

## **Nominet UK Dispute Resolution Service**

**DRS 05408**

### **LinkedIn Corporation v Nigel Clarke**

#### **Decision of Independent Expert**

##### **1. Parties**

Complainant: LinkedIn Corporation  
Address: 2029 Stierlin Court  
Mountain View  
California  
Postcode: 94043  
Country: US

Respondent: Nigel Clarke  
Address: Regency House  
York  
North Yorkshire  
Postcode: YO26 6RW  
Country: GB

##### **2. Domain Name**

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

##### **3. Procedural Background**

The Complaint was lodged with Nominet on 29 January 2008. Nominet validated the Complaint and on 29 January 2008 informed the Respondent that the Dispute Resolution Service ("DRS") had been invoked and that the Respondent had until 20 February 2008 to submit a Response. No Response was received. On 28 February 2008 the Complainant paid Nominet the appropriate fee for a decision of an expert pursuant to paragraph 7 of the Nominet DRS Policy Version 2 ("the Policy").

On 10 March 2008 Nominet appointed Andrew Clinton ("the Expert"). The Expert has confirmed to Nominet that he knows of no reason why he could not properly accept the invitation to act as Expert in this case, and further confirmed that he knows of no matters which ought to be drawn to the attention of the parties, which might appear to call into question his independence.

#### **4. Outstanding Formal/Procedural Issues (if any)**

The Respondent has not submitted a Response to the Complaint. Under paragraph 15b of the Procedure if a party does not comply with any time period laid down in the Policy or the Procedure, the Expert will, in the absence of exceptional circumstances, proceed to a decision on the Complaint. Under paragraph 15c of the Procedure if, in the absence of exceptional circumstances, a party does not comply with any provision in the Policy or Procedure (in this case by failing to file a Response) the Expert will draw such inferences as he considers appropriate.

#### **5. The Facts**

The parties to this dispute have both registered domain names that incorporate the mark "linkedin". On 6 May 2003 the Complainant launched its professional networking service from its website at [www.linkedin.com](http://www.linkedin.com). On 9 February 2004 the Respondent registered the identical mark as [www.linkedin.co.uk](http://www.linkedin.co.uk). The Complainant's business has experienced substantial growth and it now has in excess of 18 million subscribers to its professional networking service. The Domain Name points to a website that discusses issues of "Contact Management". The home page has the message "Linked in to Contact Management" prominently displayed and there are links from the website to other businesses.

The Complainant says that the issues of Contact Management discussed on the website are identical to the services offered by the Complainant through its website and this would cause confusion amongst internet users who could misinterpret the discussion of contact management as something which originated from the Complainant and that the links to third party websites are in some way linked to the Complainant's professional networking service.

#### **6. The Parties' Contentions**

##### Complainant

The Complaint, so far as is material, reads as follows:-

1. The Complainant's Rights in the name "LinkedIn".
  - i. LinkedIn Corporation ("LinkedIn") operates a professional networking service via its website at the domain name LinkedIn.com. The services provided under the business name LinkedIn include allowing users to find clients, to be

found for business opportunities, to search for jobs, to discover connections and to obtain introductions to other professionals. LinkedIn was founded in December 2002 and commenced its operations through LinkedIn.com on 6 May 2003. LinkedIn's professional networking service has been available to subscribers from the United Kingdom since its date of launch on 6 May 2003. Copies of screenshots from LinkedIn.com as it was on 6 May 2003 are at exhibit 1, together with a copy of the home and other pages from LinkedIn.com as they are today. LinkedIn's professional networking service is and has always been operated under the business name "LinkedIn". Further information about LinkedIn and its operation from its entry in en.wikipedia.org are at exhibit 2.

- ii. As of 6 May 2003, its date of launch in the United Kingdom, LinkedIn had five registered subscribers from the United Kingdom. A further 22 subscribers from the United Kingdom joined on 7 May 2003, 21 subscribers on 8 May and so on. By 4 February 2004 (the date on which the Respondent registered linkedin.co.uk), LinkedIn had 10,213 registered subscribers from the United Kingdom. As of today, LinkedIn has over one million subscribers from the United Kingdom. A copy of the declaration of April Kelly, LinkedIn's Director of Customer Support, confirming the number of subscribers is at exhibit 3. Worldwide, LinkedIn now has over 18 million subscribers. A copy of an article from The Seattle Times dated 21 January 2008 which refers to the figure of 18 million is at exhibit 4.
- iii. The success of LinkedIn's professional networking service was immediate and it has received wide coverage in the media, both internationally and in the United Kingdom. For example, at exhibit 5 is an article entitled "Cash from Contacts" by Maggie Shiels from bbc.co.uk dated 23 September 2003 which profiles LinkedIn and its operations. Further examples of press coverage for LinkedIn (prior to the Respondent's registration of linkedin.co.uk) are from wired.com dated 17 November 2003 and CNN.com International dated 8 December 2003. Recent coverage has emphasised the profile of LinkedIn, with articles in the Independent dated 14 January 2008 and at guardian.co.uk dated 10 December 2007. Also, a press release from Nielsen dated 27 November 2007 shows a 282% growth in the UK Unique Audience figure for LinkedIn between October 2006 and November 2007. Copies of these articles and the press release are also at exhibit 5.

