

DISPUTE RESOLUTION SERVICE

D00020783

Decision of Independent Expert

Pusher Ltd

and

Lee Owen

1. The Parties:

Complainant: Pusher Ltd
5th Floor,
160 Old St
London
EC1V 9BW
United Kingdom

Respondent: Lee Owen
Strada Visinului 13
Sat Tamasi
Comuna Corbeanca
Jud Ilfov
077068
Romania

2. The Domain Name:

<pusher.co.uk> (“the Domain Name”).

3. Procedural History:

02 November 2018 17:46 Dispute received
05 November 2018 09:55 Complaint validated
05 November 2018 10:09 Notification of complaint sent to parties
09 November 2018 17:49 Response received
09 November 2018 17:49 Notification of response sent to parties
14 November 2018 01:30 Reply reminder sent
16 November 2018 15:55 Reply received
16 November 2018 15:55 Notification of reply sent to parties
16 November 2018 16:03 Mediator appointed
21 November 2018 12:01 Mediation started
28 November 2018 15:11 Mediation failed
28 November 2018 15:11 Close of mediation documents sent
05 December 2018 16:00 Expert decision payment received

I, the undersigned Expert (“the Expert”), 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 into question my independence in the eyes of one or both of the parties.

4. Factual Background

The Complainant asserts and, for present purposes, the Expert accepts as fact the following:

1. The Complainant, trading under its corporate name Pusher Ltd, has been one of the key players in the developer tools market since 2011.
2. The Complainant is the proprietor of trade mark registrations for the word “Pusher” in the United States and the European Union for computer software and related goods and services. The application for the European trade mark was filed on 2 October, 2015. Registration came through on 15 September, 2016. The United States application was filed on 10 March, 2016 with a first use claim of 2 March, 2010 and the trade mark registration came through on 5 December, 2017.
3. The Complainant operates a website connected to its domain name, <pusher.com>. It has owned that domain name since 2014.
4. In April 2018 it purchased the Domain Name from its previous owner for an undisclosed sum, who, so the Complainant contends, had held it unused since 1997.
5. On 7 October, 2018 the Complainant received an email from Nominet warning it that the Domain Name was about to be cancelled.
6. The relevant email box was not checked by the Complainant until too late.

In the interim, on 14 October, 2018 the Complainant's registration for the Domain Name was cancelled. However, its sister domain name <pusher.uk>, which the Complainant acquired with the Domain Name, is still held by the Complainant.

7. On 15 October, 2018 the Domain Name was registered in the name of the Respondent.
8. The Domain Name is or was connected to a webpage, which features a contact form headed with the Domain Name and the words "*If you want to contact the owner of this domain, please fill out this form.*" The Expert has been unable to access the website.

As to 5 above, what the Complainant does not state is that prior to the 7 October, 2018 email warning the Complainant of the imminent cancellation of the Domain Name Nominet had already sent to the Complainant's registered email address three earlier warning emails on Monday, 16 July, 2018, alerting the Complainant to the fact that the Domain Name registration had expired, on Wednesday, 8 August, 2018, warning the Complainant that suspension of the Domain Name was imminent, and on Wednesday 15 August, 2018 alerting the Complainant to the fact that the Domain Name had been suspended.

5. Parties' Contentions

The Complainant contends that its PUSHER trade mark is identical to the Domain Name and asserts that the Domain Name is an Abusive Registration on the basis that it was acquired by the Respondent to sell to the Complainant at a profit, alternatively to prevent the Complainant from obtaining the Domain Name. The Complainant contends that any use of the Domain Name by the Respondent will infringe the Complainant's trade mark rights and will inevitably lead to confusion. The Complainant's contentions are dealt with in greater detail in Section 6 below.

The Respondent denies the Complainant's contentions apart from admitting that the Complainant has trade mark rights (albeit very limited rights) in respect of the word "pusher". The Respondent seeks a finding of Reverse Domain Name Hijacking.

