

DISPUTE RESOLUTION SERVICE

DRS 08302

Decision of Independent Expert

The London Organising Committee of the Olympic Games
and Paralympic Games Limited

and

David Tiley

1. The Parties

Complainant: The London Organising Committee of the Olympic
Games and Paralympic Games Limited
Address: One Churchill Place
Canary Wharf
London
Postcode: E14 5LN
Country: GB

Respondent: Mr David Tiley
Address: 51 Station Road
Canvey Island
Essex
Postcode: SS8 7NE
Country: GB

2. The Domain Names

2.1 There are 12 domain names in dispute, as follows:

1. 2012londonolympicgamestickets.co.uk
2. 2012londonolympictickets.co.uk
3. 2012olympicgamestickets.co.uk
4. get2012londonolympictickets.co.uk
5. londonolympicgames2012tickets.co.uk
6. londonolympicgamestickets.co.uk
7. official2012londonolympicgamestickets.co.uk
8. official2012olympicgamestickets.co.uk

9. olympicgamest2012tickets.co.uk
10. the2012olympicgamestickets.co.uk
11. theolympic2012gamestickets.co.uk
12. theolympicgamestickets.co.uk

2.2 I refer to these collectively as “**the Domain Names**”. When referring to individual Domain Names in the list, I do so by reference to the relevant number(s) in the above list.

3. Procedural History

- 3.1 The Complaint was received in full by Nominet on 22 February 2010. Nominet validated the Complaint and sent a copy to the Respondent the same day, informing him that he had until 15 March 2010 to lodge a Response.
- 3.2 Nominet used several of the methods of communication provided for under paragraph 2 of the Dispute Resolution Service (“**DRS**”) Procedure in order to bring the Complaint to the attention of the Respondent, and I am satisfied that the Respondent was properly notified. Nevertheless, the Respondent did not lodge a Response. There was therefore no attempt to resolve the dispute by Informal Mediation. Instead, the Complainant was asked whether it wished to opt for a summary decision or a full decision under the DRS Policy (“**the Policy**”). It chose the latter, and on 16 March 2010, the Complainant paid Nominet the required fee to obtain a full written decision of an Expert pursuant to paragraph 7(a) of the Policy.
- 3.3 Nominet invited me, Anna Carboni, 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 that might appear to call into question my independence and/or impartiality, Nominet appointed me as Expert on 24 March 2010.

4. Factual Background

- 4.1 The Complainant is an English company limited by guarantee, incorporated on 22 October 2004. It is the entity responsible for preparing and staging the 2012 Olympic Games that will take place in London. Pursuant to the Host City Contract for the Games of the Thirtieth Olympiad executed on 6 July 2005 by the International Olympic Committee (“**IOC**”), the Mayor of London and the British Olympic Association (“**BOA**”), one of the Complainant’s functions is to protect and enforce the London 2012 “brand” in order to ensure that sufficient funding for the Games may be raised from sponsorship, broadcasting rights and the sale of merchandise and tickets. For the purposes of this dispute, the London 2012 “brand” comprises a mix of registered trade mark rights and statutory rights relating to the Olympics. I describe these, and the Complainant’s interest in the rights, below.
 - (a) “LONDON 2012” is a UK registered trade mark, no. 2359105, whose proprietor is the BOA. It was filed on 19 March 2004 and granted on 10 November 2004 in all available classes of goods and services (1 to 45). Under a Licence dated 23 July 2009, the BOA confirmed that it had granted the Complainant the irrevocable and exclusive right to use and reproduce this trade mark for the purpose of raising funds for the Games through contracts with official sponsors, suppliers and affiliates between 7 July 2005 and 31 December 2012, and delegated responsibility for enforcement matters to the Complainant. The Licence expressly gives the Complainant the right to bring trade mark

enforcement proceedings in its own name, as exclusive licensee, and provides that any domain names that are to be transferred as a consequence of such enforcement proceedings may be transferred to the Complainant.

