

## Nominet UK Dispute Resolution Service

**DRS Number 07549**

**Hay House Inc. -v- Gillian Bowles**

**Decision of Independent Expert**

### 1) Parties

Complainant : Hay House Inc.  
2776 Locker Avenue  
West Carlsbad  
California  
92010  
United States

Respondent Gillian Bowles  
43 Cornerswell Road  
Penarth  
Cardiff  
CF64 2UX  
United Kingdom

### 2) Domain Name

healyourlifeteachertraining.co.uk (the Domain Name)

### 3) Procedural Background

On 21<sup>st</sup> July 2009 the Complaint was lodged with Nominet UK Limited (“Nominet”). Nominet validated the Complaint on 28<sup>th</sup> July 2009 and it was sent to the Respondent giving her 15 working days within which to lodge a Response and which was to be on or before 18<sup>th</sup> August 2009. The Respondent responded on 5<sup>th</sup> August 2009 and the Response was sent to the Complainant the next day on 6<sup>th</sup> August 2009. The Complainant did not reply to the

Response and on 17<sup>th</sup> August 2009 mediation documents were generated for the Complaint, mediation commenced on 20<sup>th</sup> August 2009 and was due to finish on 4<sup>th</sup> September 2009, on 11<sup>th</sup> September 2009 Nominet confirmed that the mediation was unsuccessful. On 30<sup>th</sup> September 2009 the Complainant paid the appropriate fee for a Decision by an Expert pursuant to paragraph 6 of Nominet's Dispute Resolution Service (DRS) Policy ("the Policy").

On 30<sup>th</sup> September 2009 Mr. Niall Lawless ("the Expert") was selected and on 12<sup>th</sup> October 2009 appointed to act as Expert in this dispute, having confirmed that he knew of no reason why he could not properly accept the appointment and knew of no matters which ought to be drawn to the attention of the parties which might appear to call into question his impartiality and / or independence. He is required to give his Decision by 2<sup>nd</sup> November 2009.

#### **4) Outstanding Formal / Procedural Issues**

On 30<sup>th</sup> September 2009 the Complainant made a non-standard submission under Section 13 B of Nominet's DRS Procedure. The explanatory paragraph explained the reasons for the submission :-

##### **FURTHER STATEMENT**

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*Submitted by: Cheryl Hodgson, Esq. on behalf of complainant Hay House, Inc.*

*In compliance with Section 13, we are submitting a further statement to highlight the importance of two supplemental documents that should be forwarded to the designated expert in this matter. The mediator in the unresolved matter, Mr. Tim Dalby, recommended that the documents listed below be forwarded to the designated expert at Nominet because of their importance in settling the domain dispute between the parties.*

*The supplemental documents are:*

- 1. Petsheion to the Director of Trademarks at the United States Trademark Office to amend the date of First Use which was erroneously entered into the registration of the American Trademark "HEAL YOUR LIFE". The petition is very important to reflect that the date of first use of the phrase, by the complainant, far precedes any use made by the respondent.*

1. *Recent decision by the World Intellectual Property Organization in their UDRP proceeding for [www.healyourlifeteachertraining.com](http://www.healyourlifeteachertraining.com) . The domain is identical to the one in dispute in the UK, and WIPO held for the complainant Hay House, Inc. in the matter.*

*Many thanks for your time, and please do not hesitate to contact us should you need additional material.*

*Kind Regards,*

*Cheryl L. Hodgson, Esq. Santa Monica, California, United States of America*

The Expert did not consider the non-standard submission made by the Respondent because :-

- The World Intellectual Property Organization (WIPO) is a Domain Name dispute resolution service provider which uses the ICANN Rules for Uniform Domain Name Dispute Resolution Policy (UDRP). Nominet has its own Dispute Resolution Service (DRS) and this is different to the UDRP. Expert Decisions made by one Nominet Expert are not binding on another Nominet Expert and WIPO UDRP Administrative Panel Decisions are also not binding.
- Expert Decisions are determined by reference to Nominet's Dispute Resolution Service (DRS) Policy and not the law in respect of trade-mark infringement.

Therefore the supplemental documents would not assist or guide me in making this Expert Decision using the Nominet DRS.

## **5) The Facts**

The Complainant was founded in 1984 by the author Louise Hay when she published the book "You Can Heal Your Life". It is one of the largest publishers of self-help materials and specializes in providing self-help products and live workshops and events.

The Respondent registered [healyourlifeteachertraining.co.uk](http://healyourlifeteachertraining.co.uk) on the 8<sup>th</sup> October 2008.

The Complainant seeks transfer of the Domain Name to it.

## 6) The Parties' contentions

### The Complainant

The Complainant says that the Domain Name (healyourlifeteachertraining.co.uk) controlled by the Respondent is an Abusive Registration under Nominet's DRS Policy.

