

DISPUTE RESOLUTION SERVICE

D00021215

Decision of Independent Expert

RCI BANQUE

and

Dimitri Klitcho

1. The Parties:

Complainant: RCI BANQUE
15 rue d'Uzès
Paris
75002
France

Respondent: Dimitri Klitcho
St Tropez Lane
Apt 741
New York
NY
10001
United States

2. The Domain Name:

rcibankonline.co.uk ("the Domain Name")

3. Procedural History:

The Complaint was submitted to Nominet on 12 March 2019 and was validated and notified to the Respondent by Nominet on the same date. The Respondent was informed in the notification that it had 15 working days, that is until 2 April 2019 to file a Response to the Complaint.

On 29 March 2019, Nominet sent a reminder of the due date for the Response to the Respondent. The Respondent did not file a Response. On 3 April 2019, Nominet notified the Parties that no Response had been received and, pursuant to section 12 of Nominet's Dispute Resolution Service Policy Version 4 ("the Policy"), invited the Complainant to pay the fee for referral of the matter for an expert decision. On 10 April 2019, Nominet's notification letter to the Respondent dated 12 March 2019 was returned by the relevant postal authorities marked "ANK" (attempted - not known) and "RETURN TO SENDER / INSUFFICIENT ADDRESS". On 15 April 2019, the Complainant paid the fee for a full expert decision. On 17 April 2019, Andrew D S Lothian, the undersigned ("the Expert"), confirmed to Nominet that he was not aware of any reason why he could not act as an independent expert in this case. Nominet duly appointed the Expert with effect from 23 April 2019.

4. Outstanding Formal/Procedural Issues

Although formal notification of the Complaint by letter to the Respondent was ultimately returned by the relevant postal authorities, as outlined in the preceding section, the Expert is satisfied that Nominet has met its obligations to issue this to the Respondent by post and electronic form in accordance with sections 3.1.1 and 3.1.2 respectively of the Policy. The Respondent has failed to submit a response to Nominet in time in accordance with section 7.1 of the Policy.

Section 24.8 of the Policy provides that "If, in the absence of exceptional circumstances, a Party does not comply with any provision in this Policy, or any request by us or the Expert, the Expert will draw such inferences from the Party's non-compliance as he or she considers appropriate."

In the view of the Expert, if the Respondent does not submit a response, the principal inference that can be drawn is that the Respondent has simply not availed itself of the opportunity to attempt to demonstrate that the Domain Name is not an Abusive Registration. This does not affect the primary requirement upon the Complainant, on whom the burden of proof rests, to demonstrate Abusive Registration on the balance of probabilities, nor does it in the Expert's view entitle an expert to accept as fact all uncontradicted assertions of the Complainant, irrespective of their merit.

Although the Respondent appears to be a natural person, the Expert has not redacted its contact details from this Decision in light of the fact that there is doubt over the accuracy or veracity of those details and there is likewise a reasonable indication that a pattern of abusive registrations has been effected, which is discussed below. In these circumstances, publication of the Respondent's contact details is relevant and of some importance to this Decision. Such publication follows the approach in the summary decision DRS 21169 (russells-solicitors.co.uk) where the expert concerned likewise appears to have decided not to redact the Respondent's contact details.

5. Factual Background

The Complainant is a French bank specializing in automotive financing and services for Renault Group customers and dealer networks covering the Renault, Renault Samsung Motors and Dacia brands throughout the world and the Nissan group covering the Nissan, Infiniti and Datsun brands mainly in Europe, Russia, South America, Korea and India. The Complainant adopted the commercial identity “RCI Bank and Services” in February 2016.

The Complainant has over 3,000 employees in 36 countries and has concluded over two million service contracts for many hundreds of thousands of vehicles. It has over 200,000 banking customers of its four online savings banks across Europe, in France, Germany, Austria and the UK.

The Complainant is the owner of several registered trade marks containing the term RCI BANK including European Union trade mark no. 14180772 for the word mark RCI BANK registered on 2 October 2015 and covering various financial services in class 36.

