

DISPUTE RESOLUTION SERVICE

D00011271

Decision of Independent Expert

DCM (Optical Holdings) Limited

and

Sasha Rodoy

1. The Parties:

Lead Complainant: DCM (Optical Holdings) Limited
The Ca' d'oro
45 Gordon Street
Glasgow
G1 3PE
United Kingdom

Respondent: Sasha Rodoy
London
United Kingdom

2. The Domain Name(s):

opticaexpressruinedmylife.co.uk

3. Procedural History:

27 April 2012 16:39 Dispute received
30 April 2012 07:55 Complaint validated

30 April 2012 08:00 Notification of complaint sent to parties
18 May 2012 02:30 Response reminder sent
23 May 2012 08:25 Response received
23 May 2012 08:26 Notification of response sent to parties
28 May 2012 02:30 Reply reminder sent
31 May 2012 09:20 Reply received
31 May 2012 09:24 Notification of reply sent to parties
31 May 2012 09:26 Mediator appointed
12 June 2012 14:26 Mediation started
25 June 2012 16:47 Mediation failed
25 June 2012 16:47 Close of mediation documents sent
05 July 2012 02:30 Complainant full fee reminder sent
06 July 2012 13:44 Expert decision payment received
13 July 2012 Mr Keith Gymer appointed as Expert

4. Factual Background

The Complainant, DCM (Optical Holdings) Limited was established in 1993. The company provides medical ophthalmic treatment services, including laser surgery and intraocular lens implants, and retail sales of optical goods under the OPTICAL EXPRESS name and mark through various subsidiaries.

The Complainant has a number of trade mark registrations for OPTICAL EXPRESS, including, by way of example, UK 2556901 dating from 2010 in classes 5, 9, 10, 35, 37 & 44.

The Complainant operates a website promoting its services at www.opticalexpress.co.uk.

The Respondent, Mrs Sasha Rodoy, is a private individual. She registered the Domain Name "opticalexpressruinedmylife.co.uk" under the alias "serendipity" on 19 April 2012.

5. Parties' Contentions

Complainant:

The Complainant asserts that it has rights in the name OPTICAL EXPRESS under its registered trade marks, and also under the common law relating to passing-off. It further claims that the law against defamation gives it rights to prevent use of the name in connection with disparaging statements.

The Complainant states that its name is associated with the highest standards of medical and ophthalmic care. Clinics operated by the Complainant and its subsidiaries in England and Wales are accredited by the Care Quality Commission (an entity responsible for checking whether hospitals, care homes and care services are meeting government standards). The Complainant's subsidiaries are fully registered with the General Optical Council (the UK regulatory authority

responsible for the registration of optometrists and dispensing opticians in the UK). The Complainant was a founding member of the Eye Laser Association (a group formed by various laser eye clinic operators to promote a code of best practice within the industry). All of the UK practising surgeons engaged by the Complainant and its subsidiaries are registered with the General Medical Council, the UK body responsible for regulating the medical profession. The Complainant and its subsidiaries additionally engage the services of an International Medical Advisory Board to ensure they maintain the highest standards in their clinical care.

Consequently, the Complainant alleges that the Domain Name is an Abusive Registration for a number of reasons:

- The allegation, implicit in the conjunction of “Optical Express” with the phrase “ruined my life” in the Domain Name “opticaexpressruinedmylife.co.uk”, that the Complainant’s services are not of appropriate standards, is defamatory in itself.
- The Respondent herself is known to have registered the domain name “optimaxruinedmylife.co.uk” (also under the alias “serendipity”). [Optimax is a competitor of the Complainant.] She has not been treated by the Complainant. Her registration of the Domain Name has therefore been made with the aim of damaging and disrupting the business of the Complainant and is part of a pattern of abusive registrations on that basis.
- Based on certain comments made in email correspondence (exhibited in evidence), the Respondent is seeking to “leverage benefits from the Complainant”.
- The Respondent is taking unfair advantage of the consumer recognition of the OPTICAL EXPRESS name, which has been generated by the substantial sums spent by the Complainant to promote the name.
- Non-English speaking internet users would be unlikely to differentiate the Domain Name from one registered and operated by the Complainant. There is a likelihood of internet traffic being diverted by “initial interest confusion”.
- The fact that (apparently, at the time the Complaint was filed) the Domain Name was only linked to a Registrar (ISP) holding page gave the impression that the Domain Name was available for sale.
- The Respondent is in breach of the Complainant’s Intellectual Property Rights and Nominet’s terms of registration.

