

DISPUTE RESOLUTION SERVICE

DRS011589

Decision of Independent Expert

Gulf Keystone Petroleum (UK) Ltd.

and

Domains by Proxy, Inc.

1. The Parties:

Lead Complainant: Gulf Keystone Petroleum (UK) Ltd.
16 Berkeley Street
Mayfair
London
W1J 8DZ
United Kingdom

Respondent: Domains by Proxy, Inc.
DomainsByProxy.com, 15111 N. Hayden Rd., Ste 160,
PMB 353
Scottsdale
Arizona
85260
United States

2. The Domain Name(s):

2.1 The domain name in dispute is <gulfkeystone.co.uk> (the “Domain Name”)

3. Procedural History:

3.1 The procedural timeline in this case is as follows:

06 July 2012 11:49 Dispute received
06 July 2012 12:44 Complaint validated

06 July 2012 13:17 Notification of complaint sent to parties
25 July 2012 02:30 Response reminder sent
30 July 2012 08:54 No Response Received
30 July 2012 08:55 Notification of no response sent to parties
06 August 2012 11:44 Expert decision payment received

- 3.2 I was appointed as Independent Expert as of 9 August 2012 and have confirmed to Nominet that I am independent of the parties and know of no facts or circumstances that might call into question my independence in the eyes of the parties.

4. Factual Background

- 4.1 The Complainant is a UK registered company incorporated in November 2004. It is a wholly-owned subsidiary company of Gulf Keystone Petroleum Limited (a company incorporated in Bermuda in 2001). Gulf Keystone Petroleum Limited is an independent oil and gas exploration and production company which, according to its 2010 Annual Report, is focused on exploration in the Kurdistan Region of Iraq. That same report recorded net assets for the company of US\$426 million.
- 4.2 The Domain Name was registered on 28 May 2004.
- 4.3 The Domain Name is currently being used by the Complainant and the website operating from the Domain Name is the same as that operating from the Complainant's domain name <gulfkeystone.com>.
- 4.4 The Domain Name is registered in the name of the Respondent, which is the privacy service offered by GoDaddy. The Complainant has asked GoDaddy to transfer the Domain Name out of the name of the Respondent. However, GoDaddy has refused to do so unless the Complainant provides GoDaddy with certain identity information the Complainant does not have.

5. Parties' Contentions

- 5.1 The Complaint is not as easy to follow as it could have been. The Complainant has provided a very large number of numbered exhibits. However, somewhat unhelpfully those exhibits numbers are not used in the Complaint and no explanation is offered as to why any particular document has been provided.
- 5.2 Nevertheless, from the Complaint itself the following claims are reasonably clear. First, the Complainant contends that the name "Gulf Keystone" is "recognised by the purchasing trade/public/investors/ shareholders/ banks/ media as indicating the goods and services of Gulf Keystone". It also refers in this respect to the Bermudian company's FTSE AIM listing in London.

- 5.3 Second, the Complainant claims that although “the original registration and history of transfer is poorly understood”, the Domain Name was initially registered on the instruction of “Gulf Keystone” by TechOne Group in the United States. Presumably, it is claimed that it is the Bermudian company that gave this initial instruction as the registration was a few months before the date of the Complainant’s incorporation as at the date. Although no material is provided that records that initial instruction, the Complainant has provided an email chain of correspondence with “TechOne” in relation to the Domain Name that stretches back to 2005.
- 5.4 Third, the Complainant claims that it has been attempting to get the Domain Name transferred into its name since summer 2010 without success. It has provided copies of email correspondence that in part records those unsuccessful efforts.
- 5.5 The Respondent did not file a response.

6. Discussions and Findings

General

- 6.1 To succeed under the Policy, the Complainant must prove first, that it has Rights in respect of a “name or mark” that is identical or similar to the Domain Name (paragraph 2(a)(i) of the Policy) and second, that the Domain Name is an Abusive Registration in the hands of the Respondent (paragraph 2(a)(ii) of the Policy). The Complainant must prove to the Expert that both elements are present on the balance of probabilities (paragraph 2(b) of the Policy).
- 6.2 Abusive Registration is defined in paragraph 1 of the Policy in the following terms:

“Abusive Registration means 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) has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’s Rights.”

Complainant’s Rights

- 6.3 I am prepared to accept on the basis of the claims made in the Complaint, and in particular the contents of the Annual Report for its Bermudian parent company enclosed with that Complaint, that there is goodwill associated with the “Gulf Keystone” name that is protectable in the United

Kingdom under the law of passing off. Such rights have long been recognised as providing “unregistered trade mark” rights for the purposes of the Policy.

- 6.4 It is unclear on the materials I have seen to what extent the goodwill in the name is owned by the Bermudian parent company or shared among the various companies in the group. However, I do not think that where exactly this resides is significant. I am prepared to accept that even if the Complainant is not the owner of that goodwill, it is “licensed” (even if that licence is not recorded in writing) to use the name by its parent. For an example of another decision under the Policy in which such a licence was assumed to exist between associated companies see the Appeal decision in DRS 00248 (seiko-shop.co.uk).
- 6.5 In the circumstances, the Complainant has made out the first requirement of the Policy.

Abusive Registration

- 6.6 There does not appear to be any abusive registration or use in the present case, if “abusive” in this context is understood to be registration or use that takes, or threatens to take, unfair advantage of the rights of the Complainant. The Complainant (or at least other companies in the Complainant’s group of companies) is and has been able to use the Domain Name in connection with its activities. The Complainant contends that it is paying the current registration and renewal fees. The problem appears to be that it simply cannot persuade the entity in whose name it is currently registered (i.e. Go Daddy’s privacy service) to transfer the Domain Name into the name of the Complainant.
- 6.7 However, the concept of abuse under the Policy is a flexible one and paragraph 3(a)(v) of the Policy identifies the following as a factor which may be evidence that the Domain Name is an Abusive Registration:

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

- A. has been using the Domain Name registration exclusively; and
- B. paid for the registration and/or renewal of the Domain Name registration.”

- 6.8 This provision of the Policy is frequently relied upon in cases where an internet service provider registers a domain name on behalf of a client in its own name and then subsequently refuses for whatever reason to transfer it into the name of the client.
- 6.9 Here matters are complicated by the intervention and use of a third party privacy service. If the case turned upon whether the registration in this case fell within the scope of the factor set out at paragraph 3(a)(v), that

would raise the secondary questions as to who should be treated as the “Respondent” and what is meant by the words “as a result of a relationship”?

- 6.10 Nevertheless, ultimately I do not think that it matters whether this case falls strictly within paragraph 3(a)(v) or not. The factors set out in paragraph 3(a) of the Policy are non-exclusive and simply provide evidence of abusive registration.
- 6.11 Further, had the Domain Name in this case been registered in the name of Tech One, paragraph 3(a)(v) clearly would have been satisfied and (in the absence of any argument or evidence to the contrary) this would be sufficient evidence to justify a finding of abusive registration. There is no good reason why there should not also be a finding of abusive registration where, as appears to be reasonably clear, Domains By Proxy Inc. has no independent interest in the Domain Name beyond that of Tech One.
- 6.12 In the circumstances, the Complainant has made out the second requirement of the Policy.

7. Decision

- 7.1 I find that the Complainant has Rights in a trade 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.
- 7.2 I, therefore, determine that the Domain Name, <gulfkeystone.co.uk > should be transferred to Gulf Keystone Petroleum (UK) Ltd.

Signed Matthew Harris

Dated 14 August 2012