

**DISPUTE RESOLUTION SERVICE**

**D00011795**

**Decision of Independent Expert**

Adventure Events Limited

and

Neil McLaren

**1. The Parties**

Complainant: Adventure Events Limited  
Sales & Accounts  
45 Greenvale Road  
Eltham  
London  
SE9 1PB  
United Kingdom

Respondent: Mr Neil McLaren  
Adventure 001 Ltd  
Hillmotts Farm Cottage  
Hedgerley Lane  
Beaconsfield  
Buckinghamshire  
HP9 2SB  
United Kingdom

**2. The Domain Name**

<adventureevents.co.uk> ("the Disputed Domain Name")

**3. Procedural History**

The Complaint was filed with Nominet on 16 August 2012. Nominet validated the Complaint on 17 August 2012 and notified the Respondent by post and by email, stating that the Response had to be received on or before 10 September 2012. The Respondent filed a Response on 10 September 2012 and Nominet notified the Complainant that a Reply had to be received on or before 17 September 2012. The Complainant filed a Reply on 14 September 2012.

The Informal Mediation procedure failed to produce an acceptable solution for the parties and so on 16 October 2012 Nominet informed the Complainant that it had until 30 October 2012 to pay the fee for the decision of an Expert pursuant to paragraph 7 of the Nominet Dispute Resolution Service Policy ("the Policy"). On 17 October 2012 the Complainant paid Nominet the required fee.

On 19 October 2012 the undersigned, Jane Seager ("the Expert"), confirmed to Nominet that she knew of no reason why she could not properly accept the invitation to act as an Expert in this case and further confirmed 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.

On 24 October 2012 the Respondent submitted a further statement in accordance with paragraph 13(b) of the Nominet Dispute Resolution Service Procedure ("the Procedure") which the Expert agreed to review in the interests of fairness. On 25 October 2012 the Complainant submitted a further statement in accordance with paragraph 13(b) of the Procedure which the Expert again agreed to review.

#### **4. Factual Background**

##### **The Complainant**

The Complainant is a company registered in England & Wales with Company number 03149956. Its registered office is in London and it was incorporated on 23 January 1996. The Complainant organises group events such as go-karting, sailing, quiz nights and paintballing.

The Complainant uses the domain name <adventure-events.co.uk> which it registered on 26 February 1997. This domain name is being used to point to its website [www.adventure-events.co.uk](http://www.adventure-events.co.uk) which sets out the Complainant's services and prices. The Complainant also operates a different website at [www.gokarting.co.uk](http://www.gokarting.co.uk).

The Complainant originally registered the Disputed Domain Name on 26 November 1999, but allowed it to lapse on 26 November 2009.

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

The Respondent is the managing director of a company registered in England & Wales with Company number 05258532. Its registered office is in Buckinghamshire and it was incorporated on 13 October 2004. The Respondent organises events for both groups and individuals, such as corporate team building activities and hen and stag parties.

The Disputed Domain Name was registered by the Respondent on 29 January 2011 and is being used to point to the Respondent's [www.adventureevents.co.uk](http://www.adventureevents.co.uk) website which sets out the Respondent's services and prices. The Respondent also operates a different website at [www.adventure001.com](http://www.adventure001.com).

##### **The Dispute**

The Complainant became aware of the Respondent's registration of the Disputed Domain Name in 2012 when it received an email and a couple of telephone calls intended for the Respondent. It therefore decided to file a Complaint under the Policy.

## **5. Parties' Contentions**

### **Complaint**

#### **Complainant's Background and Rights**

The Complainant asserts that it has conducted business discretely, professionally and honestly as an amusement and recreational activity company since 1996. It files accounts annually and pays relevant taxes on time (2011 accounts and 1999 VAT return attached to illustrate this).

Given its conduct and professionalism with suppliers and clients, the Complainant claims to have a very good reputation and to be recognised as Adventure Events across the country. The Complainant states that it has advertised in various activity-based publications and as evidence of this attaches a Talking Pages invoice (1997) and some artwork for adverts in Time Out (2003/2004).

According to the Complainant, it has now organised over 10,000 events and has received positive feedback throughout the duration of its existence. It organises events for many companies, both large and small, and is a preferred supplier for numerous companies.

The Complainant states that the Disputed Domain Name is very similar to its own domain name (and could even be considered identical) and thus it believes that the Respondent has no right to use it.

