

**DISPUTE RESOLUTION SERVICE**

**D00009786**

**Decision of Independent Expert**

Mr Matthew Sugden

and

NRUK

**1. The Parties:**

Complainant:

Mr Matthew Sugden  
Accent Group Limited  
Charlestown House  
Acorn Park Industrial Estate  
Charlestown  
Shipley  
West Yorkshire  
BD17 7SW  
United Kingdom

Respondent:

NRUK  
Unknown  
Unknown  
Unknown  
OX4 4DQ  
United Kingdom

**2. The Domain Name(s):**

accentgroup.co.uk (“the Domain Name”)

### **3. Procedural History:**

15 April 2011 14:39 Dispute received  
15 April 2011 16:10 Complaint validated  
15 April 2011 16:16 Notification of complaint sent to parties  
18 April 2011 09:07 Response received  
18 April 2011 09:07 Notification of response sent to parties  
20 April 2011 11:41 Reply received  
28 April 2011 09:01 Notification of reply sent to parties  
28 April 2011 09:09 Mediator appointed  
05 May 2011 14:49 Mediation started  
29 June 2011 16:49 Mediation failed  
29 June 2011 16:51 Close of mediation documents sent  
11 July 2011 02:30 Complainant full fee reminder sent  
12 July 2011 10:41 Expert decision payment received

### **4. Procedural Issues**

#### Identity of the Complainant

The Complainant named in this case is “Matthew Sugden”. However, the Complaint proceeds on the assumption that the Complainant is in fact “Accent Group Limited”, an industrial and provident society. It seems to me that the failure to name the correct Complainant is simply down to confusion on the part of the person who completed Nominet’s online form. The Complainant address as shown on the Complaint is the same as the society’s registered office listed on the Financial Services Authority register. There is no reason to think that Matthew Sugden is anyone other than an officer or employee of the society acting on the society’s behalf. And the Respondent has taken no objection on this point.

Accordingly, the decision below proceeds on the basis that the Complainant is in fact Accent Group Limited.

#### Identity of the Respondent

It has not been explained to me exactly what is denoted by “NRUK”, the registrant name for the disputed domain name. Most likely, this was intended as an acronym for “Rev Dr Neil Richards”, the individual who in fact responded to the Complaint. However, nothing turns on this point.

#### Respondent’s non-standard submissions

On 28 July 2011, the Respondent sent an email to me direct concerning the issues in this case. So far as I am aware, that email was not copied to Nominet or the Complainant. This was a breach by the Respondent of paragraph 10 of the DRS Procedure which states that a party and the Expert must not communicate directly and that all communication between a party and the Expert must be made through Nominet.

I did not reply to the Respondent's communication but instead forwarded it to Nominet. Nominet forwarded it to the Complainant on 29 July 2011.

On 1 August 2011 the Respondent sent an email to Nominet, copied to me (again in breach of paragraph 10 of the DRS Procedure), stating that a new document attached to this email should instead be treated as its "Further Statement". On the same date, in line with paragraph 13b of the DRS Procedure, Nominet asked the Respondent to supply a separate brief explanation as to why there was an exceptional need for this second submission.

Paragraph 13b states as follows: "Any communication with us intended to be passed to the Expert which is not part of the standard process (e.g. other than a complaint, response, reply, submissions requested by the Expert, appeal notice or appeal notice response) is a 'non-standard submission'. Any non-standard submission must contain as a separate, first paragraph, a brief explanation of why there is an exceptional need for the non-standard submission. We will pass this explanation to the Expert, and the remainder will only be passed to the Expert at his or her sole discretion. If there is no explanation, we may not pass on the document or information."

Nominet also forwarded a copy of the second submission to the Complainant.

Nominet further requested that the Respondent stop communicating with the Expert direct.