The Respondent's principal contentions in response to the allegation that the Domain Name is an Abusive Registration are that:

1. While the Complainant has trade mark rights they are very narrow and are restricted to computer software and related goods and services. There are numerous legitimate trade mark uses to which the name "pusher" could be put, which are not covered by the Complainant's trade mark. Nothing that the Respondent has done infringes the Complainant's trade mark rights.
2. The name "pusher" is an ordinary dictionary word with a range of

meanings, the most common being a drug dealer. The Respondent produces six other examples. There are therefore a number of perfectly legitimate descriptive uses of the word, which will not infringe the Complainant's trade mark rights.

3. The Domain Name was first created in 1997 by a third party and there are a number of 'pusher' domain names in other Top Level Domains held by people unrelated to the Complainant. The Respondent identifies several of them.
4. The Complainant's allegations as to the Respondent's bad faith motives in selecting and using the Domain Name are bare assertions unsupported by any evidence.
5. While it is true that the Domain Name has no active website attached to it, that is not indicative of bad faith. It takes time to develop websites.
6. The Respondent contends that this is a clear case of Reverse Domain Name Hijacking. The Complainant has put forward no evidence to support its claim of Abusive Registration. The Respondent acquired the Domain Name lawfully and was able to do so simply because the Complainant failed to renew the registration, thereby allowing it to return to the open market for registration by the first-comer.

6. Discussions and Findings

General

Pursuant to paragraph 2 of the Policy for the Complainant to succeed in this Complaint it must prove to the Expert on the balance of probabilities that:

2.1.1 It 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

"Abusive Registration" is defined in paragraph 1 of the Policy 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.*

Paragraph 18.7 of the Policy provides that “*if, after considering the submissions, the Expert finds that the complaint was Reverse Domain Name Hijacking, the Expert shall state this finding in the Decision*”. Reverse Domain Name Hijacking is defined in paragraph 1 of the Policy as meaning “*using the DRS in bad faith in an attempt to deprive a Respondent of a Domain Name*”.

Rights

There is no dispute between the parties that the Complainant’s PUSHER trade mark is identical or similar to the Domain Name.

Abusive Registration

Paragraph 5.1 of the Policy sets out a non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration. Of potential relevance here are sub-paragraphs 5.1.1 and 5.1.2, which read as follows;

“5.1.1 Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

5.1.1.1 for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

5.1.1.2 as a blocking registration against a name or mark in which the Complainant has Rights; or

5.1.1.3 for the purpose of unfairly disrupting the business of the Complainant;

5.1.2 Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;”

Sub-paragraph 5.1.1 concerns the Respondent’s motive at time of registration or acquisition of the Domain Name. For any of these circumstances to apply, the evidence has to support the proposition that the Respondent was targeting the Complainant from the outset. Sub-paragraph 5.1.2 concerns the Respondent’s subsequent use of the Domain Name, which has led or is likely to lead to confusion with the Complainant.

For the Complainant to establish to the satisfaction of the Expert that the Respondent was targeting the Complainant when he registered the Domain Name, first, it needs to show, on the balance of probabilities, that the Respondent was

aware of the Complainant or its trade mark at that time. After all, if a domain name registrant was genuinely unaware and had no reason to be aware of the existence of the Complainant and its trade mark when registering the Domain Name, the Expert cannot envisage how it would be possible to show any bad faith targeting.

A significant problem for the Complainant is that the word “pusher”, in addition to being its trade mark, is an ordinary English dictionary word with several meanings. The Respondent has identified seven such meanings. The nature of the problem is identified in paragraph 4.10 of the Experts’ Overview, a guidance resource published on the Nominet website. That paragraph responds to the question: “Can use of a purely generic or descriptive term be abusive?” and answers it as follows:

*“Yes but, depending on the facts, the threshold level of evidence needed to establish that this is the case is likely to be much higher. It may well often depend upon the extent to which such a term has acquired a secondary meaning, which increases the likelihood that any registration was made with knowledge of the rights that existed in the term in question. See the Appeal Panel discussion in DRS 17614 (freebets.uk) for a case which concluded a descriptive term had acquired a secondary meaning and which discusses the applicable principles. In many such cases where there is little or no evidence of acquired secondary meaning the Respondent is likely to be able to show that the domain name in question has been arrived at independently and accordingly cannot have been as a result of an Abusive Registration. A helpful discussion is found in DRS 04884 (maestro.co.uk) where the Appeal Panel observed **“Where a domain name is a single ordinary English word, the meaning of which has not been displaced by an overwhelming secondary meaning, the evidence of abuse will have to be very persuasive, if it is to be held to be an Abusive Registration under the DRS Policy.”** [Emphasis added]*

