

DISPUTE RESOLUTION SERVICE

D00018426

Decision of Independent Expert

RWA Compliance Services Limited

and

Mr Mark Wilson

1. The Parties:

Complainant: RWA Compliance Services Limited
The Rolling Mill, 43 Broad Street
Blaenavon
Torfaen
NP4 9NH
United Kingdom

Respondent: Mr Mark Wilson
4 Spring Lane
Richmond
Richmond
DL10 6AR
United Kingdom

2. The Domain Name:

mydevelopmentzone.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 a such a nature as to call in to question my independence in the eyes of one or both of the parties.

24 January 2017 17:15	Dispute received
25 January 2017 14:09	Complaint validated
25 January 2017 14:16	Notification of complaint sent to parties
13 February 2017 01:30	Response reminder sent
16 February 2017 11:38	No Response Received
16 February 2017 11:38	Notification of no response sent to parties
21 February 2017 14:23	Expert decision payment received

4. Factual Background

The Complainant is a UK based e-learning training and compliance consultancy. It has been in business for over 10 years and, since March 2015, has used the trade mark MY DEVELOPMENT ZONE and its mydevelopmentzone.com and mydevelopment.zone domain names and corresponding URL website addresses for the purposes of its business.

The Complainant applied for registration of MY DEVELOPMENT ZONE together with a logo as a UK trade mark on 12 April 2016 (and it was subsequently registered).

Ten days later, on 22 April 2016, the Respondent registered the Domain Name. The Respondent is the managing director of a competing business that also offers e-learning training and compliance services.

5. Parties' Contentions

In its Complaint, the Complainant submitted as follows

- The Complainant relies upon the word element of its UK trade mark registration 3159155 dated 12 April 2016 for the mark MY DEVELOPMENT ZONE together with a logo in class 35, 36 and 41.
- The Complainant is a leading Financial Conduct Authority compliance consultancy in the UK, which was established over 10 years ago and since 2010 has been the exclusive compliance partner for Aviva, the UK's largest insurer and one of Europe's leading providers of life and general insurance.
- The Complainant's MY DEVELOPMENT ZONE brand is used when providing the compliance service for Aviva and in 2015 the Complainant relaunched the Aviva Development Zone e-learning platform and is responsible for its design, development and management. The Aviva Development Zone provides skills training to businesses and their employees and insurance brokers. The use of the platform has been successful with a 280% increase in platform usage seen in the first months of 2015. Thousands of learners have completed the personal and professional development modules on the Aviva Development Zone via the My Development Zone website at <http://mydevelopment.zone>.

- The Complainant is the registrant of the domain name mydevelopment.zone, which was registered on 26 March 2015. The Complainant, as a technology leader, took advantage of the .zone new gTLD to shorten its website address through the use of a domain name in which the TLD included the last word of its trade mark so the composite domain name matches the Complainant’s trade mark.
- The Complainant has been involved in e-learning for over 10 years. The Complainant was selected as a finalist in the category of e-Learning Development Company of the Year 2015 in the e-Learning Awards and was selected as a member of Wales Digital Dozen 2016, a digital conference for a select group of companies making an impact on the UK’s economy through ground-breaking use of technology and the digital space.
- A search for the trade mark “MY DEVELOPMENT ZONE” on Google.co.uk and uk.Yahoo.com ranks the Complainant’s website as the first non-sponsored result.
- The Complainant has used its MY DEVELOPMENT ZONE trade mark through a variety of marketing activities, such as:
 - print advertisements;
 - a symposium in Corfu;
 - BIBA conference;
 - Introbiz conference; and
 - Google AdWords, spending in the region of £1,000 every three months.
- The Complainant’s MY DEVELOPMENT ZONE platform has received over 1 million hits per month since October 2016.
- The Complainant has produced online videos using the MY DEVELOPMENT ZONE trade mark since January 2016.
- The Complainant’s clients include Aviva, The Institute of Export and over 650 insurance broking firms.
- The Complainant has, since the launch of MY DEVELOPMENT ZONE, also established common law rights in the mark MY DEVELOPMENT ZONE by virtue of its use of the trade mark (including as the domain name mydevelopment.zone) in the e-learning sector and as such, has acquired a significant reputation and goodwill in the mark. To this extent the trade mark is recognised by the public as distinctive of the Complainant’s services. Accordingly, a customer and/or potential customer would assume that any service being offered under the MY DEVELOPMENT ZONE mark is associated with, endorsed or being supplied by the Complainant.
- The launch of new gTLDs has resulted in UDRP decisions taking into account the new gTLDs in its determination of identical and confusing similarity:
 - in 24 Hour Fitness USA, Inc. v. Domain Name For Sale / Redefine WEB Private Limited (FA1609001694048) it was stated “*Complainant further contends that*

