

DISPUTE RESOLUTION SERVICE

D00011631

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

SpareKeys.com Limited

and

Mr Mark Buchanan

1. The Parties:

Lead Complainant: SpareKeys.com Limited
Cityside House
40 Adler Street
London
London
E1 1EE
United Kingdom

Respondent: Mr Mark Buchanan
Tythe House
Greenways
BRIGHTON
BN2 7BA
United Kingdom

2. The Domain Name(s):

mysparekeys.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 mysparekeys.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)

Shortly after I was appointed as the Expert, the Respondent, who had not previously responded to the Complaint or any communication from Nominet about it, asked to file a non-standard submission under paragraph 13b of the DRS Procedure. His explanation was that he had not received any of the emails from Nominet notifying him of the Complaint until the email of 7 August 2012 informing him of my appointment, and nor had he received the registered letter from Nominet notifying him of the Complaint as it was sent to an address that he had not resided at for 2 years. He said that he was offering a legitimate service using the Domain Name and it would be detrimental to his business if the Domain Name was taken away, and there was an exceptional need to put his case across by way of a full submission.

I decided to allow the Respondent to make his submission, despite the fact that the Respondent had given no explanation as to why he had not received the previous email notifications from Nominet that had been sent to the same email address as the email of 7 August 2012 that he did receive. I also invited the Complainant to respond to the submission by way of a 13b non-

standard submission as if it was a Reply, and the Complainant did so. As it turned out, the parties' non-standard submissions did not take the matter much further.

I have decided that, on balance, this is not a case of an Abusive Registration. I have made that decision based on the evidence and submissions presented to me, which make it clear that both parties treat this dispute as one of alleged copyright infringement and not a dispute about the registration or use of the Domain Name as such. The Nominet DRS is not the appropriate forum to deal with a pure copyright dispute.

Both parties offer a service whereby a customer can lodge a spare set of keys with the business so that they are available in case the customer is ever locked out accidentally. The Complainant trades as "Sparekeys.com" and uses that domain name to resolve to its website, whereas the Respondent trades as "mysparekeys" and uses the Domain Name to resolve to his website. The similarity between the two domain names is not surprising given the nature of the parties' businesses as they are both very descriptive of such a business.

The Complainant's Complaint alleges that the Respondent is in breach of copyright by having copied text from the Complainant's website, particularly, the legal terms and conditions, FAQ section and the "How It Works" section explaining how the business operates. The Complaint gives details of these allegations and the Complainant's substantial efforts to persuade the Respondent's ISP to take the Respondent's website down. It is not until the very last paragraph of the Complaint that the Complainant addresses the issue of what Rights it has for the purposes of the Nominet DRS and the issue of why the alleged copyright infringement makes the use of the Domain Name an Abusive Registration.

The Rights claimed are based on the Complainant's registered trade mark for "SPARE KEYS .COM" superimposed onto a keyhole device. Whilst the device element is an important part of the overall mark, that registration does give some rights in the name "Sparekeys.com", despite the name in isolation being very generic and descriptive. The Domain Name is clearly similar, although that is not surprising given the nature of the business and, in itself, is unobjectionable.

The Complainant therefore makes no allegation that the Domain Name was acquired by the Respondent for an Abusive purpose. His case rests on proving, on the balance of probabilities, that it has subsequently been used in an Abusive manner.

The Complainant's case on that is contained in one sentence in the final paragraph of the Complaint where, after detailing the alleged copyright infringements, the Complainant states "*we believe that this is likely to cause confusion to the customer, who might believe that the two sites are related*". Although the Complainant does not refer to the DRS Policy, it clearly has Paragraph 3.a.ii of the Policy in mind. Paragraph 3 provides a

non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration and 3.a.ii states as follows:

"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 non-standard submission does not address the dispute by reference to the DRS Policy at all. He acknowledges that some of the wording and text on both sites are similar, but he says that they are not copied and any similarity is purely accidental due to the fact that both parties are both offering a similar service. He goes on to accuse the Complainant of having been unnecessarily vexatious due to his wish to put the Respondent out of business.

The Respondent may struggle to make good his claim of innocent coincidence given the nature and extent of the similarities in text identified by the Complainant. However, my role is not to adjudicate on the allegation of copyright infringement. I have to decide whether the Complainant has proved that it is more likely than not that the similarities are such that visitors to the Respondent's website would be confused into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant.

The general layout and style of the two respective websites are not particularly similar. They look like what they are - two competing business offering the same sort of service. I have not been shown the legal terms and conditions that are alleged to have been copied as they are no longer on the Respondent's website, having been removed at the insistence of the Respondent's ISP following a complaint by the Complainant. However, even assuming the two sets of terms and conditions were very similar or even identical, I do not believe that would be likely to make visitors believe that the two websites are operated by the same business or otherwise were connected. I would doubt that many visitors would take the trouble to read and compare the terms and conditions, but even if they did, many lay people may assume that all such terms and conditions are "legal small print" and inherently similar or could even have been drafted by the same lawyers.

The same might not be said of the "FAQ" and "How It Works" sections of the website. Visitors who are interested in the service being offered are more likely to read and consider these parts in some detail. There are some clear similarities between some of the respective sections on the Complainant's and Respondent's websites. For example, the order in which the questions appear is replicated in some parts (but not in others) and the information is given in a similar manner of wording, although attempts do appear to have been made to re-write some of the text whilst still providing the same information.

However, given the overall difference in the layout and style of the two websites, on balance, I do not believe that the similarities in the text of some parts of the websites are such as to make it likely that visitors would be confused into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant.

I therefore find that the Domain Name, in the hands of the Respondent, is not an Abusive Registration and no action should be taken in relation to its registration.

8. Decision

| | | | |
|----------------------|--------------------------|------------|-------------------------------------|
| Transfer | <input type="checkbox"/> | No action | <input checked="" type="checkbox"/> |
| Cancellation | <input type="checkbox"/> | Suspension | <input type="checkbox"/> |
| Other (please state) | <input type="checkbox"/> | | |

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Signed:

Dated: 2 September 2012

Chris Tulley