

## **DISPUTE RESOLUTION SERVICE**

**D00022390**

### **Decision of Independent Expert**

- (1) People's Financial Services Limited
- (2) B&CE Holdings Limited

and

- (3) Tulip Trading Company Limited

#### **1. The Parties:**

Lead Complainant: People's Financial Services Limited  
Manor Royal  
Crawley  
West Sussex  
RH10 9QP  
United Kingdom

Joint Complainant: B&CE Holdings Limited  
Manor Royal  
Crawley  
West Sussex  
RH10 9QP  
United Kingdom

Respondent: Tulip Trading Company Limited  
Dixcart House  
Fort Charles  
Charlestown  
Nevis  
Saint Kitts and Nevis

## **2. The Domain Name:**

peoplespension.co.uk

## **3. Procedural History:**

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.

25 February 2020 Dispute received

25 February 2020 Complaint validated

25 February 2020 Notification of complaint sent to parties

13 March 2020 Response reminder sent

18 March 2020 No Response Received

18 March 2020 Notification of no response sent to parties

19 March 2020 Expert decision payment received

26 March 2020 Keith Gymer appointed as Expert wef 31 March 2020

8 April 2020 Expert Request for further statement under Policy Paragraph 17.1\*

14 April 2020 Response to Expert Request received from Complainant

\*The Complaint was originally filed in the name of the Lead Complainant alone. As the evidence showed relevant intellectual property rights were in fact held by B&CE Holdings Limited (in current and previous names), the Group parent company, the Expert requested the Lead Complainant to provide statements to confirm (i) if it would agree to join B&CE Holdings Limited as Joint Complainant; (ii) that Building and Civil Engineering Holidays Scheme Management Limited was in fact a previous name of B&CE Holdings Limited; and (iii) if B&CE Holdings Limited were joined, which Complainant was to be the transferee if the Complaint succeeded.

## **4. Factual Background**

The Lead Complainant, People's Financial Services Limited, is subsidiary of B&CE Holdings Limited and is an intermediate holding company responsible for setting financial strategy within the B&CE Group.

The Joint Complainant B&CE Holdings Limited [added pursuant to the response to the Expert's Request for a further statement from the Lead Complainant under Paragraph 17.1 of the Policy] is the overall parent company of the B&CE Group. It previously changed its name from Building and Civil Engineering Holidays Scheme Management Limited on 1 April 2016.

B&CE is a not for profit organisation that provides financial products to those working in the construction industry and is the provider of workplace pensions for employers of all sizes and across all industries and sectors. The automatic enrolment pension product 'The People's Pension Scheme' ("The People's Pension" or "TPP") was established in 2012 and currently has an enrolment of 92,000 employers and 4.9 million members (as at 24 February 2020).

The Complainants operate a primary website for the Group's services at [www.thepeoplespension.co.uk](http://www.thepeoplespension.co.uk).

The Joint Complainant holds a number of registered trade marks for the Group, including, in particular:

UK2600643 The People's Pension (fig.) in Class 36 dating from 8 November 2011



UK2588848 B&CE PEOPLE'S PENSION in Class 36 dating from 21 July 2011

(Both of these registrations are presently officially recorded in the previous name of the Joint Complainant - Building and Civil Engineering Holidays Scheme Management Limited.)

The Respondent is a corporate entity with an address in the Caribbean. It has been cited as Respondent in a number of previous DRS Complaints.

According to the Nominet Whols record, the Respondent registered the Domain Name on 29 October 2015.

## **5. Parties' Contentions**

### **Complainants**

The Complainants assert that since inception The People's Pension has operated as a pension scheme and The People's Pension mark has been used in promoting the scheme. The brand is registered as the name B&CE People's Pension as trade mark UK2588848 and as The People's Pension logo as trade mark UK2600643.

The People's Pension is a multi-award-winning product with awards including:

- Pensions Age Awards – Master Trust Offering of the Year 2018 – 2019;
- Corporate Adviser Awards – Best Master Trust 2017 – 2019; and
- Pensions and Investment Provider Awards – Multi Employer DC 2018–19.

The domain name, <thepeoplespension.co.uk>, which was registered by the Joint Complainant in 2011, is used for a website which provides general information about The People's Pension and also provides a link to the online portal for members, employers and advisers.

To promote the brand and as part of its corporate social responsibility, the Joint Complainant has entered into a sponsorship agreement with Crawley Town Football and Social Club Limited which competes in the English Football League Division 2. This sponsorship includes the use of the registered trademark 'The People's Pension' on the Football Club's match kit, physical infrastructure of the Football Club's stadium, match day programmes and on the Club's website.

Whilst the words "people's" and "pension" are each ordinary English words, in combination they have no other meaning than one that is directly associated with the Complainants' business. The distinctive and non-generic nature of the People's Pension brand has led the wider public to immediately associate the People's Pension brand with the Complainants and their product.

The Complainants assert that the business has acquired the rights to the People's Pension brand, based on trade marks, and the goodwill and reputation it holds in the name. These rights are in a name and mark substantially identical to the Domain Name.

In order to protect The People's Pension brand, the Complainants have registered many corresponding domains around the product name but were unable to register the Domain Name as it had been taken by the Respondent.

The Complainants made five different attempts to purchase the Domain Name using the bidding box entitled 'Buy this domain' on the website landing page associated with the Domain Name. No response was received for any of the bids made.

