

Dispute Resolution Service DRS 25766

Decision of Appeal Panel

Quick Credit Limited

and

Quick Loans Ltd

1. Parties

Lead Complainant:
Quick Credit Limited
82 Dartmouth Park Hill
London
N19 5HU
United Kingdom

Complainant:
Mr Michael Toth
[address redacted for privacy]

Complainant:
Mr Jim Davies
[address redacted for privacy]

Respondent:
Quick Loans Ltd
Ground Floor
28 Peel Street
Barnsley
S70 2QX
United Kingdom

2. The Domain Name:

The domain name in dispute is quickquid.co.uk (the “Domain Name”).

3. Procedural History

This is an appeal against the decision of Niall Lawless (the “Expert”) issued on 19 July 2023 in favour of the Respondent.

For convenience the Panel will continue to refer to the parties as the “Complainants” and the “Respondent”.

4. The Nature of This Appeal

This Complaint and Appeal fall to be determined pursuant to Nominet’s Dispute Resolution Service Policy, version 4 (the Policy). Definitions used in this decision have the same meaning as set out in the Policy unless the context or use indicates otherwise. In accordance with paragraph 20.8 of the Policy, the Panel has considered the Appeal on the basis of a full review of the matter and a re-determination on the merits. In doing so, it has taken into account the persuasive value of previous appeal decisions (pursuant to paragraph 20.12 of the Policy) and has drawn on relevant sections of the Experts’ Overview (version 3) published on Nominet’s website.

5. Formal and Procedural Issues

There are no outstanding formal or procedural issues.

6. The Facts

It is convenient to state at this stage that both the Complainants and the Respondent have introduced into this proceeding a large amount of material that seems to the Panel to be entirely irrelevant. They have also done so in terms that are intemperate and which have led to heated debate. There is by way of example a large amount of material that has been generated as a result of it emerging that Mr Wingate (who controls the Respondent – see below) as a matter of course records all telephone conversations he receives on his mobile telephone. Both Mr Davies and Mr Wingate have introduced material which is said in one way or another to cast aspersions on what the other has said or done. The Panel has not found this material of assistance and does not think it is necessary to analyse it for the purposes of this decision. The Panel proposes to confine its analysis to matters which are directly relevant to the Policy and its application to events directly concerning the Domain Name.

Mr Davies is a solicitor and holds himself out as being an expert on legal matters relating to domain names. Mr Toth is a businessman with experience of investing in domain names. Mr Toth appears to have had little active involvement in the relevant events. Mr Graeme Wingate is a businessman who also has substantial experience of dealing in domain names. He has also been active over many years in the field of providing short term unsecured loans to borrowers (colloquially referred to as “pay day loans”). One company that Mr Wingate controls is the Respondent, Quick Loans Limited. It is in the business of providing short term unsecured loans.

The Domain Name was originally registered by CashEuronet UK, LLC which was a company that was very active in the field of providing short term unsecured finance in the UK. In 2022 it ran into financial difficulties and was placed into administration. The firm of Grant Thornton were the appointed administrators. One of the assets CashEuronet LLC controlled was its registration of the Domain Name.

In early 2023 Mr Wingate became interested in the possibility of acquiring the Domain Name for use in connection with his business interests. It appears to be the case that following a conversation with Mr Toth he was introduced to Mr Davies. He had at least one conversation on the telephone in January 2023 with Mr Davies about routes that could be explored to obtain the Domain Name including the possibility of filing a DRS Complaint. There are various disputes about these events including as to the exact capacity Mr Davies was acting in, and as to what precisely was said in the conversation(s) in question.

In any event Mr Wingate, on 22nd February 2023, arranged for his company, Quick Loans Limited, to file a DRS Complaint about the Domain Name. This was prepared without any direct assistance from Mr Davies (although Mr Davies says that it drew upon advice he had provided during the January telephone call mentioned above). This complaint became Nominet case D00025512 and in due course resulted in a summary decision which was dated 6 April 2023 (but it would seem was not published until a few days later). That decision transferred the Domain Name to Quick Loans Limited. In doing so the expert stated "I have decided in favour of the Complainant on the balance of probabilities as the Complaint is undefended and the Complainant has referred to previous customer confusion, suggesting that the Domain Name has been used in a field similar to that of the Complainant. However, the Complaint is weak and the assertions by the Complainant are largely unsupported by evidence. If the Complaint had been contested this lack of evidence could have counted against the Complainant". On 25th April 2023 pursuant to the decision in this case the Domain Name was transferred to the Respondent.