Respondent:

The Respondent offered detailed observations in response, summarised as follows.

The Respondent states that she has personally suffered problems following Lasek refractive eye surgery conducted by Optimax (a competitor of the

Complainant). She has pursued legal action in that case and had previously registered the domain name “optimaxruinedmylife.co.uk” and set up a website inviting other patients with post-operative problems associated with laser eye surgery (by Optimax) to contact her.

She believes that many more patients suffer adverse effects following laser eye surgery than are admitted by the industry. She alleges that significant numbers of affected patients are kept quiet with “gagging orders”, following out-of-court settlements with the companies responsible.

The Respondent has contacted MPs and launched an e-petition to raise awareness of the apparent dangers of laser eye surgery and to call on the Government to legislate to impose more controls on the industry.

She was contacted by patients who had been adversely affected following laser eye surgery at Optimax and Optical Express clinics.

She had contact with a “troubleshooter” at the Complainant and originally agreed not to publicise complaints about the Complainant, so long as the Complainant was seen to be looking after its adversely affected patients. When she heard that the Complainant had hired a surgeon she believed had been responsible for problems when he was at Optimax, she considered that this deal was off.

She alleges that subsequently the Complainant sought to buy her silence.

As she was no longer able to quietly assist patients adversely affected by surgery at Optical Express clinics, she says she was urged to set up a companion site under the Domain Name “opticalexpressruinedmylife.co.uk” to match her original site at “optimaxruinedmylife.co.uk”.

The Respondent claims to know numerous patients who would challenge the Complainant’s statements about the quality of its services and some who are involved in legal proceedings with the Complainant. She points out that even at a 99 % success rate, the Complainant’s own statistics for over a million procedures would suggest that there may be thousands of adversely affected patients.

The Respondent confirms that she personally has never been a patient of the Complainant, but avers that she is legitimately speaking for others who have.

The Respondent denies seeking any personal benefit from the Complainant, notwithstanding the admitted postscript appended to one of her emails in correspondence with the Complainant: “I will consider a consultancy position as ‘advisor’ should you offer it ;)”.

She asserts that the Complainant’s claim for “initial interest confusion” is ridiculous. There is no risk of confusion because visitors will know they are visiting a criticism website.

She states that the Domain Name is not for sale, and had hosted patient's personal accounts of how their lives had been ruined by Optical Express surgery (apparently taken down after a complaint made by the Complainant to the hosting service provider).

The Respondent further quotes a selected extract from the Expert's comments in the earlier case DRS 08527 "ihateryanair.co.uk" in support of the incorporation of brand names in domain names in association with obviously critical phraseology.

Complainant's Reply:

The Complainant made a number of further submissions in reply, summarised as follows.

Regarding the content of the Respondent's website, the Complainant asserts that no website had been linked to the Domain Name by the date the Complaint was filed [8 days after the Domain Name was first registered]. Consequently, any use made by the Respondent after that date is irrelevant and has been implemented with the aim of defeating the Complaint.

The fact that the Respondent has not been a patient of the Complainant means she has no legitimate reason for holding the Domain Name, and this unfairly disrupts the business of the Complainant.

The Respondent has failed to provide further evidence – in triplicate (quoting DRS Procedure Paragraph 5(c)(vii)) – to support her various assertions regarding the numbers of affected patients and concerns expressed by others.

With a typographical error in the Reply, when plainly intending to refer to the Respondent, the Complainant notes "The Complainant [sic] is not medically qualified and as such not qualified to make judgements on the treatment provided by the Complainant. As such the Respondent is not in any case in a position to properly determine the effect that the Complainant has had upon the lives of its patients."

The Complainant then states that, after the date of the Complaint, allegedly "defamatory and actionable content" [which was not presented in evidence by the Complainant] was removed following a complaint by the Complainant to the website hosting service. The Complainant claims that the Respondent used her alias "serendipity" to create difficulties for the Complainant in identifying the source of this allegedly "defamatory and actionable content".

