

**DISPUTE RESOLUTION SERVICE**

**D00014495 and D00014500**

**Decision of Independent Expert**

**South Yorkshire Aircraft Museum**

and

**Mr Jim Keable**

**1. The Parties:**

Lead Complainant: South Yorkshire Aircraft Museum  
Dakota Way, Doncaster Leisure Park  
Doncaster  
South Yorkshire  
DN4 7FB  
United Kingdom

Respondent: Mr Jim Keable  
5 Silverlands  
Buxton  
Derbyshire  
SK17 6QF  
United Kingdom

**2. The Domain Names:**

aeroventure.org.uk  
aeroventure.co.uk  
syam.org.uk  
syam.co.uk  
xx411.org.uk  
xx411.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.

08 July 2014 15:58 Dispute received  
09 July 2014 10:26 Complaint validated  
09 July 2014 13:04 Notification of complaint sent to parties  
28 July 2014 02:30 Response reminder sent  
31 July 2014 08:53 Response received  
31 July 2014 08:55 Notification of response sent to parties  
05 August 2014 02:30 Reply reminder sent  
08 August 2014 08:49 Reply received  
08 August 2014 08:49 Notification of reply sent to parties  
08 August 2014 08:54 Mediator appointed  
13 August 2014 10:44 Mediation started  
21 November 2014 15:54 Mediation failed  
21 November 2014 15:56 Close of mediation documents sent  
02 December 2014 11:12 Expert decision payment received

### **4. Factual Background**

4.1 The complainant, the South Yorkshire Aircraft Museum (SYAM), is a company limited by guarantee (number 081480551) and a registered charity (number 1149429). The company was incorporated on 18 July 2012 to take over the business previously operated by an unincorporated association operating under the same name and registered as a charity under number 1051994. Its objects as recorded in the charity registration particulars are “the recording, restoration, interpretation and preservation of aircraft, airfield, airfield buildings and structure and aeronautical artefacts of historical, technical or other interest for the education and enjoyment of the public”.

4.2 SYAM has been in existence since at least the early 1990s. It operated originally from premises at Home Farm, Firbeck, Worksop. In April 2000 it moved to Aeroventure at Doncaster Lakeside where it is housed in a 1930s aircraft hangar. By 2002 it had changed the presentation of its name to “Aeroventure incorporating South Yorkshire Aircraft Museum” as is shown in its newsletter from August of that year and subsequent newsletters which have been included in the evidence. Its publicity and promotional materials such as the newsletter prominently feature the names Aeroventure and SYAM as an abbreviation for the full name of the museum.

4.3 SYAM has always been heavily dependent upon the services and support of its members and volunteers. It is clear from the minutes of meetings and the publicity materials which have been provided in evidence that it is common for members to promote and fund individual projects for SYAM. So it is common for active members to pay for activities to be carried on by the museum.

4.4 The respondents are Mr Lawrence James Robert Keable (known as Jim Keable) who is the registrant of [aeroventure.co.uk](http://aeroventure.co.uk), [syam.co.uk](http://syam.co.uk) and [xx411.co.uk](http://xx411.co.uk) and [.org.uk](http://.org.uk) and Multisys Computers Limited, which is the registrant of [aeroventure.org.uk](http://aeroventure.org.uk) and [syam.org.uk](http://syam.org.uk). The domains have been registered over a period of time. [aeroventure.co.uk](http://aeroventure.co.uk) and [syam.co.uk](http://syam.co.uk) were registered in October 2002. [aeroventure.org.uk](http://aeroventure.org.uk) was registered in February 2003. [xx411.org.uk](http://xx411.org.uk) was registered on 1 May 2007 and [syam.org.uk](http://syam.org.uk) on 11 May 2007. Finally [xx411.co.uk](http://xx411.co.uk) was registered in May 2009. Mr Keable is the ultimate owner of and operates his business through Multisys Computers Limited and I shall not distinguish between them in this decision. I shall simply refer to “the respondent”, whom I shall treat for practical purposes as being Mr Keable, or to Mr Keable directly.

4.5 Mr Keable joined SYAM as a member in September 2001 having visited the museum for the first time the previous month. The membership form he signed contains clear references both to SYAM as an abbreviation for the full name of the museum and to the address of the membership secretary to whom the form was presumably sent as being at “Doncaster Aeroventure”. He has since paid a life membership fee and is therefore a life member of the museum. It is clear from the documents in evidence that Mr Keable was initially at least an active member of the museum. He indicated on the membership form that it was his intention to be an active member and there are repeated references to his attendance at meetings thereafter and to his activities on behalf of the museum.

