

DISPUTE RESOLUTION SERVICE

D00019183

Decision of Independent Expert

Pearson Plc

and

Locus RAGS

1. The Parties:

Lead Complainant:	Pearson Plc 80 Strand London WC2R 0RL United Kingdom
Complainant:	Pearson Education Limited 80 Strand London WC2R 0RL United Kingdom
Complainant:	Pearson Education South Asia Pte. Ltd No. 9 North Buona Vista Drive, #13-05/06 The Metropolis Tower One Singapore 138588 Singapore
Respondent:	Locus RAGS 12 Station Street East Coventry CV6 5FJ United Kingdom

2. The Domain Name(s):

<cheaphndassignmenthelp.co.uk>
<cheaphndassignmenthelp.uk>
<hndassignmenthelp.uk>
<hndassignments.co.uk>
<hndassignments.uk>

3. Procedural History:

3.1 The procedural history of this matter is as follows:

28 July 2017 10:23 Dispute received
01 August 2017 09:07 Complaint validated
07 August 2017 17:15 Notification of complaint sent to parties
25 August 2017 02:30 Response reminder sent
29 August 2017 11:36 Response received
29 August 2017 11:36 Notification of response sent to parties
01 September 2017 02:30 Reply reminder sent
05 September 2017 17:37 Reply received
05 September 2017 17:37 Notification of reply sent to parties
12 September 2017 11:53 Mediator appointed
13 September 2017 13:02 Mediation started
27 November 2017 14:55 Mediation failed
27 November 2017 14:55 Close of mediation documents sent
29 November 2017 16:24 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 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 Lead Complainant forms part of the Pearson group of companies. The Pearson group is an international education and media company. It claims to be the global leader in “qualification design and awarding” and in “educational publishing”.

4.2 “HND” is an acronym that is frequently used in the United Kingdom as an abbreviation for the “Higher National Diploma” qualification. This qualification has a history which can be traced back to the 1920s, but in 1983 it came under the auspices of the Business and Technician Education Council, which subsequently changed its name to “Edexcel”.

4.3 The Claimants contend that “Edexcel” was acquired by the Lead Complainant in 2005. How this acquisition took place is not really explained, but the following would appear to be the case:

- (i) A company limited by guarantee (Company No 01686164) was incorporated in December 1982 under the name “Business and Technical Education Council” and changed its name to “Edexcel Foundation” in 1996 before becoming the “Edge Foundation” in 2004.
- (ii) A separate company (Company No 04496750) was incorporated in July 2002 initially using the name “London Qualifications Limited” but changing its name to “Edexcel Limited” in November 2004. According to documents filed in respect of that company at Companies House:
 - (a) on 30 May 2003 “London Qualifications Limited acquired the qualifications business from the Edexcel Foundation”; and
 - (b) London Qualifications Limited was initially owned 75% by the Lead Claimant and 25% by the Edexcel Foundation but more recently this company became an wholly owned subsidiary of the Lead Claimant.
- (iii) The Claimant, Pearson Education Limited is the owner of UK registered trade mark no. UK0002156378A for the word mark “HND” in classes 9, 16 and 41. The class 41 registration covers arranging and conducting examinations. The mark was applied for in 1999 by Edexcel Foundation and transferred to “London Qualifications Limited” in May 2003, which in turn transferred it to Pearson Education Limited in April 2011. It is also the registered owner of two EU trade marks for the word mark “HND” in various classes (i.e. no.s 899021 and 1269167).

4.4 The Whois details for all of the Domain Names record the Respondent as “Locus Rags”, with addresses in India and Coventry. However, it does not appear to be disputed that the Domain Names are controlled by Locus Rags Limited, a company registered in England and Wales in March 2014 with company no. 08932342.

4.5 The Domain Names were registered on the following dates:

<hndassignments.co.uk>: 13-Oct-2015
<cheaphndassignmenthelp.co.uk>: 08-Jun-2016
<cheaphndassignmenthelp.uk>: 08-Jun-2016
<hndassignmenthelp.uk>: 08-Jun-2016
<hndassignments.uk>: 04-Jul-2017

4.6 The Domain Name <hndassignments.co.uk> has been used since registration for a website where those taking HND and HNC courses and qualifications can

pay Locus Rags to provide “assignment writing services”. In May 2017, the website offered different standard rates for Pass, Merit and Distinction “answers”, together in each case with a “turnitin” report and “unlimited feedback report”. It would appear that “Turnitin” is the name for a plagiarism checker.

