

## **DISPUTE RESOLUTION SERVICE**

**D00017452**

**Decision of Independent Expert**

**Opus Energy Group Limited**

and

**NUR Company**

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

Complainant: Opus Energy Group Limited  
Lambourne House, 311-321 Banbury Road  
Oxford  
OX2 7JH  
United Kingdom

Respondent: NUR Company  
10 Union Drive  
London  
E1 4PG  
United Kingdom

### **2. The Domain Names:**

- a) opusenergyservices.uk; and
- b) theopusenergy.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 a such a nature as to call into question my independence in the eyes of one or both of the parties.

10 May 2016 10:22 Dispute received  
10 May 2016 14:52 Complaint validated  
10 May 2016 14:56 Notification of complaint sent to parties  
27 May 2016 11:42 Response received  
27 May 2016 11:43 Notification of response sent to parties  
02 June 2016 02:30 Reply reminder sent  
09 June 2016 09:45 No reply received  
09 June 2016 09:46 Mediator appointed  
14 June 2016 12:49 Mediation started  
14 June 2016 15:36 Mediation failed  
14 June 2016 15:40 Close of mediation documents sent  
24 June 2016 02:31 Complainant full fee reminder sent  
27 June 2016 12:53 Expert decision payment received

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

The Complainant is a business that has been operating in the energy sector since 2002 and has various UK national and EU registered trade marks incorporating its OPUS ENERGY name. Its online presence uses the [www.opusenergy.com](http://www.opusenergy.com) website address.

On 29 November 2015 the Respondent registered the Domain Names and they were subsequently 'parked' on website pages containing sponsored links and offering the Domain Names for sale at £3,999 and £7,999 respectively.

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

##### **Complaint**

In its Complaint, the Complainant submitted as follows:

1. It is one of the UK's leading independent energy suppliers having been formed in 2002.
2. It owns the following registered trade marks for or including the mark "OPUS ENERGY", the earliest registrations dating back to 2012:
  - a. UK trade mark no. 2617512 for OPUS ENERGY;
  - b. UK trade mark no. 3022328 for OPUS ENERGY and device;
  - c. UK trade mark no. 2617507 for OPUS ENERGY and device;
  - d. EU trade mark no. 10807345 for OPUS ENERGY and device;
  - e. EU trade mark no. 10807386 for OPUS ENERGY; and
  - f. EU trade mark no. 12145652 for OPUS ENERGY and device;
3. The Complainant's group has offered an increasing range of services in the energy sector since 2002, initially focusing on supplying small-to-medium-sized enterprises with electricity before expanding its offering to larger corporate customers in 2006. In 2009 the Complainant's group started to supply gas,

and in 2011 the Complainant launched its renewables division, purchasing power from UK renewable generators. In 2016, the Complainant's group supplies energy to approximately 260,000 business sites.

4. It has received multiple awards, including the prestigious 'Independent Energy Supplier of the Year' award in 2010, and thereafter consistently earned a prominent position in 'The Sunday Times HSBC Top Track 250 League' in 2011, 2012 and 2013.
5. It is the first independent energy supplier to break into the "Big Six" territory, and has plans to become the third biggest supplier over the next four years.
6. Its online presence is based at [www.opusenergy.com](http://www.opusenergy.com) which, according to analysis by 'W3bin', receives approximately 1,952 visitors a day which is over 712,000 a year.
7. It consistently uses its trade marks on the website.
8. The registration of the trade marks identified above in conjunction with consistent use of those marks by the Complainant has afforded it significant and recognisable goodwill and reputation in OPUS ENERGY.
9. The Respondent has appropriated the Complainant's entire trade mark OPUS ENERGY as the dominant element in both Domain Names. The Respondent has included the small addition of 'the' in one and 'services' in the other, and such additions do not distinguish the Domain Names from the Complainant's OPUS ENERGY trade marks.
10. On the internet, the confusion between the Domain Names and the Complainant's OPUS ENERGY trade marks is enhanced because the Complainant's own website uses the domain name 'opusenergy.com' whilst the Domain Names are 'theopusenergy.co.uk' and 'opusenergyservices.uk'.
11. Both Domain Names are identical and, if not that, then at least highly similar to the Complainant's registered trade marks for and including OPUS ENERGY.
12. The registration and use of the Domain Names take unfair advantage of the goodwill and reputation in the Complainant's OPUS ENERGY marks and are likely to cause detriment to it through loss of traffic and consumer confusion.
13. The Domain Names in the hands of the Respondent are both Abusive Registrations as defined in the DRS Policy. In particular, the Domain Names:
  - a. have been registered for the purpose of selling, renting or otherwise transferring the Domain Names 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 Names, contrary to 3(a)(i)(A) of the Policy. In particular:
    - i. the Domain Names both resolve to webpages consisting of sponsored links. Screenshots taken on 4 May 2016 state that the Domain Names are offered for sale – [theopusenergy.co.uk](http://theopusenergy.co.uk) is offered at "7999 GBP" whereas '[opusenergyservices.uk](http://opusenergyservices.uk)' is being offered at "3999 GBP";
    - ii. these prices are significantly above the market prices that the Respondent would have paid for them;

