

DISPUTE RESOLUTION SERVICE**D00018527****Decision of Independent Expert**

Pro-Dec Products Ltd (trading as ScrewCaps UK)

and

Mr Peter Geddes

1. The Parties

Complainant: Pro-Dec Products Ltd (trading as ScrewCaps UK)
Sunnymeade
Montilo Lane
Harborough Magna
Warwickshire
CV23 0HB
United Kingdom

Respondent: Mr Peter Geddes
41 Pound Close
Lyneham
Wiltshire
SN15 4PJ
United Kingdom

2. The Domain Name

<covercapsonline.co.uk> ("the Domain Name")

3. Procedural History

The Complaint was filed with Nominet on 16 February 2017. Nominet validated the Complaint on 17 February 2017 and notified the Respondent by post and by email, stating that the Response had to be received on or before 10 March 2017. The Response was filed on 9 March 2017. On the same day Nominet notified the Complainant that a Reply had to be received on or before 16 March 2017. A Reply was received on 16 March 2017 and the mediator was appointed on 29 March 2017.

The Informal Mediation procedure failed to produce an acceptable solution for the parties and so on 18 April 2017 Nominet informed the Complainant that it had until 3 May 2017 to pay the fee for the decision of an Expert pursuant to paragraph 13 of the Nominet Dispute

Resolution Service Policy ("the Policy"). On 21 April 2017 the Complainant paid Nominet the required fee.

On 9 May 2017 the undersigned, Jane Seager ("the Expert"), confirmed to Nominet that she was independent of each of the parties and that, to the best of her 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 which might be of such a nature as to call in to question her independence in the eyes of one or both of the parties.

4. Factual Background

The Complainant is a company registered in the UK on 22 April 2008. It has traded under the name ScrewCaps UK since 2013 using the website at www.screwcapsuk.com. The Complainant's sole owner and managing director is Andrew Puchy, and the Complainant is a subsidiary of Mr Puchy's Australian business which manufactures small plastic caps used in a variety of industries to cover screws, amongst other things. The Australian company was founded by Mr Puchy's father and has been trading since 1973. The Complainant sells to other businesses, namely manufacturers (for use in their own products) or distributors/resellers. It does not generally target retail customers directly.

The Respondent is an individual. He was previously employed by the Complainant as its UK Sales Manager from 2009 to 2016 (not including the period from 1 February 2012 to 3 August 2014 when he was not employed but received payment for occasional online advertising work). He was made redundant by the Complainant in 2016 and this resulted in a dispute between the parties concerning the terms of his departure.

The Domain Name was registered on 8 September 2011. It was originally used to point to a website selling the Complainant's products directly to the retail market. This website was run by the Respondent's son, an employee of the Complainant, until June 2012 when he left the Complainant's employment. The running of the website was then taken over by a third party until June 2015. The Complainant subsequently entered into an agreement with one of its customers to lease the Domain Name to it for a period of three years, and the lessee was using it to point to a website selling the Complainant's products directly to the retail market. After the Complaint was filed, the Respondent pointed the Domain Name to a registrar holding page containing sponsored links.

5. Parties' Contentions

Complaint

Background

The Complainant first gives an explanation of its view of the background leading up to the dispute. It states that in early 2011 it decided to create a website to offer its caps at suitable prices to retail users, and on 4 July 2011 it employed the Respondent's son to develop such a website, amongst other things. The Complainant did not wish to "cause trouble for existing customers also looking to sell to this market" and as a result of this concern the Respondent volunteered to hold the Domain Name in his name. However, the Complainant states that it paid for the registration of the Domain Name as well as all subsequent costs in relation to the website, the hosting and the renewals, and adds that these payments can be confirmed by credit card statements, invoices and/or employee expense claims.

The Complainant states that the Respondent's son developed the website from home and sold to customers who had found the website. The Complainant supplied stock free-of-charge to the Respondent's son and he kept the proceeds of sales (after paying postage costs etc). The Complainant contends that it viewed this arrangement as a form of marketing because, although it potentially reduced sales that might have been made by other retail resellers, it believed that ultimately the competition these transactions produced would be beneficial in developing the retail market.

