

DISPUTE RESOLUTION SERVICE

D00010421

Decision of Independent Expert

The Pensions Trust

and

Mr Mark Hall (Web Master)

1. The Parties:

Lead Complainant: The Pensions Trust
Verity House
6 Canal Wharf
Leeds
W Yorks
LS11 5BQ
United Kingdom

Respondent: Mr Mark Hall (Web Master)
Suite 630
14 Tottenham Court Road
London
Greater London
W1T 4JY
United Kingdom

2. The Domain Name(s):

thepensiontrust.org.uk

3. Procedural History:

20 October 2011 13:20 Dispute received
20 October 2011 13:28 Complaint validated
25 October 2011 09:47 Notification of complaint sent to parties
11 November 2011 01:47 Response reminder sent
16 November 2011 10:41 No Response Received
16 November 2011 10:42 Notification of no response sent to parties
18 November 2011 10:28 Expert decision payment received

4. **Factual Background**

- 4.1 The name “The Pensions Trust” has been in use by Verity Trustees Limited since June 1987, and the Complaint exhibits an extract from the Memorandum of Association of that company. The Memorandum of Association explains that the object of the Company “is to act as Trustees of trusts or trust funds established for the benefit of employees or ex-employees or other persons in any way connected with The Pensions Trust for Charities and Voluntary Organisations (“The Fund”)”.
- 4.2 The Complainant’s website, www.thepensiontrust.org.uk (to which a link is provided in the Complaint), explains that it is a body used by over 4300 charitable, social, educational, voluntary and not-for-profit organisations to look after their employees’ pensions, and it is apparent that currently over £4 billion is under management by the Complainant.
- 4.3 The primary domain name used by the Complainant, thepensiontrust.org.uk has been registered since 1998.
- 4.4 The Domain Name has been registered since 26 June 2007, and is currently registered in the name of the Respondent, an individual, about whom no further detail is given, other than his address.
- 4.5 It is only recently that the Domain Name has been used for an active website, www.thepensiontrust.org.uk. The website in question contains links to a number of advertisements, including advertisements for several pensions advisers.

5. **Parties’ Contentions**

Complainant’s submissions

Rights

- 5.1 The Complaint contains scant information as to the nature of the Complainant’s business. Indeed, without the link to the Complainant’s website, the nature, size and scale of the Complainant’s Business would not be obvious from the Complaint itself. In terms of asserting Rights, the Complainant relies upon what it says is the “registration” of the name “The Pensions Trust” at Companies House, and the use of that name by Verity Trustees Limited since June 1987. The Complainant also says that it has registered domain names consisting of many variants of the name “The Pensions Trust” online, including names that miss the “s” off the name.

Abusive registration

- 5.2 The Respondent is using the Domain Name to advertise pensions products, and given that “this is a not for profit.org.uk domain name”, the Complainant says that “this is questionable use”.
- 5.3 Further, the Complainant states that it is possible for its customers to mistype its domain name, and to view the Respondent’s website, and then to think that the products and services advertised within it are connected with the Complainant. The Complainant is a not for profit organisation, and legally not permitted to provide investment advice to its customers, but the website could give the Complainant’s customers the impression that it is somehow endorsing the products it advertises.

- 5.4 Also, the Complainant states that it is potentially fraudulent for the Respondent to receive emails intended for the Complainant, but misaddressed, because there is no “undeliverable” reply. As those emails would contain data such as bank account details, and national insurance numbers, the Complainant’s customers would risk their confidential data being exposed to the public domain. It should be immediately obvious to the recipient that any such email would be intended for the Complainant, and not intended for the owner of the Domain Name.
- 5.5 The Complainant says it has no idea how many of its customers’ emails would have gone astray in this way, but attaches a partial copy of an example from an individual who apparently has repeatedly made the mistake of misaddressing emails in the past.
- 5.6 The Complainant assumes that the Domain Name has been registered to stop the Complainant using it, and to cause confusion, and the presence of the recently-established active website, appears to have been prompted by the Complainant’s own attempts to investigate the Domain Name, in the light of customer emails going astray.
- 5.7 The Complainant seeks the transfer of the Domain Name to itself.

The Respondent’s submissions

- 5.8 The Respondent has not replied.

