



## **DISPUTE RESOLUTION SERVICE**

**D00021968**

### **Decision of Independent Expert**

LogMeIn, Inc

and

Peter Szesztay

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

Lead Complainant: LogMeIn, Inc  
United States

Respondent: Peter Szesztay  
Hungary

#### **2. The Domain Name(s):**

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

27 November 2019 16:54 Dispute received

27 November 2019 17:37 Complaint validated

27 November 2019 17:45 Notification of complaint sent to parties

16 December 2019 01:30 Response reminder sent

16 December 2019 12:52 Response received

16 December 2019 12:55 Notification of response sent to parties  
19 December 2019 01:30 Reply reminder sent  
24 December 2019 12:35 No reply received  
06 January 2020 16:53 Mediator appointed  
07 January 2020 10:58 Mediation started  
08 January 2020 10:54 Mediation failed  
08 January 2020 10:54 Close of mediation documents sent  
20 January 2020 01:30 Complainant full fee reminder sent  
20 January 2020 15:34 Expert decision payment received

#### **4. Factual Background**

The Complainant was incorporated in August 2004 under the name 3am Labs, Inc and changed its name to LogMeIn, Inc in March 2006.

It operates an online platform through which customers can log in to a computer from any device and is an industry leader in the development, manufacture and distribution of computer software for collaboration, remote connectivity, IT management and customer engagement. Its products support over 28 million users per month. It operates a website which is located at [www.logmein.com](http://www.logmein.com), which has been active since its launch in 2003 and it is also the registrant of the domain name logmein.co.uk.

It opened a UK office in June 2010 and operates via three UK companies, being LogMeIn London Ltd, LogMeIn UK Ltd and LogMeIn Technologies Ltd. It had a turnover in the UK in 2016, 2017 and 2018 of \$25.6m, \$51.3m and \$55.7m respectively. It is the registered proprietor of an EU trade mark for the word LOGMEIN No 4988192 which it applied for on March 2016. The mark has been used extensively in its business and has featured in reviews, press, events, advertising and awards in the UK.

The Domain Name was registered on 3 July 2019, by the Respondent, whose contact address is in Hungary. On 23 October 2019, the Complainant's trade mark attorneys wrote to the Respondent asserting the Complainant's rights and asked him to assign the Domain Name. On 1 November 2019, the Respondent replied and asserted that the name had been chosen for a coffee shop and he did not assign the Domain Name.

The Domain Name is pointed to a web page that presents the following text:

*"This page isn't working*

*Logmein.uk didn't send and data*

ERR\_EMPTY\_RESPONSE  
RELOAD”

The Respondent works in e-commerce and a website operated by him asserts that he assists clients with search engine optimisation, and content marketing.

## 5. Parties’ Contentions

### a. The Complaint

The Complainant asserts that the Domain Name is an exact match to a name or mark in which it has rights and it relies upon its trade mark registrations and the substantial goodwill it has developed as a result of its use of that mark to establish that it has Rights.

It identifies the following factors in support of its contention that the Domain name is an Abusive Registration:

- The registration and use of the Domain Name by the Respondent amounts to a false representation that the Respondent is associated with or connected to the Complainant.
- The Domain Name takes unfair advantage of or is unfairly detrimental to the Complainant’s Rights.
- The Domain name has the effect of disrupting the Complainant’s business and could confuse internet users looking for the Complainant.
- The Complainant already has the domain name logmein.co.uk and the Respondent is blocking the Complainant from using the .uk domain name.
- The Respondent works in e-commerce and would have known of the Complainant’s Rights.
- The mere registration of the Domain Name is an “instrument of fraud” in accordance with UK case law.

### b. The Response

Because of the brevity of the Response, I set it out in full:

*“Dear Sirs,*

*thank you for your email. I previously noted towards Mr. Lynn that I don’t see how I would infringe their right as long as I don’t use the logmein.uk domain name or I use this domain not related to their field of service and trademark. I do not see this procedure valid and I ask for its deletion.*

*Kind Regards,*

*Peter”*

c. The Reply

There was no Reply.

## **6. Discussions and Findings**

a. General

To succeed in this Complaint, the Complainant must, in accordance with Paragraph 2 of the Policy, prove to the Expert on the balance of probabilities that:

- (i) it has Rights (as defined in paragraph 1 of the Policy) in respect of a name or mark identical or similar to the Domain Name; and
- (ii) the Domain Name in the hands of the Respondent is an Abusive Registration (as defined in paragraph 1 of the Policy).

b. Complainant's Rights

The DRS Policy defines Rights as follows: "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 Complainant relies upon its registered trade mark and the use of its LOGMEIN trade mark, which in my view are sufficient to meet the definition identified above. For the purpose of analysing whether the Domain Name is identical or similar to the name or mark in which Rights are claimed, one should ignore the .uk suffix. In my opinion, the Complainant has established that it has Rights in a mark identical to the disputed Domain Name.

c. Abusive Registration

I now go on to consider the extent to which the Domain Name is an Abusive Registration.

