

DISPUTE RESOLUTION SERVICE

DRS 06985

Decision of Independent Expert

Carnival Plc

and

Principal Inspections Limited

1. The Parties:

Complainant: Carnival Plc

Address: Carnival House
5 Gainsford Street
London

Postcode: SE1 2NE
Country: UK

Respondent: Principal Inspections Limited

Address: Goose Cote Lane
3 Harewood Hill
Keighley

Postcode: BD22 7NN
Country: UK

2. The Domain Name(s):

<queenvictoria.co.uk> ("the Domain Name")

3. Procedural History:

The Complaint was submitted to and validated by Nominet on 11 March 2009. Between 11 and 16 March 2009 Nominet took steps to notify the Respondent of the Complaint by post and by email. The Respondent was informed in this correspondence that he had 15 working days, that is, until 1 April 2009 to file a response to the Complaint.

On 15 March 2009 the Respondent filed a Response. On 23 March 2009 the Complainant filed a Reply to the Response. On 26 March 2009 the case proceeded to the mediation stage. On 27 April 2009 Nominet notified the parties that mediation had been unsuccessful and invited the Complainant to pay the fee for referral of the matter for an expert decision prior to 12 May 2009 pursuant to paragraph 8 of Nominet's Dispute Resolution Service Procedure Version 3 ("the Procedure") and paragraph 7 of the corresponding Dispute Resolution Service Policy Version 3 ("the Policy"). The Complainant declined to pay the fee for an expert decision. On 30 April 2009 the Respondent paid the fee for an expert decision and the Parties agreed that the formal deadlines for payment by the Complainant and Respondent could be waived by Nominet in consequence of the Respondent's early payment.

On 1 May 2009, Andrew D S Lothian, the undersigned, ("the Expert") confirmed to Nominet that he was not aware of any reason why he could not act as an independent expert in this case. Nominet duly appointed the Expert with effect from 7 May 2009.

4. Factual Background

The Complainant is a well-known company incorporated in the United Kingdom which operates internationally in the luxury cruise market. Its Cunard Line fleet has contained some of the most famous ocean liners in history including the Queen Elizabeth (1940-1972) and the Queen Elizabeth 2 (1969-2008). The Complainant is the proprietor of two CTM registrations of marks featuring the name QUEEN VICTORIA, the earliest of which was applied for on 4 June 2003 and registered on 8 October 2004. It also maintains later registrations of marks in other jurisdictions such as the USA. It uses QUEEN VICTORIA as the name of an ocean liner within the Cunard Line. This vessel was launched in 2007 and is the second largest ship built under the Cunard banner.

The Respondent registered the Domain Name on 8 March 2003. The Respondent's sole owner and director is David Wrixon. [For convenience, the Expert will follow the Complainant's approach of treating the Respondent and David Wrixon as the same person and referring to them where appropriate as 'he']. The Respondent placed the Domain Name with the parking service

Sedo and in November 2008 the associated website featured advertising links including “Queen Victoria Cruises”, “Cunard Queen Victoria” and “Queen Victoria of England”.

5. Parties’ Contentions

Complainant

The Complainant points to its trade mark registrations of the word mark QUEEN VICTORIA. It submits that it has sold hundreds of millions of pounds of goods and services under these marks and that the marks have become famous. It therefore contends that it has rights in respect of a name or mark which is identical to the Domain Name.

The Complainant asserts that the Domain Name is an Abusive Registration. It notes the date of registration of the Domain Name and states that news of the construction of the vessel *Queen Victoria* circulated before that date and as early as 1999. It produces an article from the Travel Trade Gazette dated 19 April 1999 which states in part “Cunard Line is planning to build a second superliner...” and “Company President Larry Pimentel revealed that the second ship - which might be named Queen Victoria - could be built as early as 2005”. It notes the Respondent registered the Domain Name “just weeks before” the Complainant filed trade mark applications for QUEEN VICTORIA.

The Complainant states that “as recently as a few weeks ago” the Respondent used the Domain Name to provide a page of links to various commercial sites relating to leisure cruises. It notes that the linked sites offered bookings on the Complainant’s cruise ships and also on those of the Complainant’s competitors, such as Royal Caribbean, Norwegian Cruise Line, Disney Cruise Line and Celebrity Cruises. It produces a screenshot of the Respondent’s website dated 21 November 2008 and screenshots of some of the linked sites. The Complainant also notes that the Respondent recently took down this website upon receipt of a legal notice from the Complainant.

