

DISPUTE RESOLUTION SERVICE

D00016105

Decision of Independent Expert

Recruitment Genius Limited

and

Zulqarnain Abbas

1. The Parties:

Complainant: Recruitment Genius Limited
5th Floor Kent House, Romney Place
Maidstone
Kent
ME15 6LH
United Kingdom

Respondent: Zulqarnain Abbas
Dubai Outsource Zone
Dubai
500500
United Arab Emirates

2. The Domain Name(s):

rpogenius.co.uk

3. Procedural History:

I can 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.

17 June 2015 14:15 Dispute received
17 June 2015 14:35 Complaint validated

17 June 2015 14:55	Notification of complaint sent to parties
06 July 2015 02:30	Response reminder sent
08 July 2015 13:47	Response received
08 July 2015 13:48	Notification of response sent to parties
13 July 2015 11:59	Reply received
16 July 2015 11:08	Notification of reply sent to parties
16 July 2015 11:08	Mediator appointed
21 July 2015 10:42	Mediation started
25 August 2015 17:16	Mediation failed
25 August 2015 17:16	Close of mediation documents sent
28 August 2015 11:33	Expert decision payment received

4. Factual Background

The Complainant was incorporated on 24 March 2009 and since then has carried on the business of online recruitment under the name “Recruitment Genius” with its main website at www.recruitmentgenius.com.

The Domain Name was registered by the Respondent on 12 January 2014 and has been used to resolve to a website offering online recruitment services under the name “RPO Genius”. The acronym ‘RPO’ is a well-known term in the recruitment industry and is short for ‘Recruitment Process Outsourcing’. The Respondent’s website uses a very similar logo to that of the Complainant and a similar colour scheme.

The Respondent also registered at least two other domain names at about the same time as registering the Domain Name. Both of the other two domain names are similar to names used by other established recruitment businesses and have been used by the Respondent to resolve to websites offering recruitment services.

5. Parties’ Contentions

Complainant’s Complaint

In summary, in its complaint the Complainant stated as follows:

- The Complainant was incorporated on 24 March 2009 and since then has carried on the business of online recruitment under the name “Recruitment Genius”.
- The Complainant owns a UK registered trade mark number 2548977 dated 28 May 2010 for the stylised words “recruitment genius” in class 35.
- The Complainant has operated its main website at www.recruitmentgenius.com since March 2009 which prominently uses its distinctive ‘recruitment genius’ logo trade mark.
- There have been over 540,000 visitors to the Complainant’s website over the period November 2011-May 2015.
- The Complainant’s marketing of its ‘recruitment genius’ trade mark has included extensive repeated advertising in trade magazines including the following:
 - AskGrapevine (approx. circulation 54,000) distributed to HR decision makers.

- Management Today (150,000).
 - Director Magazine (50,000) distributed to Institute of Directors members.
 - OnRec Magazine (12,000) distributed to the online recruitment community.
 - HR Magazine (40,000) distributed to HR decision makers.
 - Professional Manager (100,000) distributed to members of the Chartered Institute of Management.
 - HR Director (14,000) distributed to HR Directors in Europe.
- The Complainant has generated extensive press and PR coverage in a wide range of local, trade and national media including the Financial Times. Samples were exhibited.
 - The Complainant has won many prestigious business awards, including:
 - Winner of Best New Service – Best Business Awards, November 2010.
 - Finalist in Newcomer of the Year – OnRec Awards, March 2011.
 - Finalist in Technical Innovation – OnRec Awards, March 2011.
 - Winner of UK’s Most Promising New Business (out of over 12,000 companies entered) – British Chamber of Commerce, November 2011.
 - Winner of Best Use of Online Recruitment & second award for Innovative Online Recruitment Award – OnRec Awards, March 2012.
 - The Domain Name was registered on 12 January 2014 by the Respondent.
 - The acronym “RPO” is short for “Recruitment Process Outsourcing” and is a common term in the recruitment industry, describing a form of outsourcing where an employer outsources its recruitment process to an external provider. Evidence was exhibited to demonstrate the common use and meaning of “RPO” in the recruitment industry comprising:
 - Wikipedia and other articles;
 - extracts from the site of the Recruitment Process Outsourcing Association referring to “Find vetted RPO providers”, “Practical RPO” and “Getting Real Benefits from an RPO Program”; and
 - the first page of a Google UK search for the exact phrase “RPO Recruitment” with over 100,000 results.
 - As of 4 June 2015 the Domain Name resolved to a website (“Website”) comprising the supply of online recruitment services in competition with the Complainant.
 - The Website is an almost identical copy of the Complainant’s own website in terms of:
 - its very distinctive yellow / dark brown colour scheme on a white background;
 - the layout of the homepage, including the placement in the top left of the homepage of a logo, almost identical to that of the Complainant in similar dark brown typeface set in a box with a yellow background comprising the word “Genius” in large font preceded by the term “RPO” in smaller typeface immediately above it (replacing “Recruitment” in the Complainant’s logo); and