- iv. In addition to its common law rights in the trading name "LinkedIn" which have accrued since at least the date of the launch on 6 May 2003, LinkedIn is the proprietor of Community Trade Mark number 4183893 LINKEDIN which was filed on 9 December 2004. A copy of the printout from CTM-ONLINE is at exhibit 6.

## 2. Abusive Registration

- i. The domain name linkedin.co.uk in the hands of the Respondent is an abusive registration. At the date of registration by the Respondent of linkedin.co.uk on 4 February 2004, LinkedIn had built up a considerable reputation in the name LinkedIn and it is submitted that the Respondent's registration of linkedin.co.uk was for the primary purpose of attracting traffic to the Respondent's website at linkedin.co.uk by using the name LinkedIn which was, by this time, well known as a professional networking operation.
- ii. The use of the "LinkedIn" name by the Respondent to drive traffic to the Respondent's website at linkedin.co.uk is highlighted by an examination of the content of the website which the Respondent operates at this domain name. Copies of pages from this website are at exhibit 7. The website is headed "Contact Management", provides links to other businesses, and discusses issues of contact management, issues that are identical to the services offered by LinkedIn through its professional networking website at LinkedIn.com. It is submitted that this is something which would cause confusion amongst users who could misinterpret the discussion of contact management at linkedin.co.uk as something which originated from LinkedIn itself and the links to third party business websites as linked to LinkedIn's professional networking service. In short, users could mistakenly believe that the website at linkedin.co.uk was operated by or related to LinkedIn.

## Remedies Requested

The Complainant seeks a transfer of the Domain Name.

## Respondent

The Respondent did not file a Response.

## **7. Discussion and Findings:**

### General

Under paragraph 2 of the Policy the Complainant has to prove on the balance of probabilities; firstly, that it has Rights in respect of a name or mark which is identical or similar to the Domain Name; and secondly, that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

### Complainant's Rights

Rights are defined in the Policy as including, but not limited to, rights enforceable under English law. This is usually demonstrated by reference to a trade mark registration or active trading using the mark in question. The Complainant operates an on-line professional networking service under the mark LinkedIn through its website at [www.linkedin.com](http://www.linkedin.com). The Complainant says that it has built up a considerable reputation in the mark LinkedIn. In addition to its common law rights the Complainant relies upon its rights as the registered proprietor of a Community Trade Mark. In the absence of a Response there is no challenge by the Respondent to the Complainant's assertion that it has rights in the mark LinkedIn.

The evidence supplied by the Complainant establishes the following:-

- The Complainant was founded as LinkedIn Corporation in December 2002.
- The Complainant has operated a professional networking service through its website at [www.linkedin.com](http://www.linkedin.com) since 6 May 2003.
- There are currently over 1 million subscribers to the service from the United Kingdom and over 18 million subscribers worldwide.
- The Complainant is the registered proprietor of the Community Trade Mark number 004183893 for the mark LinkedIn in class 35 (online business and professional networking services) that was filed on 9 December 2004 and registered on 24 July 2006.

The Complainant clearly has rights in the mark LinkedIn which, for these purposes, is identical to the Domain Name. The Expert finds, on the balance of probabilities, that the Complainant has Rights in respect of a mark that is identical to the Domain Name and therefore the first limb of paragraph 2 of the Policy is satisfied.

## Abusive Registration

Abusive Registration is defined in paragraph 1 of the Policy to mean 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.

Non-exhaustive factors – paragraph 3 of Policy

A non-exhaustive list of factors which may be evidence of an Abusive Registration is set out in paragraph 3a of the Policy 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 Nominet; 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.

It is clear from the wording of the Policy that the list of factors at paragraph 3 is non-exhaustive and that a Complainant can succeed in proving Abusive Registration without the need to prove any of those factors. However, in order to do so it is necessary to prove that the definition of Abusive Registration, as set out in paragraph 1 of the Policy, has been satisfied.

Non-exhaustive factors – paragraph 4 of Policy

There is a list of non-exhaustive factors which may be evidence that the Domain Name is not an Abusive Registration at paragraph 4 of the Policy.

