

## Dispute Resolution Service Policy

### 1. Definitions

**Complainant** means a third party who asserts to us the elements set out in paragraph 2 according to this Policy and the Procedure;

**Contract** means the contract between us and the Respondent, made up of our *Terms and Conditions*, the *Rules for .uk domain and sub-domains*, this Policy and the Procedure;

**Days** means unless otherwise stated any day other than Saturday, Sunday or any Bank or public holiday in England and Wales;

**Decision** means the decision reached by the Expert;

**Dispute Resolution Service** means the service provided by us according to this Policy and the Procedure;

**Domain Name** means any domain name registered in the .uk domain and all sub-domains of .uk;

**Expert** means the expert(s) we appoint under paragraphs 8 or 18 of the Procedure and references to Expert where applicable also refer to the Experts appointed under paragraph 18;

**Informal Mediation** means impartial mediation which we conduct to facilitate an acceptable resolution to the dispute;

**ISP** means the internet service provider which has registered or hosts the Domain Name in dispute;

**Jurisdiction** means the jurisdiction of the courts of England and Wales, Scotland and Northern Ireland;

**Party** means a Complainant or Respondent and 'Parties' has a corresponding meaning;

**Procedure** means the procedure for the conduct of the Dispute Resolution Service.

**Respondent** means the person (including a legal person) in whose name or on whose behalf a Domain Name is registered and against whom the Complainant makes a complaint;

**we** means Nominet UK (company no. 3203859) whose registered office is at Sandford Gate, Sandy Lane West, Littlemore, Oxford, OX4 6LB and us and our have corresponding meanings;

## 2. **Dispute Resolution Service**

- a. A Respondent must submit to proceedings under the Dispute Resolution Service if a Complainant asserts to us, according to the Procedure, that:
  - i. The Complainant has rights in respect of a name or mark which is identical or similar to a Domain Name; and
  - ii. The Respondent has registered and/or is using the Domain Name in bad faith.
- b. The Complainant must satisfy the Expert that both elements are present on the balance of probabilities, in the case of 2(a)(i) above, and beyond reasonable doubt in the case of 2(a)(ii) above.

## 3. **Evidence of registration or use in bad faith**

- a. A non-exhaustive list of factors which may be evidence that the Respondent has registered and/or is using the Domain Name in bad faith is as follows:
  - i. 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;
    - C. primarily for the purpose of disrupting the business of the Complainant; or
  - 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.
- b. We emphasise that the requirement is to prove bad faith, which is not equivalent to the absence of good faith.

## 4. **How the Respondent may demonstrate that it has not registered and/or is not using the Domain Name in bad faith in its response**

- a. A non-exhaustive list of factors which may be evidence that the Respondent has not registered and/or is not using the Domain Name in bad faith is as follows:
  - i. Before being informed of the Complainant's dispute, the Respondent has:
    - A. used or made demonstrable preparations to use the Domain Name or a Domain Name which is similar to the Domain Name in connection with a genuine offering of goods or services;

- B. been commonly known by the name or legitimately connected with mark which is identical or similar to the Domain Name;
  - C. made legitimate non-commercial or fair use of the Domain Name;
- ii. The Domain Name is generic or descriptive and the Respondent is making fair use of it.
- b. Fair use may include sites established in tribute to or criticism of a person or business.

## **5. Informal Mediation**

- a. After we have received the Parties' submissions under the Procedure, we will initiate and conduct a period of Informal Mediation under paragraph 7 of the Procedure. Negotiations conducted between the Parties as a result of Informal Mediation shall be without prejudice, that is they will not affect either Party's position should an acceptable resolution not be found. We will not reveal details of such negotiations to any third parties unless a court within the Jurisdiction orders us to do so, or we are required to do so by applicable laws or regulations.

## **6. Appointment of Expert**

- a. If an acceptable resolution cannot be found by Informal Mediation within ten (10) Days we will notify the Parties that we will appoint an Expert when the Complainant has paid the applicable fees set out in 21(a) of the Procedure. The Expert will come to a written Decision.

## **7. Notification and Publication**

- a. We will communicate a Decision to the Parties according to paragraph 17 of the Procedure and will publish all Decisions in full on our [web site](#), unless in our sole discretion we decide to edit parts of the Decision.
- b. Fees are payable by the Complainant or otherwise according to paragraph 21 of the Procedure only if an acceptable resolution has not been reached and once we have notified the Parties that an Expert is to be appointed.

## **8. Exclusion of Liability**

- a. Except in the case of deliberate wrongdoing, neither we nor our directors, officers, employees nor any Expert shall be liable to a Party for any loss or damage suffered as a result of any act or omission in connection with any proceedings under the Dispute Resolution Service.

- b. The Respondent will not name us as a party or otherwise include us in any proceedings which concern the registration or use of a Domain Name.

**9. Appeal and Availability of Court Proceedings**

- a. Either Party will have the right to appeal a Decision under paragraph 18 of the Procedure.
- b. The operation of the Dispute Resolution Service will not prevent either the Complainant or the Respondent from submitting the dispute to a court within the Jurisdiction.
- c. If the Expert makes a Decision that a Domain Name registration should be cancelled, suspended, transferred or otherwise amended, we will implement that Decision after ten (10) Days of the date of the Decision, unless, during the ten (10) Days following the date of the Decision we receive from:
  - i. either Party an appeal complying with paragraph 18 of the Procedure, in which case we will take no further action in respect of the Domain Name until the appeal is concluded; or
  - ii. the Respondent official documentation showing that the Respondent has issued within the Jurisdiction and served (or in the case of service outside the Jurisdiction, commenced the process of serving) legal proceedings against the Complainant seeking to reverse the effect of the Decision. In this case, we will take no further action in respect of the Domain Name unless we receive:
    - A. evidence which satisfies us that the Parties have reached a settlement; or
    - B. evidence which satisfies us that such proceedings have been dismissed, withdrawn or are otherwise unsuccessful.

**10. Other action by us**

- a. We will not cancel, transfer, activate, deactivate or otherwise change any Domain Name registration except as provided under [paragraph 8] of the Terms and Conditions.

**11. Transfers During a Dispute**

- a. A Respondent may not transfer a Domain Name registration:
  - i. whilst proceedings under the Dispute Resolution Service are ongoing in relation to the Domain Name or for a period of ten (10) Days after their conclusion, unless to the Complainant as a result of a settlement reached between the Parties and approved by us whether or not pursuant to Informal Mediation; or

- ii. whilst a court proceeding or arbitration regarding the Domain Name registration is ongoing in the Jurisdiction, unless the party to whom the Domain Name is to be transferred agrees in writing to be bound by the decision of the court or arbitrator and we have received a copy of the agreement. We reserve the right to reverse any transfer of a Domain Name registration which does not comply with this paragraph.
- b. A Respondent may not without the Complainant's consent (which the Complainant will not unreasonably withhold) transfer the hosting of a Domain Name to another ISP whilst proceedings under the Dispute Resolution Service are ongoing in relation to the Domain Name or for a period of ten (10) Days after the conclusion of the Dispute Resolution Service.

## **12. Modifications to the Procedure of the Dispute Resolution Service**

- a. We may, at any time, modify this Policy and/or the Procedure. We will post the revised Policy/and or Procedure on our web site at least 30 calendar days before the revised Policy and/or Procedure become effective. Continued registration of a Domain Name after this date will constitute the Respondent's acceptance of any such modifications. If the Respondent does not agree with the modifications its sole remedy will be to cancel the Contract. The Respondent will be bound by the Policy and Procedure which are current at the time the Dispute Resolution Service is commenced until the dispute is over.