

Nominet UK Dispute Resolution Service

DRS 07549

Hay House, Inc v Gillian Bowles

Decision of Appeal Panel

Dated: 17 February 2010

1. Parties:

**Complainant/
Appellant:**

Hay House, Inc.

Address: West Carlsbad
California
USA

Respondent Gillian Bowles

Address: Penarth
Cardiff

Country: UK

In this decision, for simplicity's sake, we refer to the Complainant/Appellant as "the Complainant" and the Respondent as "the Respondent".

2. Domain Name in dispute:

<healyourlifeteachertraining.co.uk>

This domain name is referred to below as "the Domain Name"

3. Procedural Background:

21/07/2009 Complaint lodged with Nominet

28/07/2009 Complaint sent to Respondent

05/08/2009 Response received

06/08/2009 Response sent to Complainant

20/08/2009 Mediation process commenced

04/09/2009 Mediation process terminated without settlement

30/09/2009 Fees for Expert Decision received from Complainant

12/10/2009 Mr Niall Lawless appointed as expert

02/11/2009 Expert Decision issued to the parties by Nominet

17/11/2009 Notice of intent to appeal received from Complainant
together with the appropriate deposit fee

08/12/2009 Balance of Appeal payment received

21/12/2009 Appeal Notice forwarded to Respondent

08/01/2010 Appeal Response received and copied to Complainant

15/01/2010 Tony Willoughby selected as chair of Panel; Claire Milne and Ian Lowe selected as co-panellists

Each of Tony Willoughby, Claire Milne and Ian Lowe (the undersigned, "the Panel") have individually confirmed to the Nominet Dispute Resolution Service that:

"I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of a such a nature as to call in to question my independence in the eyes of one or both of the parties."

This is an Appeal against a Decision at first instance in favour of the Respondent. The Panel for this Case was appointed to provide a decision on or before 24 February, 2010. This process is governed by version 3 of the *Procedure for the conduct of proceedings under the Dispute Resolution Service* ("the Procedure") and the Decision is made in accordance with version 3 of the *Dispute Resolution Service Policy* ("the Policy"). Both of these documents are available for inspection on the Nominet website (<http://www.nominet.org.uk/disputes/drs>).

4. The Nature of This Appeal:

The Policy §10a provides that: *"the appeal panel will consider appeals on the basis of a full review of the matter and may review procedural matters"*.

The Panel concludes that insofar as an appeal involves matters other than purely procedural complaints the appeal should proceed as a re-determination on the merits. Accordingly, the Panel does not propose to undertake a detailed analysis of the Expert's decision and will only refer to the Expert's decision where the Panel feels it would be helpful to do so.

5. Formal and Procedural Issues:

The Complainant claims not to have received the Response, hence the failure to file a Reply. However, the Complainant accepts that when the Response was sent out by Nominet to the Complainant, it was correctly addressed.

There is no suggestion therefore that Nominet failed to comply with its service obligations under the DRS Procedure.

The Panel accepts what the Complainant says on this score and draws no adverse inferences from the failure to file a Reply. Furthermore, it notes that the Complainant, through its Appeal, has now had a full opportunity to comment on the Response.

Like the original Expert, the Panel regards the material described in the Complainant's explanatory paragraph for a non-standard submission as essentially irrelevant, and therefore has not taken account of the non-standard submission.

The Panel also notes the Respondent's concern at the Complainant's submission of new Annexes in the Appeal, apparently contravening Paragraph 18(c) of the Procedure. In fact these Annexes simply provided the full text of previous Nominet decisions referred to in support of the Appeal. All parties to Nominet cases are entitled to assume that experts will have access to previous Nominet cases, and so the Panel chooses to overlook this apparent contravention.

6. The Facts:

The Complainant, Hay House, is a publisher founded in 1984 by Louise Hay, an authoress.

In 1976 Ms Hay wrote a pamphlet entitled *Heal Your Body*. According to her website "She began travelling throughout the United States, lecturing and facilitating workshops on loving ourselves and healing our lives."

In 1984 the *Heal Your Body* pamphlet was enlarged and extended into a book entitled *You Can Heal Your Life*. That book became a best seller and subsequently got turned into a film. At around the same time Louise Hay began offering a two day workshop LOVE YOURSELF, HEAL YOUR LIFE to the public in the United States.

In the early 1990s Louise Hay ceased teaching and Dr Patricia Crane took over from her.

In October/November 1999 the Respondent attended a *Louise L Hay Teacher Training Course* taught by Dr Crane in Ireland, which resulted in a certificate certifying that the Respondent "has completed the requirements to be an authorised teacher for the *You Can Heal Your Life Study Course* and the *Love Yourself, Heal Your Life Workshop*."

