



DISPUTE RESOLUTION SERVICE

DRS 21929

Decision of Independent Expert (Summary Decision)

Cube (Yorkshire) Ltd

Complainant

and

Craig Buchan

Respondent

1 The Parties

Complainant:	Cube (Yorkshire) Ltd
Address:	257 Lower Mickletown Methley Leeds West Yorkshire LS26 9AN United Kingdom

Respondent:	Craig Buchan
Address:	34 Santorini City Island, Gotts Road Leeds West Yorkshire LS12 1DP United Kingdom

2 Domain Name

cubeyorkshire.co.uk (the "Domain Name")

3 Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the complaint to the Respondent in accordance with paragraphs 2 and 4 of the Procedure.

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 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)

- 1 Not for the first time in the experience of this Expert, this is a case where the Complaint may well have succeeded, had the Complainant taken the trouble properly to explain its case, and prove it by way of evidence. This does not require the involvement of a lawyer. There is plenty of helpful guidance on the Nominet website, in particular in the document called *Experts' Overview*.
- 2 The DRS Policy is clear that, even in a case such as this where the Respondent has not defended his position, the Complainant still has to prove on the balance of probabilities (i.e. that it is more likely than not), first, that it has Rights (as defined in the DRS Policy) in respect of a name or mark that is identical or similar to the Domain Name (Policy, 2.1.1), and, secondly, that the Domain Name is an Abusive Registration (as defined) in the hands of the Respondent (Policy, 2.1.2).
- 3 Regrettably, while the Complainant has just about satisfied the standard of proof in relation to Rights, by reference to the print out from the Companies House website demonstrating that it is a registered company named Cube (Yorkshire) Limited, it has not begun to make a case on Abusive Registration. Its case (in full) on Abusive Registration is as follows: "*The web designer is not responding to TSO Hosting or to the client Cube Yorkshire resulting in damage to the company*".

- 4 Accordingly, on 1 November 2019, the Expert made a request, pursuant to paragraph 17.1 of the Policy, inviting the Complainant to: "*provide evidence of abusive registration of the nature envisaged by paragraph 5.1.5 of the Policy, i.e. that it*
- (1) has been using the domain name registration exclusively; and*
- (2) paid for the registration and/or renewal of the domain name.*"
- 5 Nominet passed on that request to the Complainant on the same day but received no reply.
- 6 On 13 November, Nominet sent a chaser to the Complainant reminding its representative that no response had been received, and saying that if no response was received by the end of that day, Nominet would assume that the Complainant did not wish to provide any further evidence.
- 7 Still no response was received. Accordingly, this decision proceeds on the basis that the Complainant is unable to demonstrate that it falls within the circumstances envisaged by paragraph 5.1.5 of the Policy or any of the other circumstances set out in paragraph 5.1.
- 8 In those circumstances, the Complainant has failed to discharge its obligation to prove its case on Abusive Registration on the balance of probabilities.

8 Decision

I therefore refuse the Complainant's application for a summary decision. The domain name registration will remain with the Respondent.

David Engel

Signed:

Dated: 20 November 2019