However whilst this decision was pending matters as between Mr Wingate, Mr Toth and Mr Davies had advanced. It does not appear to be disputed that following various conversations between them, Mr Davies sent an email to both Mr Wingate and Mr Toth dated 7 March 2023. As this email is at the heart of the present complaint it is appropriate to set it out verbatim:

"Guys

We have spoken on a few occasions about this domain and the company behind it.

My understanding is that there are a number of people interested in securing the domain name. I also understand that, after I spoke with Graeme, you filed a DRS yourself. I am told that more than one DRS has been filed for this domain.

There are a number of things that I think I could help you with to get the name. Before I do that, I want the basis of the arrangement to be clear between all three of us.

I am happy to make approaches to the administrator to try to secure various assets of the company that is behind the domain name that is either in the latter stages of administration or is in the process of being struck off. If that does not work, I will review and if necessary (and if possible) revise the DRS that has been filed by Graeme.

If we are able to buy either the domain or anything else of value from the administrator, between you, you will pay up to £10,000 for them. If the price is higher, we will discuss and decide what to do.

If we secure the domain name or any other related assets, we will take them in three equal shares. It may well be that the way to do that would be to form a company and take 1/3 of the shares each. I don't want to get bogged down worrying about how that is done at this

point, as it is hypothetical, but as long as there is a clear agreement about the shares that is what we need at this point.

Please let me know what you are thinking, before I take any steps to try to secure the name. Best wishes”

Mr Wingate replied the same day as follows:-

“Hi Jim

The other people who possibly raised the issue of DRS may not have filed one. I've never been able to get to the bottom of it, Over the last few days I'm starting to doubt anyone else has filed anything other than myself. I'll get to the bottom of it within the next day or two. In principle I'm happy with the 1/3 split idea. My personal thoughts are that it's worth 100k at least. Whether we'd split it or run it ourselves as an ongoing thing we can discuss. I bought the Cheque Centre domain name and it wasn't a 5th of the size of Quick Quid, it's probably already recouped 100k in 3 years. I know [redacted for privacy reasons] makes a fortune from [redacted for privacy reasons] it was offline for 3 years before he bought it after it dropped, [redacted for privacy reasons] is another. There is no ongoing cost to running it as a going concern. I'd say this would bring in about 10-15k a month at a guess. So there would be question of whether or not you two wanted a quick sale or wanted to ride it for a long term income. I'm happy with what the majority would want to do. It's a detail thing for later. In principle I'm happy with the 3 way split on whatever we can get from the name. Yep thumbs up from me.

Cheers Graeme”.

There were then some further email exchanges in which Mr Wingate suggested paying as much as £20,000 if necessary. Mr Toth then replied later the same day stating:

“Sorry being in a meeting all day.

I'm happy with the split.

I'm also happy to go with the £20k Graeme wants to offer.

Now back in office.

Michael”

The Complainants rely upon these email exchanges as being of contractual effect and say various consequences follow (see below).

On 10 April 2023 Quick Credit Limited (company number 14790877) (“Quick Credit”) was created. The shareholders were Mr Davies, Mr Toth and Mr Wingate.

On 11 April 2023 Quick Credit filed a trademark application for QUICKQUID. It appears that the Respondent has filed an opposition to this trade mark and proceedings in the Trade Mark Registry are pending.

During this Appeal proceeding, attempts to reach any content at quickquid.co.uk lead to an error condition.

7. The Parties' Contentions

The Panel does not feel it necessary to set out in full here the parties' contentions at first instance. They are set out by the Expert in his decision of 19 July 2023. The essential points that the parties make (including those made in the formal Appeal Notice and Response) are as follows.