The Complainant says that following the publication of the book "You Can Heal Your Life" Louise Hay began offering a two day workshop Love Yourself, Heal Your Life in 1985 and continued to do so until the early 1990's. In 1992 the Complainant referred a training opportunity in Birmingham to Dr. Patricia Crane and since that time Dr. Crane has been the only authorized trainer or workshop leader in the UK. The Complainant says that at no time was the Respondent Gillian Bowles authorized or certified as a teacher-teacher to certify others as workshop leaders. The Complainant says that the Respondent attended a workshop in Ireland in 1999 and if there was any implied right to use Heal Your Life as a leader of workshops this was officially terminated on 20<sup>th</sup> April 2009 and that the Respondent is misleading the public by using Heal Your Life to offer teacher training for which she was neither authorized or licensed.

The Complainant says that it is the owner of European Community Trademark Registration Number 7312192 dated 5<sup>th</sup> May 2009 for the mark HEAL YOUR LIFE in classes 9, 16 and 41 ("the Word Mark") and European Community Trademark Registration Number 7372303 dated 10<sup>th</sup> June 2009 for the mark HEAL YOUR LIFE in classes 9, 16 and 41 ("the Logo Mark").

The Complainant says that the Domain Name contains its entire trade-mark and that inclusion of generic terms in the domain does not eliminate the similarity between the Complainant's trade-mark and the disputed domain name and that inclusion of the generic terms "teacher training" is evidence of bad faith as the Respondent has never been authorized to offer teacher training using Heal Your Life. The Complainant says that the Respondent is using its trade-mark to offer teacher training to the public in direct competition with those authorized by it and taught by Dr. Crane in the United Kingdom.

The Complainant says that the Respondent is using the Domain Name to divert customers to other landing pages offering competitive training, seminars and materials; the consequences of this are not only that the Respondent gains commercially from teaching developed by the Complainant but that it tarnishes the Complainant's trade-mark.

The Complainant says that the Domain Name is being used to create a likelihood of confusion with its trade-mark as to the source, sponsorship or affiliation of the Respondent's teacher training.

The Complainant would like this complaint to be resolved by transfer of the Domain Name.

### The Respondent

The Respondent says that she was trained by Hay House Inc. and received certification to be an authorized teacher for the "You Can Heal Your Life Study Course" and the "Love Yourself, Heal Yourself, Heal Your Life Workshop" on 7<sup>th</sup> November 1999 and also received certification for Advanced Teacher Training on 17<sup>th</sup> September 2000.

The Respondent says that in 1999 she started running "You Can Heal Your Life" workshops in the UK and in 2003 started to use the "Heal Your Life" term as a product brand to differentiate her workshops from others.

The Respondent says that she has invested substantial time, effort and money marketing the "Heal Your Life" term as a brand advertising nationally, and by national and international on-line marketing. Because of that she says she is now the largest provider of "Heal Your Life" workshops in the UK and has established substantial goodwill and reputation attracting customers from all over the UK and overseas.

The Respondent says that in 2007 – 2008 she created a new "Heal Your Life" teacher training course and in 2008 she started to market this course and registered the Domain Name for on-line marketing and as a central teacher resource. The Respondent says that she ran the first of these courses in April 2009 and that it is an entirely new work, developed and created among other things out of 10 years experience running her own "Heal Your Life" workshops.

The Respondent says that use of the term "Heal Your Life" and "Teacher Training" are entirely descriptive of the services the Respondent offers on her website and that on the website she makes it very clear that her course has no connection with Louise Hay or Hay House Inc.

The Respondent says that the Complainant cannot rely upon the European Community Trademark Registration Number 7312192 dated 5<sup>th</sup> May 2009 because this is currently subject to an Application for Declaration of Invalidity and that the Complainant cannot rely upon the

European Community Trademark Registration Number 7372303 dated 10<sup>th</sup> June 2009 on the basis that it is a figurative mark and is irrelevant as it cannot appear in a domain name.

## **7) Discussions and Findings**

### **7.1 General**

The Nominet DRS Policy requires that for a Complaint to succeed the Complainant must prove to the Expert on the balance of probabilities that :-

- i. The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
- ii. The Domain Name, in the hands of the Respondent are Abusive Registrations.

Rights include, but are not limited to, rights enforceable under English Law.

In order to show that the Domain Name are Abusive Registrations, the Complainant must prove that the Domain Name either :-

- i. At the time when the registration or acquisition took place, took unfair advantage of or were unfairly detrimental to the Complainant's Rights.
- ii. Have been used in a manner, which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

The Complainant is required to prove to the Expert that the Claimant has Rights and that the Domain Name in the hands of the Respondent are Abusive Registrations; both elements must be present.

