

DISPUTE RESOLUTION SERVICE**D00016702****Decision of Independent Expert**

Islamic Vision Ltd

and

Mr Zainul Hussein

1. The Parties

Complainant: Islamic Vision Ltd
434 Coventry Road
Small Heath
Birmingham
West Midlands
B10 0UG
United Kingdom

Respondent: Mr Zainul Hussein
14 Nelson Road
Birmingham
West Midlands
B6 6HG
United Kingdom

2. The Domain Name

islamicvision.co.uk

3. Procedural History

- 3.1 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.
- 3.2 On 30 October 2015 the complaint was received, validated and notification of it sent to the parties. On 18 November 2015 a response reminder was sent. On 20 November 2015 the response was received and notification of it sent to the parties. On 25 November 2015 a reply reminder was sent. On 27 November 2015 the reply was received, notification of it sent to the parties and the mediator appointed. On 3 December 2015 the mediation started. On 31 December 2015 the mediation failed and close of mediation documents were sent. On 13 January 2016 a Complainant full fee reminder was sent and the Expert decision payment was received.

4. Factual Background

- 4.1 The Complainant was incorporated on 19 April 1990 and changed to its current corporate name on 25 June 1990. The Complainant publishes and sells books and works on Islam, comparative religion and related subjects and also organises seminars and conferences. The Complainant has over 5,000 square foot of wholesale and retail space.
- 4.2 The Complainant has a web site at the Domain Name selling books and other products and at which donations can be made. The web site features a logo with 'Islamic Vision' in capitals and underneath this in larger capitals 'IPCI'. The 'about us' section of the web site states that Islamic Vision is one of the UK's oldest and most respected Islamic distributors, that the venue was established in 1984 in Small Heath, Birmingham and that it now stocks over 3,500 titles consisting of books, audio, videos, CD's and DVD's.
- 4.3 The Complainant's sales for the year end to April 2014 were £221,324.
- 4.4 The Domain Name was registered on 14 December 2001. The Respondent states that he is a non-trading individual. However, the Respondent or a related entity has carried out development work on and hosts the Complainant's web site at the Domain Name.
- 4.5 The Complainant is dissatisfied with the Respondent's services which forms the background to this complaint.

5. Parties' Contentions

- 5.1 I set out below a summary of what I regard to be the main contentions of the parties.

The Complainant's complaint

- 5.2 The Complainant says that it conducts trade and business under the name 'Islamic Vision' and that this name is identical or similar to the Domain Name.
- 5.3 The Complainant contends that the Domain Name was registered by the Respondent on the instruction of the Complainant and that it was paid for by the Complainant. The Complainant says that the payment was not itemised in an invoice but bulked up as a group of services on an invoice or it was otherwise confirmed by the Respondent that the Domain Name had been secured for the Complainant.
- 5.4 The Complainant states that the Domain Name has only been used by it. The Complainant says that due to the Respondent becoming engaged in court cases he was unable to provide the Complainant with satisfactory services. The Complainant further says the Respondent has failed to communicate and to comply with the Complainant's instructions. The Complainant states that it is an unwilling client of the Respondent, that the Respondent has held the Complainant ransom for over 6 years and that it is truly fed up with the Respondent and his failures. The Complainant wants the Domain Name transferred to it to have control over its use. The Complainant alleges that the Respondent has not implemented shopping cart software platform updates for the web site at the Domain Name. The Complainant asserts that the web site and customer database are insecure. The Complainant says that the transactional security issues and shopping cart platform vulnerabilities disrupt business development and adherence to minimum platform standards. The Complainant argues that this constitutes an abusive use of the Domain Name.
- 5.5 The Complainant states that if the Domain Name is not transferred it will use the site of ipci-iv but this could cause accounting confusion as well as negative general confusion to the public because ipci-iv is the parent charity.

- 5.6 The Complainant argues that a considerable risk of a likelihood of confusion among its customers would result, or a perceived association or relationship between the Complainant and the Respondent would be presumed, if the Domain Name remains in the hands of the Respondent. The Complainant says the Respondent can have no legitimate interest in the Domain Name without the Complainant's existing content on the web site.