The Domain Name is currently being used by the Respondent to redirect the public to third-party websites which provide similar pension services to that of the Complainants. This is likely to mislead the public into believing that the Domain Name is registered to, operated or authorised by or otherwise connected with the Complainants. It is also believed that the Respondent receives pay-per-click fees from the linked third-party websites thereby profiting financially from the goodwill and reputation built by the Complainants in The People's Pension brand.

Furthermore, the Complainants are aware that the Respondent has been found to have made an Abusive Registration in several previous Nominet Dispute Resolution cases. Specific examples of these cases are:

D00022032 <freepetplan.co.uk> (28 December 2019)  
D00021433 <carsmartoxford.co.uk> (29 May 2019)  
D00021325 <lovisa.co.uk> (9 July 2019)

In the cases the Respondent was found to have engaged in a pattern of 'cybersquatting' and the Complainant asserts that the registration of the Domain Name is a further example of cybersquatting. The Complainants rely on paragraph 5.3 of Nominet's Dispute Resolution Policy (the 'Policy') which states that:

"There shall be a presumption of Abusive Registration if the Complainant proves the Respondent has been found to have made an Abusive Registration in three (3) or more DRS cases in the two (2) years before the complaint was filed."

## **Remedy Requested**

The Complainant requests that the Domain Name be transferred from the Respondent to the Joint Complainant as the Complainants have demonstrated rights in The People's Pension brand and that the registration by the Respondent is an Abusive Registration in accordance with the Policy.

## **Respondent**

The Respondent made no Response to the Complaint.

## **6. Discussions and Findings**

### **General**

Paragraph 2 of the Policy requires that, for the Complainants to succeed, they must prove to the Expert, on the balance of probabilities, both that

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

Under Paragraph 18.1 of the Policy, the Expert is required to decide a complaint on the basis of the Parties' submissions and the Policy.

### **Complainants' Rights**

The Complainants have satisfied the Expert that the Joint Complainant is the proprietor of the brand name "The People's Pension" and of related registered trade marks as identified above. The Expert is also satisfied that the Complainants use of this designation from 2011 in connection with their business and their own website and the evidence of awards show that the Complainants have established goodwill and associated common law rights in The People's Pension brand.

The Domain Name differs only in dropping “the” from the brand name. The Expert does not consider this to be a material difference. Consequently, for the purposes of the Policy the Expert considers that the Complainants have Rights in respect of a name or mark which is similar to the Domain Name. The requirement of Paragraph 2.1.1 of the Policy is met.

### **Abusive Registration**

The Complainant also must show that the Domain Name is an Abusive Registration.

Paragraph 1 of the Policy defines “Abusive Registration” as 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.

A non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration are set out in Paragraph 5 of the Policy. However, the factors listed in Paragraph 5 are only intended to be exemplary and indicative. They are not definitive. It is Paragraph 1 of the Policy, which provides the applicable definitions as indicated above.

Examples from Paragraph 5 which may be relevant to the Complainants’ case’ include:

- 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;

...

5.3 There shall be a presumption of Abusive Registration if the Complainant proves that the Respondent has been found to have made an Abusive Registration in three (3) or more DRS cases in the two (2) years before the complaint was filed. This presumption can be rebutted (see paragraphs 8.1.4 and 8.3).

Paragraphs 8.1.4 and 8.3 state:

8.1 A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is as follows...

8.1.4 In relation to paragraphs 5.1.3 and/or 5.3; that the Domain Name is not part of a wider pattern or series of registrations because the Domain Name is of a significantly different type or character to the other domain names registered by the Respondent.

8.3 If paragraph 5.3 applies, to succeed the Respondent must rebut the presumption by proving in the Response that the registration of the Domain Name is not an Abusive Registration.

In the present case the Respondent has failed to offer any Response and has provided no argument or explanation to counter the Complainants' submissions.

The evidence shows that the Respondent has potentially offered the Domain Name for sale on the website associated with the Domain Name, though did not respond to any offers made via that route. The website did also link to competing pension related sites, inevitably giving rise to prospective confusion for customers and potential customers of the Complainants. Although no evidence was provided regarding misuse of the Domain Name for email, when a domain name is used in relation to financial products, such as pensions, it is clear that there is a real concern about the potential for misuse, particularly for phishing and identity theft if emails meant for the Complainants' highly similar domain name were to be mistakenly addressed to and exploited via the Respondent's Domain Name. There is clearly a risk that the Domain Name would give rise to customer confusion, diversion and disruption of the Complainants' business in such circumstances.

Further, having regard to the multiple cited earlier DRS Complaints within the preceding two years where the Respondent was held to have made Abusive Registrations, the Expert is satisfied that the Respondent is engaged in 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.

The Respondent has also not provided any evidence to rebut the application of the presumption under Paragraph 5.3 of the Policy in this case.

Consequently, the Expert finds that the registration and use of the Domain Name by the Respondent has taken unfair advantage of, and been unfairly detrimental to, the Complainants' Rights, such that the Domain Name is considered to be an Abusive Registration for the purposes of the Policy. The requirement of Paragraph 2.1.2 of the DRS Policy is met.

## **7. Decision**

Having found that the Complainants have shown relevant Rights, and that the Domain Name, in the hands of the Respondent, is an Abusive Registration, the Expert orders that the Domain Name be transferred to the Joint Complainant B&CE Holdings Limited.

**Signed .....**  
**Keith Gymer**

**Dated 18 April, 2020**