

DISPUTE RESOLUTION SERVICE

D00020854

Decision of Independent Expert

The Professional Standards Authority for Health and Social
Care

and

Alistair Maylum

1. The Parties:

Lead Complainant: Professional Standards Authority for Health and Social Care
157-197 Buckingham Palace Road
London
UK
SW1W 9SP
United Kingdom

Respondent: Alistair Maylum
29 The Mall
Faversham
Kent
ME13 8JL
United Kingdom

2. The Domain Name(s):

chre.org.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 a such

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

21 November 2018 16:08 Dispute received
22 November 2018 10:11 Complaint validated
22 November 2018 10:14 Notification of complaint sent to parties
27 November 2018 13:22 Response received
27 November 2018 13:22 Notification of response sent to parties
29 November 2018 14:39 Reply received
29 November 2018 14:39 Notification of reply sent to parties
29 November 2018 14:40 Mediator appointed
05 December 2018 09:34 Mediation started
31 January 2019 12:22 Mediation failed
31 January 2019 12:23 Close of mediation documents sent
07 February 2019 11:30 Expert decision payment received
14 February 2019 Expert Appointed
27 February 2019 Expert requested further information from the Complainant pursuant to section 17.1 of the DRS Policy
15 March 2019 Complainant furnished Additional Submissions
15 March 2019 Respondent given opportunity to respond to Complainant's Additional Submissions
18 March 2019 Respondent responded to Complainant's Additional Submissions

4. Factual Background

The Complainant is the Professional Standards Authority for Health and Social Care established by s. 25 of the National Health Service Reform and Health Care Professions Act 2002 as amended.

Section 25 of the National Health Service Reform and Health Care Professions Act 2002 established the Complainant, then known as the Council for the Regulation of Healthcare Professionals.

Sub-section 113(1) of the Health and Social Care Act 2008 provided that the Complainant was to be known as the Council for Healthcare Regulatory Excellence.

Sub-section 222(1) of the Health and Social Care Act 2012 provides that the body corporate known as the Council for Healthcare Regulatory Excellence is to continue to exist and is to change its name to the Professional Standards Authority for Health and Social Care.

The Complainant owned the disputed domain name chre.org.uk for over 10 years but the registration lapsed.

When the Complainant's registration lapsed, the disputed domain name became available and was registered by a third party on 12 October 2018.

The Respondent purchased the registration from the third party and caused it to resolve to a website with content relating to the regulation of healthcare professionals including links to regulatory authorities.

The Complainant submits that disputed domain name is an Abusive Registration for reasons given below. The Respondent denies that the registration is Abusive.

5. Parties' Contentions

The Complainant asserts its Rights to the name CHRE. It states that while it has changed its name it is still widely known and referred to as CHRE and in support of this claimed Rights in the acronym CHRE, has furnished addresses of websites both in the Complaint and in the Additional Submissions requested by the Expert, which are described in discussion below.

The Complainant claims use of the disputed domain name for over ten years until the registration was allowed to lapse due to a problem with the registrar.

The Complainant alleges that the disputed domain name is an Abusive Registration and is being used to confuse internet users because of the get-up and content of the Respondent's website is impersonating the Complainant.

The Respondent denies that it is an Abusive Registration and states that he is using the disputed domain name in good faith to generate income from traffic.

For reasons given below it is not necessary for this Expert to address the arguments of the Parties in relation to the alleged abusive use of the disputed domain name.

6. Discussions and Findings

In order for the Complainant to succeed in this Complaint, paragraphs 2.a and 2.b of the DRS Policy require the Complainant to prove on the balance of probabilities that

- i. the Complainant has Rights in respect of a name or mark which is identical or similar to the disputed domain name; and
- ii. the disputed domain name, in the hands of the Respondent, is an Abusive Registration.

