

## DISPUTE RESOLUTION SERVICE

D00014137

### Decision of Independent Expert

Stowlangtoft Healthcare LLP

and

I Macdonald t/a H I MacDonald

#### 1. The Parties:

Complainant: Stowlangtoft Healthcare LLP  
Address: Stowlangtoft Hall  
Kiln Lane  
Stowlangtoft  
Bury St Edmunds  
Suffolk  
IP31 3JZ  
Country: United Kingdom

Respondent: I Macdonald t/a H I MacDonald  
Address: 34 Fen Way  
Bury St Edmunds  
IP33 3ZA  
Country: United Kingdom

#### 2. The Domain Name(s):

stowlangtofthall.co.uk ("Domain Name")

#### 3. Procedural History:

I can 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 they might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

27 April 2014  
28 April 2014

Dispute received  
Complaint validated and notification of complaint sent to parties

20 May 2014	Response received and notification of response sent to parties
21 May 2014	Reply received and notification of reply sent to parties
28 May 2014	Mediation started
20 June 2014	Mediation failed
01 July 2014	Expert decision payment received

In his Response, the Respondent refers to a High Court Order but submitted only the first page and the second schedule of the Order. I decided that I was not able to consider the extent of the Order and its bearing upon this dispute unless a complete copy (together with copies of previous orders referred to therein) was provided.

Accordingly, I issued an expert request for further information pursuant to §13a of the Procedure for the Respondent to provide a complete copy of the Order and the referenced previous orders by 11 July 2014 (“§13a Request”) and allowed the Complainant the opportunity to make any comment by the same date. Nominet so informed the parties on 8 July 2014.

The Complainant replied on 10 July 2014 and included a further document with his reply. I considered this document to be a non-standard submission and informed Nominet that if the Complainant wished this document to be considered then he should submit an explanatory paragraph in support of a non-standard submission pursuant to §13b of the Procedure. Nominet so informed the parties on 11 July 2014.

The Respondent provided the Order and the referenced previous orders on 11 July 2014 and also commented on the Complainant’s non-standard submission.

The Complainant provided an explanatory paragraph on 14 July 2014 which set out an adequate explanation as to why there was an exceptional need for his non-standard submission to be considered. Accordingly I accepted the Complainant’s non-standard submission and the Respondent’s reply to the non-standard submission.

Definitions used in this decision have the same meaning as set out in the Nominet UK Dispute Resolution Service Policy Version 3, July 2008 (the “Policy”) and/or the Nominet UK Dispute Resolution Service Procedure Version 3, July 2008 (the “Procedure”) unless the context or use indicates otherwise.

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

Stowlangtoft Hall is a Grade II Listed building in Stowlangtoft, Suffolk. The Complainant’s family has owned the property since 1929 and leased it to tenants for a number of years. It was operated as a nursing home by tenants between 1969 and 2009.

The Respondent and his wife (hereafter the Respondent and his wife are referred to as the “Respondents” for convenience) purchased the nursing home business and a lease of Stowlangtoft Hall in 1996. The Respondents traded as Stowlangtoft Hall Nursing Home from 1996 until the business entered administration in 2009.

In 2010 the Complainant purchased the nursing home business from the administrators and operates the business as a registered care home from Stowlangtoft Hall, trading as Stowlangtoft Healthcare LLP.

The Domain Name was registered by the Respondent on 2 April 2001.

## 5. Parties' Contentions

### The Complaint

The Complainant contends that he has Rights in the name STOWLANGTOFT HALL and that the Domain Name is identical to this name, on the basis of the following submissions:

1. Since 1929 the building has been owned by the Complainant's family, who have rented it out to various tenants. The last of these tenants was the Respondents, who rented the building and ran the nursing home at Stowlangtoft from 1996 to 2009. (*Copies of title deeds provided*)
2. In 2009 the Respondents' partnership was put into administration by the courts due to unpaid debts and was eventually dissolved.
3. In 2010, the Complainant set up a new business called Stowlangtoft Healthcare, with the express aim of buying the Stowlangtoft Hall nursing home business from the administrators (Baker Tilly, Bury St Edmunds). The administrators were attempting to sell the business to raise money to repay some of the significant business debts that the Respondents had left behind.
4. The Complainant purchased the Stowlangtoft Hall nursing home business from the administrators in 2010.