On 1 August 2011 the Respondent supplied its explanation. The relevant part of it is as follows:

*"The exceptional need for the further statement is you have not used any information sent to you in the past months to the expert, he was given one brief document, this document was so vague to be useless and would have seriously prejudiced the case therefore would have no doubt in us losing the long standing domain name.*

*We did not know at that time what the correct procedure was, we raise money for charities, we are not experts in domain names or intellectual property laws, therefore the new statement has been sent that details our case in full and the paragraph on the document is as far as I am aware covering the points you have raised about further statements."*

I decided to review the submission so that I could consider whether to admit it and take it into account in reaching my decision. This second document from the Respondent is a vastly expanded version of the email he originally sent to me. It runs to some 12 closely typed pages, including a detailed line by line analysis of the Complaint.

The Respondent has not provided any convincing reason as to why this information could not have been included in the Response.

The importance of a response is clearly set out on Nominet's website. One does not need to be an expert in domain names or intellectual property law to appreciate this. For example, the "Information for Respondents" on Nominet's website states:

*"Do I have to respond to the complaint?  
No. You do not have to submit a response. However, the response represents your only chance to put your case to the independent expert..."*

Curiously, the Respondent describes the Response as being "so vague to be useless". However, this was the Respondent's own document. He does not suggest that this was filed without his authority.

The Respondent says he assumed that other documents sent to Nominet would be provided to me. It is clear from his first submission that, by this, he is referring to documents which he supplied to Nominet in the course of mediation. However, mediation only happens after a response has been filed. It seems inherently unlikely that the Respondent withheld information from his Response in the belief that he would later provide this to Nominet in the course of mediation and that Nominet would in turn pass this to the Expert.

Indeed, the information page about mediation on Nominet's website also makes clear that "... if the case does not settle ...the mediator's notes and any correspondence generated during the ten days are removed from the file. This allows the parties to speak freely, for example, about the strengths and weaknesses in their case or the testing of settlement options, without fear that it could be used against them in any way in the future."

Accordingly, I do not consider that the Respondent has demonstrated an exceptional need for the submission. He has not, for example, suggested that the document contains any information which was not available to him at the time that the Response was filed.

In any case, even if I had admitted the non-standard submission, I confirm that it would have made no difference to the outcome of the case.

Part of the document is irrelevant as it concerns administration of the Nominet mediation, which does not come within my remit.

There is a lot of factual detail in the submission but the central point appears to be an assertion that the Respondent has rights in the name "Accent Group" predating the Complainant's rights. These rights are said to arise from his alleged involvement with a non-profit organisation of that name dating back to 1993. But the submission includes no evidence in support of this assertion. And, if it were true, then why did the Respondent not even refer to this potentially important point in the Response? And, even if the Respondent did have such a prior association with the name, the Respondent's use of the Domain Name outlined below would still amount to an abusive registration.

Accordingly I decline to admit the Respondent's non-standard submission.

## **5. Factual Background**

The Complainant is a nationwide housing association operating under the name “Accent Group”.

The Respondent registered the Domain Name on 2 June 2010.

At one point the Domain Name was redirected to the website of the Housing Ombudsman Service.

## **6. Parties’ Contentions**

### Complaint

As the Complaint is short, it is reproduced here in full (with minor grammatical edits):

“Accent Group Limited (AGL) asserts that it has the Rights over the Domain Name accentgroup.org for the following reasons:

AGL is a leading nationwide housing association, providing and supporting housing and community needs across the country; it has been registered with the Financial Services Authority since 26 May 2004 and has traded under this name since this date.

AGL has a reputable and established name within local communities and housing sector.

AGL is the parent company of several companies carrying the Accent brand. AGL has held the registered domain name accentgroup.org since 23 February 2004. A copy of AGL’s website home page is attached.

A simple search engine enquiry using “Accent Group” brings AGL’s website as the first result. The same result is achieved when using a number of different search engines.

Why is the domain name an Abusive Registration?

AGL asserts that the domain name is an abusive registration for the following reasons:

AGL is a registered provider of housing and is regulated by the Tenants Services Authority (TSA) and its complaints procedure is governed by the Housing Ombudsman Service (HOS). The Domain Name (“www.accentgroup.co.uk”) merely redirects the user to the HOS’s website.