#### **Abusive Registration**

The Complainant states that it has come to its attention in the past month or two that another entity calling itself "Adventure Events" has appeared. It was not until recently, upon receipt of an "odd email" and after participating in a couple of "peculiar phone calls", that the Complainant discovered that the Disputed Domain Name was being used to run a business calling itself "Adventure Events". The Complainant states that it feels that such activities are now disrupting its own business run under the "Adventure Events" name and confusing existing clients and suppliers, and will potentially do so more in the future.

The Complainant relates that at some point during April or May 2012 it received what it thought was a bogus phone call from an adult male asking for more information about an Event Organiser's job that it had supposedly advertised. One of the Complainant's directors politely told the individual that it was not advertising and that he must be mistaken. He was adamant but did not have the advert to hand and was unable to offer any further information. Having had a rather confused conversation, the Complainant's director asked him to email a link to the advert when he was able to do so, but did not receive anything further from the individual and so ignored the conversation.

According to the Complainant, the next odd thing that it experienced was that it received an email (addressed to [events@adventure-events.co.uk](mailto:events@adventure-events.co.uk)) from an Individual who was seeking a contact number so that he could use a flying lesson voucher because the number he had on his paperwork was incorrect. The Complainant's director checked its historic invoices for such a voucher, ascertained that it did not have such an outstanding item and therefore assumed that the email was phishing (email attached to the Complaint).

The Complainant asserts that most recently and most worryingly it received a call on 27 July 2012 informing it that it was about to be served with a writ. However, it appears that after more investigation the individual concerned realised that the Complainant was not the entity that he had an issue with. The intended recipient was in fact a completely different company called Adventure 001 Limited that had been using the Disputed Domain Name and calling itself "Adventure Events".

As a result of the above events, the Complainant established that the Disputed Domain Name, which was previously owned by the Complainant, was being used by the Respondent (active website at [www.adventure001.com](http://www.adventure001.com)), to portray itself as "Adventure Events" (relevant Whois records and screenshots attached).

The Complainant asserts that, given the nature of both companies, the Respondent can be considered as one of the Complainant's competitors, although until now the Complainant has had no reason to challenge the Respondent's mode of operation.

The Complainant had previously allowed the Disputed Domain Name to lapse, but stated that it had perhaps innocently underestimated the risk of a third party adopting its brand and calling itself Adventure Events.

The Complainant states that it is aware, through the press, that the Respondent's behaviour is worthy of complaint and that individuals or companies cannot simply grab a domain name and abuse the use of that domain name to someone else's detriment. The Complainant argues that, apart from the above issues, anybody who may wish to look for the Complainant is likely to search for its company name and may well mistakenly access the Respondent's website at [www.adventureevents.co.uk](http://www.adventureevents.co.uk) (a Google search on the term "adventure events" is attached as evidence of this). The Complainant thus states that it believes that the existence of this website is deceiving any "initial interest parties".

The Complainant also asserts that simply mistakenly dropping the hyphen will equally lead Internet users to unwillingly find the Respondent, to the Complainant's detriment, and thus may be thought of as benefiting from typological mistakes.

The Complainant therefore asserts that it is losing custom and that the Disputed Domain Name, in its opinion, is being used unfairly.

In the Complainant's view, the Respondent's website at [www.adventureevents.co.uk](http://www.adventureevents.co.uk) is designed and phrased to capture goods and services both immediately local to the Complainant and also potentially existing business that it has across the country. As the Respondent can be considered a competitor, the Complainant is of the opinion that the Disputed Domain Name is taking unfair advantage of its already long existing domain name and highly reputable company name.

The Complainant asserts that it appears that the Respondent has "adopted" its company name and is attempting to pave a "new" identity under the "Adventure Events" name. As far as the Complainant is concerned, the Respondent has its own legal identity and is now attempting to adopt a clean reputation as Adventure Events.

The Complainant points out that, on its new [www.adventureevents.co.uk](http://www.adventureevents.co.uk) website, the Respondent states that it has grown and has been created and operates in and around London and the Home Counties, which is the Complainant's core business area. The

Complainant highlights various quotes such as "Adventure Events has grown out of..." and "Adventure Events was created..." and "offer events across the UK whilst our main bases are in London and the South" (screenshots attached). However, in the Complainant's opinion such statements also apply to the Complainant itself.