4.6 Mr Keable explains that between 2002 and 2006 he visited the museum frequently, at least once or twice a month and sometimes as often as weekly. He established a flight simulator at the museum using his own equipment in early 2002. To provide an event to help the museum to bring in visitors he organised an annual flight simulator day which he ran between 2004 and 2006.

4.7 In 2002 Mr Keable spoke to Ian Kingsnorth, a committee member of SYAM, about setting up websites to promote the museum. Mr Keable explains that he made clear to Mr Kingsnorth that he would be paying for the websites but, as noted above, it was common for members to fund activities out of their own pockets and Mr Kingsnorth did not see anything in this which indicated that the websites would be outside the control of SYAM.

4.8 It appears that the relationship between Mr Keable and the museum began to break down after 2006. The parties disagree about the underlying reasons for this but this does not seem to me to matter. I shall nevertheless for completeness summarise the facts and disputes as they appear from the submissions.

4.9 Mr Keable claims that a new member who joined the museum in 2006 was threatening and abusive both to him and to other members. On one occasion, this person followed him around for about half an hour and every time Mr Keable walked off, the person followed him. He says that he therefore cut down his visits to the museum so that he only went when others were around to prevent the abuse. He says that he asked committee members for help in dealing with this on several occasions. SYAM’s response is that Mr Keable made no formal written complaint about this despite the fact that the museum has an established complaints procedure. This is not a complete answer to Mr Keable’s allegations

and I am therefore left unable to determine the truth. However, Mr Keable's allegations of abuse appear to be of behaviour which was far outside any acceptable norm. I would have expected him to have made some kind of formal complaint or there to be some record which the museum would have. I am left with the impression that Mr Keable may be exaggerating what happened. But, as I have said, it does not matter for present purposes.

4.10 Next Mr Keable says that at about the same time the museum introduced a new organisational structure. The committee began to ignore him and not to keep him up to date with information. The museum's response is that Mr Keable absented himself and began to become possessive and difficult about the website. It seems likely that these events are connected to the allegation of abusive behaviour as Mr Keable's absence from the museum at this time is a common factor. The museum says that he was sent minutes of meetings for 12-18 months when he did not attend and that he refused to update the website when asked.

4.11 In 2008 Mr Keable complains that all his property was removed from the museum without notice to him or his consent. He does appear to accept that he was told where the property was once it had been moved. He says that he was very upset by this. He goes on to say that he had purchased a full-size Spitfire replica project in 2003 which he had been unable to complete because he did not receive sufficient help with it so that it had been left unfinished at the museum until 2008. The museum says that the materials were removed for safekeeping by a friend of Mr Keable's, Mr Jarvis, and that the museum assumed that this was with Mr Keable's consent. It points out that it is not a reflection on the museum that Mr Keable was unable to recruit sufficient volunteers to carry out his project. It was for him to achieve this. It seems to me that there is sense in what the museum says. An organisation which depends almost entirely upon volunteer workers depends equally upon those workers co-operating and supporting each other. Unless the particular project was one in which Mr Keable was able to interest others himself, it is difficult to see how the museum came under any obligation to provide support.

4.12 The parties do appear to have co-operated between 2007 and 2009 in refurbishment of a building known as building 21 in which there was a flight simulator room installed. It appears that Mr Keable contributed financially to this activity. However, as the museum points out, this was done in his role as a member of the organisation.

4.13 Mr Keable complains that there were tensions between various members of the museum in 2007 for a period of time. He complains that the chairman of the meetings that were called to reconcile these differences, Frank Donnelly, treated him in an insulting way when no-one else was present. He does not give any particulars of the way in which he was insulted. This is a difficult kind of allegation to answer, made as it is without particulars and in the absence of witnesses. The museum says that Mr Donnelly's role, from which he has now retired, was to try and reconcile the differences between members. It is easy to see how in such circumstances one of the parties might feel that he has been treated unfairly or even insulted if the conciliator does not accept his point of view. It seems to me that I can take no account of Mr Keable's allegations of this kind given the lack of

detail. Again, however, I do not see that this makes any difference to the matters I have to determine.

