

Nominet UK Dispute Resolution Service

DRS Number 04344

Michael Page International Plc

v.

Domain Administration Limited

Decision of Independent Expert

1. Parties

Complainant: Michael Page International Plc
Address: Bourne Business Park
1 Dashwood Lang Road
Weybridge
Surrey
Postcode: KT15 2QW
Country: U.K.

Respondent: Domain Administration Limited
Address: P O Box 37410
Parnell
Auckland
Postcode: 1151
Country: NEW ZEALAND

2. Domain Name

The domain name in this case is <michalepage.co.uk> (hereinafter "the disputed domain name") and it was registered on October 30, 2004.

3. Procedural Background

The Complaint was lodged with Nominet UK ("Nominet") on January 3, 2007, and hard copies were received in full on the same day. Nominet also validated the Complaint on January 3, 2007 and at the same time notified the Respondent of the Complaint giving him 15 working days within which to lodge a Response. No Response was received and so Nominet did not initiate its Informal Mediation procedure. On January 29, 2007 the Complainant paid to Nominet the appropriate fee for a Decision by an Expert pursuant to paragraph 6 of Nominet's Dispute Resolution Service Policy ("the Policy").

On January 7, 2007 the undersigned, Mr. David H Tatham ("the Expert"), confirmed to Nominet that he knew of no reason why he could not properly accept the invitation to act as an Expert in this case and further confirmed that he knew 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 and he was selected by Nominet as the Expert for this case on the same day.

4. Outstanding Formal/Procedural Issues (if any)

There are no outstanding Formal,/Procedural issues.

5. The Facts

The following facts were submitted on behalf of the Complainant.

The Complainant is a recruitment consultancy with, it is claimed, offices in 18 countries.¹ The Complainant claims to have used the names Michael Page and Michael Page International since the mid 1970s. Attached to the Complaint were several examples of marketing material issued by 'Michael Page International' and by 'Accountancy ADDITIONS' which appears to be a sister or a subsidiary company of the Complainant.

The name Michael Page is registered as a trademark in several countries and attached to the Complaint were copies of 2 Community trademarks No. 1771377 for 'Michael Page INTERNATIONAL' and No. 2001493 for 'MICHAEL PAGE', a UK Trademark No. 2111720 for 'MICHAEL PAGE', a US Trademark No. 2940342 for 'MICHAEL PAGE' and an Australian Trademark No. 778273 for 'Michael Page INTERNATIONAL', all them for various goods and services in Classes 16, 35 and 41. The earliest, in the UK, dates from 1996.

6. The Parties' Contentions

Complainant

The Complainant contends that it has rights in the Domain Name because of the above facts; also that it currently has no relationship and has never had any dealings with the Respondent.

The Complainant further contends that the disputed domain name in the hands of the Respondent is abusive because it was primarily registered to unfairly disrupt the business of the Complainant. The Complainant is a recruitment consultancy with the name 'MICHAEL PAGE'. The domain name is 'MICHAEL PAGE' and it was clearly registered with the aim of making money from the Complainant's business. The content of the page which currently appears at the disputed domain name acts to mislead potential clients and to direct a candidate looking for the Complainant's recruitment services to other websites.

Attached to the Complaint was a printout of the screenshot currently displayed at the disputed domain name which the Complainant contends illustrate that the Respondent is diverting traffic away from its own website.

The Complainant further asserts that the Respondent has been involved in similar activities in the past and attached to the Complaint copies of WIPO and Nominet decisions Nos. D2006-0921 and DRS 03706 in both of which it was held that the Respondent had acquired the Domain Name in question for abusive usage

The Complainant wrote to the Respondent on November 23, 2006 in order to resolve this matter amicably and attached to the Complaint was a printout of the shipment details for this letter which show it was received by the Respondent. However, to date, the Complainant has not received any response from the Respondent.

Respondent

As noted above, the Respondent did not file a Response

7. Discussion and Findings

General

According to paragraph 2(a) of the Policy, in order to succeed in a Complaint, the Complainant has to prove to the Expert that, on the balance of probabilities –

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

¹ Some of the literature attached to the Complaint refers to "122 offices in 19 countries worldwide".

