DISPUTE RESOLUTION SERVICE

D00016667

Decision of Independent Expert

(Summary Decision)

Shuhel Ali t/a Smart Clean

and

SMARTCLEAN

1. The Parties:

Complainant: Shuhel Ali t/a Smart Clean
Unit 5 Taverner Trading Estate
Newport
Gwent
NP18 1BU
United Kingdom

Respondent: SMARTCLEAN
61 CAMBRIDGE CRESCENT
High Wycombe
HP13 7NE
United Kingdom

2. The Domain Name:

smartclean.co.uk

3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the complaint to the Respondent in accordance with paragraphs 2 and 4 of the Procedure.

☑Yes ☐ No

4. Rights

The Complainant has, to my reasonable satisfaction, shown rights in respect of a name or mark which is identical or similar to the domain name.

☑Yes ☐ No

5. Abusive Registration

The Complainant has, to my reasonable satisfaction, shown that the domain name smartclean.co.uk is an abusive registration

☐ Yes ☑ No

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances

☑Yes ☐ No

7. Comments (optional)

It is with some reluctance that I have found against the Complainant in this case. The reason that I have done so is that there is no evidence before me that the domain name was initially registered with knowledge of the Complainant or even that the Complainant's business predates that registration. Further, there is no evidence that the domain name has ever been registered, used or held with a view to taking unfair advantage of the Complainant's trade marks.

Instead, the Complainant's allegation of abuse relies upon the undisputed facts that (a) the original domain name registrant no longer exists, (b) that the domain name has been regularly renewed for a large number of years by a third party, Yell.com, in the name of that non-existent registrant; and (c) that the domain name is being used to point to a simple holding page in the name of Yell.com.

The Complainant notified Yell.com of its rights in July 2015. But there is no evidence before me that Yell.com has taken any step to renew that registration or otherwise changed the way that it has used the domain name since that notification.

I am not convinced that the registration or use of the domain name in these circumstances has taken unfair advantage of or is unfairly

detrimental to the Complainant's trade mark rights. If that is so, there is no abusive registration for the purposes of the Policy.

I accept that it is undesirable that the domain name remains on the register in the name of a non-existent entity. However, there are other mechanisms that might address this. For example, the Complainant may wish to make a request to Nominet that (alternatively, Nominet may wish to independently consider in light of this decision whether) the domain name should be cancelled pursuant to conditions 16 or 17 of the Terms and Conditions of Domain Name Registration.

8. Decision

I refuse the Complainant's application for a summary decision. The domain name registration will therefore remain with the Respondent.

Signed: Matthew Harris Dated: 19 November 2015