### **7.2 Complainant's Rights**

The Complainant is a publishing company and with sales of more than 40 million copies one of its very successful books written by Louise Hay is "You Can Heal Your Life"; it has also offered workshops entitled "Love Yourself, Heal Your Life". "Heal Your Life" is the distinctive and dominant element of both these products and as the words "Teacher Training" are entirely descriptive, I decide that the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name. Because it is clear that the Complainant has Rights I do not have to consider whether Rights accrue to the Complainant through the European

Community Trademark Registration Number 7312192 or the European Community Trademark Registration Number 7372303.

Because of this I decide that the Complainant has Rights in respect of a name or mark which is similar to the Domain Name.

### 7.3 Abusive Registration

The Complainant says that the Domain Name (healyourlifeteachertraining.co.uk) controlled by the Respondent is an Abusive Registration under Nominet's DRS Policy, but it does not state under which part of the Policy. Under the Nominet DRS Policy Section 3 Evidence of Abusive Registration guidance is given as to what factors may evidence that the Domain Name is an Abusive Registration. A non-exhaustive list of factors which may evidence that the Domain Name is an Abusive Registration is as follows :-

3(a)(i). Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily :-

3(a)(i)(A). 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;

3(a)(i)(B). as a blocking registration against a name or mark in which the Complainant has Rights.

3(a)(i)(C). or the purpose of unfairly disrupting the business of the Complainant;

3(a)(ii). 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.

#### Registration of the Domain Name

The Complainant says that the Respondent has no rights or legitimate interests in respect of the Domain Name.

Nominet operates a "first-come, first-served" system of domain name registration and there is no requirement for the Respondent to show that she has Rights in the name (unlike the Complainant, who must prove that). However, it can help the Respondent's case if he can show

that she has rights in the name, as it suggests that the registration (and possibly use) of the name is not abusive.

### Trademark infringement

The Complainant says that the Domain Name contains its entire trade-mark and that inclusion of generic terms in the domain does not eliminate the similarity between the Complainant's trade-mark and the disputed domain name and that inclusion of the generic terms "teacher training" is evidence of bad faith as the Respondent has never been authorized to offer teacher training using Heal Your Life. The Complainant says that the Respondent is using its trade-mark to offer teacher training to the public in direct competition with those authorized by it and taught by Dr. Crane in the United Kingdom.

As stated above and considered in the Deutsche Telekom AG v Lammtara Multiserve Limited (DRS 05856) Appeal Decision Expert Decisions are determined by reference to Nominet's DRS Policy and not the law in respect of trade-mark infringement.

While the Policy is intended to represent a quick and cost-effective alternative to litigation, the Policy and the law of trade-mark are not interchangeable. Not all abusive registrations under the Policy will necessarily constitute trade-mark infringement and not all trade-mark infringements constitute abusive registration under the Policy. This is particularly so in the case of what might constitute 'innocent' (in the sense of unintentional) infringement.

The problem is caused to some extent by the wording of the definition of Abusive Registration (i.e. the references to unfair advantage and unfair detriment), which is taken from Section 10 of the Trade Marks Act 1994. Some take the view that this is an indication that trade-mark infringement must constitute an abuse under the Policy. The Expert does not take that view for three reasons: first, the wording of the definition does not precisely replicate the wording of the infringement provisions of the Trade Marks Act; secondly, "trade-mark infringement" is not a term that connotes knowing wrongdoing, whereas to the Expert "Abusive Registration" connotes culpable behaviour akin to deliberate wrongdoing; thirdly, if trade-mark infringement was necessarily to constitute Abusive Registration, one would expect all Nominet's team of independent experts to be lawyers practicing in the field of trade-marks, whereas many are not.

If trade-mark infringement is a concern the Complainant has the option of pursuing the matter in the English Court. It is not the role of Nominet's DRS to act as a substitute for litigation.



### Using the Domain Name to Confuse

The Complainant says that the Domain Name is being used to create a likelihood of confusion with its trade-mark as to the source, sponsorship or affiliation of the Respondent's teacher training.

On the Home Page of the website resolved by the Domain Name a prominent link is headed "*Philosophies behind Heal Your Life Training*" and which identifies that "*the workshops and training are based on the teachings of Louise Hay and the principles of Science of Mind. It incorporates the most effective techniques drawn from various self-help and spiritual authors*". Clicking on the link provides further information that :- *The philosophy underpinning the workshops and Teacher Training is fundamentally that of "Science of Mind" made popular by Louise Hay in her book "You Can Heal Your Life". It incorporates techniques from various self-help and spiritual authors such as Thomas Troward, Ernest Holmes, Frederick Bailles, Virginia Satir, Shakti Gawain, Carolyn Myss, Florence Scovel Shinn and the teachings of Abraham. The essence being to love yourself, live consciously and understand that you are a creative being.*

The Respondent says that to a broader audience the term "Heal Your Life" has a clear and common meaning of Healing of Life issues, each individual word and the phrase itself are indicative of the nature, characteristics and intended outcome of many spiritual and self-improvement products and services.