The Respondent registered the name on 2 June 2010 and no further update has been made since 4 June 2010. AGL is not aware that the Domain Name has done anything other than redirect the user to the HSO website.

The Domain Name is linked to a Twitter username. Again this Twitter account has had no postings since July 2010.

AGL asserts that the intention of the use of the web site is one of mischief or malice with its sole intention being to cause confusion for people trying to access AGL's proper website and/or send emails to AGL at the .org address.

Furthermore, AGL feels that the Respondent has no intention of using the Domain Name in any other way other than to effectively hold AGL to ransom to purchase the Domain Name.

AGL is in receipt of several emails advising that the domain name is now available to purchase and, therefore, believes that the Respondent is trying to use 'scare' tactics against AGL to sell the Domain Name to it. Copies of these emails are attached.

AGL respectfully refers to the 'One in a Million' judgment to which it believes its case is very similar. In particular AGL refers to the Court of Appeal ruling regarding Marks and Spencer.

AGL feels that the Respondent has registered the Domain Name to prevent AGL from registering it in future, thus putting it in a position to sell the Domain Name AGL at an exaggerated price

Or

AGL feels that, given that the Respondent has used the Domain Name to redirect users to a website which has relevance to AGL's line of business, the Respondent has in essence committed the act of 'passing off' in tort.

If the Expert finds in favour of either or both of the above, AGL believes that the Domain Name should be transferred to it."

### Response

The Response in full (with minor grammatical edits):

"The domain name was readily available online at a domain purchasing site. It was not registered by the Complainant, nor was it previously registered by the Complainant. It was previously owned by another individual.

The domain was purchased at £5.98 for two years to interact with other members of the property company's residents, to share stories, customer service issues, disputes etc, to share links to various other third party websites that can assist the residents in helping themselves be able to share stories, to help each other and if

necessary send group reports to the various legal authorities when customer service standards fail.

The notice the Complainant has sent is misleading and they are trying to bully us into giving up this domain name.

Please note: WE HAVE communicated with the Complainant. We have forwarded occasional emails received in error meant for them to Simon Green.

The Complainant only became aware of the domain name in use when we forwarded emails to them.

Not once have they replied or said thank you.

Not once have they requested the domain from us or asked to buy it for any reason whatsoever.

Only communication has been via Nominet complaints.

Which sums up exactly why the forum needs to be active for the protection of residents and sharing of information to help the community from these bullies.

This is not an abusive registration as the Complainant claims.

The registration is for the larger community of residents who regularly have issues with the housing organisation.”

### Reply

A summary of the Reply:

Since the Complainant filed its initial complaint on 15 April 2011, the Domain Name has been used to direct traffic to a “discussion forum” which it is believed has been set up by the Respondent. The Respondent refers to this site in his submission.

The date when the Respondent registered the Domain Name post-dates by at least 6 years the date from which the Complainant has been trading using the mark “Accent Group”. In the intervening time, the Complainant has established substantial goodwill in the mark which is widely recognised throughout the UK in connection with the Complainant.

The Domain Name is identical or similar to the mark.

The fact that - as the Respondent alleges - the Complainant had not itself registered the Domain Name as at June 2010 is irrelevant. By virtue of having traded successfully and widely throughout the UK under the mark for a period of around seven years, the Complainant is entitled to protect the mark against acts of “passing-off.”

The Respondent freely admits that e-mail traffic intended for the Complainant has indeed been received by the Respondent (albeit that he says that he has forwarded such e-mails to the Complainant).

Not only does this raise serious issues of commercial confidentiality but this represents *prima facie* evidence of the sort of confusion which the doctrine of “passing-off” is intended to prevent and thus illustrates one of the reasons why the Complainant believes that the Domain Name is abusive.

The Response says “the registration is for the larger community of residents who regularly have issues with the housing organisation.” This suggests that the emphasis in the nature of the discussions etc on the site is likely to be critical of and derogatory towards the Complainant and its business.