The Complainant asserts that it has not given the Respondent permission to use its trade marks and that the Respondent’s only business appears to be selling Internet domain names or profiting from “click-through” revenues on placeholder sites.

The Complainant submits that even if the Respondent states that it registered the Domain Name in ignorance of the Complainant’s Rights this does not explain away the use of the Domain Name to compete unfairly with the Complainant in the cruise business. It asserts that until the Respondent received the Complainant’s legal notice the Respondent had been profiting from a likelihood of confusion between the Respondent’s webpages and the Complainant’s trade marks in violation of paragraph 3(ii) of the Policy. It adds that if this were not true the Respondent would not have set about to attract Internet traffic intended for the Complainant nor to earn pay-per-click revenue for then redirecting that traffic. The Complainant notes that the use of

sponsored link advertising has been found to constitute an Abusive Registration in previous cases under the Policy.

The Complainant asserts that the Respondent's registration of the Domain Name is intended to block a registration by the Complainant in violation of paragraph 3(a)(i)(B) of the Policy, or to disrupt the Complainant's business in violation of paragraph 3(a)(i)(C) of the Policy.

The Complainant submits that the Respondent is engaged in a pattern of registering domain names, of which the Domain Name is part, that correspond to the names or marks of others in which the Respondent has no apparent rights in violation of paragraph 3(a)(iii) of the Policy, namely <testa.co.uk> and <maitake.co.uk> which were registered to David Wrixon, the owner of the Respondent and which were offered for sale by him on the online domain name trading forum <AcornDomains.co.uk>, as demonstrated by a screenshot of the posting concerned. The Complainant notes that both TESTA and MAITAKE are registered trade marks in the European Community.

Finally, the Complainant asserts that it has been independently verified that the Respondent has given false contact details to Nominet in violation of paragraph 3(a)(iv) of the Policy in that the Complainant attempted to deliver a letter by courier addressed to the Respondent at the address noted in the WHOIS and this delivery failed. The Complainant also notes that the registered office address for the Respondent's company, Principal Inspections Limited, is different from the address in the WHOIS for the Domain Name.

Respondent

The Response has been prepared by David Wrixon who notes that the Respondent, Principal Inspections Limited, is a "one man limited company" of which he is the sole owner and director. The company was incorporated in 2001 with a view to undertaking inspection of highway bridges within the UK. The Respondent contrasts the resources available to him in answering the Complaint with the resources available to the Complainant in bringing it.

The Respondent asserts that he has not given false contact details to Nominet. He states that Principal Inspections Limited's registered office address is that of its accountant and company secretary and offers evidence of use of the address on the WHOIS for the Domain Name, namely appropriately addressed invoices and an insurance schedule. The Respondent also notes that correspondence from Nominet in connection with the Complaint has been delivered successfully to the address on the WHOIS.

The Respondent admits that he has engaged in "the profitable business of trading domain names" but states that this has not been done with intent to infringe the rights of any party. However, the Respondent adds that he has disposed of his portfolio of domain names and now only has an interest in two, inclusive of the Domain Name. The Respondent notes that he has had

one previous approach from a rights owner regarding alleged encroachment on a trade mark for "Rock Financial". In that case he states that he transferred a domain name to the rights owner but adds that both then and now he was not aware that he had infringed anyone's rights. The Respondent admits that he has made mistakes with regard to intellectual property in the past and states that this has been a learning experience for him.

With regard to the Complainant's submissions on <testa.co.uk> and <maitake.co.uk>, the Respondent asserts that these were registered with the intention of bringing trade to a supplements business named ONA Europe Limited which was a franchisee of a business named Osumex. The Respondent states that one of the products offered was maitake mushrooms and another was testing kits for which the domain name <testa.co.uk> was to be aimed. The Respondent adds that a large number of domain names associated with the Osumex range of products were also registered but the company has since ceased trading and the domains have been dropped. The Respondent provides evidence via the Internet Archive to verify his status in 2005 as the UK distributor for Osumex. The Respondent adds that the list of domain names originally offered for sale on the forum referred to by the Complainant are generic and do not show a pattern of infringement but rather the opposite.

