

## **DISPUTE RESOLUTION SERVICE**

**D00018624**

### **Decision of Independent Expert**

SCOR SE

and

Stenning Limited

#### **1. The Parties:**

Complainant: SCOR SE  
5, Avenue Kléber  
F-75016  
Paris  
France

Respondent: Stenning Limited  
Apt 3164  
Chynoweth House  
Trevisson Park  
Truro  
Cornwall  
TR4 8UN  
United Kingdom

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

scor.co.uk (“the first Domain Name”)  
scor.uk (“the second Domain Name”)  
(together, “the Domain Names”).

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

The Complaint was submitted to Nominet on 7 March 2017 and was validated and notified to the Respondent by Nominet on 8 March 2017. The Respondent was informed in the notification that it had 15 working days, that is until 29 March 2017, to file a response to the Complaint.

On 22 March 2017, the Respondent filed a Response. On 28 March 2017 the Complainant filed a Reply to the Response and the case proceeded to the mediation stage on 3 April 2017. On 28 April 2017, Nominet notified the Parties that mediation had been unsuccessful and, pursuant to paragraph 10.5 of Nominet's Dispute Resolution Service Policy Version 4 ("the Policy"), invited the Complainant to pay the fee for referral of the matter for an expert decision. On 18 May 2017, the Complainant paid the fee for an expert decision. On 5 June 2017, Andrew D S Lothian, the undersigned ("the Expert"), confirmed to Nominet that he was not aware of any reason why he could not act as an independent expert in this case. Nominet duly appointed the Expert with effect from 8 June 2017.

### **4. Factual Background**

The Complainant, SCOR SE, is a group of independent global reinsurance companies, originally established in 1970 under the name Société Commerciale de Réassurance. In 2007, the Complainant became the world's fifth largest reinsurer and in 2013 it became the reinsurance market leader in the United States of America. The Complainant featured at number 44 in the Insurance Times Top 50 Insurers in 2015.

The Complainant is the owner of a variety of registered trade marks consisting of or incorporating the mark SCOR, including European Union trade mark no. 2158400 for the word mark SCOR in classes 9, 35, 36, 38, 41 and 42, filed on 19 March 2001 and registered on 22 September 2003. The Complainant's group of companies includes a number of UK companies which include the mark SCOR in the company name, the earliest of which, SCOR UK Company Limited, was incorporated in 1977 under the name SCOR UK Reinsurance Company Limited.

The Respondent is a UK limited company which is in the business of buying and selling domain names. The Respondent acquired the first Domain Name from its previous owner on 4 March 2016 and it registered the second Domain Name on the same day. According to a screenshot produced by the Complainant, the first Domain Name was associated with a website indicating that it was a premium domain name which "may be for sale" and inviting contact from interested parties to an email address or via a contact form. The Whois record for the first Domain Name dated 13 December 2016 sets out a "Registrant" field stating "Name withheld. This Registrant is using a privacy service". The privacy service noted on the Whois was provided by the registrar of the first Domain Name under Nominet's Privacy Service Framework. That registrar is also the registrant of the Domain Names and is, in its capacity as registrant, the Respondent in this case.

## **5. Parties' Contentions**

### **Complainant**

The Complainant submits that it has rights in a name or mark which is similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

The Complainant sets out its trade mark rights and explains that its main affiliated companies are SCOR Global P&C (Property and Casualty reinsurance), SCOR Global Life (Life reinsurance) and SCOR Global Investments (Asset Management). The Complainant notes that its group are active participants at industry conferences and events and that it hosts its own annual conference. The Complainant describes a range of events at which its personnel have spoken or participated in Europe. The Complainant provides evidence of training sessions, marketing events, promotional items and publications which it has issued asserting that there has been a high level of exposure to its SCOR brand among the UK public. The Complainant asserts that its rights in the SCOR mark are well established particularly in the mind of the public in the field of insurance.

The Complainant submits that in terms of paragraph 5.1.6 of the Policy there should be an assumption that the Domain Names are Abusive Registrations. The Complainant notes that the Respondent is concealed beneath a privacy service such that it does not know the registrant's identity, adding that it does not believe that the Respondent has any reasonable justification for having registered the Domain Names.

The Complainant states that it believes that the Respondent has primarily registered the Domain Names to prevent the Complainant from obtaining them or for the purpose of selling, renting or otherwise transferring them to the Complainant or its competitors, arguing that this is evidenced by the fact that the first Domain Name points to a website offering it for sale. The Complainant asserts that the Respondent must have known of the Complainant's rights when it applied for the Domain Names due to the Complainant's longstanding use of the SCOR mark and its reputation as a world-leading reinsurer.

