

# **DISPUTE RESOLUTION SERVICE**

**D00020591**

## **Decision of Independent Expert**

**Bloomberg Finance Three L.P.**

and

**Mr Amir Naseri**

### **1. The Parties**

Lead Complainant: Bloomberg Finance Three L.P.  
731 Lexington Avenue  
New York  
10022  
United States

Complainant 2: Bloomberg Finance One L.P.  
731 Lexington Avenue  
New York  
10022  
United States

Complainant 3: Bloomberg Finance L.P.  
731 Lexington Avenue  
New York  
10022  
United States

Complainant 4: Bloomberg L.P.  
731 Lexington Avenue  
New York  
10022  
United States

Respondent: Mr Amir Naseri  
London

## **2. The Domain Name**

bloombergmortgagetradecentre.co.uk

(‘the Domain Name’)

## **3. Procedural History**

Nominet checked that the Complaint received on 7 September 2018 complied with its UK Dispute Resolution Service (‘DRS’) Policy (‘the Policy’), before notifying the Respondent and inviting a response. That Response was received on 2 October. On 12 October, the Complainants replied to the Response.

Mediation was attempted but ended unsuccessfully and, on 25 October, Nominet advised both parties that the matter would be referred to an independent expert for a decision, on payment of the appropriate fee. Nominet received that fee on 5 November.

On 5 November I, Mark de Brunner, agreed to serve as an expert under the Policy. 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 into question my independence in the eyes of one or both of the parties.

## **4. Factual Background**

I have visited the web page to which the Domain Name resolves, as well as the Complainants’ main web site at <bloomberg.com>. From that limited research, the Complaint, the Response, the Reply and the administrative information routinely supplied by Nominet, I accept the following as facts.

The Lead Complainant is part of a group of companies that makes money from the provision of financial news and data. The business was founded in 1981 and has been trading as ‘Bloomberg’ since 1987. It has 19,000 employees and operates out of 176 locations across the world. Its main product, the ‘Bloomberg Terminal’, which brings together information from a range of sources, has 320,000 subscribers worldwide, including 40,000 in the UK.

The Lead Complainant and Complainants 2 and 3 are wholly-owned indirect subsidiaries of Complainant 4. The group has registered rights in the name ‘Bloomberg’. Trade mark registrations are held

- for the UK by the Lead Complainant
- for the US by Complainant 2
- for the EU by Complainant 3.

Complainant 4 makes use of these trade mark registrations under licence.

The Lead Complainant first registered the name 'Bloomberg' in the UK in February 1997. The domain name <bloomberg.com> was registered on 29 September 1993. The group's other domain name registrations include

- <bloombergmortgage.com> on 10 April 2015
- <bloombergtrade.com> on 24 May 2013.

The Respondent is an individual offering financial services. There is a dispute about the name under which he has traded, or at least the date from which he has used that name. It is common ground that, at least as early as October 2017, the Financial Conduct Authority recorded his claim to the trading name 'Bloomberg Mortgage Trade Centre'.

The Domain Name was registered on 18 February 2018. It resolves to a web page that says:

## **Bloomberg Mortgage Trade Centre**

This site is down for maintenance.  
Please check back again soon.

Username

Password

Log in

The Respondent also registered the domain name <bloombergmortgagetradecentre.com> in February 2018 and it currently points to the same web page. In April 2018, his use of that domain name was disputed by the Complainants in the present case, A National Arbitration Forum panel decided that they had failed to establish all three elements required by the ICANN policy and ordered that that domain name remain with the Respondent.

The disputed evidence of how long the Respondent has been trading as 'Bloomberg Mortgage Trade Centre' includes the Respondent's pointing to

- his first trading contract, an agreement with Abbey Life dated 27 October 1993. The copy of the document attached to the Response includes date, name and address in manuscript. The Respondent's name is shown as follows, in hand-written small capitals:

AMIR HOSSEIN ALI NASERI/BLOOMBERG MORTGAGES

- a record from the UK Information Commissioner's Office (ICO) that records a 'start' date for the Respondent of 23 May 2001 and also contains a reference to his trading (date unspecified) as 'Bloomberg Mortgage Trade Centre'.

The Complainants' response to this is covered in the Reply subsection of section 5 below (Parties' Contentions), and in section 6 (Discussion and Findings).

## **5. Parties' Contentions**

### *Complaint*

The Complainants say they have rights in 'Bloomberg', a name which is identical or similar to the Domain Name. They say that the Domain Name is an abusive registration because

- (i) the Respondent is merely seeking to capitalise on the goodwill that the Complainants have built up over thirty years in the name 'Bloomberg'.
- (ii) there is a severe risk that internet users will be confused into thinking that the Domain Name is somehow connected with the Complainants (and that that is especially dangerous, given the invitation, on the holding page to which the Domain Name resolves, to input a username and password).
- (iii) the Respondent must have registered the Domain Name with the intention of transferring it, for a profit, to the Complainants or one of their competitors.