The Respondent explains he became involved in trading domains after he had unsuccessfully attempted to capture a particular domain name relating to bridge inspections when it was dropped by the previous registrant. The Respondent admits that he has used parking companies to earn revenue from domain names but states that this ended in April 2008 due to a dispute between him and Sedo. The Respondent notes that the payment which he received for the previous six months averaged less than £10 per month for the entire portfolio and that "there was not a lot of active management of the domain going on for that kind of return". Despite parting company with his parking provider, the Respondent notes that he had failed to change the nameservers for the Domain Name, which he states was an oversight.

The Respondent notes that he registered the Domain Name six years before the Complainant expressed an interest in it. The Domain Name was registered as part of the Respondent's activities in registering domain names which had been allowed to expire by previous registrants and the Respondent selected it because of its reference to the eponymous monarch and the common practice to name and brand "just about anything" by reference to her. The Respondent states that he intends to develop the Domain Name further in due course by developing a site relating to the Victorian era.

The Respondent notes that he parked the Domain Name with Sedo in 2003 and monitored the traffic, asserting that the advertisements were generated using the keyword "Queen". As evidence of this the Respondent points to the header on the Complainant's screenshot which states "Queenvictoria.co.uk - Queen Resources and Information".

The Respondent notes that advertising purchased either by the Complainant or the Complainant's agents might also have been directed to the term "Queen" and he points to a screenshot of a traffic analysis page from Google Business Solutions, which he states was the source of the sponsored advertising links on the website associated with the Domain Name. This shows that estimated clicks for the term "Queen" are 511-638 per day while those for "Queen Victoria" are 30-38 per day and those for "Queen Victoria Cruises" are zero. The Respondent also suggests that, while he cannot be certain of this, the Complainant may have deliberately selected this keyword to build grounds for the seizing of the Domain Name.

The Respondent states that there was no intent to infringe the rights of the Complainant and that the Domain Name was never specifically targeted at the cruise business. The Respondent asserts that he did not instruct Sedo to use keywords which would have targeted the Complainant's business, nor is he aware that any such keywords were used.

The Respondent states that the suggestion that his registration was in response to the Complainant's press release is absurd. He notes that the chain of events that caused him to acquire the Domain Name upon expiry began at least two years earlier when the previous registrant registered it. The Respondent admits that the Domain Name is an exact match for the Complainant's mark but states that this is simply because both parties are referencing the late monarch. The Respondent also challenges the distinctiveness of the Complainant's trade mark and suggests that it may be a specially protected emblem which would not be registrable without consent. The Respondent points to the wide variety of registered trade marks using the name across many different use classes. The Respondent goes on to discuss possible grounds for invalidity of the Complainant's trade mark.

The Respondent refutes the Complainant's argument on blocking and disruption. Finally, he points to the fact that <queenmary.co.uk> and <queenelizabeth.co.uk> are not registered to the Complainant and states that the Respondent could not reasonably have predicted by reference to these that the Complainant would be likely to have had an interest in the Domain Name. The Respondent produces a link to a webpage at wikipedia.org which indicates that *Queen Victoria* has been the name of at least two other vessels.

Complainant's Reply to Respondent's Response

The Complainant reasserts its rights in the QUEEN VICTORIA trade marks. It points out that the Respondent has not shown any prior use of the mark by other parties for cruise-related activities and asserts that the Complainant's rights are unassailable. It notes that while there may be many other trade marks for the same term in different use classes it was only the Complainant's mark which was being targeted by the activities of the Respondent. It submits that it has received the proper royal consent for the use of the name.

The Complainant notes that the Respondent remains responsible for the control of the Domain Name under reference to paragraph 4(e)(iii) of the Policy. The Complainant notes that the Respondent states that he monitored the traffic on the associated website. The Complainant notes that the Respondent does not state that he was unaware of the offending content of the Sedo-generated website. The Complainant also asserts that the Respondent admits that he continued to point the Domain Name to links to cruise services after having parted company with Sedo, under reference to the Respondent's failure to change the nameservers on the Domain Name.

