

DISPUTE RESOLUTION SERVICE

D00018839

Decision of Independent Expert

(Summary Decision)

Alan Rowberry (North Sea) Ltd

and

Mr Merrick James

1. The Parties

Complainant: Alan Rowberry (North Sea) Ltd
7 Goosedubs Place,
Newcarron
Falkirk
Stirlingshire
FK2 7GW
United Kingdom

Respondent: Mr Merrick James
123 Sakomono Estate
Garriki
Abuja
234800
Nigeria

2. The Domain Name

alanrowberry.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 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 alanrowberry.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)

The complaint does not address the Complainant's Rights. Instead evidence of the personal identity of Alan Rowberry, a director of the Complainant is adduced. In the complaint Mr Rowberry states that he is *"keen to have the domain name transferred to myself for the reasons given in the section 'Abusive Registration'"* and that the Respondent *"has no affiliation to either myself or my Company"*.

In the absence of evidence of the Complainant's Rights, I have the option of rejecting the complaint. Paragraph 18.1 of the Dispute Resolution Service Policy ("the Policy") states:

".. the Expert will decide a complaint on the basis of the Parties' submissions and this Policy. It is the Parties' responsibility to explain all the relevant background facts and other circumstances applicable to the dispute in their submissions, and to support those submissions with appropriate evidence. In the ordinary course an Expert will not perform any research into a dispute or check the parties' assertions. However an Expert may (in their entire discretion) check any material which is generally available in the public domain."

In this case the complaint suggests the Complainant may be a trading company with Rights. Mr Rowberry also appears to have made an error when adducing evidence of Rights in failing to distinguish between himself personally and the Complainant which bears (in part) his name. Subject to the issue of Rights, there is also evidence of an Abusive Registration since the Domain Name has been used for a site which was purportedly that of the Complainant.

Taking the above into account I considered this to be one of the rare occasions where it is appropriate for me to make a request for a Further Statement under paragraph 17.1 of the Policy. I therefore requested the Complainant to explain why it has Rights and to provide supporting evidence, for example of the type referred to at paragraph 2.2 of the Dispute Resolution Service – Experts' Overview. Further to that request, the Complainant submitted a statement in support of Rights and supporting evidence. It is on the basis of that evidence I find Rights in this matter.

I also directed the Respondent be given the opportunity to respond to the Complainant's Further Statement. On 14 June 2017 Nominet e-mailed the Respondent informing him that the Complainant had submitted further evidence; the case had been referred for a binding adjudication; and that if he wished to submit any evidence of his own he would need to do so before 5pm BST on Thursday 15 June 2017. Whilst this is not quite in accordance with the time-scale of my direction for the Respondent's response, by the date of this decision, nothing has been received from the Respondent. I am satisfied that the Respondent has been given the opportunity to respond to the Complainant's complaint and further submissions but has chosen not to do so.

8. Decision

I grant the Complainant's application for a summary decision. In accordance with section 12 of the Policy, the domain name will therefore be transferred to the Complainant.

Patricia Jones

20 June 2017