

DISPUTE RESOLUTION SERVICE

D00021915

Decision of Independent Expert

Xiaohai Zheng

and

Maggie Wang

1. The Parties:

Complainant: Mr Xiaohai Zheng
DIR
66 Rea Street South
Birmingham
B5 6LB
United Kingdom

Respondent: Ms Maggie Wang
9 Kingwood Croft
Birmingham
B7 5LQ
United Kingdom

2. The Domain Name

dirgroup.co.uk

3. Procedural History:

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 in to question my independence in the eyes of one or both of the Parties.

01 October 2019 15:34 Dispute received
02 October 2019 14:27 Complaint validated
02 October 2019 14:34 Notification of complaint sent to parties
21 October 2019 02:30 Response reminder sent
23 October 2019 16:31 Response received
23 October 2019 16:31 Notification of response sent to parties
24 October 2019 11:38 Reply received
24 October 2019 14:58 Notification of reply sent to parties
24 October 2019 15:01 Mediator appointed
28 October 2019 10:44 Mediation started
07 November 2019 12:25 Mediation failed
07 November 2019 12:25 Close of mediation documents sent
07 November 2019 16:03 Expert decision payment received

4. Factual Background

The Complainant is a businessman who has been engaged in the sale of hair-salon furnishings.

There is no information on the record about the Respondent, except that in her Response, she states that her partner and the Complainant are in dispute about the shareholding of DIR GmbH, a company with limited liability organised under the laws of Germany, which went into insolvency in 2017.

The disputed domain name was registered on 8 February 2008.

The disputed domain name appears to be inactive and resolves to a standard http 404 error message which typically indicates that the searcher's browser can communicate with a server, but the server could not find the requested website.

Nominet UK's Whois record states that the registrant's name and address could be matched against a third party data source on 27 September 2019.

5. Parties' Contentions

In the Complaint, the Complainant states that he registered the disputed domain name <www.dirgroup.co.uk> in February 2008 when he started to sell salon furniture online from an address in Birmingham, UK.

He states that three days prior to his filing the Complaint, someone changed the ownership of the disputed domain name without his permission.

He contacted the Registrar because he lost the login details, but as he is not registered as the current owner of the disputed domain name the Registrar could not help.

He states that *“as we have branch (sic) in birmingham (sic) and london, the site is very important to the business”*.

In a very brief Complaint, he adds that he believes that *“the IT person who worked for the company took the password and change the ownership without my permission when he left.”*

Complainant has annexed three files to his Complaint namely

- a photograph of his passport;
- a photograph of the outside of a substantial commercial building with the name DIR across the front;
- a photograph of a sales showroom with hair-salon furniture and the words “Dream in Reality dirgroup.co.uk” on the wall.

In the Response, the Respondent does not make any claims to have rights in the disputed domain name and merely describes a dispute about shareholding in an insolvent German company.

The Respondent states that the Complainant was the sole owner of the German company DIR GmbH, which is now insolvent. Referring to the documents that she has annexed to her Complaint, she gives details of alleged share transfers between the Complainant and her partner prior to DIR GmbH becoming insolvent and the consequences of the insolvency.

She states that she is willing to transfer the disputed domain name to the Complainant, if he agrees, with a reliable guarantor, to pay the debts with which her partner has been fixed arising from the insolvency.

Respondent has annexed the following documents to her Response

- Copies of email correspondence, in the English language, commencing with an email which appears to have been sent by the Complainant in October 2014 to 2019. The first email appears to have been sent by the Complainant to a German lawyer, copying a third party named “Dan”. The second and subsequent emails were sent in February to April 2019. The correspondence relates to share transfers in DIR GmbH which was insolvent in 2019.
- A copy of an Order of Amstgericht Köln in the German language without translation dated 2 November 2017.
- A copy of a share transfer agreement between the Complainant and a third party dated 3 December 2010 in both English and German translations.
- A screenshot of mobile phone texts between the Complainant and a third party in what appears to be Chinese characters without any translation.

In his Reply, the Complainant does not address the issues raised in the Response, but merely requests that the proceedings are moved to the next stage.

6. Discussions and Findings

Paragraph 2 of the Nominet Dispute Resolution Service Policy (the "Policy") provides that:

- 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

The Complaint in these proceedings is very brief and the Complainant's Reply was merely a request to proceed with the process. As the Complainant bears the burden of proof, much more detail would be required for the Complaint to succeed.

Paragraph 2.2 of the Policy is quite clear that the Complainant is obliged to provide evidence to prove both elements of his case on the balance of probabilities.

While the Complainant states that he registered the disputed domain name <www.dirgroup.co.uk> in February 2008 when he started to sell salon furniture online from an address in Birmingham, UK, he has neither asserted, nor provided any evidence to show that he is personally the owner of, or has any rights in the DIR, DIRGROUP, or <dirgroup.co.uk>, name or mark, or any similar name or mark.

Proof that a complainant has rights in the name or mark is a threshold issue, and so the Complainant's application must be refused.

In making this decision to refuse the application, this Expert is conscious that the Complainant is a businessman and, as he is entitled to do, he has represented himself in this process. There are however legal consequences flowing from a decision of an Expert under the Policy and so a complainant must provide evidence to support the application.

It would appear from the photographs annexed to the Complaint, that the disputed domain name and the DIR mark have been used – possibly by the Complainant.

The Complainant has not provided any explanation however as to how, when or by whom the disputed domain name has been used. The Complainant presents his photographs without any explanation.

This Expert is also conscious that the Respondent appears to be making no claim to have any rights in the disputed domain name.

So, in the circumstances, this Expert must refuse the Complainant's application but without prejudice to his right to file again.

For completeness it should be added that because the Complainant has failed on this threshold issue, it has not been necessary to request translations of the documents in the German language and Chinese characters submitted by Respondent.

7. Decision

The Complainant has failed to prove that he has any rights in the disputed domain name and the Complaint is refused.

Signed

Dated 20 November 2019

James Bridgeman SC