

DISPUTE RESOLUTION SERVICE

D00008735

Decision of Independent Expert

Helen Osman

and

Hugh Humphrey

The Parties:

Lead Complainant: Helen Osman
10 Old Park Ridings
Winchmore Hill
London
N21 2EU
United Kingdom

Respondent: Hugh Humphrey
WCS Ltd
47 The Chine
London
N21 2EE
United Kingdom

The Domain Name

n21online.co.uk

Procedural History

1. Nominet received the Complaint on 21 June 2010 and validated and served it on the Respondent (“Mr Humphrey”) on 23 June 2010. The Response was served on 14 July 2010 and the Reply was served on 15 July 2010. The parties were notified that an Expert would be appointed upon payment of the prescribed fee and payment of that fee was received by Nominet on 17 September 2010. The undersigned Stephen Bate was appointed on 25 May 2010 and confirmed to Nominet that he knew of no facts or circumstances that might call into question his independence in the eyes of the parties.

Factual Background

2. On 4 December 2009 the Complainant (‘Ms. Osman’) began operating a web-site from www.n21online.com. The objective of her web site is to create an internet portal for the business and residential communities of the N21 area in London. Ms. Osman had registered this domain name in May 2009 with a view to launching her web site, the design of which was commenced in late June 2009.
3. A WHOIS search shows that the Domain Name was registered by the Respondent, Mr Hugh Humphrey (“Mr Humphrey”) on 25 August 2009. Mr Humphrey claims that he had had a similar idea to that of Ms Osman in 2006. He registered a domain name called www.N21.net in March 2008, which was used to host his web-site dedicated to N21-related matters when it was launched in November 2009.
4. Ms. Osman began promoting her web site in February 2010 using posters and cards. In about April 2010 she discovered that if people typed in www.n21online.co.uk or www.n21online.net, they were taken to www.n21.net. That position remains. Mr Humphrey says that he has plans to develop a site at the Domain Name and other ‘N21-related’ domain

names, which he purchased with to a view to enhancing, promoting and developing his online activities with respect to N21.

The Parties' Contentions

The Complaint

5. Ms. Osman says that on 29 June 2009 she sent images in Powerpoint to her web-designer, Mr Tony Lambrou. Mr Lambrou used a domain name at www.imagepicturedesk.com to develop the web site for her. Mr Lambrou received a phone call from Mr Humphrey on 14 October 2009 in which Mr Humphrey discussed the trial web site with Mr Lambrou. The branding for www.n21online.com, in the name of 'n21online', was already in place on this development site.
6. Soon after his call to Mr Lambrou, Mr Humphrey phoned Ms. Osman. In that phone conversation he asked her if the project was something they could develop jointly. She said that she did not want to do that and he said that this was not fair, because he had had the project in mind for a number of years. Mr Humphrey hurried on with his preparations and on 20 October 2009 he renewed his registration of www.n21.net, registered www.n21online.net and launched his web site in late November 2009.
7. She began marketing her web site in February 2010 and there are now currently over 500 organisations represented on the site, with a number of businesses and groups reporting to Ms. Osman that they have benefitted from being featured on it.
8. Ms. Osman says that there is a substantial similarity in the content of the rival web sites, so much so that one person who knew her web site accidentally accessed www.n21online.net in June 2010 and considered the two sites to be 'almost identical'. The basic format of her web site has not changed since the time when it was hosted on www.imagepicturedesk.com. At its launch in November 2009, the positions on Mr Humphrey's site of the

coloured box for the local organisations, weather and train times were in the same positions as appeared on her draft web site.

9. Mr Humphrey has not developed a web site at the Domain Name, but is only using it to link to www.n21.net. The address at www.n21online.net links to a version of the web site at www.n21.net in the form as it appeared in December 2009; and this is particularly confusing in view of the word 'online' in addition to the visual similarity of the web site to her own. Had Mr Humphrey not launched his spoiling tactics, Ms. Osman would almost certainly have started to make a nominal charge for a presence on the site and could have followed up an enquiry about franchising it, which has had to be put on hold because of this dispute.

