

**Nominet UK Dispute Resolution Service**

**DRS 5303**

**Coventry Building Society**

**v**

**Byron Holloway**

**Decision of Independent Expert**

**1. PARTIES**

Complainant: Coventry Building Society

Address: Oakfield House, PO Box 600, Binley Business Park, Coventry

Postcode: CV3 9YR

Country: UK

Respondent: Byron Holloway

Address: 1005 Lee Street, Atlanta, Georgia

Postcode: 30310

Country: USA

**2. DOMAIN NAME**

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

**3. PROCEDURAL BACKGROUND**

3.1 A Complaint in respect of the Domain Name under Nominet UK's Dispute Resolution Service Policy (the "Policy") was received from the Complainant on 7 December 2007. Nominet forwarded the Complaint to the Respondent. No Response was received.

3.2 The dispute was referred for a decision by an Independent Expert following payment by the Complainant of the required fee in accordance with paragraph 5d of Nominet's Procedure for the conduct of proceedings under the Dispute Resolution Service Procedure (the "Procedure") on 28 January 2008. I was appointed as Independent Expert on 29 January 2008 and confirmed to Nominet that I was independent of the parties and knew of no facts or circumstances that might call into question my independence in the eyes of the parties.

#### **4. OUTSTANDING FORMAL/PROCEDURAL ISSUES (IF ANY)**

- 4.1 Under Paragraph 5a of the Procedure the Respondent was required to submit a Response to the Complaint to Nominet by 18 January 2008. The Respondent has failed to do so.
- 4.2 Paragraph 15b of the Procedure provides as follows: "If, in the absence of exceptional circumstances, a Party does not comply with any time period laid down in this Policy or Procedure, the Expert will proceed to a Decision on the Complaint".
- 4.3 It is the view of the Expert that there are no exceptional circumstances. The proceedings have been communicated to the Respondent and the Respondent has made no attempt to explain its lack of response and there is no evidence to suggest that anything exceptional has occurred.
- 4.4 The Expert is accordingly authorised under the Procedure to proceed to decide the Complaint. Under paragraph 16a of the Procedure the Expert should reach a decision based on the Parties' submissions (which consists of the Complaint and its Annexes in this case) and the Policy and Procedure. In the absence of any exceptional circumstances the Expert is also entitled to draw such inferences from the Respondent's non-compliance with the Policy or Procedure as he considers appropriate (paragraph 15c of the Procedure).

#### **5. THE FACTS**

- 5.1 The Complainant is a UK building society. It has over 1 million customers and assets of over £11 billion. It has registered UK trade marks for the word COVENTRY. It has traded for many years and the facts stated in the Complaint show it is very well known.
- 5.2 The Domain Name was registered on 22 November 2007. The Respondent is unconnected with the Complainant. The material filed with the Complaint shows that the Domain Name is currently used to host a web site which appears to represent itself as a genuine Coventry Building Society web site.

#### **6. THE PARTIES' CONTENTIONS**

##### *Complainant*

- 6.1 These can be summarised shortly, as follows:

- (a) it owns both registered trade mark rights in the word Coventry and goodwill in the name Coventry Building Society;
- (b) the domain name is an obvious misspelling of its name; and
- (c) the domain name is being used to capture confidential information from the Complainant's customers who make a typographical error when seeking to access the Complainant's genuine site.

*Respondent*

6.2 As indicated above no Response has been filed.

**7. DISCUSSION AND FINDINGS:**

*General*

*Discussion and Findings*

7.1 The Complainant is required under Clause 2b of the Policy to prove to the Expert on the balance of probabilities that:

- (a) the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
- (b) the Domain Name, in the hands of the Respondent, is an Abusive Registration.

*Complainant's Rights*

7.2 "Rights" are defined in the Policy and in the Procedure. Rights "includes, but is not limited to, rights enforceable under English law." . I am satisfied that it has substantial goodwill and reputation in the name Coventry Building Society.

7.3 The Domain Name is clearly similar to the name in which the Complainant has rights. It is simply a misspelling of the Complainant's name.

7.4 Accordingly I find that the Complainant does have Rights in respect of a name or mark which is identical or similar to the Domain Name.

*Abusive Registration*

7.5 Paragraph 1 of the Policy defines "Abusive Registration" as a Domain Name which either:

- (a) 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

(b) has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

7.6 A non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration, is set out in paragraph 3 of the Policy. These include 3(a) ii: "*Circumstances indicating that the Respondent is using the Domain Name in a way which has confused people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant*". That is clearly what the Respondent is doing – people who misspell the Complainant's name find themselves at a site which has been deliberately arranged to look as though it is a genuine site belonging to the Complainant, and it appears likely that they are then deceived into providing confidential information.

7.7 In the circumstances, I consider that the Domain Name has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

7.8 The Domain Name, in the hands of the Respondent, is therefore an Abusive Registrations.

## 8. **DECISION**

Accordingly, I find that the Complainant has Rights in respect of a name or mark which is similar to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration. I therefore determine that the Domain Name be transferred to the Complainant.

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**Nick Gardner**

12 February 2008