In September 2000 the Respondent attended a *Louise L Hay Advanced Teacher Training Course* taught by Dr Crane in San Diego, which resulted in a certificate reading "This certificate of Completion has been awarded to Gillian Bowles".

On 4 November, 2003 the Respondent placed an advertisement in *The Lady* reading as follows: "HEAL YOUR LIFE – Louise Hay transformational week-end workshop, 25/26 November" and followed by payment and contact details.

From 2003 to 2009, the Respondent ran 18 week-end workshops under the title "Heal Your Life Weekend Workshop" and three other workshops, each having a title including the expression, "Heal Your Life".

In July 2008 (but from a date unknown to the Panel) Dr Crane was running HEAL YOUR LIFE, ACHIEVE YOUR DREAMS

WORKSHOP LEADER CERTIFICATION workshops culminating in a certificate from Dr Crane that the attendee "has completed all requirements and is an authorised leader of Heal Your Life Workshops and Groups based on the philosophy of Louise Hay".

On 8 October, 2008 the Respondent registered the Domain Name.

On 14 October, 2008 the Complainant applied for registration of the word mark HEAL YOUR LIFE in classes 9, 16 and 41 as a Community Trade Mark. The registration came through on 20 May, 2009. This mark is the subject of cancellation proceedings initiated by the Respondent on the basis that it is not a registrable mark (e.g. it is devoid of any distinctive character), the mark was applied for in bad faith and the Respondent has earlier rights.

On 6 November 2008 the Complainant applied for registration of the figurative mark HEAL YOUR LIFE (in stylised form and featuring the device of a heart) in classes 9, 16 and 41 as a Community Trade Mark. The registration came through on 10 June, 2009.

On 20 November, 2008 the Complainant's lawyers wrote to the Respondent asserting trade mark rights in respect of the expression HEAL YOUR LIFE and demanding cessation of use of that expression and transfer of the Domain Name.

On 10 December, 2008 the Respondent replied denying the allegations and claiming earlier rights in the expression HEAL YOUR LIFE on the basis that she had been using the expression for her courses for some years. She pointed out that she had spent a substantial sum of money on the training courses she had attended and that she was entitled to run courses based on the training which she had received from Dr Crane. She asserted that the Domain Name accurately described her business. She further contended that the suggestion that she was bound by some form of contractual relationship with Dr Crane was misconceived.

According to Dr Patricia Crane, who has made a declaration in support of the complaint, her company, Heart Inspired Presentations LLC, "is authorised to grant written sub-licences for use of the mark HEAL YOUR LIFE to individuals who have completed a workshop leader training course based upon the teachings and writings of Louise L. Hay." News of the licence was communicated to the Respondent on 18 February, 2009 by way of an email to the Respondent from Dr Crane and her partner. Neither the content nor the date of this licence has been provided to the Panel.

The Domain Name is connected to a website the home page of which is headed "**Heal Your Life Teachers – Home**". The introductory paragraph commences "This site is all about how to become a **Heal Your Life Teacher** and running your own **Heal Your Life Workshops**". The site features a "Frequently Asked Questions" section in which the first question is "Is Your Course associated with Hay House or Louise Hay?" to which the answer

is "No. The Heal Your Life Teacher Training is based on the works of Louise Hay and other spiritual leaders, but has no direct association with Hay House or Louise Hay."

7. The Parties' Contentions:

The parties' contentions are set out in some detail in the Expert's decision at first instance. In summary they are substantially as follows:

The Complainant

The Complainant has rights in the expression HEAL YOUR LIFE arising from the book published by the Complainant in 1984 and written by its founder, Louise Hay, entitled "YOU CAN HEAL YOUR LIFE". The book was a best seller and was followed by a film. Louise Hay ran workshops and courses under and by reference to names including the expression. The Complainant applied for Community Trade Mark protection for the expression in 2008 and registrations came through in 2009.

The Complainant contends that the expression/mark in which it has rights is similar to the Domain Name.

The Complainant contends that the registration is an Abusive Registration, because it was registered at a time when the Respondent knew that she had no rights or legitimate interests in respect of it and also knew that all relevant rights to the name were owned by the Complainant.

The Complainant acknowledges that in 1999 and 2000 the Respondent satisfactorily completed two of its courses run by its licensee, a Dr Crane. Those courses, however, only entitled the Respondent to act as a leader on such courses with the benefit of the oral licence granted by Dr Crane. They did not entitle her to offer teacher training and still less to use the expression HEAL YOUR LIFE in relation to courses developed by the Respondent and featuring materials influenced by the philosophies of persons other than Louise Hay.