### **Respondent**

The Respondent requests that the Complaint be denied.

The Respondent states that it is in the business of buying and selling generic domain names and notes that paragraph 8.4 of the Policy observes that this is of itself a lawful activity. The Respondent submits that it saw that the first Domain Name was up for sale and considered it attractive because it was a short, simple, generic, acronym-type term in line with other four letter domain names owned by the Respondent since 2011.

The Respondent states that it had in mind to sell the Domain Names to someone with an interest in using them for whatever purpose but most likely as an acronym and notes that it has never used them in a relevant manner to the Complainant's industry. The Respondent asserts that it was unaware of the Complainant and that there was no reason why it should have heard of it, noting that the Respondent has no involvement in the insurance industry.

The Respondent asserts that the Complainant is hardly a household name and notes that the Complainant operates in the reinsurance market, which it states is a highly specialised sector

with little, if any, profile outside the insurance industry. The Respondent points out that the Complainant's evidence focuses on the insurance trade press and insurance industry events. The Respondent states that there is nothing objectionable about offering a domain name for sale where the domain name was not acquired for the purpose of sale to the complainant.

The Respondent provides a screenshot of the first page of a Google UK search for the term "scor" which returns over 300 million results. The Respondent notes that the Complainant features on the page but adds that four other users of the acronym, including the Twitter account of the Society and College of Radiographers (@SCoRMembers) which has 5,000 followers, also feature. The Respondent shows that there are two other registered trade marks belonging to third parties for the mark SCOR with effect in the UK.

The Respondent argues that the Complainant misunderstands paragraph 5.1.6 of the Policy, noting that this is focused on circumstances where a domain name has not been used in an ordinary sense and where the respondent has no obvious justification for its registration and has given no explanation. The Respondent contrasts its position regarding the Domain Names and the Complainant's case, submitting that the Domain Names have been used for a website offering them for general sale and that the Complainant's mark does not have a reputation in the sense of one likely to have motivated the Respondent to acquire the Domain Names.

The Respondent submits that it is not behind a privacy service in a sinister sense, noting that it has availed itself of Nominet's privacy service for legitimate reasons, that it is also the registrar (meaning that its details were still provided on the Whois record) and that there was ample evidence of its identity arising from its use of a generic top-level domain name in its email address on the website associated with the Domain Name.

The Respondent requests a finding of Reverse Domain Name Hijacking ("RDNH"), asserting that this case should never have been brought and that the Respondent has been put to unnecessary cost. The Respondent states that there is no evidence of Abusive Registration, that the Complainant does not seriously maintain that it has any reputation outside the rarefied area of reinsurance and that there is neither evidence of use of the Domain Names in connection with the Complainant's industry nor evidence demonstrating that the Respondent was likely to be aware of the Complainant. The Respondent criticises the Complainant for not sending a legal letter to the Respondent in the first instance and launching the proceeding without warning.

The Respondent points out that RDNH was found in a previous case involving a domain name trader, *SO31 Limited v. ANY-Web Limited* (DRS 16688) where the complainant failed to bring forward proper evidence of Abusive Registration and proceeded on the wrong assumption that it had an entitlement to the domain name because the respondent was such a trader.

### **Complainant's Reply to Response**

The Complainant requests a decision acknowledging the Complainant's Rights in the mark and dismissing the Respondent's request for RDNH.

The Complainant denies that the mark SCOR is generic or a dictionary word or is a widely known acronym. The Complainant states that the vast majority of the domain names

included in the Respondent's list of four character domains are generic dictionary words which would be understood by the public.

The Complainant denies that the Complaint suggested that paragraph 5.1.6 of the Policy could be used to create a presumption that any domain name is abusive if it happens to be similar to someone else's trade mark. The Complainant observes that the Domain Names are identical to the Complainant's trade marks, the marks are not generic and evidence of the Complainant's reputation in the mark was submitted, while the Complainant was unaware of any obvious justification for the Respondent having adopted the name.

The Complainant submits that it was not obvious that the registrant and the registrar of the Domain Names were one and the same as it appeared that the Respondent was using a privacy service. The Complainant asserts that the website associated with the Domain Names states that they may be for sale and is typical of a kind of holding page which might be put in place by a registrar. The Complainant notes that the website does not make the Respondent's business activities clear, adding that it was also unclear from brief Internet searches. The Complainant observes that it is common for registrars to use their own email addresses on holding pages of the kind used in this case.