The Respondent's son left the Complainant's employment on 31 May 2012 and returned all remaining stock to the company. In June 2012, another individual took over the running of the website until June 2015, soon after which he returned all remaining stock to the Complainant. At this point the Complainant decided that it wished to leave the retail market as there were enough retail sellers in operation. The Respondent indicated that he believed that the Domain Name could be leased, possibly to one of the two significant retail resellers of the Complainant's products, at a sufficient amount to be viable after covering related expenses. The Complainant agreed and the Respondent made a deal with one of the two major retail resellers for the Complainant to lease the Domain Name for three years from 15 June 2015. The Complainant invoiced the reseller for the first year's payment on 15 June 2015 and again for the second year on 21 June 2016.

Whilst the Complainant maintained control of the Domain Name, the lessee was offered direct control of the website. However the lessee instead asked the Complainant to make small changes, which it did at no additional cost to the lessee. The Complainant states that at no time did the Respondent indicate that he believed that he was the owner of the Domain Name.

The Complainant goes on to explain that the Respondent accepted voluntary redundancy on 10 June 2016 and states that the reasons for this are irrelevant to the matter at hand. On 8 February 2017, the Respondent emailed the Complainant indicating that he believed his departure was illegal and threatened to refer the matter to an employment tribunal. During a subsequent telephone conversation, the Respondent advised the Complainant of his claim to ownership of the Domain Name and stated that the registrar had agreed that he was the legal owner. The Respondent suggested that he was prepared to sell the Domain Name to the Complainant for £5,000 and the Complainant indicated that this was well beyond what it would pay. According to the Complainant, the Respondent then suggested that he would approach the Complainant's customers and competitors about selling the Domain Name.

In the Complainant's view, it is significant that there was no mention of the Domain Name in the Respondent's initial email, suggesting that he intended to use it as leverage to obtain compensation. On the same day, the Complainant was contacted by the lessee of the Domain Name who had spoken to the Respondent about a potential sale. According to the Complainant, the lessee was initially interested, but had since declined to purchase the Domain Name from the Respondent unless the Complainant confirmed that it had no further legal claim on it. The Complainant then contacted the registrar about putting the Domain Name on hold, although they declined to do this. It also contacted its solicitors and Nominet.

On 10 February 2017, the Complainant received a further email from the Respondent mentioning that the lessee had declined to purchase the Domain Name and raising the possibility of contacting certain of the Complainant's other customers and competitors

about a sale. The Complainant asserts that the Respondent was attempting blackmail in order to obtain increased compensation and engaging in mischief-making and threats. However, the Complainant states that it will not buy something that it should already own and for which it has paid all costs.

The Complainant goes on to underline that the Respondent also stated in this email that he had changed the email addresses in relation to the Domain Name and that the Complainant could not lease the website to anyone as that would be "illegal." However, the Complainant points out that its credit card details still remained in the account settings.

The Complainant was contacted by the lessee again on 14 February 2017 who said that the Respondent had contacted her and told her that if she didn't buy the Domain Name he would not only "turn-off" her website but also sell the Domain Name to a "major" competitor who had supposedly made an offer. On the same day the Complainant received a further email from the Respondent. In the Complainant's opinion, the Respondent saw ownership of the Domain Name as a way to leverage additional payments and/or cause maximum disruption.

On 15 February 2017, the Complainant realised the content on the website had been modified and the legal notice and all contact details had been removed, thus rendering the website useless for the lessee. In the Complainant's opinion, this is yet further evidence that the Respondent's continued control of the Domain Name is abusive.

Complainant's Rights

The Complainant states that, until the late 1970s, its Australian parent company was the only company worldwide selling plastic screw cover caps. It asserts that the Complainant's arrival on the UK market has substantially increased demand for such products in the UK, and as a result the usage of various industry names has increased. Industry names for such caps include "screw caps", "cover caps", "holecaps", "pozicaps", "snap-caps" and variations of these names. According to the Complainant, these terms did not exist until after its parent company entered the market. Such names are used throughout the English-speaking world and some are also used in non-English speaking countries (either the English term, or a direct translation of the term).

In 2011 the Complainant wanted a domain name to help stimulate retail sales of its product and chose the name "CoverCapsOnline" as it most clearly described the business. At around the same time, the Complainant also purchased a number of other domain names also reflecting its business and products, including the domain name <screwcapsuk.com> which it has used since 2013. The Complainant states that, like the Domain Name, <screwcapsuk.com> uses terminology which is very specific to the goods that are manufactured and sold by the Complainant.