The Complainant relies on the Nominet DRS decision *pharmacia.org*, DRS 48

The Respondent has done nothing other than replicate the mark in which the Complainant asserts rights, and thus has done nothing to distance his use of the Domain Name from the Complainant itself.

The Respondent has chosen to use the Domain Name for its activities precisely because it appears to be a legitimate corporate/commercial domain belonging to the Complainant and is therefore calculated or likely to draw traffic to it from those users searching for the Complainant’s legitimate website(s).

The present use of the Domain Name and the previous use made by the Respondent to direct users to the body responsible for regulating the social housing sector are, the Complainant believes, calculated by the Respondent to cause damage to the reputation of the Complainant amongst users seeking the Complainant’s legitimate website.

The Complainant is not seeking to “bully” anyone as alleged by the Respondent or at all, least of all its own tenants. However, the Complainant is keen to protect its intellectual property rights and its reputation from unfair and detrimental treatment, and is entitled to do so. The Respondent made it difficult for the Complainant to identify and contact him prior to instigating the the DRS procedure by opting not to disclose his details on Nominet’s online register.

## **7. Discussions and Findings**

### General

To succeed, the Complainant has to prove in accordance with paragraph 2 of the DRS Policy on the balance of probabilities, first, that it has rights (as defined in paragraph 1 of the DRS Policy) in respect of a name or mark identical or similar to the Domain Name and, second, that the Domain Name, in the hands of the Respondent, is an abusive registration (as defined in paragraph 1 of the DRS Policy).



### Complainant's rights

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"*

The Complainant relies on unregistered rights. It says that it has traded under the name "Accent Group" since 2004 and that it has a "reputable and established name."

There is very little in the way of documentary evidence from the Complainant supporting this assertion. See paragraph 2.2 of the DRS Expert's Overview on Nominet's website which indicates that ordinarily DRS Experts will expect to see evidence to show that (a) the complainant has used the name or mark in question for a not insignificant period and to a not insignificant degree (e.g. by way of sales figures, company accounts etc) and (b) the name or mark in question is recognised by the purchasing trade/public as indicating the goods or services of the complainant (e.g. by way of advertisements and advertising and promotional expenditure, correspondence/orders/invoices from third parties and third party editorial matter such as press cuttings and search engine results).

The Complainant has produced some formal documents from the register of the Financial Services Authority evidencing that the Complainant changed its name to its present name on 26 May 2004 but, in my view, mere registration of an entity's name does not of itself give rise to any rights under the DRS Policy.

The Complainant says that it has attached to its Complaint the home page of its website at [www.accentgroup.org](http://www.accentgroup.org) but in fact it does not do so. Paragraph 16a of the DRS Procedure says that Experts may look at websites referred to in the parties' submissions. I have reviewed the Complainant's website. It does indeed indicate that the Complainant is operating a substantial nationwide business under the umbrella brand "Accent Group".

The Complainant has provided a string of emails which the Respondent allegedly forwarded to the Complainant. Although these were submitted in connection with abusive registration, they do provide some supporting evidence – albeit limited – as to the Complainant's activities by reference to the name "Accent Group". For example one email concerning insurance refers to "ERN numbers for all Accent Group trading companies".

Further, the Respondent has not specifically disputed that the Complainant traded under the name "Accent Group" (although the Respondent has claimed that this commenced in 2008 at the earliest).

It is also worth noting that it has repeatedly been stated in DRS decisions that there is a low threshold to establish "rights" under the DRS Policy.

Taking all of these matters into account, I conclude that the Respondent has – narrowly – established rights in the name “Accent Group” and that this is identical to the Domain Name.

