

**DISPUTE RESOLUTION SERVICE**

**D00010830**

**Decision of Independent Expert**

**Keats Engineering Ltd**

and

**Mr Nigel Moxon**

**1. The Parties:**

Lead Complainant: Keats Engineering Ltd  
4 Hollywel Avenue  
Castleford  
West Yorkshire  
WF10 3FD  
United Kingdom

Complainant: Pontefract Collieries FC  
93 Priory Road  
Featherstone  
West Yorkshire  
WF7 5JY  
United Kingdom

Respondent: Mr Nigel Moxon  
55 Monkhill Avenue  
Pontefract  
Yorkshire  
WF8 1JE  
United Kingdom

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

keatsengineering.co.uk (“the First Domain Name”)  
pontecollsfcc.co.uk (“the Second Domain Name”)

together referred to as “the Domain Names”.

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

04 February 2012 21:25 Dispute received  
06 February 2012 11:50 Complaint validated  
06 February 2012 11:57 Notification of complaint sent to parties  
27 February 2012 10:43 Response received  
28 February 2012 11:47 Notification of response sent to parties  
29 February 2012 09:44 Reply received  
29 February 2012 09:46 Notification of reply sent to parties  
29 February 2012 09:47 Mediator appointed  
07 March 2012 15:39 Mediation started  
12 March 2012 15:59 Mediation failed  
12 March 2012 16:06 Close of mediation documents sent  
13 March 2012 10:51 Expert decision payment received

On 21 March Gill Grassie (“the Expert”) confirmed to Nominet that she knew of no reason why she could not properly accept the invitation to act as expert in DRS0010830 and further confirmed that she knew of no matters which ought to be drawn to the attention of the parties which might call into question her independence and/or impartiality.

### **4. Procedural Issues**

The Respondent has submitted three non-standard submissions under paragraph 13b of the DRP. The Expert has considered these summaries and does not consider that the content of the additional material that the Respondent wishes to introduce is relevant to whether or not the Domain Names are Abusive Registrations.

Paragraph 13b is clear that it is intended to allow additional information to be put to the Expert where there is an “exceptional need” to do so. The basis of this need must be set out in the introductory paragraph which is supplied to the Expert.

In this case as the Expert I do not consider that an adequate basis for such an “exceptional need” has been explained by the Respondent. Further, my view is that the descriptions of the additional materials in the explanations by the Respondent demonstrate that these are irrelevant and will not alter the ultimate decision here. Thus the “exceptional need” requirement has not been met and I have declined to request sight of the additional materials concerned.

### **5. Factual Background**

The Lead Complainant, Keats Engineering Limited, operates a business specialising in fabrication and manufacture of steel items. It has a website at [www.keatsengineering.com](http://www.keatsengineering.com). The second Complainant is Pontefract Collieries FC

("PCFC") a football club in Pontefract. Mr Trevor Waddington is majority shareholder and Managing Director of the Lead Complainant and an official and committee member of PCFC and the author of the Complaint. Mr Guy Nottingham is PCFC's Chairman and is named as an Additional Complainant to whom both of the Domain Names are requested to be transferred.

The Respondent is a former committee member of PCFC but resigned from the committee on 26 June 2008. While such a member he was instructed to set up a website on behalf of PCFC and therefore purchased the Second Domain Name, pontecollsfsc.co.uk, on 27 September 2007 and set up a website under it. After he resigned in 2008 he was asked to give the Second Domain Name and website back to PCFC. He refused to do so and continued to operate the website at the Second Domain Name. PCFC decided on 1 December 2009 to set up a new website under pontecollsfsc.co.uk.

The Respondent registered the First Domain Name, keatsengineering.co.uk on 23 June 2011 according to the Nominet WHOIS search conducted by me on 21 March 2012. It is alleged by the Complainant that the First Domain Name has been re-directed to the website at the Second Domain Name by the Respondent.

The essence of the Complainants' complaint that the registrations are abusive relates to the content of the website at the Second Domain Name which it is alleged denigrates the activities of PCFC and its officials and damages the business of Lead Complainant Keats Engineering Limited. It also alleges that the content amounts to slander, libel and defamation of character.