The Complainant states that it has a widespread client base that includes many regular Blue Chip companies as well as listed companies, small local companies and individuals from the London area and across the country. It also has a long list of suppliers who may well be mistaken and think that the Respondent's [www.adventureevents.co.uk](http://www.adventureevents.co.uk) website is in fact the Complainant's.

The Complainant asserts that the Respondent looks to be using both its traditional website at [www.adventure001.com](http://www.adventure001.com) and now [www.adventureevents.co.uk](http://www.adventureevents.co.uk) to work towards rebranding itself using the Complainant's existing identity, which it feels is detrimental and confusing.

In conclusion, given its long standing and reputable name, the Complainant feels that the continued use of the Disputed Domain Name has and will detrimentally and unfairly affect its company. It therefore requests transfer of the Disputed Domain Name.

### **Response**

The Respondent states that it runs adventure-style events on the 2,500 acre Portman Estate in Beaconsfield, west of London. The managing director has traded in this sector using "Adventure" as a brand theme for 10 years now, initially as a sole trader and then as a limited company.

The Respondent states that it too pays all of its taxes including Corporation, PAYE and VAT and conducts its business discretely, professionally and honestly as an amusement and recreational activity company. However, the Respondent argues that, unlike the Complainant, who appears to be more of an agent, it runs the majority of its events itself at its own venues.

The Respondent asserts that, until it received the Complaint, it had never heard of the Complainant and had certainly never been involved in any form of competitive situation with it through its main areas of Multi Activity/Team Building, Aviation & Clay Pigeon Shooting.

In response to the Complaint, the Respondent puts forward the following arguments:

(1) The managing director categorically denies that the Respondent registered the Disputed Domain Name to capture business from any other company or website.

(2) The Respondent states that it has not at any time made any attempt to take on the identity of the Complainant.

(3) The Respondent cannot be considered to be a competitor of the Complainant because it only offers two directly comparable events (run at its own venues) out of the 10 activities listed on the Respondent's home page. According to the Respondent, the Complainant's number one activity is go karting, which is clearly its niche and something that it has marketed strongly – the Complainant has registered <gokarting.co.uk> for this purpose and appears to use this in all official communication now. The Respondent has

never provided a go karting experience and does not advertise this on its website. The Respondent states that it is predominantly a helicopter business and the managing director is a helicopter pilot.

(4) The Respondent argues that the phrase "Adventure Events" is extremely relevant to its business activities of the last 10 years.

(5) The Respondent believes that, like every other UK business, it should have the legitimate right to register and host a website at a domain name that is not an exact match of its registered business name but a phrase that matches its activity, and not a registered trade mark.

(6) In the Respondent's opinion, the above point is supported by the Complainant's registration and prominent use of <gokarting.co.uk>, which is not its registered business name. The Respondent argues that, by the Complainant's own argument, this domain name should be transferred to Go Karting Limited.

(7) The Respondent believes that it legitimately and lawfully registered the Disputed Domain Name in January 2011. Since that time its "high end" corporate events have been promoted on the corresponding website, [www.adventureevents.co.uk](http://www.adventureevents.co.uk). Since then, the Respondent has provided a variety of events to over 55,000 people including members of the Qatar and Dubai Royal Families.

(8) The Respondent strongly disputes that one email sent in error and one telephone call made in error over a period of 20 months is disruptive to any business

(9) The Respondent states that it has never had a writ served on it and so feels that this part of the Complaint requires further evidence - it denies that this was in relation to the Respondent.

(10) Over the last 20 months the Respondent states that it has invested over £65,000 in sponsorship contracts and the marketing of its corporate events business under the phrase "Adventure Events". The corresponding email addresses etc are known to its database of 225,000 individuals, and the Respondent asserts that it would therefore be devastating to its business if the Disputed Domain Name was taken from it after it had used it for so long.

### **Reply**

The Complainant confirms that it operates as an agency but does not think that this should have any negative influence on its rights.

The Complainant asserts that, prior to purchasing the Disputed Domain Name, a Google search using the term "Adventure Events" would have showed that the Complainant existed. A search at Companies House would also have revealed this. The Complainant states that it is certain that the Respondent would have heard of both Google and Companies House, and suggests that not having heard of a company does not mean that that company does not exist.