The Complainant maintains its assertions that the Respondent was seeking financial gain, apparently based on indications of what she would *not* accept to cease her activities against the Complainant.

The Complainant claims that, as it also offers services under the OPTICAL EXPRESS name in non-English speaking European countries, there is alleged risk of “initial interest confusion” because foreigners would be attracted by the Domain Name but “not able to decipher the content of any website made available through the Domain Name, nor the additional wording forming part of the Domain Name”.

Finally, the Complainant notes that, in DRS 08527 “ihateryanair.co.uk”, the complaint was upheld and that domain name was transferred. Further, the Complainant asserts that “ihate” is an expression of opinion, whereas the phrase “ruinedmylife” is a statement of fact, which is unproven and is defamatory in the context of the Domain Name.

6. Discussions and Findings

General

Paragraph 2 of the Policy requires that, for the Complainant to succeed, it must prove to the Expert, on the balance of probabilities, both that it has Rights in respect of a name or mark which is identical or similar to the Domain Name; and that the Domain Name, in the hands of the Respondent, is an Abusive Registration as defined in Paragraph 1 of the Policy.

Complainant’s Rights

The Complainant has plainly established rights in the name and trade mark OPTICAL EXPRESS.

The Domain Name is not identical. Although the Domain Name is written without spaces, to any person familiar with English, the distinctive element before the “.co.uk” is readily broken down into the sentence “Optical_Express_ruined_my_life”.

The addition of “ruinedmylife” to “opticalexpress” does not create an overall impression in the reader’s mind, which is independent of “Optical Express”. The Domain Name will still plainly be recognised as relating to and, to that extent, also similar to, “Optical Express”.

In the context of the DRS, therefore, the Expert considers that the Complainant has demonstrated Rights in respect of a name or mark, which is similar to the Domain Name.

Abusive Registration

The Complainant also has to show that the Domain Name is an Abusive Registration. Paragraph 1 of the Policy defines “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 took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

A non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration are set out in Paragraph 3a of the Policy.

These include

- 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; or
 - 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;
- iii. 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;
- iv. It is independently verified that the Respondent has given false contact details;

On the other side, Paragraph 4 of the Policy provides, *inter alia*, that:

- a. A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is as follows:
 - i. Before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under the DRS), the Respondent has:
 - ...
 - C. made legitimate non-commercial or fair use of the Domain Name; or
 - ...
- b. Fair use may include sites operated solely in tribute to or in criticism of a person or business.

It will be apparent that the Complainant has argued that the Domain Name should be considered as an Abusive Registration on several grounds analogous to those listed in Paragraph 3a, whilst the Respondent seeks to rely principally on a claim of fair use for criticism. These various respective grounds are discussed in more detail below.

The Complainant has firstly asserted that the Domain Name, in and of itself, is defamatory, because, as the Complainant declares, it and its subsidiaries “employ the highest standards in their activities” and that any allegation otherwise is “highly damaging”. In support of this assertion, it claims that the expression “ruined my life” is a statement of fact rather than an expression of opinion, and that this statement (as so made by the Respondent) is false, and that such is sufficient to make the Domain Name an Abusive Registration.

The Policy requires the Expert to determine whether registration or use of a Domain Name “took unfair advantage of or was unfairly detrimental to the Complainant’s Rights.” A defamatory statement in a domain name would arguably be “unfairly detrimental”, but defamation is a complex tort, typically requiring detailed evidence and examination to establish questions of truth or falsehood, motivation and damage. A determination of whether or not statements are legally defamatory would be beyond the scope of the DRS and properly a matter for the Court. The Expert, therefore, confines his assessment in this case to consideration of the issues of unfair advantage and unfair detriment.

The statement “X ruined my life” is likely to be perceived by any ordinary reader as an expression of an affected person’s opinion and, most probably, as an expression of some emotional hyperbole. As such, it is also likely to be viewed by any independent reader, with at least some initial scepticism, as being a possibly exaggerated, but nonetheless genuinely held, statement of personal feeling. What one person reasonably believes is a genuine expression of their feeling, another person may equally reasonably consider, from their perspective, to be unfair. People are entitled to differences of opinion, particularly on matters of personal feeling. On its own, the Domain Name may be taken as someone’s adverse opinion. The Respondent and the Complainant may disagree but, without detailed evidence, it is not possible to come to any independent conclusion as to the objective validity or otherwise of such a statement. In the circumstances, the Expert is not persuaded that the Domain Name can be intrinsically unfair.