- (b) "LONDON 2012" is also registered as a Community trade mark, no. 3422921, whose proprietor is the IOC. This mark was filed on 21 October 2003 (claiming a priority date of 16 May 2003) and was registered on 15 July 2005, again across all 45 classes of goods and services. There is a Licence dated 14 August 2009 between the IOC and the Complainant, in similar terms to the one described above for the UK trade mark, though without expressly referring to 7 July 2005 as the date when the Complainant's rights began.
 - (c) "Olympic" and "Olympics" are both protected words that are included in what is called the "Olympics association right", which is a statutory right created by the Olympic Symbol etc. (Protection) Act 1995 ("**the 1995 Act**"). This was stated to be "[a]n Act to make provision about the use for commercial purposes of the Olympic symbol and certain words associated with the Olympic games; and for connected purposes". Pursuant to section 2(1) of the 1995 Act, the Olympics association right confers exclusive rights in relation to the use of *inter alia* the protected words, which are infringed by use of the words in the course of trade, subject to specified defences. Pursuant to The Olympics and Paralympics Association Rights (Appointment of Proprietors) Order 2006 (SI 2006 No. 1119), the Complainant is one of two proprietors of the Olympics association right (the other being the BOA).
 - (d) Combinations of the expressions, "games", "2012" and "London" have further specific statutory protection under the London Olympic Games and Paralympic Games Act 2006 ("**the 2006 Act**"), which is "[a]n Act to make provision in connection with the Olympic Games and Paralympic Games that are to take place in London in the year 2012; to amend the Olympic Symbol etc. (Protection) Act 1995; and for connected purposes". This statute created another *sui generis* right called the "London Olympics association right", which confers exclusive rights in relation to the use of any representation of any kind in a manner likely to suggest to the public that there is an association (such as a contractual or commercial relationship) between the London Olympics and any goods or services or a person who provides them. Examples of expressions that will be taken into account in deciding whether this right is infringed include combinations of "games" with "2012" and combinations of either of those two expressions with "London". Again, defences are set out. The Complainant is the proprietor of the London Olympics association right.
- 4.2 Under section 31 of the 2006 Act, it is a criminal offence for a person to sell or advertise or offer for sale a ticket for one or more London Olympic events, in a public place or in the course of a business, without authorisation from the Complainant.
- 4.3 The Respondent is an individual based in Essex in England, who has stated when registering the Domain Names that he is a "non-trading individual", for the purpose of having his address omitted from the WHOIS service. For reasons that will become clear later in this decision, I do not believe that it is accurate to describe his status as "non-trading". Accordingly, I have included his address details in England in the normal way at the front of this decision.
- 4.4 The Respondent registered all of the Domain Names between 6 and 13 July 2005, on the day of and the days immediately following the announcement by the IOC

that London had won the bid to stage the 2012 Olympic Games. According to Nominet's records, the Domain Names were all subsequently renewed by the Respondent on 1 September 2007 and again on 13 October 2009.

- 4.5 Domain Names 7 and 8 point to websites offering advertising links, which lead to other websites offering tickets to events including London West End theatre productions and male strip shows. The printouts provided by the Complainant (from 6 January 2010) show no links to websites offering Olympic tickets but, on checking the websites at the time of writing this decision, there is one link from the website to which Domain Name no. 7 points. This is a link to "London 2012 Ticket Info" at www.gotickets.com, which purports to offer "2012 London Summer Games Tickets". I do not know whether the operators of this site have been authorised to advertise tickets for future purchase, but the Respondent has not.
- 4.6 The other ten Domain Names point to blank web pages.
- 4.7 On 13 January 2010 the Complainant's representatives, Demys Limited, wrote to the Respondent, enclosing a booklet explaining the Complainant's rights in respect of protecting the London 2012 brand, and complaining about his registration of the Domain Names. The letter asked the Respondent to transfer the Domain Names to the Complainant free of charge. It was sent by normal post and recorded delivery, and the Respondent signed for the latter copy on 19 January 2010, so I am satisfied that he received the letter and its enclosures and that the address set out at the start of this decision is the correct one.
- 4.8 The Respondent did not reply to the letter and took no action in relation to the Domain Names.