The Response

10. Mr Humphrey says that he had been developing his idea for an N21 online community-based website since 2006. He discussed his plans with a Mr David Nadel on several occasions. Mr Nadel produced for him several documents for the concept.
11. Mr Humphrey did contact a lady, whom he later discovered to be Ms. Osman, having seen her draft web site. They did have a conversation about it and, though shocked at having discovered her web site, he told her that it was conceivable that it was a coincidence that they both had similar plans.
12. Having bought and re-registered www.N21.net, he bought a number of other domains to support and develop the organic ranking in Google of his N21 site, which went live on 26 October 2009. The other domains he purchased were n21website.co.uk, n21takeaway.co.uk, n21restaurant.co.uk and the Domain Name. The latter was purchased because no-one else wanted it.
13. Ms. Osman cannot claim rights in what is a generic name. Moreover, Mr Humphrey has not copied Ms. Osman's site (he used a format known as

Joomla, which Ms. Osman also used), has not misused his domain names in any way and has not attempted to pass off someone else's web site as his own or to spoil anyone's web site. He has developed the idea of the N21 web site totally independently. He is honest and carries out his business affairs with the highest levels of trust and integrity.

14. The profile, outline and content of 'N21 online was conceived long before the 2009 reality' and the Domain Name has a complete synergy with Mr Humphrey's presence at N21 online.

The Reply

15. Ms. Osman says in her Reply that she would like Mr Humphrey to demonstrate that his web site was ready for launch before his viewing 'the n21online.com development web site on 14 October 2009'. She says that when she telephoned Mr Humphrey on 14 October 2009, she did give him her name.
16. More recently, she alleges, there have been an increasing number of references to 'n21online' on the web site at www.n21.net, which again seems to be an attempt to divert traffic from www.n21online.com.

Paragraph 13a Request

17. In the light of the parties' Statements of Case it was clear that further information was required in order to dispose of this dispute fairly. The particular area of enquiry related to Mr Humphrey's state of mind on the date of registration of the Domain Name. In other words, why did he choose the particular name of the Domain Name and did he know that Ms. Osman had chosen 'n21online' for her venture? The date of registration of the Domain Name did not appear from the Complaint and the WHOIS search revealed it to be 25 August 2009, not far short of two months before the telephone conversation of 14 October 2009 between Ms Osman and Mr Humphrey. Hence, the following set of requests were made by the

Expert pursuant to paragraph 13a of the Dispute Resolution Service Procedure (“the Procedure”) -

Requests pursuant to Paragraph 13a of the Procedure

The Respondent is requested to supply the following statements and documents by 4pm on Monday, 11 October 2010.

1. Does the Respondent agree that he first registered the following domain names on the dates appearing below (such dates being shown by WHOIS searches carried out by the Expert on the NOMINET web site on 01.10.10) –

n21online.co.uk	25.08.09;
n21takeaway.co.uk	16.12.09;
n21restaurant.co.uk	16.12.09;
n21website.co.uk	29.04.10?

2. If it is said by the Respondent that any of the domain names mentioned in request numbered 1 above was first registered (by him) on some other date, please state what that date was.

3. Was the Respondent aware of the Complainant’s name ‘n21online’ at the date when he registered www.n21online.co.uk?

4. If the answer to question 3 above is ‘No’, please give a full explanation as to why the Respondent registered www.n21online.co.uk and not some other name (relating to N21).

5. Did the Respondent become aware that the domain name (as opposed to the web site) n21online.com was owned by or connected to -

- (a) the Complainant; or
- (b) the person or business behind the ‘rival web site’ referred to in the fifth paragraph of the Response,

at any time on or before 25 August 2009, alternatively on or before such other date on which he may say that he first registered www.n21online.co.uk?

6. Did the Respondent become aware from the Complainant’s test web site at www.imagepicturedesk.com that the name ‘n21online’ was being used by -

- (a) the Complainant; and/or

(b) the person or business behind the 'rival web site' referred to in the fifth paragraph of the Response,

on or before 25 August 2009, alternatively on or before such other date on which he may say that he first registered www.n21online.co.uk?

7. The Expert also requests any documents or other evidence on which the Respondent may wish to rely in relation to any of the responses given to the requests made above.

The Complainant is requested to supply the following statements and documents by 4pm on Monday, 11 October 2010.

8. Please state whether the test web site at www.imagepicturedesk.com was accessible by members of the public before 25 August 2009.
9. If the answer to question 8 is 'Yes', did the test web site display the name 'n21online' on the home page or any other page and if so which; and for how long had the web site displayed that name?
10. If in answer to question 9 the Complainant says that the name 'n21online' was displayed on the test web site, for what period prior to 25 August 2010 did the test web site display that name and on which page of the test web site?
11. The Complainant is asked to provide any supporting documents and other evidence on which she may wish to rely in support of her responses to any of the requests numbered 8-10 above.