- 4.7 More recently, the website operating from this Domain Name changed, but still appears to offer assignment services in respect of various types of course. The HND page of the website, contains the following statements:

“No matter what the subject is or what the deadline is, we never compromise with our quality. And this is the reason, students recommend our work.”

and

“We compose every word from scratch. Moreover, we check it on Turnitin and do revisions before we deliver assignments to ensure no plagiarism”

- 4.8 The other Domain Names the subject of these proceedings have hosted pay-per-click pages, which have displayed various links, some of which, but not all, are education related.

5. Parties’ Contentions

The Complaint

- 5.1 The Complainants describe the history of the HND qualification in some detail. In addition to the trade marks identified earlier on in this decision, they claim that provision is made under the Section 120(1) and Schedule 6, Section 1 of the Education Reform Act 1988 “appointing Pearson’s ability to regulate how, and by whom, the mark is used and to regulate the goods and services pertaining to this mark”. Schedule 6, Section 1 does indeed appear to the HND qualification, but there does not appear to be any mention of any of the Complainants in these provisions.
- 5.2 However, the Complainants claim that a screen clipping taken from the Higher Education Funding Council for England’s website and attached to the Complaint demonstrates that HNC and HND courses can only be offered by Pearson. The page does refer to both HNC and HND courses (among other “prescribed courses”) and states that the “Relevant recognised bodies are ... for HNDs and HNCs, Pearson Education Ltd (formerly Edexcel) and the Scottish Qualifications Authority”.
- 5.3 As well as identifying three registered trade marks for “HND” registered in the name of [Pearson Education Limited], the Complainants also appear to contend that Pearson Education South Asia Pte. Ltd also holds registered

rights in this term elsewhere in the world (and this appears to be the justification for the fact that Pearson Education South Asia Pte. Ltd is also named as a Complainant in these proceedings). In addition to their registered trade marks, the Complainants also claim common law rights in the term “HND”.

- 5.4 So far as the Domain Names used to host pay-per-click pages are concerned, the Complainants contend that they were registered with a view to causing confusion and deriving pay-per-click revenue from those pages.
- 5.5 So far as the <hndassignments.co.uk> Domain Name is concerned, the Complainants claim that the Respondent is “encouraging the HND students to engage with unregulated third parties who will complete coursework on behalf of students rather than the students themselves completing the coursework in pursuit of their studies”. This is said to “pose a significant risk to the integrity and reputation of the qualifications, and as a result thereof, the Complainant[s]’ HND brand”. Further, the Complainants contend that the Respondent is passing off its services as “being acceptable as those regulated and approved by Government and in some way approved by the Complainant[s]”. Alternatively, they contend that the website encourages customers of its services to act dishonestly and that there is initial interest confusion.
- 5.6 In this respect the Complainants contend that the Respondent has placed on its website an answer to the FAQ whether it is ethical to use the Respondent’s services, as follows:

‘See it this way, the market is full with private tutors who provide help in studies. Not all students are born equal, and some need more help in academics than others. We aim to help struggling students with time or work constraints, to achieve academic success.’

The Response

- 5.7 In its Response the Respondent contends that it gained no revenue from the Domain Names hosting the pay-per-click pages.
- 5.8 So far as the <hndassignments.co.uk> Domain Name is concerned, it denies that it in anyway claims any affiliation or partnership with the Claimants or any educational institution. It also denies that it encourages customers to engage in dishonest practices. In this respect it claims that it provides free content at the website that can be used as a reference material to their coursework and that it also allows users to purchase services of subject experts who tutor them and post answers to their questions. It also refers to its terms and conditions. Although its does not provide a copy of those terms and conditions it claims that “the documents, written contents, or reference material present or purchased are not to be used for unethical or immoral academic practices”.

- 5.9 The Respondent also states that so far as the <hndassignments.co.uk> domain name is concerned it has redirected it to the website operating from the domain name <locusassignments.com> for 60-90 days. It maintains that it needs this time “to transfer the contents of the contested domain to a separate domain” after which the domain name “will be closed and withheld from any type of online activity”.
- 5.10 So far as the other Domain Names are concerned the Respondent declares that the Complainant can “consider them surrendered”. It also identifies a further domain name <hndassignment.uk> that it states it will also surrender.