- a row of links in yellow type face on a dark brown background in a horizontal banner across the header of the home page.
- The Respondent has also registered a number of other domain names (capitalresourcing.co.uk, resourcingpartners.co.uk and milestone-resourcing.co.uk) each of which relates to other UK recruitment businesses known as “Capital Recruitment”, “Resourcing Partners” and “Milestone Operations” respectively. The websites to which these domain names resolve are recruitment-related and they contain much duplicate content. Furthermore, the text of some of the pages at these sites is identical to the Website.
- The Complainant relies on its registered trade mark of a stylised “Recruitment Genius” as being Rights for the purposes of the DRS. The Complainant also relies on common law rights as, by virtue of its extensive trading and marketing activities outlined above, the Complainant has acquired substantial reputation and goodwill in the name “Recruitment Genius” such that it is recognised by the public as distinctive of the Complainant’s online recruitment business.
- The Domain Name differs from the Complainant’s trade mark only by changing “Recruitment” to “RPO”, another descriptive recruitment term. This change fails to dispel the connection between the Domain Name and the trade mark, the word “Genius” remaining by far the dominant feature of the trade mark.
- In any event, it is well established that establishing “Rights” under the DRS is a low threshold test, see, e.g., Para 2.3 of the DRS Experts’ Overview:

“Those responsible for the drafting of the Policy were aware of some of the difficulties arising under the UDRP (the policy covering disputes in the gTLDs) as a result of its wording, “identical or confusingly similar”. The wording of the Policy is broader and less restrictive, which matches the reality that the first hurdle (i.e. proving the existence of rights in a relevant name or mark) is intended to be a relatively low level test. Issues relating to confusion are best addressed under the second hurdle. The objective behind the first hurdle is simply to demonstrate a bona fide basis for making the complaint.”

- In support of its contention that the Domain Name is an Abusive Registration the Complainant points out that it has no association with the Respondent and has never authorised or licensed the Respondent to use its trade marks.
- The Complainant further relies on the following parts of paragraph 3 of the DRS Policy, which sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration:
 - Disruption – paragraph 3.a.i.C.
 - The Respondent registered the Domain Name for the purpose of unfairly disrupting the business of the Complainant by attracting its business and diverting it to his own competing recruitment site.
 - As explained below, the Respondent was clearly aware of the Complainant and its business when it registered the Domain Name.
 - Confusion – paragraph 3.a.ii.

- The Website is essentially a scheme adopted by the Respondent to confuse, attract and profit from internet users seeking the Complainant in search engines, web browsers and otherwise on the internet.
 - The Respondent was clearly well-aware of the Complainant given that he is engaged in online recruitment himself and has used a strikingly similar version of the Complainant's logo and website.
 - The Respondent has used the Domain Name to create a likelihood of confusion in the minds of the public as to an association between the Respondent and the Complainant.
 - There is evidence of actual confusion. An exchange of emails between the Complainant and Executive Grapevine Ltd, the owner of one of the trade magazines in which the Complainant advertises, is exhibited in which the sales manager confirms that she associated the Complainant with "RPO Genius".
 - Also exhibited is an exchange of emails between Lee Biggins, managing director of CV-library and "Sam Murphy", described as the marketing director of RPO Genius, in which Mr Biggins complains about the unauthorised use of the CV Library brand in the Respondent's marketing email. Amongst other things, Mr Biggins stated that he had copied his correspondence to the Complainant as he considered that RPO Genius was "most certainly" infringing the rights of the Complainant.
- Pattern – paragraph 3.a.iii
- The registration of the Domain Name is part of a pattern of conduct whereby the Respondent registers domain names referable to well-known UK recruitment businesses and uses them to divert traffic to his own business.
 - In two of the three cases i.e. capitalresourcing.co.uk and milestoneresourcing.co.uk, the Respondent has done exactly the same thing as for the Domain Name. He retained the distinctive part of the name ("Capital" / Milestone") but substituted the descriptive part of the name for a similar descriptive word (replacing "Recruitment" and "Operations" with "Resourcing"). In the third case, resourcingpartners.co.uk, the Respondent used the recruitment company's exact name. It is obvious from the names selected and from the similar websites used, that these are not genuine businesses but were designed principally to divert business from the respective recruitment companies. The Domain Name clearly is part of this pattern.

