

DISPUTE RESOLUTION SERVICE

D00012394

Decision of Independent Expert

Construction Skills Certification Scheme Limited

and

Ms Sarah Mulraine

1. The Parties:

Complainant: Construction Skills Certification Scheme Limited
CSCS Limited
B&CE Building
Manor Royal
Crawley
West Sussex
RH10 9QP
United Kingdom

Respondent: Ms Sarah Mulraine
102 College Road
Harrow
Middlesex
HA1 1ES
United Kingdom

2. The Domain Name:

blackngoldcscscard.co.uk

3. Procedural History:

28 January 2013 Dispute received
29 January 2013 Complaint validated
29 January 2013 Notification of complaint sent to parties

15 February 2013 Response reminder sent
19 February 2013 Response received
19 February 2013 Notification of response sent to parties
22 February 2013 Reply reminder sent
26 February 2013 Reply received
26 February 2013 Notification of reply sent to parties
26 February 2013 Mediator appointed
01 March 2013 Mediation started
15 March 2013 Mediation failed
15 March 2013 Close of mediation documents sent
25 March 2013 Expert decision payment received
15 April 2013 Expert Declaration filed.

4. Factual Background

The Complainant is a private company limited by guarantee, incorporated in the United Kingdom.

Since 1995 the Complainant has developed and administered a scheme by which workers in the UK construction industry can be assessed and certified for occupation competency and health and safety awareness. The scheme's full name is the Construction Skills Certification Scheme but it is also generally known and referred to by the acronym CSCS. If the workers meet the required standards, including passing the relevant "CSCS Test", they are issued with a "CSCS Card" as proof of that competency and awareness. The process of obtaining a CSCS Card is referred to as CSCS certification. Over 1.75 million CSCS Cards have been issued to date. There is a range of different cards which are colour coded and these include green cards for construction site operatives, black cards for manager occupations and gold cards for skilled workers and supervisor and technician occupations.

The Complainant is the owner of the following registered trademarks used in the provision of its certification services:

- UK Trade Mark registration no. 2 190 060 for CSCS & Device, application filed on 24 February 1999 and registered on 26 January 2001;
- UK Trade Mark registration no. 2 520 953 for CSCS, application filed on 14 July 2009 and registered on 20 November 2009; and
- Community Trade Mark registration no. 6347868 for CSCS, application filed on 1 November 2007 and registered on 4 November 2009.

Additionally the Complainant maintains a website to present its services at <www.cscs.uk.com>.

The disputed domain name was registered on 8 November 2010 and has been used as the address of a website maintained by Academy Training Group Limited, a company engaged in the provision of construction occupational training and qualifications including at one time CSCS tests and cards.

In or about October 2011 the Complainant received assurances from Academy Training Group that it would cease use and desist from further use of the disputed domain name in relation to the services provided by the Academy Training Group to students seeking CSCS certification.

The WhoIs states that the registrant is Sarah Mulraine but describes the Registrant Type as “UK Limited Company (Company number: 6765075)”. The precise relationship between the Respondent and Academy Training Group Limited is not clear. It is clear however that the Respondent has stated that the disputed domain name belongs to Academy Training Group Limited, that Academy Training Group Limited used the domain name at all material times, that the Complainant engaged in correspondence with Academy Training Group Limited and that Academy Training Group Limited gave undertakings in relation to the disputed domain name. For that reason this decision proceeds on the basis that the disputed domain name is registered in the name of the Respondent but is owned and controlled by Academy Training Group Limited as the Respondent states.

The Complainant submits that said agreement was broken by continued or renewed subsequent use, whereas the Respondent asserts that the disputed domain name has been dormant since October 2011 and denies any use of the disputed domain name subsequent to the aforesaid agreement.

5. Parties’ Contentions

The Complaint

The Complainant relies on its rights in the above-listed registered trademarks, each of which it submits, was registered in the name of the Complainant prior to registration of the domain name in dispute.

The Complainant further submits that it is generally known and referred to by the acronym CSCS and is the owner of the trademark CSCS through its ownership of a number of trade marks for or incorporating the letters CSCS and a substantial reputation and goodwill that it claims to have acquired by use of the CSCS trade mark both within the UK and internationally. Each month the Complainant’s website at <www.cscs.uk.com> receives over 150,000 different visitors and over 1.75 million CSCS cards have been issued to date and while the scheme operates only in the United Kingdom it has become known internationally. Accordingly the Complainant claims extensive and valuable rights in the CSCS mark and sign.

