

# **DISPUTE RESOLUTION SERVICE**

**D00020226**

## **Decision of Independent Expert**

RP Motorhomes Ltd

and

Mr Chris Delgado

### **1. The Parties:**

Lead Complainant: RP Motorhomes Ltd  
RP Motorhomes Ltd  
Unit 1 Mill Hurst Business Park  
Harrogate  
North Yorkshire  
HG3 2QH  
United Kingdom

Respondent: Mr Chris Delgado  
2 Kirklees Close  
Pudsey  
West Yorkshire  
LS28 5TF  
United Kingdom

### **2. The Domain Name(s):**

rpmotorhomes.co.uk (“the Disputed Domain”)

### **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.

22 May 2018 17:58 Dispute received  
23 May 2018 13:31 Complaint validated  
23 May 2018 13:45 Notification of complaint sent to parties  
23 May 2018 18:03 Response received  
23 May 2018 18:03 Notification of response sent to parties  
24 May 2018 14:46 Reply received  
24 May 2018 14:46 Notification of reply sent to parties  
24 May 2018 14:47 Mediator appointed  
31 May 2018 10:59 Mediation started  
01 June 2018 17:43 Mediation failed  
01 June 2018 17:44 Close of mediation documents sent  
12 June 2018 10:38 Expert decision payment received

#### **4. Factual Background**

4.1 The facts and matters set out in this section are taken from the parties' submissions. There is little factual dispute and I indicate below where the parties' accounts differ.

4.2 The complainant was incorporated on 3 July 2014 to carry on a business described as luxury panel van conversion. According to the publicity material supplied with the complaint, the complainant converts vans into bespoke luxury motorhomes. The respondent and his wife Gail, who trade as Funky Noodle, were engaged in late 2014 to set up a website on the complainant's behalf.

4.3 Three domains were registered by the respondent for the complainant. They are rpmotorhomes.co.uk, rpsporthomes.co.uk and rpsporthomes.com. The first of these is the Disputed Domain. The respondent says that originally the complainant used the domain rpsporthomes.co.uk and that the Disputed Domain was registered in October 2015 when the complainant changed its name to RP Motor Homes Limited. The registration date corresponds to the data on the Nominet WHOIS database. In any event, it does not appear to be in dispute that a website was ultimately set up on the Disputed Domain through which the complainant has advertised and traded since this was done. The complainant says that it was under the impression that it rather than the respondent owned the Disputed Domain and this is not contested in the response.

4.4 It is apparent from the parties' submissions that their working relationship broke down at some point. When and why are not clear. The respondent claims that he is owed money by the complainant for work including purchasing names, hosting, web work, graphic design, film and flyers amongst other things. The complainant accepts that it owes some money but says it has refused to pay because it does not know what work has been done and will not pay until this is clarified. The parties agree, however, that the respondent has made a County Court claim for unpaid fees in the sum of £7818 plus interest and that some at least of this claim is disputed by the complainant.

4.5 There is very little information in the submissions of either party which sheds any light on the merits of this dispute. I outline below the information which has been provided. It seems, however, that some money has been paid because I have been supplied with copies of two invoices (numbered 832 and 820) from the respondent for

registration of the Disputed Domain and what I presume is the corresponding hosting charge. At the top of the latter invoice is a handwritten annotation "Paid £500 06/12/17". Curiously, the dates on the two invoices, 11 December 2017 and 17 August 2017 respectively, do not correspond to the dates for those invoices listed in the County Court claim form issued by the respondent which gives the dates of both as 31/03/2017. From this limited information I can deduce that it is likely that some monies have been paid and that the respondent's claim is not entirely accurately specified in the claim form.

4.5 In January 2018 the complainant asked the respondent to carry out some work updating the website on the Disputed Domain but says that this work was not done. This claim is not disputed in the response. In consequence, the complainant decided to dispense with the respondent's services and take its website design in house. On 13 April the complainant notified the respondent of its intentions and asked him to update the Disputed Domain to enable the transfer to the new provider, Squarespace. The email containing this instruction ended with the following paragraph:

"We would like to work with you to clear off the amount owed to you for the design work you have undertaken. The amount owed has been allowed to escalate, with little, if any, explanation for what the costs were for. I would like to come to a compromise with regards this amount, so please could you give us a fair figure that we can both agree on, for the work that has been completed and the hours worked.

Thanks for your help to get us to where we are."

