

# **DISPUTE RESOLUTION SERVICE**

**D00020007**

## **Decision of Independent Expert**

Ecco Dental Group

and

Mr Alexandru Chiciu

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

First Complainant: Ecco Dental Group  
Unit 3, Queenslie Point  
120 Stepps Road  
Glasgow  
G33 3NQ  
United Kingdom

Second Complainant: Dr Abid Faqir  
Unit 3, Queenslie Point  
120 Stepps Road  
Glasgow  
G33 3NQ  
United Kingdom

Respondent: Mr Alexandru Chiciu

Glasgow  
Scotland  
United Kingdom

**2. The Domain Names:**

airdriedentalcare.co.uk  
bonnyriggdentalcare.co.uk  
eastkilbridedentalcare.co.uk  
edinburghdental.co.uk  
rosythdentalcare.co.uk

**3. Procedural History:**

23 March 2018 12:57 Dispute received  
26 March 2018 16:05 Complaint validated  
26 March 2018 16:26 Notification of complaint sent to parties  
16 April 2018 02:30 Response reminder sent  
17 April 2018 17:48 Response received  
17 April 2018 17:48 Notification of response sent to parties  
20 April 2018 02:30 Reply reminder sent  
24 April 2018 16:31 Reply received  
24 April 2018 16:34 Notification of reply sent to parties  
24 April 2018 16:35 Mediator appointed  
25 April 2018 14:26 Mediation started  
03 May 2018 17:55 Mediation failed  
03 May 2018 18:02 Close of mediation documents sent  
04 May 2018 13:02 Expert decision payment received

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 such a nature as to call into question my independence in the eyes of any of the parties.

Following close of pleadings and on a date unknown to the Expert the

use to which the Domain Names were put changed dramatically (see section 4 below – final paragraphs). The Expert learnt of the new use when visiting the websites connected to the Domain Names. Given that this information did not stem from the papers in the case the Expert felt it appropriate to seek a submission from the Respondent in respect of the new use and a procedural order was issued on 14 May, 2018 inviting a response by 16 May, 2018. The Respondent responded on 16 May, 2018. The Complainants were given until 18 May, 2018 to file a submission in response. They duly did so in timely fashion.

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

The First Complainant is a dental group comprising at least five dental practices in Scotland trading under the names appearing in the Domain Names. The business of the group was transferred into a limited company, Ecco Dental Group Limited, which was incorporated on 22 January, 2018. The Second Complainant is a director and the secretary of the company. His co-directors are Ferhan Ahmed and Ahdul Farooq Mohammed.

On 30 June, 2017 a dental partnership (known as “L&T Dental Group”) comprising the Second Complainant, Arfan Ahmed, David Kennedy, Ferhan Ahmed, Haroon Ismail, Mustafa Abdel Ellah Mustafa and Ahdul Farooq Mohammed was dissolved by way of a Separation Agreement executed by the partners on various dates between 26 September, 2017 and 3 October, 2017.

Recital (5) of the Agreement provides that: “the businesses of the Partnerships operating under the names Bonnyrigg Dental Care, East Kilbride Dental Care, Oban Dental Care, Rosyth Dental Care, Airdrie Dental Care, Edinburgh Dental Care and the leases relative thereto are being carried on and continued by Abid, Dave, Ferhan, Mustafa and Ahdul.”

On 21 March, 2018 the solicitor representing the parties to the

Separation Agreement sent an email to Ahdul Farooq Mohammed in which he expresses the opinion that *inter alia* Arfan Ahmed in whose name he believed the Domain Names to be held should transfer the Domain Names in compliance with the terms of the Agreement.

That email continues:

*“After concentrating on the necessary assignments for the various leases involved, I addressed the issue of the domain names in a discussion with Arfan on Sunday 25<sup>th</sup> February – as I understand that he was still in control of the domain names relative to the practices with which he no longer had any connection whatsoever. He agreed with me, and later that day I sent him the attached Letter of instruction, with a request that he sign and return the same to me asap. It hasn’t come back yet. I’ve tried to contact Arfan by phone and email on numerous occasions since then, and have even called in at the Shawlands practice to see him personally – unfortunately he was with a patient and couldn’t be disturbed, and accordingly the letter remains unsigned for the moment.”*

According to the Respondent the Respondent was contracted by Arfan Ahmed *“to form and develop a digital presence prior to the start of the [L&T Dental Group] business”*. At one time some or all of the Domain Names were held in the name of Arfan Ahmed, but they are currently held in the name of the Respondent.

At one time the Domain Names resolved to the websites of the individual practices, but until very recently they all resolved to a page at <express.co.uk> featuring a Sunday Express story published in that newspaper in May 2009 relating a General Dental Council (“GDC”) hearing regarding allegedly scandalous dental treatment provided by one of the above-mentioned dentists.

The Respondent in his response to the Expert’s procedural order states that he has deleted the connection to the newspaper article. The Expert cannot now access any website connected to the Domain Names. They all result in a page headed **“Forbidden”** and below that a message stating: *“You don’t have permission to access/on this server”*.

