

DISPUTE RESOLUTION SERVICE

D00019688

**Decision of Independent Expert
(Summary Decision)**

First Care Limited

and

Mr. D. Crowe

1. The Parties:

Complainant: First Care Limited
28 Clarendon Road
Watford
Hertfordshire
WD17 1JJ
United Kingdom

Respondent: Mr. D. Crowe
Alexander House
38 Forehill
Ely
Cambs
CB7 4AF
United Kingdom

2. The Domain Name:

firstcare.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 firstcare.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)

1. The Respondent registered the Domain Name on 2nd March 2000, and the Domain Name was used for a website selling Gardena gardening products between 2002 and 2005. The trading name used on the website is "Firstcare", although only a phone number appears on the images from the Internet Archive, and it is not clear who or what that entity was.
2. The Domain Name has not been used since, and now points to a default Names.co.uk page which advises "Don't let this space go to waste", and

suggests either activating the Domain Name by using a free one page website, or using Names.co.uk's website design and build service.

3. The Complainant first started trading in late November 2004 using the brand name "First Care" in conjunction with its then corporate identity of Health and Absence Limited. It did not apply to register the brand as a Trade Mark until 20th November 2006, and only changed its registered company name to its current name from 13th August 2007.
4. Given this chronology, it is clearly inconceivable that the Respondent could have had the Complainant in mind when he first registered the Domain Name. Further, it would appear that the Respondent might also be able to establish that he had used the Domain Name in connection with a genuine offering of goods or services becoming aware of the Complainant's cause for complaint, within paragraph 8.1.1.1 of the DRS Policy.
5. The Complainant contends that there will be "initial interest" confusion from the use of its Trade Mark in the Domain Name, because it is likely that its name would be typed into a browser by a prospective customer with the suffix .co.uk, which it says may also occur because it uses the domain name firstcare.eu. Because this will result in the prospective customer arriving at the current default holding page, this will lead the customer to assume it is either out of business or unprofessional in conducting its business. The holding page does not contain any disclaimer as to its lack of association with the Complainant. Therefore, the continuing "use" of the Domain Name in this way is abusive.
6. The Expert does not agree with that contention. There seems to have been no active use of the Domain Name by the Respondent since 2005. The holding page is clearly generated by Names.co.uk, not the Respondent. It seems fanciful to suggest that there is some kind of onus on the Respondent to make it clear on that holding page that there is no connection with the Complainant (assuming, of course, that the Respondent now has any idea who the Complainant is – that is not addressed in the Complaint, and there is no evidence provided of the current size and reputation of the Complainant's business). There is no sign that there has been any attempt by the Respondent to trade in any way upon the Complainant's reputation. Paragraph 5.2 of the DRS Policy provides that failure to use a Domain Name is "not in itself" evidence that the Domain Name is an Abusive Registration, which would seem to be the substance of the Complainant's contention here.
7. The Complainant also contends that false contact details have been provided to Nominet, because it has sent a registered letter to the Complainant, which has been returned (although without providing evidence). Paragraph 5.1.4 of the Policy requires independent verification, which the Expert would normally expect to see in the form of evidence, rather than just an assertion to that effect. It would appear from Nominet's records that, in notifying the Complaint to the Respondent, the emails to the principal contact address were not returned (although the copy emails to the postmaster@firstcare.co.uk address were apparently undeliverable). The postal copy of the Complaint, sent Special Delivery, was returned marked "not called for", implying that at least the physical delivery address exists

(and was not a “made up” address). The Domain Name has been registered for more than 17 years, and presumably has been renewed many times during that period, and has also apparently been used historically for a genuine offering of goods and services. It is possible that some of the contact details might currently be out of date. However, in the Expert’s opinion, it is stretching things too far to suggest that “false” details have been provided, and certainly too far to justify a conclusion that the registration of the Domain Name is abusive on that ground.

8. Therefore, the Complainant has failed to establish on the balance of probabilities that the Domain Name is an Abusive Registration within the meaning of the DRS Policy.

8. Decision

I refuse the Complainant’s application for a summary decision. The domain name registration will therefore remain with the Respondent.

Signed: Bob Elliott

Dated: 24th January 2018