

**DISPUTE RESOLUTION SERVICE**

**D00015215**

**Decision of Independent Expert**

Sproxil, Inc.

and

mPedigree Network

**1. The Parties:**

Complainant: Sproxil, Inc.  
1035 Cambridge St  
STE 21E  
Cambridge, MA 02141  
United States

Respondent: mPedigree Network  
Goldplaza, Dzorwulu  
Accra  
Ghana

**2. The Domain Name:**

sproxil.co.uk

**3. Procedural History:**

I 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 to be disclosed as they might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

25 December 2014 01:14 Dispute received

29 December 2014 12:16 Complaint validated

29 December 2014 12:54 Notification of complaint sent to parties  
16 January 2015 01:30 Response reminder sent  
21 January 2015 08:52 Response received  
21 January 2015 08:52 Notification of response sent to parties  
26 January 2015 01:30 Reply reminder sent  
29 January 2015 11:48 Reply received  
29 January 2015 11:50 Notification of reply sent to parties  
29 January 2015 11:50 Mediator appointed  
02 February 2015 15:06 Mediation started  
20 February 2015 11:13 Mediation failed  
20 February 2015 11:13 Close of mediation documents sent  
24 February 2015 14:13 Expert decision payment received

#### **4. Factual Background**

The Complainant describes its business as providing: “mobile-based services that connect large brands directly to emerging market consumers to drive revenue and consumer loyalty with targeted marketing solutions while significantly reducing sales promotion fraud and product counterfeiting.”

The Complainant uses for its website the domain name sproxil.com, which its CEO, Mr. Ashifi Gogo, registered on October 13, 2008.

On March 29, 2012 the Complainant obtained Community trademark registration No. 010298099 for the word SPROXIL in the following classes:

35

Business consultation services in the fields of supply chain analysis, regulation compliance and counterfeit detection;

39

Tracking services for retrieval of encoded products;

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Design and implementation of software and technology solutions for the purpose of product and document authentication and tracking, and brand monitoring and protection, to protect against counterfeiting, tampering, and diversion, and to ensure the integrity of genuine products and documents; providing temporary use of non-downloadable computer software for tracking packages over computer networks, intranets and the internet; and

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Consulting services, namely, consultation in the fields of product and document authentication and tracking, and brand monitoring and protection, to protect against counterfeiting, tampering, and diversion and to ensure the integrity of genuine products and document [*sic*].

The Respondent describes itself as “a highly respected developer and provider of a range of software and platform products and services in the marketing, brand protection, supply chain, safety regulation enforcement, national regulatory

systems, consumer loyalty & reward, technical process certification, and mobile value added services industries. Additional information on the Respondent's products and services may be found on the website <www.goldkeys.net>.”

The Domain Name was registered on October 23, 2013 in the name of the Respondent by its President, Mr. Bright Augustine Simons. As at December 17, 2013 (prior to the filing of the Complaint) the Domain Name resolved to a website headed:

“Welcome to British-Indian Surgical, Pharmaceutical Reagents, Overseas Exchanges & International Linkages (SPROXIL)”.

Beside a photograph of a mobile phone being held near a notebook appeared the following text:

“Who we are

We are a British-Indian merchant association of resellers for major technology systems providers like Fastlabels (www.fastlabels.net) in the anti-counterfeiting, brand-protection, security labels, security printing, anti-tampering packaging, and product security business.

Many start-up companies claim to be providing these kinds of technologies but lack the capacity for support, customer service and risk management. We do not provide services under our brand but work with leading providers around the world to identify best-in-class technology. All technologies we provide are goldkeys compliant.

Click here to contact us.

We can also provide support in Germany.”

The home page of the website <www.goldkeys.net> says:

“mPedigree GoldKeys protects you from fake products by empowering you to check the authenticity of products in three easy steps”.

On January 27, 2015 (after the filing of the Complaint) the text following “Who we are” read as follows:

“We are a British-Indian merchant association of specialists, purveyors, instrumentalists and quality investigators in the reagents, surgicals, biologicals, pharma-molecules, and apothecary and formulary industries. Our focus is on SMEs operating independent outlets.

Many start-up companies claim to be providing these kinds of sensitive technologies but lack the capacity for support, customer service and risk management. We do not provide services under our brand but work with leading providers around the world to identify best-in-class technology and certification.

[Click here to contact us.](#)

We can also provide support in Germany.”