## **5. Parties' Contentions**

### **The Complainant**

For the purposes of this decision the Expert treats the First Complainant as the Complainant, the Second Complainant's interests appearing to the Expert to coincide with those of his company, the First Complainant.

The Complainant contends that it has rights to its practice names, which feature in the Domain Names and that the Domain Names should have been transferred to it pursuant to the Separation Agreement referred to in Section 4 above as interpreted by the lawyer acting on behalf of the parties to that agreement.

The Complainant contends that the Domain Names and the websites to which they are attached are outside the Complainant's control with the result that the Complainant is unable to update the data on those websites. The Complainant contends that this constitutes abusive use within the meaning of the Policy.

The Complainant seeks transfer of the Domain Names.

### **Respondent**

In light of the final two paragraphs of Section 4 above, the Expert finds it unnecessary to relate in detail the content of the Response. Suffice it to say that the Respondent contends that he registered or acquired the Domain Names in his capacity as an independent IT consultant for a partnership comprising a group of dental practices operating under the names featured in the Domain Names and other names. The partnership had been founded by Dr Arfan Ahmed. He became the partnership's practice operations manager, but asserts that all registration and management of the domain names (including the Domain Names) was conducted by him independently through his own company. One exception was a domain name used by the

Oban Dental practice, which was registered in a separate account and which he believes was released by the Complainant to the partner running that practice for a substantial sum of money.

In his capacity as independent IT consultant to the now-dissolved partnership he was at one time the owner of the remaining domain names of that partnership, but since dissolution of the partnership he has divested himself of one of them to Dr Arfan Ahmed having reached a commercial agreement with that dentist.

He contends that he is owed money by the Complainant (a figure of £66,000 is mentioned in the Response), but the Expert has no further information as to the nature of the dispute. He further contends that he has communicated with the Complainant on many occasions encouraging it to update the websites to conform to GDC regulations and has in fact made information available to the Complainant to enable it to do so.

He further contends that he has tried on a number of occasions to communicate with the Complainant in relation to the dispute, but that the Complainant has never responded. He says *"I cannot go and fix this issues on behalf of the claimant as we are already in a commercial dispute due to them owing me a substantial sum of money."*

He sets out in some detail many of the errors on the websites of the Complainant's dental practices and states that the Complainant's disinclination to rectify them should be reported to the GDC. In relation to one of the Complainant's dentists he says: *"This individual has previously has [sic] many issues with his regulatory body. Please just Google his name."*

The Response makes no reference to the uses being made of the Domain Names and referred to in the penultimate paragraph of Section 4 above.

## **Reply**

The Reply throws little light on the matter. It concentrates upon

alleged factual inaccuracies in the Response, matters which the Expert cannot readily resolve in this form of administrative proceeding. It appears that the Complainant was unaware of much of the Respondent's dealings with Arfan Ahmed, the former partner, whom the Complainant believed to be in control of the Domain Names.

The Reply makes no reference to the use being made of the Domain Names, which is described in the penultimate paragraph of Section 4 above.

### **The Procedural Order**

#### **Respondent**

The Respondent contends that the recent connection of the Domain Names to a 2009 Sunday Express story about a GDC hearing involving the behaviour of one of the Complainant's dentists had nothing to do with him and everything to do with the failure of the Complainant to take the opportunities he gave the Complainant to update the websites. He says that the Complainant's failure in this respect has laid the accounts open to third party hackers and produces a document purporting to show relevant security related activity for the week of 11 September 2017. He produces another document in which the Complainant indicates that it has a support team capable of handling website maintenance issues.

#### **Complainant**

The Complainant states that it has been unable to maintain the relevant websites not because it does not have a sufficient support team, but because the Respondent has not provided the Complainant with maintenance access to the websites. Full administrative access has not been provided. The Complainant states:

*"We are of course aware that illegal activities such as unauthorised login attempts, hacking and phishing attacks are part and parcel of having online business related activities but we are of the opinion that the fact that the Facebook pages and websites have suffered from*

*similar attacks (all leading to newspaper articles), both of which Mr Chiciu has access to, is far too coincidental to be individual attacks from 'unauthorised log in attempts and compromised hosting' as Mr Chiciu seems to be suggesting. **We also note that these attacks relate directly to a historical event which Mr Alexandru Chiciu refers to in his original response to the complaint whereupon he urges the Dispute Resolution Service to refer this matter to the GDC which I strongly recommend in the interest of the public' and further insinuates that [the dentist referred to in the newspaper story] 'has previously had many issues with his regulatory body. Please just Google his name'.***" [Complainant's emphasis]

The Expert notes that none of the attachments stated to be appended to the Complainant's response to the Respondent's filing were in fact appended to the Complainant's response. However, the Expert does not find it necessary to see those documents in order to come to a decision.

## **6. Discussions and Findings**

### General

Pursuant to paragraph 2.a.i of the Policy, for the Complainant to succeed in this Complaint it must prove to the Expert 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 Names; and
- II. the Domain Names, in the hands of the Respondent, are Abusive Registrations

"Abusive Registration" is defined in paragraph 1 of the Policy 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. has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

### Rights

The evidence of both parties demonstrates to the satisfaction of the Expert that the Domain Names feature the trading names of the dental practices in question, the names under which they have traded for three or four years.

