

# **DISPUTE RESOLUTION SERVICE**

**D00018812**

## **Decision of Independent Expert**

Mr Ian McDonnell

and

Mr Luke Heaton

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

Lead Complainant: Mr Ian McDonnell  
38 Ailesbury Grove  
Dundrum  
Dublin  
Dublin  
D16  
Ireland

Respondent: Mr Luke Heaton  
United Kingdom

### **2. The Domain Name(s):**

<bettingsites.uk>

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

3.1 The procedural history of this matter is as follows:

25 April 2017 15:14 Dispute received  
26 April 2017 10:01 Complaint validated

26 April 2017 10:06 Notification of complaint sent to parties  
03 May 2017 09:46 Response received  
03 May 2017 09:46 Notification of response sent to parties  
08 May 2017 02:30 Reply reminder sent  
11 May 2017 10:30 Reply received  
11 May 2017 10:30 Notification of reply sent to parties  
11 May 2017 10:31 Mediator appointed  
16 May 2017 16:41 Mediation started  
14 June 2017 14:41 Mediation failed  
14 June 2017 14:41 Close of mediation documents sent  
26 June 2017 02:30 Complainant full fee reminder sent  
04 July 2017 11:54 No expert decision payment received  
14 July 2017 02:30 Respondent full fee reminder sent  
17 July 2017 11:42 Expert decision payment received

- 3.2 I have confirmed to Nominet that I am independent of each of the parties. I have further confirmed that 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 a such a nature as to call in to question my independence in the eyes of one or both of the parties.

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

- 4.1 The Complainant is an individual who appears to reside in Ireland. He has registered or is the owner of various domain names that comprise or contain words that have betting associations or connotations. One of these domain names is <bettingsites.co.uk>, which he registered on 10 June 2000. According to the Nominet Whois record for that domain name, the Complainant is a “non-trading individual”. There is also no active website operating from that domain name.
- 4.2 On 10 June 2014 Nominet allowed the registration of top level “.uk” domain names. At the same time it introduce a reservation scheme whereby the owners of any pre-existing “co.uk”, “org.uk”, “me.uk”, “net.uk”, “plc.uk” or “ltd.uk” domain names, might be entitled to register the “.uk” equivalent of that pre-existing domain name. The Complainant, as the owner of the domain name <bettingsites.co.uk>, was entitled under that scheme to register the Domain Name, and proceeded to do so.
- 4.3 The Respondent is a UK individual. He registered the Domain Name on 11 March 2015. How he came to or was able to register the Domain Name is disputed. However, in an email sent to the Respondent by Nominet on 30 April 2015, Nominet stated:

“[The Domain Name] was able to be registered to you due to the original rights holder of the .uk domain name cancelling their registration of bettingsites.uk through the Nominet Online Service with us at the end of last year.

Once the .uk domain had been cancelled it was available for anyone to register on a first come first served basis.”

- 4.4 Since its registration by the Respondent, the Domain Name has not been used for any active website.

## **5. Parties’ Contentions**

### Complaint

- 5.1 The Complainant provides various documents said to demonstrate his original registration of the Domain Name and the fact that he has not authorised the transfer of the Domain Name into the hands of the Registrant. He concludes from this that the Domain Name either has been “erroneously moved into an account by [the Complainant’s Registrar] 123 reg” or has been “stolen or otherwise illegally obtained by the current registrant.”

### Response

- 5.2 The Respondent’s Response is marked “without prejudice”. However, it is not in any obvious sense a without prejudice document. It is titled “Response to the Complaint” and sets out a relatively detailed response to the allegations made by the Complainant in the Complaint. Accordingly, it is appropriate for me to treat it as the Respondent’s open Response in these proceedings.
- 5.3 In the Response, the Respondent contends that the Domain Name was freely available for registration at the time that he registered it and after he had registered it he had contacted Nominet by telephone “to ensure that it had not become available due to an error within Nominet’s systems”. He claims that this is what led to Nominet sending the email on 30 April 2015 referred to in the Factual Background section of this decision.
- 5.4 The Respondent further maintains that at the time he registered the Domain Name, he had no knowledge of the Complainant, and no knowledge of any website operating from the <bettingsites.co.uk> domain name or of any other domain names associated with the Complainant. He claims he registered the Domain Name because of the generic nature of the term “betting sites” in that domain name. He also contends that the Domain Name is “awaiting development”.
- 5.5 The Respondent provides evidence from the UK Intellectual Property Office website to demonstrate that there is no registered trade mark in the UK for the term “Betting Sites”. He also relies on the Complainant’s own contention that the Complainant has not actively used the Domain Name to support a claim that the Complainant has not “created an unregistered trademark or any other usage rights” by his use of the term “betting sites”.

