

# **DISPUTE RESOLUTION SERVICE**

**D00017781**

**Decision of Independent Expert  
(Summary Decision)**

Mr Christian Fuchs

and

Paul Marks

**1. The Parties:**

Complainant: Mr Christian Fuchs  
2 Honiton Way  
Middlewich  
Cheshire  
CW109QS  
United Kingdom

Respondent: Paul Marks  
102 South Road  
Taunton  
Somerset  
TA1 3EA  
United Kingdom

**2. The Domain Name:**

fuchs.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 fuchs.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 Expert records his reasoning below as this is a no response case and the Expert has found against the Complainant.

##### Rights

The Complainant claims rights in the name FUCHS as it is his 'family birth name'. He has produced a copy of his passport which shows that his surname is FUCHS. The name FUCHS is identical to the Domain Name save for the generic '.co.uk' top level domain identifier, which is ignored for these purposes.

The Appeal Panel in DRS 12276 <hvidbro-mitchell.co.uk> found that Rights under the Policy includes rights in personal names. In the absence of a response arguing to the contrary, the Expert feels he should follow that decision and he therefore finds that the Complainant has satisfied the first (relatively low) hurdle of establishing rights.

##### Abusive Registration

The definition of Abusive Registration refers to registration and/or use of the Domain Name to take unfair advantage of or cause unfair detriment to the Complainant's Rights. As the Appeal Panel in <hvidbro-mitchell.co.uk> noted, this can be a problematic definition when, as in this case, the underlying right is a personal name

that has not been used as a trade mark or in relation to which there is no contractual right.

The Complainant relies on clause 3(a)(i)A of the Policy and argues his case as follows:

‘The current registration is abusive as it was primarily registered for the purposes of selling, renting or otherwise transferring it to me or my competitor at a price greater than the current registrant’s costs.’

The Complainant refers to two hyperlinks which show that the Domain Name was offered for sale and there is an indicative price to lease the Domain Name of £15 to £55 p.m. The Expert accepts that this is evidence that the Respondent has offered the Domain Name for sale or lease for consideration in excess of the direct costs of acquisition.

However, it does not necessarily follow that the Complainant has shown that the Domain Name is an abusive registration. There is nothing objectionable per se about trading in domain names. Clause 3(a)(i)A of the Policy is not made out as there is no evidence that the Respondent registered the Domain Name primarily for the purpose of selling it to the Complainant or a competitor of the Complainant.

There is no evidence that the Complainant has traded under that name or that there was any contractual nexus between the parties relating to the Domain Name. There is nothing to suggest the Respondent’s actions were in any way motivated by prior knowledge of the Complainant or an intention to take advantage of or to cause detriment to the Complainant’s rights in that name.

The Appeal Panel in <hvidbro-mitchell.co.uk> took the view that the Policy could be more readily applied to rights other than trade mark rights if references to ‘Complainant’s Rights’ were read as ‘the name or mark in respect of which the Complainant has rights.’ Even if one adopts this reading of the Policy, it is still necessary for the Complainant to show that the Respondent has taken unfair advantage of or caused unfair detriment to ‘the name or mark in respect of which the Complainant has rights.’

The Expert does not accept the proposition that offering a domain name for sale which incorporates a person’s surname is necessarily an unfair use of that name which is actionable under the Policy by anyone with that surname. This is not a case in which the Domain Name could not sensibly refer to anyone other than the Complainant. It could refer to another individual who shares that name or to a business which trades under that name.

In <hvidbro-mitchell.co.uk> the domain name pointed to a gripe site which severely criticised the Complainant’s husband. This was found by the Appeal Panel to be an appropriation of the Complainant’s name, which was considered unfair. There was a clear causal connection between the abuse and the Complainant in that case. There is no such connection in this case.

The Complainant says that he made an offer to purchase the Domain Name but he received no reply. He states as follows:

‘Given I have a right to the domain name fuchs.co.uk and I have failed in attempts to acquire the name by [sic] other means I now resort to filing this complaint to gain ownership.’

The Complainant would clearly like to secure ownership of the Domain Name but the fact that it consists of his surname and it was offered for sale does not mean he can acquire it under the auspices of the Policy.

The Expert notes that the Complainant was sent a Chairman’s ‘warning letter’ because the Complaint was less than 500 words. The Complainant chose not to review the Complaint and proceeded with the Complaint in its original form.

The Expert finds that the Complainant has not satisfied the burden of proof of showing that the Domain Name is, in the hands of the Respondent, an Abusive Registration.

## **8. Decision**

I refuse the Complainant’s application for a summary decision. The domain name registration will therefore remain with the Respondent.

Signed:  
Andrew Clinton

Dated: 19 September 2016