

Nominet UK Dispute Resolution Service

DRS 05407

London Metropolitan University v Bob Woods

Decision of Independent Expert

1. Parties

Complainant: London Metropolitan University
Address: 166-220 Holloway Road
London
Postcode: N7 8DB
Country: GB

Respondent: Bob Woods
Address: 26 York Street
London
Postcode: W1U 6PZ
Country: GB

2. Domain Name

sherwoodu.org.uk ("the Domain Name")

3. Procedural Background

The complaint was entered into Nominet's system on 28 January 2008. Nominet validated the complaint and informed the Respondent by letter dated 1 February 2008, noting that the Dispute Resolution Service had been invoked and that the Respondent had until 25 February 2008 to submit a Response. No Response was received.

On 26 February 2008 the Complainant was invited to pay the fee to obtain an Expert Decision pursuant to paragraph 7 of the Nominet UK Dispute Resolution Service Policy Version 2 ("the Policy"). The fee was duly paid on 11 March 2008.

On 14 March 2008 Nominet invited me to provide a decision in this case and, following confirmation to Nominet that I knew of no reason why I could not properly accept the invitation to act in this case and of no matters which ought to be drawn to the attention of the parties which might appear to call into question my independence and/or impartiality, Nominet duly appointed me as Expert with effect from 18 March 2008.

4. Outstanding Formal/Procedural Issues

None.

5. The Facts

The Complainant London Metropolitan University is a genuine UK University, with a contact address of 166-200 Holloway Road, N7 8DB.

The Nominet WHOIS search with which I have been provided shows that the Domain Name, sherwoodu.org.uk, was registered by or on behalf of the Respondent, presumably an individual but not registered as such, on 20 May 2003.

The print out of the site accessible under the URL <http://www.sherwoodu.org.uk> with which I have been provided is entitled 'Sherwood University' and, by use of a picture of a stately building and menu headings such as 'Students', 'Study Options' and so forth gives the clear impression of being a UK university.

Further I was able to confirm first hand the Complainant's evidence that the contact details given for 'Sherwood University' on its website are 200 Holloway Road, N7 8DB.

6. The Parties' Contentions

Complaint

At the outset of the Complaint the Complainant asserts:

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

In the course of a single paragraph, the following submissions are then advanced by the Complainant:

- (1) Sherwood University is a 'bogus' university in the sense that it is not a bone fide UK educational institution. Rather it is a virtual University which issues degrees without the approval of the relevant UK authorities.
- (2) The address of the Complainant is being used, falsely, as the contact address for the Respondent, with the result that the Complainant has received numerous unsolicited communications for Sherwood University from all over the world.
- (3) When the Complainant first became aware of the existence of Sherwood University website, this was reported to the Public Protection Division in Islington. However, to date they have been unsuccessful in removing this website.
- (4) The Complainant has been forwarding all the correspondence that it has received for Sherwood University to the Public Protection Division, asking them to respond. The Complainant is concerned that to date it has not been possible to remove this bogus website, and considers that the deliberate misuse of its address could damage its reputation.
- (5) The Respondent has also failed to comply with the rules for .uk domain, in that the .org.uk SLD is intended for the registration of Domain Names which denote non-profit making or public service organisations such as charities, trade unions, political parties, community groups, education councils, professional institutions, etc.

The Complainant requests cancellation, rather than transfer, of the Domain Name.

Response

There was no Response.

7. Discussion and Findings:

General

Paragraph 2 of the Policy requires that, in order for the Complainant to succeed, it must prove to the Expert, on the balance of probabilities, **both** that it has Rights in respect of a name or mark which is identical or similar to the Domain Name; **and** that the Domain Name, in the hands of the Respondent, is an Abusive Registration as defined in Paragraph 1 of the Policy (emphasis added). These requirements are cumulative.

Moreover these matters must be affirmatively proven by the Complainant, notwithstanding the failure by the Respondent to file a Response. The effect of the Respondent's default, under paragraph 15(c) of the Procedure, (there being no exceptional circumstances in this case) is that I may draw such inferences from the Respondent's non-compliance as I consider appropriate.

Complainant's Rights

The Complainant must prove on the balance of probabilities that it has Rights in respect of a name or mark which is identical or similar to the Domain Name.

Under paragraph 1 of the Policy, "Rights includes, but is not limited to, rights enforceable under English law. However, a Complainant will be unable to rely on rights in a name or term which is wholly descriptive of the Complainant's business."

The unusual feature of this Complaint is that – beyond the bare assertion of the Complainant that "the Domain Name is identical or similar to a name or mark in which the Complainant has Rights" – there is nothing in the Complaint or the supporting materials to suggest that London Metropolitan University owns, or even claims to own, any rights in 'sherwoodu' or 'Sherwood University' or a similar name. The objection is not to the use of the Domain Name itself, but to the use of the Complainant's address at 200 Holloway Road, N7 8DB in conjunction with a 'bogus' university.

I have little doubt from the materials provided to me that Sherwood University is a virtual 'university' which issues degrees without the approval of the relevant UK authorities and is not a bone fide UK university. I was reinforced in my view as to its general salubrity when I visited the pivotal 'Contact Us' page only to be alerted to the presence therein of a W32/RAHack virus.

I *am* able to conclude that it is highly undesirable that this website is still accessible under the Domain Name.

However, despite considerable sympathy for the Complainant's position, I am *not* in all conscience able to conclude on the balance of probabilities that the Complainant owns Rights in respect of a name or mark which is identical or similar to 'sherwoodu'.

Conclusion

For the foregoing reason the Complaint must fall at the first hurdle of Rights and the question of the second hurdle of Abusive Registration does not arise.

There may be very good reasons for the Domain Name to be cancelled or the website suspended. However, in my view they are not within the ambit of the Policy. The Domain Name may be, in layman's terms, an 'abusive registration'. But the Policy is only directed to Abusive Registrations as defined, where the Complainant can demonstrate Rights in respect of a name or mark which is identical or similar to the Domain Name.

8. Decision

Having concluded that The Complainant has failed to prove that it has Rights in respect of a name or mark which is identical or similar to the Domain Name, the Expert determines that no action should be taken under the Policy in relation to the Domain Name, sherwoodu.org.uk.

Philip Roberts

April 2nd, 2008

Date