5. Parties' Contentions

- 5.1 The Complainant claims to own "Rights" within the meaning of the definition at paragraph 1 of the DRS Policy in respect of the names and words "London 2012", "Olympic", "games", "2012" and "London", and combinations thereof, based on the various registered trade marks and statutory rights which I have already summarised above.
- 5.2 The Complainant asserts that each of the Domain Names is similar to combinations of the names and words in which it claims Rights and that the Domain Names show a consistent pattern of combining these names and words with one or more generic or descriptive words, such as "tickets". The Complainant relies on various previous DRS decisions concerning similarity and emphasise in particular that the test is "similarity" and not "confusing similarity" between the Domain Names and the names in respect of which the Complainant owns Rights.
- 5.3 The Complainant summarises its case on the Domain Names being Abusive Registrations, as follows:

"In light of the Respondent's passive holding of the majority of the Domains it is not possible to determine with absolute certainty the Respondent's intent in registering these. However, the Expert may reasonably infer the following on the balance of probabilities:-

(1) that the Domains were registered with the Complainant and its Rights in mind, given the proximity of the dates of registration to the very public and

worldwide announcement of the Complainant's success in the Olympic bid process (and probably for the primary purpose of unfairly disrupting the business of the Complainant (Policy, paragraph 3(a)(i)(c));

(2) that the Respondent intends a commercial use for the Domains, involving or directly connected with the sale of Olympic tickets, which would be unfairly detrimental to, and/or would take unfair advantage of the Complainant's Rights, given the use of the word 'tickets' in all of the Domains and in particular the reference to 'official' tickets in Domains 7 and 8. The Respondent has not received an official authorisation from the Complainant to offer Olympic tickets for sale. Taking the Domains as a whole, any alternative explanation by the Respondent of a proposed non-commercial use or intent in registration would not be credible; and

(3) that, whatever the Respondent's intent might have been, as the Domains reference the Olympic Games and the sale of Olympic tickets (which are matters for which the Complainant has exclusive responsibility and various statutory rights in the United Kingdom as noted above) the Domains, in the hands of the Respondent, are inherently unfair.

In terms of Section 31 of the 2006 Act it is a criminal offence to sell an Olympic ticket in the course of a business (subject to the defences therein provided) and accordingly it would not be legal for the Respondent or others to use the Domains for this purpose. Section 31 came into force on 30 May 2006 and although the Domains were registered prior to this date the Respondent has renewed the Domains on two occasions since then as noted above.

In all of the above circumstances it is inconceivable that the Respondent could have intended any non-abusive purpose in his registration or could ultimately make any non-abusive use of the Domains."

- 5.4 The Complainant goes on to state that, since the Respondent cannot himself legally use the Domains to sell Olympic tickets or to do anything which creates an association with the Olympic Games, it is reasonable to infer that the Respondent registered the Domain Names primarily to sell them to the Complainant for consideration in excess of the Respondent's expenses (Policy, paragraph 3(a)(i)(A)). Although the Respondent has not yet approached the Complainant, this might reasonably be expected to take place at any time up to the commencement of the Games.
- 5.5 In the Complainant's submission, it is also reasonable to infer that the Respondent registered the Domains primarily as blocking registrations against names or marks in which the Complainant has Rights (Policy, paragraph 3(a)(i)(B)). The Respondent must have known that the Complainant would ultimately be responsible for the sale of tickets for the 2012 Olympics and that some sales would take place on-line, using domain names such as those registered by the Respondent. Therefore he must have intended when registering and renewing the Domain Names to block the Complainant from being able to register and use several of the most suitable and appropriate domain names for the purpose of such ticket sales.
- 5.6 Further, the Complainant asserts that internet users who type any of the Domain Names directly into their browser by way of direct navigation, or who find them through a search engine, will be seeking a website operated by the Complainant or an officially authorised ticket seller under the terms of the 2006 Act, rather than

the Respondent. Given the prominence of the London Olympic Games in the 2012 sporting calendar and the fact that demand for tickets is likely to be very high and of a worldwide nature, and given the fact that Olympic ticket sales are subject to statutory control in the United Kingdom, it is reasonable to infer that the Respondent is using (in the case of Domain Names 7 and 8) or threatening to use (in the case of the passively held Domain Names) the Domain Names in a way which is likely to confuse people or businesses into believing that they are registered to, operated or authorised by, or otherwise connected with the Complainant (Policy, paragraph 3(a)(ii)).

