

**Dispute Resolution Service**

**DRS13492**

**Decision of Independent Expert**

**Paymatters Limited**

and

**Tracy Baker**

**1. Parties**

Complainant : PayMatters Limited  
Barons Court  
Manchester Road  
Wilmslow  
Cheshire  
SK9 1BQ  
United Kingdom

Respondent : Ms Tracy Baker  
24 Sycamore Road  
Chalfont St Giles  
Buckinghamshire  
HP8 4LG  
United Kingdom

**2. Domain Name**

paymatterscomplaints.co.uk (the "Domain Name")

### **3. Procedural Background**

On 6<sup>th</sup> November 2103 the Complaint was lodged with Nominet UK Limited (“Nominet”) and was validated. On 7<sup>th</sup> November 2013 Nominet sent the notification of the complaint letter to the Respondent by e-mail and post, advising her to log into her account to view the details of the Complaint and giving her 15 business days within which to lodge a Response on or before 28<sup>th</sup> November 2013.

The Respondent responded on 27<sup>th</sup> November 2013. On 27<sup>th</sup> November 2013 Nominet informed the Complainant that the Response was available to be viewed via the Complainant’s online services account and inviting it to Reply to the Response on or before 4<sup>th</sup> December 2013. On 3<sup>rd</sup> December 2013 Nominet informed the Respondent that the Reply was available to be viewed via the Respondent’s online services account. Mediation documents were generated for the Complaint and mediation commenced on 10<sup>th</sup> December 2013. Mediation was unsuccessful and concluded on 13<sup>th</sup> January 2014.

On 16<sup>th</sup> January 2014 the Complainant paid the appropriate fee for a Decision to be made by an Expert pursuant to paragraph 6 of Nominet’s DRS Policy (“the Policy”).

On 16<sup>th</sup> January 2014 Mr. Niall Lawless (“the Expert”) was selected and was formally appointed to act as Expert in this dispute, having confirmed that he knew of no reason why he could not properly accept the appointment and knew of no matters which ought to be drawn to the attention of the parties which might appear to call in to question his impartiality and -/- or independence. He is required to give his Decision by 11<sup>th</sup> February 2014.

### **4. Outstanding Formal -/- Procedural Issues**

There are no outstanding formal or procedural issues.

### **5. Factual background**

The Complainant, PayMatters Limited is a UK Private Limited Company incorporated on 22<sup>nd</sup> July 2009. PayMatters Limited is a provider of accounts, company administration, payroll and tax services. On 31<sup>st</sup> October 2011 PayMatters Limited bought all the assets of PayMatters LLP a

Limited Liability Partnership which was subsequently dissolved on 28<sup>th</sup> January 2014. Mr Miles Grady and Mr Nicolas Holmes are directors of PayMatters Limited. The Complainant is being represented by Miss Yates of Turner Parkinson LLP.

The Respondent is Ms. Tracy Baker. The Domain Name was registered in her name by Mr Ian Griffin on 18<sup>th</sup> May 2013. The Respondent is being represented by Mr Griffin.

The Complainant seeks transfer of the Domain Name.

## 6. The Parties' contentions

### The Complainant

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration because:-

- the Domain Name was registered in bad faith for the purpose of setting up a forum to defame PayMatters Limited, Mr Grady and Mr Holmes.
- the Domain Name was registered to unfairly disrupt PayMatters Limited's business and cause it to suffer substantial losses.

### The Respondent

The Respondent says that the Domain Name is not an Abusive Registration because:-

- the Domain Name is being used to host a "complaints website".
- the complaints website has no similarities to the Complainant's website.
- the "complaints website" homepage makes it clear that the website is not owned or operated by the Complainant.

## 7. Discussions and Findings

### 7.1 General

Nominet's DRS Policy requires that for a Complaint to succeed the Complainant must prove to the Expert on the balance of probabilities that:-

- i. the Complainant has Rights 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.

Rights include, but are not limited to, rights enforceable under English Law.

In order to show that the Domain Name is an Abusive Registration, the Complainant must prove that the Domain Name either:-

- i. 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.

The Complainant is required to prove to the Expert that the Complainant has Rights in respect of a name or mark identical or similar to the Domain Name, and that the Domain Name in the hands of the Respondent is an Abusive Registration; both elements must be present.

## 7.2 Complainant's Rights

The Complainant is PayMatters Limited. The Complainant hosts a website using the domain name [www.paymatters.co.uk](http://www.paymatters.co.uk) to promote the sale of its services, and it says that PayMatters Limited has established good will in the name PayMatters. I am satisfied that the Complainant has been carrying on business under the name PayMatters Limited since 2011. Because of the above, I decide that the Complainant has Rights in respect of a name or mark which is similar to the Domain Name.

## 7.3 Abusive Registration

Mr Grady and Mr Holmes (both directors of PayMatters Limited) and the Respondent's representative Mr Griffin are known to each other, and have been involved in business together.

### Unfairly disrupting the business of the Complainant

The Complainant says the Domain Name was registered in "bad faith".

The Uniform Domain Name Dispute Resolution Policy (UDRP) is a process established by the Internet Corporation for Assigned Names and Numbers (ICANN) for the resolution of domain name disputes.

