

NOMINET UK DISPUTE RESOLUTION SERVICE

DRS02830

DECISION OF INDEPENDENT EXPERT

Framlingham College Enterprises Limited v Realm Solutions, Inc

1.

Parties

Complainant : Framlingham College Enterprises Limited

Address : Framlingham College
Framlingham
Suffolk

Post Code : IP13 9EY

Country : GB

Respondent : Realm Solutions, Inc

Address : 143 Arbour Stone Rise NW
Calgary

Post Code : T3G4N4

Country : Canada

2.

Domain Name

framlinghamcollege.co.uk

3.

Procedural Background

3.1

The Complaint was lodged with Nominet on 29 July 2005. The hard copies of the Complaint and associated documents were received by Nominet on 11 August 2005. Nominet validated the Complaint on the same day, and notified the Respondent of the Complaint. No response was received from the Respondent. The Complainant paid the appropriate fee for Nominet to refer the case to an independent expert for a decision on 21 September 2005.

3.2

On 27 September 2005 Bob Elliott, the undersigned ("the Expert") confirmed to Nominet that there was no reason why he could not properly accept the invitation to act as 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. Nominet duly appointed the Expert with effect from 28 September 2005.

4. Outstanding Formal/Procedural Issues

- 4.1 The Respondent has not submitted a response to Nominet in time (or at all) in compliance with paragraph 5.a of the Procedure for the conduct of proceedings under the Dispute Resolution Service (“the Procedure”). Paragraph 15.b of the Procedure provides inter alia, that “if in the absence of exceptional circumstances, a Party does not comply with any time period set down in the Policy or this Procedure, the Expert will proceed to a Decision on the complaint”.
- 4.2 Paragraph 15.c 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”.
- 4.3 There is no evidence before the Expert to indicate the presence of exceptional circumstances. The Expert will therefore proceed to a Decision on the Complaint notwithstanding the absence of a Response.

5. The Facts

- 5.1 The Complaint is very short, and does not appear to have taken into account the Complaint Form Help available on Nominet’s website, to which Complainants are referred by paragraph 2.c of the Dispute Resolution Service Policy (the “Policy”). There are no attachments to the Complaint and merely bare assertions. The substantive part of the Complaint is only 9 lines long.
- 5.2 The Complainant says that Framlingham College is an independent school in Suffolk for boys and girls aged between 3 and 18 years, being a registered charity. The Complainant describes its own business as one which was set up by the College “to manage the letting of the school’s facilities”, and gives a registered number for the company. Those are the only details in the Complaint given in relation to Framlingham College, or the Complainant.
- 5.3 Even less is provided by way of information in connection with the Respondent. It is said to be a Canadian company which “has no

connection to Framlingham College in the UK". A printout of the front page of the website at www.framlinghamcollege.co.uk (provided to the Expert by Nominet, not the Complainant) shows a site which apparently has links to other pages (or perhaps websites) including some described as "college", "school", "how to find the college", "education", "online college", "hotels", and "airline tickets". The Domain Name framlinghamcollege.co.uk appears on the front page, but there is no other mention of "Framlingham" or "Framlingham College" on the front page which has been provided.

6. The Parties' Contentions

The Complainant

6.1 The Complainant asserts that the website at the Domain Name is not linked to Framlingham College in any way, and that the term "Framlingham" is not a generic one.

6.2 The Complainant believes that the Domain Name is an Abusive Registration under section 3.i.B of the Policy "as a blocking registration against a name or mark in which the Complainant has Rights".

6.3 The Complaint contains no elaboration upon how the Complainant claims to have Rights, other than the very basic information concerning Framlingham College and the Complainant referred to at paragraph 5.2 above.

6.4 The Complainant seeks the transfer to itself of the Domain Name.

The Respondent

6.5 The Respondent has not replied.

7. Findings

General

7.1 For the Complainant to succeed according to paragraph 2 of the Policy, the Complainant must prove to the Expert on the balance of probabilities both of the two elements set out in paragraph 2.a of the Policy, namely that:-

- (i) The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
- (ii) The Domain Name, in the hands of the Respondent, is an Abusive Registration.

