

DISPUTE RESOLUTION SERVICE

D00012549

Decision of Independent Expert

Crawley Computer Centre Ltd

and

Saeed Moghul

1. The Parties:

Complainant: Crawley Computer Centre Ltd
Network House
Unit 4 Bank Precinct
Gatwick Road
Crawley
West Sussex
RH10 9RF
United Kingdom

Respondent: Mr Saeed Moghul
Unit 6 Stockwell Business Centre
Stephenson Way
Crawley
West Sussex
RH10 1TN
United Kingdom

2. The Domain Name:

crawleycomputercentre.co.uk

3. Procedural History:

3.1 The procedural timeline in this case is as follows:

01 March 2013 19:17 Dispute received
07 March 2013 10:04 Complaint validated
07 March 2013 10:08 Notification of complaint sent to parties
28 March 2013 01:30 Response reminder sent
02 April 2013 10:14 No Response Received
02 April 2013 10:14 Notification of no response sent to parties
03 April 2013 14:12 Response received¹
03 April 2013 14:12 Notification of response sent to parties
08 April 2013 02:30 Reply reminder sent
10 April 2013 08:35 Reply received
10 April 2013 08:35 Notification of reply sent to parties
10 April 2013 08:35 Mediator appointed
15 April 2013 14:18 Mediation started
21 May 2013 15:37 Mediation failed
21 May 2013 15:55 Close of mediation documents sent
22 May 2013 16:02 Expert decision payment received

3.2 Ravi Mohindra was appointed as Independent Expert as of 3 June 2013. He confirmed to Nominet that he was independent of each of the parties and to the best of his knowledge and belief knew of no facts or circumstances, past or present, or that could arise in the foreseeable future, that might call into question his independence in the eyes of one or both of the parties.

4. Factual Background

4.1 The Complainant is a limited company incorporated in the UK on 18 August 2007. It is a business that provides computer repair services and is based in Crawley.

4.3 The Domain Name was registered on 31 March 2007 in the name of Saeed Moghul (the Respondent). At the date of the Complaint, the Domain Name redirected to the website located at <www.crawleycomputers.co.uk>. This website contained a banner including the words 'Frontline Computers, est 1989, for all your computer services in Crawley...', and included content under the headline 'Welcome to Frontline Computers in Crawley'. The website advertised computer hardware and software repair services in Crawley and the surrounding areas, and included reference to a sales telephone number.

¹ Nominet contacted the Complainant by email on 3 April 2013 to inform it that the Respondent had indicated it wished to respond to the Complaint, and that due to an error with the original date for the Response deadline (2 April 2013 instead of 3 April 2013) Nominet would allow the Response to be submitted. The Response was duly received on 3 April 2013.

- 4.3 The Respondent is connected with Frontline Networks Limited, a company incorporated in the UK on 20 July 1989. It is also a business that is based in Crawley that provides computer repair services. The registered office address of Frontline Networks Limited is the same as the address of the Respondent as listed on the WHOIS record for the Domain Name.

5. Parties' Contentions

- 5.1 The parties' contentions as set out in the Complaint, the Response and the Reply are set out below:

The Complainant

Rights

- 5.2 The Complainant has traded under the name Crawley Computer Centre since 2001, long before the Domain Name was registered. It was incorporated as a limited company under the name Crawley Computer Centre Limited on 18 August 2007.
- 5.3 In 2001, Mr Chris Hilton took out a lease with Crawley Borough Council to open up a shop called Crawley Computer Centre. The company name for the business was Business Images Limited trading as Crawley Computer Centre. Mr Hilton opened a bank account in the name of Crawley Computer Centre and the signage above the door also read Crawley Computer Centre.
- 5.4 Mr Hilton traded as Crawley Computer Centre for several years and employed a Mr Austin Tilbury as an apprentice in 2004. Mr Tilbury is still employed by the Complainant.
- 5.5 During this time there was another company trading as Crawley Computers PLC in Crawley town centre. Mr Paul Hawkins worked for this company until it closed in 2004. Mr Hawkins then worked for Frontline Networks Limited during the period 2004 to 2008.
- 5.6 In 2007 Mr Hilton put his business up for sale and Mr Barry Jones and Mrs Karen Jones decided to purchase it. They asked their accountant to check if there were any other businesses with the name Crawley Computer Centre registered at Companies House in the UK. He found there were none so upon their instruction he purchased the limited company on their behalf. The company name Crawley Computer Centre Limited was registered as a limited company on 18 August 2007.
- 5.7 As a result of the acquisition of the business, Mr and Mrs Jones took on the lease of the business premises previously operated by Mr Hilton, the holding stock of the business and its website operated under the domain name <crawleypc.co.uk>.
- 5.8 The Complainant's business premises signage clearly states that it is Crawley Computer Centre. It also has two sign written vans displaying the

