

DISPUTE RESOLUTION SERVICE

D00020617

**Decision of Independent Expert
(Summary Decision)**

No.1 Home Limited

and

Mr Ian Buckingham

1. The Parties:

Complainant:
No.1 Home Limited
12 Haviland Road
Ferndown Industrial Estate
Wimborne
Dorset
BH21 7RG
United Kingdom

Respondent:
Mr Ian Buckingham
Bournemouth
United Kingdom

2. The Domain Name:

no1home.co.uk

3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the Complaint to the Respondent in accordance with section 3 and 6 of the Policy.

Yes No

4. Rights

The Complainant has, to my reasonable satisfaction, shown Rights in respect of a name or mark which is identical or similar to the Domain Name.

Yes No

5. Abusive Registration

The Complainant has, to my reasonable satisfaction, shown that the Domain Name no1home.co.uk is an Abusive Registration.

Yes No

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances.

Yes No

7. Comments

This is a repeat complaint in relation to the Domain Name, brought by the same Complainant against the same Respondent, as envisaged by paragraph 21 of the Policy.

The earlier case was dealt with in DRS 20337 (the “Earlier Case”), with a summary decision date of 25 July 2018 (the “Earlier Decision”). The complaint in the Earlier Case (the “Earlier Complaint”) was dismissed on the basis that the Complainant failed to prove that it had relevant Rights in a name or mark similar to the Domain Name. The Expert in the Earlier Case therefore ordered that the Domain Name registration should remain with the Respondent. No Appeal was filed in relation to the Earlier Decision.

Ordinarily, pursuant to sub-paragraph 21.1 of the Policy, if a complaint has reached the Decision stage on a previous occasion, it will not be re-considered otherwise than by way of an appeal under paragraph 20 of the Policy. However, there may be exceptional circumstances justifying a re-hearing, guidance on which is to be found in sub- paragraphs 21.2 and 21.3 of the Policy, which read as follows:

- 21.2 In determining whether a complaint is a resubmission of an earlier complaint, or contains a material difference that justifies a re-hearing the Expert shall consider the following questions:
- 21.2.1 Are the Complainant, the Respondent and the domain name in issue the same as in the earlier case?
 - 21.2.2 Does the substance of the complaint relate to acts that occurred prior to or subsequent to the close of submissions in the earlier case?
 - 21.2.3 If the substance of the complaint relates to acts that occurred prior to the close of submissions in the earlier case, are there any exceptional grounds for the rehearing or reconsideration, bearing in mind the need to protect the integrity and smooth operation of the DRS;
 - 21.2.4 If the substance of the complaint relates to acts that occurred subsequent to the close of submissions in the earlier decision, acts on which the re-filed complaint is based should not be, in substance, the same as the acts on which the previous complaint was based.
- 21.3 A non-exhaustive list of examples which may be exceptional enough to justify a re-hearing under paragraph 21.2.3 include:
- 21.3.1 serious misconduct on the part of the Expert, a Party, witness or lawyer;
 - 21.3.2 false evidence having been offered to the Expert;
 - 21.3.3 the discovery of credible and material evidence which could not have been reasonably foreseen or known for the Complainant to have included it in the evidence in support of the earlier complaint;
 - 21.3.4 a breach of natural justice; and
 - 21.3.5 the avoidance of an unconscionable result.

In order to determine whether or not I can proceed to consider the substantive issues raised in the case before me in order to decide the Complaint, I must first consider whether the Complaint before me is a resubmission of the Earlier Complaint, or contains a material difference that justifies a re-hearing. I will therefore take each of the relevant questions set out in paragraph 21.2 of the Policy in turn and provide my answers underneath each, as follows:

21.2.1 Are the Complainant, the Respondent and the domain name in issue the same as in the earlier case?

Yes. The details of each of the Complainant and the Respondent, including their respective addresses, are the same as in the Earlier Case. The Domain Name is also the same as the domain name in the Earlier Case.

21.2.2 Does the substance of the complaint relate to acts that occurred prior to or subsequent to the close of submissions in the earlier case?

This question requires more consideration. The Complainant filed its Complaint with Nominet on 17 September 2018, a date less than two months after the Earlier Decision. I do not have access to the submissions made by the Complainant in the Earlier Case and therefore the only information I can use to decide the answer to this question are the submissions made by the Complainant in this case before me together with the comments made by the Expert in the Earlier Decision.

These submissions contain assertions and allegations made by the Complainant regarding the Respondent, specifically that the Respondent was the Complainant's web designer and that the Complainant had asked the Respondent to register the Domain Name on its behalf, but as a result of the Respondent's subsequent conduct unrelated to the Domain Name (which has led to the Respondent being sentenced to 20 months in prison), the Complainant is now unable to contact the Respondent and make the changes that it needs in order to be able to operate the website that the Domain Name resolves to. The Complainant goes on to assert that its inability to contact the Respondent to make these changes and to access the Domain Name itself, is seriously damaging its core business.

In respect of the Respondent's actions which have resulted in him being detained in prison, the Complainant refers to an article in the Bournemouth Echo, a local newspaper to of the Parties, which refers, inter alia, to the Respondent having child abuse images and videos on his computers.