The Complainant contends that the Respondent's registration and/or use of the Domain Name is an Abusive Registration on the basis of the following submissions:

1. Since the business was sold by the administrators in 2010, the Respondent has continued to renew the Domain Name registration in order to prevent the Complainant from using it for his business.
2. The Respondent has no claim to the name Stowlangtoft Hall or the business that is run from the premises.
3. The Respondents operated a web site at the Domain Name until it was removed after the business went into administration.
4. As the Domain Name is the name of both the building and the nursing home, the continuing registration and use by the Respondent is causing significant damage to the Complainant as a business owner. The Complainant's customers are unable to find the business when they try to visit the site to which the Domain Name resolves.
5. Prior to 2010, several court cases were brought by the Complainant's family, as landlords, against the Respondents due to unpaid rent at Stowlangtoft Hall. These claims were resolved in the High Court, where the Respondents were ordered to make payments. Since this time, the Respondents have made a point of trying to damage the Complainant's businesses and his family's reputation by whatever means possible.
6. While all previous court cases have been found against the Respondents, they continue to try to damage the Complainant's business by continuing to renew the Domain Name and preventing the Complainant from trading fairly.
7. The Complainant is forced to trade using [www.stowlangtoftofthehealthcare.co.uk](http://www.stowlangtoftofthehealthcare.co.uk), but as the business grows and further nursing homes are purchased, not being able to trade using the specific name of the Complainant's home is unlawful and unfair.
8. The ownership of Stowlangtoft Hall is proved by the Land Registry records for this property.

9. The Care Quality Commission (the government body that regulates and registers care homes) shows that the Complainant operates the Stowlangtoft Hall nursing home under [www.cqc.org.uk/directory/1-152379461](http://www.cqc.org.uk/directory/1-152379461) (*copy of CQC Certificate of Registration provided*).

## The Response

The Respondent contends that the registration and/or use of the Domain Name is not an Abusive Registration on the basis of the following:

1. This complaint is the first the Respondent has heard of the Complainant's interest in the Domain Name.
2. The Respondent understands that the Complainant might have an interest in the Domain Name since he occupies premises known by a similar name, but, as far as the Respondent is aware, the Complainant has no rights to the name in English law.
3. In August 1996, the Respondents purchased the lease of the entire premises known as Stowlangtoft Hall and had a long term, full maintaining and insuring lease on the property. This lease was registered at the Land Registry (*copy provided*).
4. At, or about the same time the Respondents purchased from a separate and unconnected party a nursing home business which was trading at these premises. From 4 August 1996 the Respondents traded as Stowlangtoft Hall Nursing Home.
5. The Respondents used stowlangtofthall@freeserve.co.uk as an email address for a number of years. The Respondent registered the Domain Name on 2nd April 2001 as it was more suitable.
6. The Respondents used the Domain Name for their business website and for business and personal email communications. The Domain Name was registered and used for legitimate business and personal purposes. At no time, neither then nor now, could their use of the Domain Name be construed as being abusive.
7. When the business ceased in 2010, the website was taken down but the Respondent retained the Domain Name because he continues to receive personal emails addressed to it.
8. The Respondents exited the business following a legal dispute and a settlement covering all matters was stamped by the High Court on 23 May 2011 (*part copy provided*). The Complainant agreed to the terms of the High Court Order, which remains in force. This agreement covers the Complainant, members of his family and associated businesses connected to or having any dealings with the Respondents. As is usual in these situations, the agreement is comprehensive and is in full and final settlement of all claims the parties may have against each other. The Domain Name was registered to the Respondent at the date of the agreement and any claim the Complainant may have comes under the terms of this agreement.
9. A further legal agreement was reached with the administrators in October 2011 concerning their involvement and actions.
10. The Respondent does not understand the Complainant's interest in the Domain Name over the many other variations of the name that are available. The Respondent has found that many domains with either stowlangtofthall or indeed stowlangtoft-hall are still available (*copies provided*). The Respondent has never set out to prevent the Complainant from using any domain name and, therefore, has never attempted to register any of these variants either before or after exiting the business.
11. The Respondent refutes the Complainant's allegation that he has ever taken any action with the objective of trying to damage the Complainant's businesses and his family's reputation by whatever means possible.

