

# **DISPUTE RESOLUTION SERVICE**

**D00017510**

## **Decision of Independent Expert**

Kostyantyn Kondakov

and

Anton Selivanov

### **1. The Parties:**

Lead Complainant: Mr. Kostyantyn Kondakov  
29, B. Khmelnytskoho St., app. ?1  
Melitopol  
Ukraine

Respondent: Anton Selivanov  
Prospekt Lenina,17-12  
Chelyabinsk  
454007  
Russian Federation

### **2. The Domain Name:**

kondakov.uk

### **3. Procedural History:**

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

The proceedings to date have involved the following:

24 May 2016 22:10 Dispute received  
25 May 2016 13:57 Complaint validated  
25 May 2016 13:58 Notification of complaint sent to parties  
25 May 2016 15:29 Response received  
25 May 2016 15:29 Notification of response sent to parties  
03 June 2016 13:19 Reply received  
03 June 2016 13:19 Notification of reply sent to parties  
03 June 2016 13:20 Mediator appointed  
08 June 2016 14:18 Mediation started  
14 June 2016 16:09 Mediation failed  
14 June 2016 16:10 Close of mediation documents sent  
24 June 2016 02:31 Complainant full fee reminder sent  
27 June 2016 10:30 Expert decision payment received  
19 July 2016 the Expert issued Procedural Order No. 1 in accordance with paragraph 13a of the DRS Procedure  
20 July 2016, the Complainant submitted timely additional submissions  
25 July 2016 the Respondent responded timely to the Complainant's additional submissions  
29 July 2016 the Complainant purported to file an "explanatory paragraph" which was out of time.

#### **4. Factual Background**

The Complainant's surname is "Kondakov". He is the owner of Ukraine registered trade mark no. 163582 for the word KONDAKOV, which was registered on 12 November 2012 for services in class 42 namely "Computer Programming; Computer Systems Analysis; Computer Systems Engineering; Antivirus Protection Services; Computer Software Consulting; Computer Software Upgrade; Computer Software Development; Computer Web-Sites Hosting"

The disputed domain name was registered on 2 August 2015. The Registrant provided incorrect personal details when the disputed domain name was registered. He claims this is due to a misunderstanding on his part and has stated that he will correct the record.

#### **5. Procedure**

This is an unusual case where the Complaint was very brief. Where a complaint contains under 500 words and/or has no evidence attached, it is customary for Nominet to send the complainant a standard warning letter from the Chairman of the Independent Experts, warning that the complainant is required to prove his case on the balance of probabilities and advising that, while a brief submission does not mean that a complaint will fail, it means that it is less likely to contain the detail or evidence required to enable the Independent Expert to give full weight to the case that a complainant is

seeking to make. This was done in the present case but the Complainant did not take the opportunity to expand on the Complaint.

In view of the brevity of the Complaint but the fact that the Complainant had furnished evidence of ownership of a registered trade mark and the seriousness of the allegations made in the Complaint and wishing to deal with the dispute in an expeditious and fair manner in order to bring finality to the issues for the parties, on 19 July 2016 I issued Procedural Order No. 1 in accordance with paragraph 13a of the DRS Procedure, requesting additional information and allowing both Parties to make additional submissions, as follows:

1. The Complainant may provide further evidence to support his Complaint on or before Friday 22 July 2016. Such evidence should include a copy of the website to which the Complainant refers, the URL of said website and English language translations of any content on said website which is not in the English language. The documentation provided should include a description of its source and an explanation of what it contains.
2. The Complainant shall send a copy of all such documentation to the Respondent by email at the same time.
3. The Respondent may provide further submissions and evidence on or before Friday 29 July 2016. Such evidence should include a copy of the website or websites to which the disputed domain name resolves, the URL of said website and English language translations of any content on said website which is not in the English language. The documentation provided should include a description of its source and an explanation of what it contains.
4. The Respondent shall send a copy of all such submissions and evidence to the Complainant by email at the same time.

I invited the Complainant to provide the requested information by 22 July 2016 and gave the Respondent until 29 July to comment on any information provided, and extended the decision date to 15 August.

The Complainant made a brief further submission on 20 July 2016, and the Respondent responded on 25 July, On July 29 2016 the Complainant furnished by email a further very brief “explanatory paragraph” which was out of time. These submissions are described further below.

## **6. Parties’ Contentions**

### **The Complaint**

The Complainant submitted evidence that he is the registered owner of the Ukraine trade mark KONDAKOV, described above. He asserts that the disputed domain name was registered with the primary purpose of disrupting the Complainant’s business as it resolves to a website on which defamatory

material, unsupported by any documentary evidence, has been posted that affects his business reputation.

He alleges that such use of the disputed domain name is confusing for Internet users, is infringing his intellectual property rights, and is being used to publish his personal data without his consent.

He furthermore alleges that the Respondent has registered the disputed domain name, giving fictitious personal data.