The Respondent's response

- 5.7 The Respondent says that in December 2001 he was involved with an Islamic Cultural Fair event held at the Rex Centre situated above the current Islamic Vision/IPCI store. The Respondent noticed that rexcentre.co.uk was available so on 13 December 2001 he registered it with the intention of contacting the owners and developing a site for the conference centre. The Respondent says he later noticed that the Domain Name and ipci.co.uk were available. The Respondent says he knew that these businesses were owned/operated by the same people so he bought these domain names in order to do business with them. The Respondent says he checked that they already had a web presence but the site at ipci-iv.co.uk was rather weak.
- 5.8 The Respondent states that some months later he approached the organisation about designing and developing its web site. The Respondent contends that the Domain Name was never discussed as an asset he wished to sell, that he has never created an invoice that states the transfer of the Domain Name nor has he charged for the Domain Name anywhere. The Respondent queries why the Complainant would have asked the Respondent to register a new domain name when ipci-iv.co.uk was registered 5 years before meeting him. The Respondent argues that surely the Complainant would have gone to its first source.
- 5.9 The Respondent denies that he was asked to register the Domain Name by the Complainant or any associated party. He states he *"bought the domain name with a view to using the ownership to leverage a deal in which we could produce and maintain their website."*
- 5.10 The Respondent states that the site initially developed went live around January 2003, was redeveloped some years later and there has been on-going work over the years. The Respondent says there was a breakdown in communication with the Complainant as he was involved with heavy litigation which took up a lot of his time. However, this finished in September 2015 and he is beginning to pick up the pieces and is trying to put things back in shape.
- 5.11 The Respondent says that on 26 August 2009 his company, Outstanding, issued an invoice for £5000 (exc VAT) to Islamic Vision for web development which was only half paid. The Respondent says that since then he has done a lot of unbilled work and at the beginning of 2015 work was 95% complete on the web site so monies for this would also be due.
- 5.12 The Respondent says that as matters were not moving fast enough for the Complainant, the Complainant asked for help from consultants to achieve its goals of web development and an on-line presence. The Respondent alleges that one of the consultants has little understanding of web development or web design in a commercial capacity. The Respondent objects to the Complainant adducing in evidence a secret recording of a meeting between the Complainant and the Respondent at which this consultant was present. The Respondent says the consultant frustrated him at the meeting and he had to walk out.

5.13 The Respondent states that since 2003 he has never thwarted the business activities of the Complainant, has not held it to ransom and has never threatened to misuse the Domain Name.

The Complainant's reply

5.14 The Complainant says the Respondent was introduced to it prior to the Islamic Cultural Fair held at the Rex Centre.

5.15 The Complainant contends that the Respondent's business model of registering domain names to leverage a deal to produce and maintain web sites is contrary to paragraphs 3a.i.A and B of the Nominet Dispute Resolution Service Policy ("the Policy").

5.16 The Complainant says it seldom got any on-going work from the Respondent that was either complete or as instructed by the Complainant and to its satisfaction.

5.17 The Complainant alleges that the invoice raised by Outstanding on 26 August 2009 for £5000 (exc VAT) for web development is fabricated.

5.18 The Complainant says that no one would have their 30 plus years of hard work reside on a domain name which they neither owned nor had discussed a "what if" scenario.

5.19 The Complainant alleges the Respondent's invoices are vague and not precisely itemised.

5.20 The Complainant states that IPCI, the charity, had to be separated from Islamic Vision, the bookstore and novelty business, for accurate accounting and tax reasons, so the old site domain name (ipci-iv.co.uk) was purchased in the late 1990's by a contact at that time.

6. Discussions and Findings

6.1 Paragraph 2 of the Policy sets out that for the Complainant's complaint to succeed it must prove to the Expert 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.

The Complainant has to prove to me, on the balance of probabilities, that both the above elements are present.

6.2 The Complainant complains about the Respondent's registration of the Domain Name and of islamic-exhibition.org. As the Complainant acknowledges in its complaint, the Nominet Dispute Resolution Service is not the correct forum for a .org domain name dispute. This decision relates only to the Domain Name and I have considered only the evidence which is relevant to the Domain Name.

