

DISPUTE RESOLUTION SERVICE

D00020857

Decision of Independent Expert (Summary Decision)

Amy Hoff

and

Vicky Anderson

1. The Parties:

Complainant: Amy Hoff
[Address redacted]
Glasgow
United Kingdom

Respondent: Vicky Anderson
[Address redacted]
Reading
United Kingdom

2. The Domain Name:

caledoniaseries.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 caledoniaseries.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 (optional)

Having reviewed the Complaint and, in particular, all 23 of the website links provided therein (one of which was inactive), the Expert concluded that there was sufficient evidence to find that the Complainant had Rights within the meaning of the Policy in the name "Caledonia Series". The Complainant has no registered trade mark in the term, however she has provided evidence of extensive online promotion of it via the Domain Name itself (of which she was the original registrant), via the Complainant's Twitter handle (the Twitter feed features almost 750 followers), in her Facebook address, on YouTube and also in mainstream media, all in connection with the Complainant's body of literature and video work.

This conclusion was not reached without some hesitation, however, as the term 'series' is also essentially descriptive of the Complainant's body of work and is even employed descriptively by the Complainant herself (to describe her works, which have the over-arching title "Caledonia", as a series) in a number of the articles linked to within the Complaint.

Furthermore, this finding should not be taken to mean that the Expert considers that all or any uses of the expression "Caledonia Series" must necessarily refer to or target the Complainant and her works. The phrase consists of a geographic term (Caledonia is a literary, poetic or

otherwise romantic word for Scotland originally from Roman usage) alongside the descriptive word 'series'. It could thus be used to describe any collection of Scottish-themed items, products or services and, in such usage, would not necessarily reference or conflict with the Complainant's Rights.

Turning to the question of Abusive Registration, the Expert finds in the present case that the Domain Name, in the hands of the Respondent, is an Abusive Registration on the basis of the Complainant's submissions augmented by information received from Nominet.

There was no evidence placed before the Expert to support the Complainant's contention that the Respondent registered the Domain Name primarily to sell it back to the Complainant at a high value. Furthermore, the Complainant did not submit any evidence of the appearance of the website associated with the Domain Name despite having submitted that it pointed to an online shop, apparently of doubtful provenance. The site was no longer visible at the date of this Decision.

Nevertheless, the Complainant's case is borne out by the fact that the Domain Name was suspended by the registrar. The Expert enquired with Nominet as to the background to the suspension, since no corresponding information was provided by the Complainant, and was informed that this action was taken by the registrar following a complaint regarding the substance of the website and a failed attempt to verify the Respondent's contact details.

In effect, the Expert need not therefore look much further than section 5.1.4 of the Policy which provides that where it is independently verified that the Respondent has given false contact details to Nominet this may be evidence that the Domain Name is an Abusive Registration.

The Expert is also satisfied on the balance of probabilities that the intent behind the Respondent's registration was, more likely than not, to take unfair advantage of such traffic as the Complainant had developed to the Domain Name through her promotional efforts while she was the registrant. It seems likely that the Respondent pointed this to the now suspended website and, because such website contained inappropriate or unlawful content, provided false contact details to Nominet. This is the very essence of Abusive Registration in that it takes unfair advantage of the Complainant's Rights and the goodwill which she has built up in the name "Caledonia Series".

8. Decision

I grant the Complainant's application for a summary decision. In accordance with section 12 of the Policy, the domain name will therefore be transferred to the Complainant.

Signed:

Dated: 17 January, 2019

Andrew D S Lothian