

# **DISPUTE RESOLUTION SERVICE**

**D00017614**

## **Decision of Appeal Panel**

**XLMedia PLC**

and

**UK Free Bets Limited**

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

Complainant: XLMedia PLC  
12 Castle Street  
St Helier  
JE2 3RT  
Jersey

Respondent: UK Free Bets Limited  
Unit 213 Henry House  
275 New North Road  
LONDON  
N1 7AA  
United Kingdom

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

The Domain Name in issue in this case is “freebets.uk”. It is important not to confuse this with “freebets.co.uk”, which is also discussed in this case, but is not in itself in issue (and is registered on behalf of the Complainant).

### **3. Procedural History**

The Complaint in this case was filed on 15 June 2016. A Response was filed on 6 July 2016, to which a Reply was filed on 13 July 2016. Mediation between the parties failed.

The Complainant paid the relevant fee for an expert decision. The Expert, Clive Trotman, issued his decision on 8 August 2016. Having summarised the parties' respective submissions, he concluded that the Complainant had established that it had Rights in respect of the name FREEBETS and that the operative part of the Domain Name was identical to that name. Having considered the parties' respective submissions, he determined that the real dispute behind the Complaint was the question of precisely what rights were transferred under an agreement to purchase the related domain name <freebets.co.uk> (as well as <bonus.co.uk>) and what should have become of the Domain Name which was registered to the then owner of <freebets.co.uk> during the period of negotiation in the lead up to that agreement. He therefore concluded that he was being asked to determine a contract dispute between the parties, which was not appropriate under the DRS Policy ("the **Policy**"), and on that basis decided that he could not proceed with the question of whether the Domain Name was an Abusive Registration and ruled that no action should be taken.

The Complainant filed a Notice of Appeal on 6 September 2016, to which the Respondent filed an Appeal Notice Response on 22 September 2016.

The panellists named below were appointed to determine this appeal on 14 October 2016. They have each confirmed that they are independent of each of the parties and that, to the best of their knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed which might be of a such a nature as to call into question their independence in the eyes of any of the parties.

It should be noted that, although a new DRS Policy (Version 4) came into effect for all Complaints commenced from 1 October 2016, since this case was commenced under Version 3 of the Policy, the appeal falls to be determined under that version as well.

#### **4. The Nature of This Appeal**

As is clear from paragraph 10a. of the Policy, appeals against DRS decisions are conducted by way of a full review of the whole matter, by considering all of the submissions made by the parties at first instance as well as the appeal documents. The appeal panel is entitled to review procedural as well as substantive matters. Accordingly, as well as reading the Expert's decision and the Notice of Appeal and Appeal Response, the panellists have read the full Complaint file and have taken account of the entirety of both parties' submissions. On the procedural side, they have also clarified with Nominet the history of registration of the Domain Name and of certain other domain names that are involved in the factual matrix of the case.

#### **5. Formal and Procedural Issues**

There is considerable confusion as to the correct identity of the Respondent. The Policy states in the Definitions section, paragraph 1, that:

*“Respondent means the person (including a legal person) in whose name or on whose behalf a Domain Name is registered.”*

When the Complaint was filed, the named registrant of the Domain Name according to the Nominet WhoIs record was a company called Identity Protect Limited, which provides a WHOIS privacy service, holding domain names on behalf of clients who have ultimate control of (and manage) the domains. However, the Complainant named UK Free Bets Limited as the Respondent, on the basis that it was the entity that operated the website to which the Domain Name points and there were various linking factors pointing to its being responsible for the Domain Name.

The Response asserted that the underlying registrant of the Domain Name, and thus the correct Respondent, was “Michael Barry”. It went on to state that the site at <freebets.uk> was a going concern “operated under a special arrangement between myself [Michael Barry] and UK Free Bets Ltd, who provide specific engine marketing and data services”. In the Reply, the Complainant pointed out the definition of “Respondent” in the Policy, and put forward a further explanation as to why the “special arrangement” mentioned by Mr Barry was effectively a lease of the Domain Name to UK Free Bets Limited (as evidenced by a letter dated 12 April 2016 from UK Free Bets Limited to the Complainant), which was in fact primarily responsible for the activities conducted on the website to which the Domain Name points and therefore UK Free Bets Limited was properly named as the Respondent.

