

# DISPUTE RESOLUTION SERVICE

DRS16905

## Decision of Independent Expert

Yahoo! Inc.

and

Alfa Infosystem

### 1. The Parties:

Lead Complainant: Yahoo! Inc.  
701 First Avenue  
Sunnyvale  
Santa Clara  
94089  
United States

Respondent: Alfa Infosystem  
A1,22/1,Noida Extn  
Noida  
Uttar Pradesh  
201015  
India

2. The Domain Name(s): yahoocontact.co.uk yahoosupport.co.uk

### 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 into question my independence in the eyes of one or both of the parties.

04 January 2016 11:28 Dispute received

05 January 2016 11:36 Complaint validated

05 January 2016 13:31 Notification of complaint sent to parties  
22 January 2016 01:30 Response reminder sent  
27 January 2016 08:10 No Response Received  
27 January 2016 08:11 Notification of no response sent to parties  
03 February 2016 09:26 Expert decision payment received

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

The Complainant is a Delaware corporation with registered offices in California. It is the proprietor of registered trademarks in the word and design YAHOO! in the United States, the European Union and across the globe. The Complainant is also proprietor of, inter alia, <yahoo.com>, registered 18<sup>th</sup> January 1995 and <yahoo.co.uk> registered on 23<sup>rd</sup> September 1996.

The Respondent registered the Domain Names on 22<sup>nd</sup> September 2014 (yahoosupport.co.uk) and 24<sup>th</sup> December 2014 (yahoocontact.co.uk). Aside from the registrant's contact information, and in the absence of a Response, nothing is known of the Respondent save as has been reported by the Complainant in the course of this Complaint.

At the time of writing, the Domain Names resolve to sites purporting to offer telephone support services to users of the Complainant's services.

#### **5. Parties' Contentions**

##### **Complainant**

##### **Rights**

The Complainant submits evidence of trademark registrations in the name and design YAHOO! in many jurisdictions and classes. Evidence is also provided to support a claim of unregistered rights in the YAHOO! mark, based upon its business reputation as a widely recognised global brand name.

The Complainant asserts that each of the Domain Names incorporates the YAHOO! mark in full, combined with terms closely related to its customer services. The distinctive component of the Domain Names is the string of characters "YAHOO" which will be seen by users as the Complainant's trade mark coupled with the descriptive or generic terms "Contact" or "Support". The Complainant points out that the exclamation mark in YAHOO! cannot technically be included in the Domain Names and makes no difference how the mark is pronounced.

##### **Abusive Registration**

The Complainant argues that the Domain Names are Abusive Registrations on the following grounds:

(a) The Respondent has registered or otherwise acquired the Domain Names primarily for the purpose of unfairly disrupting the business of the Complainant pursuant to Policy Paragraph 3(a)(i)(C)

(b) The Respondent is using the Domain Names in a way that has confused or is likely to confuse people or businesses into believing that they are registered to, operated or authorized by, or otherwise connected with the Complainant pursuant to Policy Paragraph 3(a)(ii),

(c) The Respondent is engaged in a pattern of registering domain names corresponding to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Names are part of that pattern, pursuant to Policy Paragraph 3(a)(iii),

(d) The Respondent has moved the Domain Names between hosting providers after services were terminated for intellectual property violations.

With regard to the first two claims, the Complainant argues that the headings and content of the websites published by reference to the Domain Names ('the Domain Names sites') aim to divert Yahoo! users away from the Complainant's legitimate service and support sites, thereby exposing them to the Respondent's unauthorised, and allegedly fraudulent, alternatives. The Complainant's business is disrupted by the Respondent because it must educate users about the risks of dealing with the Respondent and handle complaints arising from the misleading nature of the Domain Names sites.

The Complainant submits evidence to show that the Respondent uses deceptive keyword search optimisation in meta data and deceptive page headers and site content: strategies which are likely, the Complainant submits, to confuse users into believing the sites are operated or authorised by the Complainant. Keywords used are:

Yahoo support number  
Yahoo Contact Number  
Yahoo Mail Support Number  
Yahoo Technical Support Number  
Yahoo Tech Support UK  
Yahoo Customer care number  
Yahoo Mail Support Number  
Yahoo Support Contact Number

Evidence is submitted of confusion on the part of users contacting the Respondent via telephone numbers provided on the Domain Names sites. Users are told that they need to submit personal data and permit remote access to their computers.

In respect of the third and fourth of the Complainant's claims, the Complainant alleges that the Respondent is engaged in a pattern of registering domain names corresponding to well known names or trade marks in which the Respondent has no apparent rights. The Domain Names are part of that pattern. Evidence is submitted of registrations by the Respondent in respect of GMAIL, HOTMAIL, OUTLOOK, and QUICKBOOKS, in which the Respondent has no apparent rights. The Complainant asserts that all the above domain names incorporating well-known third-party

trademarks are under the Respondent's ownership or control, and the Domain Names are part of that pattern, pursuant to Policy Paragraph 3(a)(iii).

