



DISPUTE RESOLUTION SERVICE

D00018171

Decision of Independent Expert

Sprinklr UK LTD

and

Yang HongJuan

1. The Parties:

Lead Complainant: Sprinklr UK LTD
Gate House, 1 St. John's Square
London
EC1M 4DH
United Kingdom

Complainant: Sprinklr Inc.
29 West 35th Street
7th Floor
New York
NY
10001
United States

Respondent: Yang HongJuan
No.4 ZhuLin Road, Futian District
Shenzhen
China
518000
China

2. The Domain Name:

sprinklr.co.uk

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 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.

07 November 2016, the Dispute was received.

08 November 2016, the Complaint was validated.

08 November 2016, the notification of the Complaint was sent to the Parties.

25 November 2016, the Response reminder was sent.

28 November 2016, the Response was received.

28 November 2016, the notification of the Response was sent to the Parties.

01 December 2016, the Reply reminder was sent.

07 December 2016, the Reply was received.

07 December 2016, the notification of the Reply was sent to the Parties.

14 December 2016, the Mediator was appointed.

15 December 2016, Mediation started.

18 January 2017, Mediation failed.

18 January 2017, the close of the Mediation documents were sent.

30 January 2017, the Complainant full fee reminder was sent.

30 January 2017, the Expert decision payment was received.

4. Factual Background:

4.1 The Respondent registered the Domain Name on 6 February 2013.

4.2 The Complainant was founded in 2009, its main website being at *sprinklr.com*. The Lead Complainant is a subsidiary of the Complainant, and is a UK company which, among other things, provides social media and marketing services for companies.

4.3 The Complainant is the registered owner of a number of trade marks in respect of the word "**SPRINKLR**" (the '**Name**') (e.g. US trade mark (No. 3793002, registered 25 May 2015), UK trade mark (No. 3145669, registered 15 April 2016)). The Lead Complainant is joint owner with the Complainant of the UK trade mark (collectively the '**Marks**').

5. Parties' Contentions:

The Complaint

For the purposes of this section of the Decision, the Expert has summarised the submissions of the Parties but only insofar as they are relevant to the matters that the

Expert is required to determine under Nominet's Dispute Resolution Service ('DRS') Policy (the 'Policy').

The Lead Complainant and the Complainant are collectively referenced in this Decision as the '**Complainant**'.

5.1 In summary, the Complainant submitted that the Complaint should succeed for the reasons below.

The Complainant's Rights

- The Complainant submitted that it has Rights in respect of a name or mark which is identical or similar to the Domain Name.
- The Complainant submitted that it was the "*owner of various rights to the*" Name and it has used the Name globally for many years, and is well known to the public under the Name as the provider of services in the field of digital marketing.
- The Complainant stated that the word "*SPRINKLR*" does "*not exist as a generic name*" and was created by the Complainant.
- Further, the Complainant referenced that it has various trade marks, including the UK trade mark 3145669 for the Name.

Abusive Registration

- The Complainant submitted that the Domain Name, in the hands of the Respondent, is an Abusive Registration as the Domain Name has been used and/or was registered or otherwise acquired in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.
- The Complainant referenced that the Respondent, Mr. Yang Hong Juan, has registered at least 657 different domain names (based on research it had conducted at <http://reversewhois.domaintools.com>).
- The Complainant submitted that the Respondent is "*passing off against the business name of my clients.*"
- The Complainant referenced that, under the Domain Name, the Respondent has set up a place holder 'parking' website that generates revenue from advertisement traffic, submitting that the Respondent is capitalising on its reputation by choosing the Name which is identical to the Domain Name in dispute.