The Complainant notes that the Respondent does not deny that he beneficially owned the Domain Name at all times relevant to this proceeding nor that the Domain Name was pointed to a website that targeted the leisure cruise business, nor that he has reaped commercial gain from the confusion caused. The Complainant founds on the Respondent's admission of having registered at least one additional domain name corresponding to a well-known name or mark – Rock Financial – in which he had no apparent rights. The Complainant asserts that in his explanation regarding the list of domain names posted on the forum the Respondent implies there are others he has not disclosed under reference to the phrase "As for the lists from Acorn Domains, these are a couple of names out of a list of clearly generic terms".

The Complainant states that the Respondent's proposals for future use of the Domain Name are a self-serving abstract and points to the fact that the Respondent has not implemented this plan in the many years that he has owned the Domain Name. The Complainant points out that even if the Expert determines that the Respondent did not intend to block the Complainant at the time of registration the Policy allows the Expert to find that the Respondent is still responsible for later abusive use of the Domain Name.

The Complainant notes that the Respondent makes reference to having made mistakes previously with regard to intellectual property but states his ignorance is no excuse and, given that the Respondent has admitted to profitable trading in domain names, the Complainant asserts that the Respondent should not be given the benefit of the doubt. The Complainant adds that it is telling that the Respondent should make a baseless allegation that the Complainant manipulated the content of the Respondent's web page.

6. Discussions and Findings

General

In terms of paragraph 2(b) of the Policy the onus is on the Complainant to prove to the Expert on balance of probabilities each of the two elements set out in paragraph 2(a) of the Policy, namely 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

Paragraph 1 of the Policy provides that Rights means "rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning".

The requirement to demonstrate Rights under the Policy is not a particularly high threshold test. Rights may be established in a name or mark by way of a trade mark registered in an appropriate territory, or by a demonstration of unregistered so-called 'common law rights'.

In the present case, the Complainant has produced evidence of two Community, one US and two United Arab Emirates registered trade marks for the term QUEEN VICTORIA. While the Respondent has criticised the term QUEEN VICTORIA as non-distinctive and has suggested that the Complainant's marks may possibly be capable of revocation, these are not arguments which assist the Respondent for the purposes of this question. The Complainant's trade marks have been duly registered in the jurisdictions concerned and are enforceable by the Complainant unless or until revoked in suitable proceedings. Finally, although the dates of application for and registration of the Complainant's trade marks post-date the registration of the Domain Name this does not have any significance for the Rights aspect of the Policy - what is required is that the Complainant possesses the Rights claimed as at the date of filing the Complaint.

It follows from the assessment above that the Complainant has proved to the satisfaction of the Expert, on balance of probabilities, that it has Rights in a name which is identical to the Domain Name, there being no distinction between upper and lower case characters, white space being impermissible in a domain name, and the first (.uk) and second (.co) levels of the Domain Name being disregarded for the purposes of comparison as is customary in disputes under the Policy.

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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;"*

This general definition is supplemented by paragraph 3 of the Policy which provides a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. Paragraph 4 of the Policy provides a similar non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration.

It will be noted from the above that the Policy provides that an Abusive Registration may arise at the point of registration of a domain name or by virtue of the manner in which a domain name has subsequently been used. In the present case, the Complainant contends that the Domain Name was an Abusive Registration both at the point of registration and also in consequence of its subsequent use by the Respondent. It is convenient to consider these two contentions separately.

Registration

The Complainant contends that the Respondent registered the Domain Name either primarily to block the Complainant from so doing or primarily to cause unfair disruption to the business of the Complainant, effectively submissions in terms of paragraph 3(a)(i)(B) or 3(a)(i)(C) of the Policy respectively. For either of these submissions to have been made out, it is necessary for the Respondent to have been aware of the Complainant's Rights before he registered the Domain Name.

It is important to note that as at the date of registration of the Domain Name the Complainant's vessel was some four years away from being launched (though it may have been under construction - the Complainant does not state when building commenced) and that at that date the Complainant had not yet filed any trade mark applications. The Complainant notes that the Respondent registered the Domain Name "within weeks" of the filing of its trade mark applications but it should be borne in mind that the Domain Name was registered first. As such, the proximity of the Complainant's trade mark applications to the registration of the Domain Name is of no consequence.