The WhoIs records show that Identity Protect Limited became registrant of the Domain Name on 25 April 2016, immediately before which Michael Barry was the registrant. At no point was UK Free Bets Limited the named registrant.

The expert concluded from the evidence that UK Free Bets Limited is the entity “on whose behalf” Michael Barry acknowledges being the registrant of the Domain Name (hidden behind Identity Protect Limited), and that the “special arrangement” includes the lease of the Domain Name to UK Free Bets Limited, which accordingly was validly identified as the Respondent.

Like the first instance response, the Appeal Notice Response was purportedly filed by Michael Barry, who states:

*“I now understand that for this procedure and under the policy my special arrangement and lease of the Domain Name to UK Free Bets Ltd causes the company to be considered the respondent and not myself, Michael Barry.*

*“Therefore I am bound by the identification of the respondent made by the Expert under the policy, even if I do consider myself the principal owner and registrant of the Domain Name.”*

Finally, the Panel notes that, according to Nominet’s records, the Nominet online account used on behalf of the “Respondent” to access the Nominet docket of the DRS proceedings was that of Leon Hughes who incorporated UK Free Bets Limited and is the sole director and shareholder of the company, and that the email address used to log on to the online account was service@freebets.uk.

On this basis, there seems to be no dispute that the Respondent has been correctly identified in this Complaint as UK Free Bets Limited, but the Panel stresses that all relevant parties, including Identity Protect Ltd and Michael Barry, are bound by this decision.

## 6. The Facts

The Complainant is a public company that provides digital marketing and online services. Pursuant to a purchase agreement dated 13 August 2014 (the “**Purchase Agreement**”), as amended by a further agreement dated 31 March 2015 (the “**Amendment Agreement**”), the Complainant acquired the domain names <freebets.co.uk> and <bonus.co.uk> and associated intellectual property rights and other assets, including goodwill, for the sum of £3.96 million. By the time of the acquisition, a website had been operating at the <freebets.co.uk> domain for several years, providing betting and gaming aggregation services. The Complainant has continued to operate and develop this website since then, by reference to the name “freebets”. This is the name in which it claims to have acquired Rights for the purpose of contesting the Domain Name.

By way of further history, the “freebets” business acquired by the Complainant had been built up from some point between 2004 and 2008 (the exact timing does not matter) by three brothers: Leon, Ryan and Craig Hughes. On 27 May 2014 the Complainant entered into a Confidentiality and Non-Disclosure Agreement (“**NDA**”) with Leon Hughes for the purpose of negotiating the possible acquisition of the <freebets.co.uk> domain name and associated assets. Leon Hughes was at the time the registrant of the domain name. A deal in principle was reached and a Letter of Intent was drawn up to reflect this. When it was ready to be signed, Leon Hughes asked for his name to be substituted with that of his brother, Ryan Hughes, and it was Ryan who signed the Letter of Intent on 10 July 2014 and the subsequent Purchase Agreement mentioned above.

The dispute involved in this case has arisen because, on 10 June 2014, during the period of negotiating the acquisition of the “freebets” business, Leon Hughes registered the Domain Name using the email address ryan@sm-i.co.uk. The Domain Name sat ‘dormant’ while the acquisition was completed, but in March 2015 the Respondent was incorporated, with Leon Hughes as sole director and sole shareholder, and in or around July 2015 a website started operating at www.freebets.uk, providing a similar service to that at the <freebets.co.uk> domain, comprising information about free bets offered by the leading bookmakers. This appeared on its face to be operated by the Respondent. The name used to identify the service at the www.freebets.uk website was (and remains) FREEBETS UK. Originally, this appeared in logo form that was similar in colour and style to the manner of use of FREEBETS on the www.freebets.co.uk website, though this was subsequently changed to be rather less similar.

Since the background facts are somewhat confusing, the Panel sets out below events and dates which have been established to its satisfaction, with the assistance of Nominet’s internal administrative records, in relation to the Domain Name and the other domain names relied on by the Complainant. These are not intended to be exhaustive,

but they are designed to set out the chronology in sufficient detail to understand the background against which the Complaint is to be assessed.