- b. are being used in a way which is likely to confuse people or businesses into believing that the Domain Names are registered to, operated or authorised by, or otherwise connected with the Complainant, contrary to 3(a)(ii) of the Policy. In particular:
  - i. the Domain Names are intended to drive traffic to the Respondent's sites, which can only reduce the volume of traffic being directed at the Complainant's website offering its services;
  - ii. the Respondent's appropriation of the Complainant's entire trade mark OPUS ENERGY as the dominant element in both Domain Names can reasonably be for no other purpose than to create a connection with the Complainant;
  - iii. use of the Domain Names is likely to lead to a connection with the Complainant. The DRS adopts the approach taken by the Court of Appeal in *BT v One in a Million* [1999] 1 WLR 903, that Internet users who search online may assume, because of the similarity of a domain name to a well-known trade mark, that the registrant is in some way associated with the trade mark owner. English courts have held that mere registration of a domain name can constitute unfair use for the purposes of trade mark infringement and passing off;
  - iv. the DRS Experts' Overview has said that there "*is bound to be a severe risk that an Internet user guessing the URL for the Complainant's web site will use the domain name for that purpose*" (Paragraph 3.3 of the DRS Experts' Overview) and the same is true of an Internet user who finds the domain on a search engine. That is precisely the case here. When an internet user clicks on a link for either of the websites to which the Domain Names resolve containing the words "OPUS ENERGY", or enters it into a browser directly, there is a reasonable assumption that they will be taken to be a website that is owned or controlled by, or at the very least connected to the Complainant;
  - v. the Domain Names may be used for the purposes of sending emails from addresses ending with either @opusenergyservices.uk or @theopusenergy.co.uk, and there is a real risk that such practice may be used to mislead the public that those emails originate from the Complainant, when that is not the case; and
- c. the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well-known names or trade marks in which the Respondent has no apparent rights and the Domain Names are part of that pattern, contrary to 3(a)(iii) of the Policy. In particular:
  - i. the Respondent has not only registered the two Domain Names but has also registered the domain names below that correspond to the Complainant's well-known earlier trade marks for OPUS ENERGY:
    - 1. opusenergy.website;

2. opusenergy.global;
- ii. the Respondent has registered the following domain names which correspond to well-known names or registered trade marks in which the Respondent has no apparent rights:
    1. thebritishgas.co.uk;
    2. britishnaturalgas.website;
    3. britishnaturalgas.online;
    4. britishnaturalgas.global;
    5. britishgas.global;
    6. britishnaturalgas.uk;
    7. britishnaturalgasservices.co.uk;
    8. thebritishnaturalgas.co.uk;
    9. theeonenergy.com;
    10. eonenergy.info;
    11. thedongenergy.com;
    12. myeonenergy.com;
    13. eonenergy.global;
    14. myeon.uk;
    15. theeon.uk;
    16. theeonenergy.co.uk;
    17. theeon.co.uk;
    18. myeon.co.uk; and
  - iii. these domain names correspond to well-known names or trade marks owned by British Gas (Centrica Plc), E.ON UK Plc and the Complainant. The Respondent has no connection whatsoever with these third parties and no rights to these names. Given the nature of the domain names in question it is beyond the realms of possibility that the Respondent has legitimate interests in these domain names. Given that all of these brands are separately owned by companies in the energy sector, this further illustrates that the Respondent is engaging in a pattern of abusive behaviour.

14. None of the factors in paragraph 4 of the Policy apply to the Respondent's registration and use of the Domain Names to negate the finding that the Domain Names are Abusive Registrations.

### **Response**

A Response in the form of an email from Mr Mohammad Nurunnabi on behalf of the Respondent, NUR Company, was received by Nominet.

NUR Company appears to be a trading name of Mr Nurunnabi and for the purposes of this decision I am drawing no distinction between Mr Nurunnabi and NUR Company and treating them as being one and the same.