How therefore can the Respondent have registered the Domain Name with the Complainant's Rights in mind? The Complainant's case is that the Respondent would have been aware of the Complainant's intention to name its next vessel the *Queen Victoria* because news of this circulated long beforehand and as early as 1999. In support of this contention, the Complainant produces an extract of a single published article on the subject, namely the Travel Trade Gazette article of 19 April 1999. This states that Cunard was planning a second superliner which *might* be named Queen Victoria [Expert's emphasis].

For his part, the Respondent flatly denies registering the Domain Name with any awareness of the Complainant's Rights and states that he selected the Domain Name for its generic value as a reference to eponymous monarch and the common practice to name "anything" by that name. He candidly states that he registered the Domain Name in the course of what is

sometimes called “drop catching” - the registration of domains immediately they become available following the previous registrant’s failure to renew.

Having carefully considered the contentions of the Parties, the Expert is satisfied that the Respondent’s submissions are to be preferred on this point. The Complainant’s production of a single article in what is evidently the travel trade press which includes mere speculation upon the possible name of the Complainant’s new vessel is insufficient to prove on balance of probabilities that the Respondent would have had any knowledge of the Complainant’s intentions as at the date of registration of the Domain Name. There is nothing before the Expert which indicates the level of publicity given to the Complainant’s announcement of the intended name of the vessel, nor of the date when this was announced in a manner which might likely have come to the notice of the Respondent.

Furthermore, in the Expert’s view, even if the Respondent had known of the Complainant’s intention to name a vessel the *Queen Victoria* this would not necessarily render his registration of the Domain Name an Abusive Registration, given that the name has wide and varied generic uses. While the Complainant asserts that its mark has become famous in connection with its cruise liner, it does not attempt to claim an overwhelming secondary meaning for Queen Victoria (that is, where a generic name has developed a meaning in the minds of consumers which relates primarily to the Complainant’s mark) nor would the Expert necessarily have accepted any such claim.

The Appeal Panel in Oasis Stores Limited v. J Dale (DRS 06365) dealt with a similar question, regarding the domain name <oasis.co.uk>, in this manner:-

This is not a case where the word is a made up word which, if contained within a domain name, inevitably raises at least an inference that it will be associated with the party most commonly associated with the word. In such cases an Expert can infer that the purpose of the purchase was to take advantage of that connection. It would for example be relatively easy to infer (at least absent any credible explanation) that a third party purchasing, say, kodak.co.uk intended to take advantage of the name and reputation enjoyed by the well known Kodak company. The same is not true where the name comprises a common English word where any number of uses may be perfectly unobjectionable – particularly where, as here, the evidence shows a large number of trade marks for that word co-exist.

The Expert submits that this reasoning is entirely apposite in the present case and that while the Appeal Panel was dealing with a common English word the same applies to a common English name or phrase such as Queen Victoria which can be found in many different guises.

As far as the submissions of the Respondent are concerned on this point, his explanation that he selected the name in 2003 (1) as the previous registrant

was allowing it to expire and (2) for its generic value as a reference to the late monarch is entirely plausible. While the Respondent does mention the trend for people to name “anything” after Queen Victoria as one of his reasons for selecting the Domain Name this is not especially supportive of the Complainant’s position. There is nothing in the evidence which demonstrates that it was the Complainant’s intention to use the name Queen Victoria which was behind the Respondent’s decision to register the Domain Name.

The Expert is fortified in this view by the fact that the Respondent has demonstrated to the satisfaction of the Expert (as discussed in greater detail below on the subject of the use of the Domain Name) that while he placed the Domain Name with a pay per click parking service upon its registration in 2003 he did so with reference to the keyword “Queen” which appears in the Complainant’s screenshot at the top of the page. The Respondent does not appear to have selected any keywords which might have been relevant to the business of the Complainant. The Expert takes this as further confirmation that the Respondent was focusing upon the eponymous monarch and/or generic uses for the Domain Name rather than to target the name of the Complainant’s cruise ship.