same name. It is registered at Companies House under the name Crawley Computer Centre Limited and it owns a bank account in the same name.

Abusive Registration

5.9 Frontline Networks Limited, a company which the Respondent is connected to by virtue of him being its Managing Director (as evidenced by his LinkedIn profile), has traded under the name Frontline Computers since 1989 and is now passing itself off as the Complainant. Anyone searching for the Complainant will end up on the website of the business operated by the Respondent.

5.10 The Respondent is not, and has never been, known as Crawley Computer Centre. To support this claim the Complainant makes the following points:

- Aside from the Complainant's company name, the Companies House Register contains no mention of company names containing Crawley Computers or Crawley Computer Centre.
- The Domain Name redirects to the website located at <www.crawleycomputers.co.uk>. This website displays a banner for Frontline Computers, and makes no mention of Crawley Computer Centre in the header.
- The Respondent's LinkedIn profile states that he is the MD of Frontline, a computer repairs business (the same business as the Complainant's) with an address of Three Bridges, West Sussex.
- Mr Hilton (the previous owner of the Complainant's business) purchased components from Frontline Networks Ltd for his repairs if he ran out of stock or needed something in a hurry. At no time did he make payment to Crawley Computers or Crawley Computer Centre. If he had done he would not have given his company the same name.
- Mr Hawkins has stated that at no time during his employment by Frontline Networks Limited did he receive any payment from Crawley Computers or Crawley Computer Centre. A payslip provided by Mr Hawkins to the Complainant shows the name Frontline Networks Limited and there is no mention of Crawley Computers or Crawley Computer Centre.
- Mr Hawkins did not see any signage referring to, nor did he hear any mention of Frontline Networks trading as, Crawley Computers or Crawley Computer Centre. He knew the company as Frontline Networks Ltd, and the customers he served never referred to the business as Crawley Computer Centre.
- The signage outside the office building located at the address of the Respondent refers to Frontline.

5.11 Mr Hilton decided to sell his business and tried to purchase the Domain Name but it had already been registered. Unbeknown to him it had been purchased by his competitor Frontline, operating a business 1 mile away from his.

- 5.12 There is no reason why the Domain Name was purchased by the Respondent and then redirected to the company website of Frontline Networks other than to try to divert business away from the Complainant.
- 5.13 Anyone searching for the Complainant in search engines will find the Complainant's business name but will end up on the website that the Domain Name resolves to. As Frontline operates in the same line of business as the Complainant, the Respondent (and Frontline) are gaining business by using the Complainant's company name in the Domain Name.

