



# DISPUTE RESOLUTION SERVICE

**D00018416**

## Decision of Independent Expert

The Secretary of State for Health

and

Travel Affairs Limited

**1. The Parties:**

Complainant: The Secretary of State for Health  
Department for Health  
Richmond House  
Whitehall  
London  
SW1A 2NS  
United Kingdom

Respondent: Travel Affairs Limited  
35 Florence Road,  
Southall,  
Middlesex,  
London  
UB2 5HU  
United Kingdom

**2. The Domain Name:**

nhsehic-e111.org.uk

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

I 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 into question my independence in the eyes of one or both of the parties.

23 January 2017 15:34 Dispute received  
24 January 2017 12:42 Complaint validated  
24 January 2017 12:43 Notification of complaint sent to parties  
10 February 2017 01:30 Response reminder sent  
15 February 2017 15:30 No Response Received  
15 February 2017 15:30 Notification of no response sent to parties  
27 February 2017 01:30 Summary/full fee reminder sent  
02 March 2017 12:20 Expert decision payment received

### **4. Factual Background**

The United Kingdom (UK) has operated a subsidised National Health Service, commonly known as the NHS, since 1948. Many European countries provide broadly reciprocal health services to UK-resident temporary visitors on production of a European Health Insurance Card, known now as an EHIC and formerly as an E111 form. Intending travellers can obtain an EHIC, free of charge, by application online through the website at [www.ehic.org.uk](http://www.ehic.org.uk), which is operated by the NHS. The domain name <ehic.org.uk> was registered in 2005.

Since 1997 the Complainant has held registered trademarks for the term NHS as a word mark or in the form of a logo. A sufficient example is UK trademark number 2336307 for the word mark NHS, granted registration at the UK Intellectual Property Office (UKIPO) on December 2, 2005, in classes 05, 10, 16, 35, 41, 42 and 44.

The Domain Name was registered on June 19, 2013. It resolves to a website, the basic function of which is to invite applicants to complete an EHIC application. The Respondent forwards the information contained in the application to the NHS but imposes a charge of £17.99 that the NHS does not charge.

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

#### **Complainant**

The essential contentions of the Complainant are summarised briefly below.

#### **Rights**

NHS is a trademark owned by the Complainant and for which it holds five registrations at the UKIPO dated between 1997 and 2009. There is a strong tendency for people to use the abbreviation NHS in place of National Health Service. The term NHS is listed as a Sensitive Word under the Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations, 2014. The Secretary of State for Health has not permitted the Respondent to use the term NHS.

The Complainant asserts rights in the goodwill associated with the terms EHIC and E111. The term EHIC is well known to the public and in recent years some 3.5 million cards have been issued annually. In the UK the Complainant is the sole printer and supplier of EHIC cards authorised by the

European Commission. The Complainant asserts goodwill in the website address [www.ehic.org.uk](http://www.ehic.org.uk), which is the sole official online source of EHIC cards within the UK.

The Complainant says the Respondent is known as Travel Affairs Ltd., and does not have any rights in the names EHIC, E111 or NHS. The Respondent does not provide any substantive service in return for its fee of £17.99, and its claims to do so, for instance by checking the applicant data, are superfluous as the Complainant's authentic application process does this.

### **Abusive Registration**

The Complainant says it is foreseeable that customers may be attracted to the website at the Domain Name, which has similarities to the URL of the Complainant's website at [ehic.org.uk](http://ehic.org.uk), instead of applying directly to the Complainant. The Respondent is passing itself off as a source of EHIC cards in the UK and gains an unfair advantage by use of the names EHIC and E111. The Respondent's use of the name NHS is likely to create the erroneous impression that the Respondent's service is endorsed by the NHS.

The Complainant says there is a risk of detriment to applicants for EHIC cards because they may pay a fee to obtain a service that is free from the NHS, and there is a risk that sensitive personal information may be provided to the Respondent unintentionally.

The Complainant says the Domain Name registration is detrimental to its interests by undermining the Complainant's public image of credibility and impartiality. The Domain Name may be disruptive of the Complainant's business if people find they have paid for a service that is supposed to be free and if they consider the NHS should not have let this happen.

The Complainant has cited a number of previous decisions by the DRS and other bodies including the Advertising Standards Authority and the Competition and Markets Authority that it considers should support its position.

The Complainant requests the transfer of the Domain Name.

### **Respondent**

The Respondent has not made any submission.

## **6. Discussions and Findings**

Under paragraph 2.1 of the Policy the Complainant must prove, on the balance of probabilities, that:

“2.1.1 The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

2.1.2 The Domain Name, in the hands of the Respondent, is an Abusive Registration.”

### **Complainant's Rights**

Paragraph 1 of the Policy defines rights 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”.

The Expert finds on the evidence that the Complainant has the requisite Rights under the Policy in the name NHS, by which the UK National Health Service has been commonly known since 1948 and for which the Complainant has held registered trademarks since at least as early as 1997.