The Complainant has furnished copies of search results for the above trade mark registrations from the online trade mark databases of the UK Intellectual Property Office and The Trade Marks and Designs Registration Office of the European Union as an annex to the Complaint.

The Complainant submits that since its establishment in 1995, the CSCS certification scheme has become the industry standard competency card scheme for many hundreds of occupations in the UK construction industry and refers to details of the scheme on its website at <www.cscs.uk.com>.

The Complainant submits that its CSCS scheme has the support of most major trade associations, professional institutions, clients and construction contractors and is a requirement in all Government construction contracts that the workforces of the contractor hold a CSCS Card or equivalent.

Because the CSCS trademark has a significant commercial value to the Complainant, the Complainant has made efforts to enforce its rights so as to protect the substantial reputation and goodwill. To this end the Complainant has previously brought a number of successful complaints to Nominet and WIPO including: *Construction Skills Certification Scheme Limited v. Mara Figueira*, WIPO Case No. D2010-0947 in respect of the domain name <cscsbooking.com>; *Construction Skills Certification Scheme Limited v. SEO Website Designers (trading as Business Power UK)* WIPO Case No. D2011-1856 in respect of the domain name <testcscs.com>; and *Construction Skills Certification Scheme Limited v. Macsolution* DRS D00011648 in respect of the domain name <cscstestcard.co.uk> and *Construction Skills Certification Scheme Limited v. Ben Swarovski* WIPO Case No. D2012-1628 in respect of the domain name <cscstest.org>.

The Complainant alleges that the disputed domain name <blackngoldcscscard.co.uk> is clearly confusingly similar to the Complainant's trademark, consisting as it does of the CSCS mark surrounded by the descriptive words "black 'n' gold" and "card".

The Complainant further submits that the disputed domain name is an Abusive Registration.

The Complainant asserts that the website to which the disputed domain name resolves was run by Academy Training Group Limited which operates from the same postal address as that of the Respondent.

The disputed domain name and website first came to the Complainant's attention in or around July 2011. On 26 July 2011 the Complainant's solicitors, wrote to Academy Training Group to complain of its use and registration of the disputed domain name. Following an exchange of correspondence Academy Training Group undertook by its letter of 3 October 2011 to cease the use of the letters CSCS in its domain name <blackngoldcscscard.co.uk>. Following a further letter from the Complainant's solicitors dated 20 October 2011 it appeared to the Complainant that use of the disputed domain name by Academy Training Group had ceased. Copies of the correspondence between the Complainant's solicitors and Academy Training Group are annexed to the Complaint.

The Complainant alleges that subsequently however, in or around December 2012, it came to the Complainant's attention that, despite that undertaking, Academy Training Group had recommenced (or continued) use of the disputed domain name to provide services relating to the CSCS test and card, as well as other unrelated qualifications. In reply to a further letter from the Complainant's solicitors dated 21 December 2012 the Respondent denied use of the disputed

domain name for the purpose of promoting or offering the CSCS test and card. A copy of this correspondence is also annexed to the Complaint.

The Complainant submits that it appears therefore that the Respondent's website was originally set up and was continuing to be used with the intention of promoting Academy Training Group's services in connection with the genuine CSCS scheme. While the purpose of the website appears to be promotion of the CSCS scheme, the Complainant submits that it should be noted that neither the Respondent nor Academy Training Group have any connection with the Complainant and are not accredited or authorised in any way by the Complainant. Nor have they anything in their names that would justify use of "CSCS" in the disputed domain name. The Complainant submits that the Respondent therefore has no legitimate interest in using "CSCS" in the disputed domain name.

For the avoidance of doubt, the Complainant states that it does not object to the information and services being offered on the Respondent's website, nor does it object to the Respondent legitimately using "CSCS" in the website content to identify properly the services offered. The Complainant does however object to the Respondent's use of "CSCS" in the disputed domain name for the reasons explained below.

Screen shots of the website from July 2011 have been furnished in an annex to the Complaint. The Complainant states that unfortunately the screen shots of the website were not taken in December 2012 and at some point between 21 December 2012 and 11 January 2013 the Respondent replaced the website with a holding page. However the Complainant's solicitors observed the recommenced website at the domain during December 2012 when preparing the 21 December 2012 letter. In addition the print-out of the website from Google's cache furnished in an annex to the Complaint shows that the disputed domain name was used in relation to CSCS at least on 13 December 2012 at 11.25.