The absence of a response from a Respondent does not mean that he has no answer to the Complaint. A Complainant must still make out its case and, having done so, the burden is on a Respondent to prove otherwise. In this case, the Complainant has made out a *prima facie* case, so the burden of proof has shifted to the Respondent, but he has chosen to remain silent.

Complainant's Rights

It is clear to the Expert that the Complainant has rights in the name and trade mark MICHAEL PAGE. It has several trade mark registrations in different countries, some for MICHAEL PAGE and some for Michael Page INTERNATIONAL. It has made significant use of this name for approximately 30 years and although no proof of this early use was adduced, nor any turnover figures, the name is certainly in current use.

When comparing for similarity a domain name and an earlier right under the Policy, it is customary to disregard suffixes such as, in this case, “.co.uk”. Consequently, since the disputed domain name is practically the same as the Complainant's trade mark, but with just two reversed, there can be no doubt that ‘michalepage’ is similar to ‘Michael Page’. Therefore, the first requirement of paragraph 2(a) of the Policy is proved.

Abusive Registration

In the Policy, an “Abusive Registration” is defined in the following terms –

An 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*

It is clear to the Expert that these requirements have been met. The present case is an example of ‘typosquatting’. This is sometimes referred to as ‘typo-piracy’ or ‘URL hijacking’ and is defined in the online encyclopaedia Wikipedia as “*a form of cybersquatting which relies on mistakes such as typographical errors made by Internet users when inputting a website address into a web browser.*” The present Expert dealt with a similar case (DRS 04118 National Coll for School Leadership Limited v. Dave Allan) where the disputed domain name was <ncls.org.uk and the Complainant's trade mark was NCSL. He found that the domain name was abusive and ordered it to be transferred. There was a reference in that Decision to another case with similar facts, namely Case DRS 00550, Direct Line Insurance PLC v. Snoop4.com Limited, in which the domain name complained of was <jamajr.co.uk> while the Complainant owned a registration of the trade mark JAMJAR and the domain name <jamjar.co.uk>. The Expert in that case also found that the disputed domain name was abusive and ordered it to be transferred.

Paragraph 3 of the Policy sets out a non-exhaustive list of factors that define what may be an Abusive Registration, and paragraphs 3(a)(i), (ii) and (iii) would appear to be relevant in this case:

3(a)(i) Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

- 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.*

3(a)(ii) Circumstances indicating that the Respondent is using the Domain Name in a way which has confused people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;

3(a)(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.

1. The website at the Disputed Domain name is a click-per-view site i.e. one in which the registrant earns money every time someone clicks on one of the links at the site.

The Complainant is a recruitment consultant agency, and all the links shown on the copy of the page at the website at the disputed domain name which was annexed to the Complaint relate to this subject e.g. 'Job Search Link', 'Job Search', 'London Market Jobs', 'Parttime work', 'Accounting Jobs', 'job listing', 'Job Search Engine', 'Dice-Hire Detroit Pros'.

Anyone clicking on to the site, mistakenly believing it to be the official website of the Complainant would be misled and so its existence could clearly serve to unfairly disrupt the Complainant's business. Furthermore, in view of the substantial similarity between the disputed domain name and the Complainant's name and trade mark, it is also clearly a blocking registration.

2. There is no direct evidence that anyone has been confused into thinking that the disputed domain name belongs to the Complainant. However it would be surprising if they had not been in view of the very close similarity between the disputed domain name and the Complainant's name and trade mark.

3. Under paragraph 3(c) of the Policy *"There shall be a presumption of Abusive Registration if the Complainant proves that Respondent has been found to have made an Abusive Registration in three (3) or more Dispute Resolution Service cases in the two (2) years before the Complaint was filed. This presumption can be rebutted (see paragraph 4(c))."*

Paragraph 3(a)(iii) is therefore generally referred to as the 'three-strikes-and-you're-out' Rule and Nominet publishes a table of cases in which a respondent has been found to have made an Abusive Registration in 3 or more DRS cases.

