

DISPUTE RESOLUTION SERVICE**D00020497****Decision of Independent Expert**

Sasy n Savy Pty Ltd

and

Ms Mullen Mary

1. The Parties

Complainant: Sasy n Savy Pty Ltd
c/o Thompsons Accountancy Services Limited
Bedfordshire
United Kingdom

Respondent: Ms Mullen Mary
United Kingdom

2. The Domain Name

sasynsavy.co.uk

3. Procedural History

- 3.1 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.
- 3.2 On 7 August 2018 the complaint was received, validated and notification of it sent to the parties. On 27 August 2018 a response reminder was sent. On 30 August 2018 notification of no response was sent to the parties. On 5 September 2018 the Expert decision payment was received.
- 3.3 I am satisfied that the complaint was served upon the named Respondent in accordance with paragraphs 3 and 6 of the Nominet Dispute Resolution Service Policy ("the Policy").

4. Factual Background

- 4.1 The Complainant is an Australian company founded in October 2003. It manufactures natural organic skincare and wellbeing products and sells them in Australia and internationally, including in the UK. The Complainant has won a number of awards.
- 4.2 The Complainant is the owner of registered trade marks for SASY N SAVY including the following:
- (a) EU trade mark no 009167801 for SASY N SAVY registered on 27 December 2010 in Class 3; and

(b) EU trade mark no 009167818 for a figurative SASY N SAVY mark registered on 27 December 2010 in Class 3.

- 4.3 The Domain Name was registered on 24 June 2018 and is being used for a fashion e-commerce site. The mark SASYNSAVY is used on the site. According to the Complainant, the previous registrant of the Domain Name was Get You Seen Limited (“Get You Seen”), the Complainant’s former UK distributor, but this registration expired¹.
- 4.4 After service of the complaint the named Respondent informed Nominet that her personal details had been misused. As I set out below I accept that the named Respondent did not register the Domain Name. I will discuss below the issue of who is behind the registration of the Domain Name.

5. Parties’ Contentions

- 5.1 I set out below a summary of what I consider to be the Complainant’s main contentions in the complaint. I note that the Complainant has not referenced the Policy in its complaint.
- 5.2 The Complainant asserts the following Rights. The Complainant says it has been associated with SASY N SAVY in the UK and around the world for many years. The Complainant states that, as at August 2018, it exports to 26 countries and has won 19 business awards, nationally and internationally. The Complainant states it has had media coverage around the globe. The Complainant says it owns Sasy n Savy Limited (company no 11496223) which was incorporated on 2 August 2018. The Complainant also says that it owned Sasy n Savy Europe Limited (company no 7293745) and another company which was called Sasy n Savy Limited (company no 7468107).
- 5.3 The Complainant contends that the Domain Name is an Abusive Registration because Ms Nicola Davis, the Managing Director of Get You Seen, is behind the registration and use of the Domain Name. The Complainant says that in April 2018 Ms Davis notified it that she no longer wanted to continue with the UK distribution and stated she was “happy to sign over the SnS uk social media logins, website and anything else SnS related”. The Complainant says that between April and July 2018 it chased Ms Davis for login credentials to all Sasy n Savy UK social media accounts and requested administrator access to the web site at the Domain Name. The Complainant contends that Ms Davis is infringing its trade mark name and logo and is in breach of the distribution agreement. The Complainant says Ms Davis has no current association with it or with Sasy n Savy Limited and is no longer authorised to use the SASY N SAVY mark. The Complainant contends the use of the Domain Name has caused it major losses in UK sales, the loss of prestigious clients and has affected its brand reputation and credibility.
- 5.4 The Respondent has not submitted a response.

6. Discussions and Findings

- 6.1 Paragraph 2.2 of the Policy sets out that the Complainant is required to prove to the Expert that both of the following elements are present on the balance of probabilities:

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

¹ The Expert has reviewed the site at the Domain Name; the Complainant having failed to exhibit any evidence showing the site. The information that the Domain Name was registered after it had been cancelled when it was not renewed comes from Nominet in correspondence on the case file.

2.1.2 *The Domain Name, in the hands of the Respondent, is an Abusive Registration.*

- 6.2 In this case even though no response has been submitted the Complainant is still required to prove to the Expert that both the above elements are present on the balance of probabilities.