Use

Turning to the question of the subsequent use of the Domain Name, the contentions of the Complainant focus first on the likelihood of confusion (per paragraph 3(a)(ii) of the Policy) caused by the Respondent’s sale of traffic on the associated website. The site displayed a series of links to other websites which offered bookings on the Complainant’s cruise ships and also on those of the Complainant’s competitors. The Complainant also notes in general terms that the Respondent is a dealer in domain names and is engaged in profiting from click-through revenues.

The current version of the Policy specifically addresses these issues in paragraphs 4(d) and (e) which provide:-

- d. Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves lawful activities. The Expert will review each case on its merits.*
- e. Sale of traffic (i.e. connecting domain names to parking pages and earning click-per view revenue) is not of itself objectionable under the Policy. However, the Expert will take into account:*
 - i. the nature of the Domain Name;*
 - ii. the nature of the advertising links on any parking page associated with the Domain Name; and*
 - iii. that the use of the Domain Name is ultimately the Respondent’s responsibility.*

Accordingly, while the Complainant has noted that the Respondent deals in domain names and sells traffic these activities of themselves are not objectionable under the Policy. That said, the Expert is required to consider the case on its merits and to take into account the listed factors.

In the present case, there is no dispute between the Parties that the Domain Name was placed on a parking service bearing sponsored links which ultimately targeted the business of the Complainant. The Complainant's case on abusive use is straightforwardly expressed. It states that even if the Respondent did not register the Domain Name in the knowledge of the Complainant's rights this does not explain away his use of the Domain Name to compete unfairly with the Complainant via the sale of traffic. The Respondent, however, asserts that his intent with regard to the sale of traffic on the Domain Name related entirely to the generic value of the term Queen Victoria, that he placed the Domain Name with the parking service Sedo in 2003 relative to the keyword "Queen" before being aware of the Complainant's Rights and has not changed this since. The Respondent goes on to suggest that the presence of cruise-related links on the parking page may have been generated by the activities of the Complainant or its agents. The Complainant states that this is a baseless allegation.

It can therefore be seen that the Parties' contentions on use are closely connected with the manner of operation of the parking page concerned, the significance of the keyword said to have been adopted by the Respondent and the question of whether the Complainant or its agents had the power to and did influence the content. The workings of the parking page are therefore of crucial importance.

Similar questions arose in Oasis Stores Limited. In that case, the Appeal Panel noted:-

The Panel in this case is aware in general terms of the nature of parking pages and how they operate and potentially earn revenue if the content of the page generates "click through" traffic by visitors to the page clicking on links found on the page. The Panel does not however profess to have a detailed understanding of the inner workings of such pages. Given that the content of those pages may be generated automatically (by what may well be relatively sophisticated proprietary software) and may also operate in a particular way based on certain parameters specified by its owner, some caution is needed in reaching any conclusion based on simply looking at a page, without further explanation. Where (as here) the exact way in which the page behaves, and the reasons for that behaviour, are of significance then detailed explanation as to what exactly is going on is likely to be of considerable assistance to the Expert or the Panel. That is conspicuously lacking in this case.

Unfortunately, such a detailed explanation is similarly unavailable to the Expert in the present case. The decision of the Appeal Panel in Oasis was

published just a few days too late for it to have been seen by the Parties and it is evident from the lack of guidance in the Complaint that the Complainant has not independently reached the view that it should have provided any evidence of the workings of the parking page concerned or commented upon the Respondent's contentions regarding keyword selection. The Expert has only the relative passages in the Response to go on. The first is of some significance and so is worth quoting *verbatim*. The Respondent states:-

I willingly concede that I have done little with the name since owning it, apart from parking it with Sedo, where I monitored the traffic. This was done back in 2003 shortly after registering it, to my knowledge and it was parked using the keyword "Queen" which seems generic enough to my way of thinking.

In Reply, the Complainant merely notes that the Respondent (1) does not deny awareness of the offending content and (2) admits that he monitored the traffic to the site. The Complainant does not appear to have appreciated the possibility that there is a difference between monitoring traffic to a website and monitoring the content of the links on that site. Accordingly, the Expert does not believe that there is any significance in the Respondent's admission on monitoring. Neither does the Expert consider that the Respondent's failure to deny expressly an awareness of the offending content is of any particular import. In the Expert's view, such a denial may readily be inferred from the Respondent's assertion that he parked the Domain Name after registration with an inoffensive keyword, that he did not instruct Sedo to use keywords that would directly target the potential client base of the Complainant, and that he is not aware that Sedo has ever used such keywords. What is particularly important is that the Respondent does deny taking any action which may have influenced the generation of content targeting the Complainant's rights.