The Complainant asserts that its group is the only one undertaking its own manufacturing of such products (with its own moulds, injection moulding machines, own premises and own staff) and it has been doing so since 1973. It contends that most products sold by its competitors are poor copies. As a result the Complainant argues that its business IS CoverCaps and ScrewCaps and it should therefore have the same rights as any other company using a domain name centred on a particular product. In the Complainant's opinion, no other individual or company may claim a more compelling right to the name CoverCapsOnline (or indeed any other domain names described by similar product names or terminologies).

Abusive Registration

The Complainant goes through certain of the grounds under Section 5 of the Policy setting out a non-exhaustive list of factors that may be evidence that the Domain Name is an Abusive Registration (although using the numbering of the previous version of the Policy, and so this has been corrected by the Expert for the sake of clarity below):

5.1.1 - The Complainant asserts that the original registration of the Domain Name, along with all usage until 8 February 2017, was for its benefit. Since 8 February 2017, when the Respondent claimed the Domain Name as his own, his ownership has been abusive.

5.1.1.1 – According to the Complainant, emails from the Respondent dated 8 and 10 February 2017 make clear that, now he considers the Domain Name to be his, his intention is to sell the Domain Name to anyone who will pay him the amount he seeks, indiscriminately and without care to a competitor or customer of the Complainant. The prices sought by the Respondent are substantial, but the Complainant states that he has not incurred any costs.

5.1.1.3 - The Complainant states that the Respondent has further made clear that he holds the Complainant responsible for his situation 8 months after he accepted voluntary redundancy. In the event that the Respondent cannot sell the Domain Name (or sell it for a great enough amount) then the Complainant underlines that the Respondent has clearly stated that he holds the Complainant responsible for the outcome, namely that the Respondent proposes to contact the Complainant's customers and tell them about the perceived injustices he has suffered and why he believes that the Complainant has treated him badly. In the Complainant's opinion, by threatening this, the Respondent clearly intends his actions to have maximum disruption on its business and customers.

The Complainant argues that the Respondent's email dated 14 February 2017 clearly shows that the Respondent has linked the lessee's refusal to buy the Domain Name with his decision to proceed with the employment tribunal. In the Complainant's view, the Respondent's actions of 15 February 2017 in removing the lessee's contact information is proof of his desire to disrupt the business activities of the Complainant and its customers.

5.1.2 – The Complainant argues that the Respondent's removal of the lessee's contact details clearly confuses visitors to the website and causes losses for the lessee and consequently for the Complainant.

5.1.5.1 - The Complainant argues that it has used the Domain Name continuously for its own benefit since it was purchased. Although this has not been direct usage, it has nevertheless been used exclusively for a planned and considered route to benefit the Complainant at all times.

5.1.5.2 - The Complainant has paid for ALL costs associated with the Domain Name since purchase. These costs include the initial purchase cost, domain hosting, the development of an e-store and renewals. According to the Complaint, these costs have been paid for primarily with the Complainant's credit cards and possibly at times by an expense claim lodged by the Respondent.

5.2 - The Respondent is not a business, nor has the Respondent at any time (other than when employed by the Complainant) been involved in the manufacture, sale or distribution of any products related to cover caps or screw caps.

The Complainant states that, after discussing issues raised in the Respondent's emails with solicitors specialising in employment law, it understands that any intellectual property resulting from activities related to an employee's work for an employer is deemed to be the employer's property, irrespective of whether this is explicitly stated in the employee's contract or not, and it would only be considered to be the property of the employee if there was a specific agreement (usually written) to that effect. The Complainant notes that Nominet Experts have consistently applied this principle when deciding cases under the Policy.

As previously mentioned, the Respondent's son was given the role of developing the corresponding website for retail use, a task which was then passed on to another individual until his retirement, at which point the Respondent was authorised by the Complainant to negotiate the lease of the Domain Name. The Complainant points out that at no point during these activities did the Respondent indicate that he considered the Domain Name to be his property, and nor did his behaviour during his employment imply that he considered the Domain Name as anything other than the property of the Complainant. In the Complainant's opinion, it is significant that the Respondent only contacted the registrar of the Domain Name for confirmation of the registered owner after his initial correspondence with the Complainant claiming that he was unjustly made redundant, almost 8 months after his employment had ceased.

According to the Complainant, the Respondent is now proposing to leverage the Domain Name in his attempt to obtain payment, and threatening to disrupt the Complainant's business to this end, as demonstrated by the implicit threats in his email correspondence.