The Complainant and the Respondent are requested to supply the following statements and documents by 4pm on Friday, 15 October 2010

12. In the case of the Complainant, any statement in response to the Respondent's responses to requests numbered 1-7 above, together with any supporting documents or other evidence on which she may wish to rely.
13. In the case of the Respondent, any statement in response to the Complainant's responses to requests numbered 8-11 above, together with any supporting documents or other evidence on which he may wish to rely.
18. Ms. Osman and Mr Humphrey each supplied information to requests numbered 8-11 and 1-7, respectively, Ms. Osman on 8 October 2010 and

Mr Humphrey on 11 October 2010. Ms. Osman added responses of her own to the questions addressed to Mr Humphrey, saying that as an experienced purchaser of domain names Mr Humphrey must have known that www.n21online.com had been purchased recently when he registered the Domain Name on 25 August 2009 and that www.n21online.com had been registered on her behalf by Highwire Design (“Highwire”), a company with which she has business dealings and on whose web sites her name appears. I decided to take this information into account, because it produces no unfairness to Mr Humphrey. He accepts that Highwire registered that domain name and Mr Humphrey’s own account of his dealings addresses the other points made by Ms. Osman in this part of her response.

19. The information supplied by Mr Humphrey can be summarised thus. In August 2009 he did try to register all the ‘n21online’ domain names as part of an exercise in driving up the potential visibility of his main web site located at the three-letter domain ‘n21’. He was well aware of the suffix ‘online’, because people will try and guess the name of a web site or forget the actual address, and add ‘online’ when it is not part of the address. Hence, it is entirely usual that registrants will purchase an ‘online’ registration in addition to their main domain name. Further, registrar websites, if interrogated for suggestions for domain names will throw up ‘online’ as the first suggestion.
20. His web site was under active development in August 2009. He did appreciate that the .com domain was unavailable and looked up details of its ownership. He saw that it was registered to Highwire, a company shown as based in Amersham, with an agent’s address also in Amersham. Mr Humphrey saw no connection to any online directory venture whether or not run by Ms. Osman and concluded that the registration was not competing with his own business. He looked up www.n21online.com and saw that there was a holding page with no reference to the n21online brand. He also looked up www.highwiredesign.com and the web site confirmed that Highwire was not a competitor in relation to his N21-related activities. He only became aware of the site at

www.picturedesk.com a week or so before his call to Mr Lambrou. He only became aware that it was Ms. Osman who was asserting rights in connection with n21online at some time in December 2009.

21. Mr Humphrey provided information in response to the answers given by Ms. Osman and she in turn provided further information, which was initially in the form of a submission under paragraph 13b of the Procedure. She informed Nominet that the whole of the content of this submission constituted her response to the information provided by Mr Humphrey. Therefore, I took the entirety of the submission into account, which was in substance a reiteration of material already provided by her.

Discussion and Findings

22. The findings of fact set out below are limited to those necessary to dispose of this dispute under the Procedure. I have taken into account all the matters relied on by the parties in their Statements of Case and supporting documents as well as the further information supplied by them. The Complainant is required under subparagraphs 2a. and 2b. of the Dispute Resolution Service Policy (“the Policy”) to prove to the Expert on the balance of probabilities each of the following matters:-

she 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.

Rights

23. By paragraph 1 of the Policy, -

‘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.’

24. Does Ms. Osman have Rights in the name 'n21online'? Although the characters 'N21' refer to the postcode of that location and the suffix 'online' is commonplace when added with a prefix to create a domain name, the portmanteau word 'n21online' is sufficiently distinctive to be capable of establishing Rights. It is also relevant that when carrying out his initial registrations (including .com registrations) for his idea relating to N21 in March and April 2008, Mr Humphrey did not register www.n21online.com, which also suggests that the name has an element of distinctiveness.
25. The registration of www.n21online.com was in the name of Highwire, a company acting on behalf of Ms. Osman. The ownership of that registration in that name does not prevent Ms. Osman from building up goodwill in the name n21online, if that is what happened. The About Us section of the web site states that the site was launched by her in December 2009. The Complaint refers to the operation of the web site since 4 December 2009, the marketing work to support it from February 2010 and the content of the site was built up so that it represented 500 businesses. These activities were, as I infer, carried out by Ms. Osman or on her instructions. In those circumstances, Ms. Osman has established sufficient goodwill in the name 'n21online' to support a claim for passing off. Thus, by the date of the Complaint she had established Rights.
26. The Rights are those in a name, being 'n21online', which is identical to the Domain Name (ignoring the .co.uk suffix).

