

# **Nominet UK Dispute Resolution Service**

**DRS 5445**

## **Forever Driveways Limited v Trade Cars UK Ltd**

### **Decision of Independent Expert**

#### **1. Parties**

Complainant:

Forever Driveways Limited  
Woolford Trading Estate  
14A Whitelegg Street  
Bury  
Lancashire  
BL8 1SW  
United Kingdom

Respondent:

Trade Cars UK Ltd  
Harwood Lodge West  
Stich Mi Lane  
Bolton  
BL9 9AZ  
United Kingdom

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

<foreverdriveways.co.uk>

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

A Complaint in respect of <foreverdriveways.co.uk> (the "Domain Name") under Nominet UK's Dispute Resolution Service Policy ("the Policy") was received from the Complainant and forwarded to the Respondent by Nominet on 13 February 2008. No Response was received from the Respondent.

On 7 March 2008 Nominet notified the parties that it would appoint an Expert to determine the dispute on receipt from the Complainant of the applicable fees in accordance with paragraph 5d of Nominet's Procedure for the conduct of proceedings under the Dispute Resolution Service (the "Procedure"). The Complaint was referred for a decision by an Independent Expert following payment by the Complainant of the required fee on 11 March 2008. I was appointed as Independent Expert as of 18 March 2008 and confirmed to Nominet that I was independent of the parties and knew of no facts or circumstances that might call into question my independence in the eyes of the parties.

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

There are no outstanding formal or procedural issues.

## 5. The Facts

The Complainant is an installer of block paving, concrete and tarmac driveways. It was incorporated on 15 May 2006. It operates a website at [www.forever-driveways.co.uk](http://www.forever-driveways.co.uk).

According to the Nominet Whois database, the Domain Name was registered on 1 August 2006. At the date of the Complaint, the Domain Name resolved to a webpage hosted free by GoDaddy.com. It included the heading Forever Driveways and included two links, "Pattern Imprinted Concrete Lancashire" and "Pattern Imprinted Concrete Installers Lancashire" both of which resolved to the website at [www.elitedrivewayscd.co.uk](http://www.elitedrivewayscd.co.uk).

## 6. The Parties' Contentions

### Complainant

The contentions made in the short Complaint are as follows:

A business had been trading under the name Forever Drives & Patios Ltd, which was incorporated on 12 March 2003. On 16 July 2006 all "intellectual rights" of Forever Drives & Patios Ltd were transferred to the Complainant which had been incorporated on 15 May 2006. The Complainant has traded under the name Forever Driveways Limited since May 2006 and has advertised under that name and spent over £6,600 on various advertisements, examples of which are exhibited to the Complaint.

The Domain Name in the hands of the Respondent is abusive because it was registered unfairly to disrupt the Complainant's business. The website at [www.foreverdriveways.co.uk](http://www.foreverdriveways.co.uk) directs traffic to a local competitor called Elite Driveways as you can see by clicking on links on the website. The Domain Name has been used by the Respondent in a way which could confuse the public into believing that Elite Driveways was controlled by the Complainant.

The Domain Name is registered with incorrect name and address details. The Respondent's address is claimed to be "harwood lodge west, stich mi lane, bolton bl9 9az". However, this postcode in fact points to a road called A56 Manchester Road.

The homepage at [www.foreverdriveways.co.uk](http://www.foreverdriveways.co.uk) states at the bottom of the page "Copyright of Wayne Freeman". A Whois lookup of the domain name <[elitedrivewayscd.co.uk](http://elitedrivewayscd.co.uk)> shows the Registrant's name as "Wayne Freeman".

### Respondent

The Respondent has not filed any response to the Complaint.

## 7. Discussion and Findings:

### General

Although the Respondent failed to submit a Response to the Complaint, there is no scope for a decision in default under the Policy and Procedure. Under Paragraph 15c of the Procedure, the Complainant is still required under clause 2b of the Policy to prove to the Expert on the balance of probabilities 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.

### Complainant's Rights

"Rights" are defined in the Policy and in the Procedure. Rights "includes, but is not limited to, rights enforceable under English law".

The Complainant has made limited submissions and filed limited evidence as to its Rights in a relevant name. It has produced some evidence that it has taken a transfer of "Intellectual Rights" held by a company called Forever Drives & Patios Limited as at 7 July 2006 but those seem to be limited to the use of the name "Forever Drives" including some use of that name in advertising.