The Complainant also claims rights in the term EHIC. According to the evidence the European Commission has delegated the right to issue of EHICs in the UK exclusively to the Complainant. The initials EHIC are widely known since some 3.5 million NHS-branded EHICs have been issued annually in recent years. The Expert finds the Complainant to have Rights in the term EHIC, when used to mean a European Health Insurance Card issued in the UK, sufficient for the purposes of the Policy.

Whilst noting that the EHIC was formerly known as an E111 form, the Expert has not been provided in this case with evidence sufficient to decide whether the Complainant has rights in the term E111.

The Domain Name is nhsehic-e111.org.uk, of which the suffix “.org.uk” need not be considered in the determination of similarity to the Complainant’s names. What remains is nhsehic-e111, which comprises three components that may be identified with, respectively, “NHS”, being the name and trademark of the Complainant; “EHIC”, being the Complainant’s well known and exclusive product in the UK; and “E111”, being an earlier name for EHIC. The Expert finds the Domain Name to be similar to the terms NHS and EHIC, in which the Complainant has been found to have rights. The additional term E111 does not detract from, but enhances the similarity. The requirements of paragraph 2.1.1 of the Policy are fulfilled.

### **Abusive Registration**

Under paragraph 1 of the Policy, Abusive Registration means a Domain Name that 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. is being used or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant’s Rights.”

Paragraph 5 of the Policy lists factors that may be evidence of Abusive Registration, as below, in part:

“5.1 A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows:

5.1.1 Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

(...)

5.1.1.3 for the purpose of unfairly disrupting the business of the Complainant;

5.1.2 Circumstances indicating that the Respondent 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;

(...)”

On examination of the websites to which the Domain Name resolves or has resolved, its purpose is clear. Presently the website is headed prominently “EHIC CARD”, followed by “European Health Insurance Card”, and purports to provide information about the EHIC including, among other things, what it is, the countries in which it is valid, and a reminder that it is not a replacement for travel insurance. Links are provided to pages for application or renewal purposes, for lost or stolen cards, and for checking a card’s validity. In order to apply for an EHIC through the Domain Name the applicant must provide personal details including their name and full address, telephone contact and

email address, date of birth, NHS or National Insurance number, and their EHIC PIN number in the event of a renewal. The home page states that the website is not affiliated with the NHS, that the EHIC is free if obtained directly from the NHS, but that the Respondent charges £17.99 for its own service, which it says includes checking the application. On the application form page the applicant is informed that “EHIC Services will charge a service fee of £17.99 pp”.

An earlier version of the Respondent’s website captured on October 16, 2013 by the Internet Archive (archive.org), referenced in evidence, displayed NHS branding prominently at the top of the homepage, in the form NHS EHIC. The website disclaimed that it was affiliated with the NHS and stated the application fee for an EHIC to be £19.99 through the website but free through the NHS.

In overview, the function of the Domain Name is to provide a point at which applicants for an EHIC may file the personal details required by the Complainant for the purpose, and the Respondent implies that it forwards these details to the Complainant as a service. For the service fee of currently £17.99, previously £19.99, the Respondent offers no perceptible added value of substance and must inevitably introduce some delay before the application can be processed by the Complainant, particularly if the application is not straightforward.

It could be argued that users of the service provided through the Domain Name do so after having had the opportunity to read the disclaimers on the website and to assess the value of the fee charged. The issue, however, is that the Domain Name is intended to attract Internet visitors for financial gain, for which purpose the Respondent has appropriated the Complainant’s well known registered trademark NHS, the Complainant’s authorised product EHIC, and the name E111 by which the EHIC has also been known. Furthermore the website of the Domain Name has a colour and style broadly reminiscent of the Complainant’s authentic EHIC application website. According to the Complainant’s uncontested evidence, the Respondent’s purported service is unauthorised and its use of the Sensitive Word NHS has not been permitted by the Secretary of State for Health.

On the evidence and on the balance of probabilities the Expert finds it likely that a proportion of visitors to the Domain Name will be confused into believing they have reached an authentic website operated or authorised by the Complainant, and may pay a fee to the Respondent for what is available free of charge, more directly and therefore inherently more reliably, through the Complainant’s own website. The Expert finds the Domain Name to constitute an Abusive Registration within the contemplation of paragraph 5.1.2 of the Policy.

The Respondent’s activity in seeking to interpose itself in the EHIC application process and to extract a fee from applicants is inevitably likely to have some disruptive effect on the Complainant’s business, through for instance the potential for creating delays, mistakes, and clients dissatisfied with having paid a fee for what they may later discover was available free of charge. Abusive Registration is found additionally, on balance, in the terms of paragraph 5.1.1.3 of the Policy.

Accordingly the Domain Name is found to be an Abusive Registration under paragraph 2.1.2 of the Policy.

## **7. Decision**

The Expert finds that the Complainant has Rights in respect of a name or mark similar to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration. The Domain Name nhsehic-e111.org.uk is ordered to be transferred to the Complainant.

**Signed** Clive Trotman

**Dated** March 15, 2017