- The Complainant referenced that, when it clicked on the website linked to the Domain Name (the '**Website**'), "*advertisements for "cloud Computing", "Cloud technology", "Salesforce Marketing Cloud", "Big Data Solutions" appear*" and that all such services "*fall in the scope of the services of the Complainant.*" In that way, the Complainant submitted, the Respondent is causing confusion and disruption of the Complainant's business.
- The Complainant noted that, through a parking site, the Respondent is offering the Domain Name for sale.
- The Complainant submitted that the Respondent's address did not "*seem to be an existing valid address*", based on a search that the Complainant undertook on Google Maps (*map.google.com*).
- The Complainant submitted that the Respondent has no fair use interest in the Domain Name, nor is he using the Website for a legitimate business purpose.
- Finally, the Complainant noted that the Respondent has already been involved in three other domain disputes at Nominet - D00012682, D00014289 and D00012473 - and all cases ended with a transfer of the domain names from the Respondent to each Complainant. The Complainant submitted that this "*fact alone, according to the Nominet policy is establishing an Abusive Registration in this case.*"

Respondent's Response

- 5.2 In summary, the Respondent submitted that the Domain Names should not be transferred to the Complainant for the reasons set out below.

The Complainant's Rights

- The Respondent submitted that the Name is an original creation by the Respondent and, though he does not have a trademark in the Name, "*according to the general domain name register principle called first come, first serving, any people can registered the domain for their own use with this word.*"
- The Respondent submitted that the Complainant does not have rights in the Name, noting that the Complainant has not provided any evidence indicating that:
 - o it "*has registered a trademark in the Europe [...] and UK [...]*";
 - o it "*[has] any commercial activities in the UK before the Respondent registered the [Domain Name]*";

- it did *“any advertising or promotion in the UK before the Respondent registered the [Domain Name]”*;
- the Name *“is commonly associated with the Complainant”* (submitting that the Name was not recognised by the public in the UK before the Respondent registered the Domain Name); and,
- though the Complainant has *“a trademark in the USA, it is not enough for them to have the rights of the disputed domain name. The mark is not [a] well-known one, and it is not popular in the UK and more important, it cannot cause confusion as almost nobody know them before the Respondent registered the [Domain Name].”*

Abusive Registration

- The Respondent stated that, although it did not have a trade mark in the Name, it had *“registered the domain for the good wish usage.”*
- The Respondent questioned why the Complainant had not registered the Domain Name as, *“[g]enerally speaking, if you have do something business in some place, first thing you can do is that protected your rights”,* noting that the *“Complainant himself give up the right for their own reasons.”*
- The Respondent stated that he had registered the Domain Name *“in order to do their own use [...] It is a legitimate business purpose registration and have detail development plan for the future use, it is not associated to the Complainant's site Sprinklr.com.”*
- The Respondent submitted that he registered the Domain Name for one project, *“through it is not being started now, so I parked the domain temporarily [at bodis.com].”* He further submitted that he has a detailed plan to use the Domain Name *“in the near future.”*
- The Respondent explained that the *“parked page content is automatically generated by the third party, including the sponsored links on the site”* and it is not the Respondent's intention to infringe the rights of any person.
- The Respondent explained that his plan is to set up a website about *“the automatic sprinkler system,”* submitting that such a website was not related to the Complainant. The Respondent submitted that, before he registered the Domain Name, he knew *“nothing about the Complainant.”*
- The Respondent stated that, in relation to the Nominet DRS Disputes referenced by the Complainant - D00012682, D00014289 and D00012473 - *“because the Gmail.com was being blocked in China from time to time, the Respondent missed the time to reply to them.”*

- Finally, the Respondent claimed that the Complainant is guilty of reverse domain name hijacking, noting that the *“Complainant is a company, the Respondent is an individual. It is suspicion of the big one bully the small one.”*

Complainant’s Reply

5.3 In summary, the Complainant submitted that:

- it is a global company, well known to the public under the Name and has established proof of the ownership of the Name by using the name as its company name and registering various trade marks [attached evidence included a US trade mark (No. 3793002, 25 May 2015)]; it being irrelevant that some of the trademark registrations post-dated the registration of the Domain Name.
- In relation to the abusive registration, the Complainant noted that because the Respondent had been found to have made an Abusive Registration on three separate occasions, under Rule 5.3 of the Policy the abusiveness of the registration is presumed and the Respondent has not rebutted that presumption. The Complainant submitted that, in each of those cases, the Respondent registered the exact names of the complainant.
- The Complainant submitted that the Domain Name had been used in a way that has confused potential customers of the Complainant that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant - as the Website contains *“solely advertisement for products and services usually provided by the Complainants.”*
- Further, the Complainant submitted that the customers or potential customers of the Complainant entering the Website will see the advertisements of competitors for the exact services provided by the Complainant, which unfairly disrupts the business of the Complainants as they are losing business to such competitors.
- The Complainant stated that the Respondent had intentionally parked the Website at *bodis.com* to generate traffic and revenue from advertising and, thereby, disrupting the Complainant’s business.
- The Complainant submitted that the Name, and Marks, have an *“overwhelming reputation”* and that the Respondent has no reasonable justification for having registered the Domain Name, referencing that there is *“a Wikipedia article about the Complainants [with a copy of the referenced page evidenced].”*

