

DISPUTE RESOLUTION SERVICE

D00010500

Decision of Independent Expert

Veterinary Nurse Solutions

and

Veterinary Education Enterprises

1. The Parties:

Lead Complainant: Veterinary Nurse Solutions
PO Box 8187
Tarneit
Victoria
3029
Australia

Respondent: Veterinary Education Enterprises
PO Box 55
James Cook University
Queensland
4811
Australia

2. The Domain Names:

veterinarynursesolutions.co.uk
vetnursesolutions.co.uk
("the Domain Names")

3. Procedural History:

10 November 2011 11:23 Dispute received
10 November 2011 14:19 Complaint validated
10 November 2011 14:31 Notification of complaint sent to parties
29 November 2011 01:30 Response reminder sent
29 November 2011 10:10 Response received
29 November 2011 10:11 Notification of response sent to parties
02 December 2011 01:30 Reply reminder sent
07 December 2011 13:08 No reply received
07 December 2011 13:08 Mediator appointed
13 December 2011 11:29 Mediation started
20 January 2012 09:56 Mediation failed
20 January 2012 09:56 Close of mediation documents sent
30 January 2012 12:03 Expert decision payment received

4. Factual Background

The entity specified as the Complainant “Veterinary Nurse Solutions” is in fact a trading name used by Angharad Phillips, an individual located in Australia. (I will treat the two interchangeably.)

From before December 2009, the Complainant operated a forum website at www.vetnurse.com.au enabling veterinary nurses to network and share ideas.

In December 2009, the Complainant established a business which it describes as online education for vet nurses. The Complainant offers courses and seminars via the internet and also face-to-face. The Complainant’s primary market is in Australia.

The Complainant registered “Veterinary Nurse Solutions” as a business name in South Australia on 29 December 2009 and in Victoria on 19 July 2011.

The Complainant owns an Australian registered trade mark no. 1405940 consisting of a logo plus the words “Veterinary Nurse SOLUTIONS” dated 8 February 2011 in class 41.

The Respondent, “Veterinary Education Enterprises”, appears to be a trading name used by a Dr Philip Judge, also located in Australia. (Again I will treat the two interchangeably.)

The Respondent also offers online veterinary education courses.

The Respondent registered veterinarynursesolutions.co.uk on 1 February 2011 and vetnursesolutions.co.uk on 10 Feb 2011. It appears that neither domain name has been used for a website.

The Respondent has also registered the following domain names (shown with their registration dates):

veterinarynursesolutions.com (2 February 2011)
veterinarynursesolutions.net (2 February 2011)
veterinarynursesolutions.co.nz (2 February 2011)
veterinarynursesolutions.com.au (registration date unknown)
vetnursesolutions.com (10 February 2011)
vetnursesolutions.net (10 February 2011)
vetnursesolutions.org (10 February 2011)
vetnursesolutions.info (10 February 2011)
vetnursesolutions.asia (10 February 2011)
vetnursesolutions.co.nz (11 February 2011)

On 23 September 2011, the Complainant's lawyers sent a cease and desist letter to the Respondent relating to the Domain Names and to some of the other domain names listed above. The lawyers asserted, amongst other things, that the domain names had been registered or were being used in bad faith.

On 30 September 2011, the lawyers for the Respondent sent a holding response. In reply to a letter from the Complainant's lawyers of 3 October 2011 (which has not been supplied), the Respondent's lawyers stated, amongst other things: "[W]e have some doubts about your client's ability to establish bad faith. We point out that there has been no attempt by our client to obtain money from your client. Our client has acted in good faith."

On 13 October 2011, the Complainant's lawyers offered AU\$1500 for transfer of the Domain Names (and others).

On 24 October 2011, the Respondent's lawyers wrote to say that the Respondent did not accept the offer. The lawyers also raised some questions about what they described as "unrelated matter". They asked (1) whether the Complainant attended an online course delivered by the Respondent in 2008; (2) whether the Complainant agreed that at that time the Respondent was the only Australian provider of online live vet nursing continuing education courses and the only online provider globally to introduce a "uniquely different format"; and (3) whether the Complainant thereafter established a course which was substantially similar to the Respondent's course.