In addition, however, the Complainant was incorporated in May 2006 and the Complainant has stated that it has carried on business since that date under the name Forever Driveways. The Complainant asserts that it has incurred expenditure on advertising under that name of some £6,600 and it has produced evidence of its use of the name in advertisements in the Yellow Pages and on marketing leaflets. I also note from one of the copy advertisements produced by the Complainant that it operates a website at [www.forever-driveways.co.uk](http://www.forever-driveways.co.uk) but the Complainant has not made any submissions as to the extent of its use of that website.

There is no suggestion that the Complainant has a registered trade mark in respect of any relevant name.

The evidence of use by the Complainant of "Forever Drives" and "Forever Driveways" is modest. Nominet Experts have, however, consistently accepted that the threshold for establishing Rights in a name which is identical or similar to the Domain Name is a low one.

I do not consider that any rights or goodwill transferred to the Complainant from the company that had carried on business as Forever Drives & Patios contributes to any material degree. Nevertheless, the Complainant has adduced uncontroverted evidence of its use of the name Forever Driveways for a continuous period since May 2006 and advertising and marketing activities under that name throughout that period. I consider that this use could be sufficient to found a claim in passing off and that, accordingly, bearing in mind the low threshold required, the Complainant has established Rights in the name FOREVER DRIVEWAYS.

### Abusive Registration

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.

A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is set out in paragraph 3 of the Policy. These include:

3ai Circumstances indicating that the Registrant has registered or otherwise acquired the Domain Name primarily:

- C. for the purpose of unfairly disrupting the business of the Complainant;  
and

3aii 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; and

3aiiv It is independently verified that the Respondent has given false contact details to us.

The Respondent has not answered the Complaint and there is, therefore, no explanation as to the circumstances in which the Domain Name was registered. The Domain Name, however, resolves to a webpage hosted free by GoDaddy.com which features a picture of concrete paving and at least two links to a website at [www.elitedrivewayscd.co.uk](http://www.elitedrivewayscd.co.uk).

This is, apparently, a website operated by a competitor of the Complainant and there appears to be an explicit connection between the two websites in that the homepage of the site to which the Domain Name resolves includes the words "Copyright Wayne Freeman". According to a Whois search, the registrant of the domain name <elitedrivewayscd.co.uk> is Wayne Freeman. In addition, the name of the contact for the Respondent in Nominet's database is Wayne Freeman.

In the circumstances, it appears to be clear that there is a strong link between the Registrant of the Domain Name and Elite Driveways, the competitor of the Complainant. In the absence of a Response, we have no explanation from the Respondent as to why the Domain Name was registered or why it provides links to the Elite Driveways website. The obvious inference, however, is that the Respondent registered the Domain Name in order to take advantage of the name of the Complainant to direct Internet users looking for the Complainant to the Elite Driveways website. It follows that this is most likely to confuse people into believing that the Domain Name is registered to, operated or authorised by or otherwise connected with the Complainant.

In addition, the Complainant has submitted that the contact details for the Respondent are false. Although it is not appropriate for independent experts appointed by Nominet to undertake their own extended research for the purposes of deciding a complaint, it is common practice to view the website to which the Domain Name resolves and, in this case, I have in turn clicked on one of the links to see that it does still take the user to the website at [www.elitedrivewayscd.co.uk](http://www.elitedrivewayscd.co.uk).

This does appear to be a website operated by a competing business of the Complainant called Elite Driveways and I note that its address at the bottom of the homepage is stated to be Harwood Lodge West, Stitch Me Lane, Harwood, Bolton BL2 4JA. This is remarkably similar to the stated address of the Respondent to this Complaint according to the records of Nominet but with the name of the road slightly different and the postcode different. The obvious inference therefore is that the stated address of the Respondent is false. I also note that according to Nominet's records, the fax number for the contact of the Registrant is +44.11111111 – an obviously fictitious telephone number.

In all the circumstances, it is impossible to conceive that the Respondent could have a legitimate reason for registering the Domain Name comprising as it does the distinctive phrase FOREVER DRIVEWAYS. The Domain Name was registered shortly after the incorporation of the Complainant. I consider that the Domain Name was registered and has been used by the Respondent in a manner which takes unfair advantage of or is unfairly detrimental to the Complainant's Rights in the name FOREVER DRIVEWAYS and that the Domain Name, in the hands of the Respondent, is therefore an abusive registration.

## **8. Decision**

Accordingly, I find that the Complainant has 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. I therefore determine that the Domain Name be transferred to the Complainant, Forever Driveways Limited.

Ian Lowe  
27 March 2008