Although the website has now been taken down, the Complainant requests the transfer of the disputed domain name in order to avoid a repeat of the Respondent's previous action (i.e. taking the website down but then recommencing use of it at a later date).

The Complainant submits that the disputed domain name is confusing to the relevant public, including users of the CSCS Scheme who are accustomed to seeing the CSCS mark used in conjunction with other words – in particular words such as "card".

Furthermore black cards and gold cards are two of the types of cards available to scheme participants. The presence of these other words in the disputed domain name therefore increases rather than reduces the likelihood that the public will be confused into a belief that the disputed domain name refers to or is related to the Complainant's scheme or an accredited provider.

Furthermore the Complainant alleges that the Respondent's use of the disputed domain name is a breach of the undertaking provided on 3 October 2011.

The Complainant argues that the disputed domain name is an Abusive Registration because it is confusingly similar to the Complainant's mark and sign and the registration and use of the disputed domain name is inherently unfair; it takes unfair advantage of and is unfairly detrimental to the Complainant's rights.

Unfair advantage: The purpose of the Respondent's website appeared to be to promote Academy Training Group's services provided in relation to the CSCS Scheme, including its test booking services provided through its main website (www.oecademy.com). The Respondent's continuing unauthorized use of CSCS in the disputed domain name gives the incorrect impression to web users that the Respondent and/or Academy Training Group is the proprietor of the Scheme and/or connected to the Complainant. The incorrect impression produced by the Respondent's use of CSCS in the disputed domain name therefore takes unfair advantage of the Complainant's reputation in the CSCS mark and sign in order to divert web users to the Respondent's website and promote the Respondent's services and those of Academy Training Group.

The website initially appeared to have been launched shortly after registration of the disputed domain name and it therefore seems likely that the choice of disputed domain name was with the deliberate intention of taking advantage of the Complainant's reputation in the CSCS mark, in the manner described above.

The advantage gained by the Respondent through use of the CSCS mark is unfair not only towards CSCS, which has invested considerably to build its reputation in the CSCS mark, but also towards other third parties. To avoid such incorrect impressions and diversion of web users the Complainant has a policy not to permit any third parties (whether connected or not to the Scheme) to use CSCS in their domain names - see for example the complaints referred to above. The Respondent's Abusive Registration of a domain name containing CSCS is therefore also unfair to such third parties that respect the Complainant's rights.

Unfairly detrimental: The use of CSCS in the disputed domain name is also unfairly detrimental to the mark as it leads to web users being diverted away from the Complainant's own website and puts the Complainant's reputation at risk of damage. As the disputed domain name creates an incorrect impression that the website is owned by or connected to the Complainant, the Complainant may be considered responsible for any actions of the Respondent. However, the Complainant does not have any control over the Respondent's actions and this therefore represents a risk to the Complainant's reputation. Furthermore the perception that the Complainant is treating different providers inconsistently is liable to damage the Complainant's reputation with other persons offering CSCS card, testing and revision services.

The use by the Respondent is also unfairly detrimental to third parties because it diverts web traffic from persons that are also offering services connected with the CSCS Scheme but are respecting the Complainant's rights.

Inherently unfair: The unauthorised use of CSCS in a domain name constitutes infringement of the CSCS trademark and the tort of passing off. The courts have previously held that the mere holding of a domain name incorporating another's

trade mark can be an instrument of fraud if there is no realistic way of using the domain without causing deception, and so constitutes the tort of passing off. This circumstance applies here as any use of the disputed domain name will confuse and/or deceive third parties as to the ownership and administration of the CSCS scheme and accordingly the registration and continuing use of the disputed domain name is inherently unfair.

The Complainant accordingly submits that both the registration of the disputed domain name and the subsequent use of it for the Respondent's website clearly take unfair advantage of and are unfairly detrimental to the Complainant's rights. The disputed domain name is also inherently unfair as its use constitutes trade mark infringement and passing off.

Finally the Complainant argues that a further indication that the disputed domain name is an Abusive Registration is the Respondent's history of ceasing use of the disputed domain name and then subsequently recommencing such use and its breach of the undertaking given in its 3 October 2011 letter.

The Response

The Respondent asserts that the disputed domain name belongs to Academy Training Group Limited and denies the Complainant's complaint in its entirety.

The Respondent accepts that the Complainant's certification scheme is generally known and referred to by the acronym CSCS as in "CSCS Test", "CSCS Health and Safety Test" and/or "CSCS Card".

The Respondent further accepts that in October 2011 the Respondent advised the Complainant that it would stop selling CSCS health and safety tests and CSCS cards and that it would not use the letters CSCS in the disputed domain name.