### *Response*

The Respondent says this is not an abusive registration because:

- (i) a National Arbitration Forum panellist has already considered the question in relation to <bloombergmortgagetrade.com> and rejected the complaint. That decision should be conclusive of the matter here.
- (ii) the Respondent has been trading under the name 'Bloomberg Mortgage Trade Centre' since 27 October 1993.
- (iii) he has used the name
- under what he describes as a licence from the ICO for many years (the implication is that the first use recognised by the ICO was May 2001)
  - under what he also describes as a licence from the Financial Conduct Authority (FCA) and TenentLime Ltd (of which the Respondent became an 'authorised representative' on 26 October 2017).
- (iv) the domain name registrar Go Daddy sold him the Domain Name without reservation, indicating the Respondent's right to use it.
- (v) four of the other domain names mentioned in the complaint as having been registered by the Complainants:
- <bloombergmortgage.com>  
<bloombergmortgagerates.com>  
<bloombergmortgagecalculator.eu>  
<bloombergtrade.com>
- are not connected to active websites.
- (vi) there is no realistic prospect of confusion in the current or proposed use of the Domain Name, given 'the worldwide reputation of the Complainant's websites <bloomberg.com> and <bloomberg.co.uk>'. The Respondent is in any event operating in a different area of financial business from the Complainants.
- (vii) the Complainants have rights in relation to the name 'Bloomberg' but not in relation to 'word variations' such as the one reflected in the Domain Name.
- (viii) the Complainants' claim to the Domain Name is incompatible with US antitrust law, because a transfer of that Domain Name to them would only consolidate their already dominant market position.

- (ix) the Respondent intends to make 'legitimate, non-commercial fair use' of the Domain Name (paragraph 9.7 of the Response).

### *Reply*

The Complainants reply to points newly raised in the Response.

- (i) They question the validity of evidence offered by the Respondent for his claim that he has been trading using the name 'Bloomberg Mortgages' since 1993. The Complainants point to
- correspondence from Abbey Life showing that the Respondent did not trade by the name 'Bloomberg Mortgages' in the 1990s
  - FCA records showing that the Respondent instead went by various other trading names, such as, from 2004, 'Naseri Mortgage Portfolio'
  - a copy of the ICO register showing that 'Bloomberg Mortgage' was not listed as a trading name of the Respondent in May 2017.
- (ii) They note that the National Arbitration Forum's decision cited in the Response is based on the Respondent's argument that he has used the trading names 'Bloomberg Mortgages' since 1993 and 'Bloomberg Mortgage Trade Centre' since 2001. They say that, since the evidence for this has been found wanting, the decision itself is not to be relied on here.

It may be helpful to set out some of the detail they offer against the Respondent's claim that he has been trading using the name 'Bloomberg Mortgages' since 1993.

#### Abbey Life

The Complainants provide evidence that Amir Hossein Ali Naseri was an appointed representative of Abbey Life from 1993 until August 1996 but that there is no record of the trading name 'Bloomberg Mortgages'.

#### Financial Conduct Authority

The Complainants say their research shows that the Respondent was registered with the FCA as 'Naseri Mortgage Portfolio' from 23 October 2004 until 29 April 2008 and that under the trading/brand name section of the registration form the Respondent makes no reference to 'Bloomberg Mortgage Trade Centre'.

In the Respondent's entry on the Consumer Credit Register which ended in 2015, he lists his trading names as 'Naseri Mortgage Portfolio', 'Light House (Westminster)' and 'Lighthouse (Westminster)'. The only result which includes a reference to 'Bloomberg Mortgage Trade Centre' is the entry attached as Annex L to the Complaint, which shows it was only entered on the register as a trading name within the last year.

In addition, the FCA does not conduct checks for potential trade mark infringement so, the Complainants say, the Respondent's reference (paragraph 5.6 of the Response) to its 'permission' for his chosen trading name is misleading.

#### Information Commissioner's Office

As at May 2017, the register maintained by the ICO does not list 'Bloomberg Mortgages' as a trading name of the Respondent. The reference to 'Bloomberg Mortgage Trade Centre' on the register in September 2017 was added between May and September of that year.

In addition, at paragraph 1.6 of the Response, the Respondent claims use of the trade name under licence from the UK Information Commissioner's Office. But the ICO does not issue licences for trade names so, the Complainants argue, this claim is wrong.

## **6. Discussion and Findings**

To succeed in this complaint, the Complainants must prove, on the balance of probabilities, that

- they have rights in respect of a name or mark which is identical or similar to the Domain Name; and that
- the Domain Name, in the hands of the Respondent, is an abusive registration.

As defined by the Policy, an abusive registration is a domain name which:

- 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
- has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the complainant's rights.

### *Rights*

The Complainants evidently have long-established registered and unregistered rights in the name 'Bloomberg'. Ignoring the co.uk suffix as merely a technical and generic feature of the domain name register, the

Domain Name comprises the name 'Bloomberg' plus the descriptors 'mortgage', 'trade' and 'centre, all of which might be relevant to any kind of financial services business.

I conclude that the Complainants have rights in respect of a name or mark which is identical or similar to the Domain Name.

