



## **DISPUTE RESOLUTION SERVICE**

**D00013768**

**Decision of Independent Expert**

Wintercomfort for the Homeless

and

SmithMartin Partnership LLP

### **1. The Parties:**

Complainant: Wintercomfort for the Homeless  
Overstream House  
Victoria Avenue  
Cambridge  
Cambridgeshire  
CB4 1EG  
United Kingdom

Respondent: SmithMartin Partnership LLP  
483 Green Lanes  
London  
N13 4BS  
United Kingdom

### **2. The Domain Name:**

food4food.org.uk

### 3. Procedural History:

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of a such a nature as to call in to question my independence in the eyes of one or both of the parties.

23 January 2014 16:49 Dispute received  
30 January 2014 13:16 Complaint validated  
04 February 2014 11:05 Notification of complaint sent to parties  
21 February 2014 01:30 Response reminder sent  
26 February 2014 10:01 No Response Received  
26 February 2014 10:01 Notification of no response sent to parties  
28 February 2014 13:47 Summary decision payment received  
03 March 2014 13:12 Summary decision started  
24 March 2014 10:27 Summary decision received  
24 March 2014 10:28 Summary decision pack sent to parties  
25 March 2014 08:43 Summary decision published online  
08 April 2014 10:14 No appeal notice received  
16 April 2014 15:32 Dispute re-opened  
23 April 2014 10:25 Notification of complaint sent to parties  
13 May 2014 02:30 Response reminder sent  
16 May 2014 14:26 No Response Received  
16 May 2014 14:27 Notification of no response sent to parties  
19 May 2014 11:31 Expert decision payment received

***Nominet note on the procedural history of this complaint:*** A summary decision in relation to this complaint was originally returned on 24 March 2014. It became clear at that point that material provided by the Complainant which had been intended to form part of their complaint had not been passed to the appointed expert. As the absence of this material may have had a material effect on the decision made by the original expert, and was the result of an error on Nominet's part, the decision of 24 March 2014 was vacated and the parties given another opportunity to go through the DRS process.

### 4. Factual Background

The Complainant, a charity for the homeless, has been using the trading name Food4food since 2009 for catering services.

Tim Smith of the Respondent was an employee of the Complainant when the Domain Name was registered. In correspondence with the Complainant, he says the Domain Name was part of a suite of names registered by the Respondent and donated at his expense for charities, although the Respondent

has not submitted a Response in this proceeding.

## **5. Parties' Contentions**

The Complainant's contentions can be summarised as follows:

The Complainant is a charity and limited company established since 1991. It started a social enterprise at Wintercomfort for the homeless in October 2009 with a full launch January 2010, the domain for a website food4food.org.uk being registered in April 2010 and which is now a thriving catering enterprise. Many orders come through the web site and some orders via telephone. The web site is the principal method of marketing, although flyers are also used.

Tim Smith was the social enterprise manager at Wintercomfort between 23 November 2009 and 31 July 2010. Although he left the Complainant he took ownership of the Domain Name with him. This is a risk to the Complainant and he registered the Domain Name as an employee of Wintercourt. The Complainant has the ability to update content.

The Domain Name is the same as the Complainant's trading name.

The Domain Name is abusive as it was registered by a previous employee as a result of a previous relationship with the Complainant. The Complainant has e mailed and called Tim Smith on numerous occasions without any satisfactory response for a long time. In November 2013 he said the Domain Name was parts of a suite of domain names owned by the Respondent donated at its expense for charities, schools and community centres, in this case the Complainant as part of its commitment to an ethical business sector. A letter in response requesting transfer of the Domain Name received a reply denying abuse, but agreeing to unlock the Domain Name if the Complaint was withdrawn. This has not happened.

No response was received from the Respondent.

## **6. Discussions and Findings**

General

To succeed in this Complaint the Complainant has to prove to the Expert

pursuant to paragraph 2 of the Policy on the balance of probabilities, first, that it has Rights (as defined in paragraph 1 of the Policy) in respect of a name or mark identical or similar to the Domain Name and, secondly, that the Domain Name, in the hands of the Respondent, is an Abusive Registration (as defined in paragraph 1 of the Policy).

### Complainant's Rights

The Complainant has been using the trading name Food 4 Food in relation to Catering services since 2009. The Domain Name contains the Food 4 Food mark in its entirety having been used as the Complainant's web site address since registration. The Expert finds that the Complainant has Rights in respect of a name or mark, which is identical to the Domain Name for the purposes of the Policy.

### Abusive Registration

This leaves the second limb. Is the Domain Name, in the hands of the Respondent, an Abusive Registration? Paragraph 1 of the Policy defines "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 took unfair advantage of or was unfairly detrimental to the Complainant's Rights."

A non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration is set out in paragraph 3 of the Policy:

### **3. Evidence of Abusive Registration**

a. A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows:

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;
- iii. The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well known names or trademarks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;
- iv. It is independently verified that the Respondent has given false contact details to us; or
- v. 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.

The Expert is of the opinion that the Respondent's conduct and use of the Domain Name is indicative of relevant abusive conduct. The Domain Name was registered by Tim Smith of the Respondent during the course of his employment by the Complainant. Whilst there is no evidence that the Complainant paid for the registration and/or renewal to bring this case with in the strict terms of 3(a)(v) of the Policy as set out above, the criteria in paragraph 3 are expressed to be non-exclusive. The Respondent has not responded to this Complaint and has not explained why Tim Smith would be entitled to register the Domain Name for the Complainant whilst in its employ in the name of the Respondent whilst the name has been used exclusively by the Complainant for its business.

Accordingly, the Expert finds that the Domain Name is an Abusive Registration within the definition of that term in paragraph 1 of the Policy.

## **7. Decision**

In light of the foregoing findings, namely that the Complainant has Rights in respect of a name which is similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration, the Expert directs that the Domain Name, food4food.co.uk be transferred to the Complainant.

**Signed Dawn Osborne**

**Dated 13 June 2014**