Nominet does not use the UDRP, but instead uses its Dispute Resolution Service (DRS), which performs a similar function. Nominet's DRS Policy & Procedure are the rules and system by which the DRS operates, and form part of the contract of registration for .uk domain names.

There are similarities between the UDRP and the DRS.

To prevail in a Domain name dispute under the UDRP the Complainant must prove that the Domain Name has been registered and is being used in "bad faith". Evidence of registration and use in bad faith includes:-

*(iii) the Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor...*

Under Nominet's DRS Paragraph 3 - Evidence of Abusive Registration - guidance is given as to what factors may evidence that the Domain Name is an Abusive Registration. "A non-exhaustive list of factors which may evidence that the Domain Name is an Abusive Registration is as follows :-

*3(a)(i)(C). for the purpose of unfairly disrupting the business of the Complainant...*

Whereas, under the UDRP, the test for Abusive registration is that the Domain Name was registered for the purpose of "disrupting the business of a competitor", under the DRS, the test is that the Domain Name was registered for the purpose of "unfairly disrupting the business of the Complainant".

The Complainant says that PayMatters Limited relies on its good reputation and referrals for work. It says that PayMatters Limited works hard to build good business relationships, and adverse publicity and / or false reviews can adversely affect getting new customers to a great extent.

The Complainant says that the Respondent has registered the Domain Name in "bad faith" because the Domain Name is being used to host a website with the sole intention of defaming PayMatters Limited, Mr Grady and Mr Holmes.

The Complainant says that some of PayMatters Limited's contacts and customers have seen the material posted by the Respondent and raised questions as to the probity of PayMatters Limited, Mr Grady and Mr Holmes.

The Complainant says because of that, the Complainant's business has been unfairly disrupted.

#### Criticism websites

Nominet's DRS Paragraph 4 gives guidance as to how the Respondent may demonstrate in its response that the Domain Name is not an Abusive Registration:-

*a. A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under the DRS), the Respondent has:*

*C. made legitimate non-commercial or fair use of the Domain Name ...*

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

*c. If paragraph 3(c) applies, to succeed the Respondent must rebut the presumption by proving in the Response that the registration of the Domain Name is not an Abusive Registration.*

Mr Griffin alleges that Mr Grady and Mr Holmes have behaved badly, and says among other things that they are guilty of fraudulent deception and misrepresenting the credibility of PayMatters Limited.

Because of that, he registered the Domain Name to host a website, which would criticise PayMatters Limited, Mr Grady and Mr Holmes. Mr Griffin says that his purpose is to name and shame "*less than honest practices*".

#### Expert's reasoning

In DRS 06284 Rayden Engineering Ltd and Diane Charlton, the Appeal Panel said the "*DRS is intended to be a relatively simple, low cost and efficient system for resolving domain name complaints. The system does not contemplate a detailed analysis of factual disputes or the forensic weighing up of conflicting accounts*".

I cannot assess if any of the grievances that Mr Griffin sets out are founded in reality, and as a Nominet Expert it is not necessary for me to consider if they are.

As succinctly stated in DRS 06284 *“Protest sites classically carry personal, emotive versions of events, often expressed in deliberately shocking or vitriolic terms intended to attract attention to the cause. 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 whether the statements are in fact true so that the defence of justification would be available”*.

Therefore, although I have no doubt that the Domain Name is being used in a way which is intended to disrupt the business of the Complainant, I have no way of knowing if this would be necessarily considered “unfair disruption”.

The Respondent says that there are no similarities between the Complainant’s website and the website the Domain Name resolves to. Also, that the homepage of the [www.paymatterscomplaints.co.uk](http://www.paymatterscomplaints.co.uk) website makes it very clear that it is not owned or operated by PayMatters Limited in any shape or form.

I have looked at the two websites and confirm that it would be difficult to confuse them.

On the date of this Decision the homepage of the [www.paymatterscomplaints.co.uk](http://www.paymatterscomplaints.co.uk) website clearly sets out *“This website is NOT owned or associated with PayMatters (accountants) in any way! www.Paymatterscomplaints.co.uk is an independent complaints forum for people who have been wronged by the directors, Miles Grady / Nicholas Holmes or Harrington Brooks Ltd & PayMatters”*.

I consider it significant that the Domain Name does include not only the term “PayMatters”, but that it also has the adornment “Complaints”. This additional component would identify to the majority of internet users that the Domain Name is being used to host a protest website, and therefore the Domain Name is not being used to take advantage of “initial interest confusion”.

Paragraph 4 of the Policy specifically contemplates that a domain name may not be an Abusive Registration if it is legitimately and fairly used for a website that is operated solely in tribute to or in criticism of a person or business.

The website located using the Domain Name is operated solely in criticism of the Complainant, and based on that I decide that the Domain Name is being used legitimately and fairly, and is not an Abusive Registration.

#### 7.4 Conclusion

The Expert finds on the balance of probabilities that the Complainant has Rights in respect of a name identical or similar to the Domain Name but that the Complainant has not proved, on the balance of probabilities, that the Domain Name in the hands of the Respondent is an Abusive Registration.

### **8. Decision**

For the reasons set out in detail above, having decided that the Domain Name in the hands of the Respondent is not an Abusive Registration, the Expert directs that no action be taken.

**Niall Lawless, Nominet Expert**

**4<sup>th</sup> February 2014**