## The Reply

The Complainant replied:

1. The Respondent confirms that he has had no claim to the building or business at Stowlangtoft Hall since 2010.
2. The Complainant understands that the Respondent does not wish to lose contact with those who email to the @stowlangtofthall.co.uk email address, but does not understand why in the previous four years those people have not been informed that they should use a different email address or why a redirect for this email address has not been set up.
3. The Complainant has provided evidence that he and his family own Stowlangtoft Hall and the business, Stowlangtoft Hall Nursing Home, which is located at Stowlangtoft Hall. Stowlangtoft is a unique place and the name is found nowhere else in the world. As such Stowlangtoft Hall cannot be confused with any other building or business. This name is not 'similar' as claimed by the Respondent; it is identical to the Domain Name.
4. The Respondent has no claim to the building or business, as admitted, and the decision to squat on the Domain Name is done purely to prevent the Complainant from using the Domain Name.
5. The Complainant would be happy to help the Respondent to set up mail forwarding. Alternatively, the Complainant would be pleased to allow a period of time, say four weeks, to allow the Respondent to contact those he still communicates with using the @stowlangtofthall.co.uk email and to inform them of the email address change. However, the Complainant would like to see evidence that the Respondent is in fact using this email address and that email and hosting services are being paid for, rather than just renewing the Domain Name each year so as to prohibit the Complainant's use of the domain.
6. The evidence that the Respondent has provided supports the Complainant's claim fully. The fact that the Complainant was forced to go to the High Court in 2011, to recover unpaid rent and collect damages because the Respondents refused to comply with the terms of the lease of Stowlangtoft Hall, does not mean that the Respondent has the right to the Domain Name. The Respondents are no longer tenants of Stowlangtoft Hall and do not own the business based at the premises.
7. The business at Stowlangtoft Hall was sold by a court appointed administrator, at which point the Respondents lost ownership. This is the point at which the Domain Name should have been relinquished as it was a business asset. It wasn't until March 2014 that the Complainant found out that the DRS system existed and so submitted this complaint.

## §13a Request

The Parties have had the opportunity to make their case by way of the complaint, the response and the reply. My §13a Request was not an opportunity for the Parties to improve their respective cases; they must respond only to the request and not include new material in their responses.

As the "*Dispute Resolution Service – Experts' Overview*" (version 2, November 2013) published on the Nominet website explains at §5.9, if a Party is permitted to introduce new material then, in the interests of justice, the other Party must be given the opportunity to answer. Consequently, the expeditious and cost-effective resolution of domain name disputes provided by the DRS can get weighed down in paper and delays ensue.

In reply to my §13a Request, the Complainant stated that the High Court Order referred to by the Respondent relates to unpaid rent and dilapidations in relation to Stowlangtoft Hall Nursing Home and its partners, and not the Domain Name in question.

The Complainant also provided a further document, the Business Purchase Agreement for Stowlangtoft Hall Nursing Home, which I did not request and which I therefore considered to be a non-standard submission.

Under §13b of the Procedure, any communication which is not part of the standard process (that is, it is not a complaint, response, reply or a submission requested by the Expert) is a non-standard submission. A non-standard submission must contain as a separate, first paragraph, a brief explanation of why there is an exceptional need for the non-standard submission. Under §13c of the Procedure, on receipt of a non-standard submission Nominet will copy the explanatory first paragraph to the other Party, but will only send the remainder to the other Party if and when the Expert requests sight of the remainder.

Accordingly, I requested that the Complainant should provide an explanatory paragraph to explain why I should consider the Business Purchase Agreement.

Following the Complainant's response to my §13a Request, the Respondent also provided a response. The Respondent's response contained additional information that I had not requested and comments on the Complainant's non-standard submission. I considered that the additional information was not relevant to this dispute and beyond the scope of the DRS process. I held the Respondent's comments on the Complainant's non-standard submission in abeyance pending submission and consideration of the Complainant's explanatory paragraph.

Accordingly I accepted only the following statements made by the Respondent:

1. The full Consent Order of 23 May 2011 is provided and also the Order of 9 May 2011 by Mrs Justice Sharp.
2. The Order of 23 May 2011 was in full and final settlement of all claims that the parties may have against each other and supersedes any previous legal agreements and documents. The Respondents have adhered to this agreement.

### **Complainant's Non Standard Submission**

The Complainant provided an explanation as to why I should consider the non-standard submission that he enclosed with his response to my §13a Request, which is summarised as follows:

1. In the response, the Respondent stated that he should not have to give up the Domain Name because an email address linked to the domain was still being used and that the Complainant should just buy another domain with similar name.
2. The Respondent also submitted a High Court Order which related to unpaid rent and dilapidations at Stowlangtoft Hall as evidence of full and final settlement that included the Domain Name.
3. The Complainant consulted his solicitor and the administrators, Baker Tilly, in order to respond to the use of the High Court Order and asked both parties to retrieve their files from their archives. While neither party felt the High Court Order was relevant to this matter, they both independently said that the easiest way to settle the matter was to submit the Business Purchase Agreement, which proves that the Complainant owns the Domain Name as an asset of the business that was purchased.
4. It took several days to retrieve the files and provide a scanned copy of the Business Purchase Agreement.