Paragraph 1 of the Nominet Dispute Resolution Service Policy states defines "Abusive Registration" as meaning

"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;

“Rights” are defined in Paragraph 1 as “meaning rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning;”

It is beyond doubt that the Complainant had Rights in the name Council for Healthcare Regulatory Excellence and was known by that name from 2008 until 2012. Sub-section 113(1) of the Health and Social Care Act 2008 provided that the Complainant was to be known as the Council for Healthcare Regulatory Excellence. It is most probable that this was abbreviated to the acronym CHRE.

Sub-section 222(1) of the Health and Social Care Act 2012 provides that the body corporate known as the Council for Healthcare Regulatory Excellence is to continue to exist and is to change its name to the Professional Standards Authority for Health and Social Care. Therefore the statutory name Council for Healthcare Regulatory Excellence ceased to apply to the Complainant from 2012.

The question arises, therefore: does the Complainant have any present Rights in the acronym CHRE?

In a very brief Complaint, the Complainant provided three links to websites and submitted that the content of these sites illustrate its Rights in the name CHRE.

The first link resolves to a webpage which states: *“The Council for Healthcare Regulatory Excellence (CHRE) was a UK health regulatory body set up under the National Health Service Reform and Health Care Professions Act 2002 - CHRE has now changed its name to the Professional Standards Authority for Health and Social Care (the Authority) under the Health and Social Care Act 2012 section 222.”*

The second link resolved to a webpage which stated *“The Council for Healthcare Regulatory Excellence (CHRE) was a health regulatory body set up under the National Health Service Reform and Health Care Professions Act 2002. It was initially established as the Council for the Regulation of Health Care Professionals.”*

The third link resolved to the Complainant’s present website which is clearly badged “Professional Standards Authority for Health and Social Care”.

The Complainant merely then repeated twice that the Complainant owned the disputed domain name for over 10 years but was unable to renew or access the domain name due issues with domain name registrar; that following the expiry of the 90 day grace period for renewal of the registration the domain name became available to the public; that the Respondent owns the domain name and is promoting and pretending to be healthcare regulator; and that the Complainant has attempted to contact the Respondent directly via email and the Respondent not responded to our communication.

As the Complainant asserted that it continued to be known by the acronym CHRE but did not appear to disclose any present use of the acronym by the Complainant, the

Expert requested that the Complainant provide additional information to evidence its present use of the acronym.

In response, the Complainant furnished a number of Internet links. The first link was the same as had been provided in the Complaint and therefore added nothing.

The second link was to a report in the name of the “Professional Standards Authority for Health and Social Care”

The third link was redirected to a different URL at which the webpage stated “*server error*”.

The fourth link appears to be to a third-party website of one of the regulated bodies resolves to a “*page not found*” notice on three browsers tried by the Expert and the fifth link also resolves to a “*page not found*” message.

The Complainant bears the burden of proving both elements of the test in the DRS Policy and must firstly prove that it has Rights in respect of a name or mark which is identical or similar to the disputed domain name.

Despite having been given a second opportunity, the Claimant has failed to provide any evidence of any present-day Rights in the name and acronym CHRE.

This Expert accepts that the goodwill in a name can survive after use has ceased and that it is possible that the Complainant owns residual goodwill in the acronym CHRE.

However in order to succeed, a complainant must prove both elements of the test paragraphs 2.a and 2.b of the DRS Policy on the balance of probabilities. Evidence of Rights in the claimed name and goodwill is required. Mere assertion of rights is not sufficient. The Complainant has failed to provide sufficient evidence of the Rights in the acronym CHRE that it claims, to discharge the burden of proof under the DRS Policy.

This Expert finds that the Complainant has failed to discharge the burden of proof required to establish that the Complainant has Rights in respect of a name or mark which is identical or similar to the disputed domain name chre.org.uk and the Complainant’s application must be refused.

7. Decision

The Complainant’s application in relation to the disputed domain name chre.org.uk is refused.

Signed James Bridgeman SC

Dated 27 March 2019