#### Discussion and findings regarding Abusive Registration

The Complainant does not specifically identify which of the factors listed under paragraph 3 of the Policy it relies upon. The Complainant submits that the registration was for the primary purpose of attracting traffic to the Respondent's website by using the Complainant's well-known name LinkedIn. It says that support

for this submission can be found by looking at the content of the website which the Respondent operates from the Domain Name. The Domain Name points to a website that is headed "Linked in to Contact Management". There is a discussion on the home page about the advantages of contact management which, it is said, "makes it easier to keep track of all your contacts" and "can improve sales conversion rates". There are links from the website to other businesses promoting online advertising and website promotion. The Complainant says that the issues of contact management discussed on the website are identical to the services offered by LinkedIn through its website and that users could mistakenly believe that the website was operated by or in some way related to LinkedIn.

There is a disclaimer at the foot of the home page of the website that reads:-

**"Disclaimer:** LinkedIn.co.uk or Gianthand.com Ltd (hereinafter known as "The Company") do not provide Contact Management Solutions in any way. The Company provides no guarantee of the services provided by third parties which may be referred to from this web site. Please refer to the Terms & Conditions of the provider of any **Contact Management** service you undertake." The disclaimer appears designed to distance the Respondent's website from the third party businesses that may be referred to from the website; it is not designed to remove the risk that internet users may believe that the website is in some way connected to, or endorsed by, the Complainant.

The Appeal Panel in DRS 04331 verbatim.co.uk said that some knowledge of the Complainant and/or its brand/rights is a pre-requisite for a successful complaint under all heads of the DRS Policy other than paragraph 3(a)(iv) (giving false contact details). Nominet operates a first-come-first-served system and the Appeal Panel struggled to conceive of any circumstances under which a domain name registrant, wholly unaware of the Complainant and its Rights, can be said to be taking unfair advantage of or causing unfair detriment to the Complainant's Rights. Accordingly, for the Complaint to succeed the Complainant must satisfy the Expert that the Respondent was aware of the existence of the Complainant and/or its brand/rights at the date of registration of the Domain Name. It should also be pointed out that knowledge only gets the Complainant part of the way – the definition of Abusive Registration must still be made out.



There is no direct evidence that the Respondent knew of the Complainant and its LinkedIn brand at the date of registration of the Domain Name. The Respondent has decided against providing an explanation to the Expert as to his motivation for registering the Domain Name. In the absence of a Response the Expert is entitled to draw such inferences as he considers appropriate. On the basis of the available evidence the Expert draws the inference that the Respondent was aware of the Complainant's rights in the mark LinkedIn and the registration took place with that mark in mind. The factors that lead the Expert to draw that inference are as follows:-

- The Complainant's professional networking service promoted through the LinkedIn brand was well established by the date of the registration of the Domain Name.
- The Complainant's Director of Customer Support has executed a declaration confirming that LinkedIn had 10,213 registered subscribers from the United Kingdom by the date of registration of the Domain Name.
- The Complainant has produced copies of press articles about its professional networking service that appeared prior to the date of registration, including articles published on-line by the BBC and CNN. The article published by BBC News on 23 September 2003 says that in four months LinkedIn had grown from 100 members to 23,000 with predictions of more than one million members by June 2004. It is claimed in the article that 15 venture capital firms wanted to invest in LinkedIn.
- The Respondent is using the Domain Name to discuss issues of Contact Management which is the service offered by the Complainant.

One needs to consider why the Respondent would have registered a domain name that incorporated the mark LinkedIn. It is not an ordinary dictionary word but a combination of words that the Complainant selected and then promoted in connection with its on-line professional networking service. There is no obvious connection between the Respondent and the mark, other than the Respondent decided, for reasons that he has chosen not to explain, to register it as a domain name. In the absence of an explanation the Expert struggles to conceive of a motivation that was not in some way designed to take unfair advantage of or cause unfair detriment to the Complainant's rights in the mark.

Bearing in mind the Complainant's business LinkedIn was well established at the date of registration of the Domain Name, the lack of any obvious reason for the choice of the mark LinkedIn as a domain name and the fact that the website is being used to promote contact management which is a service offered by the Complainant the Expert is satisfied, on the balance of probabilities, that the Domain Name is, in the hands of the Respondent, an Abusive Registration in that it was registered and has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's rights.

## **8. Decision**

The Expert finds, on the balance of probabilities, that the Complainant has Rights in a mark which is identical to the Domain Name and is satisfied, on the balance of probabilities, that the Domain Name is, in the hands of the Respondent, an Abusive Registration. The Expert directs that the Domain Name be transferred to the Complainant.

Andrew Clinton  
25 March 2008