

## **DISPUTE RESOLUTION SERVICE**

**D00020100**

### **Decision of Independent Expert**

First Estates

and

Mr Ignatios Constantinou

**1. The Parties:**

Complainant: First Estates  
Balfour House  
741 High Road  
London  
N12 0BP  
United Kingdom

Respondent: Mr Ignatios Constantinou  
48 Holyrood Road  
New Barnet  
EN5 1DG  
United Kingdom

**2. The Domain Name:**

firstestates.co.uk (the "Domain Name")

**3. Procedural History:**

On 18 April 2018 the Dispute was received. It was validated on 19 April and notification of the complaint was sent to the Parties. On 09 May a response reminder was sent and on 10 May a response was received, and notification of response sent to the Parties. On 15 May a reply reminder was sent and on 16 May a reply received and notification of same was sent to the Parties. On 21 May a mediator was appointed and mediation started. However, on 05

June mediation failed and the close of mediation documents were sent to the Parties. On 12 June the Expert decision payment was received and on 19 June the Expert – Tim Brown - was appointed.

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.

#### **4. Factual Background**

The Complainant is an estate agent located in North Finchley, London, called First Estates. The Complainant was established in 1987 and has been operated by an individual called Mr Rob Bottomley since its foundation. It is clear that First Estates is a small business and that Mr Bottomley is synonymous with it. While the Parties disagree on the Respondent's exact status, Mr Bottomley worked with the Respondent - an individual called Mr Nady Constantinou - for some years until Mr Constantinou left the business at some point in 2017.

The Domain Name was registered in the Respondent's name on 04 February 2000 and currently resolves to a website which promotes the Complainant's business. It is also used for email services by the Complainant, though the Complainant says that Mr Constantinou still uses an email address associated with the Domain Name for his own purposes.

#### **5. Parties' Contentions**

##### **5.1 Complainant**

The Complainant contends that he has been trading as "First Estates" for around thirty years and that the business is well known in the area. Several invoices addressed to First Estates have been exhibited.

The Complainant avers that he instructed his "employee" Mr Constantinou to register the Domain Name after the Complainant decided he needed a web presence in 2000.

The Complainant says that the Respondent has registered his own, similar, domain name [firstestatesmanagement.co.uk](http://firstestatesmanagement.co.uk) in order to continue his business relationship with the Complainant's customers.

The Complainant avers that the Respondent has refused to hand over the Domain Name. The Complainant observes that he is still using the Domain Name in association with a web site promoting the First Estates business and has provided invoices from an estate agency software company called Jupix to support this.

The Complainant says that he has received complaints from some of the Respondent's customers which, the Complainant avers, is damaging his reputation by the Respondent's "*lack of professionalism*".

##### **5.3 Respondent**

The Respondent rejects the Complainant's arguments and says they are without merit.

The Respondent takes issue with the Complainant's representative in this matter and notes that he has "*not seen any letter of instruction nor correspondence from [Nominet] enabling [the Complainant's representative] to raise such a compliant of this nature*". The Respondent suggests that the Complaint should be discarded on this point alone.

The Respondent contends that the Domain Name was registered in his personal name and that all payments and renewals were paid for by him. Several invoices from the related registration service provider have been exhibited.

The Respondent says that he *"...registered firstestates.co.uk not on behalf of First Estates but as the official registrant/owner of the domain."* The Respondent further contends that the Complainant should provide *"...strict proof to provide any evidence of ownership and or payment for the domain name"*.

The Respondent rejects the Complainant's assertion that he was an employee of the Complainant and instead contends that he was a *"business partner"*. Screenshots from the website associated with the Domain Name have been exhibited which describe the Complainant and Respondent variously as *"...two partners..."* and then notes *"[The Complainant] has been ably assisted by [the Respondent] since 2000 who has now become a partner in the firm"*.

The Respondent says that "as a partner" of First Estates he established longstanding relationships with clients and decided to move away from the Complainant as the Respondent says the Complainant was planning to retire and transfer his share of the business to a third party.

The Respondent avers that that he allowed the Complainant to continue using the Domain Name until the Complainant could make plans to transfer the business to this third party.

The Respondent contends that that he has sold his goodwill in the "partnership" to a company called First Estates Management Limited and that he has the intention of using the Domain Name for this new venture.

The Respondent concludes that he legally purchased the Domain Name and has rights to it and that transferring the Domain Name in these circumstances would not be just.

## **5.5 Complainant's reply**

The Complainant contends that the Respondent has fabricated his story and exhibits a letter setting out some further detail relating to the circumstances of the Domain Name's registration.

The Complainant observes that he employed the Respondent seventeen years ago (presumably in 2000 when the Domain Name was registered) as an office administrator to *"handle the admin and IT side of the business"*. After some time, the Complainant could no longer guarantee the Respondent a regular monthly salary; however, the Respondent remained on a self-employed basis with compensation based on a percentage of the profits generated by the First Estates business.

The Complainant says that the Respondent asked if he could be a partner but the Complainant said that this *"would be in name only"* and that the Respondent would have no equity in the business. The Complainant says that the Respondent later asked if he could utilise the name "First Estates" for his own purposes and that, after consultation with the third party to whom the Complainant was transferring the business on his retirement, this request was rejected.

## **6. Discussions and Findings**

It is clear from the submissions in front of me that while the Parties have worked together for some years, their business relationship has now almost entirely disintegrated. Among other

things, matters pertaining to the transfer of the business and the Respondent's exact employment status are clearly contentious.

I have carefully read and considered the Parties' contentions where they relate to the Domain Name and the DRS Policy. My decision does not relate to the merits, or otherwise, of the Parties' arguments where they relate to other issues that do not touch on the Domain Name. There are other forums which are better suited to the other issues that the Parties raise and my decision will relate to the Domain Name only.