- 24 May 2004 Uncontested domain name <freebets.co.uk> registered.
- mid- to late 2000s The website at www.freebets.co.uk started operating.
- 30 April 2008 Brite Spark Media Limited became registrant of <freebets.co.uk>, giving Leon Hughes as the contact name.
- 6 August 2010 <freebets.co.uk> was transferred into the name of Leon Hughes (with himself as contact).
- 4 February 2013 <bonus.co.uk> was put into the name of Gambull Limited, with Leon Hughes as Contact Name.
- 20 November 2013 Nominet confirmed that “.uk” domain names will be introduced and that existing holders of domain names (including “.co.uk”) would be offered the shorter equivalent, with five years to decide whether they wanted to use it.
- 27 May 2014 The Complainant and Leon Hughes entered into the NDA concerning the proposed sale/acquisition of the <freebets.co.uk> and <bonus.co.uk> domains.
- 10 June 2014 Leon Hughes registered the Domain Name, <freebets.uk>, with Administrative contact name Leon Hughes and Administrative email address ryan@sm-i.co.uk.  
This was the first date on which Nominet accepted new registrations directly under the .uk domain, giving priority to existing customers who already had a .co.uk (or .org.uk, .me.uk, .net.uk, .ltd.uk or .plc.uk) domain name to claim the corresponding .uk domain name.
- 8 July 2014 Confirmation of a deal being struck in relation to the proposed sale was sent by email from admin@freebets.co.uk to the Complainant, as follows:  
*“We would like to confirm that we agree to a deal at £4.15m. Kind regards, Ryan, Leon & Craig”*
- 10 July 2014 Letter of Intent relating to the proposed purchase of the <freebets.co.uk> and <bonus.co.uk> domain names entered into between the Complainant and Ryan Hughes, whose name and address were added in manuscript, to substitute for his brother, Leon Hughes.
- 1 August 2014 <bonus.uk> was registered to Gambull Ltd, with leon@hg-i.com as email contact address. (Leon Hughes is sole director and shareholder of Gambull Limited.)
- 5 August 2014 The Domain Name was transferred by ‘ryan@sm-i.co.uk’ to Michael Barry as both Registrant and contact name,

giving the address of Unit 213 Henry House, 275 New North Road, London N1 7AA.

- 13 August 2014 <bonus.uk> was transferred by 'leon@hg-i.com' to Michael Barry as both Registrant and contact name, giving the same address.
- The Complainant entered into the Purchase Agreement with Ryan Hughes, as discussed above.
- 2 September 2014 <freebets.co.uk> was transferred from Leon Hughes to Ryan Hughes (both as Registrant and as contact).
- <bonus.co.uk> was transferred from Gambull Limited to Ryan Hughes (both as Registrant and as contact).
- 3 September 2014 <freebets.co.uk> was transferred from Ryan Hughes to International Domains Holdings Ltd / Your Whois Privacy Limited.
- <bonus.co.uk> was transferred from Ryan Hughes to International Internet Development Ltd / Your Whois Privacy Ltd.
- 5 March 2015 UK Free Bets Limited, company no. 09472750 was incorporated. Leon Hughes is the director and sole shareholder.
- 31 March 2015 Amendment Agreement entered into by the Complainant and Ryan Hughes.
- July 2015 Website at <freebets.uk> began operating.
- 29 March 2016 The Complainant's solicitors, Wiggin LLP, sent a letter to Leon and Ryan Hughes, asking them to cease operating the <freebets.uk> website and to transfer the <freebets.uk> domain name.
- 12 April 2016 The Respondent sent a letter to Wiggin LLP, rejecting their requests and stating that "a third party" had leased the Domain Name to the Respondent.
- 25 April 2016 The Registrant of the Domain Name changed from Michael Barry to Identity Protect Limited.
- 2 July 2016 The contact name for <bonus.uk> was changed to Leon Hughes, with Michael Barry still being the registrant.

The Complainant's website at [www.freebets.co.uk](http://www.freebets.co.uk) and the Respondent's website at [www.freebets.uk](http://www.freebets.uk) compete with each other and with third party gaming websites.

## 7. The Parties' Contentions

The Parties' contentions which were before the Expert are summarised in his decision and do not need to be repeated verbatim here. The Panel, however, confirms that it has read and considered all the Parties' contentions before the Expert, together with the annexes, documents and references submitted by the Parties. In this section the Parties contentions so far as relevant to the Appeal are summarised.

### Complainant's contentions

In its appeal notice the Complainant says that the Expert accepted that: (i) UK Free Bets Limited was validly identified as the Respondent; (ii) the Complainant had enforceable unregistered trade mark rights in the "freebets" mark; (iii) the operative part of the Domain Name was identical to the claimed mark; and (iv) the requirements of section 2(a)(i) of the Policy were met.