The Complainant goes on to list and explain the extensive supporting evidence supplied, and his reasons for not supplying certain other documentation, and requests that the Domain Name be transferred.

Response

The Respondent states that the Domain Name was registered by him in 2011 and the corresponding website was designed by his son. His son sold products manufactured and distributed by the Complainant, and this activity was subsequently continued by a third party. The Domain Name is now being leased.

The Respondent also states that he was previously employed by the Complainant but is now in the process of dealing with an employment tribunal and the Complainant is aware of this.

The Respondent says that he informed the Complainant that it could purchase the Domain Name from him and the Complainant offered £2,000, stating that if he could obtain a better offer then he should do so. The Respondent did obtain a better offer from the lessee of the Domain Name who offered him £3,000, and at this point the Complainant decided to file the Complaint.

In the Respondent's opinion, the parties have to go to an employment tribunal because of the Respondent's loss of income and employment, and as a result the Complainant does not want to pay market price for the Domain Name registered by the Respondent.

The Respondent states that he believes that the Complainant's case has little merit under the Policy, having read it, in particular Section 8. In his opinion the Complainant is just being devious and trying to obtain the Domain Name without having to pay for it and prevent the Respondent or anyone else from holding it.

Reply

The Complainant points out that the Respondent makes no reference to any of the non-exhaustive factors in Section 8 of the Policy as to why the Domain Name is not an Abusive Registration. Furthermore, he does not propose any other relevant factors which might reasonably be deemed as consistent with those listed. The Complainant also states that the Respondent raises a number of issues which have no relevance under the Policy, such as his redundancy and the Complainant's immigration status, and also resorts to personal abuse.

The Complainant underlines that the Respondent's son was employed by the Complainant at all times when his work on the website was conceived, initiated and carried out, and that this is evidenced by the offer of employment attached to the Reply.

The Complainant also points out that the Respondent fails to acknowledge that the products sold by his son were supplied free of charge or that his son was authorised to keep the proceeds after his selling and distribution costs had been paid because the Complainant viewed this as a promotional activity.

The Complainant states that it did not offer to buy the Domain Name for £2,000, as put forward by the Respondent, but only stated that the most it had ever paid for a domain name in the past was £2,000. The Respondent also claims that the lessee offered him £3,000 for the Domain Name, but in this regard the Complainant contends that the lessee then agreed that she would not purchase the Domain Name unless/until it became obvious that the Respondent had the undisputed rights to sell it.

The Complainant notes that the Respondent states that he has read Section 8 of the Policy, but he then fails to refer to it in the Response and offers no evidence in support of the non-exhaustive factors listed. In this regard, the Complainant underlines the following, referring to the numbering in Section 8 of the Policy:

8.1.1.1: The Complainant states that the Respondent took the website down the day after the Complaint was filed. In any case the Respondent does not currently, nor has he ever (outside of his employment with the Complainant) offered for sale products related to the Domain Name, and nor has he provided any evidence to suggest that he does so.

8.1.1.2: The Respondent does not currently, nor has he ever (outside of his employment with the Complainant) had any legitimate connection to the Domain Name, nor has he provided any evidence to suggest that he does so.

8.1.1.3: The Respondent has not claimed any rights under this paragraph and the evidence of the usage of the Domain Name precludes any claim.

8.1.2: The Complainant asserts that the Domain Name is not generic and, whilst it might be alleged to be descriptive, it is sufficiently narrow in its focus on a niche group of products that a claim under this paragraph should be overridden by the factors set out above.

8.1.3: The Complainant states that there has never been any, agreement (written or otherwise) that the Respondent has any rights to or claim over the Domain Name or any other asset (tangible or otherwise) or profit from his employment with the Complainant (other than a commission on sales).

8.1.4: At this stage, the Complainant has no cause to believe that the Respondent's claim is related to a wider pattern of registration.

8.2: The Complainant points out that the Respondent has no rights, and failed to claim any such rights, under paragraph 8.1.1.3 relating to fair use.

8.4: The Respondent has not claimed or provided any evidence that he has any rights under this paragraph relating to his potential ownership of other domain names.

8.5.1: The Domain Name is very specific to a very niche group of products that the Respondent has shown little interest in before or since his employment with the Complainant.

8.5.2: The Domain Name has been off-line since a day or two after the Respondent took control of, and began making changes to, the corresponding website.