The Complainant's Rights

- 6.3 Under Paragraph 1 of the Policy, 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.”* It is well accepted that the question of Rights falls to be considered at the time the Complainant makes its complaint and is a test with a low threshold to overcome.
- 6.4 I am satisfied on the basis of the Complainant’s registered trade marks set out at paragraph 4.2 that the Complainant has Rights in the SASY N SAVY mark. The SASY N SAVY mark is identical or very closely similar to the Domain Name (disregarding the .co.uk suffix which it is usual to ignore). I do not consider the absence of spaces in the Domain Name distinguishes it from the SASY N SAVY mark. I am therefore satisfied that the Complainant has Rights in respect of a name or mark, SASY N SAVY, which is identical or similar to the Domain Name.

Abusive Registration

- 6.5 Under Paragraph 1 of the Policy 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. *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.*
- 6.6 It is sufficient to satisfy either of these limbs for there to be a finding of an Abusive Registration.
- 6.7 A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration are set out at paragraph 5 of the Policy including:
- 5.1.1 *Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:*
 - 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;*
 - 5.1.4 *it is independently verified that the Respondent has given false contact details to us.*

- 6.8 The named Respondent has not submitted a response. However, shortly after service of the complaint by Nominet, the named Respondent informed Nominet by email that her personal details had been misused. I accept on the basis of this email that the named Respondent did not register and is not using the Domain Name and that the actual registrant wrongly used the Respondent’s name and contact details to register the Domain Name.

- 6.9 Paragraph 2 of the Policy defines Respondent as the person (including a legal person) in whose name or on whose behalf a Domain Name is registered. In light of my finding above it needs to be considered who is behind the registration and use of the Domain Name. The Complainant says this is Ms Davis. However, Ms Davis denies that is the case.
- 6.10 The complaint was served on Get You Seen by Nominet under paragraph 3.1.3 of the Policy using details provided by the Complainant. Following service Ms Davis, as Managing Director of Get You Seen, emailed Nominet informing them that the Domain Registration had lapsed and she didn't know who now owns the Domain Name. The Complainant also acknowledges in the complaint that Ms Davis has stated she is unaware of who is managing the web site.
- 6.11 It is clear that the Complainant disbelieves Ms Davis. It relies on the following in support of its allegation that Ms Davis is behind the Domain Name:
- (a) The Complainant says it sent e-mails to nicola@sasynsavy.co.uk to which Ms Davis responded and that the e-mails were not rejected.
 - (b) The mailbox using the Domain Name was renewed in February 2018 for 1 year.
 - (c) After a letter was sent from the Complainant's representatives on 1 August 2018, Ms Davis altered registrant details for the Domain Name and placed a block on the 'who is' public register.
 - (d) Ms Davis has accessed hello@sasynsavy.co.uk for reset password notifications.
- 6.12 The Complainant is making serious allegations against Ms Davis, in effect, that she used a false identity to register the Domain Name and is concealing her involvement in the registration and use of the Domain Name. As is recognised at paragraph 2.1 of the Dispute Resolution Service-Experts' Overview the more serious the allegation, the more that the Expert will be looking for in the way of evidence to support the allegation. The Overview cites in support the Expert decision in DRS 07599 chiesi.co.uk where the Expert stated: *"Such an approach is entirely consistent with the standard of proof required by paragraph 2 of the DRS Policy. It is simply a recognition of the fact that the more serious an allegation, the less likely it is that it occurred and accordingly the stronger the evidence required to prove it on the balance of probabilities: see e.g. per Lord Nicholls in Re Hand and Others [1996] AC 586."*
- 6.13 In DRS 07599 the complainant was implicitly asserting that the respondent was guilty of fraudulent conduct and the respondent denied it. The Expert said: *"...it is my view that to reach a finding of fraud, it has to be clear on the material before the expert that a fraud has been committed"*. In this case, there is an implicit assertion by the Complainant of fraudulent conduct by Ms Davis, which she has denied. I agree with the Expert in DRS 07599 that it has to be clear on the material that Ms Davis is behind the registration and use of the Domain Name, if I am to make such a finding.
- 6.14 I do not consider that it is clear on the evidence adduced by the Complainant that Ms Davis is behind the registration and use of the Domain Name and I do not find that to be the case. In this respect I have taken into account the following:
- (a) The Complainant has provided only limited evidence of the communications between itself and Ms Davis. One exhibited email headed "Social media and Domain" is shown only in part and this deals only with social media not the Domain Name. I am therefore unclear what has been said about the Domain Name in correspondence.