Respondent's <24hour.fitness> domain name is identical to its 24 HOUR FITNESS mark. Complainant argues that Respondent's domain name merely omits the spaces and uses the FITNESS portion of Complainant's mark as a descriptive gTLD. Panels have agreed that using a gTLD that is descriptive of a complainant's business can lead to a finding of identity and increase confusing similarity";

- see DD IP Holder LLC v. Phill Aspden, FA 1603215 (FORUM Apr. 8, 2015) (finding that the disputed domain name <dunkin.coffee> is identical to Complainant's DUNKIN COFFEE registered mark, as gTLDs that reference goods or services offered under the registered mark may be taken into account);
 - see also Health Republic Insurance Company v. Gustavo Winchester, FA 1622089 (Forum July 7, 2015) (finding, “Domain name syntax requires TLDs. Domain name syntax prohibits spaces. Therefore, omitted spacing and adding a TLD must be ignored when performing a Policy 4(a)(i) analysis.”); and
 - McGuire Woods LLP v. Mykhailo Loginov / Loginov Enterprises d.o.o, FA 1594837 (Forum Jan. 22, 2015) (“While the addition of gTLDs are generally considered irrelevant to the confusing similarity analysis, the Panel finds that Respondent's election of the “.lawyer” and “.attorney” descriptive terms do heighten the likelihood of confusion because Complainant's MCGUIREWOODS mark is used to promote the services of lawyers and attorneys.”).
- Accordingly, the Complaint has also acquired common law rights by virtue of its extensive use of the domain name mydevelopment.zone, which is identical to its MY DEVELOPMENT ZONE trade mark.
 - The Respondent registered the Domain Name on 22 April 2016.
 - The Domain Name is identical to the Complainant's word element in the MY DEVELOPMENT ZONE registered trade mark and confusingly similar to the mark in toto.
 - The Domain Name is an abusive registration because it was registered in a manner that, at the time the registration took place, took unfair advantage of and was unfairly detrimental to the Complainant's rights.
 - The Respondent is a director of the company eLamb Limited. The Respondent describes his experience on LinkedIn as follows: “creating eLearning and online assessment solutions, creating and delivering product knowledge/sales training, delivering blended learning solutions, people management, managing small businesses, account management, sales”. It is apparent from the Respondent's LinkedIn profile and e-learning website at www.elamb.co.uk that the Respondent operates a business in direct competition with the Complainant.
 - The Respondent has set-up a website to which the Domain Name resolves with a login function. On the homepage, he lists his business email address

(info@elamb.co.uk) with a link to his business website in the footer of the homepage.

- In light of the Respondent operating a business in the same industry as the Complainant within the UK, it is the Complainant's submission that the Domain Name was registered for the purpose of:
 - a blocking registration against a name or mark in which the Complainant has Rights;
 - unfairly disrupting the business of the Complainant; and
 - confusing client's and/or potential client's seeking the business of the Complainant.
- The Respondent is the Managing Director of an e-learning technology company with skills in sales and technology. It is therefore presumed that he is aware of his competitors and well-versed in the use of technology to compete against them for market share.
- On 12 October 2016 and 15 November 2016 the Complainant's solicitor sent the Complainant a cease and desist letter requesting the transfer of the Domain Name. On 13 December 2016 the Respondent replied, via email, stating that the Domain Name was registered for a client and that they did not want to transfer the Domain Name.
- The Respondent has registered the Domain Name in order to block the Complainant from registering the Domain Name, which is an identical match to the word elements of the mark in which the Complainant has registered and common law rights.
- A comprehensive evidence grab of the Respondent's website at www.elamb.co.uk reveals that no mention is made of the mark MY DEVELOPMENT ZONE. The separate website at the Domain Name is a slim attempt by the Respondent to legitimise his registration of the Domain Name as there is no content describing the service on the site or any other information that would lead a person to assume it is being used for a legitimate business.
- The Respondent registered or otherwise acquired the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant, being a competitor of the Respondent.
- The Complainant is the registrant of the domain names mydevelopmentzone.com, mydevelopmentzone.net and mydevelopmentzone.uk. The Respondent is the only other party, worldwide, that has registered a domain name identically matching the Complainant's trade mark.
- The Complainant's domain name mydevelopment.zone was registered on 26 March 2015. In addition, the online marketing mentioning the mark that was reported on

8 and 11 April 2016 and the filing of the trade mark on 12 April 2016 all precede the registration of the Domain Name on 22 April 2016.