In support of this claim he has adduced a number of documents in Russian and/or Ukrainian, two of which include translations into the English language, namely:

- a copy of the certificate of his registration of the KONDAKOV trade mark detailed below and
- a decision of the Public Prosecution Office in Chelyabinsk Oblast dated 18 March 2016. These documents also included a certified notarised translation. The decision related to an application by the Complainant alleging a violation of data protection laws by the owners of the website: <http://kondakov.uk>. The court noted that the owner of the website was not registered as residing within the territory of the Chelyabinsk Oblast but belongs to another citizen residing in Kemerovo City. The Court concluded: "[a]s at the close of inspection, the Public Prosecution Office does not have any information about a person, who committed violation of personal protection laws, that is sufficient to solve an issue on taking response measures by prosecutor"

### **The Response**

The Respondent denies that the disputed domain name was registered with the primary purpose of disrupting the Complainant's business but asserts that it was registered to collect all information about ' "Mmcis" Company', not for disrupting the Complaint's business. (The Respondent did not explain what role Mmcis Company plays in the dispute.)

He further denies that the disputed domain name has been used to confuse internet users and asserts that the registration does not violate the terms and conditions of its registration.

The Respondent also denies that the disputed domain name infringed intellectual property rights and asserted that "all intellectual property (sic.) of domain name belong to domain owner".

He further denies that the disputed domain name has been used to publish personal information without consent of its owners, asserting that all data on the site are public and there is no personal information.

He accepts that the registration information on the domain name WhoIs data was wrong but states that the incorrect information was provided because the registrant did not know that <.uk> domain name registrations require an

administrative contact in the UK. He states that the Whois data will be corrected in a few days.

### **Additional Submissions pursuant to Procedural Order No. 1**

The Complainant states in response to the Procedural Order that the Complainant had already provided all necessary information and evidence; and that the Complainant has no budget for translation of all information published on the website to which the disputed domain name resolves. Moreover that information is unavailable now, as the Registrar has blocked it for the period of the dispute; the Complainant is unable to provide the Expert with the sources or descriptions of the published materials since they are defamatory and the Complainant “has a right not to comment all those ridiculous things that were published on the website kondakov.uk”.

On 25 July 2016 the Respondent responded by email and merely repeated the denials which he made in his earlier Response.

On 29 July 2016 the Complainant furnished by email a further very brief “explanatory paragraph” which was out of time but nonetheless again merely repeated the earlier assertions while adducing no additional evidence.

## **7. Discussions and Findings**

In order for the Complainant to succeed in this Complaint, paragraphs 2.a and 2.b of the DRS Policy require the Complainant to prove 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 disputed domain name; and
- ii. the disputed domain name, in the hands of the Respondent, is an Abusive Registration.

### **The Complainant’s Rights**

The Complainant has furnished *prima facie* evidence that he is the owner of the KONDAKOV mark because of his above-referenced Ukraine registered trade mark.

The disputed domain name is clearly identical to the Complainant’s trade mark.

The Complainant has therefore satisfied the first element of the test in paragraph 2 of the Policy.

### **Abusive Registration**

Paragraph 1 of the DRS Policy defines an “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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;"

In the DRS Procedure the Complainant bears the burden of proof. In this case, as explained above, the Complainant was given two warnings that his case might not have reached the sufficient standard: first, he received a letter from the Chairman of the Independent Experts, warning him about the burden of proof and that the Complaint looked so brief that it might not be enough to enable the Independent Expert to give full weight to the case that the Complainant was seeking to make; and second, he was given the opportunity to bolster his case by virtue of Procedural Order No.1.

Notwithstanding these warnings, the Complainant chose not to expand on the Complaint, but simply asked for the case to proceed to a decision.

The Complainant has made, and repeated, a number of serious allegations against the Respondent but despite having been given this further opportunity to provide evidence of use of the disputed domain name, the Complainant failed to provide any evidence to support his allegations that the domain name has been registered or used in an abusive manner.

The Respondent accepts the allegation that he provided incorrect information about himself when registering the disputed domain name but states that this was due to a misunderstanding and has undertaken to correct the information on the Registrar's Whois. While the registration of a domain name using incorrect registrant information can be indicative of bad faith registration, in the present case this is not enough on its own to discharge the Complainant's burden of proof.

In order to succeed, the Complainant bears the burden to prove his case on the balance of probabilities. The Complainant has merely repeated unsubstantiated allegations and failed to provide any evidence to support his bare assertions that the manner in which the disputed domain name is or has been used in the hands of the Respondent is an Abusive Registration. The Complainant has furnished a number of court documents but despite having been given a number of opportunities to do so, he has failed to explain the relevance of these documents to the present Complaint.

While the Respondent has not provided any real explanation of why he needed to register the disputed domain name in order to serve his purposes of collecting information about Mmcis Company, he does not bear the burden of proof.

The Complainant has failed to meet the standard of proof required to prove that the disputed domain name is an Abusive Registration in the hands of the Respondent and therefore this Complaint must therefore fail.

## **8. Decision**

This Expert decides that, although the Complainant has established relevant Rights, he has failed to prove that the disputed domain name is an Abusive Registration in the hands of the Respondent and therefore the relief sought in the Complaint must be refused.

**Signed**

**Dated 14 August 2016**

**James Bridgeman  
Expert**