## **5. Parties’ Contentions (summarised)**

### **Complainant**

The Domain Name is identical to the Complainant’s company name. Its registration infringes the Complainant’s registered SPROXIL trademark and amounts to cybersquatting. The Domain Name is an Abusive Registration because the website at <www.sproxil.co.uk> confuses Internet users and intentionally deters business from the Complainant.

The Respondent is a direct competitor of the Complainant and Mr. Bright Simons serves as its President. Their purpose in registering the Domain Name is to obstruct the Complainant’s business opportunities, to impact the Complainant’s reputation negatively and to increase the Respondent’s business opportunities in an unethical manner in an attempt to gain market share.

The Domain Name obfuscates clients, prospective clients and other Internet users. People have arrived at the website to which the Domain Name resolves instead of the Complainant’s authentic website <www.sproxil.com> while they tried to search for the Complainant online. These occurrences will persist unless the Domain Name is transferred to the Complainant.

The confusion begins when a user visits <www.sproxil.co.uk> and sees the acronym SPROXIL, which the Respondent does not use on its website <www.mpedigree.net>.

In offering “gold-keys compliant” services, a solution which the Complainant does not offer, the Respondent’s <www.sproxil.co.uk> website misguides Internet viewers from the Complainant’s solutions to the Respondent’s services while using the SPROXIL registered trademark. As a result, the Domain Name registration brings an unfair advantage to the Respondent and its affiliates since people who are interested in the Complainant and its solutions are deterred from the Complainant’s website <www.sproxil.com> and implicitly guided toward the Respondent’s services.

### **Respondent**

SPROXIL is not a widely known word mark. It has limited name recognition in the European Union or the United Kingdom.

The Complainant is a small United States registered entity providing product authentication services in Nigeria, Ghana, Kenya and India. It has no business in the EU or in the UK that should grant it any interest in a co.uk domain name. It seeks to sustain the erroneous perception that it is a global company in order to

assert its minor intellectual property far beyond the reasonable bounds of the jurisdictions in which it operates. Seeking to use this process to intimidate Mr. Simons to hand over a domain name he has legally acquired and paid for is a monstrous abuse of this process.

No one has approached the Complainant to offer the Domain Name for sale to it. This is not a cybersquatting incident.

The Complainant bases virtually its entire claim on the fact that it has a trademark on the SPROXIL name in the European Union and purports to assert, on this basis, that it has automatic legal and moral rights to the Domain Name.

In great detail, the Respondent denies trademark infringement and says the Complainant has failed to satisfy the relevant criteria for any such finding to be made. In particular, the Respondent says the Complainant has not established:

- ‘acquired distinctiveness’ of its trademark in the European Community;
- that the classifications covered by its trademark cover activities disclosed on the <www.sproxil.co.uk> site;
- that its customers, who are all business customers with whom the Complainant deals frequently and through extended sales cycles, on encountering the <www.sproxil.co.uk> site, which offers no products similar to those sold or marketed by the Complainant, shall be confused into passing business to Mr. Simons, the Respondent or an affiliate;
- that the tests for the threshold of ‘reputation’ elucidated in *Harrods vs Sixty Internet Domain Names* (US Civil Action No. 00-262-A, 2000) are satisfied;
- misrepresentation;
- actual business damage, or even a realistic prospect of such damage.

Further, the Respondent says it is evident from the text on the <www.sproxil.co.uk> website that the purpose for which the Domain Name was acquired has nothing to do with the Complainant’s line of business of providing a mobile phone based authentication service in Nigeria and, to a limited extent, a few other countries in Africa and India.

The Respondent says it is noteworthy that the Complainant chose not to comment on the radically different focus of the activities disclosed on the <www.sproxil.co.uk> site, especially the lack of any obvious commercial offering on the site. It should be very evident to the Complainant that no such confusion is likely or even probable.

The Complainant sells directly to relatively sophisticated goods manufacturing and marketing companies. Its business model involves a long-term relationship with the customer. The customer requires a complex process of onboarding since the Complainant’s product involves a shift in the customer’s business practices and a considerable degree of industrial integration for the Complainant’s coded tags to appear on the customer’s product. That a customer who needs to conduct extensive due diligence prior to engaging a contractor for such intrusive operations shall be confused merely because of a website set up to provide information on a

completely different activity boggles the mind. Such confusion is not only unlikely to the point of being negligible but is actually ludicrous.