The Respondent

- 5.14 Frontline Networks Limited was established in July 1989 to provide end users and businesses with computer and IT services. It has been trading continually since that time in the same line of work – namely, providing computer hardware and computer services to users.
- 5.15 In 1997 the business moved to larger premises situated at its current address and it became the largest computer company in Crawley. The business grew to include the sale of computer hardware, components and peripherals, and computer repair services.
- 5.16 In 2002, the Frontline business recognised the value of search engines and it registered a number of generic domains, including <www.crawleycomputers.co.uk> to assist with the marketing and sales of the company. It has also operated an online ecommerce site with over 20,000 computer and IT products online.
- 5.17 Frontline is well known and recognised as a “computer centre” by end users and computer traders (some of whom are its competitors) with much of its business coming from word of mouth recommendation. It serves many businesses in diverse sectors, it has received a number of testimonials some of which are posted on the website located at <www.crawleycomputers.co.uk>. It has always sold its products and services under the name Frontline Networks Ltd, its registered company name.
- 5.18 Currently, the Domain Name redirects to the website located at <www.crawleycomputers.co.uk>. This website has been in operation since its registration on 12 June 2002 and offers computer products and services to computer users in the Crawley area. The site contains no misrepresentation as to who operates it.
- 5.19 The Complainant has demonstrated as part of the Complaint that this website which the Domain Name redirects to has no similarity to the colour scheme, look or feel of the Complainant's physical or online company colours, livery or style (which by contrast is bright yellow). The copyright notice at the bottom of the site's pages clearly shows the wording “Copyright © 2006 Frontline Networks Ltd. All rights reserved.”
- 5.20 When the Respondent / Frontline registered generic domain names, their intention was simply to capture online search engine originated customers

seeking products and services based on the generic keywords “computers” and “crawley”, to the Frontline company.

- 5.21 The fact that the Complainant started a company with the three generic words contained in the Domain Name as its company name after knowing that the Domain Name was already registered is unbelievable. It is inconceivable that a company that is involved in the computer industry and offers internet and website related services to its customers did not have the foresight to check if the Domain Name was available for registration prior to registering the company name at Companies House.
- 5.22 The Domain Name is now used for a genuine business that has existed for 23 years, and has valid and legitimate product and service offerings which encapsulate the meaning of the Domain Name.
- 5.23 The Respondent became aware of the Complainant when the Complainant poached a key member of staff from the Frontline business in 2008. The Respondent speculates that highly sensitive information about its operation leaked into the wrong hands through this employee.
- 5.24 Since that time, the only interaction the Respondent /Frontline had with the Complainant was when it found out that the Complainant had blatantly copied the content from its website located at <www.crawleycomputers.co.uk> and it took action for copyright infringement in January 2013. In researching this infringement, the Respondent found that the Complainant was guilty of copyright theft for several years as evidenced by screenshots of its website from the past.
- 5.25 The Respondent believes that this dispute over the Domain Name was raised by the Complainant as a reprisal against the copyright infringement claim.
- 5.26 There are a number of inconsistencies, omissions and incorrect facts stated in the Complaint, as follows:
- Frontline Networks Ltd has never traded as “Crawley Computers” or “Crawley Computer Centre”. It has however used generic domain names such as Crawley Computers and Crawley Computer Centre to attract new business in the local area, thus making fair use of the generic nature of the names. All of its business transactions are legitimately transacted through the legally registered name of Frontline Networks Ltd and all invoices show Frontline Networks Ltd.
 - The domain name <crawleypc.co.uk> was registered on 19 January 2007 as evidenced by a WHOIS report, but according to the record of the registrar, 123-Reg, the Domain Name was registered on 31 March 2007. This shows that the Domain Name was available for registration when Mr Hilton registered the domain name <crawleypc.co.uk>, but he did not select or register the Domain Name, presumably because it was not appropriate or valid for his business, or did not relate to his business model.

- As Mr Hilton alleges to have purchased components from Frontline Networks Ltd, he would have received an invoice from Frontline Networks Ltd made out to Crawley Computer Centre – his supposed trading name. The Respondent has checked his records (which date back to 1999) and cannot find any invoice ever made out to Crawley Computer Centre.
- Mr Hawkins joined Frontline from PC World, and not from the Complainant.
- At the time of registration of the Domain Name, Frontline had no dealings or contact with the Complainant or its predecessor.
- According to Mr Hilton’s signed statement, he attempted to register the Domain Name in January 2007 at which time the Domain Name was available for registration. As he sold the business in August 2007 this statement does not make chronological sense.
- The distance between Frontline and the old address of the Complainant’s business is 2.9 miles according to Google Maps. The Complainant recently relocated to new premises closer to those of Frontline.
- The Complainant had no interest in the Domain Name until after the company was formed in July 2007. The registration of the Domain Name by the Respondent predates the incorporation date of the Complainant. The Respondent is unsure how the Complainant can claim that the Respondent is taking business away from the it; it appears that the Complainant knew of the Respondent’s use of the Domain Name and set up a limited company with the same name to pass itself off as the Respondent / Frontline and trade off its reputation.

