

DISPUTE RESOLUTION SERVICE

D00019463

Decision of Independent Expert

St Neots Town council

and

Mike Kirton

1. The Parties:

Lead Complainant: St Neots Town Council
Council Offices
Priory Lane
St Neots
Cambridgeshire
PE19 2BH
United Kingdom

Respondent: Mike Kirton
St Neots Town Council
The Priory
Cambs
PE19 2AB
United Kingdom

2. The Domain Name:

sntc.co.uk

3. Procedural History:

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 such a nature as to call in to question my independence in the eyes of one or both of the parties.

29 October 2017 18:17 Dispute received
30 October 2017 15:23 Complaint validated
30 October 2017 15:27 Notification of complaint sent to parties
16 November 2017 01:30 Response reminder sent
21 November 2017 09:15 No Response Received
21 November 2017 09:15 Notification of no response sent to parties
30 November 2017 16:28 Expert decision payment received

Following my appointment and receipt of papers, I made a request of the parties pursuant to paragraph 17.1 of the DRS Policy for additional information/documents and the following further steps were taken:

14 December 2017 Expert request for information/documents
14 December 2017 Expert request forwarded to parties
20 December 2017 Complainant responds to Expert request
20 December 2017 Complainant's response sent to Respondent (undeliverable)

4. Factual Background

The Complainant, St Neots Town Council, asserts that the Domain Name was registered on behalf of the council by the Respondent and that it was subsequently pointed towards the council website, used for email and is also listed on various publications as the website address for the council including on a complaints procedure form that has been used by the council continuously since 1999.

The address that was provided upon the registration of the Domain Name in the whois details was/is that of the council, although the Registrant was identified as 'Mike Kirton'. Mike Kirton was formerly responsible for the Domain Name at the council.

The Complainant asserts that it initially paid an 'IT Company' for the cost of registering the Domain Name and that it has subsequently paid renewal costs to 123 Reg, although it is unable to provide evidence of such payments due to staff changes within its accounts department and 123 Reg has refused to provide any information other than to Mr Kirton.

The Complainant has attempted to locate Mr Kirton, but without success.

5. Parties' Contentions

a. The Complaint

The Complainant asserts that the Domain Name was in fact registered on behalf of itself and not Mr Kirton.

b. The Response

No Response was filed.

6. Discussions and Findings

a. General

To succeed in this Complaint, the Complainant must, in accordance with Paragraph 2 of the Policy, prove to the Expert on the balance of probabilities that:

- (i) it has Rights (as defined in paragraph 1 of the Policy) in respect of a name or mark identical or similar to the Domain Name; and
- (ii) the Domain Name in the hands of the Respondent is an Abusive Registration (as defined in paragraph 1 of the Policy).

Notwithstanding the failure by the Respondent to file a Response (and I am confident that Nominet has taken all necessary steps to bring the Complaint to his attention), the burden of proof as set out above remains on the Complainant. However, the expert is entitled to take into consideration when making his determination that the Respondent, despite having the opportunity to do so, has not availed himself of the opportunity to rebut the allegations that have been made by the Complainant.

b. Complainant's Rights

The DRS 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 Complainant does not expressly identify what rights it relies upon, although I infer from the Complaint that it is relying upon the long use of its name and its use of the Domain Name, which is an acronym of its name, as having created a reputation or goodwill such as to found sufficient Rights for the DRS Policy. In my view such use is sufficient. For the purpose of analysing whether the Domain Name is identical or similar to the name or mark in which Rights are claimed, one should ignore the .co.uk suffix. In my opinion the Complainant has established that it has Rights in a mark identical to the disputed Domain Name.

c. Abusive Registration

I now go on to consider the extent to which the disputed Domain Name is an Abusive Registration.

The Complainant asserts that the Domain Name is an Abusive Registration for the reason identified above.

The Policy defines an Abusive Registration as -

"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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights"*

and goes on to set out a (non-exhaustive) list of factors which may be evidence that a domain name is an Abusive Registration, including at Paragraph 5.1.5, if:

"The Domain Name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant:

5.1.5.1 has been using the Domain Name registration exclusively; and

5.1.5.2 paid for the registration and/or renewal of the Domain Name registration"

In the current matter, I am persuaded by the evidence submitted by the Complainant that the Respondent registered the Domain Name as a result of his relationship with the Complainant, that the Domain Name has been exclusively used by the Complainant and that the Complainant has paid for the registration and renewal of it.

7. Decision

For the reasons set out above, I find that the Complainant does have Rights in respect of a name which is identical to the Domain Name <sntc.co.uk> and that the Domain Name in the hands of the Respondent is an Abusive Registration. The Complaint therefore succeeds and the Domain Name should be transferred to the Complainant.

Signed

Dated