

Nominet UK Dispute Resolution Service

DRS Number 04992

B E T W E E N:

PIPEX INTERNET LTD

Complainant

- and -

ANDREW MOLOTOV

Respondent

Decision of Independent Expert

1. Parties

Complainant: Pipex Internet Ltd.
Address: 1 Triangle Business Park
Quilters Way
Stoke Mandeville
Aylesbury
Buckinghamshire
Postcode: HP22 5BL
Country: GB

Respondent: Andrew Molotov
Address: Proletarskiy pr. 26/1, Flat 86
Moscow
Postcode 115477 RU
Country: RU

2. Domain Name

bulldogbroadband.co.uk

3. Procedural Background

3.1.1 The Complaint, which is a complaint of Abusive Registration under the Dispute Resolution Procedure (“the DR Procedure”), of Nominet UK (“Nominet”), and is dated 28 August 2007, was posted by Nominet to the Respondent under cover of a letter dated 31 August 2007. The covering letter included the following paragraph:-

“You do not have to respond to the complaint, but any decision made about your domain name will apply to you even if you do not

respond. If you want to respond (and we would encourage you to do so) we must receive the response on or before 24 September 2007”.

3.1.2 The Respondent did not respond by 24 September 2007 or at all. In a letter dated 25 September 2007 Nominet wrote again to the Respondent, referring to the complaint and to the failure of the Respondent to submit a response within the deadline, and communicating that as a consequence the dispute would not go to mediation, but would be referred to an independent expert for a formal decision if the Complainant paid the appropriate fees on or before 9 October 2007 - a condition which was fulfilled.

3.1.3 By letter dated 26 October 2007 I was appointed with effect on 1 November 2007 to provide a Decision under Nominet UK’s Dispute Resolution Policy (“the Policy”). I am required to give by Decision by 15 November 2007.

3.1.4 I have been provided with the following materials:-

- Dispute History
- Complaint
- Standard correspondence between Nominet and the parties
- Companies House entries.
- Register entry for bulldogbroadband.co.uk.
- Nominet WHOIS query result for bulldogbroadband.co.uk.
- Printout of website at www.bulldogbroadband.co.uk.
- Copy of Nominet UK’s Policy and Procedure.

4. **Outstanding Formal Procedural Issues**

4.1 There are no outstanding formal or procedural issues.

5. **The Facts**

5.1 The domain name was registered by the Respondent on 13 August 2006.

6. **The Parties’ Contentions**

Complainant

6.1 The Complaint of Abusive Registration is as follows:-

The Complaint

I confirm that Domain Name(s) in dispute are identical or similar to a name or mark in which I have Rights.

I confirm that Domain Name(s) in the hands of the Respondent is an Abusive Registration.

1. The Complaint

1.1 I confirm that the Domain Name in dispute is identical to or, in the alternative, is confusingly similar to a name or mark in which the Complainant has rights.

1.2 I confirm that the Domain Name in the hands of the Respondent is an Abusive Registration.

2. The Complainant

2.1 The Complainant is part of Pipex Communications plc (“Pipex”), a company that is listed on the London Stock Exchange. Pipex acquired from Cable and Wireless in September 2006 the business operating under the name, ‘Bulldog’ (“Bulldog Communications”).

2.2 Bulldog Communications was founded in 2000 and has, since that date, been instrumental in revolutionising internet services. For example, Bulldog Communications was the first company in the UK to offer a bundled broadband and phone service. Today, Bulldog Communications is part of one of the UK’s leading providers of integrated telecommunications and internet solutions including broadband, voice, domain name registrations and hosting services. The “Bulldog” brand is therefore well known.

2.3 Bulldog Communications has a broadband and voice customer base of approximately 110,000 in the UK. 90% of this customer base subscribe to its broadband service. In 2005/06, Bulldog Communications had a turnover of £33 million and in 2006/07 it expects its turnover to reach £43 million.

