

DISPUTE RESOLUTION SERVICE

DRS 17508

Decision of Independent Expert

Opus Energy Group Limited

and

OPUS ASSOCIATES LIMITED

1. The Parties:

Complainant: Opus Energy Group Limited
Lambourne House, 311-321 Banbury Road,
Oxford
OX2 7JH
United Kingdom

Respondent: OPUS ASSOCIATES LIMITED
20 Athol Road
Manchester
Manchester
M16 8QN
United Kingdom

2. The Domain Name:

<opus-corporate.co.uk>

3. Procedural History:

The Complaint was filed with Nominet on 24 May 2016. The next day Nominet notified the Respondent by post and by email, stating that the Response had to be received on or before 16 June 2016. The Respondent did not file a Response by the deadline and so on 22 June 2016, Nominet informed the Complainant that it had until 6 July 2016 to pay the

fee for the decision of an Expert pursuant to paragraph 7 of the Nominet Dispute Resolution Service Policy ("the Policy"). On 30 June 2016, the Complainant paid Nominet the required fee.

On 6 July 2016, the undersigned, David Taylor ("the Expert"), confirmed to Nominet that he was independent of each of the parties and that, to the best of his knowledge and belief, there were no facts or circumstances, past or present (or that could arise in the foreseeable future) that needed to be disclosed as they might be of such a nature as to call in to question his independence in the eyes of one or both of the parties.

4. Factual Background

The Complainant was established in 2002, and it is an independent energy supplier in the United Kingdom. It owns the following registered trade marks for or including the mark "OPUS", the earliest of which dates back to 2012:

- UK trade mark no. 2617512 for the mark OPUS ENERGY;
- UK trade mark no. 3022328 for the mark OPUS ENERGY and device;
- UK trade mark no.2617507 OPUS ENERGY and device;
- European Union trade mark no. 10807345 for the mark OPUS ENERGY and device;
- European Union trade mark no. 10807386 for the mark OPUS ENERGY; and
- European Union trade mark no. 12145652 for the mark OPUS ENERGY and device.

The Complainant's official website is available at www.opusenergy.com

The Respondent is an entity based in the United Kingdom. No further details about the Respondent are known.

The Domain Name was registered by the Respondent on 27 April 2016. It is not resolving but was being used by the Respondent for email purposes.

5. Parties' Contentions

The Complainant

The Complainant submits that it has Rights in respect of a mark which is highly similar to the Domain Name. The Complainant explains that it offers an increasing range of services in the energy sector since 2002, initially focusing on supplying small-to-medium-sized enterprises with electricity, before expanding its offering to larger corporate customers in 2006. In 2009 the Complainant's group started to supply gas, and in 2011 the Complainant launched its renewables division, purchasing power from UK renewable generators. In 2016, the Complainant's group supplies energy to approximately 260,000 business sites. The Complainant asserts that it has received multiple awards. Its official website is available at www.opusenergy.com, which according to the W3bin analysis receives approximately 1,952 visitors a day (or 712,000 visitors per year). The Complainant asserts that it has acquired significant and recognisable goodwill and reputation in OPUS ENERGY as a result of its consistent use of its trade marks, including on its website.

The Complainant asserts that the Domain Name is highly similar to the Complainant's registered trade marks including the term OPUS. It argues that the Respondent has appropriated the distinctive and dominant element of the Complainant's trade mark, OPUS, in the Domain Name and that the addition of the term "corporate" is purely descriptive and does not distinguish the Domain Name from the Complainant's OPUS trade marks.

The Complainant further contends that the Domain Name in the hands of the Respondent is an Abusive Registration for the following reasons:

The Complainant submits that the Domain Name has been registered for the purpose of unfairly disrupting the business of the Complainant, in accordance with paragraph 3 (a)(i)(c) of the Policy. In this regard, the Complainant asserts that it has been made aware of phishing, and fraudulent emails sent from the email address <billing@opus-corporate.co.uk>, claiming to be the Complainant. The emails feature the Complainant's OPUS ENERGY trade mark as well as diagrams that were previously available on the Complainant's website until 24 February 2016. The Complainant further argues that the "get up" and colour scheme of the emails is identical to how the Complainant represents itself.

The Complainant also submits that the content of the email requests two large payments: one for gas and the other for electricity. The email also requests that the customer sends photographic identification of themselves to <compliance@opus-corporate.co.uk>. The Complainant argues that the Respondent is seeking to obtain the bank details and identification of one or more of the Complainant's customers. The Complainant thus argues that the email itself is clear evidence of fraud for financial gain, and that it unfairly disrupts the business of the Complainant. In addition to the emails, the Complainant submits that a text message was sent to the same recipient from "Opus Energy Ltd" purporting to provide information of a payment due to the Complainant. The figure is over £2000.