Another factor to bear in mind is that the Complainant’s trade mark registrations are limited to computer software and related goods and services. They do not provide the Complainant with a blanket monopoly over the mark PUSHER enforceable against all-comers. Thus, on the face of it, in addition to the various legitimate descriptive uses that can be made of the word “pusher”, the Domain Name is also capable of numerous uses as a brand, albeit not in any field covered by the Complainant’s trade mark registrations. So even if the Respondent was aware of the Complainant and its trade mark when he registered the Domain Name, the fact of registration does not lead inexorably to a finding that the Respondent in registering it was targeting the Complainant. Something more is required (e.g. evidence of abusive use).

The case on Abusive Registration put forward by the Complainant appears from the following extracts from the Complaint:

“Our registered intellectual property rights in “Pusher”, our long

historical association with the word Pusher, and our ownership of other domains (each as detailed above) clearly demonstrate that we are the rightful owners of pusher.co.uk and any registration by a third party, including in this instance, is an infringement of our registered intellectual property rights. The domain "pusher.co.uk" is identical to our registered trademark, and will inevitably lead to confusion with our existing business and any customers trying to locate our legitimate landing pages."

and

"The current owner's registration of the domain pusher.co.uk was clearly made with the intention of seeking payment from us as the registered trademark owners in excess of the costs of obtaining the domain name in the ordinary course, or at the least, with the intention of preventing us as the registered trade mark owner from obtaining the domain name. This is a clear display of bad faith."

and

"As detailed in this complaint, allowing the current owner to remain the registered owner of the domain is extremely detrimental and is already causing our business irreparable harm."

These contentions are long on bare assertion and very short on supporting evidence. In fact, the Complaint contains no supporting evidence; neither does the Reply. The Complainant is relying upon a combination of the claimed fame of its PUSHER trade mark and the fact that the Respondent appears to be a 'domainer' (i.e. someone engaged in the business of monetising domain names), who acquired the Domain Name for the purpose of selling it or otherwise exploiting its commercial value.

What were the Respondent's motives when registering the Domain Name? Was he aware of the existence of the Complainant or its PUSHER trade mark? If he was not and had no reason to be aware of it, the Complaint must fail under paragraph 5.1.1 of the Policy.

As indicated, the Complainant asserts knowledge based upon the claimed fame of its trade mark, but produces no evidence to support it. The Expert has accepted for the purposes of this decision that the Complainant is a leading player in its field of activity (see section 4 above), but has no idea whether that fame extends to the Respondent's field of activity such as to lead to the inference that the Respondent is likely to have been aware of it.

Nonetheless, while it is not entirely clear from the case file, the Expert is prepared to accept for the purposes of this decision that the Respondent is likely to be a

domainer and had access to drop catching software, which alerted him to the fact that the Domain Name was on the point of cancellation and enabled him to snap it up as soon as the Complainant's registration was cancelled. Thus, the Expert is prepared to assume that prior to registering the Domain Name, had he wished to do so, the Respondent could have discovered that the Complainant was the entity about to lose the registration. The Expert has no information as to whether or not he did so.

He might have done so to ensure that he complied with the promises that he would have to give on registration of the Domain Name pursuant to sub-paragraphs 1.3 and 1.5 of paragraph 6 of the registrant agreement, namely that by registering or using the Domain Name in any way, he would not infringe the intellectual property rights of anyone else; and would not use the Domain Name for any unlawful purpose.

For present purposes, the Expert will assume that the Respondent made that enquiry and carried out a trade mark search to check on the Complainant's registered trade mark rights. On the basis of those assumptions, the Respondent would have been aware of the Complainant and its trade mark rights when he registered the Domain Name.

Where does that 'knowledge' leave the Respondent? As a domainer he is likely to have acquired the Domain Name with a view to monetising it whether by sale or otherwise. Registering a Domain Name known to be the trade mark of another with a view to monetising it puts the Respondent in a potentially vulnerable position.