#### Abusive registration – introduction

Is the Domain Name an abusive registration in the hands of the Respondent? Paragraph 1 of the DRS Policy defines “abusive registration” as a domain name which either:-

- “i. was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant’s Rights; OR*
- ii. has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’s Rights.”*

#### Respondent’s explanation

According to the Response, the Domain Name was registered for use as a forum to enable the Complainant’s residents to exchange information, experiences etc concerning the Complainant’s service. There is no evidence of the Domain Name actually having been used in this way but, from the tenor of the Response, it seems unlikely that the Respondent had in mind anything other than negative communications regarding the Complainant, which it describes as “bullies”.

It is, however, unnecessary to reach any conclusion on this point, given the Respondent’s actual use of the Domain Name.

#### Redirection to website of the Housing Ombudsman Service

The Complaint states that the Domain Name was redirected to the website of the Housing Ombudsman Service. As with much of the Complaint, there is no supporting evidence and, when I checked the website, it was not being used in this way. However, the Respondent does not deny this and so I am prepared to accept the Complainant’s assertion.

#### Paragraph 3a(ii) of the Policy

Paragraph 3a(ii) of the Policy identifies the following as one of the non-exhaustive factors which may be evidence that a domain name is an abusive registration:

- “ii. [c]ircumstances 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 with the Complainant”*

Has there been such confusing use of the Domain Name?

#### Initial Interest Confusion

One form of confusion, known as “initial interest confusion”, is explained in paragraph 3.3 of the DRS Experts’ Overview as follows:

*“Commonly, Internet users will visit web sites either by way of search engines or by guessing the relevant URL. If the domain name in dispute is identical to the name of the Complainant and that name cannot sensibly refer to anyone else, there is bound to be a severe risk that a search engine, which is being asked for the Complainant, will produce high up on its list the URL for the web site connected to the domain name in issue. Similarly, there is bound to be a severe risk that an Internet user guessing the URL for the Complainant’s web site will use the domain name for that purpose.*

*In such cases, the speculative visitor to the registrant’s web site will be visiting it in the hope and expectation that the web site is a web site “operated or authorised by, or otherwise connected with the Complainant.” This is what is known as ‘initial interest confusion’ and the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration, the vice being that even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant, the visitor has been deceived. Having drawn the visitor to the site, the visitor may well be faced with an unauthorised tribute or criticism site (usually the latter) devoted to the Complainant; or a commercial web site, which may or may not advertise goods or services similar to those produced by the Complainant. Either way, the visitor will have been sucked in/deceived by the domain name.*

*Findings of Abusive Registration in this context are most likely to be made where the domain name in issue is identical to the name or mark of the Complainant and without any adornment (other than the generic domain suffix). See for example DRS 00658 (chivasbrothers.co.uk).”*

In my view there is a high likelihood of initial interest confusion arising in this case. The Domain Name is identical to the name of the Complainant, without any adornment other than the generic domain suffix. The (eight) misdirected emails produced by the Complainant show that third parties are commonly assuming that the Domain Name is the email address of the Complainant. There is every reason to think that internet users are similarly assuming that the Complainant’s website is located at the Domain Name. Such users will have been sucked in / deceived by the Domain Name, as explained in the Expert’s Overview.

#### Criticism site

In my view, pointing the Domain Name to the website of an official body handling complaints concerning the Complainant’s service constitutes an implicit criticism of the Complainant as it suggests that visitors to the site are likely to want to make a complaint.

The issue here, however, is not whether it is right or wrong to criticize the Complainant but whether it is appropriate to use the Domain Name for this purpose.

The fairness or otherwise of using a domain name for a criticism site is addressed in the DRS Experts’ Overview:

***“4.8 Do tribute and criticism sites necessarily constitute fair use unless proved otherwise? [Paragraph 4(b) of the Policy]***

*No. Paragraph 4(b) of the Policy provides that “Fair use may include sites operated solely in tribute to or in criticism of a person or business”. Note the use of the words “may” and “solely”– it will depend on the facts. If, for example, commercial activity beyond that normally associated with a bona fide fan site takes place, the registration may be abusive. See the Appeal decision in DRS 00389 (scoobydoo.co.uk). Note also that the use of the word “may” means that even if a site is operated solely as a tribute or criticism site it is still open to the Expert to find that it is abusive. In assessing the fairness or otherwise of the use, the Expert needs to have regard to both the nature of the domain name in dispute and its use. Some decisions in the past have concentrated solely upon whether the site fairly pays tribute to or criticises the Complainant (often a very difficult thing for an expert to assess in a proceeding of this kind).*

