

Nominet UK Dispute Resolution Service

DRS 00917

Quantix Ltd -v- Stephen Wigglesworth

Decision of Independent Expert

1. Parties:

Complainant: Quantix Ltd
Address: SGCS Business Park
Technology Drive
Beeston
Nottingham
Nottinghamshire
Postcode: NG9 2ND
Country: GB

Respondent: Stephen Wigglesworth
Address: 39 St Helens Court
Church Street
Stapleford
Nottingham
Nottinghamshire
Postcode: NG9 8AG
Country: GB

2. Disputed Domain Name:

quantix-uk.co.uk (the "Domain Name")

3. Procedural Background:

The Complaint in this case was lodged with Nominet UK ("Nominet") on March 19, 2003. Nominet validated the Complaint on March 24, 2003 and notified the Respondent, giving him 15 working days within which to lodge a response. As of April 15, 2003, no response was received. On April 23, 2003, the Complainant paid to Nominet the appropriate fee for a Decision by an Expert pursuant to paragraph 6 of the Nominet Dispute Resolution Service Policy (the "Policy").

The undersigned, Andrew Murray (the "Expert"), was formally appointed on April 30, 2003. The Expert has formally confirmed to Nominet that he knows of no reason why he cannot properly accept the invitation to act as an expert in this case and further confirmed that he knows of no matters which ought to be drawn to the attention of the parties, which might appear to call into question his independence and/or impartiality.

4. Outstanding Formal/Procedural Issues (if any):

The Respondent has not submitted a Response to Nominet in time (or at all) in compliance with paragraph 5a of the Procedure for the conduct of proceedings under the Dispute Resolution Service (“the Procedure”).

The Expert has seen copy communications from Nominet to the Respondent and has no reason to doubt that the Respondent has been properly notified of the complaint in accordance with paragraph 2 of the Procedure.

Paragraph 15b of the Procedure provides, inter alia, that “If in the absence of exceptional circumstances, a Party does not comply with any time period laid down in this Policy or the Procedure, the Expert will proceed to a Decision on the complaint.”

There is no evidence before the Expert to indicate the presence of exceptional circumstances; accordingly, the Expert will now proceed to a Decision on the complaint notwithstanding the absence of a Response.

The lack of a response does not entitle the Complainant to a default judgement. The Complainant must still prove its case to the required degree. The Expert will evaluate the Complainant's evidence on its own merits and will draw reasonable inferences from it in accordance with paragraph 12b of the Procedure.

Paragraph 15c of the Procedure provides that “If, in the absence of exceptional circumstances, a Party does not comply with any provision in the Policy or this Procedure, the Expert will draw such inferences from the Party's non-compliance as he or she considers appropriate.”

Generally, the absence of a Response from the Respondent does not, in the Expert's view, entitle an expert to accept as fact all uncontradicted assertions of the Complainant, irrespective of their merit. In this case it seems to the Expert that the probable facts speak for themselves and that it is not necessary to draw any special inferences. The Expert finds that the probable facts asserted by the Complainant and set out in the next following section are indeed facts.

5. The Facts

The Complainant is named as Quantix Ltd.. The Complainant company was incorporated in England and Wales on September 28, 1998 as Orsted Ltd. and changed its name to Quantix Ltd. on October 10, 2002.

The Nominet Whois search, which was provided to the Expert, shows that the Domain Name was registered on behalf of the Respondent on November 22, 2002.

Several communications, mostly by e-mail, took place between the Complainant and the Respondent between the dates of February 26, 2003 and March 21, 2003 where the Respondent offered to sell the Domain Name to the Complainant. It appears that on February 28, 2003 a sale was agreed between the parties, but, for whatever reason this failed to proceed, leading to the current action.

On accessing the address www.quantix-uk.co.uk the user is forwarded to a sub-page of the nolo.com website. Nolo are a plain English legal publisher and the page to which the address www.quantix-uk.co.uk resolves is, in particular, the Nolo bookstore page for Internet Law textbooks. The Complainant contends that in the past the Domain Name has been used to point to sites including absolutecrap.com and complaints.com. Although the Complainant could not provide evidence of this there is little doubt the Domain Name is being used to 'point to' sites rather than for the hosting of original content.

6. The Parties' Contentions

Complainant

The Complainant submits that the Domain Name in dispute is identical or similar to a name or mark in which it has rights and that the Domain Name in the hands of the Respondent is an Abusive Registration.

The Complainant states that it has prior rights in the name 'Quantix', which has been the Complainant's registered name since October 10, 2002 and in the name 'quantix-uk.com' a registered domain name, registered by the company on October 30, 2002.

The Complainant claims that the Respondent, Stephen Wigglesworth, is an ex-employee of the Complainant, and that the company he works for at present is a direct competitor of the Complainant. The Complainant claims he registered the name in bad faith and in infringement of the Quantix name.

The Complainant contends that the Respondent's registration is of an abusive nature for the following reasons:

- 1 When the quantix-uk.co.uk web site first appeared it was clearly aimed at attacking members of the Quantix Ltd. company. The site had a guest book function where a number of people left abusive messages. Further, it has pointed to sites such as absolutecrap.com and complaints.com. The Complainant claims that this action is undermining Quantix Ltd.'s business and that the site is intended as nothing more than an unnecessary slur and comment on the Quantix Ltd. trading name.
- 2 That the Respondent's registration is a blocking registration and is clearly confusing people who mistakenly go to the .co.uk site rather than the .com site.
- 3 That the Respondent's failure to transfer the domain name after a sale agreement was reached between the parties demonstrates that the Respondent is not interested in owning the domain for any legitimate reason.

