

DISPUTE RESOLUTION SERVICE

D00016803

Decision of Independent Expert

Rodeler Ltd

and

pokerlistings

1. The Parties:

Complainant: Rodeler Ltd
Frema Plaza
1st floor
39 Kolonakiou Street
Ayios Athanasios
Limassol
Ayios Athanasios
CY-4103
Cyprus

Respondent: pokerlistings
56 bis chemin calebasse
saint louis
97450
Reunion

2. The Domain Name:

24option.co.uk

3. Procedural History:

3.1 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 such a nature as to call in to question my independence in the eyes of one or both of the Parties.

3.2 Timeline

24 November 2015 17:08 Dispute received
25 November 2015 09:07 Complaint validated
25 November 2015 09:12 Notification of Complaint sent to Parties
14 December 2015 01:30 Response reminder sent
14 December 2015 17:38 Response received
14 December 2015 17:39 Notification of Response sent to Parties
17 December 2015 01:30 Reply reminder sent
21 December 2015 12:27 Reply received
21 December 2015 12:29 Notification of Reply sent to Parties
21 December 2015 12:29 Mediator appointed
29 December 2015 10:13 Mediation started
26 January 2016 17:18 Mediation failed
26 January 2016 17:18 Close of mediation documents sent
05 February 2016 01:30 Complainant full fee reminder sent
10 February 2016 10:05 No expert decision payment received
10 February 2016 11:38 Expert decision payment received

4. Factual Background

4.1 The Complainant operates a binary option website located at the domain name www.24option.com (the “Website”). The Website allows customers of the Complainant to trade in certain assets in the form of binary options (particular types of investments). The Complainant began using the brand name “24Option” in the online binary option trading market in October 2010. The domain name www.24option.com was registered by the Complainant on 28 April 2010.

4.2 The Complainant is the proprietor of certain trade mark registrations for the word mark “24Option.com” in countries including Australia, New Zealand and the U.S.

4.3 The Respondent owns several thousand domain names (including the Domain Name) and operates websites covering a wide range of industries, including betting and poker, in many countries around the world.

4.4 The Respondent registered the Domain Name on 8 May 2011.

5. Parties’ Contentions

The Complainant Rights

- 5.1 The Complainant contends that the Website is considered as one of the leading websites in the world in the field of online binary option trading with over 5.2 million uses accessing the Website on a monthly basis and receiving over 6 million page views per month.
- 5.2 The Complainant contends that it provides its binary options trading services exclusively under the “24Option” mark, and that the activity that it has conducted under this mark (including in respect of the Website) since its inception has been at the forefront of, and has helped to shape, the online binary option trading industry.
- 5.3 The Complainant asserts that it has invested millions of dollars in advertising and promoting both the “24Option” mark and the Website, and that the Website is one of the most profitable in its field with revenues of tens of millions of Euros on a yearly basis.
- 5.4 The Complainant contends that the “24Option” mark is recognised by the public as indicating services offered by the Complainant.

Abusive Registration

- 5.5 The Complainant contends that the Domain Name was registered by the Respondent more than a year after the Complainant commenced its use of the “24Option” mark. The Complainant contends that the Respondent was well aware of the existence of the Website and the Complainant’s rights in the “24Option” mark prior to registration of the Domain Name.
- 5.6 The Complainant submits that, to the best of its knowledge, the Respondent has no trade mark applications or registrations for the name “24Option”. The Complainant contends that the Respondent has no legitimate rights in the “24Option” name and that the Respondent registered the Domain Name in order to stop the Complainant from registering it.
- 5.7 The Complainant asserts that the Domain Name is identical, or at least confusingly similar, to its “24Option” mark as it incorporates this mark in its entirety, and as a result the use of the mark in the Domain Name creates a likelihood of confusion amongst internet users seeking the services provided by the Complainant under its “24Option” mark.
- 5.8 Further, the Complainant asserts that a cease and desist letter sent by the Complainant’s lawyers to the Respondent at its address listed on the WHOIS details for the Domain Name was returned to the sender on the grounds that the address was not traceable.