- 5.7 The Complainant also complains that the seventh and eighth Domain Names are likely to be of commercial benefit to the Respondent (or a third party) by virtue of revenue-generating 'pay-per-click' use. This indicates that the Respondent registered the Domain Names with intent to trade off (and thereby take unfair advantage of) the Rights, name and reputation of the London Olympic Games (and the Complainant as its organiser) by enticing Internet users to the Respondent's websites and obtaining their clicks on the advertising links found there. The Complainant invites me to infer that, since the other Domain Names clearly relate to the same subject matter and theme, the Respondent's ultimate intention is likely to be to configure all of the Domain Names to resolve to pay-per-click websites.
- 5.8 Finally, the Complainant goes through the various factors set out in paragraph 4 of the Policy which can sometimes be relied on by a Respondent to demonstrate that a Domain Name is not an Abusive Registration, and contends that none of these can assist the Respondent in this case. I shall deal with these factors in the next section of my decision.
- 5.9 The remedy requested is for the Domain Names to be transferred to the Complainant.
- 5.10 As stated in the Procedural History section above, the Respondent did not lodge a Response.

6. Discussion and Findings

General

- 6.1 Paragraph 2 of the Policy provides that, to be successful under the DRS Procedure, the Complainant must prove on the balance of probabilities that:
- i. it 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, is an Abusive Registration (as defined in paragraph 1 of the Policy).*

Complainant's Rights

- 6.2 Under paragraph 1 of the Policy, "**Rights** means rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning".
- 6.3 There is no doubt that this definition extends to registered trade mark rights in the United Kingdom and elsewhere. By virtue of the UK and Community trade mark

registrations for “LONDON 2012”, and the provisions of the two Licences described under paragraphs 4.1(a) and (b) above, the Complainant has successfully established Rights in respect of this term.

- 6.4 The Complainant has also established that it is a proprietor of the Olympics association right, created by the 1995 Act, which confers exclusive rights in relation to use of the word “Olympic” (see paragraph 4.1(c) above). It seems to me that the definition of “Rights” under the Policy readily extends to such a *sui generis* right, and therefore that the Complainant has established Rights in respect of the term “Olympic”.
- 6.5 Similarly, the Complainant has proved that it is the proprietor of the London Olympics association right, created by the 2006 Act, which confers exclusive rights in relation to the use of representations that are likely to suggest to the public that there is an association between the London Olympics and any goods or services or a person providing them (see paragraph 4.1(d) above). As mentioned previously, the 2006 Act expressly refers to combinations of the expression “games” with “2012” and combinations of either of these two expressions with “London” as being “combinations of expressions” of a kind which indicate that there is an association of the type covered by the London Olympics association right. In my view, the 2006 Act has created enforceable rights on which the Complainant can rely to bring a DRS Complaint. For the purposes of this Complaint, I am satisfied that the Complainant has established Rights in respect of combinations of any of:

- “2012” and “games”;
- “2012” and “London”; and
- “London” and “games”.

Such combinations include combinations of all three of the expressions “2012”, “London” and “games”, and extend to combinations in which other expressions appear, particularly if they have an obvious connection to the Olympics (e.g. the word “Olympic” itself), but also would include generic or descriptive expressions.

Similarity with the Domain Names

- 6.6 As the Complainant submits, I have to find that the name(s) or mark(s) in respect of which the Complainant has Rights is/are similar to the Domain Name. I do not need to find confusing similarity at this stage as I might in a trade mark infringement dispute. The DRS Experts’ Overview, which is published on Nominet’s website to assist participants in DRS disputes, states (at paragraph 2.3) that this first hurdle of establishing similarity of a relevant name or mark is intended to be a relatively low-level test, to demonstrate that the Complainant has a *bona fide* basis for making the Complaint.
- 6.7 The Complainant relies on its registered trade mark rights in the term “LONDON 2012” particularly in relation to Domain Names 1, 2, 4, 5 and 7. Apart from Domain Name 5, these all contain the word string “2012london”. In Domain Names 1 and 2, this appears at the start of the Domain Name, while it is embedded between other words in Domain Names 4 and 7. In the case of Domain Name 5, the two elements of the trade mark are separated by two other words, and appear as “londonolympicgames2012”.
- 6.8 There are difficulties here, in that the requirement of similarity relates “to the Domain Name”, and does not – at least not expressly – relate to just part of the Domain Name. The Complainant has cited a number of DRS cases in which