No organisation, however high its standards, can avoid adversely affecting someone. There will always be dissatisfied customers and disgruntled employees. We all know that any medical procedure carries a risk. If there were no risks, and no adversely affected patients of surgery, there would be no need for any surgeons to worry about consent forms. The necessity, of course, is that patients should be giving informed consent after a proper explanation of the risks.

For patients who may find their eyesight adversely affected after laser eye surgery it is entirely understandable that, on a personal level, they may feel devastated. Eyesight is such an important sense for most of us. It may be that there is objectively a small risk with less than 1 % of patients experiencing any bad effects, but that will be small comfort if you are in that 1 %. It is only right that the highest standards of care should be expected from any business practising eye surgery, and that patients should similarly expect a high standard of post-operative care to address and minimise the affects of any adverse consequences, which may arise for the unfortunate minority.

The Respondent herself has reportedly been so affected, following problems after surgery conducted by a competitor of the Complainant. She evidently feels that

she did not get the level of care that she would have expected and so registered the domain name “optimaxruinedmylife.co.uk” and set up a website using that domain to publicise her complaints and concerns.

She has also set up an e-petition – see <http://epetitions.direct.gov.uk/petitions/28629>

The petition is directed at raising Guidelines & Standards for Laser Refractive Eye Surgery, and appears to the Expert to be an entirely fit subject for an e-petition and for interested parties to campaign over.

Subsequently, the Respondent was evidently contacted by others who felt they had similar complaints and concerns, following surgery at the Complainant’s OPTICAL EXPRESS clinics. The Complainant has criticised the Respondent for allegedly not providing evidence of her claims. In fact, the Expert has followed the links provided in the Response and inspected the accompanying Exhibits and sees no reason to cast doubt on the Respondent’s statements. Whilst it is not appropriate for the Expert to make any judgements in this Decision the merits or otherwise of the complaints which have been made, there are most certainly patients who do feel they have been poorly treated by the Complainant just as there are others, like the Respondent personally, who feel badly treated by the Complainant’s competitors. They may be few in absolute terms, but that does not mean there are none, or that they can just be ignored.

Both the domain names “optimaxruinedmylife.co.uk” and “opticaexpressruinedmylife.co.uk” clearly convey expressions of critical opinion. No competent English reader seeing those domains is ever going to believe that they are associated with, or endorsed by, the respective businesses whose trade marks are mentioned. In the Expert’s view, such is nominative fair use of the respective marks for critical purposes. The fact that the Respondent may have registered “optimaxruinedmylife.co.uk” based on her own experience and expressing her own opinion, and “opticaexpressruinedmylife.co.uk” to record the experiences and opinions of others does not make either an Abusive Registration. Nor is it relevant that the Respondent may not be medically qualified. Most people are not, but that does not deprive any patient of the right to criticise, if they feel (as the Respondent, and the other patients whose cases she has highlighted clearly do) that they have not been treated appropriately. There may be a pattern of critical domain name construction, but presenting a common critical opinion also does not automatically render a domain name as an Abusive Registration. Web users are inevitably going to expect the content of any websites using such domains to be critical in nature. They will expect that such websites will be operated by, or on behalf of, people who have had a bad experience with the specified businesses. They are not going to be remotely confused, initially or otherwise.

They are UK domains, with English content, under English jurisdiction. The Complainant’s attempts to argue for abusive registration of the Domain Name on the basis of some speculative ‘initial interest confusion’ on the part of some non-English speaking surfer’s theoretical inability to decipher the Domain Name are too fanciful. The contentions are of insignificant merit in this context.

The Complainant has sought to argue that, when the Complaint was filed (within a very few days of registration), it was only linked to a registrar's holding page, and that this gave the impression that the Domain Name was for sale. There is no evidence to support that contention and, in any event, in the Expert's experience it is commonplace for websites to have holding pages provided by a domain name registrar for much longer periods before customised content appears on any associated website.

The Complainant appears to assert – on a *quia timet* argument – that mere registration of this Domain Name would be actionable, and that the Domain Name should be transferred, based on the perceived threat that potentially critical (and allegedly defamatory) content might damage or disrupt its business, which it has spent substantial sums promoting.

