

DISPUTE RESOLUTION SERVICE

DRS 13234

Decision of Independent Expert

Russell Quirk

Complainant

and

Rose Bunch Limited
(formerly Greenfield Computer Marketing Limited)

Respondent

1 The Parties

Complainant:	Russell Quirk
Address:	27 Greensleeves Drive Brentwood Essex C14 5WD United Kingdom

Respondent:	Rose Bunch Limited (formerly Greenfield Computer Marketing Limited)
Address:	Chilworth Point Chilworth Road Southampton Hampshire SO16 7JQ United Kingdom

2 The Domain Name

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

3 Procedural History

I confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as might be of a such a nature as to call into question my independence in the eyes of one or both of the parties.

20 August 2013 18:27. Dispute received
21 August 2013 13:55. Complaint validated
22 August 2013 10:42. Notification of complaint sent to parties
11 September 2013 02:30. Response reminder sent
13 September 2013 16:32. Response received
13 September 2013 16:33. Notification of response sent to parties
16 September 2013 09:13. Reply received
16 September 2013 09:25. Notification of reply sent to parties
16 September 2013 09:25. Mediator appointed
19 September 2013 09:51. Mediation started
30 September 2013 14:58. Mediation failed
30 September 2013 14:58. Close of mediation documents sent
02 October 2013 16:34. Expert decision payment received by Nominet

4 Factual Background

- 4.1 According to the Whois record, the Domain Name was registered on 4 November 1999 by Greenfield Computer Marketing Limited.
- 4.2 Given that the position is not entirely clear from the parties' submissions, the Expert has carried out limited enquiries into the factual background on the Companies House website and by way of Whois searches.
- 4.3 According to the Companies House website, Greenfield Computer Marketing Limited, the named Respondent, is in fact a previous name of the company now called Rose Bunch Limited and registered with company number 03075251. That company changed its name from Worldunited Limited to Greenfield Computer Marketing Limited on 20 May 1997. On 19 December 2000 it changed from Greenfield Computer Marketing Limited to Leepeckgreenfield Limited. On 2 September 2008 its name changed again to Well Thought Out Limited, and a couple of months later on 3 November 2008 changed yet again to its present name, Rose Bunch Limited.
- 4.4 It appears to be common ground between the parties that the Domain Name has never been used.
- 4.5 According to the Companies House website, a company named Emove.co.uk Limited was incorporated on 11 May 2007 with company number 06244787, and was subsequently dissolved on 10 August 2010. There is no evidence that Emove.co.uk Limited ever traded.
- 4.6 An online estate agent appears to have traded under the EMOOV name since approximately 2010. The Complainant, Russell Quirk, appears to be connected with that business. The extent and nature of that connection is unclear. The Complainant is identified on the Emoov website as its founder.
- 4.7 On 14 November 2009 the Complainant registered the domain name *emoov.co.uk*. That domain name is currently being used in the URL for the Emoov website which advertises itself

as a "low cost online estate agent". It offers to list the properties of prospective sellers on property websites such as RightMove, Zoopla, Find a Property, Prime Location and Globrix.

- 4.8 According to the Emoov website, it has been in business since 2009.
- 4.9 According to the Companies House website, a company named Emoov Limited was incorporated on 7 January 2010 with company number 07118826 and a registered office at 27 Greensleeves Drive, Warley, Brentwood CM14 5WD. This is also the Complainant's address. According to its website at *www.emoov.co.uk*, this company trades as Emoov. On its website it provides a different address: New North House, Ongar Road, Brentwood CM15 9BB.
- 4.10 On 5 August 2013 the Complainant registered the domain name *emove.uk.com*.
- 4.11 According to the Companies House website, a company named Emove Limited was incorporated on 9 August 2013 with company number 08644873 and a registered office at: *Emoov.co.uk*, 4th Floor, Newnorth House, Ongar Road, Brentwood, Essex CM15 9BB. That is the same address as that given for Emoov Limited on its website (but different from the latter's registered office).