Respondent's Response

In summary, in its response the Respondent stated as follows:

- The complaint has only been made as the Complainant wants to gain access to the Domain Name so it can start offering RPO services as well.
- "Recruitment" and "RPO" are not and cannot be considered the same term at all. Whilst "Recruitment Process Outsourcing" is an industry that emerged from traditional recruiting, there are a few fundamental differences between the two. Recruitment Process Outsourcing is a form of business process outsourcing (BPO) where an employer transfers all or part of its recruitment processes to an external service provider. An RPO provider can provide its own or may assume the company's staff, technology, methodologies and reporting. In all cases, RPO differs greatly from providers such as staffing companies and contingent / retained search providers in that it assumes

ownership of the design and management of the recruitment process and the responsibility of results.

- Recruitment consultancy (which is the business undertaken by the Complainant) would generally be an individual or a company that specializes in helping a company find a person to recruit or hire. The company would then itself take the action to hire the person, etc. Recruitment process outsourcing (or RPO) is when the company outsources all of the necessary staffing functions to a separate RPO company. That RPO Company handles the hiring and staffing functions. This allows a company to focus on its business and not staffing.
- The Complainant does not offer an RPO service which is a clear indication that "RPO Genius" is the Respondent's property and cannot be owned by someone else. The Complainant's trade mark might be "Recruitment Genius" but it is not "RPO Genius".
- The Respondent has made a huge impact in the market with numerous clients and will not tolerate losing the business and will take legal action against the Complainant if its actions affect the Respondent's business in any way.
- It is nonsense for the Complainant to claim that the Respondent has copied its website design. There are several other websites using such a colour interface, for example Pearl Outsourcing.
- The Respondent is a pioneer in offering backend RPO services to the UK market and part of a group of companies offering RPO Solutions where each company specializes in different sectors e.g. IT, Banking, Healthcare, Construction, Oil & Gas and others.

Complainant's Reply

The Complainant replied to the response and, in summary stated as follows:

- The Respondent does not deny being well aware of the Complainant at the time of registration of the Domain Name. It is telling that, instead of admitting this obvious fact, the Respondent simply ignores it.
- It is nonsense to suggest that the Complainant filed this DRS case to try and gain access to the Domain Name in order to start offering RPO services. The Complainant filed the case because it became aware of the Respondent's blatantly abusive activities, which were causing actual confusion (which is not denied by the Respondent).
- The Respondent admits that RPO is a form of recruitment and this alone demonstrates that the terms 'RPO' and 'recruitment' are conceptually similar, compounded by the use of the identical and distinctive (in this context) term "Genius". That suffices so far as the (low threshold) DRS similarity test is concerned.
- It is irrelevant whether or not the Complainant offers RPO services. What matters is that the Respondent is offering a service which is closely allied to the Complainant's service, using a strikingly similar website with a strikingly similar domain name.
- The Respondent appears to be confused in that the Complainant is not claiming that its own trade mark is RPO Genius, but rather that the Respondent has adopted this name to target the Complainant's trade mark.
- The Respondent does not deny awareness of the Complainant's website or the use of a strikingly similar version of the Complainant's logo and website. The Respondent refers to, but does not exhibit, the 'colour code' of the website of "Pearl Outsourcing". The

Complainant has viewed the website at www.pearloutsourcing.com. The only possible overlap between the three sites is that the logo has a yellow background. That is where any possible similarity ends. The Pearl Outsourcing site contains none of the many distinctive features which the Respondent's site at the Domain Name shares with that of the Complainant as outlined in the complaint.

- More importantly, the Respondent seeks to give the impression that Pearl Outsourcing is an independent company / website whereas in fact it is an entity controlled by the Respondent. An email to Nominet in response to receiving notification of the complaint was sent by "Eddie Wilson" of Pearl Outsourcing to Nominet asking why are "we" not allowed to use the Domain Name. This attempted deception is of itself further evidence of abusive registration.
- Both "Pearl Outsourcing" and "RPO Genius" feature on a list of a third party website (CV Library) naming "fraudulent third party resellers" which falsely claim to have access to the CV Library database. That list also includes "Resourcing Partners" and "Capital Resourcing" referred to in the complaint as other sites of the Respondent which target third party recruitment companies.
- The Respondent makes grandiose claims, without supporting evidence, that it is part of a 'pioneering' group of companies which have made a "huge impact" in different recruitment sectors whereas the reality is that, as demonstrated in the complaint and above, it is engaged in dubious practices including a pattern of conduct whereby it sets up similar websites designed to target the names / trade marks of a range of recruitment companies. The Respondent does not deny or even comment on this issue in the response.