The Expert does not find this argument appealing. In a liberal democracy, where freedom of speech is a recognised right, which most would consider to be the case in the UK, public criticism is equally something that most of those involved in business and public activities – including DRS Experts - are exposed to, and have to manage. As was stated in the “ihateryanair.co.uk” decision (DRS 08527) “...using the Domain Name to point to critical content may in fact be detrimental to the Complainant's Rights because, for example, it may cause potential customers to purchase services elsewhere. However the effects of criticism cannot be said to be unfair per se. Indeed dealing with criticism could be said to be the price paid in return for living in an open and democratic society.”

If using a domain name conveying a critical message in association with a specific name or trade mark were automatically to be considered as inherently unfair, as the Complainant appears to imply, that could have an undesirable and significantly chilling effect on free speech. Where a critic wishes to make criticisms of a specific business or product using a critical domain name construction, it is reasonable, and, in the Expert's view, will ordinarily be fair use (but obviously not where the criticism is couched in terms which would contravene other legislation, against say racial hatred, for example), to identify that business or product by name to focus attention on the appropriate target. (Which is why “ihateryanair.co.uk was no doubt preferred by the original registrant of that domain, to the alternative “myleastfavouriteairline.co.uk”, which was suggested as a possibility in that decision.)

Rather oddly in the context of this Complaint, the Complainant has expressly declared that any use made by the Respondent following the date of the Complaint is “irrelevant and has been implemented with the aim of defeating the Complaint”.

Yet, considering the content at www.optimaxruinedmylife.co.uk, and www.lasereyesupport.com, and the various YouTube videos whose links the Respondent provided in evidence, it is not difficult to contemplate the nature of the content which the Complainant (at the time it filed the Complaint) might have expected to appear at www.opticalexpressruinedmylife.co.uk. Indeed, such content may have appeared within 2 weeks after the Complaint was filed, as it appears that the hosting service provider was prevailed upon by the Complainant to have such content removed (on claims that the content was allegedly

“defamatory and actionable”). Evidently, and perhaps understandably in the UK, the hosting service provider was not minded to be as robust in standing up to such claims as might be the case with YouTube.

Copies of the actual content complained of were not provided by the Complainant. Whether such content might or might not have been defamatory would not be appropriate for determination under the DRS in any event.

As the Appeal Panel in *Rayden Engineering* (DRS 06284) commented:

"We consider that there is a limit to how much significance can be placed on the content of the protest website by an Expert. As countless Experts and Appeal Panels have remarked, the DRS is intended to be a relatively simple, low cost and efficient system for resolving domain name complaints. The system does not contemplate a detailed analysis of factual disputes or the forensic weighing up of conflicting accounts. There is limited scope for adducing witness evidence or for the Expert to test the truthfulness of the evidence being presented in cases where it is bitterly contested. Protest sites classically carry personal, emotive versions of events, often expressed in deliberately shocking or vitriolic terms intended to attract attention to the cause. The statements may well be libellous in legal terms, but it is unlikely to be possible or appropriate for the Expert to determine in the context of the paper based DRS whether the statements are in fact true so that the defence of justification would be available."

In its Reply, the Complainant criticised the Respondent for not providing further documentary evidence in triplicate (per DRS Procedure paragraph 5(c)(vi)), notwithstanding the corresponding obligations on the Complainant under paragraphs 3(c)(x) and 6(a). The Expert would point out that those provisions were intended to apply when evidence was submitted and distributed in paper form rather than electronically. Paragraph 24 of the Procedure specifies the relevant situation today. The Expert is satisfied that the evidence provided by the Respondent was sufficient for the purposes of the DRS, particularly in the light of the observations from *Rayden Engineering* quoted above.

There remain the various allegations of impropriety raised by the Complainant, including that the Respondent was intending to “use the Domain Name to leverage benefits from the Complainant”, and that the Respondent improperly used the alias “serendipity” when registering the Domain Name.

