

## **DISPUTE RESOLUTION SERVICE**

**D00021391**

### **Decision of Independent Expert**

Airdrie Taxis Ltd

and

David MacDonald

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

Complainant: Airdrie Taxis Ltd  
28B Hallcraig Street  
Airdrie  
Lanarkshire  
ML6 6AH  
United Kingdom

Respondent: David MacDonald  
Johnstone  
United Kingdom

#### **2. The Domain Name**

airdrietaxis.co.uk (“the Domain Name”)

### **3. Procedural History**

Nominet checked that the complaint received on 9 May 2019 complied with its UK Dispute Resolution Service (“DRS”) Policy (“the Policy”), before notifying the Respondent and inviting a response. That response was received on 14 May. On 19 May, the Complainant replied to the response.

Mediation was attempted but ended unsuccessfully and, on 12 June, Nominet advised both parties that the matter would be referred to an independent expert for a decision, on payment of the appropriate fee. Nominet received that fee on 18 June.

On 18 June I, Mark de Brunner, agreed to serve as an expert under the Policy. I 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**

I have visited the web page to which the Domain Name resolves. From that limited research, the complaint, the response, the reply and the administrative information routinely supplied by Nominet, I accept the following as facts.

The Complainant runs a taxi business in Airdrie, operating under the name “Airdrie Taxis”. It began trading on the date of its incorporation, 24 September 1998. (The complaint refers to an incorporation date 10 years earlier, in 1988, but the certificate of incorporation attached to it makes clear that this is an error.)

The Respondent is acting for a competitor taxi business, also based in Airdrie, which trades as “Penny Cars Taxi and Private Hire”. Penny Cars is the prime sponsor of Airdrie football club.

The Domain Name was registered on 25 June 2018. It resolves to <pennycars.co.uk>, which hosts the main website for Penny Cars.

### **5. Parties’ Contentions**

*Complaint*

The Complainant says that it has rights in a name that is identical to the Domain Name and that this is an abusive registration because it is intended to disrupt its business and is causing confusion among prospective customers.

### *Response*

The Respondent says that his client runs a taxi business based in Airdrie and is therefore perfectly entitled to use the Domain Name to pick up custom for taxis in that town. He says the Domain Name is being used to “enhance [his client’s] search engine profile”.

### *Reply*

In reply, the Complainant adds a further argument, about the use of the Domain Name as a blocking registration, and says that it formerly held the registration for the domain name at issue. Given that the “reply” stage of the DRS process is intended for the addressing of matters newly raised in the Respondent’s response (paragraph 9.2 of the Policy), I have had to decide whether to admit this here. The Policy says (paragraph 9.3):

“If an Expert is appointed and the reply extends to other matters, the Expert may declare it inadmissible to the extent that it deals with matters going beyond those newly raised in the Respondent’s response.”

I have decided to treat these two elements of the reply as inadmissible. I have not relied on them here and do not consider them further.

## **6. Discussion and Findings**

To succeed in this complaint, the Complainant must prove, on the balance of probabilities, that

- it 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.

As defined by the Policy, an abusive registration is a domain name which:

- 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
- has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the complainant’s rights.

## *Rights*

Evidence of rights here is thin. It essentially comprises a statement that the Complainant has been trading since the date of its incorporation and a certificate confirming that incorporation.

In general, it is not universally accepted that the mere registration of a company name of itself gives rise to rights for the purposes of the Policy. The *Experts' Overview* says (section 1.7):

“There are decisions going both ways (qv DRS 00228 (activewebsolution.co.uk) and DRS 04001 (generaldynamics.co.uk)). The issue is this: does the mere fact that under the Companies Acts (section 28(2) of the Companies Act 1985 and sections 66 and 67 of the Companies Act 2006) the Secretary of State can direct NewCo to change its name because it is the same as, or ‘too like’, OldCo’s name mean that OldCo enjoys ‘rights enforceable under English law’ and/or ‘Rights’ within the full meaning of the Policy? The consensus view of recent Experts’ meetings has been that mere registration of a company name at the Companies Registry does not of itself give rise to any rights for this purpose. An appeal panel in DRS 16594 (polo.co.uk) agreed with that approach.”

Here, however, the complaint is not merely relying on the registration of the company name as giving rise to relevant rights, but is using that registration as evidence of the date from which it began using the name “Airdrie Taxis”. I therefore take this as evidence of the date from which the Complainant began to establish unregistered rights in “Airdrie Taxis”. That conclusion seems to me to be strengthened by the fact that the Respondent has had an opportunity to challenge the Complainant’s claim to have been using the name since 1998, and has not done so.

Ignoring the .co.uk suffix as merely a generic feature of the register, the Domain Name here is the same as the name in which the Complainant has rights. I conclude that the Complainant has rights in respect of a name or mark which is identical or similar to the Domain Name.

## *Registration*

There is as little put forward by either party, in relation to the character of the registration, as there is in relation to the question of rights. But these are business competitors, operating in the same town, and the Domain Name chosen by the Respondent is identical to the name in which the Complainant has rights. I think that calls for an explanation.

The Respondent points to Penny Cars’ close connection with Airdrie, sponsoring the local football club. He implies that, because “Airdrie Taxis” is a description of his

client's business and where it operates, his client is at least equally entitled to use this as a domain name. There is evidently an argument to be made that the Domain Name is merely descriptive of a place and a service, but it is obviously relevant that the Complainant has been trading as "Airdrie Taxis" for over 20 years. The risk of confusion is high. As the *Overview* (paragraph 3.3) says:

"Commonly, Internet users will visit web sites either by way of search engines or by guessing the relevant URL. If the domain name in dispute is identical to the name of the Complainant and that name cannot sensibly refer to anyone else, there is bound to be a severe risk that a search engine, which is being asked for the Complainant, will produce high up on its list the URL for the web site connected to the domain name in issue. Similarly, there is bound to be a severe risk that an Internet user guessing the URL for the Complainant's web site will use the domain name for that purpose. In such cases, the speculative visitor to the registrant's web site will be visiting it in the hope and expectation that the web site is a web site "operated or authorised by, or otherwise connected with the Complainant." This is what is known as 'initial interest confusion' and the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration, the vice being that even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant, the visitor has been deceived."

Here, the Respondent is using the registration of the Domain Name to redirect internet traffic to the main website for "Penny Cars", That seems to me a clear attempt to disrupt the Complainant's business or cause confusion among potential customers such that business that would have gone to the Complainant is diverted to the Respondent's client. Seen in those terms, both registration and use of the Domain Name has taken advantage of the Complainant's rights in a manner that can only be unfair.

## **7. Decision**

I find that the Complainant has rights in respect of a name which is identical or similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an abusive registration.

I therefore direct that the Domain Name be transferred to the Complainant.

**Mark de Brunner**

**21 June 2019**