5 Parties' Contentions

Complaint

- 5.1 The Complainant says that his business has traded as *Emoov.co.uk* since 2010 and "*has achieved significant goodwill in that time*". He also contends that "*many clients and prospective clients know us as 'EMOVE' "*. No explanation is given as to why any goodwill in the EMOOV and/or EMOVE names would be owned by the Complainant, rather than by Emoov Limited (or Emove Limited).
- 5.2 Some evidence is adduced of the use of the EMOOV name by Emoov Limited in articles which appeared in the *London Evening Standard* in August 2013, in a spreadsheet which is said to constitute a P&L account for the period February to June 2012 for "Emoov", various other newspaper articles, and what appears to be an investment proposal for Emoov Limited.
- 5.3 The Complainant asserts that "*we are estate agents by profession*", though it is not clear to whom or to which companies he refers in using the first person plural. The Complainant asserts that: "*the terms EMOVE and EMOOV apply to the business of moving home and which we have been involved in for many years*".
- 5.4 The Complainant says that he is the registrant of the domain name *emove.uk.com*. The Complainant also asserts that he is "*sole director and shareholder of EMOVE LIMITED*" which "*demonstrates an intention to trade using the EMOVE.co.uk brand and provides a link to and an entitlement to the domain name EMOVE.co.uk.*"
- 5.5 So far as Abusive Registration under the Policy is concerned, the Complainant says that the Respondent is a marketing consultancy which does not offer any product or service "*titled or branded as EMOVE in any form or description*". The Complainant further asserts that the Domain Name "*is dormant and is not currently being used nor is it my belief that it has ever been linked to a website in its 14 year life*" and that therefore the Respondent has no intention of using the Domain Name "*for legitimate business/brand purposes*".

- 5.6 The Complainant further contends that the Domain Name "*is being held in order to profit from a potential future commercial opportunity whereby a business such as my own requires the domain*".

Response

- 5.7 The Respondent asserts that there is no evidence that the customers of Emoov Limited associate that brand with the name EMOVE. It says that businesses other than the Complainant use the name EMOVE and that accordingly the Complainant has failed to demonstrate that Emoov Limited has goodwill in the EMOVE name.
- 5.8 The Respondent says that the Complainant has made untrue and misleading statements. It says that Emove Limited was only incorporated on 9 August 2013, two weeks before this complaint was lodged with Nominet. It also says that the Complainant has falsely claimed to be sole director and shareholder, whereas the Companies House records show him as neither, identifying him rather as Company Secretary.
- 5.9 The Respondent further argues that there is little evidence that Emove Limited has anything to do with the business of Emoov Limited.
- 5.10 Accordingly, the Respondent in effect submits that the Complainant has no rights in the EMOVE mark.
- 5.11 So far as Abusive Registration is concerned, the Respondent explains that it is a "*full service marketing agency*". It says that the Domain Name was registered in 2007 on behalf of a client, Emove.co.uk Limited, and that between 2007 and 2009 that company had proposed to set up an online property business similar to RightMove. Those plans were shelved following a downturn in the property market and the company was dissolved. However, the Respondent says that "*approximately six months ago*" its client "*began consulting again, working toward getting the business back on course with a marketing strategy and advertising ideas*". It says that its client "*intends to use the domain name*", and that accordingly its client "*is therefore making genuine preparations for the offering of goods and services by Emove.co.uk Limited*".
- 5.12 The Respondent asserts that the company name Emove.co.uk Limited is "*clearly and legitimately connected to the domain name emove.co.uk*".
- 5.13 Further, the Respondent argues that the EMOVE name is "*generic and descriptive of routine estate agency services, rather than being specifically connected solely with the Complainant's company, which trades as Emoov*". The Respondent points out that other businesses use words and phrases similar to EMOVE to promote themselves online.
- 5.14 Finally, the Respondent points out that Emoov Limited was not incorporated until three years after the Domain Name was registered for its client in 2007 and that accordingly "*it cannot be said that domain name is being used to profit from any potential future opportunities of either Emoov or Emove Limited. Rather, it is in place ready for use when a client's business is ready to start trading*".