The Reply

- 5.11 The Complainants filed a Reply. In that Reply in essence the Complainants contend that the Respondent is being disingenuous when it claims that what is on offer are tutoring services. They claim that:

“[w]ilst the websites at issue may not provide the specific services of full assignment writing, ... the respondent’s corresponding websites do provide such service”,

and then proceeds to list links that are said to demonstrate this, including several links to pages on a website operating from the <locusassignments.com> domain name, to which the Respondent had now redirected traffic to the <hndassignments.co.uk> Domain Name.

- 5.12 The Complainants also content that the Student Loans Company and the Department for Education of the UK have “expressed their concerns about the content of the website to Pearson”, but do not elaborate upon or evidence this further.

6. Discussions and Findings

- 6.1 To succeed under Nominet’s Dispute Resolution Service Policy, the Complainants must prove first, that they have Rights in respect of a "name or mark" that is identical or similar to the Domain Names (paragraph 2.1.1 of the Policy) and second, that the Domain Names are Abusive Registrations in the hands of the Respondent (paragraph 2.1.2 of the Policy). The Complainants 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 I was admittedly somewhat surprised to learn that the abbreviated name of a well known UK qualification was the subject of trade mark protection in the hands of a private company. Nevertheless, there appears to be no doubt that this is the case and that one of the Complainants is the owner of various registered trade marks for the term "HND".
- 6.4 Further, I accept that even though these trade marks comprise only three letters and that the Domain Names are all much longer, the only way in which each of the Domain Names can be sensibly read is as a reference to the "HND" qualification together with the word "assignment" or "assignments" and in a few cases also the word "cheap" and/or "help". Indeed, the Respondent does not deny that the letters "HND" have been chosen in each of the Domain Names in order to make reference to the "HND" qualification.
- 6.5 It, therefore, follows that the Complainants have demonstrated that at least one of them hold rights in registered trade marks that are similar to each of the Domain Names. Given this, it is not necessary to consider the Complainants' claims based on unregistered rights.
- 6.6 I would add that I found the Complainants' claims based on the Education Reform Act 1988 difficult to understand. The Complainants have made reference to legislative provisions that at least at first sight do not seem to demonstrate what the Complainants say they do. Section 120 of the Education Act does not mention the Complainants and seems instead directed to the duties and powers of local education authorities when it comes to providing higher education.
- 6.7 Nevertheless, what does seem to be reasonably clear is that the Lead Complainant is the owner of the successor in title to the entity or entities that set up the "HND" qualification and that Pearson Education Limited, that holds registered trade mark rights in the term "HND", is a member of the same group as the Lead Complainant. I, therefore, do not think it necessary to consider any further in this decision the question of what rights, if any, the Complainants have in respect of that qualification under statute.

Abusive Registration

- 6.8 It is convenient first to consider the Respondent's registration and use of the <hndassignments.co.uk> Domain Name. It is the oldest of the Domain Names

and appears to have been the only one used for a substantial website. It, therefore, is the one that is most likely to offer an insight into the Respondent's intentions when registering domain names that incorporate the trade marked abbreviation for the "High National Diploma".

- 6.9 In their Complaint the Complainants appeared to have unequivocally alleged that the Respondent had used the <hndassignments.co.uk> Domain Name to offer for sale written assignments for use by students undertaking an HND course that those students could dishonestly pass off as their own. However, matters were complicated somewhat by the way in which the Complainants expressed themselves in the Reply. This appeared to contend that the "websites at issue do not explicitly offer assignment writing services" and that the Respondent was instead trying to hide its assignment writing service "by providing them on different websites".
- 6.10 Nevertheless, notwithstanding the Respondent's denial that it has engaged in the business of providing assignments for such dishonest use, I accept that this is indeed what the Respondent is doing. I also accept that this enterprise has either been directly carried on from the website operating from the <hndassignments.co.uk> Domain Name or, if not directly from that website, that this website has been used to promote that service.
- 6.11 This appears to me to be the most obvious and natural reading of the words that have historically appeared on the website. I do not think that there is any other credible reason why a provider offers "answers" at different prices depending upon whether this equated to a "Pass", "Merit" or "Distinction" accompanied with a plagiarism report. Even if the Respondent's terms and conditions of sale purport to preclude such dishonest use of the material provided, the commercial intent of the Respondent seems quite clear.
- 6.12 Further, there is the somewhat revealing answer provided by the Respondent to the "frequently asked question" whether use of its service was ethical. Somewhat unhelpfully the Complainants did not provide a copy of this question and answer with their Complaint. But the Respondent did not deny that this wording was on its website and I am, therefore, prepared to accept that the Complainants' assertions in this respect are accurate.
- 6.13 Given this conclusion, I find that the registration and use of this particular Domain Name was abusive. If the Complainants have rights in the term HND and control and regulate qualifications under that term, it seems to me that the offering of services through a domain name that incorporates that term in order to facilitate the dishonest awarding of such qualifications, takes unfair advantage of that term.
- 6.14 Further and in any event, even if the Respondent were engaged in the legitimate provision of tutoring services to students undertaking HND courses, in my view this Domain Name would still be abusive in light of the

