

DISPUTE RESOLUTION SERVICE

D00023023

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

W J Tatem Limited

and

Mr William James

1. The Parties:

Complainant: W J Tatem Limited
Durnsford Mill House Mildenhall
Marlborough
SN8 2NG
United Kingdom

Respondent: Mr William James
Wheathampstead
United Kingdom

2. The Domain Name:

wjtatem.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 wjtatem.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)

This is a matter where the Complainant has included very little evidence, either to substantiate its “Rights” or to make his good its allegations of fraudulent wrongdoing against the Respondent.

It is useful to have regard to the “Experts Overview” version 2 (a useful summary of principles concerning the DRS Policy and of the way Experts under the scheme have typically approached problems).

Firstly, while I have to make a decision based on the balance of probabilities, where there are really serious allegations of wrongdoing against the Respondent, I am entitled to expect clear evidence of wrongdoing and I am entitled to disregard the Complainant’s bare allegations unsubstantiated by cogent evidence (see paragraph 2.1 of the Experts’ Overview).

Secondly, the other matter concerns the Complainant’s Rights. Rights are defined in the DRS Policy as “rights enforceable by the Complainant, whether under English Law or otherwise ...”. The Rights have to be in respect of a name or mark identical with or similar to the Domain Name, according to the

DRS Policy. This is normally going to be a registered trade mark (supported by a copy of the certificate of registration), an unregistered trade mark (supported by evidence of usage over time sufficient to indicate goodwill attaching to that name or mark) or a contract showing entitlement to use the Rights in a specified name or mark. In this case, all I have to go on is a copy of the certificate of registration of the company: most Experts will not accept this as evidence of Rights, as I do not (see paragraph 1.7 of the Experts' Overview). While this certificate seems to indicate a company of some antiquity, it is the company's operations that go to make up its Rights, not its mere existence. I therefore need to see evidence of what it has done over a period of time.

Paragraph 18.1 of the DRS Policy states that an Expert must "decide a complaint on the basis of the Parties' submissions and this Policy" and that it is "the Parties' responsibility to explain all the relevant background facts and other circumstances". I am empowered to "check any material which is generally available in the public domain". On that basis, I visited the Complainant's website at wjtatem.com, which the Complainant states in his submission was acquired by it very recently. Far from providing evidence of Rights, it actually states that the Complainant has "no mission" and has "no team", that it has "a long and great history but we share it with nobody". Again, this all rather indicates that the Complainant has no Rights in a name or mark similar to or identical with the Domain Name.

For these reasons, I have decided that the Complainant has not shown that it has Rights for the purposes of the DRS Policy and that the Domain Name in the Respondent's hands is not in consequence an Abusive Registration.

8. Decision

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

Signed: Richard Stephens
November 2020

Dated: 6