The Complainant requests that the accusation of RDNH is dismissed. The Complainant asserts that it has reasonable grounds for bringing the Complaint, noting that it is not compulsory to make contact with a respondent prior to launching a proceeding and that it was impossible for the Complainant to do so because the Respondent's details were obscured in the Whois record. The Complainant also indicates that it was advised by Nominet that it would not be expected to try to contact the Respondent before filing the Complaint because the Respondent's contact details were not available.

## **6. Discussions and Findings**

### **General**

In terms of paragraph 2.2 of the Policy the onus is on the Complainant to prove to the Expert on the balance of probabilities each of the two elements set out in paragraphs 2.1.1 and 2.1.2 of the Policy, namely that the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

### **Complainant's Rights**

Paragraph 1 of the Policy provides that 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".

The requirement to demonstrate Rights under the Policy is not a particularly high threshold test. Rights may be established in a name or mark by way of a trade mark registered in an appropriate territory, or by a demonstration of unregistered so-called 'common law rights'.

Under this heading, the Complainant relies upon its registered trade marks for the word mark SCOR. The Expert finds that it has Rights for the purposes of the Policy in that mark.

Comparing this mark to the Domain Names, the Expert notes that this is alphanumerically identical to the third level of the first Domain Name and to the second level of the second Domain Name. The first and second levels of the first Domain Name (taken together, constituting the suffix .co.uk) and the first level of the second Domain Name (.uk) are typically disregarded for the purposes of comparison on the grounds that these are wholly generic and required for technical reasons only.

In all of these circumstances, the Expert finds that the Complainant has proved on the balance of probabilities that it has Rights in the mark SCOR within the meaning of the Policy and that such mark is similar to each of the Domain Names.

### **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. is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;*

This general definition is supplemented by paragraph 5.1 of the Policy which provides a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. Paragraph 8.1 of the Policy provides a similar non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration.

The essence of the Complainant’s case on Abusive Registration is that the Respondent registered the Domain Names primarily to prevent the Complainant from obtaining them or in order to sell, rent or transfer them to the Complainant or one of its competitors. Effectively, therefore, the Complainant’s case is based upon paragraphs 5.1.1.1 and 5.1.1.2 of the Policy.

The Respondent focuses on the decision of the Appeal Panel in *Verbatim Limited v. Michael Toth* (DRS 4331) for its primary assertion that a complainant needs to prove that a respondent had knowledge of that complainant and its rights at the point of acquisition/registration or during the use of the domain names concerned. The Respondent adds that it did not have any such knowledge, that it is a trader in valuable generic or acronym domain names and that it selected the Domain Names because of their appeal in that they contain a short, simple, generic, acronym-type term, in line with other such 4-letter domain names owned by the Respondent since 2011.

The *Verbatim* decision on which the Respondent relies was subsequently mentioned with approval in the decision of the Appeal Panel in *Whistle Blowers Press Agency Ltd and Commercial and Legal Services (UK) Ltd v. Ketts News Service Ltd* (DRS 07066). The Appeal Panel in the latter case was required to deal with a similar situation to that in the present case, namely that the respondent denied any knowledge of the Complainant or its activities. The Appeal Panel stated:-

*Accordingly, if the Respondent is speaking the truth when it says that it was unaware of the existence of the Complainants and/or their rights in respect of*

*WHISTLE BLOWERS when it registered the Domain Name and then when it first started making use of the Domain Name to connect to a website providing commercial services in respect of whistle blowers, the Complaint does not get off first base.*

While *Verbatim* and *Whistle Blowers* might appear at first glance to make a definitive statement regarding the issue of knowledge, on which the Respondent may rely, the Expert is also mindful of paragraph 2.4 of the Expert Overview version 2 which has been described as “a useful gloss on the *Verbatim* case” (see the comments of the expert in *Greenwich Service Solutions Ltd v. Garth Piesse* (DRS 18337)). Paragraph 2.4 of the Overview states, in part:-

*The body of expert decisions under the Policy is developing and certain principles are emerging. The section of the Appeal decision in DRS 04331 (verbatim.co.uk) dealing with ‘knowledge’ and ‘intent’ sets out one panel’s views on that topic. However, new domainer practices (e.g. automated bulk transfers of domain names) are becoming commonplace and to the extent that the Verbatim decision suggests that for a finding of Abusive Registration, the Respondent must have had knowledge of the Complainant and/or its Rights at the relevant time, it is now thought by some Experts that that might overstate the position.*

In these circumstances, an assertion of lack of knowledge on its own, however accurate or honestly made, cannot be taken as definitive on the question of abusiveness. It is not “a complete answer for a respondent” in that if the Domain Name contains a well-known mark, “an element of objectivity may play a part” (see the discussion in *HRworks GmbH v. Garth Piesse* (DRS 18610)). Accordingly, before making a determination on Abusive Registration, the Expert must consider all of the facts and circumstances of the case including, though not exclusively, the Respondent’s knowledge of the Complainant or its rights at the relevant time.