recent decision of the DRS appeal panel in *Jaguar Land Rover Limited v Essex Jaguar Spares* DRS 18271.

- 6.15 The use of another's trade mark in a domain name without further adornment (save for the "co.uk" or "uk" suffix) is nearly always abusive as it likely to be viewed by the internet user as indicating a website that either belongs to or is authorised by the trade mark holder. As such its use will amount to an illegitimate impersonation. However, in the <essexjaguarspares.co.uk> case the appeal panel considered when and in what circumstances the addition of terms to that trade mark in a domain name that is used to promote the sales of goods or services associated with that trade mark might make the use of that domain name legitimate. In doing so the panel made a distinction between those additional terms that are insufficient to dispel a misleading impression of authorisation or connection with the trade mark owner and those additional terms that were sufficient to dispel that misleading impression so as to "take[] the domain name into the category of informative rather than misleading use of the [c]omplainant's trade mark".
- 6.16 In that particular case the appeal panel suggested that the addition of the words "Essex" and "spares" to the trade mark "jaguar" was sufficient to make the domain name informative, but suggested that the use of "Essex" or "spares" alone was unlikely to do so. In reaching that conclusion it also recognised that it was adopting a "more liberal view (for the registrant) as to where the line is to be drawn than has been applied in at least some previous DRS cases".
- 6.17 Returning to the specific facts of the case before me (and regardless of whether the decision of the appeal panel in <essexjaguarspares.co.uk> was too "liberal"), in my view the addition of the word "assignment" to "HND" is insufficient to make the domain name informative rather than misleading, and thereby prevent a finding of abusive registration. The term "assignment" alone does not sufficiently indicate that the owner of the Domain Name is offering services related to but unauthorised by the Complainants.
- 6.18 So far as the other four Domain Names are concerned, the Complainants have formulated their case as one where the abuse arises out of the use of the Domain Name for pay-per-click websites. That they have done so is perhaps understandable given that three of these Domain Names have been held by the Respondent for a year and a half without any other substantive use and the pay-per-click use of a domain name that incorporates the non-descriptive trade mark of another will usually be considered abusive. This is so even if as the Respondent contends, it has not profited directly from such pay-per-click use.
- 6.19 Nevertheless, to decide the case on this basis would be somewhat unreal given the business operated by the Respondent from the <hndassignments.co.uk> Domain Name. It appears to me that it is far more likely that the other Domain Names were registered with the intent of furthering that same business. I have already held that the use of the <hndassignments.co.uk> Domain Name

to promote a business that assists HND students to dishonestly pass of third party assignment work as their own involves an abusive registration. It therefore follows that any other domain names containing the term HND that are held by the same person with the intent of furthering that same business (even though they have not yet been actually used for that purpose) must also be abusive registrations.

- 6.20 Further, if the Domain Name <hndassignments.co.uk> is misleading rather than informative, it similarly must follow that the Domain Name <hndassignments.uk> is misleading rather than informative and is independently abusive on that basis.
- 6.21 Finally, there is the fact that the Respondent has expressly disavowed the use of all of these other four Domain Names. It has not expressly consented to the transfer of these Domain Names to the Complainants, but the language it has used is not far from this. This is a factor that I think it is legitimate to take into account when considering whether to order the transfer of domain names to a complainant.

7. Decision

- 7.1 I, therefore, find that the Complainants have Rights in a name which is similar to the Domain Names, and that the Complainants have shown that each of the Domain Names, in the hands of the Respondent, is an Abusive Registration.
- 7.2 I, therefore, determine that all the Domain Names be transferred to the Complainants.

Signed: Matthew Harris

Dated: 30 December 2017