The <www.sproxil.co.uk> site has so far served an informational purpose. The name was chosen to reflect the acronym of a new, relatively low-profile, association, as well as an historical claim Mr. Simons has to the name. There is no effort to siphon off any goodwill from the Complainant, which has no marketing activities in the United Kingdom or the European Union.

The <www.sproxil.co.uk> site is not involved in any commercial activity that could reasonably be interpreted as likely to lead to a 'dilution' of the SPROXIL brand, nor has it been set up to market a product called 'sproxil'. It has been set up to reflect the acronym of an association. By trying to extend trademark law in the European Union to the use of organisational monikers elsewhere, and thus to abrogate the right of organisations to acquire domain names aligned with their acronyms and common names, the Complainant hopes to wield its intellectual property rights in a way that will curtail the rights of organisations worldwide to enjoy the full accessories of their names, which in a digital age includes their right to register a domain name, simply because the Complainant, a company with less than 32 employees based in a few cities around the world, aspires to a global recognition it does not presently enjoy in the years to come.

An association with activities such as those disclosed on the <www.sproxil.co.uk> site in no way misrepresents itself as the Complainant nor undertakes activities injurious to the Complainant or its business.

As to Abusive Registration, the Respondent says the <www.sproxil.co.uk> website does not appear in the top 1000 results in any search for the 'sproxil' term. The Respondent has done no advertising nor undertaken any search engine optimisation activities with the intent of ensuring that internet users looking for 'Sproxil' by typing the 'sproxil' term in a search engine would land on the <www.sproxil.co.uk> website by mistake. The Complainant gives no information to suggest that any such confusion may be happening.

There is absolutely no evidence in the content of the website, which is evidently set up to promote reagents specialists and merchants and thereby open up a new front in the social mission of pushing supply chain transparency self-certification, that it advanced the Respondent's market share acquisition in any way. The Complainant's line of business is predominantly business to business and is far removed from the surgical and pharma reagents industries. A professional association of specialists, dealers and apothecaries in no way promotes the Respondent's commercial interests to the detriment of the Complainant's.

As to the Complainant's allegation that the <www.sproxil.co.uk> site confers an 'unfair advantage' on the Respondent and implicitly guides clients to the Respondent's offerings, the Respondent does not offer any product infringing on the Complainant's trademarks that the site has set out to promote. There are several videos on the Youtube website which catalog the Respondent's promotional material. The <www.sproxil.co.uk> site does not link to any of them. There is no digital or navigational connection by means of which a visitor to <www.sproxil.co.uk> may be re-directed to the Respondent, instead of immediately

recognising that they have landed on a website related to an organisation that is not even remotely related to the Complainant. That the Complainant does not supply any pharmaceutical or surgical products, much less reagents, a product category of firm specialty, should be known well in advance to any business customer seeking to learn more about the Complainant or to contact them. To one searching for a vendor in the general line of business conducted by the Complainant (mobile technologies for product authentication), a website set up to provide information on a professional association of reagent dealers, specialists and purveyors should be of absolutely no interest.

For more than 6 years the Complainant has been immorally squatting on a website owned by the Respondent – <www.mPedigree.com> and <www.mPedigree.org>. These are very high-level domain names that anyone seeking to do business with either the commercial or non-profit arms of the Respondent is highly likely to visit. What is frightening about the level of the Complainant's depravity is that in the case of the above cited websites, the Complainant's founder, Mr. Ashifi Gogo, fraudulently stole the credentials from Mr. Bright Simons, whilst employed as an engineer and technologist for the non-profit Respondent, of which he was also at one time a Secretary. He then changed all the documents on file, including the credit card details, and denied Mr. Simons and the Respondent access to the sites.

The Complainant has for more than five years posted a message explicitly misrepresenting the business of the Respondent, and blatantly and fraudulently directing visitors from both <www.mpedigree.org> and <www.mpedigree.com> to its own site.

The depravity of the Complainant's conduct should be taken into account both when evaluating its credibility in making its claims and when assessing the true cause of its discomfort and anxiety about the use to which the <www.sproxil.co.uk> site may be put, but which the Respondent and Mr. Simons have absolutely no interest in doing and have not done after several months of ownership. These 'guilty minded' projections should account for the extremism that has characterised the motives the Complainant ascribes to Mr. Simons, despite the lack of even a scintilla of evidence to support these ridiculous claims of deliberate misrepresentation.

