

DISPUTE RESOLUTION SERVICE

D00016390

**Decision of Independent Expert
(Summary Decision)**

This & That 95 Limited t/a Theme

and

Oulsnam Design Ltd

1. The Parties:

Complainant: This & That 95 Limited t/a Theme
Theme
The Old Chapel
Loddon Bridge Rd
Woodley
Berkshire
RG5 4BG
United Kingdom

Respondent: Oulsnam Design Ltd

,

85260
United States

2. The Domain Name:

theme.co.uk

3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the complaint to the Respondent in accordance with paragraphs 2 and 4 of the Procedure.

Yes No

4. Rights

The Complainant has, to my reasonable satisfaction, shown rights in respect of a name or mark which is identical or similar to the domain name.

Yes No

5. Abusive Registration

The Complainant has, to my reasonable satisfaction, shown that the domain name theme.co.uk is an abusive registration

Yes No

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances

Yes No

7. Comments (optional)

I have found this Decision, and particularly the question of whether the Domain Name is an Abusive Registration, to be a difficult one. I therefore think it is sensible for me to add some comments to explain my reasoning. I should add that this decision has been made all the more difficult by the fact that the Complainant does not really seem to have turned its mind to the specific provisions of Nominet's Policy and also by the fact that the Respondent has not filed a Response of any kind.

In this case the Complaint is based on the fact that the Respondent no longer has any legitimate use for the Domain Name. Fairly unusually, the Complainant does not expressly challenge either the Respondent's original Registration of the Domain Name or its subsequent use. Indeed, the Complainant appears to implicitly accept that while the Respondent was actively using the Domain Name then that was not a problem.

What has happened, at least according to the Complainant, is that the Respondent has effectively abandoned its business under the name "Theme" and therefore has no further use of the Domain Name. In the

Complainant's submission it follows that the Domain Name has become an Abusive Registration.

It is clear from the website which the Domain Name is directed towards that Respondent is or at least was at one point running a legitimate business under the name "Theme". That was or is in a slightly different industry to the Complainant.

Nominet's Policy allows for a domain name to become an Abusive Registration at any time and I am not limited to any particular point in time. The onus is however very much on the Complainant to prove that the Domain Name is, on the balance of probabilities, an Abusive Registration.

In this case I do not think that the Complainant has done enough to persuade me that on the balance of probabilities that the Respondent's use of the Domain Name is an Abusive Registration i.e. that the Respondent's use of the Domain Name takes unfair advantage of or is unfairly detrimental to the Complainant's Rights.

Given the fact that the Respondent's registration and use (at least initially) of the Domain Name was not an Abusive Registration I would like to have seen some evidence that this use has now become an Abusive Registration. This could, by way of example, have included evidence that the Complainant's customers or potential customers were being confused or misled or evidence that visitors to the website linked to the Domain Name were being directed elsewhere (they are directed to the website www.oulsnam.com but this website advertises a business under the name Theme and as far as I'm aware this has always been the case). There is however nothing like this in the Complaint and the Complainant's submission really amounts to saying that as the Domain Name is no longer needed by the Respondent then the Complainant should have it. I do not consider that this is enough for me to make a finding of Abusive Registration.

8. Decision

I refuse the Complainant's application for a summary decision. The domain name registration will therefore remain with the Respondent.

Signed: Nick Phillips

Dated: 30th September 2015