6. Discussions and Findings

- 6.1 In order to succeed in these proceedings, paragraph 2.b of the DRS Policy (“the Policy”) requires the Complainant to prove on the balance of probabilities that both elements of the test set out in paragraph 2.a are present, namely that :
- i. the Complainant has Rights in respect of names or marks which are identical or similar to the Domain Name; and
 - ii. the Domain Name, in the hands of the Respondent, is an Abusive Registration.

Complainant’s Rights

- 6.2 Although the Expert considers that the Complaint itself is unclear as to the relationship between the Complainant and the Verity Trustees Limited, the Memorandum of Association provided with the Complaint shows that Verity Trustees Limited is a company limited by guarantee, which is intended to act as Trustees of social trusts or funds connected with The Pensions Trust for Charities and Voluntary Organisations. The Complainant’s website confirms that the role of Verity Trustees Limited is as the sole Trustee of The Pensions Trust, with the power of appointment and removal of the Complainant’s Board. Verity Trustees Limited is not itself a trading company.
- 6.3 The Complainant’s website also clarifies some of the history of the organisation, which was first established as the Social Workers Pension Fund in 1946, changing its name in June 1987 to “The Pensions Trust for Charities and Voluntary Organisations”. It is not explained when and how the name of the Complainant was abbreviated to “The Pensions Trust”. Nor is it explained how the name is registered at Companies House, and in what capacity (the Expert could not find it

using a Companies House Direct search). The extent of the registration of other domain names is also not fully spelt out (although the Expert would in any event have given relatively little weight to registrations per se, without evidence of associated goodwill). However, it is clear that the Complainant is a very substantial organisation, with an extensive history of being run as a not-for-profit organisation, and which is currently known as “The Pensions Trust”.

- 6.4 The hurdle of establishing the existence of Rights under the Policy is not a strenuous one to overcome, and the Respondent has not challenged the Complaint in any way. In the circumstances, in spite of the lack of detail in the Complaint itself, the Expert is prepared to accept that the Complainant has Rights in respect of “The Pensions Trust” which is very similar to the Domain Name (omitting only the “s” from the end of “pensions”).

Abusive registration

- 6.5 The Complainant has to show that the Domain Name is an 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 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.
- 6.6 A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is set out in paragraph 3.a of the Policy. The Complaint does not specifically cite or address any particular sub-paragraphs of paragraph 3.a. However, the Complainant has referred to likely confusion of customers, possibly obtaining the impression that the Complainant is somehow endorsing products advertised on the Respondent’s website, and to the confusion caused by misdirected emails, compounded by the Respondent apparently not telling customers that emails have been misaddressed, when that would have been obvious to the Respondent.
- 6.7 One of the non-exhaustive list of factors set out in paragraph 3.a of the Policy is set out at 3.a.ii: “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”.
- 6.8 It seems to the Expert that this is the essence of the Complaint. Particularly in relation to the relatively recently established website, there is the possibility of confusion, either at the “initial interest” level, or possibly (as the Complainant suggests) by customers assuming endorsement by the Complainant of products advertised on the site. Misdirected emails themselves are unlikely to add significantly to the confusion (particularly if not responded to at all), but the circumstances identified by the Complainant would seem to support the suggestion that the receipt of such misdirected emails has potentially caused the Respondent to activate use of the Domain Name for the purposes of a website, when for whatever reason it had otherwise been unused since its registration in June 2007.
- 6.9 The Policy also provides scope for a Respondent to establish one of a number of factors demonstrating that the Domain Name is not an Abusive Registration,

under paragraph 4.a. However, on this occasion there has been no response from the Respondent, and indeed there is no evidence before the Expert which would suggest that the Respondent has sought to explain his position on any occasion.

6.10 In the circumstances, given the substantial similarities between the Domain Name and the Complainant's Name, and also the extent of the Complainant's business, the clear implication is that the Respondent is using the Domain Name in the knowledge of, and in order to take advantage of, the Complainant's Rights.

6.11 The Expert therefore concludes that, on the balance of probabilities, the Complainant has succeeded in showing that the registration of the Domain Name in the hands of the Respondent is an Abusive Registration within the terms of the Policy.

7. **Decision**

7.1 The Expert finds that the Complainant has rights in the name The Pensions Trust which is similar to the Domain Name.

7.2 The Expert further finds that the Complainant has shown that the Domain Name in the hands of the Respondent is an Abusive Registration, and therefore directs that the Domain Name should be transferred to the Complainant.

Signed: Bob Elliott

Dated: 23 November 2011