As to the origin of the 'Sproxil' name, the Respondent says Mr. Gogo worked with Mr. Simons in 2006 on an IT project for "direct to consumer" certification of organic produce involving technology called "VirProx", and again in 2007 on a development of "VirProx" called "UPAP 2Sure", which Mr. Simons began to market in 2008 under the name mPedigree Network. Mr. Simons discussed with Mr. Gogo several names for various associated platforms, such as 'syncrytel', 'sproxy', 'authentitxt', 'proxyt', and 'sproxil'.

In mid-2008 Mr. Gogo was designated to represent the Respondent in introducing the technology in Nigeria and in January 2009 the Nigerian food and drug safety regulator, NAFDAC, began evaluating the prospect of deploying a national system to fight counterfeiting. By mid-2009 no deployment had been announced.

Unbeknownst to the Respondent, Mr. Gogo had founded a company called mPedigree Logistics and had initiated a long-term strategic plan to completely destroy the Respondent, despite the fact that joint patents (which Mr. Simons had written) were moving through the US patent examination system. Mr. Gogo had signed clients in Nigeria under the mPedigree cover name and was working with NAFDAC as the substantive mPedigree organisation itself.

When a new head of NAFDAC decided to open a tender for a national solution, a new entity called “Sproxil” appeared, majority-owned by Mr. Gogo. This was the first time that the Sproxil name, conceived as an offshoot of the VirProx name, and purely an outcome of creative work at the Respondent, entered the public space.

Even though the Respondent was adjudged to have won the bidding process, NAFDAC insisted on the formation of a consortium of the three most successful companies to run the national initiative of protecting high value products from counterfeiting. Mr. Simons was selected as the secretary to this consortium, in which position he spearheaded the development of a comprehensive strategy to implement the solution across Nigeria.

Though the consortium eventually dissolved back into its constituent companies, it was the strategy that was mapped out under the leadership of Mr. Simons that ultimately saw the scaling up of the original UPAP technology, which Mr. Gogo and the Complainant now market in Nigeria and elsewhere.

In September 2009 a final report was issued to guide the implementation of the process in Nigeria. In February 2010 the Complainant, NAFDAC and Biofem, a Nigerian pharmaceutical company, launched a service purporting to be a national anti-counterfeiting program for Nigeria called “MAS”. The entire work of the committee formed for that exact purpose had been brushed aside.

It is thus in the context of wide recognition within knowledgeable circles in Nigeria and throughout Africa that the Respondent is the true and original source of virtually all the intellectual property undergirding the mobile authentication industry, and most intriguingly of the ‘sproxil’ name itself, that the Complainant and Mr. Gogo have gone to every extent including the unethical filing of patents, trademarks and the attempted acquisition of domain names with market extensions in jurisdictions where they are operationally absent.

Mr. Simons’ decision to act firmly to protect as much of his intellectual property as possible and to prevent the continued and further usurpation of his creative work by Mr. Gogo and his Sproxil entity is what has prompted his decision to register and then grant the use of the Domain Name to a new, but poised to grow, association of reagent specialists, purveyors and dealers in India, Germany, the United Kingdom and elsewhere, who are committed to a couple of the original social entrepreneurial ideals of supply chain transparency and accountability, and safety certification, that led to the establishment of the Respondent’s non-profit arm as far back as 2007.

From an ethical and moral point of view, the Complainant has no entitlement to the ‘sproxil’ name, and from a legal and normative standpoint, the Complainant



has no global monopoly of its use in any domain name adopted by or granted to any entity that is in no position to harm its business or commercial interests in any objective way.

The Complainant and Mr. Gogo have failed to evidence their claims that they have the most compelling rights to either the Sproxil name or to the Domain Name. In fact, Mr. Simons and the Respondent have stronger claims to the Domain Name, and the history of the present situation stringently counsels against any summary adjudication of the matters at hand.

## **Complainant's Reply**

The Response elaborates on a multitude of issues and topics. The Complainant will solely respond to the issues pertinent to this case.

The services described in the screen shot of the Respondent's website <www.sproxil.co.uk> taken on December 17, 2014 fall within the scope of the SPROXIL trademark as described in each of the classes with respect to which the mark is registered. Accordingly the use of the acronym SPROXIL on that website constitutes trademark infringement.

Although Mr. Simons states that SPROXIL is a reseller association, he does not offer evidence of this association's existence.

The Domain Name was registered 1.5 years after the Complainant registered the EU trademark and the Response makes it clear that Mr. Simons was well aware of the Sproxil name and organization from at least 2010.

