

## **DISPUTE RESOLUTION SERVICE**

**D00022699**

**Decision of Independent Expert  
(Summary Decision)**

**Arcola Products**

and

**Boxxinc**

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

Complainant: Arcola Products  
Unit N2, Tribune Drive  
Sittingbourne  
Kent  
ME10 2PG  
United Kingdom

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Unit N2, Tribune Drive  
Sittingbourne  
Kent  
ME10 2PG  
United Kingdom

Respondent: Boxxinc  
DomainsByProxy.com  
14455 N. Hayden Road  
Scottsdale  
Arizona  
85260  
United States

**2. The Domain Name:**

boxxinc.co.uk

**3. Notification of Complaint**

**4. Rights**

The Complainant has, to my reasonable satisfaction, shown rights in respect of a name or mark which is identical or similar to the domain name.

Yes  No

**5. Abusive Registration**

The Complainant has, to my reasonable satisfaction, shown that the domain name boxxinc.co.uk is an abusive registration

Yes  No

**6. Other Factors**

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances

Yes  No

**7. Comments (optional)**

The facts concern the breakdown of a relationship between the Complainant and the Respondent. The Complainant summarises the relationship in the opening of its Complaint as follows:

*“The relationship model was that Jay Lanning [the Respondent] was the Director of Boxxinc and Arcola Products [the Complainant] was the manufacturer and distributor. In addition to this Arcola supported the development and maintenance of the website for Boxxinc”*

Over the course of the relationship, the Respondent built up a significant debt with the Complainant. Various “options” were apparently presented to the Respondent to continue its relationship with the Complainant.

The Complaint is short (under 500 words), and the main evidence the Expert has access to is a letter titled “Confidential – Business Agreement” which the Complainant states outlines the “new relationship” the parties entered into on 20 February 2020.

A complainant must satisfy two basic conditions under the DRS Policy: firstly, the Complainant must show that he has “Rights” and, secondly, that the Respondent’s actions amount to an “Abusive Registration”, as defined in the DRS Policy.

The Complaint fails to address “Rights” in the traditional sense of the DRS. There is no reference to a registered trade mark and neither does the Complainant attempt to show unregistered trade marks in the term “Boxxinc”. The record is silent on the nature and extent of advertising or public awareness under the “Boxxinc” name — there is nothing which helps the Expert determine what products or services the Domain Name relates to.

Fortunately for the Complainant that is not the end of the matter. The DRS does not restrict Rights to trade mark rights but also permits “rights enforceable by the Complainant, whether under English law or otherwise”, which would seem to include contractual rights. The Expert also notes the consensus view given in the Expert Overview (para 1.6) and several earlier decisions under the Policy which show that contractual rights have been sufficient to establish Rights under the Policy.

The Complainant directs the Expert to the agreement and one paragraph in particular which states that a new ltd company would be established, and for the Domain Name to be attached to it.

The Expert has carried out limited research to verify the facts of this case. A search on Companies House reveals two entries under the name “Boxxinc”. The first company “Boxxinc Ltd” was incorporated on 3 August 2016 with the Respondent as sole director. The company was dissolved on 25 September 2018.

The second company is “Boxxinc Limited” incorporated on 1 April 2020 and lists Paul Carty (Additional Complainant) as sole director and controlling shareholder. The Respondent is also listed as a shareholder. This helps clarify some of the points in the Complaint regarding the intention of the parties.

The Rights claimed by the Complainant are therefore contractual rights.

Given that the requirement to demonstrate Rights is traditionally a low threshold test and is in essence a bona fide basis for making a complaint, the Expert is prepared to find, on the balance of probabilities, that the Complainant has Rights in the name “Boxxinc”.

The Complainant’s case in respect of Abusive Registration has been reproduced below in full:

*“The registrant has taken control of a domain that they do not have ownership of. A separate legal case will be raised once this is resolved to recover the outstanding debt”.*

Essentially, the Complainant argues that based on the contractual arrangements agreed between the parties, the Respondent relinquished any rights it had in the Domain Name to the Complainant. It seems to the Expert that he is being asked to determine whether the Respondent is in breach of contract.

Although the DRS is mainly concerned with the abusive use of a domain name, such as cybersquatting, the Expert Overview and previous DRS cases (specifically the appellate decision in DRS 04632 <Ireland.co.uk>) do suggest that in certain circumstances it may be appropriate for an expert to resolve contractual disputes. For example, where contractual issues are sufficiently clear cut so that an expert can make a clear determination without requiring additional details or evidence.

Previous panels have advised that such discretion must be exercised with caution.

In this Expert's view, the parties may well have entered into a contractual arrangement and their intentions may well have been for the Domain Name to form part of this new Ltd company. But the Expert does not believe it appropriate, with the limited information presented, to order the transfer of the Domain Name to the Complainant.

The contractual right to seek transfer of the Domain Name, in this Expert's understanding of the facts, is subject to numerous conditions. The Complainant himself states that he offered the Respondent multiple "options" including: (1) **reclaiming** full control of the Boxxinc business after full payment of the debt; or (2) **relinquishing** the business in its entirety; or (3) **retaining** his share of the business (this also forms part of the contract provided as evidence).

Again, in an email following the parties' failed attempts to work with each other under the new arrangement, the Complainant states:

*"Sadly after such a short period of time, we do not feel that we can continue to work against the firm vision and standpoint you have and, **equally don't want to restrict you in any way from achieving the aspiration you have for the brand.**"*

This may suggest that it was never the intention of the parties for the Respondent to relinquish full control of the business and in turn, the Domain Name.

The Complainant asserts:

*"the [Respondent] has not selected any of the options following discussions that took place between 22<sup>nd</sup> April and 2<sup>nd</sup> June 2020.*

*As none of the above options were selected, the existing ownership model stands and ownership of the domain name sits with the Ltd company."*

Whether this amounts to a breach which triggers the Complainant's right to enforce the transfer of the Domain Name under the contract, this Expert cannot say for sure.

Nevertheless, the Expert lacks the power to enforce the obligations of a party under a contract.

The Expert here was not appointed to decide when and if the Respondent's conduct amounts to a breach of contract, especially when the contract makes provision for future discussions and is not clear on the matter of termination and breach. The Expert limits himself to deciding this case in line with the DRS policy which looks at the Abusive Registration of a domain name and no such arguments have been made.

For that reason, the Expert must reject the Complaint as falling outside the scope of the Policy.

This is not to say that the facts presented are overly complex. It's merely that the Expert is not certain that he is in possession of all relevant background knowledge which would demonstrate to his satisfaction that the elements necessary to making a finding of Abusive Registration are present.

Although the Respondent has not come forward to dispute the Complainant's arguments, there is enough to suggest that talks between the parties are still ongoing and that resolution, either through mediation or a more suitable forum such as the courts, remains open to the Complainant.

## **8. Decision**

I refuse the Complainant's application for a summary decision. The domain name registration will therefore remain with the Respondent.

Signed: Micah Ogilvie

Dated: 21 July 2020