The Domain Name was registered on 6 August 2018. Little is known regarding the Respondent, who appears to be a natural person with an address in New York, United States of America. The address provided by the Respondent to Nominet does not appear to be recognised by the US Postal Service. Initially, the Domain Name appeared to resolve to a web server index page. After the Complainant complained about the Domain Name to the web hosting company, this index page was replaced by a notice that said hosting company had suspended the Domain Name. The Domain Name had active MX records inserted into the nameservers to which it had been delegated, indicating that it was capable of being used for the purpose of receipt of email.

6. Parties’ Contentions

Complainant

The Complainant asserts that the Domain Name is identical or similar to a trade mark in which the Complainant has rights and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

The Complainant notes the terms of its registered trade marks and submits that the Domain Name merely adds the generic word “online” to the Complainant’s RCI BANK mark. The Complainant asserts that this enhances the false impression that the Domain Name is officially related to the Complainant and submits that the Domain Name is likely to confuse Internet users into believing that it will redirect them to a website dedicated to the Complainant’s banking services.

The Complainant notes that the Respondent is not affiliated with the Complainant and is not authorised to use or register a Domain Name incorporating the Complainant’s trade mark, adding that such mark predates the registration of the Domain Name by a period of years. The Complainant contends that the factors which may be evidence that the Domain Name is not an Abusive Registration as set out in section 8.1 of the Policy are not present in the circumstances of this case.

The Complainant asserts that the Respondent must have been aware of the Complainant's banking activities in the UK when it registered the Domain Name and that the use of the generic term "online" with the "co.uk" suffix in the Domain Name suggests an intent to target those activities, given the similarity between the Domain Name and the domain name used for the Complainant's official UK website at <<https://www.rcibank.co.uk>>. The Complainant states that its reputation transcends national borders due to the Internet and illustrates this by producing a "Google" search for the key words "rci bank" which shows that all of the initial results refer to the Complainant's products or news. The Complainant suggests that it is therefore inconceivable that the Respondent did not have its trade mark in mind when registering the Domain Name and indicates that the Respondent's intent was probably to confuse Internet users.

The Complainant points to the intervention of the Respondent's registrar and adds that the present inactivity on the website related to the Domain Name does not mean that it is not an Abusive Registration, with reference to a previous decision under the Policy. The Complainant also points to the configuration of the Domain Name for email purposes and indicates that the use of any relative email address would present a significant risk that valuable financial or customer information may thereby be diverted from the Complainant. The Complainant notes that if the Respondent were to send email via the Domain Name, the public would be likely to make an assumption that such email emanated from the Complainant and might volunteer financial information in response, to the public's and the Complainant's unfair detriment.

The Complainant concludes that due to the confusing similarity between the Domain Name and the Complainant's trade mark, it is not possible to conceive a plausible circumstance in which the Respondent could use the Domain Name legitimately as it would invariably result in misleading diversion and would take unfair advantage of the Complainant's rights.

Respondent

The Respondent did not file a Response and has not replied to the Complainant's contentions.

7. Discussions and Findings

General

In terms of section 2.2 of the Policy the onus is on the Complainant to prove to the Expert on the balance of probabilities each of the two elements set out in sections 2.1.1 and 2.1.2 of the Policy, namely that the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

Complainant's Rights

Section 1 of the Policy provides that 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 requirement to demonstrate Rights under the Policy is not a particularly high threshold test. Rights may be established in a name or mark by way of a trade mark registered in an appropriate territory, or by a demonstration of unregistered so-called 'common law rights'.

On this topic, the Complainant relies upon its registered trade marks described in the factual background section above. The Complainant asserts that these are similar to the Domain Name and that the Domain Name merely represents the Complainant's word mark with the generic term "online" added. The Respondent did not dispute or take any issue with those contentions.