2.4 I attach printed webpages from the Complainant’s website at www.bulldogbroadband.com (see Annex 1)

3.1 The Complainant has UK trade mark registrations incorporating or consisting of the word BULLDOG,

3.1.1 UK trade mark registration no. 2373223A, registered in respect of classes 9, 35, 37, 38 and 42 dated 10 June 2005 for “BULLDOG”;

3.1.2 UK trade mark registration no. 23

73223B, registered in respect of class 41 dated 7 October 2005 for “BULLDOG”;

3.1.3 UK trade mark application no. 2387271, in respect of classes 9, 16, 35, 36, 37, 38, 41 and 42 dated 17 March 2007 for “BULLDOG”; and

3.1.4 UK trade mark registration no. 2373214 in respect of classes 9, 35, 38 and 42 dated 1 July 2005 for BULLDOG BROADBAND; together, “the Trade Marks” (see Annex 2 for copies of the Trade Marks).

3.2 The Complainant has built up goodwill in the “Bulldog” and “Bulldog Broadband” name in the UK since Bulldog Communications was launched in 2000. This goodwill is protected in the UK through the law of passing off

4. Domain Name

4.1 The Complainant also registered numerous domain names worldwide containing the BULLDOG mark, which are accessible around the world. A schedule of these domain names is attached at Annex 3.

5. The Respondent

5.1 The Respondent’s website is at www.bulldogbroadband.co.uk (“the Website”). Relevant extracts of the Website are at Annex 4

5.2 The Website provides various links to the websites of third party providers of broadband services, which the user can click on to find more information about these services. These providers are in direct competition to the Complainant. Examples include websites operated by Talk Talk, Sky and price comparison sites for broadband services (which direct users to other broadband service providers). This clearly demonstrates that the Respondent is aware of the Complainant and the services/products offered by it

5.3 It is common practice on the Internet that those persons providing third party links on their website are paid by that third party for each click through. Indeed, the company with which the Domain Name is parked, Sedo (see the notice at the bottom of the home page of the Website), expressly states on its website (see Annex 5) that “the idle domain is used to display relevant advertisements - every time a consumer clicks on one of the advertisements you earn money”. Therefore, it is highly likely that the Respondent is making money from the use of the Domain name.

5.4 The Respondent registered the Domain Name on 13 August 2006 (a Whois search is attached at Annex 6).

5.5 The Respondent is using the Complainant’s registered trade mark BULLDOG and BULLDOG BROADBAND as a trade mark on its website (for example, the Website has a heading “Bulldogbroadband.co.uk”)

5.6 Other than the use made of the Domain Name through parking it with Sedo, the Respondent has not used the Domain Name in connection with any goods or services since it was registered on 13 August 2006

5.7 The Complainant’s investigations on the Internet have not revealed that the Respondent operates any business under the name “Bulldog Broadband” or that he is known as “Bulldog Broadband”.

6. Communications between the Respondent and the Complainant

6.1 The Complainant has attempted to contact the Respondent at the address given in the Whois search, however he has not responded to this communication. At Annex 7 is a copy of an email sent to the Respondent by the Complainant's agent offering to buy the Domain Name for £150 (which the Complainant considers would cover the Respondent's out of pocket expenses)

6.2 The Complainant has also written to Sedo (the domain name parking company identified at the bottom of the webpage at the url for the Domain Name). We note from Annex 8 that Sedo acts as a broker between the buyer and seller of the Domain Name to facilitate its purchase. A copy of the emails and attachments exchanged between the Complainant's agent and Sedo are enclosed in Annex 9. I note that Sedo assessed the value of the Domain Name at £16,000 and refused to put an offer to the Respondent for £200 as it considered the offer was too low. Sedo said that the Complainant's agent maximum offer price for the Domain Name should be at least 75% of their appraised value (i.e. £12,000)

7.1 In the circumstances, it is clear that the Domain Name in the hands of the Respondent is abusive because:

7.1.1 it has been used for the purpose of unfairly disrupting the business of the Complainant. The Respondent is using the Domain Name in order to divert business from the Complainant to competitor websites and either he or Sedo are likely to be profiting from users clicking on the links appearing on the Website. The Respondent is also blocking the Complainant from securing a key domain name for its services in the UK as this is a Domain Name that the Complainant has previously used;

7.1.2 by using the Domain Name, the Respondent is misleading the public into believing that the services offered on or through the Website originate from or are endorsed by the Complainant especially considering that the Respondent is using the marks, BULLDOG and BULLDOG BROADBAND as a trade mark. For instance, the heading on the home page of the Website is "Bulldogbroadband.co.uk" which would be understood by the users to be a reference to the Complainant;