While there are gaps in the Complainant's evidence leaving some scope for doubt as to the precise number of practices operating under the umbrella of the Complainant company, the Expert is satisfied on the balance of probabilities that they include Bonnyrigg Dental Care, East Kilbride Dental Care, Rosyth Dental Care, Airdrie Dental Care and Edinburgh Dental Care.

The Expert finds that, absent the ".co.uk" country code Top Level Domain identifier, which may be ignored for this purpose, the Domain Names are in substance identical to the trading names of the Complainant's practices.

The Expert finds that the Complainant has rights in respect of names or marks, which are in substance identical to the Domain Names.

### Abusive Registration

The circumstances under which the Domain Names were registered or acquired by the Respondent are the subject of much factual dispute. The Expert is unable to resolve those issues and therefore declines to find that the Domain Names were registered or otherwise acquired in circumstances rendering the Domain Names Abusive Registrations within the meaning of that term as defined in paragraph 1 of the Policy.

To the Expert, it seems likely that the Domain Names were registered for the benefit of the partners of the old partnership. Whether the

partners were aware that they were held and controlled by an independent company is another matter, but the Expert is unable on the information before him to find that those registrations were made by the Respondent with any abusive intent.

However, as is apparent from the definition of Abusive Registration quoted above, a domain name may be found to be an Abusive Registration if *“it has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.”*

When the Complaint, Response and Reply were filed in this administrative proceeding, the Domain Names were in the control of the Respondent and were connected to the Complainant's dental practices bearing the names featured in the Domain Names. The Complainant's contention as to Abusive Registration was based on the fact that pursuant to the Separation Agreement (see Section 4 above) the Domain Names should have been transferred to the Complainant and wrongly remain in the hands of the Respondent and out of the Complainant's control. As such the Complainant claimed to be suffering administrative and regulatory difficulties, causing significant damage.

However, it is unnecessary for the Expert to concern himself with that usage of the Domain Names by the Respondent. The Domain Names no longer link to webpages identifying the Complainant's dental practices. Until after issue of the Procedural Order issued by the Expert on 14 May, 2018 they all resolved to a Sunday Express webpage of May 2009 calling into question the competence and honesty of one of the Complainant's dentists.

Following issue of the Procedural Order the Respondent disconnected the Domain Names from the newspaper article and they now connect to a page headed ***“Forbidden”*** and below that a message stating: *“You don't have permission to access/on this server”*.

Whoever was responsible for the linking of the Domain Names to that damaging story was clearly someone keen to cause maximum damage to the Complainant. Who was it? Third party hackers as

contended for by the Respondent or the Respondent as contended for by the Complainant?

The Expert finds on the balance of probabilities that it was the Respondent who was responsible for the change of use. The factors leading to that finding are:

- (1) On the papers before the Expert nobody other than the Respondent is in conflict with the Complainant.
- (2) The Respondent has control of the Domain Names and the use to which they are put, as confirmed by his removal of the links to the Sunday Express story.
- (3) The Complainant has exhibited a spiteful streak in pointing the Expert to an eight year old complaint made against one of the Complainant's dentists, a matter which has no bearing on the subject matter of this dispute. The Sunday Express story featured in the result of the Google search that the Expert was invited to make and that was clearly the story the Respondent had in mind in issuing the invitation.
- (4) However, in Googling the dentist's name as the Respondent suggested, the top story was a story in 2017 speaking of a prestigious professional appointment for the dentist in question. Clearly, whatever the outcome of the complaint in 2009, as to which the Expert has no information, that dentist has become a very successful one.
- (5) If the linking of the Sunday Express story to the Domain Names had been the action of hackers, one would have expected the Respondent to produce a schedule showing relevant security related activity covering the period when the linking of the Domain Names took place. Instead the Respondent produced a schedule covering the week of 11 September, 2017.

The Expert can only assume that it was done to exert extreme pressure on the Complainant to resolve its dispute with the Respondent on terms satisfactory to the Respondent.

Paragraph 5 of the Policy provides a non-exhaustive list of factors, which may be evidence that a domain name is an Abusive Registration. One of those factors (paragraph 5.1.1.3) is that the

domain name is issue was registered primarily for the purpose of unfairly disrupting the business of the Complainant.

The Expert has no reason to believe that the Respondent registered the Domain Names for that purpose, but is in little doubt that the recent change of use was made to pressurize the Complainant by unfairly disrupting the business of the Complainant. Unfair use of a domain name for such a purpose constitutes, in the view of the Expert, an abusive use of the domain name.

The Expert finds that the Domain Names are being used and have been used in a manner, which is being unfairly detrimental to the Complainant's Rights and that they are therefore Abusive Registrations within the meaning of that term as defined in paragraph 1 of the Policy.

## **7. Decision**

The Expert directs that the Domain Names be transferred to the Complainant.

**Signed – Tony Willoughby**

**Dated 19 May 2018**