

## DISPUTE RESOLUTION SERVICE

D00010762

Decision of Independent Expert

BJG Solutions Ltd

and

Mr Andrew Nock

### 1. The Parties:

Lead Complainant: BJG Solutions Limited  
Unit 3 & 6 Bentalls  
Basildon  
Essex  
SS14 3BN  
United Kingdom

Respondent: Mr Andrew Nock  
Dynes Recovery Services  
Unit 3 Crayside Industrial Estate  
Thames Road  
Crayford  
Kent  
DA1 4RF  
United Kingdom

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

bjgsolutions.co.uk

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

16 January 2012 13:31 Dispute received  
17 January 2012 11:16 Complaint validated  
17 January 2012 11:23 Notification of complaint sent to parties  
03 February 2012 01:30 Response reminder sent  
08 February 2012 09:44 No Response Received  
08 February 2012 09:54 Notification of no response sent to parties  
08 February 2012 12:29 Response received  
08 February 2012 12:57 Notification of response sent to parties  
13 February 2012 09:03 Reply received  
13 February 2012 09:06 Notification of reply sent to parties  
13 February 2012 09:06 Mediator appointed  
20 February 2012 10:04 Mediation started  
08 March 2012 11:55 Mediation failed  
08 March 2012 12:26 Close of mediation documents sent  
23 March 2012 09:59 Expert decision payment received  
26 March 2012 Keith Gymer appointed as Expert (wef 29 March 2012)  
26 March 2012 Expert requests further submissions from parties pursuant to Paragraph 13(a) of the Procedure  
28 March 2012 Nominet notifies the Parties of the Expert's request  
30 March 2012 Respondent's reply to the request forwarded to the Expert  
5 April 2012 Complainant's reply to the request forwarded to the Expert

### **4. Factual Background**

The Complainant is BJG Solutions Limited, a company established in November 2006, which is in the business of providing 24 hour vehicle breakdown recovery services. The company was originally set up with Mr Ben Goldstone (whose initials are BJG as included in the company's name) and Mr Andrew Nock as directors. The Complainant operates its website at [www.bjgsolutions.co.uk](http://www.bjgsolutions.co.uk), but the Domain Name is not registered in the Complainant's name.

The Respondent is Mr Andrew Nock, who subsequently resigned as a director of the Complainant in December 2007, and who runs a competing business, Dynes Recovery Services.

The Domain Name, [bjgsolutions.co.uk](http://bjgsolutions.co.uk), was registered by Mr Nock, in his name, on 11 December, 2006.

### **5. Parties' Contentions**

#### **Complainant:**

The Complainant asserts that Mr Nock assisted with setting up the Complainant company as he had already set up another company himself, and that Mr Nock also dealt with the original registration of the Domain Name and the initial set up of the Complainant's website because he had previously worked with a computer

company which provided suitable services. Mr Nock had therefore advised that he could sort this out for the Complainant.

When Mr Nock resigned as a director of the Complainant in December 2007, Mr Goldstone purchased Mr Nock's shares in the Complainant.

Some time later, Mr Goldstone realised that the Domain Name had not been registered in the Complainant's name and requested Mr Nock to transfer the Domain Name on several occasions, but Mr Nock refused to do so.

In response to the Expert's request for further information, the Complainant clarified that the Complainant was invoiced by Mr Nock's company (Dynes Recovery Services) for the original website costs in 2007, and has since paid the for the website costs directly itself to the service provider (Datamet).

The Complainant believes that the Domain Name should be held in its name and is concerned that it could lose control and be adversely affected if the Domain Name remains in Mr Nock's name now that he is no longer a director of the Complainant.

The Complainant therefore requests that the Domain Name be transferred into its name.

**Respondent:**

The Respondent, Mr Nock, simply asserts that he took out the Domain Name himself and paid all the set up fees and first year's charges. He added the Domain Name to his own Dynes Recovery Services' account.

He claims that he owns the Domain Name and that he is not happy for the Complainant to take it over. He suggests that he has not been reimbursed for the original set up costs.

In response to the Expert's request for further information, the Respondent stated that the original invoices were raised to "Andy Nock – Dynes Recovery Services" and paid for by direct debit to Datamet. The Respondent claims that the Complainant used Mr Nock's company "as a 'Bank' to get ... off the ground as it were."

**Complainant's Reply:**

In a reply to the Response, the Complainant pointed out that "at the time of setting up of the domain Mr Nock was a director of BJG Solutions Ltd, he was therefore acting on behalf of and representing BJG Solutions Ltd."

