

**Dispute Resolution Service**

**DRS 12663**

**Decision of Independent Expert**

**Cash Converters Pty Ltd**

**and**

**J Ricotta**

**1. Parties**

Lead Complainant: Cash Converters Pty Ltd  
Level 18, Chancery House,  
37 St Georges Terrace  
Perth  
WA600  
Australia

Joint Complainant: Cash Converters (UK) Ltd  
17 Gentleman's Field,  
Westmill Road  
Ware  
Herts  
SG12 0EF  
United Kingdom

Respondent: J Ricotta  
Oaklands  
Essex Road  
Hoddesdon  
Herts  
EN11 0AS  
United Kingdom

**2. Domain Name**

cash-converters.co.uk (the “Domain Name”)

**3. Procedural Background**

On 28<sup>th</sup> March 2013 the Complaint was lodged with Nominet UK Limited (“Nominet”) and on 2<sup>nd</sup> April 2013 it was validated. On 4<sup>th</sup> April 2013 Nominet sent the notification of the complaint letter to the Respondent by e-mail and post, advising him to log into his account to view the details of the Complaint and giving him 15 working days within which to lodge a Response on or before 25<sup>th</sup> April 2013. On 23<sup>rd</sup> April 2013 Nominet sent a Response reminder to the Respondent.

The Respondent did not reply and on 26<sup>th</sup> April 2013 Nominet sent the notification of no response to the parties. On 9<sup>th</sup> May 2013 the Complainant paid the appropriate fee for a Decision to be made by an Expert pursuant to paragraph 6 of Nominet’s DRS Policy (“the Policy”).

On 14<sup>th</sup> May 2013 Mr. Niall Lawless (“the Expert”) was selected and on 15<sup>th</sup> May 2013 was formally appointed to act as Expert in this dispute, having confirmed that he knew of no reason why he could not properly accept the appointment and knew of no matters which ought to be drawn to the attention of the parties which might appear to call in-to question his impartiality and -/- or independence. He is required to give his Decision by 11<sup>th</sup> June 2013.

**4. Outstanding Formal -/- Procedural Issues**

There are no outstanding formal or procedural issues.

**5. Factual background**

The Lead Complainant is Cash Converters Pty Ltd an Australian company and the Joint Complainant is Cash Converters (UK) Limited, a company registered in England and Wales. The Complainants are part of an international franchise system, which operates using the name “Cash Converters”.

Established in Perth, Western Australia in 1984, Cash Converters offers pawn broking, online sales of second hand goods, cash for gold, cash advances, personal and payday loans via 600 stores in 21 countries. There are 208 retail stores in the UK operating under the name Cash Converters.

The Complainants are the registered proprietors of a variety of UK registered and Community registered trademarks containing or consisting of the terms “Cash Converters” in a range of classes. The Lead Complainant is the registered proprietor of registered trademarks for the mark “Cash Converters” in other jurisdictions around the world.

The Domain Name was registered on 11<sup>th</sup> July 1998 and the Respondent is the current Registrant.

The Lead Complainant seeks transfer of the Domain Name to the Joint Complainant.

## **6. The Parties’ contentions**

### The Complainant

The Lead Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under Nominet’s Dispute Resolution Service Policy (the "Policy"):-

- Paragraph 3 (a)(i)(C), because he registered or otherwise acquired the Domain Name for the purpose of unfairly disrupting the Complainants’ business.
- Paragraph 3 (a)(ii), because it has been and is being used 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 Complainants.

### The Respondent

The Respondent did not respond to the Complaint.

## **7. Discussions and Findings**

### 7.1 General

Nominet’s Policy requires that for a Complaint to succeed the Complainants must prove to the Expert on the balance of probabilities that:-

- i. the Complainants have Rights in respect of a name or mark which is identical or similar to the Domain Name; and
- ii. the Domain Name, in the hands of the Respondent, is an Abusive Registration.

Rights include, but are not limited to, rights enforceable under English Law.

In order to show that the Domain Name is an Abusive Registration, the Complainants must prove that the Domain Name either:-

- i. at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainants' Rights; or
- ii. has been used in a manner, which took unfair advantage of or was unfairly detrimental to the Complainants' Rights.

The Complainants are required to prove to the Expert that the Complainants have Rights and that the Domain Name in the hands of the Respondent is an Abusive Registration; both elements must be present.

## 7.2 Complainants' Rights

"Cash Converters" is the dominant part of the Complainants' company names.

The Complainants are the registered proprietors of a variety of UK registered and community registered trademarks in the terms "Cash Converters" in a range of classes. The Lead Complainant is the registered proprietor of registered trademarks for the mark "Cash Converters" in other jurisdictions around the world.

In addition to its registered trademarks, through its use of the name "Cash Converters" the Complainants have acquired goodwill and a significant reputation in providing pawn broking and other services. In the UK, the Joint Complainant has been trading using the company name Cash Converters (UK) Ltd since August 1995.

