



DISPUTE RESOLUTION SERVICE

D00016776

Decision of Independent Expert

Techspeak Ltd

and

Mr Garth Piesse

1. The Parties:

Complainant: Techspeak Ltd
8 Haweswater Close
Bridgegate
South Gloucs
BS30 5XS
United Kingdom

Respondent: Mr Garth Piesse
PO Box 1881
Palmerston North
4440
New Zealand

2. The Domain Names:

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

17 November 2015 10:59 Dispute received
18 November 2015 08:51 Complaint validated
18 November 2015 08:56 Notification of complaint sent to parties
04 December 2015 11:34 Response received
04 December 2015 11:39 Notification of response sent to parties
09 December 2015 01:30 Reply reminder sent
14 December 2015 13:28 No reply received
14 December 2015 13:29 Mediator appointed
17 December 2015 15:13 Mediation started
23 December 2015 12:16 Mediation failed
23 December 2015 12:16 Close of mediation documents sent
07 January 2016 01:30 Complainant full fee reminder sent
12 January 2016 12:52 Expert decision payment received

4. Factual Background

The Claimant states it was incorporated in 2003 and began trading in 2012, but has provided no evidence whatsoever of the nature of this trading or any proof that the trading was under the Techspeak mark including no evidence of the registration of its company name.

The Respondent registered the Domain Names in 2015 and states that it is a reseller of generic domain names. The Respondent has offered the Domain Names for sale.

5. Parties' Contentions

The Complaint is extremely brief and attached no supporting evidence. The Complainant's contentions can be summarised as follows:

The Complainant was incorporated in 2003. It commenced trading in 2012. When the Complainant came to register the Domain Names to set up a web site he found they were registered in September 2015 by a registrant in the

United States. The Complainant got in touch with the registrant who demanded \$5400 for the .co.uk. When challenged he reduced this to \$1500. The Domain Names are abusive registrations and the Complainant should be entitled to these urls. The Respondent has no right to the Domain Names and does not operate or own a business with this name. The sums of money he has demanded for the Domain Names make it clear that he is simply seeking to profit. No other business is likely to want to register these names.

The Respondent's contentions can be summarised as follows:

The Respondent strongly disputes that the Complainant has acquired any rights in the term 'techspeak'. The Complainant has provided no details of trading under the name 'techspeak' if that is what it claims. The Complainant does not specifically say that it traded under that particular name or indeed describe the nature of its business. A company name per se does not give rise to any rights. There is not a single item of evidence from the Complainant demonstrating existence of the apparently alleged right.

A brief investigation by the Respondent contradicts the Complainant's claim that it started trading in 2012. Companies' House records show that it filed accounts for a dormant company covering the period up to at least 31 May 2013. It claimed a small cash exemption for the following year and filed a balance sheet showing cash of £390 and creditors of £498.

A Google search against 'techspeak' specifically limited to the UK brought up no mention of the Complainant on the first page, but plenty of examples of generic and other third party use of the term.

The person apparently in charge of the Complainant used an e mail address at shiphamcommunications.co.uk when approaching the Respondent and his main role appears to be as managing director of a PR Consultancy. His profile on that web site makes no mention of any business called 'Techspeak'. The evidence, therefore, suggests that the Complainant is not, in fact, trading under the name 'Techspeak' at least in any meaningful way.

The Complainant has failed to establish any rights. The Complainant should not be allowed to correct the fundamental flaws in its Complaint by providing new information or evidence in a reply as the issue of rights is not newly raised in the Response, but was raised in the Complaint just not addressed adequately.

The Respondent is in the business of buying and selling generic domain names which is lawful. He bought the Domain Names in September 2015 when they came back on the market and assumed the previous owner no longer wanted them. They were attractive as they reflected a common generic term. The Respondent already has a number of 'tech' plus suffix and prefix plus 'speak' domain names. The Respondent directed the Domain Names to a page offering them for sale. The Respondent lives in New Zealand and was not aware of the Complainant on registration of the Domain Names. As such the Respondent could not have acquired the Domain Names for the purpose of sale to the Complainant. The Complainant only came to the attention of the Respondent when it approached the Respondent to buy techspeak.co.uk. The Respondent acquired the name for sale to the public at large and not primarily for sale to the Complainant.

It is incorrect to say the price was reduced to \$1500 when the Respondent was 'challenged'. The broker put forward the Respondent's figure of \$5400. When the Complainant said it was not happy the broker said he would put a figure of over \$1500 to the Respondent, but the Complainant declined to make any such offer.

It is irrelevant that no other business might want to acquire the Domain Names although that is questionable. It is also irrelevant that the Respondent does not own a business called 'techspeak'. Holding a large portfolio of domain names is lawful and this would be impossible if a registrant were only allowed to register domain names that reflected the name of a business. Failure to use domain names for e mail or a web site is not in itself evidence of abusive registration.

6. Discussions and Findings

General

To succeed in this Complaint the Complainant has to prove to the Expert pursuant to paragraph 2 of the Policy on the balance of probabilities, first, that 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, secondly, that the Domain Name, in the hands of the Respondent, is an Abusive Registration (as defined in paragraph 1 of the Policy). Rights is defined as 'rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning'.

Unfortunately whilst the Complainant states that it has been trading since 2012 it has provided no evidence whatsoever of any use of 'Techspeak' as a mark or any trading goodwill in that mark. It makes no mention of and does not appear to have any registered trade mark rights in 'Techspeak'. It does not even provide any evidence to support its claim that it has registered a company called 'Techspeak Limited'. No sales figures, marketing figures or other evidence of sales or marketing has been provided. As such the Complainant has failed to show that it has rights enforceable under UK law within the meaning of Paragraph 1 of the Policy. As such, this Complaint must fail at the first hurdle and the Expert must dismiss the Complaint.

7. Decision

In light of the foregoing findings, namely that the Complainant has no Rights in respect of a name which is identical to or similar to the Domain Names techspeak.co.uk and techspeak.uk, the Expert directs that the Domain Names shall remain with the Respondent.

Signed: Dawn Osborne

Dated: 9 February 2016