paragraph 2(a)(i) of the Policy, i.e. that a name or mark in which the Complainant has Rights is identical or similar to the Domain Name, the Complainant relies on its contention that the Domain Names consist of the Mark and a "second element" which refers to the services for which the Mark is registered. It is now well established under the DRS that the inclusion of generic or descriptive words together with a name or mark in which the Complainant has Rights does not mean that the domain name in question is so dissimilar that it falls outside paragraph 2(a)(i) (see *natwestloans.co.uk* (DRS3390), *tescoestateagents.co.uk* (DR3962), *replicarolex.co.uk* (DRS5764) and *veluxblind.co.uk* (DRS6973), by way of examples).
- 6.7 Accordingly, the Complainant satisfies paragraph 2(a)(i) of the Policy.

Evidence of Abusive Registration

- 6.8 The Complainant has failed clearly to set out its case on Abusive Registration, notably by omitting to identify on which of the (non-exhaustive) factors set out in paragraph 3(a) of the Policy it relies. The Complainant puts its case on Abusive Registration in very general terms, relying simply on the definition of Abusive Registration under the Policy, as set out at 6.2 above.
- 6.9 It is therefore necessary to consider whether the Complainant's contentions, as summarised in 5.7 (a) to (i) above, fall within paragraph 3(a) of the Policy.
- 6.10 Some of the Complainant's contentions, for example those at 5.7 (a), (c) and (e), arguably fall within paragraph 3(a)(i)(C) of the Policy, which provides that circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant may constitute evidence of Abusive Registration.
- 6.11 While the Complainant has not adduced any evidence which would raise an inference that the Domain Names were registered for this purpose, the Respondent's disarmingly frank explanation ("*the reasoning behind the domains being set up is that when you Googled "building trade skills centre" – the 1st Google ad was of tradeskills.co.uk*") raises a strong inference that the Domain Names were indeed registered and were used for this purpose.

- 6.12 Further, it is clear from the screenshots of the websites to which the Domain Names were formerly pointing that the Respondent has had no compunction in using the Image Mark as well as the Mark on his websites.
- 6.13 Secondly, some of the Complainant's contentions, for example those at 5.7 (d), (f), (g) and (h), arguably fall within paragraph 3(a)(ii) of the Policy, which provides that circumstances indicating that the Respondent is using 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 may be evidence of Abusive Registration. Clearly, under the Policy the fact that the Respondent may no longer be using the Domain Names to point to his own websites does not exculpate him, given that he was previously doing so.
- 6.14 Again, the Complainant has not supported its contentions in this regard with any evidence of such confusion or the likelihood thereof.
- 6.15 However, useful guidance in this regard is to be found in the DRS Expert Overview document, in particular in paragraph 3.3 of the latter which comments on paragraph 3(a)(ii) of the Policy in the following terms:

"The 'confusion' referred to in this paragraph of the Policy is confusion as to the identity of the person/entity behind the domain name. Will an internet user seeing the domain name or the site to which it is connected believe or be likely to believe that 'the domain name is registered to, operated or authorised by, or otherwise connected with the Complainant'?"

...

Commonly, internet users will visit websites either by way of search engines or by guessing the relevant URL. If the domain name in dispute is identical to the name of the Complainant and that name cannot sensibly be referred to anyone else, there is bound to be a severe risk that a search engine, which is being asked for the Complainant, will produce high up on its list the URL for the website connected to the domain name in issue. Similarly, there is bound to be a severe risk that an internet user guessing the URL for the complainant's website will use the domain name for that purpose.

In such cases, the speculative visitor to the registrant's website will be visiting it in the hope and expectation that the website is a website "operated or authorised by, or otherwise connected with the complainant." This is what is known as 'initial interest confusion' and the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration, the vice being that even if it is immediately apparent to the visitor to the website that the site is not in any way connected with the Complainant, the visitor has been deceived. Having drawn the visitor to the site, the visitor may well be faced with ... a commercial website, which may or may not advertise goods or services similar to those produced by the complainant. Either way, the visitor will have been sucked in/deceived by the domain name.

Findings of Abusive Registration in this context are most likely to be made where the domain name in issue is identical to the name or mark of the Complainant and without any adornment ... The activities of typosquatters are generally condemned ... as are those people who attach as appendages to the Complainant's name or mark a word appropriate to the Complainant's field of activity. See for example the Appeal decision in DRS 00248 (Seiko-shop.co.uk)."

- 6.16 This case would appear to fall squarely within that of "*people who attach as appendages to the Complainant's name or mark a word appropriate to the Complainant's field of activity*".
- 6.17 Indeed, there must be at least a likelihood that, at the time that the Respondent was using the Domain Names to point to his websites, the confusion would have gone further than 'initial interest' confusion, owing to the Respondent's flagrant use on the Websites of the registered word and image trade marks owned by the Complainant.
- 6.18 Finally, the Respondent adduces no evidence pursuant to paragraph 4 of the Policy which might tend to show that the Domain Names are not an Abusive Registration.
- 6.19 Accordingly, for the reasons set out at 6.4 to 6.18 above, the Expert is satisfied, on the balance of probabilities, that the Domain Names have been used in a manner which took unfair advantage of the Complainant's Rights in the Mark and/or was unfairly detrimental to those Rights.

7 Decision

- 7.1 Accordingly, the Expert finds that the Complainant has Rights in a name or mark which is identical or similar to each of the Domain Names and that the Domain Names, in the hands of the Respondent, are each Abusive Registrations.
- 7.2 It is therefore determined that the Domain Names be transferred to the Complainant.

Signed **David Engel**

Dated 20 February 2012