- (b) The exhibited emails show Ms Davis, as Managing Director, using a Get You Seen email address to send them. Whilst nicola@sasynsavy.co.uk is one of the 'cc' recipients in the 2 exhibited emails sent by Ms Davis and in the 1 exhibited email sent by the Complainant where the email addresses are shown, it is unclear who first used this address. However, it seems at odds with the Complainant's case that Ms Davis has concealed her involvement with the Domain Name for her to use it as an email address. It may be that this email address is included in the 'cc' field because Ms Davis used the 'reply to all' function to respond to the Complainant's emails.
- (c) I do not regard the renewal of the mailbox in February 2018, when the UK distributorship was still in place and before registration of the Domain Name, to be relevant to the ownership and use of the Domain Name.
- (d) The Complainant has not provided any information on the registrant details it says were altered by Ms Davis or provided any evidence. The Complainant says this took place after the letter from its representatives was sent but I do not consider this necessarily means that any alterations were made by Ms Davis.
- (e) Following termination of the UK distribution, the Complainant wanted access to a 'sasynsavyuk' Instagram account. The Complainant has provided an Instagram screenshot showing that an Instagram password can be reset using a username, phone number or linked email address. The Complainant's evidence is that in early August 2018 when it used 'sasynsavyuk' to reset the password a link was sent to hello@sasynsavy.co.uk. The Complainant has provided a record of logins to an unidentified Instagram account in early August 2018 which it says is evidence of access by Ms Davis to hello@sasynsavy.co.uk for reset password notifications. However, this merely shows that logins to an unidentified Instagram account took place in early August 2018 and is not evidence of access to the email account. Even if Ms Davis used hello@sasynsavy.co.uk as an identifier to log on to the sasynsavyuk Instagram account during this period, I do not consider this evidence that she is behind the Domain Name. There is no suggestion that hello@sasynsavy.co.uk was only linked to the Instagram account following registration of the Domain Name.
- (f) When terminating the agreement in April 2018 Ms Davis said she was happy to sign over anything "SnS related" (see paragraph 5.3). In the two e-mails I have seen from Ms Davis in August 2018 she has been co-operative with the Complainant's requests. Allowing the Domain Name to lapse and then registering it in someone else's name is at odds with such conduct. Further, it is unclear why, if Ms Davis wanted to keep the Domain Name, she did not renew it. Once the registration expired there would always be a risk that a third party would beat Ms Davis to the registration of the Domain Name.

6.15 I will therefore proceed on the basis that an unknown entity registered the Domain Name using the named Respondent's identity and that this unknown entity is using the Domain Name for a fashion e-commerce site. In accordance with the definition of Respondent in Paragraph 2 of the Policy, I will treat this unknown entity as the Respondent to this complaint being the person on whose behalf the Domain Name is registered. Whilst the unknown entity may be unaware of the complaint² that is as a consequence of its own actions in concealing its identity.

² See footnote 3. The unknown entity may have given Nominet a correct email address so may have received the complaint.