The Respondent states that the website to which the domain name <oeacademy.com> (*sic*) resolves was taken down in October 2011 and no further sales of CSCS tests or cards were or have been made by Academy Training Group Limited since this time. This functionality was totally disabled in October 2011 when the Respondent left this market. Most links are redundant and any links that remain in existence will not enable any visitor to make a purchase of CSCS Tests, Cards or Revision materials. [It is not clear as to why the Respondent refers to this website since the address is not the domain name in dispute].

The business activities of Academy Training Group Limited are primarily the provision of construction occupational training and qualifications and it trains between 1000 and 1500 students a year. A small element of this relates to the training and support of construction site supervisors and managers who wish to acquire qualifications to support their years of experience in their important positions. An option in acquiring the relevant qualification to support their job roles and official job titles as site supervisors or site managers is to obtain a gold or black CSCS card through what is called the Profiled Route.

The Complainant worked closely with Academy Training Group Limited in the delivery of the profiled route services, that the relationship is mutually beneficial and that a de-facto accreditation or authorisation of the Respondent and its services exists. The Respondent refers to correspondence between the Complainant and the Respondent annexed to the Complaint.

Academy Training Group Limited served between 40 and 50 students a year who wished to be qualified through this option and for this purpose utilised the disputed domain name <blackngoldcscscard.co.uk> domain name until Academy Training Group Limited stated that it would stop using it.

It is indeed reasonable to argue that in itself, the form of relationship between the Complainant and Academy Training Group Limited alone would have given good, logical and reasonable cause for Academy Training Group Limited to use the letters CSCS in its domain name specifically in relation to the Profiled Route services leading to black or gold CSCS cards.

In October 2011 Academy Training Group Limited replaced the use of <blackngoldcscscard.co.uk> with <academygroupuk.com/blackandgold.html>. (The Respondent has attached a copy record from an Google Adwords account detailing all relevant changes).

The disputed domain name <blackngoldcscscard.co.uk> has remained in existence but was not advertised or utilised in any way by Respondent and contrary to the Complainant's assertion, it is not the case that the Respondent had recommenced or continued use of the domain to provide services related to CSCS tests and cards. The Complainant has wrongly ignored the Respondents letters of October 2011 and January 2013 that advise, respectively, that the Respondent would no longer use the letters CSCS in its domain name for the purposes of providing services related to CSCS tests and the use to which the Complainant objected had stopped in October 2011.

In alleging that the disputed domain name is similar to the CSCS trademark and is in itself an Abusive Registration the Complainant is seeking to both mislead this Expert and perpetuate an ongoing false imposition as to rights pertaining to the use of the letters CSCS.

The Respondent argues that the Complainant is making an unsustainable argument by accepting that some uses of the letters CSCS on a website are acceptable while alleging that other uses of the letters CSCS on the same website or in a domain name are a form of deliberate misrepresentation, confusion or indeed Abusive Registration.

The Respondent argues that the Complainant makes a number of highly questionable claims as to unfair advantage, unfairly detrimental and inherently unfair. There is no text, pictures or information on the <academygroupuk.com/blackandgold.html> website that can lead anyone visiting to take the view that the site or its owners are portraying themselves as the proprietors of the CSCS scheme.

The Respondent argues that the Complainant is making wholly dubious assertions, without foundation or evidence by suggesting that the Respondent's use of the letters CSCS in a domain name diverts web users away from the Complainant's own website and puts the Complainant's reputation at risk of damage. Firstly, web users make a choice as to the sites they choose to visit based on significantly more information than a domain name. The Complainant provides no evidence to support its claim that web users have been diverted away from its website. It is simply preposterous to claim that the Complainant's reputation can be at risk of damage. A user who chooses to use the services of the Respondent is under no misunderstanding that it is dealing with Academy Training Group Limited. There is no attempt on the part of Academy Training Group Limited to promote itself as the Complainant.

The claim of unfair advantage is equally flawed. In commercial terms an unfair advantage would be hard to establish for anyone other than the Complainant as they alone have control of the base price of CSCS and all other providers must purchase CSCS cards from them for their customers at whatever price CSCS Ltd see fit to set. In selling CSCS cards no provider is independent of the Complainant.

The Complainant states that it is wary of the perception of treating different providers inconsistently and this is liable to damage its reputation with other persons offering the CSCS card, testing and revision materials. The Respondent takes this as confirmation that the Complainant accepts the right of others to provide product or services related to CSCS test, card and revision materials.