Reply

- 5.15 The Complainant relies on the fact that it has bid on the word EMOVE for Google Adwords for over two years.

- 5.16 He also says that the word EMOVE *"is referenced frequently in our media and marketing because we are also known by property sellers as 'Emove"*. No evidence is provided of such use of the EMOVE name, whether by the Complainant, by Emoov Limited, by Emove Limited, or by the general public
- 5.17 The Complainant repeats that the domain name *emove.uk.com* *"is already registered in my favour and which we use as a bona fide landing page to market our business"* and that therefore he owns the goodwill in that name.
- 5.18 The Complainant rejects the Respondent's assertions concerning Emove Limited and repeats that he is the sole shareholder and director of that company.
- 5.19 The Complainant points out that the Respondent's client company, Emove.co.uk Limited, was dissolved in August 2010 and that therefore it can longer have any connection with the Domain Name. The Complainant says that, accordingly, *"there is no seeming connection between the domain registrant and the directors or shareholders of EMOVE.CO.UK LIMITED"*.
- 5.20 The Complainant rejects the Respondent's assertions that the Domain Name was being used to market a product or service, asserting that *"there is a distinct absence of a holding page ever having existed or any reference to the purported product or service claimed, in fact anywhere at all at any time ever"*. Accordingly, it says that the Respondent's contention of an intention to use the Domain Name is *"bound to fail"*.
- 5.21 The Complainant reiterates its use of the *emove.uk.com* domain name and the fact that he is the *"controlling officer and shareholder in the only limited company that shares the EMOVE name entirely"*.
- 5.22 Finally, the Complainant threatens the Respondent with proceedings in passing off should it decide to launch an online estate agency using the Domain Name.

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 he "*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 case on Rights is obscure. It is not clear whether it is his case that he has Rights in the EMOOV name, which is similar to the Domain Name, or whether it is his case that he has Rights in the EMOVE name which is identical (or similar) to the Domain Name.
- 6.5 Turning first to the former proposition, any common law rights in the EMOOV name which may have accrued as a result of trading conducted by Emoov Limited over the last three years is the goodwill of that company and not that of the Complainant.
- 6.6 It is no part of the Complainant's case that any goodwill in the EMOOV name which may be owned by Emoov Limited has been licensed or otherwise assigned him. As mentioned at paragraph 6.3 above, Rights, for these purposes, means legal "*rights enforceable by the Complainant*". Rights in the EMOOV name are not enforceable by the Complainant; they would be enforceable only by Emoov Limited.
- 6.7 Turning to the second proposition, to the extent that it is his case that Emoov Limited has acquired common law rights in the EMOVE name, which is not in any event made out, any such rights would be those of that company, not of the Complainant.
- 6.8 The Complainant hints at a case that he has Rights in the EMOVE name by dint of his role as sole director and shareholder of Emove Limited. However, even leaving aside the issue as to the purpose of the incorporation of that company referred to at paragraph 6.11 below, not only is no evidence adduced of Emove Limited having acquired the requisite trading goodwill in the EMOVE name, but if any such goodwill existed, again it would be that of Emove Limited, not that of the Complainant.
- 6.9 In any event, there is some force in the Respondent's submission that the EMOVE name is not sufficiently distinctive to found a case of similarity under the Policy. Emoov Limited has decided to trade, and has traded for some three years, by reference to the EMOOV name, presumably precisely in order to acquire the requisite degree of distinctiveness which might, for example, entitle it in due course to register a trade mark in that name. By contrast, any application to register EMOVE as a trade mark would appear to be fraught with difficulty given its generic and/or descriptive nature. The word "move" is plainly descriptive of the process of buying and selling a house, while the prefix "e", being an abbreviation of "electronic", has come to be descriptive of the provision of services (and sometimes products) via the internet: hence email, ecommerce and so forth.
- 6.10 Moreover, the Complainant has not been entirely clear in his submissions as to his purported use of the EMOVE name. He has relied on his registration of the domain name *emove.uk.com*. However, as the Respondent points out, that domain name was registered by him only on 5 August 2013, i.e. very shortly before his Complaint was filed with Nominet on 20 August 2013. The Complainant omits to mention that date in his submissions, even when challenged on the point by the Respondent. Such lack of candour does not assist his case.
- 6.11 He has also placed considerable reliance, particularly in his Reply, on the fact that he is sole director and shareholder of Emove Limited. However, according to the Companies House website, Emove Limited was incorporated only on 9 August 2013, again very shortly before