There is nothing in the Complainant's submissions to indicate that the Respondent's sentence was handed down subsequent to the date that the Complainant filed its Earlier Complaint in DRS 20337. Indeed, the Bournemouth Echo newspaper article that the Complainant refers to was published online with a date of 21 February 2018 (being more than five months prior to the Earlier Decision date). As the Earlier Decision was a summary (uncontested) decision, it is more than likely that the Respondent's detention was, or should have been, known to the Complainant at the date that it filed its Earlier Complaint.

Accordingly, I find that the substance of the Complaint in this case relates to acts that occurred prior to the case of submissions in the Earlier Case.

21.2.3 *If the substance of the complaint relates to acts that occurred prior to the close of submissions in the earlier case, are there any exceptional grounds for the rehearing or reconsideration, bearing in mind the need to protect the integrity and smooth operation of the DRS;*

In answering this question, I consider the non-exhaustive list of examples set out in paragraph 21.3 of the Policy which may be exceptional enough to justify a re-hearing under paragraph 21.2.3.

The Complainant has not raised any allegation of serious misconduct on the part of any person connected with the Earlier Case (excluding the Respondent regarding his conduct which has led to him being detained in prison, as noted above and which I will also come to below). In fact, it specifically says that it respects the Expert in the Earlier Case but that it has been allowed by Nominet to file the Complaint in this case as a “*second bite of the cherry*” due to it having “*supporting evidence beyond reasonable doubt that the Domain Name should be transferred or cancelled (ideally transferred)*”.

There is no assertion of false evidence being put before the Expert in either the Earlier Case or this case before me, nor are there any submissions or evidence before me to support a finding of a breach of natural justice or the avoidance of an unconscionable result.

The essence of the Complainant’s case regarding a re-submission and why it should be entitled to have its case heard again is that the Respondent (who the Complainant authorised to register the Domain Name on its behalf) is now being detained in prison for serious crimes that he committed, and as a result is uncontactable, has provided false contact information in relation to registration of the Domain Name, cannot make the changes that the Complainant requires to the website to which the Domain Name resolves to, all of which is having a material negative impact on the Complainant’s business.

While it is more likely than not that the Respondent’s current state, and unavailability, would or should have been known to the Complainant at the time of it submitting its Earlier Complaint by making reasonable enquiries (including online searches, which would have revealed the existence of the Bournemouth Echo article at that time), it seems to me that the Respondent’s crimes as they have been reported are of a nature which, when linked to the Complainant through the Respondent’s ownership of a domain name that the Complainant requested it register on its behalf and which contains the brand name of the Complainant, amount to serious misconduct on the Respondent’s part.

I am also of the view that the continued holding of a domain name by a respondent under these circumstances may well lead to an unconscionable result.

I am therefore prepared to find that there are exceptional grounds for the rehearing or reconsideration of this case, at all times bearing in mind the need to protect the integrity and smooth operation of the DRS. Accordingly, I am required to make a decision on the Complaint on the basis of the submissions before me and the Policy, pursuant to paragraph 18 of the Policy. My decision is set out below.

Rights

The Complainant is a damp proofing and damp treatment business based in Bournemouth, UK. It provides its services in Bournemouth and the surrounding areas. It is incorporated as a limited company in the UK under the name "No.1 Home Limited". The sole director of the Complainant is the registrant of the domain name "no1home.uk" and the Complainant operates a website under this domain name which clearly displays the brand name "No1 Home" on the home page.

The substantive parts of these business and trading names correspond directly and entirely with the Domain Name (excluding the punctuation mark immediately following the abbreviation "No" and the generic .co.uk suffix, both of which may be disregarded).

I therefore find that the Complainant has Rights in respect of the name "No.1 Home" which is identical to the Domain Name.

Abusive Registration

The Complainant states that the Respondent was its web designer and that he registered the Domain Name as a result of that relationship between them. The Respondent is now in prison and cannot be contacted to make the changes that the Complainant requires to be made to the website that the Domain Name resolves to. As a result, the Complainant relies on paragraph 5.1.5 of the Policy to prove that the Domain Name is an Abusive Registration.

In addition, this is a case where a domain name has been registered by a respondent at the request of the complainant for use by the complainant and the respondent is now unable, as a result of the respondent's actions and seemingly through no fault of the complainant, to be contacted (so that he can make changes to the domain name to allow the complainant to continue to use that domain name). In my opinion, this is also sufficient to lead to the conclusion that the domain name in question has become an Abusive Registration.

The Domain Name may well not have been an Abusive Registration at the outset when the Respondent registered it on behalf of the Complainant (indeed, the Complainant acknowledges this in its Complaint), but the Respondent's unavailability, coupled with the specific acts of the Respondent which have been reported on publicly (specifically in the local press where the Complainant is based and carries on its trade) and which have led to his detention in prison, are sufficient to cause disruption to the Complainant's

business and these turn the Domain Name into a registration which is being used abusively.

I therefore find, on the balance of probabilities, that (i) the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name and (ii) the Domain Name, in the hands of the Respondent, is an Abusive Registration.

8. Decision

I grant the Complainant's application for a summary decision. In accordance with section 12 of the Policy, the Domain Name <no1home.co.uk> will therefore be transferred to the Complainant.

Signed: Ravi Mohindra

Dated: 8 November 2018