4.14 Following this it appears that Mr Keable has had only limited contact with the museum, visiting only once or twice a year. He clearly has serious grievances about the way in which the museum is being run but again I can take no account of these. He cannot claim to take over the running of the museum unless he can carry the organisation with him. If those responsible for its operations disagree with him, his choice is to participate in discussion and debate with them to change things or to accept that he will not be involved. Mr Keable appears to have taken the approach of withdrawing from the museum's activities, to the extent that in 2011 and 2012 when the flight simulators required repairs he sent an engineer (presumably employed by him) rather than attend himself.

4.15 In 2012 Mr Keable became aware that the museum had set up a new website and he appears to have ceased to update the information on [aeroventure.org.uk](http://aeroventure.org.uk). It is now, therefore, several years out of date. This is clearly causing the museum difficulties as members of the public consulting that site are given incorrect information about opening hours, charges and events taking place.

4.16 The sites hosted on the domains [xx411.co.uk](http://xx411.co.uk) and [xx411.org.uk](http://xx411.org.uk) carry information about the restoration by the museum of this helicopter from the Falklands war. As the museum points out, on the face of it these appear to be information provided by the museum itself, particularly as those sites link to [aeroventure.org.uk](http://aeroventure.org.uk) which itself appears to be a site promoting the museum. Mr Keable makes no comment on this aspect of the dispute in his submissions save to record how he came to own both domains. He says that he registered [xx411.org.uk](http://xx411.org.uk) in May 2007 to record the restoration of the helicopter which had been purchased by the museum through member donations. The restoration was in fact carried out as a project by a team from the Royal Electrical and Mechanical Engineers ("REME") who were looking for such an activity and found it through the [aeroventure.org.uk](http://aeroventure.org.uk) website. One of the team registered [xx411.co.uk](http://xx411.co.uk), rendering the [.org.uk](http://xx411.org.uk) site redundant. However, the registration of the [.co.uk](http://xx411.co.uk) domain was not renewed and when it lapsed Mr Keable registered it, apparently being unable to contact the original registrant. He now accordingly has both domains.

4.17 Since he ceased to update the [aeroventure.org.uk](http://aeroventure.org.uk) website Mr Keable has been responding, I suspect by automatic reply, to email contact at [aeroventure.org.uk](http://aeroventure.org.uk) with an e-mail which says the following:

"You have reached Jim Keable, I run [www.aeroventure.org.uk](http://www.aeroventure.org.uk) , a website about Aeroventure/South Yorkshire Aircraft Museum.

Earlier this year (2012) I was told that the trustees of the museum had decided to start a new website and in effect my support for the museum was no longer required hence this message.

I have not been told officially what the new website is nor been given an official alternative contact. If you want to contact the museum please search Google for South Yorkshire Aircraft Museum and follow your nose or

call 01302 761616. If you want however to hang around and enjoy this website please do so.

It would be more work for me to clear up and otherwise shut down my work of 9 years and as I have paid, own and developed this website with very little if any support I see no reason to destroy my property now.

However unless you specifically wanted to contact me personally I will now assume that you will not need a reply to your email as I will assume you have found an alternative contact.”

The contents of this indicate that Mr Keable considers that he has been side-lined and shut out from the organisation of the museum. The tone is petulant and suggests that Mr Keable wishes to convey the message that the museum’s treatment of him has been unfair. It is not designed to foster good relations between the parties. The e-mail goes on to repeat the old message which was about SYAM but is of course now out of date.

4.18 It seems to me to be clear that the conclusion to be drawn from this unfortunate dispute is that as a matter of fact Mr Keable and the museum have fallen out and that websites which appear to promote and be connected to the museum have ceased to be connected. That must lead members of the public who are unaware of the underlying dispute and consequent disconnection to be confused about the relationship between the museum and the websites hosted on the disputed domains by Mr Keable. The museum draws attention to some examples of occasions on which such confusion has occurred. I do not think that these isolated examples add materially to the conclusion that confusion is inevitable in the circumstances which have arisen. That the information on Mr Keable’s website is now inaccurate can only increase the harm to the museum which results from that confusion.

## **5. Parties’ Contentions**

5.1 Mr Keable says that he registered the domains for a variety of purposes. These were:

- (1) To develop his interest and skills in web development, programming and working with search engines;
- (2) To use them to promote his interest in flying and aviation;
- (3) To promote the South Yorkshire Aircraft Museum;
- (4) To promote his interest in flight simulation.

He says that he first registered [aeroventure.co.uk](http://aeroventure.co.uk) and [syam.co.uk](http://syam.co.uk) for these purposes. He then explains that he wrongly thought that .co.uk domains should only be used by UK registered companies which is why he then registered [aeroventure.org.uk](http://aeroventure.org.uk). His plan was to develop [aeroventure.org.uk](http://aeroventure.org.uk) as a full list of aircraft, manufacturers, designers and museums and then link the ones that applied to SYAM to the [syam.co.uk](http://syam.co.uk) website.

