



NOMINET

DISPUTE RESOLUTION SERVICE

D00018890

Decision of Independent Expert

Age UK

and

Ms Sarah Higham

1. The Parties:

Lead Complainant: Age UK
Tavis House
1-6 Tavistock Square
London
WC1H 9NA
United Kingdom

Complainant: Age UK Brighton and Hove
29-31 Prestonville Road
Brighton
East Sussex
BN1 3TJ
United Kingdom

Respondent: Ms Sarah Higham
99 Bishopsgate
London
EC2M 3XD
United Kingdom

2. The Domain Name(s):

ageconcernbrighton-hove.org.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 a such a nature as to call in to question my independence in the eyes of one or both of the parties.

12 May 2017 14:17 Dispute received

18 May 2017 14:30 Complaint validated

18 May 2017 14:51 Notification of Complaint sent to parties

07 June 2017 02:30 Response reminder sent

12 June 2017 11:39 No Response Received

12 June 2017 11:39 Notification of no response sent to parties

22 June 2017 02:30 Summary/full fee reminder sent

26 June 2017 11:04 Expert decision payment received

4. Factual Background

The Complainant is the registered proprietor of EUTM No 5813399 and UKTM No 2105906 for the mark AGE CONCERN, registered on 25 May 2009 and 1 April 1997 respectively, for various goods and services including charitable fund raising, advisory services in respect of financial and money management, and tax planning including planning for retirement.

Whilst the Complaint provides little if any description of what the Complainant does in the Complaint, it is well known that it is a substantial charity which helps people in later life and its website (www.ageuk.org.uk) confirms such.

Age Concern was a predecessor charity to Age UK. Age Concern and Help the Aged merged on 1 April 2009 to become Age UK.

Age UK Brighton and Hove is a brand partner of Age UK and is licensed to use the Age UK name with the geographical indicator 'Brighton and Hove'.

The Domain Name was registered on 30 October 2013 by the Respondent. The Domain name points to a website which has the title 'Age Concern

Brighton' at the top of the page. The 'home page' for the website suggests that the operators of the site will be able to provide various advisory services, including financial and legal advice.

5. Parties' Contentions

The Complaint gives details of the trade mark registrations and history of Age UK that are set out in the Factual Background section above.

The Complainant asserts that the Domain Name is being used by the Respondent, together with the keywords "Age Concern Brighton", to confuse people who are trying to contact Age Concern Brighton and Hove and unfairly divert traffic to its website and that this falsely suggests that the website promotes a charity. It adds that the content of the Respondent's website does nothing to clarify the position.

The Respondent has filed no Response.

6. Discussions and Findings

a. General

To succeed in this Complaint, the Complainant must, in accordance with Paragraph 2 of the Policy, prove to the Expert on the balance of probabilities that:

- (i) it has Rights (as defined in paragraph 1 of the Policy) in respect of a name or mark identical or similar to the Domain Name; and
- (ii) the Domain Name in the hands of the Respondent is an Abusive Registration (as defined in paragraph 1 of the Policy).

Notwithstanding the failure by the Respondent to file a Response (and I am confident that Nominet has taken all necessary steps to bring the Complainant to her attention), the burden of proof as set out above remains on the Complainant. However the expert is entitled to take into consideration when making his determination that the Respondent, despite having the opportunity to do so, has not availed herself of the opportunity to rebut the allegations that have been made by the Complainant.

b. Complainant's Rights

The DRS Policy defines Rights 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".

The Complainant relies upon the rights that arise from its trade mark registrations for the words 'AGE CONCERN' and the use of the name 'AGE CONCERN BRIGHTON AND HOVE' by its brand partner. For the purpose of analysing whether the Domain Name is identical or similar to the name or mark in which Rights are claimed, one should ignore the .org.uk suffix. The Domain Name consists of the words 'AGE CONCERN' with the additional words 'BRIGHTON-HOVE' which do little more than add geographical context to the other words. In my opinion the Complainant has established that it has Rights in a mark identical or similar to the disputed Domain Name.

c. Abusive Registration

I now go on to consider the extent to which the disputed Domain Name is an Abusive Registration.

