

# NOMINET

## DISPUTE RESOLUTION SERVICE

D00018020

### Decision of Independent Expert

The Sage Group Plc

and

Fiona Beaumont

#### 1. The Parties:

Lead Complainant: The Sage Group Plc  
North Park  
Newcastle Upon Tyne  
NE13 9AA  
United Kingdom

Respondent: Fiona Beaumont  
c/o Exchequer Business Systems Limited, Possums, Grange Road, Maidenhead,  
Berks  
SL6 9TH  
United Kingdom

#### 2. The Domain Name:

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

#### *Chronology*

28 September 2016	Dispute received
29 September 2016	Complaint validated
29 September 2016	Notification of complaint sent to parties
18 October 2016	Response reminder sent
20 October 2016	Response received
24 October 2016	Notification of response sent to parties
27 October 2016	Reply reminder sent
27 October 2016	Reply received

01 November 2016	Notification of reply sent to parties
01 November 2016	Mediator appointed
04 November 2016	Mediation started
23 November 2016	Mediation failed
23 November 2016	Close of mediation documents sent
29 November 2016	Expert decision payment received

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

The Complainant is a software company specialising in programming, designing, maintaining and commercialising business management software which is sold under SAGE trade marks, logo and related marks.

The Complainant and its subsidiaries own trademark applications and registrations around the world for SAGE including:

- SAGE, registered on 23 August 1991 (filing date 14 October 1988) in the United Kingdom under number UK00001360796;
- SAGE, registered on 12 May 2004 (filing date 16th November 2000) in the European Union under number 001958073.

Sage (UK) Limited a subsidiary (presumably) of the Complainant (as opposed to the Complainant itself as asserted in the Complaint), has owned the sage.co.uk domain name since August 1996.

The Domain Name, sageaccounting.co.uk (hereafter the Domain Name) was registered on 8 April 2004.

The Respondent is the sole director of Exchequer Business Systems Limited, a company which was founded and commenced trading in July 1993. The Respondent is a specialist in Sage accounting software and provides training, guidance and technical support and was at one time a Sage Business Partner. A Partnership Agreement with Sage was in place from day one of trading in 1993 (the Respondent having been an accredited Business Partner in a prior role for the previous three years).

#### **5. Parties' Contentions**

The following is a summary of the main contentions of the parties.

##### *The Complaint*

- The Complainant provides integrated accounting, EPR, HR, payroll, payment and asset management solutions for businesses, operating in 24 territories across the world, including the United Kingdom. The SAGE trade mark is used as the corporate trade mark of the Complainant.
- The Domain Name is confusingly similar to Complainant's SAGE trade mark. The disputed domain name incorporates as its most prominent feature the whole of Complainant's SAGE trade mark. The addition or insertion of letters, words or acronyms alongside a trade mark which is used in a domain name does not ameliorate a likelihood of confusing similarity.
- The addition of the descriptive or generic term 'accounting', a word which Internet users might readily associate with the business of the Complainant, may lead them to wrongly think that the

Domain Name is one of the Complainant's official websites dedicated to accountancy products in the United Kingdom. The Domain Name therefore inherently creates a likelihood of confusion with the Complainant's SAGE trade mark.

