

DISPUTE RESOLUTION SERVICE

D00021796

Decision of Independent Expert

Accenture Global Services Limited

and

Mr Martin Ainsworth

1. The Parties:

Lead Complainant: Accenture Global Services Limited
3 Grand Canal Plaza,
Upper Grand Canal Street,
Dublin 4,
Ireland

Respondent: Mr Martin Ainsworth
101 Church Lane
Cheshunt
Hertfordshire
EN8 0DU
United Kingdom (UK)

2. The Domain Name:

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

September 18, 2019	Dispute received
September 19, 2019	Complaint validated
September 19, 2019	Notification of complaint sent to parties
October 8, 2019	Response reminder sent
October 11, 2019	No Response received
October 11, 2019	Notification of no response sent to parties
October 23, 2019	Full fee reminder sent
October 24, 2019	Expert decision payment received

4. Factual Background

The factual background is based upon the Complaint, which was well supported by evidence, of which there has been no reason to question the validity.

The Complaint, filed under a personal name, states that it is submitted by Accenture Global Services Limited, together with its affiliates and predecessor Accenture Global Services GmbH (collectively, the Complainant).

The Complainant group of companies is a major international financial group with operations in more than 200 cities in 56 countries including the UK, in which it has operated for nearly 20 years. The Complainant has nine companies registered in the UK, all with names commencing with the word Accenture, such as Accenture Pension Trustees Limited and Accenture Post-Trade Processing Limited. The scale of the Complainant is reflected in its total revenues of US\$41 billion for fiscal year 2018.

The Complainant owns about 1000 trademarks in 140 countries for or incorporating the word ACCENTURE. It has eight European or UK trademarks, of which the following are representative for the purposes of this proceeding:

ACCENTURE, word mark, European Union Intellectual Property Office (EUIPO), filed October 27, 2000, registered October 9, 2002, registration number 001925650, in classes 9, 16, 35, 36, 37, 39, 41, 42;

ACCENTURE CONSULTING. DELIVERED, word mark, EUIPO, filed November 10, 2011, registered January 30, 2013, registration number 010407757, in classes 9, 16, 35, 36, 37, 41, 42;

ACCENTURE STRATEGY, word mark, EUIPO, filed May 13, 2015, registered October 7, 2015, registration number 014060149, in classes 35, 36, 42;

ACCENTURE, word mark, UK Intellectual Property Office, filed December 18, 2000, registered October 5, 2001, registration number UK00002256060, in classes 9, 16, 35, 36, 37, 41, 42.

The Complainant also owns the domain name accenture.com and the corresponding website.

Nothing is known about the Respondent except for the contact details proffered in order to acquire registration of the disputed Domain Name, which was evidently registered on April 27, 2019. The Domain Name has resolved to a screen stating "This site can't be reached".

5. Parties' Contentions

Complainant

Complainant's Rights

The Complainant says its trademark word ACCENTURE is a non-dictionary word of its own invention uniquely identifying the Complainant. The trademark is well known internationally in especially the field of financial services and is promoted through advertising and major sports sponsorship. The Complainant advertises widely and spent US\$69 million on advertising in 2017. It has been listed in the Fortune Global 500 and Forbes World's Most Valuable Brands.

The Complainant contends that the Domain Name is identical or similar to its trademark. The appended term "financial services" in the Domain Name is not distinguishing but relates to the main business sector in which the Complainant operates. The Domain Name does not resolve to a website, but if it did, there would be a likelihood of consumers being confused, at least initially, into associating it with the Complainant.

The Complainant contends that the Respondent has no rights or legitimate interests in the Domain Name. The Domain Name registrant's identification details appear to be those of a domestic house, and the registration details are inconsistent as between his name and his email address. The company registration details of a private company registered at the same address do not show any association with the Respondent. An attempt by the Complainant to contact the Respondent at the email address provided has not received any reply.

Abusive Registration

The Complainant says the Domain Name in the hands of the Respondent is an Abusive Registration. There is no evidence to suggest or any assertion by the Respondent to the effect that he has any legitimate interest in the Domain Name.

The Complainant asserts that because the Complainant's trademark is unique, the Respondent must have registered the Domain Name with specifically the Complainant in mind. The Respondent has not been authorised by the Complainant to use its trademark in any way.

The Domain Name has not apparently been used to host a website but according to the Complainant's research through mxtoolbox.com, it has been set up for use with email servers, and it may be the Respondent's intention to use it for phishing or financial fraud.

The Complainant has cited previous decisions under the Policy and under the UDRP that it considers supportive of its position.

The Complainant requests the transfer of the Domain Name.

Respondent

The Respondent has not replied to the Complaint.

6. Discussions and Findings

Under paragraph 2.1 of the Policy the Complainant is required to prove, on the balance of probabilities, that:

“2.1.1 The Complainant 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.”

Complainant’s Rights

Paragraph 1 of the Policy defines rights as follows:

“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 produced evidence, in the form of copies of the relevant registration documents, that it is the holder of the trademarks listed in section 4 above. The Expert is satisfied that the Complainant has the requisite rights in the trademark ACCENTURE.