similarity was found, where the name in which Rights were established was similar to only part of a domain name: the appeal decision in *EPSON Europe BV v Cybercorp Enterprises* (DRS 3027 – *cheap-epson-ink-cartridge.co.uk et al*) and first instance decisions *Deutsche Telekom v ADO1* (DRS 0456 – *t-mobileringtones.co.uk et al*) and *Pickfords Limited v Black Cat* (DRS 0898 – *pickford-removals.co.uk*). But these cases all involve the disputed name being perceived as the most distinctive and dominant component within the Domain Name, such that it was appropriate to find similarity notwithstanding the additional components.

- 6.9 In this case, while I have no difficulty in finding similarity between the Complainant’s registered trade marks and the “2012london” element of Domain Names 1, 2, 4 and 7, notwithstanding the reversal of “London” and “2012”, I find it harder to reach a conclusion of similarity with the “londonolympicgames2012” element of Domain Name 5 and harder still to conclude that there is similarity in relation to each Domain Name as a whole. The difficulty arises in particular from the fact that the word “olympic” is itself distinctive and cannot be categorised as merely descriptive or generic in the same way that other aspects of the Domain Names, such as “tickets”, could.
- 6.10 This could be a problem for the Complainant (though I do not express a concluded view on the point) if it were not for the fact that the Complainant has also established Rights in respect of the word “olympic”. Although a strict interpretation of paragraph 2(a)(i) of the Policy would indicate that the Domain Name concerned must be similar to an individual name or mark in which the Complainant has Rights, I believe that it must extend to a case where the Domain Name consists of a combination of two or more terms in which the Complainant has Rights. To conclude otherwise would create a potentially large hole in the Policy. One could come up with domain names comprising two distinctive marks combined together, such as “coca-cola-fanta.co.uk” or “glaxosmithkline-ribena.co.uk”, and try to get around the Policy by arguing that the domain name as a whole is not similar to either one or the other of the recognisable trade marks contained within it because of the presence of a second distinctive mark. Such an outcome cannot be correct.
- 6.11 Based on this analysis, I have concluded that Domain Names 1, 2, 4, 5 and 7 are each similar to combinations of the Complainant’s registered trade mark LONDON 2012 and the protected word “olympic” and that this similarity is sufficient to get over the first hurdle.
- 6.12 On the other hand, I do not accept the Complainant’s suggestion that the inclusion of just “2012” in Domain Names 3, 8, 9, 10 and 11, or just “london” in Domain Name 6 is sufficient to result in similarity with the LONDON 2012 trade mark. In those and other cases, it is necessary to rely on the statutory rights in the term “olympic” and the other terms as discussed below.
- 6.13 Even if I have stretched the concept of similarity too far in relation to Domain Names 1, 2, 4, 5 and 7, by combining the trade mark rights in “LONDON 2012” with the statutory rights in “olympic”, I believe that all of the Domain Names, including these five may be dealt with in any event by reference to the Complainant’s Rights under the 2006 Act. That Act not only creates rights in combinations of the specific expressions listed therein, being for present purposes, “2012”, “games” and “london”, but extends to “any representation (of any kind) in a manner likely to suggest to the public that there is an association between the London Olympics and (a) goods or services, or (b) a person who provides goods or services” (2006 Act, Schedule 4, paragraph 1(1)).