The Expert finds that the Complainant has Rights in its RCI BANK registered trade mark within the meaning of the Policy. Such rights are enforceable under English law. Accordingly, the Expert turns to compare the mark to the Domain Name. In so doing, the Expert finds that the Domain Name is similar to the Complainant's said mark. The Domain Name is alphanumerically identical to such mark, subject only to the addition of the word "online" which does nothing to distinguish the Domain Name from such mark and, on the contrary, indicates to an observer that the Domain Name is more likely than not to represent an Internet presence of the mark owner.

In all of these circumstances, the Expert finds that the Complainant has proved on the balance of probabilities that it has Rights within the meaning of the Policy in the mark RCI BANK and that such mark is similar to the Domain Name.

Abusive Registration

Section 1 of the Policy defines "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;*

This general definition is supplemented by section 5.1 of the Policy which provides a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. Section 8.1 of the Policy provides a similar non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration.

The main focus of the Complainant's contentions is that the only plausible explanation for the Respondent's registration and use of the Domain Name is to target the Complainant and its mark in an unspecified fashion which is more likely than not to constitute Abusive Registration. The Complainant indicates that any use of the Domain Name would lead to confusion between it and the Complainant's official website and domain name.

Based on the Complainant's submissions and evidence, the Expert accepts that the Complainant's mark is distinctive and is reasonably prominent in the UK in the field of financial services. It seems very unlikely to the Expert that the Respondent might have registered the Domain Name entirely independently of the Complainant's rights, without knowledge of the Complainant or its financial services activities, or for a purpose which was unconnected to any of these. On the contrary, the Complainant makes a reasonable assertion that the presence of an email capability in the nameservers to which the

Domain Name is delegated may indicate that the Respondent intended to use this in connection with a phishing scheme. The Expert accepts that any email sent from the Domain Name would look to the casual observer as if it came from the Complainant and, in the absence of countervailing evidence, this may constitute a threat of use of the Domain Name in a way which is likely to confuse people or businesses into believing that it is connected with the Complainant (see section 5.1.2 of the Policy).

In the Expert's opinion, the Complainant's case on Abusive Registration is compelling and calls for an answer from the Respondent. None is forthcoming. Given the severity of the Complainant's allegations, particularly regarding potential phishing activities, the fact that the Respondent has not even been prepared to address the Complaint does not suggest to the Expert that there is likely to be any alternative explanation for the registration of the Domain Name. Furthermore, there are no facts or circumstances present, such as those outlined in section 8.1 of the Policy, which would suggest to the Expert that the Domain Name may not be an Abusive Registration.

The Expert is mindful of two further relevant matters which have come to its attention beyond the Complainant's evidence and submissions, each of which is suggestive of Abusive Registration in this case. The first is that the Respondent appears to have supplied Nominet with false or at the very least incomplete contact details. This is independently verified by way of the US Postal Service return notice affixed to Nominet's letter notifying the Complaint. The letter had been addressed to the contact details which the Respondent had provided to Nominet. This is, in and of itself, a circumstance that can be indicative of Abusive Registration (see section 5.1.4 of the Policy dealing with the provision of false contact details). Secondly, the Panel has noted a recent finding of Abusive Registration against the Respondent in DRS 21169 (russellsolicitors.co.uk). While this was a Summary Decision, and the Expert is not therefore in a position to read the full facts and circumstances which were placed before the expert in that case, it does appear that the case similarly involves the registration and use of a domain name which matches the name of the business of the complainant concerned, coupled with a qualifying generic word representing the nature of that business. This again points in the direction of Abusive Registration in the present case being the basis of a possible pattern of Abusive Registrations (see section 5.1.3 of the Policy).

In light of the above, the Expert considers that there is ample material demonstrated by the facts and circumstances of this case that the Domain Name, in the hands of the Respondent, is an Abusive Registration, and the Expert so finds.

8. Decision

The Expert finds that the Complainant has proved that it has Rights in a name or mark which is similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration. The Expert therefore directs that the Domain Name be transferred to the Complainant.

Signed

Andrew D S Lothian

Dated 29 April, 2019