5.27 The Domain Name is not an Abusive Registration as:

- it was registered before the Complainant was incorporated as a limited company and started trading under the name Crawley Computer Centre Ltd;
- Frontline is in the business of “computers” in the geographical region of “Crawley”;
- it has not been used as a blocking registration since it was registered before the Complainant’s company was incorporated;
- the Respondent did not register it in order to sell it and it has never been offered for sale to any competitor;
- it was not registered for the purpose of unfairly disrupting the business of the Complainant as the Complainant’s company did not exist at the time of its registration;
- the Respondent / Frontline do not register trademarked domains where they have no rights;
- Frontline has a genuine offering of computer service and computer products to computer users in Crawley. It has been in exactly the same business since incorporation in 1989 and as such, on the balance of probability, has more rights in the Domain Name than the Complainant as it has been in this business for far longer;
- Frontline has rights in this generic name; it was known as the “Computer Centre” in Crawley by end users and businesses before the

likes of PC World, Tempo and other high street retailers entered the town, and well before the Complainant's company even existed. This probably came about because of the words "Computer Centre" on the signage on its building, or because it was the only large independent company dealing with all aspects of computers for miles around;

- the Domain Name was registered as a generic encapsulation of what Frontline does as a company; the Domain Name is made up of generic words that fairly and legitimately apply to its business and it is making fair use of the Domain Name, which is specifically descriptive of the offerings under its website at <www.crawleycomputers.co.uk>.
- Frontline has never attempted to pass itself off as the company "Crawley Computer Centre".

5.28 The three words contained in the Domain Name are purely generic ("Computer" and "Centre") and geographical ("Crawley"). A search for "computer centre" on Google reveals 181 million results demonstrating the generic nature of the words, and shows many computer companies using them as they describe their business.

5.29 Frontline is known by its users as a "computer centre" where they can purchase products and services for computers and is based in Crawley. All of this information has been on its signage since 1997 and this is the business it has continually operated for the last 23 years.

5.30 The Complainant has no more rights to the word "Crawley" than the Respondent has as it is the region in which the business happens to be located. Frontline is well known in the local area for its computer and IT services.

The Reply

5.31 The Complainant claims that the Response contains a number of distractions that are not relevant to the Domain Name dispute proceedings, including the poaching of staff, the mileage distance between the business premises of the Complainant and Frontline, the reasons for the purchase of the company name of the Complainant, the DMCA copyright action and the leakage of highly sensitive information.

5.32 The Complainant disputes that the company was started after the current owners knew the Domain Name had been registered as the business was started in 2001 by Mr Hilton. The current owners then purchased that business and formed the limited company of the Complainant on 18 August 2007. The Domain Name was registered in 2007, just before this.

5.33 The Complainant did not purchase the Domain Name before it was registered by the Respondent as the current owners did not own the business at that time. When the business was purchased from Mr Hilton, the Domain Name was not being used and therefore the Complainant had no dispute in respect of it. However it is now blatantly redirecting people searching for the Complainant to Frontline's business.