- The registration allows the Respondent to create and use the email address extension @sageaccounting.co.uk. Such use, combined with the email signature 'Sage Consultant and Developer' (as has been used by the Respondent), increases the risk of confusion.
- The Respondent was one of the Complainant's Business Partners in the United Kingdom and was authorised to use the SAGE trade mark, provided that rules set out by the Complainant were respected. In this regard, Business Partners are not authorised to register a domain name containing the SAGE trade mark and this is expressly provided for by clause 10 of the Sage Business Partner Agreement exhibited to the Complaint.
- Whilst the Domain Name was registered in April 2004, the Complainant only became aware of it in August 2013, and thereafter immediately tried to contact the Respondent.
- Despite the Respondent having been one of the Complainant's Business Partners, it has no rights or legitimate interest in the Domain Name because it leads consumers to confusingly believe that sageaccounting.co.uk is an official domain name owned by the Complainant. The Complainant has notified the Respondent on several occasions of her misuse and also that it constitutes a breach of clause 10 of the Sage Business Partner Agreement. The Complainant has offered support to the Respondent in curing such breach.
- It is likely that the Respondent was fully aware of the existence of the rights of the Complainant as well as the guidelines for Business Partners.
- The Respondent did not cooperate in solving the issue between the parties and consequently, the Complainant brought the Business Partner Agreement to an end on 24 August 2016, and advised the Respondent to immediately cease the use of the Complainant's marks.
- However, *'one month later'*, the Domain Name was still used for the purposes of selling Sage products, namely Sage Developer, Sage 200, Sage 50 and Sage One, and the Respondent still presents herself as an accredited Sage Business Partner. As a consequence, Internet users will wrongly believe that the Domain Name is owned by an accredited Business Partner of the Complainant and that it is *'connected or registered, operated or authorized by, or otherwise connected with the Complainant'*.

### The Response

- The Sage Business Partner Agreement allows partners to call themselves an accredited Business Partner of Sage which brings in a lot of additional business. However, Exchequer Business Systems Limited is a business in its own right, with its own clients.
- It was considered that the Domain Name aptly described the service the Respondent offered, namely training for clients in the use of Sage accounting software. At the time the Domain Name was registered, there were no Business Partner guidelines in place prohibiting the use of Sage in domain names. The Respondent's Sage account manager at the time knew of the existence of the Domain Name and congratulated the Respondent on its registration. The Sage Business Partner Agreement exhibited by the Complainant is an undated extract which the Respondent

suspects has been taken from the most up to date version, which post-dates registration of the Domain Name by many years.

- The assertion of the Complainant that it only became aware of the Domain Name in 2013 is denied; 2013 was the first time the Respondent's ownership of the Domain Name was questioned. By this time, it had been in use by the Respondent, as a legitimate Sage Business Partner, for over 9 years. Despite the issue having been raised in 2013, it was not pursued by the Complainant and it was assumed the matter was at an end. The next correspondence received from the Complainant on the issue of the Domain Name was dated 30 March 2016. The Complainant offered no explanation for the gap in communication. The actions taken by the Complainant in 2013, were as a result of a complaint from another Sage Business Partner and not as a result of the Complainant itself objecting to the Domain Name.
- The Respondent maintains that the Complainant's letter of 30 March 2016 contains a number of factual inaccuracies, for instance, concerning the Respondent's willingness to co-operate. Various telephone conversations were made during April 2016, in which the Complainant stated that the Respondent was in breach of the terms and conditions of the Sage Business Partner Agreement and requested that the Respondent hand over the Domain Name. No compensation was offered, even when requested, but only *'support'*, which was non-quantifiable and undocumented. The Respondent considered that she was being dealt with unfairly given that at that point, she had operated as a genuine Sage Business Partner for over 23 years and had operated from the Domain Name for around 12 years.
- The Respondent has invested heavily in the Domain Name and has generated an extremely large amount of goodwill over the years. The Complainant is trying to remove one of the Respondent's most valuable and longstanding assets without any offer of compensation or compromise.
- In August 2016, following a further letter to the Respondent on 1st July 2016, the Sage Business Partner agreement was terminated, the use of the Domain Name being cited as the one and only reason.
- The Respondent acknowledges that the Complainant owns a large number of trade marks for SAGE, provides comments on all five trade marks listed in the Complaint and summarises her position by stating that *'...the Rights that the Complainant is asserting in its Complaint are not enforceable against me. Either the rights post date my registration of the Domain Name or the Complainant has lost the ability to enforce the right due to the fact that they have acquiesced to my activities'*. (For reasons explained later in this Decision, the Expert need not deal comprehensively with the trade mark related issues).
- In relation to acquiescence, the Respondent refers not only to her notification to the Complainant at the time of registration of the Domain Name, but also to the fact that she regularly exchanged e-mails with the Complainant *'over the last year 9 years'* (presumably a reference to her use of the email address extension @sageaccounting.co.uk, an issue in fact raised by the Complainant as mentioned earlier).
- The Respondent asserts that the Domain Name is not an Abusive Registration for a number of reasons. The business of Exchequer Business Systems Limited has operated from the Domain Name since 2004, and it (the Domain Name) has therefore been used in connection with a genuine offering of goods and services since then.