Complainants

The Complainants say they have rights in the term "quickquid" and/or the Domain Name by virtue of the contractual arrangements they say arise out of the exchange of emails on the 7 March 2023 (above). They say that the Respondent's continuing retention/use of the Domain Name is abusive because pursuant to these contractual arrangements Mr Wingate should have caused the Respondent to transfer the Domain Name to the Complainant Quick Credit Limited (which was a company that was formed to give effect to the contractual agreement) and he has failed to do so. They invoke several different paragraphs of the Policy describing grounds for finding Abusive Registration, but all are effectively summarised by the previous sentence.

Respondent

Of some importance is the fact that the Respondent accepts that the email exchange of 7 March 2023 does result in a binding contract. This is quite clear from the Response – for example it contains the following statements: "Mr Toth had misled Graeme Wingate when they entered into the March 7th contract with him" and "Mr Wingate did enter into an agreement with Mr Toth and Mr Davies on the 7th of March. He did not enter into a contract with Quick Credit Ltd. Arguments Mr Toth and Mr Davies have about rights of that agreement being transferable into a new entity before any due diligence is done by Quick Loans Ltd are themselves up for debate in Civil Court".

In essence however what the Respondent says is that Mr Wingate was misled as to various matters which led him into entering into this contract, and then Mr Davies failed to perform his obligations under the contract in question. The Respondent in effect says that if it was under any obligation to transfer the Domain Name (and it is unclear to the Panel whether the Respondent accepts this was the effect of the contract) that obligation has come to an end because of the misrepresentation and/or the breaches of contract. The Respondent protests that the matters in dispute should be determined by a court and not under the Policy. The Respondent requests a finding of Reverse Domain Name Hijacking.

8. Discussion and Findings

The Panel considers that this case is best approached by considering whether it is suitable for resolution pursuant to the Policy at all. At the heart of the case is a contract (or alleged contract) whose terms are in material respects unclear (see below), where the Respondent's controlling shareholder in effect says that actionable misrepresentation(s) led him to enter into the contract, and where it is alleged that parties to that contract have failed to perform their obligations under the contract.

The Nominet DRS Policy is not intended to deal with complex contractual disputes. This issue is addressed at section 1.6 of the Experts Overview (version 3) as follows:

“1.6 Can a contractual right constitute a right within the definition of Rights?

Yes it can. A specific example of this is given in the Policy at paragraph 3(a)(v) [note that this is a reference to an earlier version of the Policy – the relevant section is now 5.1.5]. However where the right is disputed and/or the surrounding circumstances are particularly complex, the complaint may nevertheless be rejected as not being appropriate for adjudication under the Policy. See the Appeal decision in DRS 04632 (ireland.co.uk), which was just such a case. This decision reviews all the previous DRS cases involving contractual rights. See also the Appeal Decision in DRS 16584 (polo.co.uk)”

The Appeal decision in DRS 04632 (ireland.co.uk) provides further detail as to the relevant principles:

“Nominet describes the DRS as a cheap, fair and quick way of dealing with these disputes as an alternative to the court system which is too expensive and difficult.

This presupposes that the DRS is capable of providing a fair result in the cases contemplated. The members of the Panel consider that the parties in this case may well have entered into a contract in respect of the Domain Name so that in refusing to transfer the Domain Name to the Complainant the Respondent is in breach of contract. But the members of the Panel each recognise that they were not appointed as experts in the law of contract. This Panel happens to comprise three experienced Intellectual Property lawyers. Their experience outside that specialist field is variable. A significant minority of the body of Experts are not lawyers at all.

Although it may be said that at first sight the contractual issues in the case are apparently straightforward, the dispute between the Complainant and the Respondent has raised a number of contested legal issues. These concern questions such as jurisdiction, was a binding and enforceable contract entered into, where was any contract made, what is the proper law of the contract, what are the terms of any contract, and what statutory provisions might govern the enforceability of the contract.

The members of the Panel are not in a position to come to a clear view on the contractual issues. The Panel is well aware that other Experts will be at least as uncomfortable on the topic. Had Nominet contemplated that pure, possibly complex, contractual disputes would fall to be resolved under the Policy, its system for selecting and appointing Experts to cases would have been very different and the procedure for dealing with the disputes more comprehensive than the simple paper-based system it is.