- 5.34 The DMCA copyright action referred to by the Respondent in the Response includes a sworn statement by the Respondent that Crawley Computer Centre was its trading name. This gave the Complainant cause to bring this Complaint. If this was its trading name, why did the Respondent wait nine years before it purchased the Domain Name? It is clear from the Response that the Domain Name was purchased for SEO (search engine optimisation) purposes.
- 5.35 The Respondent was well aware of the Complainant and its name, and that Mr Hilton owned the business since 2001 as he was a regular client of Frontline. Despite that, the Respondent went ahead and purchased the Domain Name in his company name.
- 5.36 The Respondent has fabricated claims of staff poaching by the Complainant, and indeed it poached Mr Hawkins from PC World.
- 5.37 The DMCA copyright dispute caused the Complainant to investigate the Respondent's claim of it trading as Crawley Computer Centre. This is when it obtained the information from Mr Hawkins referred to in the Complaint.
- 5.38 The Complainant repeats its contention that Internet users searching for the Complainant will come across the Domain Name, and will think that this is the company they are looking for (the Complainant). As a result, the Complainant is losing business to Frontline and this is clearly detrimental to the Complainant's business.
- 5.39 Although the Complainant agrees that the Domain Name was registered before the Complainant was incorporated as a limited company, the Respondent can contact Crawley Borough Council along with many other companies to provide evidence that this business was trading as Crawley Computer Centre six years prior to the Respondent's registration of the Domain Name.
- 5.40 The matter of the Domain Name was brought to the Complainant's attention as the Respondent was falsely claiming to be trading as Crawley Computer Centre in the copyright claim and the Complainant therefore needs to protect its name.

6. Discussions and Findings

General

- 6.1 The Complainant is required under paragraph 2b. of the Policy to prove to the Expert, 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 Domain Name; and
 - (ii) the Domain Name, in the hands of the Respondent, is an Abusive Registration.

Complainant's Rights

- 6.2 Paragraph 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*". 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'.
- 6.3 The Complainant relies on its company name registration and its contentions that the business of the Complainant has traded under the name Crawley Computer Centre since 2001 as the basis upon which it attempts to establish Rights under the Policy.
- 6.4 There is no evidence to suggest that the Complainant owns registered trade mark rights in the mark Crawley Computer Centre, or anything similar. This is not surprising, given the descriptive nature of the words, although the Expert notes that this would not necessarily be a bar to trade mark registration (for example the Complainant may be able to demonstrate that through use of the words in relation to the Complainant's products and / or services the mark "Crawley Computer Centre" has acquired a secondary meaning, being distinctive of the Complainant's products and/or services, and the mark is therefore capable of registration).
- 6.5 Accordingly, insofar as Rights under the Policy are concerned this is a case where the Complainant is attempting to claim unregistered rights in its business and registered company name.
- 6.6 Where the Complainant is relying on unregistered trade mark rights to prove that it has Rights for the purpose of the Policy, paragraph 2.2 of the Experts Overview² states:
- "If the right is an unregistered trade mark right, evidence needs to be put before the Expert to demonstrate the existence of the right. This will ordinarily include evidence to show that (a) the Complainant has used the name or mark in question for a not insignificant period and to a not insignificant degree (e.g. by way of sales figures, company accounts etc) and (b) the name or mark in question is recognised by the purchasing trade/public as indicating the goods or services of the Complainant (e.g. by way of advertisements and advertising and promotional expenditure, correspondence/orders/invoices from third parties and third party editorial matter such as press cuttings and search engine results)."*
- 6.7 The name Crawley Computer Centre is, in the Expert's opinion, highly descriptive of the Complainant's business. The words describe a centre,

² The Experts' Overview is a document promulgated by Nominet's panel of Experts which deals with a range of issues that come up in DRS disputes. It is published on Nominet's website at: http://www.nominet.org.uk/sites/default/files/drs_expert_overview.pdf.

based in Crawley, which provides computer products and services. As the Respondent has identified, there are a number of entities that have an online presence and which operate and promote themselves under domain names which include the words “computer” and “centre”, to describe the fact that they provide computer products and services. Accordingly, in the context of the Complainant’s business, “Crawley Computer Centre” is a highly descriptive term. If the Complainant were bringing a passing off claim through the Courts it would need to adduce substantial evidence to prove that the name or mark has acquired a secondary meaning and has become wholly associated with the Complainant’s products and/or services.