## **6. Parties' Contentions**

### **The Complainants' Complaint**

The Lead Complainant is a limited company which runs the business as above. It asserts that it was first established in November 2003 under the name Keats Engineering as its trading name and has been incorporated since February 2007. Prior to that and since November 2003 it was operated by Mr Trevor Waddington (who is still majority shareholder and Managing Director) as a sole trader as Keats Engineering. It asserts that "Keats Engineering" is the recognised trading name for the company, and that the First Domain Name is re-directed to the Second Domain Name by the Respondent. The Complainant contends that the latter website contains material that is abusive to it as well as to individual officials of PCFC.

It alleges that Google searches for "Keats Engineering" direct prospective clients of that company towards both its official site and the sites of the Respondent at the Domain Names. The Complainant suggests that there is evidence attached to this effect. The Expert has not been able to identify such evidence.

The Expert did her own Google search for "Keats Engineering" on 22 March 2012, and, looking at the first page of results only, there was no reference to the Respondent's website under the First Domain Name.

PCFC is stated to be the largest football club in Pontefract and is more commonly known as “Ponte Colls” by locals and supporters. This evidence appears from a Wikipedia page about sports in Pontefract with the reference:

*“Pontefract has its own non-league football club Pontefract Collieries FC who were founded in 1958 and play adjacent...Ponte Colls play in the Northern Counties East Football League”.*

Another Wikipedia page produced as evidence about Pontefract states that:

*“The town is called Pont/Ponty by its citizens....”*

The Complaint states that the official site of PCFC is hosted as [www.pontecolls.co.uk](http://www.pontecolls.co.uk), that PCFC was formed in the 1950's and has had the name of Pontefract Collieries throughout the intervening period. It refers to evidence in the form of a letterhead and NCEL screen grab. The letterhead is undated but is headed Pontefract Collieries Football Club. The letterhead also has the URL [www.pontecolls.co.uk](http://www.pontecolls.co.uk) on it under the Club badge. The screen grab is dated 19 February 2012 and includes “Pontefract Collieries” as a named team.

The Complaint states that the Respondent was asked to register the Second Domain Name for PCFC. The Respondent does not dispute this and there is a copy letter of resignation by the Respondent dated 26 June 2008 confirming that he was invited to design a website and claiming legal ownership of the Second Domain Name.

The Complainant alleges that the Respondent was reimbursed by PCFC and refers to evidence attached in the form of a receipt. This is a receipt from Fasthosts Internet Limited addressed to the Respondent for the sum of £103.27 in respect of a hosting package for the Second Domain Name. The Respondent appears to have written on it *“Received 29 September 2007 £103.27”* and has signed his name. There is also a letter attached from the Complainant addressed to the Respondent dated 9 May 2008 headed *“Reimbursement of website fees”*. It states:

*“On behalf of Pontefract Collieries, I acknowledge reimbursement by you of the sum of £103.27 in respect of the website and domain pontecollsfc.co.uk now owned by yourself.”*

There are also Minutes of a committee meeting of PCFC dated 26 June 2008 which indicate at paragraph (d) that the Respondent was reimbursed for the setup and running costs of the site.

The Complainants assert that both the Domain Names are Abusive Registrations. It claims the First Domain Name re-directs to the website at the Second Domain Name which in turn contains material which is abusive to the Lead Complainant as well as PCFC, Mr Trevor Waddington and other club officials.

The Complainants assert that the main focus of the site is to denigrate the activities of PCFC, its officials and to damage the business of the Lead Complainant. It alleges that the site purports to represent a host of disaffected

fans when in fact blogs and entries are posted by the Respondent under a series of pseudonyms. It is also alleged that the abuse takes several forms including slander/libel, damage to the reputation of PCFC and defamation of character in relation to Mr Guy Nottingham and Trevor Waddington.

The Complainant states that a Google search for “Pontefract Collieries” gives the website at the Second Domain Name third in the rankings and achieves a large number of clicks. It alleges that the site itself is claiming 563,716 (at 31 January 2012) clicks.

Transfer of the Domain Names is requested to Mr Guy Nottingham as an additional Complainant.

### **The Respondent’s Response**

The Respondent asserts that the First Domain Name does not redirect to the website at the Second Domain Name and that there are no hosting companies for it so it cannot be re-directed to take prospective visitors away from the official website of the Lead Complainant’s business. He asserts that the First Domain Name is parked with registrar Fasthosts and no email addresses are associated with it.