The Complainant's allegation that use of the letters CSCS in the disputed domain name is detrimental not only to them but to other persons offering CSCS card, testing and revision services is illogical because the Complainant accepts the right of other persons to provide services related to CSCS tests and cards in the same manner and market as they themselves do.

The courts have indeed upheld claims where a domain name incorporates another's mark but this is in the context of passing off. The Respondent makes no claims to be the Complainant, does not represent itself as the Complainant in anyway whatsoever and does not claim to offer 'Official' services or anything of the like, no claim is made as to the ownership or administration of the scheme and indeed through its ongoing working relationship with the Complainant in regards to the profiled route and the attainment through training and study of Black and Gold cards all of the Respondent's students are advised of the role of the of Complainant in assessing and granting their qualification. In this regard the Respondent refers to copy web pages that display direct links to the Complainant's web site.

Furthermore the Respondent submits that the Complainant has a device mark and not the letters CSCS *simpliciter*. Accordingly, the Respondent has not in fact used the Complainant's mark. The simple use of the letters CSCS is plainly necessary in order to describe the services. There is no incident of passing off present in this argument.

Finally the Respondent asserts that the Complainant has got its facts completely wrong and the disputed domain name has remained in existence but dormant since October 2011

The Reply

In Reply the Complainant submits that many of the Respondent's arguments have already been covered in the Complaint but there are a few inaccuracies and misunderstandings in the Response to which the Complainant considers it would be helpful to reply, as follows.

While the Complainant accepts there has been a working relationship between the parties, including the meetings referred to in the Response, the Complainant disagrees that such a relationship creates a "de facto accreditation or authorisation of the Respondent" giving it reason to use the letters "cscs" in the disputed domain name, <blackngoldcscscard.co.uk>.

There has at no point been any accreditation or authorisation of the Respondent by the Complainant.

The Respondent repeats that it has not used the disputed domain name since October 2011 but it is clear from the evidence the disputed domain name was being used at least in December 2012.

The Respondent asserts that the Complainant has ignored the Respondent's letters on the issue. The Complainant has not ignored the Respondent's comments or letter.

The Complainant accepts that some uses of CSCS are acceptable and that the Complainant does not object to others providing services relating to the CSCS test, card and revision materials. Neither does the Complainant object to use of CSCS in relation to actual CSCS goods and services on the Respondent's website. The Complainant's objection is to the use of the CSCS trademark in the disputed domain name. This is consistent with trade mark law such that a trade mark owner cannot object to the use of its mark to identify its genuine goods and services but is entitled to prevent third parties using its mark in a manner that is likely to confuse consumers as to the origin of goods and services.

Further, training students for CSCS certification is only a small part of the Respondent's business. That activity, either per se or taking account of its extent, does not justify the Respondent's registration of the disputed domain name, which is inherently unfair and likely to cause confusion as to the origin of the Complainant's certification scheme for the reasons explained in the Complaint.

The webpage extract referred to in paragraph 18 of the Response should be disregarded as it is not from the website associated with the disputed domain name and so is irrelevant to the dispute. The Complainant has raised no objections to the Respondent's other domain names that do not contain "cscs" (or to the websites associated with those domain names).

The assertion that the Complainant only has a device mark is incorrect. It is clear from the evidence adduced that CSCS has UK and Community trade mark registrations for the word mark “CSCS” as well as a UK certification mark for the “CSCS” device.

6. Discussions and Findings

Paragraph 2 of the DRS Policy requires the Complainant to prove 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.

The Complainant has furnished convincing evidence of its Rights in the CSCS mark through its ownership of the above listed trade mark registrations and at common law through the substantial goodwill and reputation it has acquired in the use of the mark in connection with the provision of certification scheme for skills and crafts in the construction industry.

The Respondent has acknowledged the reputation and standing of the Complainant’s CSCS certification.

As the Complainant has submitted, the disputed domain name <blackngoldcscscard.co.uk> is composed of the descriptive elements “blackngold” in combination with the letters “cscs” and the word “card”.

The distinctive element of the domain name is therefore the combination of the letters “cscs” which is the Complainant’s trademark.

Participants in the Complainant’s certification scheme are given cards reflecting their participation. The cards are colour coded and some of them are black and gold in colour. In the view of this Expert the descriptive elements “blackngold” and “card” do not serve to distinguish the domain name from the Complainant’s trade mark in any way.

This Expert finds that the disputed domain name is similar to the Complainant’s CSCS trade mark.