*The appeal decision in DRS 06284 (rayden-engineering.co.uk) confirmed the consensus view among experts today that the nature of the domain name is crucial to the exercise. A criticism site linked to a domain name such as <IhateComplainant.co.uk> has a much better chance of being regarded as fair use of the domain name than one connected to <Complainant.co.uk>. The former flags up clearly what the visitor is likely to find at the site, whereas the latter is likely to be believed to be a domain name of or authorised by the Complainant.*

*In DRS 06284 the domain name was identical to the name in which the Complainant had rights. A modified name that made it clear that this was a protest site would presumably have been less successful in drawing the protest to the attention of customers of the Complainant.*

*The Panel concluded there was a balance to be drawn between the right to protest (which could be effected via a modified name) and the Complainant's rights in its own name, and that in this case at least the latter outweighed the former. Note that the Panel did not rule that use of an identical name would always and automatically be unfair, but did conclude that it was only in exceptional circumstances that such use could be fair. The Panel declined to find that such exceptional circumstances existed in the case in question.”*

Here, the Domain Name is the exact name of the Complainant with no modifier. Users are likely to arrive at the website expecting to find the Complainant's own site. Instead, when the redirect was in place, they would have encountered a site that was implicitly critical the Complainant. In my view this is unfair, for the reasons explained in the Experts' Overview. And there is nothing to suggest that there are exceptional circumstances in this case which would justify the use of the Complainant's exact name for a criticism site.

Accordingly I conclude that the use of the Domain Name as above constitutes an abusive registration

### Threat to sell the Domain Name to a third party

The Complainant says that it has received from the Respondent several emails which constitute 'scare tactics' designed to encourage the Respondent to buy the Domain Name.

One of the emails provided by the Complainant is dated 7 April 2011. In this email, the Respondent forwards to the Complainant a misdirected email from a third party and adds the following comment:

*"This domain name is currently being sought by two overseas companies called "Accent Group" one in Europe and one in New Zealand, once sold we will be unable to forward such wrongly addressed emails."*

In my view the implication is clear. If the Complainant does not buy the Domain Name from the Respondent for a substantial sum, then it will be sold to a third party from whom the Complainant will be unlikely to retrieve it. And that one possible outcome is that future wrongly addressed emails will not get passed to the Complainant.

The Respondent does not explain or attempt to justify this email.

In my view, this email constitutes a separate abusive registration of the Domain Name – i.e. independently of the use for a criticism site discussed above.

### Subsequent use of the Domain Name

In its Reply, the Complainant says that since the Complaint was filed the Respondent has in fact used the Domain Name to direct traffic to a "discussion forum" of the kind mentioned in the Response. However, neither the Complainant nor the Respondent has provided any of evidence of this.

When I visited the site on 2 August 2011, it was not being used for a discussion forum. Instead, it was branded "Accent Group<sup>TM</sup>", described as a voluntary and non-profit organisation established in 1993 and said to be dedicated to helping other non-profit organisations and charities.

This new website postdates the filing of the Complaint. It ties in closely with the Respondent's non-standard submission and it seems likely that its purpose was to assist the Respondent's position in this dispute. In any case, it does not displace my conclusions arising from the other aspects of use of the Domain Name, mentioned above.

### Abusive registration - conclusion

For the reasons stated above I find that the Domain Name is an abusive registration in that it has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's rights.

## **8. Decision**

I find that the Complainant has rights in a mark which is identical to the Domain Name and that the Domain Name is, in the hands of the Respondent an abusive registration. I therefore direct that the Domain Name be transferred to the Complainant Accent Group Limited.

**Signed: Adam Taylor**

**Dated: 16 August 2011**