- At the time of registration of the Domain Name, there were no restrictions with regard to Domain Names when operating as a Sage Business Partner.
- The Respondent offers a wide range of services that assist businesses in implementing and operating Sage accounts software. These are offered from the website to which the Domain Name resolves. Such services have not varied substantially for the last 12 years.
- The Respondent has been an accredited Sage Developer and trained accountant for nearly 20 years and has completed installations throughout the UK and Europe for clients in a wide range of industries and sizes.
- It is made clear on the Respondent's website that her business is separate to that of the Complainant. The Complainant is only ever mentioned on her website in a descriptive capacity e.g. *'Sage recommend me to Sage BPs and advisors, either directly, or as their sub-contractor to provide training, development and technical support for their own clients'*. The Respondent asserts that it is clear from this statement that she is not connected with the Complainant. Moreover, the Respondent's company details are clearly stated at the bottom of her website.
- There are a large number of people utilising the Sage name to offer genuine consultancy and training services. Examples include: <http://www.sageconsultants.co.uk/> and <http://www.sageaccounting.com/>. As with these websites, the Respondent's use of the word Sage in the Domain Name is purely descriptive.
- The Respondent also submits that the Complainant's rights are limited to the word 'Sage' only. That the Domain Name includes the word *'accounting'* clearly has a large effect on the overall look of the Domain Name and creates a different overall impression from the word 'Sage' alone. This would clearly limit the risk of any confusion.
- Whilst the Complainant asserts a likelihood of confusion, it has failed to evidence a single instance. Furthermore, the Respondent is unaware of any instances of confusion.
- The Respondent does not offer competitor products through the Domain Name but rather her services run in parallel to those of the Complainant. There is a large industry comprised of people who offer similar services to that of the Respondent and who hold themselves out to be experts in Sage accounting software. Though no longer an accredited Business Partner, the Respondent will be continuing as a Sage trainer.
- As to the Complainant's assertions concerning the current content of the Respondent's website and associated likelihood of confusion, whilst the Respondent accepts that the content is somewhat out of date given the sudden termination of the Business Partner Agreement, it is not accepted that there is a likelihood of confusion. The Respondent is currently preparing updated content for her website to accurately reflect the new circumstances. She notes that she has only been given a period of 4 weeks in which to rebrand and redesign a website from which she has operated for over 12 years. The Complainant did not notify the Respondent in writing that it was contemplating commencing these proceedings.

### The Reply

- The Complainant makes a number of trade mark specific points in response to those made by the Respondent. As already noted, for reasons explained below, the Expert need not deal in detail

with such issues.