- 6.16 I now turn to whether the Domain Name, in the hands of this unknown entity, is an Abusive Registration. For there to be an Abusive Registration under paragraph 1.i. of the Policy it generally must be established that this unknown entity knew of the Complainant and/or its Rights at the time of registration of the Domain Name.
- 6.17 The Complainant is an Australian business which exports internationally and has won awards. The Complainant's web site at sasynsavy.com shows that in 2016 it won the AI Business Excellence Awards UK – Best for Natural Skincare & Wellbeing Products and in 2018 was the winner of 2 UK LUX Health Beauty & Wellness Awards for Best Natural Skincare Manufacturer and Best Natural Skincare Brand. However, the Complainant has not provided any turnover information.
- 6.18 The Complainant has named in its complaint some well known retailers and airlines, said to be UK clients established in 2010 and 2011. However, the Complainant's annexed invoices to its two former UK distributors and to Sasy n Savy UK Limited show total sales of around £40,000. It therefore appears the Complainant made limited UK sales through its distributors.
- 6.19 The Domain Name appears to have been registered in or around February 2012 by the owner of the Complainant's first ever UK distributor. The Complainant says that it gave this distributor the right to set up a web site under the Domain Name in December 2012. The Complainant states that Get You Seen took over the registration on 30th July 2014. The Domain Name has been used in media coverage of the Complainant's products.
- 6.20 Having considered the Complainant's evidence on its trade and the use of the Domain Name, I consider the Complainant has established, on the balance of probabilities, that the unknown entity was aware of the Complainant and/or its Rights at the time of registration of the Domain Name. In reaching this conclusion I have taken into account that the Domain Name registrant has intentionally hidden its identity, which is wholly inconsistent with a legitimate basis for registration and use of the Domain Name. Further, as the Complainant explains in its brochure SASY N SAVY is unusually spelled, based on the words SASSY and SAVVY, "to encourage people to think outside the square". There is no obvious explanation why a fashion e-commerce site would use the mark SASYNSAVY. As I set out further below, I consider the unnamed entity took the opportunity to register the Domain Name after its expiry because it knew that the Domain Name would be recognised by Internet users as being owned by or connected with the Complainant.
- 6.21 Paragraph 5 of the Policy sets out a list of non-exhaustive factors that the Domain Name is an Abusive Registration. I consider that paragraph 5.1.1.3 (see paragraph 6.7 above) is relevant. If the unknown entity, with knowledge of the Complainant, registered the Domain Name for the purpose of unfairly disrupting the business of the Complainant by attracting users looking for the Complainant to the site at the Domain Name and once there potentially diverting users into purchasing goods this may be an Abusive Registration under paragraph 1.i. of the Policy.
- 6.22 The Complainant uses the SASY N SAVY mark and sasynsavy.com for its business. The Domain Name was previously used by the Complainant's UK distributors. Accordingly, I consider there is a real risk that Internet users, particularly those based in the UK, guessing the Complainant's URL will use the Domain Name and thereby visit the site at the Domain Name. I also consider there is a real risk that Internet users will visit the site at the Domain Name in response to a search engine request looking for the Complainant. There is a risk that users who find the site at the Domain Name when looking for the Complainant will be diverted into buying products from this site.

- 6.23 I consider that at the time of registration of the Domain Name the unnamed entity knew that Internet users may find the Domain Name when looking for the Complainant (or its authorised distributor) and that it intended to take unfair advantage of this likely confusion to divert traffic to the site at the Domain Name where users may potentially purchase products. In such circumstances I consider that the Domain Name is an Abusive Registration under paragraph 1.i. of the Policy.
- 6.24 I also consider paragraph 5.1.2 of the Policy to be relevant. As set out above I consider there is a likelihood of Internet users being initially confused into visiting the site at the Domain Name in the expectation of finding the Complainant and once there potentially purchasing goods. Even if users appreciate that they have not found the Complainant when they reach the site at the Domain Name, the unknown entity has still used the Domain Name in a way to cause initial interest confusion that the Domain Name is registered to, operated or authorised by or otherwise connected with the Complainant. In such circumstances I consider that the Domain Name is an Abusive Registration under paragraph 1.ii. of the Policy.
- 6.25 I consider paragraph 5.1.4 of the Policy applies and is a further basis for finding that the Domain Name is an Abusive Registration. As the Appeal Panel in DRS 04331 *verbatim.co.uk* set out knowledge of the Complainant and/or its brand/rights is not a pre-requisite for a successful complaint under this paragraph. Accordingly this paragraph applies even if, contrary to my finding above, the unidentified entity was unaware of the Complainant and/or its Rights. The Experts' Overview says of this paragraph, "*Delivery service or post office certification will certainly suffice, but it is not necessary to obtain formal verification. An authoritative letter, email or note from a third party explaining how the contact details are known to be false will usually suffice.*" As set out above, after service of the complaint the named Respondent informed Nominet by e-mail that her personal details had been misused³. I consider this suffices as independent verification that the Domain Name registrant has given false contact details, including a false name, to Nominet.
- 6.26 Paragraph 8 of the Policy contains a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration. In this case I do not find any of these factors apply.
- 6.27 I therefore find that the Domain Name, in the hands of the unknown entity which registered it, is an Abusive Registration under paragraphs 1.i. and 1.ii. of the Policy.

7. Decision

- 7.1 I find that the Complainant has Rights in a name or mark which is identical or similar to the Domain Name and that the Domain Name, in the hands of the unknown entity which registered it, is an Abusive Registration.
- 7.2 I direct that the Domain Name be transferred to the Complainant.

Signed Patricia Jones

Dated 1 October 2018

³ It seems the named Respondent contacted Nominet after receipt of the complaint by post. The named Respondent used a different e-mail address to that shown on the Nominet records for the Domain Name. It may be that the unnamed entity who registered the Domain Name provided Nominet with a correct contact email address but a false name and address. However nothing turns on this.