He states that there are no registered trade marks for either Domain Name. He asserts that another ex-Committee member who resigned and refused to hand back another domain name, pontefractcollieries.co.uk, was not subjected to “persecution” and that Trevor Waddington and Guy Nottingham are subject to a National Football Association investigation with regard to PCFC. He claims that PCFC is known by its full name i.e. Pontefract Collieries Association Football Club and advertises as such on its football stand and on its badge. He asserts that the Second Domain Name is used to report on local football matches played within the NCEL and for investigative journalism and a football comments blog for visitors.

He states that the website has been in existence since registration on 27 September 2007 for some 4 years and 5 months and that no complaints were received during that period in relation to it. The Respondent alleges that during 2009 Mr Trevor Waddington as then Chairman of PCFC was in total control and administration of the domain name, pontecolls.co.uk, and that he (Mr Waddington) decided to use that domain name and PCFC’s website as a tool and weapon of vendetta against him. There is a letter provided from Mr K Burton as leaseholder/trustee of PCFC to the Respondent dated 16 January 2012 confirming that from 27 June 2008 only the chairman Mr Trevor Waddington had administrative rights and full control of the Pontefract Collieries website and domain at pontecolls.co.uk. The Respondent alleges it is an Abusive Registration, of which Mr Waddington is not the registrant or the co-Complainant.

Contrary to what the Complainant states the Respondent asserts that PCFC requested reimbursement of all fees associated with the Pontecollsfco.uk registration and that PCFC subsequently received reimbursement in full. He denies that he posts under a pseudonym and states that the comments are those of the respective authors on the website concerned. He refers to evidence which shows

Mr Waddington accusing his hosting company of hosting the disputed domain name and that Mr Waddington contacted his registrar Fasthosts in July 2011 stating he wanted his domain back.

The Respondent points out that Mr Waddington has never registered the domain name Keatsengineering.co.uk. He states that Mr Waddington himself is not the registrant of the domain keatsengineering.com but it is registered to Mr Wayne Clarida who is the company director of Visible BG Limited. He states that Mr Clarida and Mr Guy Nottingham via Visible-website.co.uk and Visiblecoms.co.uk designed and presently host the Lead Complainant's company website at [www.keatsengineering.com](http://www.keatsengineering.com). He states that they also designed and presently host PCFC's website, [www.pontecolls.co.uk](http://www.pontecolls.co.uk), and that Mr Guy Nottingham is an employee of Mr Clarida and of the Lead Complainant. Various documents as evidence are referred to to support these statements. The Respondent suggests Mr Waddington has various financial conflicts of interest as regards the Domain Names.

The Respondent states that he does not advertise on the [pontecollsfc.co.uk](http://pontecollsfc.co.uk) website nor hide his identity and that there are no pay-per-clicks. He also states he does not sell any products and there are no advertisements on it. He denies that the [pontecollsfc.co.uk](http://pontecollsfc.co.uk) website denigrates PCFC's activities. He states that PCFC presently enjoys a 17.24% increase in its support base and refers to a screen-grab evidence of this.

He alleges that the website contains comments from a wide variety of personnel members and fans who are disgusted with Mr Trevor Waddington and also how he has operated PCFC's website to bully officials into resignation etc. He alleges that PCFC's official website has been used as a means to deter and frighten other visitors away from his website and refers to evidence of this as a screen grab of a statement from Mr Waddington as Chairman on the official website.

The Respondent states that Mr Waddington was instructed by letter from the secretary of PCFC on 1 December 2009 to refrain and desist from using the domain [pontecolls.co.uk](http://pontecolls.co.uk) in light of previous complaints about articles that were published on it. This letter states that a new domain and website has been registered [Pontefractcollieriesfc.co.uk](http://Pontefractcollieriesfc.co.uk) and would be used so all club officials had access and use of the new website.

The Respondent asserts his rights as respective registrant and legal owner of both the Domain Names and alleges that the complaints are malicious and that he is the subject of a hate campaign and personal vendetta by Mr Waddington and Mr Nottingham.

I note that there are many other allegations by the Respondent about the Complainants and Mr Waddington's behaviour in particular and instances of his being targeted for abuse via use of the Club's official website.

