

DISPUTE RESOLUTION SERVICE

D00016357

Decision of Independent Expert

CANUK (Central Association of Nigerians in the UK)

and

Hameed Opeloyeru

1. The Parties

Complainant: CANUK (Central Association of Nigerians in the UK)
4 Imperial Place
Maxwell Road
Borehamwood
Hertfordshire
WD6 IJN
United Kingdom

Respondent: Mr Hameed Opeloyeru
69 Saint Pauls Avenue
London
NW2 5TG
United Kingdom

2. The Domain Name

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

3. Procedural History

The Complaint was filed with Nominet on 2 August 2015. Nominet validated the Complaint the next day and notified the Respondent by post and by email, stating that the Response had to be received on or before 24 August 2015. No response was received, despite a reminder notification sent on 20 August 2015.

On 25 August 2015 Nominet sent a notification of no response to both parties and informed the Complainant's representative that mediation was not possible and that it had until 9 September 2015 to pay the fee for either a full or a summary decision of an Expert pursuant to paragraph 7 of the Nominet Dispute Resolution Service Policy ("the

Policy"). On 1 September 2015 the Complainant's representative paid Nominet the fee for a full decision.

On 3 September 2015 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.

On 28 September 2015 the Expert sent a request for an additional submission by the Complainant to Nominet, in accordance with paragraph 13(a) of the Nominet Dispute Resolution Service Procedure ("the Procedure"). In the request, the Expert directed the Complainant to paragraph 3 of the Policy which contains a non-exhaustive list of factors potentially evidencing Abusive Registration. Paragraph 3(a)(v) reads as follows:

"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 invited the Complainant to consider this scenario and to provide comments on the pertinence of it to the situation described in the Complaint.

Nominet sent this request to both parties by email on 29 September 2015 and on 14 October 2015 the Complainant provided an additional submission. The Respondent did not respond. Nominet revised the due date of the decision to 28 October 2015.

4. Factual Background

The Complainant's stated mission is to protect, unite and empower Nigerians in the United Kingdom. According to the Complainant's official website, the Complainant currently has approximately 40,000 members from over 320 Nigerian associations.

The Respondent is listed in the Nominet Whois as a non-UK individual with an address in London, and was Head of Chancery of the Nigerian High Commission at the time when CANUK was set up.

The Disputed Domain Name was registered on 7 February 2006 and is currently pointing to the Complainant's official website at www.canuk.org.uk.

5. Parties' Contentions

Complaint

Complainant's Rights

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

"My name is Babatunde Olaniyi Loye. I am the current leader of Central Association of Nigerians in the United Kingdom (CANUK). I was voted in as the leader in April 2015, even though the organisation has been in existence for more than seven years. The domain CANUK.ORG.UK was registered under the leadership of Mr. Mark Abani by an individual named as Oyateru. As part of the leadership transfer process, all the documents relevant to the organisation had to be transferred from the previous leadership. Mr. Oyateru was contacted for this reason, but all efforts to acquire the details of the domain were unfruitful. Consequently, it became necessary for myself to contact Nominet so that the details of the domain are transferred to me for its proper and rightful management."

Abusive Registration

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

"The domain registration of CANUK.ORG.UK was handled by Oyateru on behalf of the organisation due to the limited technical knowledge of the CANUK leader (Mr. Mark Abani) and the executive at that time. However, the control of the domain remains with the CANUK leader. I became the leader of CANUK in April 2015 and I made efforts to contact Mr. Oyateru in order to obtain control of the domain registration details with the assistance of a predecessor, Mr. Mark Abani. However, all my efforts were made with no success. It is imperative to secure control of the domain name in order to prevent misrepresentation of the organisation or misuse of the domain by an individual who is not a member of the group."

In Annex the Complainant also submitted the following text:

"The domain name CANUK.ORG.UK was registered by Oyateru for the organisation CENTRAL ASSOCIATION OF NIGERIANS IN THE UK (CANUK) under the leadership of Mark Abani. CANUK was setup to mobilize and coordinate all Nigerians associations in the UK, so the domain name and website were arranged to provide relevant information to the current and potential members."

