

DISPUTE RESOLUTION SERVICE

D00017919

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

Wing and a Prayer Hen Rescue SCIO

and

Joanne Drysdale

1. The Parties:

Complainant: Wing and a Prayer Hen Rescue SCIO
28The Maltings
Haddington
East Lothian
EH41 4EF
United Kingdom

Respondent: Joanne Drysdale
Cockdurno Farmhouse
Edinburgh
EH14 7HZ
United Kingdom

2. The Domain Name:

wingandapayerrescue.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 wingandaprayerrescue.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 (optional)

I understand from the Complainant's submissions that there has been and still is a dispute between various members and former members of a charity, and a good deal of information has been provided about this – enough to show that this is a very complicated situation where two groups are disputing entitlement to carry on the charity's work.

However, my interest is not so much in this as in understanding what "Rights", as defined by the DRS Policy, the charity actually has. The trade mark registration clearly postdates the establishment of the charity and its breakup as well as postdating the application for the Domain Name by some time. The application for the Domain Name predates the establishment of the charity and I have little evidence about the arrangements in place concerning the application for the Domain Name or what arrangements were subsequently made for the charity to have some sort of contractual entitlement to the Domain Name.

Rights could be unregistered rights but I would need to see evidence to show that the Complainant has been using the name or mark for a not insignificant period and to a not insignificant degree and also that the name or mark is recognised by the public generally. This could be evidence such as

advertisements, promotional expenditure, press cuttings, search engine results – the list is not closed. I have seen some social media extracts but these seem to indicate that the knowledge of the charity was limited to a number of volunteers rather than known more generally. Without such evidence, I have decided on balance that there is insufficient evidence to show Rights and, consequent on this, insufficient evidence to show 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: Richard Stephens

Dated: 24 October 2016