

DISPUTE RESOLUTION SERVICE

D00019582

Decision of Independent Expert

RNS Publications

and

Paul Hudson

1. The Parties:

Complainant:

RNS Publications
Levens house
Clifton road
Blackpool
FY4 4QA

Respondent:

Paul Hudson
8 Sheriff Highway
Hedon
HU12 8HD

2. The Domain Name(s):

rnspublications.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 might be of such a

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

23 November 2017 Dispute received
24 November 2017 Complaint validated
24 November 2017 Notification of complaint sent to parties
13 December 2017 Response reminder sent
14 December 2017 Response received
14 December 2017 Notification of response sent to parties
19 December 2017 Reply reminder sent
20 December 2017 Reply received
20 December 2017 Notification of reply sent to parties
20 December 2017 Mediator appointed
22 December 2017 Mediation started
22 December 2017 Mediation failed
22 December 2017 Close of mediation documents sent
27 December 2017 Expert decision payment received

4. Factual Background

The Nominet records show that the Domain Name was registered on 20 November 2017.

The parties' submissions contain a good deal of content relating to a contractual dispute between them relating to the Respondent paying to place advertising in the Complainant's publications. For reasons which I will explain in section 6 below, the details of these allegations and counter-allegations are not in fact relevant to the outcome of this case. Accordingly, I will not set out those details in section 5 below, but will limit the summaries in that section to the parties' submissions which are relevant to the decision. For the purposes of this case, it is sufficient to state that there has been an ongoing contractual dispute between the parties, which has led to bad relations between them.

Based on the parties' submissions (see section 5 below), I set out below the main facts which I have accepted as being true in reaching a decision in this case:

- a. The Complainant has traded under the name RNS Publications for over 20 years, providing publications to the NHS.
- b. As a consequence of a contractual dispute between the parties, the Respondent registered the Domain Name and set up a website setting out his criticisms of the Complainant's business and how the Complainant dealt with him.

5. Parties' Contentions

Complaint

The Complainant's relevant submissions are summarised below:

The Complainant has rights in respect of a name and mark which is identical or similar to the Domain Name:

- (1) The Complainant has traded under the name RNS Publications for 25 years, providing end-of-life information and resources to the NHS.
- (2) The Complainant uses the RNS Publications name on its website at www.rns.co.uk and on all its stationery and signage.

The Domain Name, in the hands of the Respondent, is an abusive registration:

- (1) The Domain Name will be perceived as belonging to the Complainant.
- (2) The Respondent has a grievance with the Complainant because of a contractual dispute. He registered the Domain Name and has used a corresponding website with the aim of causing discredit to the Complainant.
- (3) The Respondent sent the following email to the Complainant shortly after the Domain Name was registered:

"Hello Chris,

Well the court case is over and you won. I shot without thinking. It cost me. You had a good team that knew more than I could ever know.

I have no malice towards you. The court said I could appeal the decision should I choose. I am not going to bother.

Two days ago as a direct result of your actions I bought a domain called rnspublications.co.uk. I have only had it two days and it is already ranked on bing. If you search for it on Bing it comes just under your site.

I intend to write my story whilst I am on holiday. I wanted to have my site off line whilst I wrote it but it won't let me.

As more content is added to the site and more search engines crawl it the higher the ranking it will get. It will either end up above or below yours.

I am a good business man the same as you but I believe that is where it ends. Your business model it totally different to mine.

I am now in a position where I can decide what I do. I have numerous options. This could be your Gerald Ratner moment."

Response

A summary of the Respondent's relevant submissions is set out below:

- (1) The Respondent registered the Domain Name to use for a website to make truthful criticisms of the Complainant.
- (2) The Complainant has not registered RNS Publications as a trade mark. Nor did it register rnspublications.co.uk as a domain name when it had the opportunity to do so.
- (3) There is a website at www.wizzairsucks.com which sets out criticisms of the airline Wizzair. This site has been operating for many years and Wizzair have not been able to shut it down. The Respondent is using the Domain Name for the same purpose in relation to the Complainant.
- (4) There are a lot of companies and domain names which start "RNS". RNS is generic. The Complainant cannot therefore claim rights in "RNS Publications".
- (5) The Respondent's website states that it is not affiliated in any way with the Complainant.
- (6) The Complainant only wishes to recover the Domain Name to stop the Respondent publishing critical comments about its business.
- (7) The Respondent is using the Domain Name fairly and purely to tell the truth about the Complainant.

Reply

The Complainant's relevant submissions in reply are summarised below:

- (1) The sole purpose of the Respondent's website is to deliberately denigrate the Complainant's reputation without due cause.
- (2) The Respondent's website is full of misrepresentations and does not represent fair comment and fair use.
- (3) The Respondent set up his website in bad faith for the purposes of causing harm to the Complainant. The Respondent has admitted this in the email which he sent to the Complainant shortly after the Domain Name was registered. In that email the Respondent admits that it is his intention to have his website rank in search results above the Complainant's own website.

6. Discussions and Findings

General

Paragraph 2 of the Policy provides that, to be successful, the Complainant must prove on the balance of probabilities that:

- i it 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 (as defined in paragraph 1 of the Policy).