The Complainant also puts forward the following arguments:

(1) The registration of the Disputed Domain Name has already confused Internet users and takes advantage of the Complainant's long established reputable name – in the Complainant's opinion the Disputed Domain Name will potentially divert initial interest parties to the Respondent.

(2) The Complainant believes the registration to be an abusive one. The use of "Adventure Events" throughout the [www.adventureevents.co.uk](http://www.adventureevents.co.uk) website reads as though it is a company title, which will inevitably lead visitors to believe that it is the Respondent's identity, when it is not.

(3) The Complainant asserts that the website to which the Disputed Domain Name is pointing overlaps the Complainant's core business area (Central London and the surrounding counties) and offers products that significantly contribute towards the Complainant's revenue.

(4) In the Complainant's opinion, the Respondent is using "Adventure Events" as a name, not as a phrase. This is illustrated by the Respondent's website and in particular by sentences such as "Adventure Events specialise in fun, unusual and exciting events."

In addition the Complainant asserts that the Google search results show that the [www.adventureevents.co.uk](http://www.adventureevents.co.uk) website is using the sole text "Adventure Events" in the head title section of the website code, indicating use as a title or noun. "Adventure Events" is also used as a title on all screen shot pages previously submitted (additional evidence attached demonstrating this). According to the Complainant, the use of "Adventure Events" in this manner is as a noun and again demonstrates that the Respondent is taking unfair advantage of its business name and title.

(5) The Complainant states that the registration of the Disputed Domain Name is as close to an exact match of its company name as possible (other than the Complainant's existing domain name <adventure-events.co.uk>) and the Complainant therefore considers it to be an unfair one.

(6) According to the Complainant, the Complainant's domain name <gokarting.co.uk> was registered in 1997. GoKarting Limited was formed in 2004 and so it would not have been able to register the Complainant's domain name. A quick search by GoKarting Limited at the time, on any search engine, would have shown that it was already registered. Thus the Complainant asserts that the Respondent's point is irrelevant.

(7) The Complainant believes that the registration of the Disputed Domain Name abuses its existing domain name and confuses its long standing "high end" corporate portfolio.

(8) The Complainant states that its business continues to be disrupted and that it does not wish to be further confused, disrupted or vaguely associated with the Respondent. In the Complainant's opinion their identities and domain names are best separate.

(9) The Complainant asserts that the combination of events recorded in its Complaint, including the conversation it had with an individual about a potential writ, led to its discovery of the Disputed Domain Name and corresponding website. These events resulted in the Complainant's decision to file the Complaint.

(10) Over the past 16 years the Complainant has used the domain name <adventure-events.co.uk> and traded successfully as Adventure Events Limited. No doubt some

correction costs would be incurred by the Respondent should the Disputed Domain Name be transferred. However, the Complainant imagines that the Respondent could inform its 225,000 clients of the change at relatively little expense.

### **Respondent's 13(b) Submission**

The Respondent asserts that it is now clear that the Complainant claims that the sole purpose of the Respondent's registration of the Disputed Domain Name was to attempt to steal the Complainant's company identity due to the Adventure001 brand being "toxic" with overwhelmingly bad reviews.

In this regard the Respondent makes the following arguments:

(1) The idea that the Respondent is moving away from the Adventure001 brand is unfounded. The Respondent asserts that it has continued to develop this brand for its Experience Gift Vouchers and states that it will be part of its business for a long time to come. According to the Respondent, it exclusively supplies over £1.5m of services annually to BuyaGift, Virgin Experience Days, Activity SuperStore & Red Letter Days and has won awards for quality of supplier and customer service. The Respondent also states that it is about to launch a new Adventure001 website.

(2) The Respondent asserts that, like any business that supplies to the general public, it does have a few negative Trip Advisor reports and this is inevitable for a company of its size - there will always be a few customers who feel they can "blackmail" their way to a refund. However, given the Respondent's overall 4.5 / 5 rating, it has no concerns that its Adventure001 brand has overwhelmingly bad reviews (link to the relevant Trip Advisor webpage attached).

(3) The Respondent therefore argues that its Trip Advisor rating is very good and the motive that the Complainant describes for the Respondent wishing to move away from the Adventure001 brand doesn't exist.

(4) The Respondent states that its motive for registering the Disputed Domain Name was to start building a distinct brand for its prestige (Corporate Event) customer group using a descriptive phrase by which it had been commonly known for many years. According to the Respondent, the Adventure001 brand remains aimed at the more budget (gift experience) end of the market.