The Complainant says that the Expert, however, determined that the registration was not abusive because (i) the Complainant's rights comprise partly rights acquired under the Purchase Agreement; (ii) the first registration of the Domain Name pre-dated the Purchase Agreement; (iii) the Purchase Agreement names neither the Respondent nor Michael Barry; and (iv) the real dispute concerns a contractual matter as to "*precisely what rights were transferred under the Purchase Agreement, and what should have become of the Domain Name after its registration*".

The Complainant contends that the Expert was wrong to conclude that neither paragraph 1(i) nor (ii) of the Policy was satisfied and that, of the factors which may indicate Abusive Registration listed in section 3a of the Policy, those set out in section 3a(i)C and 3(a)(ii) are relevant; it also notes that the listed factors are non-exhaustive. The main points the Complainant advances are as follows:

- The Respondent's use of the Domain Name is diverting business away from the Complainant as set out in the Complaint; there is continuing interference with its business.
- The Respondent's use of the Domain Name is intended to confuse people into believing that there is some connection between the Domain Name and the Complainant's <freebets.co.uk> website. Evidence as to likely confusion is set out in the Complaint.
- The Respondent is a competitor of the Complainant and would have known of the Complainant's cause for complaint before using the Domain Name in connection with the offering of its services. The Respondent contends that the phrase "free bets" is generic but it cannot claim to have been unaware of the previous use of the <freebets.co.uk> website and of the Complainant's acquisition of that domain name and associated goodwill. The Respondent cannot be said to be "*making fair use*" of the Domain Name given its deliberate action to trade upon the reputation and goodwill in the "freebets" mark and the <freebets.co.uk> website acquired by the Complainant.

- The Expert relied on the DRS case of *David Munro v Celtic.com Inc* but failed to distinguish the facts of that case which was a purely contractual dispute concerning whether a binding contract for transfer of the domain name in issue had been formed, and related jurisdictional matters.
- The Complaint is not a purely contractual dispute. The Complainant relies on the Purchase Agreement to establish that it has enforceable Rights; it also relies on the Respondent's knowledge of the sale and purchase of the <freebets.co.uk> domain name and related assets (through its sole director and shareholder). There is no dispute as to the operation of the Purchase Agreement and the Complainant does not contend that the Domain Name should have been included in the transaction.
- The Complainant submits that the two cases referred to below are of more direct relevance:
  - First the case of *Delecto Gifts Limited v Alasdair MacPherson (DRS 4376)*, in which there was a contract for the purchase of goodwill in the vendor business (including the domain name in issue). The respondent in that case ran a competitor business and had bought the domain name in issue from an ex-employee of the vendor who had registered the domain for the vendor. The Complainant says that of particular import are the Expert's findings at paragraph 7.6 to 7.15, especially 7.14.
  - Secondly the case of *Kiley-Hale Solicitors v Personal Injury Management Services (DRS 4438)*, in which the complainant purchased the domain name in issue from the respondent for a substantial sum. Subsequently the respondent took back control of the domain name and amended the website to direct enquiries to itself. The main distinction between that case and the present one is that, rather than taking back control of the sold domain name, the Respondent has instead begun operating a competitor business from a near identical domain.

### **Respondent's contentions**

The Respondent's appeal response has apparently been submitted by Michael Barry who says that, even though he considers himself the principal owner and registrant of the Domain Name, he accepts that his special arrangement and lease of the Domain Name to UK Free Bets Limited causes that company to be considered the Respondent. He accepts that the appeal response will be deemed as a response from the Respondent and presented as authored by Leon Hughes as a result of hard settings inside Nominet Online Services. The main points Michael Barry advances on behalf of the Respondent are as follows:

### Complainant's Rights

- The Expert correctly assessed that the Complainant does not have a registered trade mark for "freebets" or a company registered for that name.



- The Expert correctly determined that the Complainant’s claimed mark comprised the ordinary generic or descriptive words “free” and “bets” and he stated “*Whether or not the combined term ‘freebets’ is associated with the Complainant to the extent of having acquired a secondary meaning is debateable.*”
- The numerous examples of unrelated websites referred to in the Response to the Complaint and domain registrations bearing the Complainant’s claimed mark in plural and singular form were acknowledged by the Expert.
- The Expert noted the modest threshold for establishing Rights under the Policy and, solely for the purposes of this proceeding, accepted that the Complainant had certain Rights as a result of the Purchase Agreement.
- The above factors would further support the Expert’s Decision especially in relation to section 1(ii) of the Policy.

