

**DISPUTE RESOLUTION SERVICE**

**D00010929**

**Decision of Independent Expert  
(Summary Decision)**

Cupid plc

and

Mr Derek McComisky

**1. The Parties:**

Lead Complainant: Cupid plc  
23 Manor Place  
Edinburgh  
Lothian  
EH3 7DX  
United Kingdom

Respondent: Mr Derek McComisky  
Northfield House  
Longridge  
Bathgate  
West Lothian  
EH47 9AA  
United Kingdom

**2. The Domain Name(s):**

be-naughty.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 be-naughty.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)

The Domain Name in issue can be most sensibly understood as the phrase “be naughty” with the space replaced by a hyphen together with the “.co.uk” suffix.

The Complainant’s case as to abuse was as follows:

“The disputed domain has been used in a manner which has taken unfair advantage of the successful reputation of Complainant’s business as a genuine customer could be fooled into believing that this site was in some way affiliated with the Complainant’s business. Clearly there is potential for confusion of customers as the mere fact that the mark “-“ has been added to our trademark does not in any way make the disputed domain name unique or clearly different from the Complainant’s trade mark, so as to avoid any consumer confusion and Complainant suggests that the redirection of innocent consumers to competitor websites, whilst profiting from commission for such redirection, by the disputed domain owner, constitutes an abusive registration.”

However, no evidence was provided of any actual use that had taken unfair advantage. There was certainly no evidence before me of either of the existence of a “site” or that the Respondent had been redirecting consumers to competitor websites, or had been “profiting from commission from redirection”.

It would also appear that at the date of this decision no website is operating from the Domain Name

Further, notwithstanding the Complainant’s claims to an extensive reputation, it was not suggested in the Complaint that the phrase “be naughty” could only be exclusively understood as referring to the Complainant.

In the circumstances, the Complainant has failed to make out its case.

## 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"/> |            |                                     |

Signed: Matthew Harris

Dated: 16 March 2012