

DISPUTE RESOLUTION SERVICE

D00015439

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

The Hope and Anchor Pub Ltd

and

. E Swan

1. The Parties:

Complainant: The Hope and Anchor Pub Ltd
The Hope and Anchor Pub, Sluice Road
South Ferriby
North Lincolnshire
DN18 6JQ
United Kingdom

Respondent: . E Swan
Hope and Anchor
Sluice Road
Barton
Barton
DN18 6JQ
United Kingdom

2. The Domain Name(s):

hope-and-anchor.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 hope-and-anchor.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)

Rights

The Complaint is very brief. The evidence produced by it suggests that there has been a history of trading at the relevant premises using a name which is similar or identical to the Domain Name i.e. the Hope and Anchor since around 2005. It seems that the premises were operated by the Complainant's predecessor until the end of 2013 when they closed due to floods. The Complainant seems to have taken them over in July 2014 with a view to refurbishing them. There is a link provided to an online article in the Grimsby Telegraph dated 31 July 2014 referring to the premises re-opening under a new owner namely Colin McGurran. Mr McGurran appears to be the husband of the Company Secretary of the Complainant. There is however also a link provided to the website [HTTP://thehopeandanchorpub.co.uk](http://thehopeandanchorpub.co.uk). That link is simply a holding page indicating that they are opening soon. There is also a calendar on that page covering the month of March 2014. It is thus not clear from this website whether or not the premises are yet open. However the Expert is prepared to infer that the Complainant would have, at least impliedly, have been assigned the goodwill in the trading name the Hope and Anchor on acquiring the premises. Notwithstanding any gap in trading due to the refurbishment taking place the Expert finds that Complainant has Rights in the name Hope and Anchor which is similar to the Domain Name hope-and-anchor.co.uk.

Abusive Registration

There is no evidence provided at all in relation to the Respondent who appears to be an individual or the use to which the Domain Name is being put by it and why that is abusive. The Complaint simply says that "The domain in its current state is abusive because:

- contains information that is no longer correct such as contact information, opening hours and services offered.
- the current site has the potential to cause confusion with customers.
- Appearance of the site doesn't match the style and quality of the new business".

It seems that the address of the Respondent is exactly the same as that of the Complainant and certainly the same postal code is used for both. The Expert infers from this that the Domain Name had been registered by the former proprietor of the premises in question and that it remains registered in their name. However again there is no evidence of what is currently being done with the Domain Name, if anything. The Expert has taken the step of searching for the website at the Domain Name. As at 9th March 2015 it states the page cannot be displayed and is currently unavailable.

There is no information supplied by the Complainant as to the nature of its concerns about information at the Domain being no longer correct or having the potential to cause confusion with the customers or that the appearance of the site does not match the style and quality of the new business. In particular there is no evidence suggesting that the Respondent has acted or is acting with "intent" in accordance with the Appeal Decision in DRS04331 (verbatim.co.uk) .

In addition reference is made to paragraph 2.4 of the Expert's Overview in relation to establishing confusing use of the Domain Name and what is required in the way of proof. There it is stated "*much depends upon the clarity of the case. If one is contending that there is evidence available to demonstrate that actual confusion has taken place, the expert will expect to see that evidence. If the contention is that confusion is likely to occur, an explanation should be given as to how that confusion is likely to arise.*" There is no such clarity here in relation to the case made out in the Complaint. Nor is there is any evidence of actual confusion or any explanation of how any alleged confusion is likely to arise.

In these circumstances the Expert finds that the Complainant has failed to establish on the balance of probabilities that the registration of the Domain was abusive or that its use is abusive.

8. Decision

I refuse the Complainant's application for a summary decision. The domain name registration will therefore remain with the Respondent.

Signed: GILL GRASSIE

Dated: 10th March 2015