

# **DISPUTE RESOLUTION SERVICE**

**D00017218**

## **Decision of Independent Expert**

Mr Ian Daynes

and

Mr Garth Piesse

### **1. The Parties:**

Complainant: Mr Ian Daynes  
32 Abbey Road  
Medstead  
Alton  
Hants  
GU34 5PB  
United Kingdom

Respondent: Mr Garth Piesse  
PO Box 181  
Palmerston North  
Manawatu  
4440  
New Zealand

### **2. The Domain Name(s):**

daynes.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 into question my independence in the eyes of one or both of the parties.

15 March 2016 15:18 Dispute received  
16 March 2016 09:48 Complaint validated  
16 March 2016 10:10 Notification of complaint sent to parties  
06 April 2016 09:01 Response received  
06 April 2016 09:02 Notification of response sent to parties  
11 April 2016 02:30 Reply reminder sent  
14 April 2016 09:28 No reply received  
14 April 2016 09:31 Mediator appointed  
19 April 2016 08:29 Mediation started  
27 April 2016 11:16 Mediation failed  
27 April 2016 11:17 Close of mediation documents sent  
10 May 2016 02:30 Complainant full fee reminder sent  
13 May 2016 12:24 No expert decision payment received  
23 May 2016 11:01 Expert decision payment received

#### **4. Factual Background**

The Complainant is an individual, with an address in Hampshire, England.

The Respondent is an individual, with an address in New Zealand, who registered the Domain Name in December 2012. The Respondent is in the business of buying, selling and monetising domain names.

The Complainant approached the Respondent with a view to seeking to buy the Domain Name in June 2015, but although negotiations continued until March 2016, the parties were unable to agree a price.

#### **5. Parties' Contentions**

##### **The Complainant**

The Complaint is short. The Complainant points out that his surname is "Daynes", and he says that he has a better right to use his surname as part of his online and trading identity than the "current domain squatter" who has no link to the name whatsoever. His residence in the United Kingdom gives him a greater right to the Domain Name than someone based in New Zealand. The Respondent's ownership of the Domain Name is preventing the Complainant from registering a .uk domain. The Complainant believes the Domain Name is abusive, because it was registered with the primary purpose of selling or renting it to him (or a competitor) for more than the Respondent paid for it. It has been parked since 2012, and never actively used. When the Complainant approached the Respondent through a domain broker, he was asked for £1300 for the Domain Name, "which is extortion". The Complainant seeks transfer to himself. He did not file a Reply to the Response.

##### **The Respondent**

## **Rights**

The Respondent accepts that the Complainant has Rights under the Policy in his surname, following the ruling of the Appeal Panel in *hvidbro-mitchell.co.uk* (DRS 12276).

## **Abusive Registration**

However, in order to succeed, the Complainant needs to show at least that the Respondent was aware of the Complainant at the date of registration of the Domain Name or commencement of objectionable use of the Domain Name (*verbatim.co.uk* DRS 4331).

The Respondent is in the business of buying, selling and monetising generic domain names, which is accepted as being a lawful activity under Para 4.d of the Policy. He registered the Domain Name when he became aware that a previous owner was not renewing its registration, as he thought it was potentially attractive because it reflected a not uncommon surname, which he might be able to sell to someone who might be prepared to pay for it for whatever reason. He was not aware of the Complainant when he registered the Domain Name. Nor was there any reason why he should have been, and the Complainant has not suggested any. A Google search for “Daynes” brings up 412,000 results, but with no mention of the Complainant. The most prominent business within UK websites is “Saber Daynes Office Interiors”, with various individuals appearing with the surname Daynes. Therefore, the Complaint should fail in any event.

However, for the sake of completeness, the Respondent also addresses the Complainant’s other points. Given the absence of any knowledge of the Complainant on the part of the Respondent, the lack of intent makes the Complainant’s claim of registration for the purpose of selling to him absurd. It was the Complainant who first approached the Respondent, offering \$10 to buy the Domain Name. In return, the Respondent invited an offer of over \$1,500. Negotiations concluded in March 2016 with the Complainant’s maximum offer stated to be \$50, and with the Complainant stating that he would rather spend money taking legal action than meeting the Respondent’s then asking price of \$1,800. The Complainant relies upon the decision of the Appeal Panel in *ghd.co.uk* (DRS 3078) as confirming that, where the registration was not for the purpose of sale to the Complainant, the Respondent was free to ask any price he liked.