- As to acquiescence, the Complainant notes that the Respondent does not bring any evidence in support and maintains that it only became '*...aware of the litigious use of its trademark ....in 2013*'. The Complainant states that there is no evidence of it being informed of the Domain Name at the time of its registration.
- The Complainant's approach is to build relationships of trust with its Business Partners. It does not therefore watch closely the activities of each of its 20,000 Business Partners, but assumes they will request its authorization where necessary.
- Neither the Complainant being made aware of the existence of the domain name by another Business Partner nor the period of inactivity between 2013 and 2016, can have any bearing on the likelihood of confusion, or be interpreted as an absence of objection to the Respondent's ownership of the Domain Name.
- The Complainant emphasises the likelihood of confusion, noting that its SAGE trade mark is used by the Respondent for identical and similar products and services, that it is used in the Domain Name and that also an identical or similar SAGE design trade mark is used on the Respondent's website. As a consequence, Internet users may wrongly think that the Respondent's website is one of the official Complainant's websites dedicated to accountancy products in the United Kingdom. The Complainant maintains that the Domain Name inherently creates a likelihood of confusion with its SAGE trade mark and asserts that by virtue of trade mark law, a third party has to obtain the prior authorisation of the trade mark owner to use its trade mark. It goes on to say that this is usually given to Business Partners in the Sage Business Partner Agreement or through its brand guidelines, but that '*...where the use of the trademarks would not be provided into agreements/guidelines, the Business Partner must comply with the general law principle and obtain the prior authorization of the trademark owner. In this respect, assuming that at the time of registration, there were no guidelines of the use of 'SAGE' marks by Business Partners, the Respondent should have asked the Complainant the prior approval to register the domain name containing 'SAGE' trademark, which was not the case. Thus, the Respondent is counterfeiting the rights of the Complainant*'.
- The Complainant strongly disagrees with any suggestion that compensation should have been offered because '*...the Respondent is counterfeiting the Complainant's prior rights*'. The Complainant states that the Respondent has claimed money for the transfer of the Domain Name back in 2013 and also in 2016. The Complainant suggests that this shows '*...unethical behavior of the Respondent who is trying to take unfair advantage of the situation, where it is clearly infringing the Complainant's rights*'.
- The Complainant says that the Respondent '*pretends*' that it has invested heavily in the Domain Name whilst complaining that the Complainant is seeking to remove one of its most valuable and longstanding assets. However, the Complainant notified the Respondent that the website design was not compliant with its Brand Handbook '*for many years*', noting that the Respondent herself acknowledges that the content of her website is out of date. The Complainant makes the point that if the Respondent really cared about what she describes as a valuable asset, she would already have modified the design of its website.
- The Complainant, whilst noting that the Sage Business Partner Agreement has been terminated

because of the Respondent's breach, states that the Domain Name registration was not the only breach, as has been made clear in correspondence. For instance, non compliance with brand guidelines in respect of the website was also cited.

- The Complainant does not agree with the characterisation of its termination as being 'sudden'. The Complainant gave 30 days' notice of the breach of the Sage Business Partner Agreement, warning the Respondent that if it did not comply with the Complainant's requests, the agreement would be terminated.
- The Complainant disagrees with the Respondent's allegation that it has had only 4 weeks to rebrand and redesign her website. The Respondent has had a lot more time. Indeed, the Complainant has been in regular contact with the Respondent since March 2016, regarding the Domain Name and the Respondent has had at least 5 months to change the design. Despite the offer of the Complainant to assist the Respondent (referred to in an internal email of the Complainant in April 2016), the Respondent did not revert to the Complainant in this regard.
- As a consequence of the termination of the Sage Business Partner Agreement, the Respondent is no longer one of the Complainant's Business Partners yet after '2 months', the Respondent is still using the Domain Name for the purposes of selling the Complainant's products and still presents herself as an accredited Sage Business Partner. The Complainant maintains that, as a result, Internet users will wrongly believe that the Domain Name is owned by an accredited Business Partner of the Complainant and thus that it is '*connected or registered, operated or authorized by, or otherwise connected with the Complainant*', whereas it is not.

## **6. Discussions and Findings**

### Preliminary matters

A new Dispute Resolution Service (DRS) Policy (Version 4) came in to force on 1 October 2016. It combines the DRS Rules and Procedures and applies to disputes filed on or after that date. Given that the Complaint in this proceeding was validated on 29 September 2016, this matter will be dealt with under Version 3 of the Policy (and the separate DRS Procedure applying to disputes filed up to and including 30 September 2016).