7.1.3 it is likely to have been registered for the purpose of making money by attracting customers looking for the Complainant and referring those customers to other competitors (who are likely to pay Sedo or the Respondent a fee for each click through). In such circumstances, the Respondent or Sedo is clearly taking unfair advantage of the Trade Marks

7.1.4 the use of the Domain Name is undoubtedly detrimental to the Complainant's business

7.1.5 it can be inferred from the value placed on the Domain Name by Sedo that the Domain Name was primarily registered for the purpose of selling it to the Complainant for valuable consideration in excess of the Respondent's out of pocket expenses directly associated with acquiring or using the Domain Name;

7.2 The Respondent clearly has no legitimate reason for registering and using the Domain Name.

6.2 The Complainant requests the transfer of the Domain Name.

Respondent

6.3 As stated above, the Respondent has did not submitted any Response.

7. **Discussion and Findings:**

General

7.1 Under paragraph 2a of the Policy the Respondent is required to submit to proceedings if a Complainant asserts to Nominet in accordance with the DR Procedure 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.*”

7.2 Under paragraph 2b of the Policy a Complainant is required to prove both these elements on the balance of probabilities.

7.3 Paragraph 1 of the Policy defines “Rights” as including but not being “limited to, rights enforceable under English law”. This definition is subject to a qualification which is not material.

Complainant’s Rights

7.4 The Complaint (which is signed , includes a statement of truth, and to which there is no challenge) and the documentation provided with it, in my opinion shows that the Complainant has “rights” enforceable under English law in the name utilised for its website viz www.broadbandbulldog.com – see paragraph 2.4.1 of the Complaint – and as registered proprietor, in the mark BULLDOG BROADBAND .

7.5 The date upon which the Complainant registered the present name of its website is not clear. The BULLDOG BROADBAND mark was registered on 3 June 2005.

7.6 Under the Policy the mere assertion that a Complainant has “rights” is sufficient for there to be jurisdiction. For this purpose the date when such alleged rights are acquired is in fact immaterial. I am satisfied that the conditions of paragraph 2 a I of the Policy are fulfilled.

7.7 I do not consider that the name or the mark in which the Complainant has rights are identical to the Domain Name. Nevertheless I consider and find as a fact that the name and mark in which the Complainant has rights are similar to the Domain Name.

Abusive Registration

7.8 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 was unfairly detrimental to the Complainant’s Rights.”*

7.9 The Policy provides:

“3 Evidence of Abusive Registration

a A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows:

i Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

A for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

B as a blocking registration against a name or mark in which the Complainant has Rights; or

C for the purpose of unfairly disrupting the business of the Complainant;

ii Circumstances indicating that the Respondent is using the Domain Name in a way which has confused people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;

iii The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise)

- which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;
- iv It is independently verified that the Respondent has given false contact details to us; or
 - v The domain name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant:
 - A has been using the domain name registration exclusively; and
 - B paid for the registration and/or renewal of the domain name registration.
 - b Failure on the Respondent's part to use the Domain Name for the purposes of e-mail or a website is not in itself evidence that the Domain Name is an Abusive Registration.
 - c There shall be a presumption of Abusive Registration if the Complainant proves that Respondent has been found to have made an Abusive Registration in three (3) or more Dispute Resolution Service cases in the two (2) years before the Complaint was filed. This presumption can be rebutted (see paragraph 4 (c)).

4. How the Respondent may demonstrate in its response that the Domain Name is not an Abusive Registration

- a A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is as follows:
 - i Before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under the DRS), the Respondent has
 - A used or made demonstrable preparations to use the Domain Name or a Domain Name which is similar to the Domain Name in connection with a genuine offering of goods or services;
 - B been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name; or
 - C made legitimate non-commercial or fair use of the Domain Name; or
 - ii The Domain Name is generic or descriptive and the Respondent is making fair use of it.
 - iii In relation to paragraph 3(a)(v); that the Registrant's holding of the Domain Name is consistent with an express term of a written agreement entered into by the Parties; or
 - iv In relation to paragraphs 3(a)(iii) and/or 3(c); that the Domain Name is not part of a wider pattern or series of registrations because the Domain Name is of a significantly different type or character to the other domain names registered by the Respondent.
- b Fair use may include sites operated solely in tribute to or criticism of a person or business.
- c If paragraph 3(c) applies to succeed the Respondent must rebut the presumption by proving in the Response that the registration of the Domain Name is not an Abusive Registration.