The Respondent

- 5.9 The Respondent claims that the trade mark “24Option.com” was not registered until 7 June 2013, more than 2 years after acquisition of the Domain Name by the Respondent, and therefore at the point in time of the Respondent’s acquisition of the Domain Name the Complainant was not the owner of the brand name “24Option.com” and it did not own prior rights in that name.
- 5.10 The Respondent asserts that the Domain Name is one of several thousand domain names that it owns, and that it has recorded great success for most of the websites operating under these domains.
- 5.11 The Respondent contends that it rejected two offers from the Complainant to buy the Domain Name, the first one being for US\$2000 in May 2015 and the second for US\$3000 in June 2015. The Respondent says that subsequently the Complainant refused to negotiate further and told the Respondent that it would get the Domain Name for free.
- 5.12 The Respondent contends that it has invested in, and operated successfully under, the Domain Name for a long period, to a significant degree and therefore it has a right to the Domain Name.
- 5.13 Whilst the Respondent acknowledges that www.24option.com is currently a valuable brand name, it says that this name was certainly not valuable at the time that it acquired the Domain Name.
- 5.14 The Respondent contends that it is illogical to argue that by registering a trade mark a company should automatically acquire ownership of all domain names which include that mark and which were registered prior to the date of registration of the trade mark.
- 5.15 Further, the Respondent submits that the reason the Complainant registered its trade mark as “24Option.com” and not as “24Option” is that the Complainant was aware at the time it applied for its trade mark that the “24Option” name was already in use by the Respondent and possibly some other businesses with similar domain names.
- 5.16 In summary, the Respondent claims that the Complaint was brought as an aggressive and cynical attempt to seize control over a domain name which the Respondent bought in good faith and that it has no issue with selling the Domain Name to the Complainant at the right price, but it is not prepared to hand it over for free given the investment that it has made in it.

The Reply

- 5.17 The Complainant contends that it is clear that the Respondent has no legitimate rights in the name “24option” either in the UK or elsewhere. The Complainant submits that the Respondent has failed to provide any evidence to show that it does have such rights and its claims about the use of, and the investment it has made into, the Domain Name are simply bare assertions.

- 5.18 The Complainant asserts that the Domain Name resolves to a landing page website and that it has been unable to obtain any historical information about the Domain Name and associated website use due to the Respondent's use of "robots.txt" in the website. This, claims the Complainant, emphasises the Respondent's attempts to conceal the fact that the Domain Name has never been in actual use.
- 5.19 The Complainant contends that the Respondent is only willing to sell the Domain Name for valuable consideration in considerable excess of what the Respondent's documented out-of-pocket costs in acquiring the Domain Name would have been.
- 5.20 Finally, the Complainant contends that a search of the Respondent's representative's email address shows that an entity using the same address and contact details of the Respondent is the owner of the domain name www.forex.re. The website to which this domain name resolved promoted the Complainant's Website on at least 30 June 2011 – a date in close proximity to the date of the Respondent's registration of the Domain Name. This, says the Complainant, proves that the Respondent (or at least some of its principals) were well aware of the Complainant's "24Option" brand name at the time that it registered the Domain Name.

6. Discussions and Findings

General

- 6.1 The Complainant is required under paragraph 2(b) of the Policy to prove to the Expert, on the balance of probabilities, that:
- (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

- 6.2 Paragraph 1 of the Policy provides that Rights means "*rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning*". Rights may be established in a name or mark by way of a trade mark registered in an appropriate territory, or by a demonstration of unregistered so-called 'common law rights'.
- 6.3 The Complainant is the owner of trade mark registrations for the word mark "24Option.com" covering various countries. It is also accepted that the Complainant is the owner of the domain name www.24option.com and has been since 28 April 2010.

- 6.4 Further, the assertions made by the Complainant regarding its use of both the name “24Option.com” and the Website are supported by evidence including various screenshots of the Website, screenshots of YouTube and Vimeo videos of commercials of its “24Option.com” service and a Google Analytics report showing over 800,000 active sessions from UK internet users on its Website during the period January to July 2015.
- 6.5 Consequently, I find that the Complainant has Rights in respect of the mark “24Option.com”.
- 6.6 The only difference between the Domain Name (ignoring the generic .co.uk top level suffix) and the mark in which the Complainant has Rights is the omission of the “.com” element of the Complainant’s mark in the Domain Name. I consider this element to be non-distinctive and it does not materially distinguish the Domain Name from the mark in which the Complainant has Rights.
- 6.7 I therefore find that the Complainant has established that it has Rights in respect of a name or mark which is similar to the Domain Name and accordingly the Complainant has satisfied the first limb of the Policy.
- 6.8 For the sake of completeness, I will also deal with the Respondent’s claims that the Complainant was not the owner of the “24option.com” brand at the time that it acquired the Domain Name. I accept that all of the trade mark registrations that incorporate the word mark “24Option.com” as adduced by the Complainant in its evidence postdate acquisition of the Domain Name by the Respondent. This, however, is not fatal to the Complainant’s case on Rights but is a relevant factor to consider when assessing the second limb of the Policy, namely whether the Domain Name, in the hands of the Respondent, is an Abusive Registration. I will therefore address this point under the Abusive Registration section of my decision below.