Absent any guidance from the Complainant on the manner of operation of the Sedo parking page, the Expert considers that it is reasonable to accept the Respondent's explanation that the content of the webpage has been generated via the inoffensive keyword "Queen" with which he parked the Domain Name in 2003. There is some support for the Respondent's selection of this keyword in the evidence, namely the fact that the title of the page shown on the Complainant's screenshot states "Queenvictoria.co.uk - Queen Resources and Information".

While the Expert has not been provided with any historic screenshots of the website associated with the Domain Name, it is evident that at some point, and possibly only after the launch of the Complainant's vessel in 2007, some of the links on the Respondent's website began to target the rights of the Complainant (but not all - "Queen Victoria of England" is clearly a reference to the monarch). The Expert accepts the Respondent's assertion that he did nothing to bring this about. There is no evidence that he did so, and what evidence there is points to an intention at the time of parking to use the Domain Name with reference merely to the keyword "Queen", consistent with the Respondent's explanation that he was thinking of Queen Victoria the

monarch, not the vessel. That said, the Expert also accepts the Complainant's denial that it too did nothing to manipulate the content.

It is perhaps the case that following the rise to prominence of the Complainant's vessel, third parties, be they agents or competitors of the Complainant, may have purchased keyword advertising which has caused the offending links to appear on the Respondent's website. Since neither party has provided detailed evidence on the manner in which the content of a parking page can be influenced either (1) by the person parking the domain name or (2) by the purchase of advertising or keywords by third parties, this is simply the Expert's reasoned conjecture. While the Respondent attempts to show by reference to an extract from Google Business Solutions that the keyword "Queen" is more attractive from the point of traffic generation than "Queen Victoria" or "Queen Victoria Cruises" this does not add anything to the Expert's understanding of the circumstances.

In the case of MySpace, Inc v Total Web Solutions Limited (DRS 04962) the Appeal Panel were faced with a rise to prominence of the complainant's rights which occurred after registration of the disputed domain name and which had in turn led to the changing of automated website content apparently without the direct intervention of the respondent. On this topic, the Appeal Panel commented:-

However, the registration of domain names is still a first-come-first-served system and the Panel is reluctant to place any duty on a registrant, who has merely had the good fortune (or maybe ill fortune) to register a name in good faith, which subsequently, through no fault of his own, acquires notoriety, provided that he does nothing actively to exploit his position. [Appeal Panel's emphasis].

That passage was also referred to with approval by the Appeal Panel in Oasis Stores Limited. Given that the evidence in the present case indicates that the Respondent most probably acquired the Domain Name in good faith, and likewise that he most probably did not do anything which exploited his position after the name of the Complainant's vessel the *Queen Victoria* achieved notoriety due to the promotion of cruises by the Complainant and its agents, it follows that the Complainant in the present case has failed to prove that the Domain Name is an Abusive Registration on this ground.

It is perhaps worth adding that the Expert considers that a respondent's actions once on notice of a complainant's cause for complaint can be significant in a case of this type where the respondent claims that offending content has been generated automatically and inadvertently. In the Expert's view, the fact that the Respondent removed the advertising links from the website after having been contacted by the Complainant's lawyers is entirely consistent with the general thrust of his case that he had no intention to target the Complainant's rights and has no desire to do so in the future.

The Complainant makes a further submission regarding paragraph 3(a)(iii) of the Policy. This paragraph provides that it may be evidence of an Abusive Registration where:

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;

The Complainant produces a print of a posting on the online forum <AcornDomains.co.uk> made by the username 'DWrixon' dated 15 February 2006. The posting provides a list of some eighty or so .uk domain names which are offered for sale at £50 each. The Complainant asserts that these are the Respondent's domain names and focuses on <testa.co.uk> and <maitake.co.uk> which it states are trade marks of third parties. However, with regard to "maitake" it is evident from the two trade marks provided by the Complainant, namely YUKIGUNI MAITAKE and MAITAKE D-FRACTION, that the term "maitake" is the name of a species of mushroom (this is evident from the fact that it is referenced throughout the applicable goods and services of one of the marks, for example as "foodstuffs containing Maitake mushrooms").

