

DISPUTE RESOLUTION SERVICE

D00012194

Decision of Independent Expert

Ufford Parish Council

and

Ian Glew

1. The Parties

Complainant: Ufford Parish Council
Stonycroft
Millstone Lane
Barnack
Stamford
Lincolnshire
PE9 3ET
United Kingdom

Respondent: Ian Glew
Hall Farm House
Main Street
Ufford
Stamford
Lincolnshire
PE9 3BH
United Kingdom

2. The Domain Name

<uffordparishcouncil.org.uk> ("the Disputed Domain Name")

3. Procedural History

The Complaint was filed with Nominet on 27 January 2014. The next day Nominet wrote to the Complainant inviting it to submit supporting evidence and the Complainant did so on 5 February 2014. Nominet notified the Respondent by post and by email on the same day, stating that the Response had to be received on or before 26 February 2014. The Response was filed on 25 February 2014, further to Nominet's reminder on 24 February 2014. Nominet notified the Complainant that a Reply had to be received on or before 5

March 2014 and reminded the Complainant of this on 3 March 2014. The Complainant did not file a Reply. The mediator was appointed on 10 March 2014.

The Informal Mediation procedure failed to produce an acceptable solution for the parties and so on 10 April 2014 Nominet informed the Complainant that it had until 28 April 2014 to pay the fee for the decision of an Expert pursuant to paragraph 7 of the Nominet Dispute Resolution Service Policy ("the Policy"). On 23 April 2014 the Complainant paid Nominet the required fee.

On 28 April 2014 the undersigned, Jane Seager ("the Expert"), confirmed to Nominet that she was independent of each of the parties and that, to the best of her knowledge and belief, there were no facts or circumstances, past or present (or that could arise in the foreseeable future) that needed to be disclosed as they might be of such a nature as to call in to question her independence in the eyes of one or both of the parties.

4. Factual Background

The Complainant is Ufford Parish Council. It represents the residents of Ufford, a village in North Cambridgeshire with over 200 inhabitants. The Council was created as a result of the Local Government Act 1958 and held its first meeting in 1965. It has held regular monthly meetings ever since and is concerned with the general wellbeing of the village (for example with regard to planning applications, grass cutting etc). Councillors are elected and all residents are invited to Council meetings.

The Respondent is Mr Ian Glew. He was an Ufford Parish Councillor for some years but resigned in 2008. The Respondent was present at various meetings of the Complainant when a website and the budget for it were discussed, as evidenced by the corresponding minutes.

The Disputed Domain Name was registered on 22 May 2007 by the Respondent. It is currently pointing to a website headed "Ufford Online" giving information relating to the village of Ufford and linking to information about parish councils in general.

The Complainant asked the Respondent to transfer the Disputed Domain Name to it on several occasions in 2009 / 2010 (evidence of any more recent demands has not been supplied). The Respondent refused. The Complainant is therefore currently using <http://uffordvillage.btck.co.uk/> to point to its own website.

5. Parties' Contentions

Complaint

Complainants' Rights

The Complaint was very short and thus the Complainant's submission in this regard may be reproduced in its entirety, as follows:

"The domain name was first registered by Mr Glew on behalf of the Council when he was a councillor. He resigned from the Council on 1 November 2008 and has refused to surrender the domain name to the council or cooperate in any way. Ufford Parish Council is an elected council within Peterborough City Council, the unitary authority. The

Council asserts the right to the domain name as it should be operated by and on behalf of the legally titled parish council and not an individual."

After Nominet's email pointing out that no evidence had been submitted, the Complainant submitted evidence with regard to the following:

- The Complainant (when and why it was created, its geographical location, its role and how it functions).
- The Complainant's relationship with the Respondent (the dates when the Respondent was elected and re-elected, his role on the Council and references to the proposed website in minutes of meetings attended by the Respondent).
- The Respondent's resignation (the email of resignation, the corresponding minutes).
- The Complainant's "right to the name" (various minutes of council meetings referring to the website and the budget for it).
- The Respondent's refusal to transfer the Disputed Domain Name (various correspondence between the Complainant and the Respondent).