- It is the Complainant's contention that soon after the MY DEVELOPMENT ZONE trade mark application was filed and displayed on the IPO website and made known online, the Respondent became aware of this and took steps to disrupt and block the Complainant from registering the Domain Name.
- It is common practice amongst squatters or domain opportunists to monitor the media for reports and announcements of mergers and acquisitions, buyouts or the like with a view to registering the speculated new name of the business, company, product and/or service. Upon receiving such information, the squatter registers the matching domain name. The Respondent has engaged in such activities by registering the Domain Name based on the publicly available information mentioned above. See:
 - Svea Ekonomi AB, Svea Exchange AB v. Christopher Clewehielm / 24Guld i Sverige AB D2014-1476 (WIPO Nov. 3, 2014) finding that *"It is not probable that the Respondent took actions with no awareness of the Complainants' trademarks and business. Instead, it appears to be a typical case of cybersquatting. In light of the above, the Respondent can be considered to have been fully aware of the Complainants and their trademarks and business."*
 - HBOS plc –v– Andy Hodges (DRS 00295, 14 June 2002), which dealt with the issue of coincidence as follows: *"The Complainant has referred to the "issue of coincidence" (the Complaint paragraph 7). The Complainant has presented evidence of press coverage of the creation of HBOS plc dating from 25 April 2001, although the first printed reference to the name "HBOS" appears to be about 28 April 2001. This evidence postdates the registration of the Domain Name and hence allows only three possibilities: (1) that the Respondent discovered the name HBOS by some undisclosed means; (2) that the Respondent guessed the name correctly; or (3) that the Respondent registered the name HBOS by coincidence. In the Expert's opinion (1) and (2) are quite possible, but (3) is extremely improbable. Noting that HBOS is not a word in ordinary use, but an acronym, the likelihood of the Respondent registering this particular 4-letter combination as the Domain Name on the same day that HBOS plc registered hbosplc.co.uk and other variants is infinitesimally small. The Expert therefore accepts that the Respondent took unfair advantage of the Complainant's Rights"*.
 - Konica UK Limited – v – ic (Nominet DRS 00800, 2 April 2013) *"The Expert is of the opinion that the registration of the Domain Name on the same day as the merger and new joint brand were announced is more than simple coincidence. Each of the component names forming part of the Domain Name are highly distinctive and in the absence of any credible or plausible purpose for the Respondent's actions in registering the Domain Name on that date the Expert is drawn to conclude that the registration took place as a result of the merger announcement. The Expert further concludes that at that time the Respondent had no legitimate right or purpose to justify registration of the Domain Name. In the opinion of the Expert it is also clear that following the*

merger announcement, amongst other domain names throughout the world incorporating the new business name, the merged business would wish to own and control the Domain Name. This being the case the Expert is of the opinion that the registration of the Domain Name by the Respondent took unfair advantage of the Complainant's Rights."

- The probability of registering an exact match of a competitor's trade mark 10 days after it filed its trade mark application is extremely unlikely. It is logical to assume it was a calculated and opportunistic action intended to disrupt the Complainant's business. Any argument to the contrary or that it was independently created is contrived and farfetched.
- The result of the Respondent's registration of the Domain Name is that it now ranks as the number five result for the search term "MY DEVELOPMENT ZONE" on Google.co.uk. This undoubtedly causes confusion and can result in large numbers of users being misdirected to the Respondent and his competing business.
- The Respondent has inserted the following statement on the homepage of the website to which the Domain Name resolves "*If you are new to My Development Zone and have any questions please contact info@elamb.co.uk*". The purpose of this statement is to direct and/or lure unsuspecting clients and/or potential clients searching for the Complainant's business to the Respondent. The confusion caused allows the Respondent to engage, via email, with the client with a view to marketing and/or selling his competing service.
- The Complainant contends that the Registrant's interest in the Domain Name is to benefit commercially from the unauthorised and illegitimate use of the Complainant's trade mark and to confuse people and/or businesses into believing that the Domain Name is registered to, operated or authorized by, or otherwise connected with the Complainant.
- As far as the Complainant is aware, the Respondent has no trade mark or other rights to the Domain Name.
- The "coincidental" facts listed below negates any attempt by the Respondent to defend his activities against any action brought by the Complainant, namely:
 - the Respondent operates in the same industry as the Complainant and they are competitors;
 - the Domain Name was registered within days of the press announcements and filing of the trade mark application by the Complainant;
 - the Respondent shares the same name as the CEO of Aviva plc, the Complainant's largest client and who licenses use of the My Development Zone branded service. If the Domain Name was indeed registered for a "client", the Respondent would have registered it in their name or at least would have done so after being notified of the infringement but since the Respondent shares the same name, as mentioned above, a client or potential client would assume the CEO owns the Domain Name that matches the name of the service they offer;