"The domain name is clearly that of the company, BJG Solutions Ltd. It would be unfair and unreasonable to withhold company's domain name from the company following the resigning of Mr Nock as a director of that same company."

Additionally, the Complainant claims that the allegedly uncompensated set up costs implied in Mr Nock's Response are "far higher than the actual costs incurred at the time."

## **6. Discussions and Findings**

### **General**

Paragraph 2 of the Policy requires that, for the Complainant to succeed, it must prove to the Expert, 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 that the Domain Name, in the hands of the Respondent, is an Abusive Registration as defined in Paragraph 1 of the Policy.

### **Complainant's Rights**

The Complainant has been trading as BJG Solutions Limited since 2006. It also uses the designation BJG Recovery Solutions on its vehicles. The content on the website at [www.bjgsolutions.co.uk](http://www.bjgsolutions.co.uk) clearly relates to the Complainant's own business. There is no evidence that it has been used other than for the promotion and benefit of the Complainant's business.

The Complainant has not asserted any claim to registered trade mark rights, but the Expert is satisfied that the Complainant would have unregistered common-law rights as a consequence of its use of the BJG Solutions designation in relation to its breakdown recovery services, and the testimonials on the website are demonstrable evidence of established goodwill in the name.

Consequently, the Expert considers that the Complainant has Rights in respect of a name or mark, which is identical or similar to the Domain Name.

### **Abusive Registration**

The Complainant also has to show that the Domain Name is an Abusive Registration. Paragraph 1 of the 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.

A non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration are set out in Paragraph 3a of the Policy of which the one example pertinent to the present case is at 3a(v) that:

- v. The Domain Name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant:
  - A has been using the Domain Name registration exclusively; and

**B** paid for the registration and/or renewal of the Domain Name registration.

This example was first introduced in Version 2 from October 2004 and was meant to apply in cases where there has been some breakdown in the original relationship between Complainant and Respondent, and where the original intent of that relationship has been frustrated with some unfairly detrimental consequence for the Complainant, notwithstanding that it is the Complainant (and not the Respondent) which is actually making “use” (in any ordinary sense of the word) of the Domain Name at issue.

As has been considered previously (e.g. in DRS 02242 BAE Systems PLC v. Natasha Sime), this does require some stretching of the ordinary interpretation of Paragraph 1(i) and (ii), but the intent of the framers of the Policy is clear.

The wording of Paragraph 1(ii) “*has been used in a manner, which took unfair advantage of or was unfairly detrimental to the Complainant’s Rights*” is therefore to be construed as encompassing situations where the “use” is to be considered as unfair to the Complainant’s Rights because the Domain Name is not actually registered in the Complainant’s name, when the original expectation was that it would be so registered.

In the Expert’s opinion, that is the case in the present dispute.

The Complainant’s observations in its Reply that “at the time of setting up of the domain Mr Nock [the Respondent] was a director of BJJ Solutions Ltd, he was therefore acting on behalf of and representing BJJ Solutions Ltd” is surely correct.

As he was a director of the Complainant at the time he registered the Domain Name and made the arrangements to set up the Complainant’s website, the Respondent, Mr Nock, would have been under a statutory, fiduciary duty to act in the interests of the company and its shareholders as a whole, and not just for himself personally.

Whilst it may have been convenient for him to use his existing contacts and accounts to handle that work, in the Expert’s opinion, he was undoubtedly obliged to do so on trust for the Complainant.

If he incurred personal expenses in undertaking that work, then it was up to him to present an appropriately supported and timely claim to the Complainant for reimbursement of those expenses. If he omitted to do so, that may be a separate issue for the parties to resolve, but it does not entitle him to claim now that he originally acquired the Domain Name, and should continue to hold it, for himself and not for the Complainant. That would be inconsistent with his original duties as a director of the Complainant at the relevant time.

The Respondent is now no longer a director of the Complainant, and actually runs another company in direct competition with the Complainant. In these circumstances, it is unjustifiable, and takes unfair advantage of the Complainant’s Rights, for the Respondent to continue to deny the Complainant control of the

Domain Name, when that Domain Name was dutifully registered by the Respondent, for the Complainant's use and benefit, when he was a director.

For these reasons, for the purposes of the Policy, the Expert concludes that the Domain Name in the hands of the Respondent is an Abusive Registration, consistent with Paragraph 3a(v) of the Policy.

## **7. Decision**

Having concluded that the Complainant has relevant Rights and that the Domain Name, in the hands of the Respondent, may be characterised as an Abusive Registration for the purposes of the Policy, the Expert orders that the Domain Name bjgsolutions.co.uk be transferred to the Complainant.

**Signed Keith Gymer**

**Dated 23 April 2012**