

## **DISPUTE RESOLUTION SERVICE**

**D00022795**

**Decision of Independent Expert**

**VISITHEALTH LIMITED**

and

**YULIA SMAL**

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

Complainant: Visithealth Limited  
24 Elgin Court  
164 Elgin Avenue  
London  
W9 2NU  
United Kingdom

Respondent: Yulia Smal  
Linda-a-Velha  
Portugal

### **2. The Domain Names:**

visithealth.co.uk  
visithealth.uk

### **3. Procedural History:**

I 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 in to question my independence in the eyes of one or both of the parties.

04 July 2020 08:17 Dispute received  
07 July 2020 16:50 Complaint validated  
07 July 2020 16:56 Notification of complaint sent to parties  
24 July 2020 02:30 Response reminder sent  
29 July 2020 08:06 Response received  
29 July 2020 08:07 Notification of response sent to parties  
03 August 2020 02:30 Reply reminder sent  
03 August 2020 17:33 Reply received  
03 August 2020 17:33 Notification of reply sent to parties  
04 August 2020 15:38 Mediator appointed  
05 August 2020 09:42 Mediation started  
08 September 2020 15:55 Mediation failed  
08 September 2020 15:55 Close of mediation documents sent  
14 September 2020 12:42 Expert decision payment received

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

The Complainant is an English limited company called VisitHealth Limited. It was incorporated on 11 May 2017, and it provides at-home medical care and medical testing services to its customers.

The Respondent is an individual who was a director of the Complainant's business from December 2017 until March 2019.

An "Advisory Services Agreement" between the parties dated 10 November 2017 set out details of certain business-related services to be provided by the Respondent to the Complainant.

The First Domain Name ([visithealth.co.uk](http://visithealth.co.uk)) was registered by the Respondent on 7 February 2017. The First Domain Name has been used to operate the business of the Complainant.

The Second Domain Name ([visithealth.uk](http://visithealth.uk)) was registered by the Respondent on 9 September 2018. The Second Domain Name does not resolve to a functioning website.

At some point in or around March 2019, the relationship between the parties began to deteriorate, and the Respondent ceased to be a director shortly thereafter. A "Deed of Acknowledgement" between the parties dated 29 May 2019 sets out the basis upon which the parties parted company.

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

The Complainant submits that the First Domain Name was registered by the Respondent at the request of Mr Dmitry Yampolskiy, who was a director of the Complainant following its incorporation, as a result of a discussion between Mr Yampolskiy and the Respondent over available domain names prior to the incorporation of the Complainant company.

The Complainant submits that the Second Domain Name was later registered by the Respondent in her own name during her tenure as a director of the Complainant, using the Complainant's funds.

The Complainant asserts that the Domain Names were registered by the Respondent on the understanding that they would both be used for the purpose of running the Complainant's business.

In response, the Respondent argues that the registration of the first Domain Name could not be an abusive registration because at the time of its registration the Complainant had not been incorporated.

The Respondent further claims that registration of the Domain Names in her own name was within the scope of her agreement to provide services to the Complainant. The Respondent states that at no time did she agree to delegate any rights in the Domain Names.

In reply, the Complainant stresses that the registration of the first Domain Name was carried out in contemplation of the incorporation of the Complainant and for the benefit of the business to be operated by the Complainant. The Complainant submits that the Respondent registered both Domain Names as a result of a relationship with the Complainant.

## **6. Discussions and Findings**

Under paragraph 2.2 of the Policy, the Complainant must prove, on the balance of probabilities, each of the two elements set out in paragraph 2.1.1 and 2.1.2 of the Policy, namely that the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

## **Rights**

Paragraph 1 of the Policy provides that 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 requirement to demonstrate Rights under the Policy does not have a high threshold. Rights may be established by way of a trade mark registration, or unregistered rights arising from use of a name to the standard required under common law.

The Complainant has established that it is the owner of a UK trade mark registration which contains what appears to be the letters “VH” in a stylised format, and the words “VISIT HEALTH”.

The Domain Names comprise just the term “visithealth” and the top-level domains “.co.uk” and “.uk” (which may be disregarded for the purpose of comparison).

The main “VISIT HEALTH” element of the registered trade mark is identical (bar spaces, which are not within the permitted character set for domain names) to the Domain Names.

The Complainant appears to have been trading under the name “VISIT HEALTH” for approximately three years, but has not provided any evidence to suggest any particular level of revenue or expenditure on promotional activity which might give rise to possible unregistered rights in that name.

The Expert finds, on the basis of the registered trade mark right only, that the Complainant has Rights in respect of a name or mark which is similar to the Domain Names.

## **Abusive Registration**

Paragraph 1 of the Policy defines “Abusive Registration” 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;*

This general definition is supplemented by paragraph 5.1 of the Policy which provides a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration. Paragraph 8.1 of the Policy provides a similar non-

exhaustive list of factors which may be evidence that a Domain Name is not an Abusive Registration.

The Policy requires the Complainant to prove, on the balance of probabilities, that the Domain Names are an Abusive Registration. The burden of proof is therefore firmly on the Complainant.

The Complainant has specifically cited paragraph 5.1.5 of the Policy as providing a factor that should be considered evidence of an Abusive Registration:

*The Domain Name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant:*

*5.1.5.1 has been using the Domain Name registration exclusively, and  
5.1.5.2 paid for the registration and/or renewal of the Domain Name registration.*

I will consider each of the three elements of this test in turn.

*Were the Domain Names registered as a result of a relationship between the Complainant and the Respondent?*

There is no dispute that the Domain Names were purchased by the Respondent. The dispute is merely as to the capacity in which the Respondent was acting when she did so.