The first thing to point out is that, as set out in paragraph 8.4 of the Policy: "*Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves lawful activities. The Expert will review each case on its merits.*" Thus, the practice of registering domain names for the purpose of trading in them is not of itself objectionable. For it to be objectionable the Respondent has to be targeting the Complainant.

What evidence is there that in registering the Domain Name the Respondent was targeting the Complainant? The Complainant has come forward with no such evidence; merely the bare assertion that:

"The current owner's registration of the domain pusher.co.uk was clearly made with the intention of seeking payment from us as the registered trademark owners in excess of the costs of obtaining the domain name in the ordinary course, or at the least, with the intention of preventing us as the registered trade mark owner from obtaining the domain name. This is a clear display of bad faith."

That ought to be the end of the matter. Without evidence a complaint ought normally to fail.

Is there anything about the circumstances of the case that should lead the Expert, notwithstanding the lack of any evidence from the Complainant, to assume that the Respondent's motives were at any stage abusive?

One possibility could be that special rules should apply where drop catching software has been used to acquire the disputed domain name. The Expert does not see why that should be the case. When the Respondent registered the Domain Name he will not have known whether the dropping of the Domain Name by the Complainant was intentional or an accident. Is it to be suggested that users of such software should enquire of the registrant in advance of the cancellation whether the dropping of the name was intentional, thereby giving the registrant an opportunity of 'saving' the name? The Expert does not believe so. Ultimately, the responsibility for preserving a domain name registration lies solely with the registrant.

Is there anything about the Complainant's trade mark which puts this case into a special position rendering possible a finding of Abusive Registration in the absence of supporting evidence from the Complainant?

Brands come in all shapes and sizes. At one extreme are made-up names such as XEROX and KODAK, which have no meaning and in respect of which it is difficult to imagine that any lawful commercial use could be made without the permission of the brand owner. Alongside them are combination names, which may include dictionary words, but which over time and through extensive use have achieved such notoriety, that they fall into the same category. Examples include brands such as VODAFONE and COCA-COLA. At the other end of the spectrum are ordinary dictionary words, which may achieve notoriety as brands (e.g. APPLE and VIRGIN), but which also have other descriptive uses in line with their dictionary definitions.

"Pusher" is an ordinary dictionary word with several meanings. The Respondent has identified seven, but the two main ones are (a) someone who sells illegal drugs; and (b) someone who pushes. Thus, the Domain Name has a value in and of itself as a dictionary word and independently of any value attributable to the Complainant's trade mark. It was perceived to have had such a value back in 1997 when the original owner of the Domain Name first registered it and long before the Complainant had acquired any trade mark rights. Has the name acquired an overwhelming secondary meaning of the kind referred to in paragraph 4.10 of the Experts' Overview quoted above? As indicated, the Complainant has produced no evidence to support any such contention. In the Complaint it invited a visit to the Complainant's website connected to its <pusher.com> domain name. The Expert duly visited the site, but there was nothing there to demonstrate fame going beyond the Complainant's narrow field of activity.

Even if the Respondent was aware of the Complainant's trade mark when he acquired the Domain Name, those trade mark rights do not give rise to a blanket monopoly on all uses of the word "pusher". The original owner of the Domain Name was entitled to sell the Domain Name at a profit to the Complainant and the Respondent is in a similar position; certainly, there can be no doubt that the Respondent is entitled to exploit the descriptive value of the Domain Name. Additionally, it may legitimately have a premium value as a trade mark for use outside the scope of the Complainant's trade mark registrations.

It is possible that the Respondent's use of the Domain Name could have thrown additional light on his motives, but it does not. On the evidence before the Expert, it appears that the only use to which the Domain Name has been put thus far is to connect it to a webpage featuring a contact form headed with the Domain Name and the words "*If you want to contact the owner of this domain, please fill out this form.*" The Complainant seems to regard this as objectionable, but to the Expert it appears straightforward, neutral and the sort of webpage appropriate to a domainer website. No attempt has been made by the Respondent to contact the Complainant, let alone to sell the Domain Name to the Complainant.

The Complainant contends that the presence of the Domain Name in the hands of the Respondent "*is extremely detrimental and is already causing our business irreparable harm*", thus bringing paragraph 5.1.2 of the Policy into play. ("*Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;*").