A screen shot of the website taken on January 22, 2015 shows that significant changes to the home page content were made after the Complainant's claim of infringement. One may surmise that this was in response to that claim.

The Complainant denies having limited recognition in the UK and the European Union, saying it is well recognized in the UK pharmaceutical sector, one of the focus areas for the purported association list on the Respondent's website. It is widely known that one of the Complainant's clients is GlaxoSmithKline (GSK), a global pharmaceutical company headquartered in Brentford, England. The Complainant supports GSK's healthcare efforts by protecting their pharmaceutical products, strengthening the tenacity of their supply chain, and allowing consumers to verify the authenticity of the medicines for safety reasons.

In addition through media coverage, press releases, and attendance at events and conferences, the Complainant continues to be a known as an enterprise providing services to businesses, governmental institutions, and organizations globally and especially within the EU. Examples are provided.

The Respondent's registration of the Domain Name is an Abusive Registration under Section 3 (ii) of Nominet's Dispute Resolution Service Policy ("the Policy"). It is disrupting the Complainant's business as there are aspects of the website that mislead users into believing that the Domain Name is related to the Complainant, such as the use of the words "anti-counterfeiting" and "brand protection". Also, the

photograph of a person holding a mobile phone denotes the site's relation to mobile technologies instead of surgical and pharmaceutical reagents, confusing internet users and potential clients since the picture is similar to the Complainant's marketing materials.

The Complainant seeks transfer to it of the Domain Name and to recoup its legal and administrative fees.

## **6. Discussions and Findings**

Paragraph 2 of the Policy requires that, for the Complainant to obtain transfer to it of the Domain Name, it must prove, on the balance of probabilities, that it has Rights in respect of a name or mark which is identical or similar to the Domain Name at issue; and that the Domain Name, in the hands of the Respondent, is an Abusive Registration. There is no provision for the recoupment of legal and administrative fees.

### Rights

Although the Respondent notes that the Complainant has produced no evidence of "acquired distinctiveness" or "reputation" in respect of the name, the Complainant has provided a copy of the OHIM certificate of registration in the name of the Complainant of Community Trademark No. 010298099 dated 29 March 2012 for the word SPROXIL. This suffices to prove that the Complainant has rights in the SPROXIL mark.

The Respondent challenges the Complainant's entitlement to that mark and to the name "sproxil", as set out at length in the Response.

This is not the forum in which the rightful ownership of the "sproxil" name can be resolved. As stated by the Appeal Panel in DRS4632 (ireland.co.uk):

"Had Nominet contemplated that pure, possibly complex, contractual disputes would fall to be resolved under the Policy, its system for selecting and appointing Experts to cases would have been very different and the procedure for dealing with the disputes more comprehensive than the simple paper-based system it is."

Likewise in cases of possible breach of confidence of the kind suggested by the Response.

For the purposes of this Administrative Proceeding, the fact that the Complainant's registration remains on foot is sufficient evidence of the Complainant's entitlement to the SPROXIL mark in the European Union.

The Domain Name comprises the SPROXIL mark and the inconsequential ".co.uk", which may be ignored. Accordingly, I am satisfied that the Complainant's mark is identical to the Domain Name.

The Complainant has established this element.

## Abusive Registration

Although the Complaint alleges trademark infringement and the Response addresses this issue at great length, it is not essential that there be trademark infringement for a finding of Abusive Registration to be made. As stated by the Appeal Panel in DRS00248 (seiko-shop.co.uk, spoonwatchshop.co.uk):

“The Panel considers that parties and Experts should not be overly concerned with whether or not an allegedly abusive registration also constitutes an infringement of registered trade mark. The question of trade mark infringement is... one for the courts to decide. The question of abusiveness is for the Expert to decide. The two jurisdictions co-exist alongside each other, and no doubt there will be considerable overlap. However there may well be factual scenarios in which an abusive registration under the Policy would not be an infringement of trade mark under the 1994 Act, and where an infringement of trade mark under the 1994 Act would not be an abusive registration under the Policy. The safest course for parties and Experts is simply to address the terms of the Policy.”

Abusive Registration is defined in Paragraph 1 of the Policy 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.

Paragraph 3 of the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. The Complainant relies on paragraph 3(a)(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.”