The Complainant further contends that such oral licence as the Respondent may have had from the Complainant (through Dr Crane) to use the expression HEAL YOUR LIFE was terminated by the Complainant in April 2009.

The Complainant contends that the Respondent registered the Domain Name without authority and for the purpose of attracting to herself business which would otherwise have gone to the Complainant.

The Complainant further contends that in operating her website connected to the Domain Name the Respondent is infringing the Complainant's copyright and is offering for sale materials which infringe the Complainant's copyright.

The Respondent

The Respondent contends that the expression HEAL YOUR LIFE is descriptive and unregistrable as a trade mark. The Respondent contends that the only rights which the Complainant has in respect of the expression HEAL YOUR LIFE are the two Community Trade Marks which the Complainant applied for in October 2008 after the Respondent registered the Domain Name and which came through to registration in

2009. She contends that one, an ornate device mark, has never been used in the United Kingdom and should be ignored and that the other, the word mark, should also be ignored because it is currently the subject of cancellation proceedings which she has initiated.

The Respondent contends therefore that the Complainant has no rights in a name or mark which is identical or similar to the Domain Name.

The Respondent asserts that she invested significant time and expense in attending the teacher training courses run by the Complainant in 1999 and 2000 and that those running the courses knew and intended that she would run similar courses in the United Kingdom.

The Respondent denies that she has ever been in contractual relations with either the Complainant or Dr Crane save in relation to her attendance at the courses in 1999 and 2000. Specifically she denies that she has ever been subject to any licence in respect of the use of the expression HEAL YOUR LIFE. The Respondent denies that the Complainant has any right to exercise control over her use of the expression HEAL YOUR LIFE.

The Respondent contends that what she has done in relation to the expression HEAL YOUR LIFE she has been entitled to do. Since 2000 she has conducted over 20 workshops based on the philosophies of Louise Hay and others. She contends that she started out by doing no more than what she was taught to do and then developed her programme as she saw fit. She contends that there is no scope for confusion because her website makes it clear that she is not connected to the Complainant. Further, contrary to what is asserted by the Complainant, for her teacher training courses which she started in April of 2009, attendees must have previously attended one of her other courses. Accordingly, attendees on her teacher training courses will already be aware that the Respondent is not associated with the Complainant.

As to the Complainant's assertion that Dr Crane is the only person authorised to appoint teacher trainers for HEAL YOUR LIFE workshops and courses, the Respondent contends that in about 2001 the Complainant and Dr Crane fell out and that if they are now in contractual relations, this is likely to have occurred very recently and around the time when the Complainant's lawyers wrote to her in late 2008.

The Respondent asserts that she has been running her workshops for nearly 10 years based upon what she learnt at the Complainant's courses for which she paid. Over the same period she asserts that Dr Crane has been running her own courses under the title HEALING LIVES, ACHIEVING DREAMS. The Respondent contends that for most of that period Dr Crane was operating separately from the Complainant. The Respondent contends that the Complainant and Dr Crane, having got back together again, are now seeking unfairly to disrupt their competition.

8. Discussion and Findings:

The factual background to the reasoning below is to be found in section 6 above.

General

In order for the Complainant to succeed it must (pursuant to Paragraph 2 of the Policy) prove to the Panel, on the balance of probabilities, **both** that:

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

the Domain Name, in the hands of the Respondent, is an Abusive Registration as defined in Paragraph 1 of the Policy.

The meaning of 'Rights' is clarified and defined in the Policy in the following terms:

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;

If the Complainant satisfies the Panel that the Complainant has relevant rights, the Panel must address itself to whether the registration by the Respondent of the Domain Name is abusive.

An Abusive Registration is defined in the Policy as follows:

Abusive Registration means a Domain Name which either:

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

has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights;

The Issues before the Panel

Rights

There is a dispute between the parties over the Complainant's rights in respect of HEAL YOUR LIFE; however there is no dispute that the Complainant has a Community Trade Mark in respect of that expression.

The issue is whether that registration should be ignored because it is subject to cancellation proceedings and whether the Panel should reach some view on the arguments put forward by the Respondent in support of the cancellation action in deciding whether or not the Complainant has Rights under the Policy.

The Panel cannot ignore the Community Trade Mark registration. It is valid unless and until it is cancelled. It is also not

appropriate for the Panel to express a view at this stage on whether the cancellation action is likely to succeed.¹

The Panel concludes that the registered trade mark HEAL YOUR LIFE is similar to the Domain Name, a domain name which comprises HEAL YOUR LIFE and the descriptive addition 'teachertraining'.