- The Complainant stated that there are “currently 13,700 news articles available about the Complainants and [their] worldwide business [...]” and that the Complainant is, therefore, well known to the public.
- The Complainant submitted that the registration of the Domain Name is blocking the Complainant from registering the Domain Name where they have corresponding name rights, submitting that the Respondent registered the Domain Name “one day after a press release about a 15 million dollar funding of the Complainant by Intel [Capital]” [print out from *crunchbase.com* provided].
- The Complainant submitted that the allegation that the Respondent did not know the Complainant prior to filing the Domain Name “is not true and implausible” as, by the time the Respondent registered the Domain Name, the Complainant had already provided its services globally.
- The Complainant refuted that it gave up its Name or Mark rights by not registering the Domain Name.

6. Discussions and Findings

General

6.1 To succeed in the Complaint, the Complainant has to prove pursuant to paragraph 2 of the Policy that, on the balance of probabilities:

i. [it] 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.

6.2 Addressing each of these limbs in turn:

Rights in respect of a name or mark which is identical or similar to the Domain Name

6.3 The Expert considers that, for the reasons set out below, the Complainant has Rights in a name or mark which is identical to the Domain Name.

6.4 Paragraph 1 of the 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;

The Complainant must have the Rights in question at the time of the complaint (Nominet Appeal decision, *ghd.co.uk*, DRS No. 03078).

- 6.5 The Expert notes that the Complainant holds various trade mark registrations, including a UK trade mark (registered on 15 April 2016). As has been addressed in a previous DRS Decision (D00012473), that the registration post-dates the registration of the Domain Name is not relevant when considering whether or not the Complainant has Rights.
- 6.6 The Expert further notes the information provided by the Complainant as part of the Complaint, including the number of webpages referencing the Complainant, information from *crunchbase.com* and a Wikipedia page which has citations supporting the Complainant's use of the Name in the marketplace (noting, for example, that it won an Industry award in 2014).
- 6.7 The Expert considers that, through activity in the market place and the Complainant's evidenced reputation, the Complainant has developed considerable goodwill and reputation in the Name/Marks.
- 6.8 In addition, the Expert considers that the Domain Name includes the ".co.uk" suffix does not sufficiently distinguish the Domain Name from the Name/Marks.
- 6.9 Given those factors, the Expert considers that, at the time of the Complaint, the Complainant had Rights in the Name/Marks which is/are identical to the Domain Name.

Abusive Registration

- 6.10 For the reasons set out below, the Expert considers that the Domain Name is an Abusive Registration as understood by the Policy.
- 6.11 Paragraph 1 of the Policy defines "*Abusive Registration*" 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. is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;*
- 6.12 *In relation to i. above*, the Expert considers that the Domain Name was an Abusive Registration at the time the Domain Name was registered.
- 6.13 The Policy, at paragraph 5, sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. Specifically, the Expert considers that the factors set out at paragraphs 5.1.1.2 and 5.1.1.3 are relevant.