- the terms and conditions on the website to which the Domain Name resolves indicate the Respondent is the copyright and trade mark owner of MY DEVELOPMENT ZONE; and
 - The Respondent's client's information is not listed on the website to which the Domain Name resolves but it contains the Respondent's own email address and a link to the Respondent's own website.
- The Complainant submits that the above 'coincidences' cannot be ignored and make a clear case for an Abusive Registration.

As noted above, the Respondent did not file a Response to the Complaint.

6. Discussions and Findings

As the Respondent did not respond to the Complaint I am left to make my decision based only on the unchallenged evidence of the Complainant, drawing such inferences from the Respondent's failure to respond or challenge as I consider appropriate (Paragraph 24.8 of the Nominet DRS Policy). However, I bear firmly in mind that it is still incumbent on the Complainant to prove its case (Paragraph 2.2 of the Policy).

General

In order to succeed the Complainant must prove, on the balance of probabilities, two matters, i.e. 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.

These terms are defined in the Policy as follows:

- **Rights** means rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.
- **Abusive Registration** means 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 took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

Rights

The Complainant has registered trade mark rights for a logo combined with the words MY DEVELOPMENT ZONE. Whilst it includes a logo element, such a registration does provide some rights in the word element as part of the overall mark.

In addition, the Complainant has used its MY DEVELOPMENT ZONE mark quite extensively since March 2015 in relation to its online e-learning compliance training business provided via its own website at www.mydevelopmentzone.com and also another website at www.mydevelopment.zone. The latter website is operated under the terms of a licence agreement with Aviva which specifically confirms that the MY DEVELOPMENT ZONE brand belongs to the Complainant.

Although the MY DEVELOPMENT ZONE mark is somewhat descriptive, such use will have been sufficient to generate common law passing off rights in the MY DEVELOPMENT ZONE mark that are owned by the Complainant.

In the circumstances, I am satisfied that the Complainant does have Rights in the MY DEVELOPMENT ZONE mark for the purposes of the DRS and that mark is identical to the Domain Name, ignoring the .co.uk suffix.

Abusive Registration

Paragraph 5 of the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. The Complainant relies upon three separate parts as follows:

"5.1.1 Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

5.1.1.1

5.1.1.2 as a blocking registration against a name or mark in which the Complainant has Rights; or

5.1.1.3 for the purpose of unfairly disrupting the business of the Complainant;

5.1.2 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 circumstances set out in paragraph 5.1.1 of the Policy all concern the Respondent's motives at the time of registration or acquisition of the Domain Name and imply that the Respondent must at least have been aware of the existence of the Complainant and/or its Rights at that time.

The Complainant points to the fact that the Domain Name was registered by the Respondent on 22 April 2016, being a matter of just a few days after i) the Complainant's application to register its MY DEVELOPMENT ZONE trade mark was made and will have been publicly available on the IPO website, and ii) some third party

media reporting about the Complainant's business and mentioning the trade mark was published.

The Complainant contends that this cannot be coincidence and is an example of a calculated and opportunistic action intended to disrupt the Complainant's business following a common practice amongst squatters or domain opportunists who monitor the media for reports and announcements of mergers and acquisitions or the like and then register the speculated new name of the business to be used as a ransom demand.

However, the media publicity about the Complainant's business mentioning the trade mark was not the equivalent of widespread media publicity about a major corporate merger. It was an article in the South Wales Argus newspaper about the Complainant attending a symposium in Corfu. I note the Respondent is based in Richmond, North Yorkshire and his business is in Darlington, County Durham. It therefore appears unlikely that the Respondent would necessarily have been aware of this particular article in the South Wales Argus newspaper.