The Respondent says that the website to which the Domain Name resolves makes it clear that her course has no connection with the Complainant and it is clear to the Expert from her website that although the Respondent's Heal Your Life Teacher Training is based on the works of Louise Hay and other spiritual leaders it has no direct association with Hay House Inc. or Louise Hay.

Because of the above, the Complainant has not persuaded me on the balance of probabilities that the Domain Name has been used in a way which has confused people or businesses or is likely to confuse people or businesses and that under the test set out in Nominet's DRS Policy 3(a)(ii) and that in the control of the Respondent the Domain Name is an Abusive Registration.

### Using the Domain Name to unfairly disrupt the Complainant's business

The Complainant says that the Respondent is using the Domain Name to divert customers to other landing pages offering competitive training, seminars and materials; the consequences of this are not only that the Respondent gains commercially from teaching developed by the Complainant but that it tarnishes the Complainant's trade-mark. The Complainant says that the

Respondent is trading on the name and notoriety of Louise Hay and the trade-mark “Heal Your Life” to offer her own services.

The Respondent says that the Complainant is well aware that she has been using the term “Heal Your Life” to brand her workshops since 2003. The Respondent says that the Complainant is also well aware that she is the owner of earlier rights in the UK to the term “Heal Your Life” and that the Complainant has only filed the trade-marks in bad faith with the aim of expropriating the goodwill and reputation which she has established over the last six years.

It is clear that the Respondent has completed two of the Complainant’s courses and received certification for Advanced Teacher Training on 17<sup>th</sup> September 2000. However the Complainant says that having completed the training the Respondent would have been allowed to lead “Heal Your Life” workshops but that she was never authorized to train other “workshop leaders”, i.e. to offer “teacher training”. It also says that on 20<sup>th</sup> April 2008 the Respondent was officially terminated as a workshop leader for among other reasons attempting to mislead the public by offering “teacher training” for which she was never authorized or trained.

The Respondent says that she has never claimed to be “authorized” by the Claimant to run “teacher training” and as the training that she offers in entirely new work she does not need permission to run her courses from the Complainant.

The Respondent has used the “Heal Your Life” term for many years marketing her workshops in the UK. For example she has provided evidence of courses going back as far as October 2003 (Heal Your Life Weekend Workshop). Before being aware of the Complainant’s cause for complaint the Respondent has used the Domain Name in connection with a genuine offering of goods and services and under Nominet’s DRS Policy section 4, this is one factor that may demonstrate that the Domain Name is not an abusive registration.

In the Declaration of Dr. Patricia Crane submitted by the Complainant in support of its filings under the Rules of the UDRP, the WIPO Domain Dispute Center and Nominet Dr. Crane says that in the spring of 1992 she travelled to the UK presenting a “Heal Your Life” workshop and returned several times to teach the same workshop. However it is also clear from the listing of receipts and booking forms provided by the Respondent that between October 2003 and May 2009 she has carried out “Heal Your Life” workshops and training on over 20 occasions.

I accept the Respondent is using the Domain Name to offer “Heal Your Life Teacher Training” and in part the Domain Name is being used to divert customers to other landing pages offering

competitive training to the Complainants. For example, taking visitors to another website [www.aplacefortheheart.co.uk](http://www.aplacefortheheart.co.uk) also controlled by the Respondent and which offers “Heal Your Life” workshops and which is also being used to promote “Heal Your Life Workshop Teacher Training”. The Respondent is prominently featured in UK search engine results when searches using the term “Heal Your Life” are made.

Whereas it is clear that the Respondent will gain commercially from this and the training offered is based on the teaching originally developed by the Complainant, the training offered also includes teaching developed by others including the Respondent herself. I do not accept that the Respondent is using the Domain Name to unfairly disrupt the Complainant’s business.

Although the Complainant has Rights in the Domain Name, because of the above, I decide that the Respondent has not used the Domain Name in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant’s rights.

#### 7.4 Conclusion

The Expert finds on the balance of probabilities that the Complainant has Rights in respect of a name identical or similar to the Domain Name but that the Complainant has failed to prove, on the balance of probabilities, that the Domain Name, in the hands of the Respondent is an Abusive Registration.

### **8) Decision**

For the reasons set out in detail above, having decided that the Domain Name in the hands of the Respondent is not an Abusive Registration, the Expert directs that no action is required.

**Niall Lawless,**

**Nominet Expert**

**2<sup>nd</sup> November 2009**