## **6.1 Procedural issues**

The Respondent has said that the Complaint should fail as he has "*not seen any letter of instruction nor correspondence from [Nominet] enabling [the Complainant's representative] to raise such a compliant [sic.] of this nature*".

The Policy is clear that a party to the DRS can appoint an authorised representative to act for it if it so chooses. This is set out in Paragraph 4.3.3 of the Policy and it is a frequent practice for parties to do so.

Having examined the submissions and notifications, it is clear that proper procedures have been followed by the Complainant in appointing a representative to act on his behalf. I therefore see no reason to grant the Respondent's request to strike out this matter on this basis.

The Respondent has also requested that the Complainant provide "*...strict proof...*" regarding his contentions. I note that Paragraph 2.2 of the Policy notes that the burden of proof is based on the balance of probabilities and I will proceed on this basis.

## **6.2 Rights**

According to Paragraph 1 of the Policy, "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 Complainant has not put forward evidence of a registered trade mark and is therefore presumably relying on his unregistered or "common law" rights in the term "First Estates". On this point I have referred to Paragraph 2.2 of the Expert's Overview<sup>1</sup> which observes:

*If the right is an unregistered trade mark right, evidence needs to be put before the Expert to demonstrate the existence of the right. This will ordinarily include evidence to show that (a) the Complainant has used the name or mark in question for a not insignificant period and to a not insignificant degree (e.g. by way of sales figures, company accounts etc) and (b) the name or mark in question is recognised by the purchasing trade/public as indicating the goods or services of the Complainant (e.g. by way of advertisements and advertising and promotional expenditure, correspondence/orders/invoices from third Parties and third party editorial matter such as press cuttings and search engine results).*

Although the evidence before me is perhaps a little scarce, it is clear from the website and the invoices submitted by the Complainant that his business "First Estates" has been trading for approximately 30 years (and it is 18 years since the Domain Name was registered) and so is at least reasonably well-known by the public. Equally, I note that the Respondent does not deny that the Complainant has Rights.

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<sup>1</sup> The Expert's Overview is a document which sets out and discusses common issues that come up in DRS decisions. It can be found on Nominet's website.

I therefore find that the Complainant has Rights in the term "First Estates". The .co.uk suffix is required only for technical reasons and so, as is customary in DRS proceedings, it can be ignored for the purposes of comparing the Domain Name to the Complainant's mark.

The Domain Name is therefore identical to a name or mark in which the Complainant has Rights.

### **6.3 Abusive registration**

According to Paragraph 1 of the Policy, a domain name is Abusive if it 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 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.

Although the Parties have not specifically mentioned it in their submissions, this matter seems to fall under Paragraph 5.1.5 of the Policy, which notes that a domain name can be Abusive if the domain name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant has been using the Domain Name registration exclusively; and paid for the registration and/or renewal of the Domain Name registration.

While the exact employment status of the Respondent is under some dispute, it is clear that the Respondent registered the Domain Name as a result of and exclusively in connection with a business relationship between him and the Complainant. In my view, it does not particularly matter whether the Respondent was an employee, a director or a partner. In these circumstances, it is more likely than not on balance that the Respondent registered the Domain Name for the use of the First Estates business with which he was closely associated.

At the point of registration and throughout the Domain Name's existence, the Domain Name has been used in association with a website that did, and still does, support and promote the Complainant's business. The Domain Name was therefore registered as a result of a relationship between the Complainant and Respondent and the Complainant has been using the Domain Name exclusively to promote his business.

The alternative scenario - that the Respondent registered the Domain Name in his own name for his own purposes that were entirely unconnected to the First Estates business and that the Respondent had Rights of his own in the First Estates name or mark is simply not credible. In other words, the registration and use of the Domain Name has always been inextricably linked in one way or another to the Complainant's Rights.

As I have noted above, the submissions show that the business relationship between the Parties is now at an end. In these circumstances, I cannot see how the Respondent has any justification in retaining the Domain Name, which is identical to the Complainant's name and mark, for his own purposes.

I do note that the Respondent appears to have paid for the Domain Name's registration and renewal. It is reasonable to assume that the Respondent would presumably have been entitled to be refunded for this by the Complainant in connection with his employment by the Complainant (regardless of the exact status of that employment). That the Respondent may have incurred these costs himself does not seem to me to entitle him to claim the right to continue to control the Domain Name in these circumstances.

I observe that there is a possible defence to Paragraph 5.1.5, which is found in Paragraph 8.1.3 of the Policy. This provides a non-exhaustive factor which may be evidence that a domain name is not an Abusive Registration where the Respondent's holding of a domain name is consistent with an express term of a written agreement between the Parties. There is no evidence of such a written agreement in this matter.

In general terms, I find that the Respondent's use of and continued holding of the Domain Name is unfairly detrimental to the Complainant's Rights. The Domain Name continues to point to the Complainant's website, but the Complainant does not have any control over it while it continues to give the clear impression that it is under the Complainant's control.

Furthermore, the Complainant has suggested that the Respondent has retained an email address and is using it for business-related correspondence. Even if this is not the case, it is reasonable to suppose that emails intended for the Complainant might be diverted or otherwise remain unattended. I cannot see how this situation could be anything other than unfairly detrimental to the Complainant's Rights.

In all of these circumstances, I find that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

Finally, I reiterate that my decision is made entirely on the submissions before me and the Policy. My decision is no reflection on any of the other contentious matters between the Parties.

## **7. Decision**

I find that the Complainant has proved that he has Rights in 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. I therefore direct that the Domain Name is transferred to the Complainant.

**Signed**

**Tim Brown**

**Dated 21 June 2018**