### **The Complainants' Reply to the Response**

The Complainants state that the Respondent has taken the redirect off the first Domain Name site after receiving its complaint. They ask what reason the

Respondent would have to register the First Domain Name as it has no association with the Lead Complainant and never has. It also points out that the Respondent did have an email associated with the Lead Complainant at [info@keatsengineering.co.uk](mailto:info@keatsengineering.co.uk) in contradiction to what the Respondent states. There is evidence of this provided in a copy of registration information for the Second Domain Name which states the Respondent as having an email address at [info@keatsengineering.co.uk](mailto:info@keatsengineering.co.uk).

The Complainants state that a number of matters the Respondent relies upon in his reply are either irrelevant or untrue. They indicate that they are not under investigation by the National Football Association and point to an email from the West Riding County FA to evidence this. They advise that Mr Clarida did redesign the club's official website at [pontecolls.co.uk](http://pontecolls.co.uk) and host it as appointed by PCFC. They state Mr Nottingham is not employed by Mr Clarida nor is he an employee of Trevor Waddington or the lead Complainant. They assert that Mr Nottingham himself is self-employed and is Chairman of PCFC. They also allege that advertisements have been removed from the Respondent's website at the Second Domain Name and that there have been some in the past history of the website.

## **7. Discussions and Findings**

Paragraph 2 of the Nominet Dispute Resolution Policy ("the Policy") sets out that for a Complainant's complaint to succeed it must prove to the Expert that:

*(i) the Complainant has Rights in respect of the name or mark which is identical or similar to the Domain Name;*

*and*

*(ii) the Domain Name in the hands of the Respondent is an Abusive Registration.*

The Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.

### **The Complainants' Rights in First Domain Name**

Under paragraph 1 of the Policy "Rights" are defined as:

*"rights enforceable by the Complainant, whether under English law or otherwise and may include rights and descriptive terms which have required a secondary meaning"*

The Complainants do not provide evidence of sales levels, accounts or the number of customers it has in order to establish goodwill in the name Keats Engineering. There are no registered trade marks for that name. It asserts that the business first started to use the name Keats Engineering in November 2003 and has used it continuously since then as a business name, and that the official domain name was registered on 8 March 2007. It provides a sample of Keats Engineering Limited's letterhead and a page from their website at [www.keatsengineering.com](http://www.keatsengineering.com)

(albeit the latter is submitted by the Respondent as evidence). It states that the name Keats Engineering Limited is a recognised trade name for the company.

Notably the Respondent does not specifically challenge the fact that the Lead Complainant has Rights in the name, Keats Engineering, which is the name reflected in the First Domain Name. I consider it is not relevant to take into account the fact that the First Domain Name and the website to which it is connected are registered to or hosted by another party as the Respondent asserts. The question is whether the Complainant Keats Engineering Limited has Rights in the name Keats Engineering. The Complainant has provided some evidence which is unchallenged to the effect that it has some limited trading and goodwill in the name. In addition it is not a descriptive or generic trading name as such and therefore does not require to reach the higher threshold of secondary meaning to acquire common law unregistered rights.

Although the evidence submitted in this respect is very limited, I am satisfied that the Complainant has sufficient rights to found a complaint. It is also well accepted that the question of Rights is a test with a low threshold to overcome.

I also consider Keats Engineering to be identical or similar to the First Domain Name (disregarding the .co.uk suffix). Accordingly I find that the Lead Complainant has Rights in the name and mark Keats Engineering which is identical or similar to the First Domain Name.

### **Rights in the Second Domain Name**

The issue here is whether PCFC has Rights in respect of a name or mark identical or similar to the Second Domain Name, pontecollsfsc.co.uk. This involves assessing whether it has Rights in the name pontecolls fc as opposed to the formal name of the club Pontefract Collieries Football Club.

The Complainant states that:

*“the football club is more commonly known as Ponte Colls by locals and supporters and its official site is at [www.ponte.colls.co.uk](http://www.ponte.colls.co.uk)”*

It states that PCFC was formed in the 1950s and that it has used the name Pontefract Collieries throughout the period since then. The only evidence submitted to the effect that the Club is officially referred to as Ponte Colls is the Wikipedia page. Other than this in September 2007 the Club did request the Respondent to register the disputed Domain Name, which incorporates the Ponte Colls name, for its website. There are no registered trade marks for Ponte Colls.