On 4 November 2011, the Complainant's lawyers replied that their client did attend the course, declining to confirm (2) above, and denying that the courses were substantially similar.

5. Parties' Contentions

Complaint

The following is a summary of the contentions in the Complaint:

1. As the registered business name, "Veterinary Nurse Solutions" forms part of the business logo, it is used in all marketing for the Complainant including on its website, Facebook page, brochures, promotional signage used at seminars and Google search advertisements.
2. The Complainant's trade mark is a composite trade mark and includes the logo as well as the prominent wording "Veterinary Nurse Solutions".
3. The domain names in dispute are identical to the registered business name and trade mark for "Veterinary Nurse Solutions" as "vet" is considered to be a widely known and accepted abbreviation for "veterinary" or "veterinarian".
4. The Respondent first became known to the Complainant when the Complainant participated in a course offered by the Respondent in early 2008.
5. Prior to September 2010, the parties were in contact about a reference for a vet nurse. During the conversation, the Respondent enquired about the current development and growth of Veterinary Nurse Solutions.
6. In 2010, the Respondent and Complainant both attended and presented, in person, at the Hills Veterinary Nutritional Advocates Nurses Weekend Retreat conference at the Gold Coast, Queensland, Australia.
7. In July 2011, the Respondent and Complainant both presented in person at the Hills Veterinary Nutritional Advocates Nurses Weekend Retreat at the Gold Coast.
8. The relationship between the Complainant and Respondent has been amicable, with the Complainant quite willing to recommend potential clients to seek the services of the Respondent if their educational requirements exceeded the level of the courses currently being offered by the Complainant.
9. The Respondent included a link to the Complainant's website (vetnurse.com.au) on its own business website (veteducation.com.au) from mid-2008 until Jan 2010. The removal of the link to the Complainant's website coincided with the registration of the Complainant's business name and the commencement of trading from the Complainant's website. This indicates that the Respondent was aware of the Complainant's business and registered business name.
10. The Respondent has registered the Domain Names in bad faith to prevent the Complainant from registering the Domain Names. This is further evidenced by the fact that the Respondent has registered a number of derivatives of both Domain Names.
11. Due to the relationship between the Complainant and the Respondent, the Respondent was aware of the Complainant's business, including its trading name, prior to the Respondent acquiring the Domain Names.
12. Since registering the Domain Names in February 2011, the Respondent does not appear to have made any effort to utilise the Domain Names. The

Complainant would strongly object to the Respondent doing so, whether for its own business (which offers some services similar to the Complainant) or for any other purpose, as this is likely to confuse people or businesses into believing that the Domain Names are registered to, operated or authorised by, or otherwise connected with the Complainant.

13. The Domain Names are non-generic and are identical to the registered business name and trade mark of the Complainant.
14. The Respondent has acquired the Domain Names for the purpose of blocking registration of those Domain Names by the Complainant.
15. The Respondent has engaged in a pattern of acquiring domain names in bad faith. These domains are related to individuals and/or businesses that are not associated with, and are likely to be in competition with, the Respondent. These abusive registrations were made at or around the same time that the Respondent abusively registered the Domain Names that are the subject of this complaint. As at least one of the businesses affected is known to the Complainant (The Webinar Vet) as they are in similar fields of business; it is considered highly probable that the Respondent knew of The Webinar Vet prior to acquiring the domains thewebinarvet.co.nz and thewebinarvet.com.au.

Response

The following message was filed as the Response:

“Why should the complaint not succeed?”

Thank You for your e-mail. This matter is being dealt directly with the complainant through our solicitor. We are close to resolving the issues raised and are looking forward to a speedy resolution of this matter.

Should You have any further queries, Please do not hesitate to contact us.

Kindest Regards

Charisma Judge
Vet Education

As far as you are aware have any legal proceedings been issued or terminated in connection with the domain name?