Abusive Registration

- 6.9 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 has been unfairly detrimental to the Complainant’s Rights.
- 6.10 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. Paragraph 4 of the Policy provides a non-exhaustive list of the factors which may be evidence that the Domain Name is not an Abusive Registration.

6.11 The Policy provides for the Complainant to prove, on the balance of probabilities, that the Domain Name is an Abusive Registration. The burden of proof is therefore firmly on the Complainant.

6.12 Paragraph 3(a)(i) of the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration under paragraph 1(i) of the Policy, as follows:

“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;”

6.13 The Complainant seeks to rely on all three of the above circumstances to prove its case on Abusive Registration. However, it is important to note that paragraph 3(a)(i) of the Policy relates to the Respondent’s motives at the time of registration (or other acquisition) of the Domain Name and therefore, for any of the circumstances listed under paragraph 3(a)(i) to apply, it follows that the Complainant must establish that the Respondent had knowledge of the Complainant and/or its rights at the time that the Respondent registered or otherwise acquired the Domain Name.

6.14 The assertions and evidence submitted by the Complainant to show that it had established some form of rights in respect of the mark “24Option.com” prior to the date of registration of the Domain Name by the Respondent can be grouped into two categories:

- its ownership of the domain name www.24option.com which was registered on 28 April 2010;
- its use of the Website; and
- contentions that the mark “24Option.com” has been used in the course of trade since October 2010, to provide online binary trading services.

6.15 The Complainant has also adduced evidence of its trade mark registrations for the word mark “24Option.com”. As stated above, these registrations all postdate acquisition of the Domain Name by the Respondent. The Respondent could not, therefore, have known about any of these registrations at the time that it acquired the Domain Name.

6.16 With regard to unregistered rights which may have subsisted at the relevant time (i.e. the date of acquisition of the Domain Name by the Respondent), the

Complainant's evidence in support of its contentions regarding use of the mark "24Option.com" in the course of trade is limited. It makes assertions about the use and renown of the Website which operates under the "24Option.com" mark but the majority of this relates to current activity of the Complainant under the Website.

- 6.17 The evidence adduced by the Complainant as attached to its Complaint shows, inter alia, screenshots of commercials of its "24Option.com" service from certain video sharing websites and articles from other websites concerning this service. None of this evidence shows a date preceding acquisition of the Domain Name by the Respondent.
- 6.18 Based solely on the Complainant's own limited evidence, it is not possible to make a finding that the Respondent was aware of the Complainant and its rights in the "24Option.com" mark at the time that it acquired the Domain Name. The Complainant is, however, helped in its case on Abusive Registration under paragraph 3(a)(i) of the Policy by the Respondent's statements regarding its own business, its lack of explanation as to why it acquired a domain name comprising the mark "24Option" and its acknowledgements concerning the Complainant's use of its "24Option.com" mark going back to 2010.
- 6.19 The Respondent has stated that it operates thousands of websites around the world covering a wide range of industries, one of which (namely, betting) is analogous to the industry that the Complainant operates in (namely, online trading).
- 6.20 Further, although the Respondent asserts that it acquired the Domain Name in good faith having previously checked that the corresponding trade mark was available for registration, it fails to provide any explanation as to why it acquired a domain name which incorporates the mark "24option".
- 6.21 The juxtaposition of the numbers "24" with the word "option" does not, in my opinion, constitute a wholly generic or descriptive mark for services in the betting or trading industry. There is potential argument to suggest that "24" could stand for the availability of an online service (for example, available "24" hours a day), and the word "option" is generic in the trading industry. However, the Respondent has not put forward this argument nor has it provided any other credible explanation or information regarding its choice of acquiring this particular domain name.
- 6.22 Further, the Respondent acknowledges (and in any event does not deny) that the Complainant registered the domain name www.24option.com on 28 April 2010 and that the Website became operational in October 2010. The Respondent therefore appears to accept that Complainant's use of the "24Option.com" name commenced at least 7 months prior to the Respondent's acquisition of the Domain Name.
- 6.23 The Respondent has also not adduced any evidence to support its contentions that it has invested in, and operated under, the Domain Name to a significant

degree and successfully. In particular, the Respondent has not provided any screenshots of a website under the Domain Name, nor has it provided any evidence showing use of the Domain Name in respect of the provision of goods or services in the industries in which it claims to operate in.