### Abusive Registration

- As regards section 1(i) of the Policy, the Domain Name, rights and associated rights were acquired via transfer to himself Michael Barry on 27 July 2014 before the Complainant purchased the separate domain name and claimed rights on 13 August 2014.
- Michael Barry claims that in section 5 of his Decision the Expert noted about him that “*He could not have been aware of the existence of any rights acquired later by the Complainant*”. (However, the Panel notes that the Expert was there reciting the submission by Michael Barry in the Response, not accepting that this was the case.)
- The Expert concisely covered the crucial timings of the original registration of the Domain Name and subsequent transfer to him, establishing that these events happened separately and before the Complainant’s partial rights coming into existence. The requirements of section 1(i) were, therefore, not met.

### DRS Policy Section 3

- Michael Barry disputes that any factors in section 3 of the Policy are present; none was identified by the Expert.
- He points to the Complainant’s method of identifying the Respondent via the highly visible (Green Bar Assurance) SSL server certificate provided by a renowned identity verification authority. He believes it reasonable to expect users and businesses to identify the same association in the same fashion.
- Over 100 betting operators have all been able to identify, distinguish and willingly commercially engage with the Domain Name quite separately from the numerous sites in the sector, including those of the Complainant.

#### DRS Policy Section 4

- Michael Barry agrees with the Expert’s assessment of the Complainant’s claimed mark and contends that the Domain Name is generic or descriptive and that fair use is being made of it. It is, therefore, entirely speculative for the Complainant to suggest that he or the Respondent would have specifically known of the Complainant’s cause for complaint before and during the use of the Domain Name; he denies that he or the Respondent has ever had knowledge of any cause for complaint.
- He points to the Response to the Complaint and a firm belief that the generic nature of the sector renders it a free-for-all, where he and the Respondent and others are making fair use of the descriptive key phrase “*free bets*” as borne out by the operation of the betting industry since the early 2000s (see Annexes 10 and 12 to the Response to the Complaint).
- The Respondent accepted his offer of engagement many months after the acquisition and into the preparation of the Domain Name and would have done so using any rights as acquired on 27 July 2014. The 20 months that elapsed before the Complainant made known its cause for complaint do not help the Complainant’s argument.
- For the Complainant’s proposed reverse treatment of section 4a(i) to succeed, knowledge of a “*cause for complaint*” is required as opposed to any proposed knowledge of a fact.

#### Disruption

- Significant financial investment, expertise and effort have resulted in the considerable progress of the Domain Name. The Complaint is disrupting and interfering with the fair use of the Domain Name, causing key developments to be placed on hold or shelved.
- The Domain Name website is a very real going concern, providing a livelihood for several people and offering genuine services to thousands of users and many businesses. Loss of the Domain Name will destroy this concern, deprive him of a considerable asset and place him and the Respondent in complete jeopardy with regard to long-term contractual arrangements with major betting operators.

## **8. Discussion and Findings**

#### General

Pursuant to paragraph 2 of the Policy, the Complainant must 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 Domain Name; and

- ii. the Domain Name, in the hands of the Respondent, is an Abusive Registration.

### Rights

“Rights” are defined as “rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning”.

The Complainant does not rely on any registered trade mark rights, but relies on its use (and the use by its predecessor in title) of the unregistered mark, FREEBETS, and goodwill that it says it has acquired through use of the mark in connection with the services offered through the website at [www.freebets.co.uk](http://www.freebets.co.uk).

The Respondent points out that “freebets” is simply the “concatenation” of the words “free” and “bets” and that numerous domain names have contained the same concatenation. In its submissions, however, the Complainant has provided evidence that the mark “freebets” has been used in connection with the business run through the website at [www.freebets.co.uk](http://www.freebets.co.uk) since 2004 and that it has generated a substantial number of players and substantial revenue. It is, therefore, clear that the original operators of the website and subsequently the Complainant have succeeded in turning a very descriptive term into one which is distinctive of the business conducted through the website. The Complainant acquired such goodwill as was associated with the domain name and website at [www.freebets.co.uk](http://www.freebets.co.uk) for a very substantial sum in August 2014 and since then has made further investment in advertising and promoting it, as a result of which it owns goodwill in the business that is conducted by reference to the name FREEBETS.