6. Discussions and Findings

General

In order to succeed the Complainant must prove, on the balance of probabilities, two matters, i.e. that:

1. the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
2. the Domain Name, in the hands of the Respondent, is an Abusive Registration.

These terms are defined in the Nominet DRS Policy as follows:

- **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.
- **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

The Complainant has a registered trade mark for its 'Recruitment Genius' name in the stylised form shown below.



It can be seen that the dominant part of the trade mark is the word 'genius'. The Complainant has also made extensive use of its name in relation to recruitment services and also in a logo form comprising of its stylised trade mark superimposed onto a bright yellow rectangular background as shown below.



The Complainant's use of its name and logo includes use on its own website at www.recruitmentgenius.com and in advertisements placed in various trade magazines. The Complainant appears to have established itself in the recruitment business and has won several industry awards.

In the circumstances, I am satisfied that the Complainant has Rights in the name 'Recruitment Genius' for the purposes of the DRS.

Both parties agree that 'RPO' is a well-known acronym in the recruitment industry for 'Recruitment Process Outsourcing' and that it has an accepted meaning. The only difference between the names 'Recruitment Genius' and 'RPO Genius' is the replacement of the descriptive word 'recruitment' with the descriptive acronym 'RPO' standing for 'recruitment process outsourcing'. Both names directly refer to the business of recruitment and the dominant part of both names is the additional word 'genius'.

In the circumstances, I am satisfied that both names are similar for the purposes of the DRS.

Accordingly, I find that the Complainant has proved on the balance of probabilities that it has Rights in the name 'Recruitment Genius' and that name is identical or similar to the Domain Name.

Abusive Registration.

The Respondent's protestations of innocence are brought into perspective as soon as the Complainant's website and the Respondent's website to which the Domain Name resolves are considered. The similarities are readily apparent. By way of example, the banner headline of each website's home page is reproduced below:



The Complainant relies on paragraph 3.a.i.C and 3.a.ii of the DRS Policy, which sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration i.e.:

“i. Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

....

C. for the purpose of unfairly disrupting the business of the Complainant”

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;”

The Respondent’s attempt to distinguish between a traditional recruitment consultant, who locates and puts forward suitable candidates to fulfil an advertised role, to that of an ‘RPO’ recruitment business where the entire recruitment process is outsourced is not material. Both are facets of the staff recruitment industry and the fact that the Complainant has not historically offered an RPO service does not alleviate the obvious risk of confusion between the two websites. The Respondent’s use of a strikingly similar logo design supported by the use of a similar website colour scheme and design is clearly likely to confuse those who know of the Complainant and its business into believing that it has branched out and is now offering an ‘RPO’ recruitment service in addition to its established traditional recruitment service. The similarities are such that one is driven to the conclusion that the Respondent has deliberately set out to cause such confusion in the hope of being able to profit from it.

In its response the Respondent denied it had copied the Complainant’s website design and said there were several other websites using such a colour scheme, giving the example of Pearl Outsourcing. However, in its reply the Complainant was able to demonstrate that Pearl Outsourcing is another entity controlled by the Respondent.

The Complainant also relies on paragraph 3.a.iii of the DRS Policy i.e.:

“iii. The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well-known names or trademarks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;”

The Complainant points out that the Respondent has also registered three other domain names (capitalresourcing.co.uk, resourcingpartners.co.uk and milestone resourcing.co.uk) that correspond to the names of other established recruitment businesses and is using each of those domain names to resolve to a website offering recruitment services. It is notable that the Respondent failed to deny or address this allegation in any way in its response.

I note from the documents exhibited to the complaint that the Domain Name was registered on 12 January 2014 and that the other three domain names were registered by the Respondent as follows:

- capitalresourcing.co.uk 12 January 2014
- resourcingpartners.co.uk 19 January 2014
- milestone resourcing.co.uk 27 June 2013

Whilst the third domain name was registered some 6 months before the Domain Name, the other two were registered on the same day and one week after the Domain Name was registered. In the circumstances, I am satisfied that it is more likely than not that the registration of the Domain Name by the Respondent was part of a pattern of registrations, at least with capitalresourcing.co.uk and resourcingpartners.co.uk, which correspond to well-known names in the recruitment business and in which the Respondent has no apparent rights.

7. Decision

For the reasons outlined above I find that the Complainant has proved, on the balance of probabilities, that it 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.

In the circumstances I order that the Domain Name be transferred to the Complainant.

Signed Chris Tulley

Dated 24 September 2015