It should be pointed out that neither the Complaint nor the Reply contains any support for that contention. Nothing. However, it would be surprising if some damage did not result from the change of ownership. At a basic level any business literature of the Complainant identifying the Domain Name as a route to the Complainant's website will need to be changed. Beyond that, there will no doubt be examples of initial interest confusion among Internet users aware of the Complainant's brand, but none of this damage has resulted from anything that the Respondent has done. It has resulted simply because the Complainant has allowed the Domain Name to return to the open market.

The Nominet website and its <theukdomain.uk> website contain ample guidance on renewal and the potential consequences of failing to do so e.g.:

"What happens if you don't renew your registration

If you don't renew your registration then you will eventually lose your domain name, which means your website won't be available and your email addresses won't work.

Initially your website will be suspended, and later cancelled.

If your site is for business, this will impact:

- *How your customers find you (and not your competitors)*
- *How your customers contact you (instead of your competitors)*
- *Online tools and sites that you use for business using your registered email address”*

The simple fact of the matter is that the Complainant ignored all available advice and numerous warnings and has suffered the consequences. All of it is down to the Complainant’s failures. None of it can sensibly or fairly be laid at the door of the Respondent.

In summary, on the evidence before him, the Expert concludes on the balance of probabilities that the Respondent is a domainer and registered the Domain Name with a view to re-selling it or otherwise deriving a commercial gain from it, but there is no evidence before the Expert to indicate that the Respondent has targeted or intends to target the Complainant. He acquired it because it has an inherent value as an ordinary English dictionary word and it became available on the open market for re-registration. The Complainant will have become well aware of the intrinsic value of the Domain Name when it acquired the Domain Name from the original registrant in April 2018. What that value was at that time is not known as the Complainant has redacted the price from the receipt annexed to the Reply. The price will almost certainly have included a premium reflecting the added value to the Complainant, the Domain Name featuring its trading name and trade mark.

In the absence of any evidence, the Expert also dismisses the Complainant’s alternative claim that the Respondent registered the Domain Name with a view to blocking the Complainant.

The Expert declines to find that the Domain Name in the hands of the Respondent is an Abusive Registration.

Reverse Domain Name Hijacking (“RDNH”)

The Complainant contends that in filing the Complaint the Respondent has used the Policy in bad faith in an attempt to deprive him of the Domain Name and seeks a finding of RDNH, a finding that the Expert is required to make pursuant to paragraph 18.7 of the Policy, if the facts merit it.

The Respondent contends that the Complaint was launched simply because the Complainant lost the registration through failing to renew it and the Policy provided a possible means of recovering it. The Respondent contends that the Complainant never had any reason to believe that the Domain Name in the hands of the Respondent was an Abusive Registration.

The Complainant filed a Reply, but did not expressly address the Complainant's request for a RDNH finding. It stood by its original claim stating: *'It remains our assertion that the current owner of pusher.co.uk purchased the domain within 48 hours of accidental expiry merely to sell it back to us at a profit, has no legitimate interest in owning the domain name and does so in bad faith.'*

Requests for findings of RDNH are relatively rare under the Policy. The Experts' Overview, which is one of the guidance resources accessible on the Nominet website and deals with many of the questions faced by Experts when dealing with these disputes, does not address the issue.

One case that does address the issue is *Dignity Funerals Ltd. v. Steve Dale* Case No. D18931 <dignity.co.uk> ("*Dignity*") in which the Appeal Panel made the following observation:

"There are very few full DRS Decisions addressing this issue. There are many more UDRP decisions considering the analogous (and very similarly-defined) issue as it arises in the context of the UDRP, but the Panel places no reliance on those UDRP decisions in accordance with the approach prescribed by the Foreword to Version 3 of the DRS Experts' Overview (December 2016):

"... it should be stressed for the benefit of those who have had experience of domain name disputes under the Uniform Domain Name Dispute Resolution Policy ("UDRP"), that the DRS Policy and the UDRP are different systems. In some places they share very similar wording, but there are significant differences and the citation of UDRP decisions in a dispute under the DRS Policy is rarely likely to be helpful."