### Reply

- 5.6 Although the Nominet system records the Complainant as having filed a Reply in these proceedings, this simply takes the form of an email from the Complainant in which he states that he is “exploring other channels for retrieving the [D]omain [N]ame from the holder right now”:

## **6. Discussions and Findings**

- 6.1 To succeed under Nominet’s Dispute Resolution Service Policy, the Complainant must prove first, that he has Rights in respect of a "name or mark" that is identical or similar to the Domain Name (paragraph 2.1.1 of the Policy) and second, that the Domain Name is an Abusive Registration in the hands of the Respondent (paragraph 2.1.2 of the Policy). The Complainant must prove to the Expert that both elements are present on the balance of probabilities (paragraph 2.2 of the Policy).

- 6.2 Abusive Registration is defined in paragraph 1 of the Policy as follows:

"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. is being or has been used in a manner which took unfair advantage of or has been unfairly detrimental to the Complainant's Rights."

### Complainant’s Rights

- 6.3 The Complaint has failed to demonstrate that he has any rights for the purposes of the Policy. No registered trade mark is identified and he does not claim that he has any rights under the law of passing off by reason of past use of the term. So far as rights under the law of passing off is concerned, not only do I accept that the term “betting sites” is potentially generic in a gaming context, but I note that the Complainant does not claim that he has used that term actively for any business. Indeed, he positively contends that the Domain Name when registered in his name had not been used for any active website.

- 6.4 Further, although “Rights” in respect of a name or mark for the purposes of the Policy potentially extends beyond merely registered or unregistered trade marks rights (see paragraph 1.4 of Dispute Resolution Service – Experts’ Overview v.2), no such right is claimed by the Complainant in this case.

- 6.5 Accordingly, this is one of those rare cases where the Complaint fails on the basis of lack of rights alone.

### Abusive Registration

- 6.6 Given the finding of lack of rights, it is not necessary to consider the issue of Abusive Registration. However, I will add a few comments in this respect.
- 6.7 The Complainant alleges that this is a case where the Domain Name has been transferred into the hands of the Respondent either as a result of an error by “123 reg” or because the Domain “stolen or otherwise illegally obtained”. There is no evidence before me that substantiates any claim of theft or illegal activity. I, therefore, accept the Respondent’s contrary claim (which appears to be supported by an email from Nominet) that the Domain Name became available for registration because the Complainant’s registration had been cancelled at the end of 2014.
- 6.8 Why the Domain Name was cancelled and whether this was due to an oversight on the part of the Complainant or some error or action of a third party, is unclear. However, there is nothing I have seen that suggests that the Respondent caused the Domain Name to be cancelled.
- 6.9 Further, I also accept that the Domain Name was registered by the Respondent because of its potential generic meaning and for a use associated with that generic meaning. This is, therefore, a case, where the Respondent’s activities prima facie fall within the scope of the example of circumstances evidencing a lack of abusive registration that is set out in paragraph 8.1.2 of the Policy.
- 6.10 There is one aspect of the Respondent’s claims that is somewhat curious. That is the Respondent claim that he approached Nominet shortly after registration to check that the Domain Name had not become available due to “an error” in Nominet’s systems. No explanation is offered by the Respondent as to why he made that approach and why he thought that there might have been some “error” on Nominet’s part. Nevertheless, in the absence of any claim by the Complainant to the contrary, I am prepared to accept the Respondent’s contention that he registered the Domain Name without knowledge of the Complainant or his activities.
- 6.11 Given this, the Complainant has also failed to demonstrate that the Domain Name in the hands of the Respondent is an Abusive Registration.

## **7. Decision**

- 7.1 For the foregoing reasons the Complaint is dismissed.

**Signed** .....

**Dated** 11 August 2017