



DISPUTE RESOLUTION SERVICE

D00017080

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

Intelligent Business Transfer Limited

and

Chris Hampson

1. The Parties:

Complainant: Intelligent Business Transfer Limited
51 St. Paul's Street
Leeds
West Yorkshire
LS1 2TE
United Kingdom

Respondent: Chris Hampson
18 Malahide Court
Widnes
Widnes
WA8 9SF
United Kingdom

2. The Domain Name:

intelligentbusinesssales.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

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.

No

5. Abusive Registration

The Complainant has, to my reasonable satisfaction, shown that the domain name intelligentbusinesssales.co.uk is an abusive registration

N/A

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances

Yes

7. Comments (optional)

The evidence is that both parties are trading under their respective company names, Intelligent Business Transfer and Intelligent Business Sales, in precisely the same field of activity. Moreover, the parties' respective logos are very similar with the word "Intelligent" featuring most prominently with the remainder of the names (i.e. "Business Transfer" and "Business Sales Limited") appearing below in a much smaller font and accompanied by a colourful artistic device.

It seems inconceivable to me that the Respondent could have selected its trading name and style without having the Complainant firmly in mind. The Complainant's assertion that confusion is resulting does not surprise me. What does surprise me is that the Complainant has produced no corroborative evidence. Nor, apparently, has it written to the Respondent asserting passing off; yet it appears to me that the domain name issue is a secondary issue, the main one being the similarity of trading names and logos.

I have to balance the following factors: (i) the descriptiveness of the Complainant's name, (ii) the fact that the Complainant's trade mark is a device mark, the principal elements being the word "Intelligent" and the colourful artistic device; (iii) the absence of any evidence to support unregistered rights in the name, "Intelligent Business Transfer" (cf. paragraph 2.2 of the Experts' Overview) – bare assertion is not enough; (iv) the absence of any evidence of confusion (despite my belief that confusion is likely); (v) my belief that the Respondent is deliberately targeting the Complainant; (vi) the absence of any Response; (vii) the fact that the Respondent's business, on the evidence, appears to be an active business operation, the domain name reflecting the Respondent's company name.

The fact that I have produced this note at all is indicative of the fact that I have not found this case an easy one. On the one hand I am of the view that the Respondent, a competitor of the Complainant, deliberately set out to ape the Complainant's trading style and that it cannot be surprised if that leads to adverse consequences for it. On the other hand, I am instinctively reluctant to deprive an active business of a domain name, which reflects its company name, a name which will remain in place even if I decide that the domain name should be transferred to the Complainant.

To me the Complainant's trade mark (in the absence of any sufficient evidence as to unregistered rights in its name) is essentially the word "Intelligent" accompanied by a colourful artistic device, the rest of the wording being descriptive and in so small a font as to be immaterial to the overall effect. Is it similar to "Intelligent Business Sales"? An arguable point, but on balance, in my view "no".

That disposes of the case at this stage, but in the event that there is an appeal and the Appeal Panel takes a different view on the first element, my view as to the second element is that the Respondent's use of the domain name is very likely to be leading to confusion in the marketplace and that the Respondent is unable to avail itself of the defences provided by paragraph 4a.i.A and B of the Policy, because on my finding that the Respondent set out to ape the Complainant from the start, it was aware of the Complainant's cause for complaint from the outset and on that basis its business can hardly be described as a genuine offering of services; nor can the Respondent sensibly be said to be legitimately connected with its name. I appreciate that it may be commonly known by its name but it wasn't commonly known by that name when it adopted the domain name.

This result, unless overturned on appeal, means that if the Complainant is to achieve the result it desires, it will have to do so by way of a court action targeting the

Respondent's trading name and trading style, which appears to me to be the fundamental issue.

In summary, while the parties' trading names and logos are similar, the Complainant's registered trade mark (the device mark) is not similar to the Domain Name.

8. Decision

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

Signed: Tony Willoughby

Dated: 24 March, 2016