

**DISPUTE RESOLUTION SERVICE**

**D00016458**

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

**Art To Life Limited**

and

**Identity Protect Limited**

**1. The Parties:**

Complainant: Art To Life Limited  
11 Lydgate  
Lepton  
Huddersfield  
HD8 0LT  
United Kingdom

Respondent: Identity Protect Limited  
5TH FLOOR, THE SHIPPING BUILDING OLD VINYL FACTORY  
252 - 254 BLYTH ROAD  
HAYES  
MIDDLESEX  
UB3 1HA  
United Kingdom

**2. The Domain Names:**

art-to-life.co.uk  
arttolife.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 names art-to-life.co.uk and arttolife.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)

The Expert has decided that the condition set out in paragraph 7(c)(ii) of the DRS Policy has not been satisfied and therefore refuses the Complainant's application for a summary decision. The Expert has set out a summary of his findings below in case there is an appeal against this decision.

The Complaint was received by Nominet and notified to the Respondent on 1 September 2015. Nothing having been heard from the Respondent, a reminder was sent on 18 September 2015. The Complainant paid the fee for a summary decision, pursuant to paragraph 7(b) of the DRS Policy, on 23 September 2015.

The Complainant lodged a non-standard submission, in accordance with paragraph 13(b) of the DRS Procedure, on 23 September 2015. The non-standard submission did not comply with the mandatory requirement to include a brief explanation of why there was an exceptional need for the non-standard submission. The non-standard submission simply stated that the Complainant "would like to provide some additional evidence."

Whilst no Response was received from the Respondent in time, the Respondent filed a non-standard submission with Nominet on 7 October 2015. The brief

explanantion for the exceptional need was that, due to a failure at Identity Protect (the registrant), the end user only received the Complaint on 6 October 2015.

The Expert decided not to call for the full non-standard submission of the Complainant because the Complainant had failed to identify an exceptional need for that non-standard submission. It appears that the submission was simply additional evidence that could have formed part of the Complaint.

The Expert decided not to call for the full non-standard submission of the Respondent. The Respondent's explanation, in terms of exceptional need, was that the registrant had failed to forward the Complaint to her until 6 October. However, Nominet served the Complaint on the named Respondent in accordance with the requirements of the Procedure. The time limits set out in the DRS Procedure are important. Additionally, a submission from the Respondent, after the appointment of the Expert to determine a summary decision, would have, in effect, converted what was a summary case into a disputed case.

The Nominet DRS is a procedure which is intended to provide a fast and relatively low-cost resolution of domain name disputes. As the Appeal Panel pointed out in DRS10075 <philosophy.co.uk>, if an 'innocent' respondent fails to respond, necessarily such a respondent is immediately at a disadvantage. This is because the Expert has only 'heard one side of the story' and the Expert is entitled (under paragraph 15(c) of the Procedure) to draw inferences from the failure to respond, which may well be adverse to the respondent.

In this case, the Respondent is not prejudiced by the Expert's decision not to call for the full non-standard submission lodged with Nominet, as the Expert draws no inference from the failure to respond in time. This is because the Complainant has failed to show, in the Complaint, that it has rights in respect of a name or mark which is identical or similar to the Domain Name and that the Domain Name is an Abusive Registration. There is no evidence of rights other than the mere registration of a company name which post-dates the date of registration of the Domain Name. The Complaint discloses the existence of a dispute between two directors of a company (including allegations of a criminal nature) but no evidence as to an abusive intent as at the date of registration of the Domain Name. There is insufficient evidence of abuse through use of the Domain Name and, in particular, under paragraph 3(a)(v) of the DRS Policy.

Under paragraph 7(c)(ii) of the DRS Policy, the Expert can only grant a request for a summary decision where the Complainant has shown, to the Expert's reasonable satisfaction, that it has rights in respect of a name or mark which is identical or similar to the Domain Name and that the Domain Name is an Abusive Registration. The Expert is not satisfied on the basis of the very limited Complaint.

The alternative approach, which would have been to allow the non-standard submissions of both parties, is not appropriate for reasons that are explained above and, even absent those considerations, it would be unconscionable for an Expert to determine what would, in effect, become a disputed case under the summary process which does not provide for the full "machinery" of a disputed case, including a right on the part of a complainant to file a reply.

## **8. Decision**

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

Signed:  
Andrew Clinton

Dated: 9 October 2015