The Respondent states that the two domain names identified by the Complainant were registered in connection with his supplements business named ONA Europe Limited and that all of the other domain names quoted in the forum list are generic. The Respondent provides evidence from the Internet Archive that his supplements business existed and that he was the official point of contact in the UK for the franchiser, Osumex. In addition to asserting that this business offered maitake mushrooms, the Respondent states that the <testa.co.uk> domain name referred to testing kits.

The Expert has no reason to disbelieve the Respondent's explanations for the registration of the two domain names and indeed the portfolio set out in the forum posting taken as a whole does have the appearance of a list of generic names. Among the names are others relevant to a supplements business such as <omegaoils.co.uk> and <lactobacillus.co.uk> which lends credibility to the Respondent's contention. Furthermore, the wording of the Policy requires that the Domain Name itself be part of the pattern contended for and the Expert cannot identify anything whatsoever which might link <testa.co.uk> and <maitake.co.uk> with <queenvictoria.co.uk> in any particular pattern, abusive or otherwise.

In its Reply, the Complainant makes two further points. It states that the Respondent's explanation indicates that there are other domain names which he has not disclosed, based upon his statement "As for the lists from Acorn Domains, these are a couple of names out of a list of clearly generic names". The Expert does not agree that this statement is capable of bearing any meaning that the Respondent is in some way holding something back; he is merely commenting upon the two domain names selected by the Complainant

from the forum listing. Secondly, the Complainant seeks to extend its submissions on the pattern of registrations itself. This is because, in the Response, the Respondent candidly admits to having received an approach in the past from the owner of the trade mark “Rock Financial” regarding a particular domain name. The Respondent notes that while he did not believe that the domain name concerned infringed that party’s rights, after an initial altercation he agreed to transfer it. He does not specify the domain name itself.

The Complainant states that the Respondent’s revelation amounts to an admission that he has registered at least one additional domain which corresponds to a well-known name or mark in which he had no apparent rights. The Expert does not agree. In the Expert’s view, the fact that the Respondent admits to having been on the receiving end of correspondence from a trade mark owner and having subsequently agreed to the transfer of a domain name cannot on its own be taken as an admission of any kind of wrongdoing nor is it evidence of the making of a pattern of registrations within the meaning of paragraph 3(a)(iii) of the Policy.

The Complainant makes a further submission relating to paragraph 3(a)(iv) of the Policy which provides that where it is independently verified that the Respondent has given false contact details to Nominet this may be evidence of Abusive Registration. While the Complainant is able to demonstrate that its courier was unable to deliver a package to the address provided by the Respondent to Nominet, the Respondent has provided ample evidence that this address is valid and correct, together with a perfectly reasonable explanation as to why it differs from the registered office address of Principal Inspections Limited.

Finally, the Complainant criticises the Respondent’s submission that he plans to use the Domain Name in connection with a website relating to the Victorian era. The Complainant states that this is self-serving and does not confer any rights in the name Queen Victoria upon the Respondent. Furthermore, the Complainant notes that the Respondent has been in possession of the Domain Name for many years without bringing these plans to fruition. The Expert does not believe that there is any merit in the Complainant’s comments on the Respondent’s stated plans for the Domain Name. As is demonstrated from the Appeal Panel’s decision in MySpace, *provided that the Respondent does nothing to actively exploit his position vis à vis the Complainant*, the Respondent is entirely free to use the Domain Name as he sees fit.

Accordingly, in all of the above circumstances, the Expert finds on balance of probabilities that the Domain Name, in the hands of the Respondent, is not an Abusive Registration.

7. Decision

The Expert finds that the Complainant has proved that it has Rights in a name or mark which is identical to the Domain Name but has not proved that the

Domain Name, in the hands of the Respondent, is an Abusive Registration. The Expert therefore directs that no action be taken with regard to the Domain Name.

Signed
Andrew D S Lothian

Dated 20 May, 2009