8.5.3: The Complainant asserts that, except for it being initially registered in the Respondent's name, all activities related to the Domain Name since its inception have been managed/borne by either the Complainant or its managing director, namely purchase costs, hosting costs, renewal costs, provision of stock at no charge to the Respondent's son, transfer of usage to another person from June 2012 until June 2015 (also provided with stock at no charge), lease to an existing customer, charging of VAT (the Respondent is not registered for VAT), banking of lease payments etc. In the Complainant's opinion, this clearly shows a history that, until disabled by the Respondent, the Domain Name was used to indirectly promote the Complainant, its products and its website. The Complainant asserts that the Respondent clearly had no interest and took no interest in the Domain Name until around 8 February 2017 when he emailed the Complainant.

The Complainant contends that there is nothing in the Respondent's Response which implies, directly or indirectly, a claim to rights in relation to any other possible factors not specified in the non-exhaustive list in Section 8 of the Policy. In the Complainant's opinion, the Respondent has failed to offer a single, relevant reason as to why he should be allowed to maintain control of the Domain Name.

6. Discussion and Findings

General

Under paragraph 2.1 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:

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

2.1.2 *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, and may include rights in descriptive terms which have acquired a secondary meaning*".

By far the easiest way to demonstrate Rights under the Policy is usually via a trade mark, either registered or unregistered. Given the descriptive nature of the term at issue, "cover caps online", it seems unlikely that the Complainant would have any registered trade mark rights, and indeed it has not supplied any evidence of this.

However the Complainant does make an attempt to argue that it has acquired unregistered trade mark rights, based on the fact that its parent company was responsible for the invention and development of the product in question and the Complainant has built up the market for it in the UK to the extent that it alone is now synonymous with "cover caps online". Whilst this is quite creative, the Expert is not persuaded that it is correct from a legal standpoint. In short, the question is whether the original primary meaning of "cover caps online" has been displaced so that it has acquired a secondary meaning and become uniquely associated with the Complainant and its goods, to the extent that the Complainant would be able to prevent an unconnected third party from using the term. Given that competitors need to be free to describe their goods in plain English, and in the absence of strong evidence in the Complainant's favour, in the Expert's opinion the clearly descriptive nature of the term "cover caps online" precludes a finding of unregistered trade mark rights.

The question then arises as to whether the Complainant may claim any other Rights under the Policy, such as contractual rights or other similar legal rights. In this regard the Nominet Experts' Overview provides as follows:

"1.6 Can a contractual right constitute a right within the definition of Rights?"

Yes it can. A specific example of this is given in the Policy at paragraph 3(a)(v) [Expert's note: paragraph 5.1.5 in the current version of the Policy]. However where the right is disputed and/or the surrounding circumstances are particularly complex, the complaint may nevertheless be rejected as not being appropriate for adjudication under the Policy. See the Appeal decision in DRS 04632 (ireland.co.uk), which was just such a case."

The Expert has examined previous cases where the question of a complainant's rights aside from trade mark rights fell to be considered and has concluded that, in view of the overall facts and circumstances of this case, the case falls squarely within the line of decisions finding that the complainant's rights in question are Rights under the Policy. This case is not a complex contractual dispute that would involve the detailed interpretation of contractual terms and would be better left to a competent court. Instead the Complainant has simply asserted that the Respondent registered the Domain Name on its behalf as the beneficial owner in the course of his employment, whilst the Respondent has asserted that he registered it for his son's use and is the legal owner. It falls to the Expert to consider which version of events is more plausible.

Without hesitation the Expert finds the Complainant to be the more credible party and that it has the legal right to require transfer of the Domain Name, given the detailed explanations put forward and the evidence submitted, whilst the Respondent has done little more than assert that the Complainant's case has no merit, but without going into detail and without providing any evidence to back up his case.

The Expert is persuaded, based on the parties' submissions, that the Respondent registered the Domain Name whilst in the Complainant's employment because it suited the Complainant's purposes at that time. In the Expert's opinion, both parties understood that the Domain Name was being held on behalf of the Complainant and acted accordingly, and indeed the Domain Name was then used by the Respondent's son who was also employed by the Complainant. The subsequent lease of the Domain Name was clearly negotiated by the Respondent on the Complainant's behalf because the two invoices supplied as evidence in respect of the lease payments in 2015 and 2016 were issued by the Complainant and payment was made to the Complainant. The Respondent did not raise any objection to the receipt of such monies and only claimed that the Domain Name belonged to him in 2017, after his employment had been terminated by the Complainant.