- 6.14 It seems to me that in all but the twelfth Domain Name, there is a representation that the person behind the Domain Name is or will in the future be selling tickets for the London 2012 Olympic Games. It is not necessary for both the words “london” and “2012” to appear for this representation to be made: one of them is enough, since almost every internet user would be aware that the London Olympics means the 2012 Olympics and vice versa.
- 6.15 Domain Names 7 and 8 contain an express indication of an association with the London Olympics, given the use of the word “official”. In my opinion, Domain Names 1-6 and 9-11 contain an implied representation of such an association, because – even without the term “official” – they convey the message that the person behind the Domain Names is authorised to offer tickets for the London Olympics for sale. Although many people will not know the precise arrangements under which tickets will be made available, they will be aware of the reality that sales will be tightly controlled. There has already been considerable publicity about this fact, and I believe that it would be assumed in any event. Some sort of contractual or commercial relationship is therefore being implied through the use of Domain Names that convey the message that Olympic tickets can be purchased. I therefore conclude that the Complainant has Rights in respect of names that are similar to each of the Domain Names 1-11.
- 6.16 I note that the term “olympic” is mis-spelt as “oylimpic” in Domain Names 7 and 8. One cannot tell whether this was done deliberately or by mistake. The “typo” is hardly noticeable and makes no difference to the above analysis.
- 6.17 Domain Name 12 does not contain either “london” or “2012”. However, in the context of the timing of its registration and renewals, it is likely to be assumed to relate to tickets for the London 2012 Olympics, and therefore the term “the olympicgametickets” used in the context of a domain name probably falls within the scope of the London Olympics association right. Even if there is doubt about that, I believe that the inclusion of the term “olympic” is in this case enough for the Complainant to rely on its rights under the 1995 Act, since “olympic” is the distinctive and dominant part of the Domain Name. I therefore also conclude that the Complainant has Rights in respect of a name that is similar to Domain Name 12.

Abusive Registrations

- 6.18 Paragraph 1 of the Policy defines an “**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) has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant’s Rights.”*

- 6.19 I must take into account all relevant facts and circumstances which point to or away from the Domain Names being Abusive Registrations. I must consider each of the Domain Names on its own merits, in particular whether the content of the names themselves or any facts that are specific to any of them might result in a different outcome from that in relation to the others.

6.20 Paragraph 3 of the Policy sets out a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration. Those that are relied on by the Complainant are as follows:

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

(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;

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

(C) for the purpose of unfairly disrupting the business of the Complainant;

(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;”

6.21 I have concluded that the first limb of the definition of “Abusive Registration” was not satisfied when the Respondent registered the Domain Names in early July 2005 because the Complainant has not established that it then owned the Rights on which it now relies. The London Olympics association right, covering representations suggesting a connection with the London Olympics, was only created by the 2006 Act. The Olympics and Paralympics Association Rights (Appointment of Proprietors) Order 2006, which appointed the Complainant as one of the proprietors of the Olympics association right under the 1995 Act (covering the term “olympic”) only came into force on 12 May 2006. And the Licences relied on in relation to the UK and Community trade marks are dated 23 July 2009 and 14 August 2009 respectively. Although the Licences each refer to the existence of a previous (presumably unwritten) licence, possibly dating back to 7 July 2005, insufficient information has been given to prove on the balance of probabilities that the Complainant had relevant Rights in the trade marks at the time when the various Domain Names were registered. Indeed, the Community trade mark had not even been registered at the time, though it had been filed.

6.22 The statutory rights were in existence and owned by the Complainant by the time that the Respondent renewed the Domain Names in September 2007 (and again in October 2009). The Community trade mark was registered by then, and it is more readily arguable that the Complainant had Rights as licensee under both trade marks by September 2007 – and certainly by October 2009, by which time the formal written Licences had been executed.

6.23 The DRS Experts’ Overview states that renewal of a registration does not count as “registered or otherwise acquired” in the definition of “Abusive Registration” and goes on to say: *“While arguably [renewal] constitutes a re-registration, an innocent registrant could be deprived of his domain name, simply because, by the time that the registration comes up for renewal, he has been given notice of a rights owner’s*

rights, rights which may post-date the original registration. This is not what the Policy was intended to cover”.