While the parties agree much of the factual context of this dispute, there is disagreement on two important factors.

The Complainant alleges that the Respondent continued or recommenced use of the disputed domain name in relation to CSCS services after the agreement in October 2011, whereas the Respondent denies any such subsequent use and asserts that the disputed domain name has been

dormant ever since. This Expert notes that there is some evidence that the disputed domain name was used in relation to CSCS at least on 13 December 2012 at 11.25 but it appears from the Complainant's inability to secure evidence of continued use that it has generally remained dormant since that date.

This Expert is satisfied that it is not necessary to decide this issue.

The determining issue is whether the Respondent registered or otherwise acquired the disputed domain name in a manner which at the time took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or whether the disputed domain name has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

The disputed domain name was registered on 8 November 2010 and the Complainant had already acquired trade mark rights by that date. The earliest of the Complainant's above referenced UK Trade Mark registrations, no. 2 190 060 CSCS & Device, was registered on 26 January 2001. It is clear that the disputed domain name was chosen and registered in order to refer to the Complainant's CSCS scheme.

The question therefore is whether the use of the disputed domain name took unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

The Complainant does not object to use of CSCS on the website in relation to actual CSCS goods and services – its objection is only to other uses of “cscs” and, in the particular instance, to its use in the disputed domain name.

The Complainant argues that the Respondent's use of the disputed domain name takes advantage of the Complainant's mark and since the Respondent has no licence or entitlement to use the Complainant's mark in a domain name it follows that the use is unfair.

The Complainant denies any connection between the Complainant and Academy Training Group Limited whereas the Respondent submits that there has been *de facto* accreditation of the company's provision of CSCS products.

While there is no formal relationship between the parties, it appears that the Complainant has allowed or acquiesced in the activities of Academy Training Group Limited as a reseller of its products and this is consistent with the Complainant's business model of allowing third parties to supply its products on an informal basis.

A number of appeal panels have dealt with the rights of resellers and providers of services to use a trade mark in a domain name.

In *Seiko UK Ltd v. Wanderweb* DRS 00248 the appeal panel held that owing to the many different circumstances in which a reseller might be offering the trade mark owner's goods, no hard and fast rules as to incorporation of the

trade mark could be laid down and that each case involving the incorporation of a trade mark in a domain name must be taken on its own merit.

In *Epson Europe BV v. Cybercorp Enterprises* DRS 03027 an appeal panel revisited the issue in circumstances where the majority of the products on the site were products competitive with the goods of the complainant. The appeal panel considered that one of the questions to be considered was whether the use of the domain name created the false impression of a commercial connection between the parties.

Subsequently in *Toshiba Corporation v. Power Battery Inc.* DRS 07991 the appeal panel identified the following four criteria which it stated was broadly consistent with the decisions in the above appeals which were summarised as follows:

1. It is not automatically unfair for a reseller to incorporate a trade mark into a domain name and the question of abusive registration will depend on the facts of each particular case.
2. A registration will be abusive if the effect of the respondent's use of the domain name is falsely to imply a commercial connection with the complainant.
3. Such an implication may be the result of "initial interest confusion" and is not dictated only by the content of the website.
4. Whether or not a commercial connection is implied, there may be other reasons why the reseller's incorporation of the domain name is unfair. One such reason is the offering of competitive goods on the respondent's website.

Adopting these criteria, and applying them to the use by the Respondent of the CSCS trademark in the present case this Expert finds that the Respondent's use was intended to imply a commercial connection with the Complainant. No such commercial connection existed when the disputed domain name was registered or subsequently used.

The disputed domain name is likely to give Internet users the impression that the disputed domain name is associated with the Complainant and this is not the case. The disputed domain name was chosen and registered to refer to the Complainant's products and in particular the black and gold coloured cards provided by the Complainant in its CSCS scheme. In this way the domain name was registered by the Respondent in order to give the impression that it had a connection with the Complainant's business and to allow the Respondent to steal a march on the Complainant and third party resellers.

The fact that the Respondent has agreed to cease use of the disputed domain name is not sufficient for it to succeed, otherwise any respondent would

defeat a complaint by merely parking the domain name on receipt of a cease and desist letter.

In the circumstances this Expert finds that the disputed domain name is an Abusive Registration and the Complainant is entitled to succeed in this Complaint.

7. Decision

For the above reasons this Expert determines that the disputed domain name be transferred to the Respondent.

Signed: James Bridgeman, Expert

Dated 22 April 2013