Abusive Registration

Again the Complainant's initial submission was very short and may be reproduced as follows:

"The domain name registration has been renewed since Mr Glew resigned, despite the fact that he had severed all links with the Council. The site is neither up to date or complete, members of the public and organisations seeking information or contact details are unable to acquire them. The Council is prevented from posting a wide range of statutory information such as: dates of meetings, agendas, minutes of meetings, financial reports and many other matters. This means, the Council is being misrepresented on the internet and visitors to the site are unable to interact with it. In response to the Council's letters, Mr Glew has suggested the Council sets up a new site of its own. If the Council posts a site with an alternative domain, it will still leave a site which purports to be that of the Parish Council."

After Nominet's email pointing out that no evidence had been submitted, the Complainant submitted evidence with regard to Abusive Registration, which consisted of the following assertions, together with three screen captures:

- "1. The domain was originally registered by Mr Glew on behalf of the Council, to enable the building and posting of a website intended to represent the Council and the community it serves. It was meant to be a resource guide and information centre for the village.
2. Mr Glew was an elected and serving member of the Council during the period of research, development and fulfilment. There is no evidence that he considered the domain or the website to be his personal property, or indeed any statements from him to that effect. And indeed, he was Chairman of the Council for most of the period.
3. The reporting of progress to the Council (minuted on many occasions) and budgeted expenditure, indicate that it was a Council project and not a personal website.

4. When searching for Ufford Parish Council via Google one can see that the results purport to be that of the Council. Three screenshots are included showing, Google results, Facebook results and the website using the domain uffordparishcouncil.org.uk".

Response

The Respondent's Response takes various statements or assertions made by the Complainant in its submissions and sets out the Respondent's views on them, as follows:

- Registered on behalf of the Council

In the Respondent's opinion whilst this is stated as a fact, it differs from reality. There is no more than the discussion of the need for a website in the copious documentation submitted by the Complainant. There is no specific legal resolution nor any minutes proposing that the Respondent would register the Disputed Domain Name on behalf of the Complainant and recover the costs.

- Ufford Parish Council is an elected Council

The Respondent states that there is no legal requirement in the Local Government Act 1972 or subsequent Acts requiring a Town or Parish Council to have a website. The Respondent adds that where any part of local government wishes to have a website they are eligible to have and use a .GOV suffix to ensure that the site is clearly identifiable.

The Respondent underlines that he is not planning to acquire the same domain with all the available suffixes, for example .COM. EU or .BIZ as there are now so many suffixes available that this is not in reality a practicable option.

In the Respondent's opinion this begs the question whether the Complainant proposes to bring actions against every registration. The Respondent wonders what the Complainant would do if Ufford Parish Council in Suffolk were to register [<uffordparishcouncil.eu>](mailto:uffordparishcouncil.eu). The Respondent asserts that this was a situation the government foresaw with the creation of the .GOV domain. The Respondent wonders whether the email address uffordparishcouncil@gmail.com would be abusive as hundreds of parish councils do this all the time. The Respondent states that the Complainant has had 3 years to avail itself of the .GOV option but has failed to do so.

- The site is neither up to date or complete

In the Respondent's opinion the Complainant is simply not in a position to make such unsupported statements. The Respondent asserts that since 28 June 2013 there have been 18 major updates, upgrades and ongoing maintenance and attaches a corresponding schedule. This includes the complete migration of the web platform to the then latest version of the CMS (Content Management System). According to the Respondent this was a very major undertaking which required 2 weeks of preparation and dry runs - every major component has been upgraded at least once.

The Respondent asserts that the website is backed up on a weekly basis and a copy downloaded for safety, in addition to the backups performed by the host. The Respondent states that no responsible web hosting company would continue to host out of date web sites because they pose such a significant security threat to other sites on shared hosting servers.

The Respondent underlines that no evidence has been provided to support the statement "not complete" and wonders whether there is a legal requirement for websites to be "complete". The Respondent states that the website is complete for his purposes and no casual visitor would be able to discern if it was incomplete. Thus the Respondent asserts that this is simply a preposterous and unsupported statement by the Complainant.

- The Council is prevented from posting a wide range of statutory information

In the Respondent's opinion the implication of this statement is that the Complainant has been unable to provide about 200 residents with any form of digital information, such as dates of meetings, agendas, minutes and financial reports. However this is incorrect as the Complainant has a website at <http://uffordvillage.btck.co.uk/ParishCouncil> which includes this kind of information. The Respondent therefore asserts that a key premise of the Complainant's "abusive registration" argument, the denial of a website, is not true.