The evidence of intent to “leverage benefits” is apparently based principally on a PPS to one email sent by the Respondent in a chain of correspondence, only parts of which have been put in evidence. Following some information on a case, which the parties had evidently been discussing, and some comments on her parliamentary lobbying activity, the Respondent wrote:

“PPS: I will consider a consultancy position as ‘advisor’ should you offer it ;)”

The issue for the Expert is whether this was a serious proposition, which might be considered to taint the sincerity of the Respondent’s claimed motivations and call into question whether her intended use of the Domain Name (putative use at the time of the Complaint) could then be considered as fair.

This is pertinent to consider in the light of the observations made in the decision in DRS 08527 “ihateryanair.co.uk”. The (different) Expert in that decision stated that, in her opinion, *“criticism websites are essential in a democratic society, but if they draw in users using a domain name containing a company’s brand then they must be wholly devoted to honest criticism and open discussion and not potentially tainted by commercial concerns.”*

In that case, the Expert considered that the evidence that the respondent had received a total of £322 from click through advertising revenue on what was otherwise a site devoted to criticism of Ryanair, and which was less than the costs the respondent had incurred in setting up and running his website, was sufficient to taint the registration of that domain name. Unfair advantage had been taken of the Ryanair name, so that the domain name “ihateryanair.co.uk” was to be considered an Abusive Registration.

In the present Expert’s view, that was a decision on its own particular facts and might be considered to be somewhat harshly based on a prescription which amounts to an almost angelical “counsel of perfection”.

And critics are seldom perfect angels in their conduct, as can be noted from the quote from the *Rayden Engineering* decision above, which the Expert feels is a realistic representation. Critics are also often unfunded compared to the large and profitable corporations they seek to challenge. In the present Expert’s view, therefore, it is desirable that there should be some sense of proportion when assessing whether “commercial concerns” in relation to use of a domain name are really so significant as to always disbar a critic from ever using a domain name which incorporates the name of the object of the criticism. Where the “commercial concerns” are de-minimis and clearly incidental, this Expert at least does not consider that it would necessarily always be unfair for a critic to take steps (e.g. from some general advertising or by requesting donations) to obtain some income to maintain a website. Obviously, there are circumstances where any “commercial concerns” would clearly be unfair, for example, if a business were to set up a bogus criticism website using the name of a competitor, but the Expert believes that there is room for flexibility, and absolute purity is not prescribed under the Policy.

In the present case, the Respondent’s email style is informal and interspersed with attempted repartee. In context, the Expert considers that the Respondent’s PPS was really no more than a flippant parting comment, ill-considered perhaps, but not intended as a serious proposition and certainly not anticipating any acceptance. Elsewhere, the evidence suggests that the Respondent has consistently refused to consider any financial consideration either for sale of the Domain Name or to cease her lobbying for patients who have reportedly been adversely affected by laser eye surgery. The evidence does imply that she had some success in obtaining benefits for some adversely affected patients, but using criticism to achieve such benefits would hardly qualify as unfair.

As to the use of the alias “serendipity”, the evidence is that the Respondent filled in this name in the “Company” field on her registrar’s registration form, and that her name was properly given as the named contact, and that she used her own email address “sasha.rodan@...”, which Nominet used for the contact details in its

records. The Respondent has used a pseudonym, as writers and actors frequently do, but has not sought to hide behind a so-called 'Privacy' business, beloved of professional cybersquatters and counterfeiters. From the speed with which the Complaint was filed in this case and the detail in the Complaint, the Expert believes that the Complainant had little doubt who was behind the Domain Name and that there has been no deliberate intent, on the Respondent's part, to deceive by providing false contact details.

For the reasons discussed above, the Expert considers that, having regard to all the circumstances, the registration and putative critical use of this Domain Name do not, on the balance of probabilities, render it an Abusive Registration.

To borrow again a quote from the "ihateryanair.co.uk" domain name decision: *"...the Domain Name itself makes it abundantly clear that there is no connection between the Domain Name and the trade mark holder and leaves internet users in no doubt as to what type of content to expect when accessing the corresponding website. The Domain Name does not exactly match the Complainant's trade mark and neither is it likely to cause any confusion in the minds of internet users."*

7. Decision

Having concluded that the Complainant has relevant Rights in a name or mark, which is similar to the Domain Name, but that the Domain Name, in the hands of the Respondent, may not be characterised as an Abusive Registration for the purposes of the Policy, the Expert determines that no action should be taken in respect of this Complaint.

Signed Keith Gymer

Dated 3 August, 2012