The Complainant has overcome the first hurdle.

Abusive Registration

Accordingly, the Panel now has to focus its attention on whether or not the Domain Name is an Abusive Registration in the hands of the Respondent.

As indicated above, a domain name can be an Abusive Registration either because it was registered with abusive intent or because it has been used in an abusive manner.

The Complainant alleges both abusive registration and abusive use.

From the Complaint and indeed all the papers put before the Panel on this appeal the Complainant's primary case appeared to the Panel to be that by the time the Respondent attended the Complainant's courses in 1999 and 2000, the Complainant had acquired rights in respect of the expression HEAL YOUR LIFE and that Dr Crane was the exclusive worldwide licensee of the Complainant and by virtue of that licence entitled to grant authorisations for third parties to use the HEAL YOUR LIFE name. The Respondent had been granted an oral licence to conduct HEAL YOUR LIFE courses (a licence which was revoked in April 2009), but had never been granted permission to use the name in relation to teacher training courses.

Accordingly, the Complainant's case is that since April 2009 when such oral licence as the Respondent may have had was terminated, the Respondent has been using the name HEAL YOUR LIFE without permission and the Domain Name is deceptive. Visitors will believe it to be an authorised site and will believe that the teacher training offered under/through it is the real thing i.e. that espoused by Louise Hay and her licensee, Dr Crane.

On that case much depends upon the nature of the licence. What were its terms? What were its limits? To what extent did it expressly limit the scope of what the Respondent could teach under and by reference to the HEAL YOUR LIFE name?

¹ In another case this might have been a relevant consideration to weigh in the balance when coming to consider the issue as to whether the Domain Name was registered or used in a manner that took unfair advantage or was unfairly detrimental to those Rights.

On these matters, the Panel has no information before it beyond unsupported assertions. In fact, the Panel's impression from the evidence provided is that, rather than attempting to limit the use of the HEAL YOUR LIFE name, the Complainant wanted to spread its use by certified trainers in the philosophy and methods founded by Louise Hay. If there was such a licensing arrangement in place as is asserted by the Complainant, how is it that the Respondent was able to operate unchecked until late 2008? Was it a coincidence that the Complainant filed for trade mark protection in Europe a few days after the Respondent registered the Domain Name? Was the Respondent correct in her assertion that from about 2001 to 2008, Dr Crane was operating her workshops under the HEALING LIVES, ACHIEVING DREAMS title without any authority from the Complainant?

For her part, the Respondent states that she attended the Complainant's courses in 1999 and 2000 with the intention of starting her own HEAL YOUR LIFE courses in the United Kingdom and that this was known to Dr Crane who conducted both those courses. She also states that since completing these courses she has on occasion been invited to attend Dr Crane's UK training courses as a guest speaker and to help out when numbers were large, and has been glad to do so. She contends that she was under no contractual restrictions and has in good faith offered HEAL YOUR LIFE courses based upon the philosophies of Louise Hay and now others. She believes that her training and experience has enabled her to offer teacher training and contends that there is no reason why she cannot legitimately do so.

The Panel finds the Respondent's argument persuasive. Furthermore, the Panel is concerned that it has not been given as full an account as it could have been given in relation to the contractual relationships that the Complainant has and has had with Dr Crane and the contractual limitations placed upon attendees at the Complainant's courses. The Panel notes that no documentation was produced by the Complainant in support of its contentions in that regard. On the evidence before it, the Panel concludes that in all the circumstances the Complainant does not have the right to exclude all others from using the expression HEAL YOUR LIFE, and that the Respondent, in registering the Domain Name and in using it as she has done, has not rendered the Domain Name an Abusive Registration under the Policy.

As to the allegations of copyright infringement, so far as they may be relevant, the Panel has no evidence before it upon which it can sensibly make any finding either way.

It is for the Complainant to prove its case, not for the Respondent to prove her defence. Accordingly, the Panel is not satisfied on the evidence put before it that the Domain Name in the hands of the Respondent is an Abusive Registration.

The Respondent has suggested that this is a case of Reverse Domain Name Hijacking. The Panel does not on balance support that view.

9. Decision

The Panel finds that the Complainant has rights in a name or mark which is similar to the Domain Name, but concludes on the evidence before it and for the reasons given above that the Domain Name in the hands of the Respondent is not an Abusive Registration. The Panel affirms the decision of the Expert and dismisses the Appeal.

Claire Milne

Tony Willoughby

Ian Lowe

Dated: 17 February, 2010