I accepted the Complainant's explanatory paragraph.

In his non-standard submission, the Complainant refers to the following parts of the Business Purchase Agreement as being pertinent to his dispute:

1. The Business Purchase Agreement outlines what was purchased from the Respondents via the court appointed administrators. This document makes it clear that the Respondents have no claim to the building or business and therefore no claim to the Domain Name and that the assets of the business, which include the Domain Name, were in fact purchased by the Complainant in 2010.
2. The parties to the agreement include "*STOWLANGTOFT HALL NURSING HOME (A FIRM) (IN ADMINISTRATION) the partners in which being HECTOR IAIN MACDONALD AND HILARY ANNE MACDONALD ("the Vendor")*".
3. The agreement sets out that the Vendor has agreed to sell such rights, title and interest as the Vendor had in certain of its assets with the intent that its business shall be transferred as a going concern upon the terms and subject to the conditions contained in the agreement.
4. The Complainant refers to the definitions of assets and intellectual property and the transfer of such aspects by way of the agreement.
5. Thus, even if the High Court Order would have protected the Respondents, which it does not, the Domain Name was a business asset that was sold by the Respondents to the Complainant in 2010.

The Respondent commented on the Complainant's non-standard submission as follows:

1. The Business Purchase Agreement is not relevant other than to establish that there is no reference anywhere in that document to the Domain Name or indeed to any other domain name. The Business Purchase Agreement is an agreement between the Complainant and Baker Tilly, the administrators.
2. It was established, through Taylor Vinters, that Baker Tilly did not act or represent the Respondents personally. Therefore the Business Purchase Agreement only applies to Baker Tilly and the assets that they held as part of Stowlangtoft Hall Nursing Home. The Domain Name was not an asset of the business sold by Baker Tilly to the Complainant, and hence no rights to the use of the Domain Name were acquired by the Complainant under the Business Purchase Agreement.
3. The Business Purchase Agreement is not an agreement between the Complainant and the Respondent. The High Court Order supersedes any previous legal documentation.
4. It is a matter of fact that the High Court Order sets out the terms of full and final settlement between the Complainant and the Respondents relating to all matters arising out of the occupation of Stowlangtoft Hall Nursing Home, as laid out in Schedule 2 of the Consent Order. It is also a matter of fact that the parties in this dispute are the parties to the High Court Consent Order. Further, the Complainant has confirmed that his dispute arises from the matters laid out in the Consent Order. It seems clear that any dispute about the use of the Domain Name falls under the terms of the Consent Order.
5. The Complainant had been a client of Baker Tilly prior to the appointment of Baker Tilly as administrators of the business by the Court in January 2010. A legal settlement was reached between Baker Tilly and the Respondents regarding their actions and involvement in the administration. This is an all-encompassing agreement similar in format to the wording in Schedule 2 of the High Court Consent Order of 23 May 2011 and removes the Respondents from any actions associated with Stowlangtoft Hall Nursing Home. This agreement is dated 14 October 2011 and was returned, signed by Baker Tilly on 25 October 2011.

6. If the Complainant believes that the Domain Name was, or should have been, an asset of the business he purchased (which it wasn't in the Respondents' view), then he should raise the matter with Baker Tilly. The Respondents also believe that the interpretation of the Business Purchase Agreement is outside the terms of reference of the DRS.
7. Prior to the dates of the agreements in 2010 and 2011, both the Complainant and the administrator communicated with the Respondents using an email address at the stowlangtoft.co.uk domain. They were both, therefore, fully aware of the existence of this domain, and its use, when both final agreements were made.
8. The Domain Name was used for business use of Stowlangtoft Hall Nursing Home and also for private personal use. To date, some communications are still received via this domain and hence it is renewed each time.

## 6. Discussions and Findings

### General

To succeed in this Complaint, the Complainant has to prove to the Expert on the balance of probabilities, pursuant to §2 of the Policy, both limbs of the test that:

1. *The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and*
2. *The Domain Name, in the hands of the Respondent, is an Abusive Registration.*

### Complainant's Rights

Rights is defined in §1 of the Policy as “rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning”.

The wholly generic suffix “.co.uk” is discounted for the purposes of establishing whether a complainant has Rights in a name or mark which is identical or similar to a domain name.