- 6.8 Where the Right relied on by the Complainant is generic or descriptive of the Complainant’s business (as is the case here), the more compelling that evidence should be compared to where the mark is inherently distinctive.
- 6.9 The Complainant’s evidence in this regard is weak. The only relevant evidence put forward by the Complainant regarding its use of the name Crawley Computer Centre comprises (i) submissions that the business has traded under the name since 2001, (ii) a picture of a statement addressed to “To whom it may concern” signed by Chris Hilton and dated 14 February 2013 in which he claims, inter alia, that he owned a company called Business Images Limited and traded as Crawley Computer Centre since 2001- a business which he subsequently sold to Mr & Mrs Jones in August 2007, (iii) a screenshot of the homepage of its website located at <www.crawleypc.co.uk> which references Crawley Computer Centre in the top banner and in the text on that page, which also contains a picture of the outside of the Complainant’s business premises (which includes signage showing the words “crawley computer centre”) and a company vehicle in the Complainant’s livery including the same words, and (iv) claims that it has a bank account in the name of Crawley Computer Centre and a company registered at Companies House under the name Crawley Computer Centre Limited.
- 6.10 The Complainant has provided no other evidence to demonstrate the extent of its use of the name “Crawley Computer Centre” or that the name is recognised by the public as indicating goods or services provided by the Complainant. Specifically, there is no evidence of the Complainant’s accounts, sales figures, advertising and promotional expenditure, search engine results and press cuttings, despite claims that it has traded under the name since 2001 and despite the Respondent clearly putting the descriptive and generic nature of the name (and therefore the Complainant’s rights in the same) in issue.
- 6.11 Nevertheless, the Expert notes that the requirement to demonstrate Rights under the Policy is not a particularly high threshold test, and is more a question of establishing whether or not the Complainant has the standing to bring a complaint under the DRS.
- 6.12 In light of (i) the Complainant’s claims that the business has traded under the name “Crawley Computer Centre” since 2001, (ii) the Respondent itself admitting that it was aware of the Complainant in 2008, (iii) evidence of

use of the name on the Complainant's website under which it trades, its business premises and a company vehicle, and (iv) an unchallenged claim that the Complainant owns a company name registration for Crawley Computer Centre Limited, the Expert is prepared to find that, on the balance of probabilities, the Complainant has Rights for the purposes of the Policy in the name "Crawley Computer Centre".

- 6.13 However, the Expert considers the Complainant's Rights to be extremely limited given the descriptive nature of the name and in light of the fact that the Complainant adduced very little evidence to prove the extent of its Rights both in and outside of the Crawley area. Accordingly, on the evidence before him, the Expert finds that the Complainant has limited trading goodwill in the name "Crawley Computer Centre". Although this does not affect the first limb of the Policy, it is relevant when assessing the issue of whether the Domain Name constitutes an Abusive Registration under the Policy (as to which, see below).
- 6.14 Having established that the Complainant has Rights in respect of the name Crawley Computer Centre, the Expert is required to decide whether this mark is identical or similar to the Domain Name.
- 6.15 Ignoring the generic "co.uk" suffix, the Domain Name comprises the Complainant's name Crawley Computer Centre in its entirety.
- 6.16 The Expert therefore finds that the Complainant has Rights in a name or mark which is identical or similar to the Domain Name.

Abusive Registration

- 6.17 Paragraph 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. has been used in a manner which took unfair advantage of or has been unfairly detrimental to the Complainant's Rights.
- 6.18 A non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration, is set out in paragraph 3a. of the Policy. Paragraph 4 of the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration.
- 6.19 As these factors are non-exhaustive they are only intended to provide guidance to the parties when compiling their submissions. They are not definitive either way, and it is for the Complainant to prove to the Expert, on the balance of probabilities, that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