4.6 The respondent responded to this email on 16 April 2018 by quoting the first paragraph above and then saying:

"At the start of our working relationship you requested that I book out 2 full days per week to complete work for you and we agreed a figure of £100 per full day. This was adjusted up or down under your instruction each week. You were fully aware at all times of what work was being completed.

We have discussed MANY times about the outstanding invoices and the fact that under your instruction we continued to complete work for you thus the amount continued to grow. At your request and in good faith each time we discussed the outstanding amount I said I would wait for payment until your cash flow improved. At no point have you ever expressed that you were unhappy with the work completed.

As I made clear earlier today in our discussion, I expect full payment of all outstanding invoices for work completed and then I will release all names, social media, films, etc over to you immediately."

4.7 It is impossible from this exchange to form any clear picture of the substance of the dispute. What does seem clear is that the parties have allowed this dispute to develop over a significant period when both would have been better advised to address and resolve it. It may well be that their relationship would not have broken down if they had done so.

4.8 The respondent made clear in the final paragraph of his email that he would only transfer the property he holds for the complainant on receipt of full payment of his invoices. He says that his terms and conditions include a retention of title clause under which property remains with him until all outstanding invoices have been paid which justifies this approach. However, he has provided no evidence to support the claim that such a term applied to the parties' dealings.

4.9 The complainant's answer to this claim is that it has never been shown any such terms or conditions.

4.10 The complainant explains that in the light of the difficulty in obtaining the Disputed Domain from the respondent it decided to move its website to a new domain. It registered rpmotorhomes.com and set up its new website there. It was able to log into some of its social media accounts to update the information on them to show the new website address. The respondent's reaction to this was to log into those same accounts himself and change the information back to the Disputed Domain which he of course controls. I have been provided with copies of screenshots showing that the respondent updated data on the complainant's Facebook account shortly before he sent his email of 16 April 2018. The respondent does not contest or seek to explain his conduct.

4.11 As a result of the facts and matters set out above, the complainant now appears on the internet to have two websites, one under the Disputed Domain which is out of date and one under its new domain which it controls and is up to date. This it says is causing significant disruption to its business.

## **5. Parties' Contentions**

5.1 The complainant says that it has rights in the Disputed Domain because it was registered by the respondent as a result of a relationship between the parties. This would appear to be a claim that the Disputed Domain is covered by the provisions of paragraph 5.1.5 of the current DRS Policy. This requires that the complainant has used the Disputed Domain exclusively and paid for its registration and/or renewal.

5.2 The complainant says that the Disputed Domain is an Abusive Registration because the respondent is unfairly disrupting its business by refusing to transfer the Disputed Domain and interfering with data on, for example, its Facebook account.

5.3 The respondent's answer to the complaint is that he is entitled to retain title to the Disputed Domain under his terms and conditions until all his outstanding invoices have been settled. I understand this to mean that the respondent accepts that the complainant is in principle entitled to have the Disputed Domain transferred to it under paragraph 5.1.5 of the DRS Policy but that there is a contract in force between the parties which overrides that right until the requirements of that contract have been complied with.

5.4 The respondent has not addressed the reasons why he changed data on the complainant's Facebook account so that it referenced the Disputed Domain rather than the new domain that the complainant set up.

## **6. Discussions and Findings**

### *The DRS Policy*

6.1 The DRS Policy applicable to this dispute is Version 4 in force since 1 October 2016. Paragraph 1 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”.

In the same paragraph Rights are defined as:

“rights, enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning”.

6.2 Paragraph 2 of the DRS Policy provides as follows:

### **“2 Dispute to which the DRS applies**

2.1 A Respondent must submit to proceedings under the DRS if a Complainant asserts to us, according to the Policy, that:

- 2.1.1 The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
- 2.1.2 The Domain name, in the hands of the Respondent, is an Abusive Registration.

2.2 The Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.”

6.3 Paragraph 5 of the DRS Policy contains a non-exhaustive list of factors which may be evidence that a domain name is an Abusive Registration. They include:

“5.1.5 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 has paid for the registration and/or renewal of the Domain Name registration;”

This appears to me to be the only factor which is applied directly to the present dispute. An additional factor which may be relevant is that set out in paragraph 5.1.1.3 which is that the respondent has registered or acquired the Domain Name primarily for the purpose of unfairly disrupting the business of the complainant.