- 7.10 There is no challenge to the facts asserted in paragraphs 5 and 6 of the Complaint. There is no reason to doubt the accuracy of those assertions, and they are supported by the documentation referred to. Accordingly I accept them as being factually correct.
- 7.11 As can be seen, the Complainant contends that:-
- 7.11.1 The Domain Name has been used for the purpose of unfairly disrupting the business of the Complainant. The Respondent is using the Domain Name in order to divert business from the Complainant to competitor websites and either he or Sedo are likely to be profiting from users clicking on the links appearing on the Website;
 - 7.11.2 The Respondent is also blocking the Complainant from securing a key domain name for its services in the UK as this is a Domain Name that the Complainant has previously used;
 - 7.11.3 By using the Domain name the Respondent is misleading the public into believing that the services offered on or through the Website originate from or are endorsed by the Complainant especially considering that the Respondent is using the marks, BULLDOG and BULLDOG BROADBAND as a trademark. For instance, the heading on the home page of the Website is “Bulldogbroadband.co.uk” which would be understood by the users to be a reference to the Complainant.
 - 7.11.4 It is likely to have been registered for the purpose of making money by attracting customers looking for the Complainant and referring those customers to other competitors (who are likely to pay Sedo or the Respondent a fee for each click through). In such circumstances, the Respondent or Sedo is clearly taking unfair advantage of the Trade Marks;
 - 7.11.5 The use of the Domain Name is undoubtedly detrimental to the Complainant’s business as the Respondent is seeking to divert business from the Complainant;
 - 7.11.6 It can be inferred from the value placed on the Domain Name by Sedo that the Domain Name was primarily registered for the purpose of selling it to the Complainant for valuable consideration in excess

of the Respondent's out of pocket expenses directly associated with acquiring or using the Domain Name;

7.11.7 The Respondent clearly has no legitimate reason for registering and using the Domain Name.

7.12 On the basis of the unchallenged evidence before me, I accept these contentions. I consider that this evidence establishes that the Respondent registered the Domain Name primarily:-

7.12.1 for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

7.12.2 as a blocking registration against a name or mark in which the Complainant has Rights; and

7.12.3 for the purpose of unfairly disrupting the business of the Complainant;

within the terms of paragraph 3 ai A,B,and C of the Policy and hence are evidence that the Domain name is an Abusive Registration .

7.13 Further, although the Complainant has not adduced any evidence that people or businesses have actually been confused into believing that the Domain name is registered to be operated or authorised by or otherwise connected with the Complainant I consider that such confusion is likely to have resulted or is likely to result in the future. The list in paragraph 3 of the Policy is non-exhaustive, and I consider that a Registration may be Abusive where such confusion is intended or likely.

7.14 I draw the inference that the Respondent was aware of the Complainant's names and marks before embarking on the business now operated from its web-site and before registering the Domain Name. Indeed, I have no doubt that the Domain Name was chosen and registered because of its similarity to the name and marks used in connection with the Complainant's business. Hence, it would not be open to the Respondent to rely upon paragraph 4a: A

of the Policy – the only one of the non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration which might conceivably have fitted the facts.

- 7.15 Accordingly I am satisfied and find as a fact that the Domain Name
- 7.15.1 was registered 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; and
 - 7.15.2 has been used in a manner which took unfair advantage of and was unfairly detrimental to the Complainant’s Rights.
- Accordingly it is an Abusive Registration.

8. **Decision**

- 8.1 For the reasons give above, I find that the Domain Name in the hands of the Respondent, is an Abusive Registration.

- 8.2 The Complainant has requested the transfer of the Domain Name. On the basis of the material before me I consider that that is an appropriate remedy and accordingly that the Domain Name should now be transferred to the Complainant as it requests.

Signed.....

David Blunt QC
5 November 2007