Most of the Response is not so much a response to this particular DRS complaint but rather more in the nature of a general rant against Nominet, the DRS process and the general trade mark and domain name registration rules and regulations. I have summarised below the points made by the Respondent in the Response:

1. He is engaged in research and the business of IT solutions in the UK.
2. He has a few collections of domain names placed in auction markets which are a part of his business and research.
3. He has been engaged in research since 1993 in IT related topics such as:
  - a. pattern recognition,
  - b. ANS – artificial neural system,
  - c. fuzzy logic/system,
  - d. simulation,
  - e. manipulation,
  - f. spatio-temporal pattern,
  - g. bidding,
  - h. digital market,
  - i. e-business,
  - j. recursion,
  - k. algorithm development to site manipulation,
  - l. ICT policy,
  - m. threats,
  - n. traffic policy & performance,
  - o. response time, and
  - p. real time threats.
4. He has accounts with a few domain name registration groups as well as auction sites. The Domain Names were placed with those sites where he could delete them and were not listed with any where he would be obliged to sell them. They were listed in order to make findings relating to his research work and he would be very glad to share more information regarding his research work with the Complainant.
5. He questioned who Nominet is, asking whether it is "*the Government of the IT world*", a court or a regulatory body and whether it has published its regulations on any public website rather than only on its own website. He asked who has authorised Nominet as he could not find that information on Nominet's website.

6. He says the Nominet DRS process requires him to learn Nominet's software technology just to provide his Response to the Complaint which is "*completely wasting of my time*" and a complex situation for the general public.
7. He questions if there is any restriction against registering any domain name and whether Nominet has a defined geographic territory. In particular, he asks if he is only being contacted by Nominet about the Complaint because he is based in the UK and what it would do if he was outside the UK in another corner of the world with a business using the OPUS name.
8. He asks why, when the Domain Names are very important for the Complainant, they were still open to register in the market. He believes it should be the Complainant's responsibility to keep safe their property.
9. He can provide many examples of websites operating businesses with the name "OPUS" and asks what action the Complainant has taken against them and why they have decided to make this DRS complaint now.
10. "OPUS" is a technical term of 'audio activation tools' and it is definitely a public word. He questions how such a term can be registered as a trade mark for any individual group and believes that if Nominet is the regulatory body it should prevent such rights being acquired.
11. He believes that as the Complainant has sufficient money it should instead create its own name and brand and not take advantage of public words for free which should always be available for use by the general public. The same applies for the others mentioned in the Complaint, British Gas and E.ON Energy. No individual should be able to register public words like JESUS, GOD, VOGOBAN, BRITISH, ENERGY, OPUS, ON, ALLAH, GAS, ELECTRICITY, WORLD, NATURE, COLOR etc.
12. If it is allowed for an individual to register such words then he asks where that leaves his rights and those of the public if they cannot say or pronounce those words because they are owned by someone else.
13. The Domain Names are not even domains for the Respondent but just Uniform Resource Locators for the Respondent only. (I am unsure what point Mr Nurunnabi was trying to make by drawing a distinction between the Domain Names as such and their respective associated URL website addresses to which they might resolve).
14. The Complainant has only complained about the two Domain Names and are not concerned by others and he asks why not. (I assume Mr Nurunnabi is here referring to the 'opusenergy.website' and 'opusenergy.global' domain names he has also registered which were identified by the Complainant in the Complaint and which are not within Nominet's .uk domain name DRS jurisdiction).
15. When he did a search on the '1and1' and 'godaddy' websites they offered to register free domain names for him and that means somebody or some business groups are making money by selling them. He asks why Nominet and the Complainant are not thinking about that.
16. He believes that due to a lack of proper policies no single word is now free to use as all single words or suitable words have been registered by someone

which leaves nothing for the next generation who will be left having to pay more and more due to Nominet's negligence.

