

DISPUTE RESOLUTION SERVICE

D00010221

Decision of Independent Expert

(Summary Decision)

Keolis (UK) Ltd

and

Mr Justin Thomson

1. The Parties:

Lead Complainant: Keolis (UK) Ltd
Keolis/SNCF West Coast Ltd
Forsyth Business Centres
2nd floor, The Podium
One Eversholt Street
Euston
London NW1 2DN
United Kingdom

Respondent: Mr Justin Thomson
6 Spring Gardens
Spencers Wood
Reading
RG7 1BD
United Kingdom

2. The Domain Name(s):

keolis.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 paragraphs 2 and 4 of the Procedure.

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 keolis.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)

Paragraphs 2 and 4 of the Nominet Dispute Resolution Procedure (“the Procedure”)

Paragraph 4a of the Procedure provides that Nominet will check that the complaint complies with the Policy and Procedure and if so Nominet will forward it to the respondent together with an explanatory coversheet within 3 Days of receipt of the complaint. A Day is defined as any day other than Saturday, Sunday or any bank or public holiday in England and Wales. Paragraph 4b of the Procedure provides that if Nominet find that the complaint does not comply with the Policy and Procedure Nominet will promptly notify the complainant of the deficiencies identified and the complainant will have 3 Days from receipt of notification to correct the deficiencies and return the complaint to Nominet, failing which Nominet will deem the complaint to be withdrawn.

In this case the complaint was received by Nominet on 31 August 2011. On the same day Nominet sent an e-mail to the complainant inviting the complainant to review its case. In this e-mail it was stated that Nominet does this when it receives short complaints or complaints which do not have supporting evidence, and the complainant was given some guidance to help assess its complaint. The complainant was informed that if it wished to withdraw its complaint and submit a new one it should advise Nominet by e-mail but if Nominet did not hear back from the complainant within 3 working days it would send the complaint to the registrant. As Nominet did not hear from the complainant within this time limit the complaint was notified to the respondent (by royal mail special delivery and by e-mail) on 7 September 2011.

I am satisfied that the complaint was sent to the respondent in accordance with paragraph 2 of the Procedure. However, on the face of it, Nominet has not complied with the time period to forward the complaint under paragraph 4a of the Procedure of 3 Days from receipt of the complaint. In this respect, I do not consider that paragraph 4b of the Procedure applies to the guidance e-mail sent by Nominet as it was not a notification of deficiencies in the complaint, with the consequence of the complaint being deemed withdrawn if these were not remedied within the stipulated time period. Instead the e-mail gave the complainant the opportunity to re-assess its complaint and if it did nothing the complaint would still proceed.

However, on my construction of paragraph 4a, I consider that the complaint was only received by Nominet once it was verified that the complainant wanted to proceed with it, by not responding to Nominet's guidance e-mail within the stipulated period. On that construction the complaint has been forwarded by Nominet within the time period set out in paragraph 4a. Further, under paragraph 12 of the Procedure Nominet or the Expert may in exceptional cases extend any period of time in proceedings under the DRS (the service provided by Nominet according to the Policy and the Procedure). If, contrary to my construction above, an extension of time is required in relation to the forwarding of the complaint then, if this has not already been granted by Nominet under paragraph 12, I exercise my discretion to grant such an extension. I consider that such a guidance e-mail from Nominet to a complainant is very useful as it helps ensure that the complainant is aware of what it is required to prove, on the balance of probabilities, under the Policy and it also encourages the complainant to submit appropriate evidence in support of its complaint.

Other Comments

It is regrettable that the complainant did not take the opportunity given by Nominet to withdraw its complaint and submit a new one, as the complainant has adduced only limited evidence in support of its complaint. As this is a summary decision I will not set out in full the reasons for my decision. However, I would like to comment on the issue of Rights. The complainant is not the owner of the Community trade mark for 'Keolis' annexed to the complaint and has not adduced any evidence that it is licensed or authorised to use this mark or that it is an associated company of the trade mark owner or any evidence of its use of the Keolis name. I therefore do not find that 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.

8. Decision

Transfer	<input type="checkbox"/>	No action	<input checked="" type="checkbox"/>
Cancellation	<input type="checkbox"/>	Suspension	<input type="checkbox"/>
Other (please state)	<input type="checkbox"/>		

I direct that NO ACTION be taken in relation to the Domain Name.

Signed: Dr Patricia Jones

Dated: 28 October 2011