

**Monarch Airlines Limited**

**-v-**

**Owen Webster**

**Nominet UK Dispute Resolution Service**

**DRS 05213**

**Monarch Airlines Limited and Owen Webster**

**Decision of Independent Expert**

**1. PARTIES:**

Complainant: Monarch Airlines Limited  
London Luton Airport  
Luton  
Bedfordshire  
LU2 9NU  
GB

Respondent: Owen Webster  
Unit 5, 29-33 Wood Street Lane Cove West  
Sydney  
NSW  
2066  
AU

**2. DOMAIN NAME:**

monarchholidays.co.uk ("the Domain Name").

**3. PROCEDURAL BACKGROUND:**

- 3.1. A hard copy of the Complaint was received in full by Nominet on 08 November 2007. Nominet validated the Complaint and notified the Respondent of the Complaint.
- 3.2. No response was received from the Respondent and therefore informal mediation was not possible.
- 3.3. On 11 December 2007 the Complainant paid the fee to obtain the expert decision pursuant to paragraph 21 of the procedure for the conduct of proceedings under the Nominet Dispute Resolution Service ("the Procedure").

- 3.4. On 12 December 2007, Nick Phillips, the undersigned (“the Expert”), was selected as the Expert. Nick Phillips confirmed to Nominet that he knew of no reason why he could not properly accept the invitation to act as the Expert in this case and further confirmed that he knew of no matters which ought to be drawn to the attention of the parties, which might appear to call into question his independence and/or impartiality.

#### **4. OUTSTANDING FORMAL/PROCEDURAL ISSUES**

- 4.1. The Respondent has not submitted a response to Nominet in time (or at all) in compliance with paragraph 5(a) of the Procedure.
- 4.2. Paragraph 15(b) of the Procedure provides, inter alia, that “if, in the absence of exceptional circumstances, a party does not comply with any time periods laid down in the policy of this procedure, the Expert will proceed to a decision on the Complaint”.
- 4.3. Nominet appears to have used all of the available contact details to try to bring the Complaint to the Respondent’s attention. Consequently, there do not appear to me to be any exceptional circumstances involved and I will therefore proceed to a decision on the Complaint notwithstanding the absence of a Response.

#### **5. THE FACTS**

- 5.1. The Complainant is Monarch Airlines Limited, a British charter and scheduled airline based in Luton, UK.
- 5.2. The Respondent is Owen Webster.
- 5.3. The Respondent registered the Domain Name on 29 July 2005.
- 5.4. The Complainant is the proprietor of the following United Kingdom registered trade marks registrations for the word mark MONARCH:
  - TM registration number 1275140 for MONARCH in Classes 37 and 39 registered with effect from 1<sup>st</sup> October 1986;
  - TM registration number 2259644 for MONARCH in Class 43 registered with effect from 24<sup>th</sup> October 1996;
- 5.5. The Complainant owns the following domain name registrations containing the word MONARCH;
  - (a) flymonarch.com created on 22 March 2000;
  - (b) flymonarchhotels.com created on 14 February 2006.
- 5.6. The Complainant has used the trading name MONARCH since it was established in June 1967, which is approximately thirty eight years before the date on which the Respondent registered the Domain Name.

- 5.7. The webpage located at the Domain Name contains an advertisement page with links to websites providing flight booking services, holiday planning services and details of charter airlines.
- 5.8. The Complainant's agents contacted the Respondent on 24 August 2007 requesting the voluntary transfer of the Domain Name. No response was ever received from the Respondent.

## 6. THE PARTIES' CONTENTIONS

The parties' contentions can be summarised as follows:

### *Complainant*

- 6.1. The Complainant has Rights in the Domain Name because it is identical or similar to a name or mark in which the Complainant has rights.
  - (a) The Domain Name incorporates the mark MONARCH with the addition of the modifier "HOLIDAYS", or is a confusingly similar mark;
  - (b) The Complainant has both registered rights and unregistered rights in the mark MONARCH and has used the trading name MONARCH since 1967, approximately thirty eight years before the Domain Name was registered;
  - (c) The Complainant's registered trade marks were registered before the Domain Name;
  - (d) The Complainant owns a number of trade mark registrations and domain names consisting of and including the word MONARCH;
  - (e) The public associates the MONARCH mark with the Complainant and the Complainant's brand has been extensively advertised and promoted online;
- 6.2. The Domain Name in the hands of the Respondent is an Abusive Registration;
  - (a) By registering the Domain Name the Respondent has blocked the Complainant from registering a name that most closely and obviously reflects their activities as a provider of an online travel portal.
  - (b) The Respondent has been found to have made Abusive Registrations in at least three Dispute Resolution Services cases at Nominet in the last two years. There is therefore a rebuttable presumption under paragraph 3(c) of the Policy that there is an Abusive Registration in the present case;
  - (c) The Respondent is a serial cybersquatter and typosquatter and has registered a large number of domain names which incorporate third party marks and in which the Respondent has no apparent

rights. The registration by the Respondent of monarchholidays.co.uk is part of this behaviour;