17. Cyveillance.com contacted him on behalf of British Gas. He asked them a few questions and to provide proof of their authority or their client's authority but they did not reply.
18. He had no intention to hold onto the Domain Names but has been planning for a "few more" for his research as it is clear that the Complainant has no issue over any other similar domain names. He suggests that if the Complainant is threatened by them it could obtain them for the market price or it can contact him directly or via mediation to negotiate the price or it can make an offer as it obviously believes them to be very valuable. He hopes the Complainant will understand that he incurred costs in relation to them.
19. He then says that the Complainant can obtain all of the domain names for just the registration fee if it leaves him to maintain them through his controlling account. Alternatively he says the Complainant can have the two Domain Names as a free gift from him if the Complainant makes an appointment for a courtesy meeting to be held between him and the Complainant's main shareholder.
20. His Response is intended to raise a voice for his "*little research activities*" and he believes there should be proper policies to stop or prevent IT frauds and domain broker frauds, which his research has found examples of. He believes he is not a threat to the Complainant or to others but he has found other groups or companies who are trading and doing business with similar domain names. He hopes that Nominet will find them and is well versed in the procedures to claim trade mark infringement in order to protect the Complainant's rights.
21. It would be better to stop the sellers of such domain names who are making money out of it due to a lack of proper policies, but if someone is allowed to buy a domain name then that person should be allowed to use it.
22. Whatever the issues, he apologises for any inconvenience but asks Nominet to provide proof of its authority as it is working for the Complainant.
23. He ended his Response by confirming that a "*Summary Copy*" of it would be sent to:
  - a. *"Mr David Cameron, The Prime Minister, UK;*
  - b. *Ms Rowshan Ara , Member of Parliament, Bethnal Green and Bow;*
  - c. *Authority, Ministry of ICT, UK;*
  - d. *Authority, IPO (Intellectual Property);*
  - e. *The Press;*
  - f. *The Times;*
  - g. *The Sunday;*
  - h. *The Guardian;*
  - i. *The Evening Standard;*
  - j. *BBC;*



- k. *Sky News*;
- l. *CNN*;
- m. *Channel I*;
- n. *ATN Banlga*;
- o. *NTv*;
- p. *Z News*;
- q. *Channel S*;
- r. *1and1*;
- s. *Godaddy.com*;
- t. *Google.com*;
- u. *Yahoo.com*;
- v. *Sedo.co.uk*;
- w. *msn.com*;
- x. *live.com*;
- y. *sky.com*; and
- z. *All Research Forum, IT & ICT Forum (IEEE, BCS)*".

The Complainant did not submit any Reply.

## **6. Discussions and Findings**

### **General**

In order to succeed the Complainant must prove, on the balance of probabilities, two matters, i.e. that:

1. the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
2. the Domain Name, in the hands of the Respondent, is an Abusive Registration.

These terms are defined in the Nominet DRS Policy 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.
- **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 took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

Before dealing with the two issues of the existence of the Complainant's Rights and whether or not either or both of the Domain Names are Abusive Registrations, I would like to address briefly some of the more general points made by the Respondent throughout the Response.

Firstly, the Respondent questions who or what Nominet is and what role it plays in this process. No doubt he has visited and read Nominet's website which explains that it is the domain name registry in the UK responsible for all .uk, .cymru, and .wales top-level domains. As part of that role, it provides a Dispute Resolution Service (DRS) to resolve all .uk domain name disputes. Anyone based anywhere in the world who registers or acquires any .uk domain name agrees as part of the relevant terms and conditions to be subject to the jurisdiction of the DRS. But whenever the DRS is invoked by a complainant filing a complaint, Nominet itself does not act on behalf of either the complainant or the respondent in the process.

Secondly, the Respondent challenges the right of anyone to register a known word like OPUS as a trade mark. The Nominet DRS system is not the place to make such a challenge as the regulatory framework dealing with registration of trade marks and, in particular, what can and cannot be registered as a trade mark is set down in the relevant UK Act of Parliament and EU Directives. Suffice to say that the Complainant has in fact been successful in registering its various OPUS ENERGY national UK and EU trade marks.

Thirdly, the Respondent opines that if the Domain Names are so important for the Complainant then it had a responsibility to have registered them first and, because it did not do so and the Respondent did, he should be free to use them without further interference. There is no obligation on anyone to register any or all domain names corresponding to names in which they have prior rights. There may be very good reasons to do so, not least to prevent situations like this occurring, but it is generally impractical to register every possible variation that a third party like the Respondent may decide to register. But merely because one is able to register an available domain name, that does not extinguish or override the rights of others who have existing prior rights in relation to the relevant name. The need to deal with such occurrences is why the DRS exists.

### **Complainant's Rights**

The Complainant has provided ample evidence of its registered trade mark rights in OPUS ENERGY and its common law rights through its extensive use of OPUS ENERGY as the name of its energy related business since 2002. The existence of those rights was not challenged by the Respondent.

In the circumstances, I find that the Complainant has proved on the balance of probabilities that it has Rights in the name OPUS ENERGY for the purposes of the DRS. That name is clearly identical or similar to each of the Domain Names, one

of which merely adds the descriptive term "services" at the end of OPUS ENERGY and the other just adds the word "the" in front of it.