Complainant's Rights

In light of the factual findings set out in section 4 above, it is clear that the Complainant has Rights in the nature of legally protectable goodwill in the name RNS Publications.

Disregarding the generic .co.uk suffix, the Domain Name is identical to the name in which the Complainant has Rights.

I therefore find that the first limb of paragraph 2 of the Policy is satisfied.

Abusive Registration

Paragraph 1 of the Policy defines an "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."

Paragraph 5 of the Policy sets out a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration. The factors under paragraph 5 on which the Complainant implicitly relies are as follows:

"5.1.1.3 Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily for the purpose of disrupting the business of the Complainant;

5.1.2 Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is

registered to, operated or authorised by, or otherwise connected with the Complainant"

Paragraph 8 of the Policy sets out a non-exhaustive list of factors which may be evidence that a Domain Name is not an Abusive Registration. The factor under paragraph 8 on which the Respondent relies is as follows:

"8.1.1.3 Before being made aware of the Complainant's cause for complaint (not necessarily the "complaint" under the DRS), the Respondent has made legitimate non-commercial or fair use of the Domain Name;

8.2 Fair use may include sites operated solely in tribute to or in criticism of a person or business."

A major part of the parties' submissions deals with the contractual dispute between them relating to advertising which the Respondent paid for. It is a well-established principle under the DRS that it is not appropriate for an Expert to consider the detailed content of a criticism website or to form a view as to whether or not it is justified. As stated by the Appeal Panel in DRS 06284 (Rayden Engineering):

"the DRS is intended to be a relatively simple, low cost and efficient system for resolving domain name complaints. The system does not contemplate a detailed analysis of factual disputes or the forensic weighing up of conflicting accounts... Although an Expert may in many cases form an impression as to whether the views expressed on a protest site are justified or true, we do not consider that in general the legitimacy of the use of a particular domain name should turn on such a judgement."

I am willing to accept that the Respondent genuinely holds the views which he expresses on his website. However, I am not in a position to decide on the merits of the underlying commercial dispute. I have therefore not analysed the allegations and counter-allegations between the parties relating to their contractual dispute, on the basis that whether or not the Respondent's criticisms of the Complainant are justified is not determinative in relation to the Domain Name.

In the same way as in the Rayden Engineering case, the issue at the heart of this case is the registration of the Complainant's identical name- RNS Publications- as a domain name for the purposes of a protest site. It is clear that the Respondent registered the Domain Name to attract visitors to his website, with the intention that he would increase the number of people who would see his adverse comments about the Complainant.

The Respondent has used a domain name which is exactly the same as the trading name of the Complainant without any indication in the domain name itself that it leads to a criticism website. To borrow a phrase from the Rayden Engineering case, *"in effect the Respondent is posing as the Complainant in order to attract members of the public to the site"*.

The Respondent submits that "RNS" is generic, his point being that it does not necessarily refer to the Complainant. However, even if that were correct- which in my view it is not when correctly taking into account the full name RNS Publications- this

submission would not assist the Respondent when he himself is making use of the Domain Name with reference to the Complainant.

The Respondent is thereby creating a likelihood of confusion with the Complainant. The Respondent submits that, because of the disclaimer on his website and the nature of its content, someone arriving at his website would quickly realise that in fact the site has no connection with the Complainant. However, where a registrant registers and uses a domain name to take advantage of "initial interest confusion"- i.e. confusion which causes a user to visit a website expecting it to be connected with a person or business whose name constitutes the domain name- he takes unfair advantage of the Rights in that name. By the time the user sees the disclaimer, or realises from the content of the website that it is not what he was looking for, the damage has been done and the advantage sought by the registrant has been achieved. That is the situation in this case.

The key point here is that the Respondent could have published his criticisms of the Complainant by using a domain name- and website address- which either did not include the Complainant's name at all or which included an additional element to make clear that the domain name was not associated with the Complainant but was being used for a third party criticism website. The classic example of this is to add the word "sucks" at the end of the domain name, which in this case would have become *rnspublicationsucks.co.uk*. This would not have been objectionable under the Policy. This would explain why the example quoted by the Respondent himself, namely *wizzairsucks.com*, has not been shut down.

This case under the DRS relates specifically to the Domain Name itself. As I have said, the outcome does not hinge on whether or not the Respondent's adverse comments on the Complainant, as expressed on his website, are true. The determining factor here is that the Respondent elected to register and use a domain name which is literally identical to the trading name of the Complainant, without any additions. He has clearly done so to attract additional users to his criticism website, who would not visit the site if it was under a domain name such as *rnspublicationsucks.co.uk*.

In conclusion, for the reasons set out above, I find that the Domain Name has been registered and used by the Respondent in a manner which takes unfair advantage of, or is unfairly detrimental to, the Rights of the Complainant in the name RNS Publications.

7. Decision

Having found that the Complainant has Rights in respect of a name which is identical to the Domain Name, and that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name *rnspublications.co.uk* be transferred to the Complainant.

Signed
Jason Rawkins

Dated: 9 January 2018