

DISPUTE RESOLUTION SERVICE

D00021648

Decision of Independent Expert

Nutanix, Inc

and

Mr Rob Ganly

1. The Parties:

Nutanix, Inc (“the Complainant”)
1740 Technology Drive
San Jose
California
95110
United States

Mr Rob Ganly (“the Respondent”)
Radlett
Herts
United Kingdom

2. The Domain Name:

<nutanix.uk> (“the Domain Name”)

3. Procedural History:

19 July 2019 14:55 Dispute received
22 July 2019 17:12 Complaint validated
22 July 2019 17:13 Notification of complaint sent to parties
08 August 2019 02:30 Response reminder sent
13 August 2019 08:28 No Response Received
13 August 2019 08:28 Notification of no response sent to parties
16 August 2019 11:09 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 a such a nature as to call into question my independence in the eyes of either of the parties.

4. Factual Background

The Complainant is a United States based computer software company, which was founded in 2009. It has a United Kingdom subsidiary, Nutanix Limited, which was incorporated in 2012. The Complainant's evidence includes press cuttings one of which, dated 12 June, 2017, has the headline "*From start-up to \$3bn stock in 8 years, Nutanix is gunning for the giants.*" The financial data provided by the Complainant demonstrates that its sales under the NUTANIX mark were very substantial in the years leading up to that article.

The Complainant is the registered proprietor of a large number of trade mark registrations covering its name including European Union Trade Mark Registration No. 1099915 NUTANIX (word) registered on 16 November 2011 in class 9 for computer software and hardware for use in cloud computing, virtualization and data storage.

The Domain Name was registered on 12 October 2017. It is not connected to any website.

5. Parties' Contentions

The Complainant

The Complainant contends that its name and trade mark NUTANIX is identical to the Domain Name at the second level and further contends that the Domain Name is an Abusive Registration.

It contends that the Domain Name is an Abusive Registration for the following reasons:

- (a) it was registered primarily as a blocking registration (paragraph 5.1.1.2 of the Policy);
- (b) it was registered primarily for the purpose of unfairly disrupting the business of the Complainant (paragraph 5.1.1.3 of the Policy);
- (c) it is an exact match for the Complainant's NUTANIX name and trade mark, the NUTANIX name and trade mark has a reputation and the Respondent has no reasonable justification for having registered the Domain Name (paragraph 5.1.6 of the Policy).

In support of the above, the Complainant contends that it has never licensed the Respondent to use NUTANIX and has no connection with him. It points out that its name and mark is not a dictionary word. It is meaningless save to indicate the Complainant. Moreover, the Respondent has made no use of the Domain Name.

The Respondent

The Respondent has not responded to the Complaint.

6. Discussions and Findings

General

Pursuant to paragraph 2 of the Policy for the Complainant to succeed in this Complaint it must prove to the Expert on the balance of probabilities that:

- 2.1.1 It has Rights in respect of a name or mark which is identical or similar to the Domain Name; and*
- 2.1.2 The Domain Name, in the hands of the Respondent, is an Abusive Registration*

"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. 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.*

Rights

The Complainant clearly has rights in respect of the NUTANIX trade mark, being the registered proprietor of several registrations of the trade mark including the European Union Registration detailed in section 4 above.

The NUTANIX trade mark is identical to the Domain Name at the second level.

Abusive Registration

Paragraph 5.1 of the Policy sets out a non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration. The Complainant relies upon sub-paragraphs 5.1.1.2, 5.1.1.3 and 5.1.6, which read as follows;

“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;

5.1.6 The Domain Name is an exact match (within the limitations of the character set permissible in domain names) for the name or mark in which the Complainant has Rights, the Complainant’s mark has a reputation and the Respondent has no reasonable justification for having registered the Domain Name.”

In the absence of any use of the Domain Name by the Respondent and in the absence of any explanation from the Respondent as to why he registered the Domain Name, one can only speculate. Certainly there is nothing before the Expert to indicate what justification he may have thought he had for adopting it. The name is, as the Complainant contends, a made-up name, which on the evidence of the Complainant serves no useful purpose other than to indicate the Complainant.

If there were evidence that the Respondent had had some reason to feel aggrieved at the Complainant, then sub-paragraphs 5.1.1.2 and 5.1.1.3 of the Policy might well fit the bill. Alternatively, he might have registered the Domain Name in the hope and expectation that the Complainant would offer to purchase it from him (sub-paragraph 5.1.1.1 of the Policy). Happily, there is no need to speculate.

In the view of the Expert, sub-paragraph 5.1.6 provides the answer for the purpose of sub-paragraph 2.1.2 of the Policy. The Domain Name is an exact match for the Complainant’s name and trade mark. The Expert is satisfied on the evidence before him that the Complainant’s trade mark has a reputation and can conceive of no basis

upon which the Respondent can be said to have a reasonable justification for having registered the Domain Name.

The Expert finds that the Domain Name is an Abusive Registration pursuant to the terms of sub-paragraph 5.1.6 of the Policy.

7. Decision

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

Signed [TONY WILLOUGHBY]

Dated 21 August, 2019