

DISPUTE RESOLUTION SERVICE

D00018475

Decision of Independent Expert

Hayley Glasson trading as GelMe

and

Jacob Gourd

1. The Parties:

Lead Complainant: Hayley Glasson trading as GelMe
6 Hardwick Close
Stevenage
Hertfordshire
SG2 8UF
United Kingdom

Respondent: Jacob Gourd
188 The Ridgeway
St Albans
Hertfordshire
AL4 9XJ
United Kingdom

2. The Domain Name(s):

gelme.co.uk

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.

02 February 2017 17:57 Dispute received
06 February 2017 16:25 Complaint validated
06 February 2017 16:28 Notification of complaint sent to parties
07 February 2017 11:03 Response received
07 February 2017 11:04 Notification of response sent to parties
10 February 2017 01:30 Reply reminder sent
13 February 2017 16:19 Reply received
13 February 2017 16:20 Notification of reply sent to parties
22 February 2017 16:02 Mediator appointed
22 February 2017 17:22 Mediation started
28 March 2017 16:32 Mediation failed
28 March 2017 16:33 Close of mediation documents sent
07 April 2017 02:30 Complainant full fee reminder sent
10 April 2017 10:57 Expert decision payment received.
12 April 2017 Complainant submitted a Further Statement as permitted by the Expert.
13 April 2017 Respondent submitted a Further Statement as permitted by the Expert.

4. Factual Background

The Complainant and the Respondent were in a romantic relationship from January 2013 until July 2015.

Between March and May 2013 the Complainant built a website for the Complainant at his own suggestion to promote the Complainant's beautician and nail care business in which she traded as GELME.

According to the Registrar's Whois the disputed domain name was registered on 11 April 2013 in the name of the Respondent who paid for the registration and all renewal fees since that time. The Respondent has maintained and controlled the disputed domain name and the website at the address to which the disputed domain resolves since its registration.

In November and December 2015, the Complainant both directly and indirectly through a third party requested the Respondent to transfer the disputed domain name to her but the Respondent has refused so to do as he claims ownership of the registration the website.

5. Parties' Contentions

The Complainant claims ownership of the disputed domain name and submits that she had sole use of www.gelme.co.uk from the day it was created for her until January 2017 when the Respondent removed her contact details from the site.

The Complainant submits that between March and May 2013 the Complainant built a website for her at his own suggestion to promote her business.

The Complainant states that when the domain name was being registered the Respondent advised her that if the domain name was registered in his name it would facilitate the hosting of the website.

The Complainant submits that she chose the domain name and the layout and content including the images for the website.

In the following months the Complainant reduced her working hours in full-time employment to focus on her nail care business. In November 2014 she left her job and engaged in the nail care business on a full time basis from November 2014.

The Respondent maintained the website for her during the course of their relationship. When their personal relationship ended the Complainant contacted a third party to go through the process of taking over the management of the website. The third party made email contact with the Respondent in November and December 2015 to endeavour to arrange for the transfer of the disputed domain name but had no success despite the efforts of the Complainant who make contact with the Respondent by text message.

The Complainant has filed a number of exhibits including copies of Instagram and Facebook posts to support her submissions. Unfortunately some of these are of little evidential value as they are of a personal nature unrelated to the issues in dispute and others are undated.

One of the exhibits submitted by the Complainant is an email sent by the Respondent to the Complainant dated 9 May 2015 in which he states that “[y]our website seems to have had a jump in the rankings yesterday.” In the same email exchange the Respondent also stated that he has added two articles to the website and added a link to the FAQs and one of the articles to the home page.

Also of significance is the statement by the Respondent in the email correspondence on 20 May 2013 that the website has been live from April 2013 and he also reported that he had added a link to the Complainant’s Facebook page on 20 May 2013.

While the Complainant states that there was evidence on the WayBackMachine to support her submissions, it would appear however that the data relating to the disputed domain name has been excluded from the WayBackMachine. The

Complainant submits that this has been excluded by the Respondent but provides no evidence to support this assertion.

6. The Respondent's Case

The Respondent's case is that he is the owner of the disputed domain name; that he allowed the Complainant to use the website to which it resolves at no charge while they were in a romantic relationship but wished to charge for the service when the relationship ended. He asserts that the disputed domain name is registered under his name and at his address; that he applied for and paid for the disputed domain name and he is therefore entitled to license it.

He furthermore states that he created the website, layout, content and organised the website and is therefore the owner of the intellectual property in the website.

He states that the website was never created directly for the Complainant. It was created as an asset for himself to generate income, as he has done with other websites which he lists. Having invested a great deal of time and expertise in the creation of this website, he allowed the Complainant free and unfettered use while they were in a personal relationship which ended some 14 months ago. He then approached the Complainant about the website and offered to allow her to continue use the website at a reasonable rate of £200 a month, she did not agree to this and paid a new website developer to create her another website at <thebeautytech.co.uk/>. The Respondent allowed the Complainant continued use of disputed domain name <gelme.co.uk> until her new website was established.

