

DISPUTE RESOLUTION SERVICE

DRS 16411

Decision of Independent Expert

Happy Eat Limited

Complainant

and

Alberto Angiolin

Respondent

1 The Parties

Complainant:	Happy Eat Limited
Address:	16 Rochford Avenue Westcliff-on-Sea Essex SS0 7DT United Kingdom

Respondent:	Alberto Angiolin
Address:	Via San Giovanni Bosco No. 3/a 36016 Thiene Italy

2 The Domain Name

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

3 Procedural History

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 a such a nature as to call in to question my independence in the eyes of one or both of the parties.

18 August 2015	Dispute received
19 August 2015	Complaint validated
19 August 2015	Notification of complaint sent to parties
8 September 2015	Response reminder sent
8 September 2015	Response received
8 September 2015	Notification of response sent to parties
11 September 2015	Reply reminder sent
16 September 2015	No reply received
16 September 2015	Mediator appointed
21 September 2015	Mediation started
5 October 2015	Mediation failed
5 October 2015	Close of mediation documents sent
12 October 2015	Expert decision payment received

4 Factual Background

- 4.1 The Domain Name was registered by the Respondent, Alberto Angiolin, on 11 November 2014. According to the Nominet Whois service, the Domain Name is currently suspended for lack of data validation. It is not therefore in use in any URL for any website.
- 4.2 According to Companies House records consulted by the Expert, the Complainant was incorporated on 11 August 2015, i.e. nine months after the Domain Name was registered. It has a single director, Reza Haidari, who was appointed on 11 August 2015. Mr Haidari also owns 100% of the share capital. No accounts or annual return have yet been filed (such accounts and annual return not being due before 11 May 2017 and 8 September 2016 respectively).

5 Parties' Contentions

Complaint

- 5.1 The Complaint explains that Mr Haidari has a limited company called Happy Eat Limited. He says that he attempted to register the Domain Name but found it had been "*taken by someone else*". He explains that the Domain Name is currently suspended and that he was unable to identify its registrant. As a result, he contacted Nominet's helpdesk and says that he was advised to make a complaint under the DRS.
- 5.2 Mr Haidari says that he had registered the domain names *happyeat.uk*, *happyeat.me.uk* and *happyeat.org.uk*, all of which is evidenced by a screenshot of the relevant Whois look-ups. Those screenshots show the registrant of those domain names as Reza Haidari (not the Complainant).
- 5.3 There are no further submissions or evidence which go to the question of the rights asserted by the Complainant.
- 5.4 As to abusive registration, Mr Haidari asserts that: "*my Happy Eat Ltd is an online website which is only given online services to businesses*". He adds that he has spent a "*massive amount of money to build my website*" but cannot use his website because he does not know "*what will happen to this domain name which same as my company name*".
- 5.5 The Complainant adds that, because the Domain Name is suspended, "*there is no point for this owner to keep this domain name*".

- 5.6 The above constitutes the full extent of the Complainant's submissions. The only additional evidence comprises:
- (a) a screenshot of a Whois look-up demonstrating the Domain Name is registered by the Respondent and is suspended;
 - (b) a screenshot demonstrating that the Domain Name does not currently appear to be in use in the URL for any website;
 - (c) a screenshot, the relevance of which is not explained in the Complaint, which again appears to identify the Respondent as the registrant of the Domain Name and to provide the name of a Mr Scilessere as a contact point, together with his email address and telephone number.

Response

- 5.7 The Response is extremely brief. It consists of the following submissions:

"I'd like to inform you the 'happyeat' is a brand-registered project created and activated by my society. Actually we are working in Italy – please take a look to www.happyeat.it – but our goal is to open an english branch for it."

- 5.8 No documents or other evidence are or is submitted in support of the Response.

6 Discussions and Findings

General

- 6.1 To succeed under the DRS Policy (the "Policy"), the Complainant must prove on the balance of probabilities, first, that he has Rights (as defined in the Policy) in respect of a name or mark that is identical or similar to the Domain Name (paragraph 2(a)(i) of the Policy), and secondly, that the Domain Name is an Abusive Registration in the hands of the Respondent (paragraph 2(a)(ii) of the Policy).

- 6.2 Abusive Registration is defined in paragraph 1 of the Policy in the following terms:

"Abusive Registration means 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 took unfair advantage of or was unfairly detrimental to the Complainant's Rights."

Complainant's rights

- 6.3 Paragraph 2(a)(i) of the Policy requires the Complainant to prove that it *"has Rights in respect of a name or mark which is identical or similar to the Domain Name"*. "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"*.

- 6.4 The Complainant has not begun to make a case that it has Rights (as defined in the Policy) in the Happy Eat name or in any other name. For example, it has not said that it owns any

registered trade marks. Nor is there any evidence at all that it is trading by reference to the Happy Eat name.