The Complainant therefore contends that the Respondent as the registrant of the Domain Name is behind this fraudulent misrepresentation. Further to this, the Complainant asserts that the Respondent is unfairly disrupting the business of the Complainant for financial gain.

The Complainant also asserts that there are 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, in accordance with paragraph 3(a)(ii) of the Policy. In this regard, the Complainant argues that the Respondent's use of the Domain Name for the purpose of sending unauthorised emails from addresses ending in "@opus-corporate.co.uk" clearly shows that the Respondent is using the Domain Name in a way that 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 Complainant relies on the decision *BT v One in a Million* [1999] 1 WLR 903, and states that English courts have held that mere registration of a domain name can constitute unfair use for the purposes of trade mark infringement and passing off. The Complainant further claims that the Respondent's appropriation of the Complainant's trade mark

OPUS as the dominant element in the disputed Domain Name serves no other purpose than to create a connection with the Complainant in order to actively mislead the customers of the Complainant into thinking that the emails originate from the Complainant.

The Complainant also contends that it can demonstrate the Respondent has engaged in registrations that correspond to well-known names or trade mark which the Respondent has no apparent rights, that includes the disputed Domain Name and is indicative of the start of a pattern, in accordance with paragraph 3(a)(iii) of the Policy. In this regard, the Complainant asserts that apart from the Domain Name, which was registered on 27 April 2016, the Respondent has also registered the domain name <o2-corporate.co.uk>, which corresponds to a well-known name and trade mark in which the Respondent has no apparent rights (O2 being the commercial brand of Telefónica UK Limited, a digital communications company). The Complainant therefore submits that this provides further peripheral support to the assertion that the Domain Name is an abusive registration.

The Complainant further submits that the Respondent has given false contact details, in accordance with paragraph 3(a)(iv) of the Policy. In this regard, the Complainant alleges that the WHOIS record for the Domain Name shows that the Respondent is OPUS ASSOCIATES LIMITED, with an address of 20 Athol Road, Manchester, M16 8QN. The Complainant asserts that this information is false. To support its claim, the Complainant has submitted evidence from the Companies House showing that the registered address of OPUS ASSOCIATES LIMITED is Singleton Court Business Park, Wonastow Road, Monmouth, Monmouthshire, NP25 5JA. Further to this, none of the officers of the company have registered addresses in Manchester. The Complainant therefore submits that it is highly unlikely that the company is the Respondent, and in the alternative, the address is false.

The Complainant has also submitted evidence showing that there are ten businesses that are registered at Companies House at 20 Athol Road, Manchester, M16 8QN, and that they all have one director (although nine of the companies are now dissolved after being created between 2013 and 2015). The Complainant states that none of those companies correspond with the Domain Name, nor do they correspond with the company name listed as the Respondent. The Complainant asserts that this is further evidence supporting the assertion that the contact details of the Respondent are false. The Complainant therefore contends that either the Respondent's name or address is false or, in the alternative, that both the Respondent's name and address are false.

The Complainant further submits that none of the factors in paragraph 4 of the Policy apply to the Respondent's registration and use of the Domain Name to negate the finding that the registration and use of the Domain Name is abusive. The Complainant also contends that the Respondent has no connection whatsoever with the Complainant and has no rights to this name. Given the nature of the Domain Name, the Complainant submits that it is beyond the realms of possibility that the Respondent has legitimate interests in this Domain Name.

The Respondent

The Respondent did not submit a Response.

6. Discussions and Findings

Under paragraph 2(a) of the Policy, for the Expert to order a transfer of the Domain Name the Complainant is required to demonstrate, on the balance of probabilities, both of the following elements:

"(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."*

Complainant's Rights

The Policy defines Rights as "*rights enforceable by the Complainant, whether under English law or otherwise*".

The Complainant asserts Rights in the Domain Name based on the Complainant's trade marks in the term OPUS ENERGY. The Complainant has submitted evidence of its trade marks in the term OPUS ENERGY which are enforceable under English law and so the Expert is satisfied that the Complainant has Rights in the term OPUS ENERGY.

Paragraph 2(a)(i) of the Policy also requires the Expert to examine whether the name or mark in which the Complainant has Rights is identical or similar to the Domain Name. The Domain Name does not reproduce the Complainant's trade mark in its entirety but rather the term OPUS alone, with the addition of the term "corporate", separated by a hyphen.

Given that the Complainant's trade mark and the Domain Name are clearly not identical, the Expert must examine whether it can be said that they are "similar" for the purposes of the Policy. See DRS 16516 (<gorillanutrition.co.uk>). It should be noted that the first requirement under the Policy is simply a low-level test intended to demonstrate whether there is a *bona fide* basis for making the complaint (see paragraph 2.3 of the Experts Overview) and so the Expert finds that the Domain Name is similar to the Complainant's trade mark because it reproduces the distinctive and dominant component of the Complainant's trade mark (the term OPUS). The addition of the generic term "corporate" and the hyphen in the Domain Name is insufficient to diminish the similarity with the Complainant's trade mark.