At the beginning of 2017, he repeated his offer to the Complainant to allow her to rent the website and domain name for £200 a month, but she declined. Since then he has rented the website to a new owner for £200 a month, which he regards as being a very reasonable rate considering the volume of work that it generates.

The Complainant has never paid the Respondent any money for the registration or renewal of the disputed domain name or for the creation of the website, for its hosting, the content or the significant amount of time that the Respondent has spent marketing it.

The Respondent furthermore asserts that he has no agreement, formal or otherwise with the Complainant that allows her to state any claim to his domain name.

In the Further Statement which was admitted, the Respondent repeats that the domain name was registered and the website created and invested in for himself; that he has had many expenses including registration and renewal costs, hosting and marketing costs including the costs which included paid for blog posts on other sites, professional video creation etc. to secure its high search engine rankings.

The Respondent highlights his submission that the Complainant has never made any financial contribution for the website or the domain name.

He furthermore states that the website was informally licensed to someone else before the Complainant convinced him to put her name and number to it and that the website is now licensed to another local beautician. The Respondent has attached invoices addressed to him regarding the registration and renewal of the domain name.

7. Discussions and Findings

In order for the Complainant to succeed in this Complaint, paragraphs 2.a and 2.b of the DRS Policy require the Complainant to prove 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 disputed domain name; and
- ii. the disputed domain name, in the hands of the Respondent, is an Abusive Registration.

Paragraph 1 of the DRS Policy defines “Abusive Registration” as meaning 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 has taken unfair advantage of or has been unfairly detrimental to the Complainant’s Rights.

It is not disputed that the Complainant has carried on a nail-care business, firstly on a part-time basis and subsequently on a full time basis using the name GELME.

The disputed domain name <gelme.co.uk> is identical to the Complainant’s GELME name which she has adopted for her business.

It has been acknowledged by the Respondent in correspondence, and in any event it is not in dispute, that the Complainant has acquired a valuable, if local, goodwill and reputation in the use of the GELME name and mark.

There is a number of conflicts of fact in the respective submissions of the Parties and some of the evidence submitted by the Complainant being undated is of little probative value.

The following facts are however either submitted and not challenged or admitted by both Parties:

- that there was no formal or informal agreement between the Parties as to the ownership of the disputed domain name;
- that the Respondent had the technical knowledge to register the domain name, to create the website, establish it on the Internet and maintain both the domain name registration and the website;
- that the disputed domain name was registered on 11 April 2013;

- that the website was live from April 2013;
- that the Respondent has paid all registration and renewal charges for the domain name registration
- that the Complainant has never paid anything towards the cost of the registration or renewal of the disputed domain name or the cost of developing, maintaining and hosting the website to which the disputed domain name resolves.

It is also accepted by both parties, either expressly or implicitly that the Respondent has carried on her nail-care business as the exclusive user of the GELME website from April 2013 until early 2017 and that the Respondent makes no claim to any ownership of that business as he is either a website developer as he himself claims or a property developer with IT skills as the Complainant claims.

The Respondent does not claim to have devised the GELME name. There is however a conflict in that both Parties claim to have created the content for the website.

It would appear that because of the nature of their personal relationship the Parties did not consider the question of ownership of the domain name or the website in April 2013 and the situation which evolved was very informal in the circumstances.

These proceedings relate to the ownership of the domain name however and not to the ownership of the website to which it resolves.

The Complainant claims that when the disputed domain name was registered the Respondent suggested to the Complainant that the domain name should be registered in his name to facilitate the technical issues relating to its registration renewal. The Respondent on the other hand claims the disputed domain name was informally licensed to someone else before the Complainant convinced him to put her name and number to it.

This Expert finds that the Complainant's version of the events is more probable because the Respondent was the person with the technical knowledge, but more importantly because according to the Registrar's WhoIs the disputed domain name was registered on 20 April 2013 and in the Respondent email correspondence on 20 May 2013 is confirmation that the website has been live from April 2013. Given that timing it is therefore improbable that the domain name or the website was used by anyone before the Complainant as the Respondent claims.

The correspondence indicates that the Respondent contributed some content to the website notwithstanding that the Complainant submits that she provided the content. It is not possible to determine the extent to which the Parties contributed to the content and it is clear that they had a close and informal collaboration when the website was being designed and in any event it is beyond the jurisdiction of this proceeding to determine ownership of copyright in a website.

The Respondent however makes no claim to any rights in the GELME name and mark which on the balance of probabilities was owned by the Complainant. This Expert finds that by licensing the domain name which is identical to the Complainant's trademark and by facilitating its use by a third party in a similar line of business to the Complainant the Respondent has taken unfair advantage of the Complainant's goodwill in the name and mark.

In the circumstances this Expert finds that the domain name in the hands of the Respondent is an Abusive Registration because it has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

8. Decision

This Expert directs that the disputed domain name < gelme.co.uk> be transferred to the Complainant.

Signed

**James Bridgeman
Expert**

Dated 5 May 2017