- 6.14 In relation to the above factors, the generally held view amongst DRS Experts is that the Respondent should have had knowledge of the Complainant and/or its Rights when registering the Domain Name for there to be a finding of an Abusive Registration. As referenced above, given the Complainant's goodwill and reputation in the Name/Marks, the Expert considers that the Respondent is likely to have been well aware of the Complainant and its Name/Marks at the time of the Domain Name registration on 6 February 2013.
- 6.15 Indeed, on the balance of probabilities (noting that, as referenced by the Complainant, the Respondent registered the Domain Name a day after an announcement that Intel Capital had invested in the Complainant), the Expert considers that the Respondent specifically chose to register the Domain Name with the intention of benefitting from the Complainant's reputation and goodwill – in order to attract to the website linked to the Domain Name (the '**Website**') users who would be looking for the Complainant and its services (the purpose of which would be to disrupt unfairly the business of the Complainant).
- 6.16 Further, the Expert considers that, by registering the Domain Name, the Respondent has prevented the Complainant from so doing.
- 6.17 The Expert notes that the Respondent has, through the parking site, offered to sell the Domain Name. While the Policy also sets out at paragraph 5.1.1.1 that a factor which may be evidence that the Domain Name is an Abusive Registration could be where the Respondent registered the Domain Name to sell it to the Complainant or a competitor of the Complainant, the Expert has no compelling evidence before him that this was the Respondent's intent at the time of the Domain Name's registration.
- 6.18 Therefore, for the reasons set out above, the Expert considers that the registration of the Domain Name took unfair advantage of, and was unfairly detrimental to, the Complainant's Rights.
- 6.19 *In relation to (ii) above*, the Expert also considers that the Domain Name was and is an Abusive Registration as a result of its manner of use by the Respondent.
- 6.20 The Expert considers that paragraph 5.1.2 of the Policy is relevant, whereby a factor which may be evidence that the Domain Name is an Abusive Registration is:

Circumstances indicating that the Respondent is using [...] 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;

- 6.21 The confusion referred to above is confusion as to the identity of the person or entity behind the Domain Name. The Expert considers that the Domain Name is identical to the Complainant's Name/Marks (save for the ".co.uk" suffix), and cannot sensibly refer to anyone else.
- 6.22 The Expert notes that the Website references on the homepage services that are provided by the Complainant, such as "Cloud Computing" and "Big Data Solutions." Accordingly, the Expert considers that there is a real and tangible risk that the URL for the Website will likely appear high up on the search engine list of a user trying to locate the Complainant's website and that a user will access the Website thinking it is the Complainant's.
- 6.23 The Expert considers that the use of the Domain Name, for the reasons referenced above, has taken unfair advantage of the Complainant's Rights by seeking to rely on the Complainant's goodwill and reputation in the Name/Marks to generate web traffic to the Website that was meant for the Complainant.
- 6.24 Further, the Expert is not persuaded by an argument that a person accessing the Website on the assumption it was the Complainant's website would soon realise his or her mistake, as the damage to the Complainant's business would already have been done. Indeed, paragraph 3.3 of the DRS Experts' Overview (http://www.nominet.uk/wp-content/uploads/2015/08/Expert_Overview.pdf) supports the view that a registration is abusive in such circumstances where the Respondent is providing goods and services which do not originate from the Complainant (which is the case here, noting the referenced parking site links on the Website homepage).
- 6.25 The Expert notes that clause 5.3 of the Policy states that there is a "*presumption of Abusive Registration if the Complainant proves that the Respondent has been found to have made an Abusive Registration in three (3) or more DRS cases in the two (2) years before the complaint was filed.*"
- 6.26 In this regard, the Expert notes the submissions made by the Complainant: that the Respondent has three Abusive Registration decisions against him (D00012473 (16/04/2013), D00012682 (03/06/2013), and D00014289 (08/07/2014)). The Expert also notes that the Respondent had a further recent Abusive Registration decision against him (D00018025 (19/12/2016)). However, three such decisions were not found against him in the two years before the Complaint was filed and, therefore, clause 5.3 is not applicable in such circumstances.
- 6.27 The Expert has considered whether there is evidence before him to demonstrate that the Domain Name is not an Abusive Registration but does not consider there is. Indeed, the Expert considers that there is no obvious justification for the Respondent having registered the Domain Name.

6.28 Therefore, for the reasons set out above, the Expert considers that the use of the Domain Name took unfair advantage of, and was unfairly detrimental to, the Complainant's Rights.

7. Decision

7.1 The Expert finds that, on the balance of probabilities, the Complainant has Rights in respect of a name or mark which is identical to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration. Therefore, the Expert directs that the Domain Name be transferred to the Complainant.

Signed: Dr Russell Richardson

Dated: 1 March 2017