Please contact our Lawyers for information

Mr Donnie Harris
dharris@rnm.com.au

Roberts Nehmer McKee, Lawyers
Level 1, 111 Charters Towers Road, Townsville QLD 4810
PO Box 5374, Townsville QLD 4810
Tel: 07 - 4726 5000
Fax: 07 - 4726 5005

Are there any web pages that support this dispute?

- www.veteducation.com.au”

6. 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 Names and, second, that the Domain Names, in the hands of the Respondent, are abusive registrations (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”

Paragraph 1.5 of the DRS Experts’ Overview on Nominet’s website explains that there is no geographical / jurisdictional restriction on “rights”. Accordingly the Complainant can rely on its Australian trade mark.

The trade mark is dominated by the words “Veterinary Nurse SOLUTIONS”. In my view, veterinarnursesolutions.co.uk is similar to the trade mark as it comprises those same words (excluding the domain suffix). I consider that vetnursesolutions.co.uk is also similar to the mark as “vet” is an obvious and well-known abbreviation for “veterinary”.

I conclude that the Complainant has established rights in a name or mark which is similar to the Domain Names.

It is therefore unnecessary to consider whether the Australian business name registrations constitute “rights”.

I make no finding as to unregistered rights because the Complainant has provided no information or evidence concerning the extent of the use or public recognition of the 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.”*

There is no substantive Response in this case. The document filed as a “Response” is simply a message from the Respondent to Nominet stating that the Respondent’s solicitor was dealing directly with the Complainant and that a resolution was close at hand. The document identifies the website “www.veteducation.com.au” as a web page that “supports this dispute” but this is simply the Respondent’s own website and, of itself, it casts no light on the Respondent’s stance in the case.

This is therefore equivalent to a default by the Respondent. Paragraph 5.6 of the DRS Experts’ Overview observes that, where a respondent fails to respond, it is still necessary for the Expert to be satisfied that the elements necessary to make a finding of abusive registration are present.

Knowledge of the Complainant’s trading name

I am satisfied that the Respondent registered the Domain Names with knowledge of the Complainant’s trading name “Veterinary Nurse Solutions”.

First, the parties are direct competitors in Australia in what appears to be the relatively small marketplace of online veterinary-related education.

Second, the Complainant has provided evidence that in 2010 (i.e. after the Complainant started using the name “Veterinary Nurse Solutions” and before registration of the Domain Names) both parties made presentations in person at the same conference.

Third, the Complainant has established that the Respondent’s site linked to the Complainant’s site from July 2008 to December 2009 but by 30 January 2010 the link had been removed. This was at around the time when the Complainant started trading under the name “Veterinary Nurse Solutions” and offering services competing with the Respondent. This timing indicates that the Respondent is likely to have pulled the link because it became aware of the Complainant’s competing business.

Fourth, the correspondence from the Respondent’s lawyers does not deny the Respondent’s knowledge of the Complainant’s name despite the fact that the Complainant’s lawyer had asserted registration in bad faith (amongst other things).

Respondent’s motive

It is difficult to see what genuine reason that Respondent could have for registering some twelve domains (including the Domain Names) reflecting the name of its competitor. The Respondent has not filed a substantive Response to explain why it did this and the correspondence from its lawyers contains no explanation either.

However, the correspondence between the parties' lawyers does include an exchange regarding "an unrelated matter" which indicates that the Respondent believed that the Complainant, having attended an online course of the Respondent 2008, thereafter established its own course which copied the Respondent's "uniquely different format". It may be that the Respondent registered the Domain Names (and variations) in retaliation for what it perceived as an infringement of its rights.

Abusive registration – conclusion

Whatever its exact motive, I am satisfied on the balance of probabilities that the Respondent registered the Domain Names as part of pattern designed to block the Complainant and/or to unfairly disrupt its business in accordance with paragraphs 3(a)(i)(B) and (C) of the Policy respectively.

I conclude that the Domain Names are abusive registrations in that they have been registered in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's rights.

7. Decision

I find that the Complainant has rights in a mark which is similar to the Domain Names and that the Domain Names are, in the hands of the Respondent, abusive registrations. I therefore direct that the Domain Names be transferred to the Complainant.

Signed Adam Taylor

Dated 1 March 2012