### *Registration*

The Complainants' underlying position is that the Respondent is taking unfair advantage of their rights by trading off the back of their goodwill in the name 'Bloomberg'. They offer two specifics, drawn from the Policy's non-exhaustive list of factors that may be evidence that a domain name is an abusive registration: that the Domain Name is or is likely to be causing confusion; and that it must have been registered in order to transfer it to the Complainants or a competitor of theirs at a profit.

The Respondent's case, on the other hand, is that he has been trading for many years using the name that is reflected in the Domain Name – and before the Complainants registered their interest in 'Bloomberg'; that there is no reasonable prospect of confusion; that the Complainants' rights in Bloomberg are not exclusive and in particular do not extend to 'word variations'; and that his intended use of the Domain Name is perfectly legitimate.

Much of this turns on the question of how long the Respondent has been using the word 'Bloomberg' as part of his financial services business. On that, the evidence offered by the Respondent in support of his claim that he has been using the name 'Bloomberg Mortgage Trade Centre' since 1993 looks highly doubtful. In particular, I find unconvincing the Respondent's pointing to his agreement with Abbey Life dated 27 October 1993. The inclusion in that document of a reference to 'Bloomberg Mortgages' appears to be a subsequent addition in a different hand. The Complainants say that, at the very least, the single document is a 'slim reed' on which to rely as sole evidence of the name under which the Respondent has been trading since 1993. I agree. It is so slim as to be implausible as the sole support for that claim.

It is sometimes observed that the DRS is not the most effective mechanism for testing disputed facts – in particular where there are competing versions of events and the authenticity of particular documentation is in doubt. On the other hand, the Policy (paragraph 24.3) is clear that it is for the expert to determine the admissibility, relevance, materiality and weight of the evidence presented as part of proceedings under the DRS. In my view, the Complainants have cast sufficient doubt on the Abbey Life document for me not to rely on it as evidence that the Respondent was trading as 'Bloomberg Mortgage Trade Centre' as far back as 1993. Taking this with all the other evidence before me – particularly the detailed evidence in the Reply, which is highly persuasive – in my judgement the Complainants have established, on the balance of probabilities, that the Respondent did not adopt that trading



style until much later and that, at the time of registration of the Domain Name, the Respondent did not have the long history he claims of trading under that name.

On that basis, I see no reasonable conclusion other than that the Respondent chose the Domain Name in order to trade on the Complainants' goodwill in the name under which they do business. That clearly takes unfair advantage of the Complainants' rights.

For completeness, I can now briefly review all the Respondent's arguments in turn.

- (i) I am not bound by the decision in a National Arbitration Forum case, in part because it is applying different tests but mainly because there is simply no such requirement within the DRS Policy. In any event, the Complainants have cast very significant doubt on the evidence put before the panel in that case and on which that panel necessarily relied.
- (ii) I do not accept that the Respondent has been trading under the name 'Bloomberg Mortgage Trade Centre' since 27 October 1993.
- (iii) The Respondent cannot have been using any name under licence from the Information Commissioner's Office or the Financial Conduct Authority because neither body grants such licences.
- (iv) Domain name registrars register domain names first come, first served. They do not check how a name is to be used or whether such use would be regarded as legitimate. The ability to register a domain name therefore does not of itself provide any reassurance about whether and how that name can be used, beyond the purely technical matter of establishing a valid URL.
- (v) I draw no conclusion whatsoever from the fact that four of the other domain names mentioned in the complaint are not currently connected to active websites.
- (vi) It seems to me that there is every prospect of confusion in the current and possible future use of the Domain Name – especially as both Complainant and Respondent operate in the same broad field.
- (vii) The Complainants' rights in 'Bloomberg' do give them a legitimate interest in a domain name that takes that word as its primary element.

- (viii) The references to anti-trust law appear to me irrelevant to the question before me, the answer to which turns on the application of the DRS Policy.
- (ix) The Respondent's claim that he intends to make 'legitimate, non-commercial fair use' of the Domain Name (paragraph 9.7 of the response) reflects one of the elements in the Policy's list of factors that may be evidence that a domain name is not an abusive registration. But there has been no evidence on the point (though the implication is surely that any proposed use would be commercial rather than non-commercial) and, even if there were, the weight of evidence pointing the other way would be compelling.

For the Complainants:

- (i) I agree with the Complainants' conclusion that the Respondent is merely seeking to capitalise on the goodwill that they have built up over 30 years in the name 'Bloomberg'.
- (ii) I agree that there is a severe risk that internet users will be confused into thinking that the Domain Name is somehow connected with the Complainants.
- (iii) I do not agree that the Respondent must have registered the Domain Name with the intention of transferring it, for a profit, to the Complainants or one of their competitors. That feels to me like speculation for which there is no evidence. But that reaction to this element of the complaint does not change my overall conclusion.

## **7. Decision**

I find that the Complainants have rights in respect of a name which is identical or similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an abusive registration.

I therefore direct that the Domain Name be transferred to the Lead Complainant.

**Mark de Brunner**

**25 November 2018**