Complainant's Rights

- 7.2 The definition of Rights under the Policy "includes, but is not limited to, rights enforceable under English Law".
- 7.3 The Complaint Form Help provided by Nominet on its website gives examples of what Complainants should provide in support of their assertion of Rights under the Policy. This includes the recommendation that, if the Complainant is a business, it should state how long it has been using the name or mark (for which evidence should be supplied) and what goods or services have been provided under the name or mark (again, evidence should be supplied). Although the Complaint provides what could be said to be an outline description of the services provided by the Complainant (the management of the letting of the school's facilities), that is the only detail provided, and no evidence is provided in support of that assertion, nor evidence as to the scale of or detailed nature of the Complainant's business activities, nor the length of time involved.
- 7.4 The Expert is conscious that the hurdle that the Complainant must overcome to show that it has Rights under the Policy is not necessarily a high one, and also that the Respondent has not responded in this case. Nevertheless, in this case the Expert finds the Complaint is so devoid of any useful information which could (presumably) have been easily provided by the Complainant, that he is not prepared to accept that, on the balance of probabilities, the Complainant has shown that it has Rights in respect of a name or mark which is identical or similar to the Domain Name. The Complainant must do more than merely assert that it has Rights, and in this case has not done so.

Abusive Registration

- 7.5 Although, in the light of the Expert's finding in respect of the question of whether the Complainant has Rights, it may not be strictly necessary for the Expert to consider the question of whether the Domain Name constitutes an Abusive Registration, the Expert will nevertheless set out his findings on this aspect of the Complaint.
- 7.6 The Complaint relies solely upon the "blocking registration" factor set out as one of the non-exclusive factors which may be evidence that the Domain Name is an Abusive Registration in paragraph 3.a of the Policy. There is no suggestion in the Complaint that the Complainant wishes to complain about the manner of use of the Domain Name (as noted above).

Although the Complaint notes that there is no link to Framlingham College itself from the website at the Domain Name, no comment whatsoever is passed in the Complaint on the content of the website.

7.7 A Complaint based upon the “blocking registration” factor requires the Complainant, in the Expert’s view, to provide evidence as to the motives of the Respondent in registering or otherwise acquiring the Domain Name. In particular, the Complainant needs to demonstrate that the Respondent’s motives in acquiring the Domain Name included that of stopping the Complainant from using the Domain Name. This is not made out in any way in the Complaint, and even in the absence of any response from the Respondent, the Expert does not consider that the Complainant has made out its case on the balance of probabilities in respect of this factor.

7.8 The Expert notes that the Domain Name is identical to Framlingham College, and there is no explanation from the Respondent for having selected the Domain Name (and no obvious justification for it to have adopted that name as the Domain Name). Nevertheless, in the absence of sufficient evidence from the Complainant as to the extent of its Rights (and in particular the exclusivity of those Rights) and further in the absence of any complaint as to the method of use of the Domain Name, the Expert does not feel that it would be appropriate for him to adopt the approach advocated by Tony Willoughby in his decisions in DRS00658 *Chivas Brothers Limited v David William Plenderleith* – *chivasbrothers.co.uk* and more recently in DRS02464 *Aldershot Car Spares v Gordon* - *aldershotcarspares.co.uk*, namely to infer an abusive purpose merely from those factors alone. The onus is clearly on the Complainant to make out its case on the balance of probabilities, and in this case the Expert considers that the Complainant has failed to do so by reason of the inadequacies in its Complaint.

8. **Decision**

8.1 The Expert finds that the Complainant has not established that it has Rights in respect of a name or mark which is identical to the Domain Name, nor that the Domain Name in the hands of the Respondent is an Abusive Registration, and in the circumstances orders that no action is taken.

Bob Elliott

Dated: 28 September 2005