

**DISPUTE RESOLUTION SERVICE**

**D00015178**

**Decision of Independent Expert**

Northumbria Spirit Ltd

and

Mr Andrew Haddon

**1. The Parties:**

Complainant: Northumbria Spirit Ltd  
Northumbria Spirit Ltd  
South Houghton Farm  
Heddon on the Wall  
Northumberland  
NE15 0EZ  
United Kingdom

Respondent: Mr Andrew Haddon  
5 West View  
Wylam  
Northumberland  
NE41 8DT  
United Kingdom

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

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

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

The procedural history is as follows:

10 December 2014 15:36 Dispute received  
11 December 2014 09:25 Complaint validated  
11 December 2014 09:32 Notification of complaint sent to parties  
02 January 2015 01:30 Response reminder sent  
02 January 2015 11:47 Response received  
02 January 2015 11:48 Notification of response sent to parties  
07 January 2015 01:30 Reply reminder sent  
08 January 2015 09:22 Reply received  
08 January 2015 09:22 Notification of reply sent to parties  
08 January 2015 09:22 Mediator appointed  
13 January 2015 11:48 Mediation started  
29 January 2015 11:26 Mediation failed  
29 January 2015 11:26 Close of mediation documents sent  
30 January 2015 10:22 Expert decision payment received

### **Expert Declaration**

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

### **4. Factual Background**

The background to this complaint concerns a dispute between the shareholders of the Complainant (the Complainant is referred to as either “the Complainant” or “NSL” in this decision). The following facts appear, on the evidence before the Expert, to be undisputed.

NSL was formed in August 2007 by three shareholders, Jim Golightly, John Boyle and Andrew Haddon. Its business was to be the production and sale of alcoholic spirits. Prior to the formation of NSL Mr Haddon had registered the Domain Name and also northumbria spirit.com. NSL’s main product appears to be a gin spirit. It trades on a modest scale – its turnover is less than £40,000 a year.

NSL operated a web site at the Domain Name until August 2009 when a trade mark dispute with a third party who owned the trade mark 'Spirit of Northumberland' led to NSL changing its web site to [www.jackcains.co.uk](http://www.jackcains.co.uk). Jack Cains is a brand name of one of NSL's products. Following this change arrangements were made so that attempting to access a website at the Domain Name redirects to the [www.jackcains.co.uk](http://www.jackcains.co.uk) website. That remains the position today.

At some stage after 2009 the two other shareholders in NSL have fallen out with Mr Haddon. The details of this falling out and exactly what it involved are, perhaps not surprisingly, contentious and disputed. All of the shareholders have, it appears, been attempting to sell their interest in NSL, but again the exact details of what has happened are contentious.

Mr Haddon has at all material times been the registrant of the Domain Name. It also appears (see discussion below) he has paid all relevant fees associated with registering and maintaining the Domain Name. The Complainant has requested that the Domain Name be transferred to it and Mr Haddon has refused.

## **5. Parties' Contentions**

The submissions of both Parties include references to matters of disagreement between them which fall outside the scope of this Decision. The Expert has only attempted to summarise below those portions of the Parties' arguments directly relevant to the resolution of the Domain Name dispute according to the DRS Policy and Procedure.

### **Complainant**

The Complainant says that Mr. Haddon is a "hostile ex employee" who has refused to transfer the Domain Name to it despite an offer to pay his reasonable expenses in doing so. It says that at no time was there any suggestion that the domain name should remain the personal property of Mr. Haddon and the other shareholders were not aware at the time NSL was formed that Mr. Haddon had registered the Domain Name in his name rather than the company's name. The Complainant says Mr. Haddon was dismissed as an employee in 2010 and removed as a director in 2011. The Complainant says that "*Whilst Andrew Haddon has not*

*attempted to use or abuse the said domain names he has indicated his intention to do so*". This is a reference to an allegation that Mr. Haddon has indicated that he would use the domain names registered to him -northumbriaspirt.co.uk and northumbriaspirt.com - in future business activity. The Complainant says this is use in bad faith and asks for the Domain Name to be transferred.

## **Respondent**

The Respondent says that he was the originator of the business idea that led to the formation of NSL, and that he sought local partners to join him in this venture. He says he registered the Domain Name (and northumbriaspirt.com) as part of a wider business vision he had, and that Mr Boyle and Mr Golightly knew about this at the time. This occurred before NSL was formed.

The Respondent denies he has ever been an employee of NSL. He says he was one of the founders and a shareholder. He says the background to the dispute is the poor performance of NSL and he blames the other directors of the Complainant for this. He says the Domain Name cannot be actively used by the Complainant because of the previous trade mark dispute with a third party and he wishes to use it in a different context, for a "green energy" project he is involved with.