It is not absolutely clear which party ended up out of pocket for the Domain Name/website costs. It seems that the Respondent paid these initially on 27 September 2007 and was then reimbursed by PCFC on 29 September 2007. The letter from PCFC to him of 9 May 2008 acknowledges receipt of the Respondent’s reimbursement of the relevant sum in respect of the website or domain name. That letter also specifically acknowledges that the Domain Name is “now owned by yourself” meaning the Respondent.



That letter is dated prior to the Respondent's resignation from the Club Committee on 26 June 2008. The Respondent's letter of resignation states:

*"Pontefract Collieries Committee also invited me to design a website. I did so....many hours of hard work and passion went into the website where there were 45,000 hits per month. However that task will cease. I also point out the legality of the domain names are solely in my name and I am respectful copyright holder and so owner of [www.pontecollsfsc.co.uk](http://www.pontecollsfsc.co.uk) and [www.pontefract-collieries.co.uk](http://www.pontefract-collieries.co.uk)."*

The Minutes and meeting of the Club Committee of 26 June 2008 at which the Respondent was present under paragraph (d) "shoutbox" states that the Respondent was reimbursed for set-up money costs for the site. The Respondent denies this in his response to the Complainant.

The Minutes of the meeting also state that:

*'legal advice is to be taken in communication with Fasthosts with a view to suspending the site (at the disputed domain name) until (the Respondent) hands over all the passwords as the site belongs to the Club. NM was reimbursed for the set up and running costs of the site.'*

Irrespective of the question of reimbursement/the previous acknowledgement of the Respondent's ownership of the Domain Name and website, PCFC made its position clear at that meeting which was that it objected to the Respondent's continued operation of the site.

The full name of the football club is Pontefract Collieries Football Club. The copy letter submitted on PCFC's headed notepaper uses this full name. The full name is also used on the Club badge. It appears that there have been various websites at different variations of the names PCFC/pontecolls set up over the period concerned. There is reference to a website at [www.pontefractcollieries.afc.co.uk](http://www.pontefractcollieries.afc.co.uk) and a letter of 1 December 2009 on the Club's headed notepaper with this website address on it. It seems to be the case at the moment that the Club's official website is at [pontecolls.co.uk](http://pontecolls.co.uk).

There is no evidence of consistent use of the name Ponte Colls demonstrated by the Complainant. It appears to be a nickname used by the fans and supporters for the Club. There is no evidence of any substantial promotion or advertising of the football club specifically under this name other than use of its name as part of the official domain name website. Against that it does appear that the website operated at the Second Domain Name by the Respondent was operated by him on behalf of PCFC from 2007 until his resignation of 26 June 2008. Also it appears that PCFC's new official website was set up in 2009 and has been operated at least from time to time using the name Ponte Colls since then under [pontecolls.co.uk](http://pontecolls.co.uk). It is likely therefore that some goodwill has been generated in the name pontecolls on behalf of PCFC during that period.

Under paragraph 2.2 of the Nominet Experts' Overview, as regards establishing Rights in an unregistered trade mark, evidence needs to be put before the Expert to demonstrate the existence of that right. This will ordinarily include evidence to show that (a) the Complainant has used the name and mark in question for a not

insignificant period and to a not insignificant degree (eg 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 (eg by way of advertisements and advertising of promotional expenditure, correspondence/orders and invoices from third parties and third party editorial material such as press cuttings and search engine results). No specific evidence of this nature has been produced in this case.

The fact that the full official club name has been used consistently since the 1950's is not challenged by the Respondent. The name Ponte Colls is effectively an abbreviation of that and in my view on the balance of probabilities can only refer to that. The Complainant may not have deliberately set out to appropriate that name or mark as its own. However it is possible for a name to become distinctive of a Complainant's business/operations as a result of the public's adoption of it.

There have been reported cases to this effect. For example Arsenal v. Reid (2001) ETMR 77; 2001 RPC46 (Laddie J); on appeal (2003) EWCA Civ 696; 2003 RPC 39, CA. In that case the Club's official name "Arsenal" and its popular nickname "The Gunners" were both protected under the laws of passing off. In Daimler Chrysler v. Alavi 2001 RPC 42, evidence was accepted that the names of the claimants "Mercedes" and "Mercedes-Benz" cars were frequently abbreviated to "Merc".