While it may well be the case, as the Respondent contends, that others use the term “free bets” in relation to similar activity to that conducted through the [freebets.co.uk](http://freebets.co.uk) website, the Panel is confident that the Complainant’s business will be particularly recognised as being associated with the domain name [freebets.co.uk](http://freebets.co.uk). Accordingly, the Complainant has additionally built up reputation and goodwill by reference to the full domain name.

The Panel therefore concludes that the Complainant has Rights in respect of the name and mark FREEBETS and/or the name [freebets.co.uk](http://freebets.co.uk), both of which are identical and/or similar to the Domain Name.

### Abusive Registration

“Abusive Registration means 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 was unfairly detrimental to the Complainant's Rights”

As is all too apparent from the discussion as to the correct identity of the Respondent and the facts and chronology set out above, the interaction between Ryan and Leon Hughes and Michael Barry and the Respondent is complex.

In May 2014, the Complainant and Leon Hughes began discussions as to the sale of the <freebets.co.uk> and <bonus.co.uk> domain names, the associated intellectual property rights, and the websites operating under those domain names. By this date it was already known that the registrants of such domain names would have priority in registering the associated shorter “.uk” domain names. There is, however, nothing in the evidence before the Panel suggesting any discussion between the Complainant and Leon Hughes (or his brothers) as to what was to happen to the right to register these “.uk” domain names.

As the registrant of <freebets.co.uk> on 10 June 2014, Leon Hughes became entitled to register the Domain Name from that date, and would have the exclusive right to do so for the next five years. He exercised that right on 10 June 2014. On 8 July 2014, the Hughes brothers sent an email to the Complainant confirming that a deal had been struck in relation to the proposed sale. However, when the Letter of Intent was entered into on 10 July 2014, Ryan Hughes was substituted as seller in place of Leon Hughes, even though at that date Leon Hughes was still the registrant of <freebets.co.uk>, and Gambull Limited (of which Leon Hughes was the sole shareholder and director) was the registrant of <bonus.co.uk>.

Gambull Ltd exercised its right to register <bonus.uk> on 1 August 2014. Then, in the lead up to the formal Purchase Agreement being entered into by the Complainant and Ryan Hughes on 13 August 2014, the Domain Name was transferred to Michael Barry on 5 August, and <bonus.uk> was transferred to him on 13 August.

On 2 September 2014, <freebets.co.uk> and <bonus.co.uk> were both transferred to Ryan Hughes (by Leon Hughes and Gambull Ltd) so that Ryan Hughes was able to transfer them as directed by the Complainant in completion of the Purchase Agreement on 3 September 2014.

In the Panel’s view, the overwhelming inference from these events is that Ryan Hughes was selected to act as seller in place of Leon Hughes to avoid an argument that the rights to register the Domain Name and <bonus.uk> were rights that were required to be transferred to the Complainant under the Purchase Agreement.

As discussed above, the Panel has found that the Respondent to this Complaint is UK Free Bets Limited, the operator of the website at the Domain Name. Paragraph 3a of the Policy provides a list of factors which may establish a registration as Abusive. These include circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant (3a.i.C); and is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain name is registered to, operated or authorised by, or otherwise connected with the Complainant (3a.ii).

At the time he originally registered the Domain Name, Leon Hughes, the sole shareholder and director of the Respondent, was of course fully aware of the proposed

sale of the <freebets.co.uk> business and that the Complainant no doubt intended to carry on that business at the website at <freebets.co.uk> under the “freebets” name. He then incorporated the Respondent and set up a business operating through the website at the Domain Name using a virtually identical domain name, providing a virtually identical service, conducted under the same name and a similar logo. The Complainant has also provided evidence about the diversion of website traffic and the significant drop in traffic to the Complainant’s website after the website at the Domain Name was established in July 2015.