The Complainant’s residence in the United Kingdom does not give him a greater right to the Domain Name than anyone else, as domain names are allocated on a first come, first served basis.

The inability to register a .uk domain name is simply a function of Nominet’s rules, arising from the Respondent having got in first with his registration of the Domain Name.

Nothing the Respondent has done is remotely unfair to the Complainant. The Domain Name has been registered and used in pursuance of an entirely legitimate business, expressly sanctioned under the Policy.

## **6. Discussions and Findings**

In order to succeed in his Complaint, in accordance with the Policy, the Complainant needs to establish (in respect of the Domain Name):

- “i. The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and  
ii. The Domain Name, in the hands of the Respondent, is an Abusive Registration.”*

The Complainant needs to establish both elements on the balance of probabilities.

The definition of Abusive Registration under the Policy is as follows:

*“Abusive Registration means 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”.*

The definition of Rights under the Policy is 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.”*

## **Rights**

The Respondent has accepted that the Complainant has Rights under the Policy in his surname, following the ruling of the Appeal Panel in *hvidbro-mitchell.co.uk (DRS 12276)*. The surname Daynes is clearly identical to the Domain Name, and the Complainant therefore succeeds on this point.

## **Abusive Registration**

However, on abusive registration, the Complainant's case seems wholly misconceived. He has either not read, or has ignored guidance on Nominet's DRS website and from previous Nominet decisions as to the need to prove intent on the part of the Respondent in order to demonstrate that the registration of the Domain Name was in some way unfair.

The Complainant has failed entirely to make out any case for why the Respondent could possibly have had him specifically in mind when he registered the Domain Name. What is the Complainant's "online and trading identity" he relies upon? What sort of reputation has he established that might have meant his "identity" could have been in the mind of the Respondent when he registered the Domain Name? The Complainant gives no assistance in that respect, and has not challenged the Google search results produced by the Respondent, which would seem to suggest that he has no apparent "online" reputation, or at least none that could conceivably have come to the attention of someone in New Zealand, without some special knowledge of the Complainant (which, again, the Complainant does not suggest).

The Expert agrees with the Respondent's contention that the Complainant does not even make it past first base, with reference to widely established first principles, analysed and reinforced by the Appeal Panel in *verbatim.co.uk (DRS 4331)*, and subsequently consistently applied. The Complainant has failed entirely to make out any case as to why the Respondent must have been aware of him (or, by inference, of

any competitor of his) and had him in mind when he registered the Domain Name. Therefore, the Complaint fails.

For the sake of completeness, the Expert also agrees with the Respondent on the other matters raised, which are all in any event subsidiary to the finding as to lack of intent. There is no basis whatsoever under the Policy for an assertion that having a United Kingdom residence gives any priority in terms of entitlement to register a .co.uk domain name. Even if it somehow did so, it on its own would not make such a registration unfair on the part of a non-UK based individual. Furthermore, trading in domain names for profit and holding a large portfolio of domain names are expressly recognised under the policy (para 4.d) as being of themselves lawful activities, and failure to agree a price in a commercial negotiation is not unfair. The Complainant may well feel that the Respondent is asking for more than he is prepared to pay – no doubt the Respondent holds the opposite view. However, that does not mean the Respondent is acting unfairly. Finally, the Complainant's inability to register the .uk equivalent domain name is merely a function of Nominet's rules, given the Respondent's registration of the Domain Name, and not an unfair action on the part of the Respondent. The Complaint therefore fails.

## **7. Decision**

The Expert finds that the Complainant has Rights in the name or mark Daynes which is identical to the Domain Name. However, the Complainant has failed to establish that the Domain Name in the hands of the Respondent is an Abusive Registration. The Complaint therefore fails. The Expert directs that the Domain Name remain registered in the name of the Respondent, and that no action be taken.

**Signed ... Bob Elliott**

**Dated 1<sup>st</sup> June 2016**