- 6.20 The Complaint and the Reply submitted by the Complainant under this dispute are lengthy and include a variety of submissions (with little in the way of supporting evidence). However, by extracting the relevant parts of those documents, the Complainant's case on Abusive Registration appears to centre on paragraphs 3a.(i)(B), 3a.(i)(C) and 3a.(ii).
- 6.21 The Expert has not found this case an easy one to decide as the evidence submitted was sparse, both parties raised issues not directly related to the Policy and neither party's submissions were well drafted. This is also a very finely balanced case where the parties are competitors operating from the same town, and where the Domain Name in issue is highly descriptive of their businesses. However, on the evidence before him from the Complaint, the Response and the Reply, the Expert considers that there is evidence before him to support these factors.
- 6.22 Each of the relevant factors of paragraph 3a. involves the issue of the relevance of knowledge and intent to a determination of whether a domain name is an Abusive Registration. The Respondent claims to have become aware of the Complainant's company in 2008 – the time at which it claims the Complainant poached a key member of staff from it, and one year after the Domain Name was registered. However, it has not specifically contested the Complainant's claims that the business trading under the name Crawley Computer Centre (as opposed to the registration of the company name Crawley Computer Centre Limited) started in 2001.
- 6.23 The Respondent claims that at the time of the registration of the Domain Name Frontline had no dealings or contact with the Complainant's company. That does not specifically deny that the Respondent had knowledge of the Company at the relevant date. Central to this case and the issue of knowledge is the fact that the Respondent, Frontline and the Complainant (and the business carried on by its predecessor) are all and were all, at the relevant time, located in the same geographic area – namely the town of Crawley (and the Respondent acknowledges that the distance between Frontline and the old address of the Complainant's business is only 2.9 miles). In addition, the Complainant contends that the business carried on by the Complainant's predecessor started in 2001, and Frontline has been in business since 1989, again both in the same geographic area and both providing competing products and services.
- 6.24 The Expert therefore considers that, on the evidence before him and on the balance of probabilities, the Respondent would have had at least some knowledge of the business operated by the Complainant's predecessor, and further that it was trading under the name Crawley Computer Centre.

Paragraphs 3(a)(i)(B), (C) and 3(a)(ii)

- 6.25 Paragraph 3a.(i)(B) refers to where the Respondent has registered the domain name primarily "*as a blocking registration against a name [...] in which the Complainant has Rights;*" and paragraph 3a.(i)(C) refers to where the Respondent has registered the domain name primarily "*for the purpose of unfairly disrupting the business of the Complainant*". Paragraph 3(a)(ii)

states: “Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;”.

- 6.26 The Respondent contends that the Domain Name is generic in nature, and it was one of a number of generic domain names that have been registered (presumably either by the Respondent or Frontline) simply to capture customers searching for products and services based on the generic keywords “computers” and “Crawley” to its company (although the only mention of such generic domain names referred to in its response (aside from the Domain Name) is <www.crawleycomputers.co.uk>, which resolves to a website for Frontline Computers – being also the website to which the Domain Name redirects to). There is no evidence of use of the term “Crawley Computer Centre” by the Respondent or Frontline other than in respect of the Domain Name itself.
- 6.27 In light of the finding that on the balance of probabilities there would have been some knowledge of the business trading as Crawley Computer Centre at the relevant time, and the fact that the Respondent has admitted that it has never traded as “Crawley Computers” or “Crawley Computer Centre” (despite claims that it has been known by customers as the “computer centre” in Crawley) the Expert leans towards a finding that the Domain Name was registered as a blocking registration against the name “Crawley Computer Centre” in which the Complainant has Rights, and to benefit from the reputation and goodwill of the Complainant and the “Crawley Computer Centre” name (even if such reputation and goodwill is limited in this case). By doing so, it is likely to attract internet users who are looking for the Complainant to the Respondent’s website, in order that those users would instead conduct business with the Respondent rather than with the Complainant.
- 6.28 The Domain Name comprises the three elements of the name in which the Complainant has Rights (albeit limited given the descriptive nature of the name and lack of any evidence to show that the name has become distinctive of the Complainant’s business even in the Crawley area) in their entirety. The Respondent has not sought to distinguish the Domain Name from the Complainant or its business in any way (commonly known as “unadorned use”).
- 6.29 Further, the Respondent has itself admitted that it has never traded as Crawley Computers or, more relevantly, Crawley Computer Centre. The Complainant’s claims that its business has operated since 2001 (under its previous owner) have not specifically been challenged by the Respondent despite what it says in its Response about the date of registration of the company name of the Complainant. The Expert therefore considers there to be a reasonable chance that “initial interest confusion” could apply in this case (ie consumers searching online for the Complainant and its business are likely to expect there to be some connection between the website operated under the Domain Name and the Complainant, even