The Complainants are the registrants for a range of domains such as [www.cashconverters.com](http://www.cashconverters.com), [cashconverters.eu](http://cashconverters.eu), [www.cashconverters.co.uk](http://www.cashconverters.co.uk), [www.cashconverters.net](http://www.cashconverters.net), [www.cashconverters.com.au](http://www.cashconverters.com.au); [www.cashconverters.net.au](http://www.cashconverters.net.au) and [www.cashconverters.pt](http://www.cashconverters.pt) and [www.cashconverters.ch](http://www.cashconverters.ch).

Because of this, I decide that the Complainant has Rights in respect of a name or mark, which is identical or similar to the Domain Name.

### 7.3 Abusive Registration

#### Registration of the Domain name

The Lead Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under the Policy Paragraph 2 (a)(ii), because it has been registered and used in a manner which has taken unfair advantage of, or has been unfairly detrimental to, the Complainants' Rights.

The Lead Complainant says that the Respondent has deliberately registered the Domain Name to exploit the goodwill and reputation in the "Cash Converters" name and trademarks, to gain an unfair advantage by initially passing the Respondent's business off as the Complainants' business; and then diverting traffic to other commercial websites of competitors.

The Respondent has not responded to the above and offered no evidence.

However, the Lead Complainant acknowledges that as the Domain Name was registered on 11<sup>th</sup> July 1998 it does not know if the Respondent is the first registrant of the Domain Name. Therefore, it is unable to establish that the Respondent registered the Domain Name to exploit the goodwill and reputation in the "Cash Converters" name and trademarks.

#### Unfairly disrupting the Complainants' business

The Lead Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under Paragraph 3 (a)(i)(C) because he registered or otherwise acquired the Domain Name for the purpose of unfairly disrupting the Complainants' business by using the Domain Name to divert traffic to websites of the Complainants' competitors

Although the Lead Complainant has not demonstrated that the Respondent intended to disrupt the Complainants' business when the Domain Name was registered, the Nominet Experts Overview says that *"unfair disruption of the Complainant's business by way of a domain name is very likely to constitute an abusive use of the domain name (DRS 02223 itunes.co.uk)"*.

It is enough for the Complainants to show that the 'abuse' occurred at any time during the 'life' of the domain name - so it may be that :-

- there was an 'unfair' motive when it was registered;
- there was an 'unfair' use after registration but it has now stopped;
- there was an 'unfair' motive at transfer;
- there is something 'unfair' going on now;
- the domain name is inherently 'unfair' (similar to the concept of an "instrument of fraud" in the Court of Appeal case One In a Million);
- any combination of these.

Nominet's Policy states that 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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;

It is clear that the Respondent is currently using the Domain Name to direct internet users to the commercial websites of competitors of the Complainants. For example, today the Domain Name is resolving to a webpage which links visitors to [www.cashmatch.co.uk](http://www.cashmatch.co.uk) (Unemployed Loans), [www.savesimply.co.uk](http://www.savesimply.co.uk) (Instant Unsecured Loans) and <http://ukcompared.com> comparing a range of "Instant Cash Loans" from companies such as Amigo Loans and QuickQuid Cash Loans.

This is unfair and I decide that the Domain Name is being used in a way which is unfairly detrimental to the Complainant's Rights. I decide that in the control of the Respondent the Domain Name is an Abusive Registration.

### Confusion

The Lead Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under Paragraph 3 (a)(ii), because it has been and is being used 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 Complainants.

The Lead Complainant provides a screenshot of the page hosted by the Domain Name on 19<sup>th</sup> February 2013, this demonstrates that the Respondent was using the Domain Name to resolve to a

webpage providing a series of links to websites of companies/businesses not related to the Complainants, including those engaged in the provision of loans and/or other financial transactions.

This is entirely consistent with the way that the Respondent is using the Domain Name today.

The Lead Complainant says that internet users who came across the Domain Name on 19<sup>th</sup> February 2013 would have had the likely belief, expectation and assumption that any website they might find located at the Domain Name address would be promoting/offering the Complainants' "Cash Converters" branded services, or would be in some way connected with the Complainants. Thus, there would be "initial interest confusion".

The Respondent has not responded to the above and offered no evidence.

I accept the Lead Complainant's contentions that it is common for Internet users to find or visit websites by way of a search engine or by guessing the relevant URL. As the Domain Name incorporates the Complainants' well-known trading name "Cash Converters", internet users are likely to believe that any webpage it resolves to is "operated or authorised by, or otherwise connected with the Complainant."

This is known as "initial interest confusion" and is evidence of Abusive Registration, the vice being that even if it is immediately apparent to the internet user that the webpage is not in any way connected with the Complainant, the visitor has been deceived.

Because "initial interest confusion" arises from the way that the Respondent is using the Domain Name, I decide that in the control of the Respondent the Domain Name is an Abusive Registration.

#### 7.4 Conclusion

The Expert finds on the balance of probabilities that the Complainant has Rights in respect of a name identical or similar to the Domain Name and that the Complainant has proved, on the balance of probabilities, that the Domain Name in the hands of the Respondent is an Abusive Registration.

**8. Decision**

For the reasons set out in detail above, having decided that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name be transferred to the Joint Complainant.

**Niall Lawless, Nominet Expert**

**3<sup>rd</sup> June 2013**