## **6. Discussions and Findings**

### **Role of the Expert**

Neither Party is legally represented. The Parties' submissions contain much that is outside the scope of this dispute. The sole function of the Expert is to consider these submissions insofar as they address the questions of the Rights claimed by the Complainant and the allegations of Abusive Registration of the Domain Name as defined in the DRS Policy (see below). On this basis alone the Expert must decide whether the Complainant has made its case on the balance of probabilities. To the extent that the submission of either Party refers to extraneous matters, particularly any which may give rise to litigation, the Expert makes no findings in respect of them.

### **Nature of Proceedings under the DRS**

Nominet states in its published guidance about the DRS that “The DRS is intended to be a cheap and quick way of resolving clear cases of domain name abuse”. That is clearly correct and one aspect of this is that proceedings under the DRS are of a limited and restricted nature, do not involve oral hearings, discovery or cross examination, and it is not usually appropriate to decide disputed questions of fact or matters of truth or falsehood. That does not however mean the Expert cannot reach a conclusion as to the veracity of a case that is being advanced where the only evidence that is provided is in the form of conclusory statements that are inherently not credible, and which are not supported by relevant corroborative or third party evidence. However the Panel does not consider the present case to be such a case – the underlying dispute between the shareholders in the Complainant involves complex and hotly disputed questions of fact (and probably law) and these are in general not matters the Expert is able to resolve, even to the extent they are relevant to the issues before the Expert. Accordingly the Expert proceeds with caution.

## **DRS Policy**

Paragraph 2 of the DRS Policy requires that the Complainant must make its case that:

2.a.i. The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

2.a.ii. The Domain Name, in the hands of the Respondent, is an Abusive Registration.

Under Paragraph 2.b of the Policy, the Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.

Paragraph 1 of the DRS Policy defines Rights as:

“rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning;”

Elsewhere in Paragraph 1 of the Policy, “Abusive Registration” is defined 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;

### **First Element (Rights)**

There does not appear to be any dispute between the Parties that the Complainant has Rights in relation to its name and the Expert so finds. It is however to be noted that it would appear those Rights are limited, in that (as a result of a dispute with a third party) the Complainant does not have the right to use its name as a trademark in relation to its own area of business activity. The Expert has not been provided with details of exactly what restrictions apply in this regard but the Complainant in its Reply has not disputed the Respondent's submissions on this issue, which in any event appear consistent with what the Complaint says about the Complainant's history, and the fact that it has since 2009 used [www.jackcains.co.uk](http://www.jackcains.co.uk) as its website.

### **Second Element (Abusive Registration)**

Paragraph 3 of the DRS Policy provides a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. The Complainant does not really explain its case in relation to the terms of the Policy, but manifestly (given the Domain Name is still being used in the way it has been since 2009, namely to provide a redirection link to [www.jackcains.co.uk](http://www.jackcains.co.uk)) the only one of the factors specified likely to be of relevance is sub-paragraph (v) namely:

“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.”

The difficulty that the Complainant faces in relation to this ground is that it would appear that Mr Haddon has paid all the relevant fees. The Respondent says *“Since then [2008] I have continued to pay for the domain names personally and make them available for use by the business Northumbria Spirit Ltd.”* The Complainant itself states in its Reply *“He never asked for registration fees to be reimbursed with his other expenses to avoid exposing his duplicity”*

Accordingly the Expert concludes that the Complainant fails to establish that paragraph 3.a(v) applies so as to establish evidence of an Abusive Registration. However this is not conclusive as the list in paragraph 3a is non-exhaustive. The Expert therefore has to consider more generally whether other grounds arise for finding an Abusive Registration.

So far as the original registration is concerned the Expert notes that the Complainant criticises Mr Haddon’s behaviour and says the other shareholders assumed the registration would be effected by the Complainant and Mr Haddon withheld information from them. The Respondent says that to the contrary the other shareholders knew what was taking place. The evidence he relies upon in this regard does not seem to the Expert to be conclusive – it is an e mail he sent in 2008, apparently to Mr Boyle, which records what he said was said between the shareholders in a pub a year earlier. There is no reply to the email in evidence, and accordingly there is nothing before the Expert showing that Mr Boyle or anyone else accepted in 2008 that what Mr Haddon said was correct. It is clear from the Complaint that this is a matter that is now disputed.

What is clear is that the Domain Name was registered before the Complainant was incorporated, which is not unusual when a new business venture is being started. The evidence shows the Domain Name having been registered on 27 July 2007, and the Complaint says that whilst the decision to form the Complainant took place in July 2007 this was only completed on 16 August 2007.

