DISPUTE RESOLUTION SERVICE

D00016078

Decision of Independent Expert

(Summary Decision)

Cipher Surgical Ltd

and

Mr Dan Thurston

1. The Parties:

Complainant: Cipher Surgical Ltd
The Venture Centre
Sir William Lyons Road
Coventry
Warwickshire
CV4 7EZ
United Kingdom

Respondent: Mr Dan Thurston
3 River Park Court
Southampton
SO18 1PQ
United Kingdom

2. The Domain Name:

ciphersurgical.co.uk

3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the Complaint to the Respondent in accordance with paragraphs 2 and 4 of the Procedure.

☑ Yes ☐ No

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 ciphersurgical.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

The Complainant has failed to provide sufficient evidence to establish that it has rights in the name or mark sufficient to satisfy the requirements of paragraph 2(a)(i) of the Nominet Dispute Resolution Service ("DRS") Policy.

The only contentions relating to Rights contained in the Complaint were that the Complainant originally registered the Domain Name in 2010 but due to a change of email address the Domain Name lapsed in 2014, at which point it was registered by the Respondent.

Having reviewed the Complaint, I exercised my discretion to request further evidence from the Complainant in respect of its Rights in the Domain Name pursuant to paragraph 13(a) of the DRS Procedure. In that request I also directed the Complainant to Nominet's website for guidance on how a Complainant can establish Rights under the Policy.

The Complainant's response to this paragraph 13(a) request attached the Complainant's letterhead and a certificate of incorporation on change of name from Companies House showing the company name of the

Complainant. The Complainant also stated (wrongly) that rights are only conferred by a trade mark of the name. No other evidence of use of the name Cipher Surgical was provided.

The DRS Policy and Procedure, together with the Experts' Overview, make it clear that Rights can be established not only by registered trade mark rights but also by way of unregistered rights in a name or mark. Despite this, the Complainant has failed to provide any evidence of its use of the name Cipher Surgical other than a copy of its letterhead and a certificate of registration from Companies House. This is not sufficient evidence of rights for the Complainant to succeed under the Policy.

8. Decision

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

Signed: Ravi Mohindra Dated: 1 August 2015