

**Nominet UK Dispute Resolution Service**

**DRS 8892**

**British Insurance Brokers' Association**

and

**Vanilla Circus Ltd.**

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**Decision of Independent Expert**

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**1 Parties**

Complainant: British Insurance Brokers' Association

Address: 8th Floor John Stow House,  
18 Bevis Marks  
London

Postcode: EC3A 7JB

Country: United Kingdom

Respondent: Vanilla Circus Ltd.

Address: 197-201 Church Road  
Brighton  
East Sussex

Postcode: BN3 2AH

Country: United Kingdom

**2 Domain Name**

<biiba.org.uk>

### **3 Procedural History**

- 3.1 On 19 August 2010 the complaint was received by Nominet, which checked that it complied with the Nominet UK DRS Policy (“the Policy”) and DRS Procedure (“the Procedure”). Nominet notified the respondent on the same day, 19 August 2010. No response was received. The complainant requested referral of the matter for expert decision under the Procedure, and on 23 September 2010 paid the applicable fee.
- 3.2 I was appointed as expert on 12 October 2010. I have made the necessary declaration of impartiality and independence.

### **4 Factual background**

- 4.1 The complainant is a membership organization representing the interests of insurance brokers and intermediaries.
- 4.2 The respondent registered the domain name on 15 September 2009.

### **5 Parties’ Contentions**

#### *Complainant*

- 5.1 The complainant says that since it was established in 1977 it has been known by the acronym BIBA (1977-88 and 1999-present) and, during a period when it was called the British Insurance and Investment Brokers’ Association, by the acronym BIIBA (1988-99).
- 5.2 The complainant has produced documentary evidence from the Intellectual Property Office that it is proprietor of the trademark BIBA, registered in 1999. It says it has used a website at <www.biba.org.uk> since 1998.
- 5.3 The complainant argues that the domain name is similar to its acronym and trademark BIBA, differing by just one letter, and being phonetically identical and visually similar to it. It argues that the domain name is the same as the acronym by which it was known from 1988 to 1999.
- 5.4 It has produced evidence in the form of screenshots that between September 2009 and April 2010, the respondent used the domain name for a website prominently displaying the words “British Insurance and Investment Brokers’ Association” (which was the complainant’s name from 1988 to 1999) and displaying the text:

*As the largest and longest established trade association in the insurance broking sector BIIBA has become the watchword for professionalism, service and quality. We expect the highest possible standards from our members.*

According to the complainant this was likely to confuse people into believing that the domain name was connected with the complainant, and shows the respondent intended to associate them.

- 5.5 It has produced evidence in the form of screenshots that since April 2010 those elements have been removed the website connected to the domain name, which now refers to “Better Insurance and Investment Brokers’ Advice” and includes a disclaimer on the website stating that the website is wholly unconnected with the complainant.
- 5.6 The complainant argues that the respondent probably generated revenue through hyperlinks contained on the website both before and after April 2010, and that its use of the domain name takes unfair advantage of and is unfairly detrimental to the complainant’s rights.

*Respondent*

- 5.7 No response has been provided.

## **6 Discussion and Findings**

*General*

- 6.1 Under paragraph 2(a) of the Policy a complainant must show on the balance of probabilities that:
- it has rights in respect of a name or mark which is identical or similar to the domain name, and that
  - the domain name, in the hands of the respondent, is an abusive registration.

*Rights*

- 6.2 Rights are defined in the Policy as rights enforceable by the complainant, whether under English law or otherwise.
- 6.3 It is not disputed that the complainant has been known as BIBA or BIIBA since 1977, or that it uses the website <biba.org.uk>. It has produced documentary evidence of its trademark BIBA.
- 6.4 At the third level (i.e. disregarding “.org.uk”), the first and dominant element of the domain name is the word “biiba”.
- 6.5 In my view, the inclusion within the domain name of an additional letter “i” does not make it dissimilar to the complainant’s name, domain name or trademark. There is similarity both phonetically and visually.
- 6.6 In any event the complainant in my view has rights in the name BIIBA based on its use of that name from 1988 to 1999. That is identical to the domain name.
- 6.7 In those circumstances I am satisfied that the complainant has rights in respect of a name which is identical or similar to the domain name.

### *Abusive Registration*

- 6.8 Under paragraph 1 of the Policy, 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.

This definition obviously covers both the time of registration, and later use.

- 6.9 Under paragraph 3(a)(ii) of the Policy, circumstances indicating that the respondent is using the domain name in a way which has confused or is likely to confuse people into believing it is connected with the complainant may be evidence of abusive registration.
- 6.10 Given that the website associated with the domain name has been used to display prominently the complainant's old name together with words associating the domain name with an insurance industry membership organisation, it is in my view clear that confusion was likely between the domain name and the complainant.
- 6.11 Confusion has also in my view been likely since April 2010, since when the website has continued to display references to insurance and insurance brokers. The inclusion of a disclaimer apparently near the bottom of a page on the respondent's website does not in my view prevent or sufficiently guard against this confusion.
- 6.12 In my view therefore, the respondent appears to have used the domain name in a manner which has taken unfair advantage of or has been unfairly detrimental to the complainant's rights.
- 6.13 It is for the complainant to make good its case. However, for the reasons I have given the evidence before me establishes a prima facie case of abusive registration. The respondent has provided no response.
- 6.14 In those circumstances therefore I am satisfied on the balance of probabilities that the domain name, in the hands of the respondent, is an abusive registration.

## **7 Decision**

- 7.1 I find that the complainant has rights in a name which is identical or similar to the domain name; and that the domain name, in the hands of the respondent, is an abusive registration.
- 7.2 The complaint is upheld. I direct that the domain name be transferred to the complainant.

Carl Gardner

2 November 2010