In the present case, the Complaint is accompanied by a significant amount of detail on the Complainant and its industry activities. It appears, to the Expert, to be prominent in its particular field of reinsurance and its SCOR mark is likely to be well-known in that industry. However, the Expert agrees with the Respondent that there is nothing in the Complaint which would demonstrate to the Expert’s satisfaction that the Respondent knew or is likely to have known of the Respondent’s identity when it acquired the first Domain Name. The evidence does not show, for example, that the typical UK Internet user or consumer is likely to have heard of the Complainant. On the contrary, being a relatively specialist business to business form of insurer, the Complainant is likely to be much better known within its own industry than it is to the public in general.

For its part, the Respondent’s evidence is broadly supportive of its case that it registers generic dictionary word and acronym domain names for resale. The Expert does not entirely agree with the Complainant’s contention in the Reply that the Domain Names do not fit within the list of registered domain names provided by the Respondent. Not every domain name listed by the Respondent is a dictionary word. Out of a total of 28 domain names, the Expert identifies 11 as acronyms which could be used for a variety of purposes, including the Domain Names themselves. Two of these are well-known acronyms for computer terms (“bios” and “sata” respectively) such that they could almost be described as generic words in their own right rather than acronyms *per se* but the others very much fit the pattern contended for by the Respondent which it describes as “assorted generic acronym-type

terms". It is clear that the Respondent was registering such terms as long ago as 2011 and 2012 ("huss" and "lloy" respectively) and that the Respondent has also registered two others more recently ("saxe" and "zend" respectively) in 2016 and 2017. With the exception of the second Domain Name, all of the domain names on the list are of the ".co.uk" variant.

The Complainant likewise has not provided evidence that it is more strongly identified with the SCOR acronym than any others who use the same term. The Complainant is clearly one longstanding user of the acronym and indeed has registered it as a trade mark but that in itself does not make out a convincing case that the Respondent acquired the first Domain Name with the primary purpose of selling it to the Complainant in particular or to a competitor of the Complainant or, for that matter, with the primary purpose of blocking the Complainant.

The Respondent's evidence shows that the acronym is in use both online and as a trade mark by various third parties. While the Complainant's use does appear at the top of the Google search produced by the Respondent, that search has over 300 million entries for the acronym and the first page features other uses such as the Scientific Committee on Oceanic Research, the Supply-chain operations reference model and the Steering Committee on Reciprocity together with the previously noted Twitter account of the Society and College of Radiographers (@SCoRMembers). The Complainant had the opportunity to comment on these search results by way of its Reply; for example, it might have attempted to show that a significant proportion of the entries in subsequent pages relate to the Complainant and not to the uses cited by the Respondent. However, the Complainant failed to address this point other than making the bare assertion that the acronym is not widely known. In all of these circumstances, the Expert must ask himself why it should be the case on the balance of probabilities that the Respondent was targeting this particular user of the acronym and/or holder of the corresponding trade mark. Neither the Complaint nor the Reply satisfies the Expert on this point.

The evidence shows that the Respondent was offering the first Domain Name for general sale and, given its existing portfolio of domain names, this activity appears to be consistent with the provisions of paragraph 8.4 of the Policy. No approach or solicitation was made to the Complainant regarding the Domain Names and there is nothing convincing in the case put forward by the Complainant which would allow the Expert to make a reasonable inference that the Complainant was likely to have been the focus of the Respondent's trading activity. In other words, placing the issue in the context of paragraph 5.1.1.1 of the Policy, the evidence shows that the Respondent acquired/registered the Domain Names primarily with the intent of selling them at a profit but not necessarily to the Complainant or to a competitor of the Complainant.

In all of these circumstances, it appears to the Expert on the balance of probabilities that whether or not the Respondent knew of the Complainant when it acquired/registered the Domain Names, the Respondent was entitled to offer these for general sale consistent with the provisions of paragraph 8.4 of the Policy. The Domain Names may be of interest to one of the several entities already using the acronym but equally to any entity wishing to acquire a short acronym-style domain name which is pronounceable, such domain names being relatively desirable and in limited supply. The Respondent has purchased such domain names in the past and there is no suggestion that any of those in its existing portfolio have targeted rights holders.