The Complainant also submits that the Respondent is in violation of its web-hosting Terms of Service prohibiting intellectual property violations. Correspondence is submitted in evidence to show that on September 27 2015, the Complainant requested that hosting services be terminated for both Domain Names. On October 18, the hosting provider confirmed that this had been done. On October 25, the Complainant was advised that the Domain Names had been moved to a different hosting provider. A notice was sent on October 25 to the new hosting provider, and the Respondent moved back to the original provider. The Complainant requested the old hosting provider not to let them return with the infringing content on November 10. The Respondent subsequently moved the Domain Names to an entirely new IP address.

### **Respondent**

No Response received

## **6. Discussions and Findings**

### **Introduction**

#### **No Response**

According to paragraph 15(c) of the Procedure, in the absence of exceptional circumstances Experts under the DRS are to draw such inferences as they consider appropriate from the Respondent's failure to file a Response to the Complaint. Having said this, the fact that no Response has been received does not relax or relieve the Complainant of its obligation to make out its case. The DRS Expert Overview, a document providing guidance to parties in DRS complaints, explains this requirement as follows:

***5.6 If the Respondent fails to respond to the complaint, is it inevitable that the complaint will succeed?***

*Whether the Complainant seeks a full decision or a summary decision, it is still necessary for the Expert to be satisfied that the elements necessary to make a finding of Abusive Registration are present.*

### **Allegations in the Complaint**

The Complainant makes a number of allegations against the Respondent which fall outside of the scope of the DRS, as they relate to alleged activities not connected directly to the use of the Domain Names. These concern the Respondent's use of social media and its reportedly fraudulent behaviour towards users who make contact via the telephone numbers provided on the Domain Names sites. Some supporting material is submitted by the Complainant in this regard. This decision, however, is concerned solely with the application of DRS Policy to the Complainant's case and I make no finding in respect of allegations of criminal or otherwise unlawful activity.

## **DRS Policy**

Paragraph 2 of the DRS Policy requires that the Complainant must make its case that:

*2.a.i. The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and*

*2.a.ii. The Domain Name, in the hands of the Respondent, is an Abusive Registration.*

Under Paragraph 2.b of the Policy, the Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.

Paragraph 1 of the DRS Policy defines Rights 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;”*

Elsewhere in Paragraph 1 of the Policy, “Abusive Registration” is defined as 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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;*

## **Rights**

The Complainant has submitted evidence of registered marks in the name YAHOO! Evidence is also submitted in support of the existence of extensive goodwill in this name, based upon the Complainant’s high levels of recognition as a global brand. I accept these submissions.

The Complainant must further show that the name or mark in which it has rights is identical or similar to the Domain Names. The Complainant argues, correctly in my view, that the words “contact” and “support” which are appended to the Complainant’s name are merely descriptive and do nothing to differentiate the Domain Names from the Complainant. As is customary in DRS complaints, I discount the .co.uk suffix in each case.

I therefore proceed on the basis that the Complainant has the relevant Rights for the purposes of bringing this Complaint.

## **Abusive Registration**

The Complainant spells out the portions of paragraph 3 of the DRS Policy upon which its Complaint is based. The allegations of unfair disruption to the Complainant’s business and of causing confusion as to the ownership or operation of the sites at the Domain Names are addressed in paragraphs 3(a)(i)(C) and 3(a)(ii) respectively. In the absence of refutation from the Respondent, I have no difficulty in

finding on the balance of probabilities that the registration and subsequent use of the Domain Names gives rise to potential or actual confusion on the part of users. The nature of the website content is such that little doubt can exist as to the Respondent's intention to disrupt the Complainant's business. Users seeking to make contact with the Complainant will, almost inevitably, be drawn to the Domain Names sites as a result of the use of the Complainant's protected mark forming the principal element in the Domain Names. The Complainant addresses the presence of disclaimer language on the Domain Name websites, asserting that it is ambiguous and lacking in prominence. I accept that this is the case; the disclaimers do nothing, in my view, to obviate the detriment to the Complainant's rights.

Notwithstanding the absence of a Response to this Complaint, paragraph 4 of the DRS Policy invites the Expert to ask if there are circumstances which might assist the Respondent in arguing that the registrations are not abusive. A non-exhaustive list of such matters is set out in this paragraph 4. The Respondent has not offered an explanation of its actions and I do not believe that the possible lines of defence suggested in paragraph 4 of the Policy can be of any assistance to the Respondent.

I have found that the Complainant has made its case on a balance of probabilities in respect of paragraphs 3(a)(i)(C) and 3(a)(ii) of the DRS Policy. Looking at the matter as a whole I conclude that the Complainant's evidence relating to these matters is persuasive and supportive of an overall finding that the Domain Names are Abusive Registrations in the hands of the Respondent.

## **7. Decision**

I find that the Complainant has Rights in a name identical or similar to the Domain Names and that the Domain Names are Abusive Registrations in the Respondent's hands, pursuant to paragraph 3 of the DRS Policy. The Domain Names should be transferred to the Complainant.

**Signed Peter Davies**

**Dated: 19 February 2016**