Abusive Registration

27. Paragraph 1 of the Policy states, -

'Abusive registration means a Domain Name which either:

- i. *was registered or otherwise acquired in a manner which, at the time when the registration or other 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.'*

Paragraph 3 of the Policy states -

'3. Evidence of Abusive Registration

- a. *A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows:-*
 - i. *Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:*
 - A....
 - 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 or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected to, the Complainant.*
- b. *Failure on the Respondent's part to use the Domain Name for the purposes of email or a web site is not in itself evidence that the Domain Name is an Abusive Registration*

Paragraph 4 of the Policy states, -

'4. How the Respondent may demonstrate in its response that the Domain Name is not an Abusive Registration.

a. *A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is as follows:*

i. *Before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under the DRS), the Respondent has:*

A. *used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services;*

B. *been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name; or*

C. *made legitimate non-commercial or fair use of it.*

....

ii. *The Domain Name is generic or descriptive and the Respondent is making fair use of it.*

.....'

28. In May 2009 Highwire registered the domain name www.n21online.com on the instructions of Ms. Osman, with a view to the operation of her web site from that address. The objective of the web site was and is to create an internet portal for the business and residential communities of the N21 area in London.

29. I accept that Mr Humphrey had been developing his idea for an N21 online community-based website since 2006. He discussed his plans with Mr Nadel on several occasions and the latter produced several documents for the concept. Mr Nadel has made a statement setting out his dealings with Mr Humphrey on these matters and I accept that statement as true.

30. Mr Humphrey's online activities with respect to N21 commenced on 21 March 2008 when he registered www.n21.net. In April 2008 he registered www.n21directory.com.
31. Ms. Osman began to develop her web site in late June 2009, through her web-designer Tony Lambrou to whom she had sent images in Powerpoint bearing the name 'n21online' on 29 June 2009. Mr Lambrou used a domain name at www.imagepicturedesk.com to build a web site for Ms. Osman and the draft web site bearing the name n21online was accessible at that address from early August 2009 and at another address, namely, www.tonicdesigns.co.uk from late July 2009.
32. I accept Ms. Osman's case (expanded by the further information provided by her) that her web site in draft form was available for viewing before the date of registration of the Domain Name. I also accept Mr Humphrey's case that it was not until the first part of October 2009 that he first came across the draft web site. He phoned Mr Lambrou on 14 October 2009 and discussed the site with him. Having registered the Domain Name on 25 August 2009, it is unlikely that he would have waited until 14 October 2009 to make contact with a potential competitor if he already knew of the competing brand on the date of registration. It is much more likely that he would have made the call to Mr Lambrou soon after discovering the rival brand. Equally, there is no record of any attempt by to contact Highwire in August 2009, which one would have expected if he had believed it to be a competitor.
33. Soon after his call to Mr Lambrou, Mr Humphrey phoned Ms. Osman. In that phone conversation, he asked her if the project was something they could develop jointly. She said that she did not want to work on the project jointly and he said something along the line that this was not fair, because he had had the project in mind for a number of years. I am unable to make a finding on the evidence as to whether or not Ms. Osman revealed her name during this call, or whether he knew it already. It does not matter,

because the question is: when did he discover the existence of the rival brand?