The Expert tentatively suggests that RDNH may be an exception which proves the rule. The Policy defines RDNH as *"using the DRS in bad faith in an attempt to deprive a Respondent of a Domain Name"*. The UDRP defines it as *"using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name."* One would have thought that the principles should be the same for both; however, the Expert will do his best to ignore his experience as a panelist under the UDRP and start from first principles.

Clearly, the Complainant has attempted to deprive the Respondent of the Domain Name, but was the attempt made in bad faith?

An obvious example of a bad faith attempt would be where a complainant knows when filing the complaint that the complaint ought not to succeed. It could be because he knows that the respondent has a right or legitimate interest in respect of the domain name; it could be because he knows that he has no evidence to support an Abusive Registration claim; or it could be because he knows that he, the complainant, has no right or legitimate interest in respect of it. It is a matter for

consideration whether in this context “knows” includes “ought to have known”.

In *Dignity* the background facts were very different from the facts of this case. The domain name in issue had been registered by the respondent over 20 years ago, there had been a long-standing co-existence agreement between the parties which the respondent had not contravened, the complainant had made numerous attempts to buy the domain name from the respondent and the complainant by its own actions had exacerbated the risk of confusion. None of that occurred here although the Domain Name was first registered by the original registrant over 20 years ago.

The only common factor in the two cases is that in each case the domain name in issue is, in the words of the Appeal Panel in *Dignity*, “a single short English word with intrinsic market value.”

In *Dignity* the Appeal Panel refers to the case of *Consolidated Artists B.V. v. Mr Garth Piesse* Case No. D15585 <mango.co.uk> (“*Mango*”), the facts of which are said to mirror the facts in *Dignity*. In *Mango* the expert made his finding of RDNH in the following terms:

“The sequence of events in the present case appears to show that the Complainant attempted to buy <mango.co.uk> from the Respondent. When these negotiations failed the Complainant started proceedings under the DRS. As I have noted, the Complainant has relied on bare assertion and has provided a paucity of evidence to support its arguments.

Even a cursory reading of the Policy, Procedure and extensive guidance on Nominet's website would quickly show that a matter concerning a clearly generic, dictionary term would require a higher standard of argument and evidence than is perhaps common. That the Complainant has failed to come anywhere close to providing sufficient argument or evidence is, in my view, strongly indicative that the Complainant pursued this dispute in frustration at the Respondent's unwillingness to sell <mango.co.uk> for a price it was willing to pay, rather than because of the merits of its position in terms of the Policy's requirements.

I conclude that the Complainant brought a speculative complaint in bad faith in an attempt to deprive the Respondent of the Domain Names. I therefore determine that the Complainant has engaged in Reverse Domain Name Hijacking.”

While it is true that the facts of that case were very different from this one, the Expert finds on much the same basis that the Complainant in this case brought a speculative complaint, frustrated at the consequences of its failure to renew its registration of the Domain Name. It made no attempt to support its claim that the Respondent's use of the Domain Name constitutes an infringement of its trade mark rights. Nor did it make any attempt to meet the evidentiary burden laid down in paragraph 4.10 of the Experts' Overview in respect of domain names featuring "*a single ordinary English word*". While it would be unfair to assume that the Respondent had read the message handed out in that paragraph, it represents obvious, straightforward commonsense.

The Response made very clear the lamentable shortage of any supporting evidence for the Complainant's contentions; yet the Complainant filed its Reply reiterating its contentions and making no attempt to repair the omissions.

The Panel concludes that when filing the Complaint the Complainant failed to provide any supporting evidence on the issue of Abusive Registration, because it did not have any such evidence. It knew or ought to have known that the Complaint was doomed to failure. In proceeding as it did it made allegations of bad faith against the Respondent, which it knew or ought to have known were unjustified and unnecessarily put the Respondent to the trouble and expense of responding to them.

The Expert finds that the Complainant has engaged in Reverse Domain Name Hijacking.

7. Decision

The Complainant has failed to prove that the Domain Name is an Abusive Registration and the Expert directs that no action be taken regarding the Domain Name. The Expert also finds for the reasons given above that the Complaint was brought in bad faith in an attempt to deprive the Respondent of the Domain Name and constitutes Reverse Domain Name Hijacking.

Signed: TONY WILLOUGHBY

Dated 3 JANUARY, 2019