Furthermore, it is well-established that the ".co.uk" suffix may be disregarded for the purposes of assessing identity or similarity between a trade mark and a domain name, as it is a functional element, and so the Expert finds that the Complainant's trade mark and the Domain Name are similar.

The Expert therefore finds that the Complainant has Rights in respect of a mark which is similar to the Domain Name, in accordance with paragraph 2(a)(i) of the Policy.

Abusive Registration

Moving on to paragraph 2(a)(ii) of the Policy, "Abusive Registration" is defined in paragraph 1 of the Policy to mean a domain name which:

- "(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."*

A complainant must prove one or both of these on the balance of probabilities. In the present case, based on the evidence put forward by the Complainant, the Expert finds that the Domain Name was both registered and used in a manner which takes unfair advantage of, and is unfairly detrimental to, the Complainant's Rights.

As far as (i) above is concerned, in order to assess whether the Domain Name was registered or otherwise acquired in a manner which, at the time of registration, took unfair advantage of or was unfairly detrimental to the Complainant's Rights, it is necessary to determine whether the Respondent was aware of the existence of the Complainant and its Rights at that time (see DRS 4331 (<verbatim.co.uk>). In this regard, the nature of the Domain Name itself, which only partially reproduces the Complainant's trade mark, does not necessarily suggest that the Respondent was targeting the Complainant at the time of registration of the Domain Name. However, the Respondent's subsequent use of the Domain Name to send emails displaying the Complainant's OPUS ENERGY logo and requiring payment from the Complainant's customers clearly demonstrates that the Respondent not only had knowledge of the Complainant's Rights at the time of registration but also that it deliberately registered the Domain Name with the intention of impersonating the Complainant in order to deceive its customers for the Respondent's financial gain. The Expert therefore finds that the Domain Name was *registered* in a manner which takes unfair advantage of, and is unfairly detrimental to, the Complainant's Rights.

As far as (ii) above is concerned, the Expert is of the view that the Respondent's use of the Domain Name for the purpose of sending emails displaying the Complainant's trade mark and logo constitutes use in a way that 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, in accordance with paragraph 3(a)(ii) of the Policy. Furthermore, the Respondent's use of the Domain Name is abusive not only because the Respondent is deliberately intending to cause confusion amongst internet users but also because it is seeking to obtain financial gain by deceptive means. The Expert therefore finds that the Domain Name is being *used* in a manner which is taking unfair advantage of, and is also unfairly detrimental to, the Complainant's Rights, in accordance with (ii) above.

The Policy also list additional circumstances that may be evidence that the Domain Name is an Abusive Registration, including paragraph 3(a)(iv), which provides that "*It is independently verified that the Respondent has given false contact details to us*". In this regard, the Expert notes that the WHOIS for the Domain Name shows that the registrant is an entity called "OPUS ASSOCIATES LIMITED", with an address at 20 Athol Road, Manchester, M16 8QN. However, the Complainant has provided ample evidence

showing that such entity does not exist at the aforementioned address and that there are numerous other entities, none of which correspond to the entity listed as the Respondent, that have been domiciled at the aforementioned address. In addition, the fact that the signature of the emails sent using the Domain Name does not make any reference to "OPUS ASSOCIATES LIMITED" but to the Complainant itself is a strong indication that the details provided by the Respondent in the WHOIS are false and that the Respondent is using the Domain Name to impersonate the Complainant, as described above. The Expert is also of the view that the fact that the Respondent has also registered an additional domain name which corresponds to a well-known third party trade mark in which the Respondent does not appear to have rights, although it may not constitute a pattern within the meaning of paragraph 3(a)(iii) of the Policy, is indicative that the Respondent's intentions are not well-meaning.

Finally, paragraph 4 of the Policy provides a non-exhaustive list of circumstances which may be evidence that the Domain Name is not an Abusive Registration. The Respondent had an opportunity to submit a Response to the Complaint but chose not to do so. However, the Expert has examined the circumstances set out in paragraph 4 of the Policy and finds that, given the use to which it has been put by the Respondent and the fact that the Respondent's details are, on balance, likely to be false (as described above), none of those circumstances would seem to assist the Respondent.

In summary, the Expert has considered the admissibility, relevance, materiality and weight of the evidence as a whole and is satisfied that the Complainant has succeeded in proving, on balance of probabilities, that the Domain Name is an Abusive Registration in accordance with paragraph 2(a)(ii) of the Policy.

7. Decision

The Expert finds that the Complainant has Rights in a name which is similar to the Domain Name, and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

The Domain Name should therefore be transferred to the Complainant.

Signed: David Taylor

Dated: 2 August 2016