The Complainant asserts that the Domain Name is an Abusive Registration for the reason identified above.

The Policy defines an Abusive Registration as -

"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 is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights"*

and goes on to set out a (non-exhaustive) list of factors which may be evidence that a domain name is an Abusive Registration, many of which are the same as or similar to the reasons given by the Complainant.

Two such grounds are that the Respondent registered the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant (Paragraph 5.1.1.3 of the Policy) or 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 (Paragraph 5.1.2 of the Policy).

To be successful in its complaint on these grounds, the Complainant must show that the Respondent had knowledge of the Complainant's Rights and intended to take unfair advantage of or cause unfair detriment to them. In appeal case DRS 04331 *Verbatim*, the Appeal Panel said the following (N.B the Policy at that time set out the above grounds at Paragraph 3 of the Policy):

"8.13 In this Panel's view the following should be the approach to the issues of knowledge and intent in relation to the factors listed under paragraph 3 of the Policy:

- (1) First, some knowledge of the Complainant and/or its brand/rights is a pre-requisite for a successful complaint under all heads of the DRS Policy other than paragraph 3(a)(iv) (giving false contact details). The DNS is a first-come-first-served system. The Panel cannot at present conceive of any circumstances under which a domain name registrant, wholly unaware of the Complainant and its Rights, can be said to be taking unfair advantage of or causing unfair detriment to the Complainant's Rights.*
- (2) Secondly, 'knowledge' and 'intention' are pre-requisites for a successful complaint under all heads of paragraph 3(a)(i) of the Policy. The wording of that paragraph expressly calls for the relevant intent, which cannot exist without the relevant knowledge.*
- (3) Thirdly, 'intention' is not a necessary ingredient for a complaint under paragraph 3(a)(ii) of the DRS Policy. The test is more objective than that. However, some knowledge of the Complainant or its name/brand is a pre-requisite.*
- (4) Fourthly, while some knowledge of the Complainant or its name/brand is a pre-requisite for a successful complaint under the DRS Policy (save for a complaint under paragraph 3(a)(iv)), knowledge is not of itself conclusive in favour of the Complainant. The Expert/Appeal Panel will still need to be satisfied that the registration/use takes unfair advantage of or is causing unfair detriment to the Complainant's Rights.*
- (5) Fifthly, when a Respondent denies all knowledge of the Complainant and/or its Rights at the relevant time, that denial is not necessarily the end of the matter. The credibility of that denial will be scrutinised carefully in order to discern whether, on the balance of probabilities, the relevant degree of knowledge or awareness was present."*

It seems to me that given the use that the Complainant has made of its trade mark and the use that has been made of the Domain Name by the Respondent, it is very likely that the Respondent was aware of the

Complainant's Rights at the time that she registered the Domain Name. She has not availed herself of the opportunity to deny this assertion by the Complainant and provide any evidence in support thereof. It therefore seems to me that, absent any particular factors which might support the Respondent's position, the Domain Name was likely registered to disrupt or take advantage of the Complainant's business and that use of the Domain Name is very likely to cause confusion. It therefore follows that the grounds relied upon by the Complainant, are made out.

Paragraph 8 of the Policy provides a (non-exhaustive) list of factors which may be evidence that a domain name is not an Abusive Registration. I have no information before me which causes me to conclude that any of the factors contained within Paragraph 8 of the Policy are applicable.

7. Decision

For the reasons set out above, I find that the Complainant does have Rights in respect of a name which is identical or similar to the Domain Name <ageconcernbrighton-hove.org.uk> and that the Domain Name in the hands of the Respondent is an Abusive Registration. The Complaint therefore succeeds and the Domain Name should be transferred to the Complainant.

Dated 20. 07. 2017