I am satisfied on the papers before me that the Complainant has unregistered rights in the name STOWLANGTOFT HALL arising from ownership since 1929 of the property with the unique name of STOWLANGTOFT HALL and from the purchase of a business and its goodwill established at least as early as 1996 and trading under the name of Stowlangtoft Hall Nursing Home.

Accordingly, I find for the purposes of the first limb of the test in §2 of the Policy that the Complainant has Rights in the name STOWLANGTOFT HALL which is identical to the Domain Name.

The Respondent has not demonstrated any rights, for the purposes of this dispute resolution procedure, in the name STOWLANGTOFT HALL save for rights arising from the use of the name in the Respondents' business (between 1996 and 2011) and the Respondents' lease of the property during the same period. Such rights were extinguished when the Respondents' partnership went into administration, the lease was transferred and the business and its goodwill were sold by the administrators as a going concern to the Complainant. The Respondent raised in his responses that the administrators did not act for the Respondents in their personal capacity and referred to a later settlement with the administrators in this regard. Nevertheless, the business was sold to the Complainant and the lease of the property was transferred, and this is not disputed by the Respondent.



## Abusive Registration

Abusive Registration is defined in §1 of the Policy as a Domain Name which either:

1. *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*
2. *has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.*

A non-exhaustive list of factors which may be evidence that a domain name is an Abusive Registration is set out in §3 of the Policy.

The DRS is meant to be a relatively straight forward process for the resolution of domain name disputes. It is not a forum for the resolution of disputes of the nature that the parties have been involved in previously nor is it a forum to debate the intricacies of court orders or complex agreements. What the DRS procedure will decide, on the papers presented, and on the balance of probabilities, is whether the registration or acquisition or use of a domain name is an Abusive Registration as defined by the Policy.

The Respondent says that he is not aware of the Complainant having any rights in the name STOWLANGTOFT HALL. I do not accept this; the Respondent knew that the business and its assets, goodwill and so on was sold to the Complainant as a going concern. He also knew that the Complainant had property rights in the hall itself, which is a unique name. Accordingly, I am satisfied on the balance of probabilities that the Respondent continued to use the Domain Name following the sale of the business knowing of the Complainant's Rights.

Whether other domain names using the name STOWLANGTOFT HALL are available is not a factor that has any bearing on whether the registration or acquisition or use of the Domain Name is an Abusive Registration.

One of the factors which may be evidence of Abusive Registration is stated in the §3a.ii of the Policy:

*“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 Experts' Overview states that a potential for confusion is the use of a domain name for the purposes of email. Registrants of domain names receiving email traffic intended for the complainant can lead to a finding of Abusive Registration depending on the nature of the domain name and the circumstances of its use. In this dispute, it is not disputed that the Domain Name was used for the purposes of the business and business email prior to the sale of the business to the Complainant. I consider that it is likely, on the balance of probabilities, that use of the Domain Name following the sale of the business has caused confusion.

I am also satisfied that the High Court Order does not have any bearing on the registration and use of the Domain Name; it refers to the full and final settlement of all claims the parties may have against each other arising out of the Respondents' occupation of Stowlangtoft Hall under a lease dated 5 August 1996 and all claims that each party may have made (past, present or future of whatever nature) in that action. The registration and use of the Domain Name is not connected to the occupation of the hall under the lease but to the business operated by the

Respondents. The Respondent states that the lease and the business were purchased separately from different parties.

The Business Purchase Agreement does not specifically identify the Domain Name. The Complainant refers to its inclusion in the wider definition of assets and intellectual property of the business. I do not intend to venture into a discussion as to the nature of domain names as property, a matter that has not yet been fully explored and resolved by the Courts. I note, however, that the Nominet terms and conditions for the registration of a domain name state, at clause 10, that a domain name is not an item of property and has no 'owner'.

What is of note in the Business Purchase Agreement is that the sale included the goodwill in the business together with the exclusive right for the Complainant to represent itself as carrying on the business in succession to the Respondents and to trade under the name Stowlingtoft Hall Nursing Home. Use of the Domain Name as part of an email address clearly implies to me a representation of continuing association with the business in question, which as mentioned above is likely to lead to confusion.

Accordingly, I find that the Respondent's use of the Domain Name since the sale of the business to the Respondent is an Abusive Registration.

## **7. Decision**

In light of the foregoing findings, namely that the Complainant has Rights in a name which is identical to the Domain Name, and the Domain Name, in the hands of the Respondent, is an Abusive Registration, I direct that the Domain Name (stowlangtoft.co.uk) be transferred to the Complainant.

**Signed: Steve Ormand**

**Dated: 28 July 2014**