### *Rights*

6.4 The first question in any DRS dispute is whether the complainant has “Rights” as defined by the DRS Policy. This is a threshold test and readily satisfied. It seems to me that in the present case there is really no dispute that the test is satisfied. The parties agree that the Disputed Domain was registered by the respondent for the complainant to use on the complainant’s instructions and subject to payment by the complainant. In these circumstances there must have been a contract for this to be done whether or not the terms of that contract were reduced to writing. It must be an implied term even if not express that the respondent will hold the Disputed Domain to the complainant’s order. That gives the complainant a contractual right to the Disputed Domain in the hands of the respondent. Accordingly, it seems to me that the complainant has met the threshold of demonstrating that it has Rights in the Disputed Domain.

### *Abusive Registration*

6.5 Paragraph 5 of the DRS Policy lists a series of factors which may be evidence that a domain is an Abusive Registration. The opening words of the paragraph state expressly that the list is not exhaustive. Accordingly, it seems to me that it is open to me to take into account other matters which are analogous to the factors listed in paragraph 5. I have noted above the factor set out in paragraph 5.1.1.3 that a domain has been registered or acquired to disrupt the complainant’s business. It seems to me that, where a domain has been registered by a respondent at the request of the complainant for use by the complainant and the respondent then decides to use the domain to disrupt the complainant’s business because the parties have a collateral dispute, that too leads to the conclusion that the domain registration has become an Abusive Registration. It may not have been an Abusive Registration at the outset but the adoption by the respondent of activities disruptive of the complainant’s business turns it into a registration which is being used abusively. I propose to adopt that approach in this decision. I draw support in doing so from paragraph 3.2 of the Experts’ Overview which indicates that unfair disruption of a complainant’s business by use of a domain name is very likely to constitute abusive use of the domain name.

6.6 The facts and matters set out above, particularly those outlined in paragraph 4.10 which have had the result set out in paragraph 4.11, seem to me to make it clear that the respondent decided when asked to transfer the Disputed Domain to the complainant not to do so until his disputed invoices were paid. To strengthen his hand in the dispute, he also decided to disrupt the complainant’s business by altering at least its Facebook account to reference the Disputed Domain rather than the replacement set up by the complainant. It was inevitable that this would cause a loss of business to the complainant and I am sure that the respondent was well aware that this would be the result of his actions. Indeed, I am sure that that was his intention. It was his hope that this would coerce the complainant into paying his invoices in order to recover control of the Disputed Domain and its social media accounts. This is

clearly not normal commercial behaviour and seems to me to have been entirely improper. The respondent has bought a claim for unpaid fees in the County Court. That is where he should seek his remedy for non-payment, not by engaging in “self-help” by disrupting the complainant’s business. Even if the respondent had the benefit of a retention of title clause, that did not entitle him to interfere with the complainant’s business by altering its contact details in its social media accounts to point to the Disputed Domain. For this reason, therefore, I conclude that the Disputed Domain is an Abusive Registration.

6.7 I should add for completeness that the absence of evidence either that the respondent did at the time he registered the Disputed Domain in fact trade on terms including a retention of title clause or that the complainant was given notice that such a term applied to the parties’ dealings would have led me to conclude if necessary that the respondent did not have the benefit of such a term<sup>1</sup>. Accordingly, his refusal to transfer the Disputed Domain when requested was probably in itself a breach of contract itself amounting to abusive use of the domain.

6.8 Further, the respondent does not suggest that the complainant failed to pay either for the initial registration and hosting of the Disputed Domain or for the initial design work which was done on the complainant’s website hosted on the domain. He does appear to allege that the recent registration renewal and hosting fees for the Disputed Domain remain unpaid but he has not accounted for the £500 which is noted as having been paid on one of those invoices. That sum considerably exceeds those fees and it seems to me that I am entitled to assume that payments sufficient to cover all registration and hosting fees for the Disputed Domain have been paid if that is required by Paragraph 5.1.5 of the DRS Policy<sup>2</sup>. In these circumstances, it seems to me that Paragraph 5.1.5 applies to the present circumstances and that this alone makes the Disputed Domain an Abusive Registration.

## **7. Decision**

For the reasons set out above I determine that the registration of rpmotorhomes.co.uk in the hands of the respondent is an Abusive Registration and I direct that it be transferred to the complainant.

**Signed Michael Silverleaf**

**Dated 28 June 2018**

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<sup>1</sup> The respondent’s website does now contain such a term but there is no evidence that this link existed at the time the Disputed Domain was registered or that it was drawn to the complainant’s attention. The complainant’s evidence that it was not advised that the respondent had such a trading term is the only evidence presented and must therefore be accepted.

<sup>2</sup> The better interpretation of Paragraph 5.1.5 seems to me to be that payment of the initial registration fee or a renewal fee is sufficient to satisfy its requirements so this question does not arise.