The Complainant has submitted that the First Domain Name was purchased at the request of Mr Yampolskiy prior to the incorporation of the Complainant company, and the Respondent has not contested that assertion. The Respondent appears to be relying solely upon the argument that since the Complainant company had not been incorporated at the time of the registration of the First Domain Name, no case can be made.

However, the Complainant has provided evidence of email correspondence (in Cyrillic, with an English translation provided) between Mr Yampolskiy and the Respondent pre-dating the registration of the First Domain Name contemplating the registration of the domain name <visithealth.co.uk> (and which was preferred over <visithealth.com> because of costs).

The Respondent is technically correct that the Complainant legal entity had not been registered as of the time of registration of the First Domain Name. However, it is clear that the Respondent only registered the First Domain Name as a result of the instruction of Mr Yampolskiy and with the clear intention that it was for the use of the increasing business activity that was to be formalised in due course, that formalisation being in the name of the Complainant.

It is clear that the Domain Names were acquired purely for the purposes of the operation of the Complainant's business. It is highly unlikely, given the evidence,

that the First Domain Name was registered by the Respondent independently of the intention at that time to work with Mr Yampolskiy.

At the date of the registration of the First Domain Name, the Complainant's business had yet to be incorporated. That did not happen until some three months later. It would have been perfectly reasonable for the First Domain Name to have been secured in the name of one of the individuals involved in establishing the business in order to secure it before incorporation and the commencement of trading.

I therefore find that the First Domain Name was registered as a result of a relationship between the Complainant and the Respondent.

The Respondent later went on to become a director of the Complainant's business, so I have no trouble finding that the Second Domain Name (which was registered during the course of the Respondent's time as an officer of the Complainant) was registered as a result of a relationship between the Complainant and the Respondent.

*Has the Complainant been using the Domain Name registration exclusively?*

There appears to be no dispute that the Domain Names have at all times been used in relation to the business of the Complainant, so I find that this part of the test is satisfied.

I note in passing that only the First Domain Name has been used for the business of the Complainant, and that the Second Domain Name appears to have been registered but not used. No evidence has been provided that the Second Domain Name has been used by any party at any relevant time.

*Has the Complainant paid for the registration and/or renewal of the Domain Name registration?*

No specific (or identifiable) evidence has been provided as to the party responsible for the payment for the initial registration of the First Domain Name.

The Complainant has stated that:

*"[b]oth the Respondent and Mr. Yampolskiy from time to time paid for the registration and prolongation of the domain name. Whenever the Respondent made a payment for the domain name or bore any other expenses in relation thereto, she was reimbursed either by Mr. Yampolskiy or from the Complainant's banking account."*

This assertion appears to be supported by the GoDaddy payment receipts and copies of the Complainant's bank accounts provided. Whilst not providing a complete picture of all registration and renewal costs, they provide a strong indication that the

Complainant has been the party paying for them, whether directly or through reimbursement of the Respondent.

Mr Yampolskiy appears to have made a payment to GoDaddy (in the amount of £21.22) in relation to the First Domain Name on 21 January 2018.

A payment was made to GoDaddy (in the amount of £8.25) under the Respondent's name in relation to the Second Domain Name on 9 September 2018. Reference to such payment appears in the Complainant's bank account statement two days later.

The Respondent appears to have made a payment to GoDaddy in her own name (in the amount of £67.13) on 10 January 2019 in relation to both of the Domain Names. The Respondent appears to have been reimbursed for this payment because there is a payment from the Complainant to the Respondent for the same amount on the same day in the Complainant's bank account statement.

It is apparent that the Complainant has been regularly paying for the costs of the Domain Names, and reimbursing those costs to the Respondent where such costs were incurred by her personally.

The Respondent has argued that:

*"During my services the [Complainant] offered me to pay the domain annual fees which I found a fair suggestion once they benefit from my belonging."*

The Respondent appears to be relying on the fees paid to her under the "Advisory Services Agreement" dated 10 November 2017. However, there is no reference in that agreement to the registration of domain names for the Complainant. The closest service is "development of IT functional and technical specification". In any event, the agreement states that all expenses incurred by the Respondent are to be reimbursed to her (which would strongly indicate that anything purchased by the Respondent in the course of her work would be for the benefit of the Complainant). Indeed, that appears to have been the case, at least in relation to the £67.13 payment made on 10 January 2019 for both of the Domain Names.

The Respondent does not appear to be out of pocket for any domain name costs that she might have incurred on behalf of the Complainant.

I am therefore prepared to find that this part of the test is also satisfied.

Accordingly, I therefore find that the Domain Names are Abusive Registrations within the meaning of paragraph 5.1.5 of the Policy.

The Complainant has additionally cited paragraph 5.1.6 of the Policy as an alternative basis for a finding of an Abusive Registration. Paragraph 5.1.6 provides as follows:

*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.*

The Complainant has provided no evidence of the extent of its business activities, and therefore I have no basis upon which to establish a reputation as required by this paragraph. Given the findings above on the registration of the Domain Names being Abusive Registrations under paragraph 5.1.5 of the Policy, nothing rests on this submission by the Complainant, and it is covered here for completeness only.

The Respondent has made minimal submissions on the issue of the Domain Names, merely stating that the Domain Names were never the property of the Complainant. Nothing in those submissions gives the Expert any indication that any ground under paragraph 8.1 of the Policy (or any other ground) might apply to establish that the Respondent's behaviour is not an Abusive Registration.

## **7. Decision**

The Expert finds that the Complainant has proved that it has Rights in a name which is identical to the Domain Names and that the Domain Names, in the hands of the Respondent, are Abusive Registrations. The Expert therefore directs that both of the Domain Names be transferred to the Complainant.

**Signed .....**

**Dated .....**

Simon Sellars