On the evidence before it the Expert cannot resolve the detail of what exactly Mr Haddon’s fellow shareholders may have known about the registration of the Domain Name, or what was said between them about it. The Expert views the Respondent’s

explanation that he would retain personal ownership of the Domain Name with some scepticism. In the normal course of events one would have expected that shareholders incorporating a company with a given name, where one shareholder had registered a domain name identical to the company's name shortly beforehand, would most probably intend (absent any express agreement to the contrary) that the domain name would in due course become the property of the company. However there is evidence that the original genesis of the business venture was an idea that the Respondent had been developing for many years and the Expert does not feel that it is in a position to reach a concluded view, on the balance of probabilities, that what the Respondent says is clearly untrue. In any event it seems clear that at that time the registration was effected this was with a view to the Complainant having the use of the Domain Name - and that is what happened – it is accordingly not possible to say the registration was such that it “took unfair advantage of or was unfairly detrimental to the Complainant's Rights”, and hence the registration does not amount to an Abusive Registration.

Is the subsequent use that has been made of the Domain Name such as to amount to an Abusive Registration? As matters currently stand the Domain Name is still being used in the same way as the Complainant has used it for many years, namely to provide a redirection facility such that anyone attempting to access [www.northumbriaspirt.co.uk](http://www.northumbriaspirt.co.uk) is redirected to the Complainant's website at [www.jackcain.co.uk](http://www.jackcain.co.uk). The continuation of this use, which is clearly for the Complainant's benefit and with its consent, cannot in itself be abusive, nor does the Complainant suggest otherwise. What the Complainant says is that the Respondent's threat to use the Domain Name for other purposes is itself a use which should be taken into account. The Complainant puts it this way in response to the question “*Why is the domain name an Abusive Registration?*” - “*A Haddon indicated that he would use the domain names registered to him - northumbriaspirt.co.uk and northumbriaspirt.com - in future business activity*”.

The Respondent for his part says “*As indicated by the Complainant the use of northumbriaspirt.co.uk and .com branding is not available for use by the existing business or a new drinks related business due to the failed trademark defence undertaken previously. I would like the option to use the northumbriaspirt domains for the green enterprise centre project under a social*



*enterprise umbrella as per the original intention for these web addresses. I am currently director of a social enterprise developing low carbon projects locally called Earth Doctors Ltd (see website [www.earthdoctors.co.uk](http://www.earthdoctors.co.uk)). The green enterprise hub is unlikely to conflict with existing trademarks as will not be specifically a drinks business.”*

The Expert again views the Respondent’s explanation with some scepticism. If it were the case that the Domain Name was held by the Respondent on behalf of the Complainant (e.g. on trust for it) or on terms where the Complainant could compel its transfer to it, then manifestly the Respondent would have no right to do this. However as indicated above the Expert is not in a position to resolve questions of this nature and has to proceed on the basis that the Respondent’s statement that Domain Name is held by the Respondent on his own account is true, and that whilst to date he has allowed the Complainant to use it he now wishes to change that position. Even in those circumstances the Expert can envisage hypothetical facts where such change of use could be so obviously unwarranted and/or prejudicial as to amount to conduct which could be said to have “taken unfair advantage of or has been unfairly detrimental to the Complainant’s Rights”. In the present case however the Expert is not persuaded that is the case. It seems common ground that as a result of third party trademark rights the Complainant cannot use the Domain Name directly in relation to its business and does not do so. The Expert notes the nature of the Domain Name, which combines the geographical/historical name “Northumbria” with the word “spirit”. Such a name is of obvious relevance to a spirits business based in Northumberland, but it also conceivably has other potential uses outside that specific type of business area, given that the word “spirit” has multiple possible connotations. Contrast a different hypothetical example where it would be hard to see how say [northumbriatyres.co.uk](http://northumbriatyres.co.uk) could be of relevance or use to anyone other than a tyre related business.

The Respondent says he wishes to use the Domain Name for a different business area that would not compete with the Complainant – this is evidence the Expert is not in a position to dispute (within the structure of the DRS proceedings - see comments above). Taking all of this into account the Expert declines to find that the Respondent’s intended use of the Domain Name in relation to a different type of business activity amounts to

use which could be said to have “taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights”. In reaching this conclusion the Expert has also taken into account the very limited manner in which the Complainant itself can be said to have used the Domain Name, namely in relation to redirection to its web site at a completely different domain name.

## **7. Decision**

The Expert finds that the Complainant has Rights in respect of a name or mark which is identical to the Domain Name but declines to find that the Domain Name, in the hands of the Respondent, is an Abusive Registration. No action is required to implement this decision.

Nothing in this decision should be taken to be applicable to any wider issues in dispute between the Complainant or its shareholders and the Respondent, these being outside the scope of the DRS and the Policy and the Rules.

**Signed**

**Dated 5 March 2015**

**Nick Gardner**