

DISPUTE RESOLUTION SERVICE

D00011677

Decision of Independent Expert

Provelio Limited

and

Micheal Reed

1. The Parties:

Lead Complainant: Provelio Limited
The Meeting House
Lewins Mead
Bristol
BS9 1AA
United Kingdom

Respondent: Micheal Reed
7 Crofton Road
Kent
BR6 8AB
United Kingdom

2. The Domain Name(s):

provelio.co.uk

3. Procedural History:

19 July 2012 09:09 Dispute received
19 July 2012 10:55 Complaint validated
19 July 2012 12:09 Notification of complaint sent to parties
07 August 2012 02:30 Response reminder sent
10 August 2012 10:42 No Response Received
10 August 2012 10:42 Notification of no response sent to parties
10 August 2012 15:27 Expert decision payment received

I was thereafter contacted by Nominet and asked to confirm that I was able to provide an Expert Decision. I responded to Nominet confirming that I was able to provide a decision.

4. Outstanding Procedural Matters

The Respondent has not submitted a response to the Complaint. From the papers that have been submitted to me by Nominet, it is apparent that they have sent the Complaint to the Respondent using the contact details held on Nominet's Register.

When registering a .uk domain name applicants agree to be bound by Nominet's Terms and Conditions. Clause 4.1 of those terms and conditions states that the registrant of the domain name shall:-

*"4.1 give and keep us **notified** of **your correct** name, postal address and any phone, fax or e-mail information and those of your contacts (if you appoint any, see condition 5.2). This duty includes responding quickly and correctly to any request from us to confirm or correct the information on the **register**"*

In addition paragraph 2(e) of the Dispute Resolution Service Procedure (the "Procedure") states that:-

"e. Except as otherwise provided in this Procedure or as otherwise decided by us or if appointed, the Expert, all communications provided for under this Procedure shall be deemed to have been received:

i. if sent by facsimile, on the date transmitted; or

ii. if sent by first class post, on the second Day after posting; or

iii. if sent via the Internet, on the date that the communication was transmitted;

iv. and, unless otherwise provided in this Procedure, the time periods provided for under the Policy and this Procedure shall be calculated accordingly."

In light of the above it is my view that Nominet has done everything that it is obliged to do to bring the Complaint to the attention of the Respondent.

I now move on to consider the consequences of the Respondent not submitting a response.

The Procedure envisages just such a situation and provides in Paragraph 15 that:-

"c. If, in the absence of exceptional circumstances, a Party does not comply with any provision in the Policy or this Procedure or any request by us or the Expert, the Expert will draw such inferences

from the Party's non compliance as he or she considers appropriate."

I am not aware of any exceptional circumstances to explain why the Respondent should not have responded to the Complaint, and as such believe it appropriate to proceed to a Decision.

I will draw such inferences from the Respondent's failure to respond as I think appropriate, but must keep in mind that there may be a number of reasons why a respondent might fail to serve a response, for example that they have nothing useful to say.

5. Factual Background

The Complainant is a company registered in England & Wales, and has been trading since 2002, providing management services in estate construction. The Complainant uses the word 'Provelio' as part of its corporate name, on marketing materials and also for its website and email traffic. The word 'Provelio' is a made up word. The Complainant's turnover in 2011 was £3.5 million. It has been nominated for and received various industry awards.

The Complainant registered the Domain Name via its logo designers, however the registration was inadvertently allowed to lapse, and was thereafter registered by the Respondent.

The Respondent has no relationship with the Complainant. After registering the Domain Name, the Respondent posing as a director of the Complainant contacted one of the Complainant's customers using the Domain Name and endeavoured to have that customer divert monies that were due to the Complainant to the Respondent.

6. Parties' Contentions

I would summarise the contentions as follows –

The Complaint

The Complainant asserts that the Respondent is using or threatening to use the Domain Name in a way that has confused or is likely to confuse people into believing that the Domain Name is registered to or authorised by or otherwise connected to the Complainant (para 3a(ii) of the Dispute Resolution Service Policy (the "Policy)).

The Response

There was no Response

7. Discussions and Findings

General

To succeed in this Complaint, the Complainant must, in accordance with paragraph 2 of the Policy, prove to the Expert on the balance of probabilities that:

- (i) it has Rights (as defined in paragraph 1 of the Policy) in respect of a 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 (as defined in paragraph 1 of the Policy).

The Complainant must make out its case to the Expert on the balance of probabilities.

Complainant's Rights

The Policy defines Rights as follows -

"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 Policy requires such Rights to be in a name or mark identical or similar to the Domain Name. For the purpose of analysing whether the Domain Name is identical or similar to the name or mark in which rights are claimed, one must ignore the .co.uk suffix. The comparison is therefore between 'PROVELIO' on the one hand, and 'PROVELIO' on the other. In my opinion the mark 'PROVELIO' is identical to the Domain Name.

Furthermore, and as a result of the extensive use of the mark, the Complainant has in my view established that it has Rights in a mark identical to the disputed Domain Name.

Abusive Registration

I now go on to consider the extent to which the Domain Name is an Abusive Registration.

The Policy defines an 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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights"*

and goes on to set out a (non-exhaustive) list of factors which may be evidence that a domain name is an Abusive Registration. An extract from that list is as follows -

"3 a. A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows:

i. Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

....

C. for the purpose of unfairly disrupting the business of the Complainant;

ii. 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 or authorised by, or otherwise connected with the Complainant;"

The evidence put forward by the Complainant is that the Respondent having registered the Domain name after the Complainant inadvertently allowed it to lapse, thereafter used the Domain name in an attempt to fraudulently obtain monies from the Complainant's customer. This evidence is unchallenged by the Respondent.

The Complainant relies upon the second ground to which I have referred to above, although in my opinion the first ground would equally apply. It would seem difficult to imagine a set of circumstances in which the actions of a Respondent could be more abusive, and I have no hesitation in concluding that the registration of the Domain Name is an Abusive Registration.

8. Decision

For the reasons set out above, I find that the Complainant does have Rights in respect of a name or mark which is identical to the Domain Name <provelio.co.uk>, and that the Domain Name in the hands of the Respondent is an Abusive Registration. The Complaint therefore succeeds.

The disputed Domain Name should be transferred to the Complainant.

Signed Simon Chapman

Dated 03 September 2012