

DISPUTE RESOLUTION SERVICE

D00017616

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

Integrity Refurbishment Ltd

and

Chris Marsh

1. The Parties:

Complainant: Integrity Refurbishment Ltd
Integrity Refurbishment Ltd
6 George Street
Alderley Edge
Cheshire
SK9 7EJ
United Kingdom

Respondent: Chris Marsh
48 Wayfarers Drive
Newton-le-Willows
Cheshire
WA12 8DG
United Kingdom

2. The Domain Name:

integrityrefurbishment.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 name integrityrefurbishment.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)

I would like to explain briefly why I have rejected this DRS complaint.

Even in a case where the Respondent has failed to respond to the complaint, in order to succeed the Complainant must still provide sufficient evidence to prove two matters on the balance of probability. That burden lies on the Complainant to the same degree in respect of both summary and full DRS decisions.

The two matters which must be proved are that:

1. the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
2. the Domain Name, in the hands of the Respondent, is an Abusive Registration.

These terms are defined in the Nominet DRS Policy as follows:

- **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.

- **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.

In this case, the Complainant provided just enough to prove that it has Rights. The Complainant was incorporated on 11 September 2015. The Domain Name was registered by the Respondent on 5 October 2015. The Complainant also provided an example of a 'with compliments' slip and notepaper that incorporated the INTEGRITY REFURBISHMENT name and which were printed in anticipation of using the Domain Name as its website address. However, the Complainant provided no details of and did not even make any reference to any actual use of those documents sufficient to generate any Rights in that name. It made no claim and gave no information about any trading or business marketing undertaken by the Complainant under its name nor was I referred to any other website where it might have been using it.

I would refer the Complainant to the DRS Experts' Overview published on Nominet's website which is intended to assist all participants or would-be participants in disputes under the DRS Policy by explaining commonly raised issues and how Experts, the members of Nominet's panel of independent adjudicators, have dealt with those issues to date. It also draws attention to areas where Experts' views differ. In particular, paragraph 1.7 deals with the issue of whether or not a company name registration on its own can give rise to a right within the definition of Rights. The Overview points out that there are decisions going both ways but confirms that the consensus view of recent Experts' meetings has been that mere registration of a company name at the Companies Registry does not of itself give rise to any Rights for the purposes of the DRS.

But in this case the Complainant's representative did at least state that he had been using 'gary@integrityrefurbishment.co.uk' as his main email address and exhibited a short exchange of emails on 11 and 12 January 2016 with a company called Enquiry Experts Limited showing such use. I note that in the earlier email exchange he exhibited he was using a different '@tiscali.co.uk' address. However, The Complainant's unchallenged statement that the '@integrityrefurbishment.co.uk' email address has been in use, supported by the short email exchange on 11 and 12 January 2016, is just sufficient evidence to prove that, on the balance of probabilities, the Complainant does have Rights in the INTEGRITY REFURBISHMENT name for the purpose of this DRS complaint.

However, the Complainant must also prove that the Domain Name, in the hands of the Respondent, is an Abusive Registration (emphasis added). The Complainant fails to do so. The Complainant alleges that the

company called Enquiry Experts Limited was retained by the Complainant to provide web services and as part of this arrangement that company registered the Domain Name on behalf of the Complainant. The Complainant further alleges that Enquiry Experts Limited was unable to deliver the web services and has failed to respond to the Complainant's requests to transfer the Domain Name to a new registrar but has now directed it to resolve to a third party website. The Complainant exhibited an exchange of emails with Enquiry Experts Limited between 29 October 2015 and 12 January 2016. This exchange does not mention the registration of the Domain Name as part of any arrangement about web services but merely discusses the setting up of email services using the Domain Name. In this email exchange, the person with whom the Complainant was dealing at Enquiry Experts Limited was a gentleman named Daniel Marsh.

But the fundamental issue the Complainant has entirely failed to address is the fact that the Respondent to this Complaint who registered and is currently holding the Domain Name is not Enquiry Experts Limited as alleged by the Complainant but an individual named Chris Marsh of 48 Wayfarers Drive, Newton-le-Willows, Cheshire. The Complainant makes no allegations of any sort against the actual Respondent and indeed it never once even mentions the actual Respondent whether in its Complaint or in any of the supporting documents that it exhibited. That may well explain why the Respondent chose not to respond to the Complaint. I would also note that the Complaint will not have been sent by Nominet to Enquiry Experts Limited as that company is not the Respondent and it may therefore be unaware of the allegations made against it.

I take note of the fact that the person with whom the Complainant was dealing at Enquiry Experts Limited in the exhibited email exchange was called Daniel Marsh and therefore has the same surname as the Respondent. But it is a fairly common surname and, having checked the website of Enquiry Experts Limited myself, I note that its address is 18a Bridgewater Street, Lymm, Cheshire i.e. not the same address as the Respondent.

Someone has taken steps to direct the Domain Name to resolve to a third party website at www.sbddoors.com, which is the website of a company specialising in the design and construction of Orangeries and sun house extensions in Manchester and Cheshire. But the Complainant does not allege that the Respondent is responsible for this action and I have been provided with absolutely no evidence whatsoever to link the Respondent with what the Complainant alleges has been done by Enquiry Experts Limited.

In my view, in order for the Domain Name to be an Abusive Registration in the hands of the Respondent under the second limb of the definition of Abusive Registration, the relevant use of the Domain Name in a manner which takes unfair advantage of or is detrimental to the Complainant's Rights has to be use for which the Respondent is, on the balance of

probabilities, proved by the evidence to be responsible or at least involved in.

In the absence of any evidence whatsoever I am not entitled to jump to the conclusion that the Respondent is involved with and/or directed the alleged actions of Enquiry Experts Limited. I must decide this Complaint on the evidence before me and, on that evidence, the Complainant has failed to prove on the balance of probabilities that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

I am conscious that the Complainant cannot resubmit the same complaint again and that in any appeal of this decision the Complainant is not entitled to adduce any new evidence or provide further documents in support. I therefore considered whether or not I should invite the Complainant pursuant to paragraph 13a of the DRS Procedure to provide further statements and documents to address the fundamental shortcomings of the Complaint as filed. However, that would be tantamount to inviting the Complainant to have a complete second bite at it and it would only be fair for the Respondent to then be given another opportunity to respond. That could undermine the whole nature of the DRS summary decision process which is only available when no response to a complaint has been received. In the circumstances, I have decided that I should deal with the Complaint as filed and, for the reasons outlined above, I have no choice but to reject it.

8. Decision

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

Signed: Chris Tulley

Dated: 4 August 2016