(5) The Respondent argues that this strategy has long been part of its business strategy as it has previously done the same thing with its <aircraft-charter.co.uk> brand and can produce minutes from the meetings in January 2011 when this business strategy was developed and the Adventure Events name was first mentioned.

(6) The Respondent asserts that the Complainant must recognise this as it has done the same with its <gokarting.co.uk> domain name.

(7) The Respondent's managing director can categorically state that his motive for registering the Disputed Domain Name had nothing to do with knowledge of the Complainant or any attempt to benefit from its trading reputation.

The Respondent argues that the range of services that it is promoting via the website to which the Disputed Domain Name is pointing differs significantly from the services



referred to on the Complainant's website. According to the Respondent, it is a supplier promoting its own venues whereas the Complainant is an agent acting primarily on behalf of go-karting suppliers.

Over the last 2 years, the Respondent asserts that it has invested in excess of £52,000 in sponsorship, recruitment, marketing, vehicle branding, helicopter branding and business development activities in areas that do not compete with the Complainant.

In the Respondent's opinion losing the Disputed Domain Name would have devastating effects on its business and would give the Complainant a huge benefit as a result of the Respondent's efforts over the last two years.

### **Complainant's 13(b) Submission**

The Complainant states that the Complaint is based on its rights and belief that the registration and use of the Disputed Domain Name is abusive and confuses Internet users. Such rights have already been documented in previous evidence. The Complainant is concerned that the Respondent has registered an identical domain name and is subsequently using it to operate in areas and offer products that compete directly with the Complainant.

The Complainant argues that it is apparent from the Respondent's 13(b) submission that the Respondent's "motive" in 2011 was to start an Adventure Events "brand". However, the Complainant believes that that particular brand name belongs to it. The simplest of checks on Google or at Companies House would have revealed the existence of the Complainant. In the Complainant's opinion the Respondent is attempting to attract high value custom as "Adventure Events", and this confuses the public and corporate audience.

The Complainant argues that the Respondent is using the Disputed Domain Name to build upon and promote London area venues and events outside of its ownership and is also acting, as the Complainant does, as an agent for London based activity venues. Confusion has occurred and will occur further should the Disputed Domain Name remain registered to the Respondent.

Finally the Complainant states that it feels that the Respondent has gone off-point in its 13(b) submission and would instead like the evidence to focus on the rights to the Disputed Domain Name and the fact that the registration confuses Internet users and unfairly damages the Complainant's long standing, established and trusted identity.

## **6. Discussion and Findings**

### **General**

Under paragraph 2(a) of the Policy, for the Expert to order a transfer of the Disputed Domain Name the Complainant is required to demonstrate, on the balance of probabilities, both of the following elements:

- "(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."*

### **Complainant's Rights**

The Policy defines Rights as "*rights enforceable by the Complainant, whether under English law or otherwise*".

By far the easiest way to demonstrate Rights under the Policy is usually the provision of a registered trade mark. However the Complainant has supplied no evidence that it owns any registered trade marks in the term ADVENTURE EVENTS.

The Complainant is an incorporated company called Adventure Events Limited. However, in this regard the Expert is of the opinion that the mere registration of a company name is not sufficient to create Rights under the Policy (and this is indeed the view of the majority of the Nominet Experts).

In some countries the registration of a domain name may be interpreted as a prior right, as can a trade name. However, as both parties are based in the UK it would seem appropriate to limit consideration to rights enforceable under English law, despite the wider wording of the Policy.

In the light of the above, the only question that remains to be examined is whether the Complainant can lay claim to unregistered (or common law) trade mark rights in the term ADVENTURE EVENTS.

It is often remarked that the Nominet Dispute Resolution Service (DRS) is intended to be a fast, simple procedure designed predominantly for clear cut cases of Abusive Registration under the Policy (often referred to as "cybersquatting"). It is not intended to deal with complex points of law, which are better left to a court of competent jurisdiction. However, brief consideration of the law of passing off is somewhat unavoidable in these circumstances, as it is inextricably linked to the concept of unregistered trade mark rights.

Under the law of England and Wales, it is generally accepted that three elements must be satisfied for a successful action in passing off, as follows:

(i) First, the claimant has to prove that he has goodwill or reputation attached to the goods or services supplied, so that the identifying 'get-up' (whether brand name or trade description or the individual features of labelling or packaging) is recognised by the public as distinctive of those goods and services.