- (d) Given the reputation of the Complainant's Rights it is inconceivable that the Respondent was not aware of the Complainant when it acquired the Domain Name. Given the Respondent's history and past activity it is inconceivable that this registration was not a bad faith registration and it is not possible to conceive of any plausible action or contemplated good faith use;
- (e) The Disputed Domain Name incorporates the Complainant's MONARCH trade mark with the addition of the descriptive term "HOLIDAYS" which is conceptually similar to the Complainant's mark and type of business. Furthermore, the Complainant's MONARCH mark is the dominant and distinctive element of the Domain Name. As a result the risk of confusion is high. This is particularly the case given the Complainant's substantial reputation in the MONARCH mark;
- (f) Further, or in the alternative, the Disputed Domain Name is confusingly similar to the Complainant's MONARCH trade marks which will result in third parties wrongly associating the Domain Name with the Complainant and the Complainant's business. The likelihood of confusion is exacerbated given that the Respondent is using the Domain Name to link to websites which relate to identical and/or similar goods and services to which the Complainant is well known;
- (g) The Complainant has not consented to the Respondent's use of the MONARCH trade marks and the Respondent has no legitimate interest in respect of the Domain Name. In particular the Respondent;
  - is not related in any way to the Complainant;
  - has not made any use of, or demonstrable preparations to use the Domain Name in connection with a bona fide offering of goods or services;
  - is not (as an individual, business or other organisation) commonly known by the Disputed Domain Name.
- (h) The Domain Name funnels customer traffic away from the Complainant's website to other websites selling and promoting the services of the Complainant's competitors and other third parties in a manner which is unfairly detrimental to the Complainant's rights;
- (i) Any use of the Domain Name which incorporates the MONARCH trade mark or mark similar thereto will cause confusion in the minds of the public, leading them to mistakenly believe that the Respondent's business and websites are legitimately connected or associated with the Complainant when that is not the case. The Complainant has not consented to the Respondent's use of the Domain Name;

- (j) The Complainant specifically cites paragraphs 3(a)(ii), 3(a)(iii) and 3(c);
- (k) The Complainant also relies on the following factors;
  - the Complainant's MONARCH trade marks have a strong reputation and are widely known;
  - it is inconceivable that the Respondent did not have actual knowledge of the Complainant's rights to their trade marks;
  - there is no evidence whatsoever of any actual or contemplated good faith use by the Respondent of the Domain Name and the Domain Name was registered by the Respondent, with the Complainant in mind, to trade off and benefit from confusion with the mark and its extensive reputation.

#### *Respondent*

The Respondent has not provided a Response so there are no submissions to consider.

## **7. DISCUSSIONS AND FINDINGS**

### **GENERAL**

7.1. Under paragraph 2 of the Dispute Resolution Service Policy ("the Policy") the Complainant is required to show, on the balance of probabilities, that;

*(1) it has rights in respect of a name or mark which is identical or similar to the Domain Name; and*

*(2) the Domain Name in the hands of the Respondent is an Abusive Registration.*

### **Complainant's Rights**

7.2. The first question I must answer therefore is whether the Complainant has proved in the balance of probabilities that it owns Rights in a name or mark that is identical or similar to the Domain Name.

7.3. The Policy defines rights as including but not limited to "...rights enforceable under English laws." This has always been treated in decisions under Nominet DRS as a test with a low threshold to overcome and I think that that must be the correct approach.

7.4. The Complainant has provided evidence of its use of the name MONARCH covering charter air travel and other comprehensive holiday planning services, and also owns a number of registered trade marks consisting of or incorporating the name MONARCH. The Complainant has also registered and uses a number of domain names incorporating the name MONARCH.

- 7.5. In the circumstances I have no difficulty in finding that the Complainant has rights in the name MONARCH.
- 7.6. I must now decide whether the name in which the Complainant has rights i.e. MONARCH, is identical or similar to the Domain Name, while ignoring the first and second level suffixes as I must do i.e. MONARCHHOLIDAYS.
- 7.7. I have no doubt at all that the two names are similar. The words used by the Complainant and Respondent respectively are identical, with one additional word used in the Domain Name, which is a descriptive term relating to a significant component of the Complainant's activities, and consequently which does not change the overall distinctive character of the Domain Name.

### **Abusive Registration**

- 7.8. Having concluded that the Complainant has rights in a name which is identical or similar to the Domain Name, I must consider whether the Domain Name constitutes an Abusive Registration. Abusive registration is defined in the Policy as;

*"...a domain name which either;*

- (a) was registered or otherwise acquired in the 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*
- (b) has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights."*

- 7.9. This definition allows me to consider whether the Domain Name constitutes an Abusive Registration at any time and not, for example, just the time of the registration/acquisition.
- 7.10. Paragraph 3 of the Policy provides a non-exhaustive list of the factors which may evidence that a domain name is an Abusive Registration. It is worthwhile setting out paragraph 3 of the Policy in full:

"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."

7.11. The Complainant relies, amongst other things, on paragraph 3(c) of the Policy. The Respondent has been found to have made an Abusive Registration in at least three Dispute Resolution Service cases in the last two (2) years. Therefore, there is a rebuttable presumption that there has been an Abusive Registration in this case.

7.12. By not filing a Response, the Respondent has failed to rebut the presumption of an Abusive Registration that has arisen due to paragraph 3(c) of the Policy.

7.13. I therefore conclude that in the Respondents hands the Domain Name constitutes an Abusive Registration and having reached this conclusion I will not go on and consider the other contentions put forward on behalf of the Complainant.

## **8. DECISION**

8.1. I find that the Complainant has proved, on the balance of probabilities, that it has rights in a name or mark which is identical or similar to the Domain Name and that the Domain Name is an Abusive Registration in

the hands of the Respondent. I therefore direct that the Domain Name be transferred to the Complainant.

.....  
**NICK PHILLIPS**  
**3<sup>rd</sup> January 2008**