In conclusion, the Expert considers that it is not reasonable to infer either from the nature of the Complainant or its mark, from the Complainant's industry activities, from the Respondent's domain name portfolio, or from the general offer of sale in respect of the Domain Names, that the Respondent had knowledge of the Complainant and/or was intending to target it or that there are any other facts or circumstances in this case that point objectively in the direction of Abusive Registration.

Consequently, the Expert finds that the Domain Names are not Abusive Registrations in the hands of the Respondent and the Complaint therefore fails. On the subject of the Parties' dispute regarding the meaning of paragraph 5.1.6 of the Policy, the Expert notes for completeness that he considers that the Respondent has a reasonable justification for acquiring/registering the Domain Names along the lines previously discussed.

### **Reverse Domain Name Hijacking**

The Respondent has requested a finding of RDNH in this case. This is defined in paragraph 1 of the Policy as "using the DRS in bad faith in an attempt to deprive a Respondent of a Domain Name".

In the Expert's opinion, for bad faith to be found, something more than mere failure of the Complaint needs to be present. The Respondent asserts that the lack of evidence of use of the Domain Names in connection with the Complainant's activities and the lack of knowledge and intent on the Respondent's part are sufficient for the finding to be made but the Expert does not agree with those contentions in the circumstances of this particular case.

The Complainant is a significant organisation which has been named SCOR both in the UK and elsewhere for several decades. It has built up goodwill in the SCOR name in its industry. Its SCOR trade marks pre-date the Respondent's acquisition of the first Domain Name by many years. The Domain Names are an exact match for the trade mark in the third and second levels respectively. The Complainant therefore had a reasonable interest in the Domain Names and could likewise be expected to want to understand who had registered them and how they were being used.

The Domain Names were held behind a Whois privacy service under Nominet's Privacy Service Framework. This meant that the Whois record listed the identity of the registrar and provider of the privacy service but concealed the identity of the registrant and its contact details from an interested party such as the Complainant. The publicly listed registrar happened to be the same entity as the concealed registrant but there was no obvious connection between the two and thus no way for the Complainant to know this. The website associated with the first Domain Name was not particularly informative. As the Complainant notes, its appearance was consistent with a standard page provided by a registrar stating that a domain name may be for sale. In any event, it contained no additional information which would have allowed a potential complainant to identify the Respondent or discover the likely nature of its interest in the Domain Names. While, as the Respondent argues, it might have been possible to identify the Respondent via the domain name associated with the email address on the website, that email address not unreasonably appeared to the Complainant to be operated by the registrar and provider of the privacy service identified on the Whois record rather than by the Respondent *per se*. In all of the above circumstances, the Expert considers that neither the website content nor the Whois information ought to

have alerted the Complainant to the possibility that the Respondent was engaged in a potentially non-abusive activity as contemplated by paragraph 8.4 of the Policy.

It appears to the Expert that the Complainant may not have appreciated that it could have requested Nominet to make the registrant contact information available in terms of Nominet's Privacy Service Framework and data disclosure policy. Equally, the Complainant may have been unaware that in terms of the Framework, the registrar must act as an address for service for the registrant and must respond to or pass on abuse complaints from third parties. The Complainant's position is perhaps explained by the fact that the Whois record merely notes that the registrant is using a privacy service and provides no indication as to how the Framework operates or what steps a relevant third party can take regarding disclosure. The Complainant explains that it did make contact with Nominet but does not say whether the operation of the Privacy Service Framework and data disclosure policy was discussed. Nevertheless, the Expert notes that where a privacy service is being used it might be helpful for there to be some guidance for third parties expressed on the Whois record itself, for example by way of a link to an information page.

In any event, there is nothing before the Expert in the present case demonstrating that it should have been in the reasonable contemplation of the Complainant at the outset of the dispute that the Complaint would have been bound to fail. In contrast with the previous case under the Policy cited by the Respondent involving a domain name trader, *SO31 Limited v. ANY-Web Limited* (DRS 16688), the Complainant in the present case was unaware that the Respondent was a domain name trader. That lack of awareness seems to the Expert to be reasonable given the Respondent's largely uninformative website together with the potential for confusion arising from the Whois record and the Respondent's dual capacity as registrar and registrant described above.

In conclusion, the Expert considers that there is no bad faith in the conduct of the Complainant in bringing the present Complaint and accordingly RDNH is not found.

## 7. Decision

The Expert finds that the Complainant has proved that it has Rights in a name or mark which is similar to the Domain Names but has failed to prove that the Domain Names, in the hands of the Respondent, are Abusive Registrations. The Expert therefore directs that no action be taken with regard to the Domain Names.

**Signed** .....

**Andrew D S Lothian**

**Dated** 29 June, 2017 .....