(ii) Secondly, the claimant must demonstrate a misrepresentation by the defendant to the public, leading or likely to lead the public to believe that the goods or services offered by him are the goods or services of the claimant.

(iii) Finally, the claimant must prove that he has suffered damage by reason of the public's belief that the source of the defendant's goods or services is the same as the source of those offered by the claimant.

For the purposes of considering whether the Complainant has Rights under the Policy, the Expert is of the opinion that it is not necessary to come to a view on all three points listed, only point (i).

As far as (i) is concerned, given the fact that the term at issue consists of two dictionary words, there is clearly an issue in relation to distinctiveness. The Complainant is using

the term ADVENTURE EVENTS in connection with its business organising events which could be described as adventurous. Indeed the term "adventure" is frequently used as an adjective, for example "adventure holidays" or "adventure parks", such that the phrase "adventure events" used in this context could be said to be relatively descriptive. Indeed a brief Internet search reveals that this word combination is also being used by entities performing similar activities in both Denmark and Australia.

In terms of the standard and quality of evidence required to demonstrate unregistered trade mark rights, the Experts' Overview (available on the Nominet website) is helpful and states that:

*"If the right is an unregistered trade mark right, evidence needs to be put before the Expert to demonstrate the existence of the right. This will ordinarily include evidence to show that (a) the Complainant has used the name or mark in question for a not insignificant period and to a not insignificant degree (e.g. by way of sales figures, company accounts etc) and (b) the name or mark in question is recognised by the purchasing trade/public as indicating the goods or services of the Complainant (e.g. by way of advertisements and advertising and promotional expenditure, correspondence/orders/invoices from third parties and third party editorial matter such as press cuttings and search engine results)."*

The Complainant has clearly taken note of the above and supplied (a) its latest company accounts and (b) evidence of advertising. Nevertheless the Expert finds it difficult to come to a decision on whether this is enough, given the fact that the company accounts serve to highlight the fact that the Complainant is a relatively small company and the advertisements supplied date back to 2003/2004. However, overcoming the Rights hurdle under the Policy is often said to be a relatively low level test, more a question of establishing whether or not the Complainant has the standing to bring a complaint under the DRS.

Given that the Complainant has been trading under the "Adventure Events" name since it was incorporated in 1996, the Expert is prepared to conclude that the Complainant has established Rights for the limited purpose of the DRS, although this is not to say that the Complainant would necessarily succeed in establishing the relevant goodwill for a case in passing off in a court of law.

Furthermore, the Policy stipulates that the name or mark in which the Complainant has Rights (ADVENTURE EVENTS) must be identical or similar to the Disputed Domain Name (adventureevents.co.uk).

It is accepted practice under the Policy to discount the ".co.uk" suffix, and so as a result the Expert finds that paragraph 2(a)(i) of the Policy is satisfied and that the Complainant has Rights in respect of a name which is identical to the Disputed Domain Name.

### **Abusive Registration**

Moving on to paragraph 2(a)(ii) of the Policy, "Abusive Registration" is defined in paragraph 1 of the Policy to mean a domain name which:

*"(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."*

In the light of the above, the Expert has considered both (i) and (ii) in turn, as follows:

**(i) Abuse at the Time of Registration**

Paragraph 3(a) of the Policy sets out a non-exhaustive list of factors which may be evidence of abuse. Both parties are unrepresented by lawyers and have not referred explicitly to the paragraphs set out in the Policy in their submissions. However, the Expert has considered the parties' submissions in detail and, as far as abuse at the time of registration is concerned, the Complainant would seem to be arguing that paragraphs 3(a)(i)(B) and (C) apply to the Respondent's behaviour, as follows:

*"Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:*

*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."*

Whilst the Respondent's registration of the Disputed Domain Name may well have had the side effect of blocking the Complainant from registering it (again) and may also have disrupted the Complainant's business (unfairly or not), the Expert thinks it unlikely that this was the Respondent's primary intention upon registration of the Disputed Domain Name, as required by the Policy. Presumably the Respondent's main intention was instead to increase its own business, rather than to disrupt or inconvenience the Complainant (regardless of whether or not this actually took place).