The Complainant only referred to two Decisions in which it alleged that the Respondent in this case also appeared as a Respondent, namely WIPO Case D2006-0921 American Diabetes Association v. Domain Administration Limited (domain name <americandiabetesassociation.com>), and Nominet Case DRS 03706 Warren James Jewellers Limited v. Mr. David Allan (domain name <warenjames.co.uk>). In the first case, the Panelist ordered the domain name to be transferred and, although the copy of the second case that was supplied to the Expert was not complete, he has confirmed that in it too the domain name was ordered to be transferred.²

Strictly speaking, the Complainant has not proved paragraph 3(a)(iii). However the said Dave Allan was the Respondent in DRS 04118 referred to on page 3 above, in which the circumstances were almost identical to those in this case and in which the present Expert was also involved. Furthermore, the Respondent in the present case, Domain Administration Limited now appears 5 times in Nominet's table referred to above, but the Decisions in these cases are dated between January 11 and February 2, 2007 so the Complainant would not have been aware of them before the current Complaint was filed. He might also not have been aware that Domain Administration Limited is apparently connected in some way not only with Chao Investments Limited – whose name appears 4 times in Nominet's Table with Decisions dated between January 4 and February 5, 2007 – but also with Kwan Jin, whose name appears 6 times in Nominet's Table, and possibly also with others (see below).

The following is a quote from the Decision in Case DRS 04271 (Courtesy Shoes Limited v. Chao Investments Limited re <wynsors.co.uk> – *"Additionally, as the Complainant has observed, the address given for "Chao Investments Limited" as registrant has also appeared in a number of previous disputes. In the present case, the Registrant's Contact (and Administrative Contact) is actually identified as Mr. David*

² The second of these cases was presumably included by the Complainant because the name 'Domain Administration Limited' appeared as the second line of the Respondent's address.

Halstead, with the same address as "Domain Administration Limited", which was specified similarly in Cases DRS03706 and Drs03931 and also in DRS03700. In two of these cases, the Respondent registrant was ostensibly identified as "Kwan Jin", another Respondent on the losing side in more than three recent DRS disputes. Although it cannot be taken into account for the application of Paragraph 3 (c) under the DRS, it is also to be noted that Domain Administration Limited/Mr Halstead have been cited as losing Respondent in at least two WIPO UDRP Decisions (D2006-1147; D-2006-0921) and at least two NAF UDRP Decisions (FA0611000831176; FA0608000785539)."

And the following is a quote from the Decision in Case DRS 04298 (Mattel, Inc. v. Domain Administration Limited re <hotwheel.co.uk> and <hotweels.co.uk>) –
"Further the Complainant has provided a list of the Respondent's <.co.uk> domain names. There are some 160 in total, a striking proportion of which correspond to famous brands. Some correspond to brands which might be said to be capable of some generic meaning but others correspond to highly distinctive brands. Further there are multiple series of domain names whose only intrinsic value resides in the fact that they are mistyping's of famous brands. There is also a significant emphasis on toy brands and brands with some particular interest to children."

The Complainant may not have itself produced the necessary 3 examples of cases in which the Respondent has been found to be abusive in the two years before it filed this Complaint, but It is clear from all of the above that the Respondent in this case, either in its own name or under its various aliases, is a serial cybersquatter and fully deserves its presence on Nominet's Table of "losers" under paragraph 3(a)(iii) of the Policy. Consequently the Expert has no hesitation in finding its registration of the disputed domain name <michalepage.co.uk> to be Abusive.

1. Decision

The Expert finds that the Complainant has clear and indisputable rights in the name and trade mark 'Michael Page' and that this is similar to the disputed domain name <michalepage.co.uk>.

The Expert further finds that the disputed domain name is an Abusive Registration in the hands of the Respondent.

The Expert therefore directs that the domain name <michalepage.co.uk> be transferred to the Complainant.

David H Tatham

February 16, 2007