- 6.24 Based on the above, and in particular given the nature of the mark which is incorporated into the Domain Name, namely “24option”, the lack of information regarding the Respondent’s choice of this particular domain name, the analogous industries in which the Complainant and the Respondent operate and the Respondent’s own statements and acknowledgements regarding the Complainant and its activity under the mark “24Option.com” since 2010, I am prepared to find that the Respondent would have been aware of the Complainant and its mark “24Option.com” at the time that it acquired the Domain Name and in acquiring the Domain Name it had the Complainant’s mark in mind.
- 6.25 I therefore consider this to be a case where the Complainant has raised a presumption that there is an Abusive Registration.
- 6.26 In order to rebut this presumption, the Respondent needs to adduce credible evidence as to why this is not a case where Abusive Registration exists. The Respondent has however failed to provide any evidence of actual use of the Domain Name despite claiming that it has invested in the Domain Name, and has operated for a long period, to a significant degree and successfully. If this were the case, it should have been able to provide some material evidencing these claims as part of its Response – for instance details of the website that the Domain Name resolves to including screenshots and viewing figures, advertisements showing use of the name, sales figures etc.
- 6.27 I am prepared therefore to find that, on the balance of probabilities, the acquisition of the Domain Name by the Respondent and with the Complainant’s “24Option.com” mark in mind at that time “*took unfair advantage of or was unfairly detrimental to the Complainant’s Rights*” (per the definition of Abusive Registration as set out in the Procedure) and that paragraph 1(i) applies in this case.
- 6.28 In addition, given the identity between the Domain Name and the name in which the Complainant has Rights, and the fact that the Complainant’s “24Option.com” brand name is now well known as a result of the promotion of it by the Complainant (the Respondent itself acknowledges that this brand name is currently valuable), I am also satisfied that consumers searching online for online binary trading services provided by the Complainant are likely to expect there to be some connection between any website operated under the Domain Name and the Complainant, even before they arrive at that website (regardless of the state of that website). As stated in paragraph 3.3 of the Experts’ Overview¹:

¹ The Experts' Overview is a document put together by Nominet's panel of Experts which deals with a range of issues that come up in DRS disputes and provides further guidance on the Policy and Procedure for the benefit of prospective DRS parties. It is published on Nominet's website at: http://www.nominet.uk/wp-content/uploads/2015/08/Expert_Overview.pdf.

“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.”

- 6.29 This possibility is enhanced by the lack of evidence supporting the Respondent’s assertions regarding its own use of the Domain Name, the fact that the Complainant and Respondent operate in analogous fields and that the Domain Name is virtually identical to the Complainant’s “24Option.com” name without any adornment (other than the generic .co.uk suffix).
- 6.30 I am therefore prepared to find that, on the balance of probabilities, paragraph 1(ii) of the Policy also applies in this case.
- 6.31 Paragraph 4 of the Policy provides guidance to parties to a DRS proceeding on how the Respondent may demonstrate in its response that the Domain Name is not an Abusive Registration. Central to the Respondent’s case (although not specifically pleaded by the Respondent) are the factors set out in paragraph 4(a)(i)(A) and (B), which read:
- “Before being aware of the Complainant’s cause for complaint (not necessarily the ‘complaint’ under the DRS), the Respondent has:*
- A. used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services;*
 - B. been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;”*
- 6.32 In relation to paragraph 4(a)(i)(A), as noted above there is no evidence to show that there has been any use by the Respondent of the Domain Name, nor is there any evidence before me that the Respondent has made demonstrable preparations to use the Domain Name, other than a bare assertion regarding the Respondent’s investment in and operation of the Domain Name.
- 6.33 In relation to paragraph 4(a)(i)(B), I consider there to be insufficient evidence to enable me to find that, on the balance of probabilities, the Respondent has been commonly (underline added) known by the name or legitimately connected with a mark which is identical or similar to the Domain Name. The Respondent registered the Domain Name in May 2011 and yet it has provided no evidence regarding its use of the Domain Name despite making assertions regarding its use.
- 6.34 Conversely, the Complainant has adduced evidence showing its use of the “24Option.com” brand name and appears to have generated goodwill and reputation in its “24Option.com” mark through use of the mark and significant use of the Website. Coupled with the finding of the Respondent having actual or constructive knowledge of the Complainant’s mark, it cannot be said that

the Respondent has been legitimately connected with a mark which is identical or similar to the Domain Name.

- 6.35 In the circumstances, the Expert finds that on the balance of probabilities the Domain Name was registered or otherwise acquired in a manner which, at the time the registration took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights and therefore that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

7. Decision

- 7.1 The Complainant has established that it has Rights in respect of a name or mark which is identical to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration.
- 7.2 Accordingly, the Complaint succeeds and I direct that the Domain Name <24option.co.uk> be transferred to the Complainant.

Signed Ravi Mohindra Dated 5 March 2016