However, it is clear that such factors are only examples of what may or may not constitute abuse, and not an exhaustive list. The Expert is thus free to consider what is and what is not abusive, as long as it falls under the terms of the Policy.

It is significant that the Respondent categorically denies all knowledge of the Complainant when it chose the Disputed Domain Name. In this regard the Expert finds the reasoning of the Appeal Panel in *Verbatim Ltd v Michael Toth*, DRS 04331, to be useful. The Panel states:

*"some knowledge of the Complainant and/or its brand/rights is a pre-requisite for a successful complaint under all heads of the DRS Policy other than paragraph 3(a)(iv) (giving false contact details). The DNS is a first-come-first-served system. The Panel cannot at present conceive of any circumstances under which a domain name registrant, wholly unaware of the Complainant and its Rights, can be said to be taking unfair advantage of or causing unfair detriment to the Complainant's Rights...[F]or this complaint to succeed, the Complainant must satisfy the Panel, as an opener, that the Respondent was aware of the existence of the Complainant or its brand at the date of registration of the Domain Name or at commencement of an objectionable use of the Domain Name."*

The Expert would agree with this - whether or not there can be said to have been abuse depends largely on the Respondent's mental state at the relevant time, unlike (for example) trade mark infringement which requires a more objective test. The

Complainant seems to acknowledge that the Respondent may be telling the truth about not being aware of the Complainant when it states:

*"It would be surprising to learn that everyone had heard of Adventure Events Limited. Prior to purchasing the domain name a Google search using the criteria Adventure Events would have showed Adventure Events existed. Another search at Companies House would have revealed Adventure Events Limited existed. We are certain owners of Adventure 001 Limited will have heard of both Google and Companies House. We suggest not having heard of a company does not mean the company does not exist."*

Even though the Complainant and the Respondent broadly operate in the same fields in the South of England, the Expert is not convinced, on the balance of probabilities, that the Respondent knew of the Complainant when it decided to register the Disputed Domain Name, based on the evidence presented. Aside from the Complainant's admission that the Respondent may not have been aware of it, the Complainant would appear to be a relatively small company operating mainly in London (often as an agent), whereas the Respondent is based in Buckinghamshire and would not appear to have exactly the same focus as the Complainant (different events, different venues). Thus it is by no means a forgone conclusion that the two companies were aware of each other, despite operating in broadly similar fields.

The Experts' Overview (available on the Nominet website) makes the point that:

*"The body of expert decisions under the Policy is developing and certain principles are emerging. The section of the Appeal decision in DRS 04331 (verbatim.co.uk) dealing with 'knowledge' and 'intent' sets out one panel's views on that topic. However, new domainer practices (e.g. automated bulk transfers of domain names) are becoming commonplace and to the extent that the Verbatim decision suggests that for a finding of Abusive Registration, the Respondent must have had knowledge of the Complainant and/or its Rights at the relevant time, it is now thought by some Experts that that might overstate the position."*

However in the Expert's opinion, this is not a case where the Respondent should be penalised because it should have known of the Complainant (even though it may not have actually been aware of it), in particular given the relative weakness of the Complainant's Rights as examined above. The Expert finds that it is certainly plausible that the Respondent registered the Disputed Domain Name because it seemed descriptive of its activities, especially given its registration and use of the similarly descriptive domain name <aircraft-charter.co.uk>. Furthermore, had the Respondent known that the Disputed Domain Name had been allowed to lapse by the Complainant in 2009 (although this would seem very unlikely), it would have been reasonable for the Respondent to believe that the Disputed Domain Name was fair game.

As a result the Expert finds that the Complainant has not succeeded in proving that the Disputed Domain Name was registered in a manner which, at the time when the registration took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

## **(ii) Abusive Use**

As far as abusive use is concerned, the Complainant would seem to be arguing that paragraph 3(a)(ii) of the Policy applies to the Respondent's behaviour, as follows:

*"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."*

The Complainant has supplied evidence of a misdirected email and also states that it has received two misdirected telephone calls intended for the Respondent. The Expert has no reason to doubt the veracity of the Complainant's claims and thus accepts that there has been actual confusion. However, in this regard once again the Expert finds the reasoning of the Appeal Panel in *Verbatim Ltd v Michael Toth*, DRS 04331, to be useful. The Panel states:

*"factor 3(a)(ii) (use that causes confusion with the Complainant) will generally be insufficient where there is nothing else in the evidence to indicate abuse: other questions must be asked, such as how well-known the Complainant's relevant Rights are, whether the Respondent was aware of them, and whether the Respondent intended confusion to arise. The Expert's role is then to consider the materiality and weight of all the evidence in determining whether it is sufficient to establish that the Domain Name is an Abusive Registration."*

In other words, for the use of the Disputed Domain Name to qualify as abusive, there has to be an element of abusive behaviour on the part of the Respondent, not just confusion in itself, and the Respondent must have at least some knowledge of the Complainant. As discussed above, the Complainant has not succeeded in proving, on the balance of probabilities, that the Respondent was aware of the Complainant at the time that the Disputed Domain Name was registered. In addition, there is nothing in evidence to suggest that the Respondent subsequently became aware of the Complainant's existence whilst it was using the Disputed Domain Name until it received the Complaint, and this was over 18 months after the Disputed Domain name was registered.

In the Expert's opinion, the "look and feel" of the Respondent's website does not suggest that it is attempting to profit from any confusion with the Complainant, as the two websites are completely different. Ironically, the Respondent's reference to itself on its website as "Adventure Events" actually supports its case as it explains the use of the Disputed Domain Name. Had the Respondent simply been using the Disputed Domain Name to point towards its other website at [www.adventure001.com](http://www.adventure001.com) with no explanation then it would certainly have been easier to believe that the Respondent was attempting to profit from the Complainant's existing reputation in some way.

It is true that some Internet users searching for the Complainant may suffer from so called "initial interest" confusion, whereby they realise almost immediately that they are on the wrong website, but continue to do business with the Respondent anyway. However once again this can only be classified as abusive behaviour if the Complainant can prove (on the balance of probabilities) that the Respondent had some prior knowledge of the Complainant and its Rights. Again the Expert feels that this is not the case, especially in view of the rather descriptive nature of the Disputed Domain Name and the fact that the Complainant does not have strong Rights as defined under the Policy.

Furthermore, whilst the Respondent's arguments concerning the reason for its choice and use of the Disputed Domain Name may not necessarily be resoundingly convincing

(namely the separation of its corporate and individual business), they do go some way towards rebutting the Complainant's allegations of usurpation of its identity due to bad Internet reviews. In short, neither party has succeeded in producing particularly persuasive evidence, but given that it is for the Complainant to make out its case and not for the Respondent to prove otherwise, this ultimately acts in favour of the Respondent.

## **Conclusion**

None of the other factors listed in paragraph 3 of the Policy illustrating Abusive Registration can be said to be relevant, and the Complainant does not cite any of them in argument. The list is only meant to give illustrative examples, and so the Expert has considered whether there are any other arguments which could suggest that the Respondent's registration or use of the Disputed Domain Name was or is inherently unfair or abusive (and thus should be brought to an end by the DRS procedure), or whether such registration or use could simply be said to be fair competition - an unfortunate consequence of the Complainant's initial choice of corporate identity / domain name, coupled with its failure to renew the Disputed Domain Name. Given the circumstances of the case as a whole and, in particular, the nature of the Disputed Domain Name and the fact that the Complainant was only barely able to establish Rights in accordance with the Policy, the Expert has decided not to make a finding of Abusive Registration.

However, this is a very difficult case and the issues are finely balanced. The questions raised are complex and in this regard it should be remembered that the DRS procedure was designed and is intended predominantly for clear cut cases where it is evident that the domain name in question is abusive. Domain names are registered on a first come first served basis and, although the Expert has a great deal of sympathy for the Complainant and its predicament, in this case the Expert is unwilling to overturn this. Evidently the parties are of course free to pursue the matter in a court of competent jurisdiction, and by this decision the Expert makes no inferences as to what the outcome of such a case would be.

In summary, the Expert has considered the admissibility, relevance, materiality and weight of the evidence as a whole and is not satisfied that the Complainant has succeeded in proving, on balance of probabilities, that the Disputed Domain Name is an Abusive Registration in accordance with paragraph 2(a)(ii) of the Policy.

## **7. Decision**

The Expert finds that the Complainant has Rights in a name which is identical to the Disputed Domain Name, but is not satisfied that the Disputed Domain Name, in the hands of the Respondent, is an Abusive Registration. No action should therefore be taken in relation to the Disputed Domain Name.

---

Jane Seager  
14 November 2012