6.3 The Complainant also seeks in its reply the transfer of rexcentre.co.uk and ipci.co.uk based on matters in the Respondent's response. Both these domain names are registered to NetUse.co.uk rather than the Respondent. These would need to be the subject of a separate complaint and I have not considered them in this decision.

6.4 The Complainant makes serious allegations in its reply in relation to the alleged fabrication of an invoice by the Respondent. I have disregarded these allegations in reaching my decision and say nothing further on them. For the reasons set out below, I do not consider whether or not an invoice was raised in 2009 for web development is relevant to my decision on whether the requirements of paragraph 2 of the Policy

are satisfied.

The Complainant's Rights

- 6.5 Under Paragraph 1 of the Policy, Rights is defined 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"*. It is well accepted that the question of Rights falls to be considered at the time the Complainant makes its complaint and is a test with a low threshold to overcome.
- 6.6 The Complainant uses 'Islamic Vision' as its corporate name and as the trading name of its business. The Complainant also uses 'Islamic Vision' in conjunction with 'IPCI' (see, for example, the Complainant's logo as described at paragraph 4.2). This, no doubt, reflects the Complainant's relationship with Islamic Presentation Centre International Limited, its sister company and a registered charity, which is abbreviated to IPCI.
- 6.7 I am satisfied, on the evidence, that the Complainant has demonstrated sufficient use of 'Islamic Vision' to own goodwill in this mark so as to have unregistered Rights in this mark. I consider that 'Islamic Vision' is identical to the Domain Name (disregarding the .co.uk suffix). Accordingly, I find on the basis of the use made by the Complainant of 'Islamic Vision' that the Complainant has Rights in a name or mark which is identical to the Domain Name.

Abusive Registration

- 6.8 It now has to be considered whether the Domain Name, in the hands of the Respondent, is an Abusive Registration. Paragraph 1 of the Policy defines 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.
- 6.9 It is sufficient to satisfy either of the limbs for there to be a finding of an Abusive Registration.
- 6.10 Paragraph 3 of the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. These include:

Paragraph 3a.i.:

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

- A. for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name; or
- B. as a blocking registration against a name or mark in which the Complainant has Rights.

Paragraph 3a.v.:

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.
- 6.11 The Complainant relies on paragraph 3a.v. of the Policy. The Complainant says that it has been using the Domain Name exclusively, that the Domain Name was registered by the Respondent on the instruction of the Complainant and that it was paid for by the Complainant. The Respondent disputes this and says he *“bought the domain name with a view to using the ownership to leverage a deal in which we could produce and maintain their website.”*
- 6.12 In relation to paragraph 3a.v.A of the Policy I am satisfied that the Complainant has been using the Domain Name registration exclusively. Since registration the Domain Name has only been used for the Complainant’s web site. In relation to paragraph 3a.v.B. of the Policy I do not consider it has been established that the Complainant paid for the registration of the Domain Name. As the Complainant acknowledges, the invoices adduced in evidence by it do not itemise the cost of the Domain Name registration and the Respondent denies that the Complainant paid for the registration.
- 6.13 However, I consider it has been established that the Complainant (or a related entity) paid for the renewal of the Domain Name registration. The Complainant has adduced in evidence a summary of the payments made to the Respondent. This shows invoice number 232 dated 26 August 2009 in the sum of £517.50 for *“www.ipci.co.uk, www.ipci-iv.co.uk & www.islamicvision.co.uk Work carried out July 08 (£150/name) expires July 2010”* and invoice with no number given dated 28 July 2010 in the sum of £581.63 for *“Renew 3x domains £165 + vat”*. I consider it apparent from these descriptions that these invoices relate to the renewal of the Domain Name, ipci.co.uk and ipci-iv.co.uk. The Complainant has adduced in evidence copy cheque stubs which show that payment was made to Outstanding of invoice number 232 and to Partners in Print of the invoice dated 28 July 2010, although it is unclear whether the Complainant or its sister company issued the cheques. The Respondent describes Outstanding as *“my company”*. The Complainant’s evidence shows that a telephone number given for the Respondent is associated with Partners in Print. Accordingly, I consider that the Complainant or a related entity (its sister company) paid the Respondent or a related entity for the renewal of the Domain Name.
- 6.14 For the requirements of paragraph 3a.v. of the Policy to be satisfied the Domain Name also needs to have been registered as a result of a relationship between the Complainant and the Respondent. The Complainant says that it instructed the Respondent to register the Domain Name but the Respondent denies this. He says the Domain Name was registered as leverage to establish a relationship with the Complainant to produce and maintain its web site. The Complainant has not provided any detail of the background and circumstances of the purported instruction to the Respondent to register the Domain Name or any supporting evidence. I therefore do not consider that it has been proved, on the balance of probabilities, that the Domain Name was registered as a result of a relationship between the Complainant and the Respondent.
- 6.15 Nevertheless I can take into account the Respondent’s explanation for registering the Domain Name as set out at paragraph 6.14. In this respect I consider paragraphs 3a.i.A and 3a.i.B of the Policy to be relevant. These paragraphs relate to the Respondent’s motives at the time of registration of the Domain Name.
- 6.16 The Respondent admits that he knew of the Complainant when he registered the Domain Name and that his motive in registering the Domain Name was to *“leverage a*