- Misrepresentation on the internet

The Respondent states that since the dispute originally arose he has completely redesigned the website for the specific avoidance of doubt. The primary name was changed so that "Ufford Online" now appears in searches. In the Respondent's opinion it is now generally accepted that domain names now play little part in searches as users do not use them and certainly no longer type them - they rely upon the primary name, in this case Ufford Online.

The Respondent asserts that he could make a website with the domain name <qwerty.com> but give it the primary name of Ufford Parish Council and it would appear next to the Complainant's website in search engine results.

The Respondent states that the website previously used a mast image of the village church, but this was removed to ensure that there was no confusion. The Respondent points out that the Complainant's current website uses a very similar image and states that in his opinion this is not the action of an organisation wishing to differentiate its offering or reduce confusion.

- Other Matters

The Respondent states that there is much innuendo in the Complainant's accompanying documents and provides comments on them in an attachment. In particular, in the Respondent's opinion much is made by the Complainant of financial items relating to the website. However, the Respondent asserts that the Complainant fails to mention that these were budget items which were subsequently reversed.

The Respondent also states that the accounts do not show a single pound spent on the alleged council website, and there is no minute of approval to pay any amount at any time. The Respondent points out that Parish Councils must approve and minute every item of expenditure, but the Complainant has not provided a copy of such a minute, presumably because one does not exist.

The Respondent also states that there are more telling omissions: no copy of the invoice, no copy of any receipt of payment, no copy of the bank statement proving payment and no copy of the cash-book entry showing payment to the Respondent. In the

Respondent's opinion no such evidence exists, which is why it has not been provided, and the Complainant never paid for or contributed to the Respondent's website at any time. The Respondent asserts that if the Complainant could produce such documents, this dispute would not be happening.

The Respondent concludes by stating that there is simply no documentary evidence that he registered the Disputed Domain Name for the Complainant and no confirmation of this. In addition, no evidence has been produced to support the Complainant's accusation of "misrepresentation".

6. Discussion and Findings

General

Under paragraph 2(a) of the Policy, for the Expert to order a transfer of the Disputed Domain Name, the Complainant is required to demonstrate, on the balance of probabilities, both of the following elements:

- "(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, is an Abusive Registration."*

Complainant's Rights

The Policy defines Rights as "*rights enforceable by the Complainant, whether under English law or otherwise*".

The Expert is satisfied, based on the evidence presented, that the Complainant has the necessary Rights in the term UFFORD PARISH COUNCIL. Even though the Complainant has no registered trade mark rights, the Expert is satisfied that it possesses common law rights, given the evidence submitted as to the Complainant's existence and activities, and that the relevant section of the public would associate the name UFFORD PARISH COUNCIL with the services provided by it (see also *Aylesbury Vale District Council and Digital Assets Inc*, Nominet DRS 05877).

Furthermore, the Policy stipulates that the name or mark in which the Complainant has Rights (UFFORD PARISH COUNCIL) must be identical or similar to the Disputed Domain Name (<uffordparishcouncil.org.uk>).

It is accepted practice under the Policy to discount the ".ORG.UK" suffix, and so as a result the Expert finds that paragraph 2(a)(i) of the Policy is satisfied and that the Complainant has Rights in respect of a name which is identical to the Disputed Domain Name.

Abusive Registration

Moving on to paragraph 2(a)(ii) of the Policy, "Abusive Registration" is defined in paragraph 1 of the Policy to mean a domain name which:

- "(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."*

Having considered the parties' submissions in detail, it is clear that (i) relating to abusive registration has not been made out, as the Respondent was authorised by the Complainant to register the Disputed Domain Name. Indeed the Complainant conceded this in its letter of 29 September 2009 to the Respondent requesting transfer, which contains the following paragraph:

"Although you were entitled to register the domain name, the fact that you do not now have the Council's consent to operate the website or use the domain name means that you are infringing the Council's intellectual property rights and are not permitted to carry on using the Council's title and domain name."

However, the Expert finds that (ii) relating to abusive use is satisfied. Unfortunately neither of the parties was legally represented and much of the information and argumentation provided was slightly off the point, making this dispute into something rather more complicated than it actually is. Neither party referred to the particular provisions of the Policy in their submissions, which is unfortunate as the Policy clearly underlines what constitutes abuse and under what circumstances an Expert will order the transfer of a domain name. There also appeared to be some confusion on occasion concerning the Disputed Domain Name and the website to which it is pointing. Just to be clear, Nominet Experts are only able to assess whether or not a domain name is abusive and should be transferred. Any website to which such a domain name is pointing will greatly assist in the Expert's decision regarding the domain name, but the Expert's decision can have no bearing on the actual website content and this will remain under the control of the party who is responsible for it (more often than not this is in fact the respondent).