In April 2015, I, Babatunde Olaniyi Loye, was appointed as the new leader of CANUK. As part of the efforts to secure the handover of all relevant documents from the previous leader, it became necessary to obtain the administrator's rights for the website as well as the registration details of the domain name. However, it has not been possible to secure the domain registration details because we have not been able to get in touch with Oyateru. In addition, it is not clear to the current leadership whether the domain name was registered using a Channel Partner or Self-Managed Registrar. Altogether, the current leadership of CANUK will want the domain registration transferred, so that it can take ownership and manage the domain name accordingly. We believe that NOMINET is an organisation that believes in fairness and will seek the best outcome of this dispute."

Three other documents were also submitted in evidence, namely a copy of the monthly CANUK Newsletter (dated August 2015) a flyer for a Disability Fun Day organized by CANUK on 19 September 2015, and a document containing three screenshots (two of the current CANUK website and one of an email from Mark Abani regarding the transition of the website to CANUK's new leadership).

In response to the Expert's request for an additional submission, the Complainant replied as follows:

"I was asked to provide information in regards to the relationship of CANUK and Mr. Hameed Opeloyeru. As I explained earlier, Mr Opeloyeru left the UK years back, there is no way I could retrieve all the login details from him. The attached shot is to show you that Hameed Opeloyeru had something to do with the website and CANUK and also to show to that CANUK use the domain name for a website and emails now, but I do not have login details so it cannot be controlled by me. As the chairman of CANUK, between now and end of my tenure, I have the right to have the full control of the website which am asking you to do for me."

Attached to the Complainant's additional submission was a screenshot from the website at www.canuk.org.uk evidencing that the Respondent, Ambassador Hameed Opeloyeru, was Head of Chancery of the Nigerian High Commission at the time when CANUK was set up.

Response

No Response was received.

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 CANUK. Even though the Complainant has not supplied evidence of any registered trade marks, 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 CANUK with the services provided by it (see also *The Panel on Takeovers and Mergers and Hi-res*, Nominet DRS D6184).

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

It is accepted practice under the Policy to discount the ".ORG.UK" suffix (unless it is significant in the relevant context), and 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."*

On the face of it, the Complainant has not succeeded in proving limb (i) above which relates to abuse at the time that the Disputed Domain Name was *registered*. By the Complainant's own admission, the Disputed Domain Name was registered by the Respondent "*on behalf of the organisation due to the limited technical knowledge of the CANUK leader (Mr. Mark Abani) and the executive at that time*". It is clear from the Complainant's submissions that the registration of the Disputed Domain Name by the Respondent was approved by the Complainant and there is no implication that the Respondent was not acting on the Complainant's authority.

Turning to limb (ii) of the definition of Abusive Registration which relates to the Respondent's subsequent *use* of the Domain Name, the Expert also finds that, on the face of it, the Complainant has not succeeded in proving this either. The Disputed Domain Name is currently being used to point towards the Complainant's main website, as the Complainant no doubt wishes, and there is nothing to suggest that it has ever been used in any other way. The Complainant freely admits that it has filed the Complainant simply because it is now unable to trace the Respondent, and the email from Mark Abani underlines that the issue appears to be simply one of a technical nature.

However, Paragraph 3 of the Policy contains a non-exhaustive list of factors which may indicate that the Disputed Domain Name is an Abusive Registration. Paragraph 3(a)(v) reads as follows:

"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."*

This provision was introduced by Nominet to deal mainly with cases where IT service providers register a domain name on behalf of a paying client but then fail to transfer it into the name of that client in due course, for example because the relationship breaks down or because the service provider simply vanishes. Without this provision, such registrants would find themselves in a very difficult provision, having no control over a domain name that rightfully belongs to them, but with no clear evidence of abuse (for example because the domain name was registered with their permission and may still even be pointing to their website).

In view of the Complainant's additional submission clarifying the identity of the Respondent and the circumstances surrounding the registration of the Disputed Domain Name, the Expert finds that this is a case that falls under Paragraph 3(a)(v) of the Policy.

In conclusion, 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 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
27 October 2015