deal” to produce and maintain the Complainant’s web site and thereby generate revenue from these services. This purpose for the Domain Name registration of producing and maintaining the Complainant’s web site for profit would necessarily involve the Respondent allowing the Complainant to use the Domain Name for its site. In my view this equates to the Respondent renting the Domain Name to the Complainant as part of the Respondent’s paid for web site production and maintenance services. I therefore consider that as set out at paragraph 3a.i.A of the Policy the Respondent registered the Domain Name for the purpose of renting the Domain Name to the Complainant for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly associated with acquiring or using the Domain Name.

- 6.17 Further, I consider the Respondent’s purpose of registering the Domain Name was also as a blocking registration against a name or mark in which the Complainant has Rights as set out at paragraph 3a.i.B of the Policy. The Respondent admits that he registered the Domain Name which is identical to the Complainant’s trading name (disregarding the .co.uk) suffix in order to improve his bargaining position to provide his services to the Complainant. It was the fact that the Complainant was blocked from registering this Domain Name which provided the Respondent with his “leverage”.
- 6.18 I therefore consider there to be factors which indicate that there is an Abusive Registration under paragraph 1(i) of the Policy. Does the Complainant’s subsequent agreement with the Respondent affect whether the Domain Name should be transferred to the Complainant? I do not consider that it does. The ownership of the Domain Name is separate from the Respondent’s services. If the Complainant owns the Domain Name it can continue to obtain services from the Respondent if it wishes or is obliged to do so.
- 6.19 I therefore find that the Domain Name, in the hands of the Respondent, is an Abusive Registration under paragraph 1(i) of the Policy.
- 6.20 I will now consider whether there is an Abusive Registration under paragraph 1(ii) of the Policy. The Domain Name has been used since registration for the Complainant’s web site, the Respondent having achieved his stated purpose of leveraging a deal to produce and maintain the site. I do not consider this constitutes Abusive use of the Domain Name as the Complainant agreed to this use.
- 6.21 However, it is apparent that there has been deterioration in the relationship between the Complainant and the Respondent. The Complainant describes itself as an “unwilling client” and wishes to terminate its relationship with the Respondent. This suggests that at some point the Complainant considered it had no choice but to use the Respondent’s services. However, I do not consider it appropriate for me to consider any further whether there may be an Abusive use of the Domain Name on this basis. In my view this would necessarily involve a consideration of the terms of the agreement between the Complainant and the Respondent, including any rights of termination, which are matters which cannot fairly or fully be considered within the Policy.
- 6.22 Finally, paragraph 4 of the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration. Having considered these factors I do not consider any of them apply to the circumstances of this case.

7. Decision

7.1 I find that the Complainant has Rights in respect of a name or mark which is identical to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

7.2 I therefore direct that the Domain Name be transferred to the Complainant.

Patricia Jones

Dated 28 January 2016