



**NOMINET**

## **Dispute Resolution Service**

**D00018948**

Frenches Farm Livery

and

Natalie Bainbridge

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## **Decision of Independent Expert**

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### **1 Parties**

Complainant:	Frenches Farm Livery
Address:	Winfield, Frenches Farm, Frenches Farm Lane, Little London Andover
Postcode:	SP11 6JQ
Country:	United Kingdom
Respondent:	Natalie Bainbridge
Address:	3 Tyhurst Place Winchester Road Andover
Postcode:	SP10 2FW
Country:	United Kingdom

## **2 Domain name**

<frenchesfarmlivery.co.uk>

## **3 Procedural History**

- 3.1 On 31 May 2017 the complaint was received by Nominet, which checked that it complied with the Nominet UK DRS Policy (“the Policy”). Nominet notified the respondent on 1 June 2017. The respondent’s response was received on 5 June 2017, and the complainant’s response was received on the same day. The matter was not resolved in mediation. The complainant requested referral of the matter for expert decision under the Policy, and on 7 July 2017 paid the applicable fee.
- 3.2 I was appointed as expert on 19 July 2017. I have made the necessary declaration of impartiality and independence, and 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 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 a horse livery business. The domain name was registered on 10 March 2009.

## **5 Parties’ Contentions**

### *Complainant*

- 5.1 The complainant says Frenches Farm is a business established over 60 years ago. It says the current owners, Mr & Mrs Charles White, established Frenches Farm Livery at Frenches Farm about nine years ago. This business was managed by Katie Jones.
- 5.2 The complainant says the domain name was registered and a website created and operated to represent the business by the respondent, at the behest of Ms Jones. It says the respondent is a friend of Ms Jones.
- 5.3 It says the website exclusively represented the complainant’s business.
- 5.4 The complainant says that in October 2016 Ms Jones was served notice to leave the complainant’s business. The notice required Ms Jones to transfer the domain name to Mr & Mrs White. According to the complainant, Ms Jones claimed that the

website was nothing to do with her. The complainant says the website content was later changed, and that the domain name now connects to a holding page.

- 5.5 The complainant says the respondent has no right to own the domain name as she has no connection with the complainant, and her friend Ms Jones is no longer managing the complainant's business.
- 5.6 The complainant says the domain name and reputation of the website clearly represents its business. It is irrelevant, it argues, that there is another business called "Frenches Farm Livery".
- 5.7 The complainant says the respondent is hindering the progression of its business and is preventing the complainant establishing a new website at the domain name.
- 5.8 The complainant says the respondent has threatened to sell the domain name to a third party. It says this is a direct threat to harm the complainant's business.
- 5.9 The complainant says the respondent could use the domain name to poach new clients. One factor in the complaint, it says, is to prevent malicious use of the domain name in the future. The complainant says it is seeking to secure the domain name associated with the business, and to protect against the risk of damage to it in the future.

#### *Respondent*

- 5.10 The respondent says she kept her horse at the complainant's business for nine years, and created a website at the domain name at her own expense and under her own initiative. She denies that this was at the request of Ms Jones.
- 5.11 She says she made the decision to deactivate the website to avoid being involved in a dispute between Ms Jones and Mr White.
- 5.12 She says she has refused to transfer the domain name to Mr and Mrs White as she felt she needed an explanation of why they were entitled to it.
- 5.13 She says it is not proven that the complainant owns a trade mark in respect of the name of the stable or in respect of the domain name. She says the complainant's business name is not unique, as another business operates in the UK under the "Frenches Farm Livery" name offering similar services.
- 5.14 She says the complainants appear to have financially benefited from the website she created at the domain name. The respondent says the complaint has the sole purpose of gaining from her work. She says Mr White has never shown any interest in the website or offered any financial contribution to managing it; but if the domain name were a significant aspect of the business, she says she would have expected some involvement in the design and management of the website from Mr White.

- 5.15 She says accusations that she is trying to damage the complainant are unjustified speculation.
- 5.16 She says the complainant appears to be bullying her into submission.

## **6 Discussion and Findings**

### *General*

- 6.1 Under paragraph 2(a) of the Policy a complainant must show 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, and that
  - the domain name, in the hands of the respondent, is an abusive registration.

### *Rights*

- 6.2 Rights are defined in the Policy as rights enforceable by the complainant, whether under English law or otherwise.
- 6.3 The complainant does not assert any registered trade mark rights.
- 6.4 Nor has the complainant provided any real evidence of unregistered rights. The complaint says simply that—

*Approximately 9 years ago The Owners established Frenches Farm Livery, a horse livery business in conjunction with Ms. Katie Jones, and this business was managed by Ms. Jones with The Owners remaining the owners and of the property from which it was run ...*

- 6.5 The complainant asserts that it has been in business for about nine years, but otherwise there is no evidence to show that the complainant has used the name “Frenches Farm Livery” for a not insignificant period and to a not insignificant degree (e.g. sales figures or trading accounts) or that that name is recognised as indicating the complainant’s services (e.g. adverts or promotional expenditure, orders or invoices, or consumer or trade press coverage).
- 6.6 Indeed the only evidence before me of promotion of the complainant’s business is a screenshot of the website that was connected to the domain name, and that the parties agree was created by the respondent.
- 6.7 This is not a case in which rights are asserted based on the registration of a company name. No evidence has been provided showing the complainant has been registered as a company. It may be that Frenches Farm Livery is simply a name under which Mr & Mrs White (who are referred to as “the owners” in the complaint) trade.

- 6.8 Nor does the complainant assert any contractual rights in its name.
- 6.9 Under paragraph 2.2 of the Policy it is for the complainant to prove to the expert that both elements—rights and abuse—are present on the balance of probabilities. But as I have explained, the complainant has provided little or no evidence that it has enforceable rights.
- 6.10 In those circumstances, I am not satisfied that the second complainant has rights in respect of a mark similar to the domain name.

*Abusive registration*

- 6.11 It is not necessary, given my finding on rights, to consider the question of abuse.
- 6.12 For the sake of completeness, however, it may help for me to say that in my view, complainants have not provided evidence that the registration was unfair at the time, or that the domain name has been used unfairly.

**7 Decision**

- 7.1 I do not find that the complainant has rights in a name or mark which is similar to the domain name.
- 7.2 The complaint is therefore dismissed. I direct that no action be taken.

Carl Gardner

14 August 2017