- 6.24 The Overview is not definitive or binding on Experts, but I would only diverge from it where the particular circumstances of the case make it appropriate to do so. I do think that this is such a case. In particular, this case is quite different from the example given in the Overview, and it does seem to me to be precisely the type of case that the Policy was intended to cover.
- 6.25 In view of the timing of the original registrations, immediately following the high profile public announcement of the successful bid to host the 2012 Olympic Games in London, it is highly likely that the Respondent registered the Domain Names with a view to cashing in on the event. Although he may not have been aware of who or which entity would be responsible for managing the Games and administering ticket sales, he would undoubtedly have been aware that these responsibilities would be given to a particular entity or entities and that the sale of tickets for the Games would not be a ‘free-for-all’ but would be subject to stringent controls. Such matters are common knowledge. He would also have been aware that the particular Domain Names chosen by him would have been very valuable to that entity/those entities once sales got underway. In turn, there was considerable prospective value to the Respondent, derived from the future price that the relevant entity might be prepared to pay for the transfer of the Domain Names or alternatively the price that might be paid for the use of the Domain Names to sell tickets. Additional value could also be derived in the meantime from pay-per-click advertising.
- 6.26 In other words, while the relevant Rights did not actually exist (or have not been proved to have been owned by the Complainant) at the time, it seems reasonable to infer that the Respondent registered the Domain Names with the prospect of taking unfair advantage of the Rights which were bound to be – and were subsequently – granted to an entity which turned out to be the Complainant. When the Respondent renewed the Domain Names, he was thus continuing with his plan at a time when the Complainant had by then acquired Rights. In these circumstances, it seems to me reasonable to say that renewal of the Domain Names is technically a re-registration and as such is capable in circumstances such as these of satisfying the first limb of the definition of “Abusive Registration”.
- 6.27 By the time of the first renewal, it was a criminal offence for anyone other than the Complainant or those authorised by the Complainant to sell or offer for sale in the course of business a ticket for London Olympic events. As discussed above, the Domain Names themselves all make a representation that tickets for the London Olympics will be available through them. They effectively amount to a business advertisement for such tickets. Such a representation and advertisement is unfairly detrimental to the Complainant’s Rights, in that any sales made by using the Domain Names will be lost (or uncontrolled) sales for the Complainant, and will have resulted from the use of the London Olympics association right, contrary to the provisions of the 2006 Act.
- 6.28 Turning to the second limb of the “Abusive Registration” definition, in case I am wrong in relation to the renewal point, the question here is whether the Respondent has since registration “used” the Domain Names or any of them in a manner which has taken advantage of or has been unfairly detrimental to the Complainant’s Rights.

- 6.29 There is no definition of “use” in the Policy, but it is clear from a combination of the factors set out in paragraph 3 (both as above and some of the other factors not specifically relied on by the Complainant) and from previous DRS decisions that this does not have to involve active steps being taken after registration. Merely “squatting” on domain names can in some cases be enough if the result is that, for example, people are likely to be confused into assuming a connection with the Complainant (Policy, paragraph 3(a)(1)(ii)).
- 6.30 There appear to be broadly three possible rational explanations for the Respondent’s continued ownership of the Domain Names:
- (a) The first is that the Respondent intends to use them for selling Olympic tickets. As discussed above, the Respondent is not authorised to do so and would be taking unfair advantage of the Complainant’s Rights if he were to do so.
 - (b) The second is that the Respondent wants to use them to make pay-per-click revenue out of them. This has been proven to be the case for Domain Names 7 and 8, which might be expected to bring in the highest number of clicks due to the express indication that the relevant websites are a source of “official” Olympics tickets. It is a reasonable likelihood in relation to the other Domain Names as well because the names include terms for which internet users are likely to search if they wish to look for Olympic tickets. Thus such use carries with it the risk of confusion.
 - (c) The third is that the Respondent is sitting on the Domain Names until approached by the Complainant with a sufficiently high price for a transfer. He could be reasonably confident of such an approach, as an alternative to litigation or a DRS complaint, because his registration of the Domain Names effectively blocks the Complainant from registering some of the most obviously attractive domain names for selling Olympic tickets. The Complainant has publicised the fact that Olympic tickets will not go on sale until 2011, so it is not surprising that no approach has been made to the Complainant before now.
- 6.31 It is not possible to say for certain which of these explanations is the correct one. Indeed the Respondent may well be keeping all of these options open during the lead-up to the London Olympics. However, the inevitable result of his using the Domain Names for any of these purposes will be an advantage to him to which he is not entitled and, although it seems unlikely that disruption of the Complainant’s business is a key driver for the Respondent (in the absence of any evidence to that effect), disruption or at least inconvenience and expense will inevitably flow from the Respondent’s use of the Domain Names in any of the above scenarios. Accordingly, any of the three explanations would in my opinion amount to use that takes unfair advantage of and/or is unfairly detrimental to the Complainant’s Rights.
- 6.32 I therefore turn to consider whether there are any factors which point away from the Domain Names being abusive. Paragraph 4 of the Policy sets out a non-exhaustive list of such factors, and the Complainant dealt with each factor which might conceivably have been brought into play by the Respondent, which are as follows:

“4(a)(i) Before being aware of the Complainant’s cause for complaint (not necessarily the ‘complaint’ under the DRS) the Respondent has:

(A) used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services;

(B) been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name; or

(C) made legitimate non-commercial fair use of the Domain Name; or

(ii) The Domain Name is generic or descriptive and the Respondent is making fair use of it;

....

(e) Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) is not of itself objectionable under the Policy. However, the Expert will take into account:

(i) the nature of the Domain Name;

(ii) the nature of the advertising links on any parking page associate with the Domain Name; and

(iii) that the use of the Domain Name is ultimately the Respondent's responsibility."

6.33 Although the Respondent was not contacted by the Complainant until January 2010, I do not think that he can legitimately rely on this as the date on which he first became aware of the Complainant's "cause for complaint" within the meaning of paragraph 4(a)(i). As discussed above, the Respondent was almost certainly (or alternatively should have been) aware at the outset that an entity such as the Complainant would have cause for complaint once preparations for selling Olympic tickets got underway. In any event, any offering of tickets through the Domain Names could not be a "genuine offering" in circumstances where this would infringe the Complainant's London Olympics association right and would amount to a criminal offence. If the Respondent had wanted to use the Domain Names to operate a genuine Olympic ticket website, then he would no doubt have applied to the Complainant some time ago for authorisation to do so, or would at least have responded with that explanation when he received the warning letter in January or in a Response to the Complaint. I have therefore discounted that possibility.

6.34 There is no evidence that either 4(a)(i)(B) or (C) applies.

6.35 In relation to paragraph 4(a)(ii), while some uses of the various terms set out in the Domain Names could in certain circumstances be said to be descriptive or generic, the combinations used in the Domain Names themselves cannot be excused by such an explanation.

6.36 Finally, in relation to paragraph 4(e), I adopt the Complainant's submission, as follows:

"while sale of traffic is not of itself objectionable under the Policy it is clear that such sale with regard to Olympic tickets could not be anything other than abusive in terms of the Policy since it trades off the substantial goodwill invested in the London Games; it would be likely to divert traffic from officially authorised ticket sellers; and it could potentially result in, lead to or aid the

commission of criminal offences under the 2006 Act should Internet traffic be diverted to unauthorised ticket sellers. The use of the Domains is ultimately the Respondent's responsibility (Policy, paragraph 4(e)(iii)) and in the present case it is impossible to conceive of any use of any of the Domains involving the sale of traffic which would not be unfairly detrimental to the Complainant's Rights."

6.37 The Respondent has declined to present any alternative explanations to those which appear to be the most likely in the circumstances of the case. And he did not offer any explanation when given the opportunity in correspondence with the Complainant's representatives. Indeed, his silence and continued use of Domain Names 7 and 8 for pay-per-click advertising, as well as continued holding of the other Domain Names, following the information provided to him about the Complainant's rights, weaken his ability to defend the allegation of abuse. Although the arguments about the abusive nature of the registrations are stronger for some of the Domain Names than for others, in the absence of any explanation for any of them, I have concluded that they are all part of a scheme that takes unfair advantage of and is unfairly detrimental to the Complainant's Rights, and as such are all Abusive Registrations.

7. Decision

I find that the Complainant has Rights in respect of names and marks which are similar to each of the Domain Names and that the Domain Names, in the hands of the Respondent, are all Abusive Registrations. I therefore direct that all of the Domain Names listed in Section 2 above should be transferred to the Complainant.

Signed Anna Carboni

Dated 16 April 2010