- 6.5 Its case appears to be (though it is not clear) (a) that it has been incorporated as Happy Eat Limited, and/or (b) that its sole director and shareholder, Mr Haidari, has registered three UK domain names: *happyeat.uk*, *happyeat.me.uk* and *happyeat.org.uk*.
- 6.6 Incorporation of the Complainant post-dated by nine months registration of the Domain Name on 11 November 2014. Moreover, mere incorporation of a company does not generally, without more (e.g. evidence of trading goodwill in the name), endow the company with common law rights in its own name. For the purposes of the Policy, the consensus view of DRS Experts has been that mere registration of a company name at the Companies Registry does not of itself give rise to any Rights (see Expert Overview §1.7 and DRS 5522 *locationmotorhomes.co.uk*).
- 6.7 The three domain names referred to by the Complainant, *happyeat.uk*, *happyeat.me.uk* and *happyeat.org.uk*, all appear to be registered to Mr Haidari (not the Complainant), but there is no website associated with any of them, the URLs all currently pointing to a Go Daddy holding page. Again, by analogy with the position in relation to a company name, it is difficult to see how mere registration of domain names including the Happy Eat name can give rise to any Rights for the purpose of the Policy, in circumstances where the Complainant has been unable to provide any evidence that it (or anyone else) is trading by reference to those domain names.
- 6.8 The Complainant has therefore provided no evidence whatsoever that any trading goodwill attaches to the Happy Eat name. While under the DRS there is no obligation to do so, the Expert has conducted a cursory online search for any evidence that the Complainant is actually trading. He found none.
- 6.9 The onus is on a Complainant to discharge the evidential burden of proving on a balance of probabilities that it has the relevant Rights, i.e. that it is more likely than not. In this case, it has failed to do so. Accordingly, the Complaint must fail.

Abusive registration

- 6.10 Whether or not the Complainant has demonstrated that the Domain Name is an Abusive Registration is moot, given that it has failed to demonstrate that it has the requisite Rights in a relevant name or mark.
- 6.11 For the sake of completeness, however, the Expert has considered the Complainant's case in this regard. The Complainant's argument appears to be that it is operating a business online, has spent a "*massive amount*" of money building a website, and is now unable to use that website because a third party has registered the Domain Name. In addition, the Complainant relies on the fact that the suspension of the Domain Name means that "*there is no point*" in the Respondent being allowed to retain the Domain Name. Those submissions are unpersuasive.
- 6.12 In the first place, the Complainant relies on the fact that its sole director and shareholder owns three other *.uk* domain names. It does not explain why it could not have used one or more of those other domain names for the online business it claims to be running or preparing to run.
- 6.13 Secondly, there is no evidence that the Complainant is operating a business online. For example, the other domain names registered by Mr Haidari point to a registrar's domain

holding page. Nor does there appear to be any website trading by reference to the Happy Eat name, nor any evidence that the Complainant has prepared, or is in the course of preparing, one. Nor is there any evidence demonstrating the expenditure of a massive amount of money or indeed of any money at all. If that version of events were accurate, it should not be difficult to evidence it. The Expert is frankly sceptical as to the veracity of those assertions.

- 6.14 Thirdly, the Complaint does not address the fact that the Domain Name was registered some nine months before the Complainant was incorporated in August 2015.
- 6.15 The Respondent asserts that he is trading by reference to the Happy Eat name through his website at *www.happyeat.it*, though no evidence (apart from inviting the Expert to take a look at that website) is provided of that. On the face of it, the Respondent appears to have some kind of online presence at that URL, but given that no evidence or explanation is provided as to the use he is making, or intending to make, of the Domain Name in that ostensible business, it is impossible to make any finding as to whether any of the factors identified in paragraph 4 of the Policy, for example under paragraph 4(a)(i)(A) (using or preparing to use the Domain Name in connection with a genuine offering of goods or services) is in play.
- 6.16 The Complainant's failure to establish a case as to its Rights means the issue is academic, but in any event it has failed to establish, on the balance of probabilities, that the Domain Name is an Abusive Registration, i.e. that it has been used by the Respondent in a manner which takes unfair advantage of the Complainant's Rights in the Happy Eat name and/or was unfairly detrimental to those Rights.

7 Decision

- 7.1 The Expert therefore finds that the Complainant has failed to establish that it has Rights in a name or mark which is identical or similar to the Domain Name or that the Domain Name, in the hands of the Respondent, is an Abusive Registration.
- 7.2 It is therefore determined that there be no transfer of the Domain Name to the Complainant.

Signed David Engel

Dated 3 November 2015