### The Policy (Version 3)

For a Complaint to succeed under the Policy, a Complainant is required to prove, on the balance of probabilities, that it has rights in respect of a name or mark which is identical or similar to the domain name in issue and that the domain name in the hands of the Respondent is an Abusive Registration. Both elements are required.

### *Complainant's 'Rights'*

The meaning of 'Rights' is defined in the 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*'.

It is clear that the Complainant enjoys registered rights in the mark SAGE.

The Domain Name encapsulates the Complainant's SAGE trade mark in its entirety. It is the first and

dominant element of the Domain Name, being followed by the descriptive or generic term 'accounting'. The Complainant's mark and Domain Name are similar.

The Expert is satisfied that the Complainant has Rights in a name or mark that is similar to the Domain Name and must now therefore consider whether the Domain Name is an Abusive Registration in the hands of the Respondent.

#### *Abusive Registration*

Paragraph 1 of the Policy defines Abusive Registration as a domain name which was either '*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 which '*has been used in a manner which has taken unfair advantage of or was unfairly detrimental to the Complainant's Rights*;'.

A non-exhaustive list of factors which may indicate that a domain name is an Abusive Registration is set out in paragraph 3 of the Policy. Such factors include circumstances indicating that the Respondent has registered or otherwise acquired the domain name primarily as a blocking registration against a name or mark in which the Complainant has rights, or for the purpose of unfairly disrupting the business of the Complainant.

Other factors suggesting an Abusive Registration include the Respondent 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.

A non-exhaustive list of countervailing factors is set out in paragraph 4 of the Policy. This includes circumstances indicating that before being aware of the Complainant's cause for complaint, the Respondent has used or made demonstrable preparations to use the domain name or one that is similar in connection with a genuine offering of goods or services, or has been commonly known by the name or legitimately connected with a mark which is identical or similar to the domain name, or has made legitimate non-commercial or fair use of the domain name.

#### Discussion

The fact that a domain name incorporates a trade mark, even if that means that the two are identical, does not automatically mean that there has been an Abusive Registration. There are several examples of trade mark owners failing to secure transfers of domain names incorporating their marks. Whatever analysis might be propounded in terms of intellectual property law, the Complainant must still satisfy the requirements of the Policy. It is the Complainant that bears the burden of proof on the balance of probabilities standard.

Given the long business relationship between the parties, it is appropriate to analyse the more significant issues in the case by reference to distinct periods of time.

#### Pre-1993

The Respondent says that she had been an accredited Sage Business Partner for a period of three years prior to her incorporating and carrying on business through Exchequer Business Systems Limited in 1993. The Complainant does not challenge this.

1993 to April 2004

From 1993, the Respondent carried on her Sage related business, as a Business Partner of the Complainant, through Exchequer Business Systems Limited. Nothing significant, at least in terms of this dispute, appears to have happened until the Domain Name is registered on 8 April 2004 (not in March 2004 as the Respondent states in her Response). The Respondent says that she notified her Sage account manager at the time of acquiring the Domain Name that she had done so. The Complainant says that there is no evidence of this. The Respondent says that her account manager congratulated her on the registration of the Domain Name.

The Respondent maintains that at the time the Domain Name was registered, there were no Business Partner guidelines in place prohibiting the use of the SAGE mark in domain names. She says that the Sage Business Partner Agreement exhibited by the Complainant is an undated extract which she suspects has been taken from the most up to date version, which post-dates registration of the Domain Name. The Complainant deals with this point by simply relying on what it describes as general law principles, stating that absent express provisions dealing with its trade marks, a third party must seek its consent to use them.

April 2004 to March 2013

The Respondent states that she regularly exchanged e-mails with the Complainant (*'over the last 9 years'*) by which it is assumed she is referring to her use of the email address extension '@sageaccounting.co.uk' (which was certainly used in April 2016, as evidenced by an e-mail attached to the Complaint). The Complainant does not deny this and in fact points to such use as contributing to the risk of confusion.