In this regard the Expert agrees with the reasoning of the Experts in *DRS 05782, Essex and Herts Air Ambulance Trust and Mr Dave Dexter* (<essexairambulance.org.uk>) and *DRS 15217, Cardiff Bay Leisure Limited and Mr Ryan Hopkins* (<boattripscardiff.co.uk>). Both cases are similar in that the Expert found that the respondent was in some form of relationship with the complainant (IT services provider and company director respectively) and registered the domain name in question as part of that ongoing relationship. The Expert in DRS 15217 commented as follows:

"The abuse here lies in the holding on to a registration that the registrant has registered for or held on behalf of someone else. In which case, the "right" that the registrant's holding of the domain name is "unfairly detrimental to" is the legal right that the someone else has to demand the transfer of the domain name so that it can fully and directly control that registration and be named as the registrant of the domain name."

The Expert therefore concludes that, under the particular circumstances of this case, the Complainant has legal rights in the term "covercapsonline.co.uk" and that such rights are recognised as Rights for the purposes of the Policy.

Therefore the Expert finds that paragraph 2.2.1 of the Policy is satisfied and that the Complainant has Rights in respect of a name which is identical to the Domain Name.

Abusive Registration

"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."

The Complainant has not succeeded in proving limb (i) above which relates to abuse at the time that the Domain Name was registered. By the Complainant's own admission, the Domain Name was registered by the Respondent with the Complainant's permission because this suited the Complainant's requirements at the time in view of its desire not to disrupt the retail market.

Turning to limb (ii) of the definition of Abusive Registration which relates to the Respondent's subsequent use of the Domain Name, Paragraph 5.1 of the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration, as follows:

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

5.1.1.1 for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

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;

5.1.3 The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .UK or otherwise) which correspond to well known names or trademarks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;

5.1.4 It is independently verified that the Respondent has given false contact details to us;

5.1.5 The Domain Name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant:

5.1.5.1 has been using the Domain Name registration exclusively; and

5.1.5.2 paid for the registration and/or renewal of the Domain Name registration;

5.1.6 The Domain Name is an exact match (within the limitations of the character set permissible in domain names) for the name or mark in which the Complainant has Rights, the Complainant's mark has a reputation and the Respondent has no reasonable justification for having registered the Domain Name".

The Expert has examined each of these in turn and has no hesitation in finding that paragraph 5.1.5 applies in this case. Regarding exclusive use at 5.1.5.1, it is true that the Domain Name has been used by various other parties over the years, but in the Expert's

opinion it has always been clear from the behaviour of such parties that the Complainant has been consistently viewed as the owner of the Domain Name and the Domain Name has always been exclusively used according to the wishes of the Complainant and for the Complainant's ultimate benefit.

Turning to payment at 5.1.5.2, the Complainant claims to have paid all costs relating to the Domain Name, whether directly by credit card or indirectly via an expenses claim from the Respondent. The Complainant has not supplied detailed evidence of such payments, but has offered to provide it if required, and the Respondent has not disputed this. As a result the Expert accepts the Complainant's version of events.

It should be noted that paragraph 5.1 is non-exhaustive, and other factors not listed may also indicate evidence of Abusive Registration. In this case the Expert finds that the Respondent's behaviour after his email to the Complainant on 8 February 2017 also indicates abuse. Not only did the Respondent attempt to sell the Domain Name, first to the Complainant and then to its lessee, as well as threatening to sell it to their competitors, he then also altered the content of the website, first removing the lessee's contact details and then disabling the website completely. Such behaviour has likely put the Complainant in breach of its three year lease of the Domain Name and affected its relationship with its lessee. It is also evident that the Respondent's behaviour was likely calculated to assist the Respondent in his employment dispute with the Complainant.

For the sake of completeness, the Expert finds that none of the factors listed at paragraph 8.1 of the Policy setting out a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration are of any assistance to the Respondent.

In conclusion, 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 the balance of probabilities, that the Domain Name is an Abusive Registration in accordance with paragraph 2.1.2 of the Policy.

7. Decision

The Expert finds that the Complainant has Rights in a name which is identical 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.

Jane Seager
30 May 2017