Moreover, the Complainant seems to assume that the natural consequence of a finding of breach of contract by a court will lead inexorably to an order for transfer of the domain name in issue. That is not so. A court might decide that the fair result should be a damages award. Yet, the only sanction available to the Panel is transfer (or cancellation). The Panel is not satisfied that in this case an order for transfer of the Domain Name would necessarily be the just result.

Even if specific performance of the contract were the just result, steps would have to be taken to ensure that the purchase price was paid over to the Respondent. Unlike a court, the Panel has no power to give any effective supervision to the enforcement of the contract.

For all the above reasons, the Panel is confident that pure contractual disputes of this kind are outwith the scope of the Policy. In all the circumstances, not only is the Panel unable to satisfy itself on the balance of probabilities that the Complainant has Rights but in any event it declines to allow the appeal”.

The present Panel considers the same approach is applicable to the present case. In fact the contractual issues in dispute in the present case are in many ways more complex than in DRS 04632. In the present case in order to reach a conclusion as to the merits of the cases advanced by each party it would be necessary for at least the following issues to be determined.

- Was there an actionable misrepresentation? The Respondent alleges that Mr Wingate was told in a telephone conversation with Mr Toth that Mr Davies knew the person at Grant Thornton dealing with the administration of CashEuronet UK, LLC and that this statement was untrue. Determining this point would involve reaching a conclusion on exactly what was said in the conversation in question, was it untrue and if so to what extent did Mr Wingate rely upon this conversation and with what result?
- Assuming there is a subsisting contract (which may itself turn out to be an issue which is in dispute and requires determining) what were its terms? In particular was there an obligation to place the Domain Name into joint ownership if the DRS complaint (which Mr Wingate had independently already launched) succeeded? It is far from clear to the Panel that this is the effect of the relevant wording.
- What precisely were the obligations upon Mr Davies and was he in breach of any of them? In particular (i) did he fail to deal with Grant Thornton in the manner apparently agreed, and (ii) was he required to do more work in relation to the already filed DRS complaint, and if so did he fail to do so? If he was in breach of his obligations what effect does that have on the contract and in particular does it entitle Mr Wingate to be released from any obligation he may have been under to transfer the Domain Name into joint ownership?

A proper resolution of these matters requires findings by an appropriate court, having had the benefit of applicable procedural steps such as service of formal statements of case, disclosure of documents, written witness statements, and a trial with detailed argument, oral evidence from witnesses and cross-examination. These are not steps that a Nominet Expert or Appeal Panel can deal with. Were an Expert or the Panel to attempt to do so it would in effect be substituting its own opinion on the likely merits for a properly reasoned decision of a court. It would be doing so in relation to matters that are not necessarily within the relevant expertise of the Expert or Panel. That is not appropriate in circumstances where the relevant contractual issues are at the heart of the case and are disputed.

Accordingly the Panel declines to address the merits of the Appeal. In doing so it makes no finding one way or another as to who is right and who is wrong. The Complainants if they wish to pursue this matter should do so before an appropriate court which will be able to reach a conclusion in this regard.

The Panel would add that its reasoning applies to both the question of Rights and the question of Abusive Registration since both issues turn on the contractual analysis. The Complainant's Rights are said to derive from the contract in question (see above). Even if the Complainants could show Rights by some other means (suppose for example that the pending trade mark application had been granted) the alleged Abusive Registration is based upon the failure to transfer the Domain Name pursuant to the same alleged contract obligation.

9. Reverse Domain Name Hijacking

Under the Policy, Reverse Domain Name Hijacking means using the DRS in bad faith in an attempt to deprive a Respondent of a Domain Name. The Appeal Panel concludes this is not a case where a finding of Reverse Domain Name Hijacking is appropriate. In circumstances where there is an underlying dispute as to the contractual issues as described above, and the Panel is not capable of determining that dispute, the Panel considers that it is similarly unable to reach a conclusion on whether or not the Complainants brought the complaint in bad faith.

10. Decision

Accordingly, the Panel declines to decide this Appeal. This has the same effect as the original Expert's finding that the Complainants did not have Rights, namely that the Domain Name remains with the Respondent. The Panel's decision is not made on the merits of the case as advanced by either party but because the present dispute is not suitable for determination under the Policy.

Signed
Nick Gardner

13 September 2023

Signed
Claire Milne

Signed
David King