### **Abusive Registration**

The Complainant points to several parts of Paragraph 3 of the DRS Policy which sets out a non-exhaustive list of factors which may be evidence that the Domain Names are Abusive Registrations. In particular, it relies on the following:

Paragraph 3(a)(i)(A) of the DRS Policy which states as follows:

*"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;"*

The Respondent did not approach the Complainant offering to sell the Domain Names to it and there is no evidence before me that he made any such approach to any competitor of the Complainant. Instead, he simply parked them offering them generally for sale at relatively substantial prices and gaining 'click through' income from sponsored link advertisements in the meantime.

However, the fact that both Domain Names contain both elements of the Complainant's OPUS ENERGY name means that they can likely only be of real interest to either the Complainant or one of its competitors and the Respondent must have known that at the time of registering them and then offering them for sale. Despite the Respondent's claim to have registered and be using them for his research, which he does not explain any further, it is much more likely that he was just sitting back waiting for an approach to be made by the Complainant.

I note in his Response that the Respondent invites the Complainant to make an offer to buy the Domain Names at market price. He also suggests that it can have them for their basic registration fee as long as control of them remains with him, which is hardly likely to be of interest to the Complainant for obvious reasons. His third suggestion was that the Respondent can have them for free on condition the Complainant's main shareholder makes an appointment with him to hold "*a courtesy meeting*". That invitation is made against the back drop of the Respondent also having registered other similar domain names (opusenergy.website and opusenergy.global) that are not included in this complaint because they do not fall within the jurisdiction of the Noiminet DRS.

I note that the DRS mediation process was unsuccessful having started and finished on the same day so it would appear that the Complainant was not interested in any of the Respondent's suggestions and chose instead to proceed with its current complaint. I can understand the Complainant's position in that regard.

Paragraph 3(a)(ii) of the DRS Policy which 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 Domain Names have been used to resolve to a parking site offering them for sale and gaining click through income. The Complainant says this can only lead to the sort of confusion envisaged by paragraph 3(a)(ii) of the DRS Policy and points to paragraph 3.3 of the DRS Experts' Overview. The Experts' Overview is there to assist all participants or would-be participants in disputes under the DRS Policy by explaining commonly raised issues and how the DRS Experts have dealt with those issues to date and to draw attention to areas where Experts' views differ.

Paragraph 3.3 of the DRS Experts' Overview includes the following:

*"Commonly, Internet users will visit web sites either by way of search engines or by guessing the relevant URL. If the domain name in dispute is identical to the name of the Complainant and that name cannot sensibly refer to anyone else, there is bound to be a severe risk that a search engine, which is being asked for the Complainant, will produce high up on its list the URL for the web site connected to the domain name in issue. Similarly, there is bound to be a severe risk that an Internet user guessing the URL for the Complainant's web site will use the domain name for that purpose.*

*In such cases, the speculative visitor to the registrant's web site will be visiting it in the hope and expectation that the web site is a web site "operated or authorised by, or otherwise connected with the Complainant." This is what is known as 'initial interest confusion' and the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration, the vice being that even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant, the visitor has been deceived. Having drawn the visitor to the site, the visitor may well be faced with an unauthorised tribute or criticism site (usually the latter) devoted to the Complainant; or a commercial web site, which may or may not advertise goods or services similar to those produced by the Complainant. Either way, the visitor will have been sucked in/deceived by the domain name."*

I agree with the above views expressed at Paragraph 3.3 of the Experts' Overview and would add that they also apply where, as in this case, the Domain Names are not quite identical to the name of the Complainant because they also include additional descriptive matter but still cannot sensibly refer to anyone else.

Paragraph 3(a)(iii) of the DRS Policy which states as follows:

*"The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern";*

The Complainant relies on a number of other domain names held by the Respondent, two of which relate to the Complainant's name and 18 of which relate to the names of two other very well-known energy companies, being British

Gas and E.ON. All were registered by the Respondent on 29 November 2015. That is clearly a pattern of registrations of the sort envisaged by Paragraph 3(a)(iii) of the DRS Policy and the Domain Names are part of that pattern.

The Response from the Respondent does not take issue with the detail of the Complaint and in my view both Domain Names are clearly Abusive Registrations in the hands of the Respondent. Indeed, the Respondent seems positively to acknowledge that the Domain Names are rightly the property of the Complainant when he states *"Theopusenergy.co.uk, opusenergyservices.uk: When these are very important for the complainant then why were those open to register into market? It should be their responsibility to keep safe their property!"*

## **7. Decision**

For the reasons outlined above I find that the Complainant has proved, on the balance of probabilities, that it has Rights in respect of a name or mark which is identical or similar to each of the Domain Names and that the Domain Names, in the hands of the Respondent, are Abusive Registrations.

In the circumstances I order that the Domain Names be transferred to the Complainant.

**Signed: Chris Tulley**

**Dated: 21 July 2016**