The Complainant asserts that the Domain Name is an Abusive Registration for the reasons identified above, much of which are commensurate with the non-exhaustive list of factors that may evidence that a domain name is an Abusive Registration under paragraph 5 of the Dispute Resolution Policy ("the Policy").

The Policy defines an 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"*

A fundamental issue that must be determined is whether the Respondent had knowledge of the Complainant's Rights and intended to take unfair advantage of or cause unfair detriment to them. In appeal case DRS 04331 *Verbatim*, the Appeal Panel said the following (N.B the Policy at that time set out the above grounds at Paragraph 3 of the Policy):

*"8.13 In this Panel's view the following should be the approach to the issues of knowledge and intent in relation to the factors listed under paragraph 3 of the Policy:*

- (1) First, some knowledge of the Complainant and/or its brand/rights is a pre-requisite for a successful complaint under all heads of the DRS Policy other than paragraph 3(a) (iv) (giving false contact details). The DNS is a first-come-first-served system. The Panel cannot at present conceive of any circumstances under which a domain name registrant, wholly unaware of the Complainant and its Rights, can be said to be taking unfair advantage of or causing unfair detriment to the Complainant's Rights.*
- (2) Secondly, 'knowledge' and 'intention' are pre-requisites for a successful complaint under all heads of paragraph 3(a)(1) of the Policy. The wording of that paragraph expressly calls for the relevant intent, which cannot exist without the relevant knowledge.*
- (3) Thirdly, 'intention' is not a necessary ingredient for a complaint under paragraph 3(a)(ii) of the DRS Policy. The test is more objective than that. However, some knowledge of the Complainant or its name/brand is a pre-requisite.*

- (4) *Fourthly, while some knowledge of the Complainant or its name/brand is a pre-requisite for a successful complaint under the DRS Policy (save for a complaint under paragraph 3(a)(iv)), knowledge is not of itself conclusive in favour of the Complainant. The Expert/Appeal Panel will still need to be satisfied that the registration/use takes unfair advantage of or is causing unfair detriment to the Complainant's Rights.*
- (5) *Fifthly, when a Respondent denies all knowledge of the Complainant and/or its Rights at the relevant time, that denial is not necessarily the end of the matter. The credibility of that denial will be scrutinised carefully in order to discern whether, on the balance of probabilities, the relevant degree of knowledge or awareness was present. "*

It has been put to the Respondent in the Complaint that he had knowledge of the Complainant's Rights. In the Response he does not address this allegation. It seems to me that it is likely on the balance of probabilities that he was aware of the Complainant's Rights given his involvement in e-commerce. It is also noticeable that the Respondent does not engage with any of the points that are put to him in the Complaint which assert that the Complainant has Rights or that he was aware of them. He merely asserts that if he doesn't use the Domain Name or uses it for a different field to that in which the Complainant operates he cannot be infringing the Complainant's Rights.

While I must keep in mind that the possibility that the Respondent may not be very familiar with Nominet's Dispute Resolution procedure and as he is based in Hungary he might have limited understanding of English, nevertheless, it seems to me that insofar as I have found that I think it is likely that he would have had knowledge of the Complainant's Rights, the Domain Name is an Abusive Registration, because it is very likely that it will cause confusion to internet users looking for the Complainant, that it will disrupt its business and it is blocking the Complainant from registering a .uk domain name identical to its mark. I reach this conclusion because the Domain Name is identical to the Complainant's mark, a mark which has been extensively used over a prolonged period, and the Respondent has not provided any justification for why he chose or registered the Domain Name or set out any grounds as to why the Domain Name is not Abusive.

I am mindful of the explanation that he provided to the Complainant's trade mark attorneys in which he asserted that he intended to set up a coffee shop. However, that strikes me as implausible given that the Domain Name would seemingly have little if any connection to the services that would be provided in a coffee shop and I note that he has not repeated this explanation in the Response or provided any evidence to support it.

## **7. Decision**

In light of the above conclusions I therefore find that the Complainant does have Rights in respect of a name or mark which is identical to the Domain Name logmein.uk, and that it is an Abusive Registration. The Complainant's request that the Domain Name be transferred is therefore granted.

**Signed .....**

**Simon Chapman**

**Dated .....**