5.2 He says that at this time there was little use of the words “aeroventure” and “syam” and that he registered these domains rather than southyorkshire-aircraftmuseum because he did not want to cause confusion whilst he developed the websites. I find these claims impossible to believe. First, the publicity materials I have seen make prominent use of both names. Second, the location of SYAM was by the time Mr Keable joined it at Aeroventure. There is a large sign at the entrance which says it is “Doncaster Aeroventure” with in smaller letters underneath “The Home of South Yorkshire Aircraft Museum”. It is simply not possible that Mr Keable was unaware of this. Third, he was according to both parties’ evidence setting up the websites to promote the museum’s activities. There was, therefore, no need to be concerned about confusion between them and the museum. Fourth, elsewhere in his submissions Mr Keable says that he was not aware in 2003 that the name aeroventure had been used or marketed in any way. He says that he found the domain aeroventure.co.uk “completely by chance one day”. That cannot be correct. He was by then an active member. The location of the museum was at Aeroventure. It was therefore necessarily intimately associated with the operation of the museum. I have accordingly reached the conclusion that Mr Keable cannot be right in his claims that he did not want to cause confusion or that he did not realise that the name aeroventure was being used by the museum to promote itself.

5.3 Mr Keable claims not to have seen the specific exhibits in the museum’s evidence which used this name at the time. This does not alter my view for two reasons. First, I have no reason to think that these were the only materials on which the name appeared. Indeed, as noted above, it appeared on the membership form Mr Keable completed and he admits that he knew it was the museum’s address. I am also satisfied that Mr Keable must have seen other materials on which the name Aeroventures appeared, such as the entrance board. Second, it is clear that Mr Keable has not been correct in a number of claims that he has made. It is therefore more than likely that he is either mistaken or possibly being deceitful in his claim not to have appreciated the use which was being made of the name Aeroventure. Third, he relies upon the use of Aeroventure as a name by other entities. The only one he is able to identify is a flying club somewhere in America which used that name “for a while”. He does not say when or for how long. Reliance upon such poorly researched and supported third party uses does not add credibility to his claims. In addition, use in the US has no bearing on the present dispute. It is simply irrelevant. I am therefore not prepared to accept Mr Keable’s unsupported word on matters such as this.

5.4 Mr Keable says that some of the domains are in his name personally and some in the name of Multisys because the latter was probably the “default on my control panel at the time when I actually purchased the domains”. The difficulty with this explanation is that xx411.org.uk and syam.org.uk were registered within 11 days of each other in May 2007 in the two different names and that both registrations are preceded and followed by registrations in Mr Keable’s name. His explanation is therefore inconsistent with the facts unless he changed the default name on his control panel quite frequently and more than once. It seems much more likely that he made a conscious decision about the name in which to register particular domains. Why he did so is unclear.

5.5 The complainant says that the disputed domains are abusive because they were first registered to support and promote the museum but are no longer being so used or operated. They are now causing confusion amongst the public. The complainant also says that the domains which are not being used have been registered by the respondent to block the complainant's use and registration of them.

5.6 Mr Keable says that that the museum has always known that he owns and operates these domains. He says that there should be no confusion because the museum's own website is the first response if one carries out a Google search for aeroventure, his site being the second. He also says that he has offered to remove all information about the museum from his website but that there has been no response to that offer. It is notable that he does not appear to have carried out the removal. I cannot see why not. It does not require the museum's consent. He says that his main motive is to assist the museum and not to cause confusion. I accept that this is so and accordingly take it into account in reaching my decision.

## **6. Discussions and Findings**

6.1 The version of the DRS Policy relevant to the present dispute is version 3 which relates to complaints lodged after 29 July 2008. Paragraph 1 of that 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. has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights”

6.2 Paragraph 1 of the DRS Policy defines “Rights” for the purposes of this procedure as:

“rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.”

6.3 Under Paragraph 2 of the DRS Policy a complainant must show on the balance of probabilities

- (a) that it has Rights in a name or mark identical or similar to the Domain Name; and
- (b) that the Domain Name in the hands of the Respondent is an Abusive Registration.