In this case there has been use and limited promotion of PCFC under the name Ponte Colls since 2007 and thus some goodwill has been generated. In addition the desire by PCFC to adopt the name for its official website in 2007 suggests that it is a name commonly used by fans and supporters to refer to the above. There have also been according to the Respondent a large number of hits on the official site (45,000 per month as at 26 June 2008) which suggests fans and local recognise it as referring to PCFC. Thus on the balance of probabilities I find that the Complainant has Rights in the name Ponte Colls which is identical or similar to the Second Domain Name.

### **Abusive Registration**

I am required to consider whether the Domain Names in the hands of the Respondent are Abusive Registrations. Paragraph 1 of the Policy defines Abusive Registration as 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 the manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.*

It is sufficient to satisfy either of these limbs for there to be a finding of an Abusive Registration.

Paragraph 3(a) of the Policy sets out a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration under paragraph 1(i) of the Policy as follows:-

*i Circumstances indicating that the Respondent has registered or otherwise acquired the domain names primarily:*

*A for the purposes of selling, renting or otherwise transferring the domain name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out of pocket costs directly associated with acquiring or using the domain name;*

*B is 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.*

### **The First Domain Name**

The Complainant asserts that the Domain Name is re-directed to second Domain Name website which contains material that is abusive to the Lead Complainant. I have found no evidence of that submitted and the Respondent denies that. The Respondent also claims there are no email addresses associated with it. The Complainants allege that the redirection stopped after the Complaint was served. They submitted evidence in relation to the registration information for Pontecollsf.com (not .co.uk), which shows not only that the Respondent has registered that Domain Name but gave an administrative contact as [info@keatsengineering.co.uk](mailto:info@keatsengineering.co.uk). The Respondent puts forward no reason why he has any legitimate interest, right to or connection with Keats Engineering as the Lead Complainant. The Respondent alleges that he registered the Domain Name in his name in July 2011. The WHOIS search above indicates it was in fact registered on 23 June 2011. He simply claims it has been parked with the domain name registrar.

On the balance of probabilities it is in my view based on all of the information available that the redirection was happening at one point before the Complaint was made. The Respondent's registration in his name of the First Domain Name clearly supports this.

It is my view that Paragraph (3)(a)iC of the Policy is applicable here i.e. that the Domain Name has been registered/acquired for the purpose of unfairly disrupting the business of the Complainant. I am also of the view that the Respondent has registered and used the disputed domain name in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights. If, as is likely to be the case, the website did previously redirect to [www.pontecollsf.com](http://www.pontecollsf.com), (and even if there was no criticism of the Lead Respondent's business on it) there would still be a likelihood of customers/potential customers of Keats Engineering Limited who were legitimately looking for that company on the web being diverted to it. This in my view would be unfairly detrimental.

A further factor which can support a finding of Abusive Registration is under 3(a)(ii) of the Policy. This is as follows:

*'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 by or authorised by or otherwise connected with the Complainant.'*

Here the Domain Name is effectively identical to the name in which the Lead Complainant has Rights i.e. Keats Engineering. Legitimate actual or potential customers of the Complainant who ended up on the Respondent's site at the Second Domain Name at the time of re-direction of the First Domain Name would be likely to be confused and may well have believed that site to be connected to the Lead Complainant.

The Respondent has now stopped any redirection, but given the background to this dispute and the previous relationship and the obvious bad blood between the Respondent and Complainants and their representatives, there is no reason to consider that the Respondent will not restart this re-direction if the Domain Name were to be left in his hands. Also the Respondent offers no legitimate reason for his ownership of the First Domain Name whether it is parked or not.

Accordingly in all of these circumstances I find that the First Domain Name in the hands of the Respondent is an Abusive Registration under paragraph 1(i) of the policy.

### **The Second Domain Name**

The Complainants claim that the purpose of the website at the Second Domain Name is to denigrate the activities of PCFC and its officials, including the two individuals named in association with each of the Complainants. They allege that it contains slanderous and libellous comments and comments damaging to the reputation of PCFC and its officials. The Respondent has made counter-allegations that he has been likewise defamed and abused etc. on the official club website. The Respondent claims that his website reports local football matches, investigative journalism and is also a football comments blog for visitors.