March 2013 to March 2016

The Complainant raises an objection to the Respondent's use of the Domain Name in response to a complaint raised by another Sage Business Partner, but it appears the objection is not progressed.

March 2016 to date

On 30 March 2016, a cease and desist letter is sent by the Complainant to the Respondent. Complaint is made not just in relation to the Domain Name, but other matters too. A telephone conversation follows on or around 15 April 2016, as recorded in an internal communication of the Complainant. Apparently the Respondent asked for compensation if she is to give up the Domain Name. It seems likely that only non-monetary assistance was offered. The matter was not resolved in March 2016, and a further letter was sent to the Respondent on 1 July 2016, notifying her of her breach of the Sage Business Partner Agreement. This is followed by a letter dated 24 August 2016, terminating the Sage Business Partner Agreement. A Complaint is filed with Nominet the following month.

The contentions of the parties

The Complainant relies heavily on the likelihood of confusion. Using (or threatening to use) a 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, is indeed an example of circumstances that may be indicative of an Abusive Registration. However, such circumstances are not conclusive. If a respondent can show that its use has not been abusive, it will defeat a complaint.

The Complainant has enjoyed trade mark rights for a number of years (albeit it has incorrectly described filing dates as dates of registration). Moreover, in the Expert's view, there is a possibility that internet users may be confused into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant. That possibility of confusion arises because the Domain Name incorporates the SAGE mark in its entirety and is followed by a descriptive or generic term that can readily be associated with the SAGE brand. But the analysis cannot stop there, because it does not necessarily follow that a likelihood of confusion leads to a finding of Abusive Registration, even in circumstances where the trade mark and domain name are identical. The point is perhaps best illustrated by reference to the DRS Expert Overview (Version 2). This is a document prepared to assist participants in disputes under the Policy. At paragraph 4.7, it raises the question *'Is it possible for a Respondent to make fair use of a domain name where (a) that name is also the Complainant's trade mark and (b) the Respondent's use of the domain name is causing confusion?'* The answer is as follows: *'Yes. While, ordinarily, a confusing use of such a domain name will be regarded as unfair, it may not be regarded as unfair where, for example, the Respondent's registration and use of the domain name predates the Complainant's rights, the Respondent has not changed his use of the domain name to take advantage of the Complainant's rights and the Respondent's behaviour has been unobjectionable.'*

It is clear therefore that whatever the level of confusion and similarity to a trade mark, there must always be unfair advantage taken of, or unfair detriment caused to a Complainant's Rights by registration or use of the domain name. Confusion may be enough in some circumstances, but might not be in others.

Furthermore, and as already noted, whatever the analysis of a Complainant's case by reference to the principles of intellectual property law, a Complainant must still satisfy the requirements of the Policy.

All of that said, the Expert is satisfied that the Complainant has made out a prima facie case based on confusion i.e. that it has Rights and the Respondent is using the Domain Name in a way which could confuse people into believing that the domain name is registered to or connected with the Complainant and it is therefore necessary to consider whether the Respondent has an answer to the case.

The thrust of the Respondent's answer to the case (leaving aside trade mark issues) is that the Domain Name was registered pursuant to a legitimate relationship with the Complainant and for a legitimate reason, that the Complainant knew all about the Domain Name, even prior to 2013 (the time of the first complaint) and that the Complainant didn't bother to pursue her for a number of years thereafter.

Before considering the Respondent's position in more detail, it is perhaps worth noting what appears to the Expert to be something of a lacuna in the evidence. It seems obvious to the Expert that the precise terms of the relationship between the parties is important to any analysis of whether unfair advantage has been taken of the Complainant, or unfair detriment caused to it. However, there is almost a complete vacuum of information in his regard. It does not appear to be disputed that the extract of the Sage Business Partner Agreement annexed to the Complaint post-dates the registration of the Domain Name. However, it is not clear if these or any later terms were imported into the pre-existing relationship between the parties, such as it was. The issue is simply not dealt with. Instead, the Complainant relies on its trade marks, general principles of trade mark law and says, in essence, that whatever the relationship between the parties once was, there is a risk of confusion and its trade mark rights are being infringed. The Respondent makes a number of points concerning the enforceability of the Complainant's trade marks as against *her*, but given that this is a DRS proceeding rather than a trade mark infringement action, they need not be considered here.