Respondent's Response

No response was received from the Respondent.

7. Discussion and Findings:

General

According to paragraph 2 of the Policy, in order to succeed in this complaint, the Complainant has to prove to the Expert that, on the balance of probabilities:

- i. the Complainant has Rights (as defined in paragraph 1 of the Policy) in respect of name or mark which is identical or similar to the disputed domain name; and
- ii. the disputed domain name is an Abusive Registration (as defined in paragraph 1 of the Policy).

These matters must be proven by the Complainant, notwithstanding the failure by the Respondent to respond. The effect of the Respondent's default is rather that, under paragraph 15(c) of the Procedure (there being no exceptional circumstances in this case) the Expert is required to draw such inferences from the Respondent's non-compliance as he considers appropriate.

Complainant's Rights

The Complainant has traded under its name, Quantix, since 1995 (as a subsidiary of the Lynx Group) and will undoubtedly have acquired a trade reputation in that time. All of the information before the Expert in respect of the Complainant supports this view. The Expert considers it reasonable to infer that the Complainant has goodwill in the name.

The Domain Name 'quantix-uk.co.uk' comprises the word 'Quantix-uk' and the suffix '.co.uk'. In assessing whether or not a name or mark is identical or similar to a domain name, it is appropriate to discount the domain suffix, which is of no relevant significance and wholly generic. The remainder 'Quantix-uk' bears a strong resemblance, not only to the trading name of the Complainant, but also to the newly constructed domain name 'quantix-uk.com' which is being promoted by the Complainant, and which was registered by the Complainant three weeks prior to the Domain Name in issue. The Expert, therefore, finds that the Complainant has rights in respect of a name or mark, which is sufficiently similar to the Domain Name.

Consequently, the Expert finds that, for purposes of the Policy, the Complainant has rights in respect of a name or mark, which is identical or similar to the Domain Name.

Abusive Registration

Paragraph 1 of the Policy defines "Abusive Registration" as:-

"a Domain Name which either:

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

has been used in a manner, which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.”

Under paragraph 3a of the Policy is listed a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. The Complainant has indicated that it wishes to rely on the paragraph 3a(i) which requires:

“Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name:

- A. primarily 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. primarily for the purpose of unfairly disrupting the business of the Complainant.”

Taking each of these claims in order:

With reference to paragraph 3a(i)(A), there is evidence that the Respondent has engaged in attempts to transfer the Domain Name for a sum clearly in excess of his out-of-pocket costs. In one exchange of e-mails between the Complainant and Respondent dated February 28, 2003 the Respondent agrees to sell the Domain Name for the price of £750. This sale failed to proceed and at a later date, March 21, 2003, the Respondent seeks the much increased price of £5000. Both these transactions provide clear evidence to support a claim under paragraph 3a(i)(A) and therefore I find the Respondent’s registration to be an Abusive Registration on this basis.

With reference to paragraph 3a(i)(B) there is strong and compelling evidence in support of this claim. The Respondent has not used the Domain Name for the development of a site or presence on the Internet. Although mere failure to develop or utilise a domain name is not evidence of a blocking registration, there is further evidence to support a claim of a blocking registration in this case. Firstly, there is the prior relationship of the parties. The Respondent is an ex-employee of the Claimant and is now a direct competitor of the Claimant. The Respondent was clearly aware of the Claimant prior to his registration of the Domain Name. Secondly, the Respondent registered the Domain Name within 23 days of the Claimant’s registration of the domain name ‘quantix-uk.com’. As an industry insider, the Respondent would have been aware of this development and this suggests he registered the Domain Name as a direct response to this development. Finally, the Respondent despite agreeing to transfer the Domain Name to the Claimant on February 28, 2003 has to date failed to do so. The Claimant claims that this failure to conclude an agreed transfer “indicates strongly that Mr. Wigglesworth is not interested in owning the domain for any legitimate reason”. I agree and therefore find that the registration is a blocking registration under paragraph 3a(i)(B).

Finally, with reference to paragraph 3a(i)(C) the Complainant contends that the use of the Domain Name to point to sites such as absolutecrap.com and complaints.com as well as nolo.com, to which it currently links is “intended as nothing more than an unnecessary slur and comment on the Quantix Ltd. trading name.” Although the Complainant could

not provide evidence that the Domain Name ever pointed to either absolutecrap.com or complaints.com, there is little doubt that a customer seeking the Complainant, who entered the Domain Name seeking their home page would be quite confused by the page which was retrieved. The nolo.com site has no obvious connection to the Complainant or their business. There is little doubt the confusion caused by this is unfairly disrupting the Complainant's business activities and therefore I find that the Respondent's registration is further an Abusive Registration in terms of paragraph 3a(i)(C).

Having found the Complainant to have made out a prima facie case under the Policy the burden under paragraph 4 now shifts to the Respondent to demonstrate their use is not an Abusive Registration. The Expert having found the Respondent has a case to answer, the Respondent must make that answer. Here the Respondent has failed to answer and therefore cannot rebut the presumption of Abusive Registration.

Accordingly, the Expert finds that the Domain Name is an Abusive Registration as defined by paragraph 1 of the Policy on the basis that it is being used in a manner which takes unfair advantage of the Complainant's rights.

8. Decision:

In light of the foregoing findings, namely that the Complainant has rights in respect of a name which is similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration, the Expert directs that the Domain Name, quantix-uk.co.uk, be transferred to the Complainant.

Andrew Murray

Date: 7 May 2003