

DISPUTE RESOLUTION SERVICE

D00018018

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

Hollis School of Dance and Drama

and

Mr Adam Mersh

1. The Parties:

Complainant: Hollis School of Dance and Drama
28 Walton Close
Worthing
West Sussex
BN13 2BJ

Respondent: Mr Adam Mersh
17 The Street
Storrington
West Sussex
RH20 3NL

2. The Domain Name:

worthingdanceclasses.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 section 3 and 6 of the Policy. 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 worthingdanceclasses.co.uk is an abusive registration

NO

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 Complainant has not demonstrated rights in respect of a name or mark which is identical or similar to the domain name as firstly the domain name is descriptive and secondly it trades under the name Hollis School of Dance and Drama as opposed to worthingdanceclasses.co.uk as the domain name. The website at the domain name refers to Hollis School of Dance and Drama ("HSDD") and reference is made throughout to HSDD. There is a reference to Worthing Dance Classes on the home page, but the use is entirely descriptive of the services being offered, i.e. dance classes in the Worthing area.

The Nominet Expert Guidance states at 2.2 that:

"the relevant right has to be an enforceable right (i.e. a legally enforceable right). Bare assertions will rarely suffice. The Expert needs to be persuaded on the balance of probabilities that relevant rights exist"

And goes on to state:

"If the right is an **unregistered trade mark right**, evidence needs to be put before the Expert to demonstrate the existence of the right. This will ordinarily include evidence to show that (a) the Complainant has used the

name or mark in question for a not insignificant period and to a not insignificant degree (e.g. by way of sales figures, company accounts etc) and (b) the name or mark in question is recognised by the purchasing trade/public as indicating the goods or services of the Complainant (e.g. by way of advertisements and advertising and promotional expenditure, correspondence/orders/invoices from third parties and third party editorial matter such as press cuttings and search engine results).'

No evidence of that nature has been produced.

8. Decision

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

Signed: G GRASSIE
UNSIGNED

Dated: 15/11/16