As earlier noted, the usual starting point in analysing a respondent's case is paragraph 4 of the Policy. The Respondent has expressly referred to one of the examples in paragraph 4, namely using the Domain

Name in connection with a genuine offering of goods and services. She could also no doubt rely on an argument based on her legitimate connection with the SAGE mark.

In the Expert's view, absent a clear contractual prohibition on the use of the Complainant's trade mark in a domain name, either in 1993 or subsequently, given the nature of the Respondent's Sage related business, there was every reason for the Respondent to choose the Domain Name that she did. If that was a breach of any contractual provision or guideline, such breach has not been made out. If the Complainant considers that there may be an actionable trade mark infringement (or 'counterfeiting' as alleged in its Reply) between 2004 and 2013, or between 2013 and 2016, or on termination of the relationship in 2016, in relation to the Domain Name or website, it will no doubt seek advice on the options available to it. However, these are not matters for a DRS proceeding. One matter that was clearly of relevance and which might have been determinative, is (as already noted) the precise nature of the contractual relationship between the parties - at the time the Domain Name was acquired and at the time the relationship came to an end - because that could have had a bearing on the legitimacy of the behavior of the Respondent at various times (including post termination).

Various other matters have been raised but only two need be dealt with. The first is the Respondent's website. As a preliminary point, it should be mentioned that it is not automatically unfair or abusive for a third party's trade marks to be used on a website if there is a legitimate reason to do so. However, where, for instance, there is an implication of a false connection between a complainant and respondent, or where a website is used to sell products that are competitive with a complainant/trade mark owner's products, website content may well support a finding of Abusive Registration. The Respondent herself acknowledges that as a result of the termination, her website needs some updating. The relationship came to an end in August 2016 and the Complaint was filed the following month. But the Complainant can hardly complain that a few months have passed without the Respondent having updated her website in circumstances where, even on its own case, it has known of what it maintains was an inappropriate registration since 2013, (but most probably knew for some years before that), yet only took action in 2016.

The second matter is the Complainant's allegation of unethical behaviour by the Respondent in connection with a discussion over compensation for giving up the Domain Name. In the Expert's view, such an allegation is inappropriate – if a party is asked to give up something that they do not consider they are obliged to give up, there is every reason to seek compensation.

In summary, the Respondent has advanced a perfectly plausible and legitimate explanation for her registration of the Domain Name and subsequent use. The Complainant has not demonstrated that the Respondent's registration was a breach of the Sage Business Partner Agreement at the time, or since. The fact that it appears to be accepted all round that that agreement is at an end, sheds no light on the issue given that a) it is far from clear what the terms of the relationship between the parties actually were and b), without transparency on such terms, it cannot be said that on the parties' relationship coming to an end, the Respondent must give up the Domain Name. The Complainant bears the burden of proof on a balance of probabilities on all these issues, but such burden has not been met. Its efforts have been directed to analysing its case primarily by reference to trade mark principles, but this is not a trade mark matter. It is a DRS proceeding with its own rules and jurisprudence.

The Expert does not consider that the Respondent has taken unfair advantage of the Complainant's rights or acted in a way that has been unfairly detrimental to them and in these circumstances, the Expert does not find the registration to be abusive.

## **7. Decision**

The Expert finds that the Complainant has rights in a name or mark that is similar to the Domain Name but is not satisfied on the evidence before him that the Domain Name in the hands of the Respondent is an Abusive Registration. Accordingly, the Expert directs that no action be taken in respect of the Complaint

Signed: Jon Lang

Dated: 3 January 2017