As stated in paragraph 3.3 of the DRS Experts' Overview Version 2:

“The ‘confusion’ referred to in paragraph 3(a)(ii) of the Policy is confusion as to the identity of the person/entity behind the domain name. Will an Internet user seeing the domain name or the site to which it is connected believe or be likely to believe that “the domain name is registered to, operated or authorised by, or otherwise connected with the Complainant”?

...

Commonly, Internet users will visit web sites either by way of search engines or by guessing the relevant URL. If the domain name in dispute is identical to the name of the Complainant and that name cannot sensibly refer to anyone else, ...there is bound to be a severe risk that an Internet

user guessing the URL for the Complainant's web site will use the domain name for that purpose.

In such cases, the speculative visitor to the registrant's web site will be visiting it in the hope and expectation that the web site is a web site "operated or authorised by, or otherwise connected with the Complainant." This is what is known as 'initial interest confusion' and the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration, the vice being that even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant, the visitor has been deceived."

The Response emphatically rejects the possibility of confusion between the mobile authentication services provided by the Complainant and the "merchant association of specialists, purveyors, instrumentalists and quality investigators in the reagents, surgicals, biologicals, pharma-molecules, and apothecary and formulary industries" portrayed on the Respondent's website in January, 2015.

However, the question whether or not, in the hands of the Respondent, the Domain Name is an Abusive Registration is to be determined by reference to the conduct of the Respondent at the time of the filing of the Complaint. At that time the Respondent's website depicted a mobile phone next to a notebook and described the Respondent as a "merchant association of resellers for major technology systems providers like Fastlabels ([www.fastlabels.net](http://www.fastlabels.net)) in the anti-counterfeiting, brand-protection, security labels, security printing, anti-tampering packaging, and product security business... All technologies we provide are goldkeys compliant".

That content satisfies me that, prior to the filing of the Complaint, the Respondent was offering, on the website to which the Domain Name resolved, mobile authentication services of the kind provided by the Complainant. This conclusion is reinforced by the statement on the home page of the website <[www.goldkeys.net](http://www.goldkeys.net)>: "mPedigree GoldKeys protects you from fake products by empowering you to check the authenticity of products in three easy steps."

I accept the Respondent's submission that a website set up to provide information on a professional association of reagent dealers, specialists and purveyors would be of no interest to one searching for a vendor in the general line of business conducted by the Complainant (mobile technologies for product authentication). However, I find that a website set up to provide information on a merchant association of resellers for major technology systems providers in the anti-counterfeiting, brand-protection, security labels, security printing, anti-tampering packaging, and product security business would be of interest to one searching for a vendor in the Complainant's line of business. Such was the nature of the website to which the Domain Name resolved prior to the filing of the Complaint.

It is notable that the Respondent has offered not one word in justification of the content of the website prior to the filing of the Complaint, despite a screenshot as at December 17, 2014 being exhibited to the Complaint. Nor has the Respondent offered any explanation for the change in content after the filing of the Complaint.

The Respondent concedes that the Complainant has some, albeit limited, name recognition in the European Union or the United Kingdom. I consider that, because the SPROXIL mark is inherently distinctive, people who know of the trademark and become aware of or guess the Domain Name (not necessarily business people who already deal with the Complainant) are likely to be confused into believing that it belongs to the registrant of the trademark.

Further, people who are aware of the Complainant and that the Complainant provides mobile authentication services (not necessarily business people who already deal with the Complainant), upon arriving at the website to which the Domain Name resolved and upon seeing the image and reading the text as it was prior to the filing of the Complaint, were likely to be confused into believing that it was a site operated by the Complainant.

Accordingly I am satisfied that the Complainant has proved, on the balance of probabilities, that the Respondent has used the Domain Name in a way which 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 and that the Domain Name has thus been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights. Accordingly I find that, in the hands of the Respondent, the Domain Name is an Abusive Registration.

I do not consider that the changes made to the content of the website after the filing of the Complaint prevent a finding of Abusive Registration.

Although it is unnecessary to make a formal finding of trademark infringement, I also consider that the image and text of the website to which the Domain Name resolved prior to the filing of the Complaint show that the Respondent was offering services falling within each of the classes in which the Complainant's mark is registered.

The Complainant has established this element.

## **7. Decision**

I find that the Complainant has proved, on the balance of probabilities, that it has rights in a mark which is identical to the Domain Name and that the Domain Name is an Abusive Registration in the hands of the Respondent. I therefore direct that the Domain Name <sproxil.co.uk> be transferred to the Complainant.

**Signed Alan Limbury**

**Dated: March 15, 2015.**