before they arrive at that website). As stated in paragraph 3.3 of the Expert's Overview:

“the overwhelming majority of Experts view it [initial interest confusion] 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.”

- 6.30 Given the considerations above, there appears to be an arguable case for the Complainant that the Respondent is using the Domain Name in a way which is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant pursuant to paragraph 3a.(ii) of the Policy.

Paragraph 4a.(ii)

- 6.31 However, as noted above, paragraph 4 of the Policy provides guidance to parties to a DRS proceeding on how the Respondent may demonstrate in its response that the Domain Name is not an Abusive Registration. Central to the Respondent's case is the factor set out in paragraph 4a.(ii), which reads:

“The Domain Name is generic or descriptive and the Respondent is making fair use of it”.

- 6.32 As the Expert has already found, the Domain Name is descriptive of the businesses operated by both Complainant and Respondent – namely computer centres operated from Crawley - and therefore the issue is whether the Respondent is making fair use of it.

- 6.33 The Appeal Panel Decision in DRS04889 (Wise Insurance Services Limited and Tagnames Limited) provides guidance on this issue (the case concerned a domain name <wiseinsurance.co.uk> which was used for the purposes of providing links to third party websites offering insurance services), where it was said:

“The Expert was exercised as to the risk of confusion if the Respondent continued to use the Domain Name to connect it to a parking page. However in the Panel's view, the limitations of the goodwill associated with the Complainant's use of its name, makes the likelihood of such confusion very low indeed, and given that the Complainant has adopted a descriptive name for its business it cannot, without more extensive rights, complain about the use of the same descriptive name by a third party.

Accordingly, on the Panel's view of the matter, the Respondent has not used the Domain Name unfairly, and as such there is no reason why Paragraph 4(a)(ii) should not apply here.”

- 6.34 As set out above, the Expert considers there is a reasonable risk of confusion arising in respect of the Respondent's use of the Domain Name. However, that risk must be assessed in the context of the facts of this particular dispute, where the Domain Name is descriptive and the Complainant has little trading goodwill under the name. Nonetheless, the business of the Complainant has been trading under the name Crawley Computer Centre (including by its predecessor) for a number of years, and so it is likely that a consumers searching for "Crawley Computer Centre" would have some knowledge of the Complainant and would be confused if they were to end up at the Respondent's website (to which the Domain Name resolves), which promotes its Frontline business.
- 6.35 Further, as noted above it is likely that the Respondent knew of the Complainant's predecessor (whose business operated under the same name as the Complainant) at the relevant time. The website to which the Domain Name resolves has a large banner promoting the name Frontline Computers, and its signage at its business premises refers to Frontline Computer Centre. In the Expert's view, the Respondent registered the Domain Name with knowledge of the business conducted by the Complainant's predecessor and has used (and is using) the Domain Name to attract internet users looking for the Complainant to its website instead, thus diverting traffic and potential sales opportunities to the Respondent and his business.
- 6.36 In the circumstances, the Expert finds that on the balance of probabilities the Domain Name has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights (in the name Crawley Computer Centre) and therefore that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

7. Decision

- 7.1 The Expert finds that the Complainant has Rights in the name Crawley Computer Centre which is identical or similar to the Domain Name, and further that the Domain Name, in the hands of the Respondent, is an Abusive Registration.
- 7.2 The Expert therefore directs that the Domain Name should be transferred to the Complainant.

Signed **Ravi Mohindra** **Dated** **24 June 2013**