I do not consider that it is necessarily so that there has been such defamation etc. and in any event, as I set out below, it is not possible or appropriate for an Expert to make a decision in that regard. I have not looked at those materials in any detail and do not consider that these issues are relevant to this particular dispute or to a decision.

The Respondent does not specifically rely upon any Policy grounds to resist the complaint. However it can reasonably be inferred that he intends to rely upon paragraph 4(a)(i)(c) of the Policy as follows:

*"Before being aware of the Complainant's cause for complaint (not necessarily the complaint under the DRS the Respondent has made legitimate non-commercial or fair use of the Domain Name."*

Also relevant is paragraph 4(b) of the Policy:

*“Fair use may include sites operated solely in tribute to or in criticism of a person or business”.*

The Respondent has alleged that he has not made any commercial use of the website. However one of the screenshots provided in evidence of the website which is undated appears to have an advertisement on it for [www.ezmousemat.com](http://www.ezmousemat.com). Thus it appears likely that there may have been some commercial use by the Respondent of the website as the Complainants have suggested. I note that “fair use” may include sites operated solely in tribute to or in criticism of a person or business. This is also not the case here as not only does it appear there has been some commercial use in the past but the site is also, on the Respondent’s admission, used for matters other than criticism.

The Expert’s Overview at paragraph 4.8 refers to the appeal decision in DRS 06284 (The Rayden-engineering case) which confirmed the consensus view among the Experts today that the nature of the domain name is crucial to the exercise involved in assessing whether a tribute or criticism site constitutes fair use. It states that:

*“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 about to find at that site, whereas the latter is likely to be believed to be a domain name of or authorised by the Complainant”.*

The Panel in the Rayden case 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 such as where use of the domain is so obviously justified that such use could be fair. In the Rayden case notably (unlike here) the website was maintained for the sole purpose of airing grievances and allegations against the Complainant. The Panel also stated at page 12 of the decision that they considered:

*“there is a limit as to how much significance can be placed on the content of a protest website by an Expert. The whole DRS policy is intended to be relatively simple, low cost and effective system for resolving domain name complaints. It does not contemplate a detailed analysis of factual disputes or the weighing up of conflicting accounts. Protest sites classically carry personal and emotive versions of events often expressed in deliberately shocking or vitriolic terms. The statements may well be libellous in legal terms but it is unlikely to be possible or appropriate for the Expert to determine in the context of the paper-based DRS assessment whether the statements are in fact true”.*

Notably the Panel also made it clear that the question of whether a criticism site using an identical name is or is not abusive did not turn on whether the contents of that site are defamatory in law.

In this case it seems that the Respondent has deliberately continued to use the Second Domain Name identical or similar to PCFC’s name, in which I have found it

has Rights, as a designation for what is in part a protest/criticism site without adding any distinguishing component that would identify it as such. It is therefore creating a likelihood of confusion with PCFC and attracting users of the internet who would not intentionally seek out a 'grudge' site. The Respondent does not argue that the Second Domain Name was intended to refer to anyone than the Complainant. The Respondent could have chosen to carry on his campaign by using a different domain name or one which included a distinguishing feature to ensure the Domain Name was not confusingly similar to PCFC's name.

I consider that paragraph 3(a)(ii) of the Policy is applicable here. Thus I find that the Second Domain Name has been used in a manner which has been unfairly detrimental PCFC's Rights.

For all these reasons I am satisfied on the balance of probabilities that the Second Domain Name in the hands of the Respondent is an Abusive Registration in that it has been used in a manner which takes unfair advantage of or is unfairly detrimental to PCFC's Rights in the name Ponte Colls.

## **8. Decision**

Accordingly I find that the Complainants have Rights in respect of names or marks which are similar or identical to the Domain Names and that the Domain Names in the hands of the Respondent are Abusive Registrations.

The Complaint is upheld. I direct that both Domain Names be transferred to the additional Complainant as requested by the Lead Complainant and PCFC.

Gill Grassie

**Signed: Gill Grassie**

**Dated: 11 April 2012**