

DISPUTE RESOLUTION SERVICE

D00020027

Decision of Independent Expert

INDEPENDENT COMMERCIAL BROKING LTD

and

Mee Larsont

1. The Parties:

Lead Complainant: INDEPENDENT COMMERCIAL BROKING LTD
Virginia House
35-51 Station Road
Surrey
Egham
TW20 9LB
United Kingdom

Respondent: Mee Larsont
Jl Wetang Tanggaerang
Tangerang
banten
51255
Indonesia

2. The Domain Name(s):

barnett-and-barnett.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.

06 April 2018 00:26 Dispute received
10 April 2018 14:47 Complaint validated
10 April 2018 14:50 Notification of complaint sent to parties
27 April 2018 02:30 Response reminder sent
02 May 2018 09:59 No Response Received
02 May 2018 09:59 Notification of no response sent to parties
04 May 2018 08:18 Expert decision payment received
17 May 2018 Keith Gymer appointed Expert with effect from 22 May, 2018

4. Factual Background

The Complainant, Independent Commercial Broking Limited (UK Co. No. 4024377) was previously incorporated as Barnett & Barnett Limited from 4 September, 2000 to 1 May, 2013. It is a successor in business to the original Barnett & Barnett (Insurance) Limited, incorporated on 3 July, 1935 as UK Co. No. 302524. [Companies House records show that this entity's name was changed to Wedring Investments Limited on 15 March, 2001 and subsequently dissolved on 3 February, 2015.]

The Complainant itself held and used the Domain Name at least from 2002 in connection with its insurance, risk management and related services. Following the change of business name in 2013, the Domain Name was retained for email and (redirected) website uses.

However, the Domain Name registration was inadvertently allowed to lapse in April 2017.

According to the Nominet Whols records, the Domain Name was re-registered by the Respondent on 22 June, 2017. Nominet was not able to verify the registrant's name and/or address against a third party source. At the time of the Complaint, the Domain Name is suspended and not in use for any website.

5. Parties' Contentions

Complainant

The Complainant essentially asserts common law rights in the Barnett & Barnett business name and trading style. It claims rights acquired through trading under the name Barnett and Barnett since 1935, and through its own prior use of the Domain Name for emails and web sites since at least 2002.

It asserts that some of its long-standing clients still know it as Barnett and Barnett and have not updated their address books with relevant new email addresses since the change of business name. The Complainant states that it actually discovered that the Domain Name was no longer registered to it when some clients reported that emails intended for it at the old email address were receiving bounce backs.

The Complainant points out that clients do often send emails containing personal and sensitive data relating to insurance and other financial services to their insurance broker.

It claims that the registration of the Domain Name by the Respondent was unfairly detrimental to the Complainant's rights at the time of registration and that, in the hands of the Respondent, it constitutes an Abusive Registration.

Of particular concern is the risk that the Domain Name could be used to confuse existing customers and other internet users who are not aware that the Complainant has changed its business name. This could result in clients sending privileged information, expecting it to be received by the Complainant. The Domain Name could be misused to impersonate the Complainant's business, which could result in financial loss and reputational damage.

The Complainant also speculates that the Respondent may have registered the Domain Name to stop the Complainant from using it and effectively as a blocking registration, or with the objective of selling it or renting it back to the Complainant for financial gain.

Respondent

The Respondent offered no Response to the Complaint.

Remedy Requested

The Complainant requests transfer of the Domain Name.

6. Discussion and Findings

General

Paragraph 2 of the Policy requires that, for the Complainant to succeed, it must prove to the Expert, on the balance of probabilities, both that

2.1.1 The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name(s); and

2.1.2 The Domain Name, in the hands of the Respondent, is an Abusive Registration

Under Paragraph 18.1 of the Policy, the Expert is required to decide a complaint on the basis of the Parties' submissions and the Policy.

Complainant's Rights

The Complainant has claimed rights acquired through longstanding use of the BARNETT & BARNETT business name and trading style and has provided evidence, unchallenged by the Respondent, to demonstrate such use.

The Expert sees no reason to doubt that the Complainant does indeed have goodwill generated over 70+ years of trading under the name, and that this goodwill continues, notwithstanding the change of trading name in 2013.

The Expert is therefore satisfied that the Complainant would have common law rights in the BARNETT & BARNETT name sufficient, for example, to support a passing-off action under English law. The use of "-and-", rather than the ampersand between "barnett" and "barnett" in the Domain Name is plainly immaterial as "&" would not be a valid domain name character in any event.

Consequently, the Expert finds that the Complainant has relevant Rights in a name or mark, which is essentially identical to the Domain Name. The requirement of Paragraph 2.1.1 of the Policy is met.

Abusive Registration

The Complainant also must show that the disputed Domain Name 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. 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.

A non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration are set out in Paragraph 5 of the Policy. The following examples appear pertinent to the present dispute:

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

...

5.1.1.2 as a blocking registration against a name or mark in which the Complainant has Rights; or

5.1.1.3 for the purpose of unfairly 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;

The factors listed are only intended to be exemplary and indicative. It is Paragraph 1 of the Policy, which provides the applicable definition as indicated above.

In the present case, no submissions have been made by the Respondent to rebut or deny the allegations made by the Complainant, and there is no evidence that the Domain Name has actually been used by the Respondent, whether for email or for a website. Neither is there any evidence relating to the Respondent's motivation for registering the Domain Name.

It appears to the Expert that, in the circumstances, it is very likely that the Domain Name was simply opportunistically re-registered by the Respondent when the original registration lapsed. At that time, there may have been no established intention, on the part of the Respondent, to make any particular use or abuse of the Domain Name adverse to the Complainant. Certainly, no evidence has been presented of such deliberate intent.

However, even if the Domain Name has been acquired speculatively by the Respondent, possibly as a domainer, that does not exclude consideration of the rights of others, such as the Complainant, which may be affected by any use of the Domain Name. Domain names are regularly used by bad actors for phishing and similar abuses, particularly in the fields of financial and related services, where domain names misleadingly incorporate names or trading styles of banks or other financial institutions. In such situations, the risk of a domain name being used as an "instrument of deception" cannot be taken lightly.

Here, at least some of the Complainant's clients have been exposed to the potential interception of emails containing confidential information, which were sent to

addresses using the Domain Name. The threat of an abuse, as contemplated under Paragraph 5.1.2 of the Policy, is implicit.

The facts that Nominet has also been unable to verify the name/address details of the Respondent, and that the Respondent has provided no response to the Complaint also raises doubts as to what *bona fide* justification there could be for the Respondent's registration and potential use of the Domain Name.

On balance, therefore, the Expert considers that the registration and potential use of the Domain Name by the Respondent takes, and would take, unfair advantage of and be unfairly detrimental to the Complainant's Rights, and is an Abusive Registration consistent with Paragraph 2.2.2 of the Policy.

7. Decision

Having found that the Complainant has relevant Rights and that the Domain Name, in the hands of the Respondent, is an Abusive Registration, the Expert orders that the Domain Name be transferred to the Complainant.

Signed **Dated June, 2018**
Keith Gymer