The Domain Name is `accenturefinancialservices.co.uk`, of which the second level and country domains (.co.uk) may be disregarded in the determination of similarity. What remains may easily be read as an apparent company name, “Accenture Financial Services”, in which the word “Accenture” is identical to the Complainant’s fanciful registered trademark and the words “financial” and “services” are descriptive or generic. The Domain Name, by incorporating the Complainant’s registered trademark in its entirety, is found to be similar to the Complainant’s trademark, and the additional expression “financial services”, by alluding to the Complainant’s main sphere of business, is found to exacerbate the similarity. The Expert finds for the Complainant under paragraph 2.1.1 of the Policy.

Abusive Registration

Under paragraph 1 of the Policy, Abusive Registration means a Domain Name that 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 used or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.”

Paragraph 5.1 of the Policy provides a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration, including:

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

- 5.1.1.1 for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for

valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

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;

(...)

5.2 Failure on the Respondent's part to use the Domain Name for the purposes of email or a web site is not in itself evidence that the Domain Name is an Abusive Registration.

(...)"

Paragraph 8 of the Policy sets out how the Respondent may demonstrate in its Response that the Domain Name is not an Abusive Registration, but the Respondent has not proceeded to do so. Nevertheless the Complainant is required to establish its case on the balance of probabilities.

Paragraph 1(i) of the Policy refers to the circumstances surrounding the registration of the Domain Name, while paragraph 1(ii) refers to its use. Notwithstanding the provisions of paragraph 5.2 of the Policy (above), in the absence of any apparent actual use of the Domain Name by the Respondent for a website, for emails, or for any other purpose, other than evidently the creation of the potential for email use, it is necessary to examine the Respondent's probable motives at the time of registration.

Significant evidence of the Respondent's probable motivation derives from the Domain Name itself, featuring precisely the Complainant's distinctive trademark ACCENTURE with clear additional reference to the Complainant's main field of business in financial services. The Complainant in some of its web pages produced in evidence has itself used the expression "Financial Services" in prominent headings, for instance "Financial Services Industry Highlights", "Financial Services Leadership" and "Connect with Accenture Financial Services". The Respondent has not attempted to explain or justify his actions. Although the concept of constructive notice of a trademark is not embodied in the Policy, the conclusion may reasonably be drawn in this instance, on the balance of probabilities, that the entirety of the Domain Name reveals prior knowledge by the Respondent of the Complainant, a major group of companies with revenues in the region of US\$40 billion annually and a presence in 140 countries including the UK.

It is difficult to conceive of any purpose for which the Respondent could have registered the Domain Name that, if implemented for either a website or an email address, would not have the likely consequence of appearing falsely to represent the Complainant and therefore of unfairly disrupting the Complainant's business in the terms of paragraph 5.1.1.3 of the Policy. Paragraph 5.1.2 of the Policy refers to confusion or the threat of confusion with the Complainant's name or trademark. Whilst the Respondent has not made any overt threat to cause confusion, the mere existence of the registered Domain Name nevertheless hangs as a

threat, since any conceivable use for a website or email address would be likely to amount to the Respondent attempting to pass himself off as the Complainant, with damage to the Complainant being the foreseeable consequence.

Protection against passing off is a Right possessed by the Complainant as the proprietor of its name and trademarks. As discussed in the DRS Experts' Overview, v3, at section 3.3, in the context of well known trademarks, "... the English Courts have clearly held that mere registration of a domain name can constitute unfair use of a domain name for the purposes of passing off and trade mark infringement, even if nothing more is done with the domain name. The prevailing approach under the DRS is consistent with this".

The illustrations of possible evidence of Abusive Registration provided within paragraph 5.1 of the Policy are a non-exhaustive guide. Not every case will necessarily fit one or more of the provisions exactly. Taking into account the nature and intent of paragraph 5.1 of the Policy, particularly paragraphs 5.1.1.3 and 5.1.2, and the absence of any submission or evidence from the Respondent as to having any reasonable justification for registering the Domain Name, the Expert concludes in the terms of paragraph 1(i) of the Policy that the Domain Name, at the time of registration, was intended to take unfair advantage of the Complainant's Rights. On the totality of the evidence, and on the balance of probabilities, the Expert finds the Domain Name to be an Abusive Registration under paragraph 1(i) of the Policy.

The Nominet Terms and Conditions of Domain Name Registration (Registration Agreement) reads in part as follows (original emphasis), "you" and "your" referring to the registrant, the exact identity of which is not relevant in the present circumstances:

"6. Your promises and indemnity

6.1 By registering your **domain name** you promise that:

(...)

6.1.3 by registering or using your **domain name** in any way, you will not infringe the intellectual property rights (for example, trade marks) of anyone else;

(...)"

On the evidence and on the balance of probabilities, the Respondent is found to have contravened paragraph 6.1.3 of the Registration Agreement by infringing the intellectual property rights of the Complainant, constituting additional grounds for finding the Domain Name to be an Abusive Registration.

7. Decision

The Expert finds that the Complainant has Rights in respect of a name or mark that is identical or similar to the Domain Name accenturefinancialservices.co.uk and that the Domain Name in the hands of the Respondent is an Abusive Registration. The Domain Name accenturefinancialservices.co.uk is ordered to be transferred to the Complainant.

Signed Clive Trotman

Dated November 18, 2019