his Complaint was filed. The same date is recorded on the J30 form exhibited to the Complaint (but is not mentioned by the Complainant in his submissions).

- 6.12 It is therefore to be inferred that both those steps were taken by the Complainant purely for the purpose of bolstering his Complaint in these proceedings.
- 6.13 Accordingly, the Complainant has not proved that he has Rights (as defined in the Policy) in respect of a name or mark identical or similar to the Domain Name.

Evidence of Abusive Registration

- 6.14 Since the Complainant has failed to prove on the balance of probabilities that he has Rights in a name or mark identical or similar to the Domain Name, pursuant to paragraph 2(a)(i) of the Policy, his Complaint fails and there is no need to consider the question of Abusive Registration. For the sake of completeness, however, the contentions of the parties in this regard are discussed below.
- 6.15 The Complainant does not identify which of the factors set out in paragraph 3 of the Policy he relies on in his assertion that the Domain Name is an Abusive Registration.
- 6.16 He complains that the Domain Name is not and has never been used and that, given that this has been the case for a considerable period, the Respondent appears to have no intention to use it "*for legitimate business/brand purposes*". However, that does not, without more, constitute evidence of Abusive Registration. Paragraph 3(b) of the Policy is clear:

"Failure on the Respondent's part to use the Domain Name for the purposes of email or a website is not in itself evidence that the Domain Name is an Abusive Registration."

- 6.17 The Complainant also appears to contend that the Domain Name is "*being held in order to profit from a potential future commercial opportunity*" in the event that a third party would like to use it. This is, in essence, a contention that the Respondent has registered the Domain Name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name, as provided in paragraph 3(a)(i)(A) of the Policy.
- 6.18 However, the Complainant has not contended, let alone proved, that this was the primary purpose for which the Domain Name was registered. Moreover, the Respondent has a cogent explanation for the registration of the Domain Name, namely for its then client Emove.co.uk Limited. There is uncertainty as to the date on which the Domain Name was registered. The Whois result puts it in 1999, but the Respondent puts it in 2007. However, since even the later date is at least three years before the company with which the Complainant is associated began trading in 2010, not a great deal turns on that discrepancy.
- 6.19 Given that the Domain Name was therefore registered by the Respondent a number of years before Emoov Limited began trading, even on the Complainant's case it is difficult to see how this could fall within paragraph 3(a)(i)(A) of the Policy.
- 6.20 The Respondent's submissions on Abusive Registration amount to an assertion that it or its client had made demonstrable preparations to use the Domain Name in connection with a genuine offering of goods or services (see paragraph 4(a)(i)(A) of the Policy). However, no evidence of such preparations is provided and its submissions are not entirely persuasive in

this regard. Nonetheless, given that the Complainant has, for the reasons given, failed to discharge its burden of proving Abusive Registration, in the event this does not matter.

- 6.21 Accordingly, even if the Complainant had been able to prove that he has Rights in a name or mark which is identical or similar to the Domain Name, he has failed to prove that the Domain Name was registered or has been used in a manner which took unfair advantage of or was detrimental to any such Rights.

7 Decision

- 7.1 Accordingly, the Expert finds that the Complainant has no Rights in a name or mark which is identical or similar to the Domain Name and that, even if the Complainant had been able to demonstrate he had any such Rights, he has failed to demonstrate that the Domain Name is an Abusive Registration in the hands of the Respondent.

- 7.2 It is therefore determined that there be no transfer of the Domain Name to the Complainant.

Signed: **David Engel**

Dated 31 October 2013