

DISPUTE RESOLUTION SERVICE

D00013435

Decision of Independent Expert (Summary Decision)

Clive Hurt (Plant Hire) Ltd

and

Mr Calv Turner

1. The Parties:

Complainant: Clive Hurt (Plant Hire) Ltd
Sandham House
Redrose Drive
Lancashire Enterprise Business Park
Leyland
Preston
Lancashire
PR26 6TJ
United Kingdom

Respondent: Mr Calv Turner
30 Sandringham Rd
Darwen
BB3 0BL
United Kingdom

2. The Domain Name(s):

clivehurtanglesey.co.uk
clivehurtexecutivetrust.co.uk
clivehurtpensionfund.co.uk
hargreavestarnacre.co.uk

3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the complaint to the respondent in accordance with paragraphs 2 and 4 of the Procedure. Yes No

4. Rights

The complainant has, to my reasonable satisfaction, shown Rights in respect of a name or mark which is identical or similar to the Domain name.

Yes No

5. Abusive Registration

The complainant has, to my reasonable satisfaction, shown that the domain names clivehurtanglesey.co.uk, clivehurtexecutivetrust.co.uk, clivehurtpensionfund.co.uk and hargreavestarnacre.co.uk are Abusive Registrations.

Yes No

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances

Yes No

7. Comments (optional)

This Complaint fails for lack of adequate submissions and evidence.

The Complainant asserts that the Domain Names were registered by the Respondent in terms of a contract between the Complainant and the Respondent whereby the Respondent was appointed to operate the Domain Names on the Complainant's behalf. The Complainant states that the Domain Names were used by the Complainant for various email purposes.

The Complainant provided no more than a mere hint as to its Rights in names identical or similar to the Domain Names within the Complaint. The only evidence initially presented was three emails relating to UK VAT returns and

an email relating to a Companies House transaction. Each appeared to show that the Complainants had had control of email addresses associated with the Domain Names.

The Expert considered that some further indication of the Complainants' Rights might be disclosed from a search of the publicly available European Commission VIES VAT number validation database in respect of the VAT-related emails and the UK Companies House database in respect of the remaining email produced by the Complainant. The Expert therefore performed limited searches restricted to the company and VAT data in the emails. The results indicated that the Complainant appeared to be connected to names identical or similar to the Domain Names but took the question no further.

Furthermore, while relatively bare assertions had been made on the question of both Rights and Abusive Registration, the Expert considered that the Complainant's submission disclosed a likelihood that the Complainant might have a case in terms of paragraph 3(a)(v) of the Policy, yet had not provided the necessary documentation to support this.

Adopting a purposive approach, therefore, the Expert made a request for further information in terms of paragraph 13(a) of the Procedure, both relating to the Complainant's Rights and to the type of evidence called for in terms of paragraph 3(a)(v) of the Policy. In the request, the Expert drew both of the Parties' attention to the data disclosed by the Expert's searches in the public VAT and Companies House databases and asked the Complainant to explain its relationship to the various entities revealed therein. The Respondent was specifically invited to comment on both the Expert's request and any response received from the Complainant.

In response to the Expert's paragraph 13(a) request, the Complainant filed a series of emails relative to Companies House and VAT filings for a company named Clive Hurt (Anglesey) Limited. No further narrative or explanation was filed regarding the Complainant's Rights or Abusive Registration. The Respondent was invited to comment on the Complainant's response to the paragraph 13(a) request but did not do so within the period allowed by Nominet.

The materials filed by the Complainant indicate that it has a connection to Clive Hurt (Anglesey) Limited. They do not however answer the paragraph 13(a) request to any substantive extent and in the Expert's opinion take the Complainant no further as regards proof of Rights or Abusive Registration.

It is extremely unfortunate that the Complainant appears to have failed to take advantage of the detailed and helpful guidance on Nominet's website as to how to make a full and complete complaint under the DRS Policy, or indeed to consider the Expert Overview which is intended to assist all participants in disputes under the Policy by explaining commonly raised issues. Care and attention to the terms of such guidance would have prompted the Complainant to provide specific evidence of its Rights and documentation to support its case under paragraph 3(a)(v) of the Policy.

In these circumstances, while the Expert sympathises with the position expressed by the Complainant and indeed suspects that the Complainant might have been able to demonstrate both Rights and Abusive Registration had a full and complete complaint been filed, or had the Complainant provided full and complete answers to the Expert's request for further information, the Expert is not in a position to grant the remedy sought by the Complainant on the basis of the record in this case.

8. Decision

Transfer	<input type="checkbox"/>	No action	<input checked="" type="checkbox"/>
Cancellation	<input type="checkbox"/>	Suspension	<input type="checkbox"/>
Other (please state)	<input type="checkbox"/>		

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Signed:

Dated: 6 January, 2013

Andrew D S Lothian