6.4 Paragraph 3 of the DRS Policy identifies a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. The relevant factors for the purposes of the present case are

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

- A. for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's



documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

B. as a blocking registration against a name or mark in which the Complainant has Rights;

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 remaining factors are not relevant in the present case. I have accordingly taken the above factors into account in reaching my conclusions.

6.5 Paragraph 4 of the DRS Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration. These include the following which are relevant to the present case:

“(a)i. Before being aware of the Complainant’s cause for complaint (not necessarily the ‘complaint’ under the DRS) the Respondent has:

A. used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services;

B. been commercially known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;

...

6.6 The first question in any DRS complaint is whether the complainant has Rights. As the DRS Policy definition makes clear Rights are limited to rights which are enforceable by the complainant whether under English law or not: see also paragraph 1.10 of the Expert Overview. Equally, as has been said in many cases, the requirement to establish Rights sets a low threshold test.

6.7 It seems to me to be clear that the complainant has rights in the names “aeroventure” and “syam”. Both are names by which the museum is known and under which its activities are promoted. It is therefore clear that they will be recognised by members of the public as names by which the museum is known. The disputed domain [aeroventure.org.uk](http://aeroventure.org.uk) has contributed to that promotion and recognition over a period of several years. The name “xx411” is the registration number of a helicopter which is at the museum and was restored by REME as a project for the museum. The sites at [xx411.org.uk](http://xx411.org.uk) and [.co.uk](http://.co.uk) have both promoted the restoration and its connection with the museum. Recognition of the connection and the project as part of the museum’s activities must have followed as a result. Further, visitors to the museum will have seen the project and therefore connect it with the museum. In these circumstances, it seems to me that the low threshold test for rights is met in relation to xx411. Members of the public who have come across the museum’s work will recognise it as belonging to SYAM.

6.8 It also seems to me that confusion between a site operating under one of the disputed domain names and the complainant is inevitable. The fact that Mr Keable has run the sites hosted on the active domains in support of the museum’s

activities and that they were originally accurately presented as being the museum's websites can only contribute to the confusion which will now follow if they are independently operated. Mr Keable asserts that he had additional reasons for registering the domains and setting up the websites than simply to promote the museum but those reasons, even if true, are irrelevant. He set them up to promote the museum's activities, as an active member of the museum, with the museum's consent and assistance in providing information. They were for practical purposes the museum's websites until the parties fell out and Mr Keable ceased to co-operate with the museum. Indeed, even now Mr Keable's email response to messages to [aeroventure.org.uk](mailto:aeroventure.org.uk) states expressly that the site is about the museum. Only when one reads on does it become clear that Mr Keable claims to be entitled to operate it independently.

6.9 Unfortunately for Mr Keable, it seems to me to be clear that the way in which he acted resulted in him falling foul of the DRS Policy. Having registered the disputed domains and set up the websites hosted on them primarily for the purpose of supporting and promoting the museum's activities, it was not open to him simply to withdraw unilaterally from those activities and assert that the domains and sites are independent from the museum. They take and use the museum's names and other identifying indicia and cannot be used independently without some risk of confusion. The way the sites have been used has exacerbated the risk of confusion. Consequently, it seems to me that the domains are Abusive Domains within the meaning of the DRS Policy.

6.10 I do not accept that Mr Keable registered the disputed domains as blocking domains. It seems to me that, with the possible exception of [xx411.co.uk](http://xx411.co.uk), which he registered when the original registration lapsed, they were in fact all registered by him to support and promote the museum and its activities. As a result of what has happened, this is the only legitimate use to which they can realistically now be put. [xx411.co.uk](http://xx411.co.uk) may have been registered by Mr Keable to block the museum from registering that domain itself but I do not need to resolve that issue for the purposes of this decision.

6.11 Equally, I reject Mr Keable's assertion that there should be no confusion. I cannot see how people performing Google searches who see two websites, one of which bears the name of [aeroventure](http://aeroventure.org.uk) under which the museum operates, are anything other than likely to think that both sites are associated with the museum. Mr Keable's approach relies upon the searcher looking at the results with a critical eye and working out that only one of them can be the "legitimate" site operated by the museum. Apart from the fact that such an analysis is not the sort of thing one would expect ordinary internet users to perform, I can see no reason why people should make that distinction. It is perfectly possible that a searcher would think that both sites are operated by the museum. Accordingly, it is clear in my view that there is a risk of confusion and that confusion will occur.

## **7. Decision**

I accordingly decide that the disputed domains are abusive and direct that they be transferred to the complainant.

**Signed Michael Silverleaf**

**Dated** 15 January 2015