34. Mr Humphrey was the first of the two to create a web site dealing with the communities in N21, on 26 October 2009. Ms. Osman's rival web site was launched on 4 December 2009. I accept these dates, being those given by the parties as to when they launched their respective web sites.
35. Once she began to market the site, Ms. Osman received complaints that people could not find pages on www.n21online.com and it was then brought to her attention that if people typed in the address of the Domain Name or that of www.n21online.net they were taken to www.n21.net.
36. Ms. Osman complains that the web site at n21.net was confusingly similar to the site at www.imagepicturedesk.com from its launch on 26 October 2009 and that it was confusingly similar to her own site at www.n21online.com up until the date of the Complaint. She also complains of the link, which she says unfairly siphons off potential visitors to her site, and also says that Mr Humphrey acquired the Domain Name as a direct response to viewing her site in development. She also complains about the use of www.n21online.net.
37. To succeed under paragraph 3(a)(i) of the Policy (see paragraph 27 above), Ms. Osman must establish as an opener that at the date of registration of the Domain Name, Mr Humphrey had some awareness of her, her brand or her Rights: see *Verbatim Ltd v Michael Toth* DRS 04331 at paragraph 8.13.
38. I accept Mr Humphrey's explanation as to why he chose to register the Domain Name. At that time he did not have in mind, and was not aware of, the brand being launched by Ms. Osman. His explanation is detailed, inherently credible and fits with the undisputed parts of the chronology. In particular, I refer to his discovery of the rival web site in the first part of October 2009 and his call soon afterwards to Mr Lambrou. Thus, the

Complaint fails insofar as it is based on an allegation under paragraph 3a.i. of the Policy.

39. However, I do consider that his awareness of the rival brand did prompt him initially to launch his site in a form which made liberal use of the word 'online', and which he would not otherwise have done had he not learned of the potential rival with the brand n21online. In particular, introductory words on the web site at www.n21.net stated –

'The N21.net Online Website

An online presence for the postal code N21..

N21.net is the online community and business website for everything in N21'

40. I turn now to the complaints of confusion. I consider first the current content of Mr Humphrey's web site at www.n21.net. With the exception of the link from www.n21online.net, the Complaint did not exhibit copies of extracts from the two web sites on particular dates, but did refer to www.n21online.com in answer to the question, 'Are there any web pages that support this dispute?' Likewise, the Response answered that question by referring to www.n21.net and to www.n21.net/about-n21net.html. Thus, I have considered both web sites.
41. I do not agree that the web-site at www.n21.net in its current form is confusingly similar to the web site at www.n21online.com. Mr Humphrey says that he has used the same Joomla software to create his web site, but I accept that this is very commonly used. It has two outer columns and a central area for content. However, that does not make the two sites appear confusingly similar.
42. Such references as there are to 'N21' and 'online' do not amount to unfair use of the Domain Name. A search of some of the more prominent pages on the site does not reveal any significant use of the two words together. The words 'N21' and 'online' do appear under the section 'Jobs', but in the

context of an invitation to complete '...the N21.net online form'. Likewise, under the 'Join Us' section, there is reference to '... N21.net - Your online home' in the second and third lines of this section. However, such references to 'online' as appear on the web site (in combination with the structural similarities) do not render the two sites confusingly similar.

43. Although there are superficial similarities of lay-out and some topics covered are the same, viewed as a whole I do not consider that Mr Humphrey is using the Domain Name in a way which is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected to, Ms. Osman.
44. However, this is not an end of the matter. Past use is relevant, particularly as it may justify an inference that Mr Humphrey is threatening to use the Domain Name so as to confuse within paragraph 3a.ii. of the Policy.
45. The unidentified email correspondent who tried to access www.n21online.com in June 2009 found that www.n21.net was 'almost identical' to that at www.n21online.com and asked, 'How come there are 2 very similar sites'? This is not the link between the Domain Name and www.n21.net. The complaint in respect of the Domain Name is that it links to www.n21.net as it now appears, and as indicated, the two web sites are not confusingly similar.
46. However, the fact is that in December 2009 Mr Humphrey's web site at www.n21.net was materially different to its current appearance by reason of the various references to 'online' in close proximity to 'n21.net'. He has not sufficiently addressed this change in his Defence. He should have explained it. I infer that he knew he was sailing close to the wind and decided to take out the words of introduction with the word 'online'. Ms. Osman states in one of the documents accompanying the Complaint that those words of introduction appeared on his web site in December 2009, just before Christmas. (The confusion experienced by the correspondent in June 2009 was because his accessing of www.n21online.net took him to

the version of the web site at www.n21.net as it appeared in December 2009.) No allegation is made of the web site continuing in that form and no allegation is made that it was in this form in June 2009, for example, the date when the correspondent accessed www.n21online.net. Thus, I infer that the change to delete these words of introduction occurred in early 2010. It follows that there may have been a time when the Domain Name was linked to www.n21.net in the form in which it appeared in December 2009. However, the evidence does not establish this, because we do not know when this link was put on, nor do we know the exact date when the form of the web site at www.n21.net was changed.