Accordingly, if, as the Panel has found, UK Free Bets Limited is the correct Respondent to this Complaint, then the Domain Name was acquired by the Respondent when it “leased” the Domain Name from Michael Barry between March 2015 when the Respondent was incorporated and July 2015 when the website at the Domain Name began operating. On that basis, the Panel is in no doubt that the Domain Name was acquired in a manner that was unfairly detrimental to the Complainant’s Rights and that the use of the Domain Name for the competing website amounts to use in a manner that both takes unfair advantage of and is unfairly detrimental to the Complainant’s Rights. The Respondent (through its sole shareholder and director) was fully aware of the Complainant’s cause for complaint when it started using the Domain Name for its competing website. The Respondent is attracting Internet users to its website by taking unfair advantage of the reputation and goodwill that the Complainant both acquired under the Purchase Agreement and has subsequently developed in the “freebets” name through its continued operation of the freebets.co.uk website. None of the factors in paragraph 4 of the Policy that might demonstrate that the Domain Name is not an Abusive Registration apply in the case of UK Free Bets Limited.

The Panel therefore finds that the Domain Name in the hands of the Respondent UK Free Bets Limited is an Abusive Registration.

Although it is not, in the Panel’s view, necessary to do so, it has considered whether its decision would be any different if Michael Barry were to be regarded as the correct Respondent. In “his” Response, he relied on factors in paragraph 4 of the Policy including 4a.i.A – “Before being aware of the Complainant’s cause for complaint ..., the respondent has ... 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”; and 4a.ii “The Domain Name is generic or descriptive and the Respondent is making fair use of it”.

Mr Barry claims that at the “point of registration” – by which he presumably means the time he acquired the Domain Name – he was “unaware of the existence of the Complainant or the websites owned and operated by it”. The Domain Name was first registered in his name on 5 August 2014, but he relies on an invoice transferring the Domain Name to him from 123-reg Ltd dated 27 July 2014. Although the Complainant had not yet acquired the <freebets.co.uk> business at that date, the Complainant also relies on the Rights that had been established by the operation of the business by the Hughes brothers prior to the sale. In the Response, Mr Barry states that:

*“‘free bet’ ... describes a long-standing marketing incentive used by the vast majority of betting operators to acquire and retain customers in the UK...As a*

*betting man and user of the Internet, I have been aware of such incentives for over a decade.*

*“The selection of use for the [Domain Name] was informed by my exposure to online betting, practical limitations and a desire to successfully tap into to [sic] the culture of online comparison in the UK which spans across many verticals such as ... betting (as targeted).”*

The invoice relied on by Mr Barry has a quoted price of nil, no charge, and nowhere in the evidence does he claim to have paid anything for the Domain Name. He is entirely silent about the <bonus.uk> domain name. There is no explanation as to why Leon Hughes transferred the Domain Name (and <bonus.uk>) to him. Mr Barry simply states that “I acquired registration of the [Domain Name] via transfer of a disposal by Ryan Hughes”. In fact, as set out above, it must have been transferred to him by Leon Hughes.

In the circumstances, the Panel does not find it credible that Mr Barry was unaware of the website at [www.freebets.co.uk](http://www.freebets.co.uk), the business operated by the Hughes brothers under the name “freebets” at the website, or therefore the Rights then existing in the name “freebets”, when he acquired the Domain Name in July/August 2014. He must also have been aware that the website at [www.freebets.co.uk](http://www.freebets.co.uk) was still being operated (now by the Complainant) when he leased the Domain Name to the Respondent.

Mr Barry could not therefore rely on paragraph 4a.1.A since he was aware of the Complainant’s cause for complaint. His argument that the Domain Name is generic or descriptive (paragraph 4a.ii) also fails for the reason set out in the discussion on Rights above, namely that the Complainant and its predecessors have succeeded in turning a very descriptive term into one which is distinctive of the business conducted through the website.

Mr Barry also suggests that if the Domain Name is transferred to the Complainant, the loss of the Domain Name will deprive several people of their livelihood, deprive him of a considerable asset and place him and the Respondent in jeopardy regarding contractual arrangements with major betting operators. However, this submission is misplaced. If the Respondent is no longer able to use the Domain Name, that would not of itself prevent the Respondent carrying on its business under an alternative domain name that did not take unfair advantage or cause unfair detriment to the Complainant’s Rights.

Accordingly, if Mr Barry had been the appropriate Respondent, the Panel would still have found that the Domain Name in his hands was an Abusive Registration.

## **9. Decision**

The Appeal is successful. The Panel finds that the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration. Accordingly, the Panel directs that the Domain Name [freebets.co.uk](http://www.freebets.co.uk) should be transferred to the Complainant.

**Signed:**

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**Anna Carboni**

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**David King**

**Ian Lowe**

**Dated: 25 November 2016**