Moving on to the specific issues raised by this case, the Expert would be hard pressed to think of a situation where a domain name exactly reflecting the name of an organisation could be pointed to a website run by an unconnected third party without this being abusive in some way if the organisation itself did not consent. In other words, internet users would generally expect the domain name string <nameofparishcouncil> to belong to a genuine parish council going by that name, no matter what the domain name extension. Whilst the content of any corresponding website may well make it clear that it is being run by a third party as a result of disclaimers and the like, the domain name itself will have caused the internet user to stray on to a website that he or she presumably did not initially intend to visit (so-called "initial interest confusion"). If the website is not actually run by the organisation reflected in the domain name then it is difficult to see how confusion will not arise, regardless of the website content.

In the present case, the Respondent argues that he has "*completely redesigned the website for the specific avoidance of doubt!*" and indeed the words "*Ufford Online*" do appear prominently in the top left hand corner twice. If, as it seems the Respondent is attempting to argue, the website is supposed to simply be a general source of information about the village and not the mouthpiece of the Complainant itself, then it is difficult to see how the Disputed Domain Name could ever be appropriate to direct internet users

there. Faced with the Disputed Domain Name, which simply reflects the Complainant's name with no additional adornment, it is clear that the vast majority of internet users would believe that any corresponding website would not just be *about* the Complainant, but would be *controlled* by the Complainant too. Confusion is therefore inevitable.

Furthermore, in the Expert's opinion, the content of the actual website doesn't do a great deal to dispel such confusion: in this instance we are not dealing merely with "initial interest confusion" which is dispelled upon arrival at the website, but confusion full stop. The first page of the website talks generally about Ufford and has four links in the centre allowing internet users to click to find out more about parish councils, councillors, clerks etc. This certainly does not assist in showing that there is no link between the website and the Complainant, and neither does the fact that there is no prominent disclaimer explaining that the website is being run by someone with no connection to the Complainant.

Paragraph 3(a) of the Policy sets out a non-exhaustive list of factors which may be evidence of abuse. Whilst neither party actually referred specifically to any provisions of the Policy in their submissions, the Expert finds that paragraph 3(a)(ii) is satisfied, which reads as follows:

"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"

As a result, the Expert finds that abuse has been made out and would thus order the Disputed Domain Name to be transferred to the Complainant. For the avoidance of doubt, the Respondent is of course technically free to continue to operate a general website about Ufford using a non-misleading domain name (although in this regard the Expert makes no comment on any potential causes of action that the Complainant may have if it is not made clear that the website is being run by a third party with no connection to the Complainant).

As an aside, the parties devoted considerable energy to the issue of who paid for the Disputed Domain Name, the Complainant or the Respondent. This is presumably because of paragraph 3(a)(v) of the Policy, which refers to the following as possible evidence of abuse:

"The Domain Name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant:

A. has been using the Domain Name registration exclusively; and

B. paid for the registration and/or renewal of the Domain Name registration"

However, whilst it would have helped the Complainant's case to have been able to prove the above, it is not crucial to the outcome and the Expert makes no finding either way on this issue. Even if the Respondent did in fact pay for the registration of the Disputed Domain Name himself, together with any subsequent renewals, this does not have any impact upon the issue of confusion explained above.

For the sake of completeness, paragraph 4(a) of the Policy sets out a non-exhaustive list of factors which may be evidence of non-abuse, but in the Expert's opinion none of these factors are of any assistance to the Respondent in the present case.

In summary, the Expert has considered the admissibility, relevance, materiality and weight of the evidence as a whole and is satisfied that the Complainant has succeeded in proving, on balance of probabilities, that the Disputed Domain Name is an Abusive Registration in accordance with paragraph 2(a)(ii) of the Policy.

7. Decision

The Expert finds that the Complainant has Rights in a name which is identical to the Disputed Domain Name, and that the Disputed Domain Name, in the hands of the Respondent, is an Abusive Registration. The Disputed Domain Name should therefore be transferred to the Complainant.

Jane Seager
16 May 2014