Although the Respondent did not respond to the Complaint he did respond by email to the Complainant's solicitor's letters sent before the DRS complaint was filed. The Complainant has exhibited some of that exchange of correspondence. In his email of 13 December 2016, the Respondent claimed the Domain Name was registered for and was being used by a customer called Home House Limited who had specifically requested that particular domain name be registered for them and they were unwilling to give up the corresponding URL website address. The website to which the Domain Name resolves is in fact a one page website. It is headed "My Home House" and has a "log-in" icon and a few scrolling photographs of what appear to be the inside of an hotel, but it otherwise comprises the following content:

Welcome to My Development Zone

Please Login with your login details

If you are new to My Development Zone and have any questions please contact info@elamb.co.uk.

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There is a hyper link to www.elamb.co.uk which is the website of a business of which the Respondent is said to be the managing director. The website claims that the business provides face-to-face and online e-learning training and "*supports over a million learners around the world*" whilst naming a large number of very well-known companies as customers.

Whilst the website to which the Domain Name resolves is headed "My Home House", it seems to operate in fact as a portal page that prominently uses the Complainant's MY DEVELOPMENT ZONE brand and links to the website of a business of the which the Respondent is managing director and which competes directly with the Complainant's business.

The fact that the Respondent is the managing director of a directly competing business substantially increases the likelihood that he will have been aware of the Complainant's business and/or its MY DEVELOPMENT ZONE brand when registering the Domain Name. The likelihood that he did so deliberately as a blocking registration or for the purpose of unfairly disrupting the business of the Complainant is further supported by his apparent false claim that the Domain Name was chosen by a customer and was registered on their behalf and was being used by them when in fact it seems to be used for the purposes of his competing business.

In the circumstances, on the basis of the evidence before me, I find that it is more likely than not that the Respondent has registered the Domain Name primarily as a blocking registration against a name or mark in which the Complainant has Rights and/or for the purpose of unfairly disrupting the business of the Complainant.

In addition, the Complainant contends that, irrespective of the Respondent's motives when he registered the Domain Name, it is being used 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 is published on Nominet's website to assist all participants or would-be participants in disputes under the Policy by explaining commonly raised issues and how the DRS Experts have dealt with those issues to date and to draw attention to areas where Experts' views differ. Paragraph 3.3 of the DRS Experts' Overview includes the following:

"Commonly, Internet users will visit web sites either by way of search engines or by guessing the relevant URL. If the domain name in dispute is identical to the name of the Complainant and that name cannot sensibly refer to anyone else, there is bound to be a severe risk that a search engine, which is being asked for the Complainant, will produce high up on its list the URL for the web site connected to the domain name in issue. Similarly, there is bound to be a severe risk that an Internet user guessing the URL for the Complainant's web site will use the domain name for that purpose.

In such cases, the speculative visitor to the registrant's web site will be visiting it in the hope and expectation that the web site is a web site "operated or authorised by, or otherwise connected with the Complainant." This is what is known as 'initial interest confusion' and the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration, the vice being that even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant, the visitor has been deceived. Having drawn the visitor to the site, the visitor may well be faced with an unauthorised tribute or criticism site (usually the latter) devoted to the Complainant; or a commercial web site, which may or may not advertise goods or services similar to those produced by the Complainant. Either way, the visitor will have been sucked in/deceived by the domain name."

I agree with the above views expressed at Paragraph 3.3 of the Experts' Overview. The risk of such confusion occurring is readily apparent in this case where, ignoring the suffixes, the Domain Name is identical to the Complainant's word trade mark and its

mydevelopment.zone and mydevelopmentzone.com domain names that are used as the URLs for its main websites. The risk of confusion is reinforced by the fact that the website to which the Domain Name resolves and to which the web visitor is taken is a portal page that prominently displays the Complainant's MY DEVELOPMENT ZONE brand but then has a contact email address and a separate link through to a website of a competing business.

The Complainant has also pointed to one particular peculiarity in this case in that the Respondent shares the same forename and surname as the CEO of Aviva plc which happens to be the Complainant's major customer and uses, under licence, the Complainant's MY DEVELOPMENT ZONE brand and mydevelopment.zone domain name and corresponding URL for the purposes of an Aviva branded website. The Complainant suggests that the Respondent has taken advantage of the coincidence of their names in the hope that third parties would just assume that Aviva's CEO had registered the Domain Name as it matches the name of the service offered by Aviva and not look behind that. I suppose that is possible, but nothing turns on it in view of my findings above and therefore I decline to make any ruling on this issue.

7. Decision

For the reasons outlined above I find that the Complainant has proved, on the balance of probabilities, that it has Rights in respect of a name or mark which is identical or similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

In the circumstances I order that the Domain Name be transferred to the Complainant.

Signed **Dated 15 March 2017**
Chris Tulley