

Dear Nominet DRS consultation,

I believe the questions asked in the DRS consultation are too narrowly focused and they tend to shepherd respondents into looking at narrow aspects of the DRS rather than the overall effects of having a DRS at all and looking at the question of whether Nominet are competent to run it.

Summarising our views here at giraffe.co.uk and woodlands.co.uk,

(a) If the DRS is to be continued, the test for abusive registration should be changed to be much more in line with the UDRP (which the rest of the world uses perfectly successfully). The main change to get into line with the rest of the world should be to make it so that an abusive registration is only abusive if a name is BOTH registered in bad faith AND it is abusive in the hands of the registrant - not, as in the current DRS, a rule that requires only either one OR the other. The registration of a name pre-dating a trademark should, as with UDRP, be extremely hard for the new trademark owner to challenge.

(b) Nominet are not competent to run the DRS. They are not independent enough in a number of ways and even if the DRS is to be retained it should be in the hands of a truly independent third party. Serious consideration should be given to not having a DRS at all. The cost of the DRS to Nominet and its members probably outweighs its benefits - though the costs have to be guessed at as they are not revealed by Nominet despite requests that they should calculate and publish these costs (please treat this as another such request!). Surprisingly even Tony Willoughby, chairman of the "experts" panel, indicated that he has no idea what the whole thing costs Nominet and I doubt whether the board of Nominet themselves have worked out the cost of running the DRS. Many pointers indicate Nominet's lack of competence to run the DRS including the fact that the "taxi-rank system" for appointing experts seems to be subject to interference (and in any case is not transparent), the experts are appointed and paid by Nominet and therefore inclined to lean towards their general views, wrong decisions are not reversed even when they are recognised generally to have been wrong (unless the respondent has £3,000 plus to appeal). Mercer.co.uk illustrates this - Tony Willoughby admitted at the recent open meeting on the DRS in effect that the wrong decision had been reached and that had the respondent not appealed then Nominet's wrong decision would have stood. That's no sort of justice - relying on an appeal to put things right even when you know the DRS decision is wrong.

Fundamentally Nominet and the Current DRS system are stacked in favour of the trademark holders. This is illustrated by, amongst other things:

- (i) the preponderance of trademark lawyers in the DRS system, particularly as experts;
- (ii) the pressure that Nominet feels from large trademark holders as illustrated by the bounce.co.uk/ Procter & Gamble case;
- (iii) the extent to which experts are encouraged to "fill in" gaps for complainants where they rarely do so for respondents;
- (iv) the system where a complainant gets two chances to comment (initial complaint AND reply to response) whereas the respondent only has one chance - the response.

(c) Not having an entry fee to start a DRS is really silly and if Nominet continue with this free-to-start-an-action regime they should reasonably expect to have their tail twisted by domainers. At present a frivolous complaint can be put against a domainer so that the domain holder, in order to ensure that they keep a clean record in the public record of decisions, will employ a professional to make their case - if they can afford it. This is likely to cost between £2,000 and £5,000.

The complainant can then drop their case with absolutely no adverse consequences for them. Recently this has happened to us twice at giraffe.co.uk and the cost each time for us was over £2,500. The cost to the complainant was zero. Martin Reeves and others are quite right on this.

Hoping and believing that the DRS can only get better,

Best wishes,
Angus Hanton