47. The fact that people who tried to access Ms. Osman's site could not find pages that had been set up does not establish that the web sites were confusingly similar after January 2010. Mr Humphrey denies that there was never a Weather section and I accept that in view of the documentary evidence as to the appearance of his web site. The similarities referred to by Ms. Osman as to the coloured boxes did not render the two sites confusingly similar. I do not consider the pictures of the site at www.imagepicturedesk.com add anything.
48. It seems odd that Mr Humphrey should have kept www.n21online.net in such a way as to show the web site at www.n21.net as it appeared in December 2009. This may be oversight, or not. However, I infer that he decided that keeping the web site www.n21.net in the form in which it appeared in December 2009 was not appropriate in view of the competing business at www.n21online.com. I do not believe the change was brought about by this Complaint. The Complaint did not mention it and there was no allegation that the web site at www.n21.net was in this form in March, April or May 2009. All in all, I do not consider that Mr Humphrey threatens to use the Domain Name in a confusing manner within paragraph 3a.ii. of the Policy.
49. It might be possible to ground a successful claim on past use alone. It could be argued that being aware of the rival brand in early October 2009, that

the effect of his initial reaction was to attempt to dilute its distinctiveness by using the word 'online' in a manner designed to cause confusion. However, it would not be appropriate to make any finding of Abusive Registration on this basis, given the limited time during which the web site was in this form and the conclusions I have drawn as to Mr Humphrey's future intentions.

50. The effect of the link must also be considered, namely the link between the Domain Name and www.n21.net. The addition of the link was part of Mr Humphrey's plans that had been in development since 2006, culminating in registration of the domain name at www.n21.net in March 2008, the building of the web site in August 2009 and its launch on 26 October 2009. The Domain Name was purchased on 25 August 2009 with a view to enhancing the visibility of Mr Humphrey's proposed web site by creating a link to it through an associated name arrived at independently of Ms. Osman's plans. True it is that Mr Humphrey was aware of the competing brand when he created the link with his web site. However, that awareness did not bring about any change in his plans with respect to linking www.n21.net to the Domain Name. Having purchased the Domain Name with a view to creating a link with his own site, ignorant of Ms Osman's brand, he proceeded to do just that. That intention being perfectly proper, it did not become improper or 'unfair' within the meaning of paragraph 2b. of the Policy once he discovered Ms. Osman's brand. True it is that he *may* have used the Domain Name to link to his site in a form that was at the very least, arguably confusing. However, I have dealt with that chain of events above.

51. I have also considered the cumulative effect of the link between the Domain Name and the web site at www.n21.net, the history of the content of the various web sites from their launch, the current state of www.n21online.net and the issue of confusion generally. I have asked whether taken as a whole this picture amounts to Abusive Registration in respect of the Domain Name. I have concluded that this is not so, for the reasons already given.

52. I accept that there has been, and will continue to be, some confusion caused by potential visitors to Ms. Osman's web site at www.n21online.com. However, the Nominet scheme of registration operates on a 'first come first served basis', subject to the rules on Abusive Registration. What to Mr Humphrey appears as a legitimate attempt to enhance the Search Engine Optimisation of his site strikes Ms. Osman as an unfair attempt to siphon off potential visitors to her site. However, in view of Mr Humphrey's prior plans as I have found them to be and his current use of the Domain Name consistently with those plans, I am not satisfied that the Domain Name has been used in a manner which has taken unfair advantage or has been unfairly detrimental to Ms. Osman's Rights within the meaning of the Policy.
53. Having drawn these conclusions, I should say something about the future. Although I have found that Mr Humphrey does not threaten to use the Domain Name in a confusing manner, he may wish to take note of where he stands. I note that he has plans to develop his various N21-related web sites, including one at the Domain Name. Ms. Osman has Rights in the word 'n21online', a name which is identical to the Domain Name. Should he make use of the Domain Name in such a manner as to amount to Abusive Registration, Ms. Osman would be entitled to make a further complaint under the DRS scheme and seek an order for transfer. This is not to be read as encouragement to Ms. Osman to make a further claim, but by way of explanation of the limits of this decision.

Decision

54. I find that while the Complainant has Rights in a name which is identical to the Domain Name, it is not an Abusive Registration in the hands of the Respondent. Accordingly, no action should be taken in relation to the Domain Name.

Signed: Stephen Bate

Dated: 23 October 2010