

**Michael Page International Plc
-v- Robert Morrison**

Nominet UK Dispute Resolution Service

DRS 03578

**Michael Page International Plc and
Robert Morrison**

Decision of Independent Expert

1. PARTIES:

Complainant: Michael Page International Plc
Page House
39- 41 Parker Street
Holborn
LONDON
WC2B 5LN

Respondent: Robert Morrison
PO Box 520
Wallan
Victoria 3756
Australia

2. DOMAIN NAME:

michealpage.co.uk ("the Domain Name").

3. PROCEDURAL BACKGROUND:

- 3.1. A hard copy of the Complaint was received in full by Nominet on 11th April 2006. Nominet validated the Complaint and notified the Respondent of the Complaint.
- 3.2. No Response was received by the Respondent and therefore informal mediation was not possible. On 23 May 2006 the Complainant paid the fee to obtain the Expert Decision pursuant to paragraph 21 of the

procedure for the conduct of proceedings under the Nominet Dispute Resolution Service ("the Procedure").

- 3.3. On 24 May 2006, Nick Phillips, the undersigned ("the Expert"), confirmed to Nominet that he knew of no reason why he could not properly accept the invitation to act as the 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.

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.
- 4.2. 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 laid down in the Policy or this Procedure, the Expert will proceed to a Decision on the complaint".
- 4.3. Nominet appears to have used all of the available contact details to try to bring the Complaint to the Respondent's attention and indeed I have seen some emails passing between the Respondent and Nominet which strongly suggest that the Respondent has seen the Complaint and has decided not to file a Response. Consequently, there do not appear to me to be any exceptional circumstances involved and I will therefore proceed to a Decision on the Complaint notwithstanding the absence of a Response.

5. THE FACTS:

- 5.1. The Complainant is Michael Page International Plc.
- 5.2. The Respondent is Robert Morrison. The Respondent registered the Domain Name on 4 May 2004.

- 5.3. The Complainant is a public limited company incorporated in England and Wales, with Company no. 03310225, and carries on business as a recruitment consultancy with offices in eighteen countries worldwide.
- 5.4. The Complainant was incorporated on 30th January 1997, although the name, Michael Page has been used in relation to recruitment consultancy since the mid-1970's.
- 5.5. The Complainant and its subsidiaries and affiliates are the registered proprietor of a number of trade marks worldwide. These include Community trade mark no. 2001493, registered with effect from 15th December 2000, UK trade mark no. 2111720, registered from 27th September 1996, and US trade mark registration no. 2940342 with a registration date of 12 April 2005. All of these registrations are for the word mark MICHAEL PAGE and all are registered in the name of Michael Page Recruitment Group Limited,
- 5.6. The Domain Name is currently being pointed towards a web page which is headed up, "michealpage.co.uk, and which consists of a number of sponsored links to the web sites of a variety of companies offering employment opportunities, including some more general links to employment related web sites.
- 5.7. Prior to the filing of this Complaint, the Complainant filed an earlier complaint against the same Respondent. This earlier complaint never proceeded to a Decision because the Complainant decided not to pay Nominet's £750.00 fee for a Decision. This appears to have been because the parties had entered into negotiations and the Complainant believed that the Domain Name was going to be transferred to it without the need for a formal Decision.
- 5.8. The Respondent has been found to have made an Abusive Registration in at least five earlier Dispute Resolution Service Cases within the last two years. These are DRS complaint numbers 03408, 03035, 03028, 03021, and 2775.

6. THE PARTIES' CONTENTIONS:

The parties' contentions can be summarised as follows:

Complainant

- 6.1. In its Complaint, the Complainant makes the following submissions:
 - 6.1.1. The Complainant has rights in the Domain Name because it has traded using the name Michael Page since the mid-1970's as a recruitment consultancy with offices in eighteen countries worldwide and because of its various trade mark registrations;
 - 6.1.2. There is currently no relationship between the parties and the Complainant has never had any dealings with the Respondent;
 - 6.1.3. The Domain Name in the hands of the Respondent is abusive because it was primarily registered to unfairly disrupt the business of the Complainant;
 - 6.1.4. The Complainant is a recruitment consultancy with the name, Michael Page. The Domain Name has been registered, clearly, with the aim of making money from the Complainant's business;
 - 6.1.5. The content of the page currently used by the Domain Name acts to mislead potential clients and candidates looking for the recruitment services of the Complainant to visit other web sites;
 - 6.1.6. The page to which the Domain Name points has been set up by the Respondent using the Domain Name, geared to making money from mistyping done from clients and candidates who are looking for the Complainants site;
 - 6.1.7. For every click on a link on the site to which the Domain Name points, the Respondent receives a payment (by use of Domain Parking Programme);

6.1.8. The Complainant initially contacted Nominet DRS in September and subsequently the Respondent has promised, on a number of occasions, to transfer the Domain Name to the Complainants. The Respondent has not done this and, in addition, has now transferred the ownership into a different company in a different country to be purposefully obstructive.

7. DISCUSSIONS AND FINDINGS

General

- 7.1. There is one preliminary point which I need to deal with before I look at the merits of this Complaint. That point concerns the previous complaint which was filed by the Complainant but which did not proceed to a Decision because the Complainant did not pay the fee.
- 7.2. The point I am concerned with is whether this previous complaint operates to prevent me from hearing the current Complaint. Paragraph 10 of the Policy deals with, "Repeat Complaints". Paragraph 10e provides that, "If a complaint has reached the Decision stage on a previous occasion it will not be reconsidered.... If the Expert finds that the complaint is a resubmission of an earlier complaint he or she shall reject the complaint without a consideration of its merits". Paragraph 10f, then goes on to set out a number of factors which may allow a re-hearing in certain circumstances.
- 7.3. I have not seen the Complainant's previous complaint in this matter. However, the effect of Paragraph 10e, is only to preclude a repeat complaint where that earlier complaint has reached the Decision stage and therefore, I would suggest, to prevent a complainant effectively having a, "second bite of the cherry", for example, by putting together stronger evidence and arguments second time around. In my view, therefore Paragraph 10e, does not preclude the re-submission of a complaint where the earlier complaint has not reached the Decision stage and I am able to continue with this Complaint.
- 7.4. The Policy defines Rights as including but not being limited to, "...rights enforceable under English law....". This has always been treated in

decisions under Nominet's DRS as a test with a low threshold to overcome and I think that must be the correct approach.

- 7.5. Under paragraph 2 of the Policy the Complainant is required to show, on the balance of probabilities that:
- (1) It has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
 - (2) The Domain Name, in the hands of the Respondent, is an Abusive Registration.

Complainant's Rights

- 7.6. The first question I must answer is therefore whether the Complainant has proved on the balance of probabilities that it owns Rights in a name or mark that is identical or similar to the Domain Name.
- 7.7. The Policy defines Rights as including but not being limited to, "...rights enforceable under English laws...". This has always been treated in decisions under Nominet's DRS as a test with a low threshold to overcome and I think that must be the correct approach.
- 7.8. The Complainant has provided evidence of its use of the name Michael Page, dating back some years, and it is also common knowledge that Michael Page is an extremely well known name in the recruitment consultancy arena. Additionally, the Complainant (or other companies in the same group) hold registered trade marks in the name, Michael Page, all of which go back several years.
- 7.9. In the circumstances I have no difficulty in finding that the Complainant has, on the balance of probabilities, rights in the name "Michael Page".
- 7.10. Ignoring the first and second level suffixes, as I must do, I must now decide whether the name in which the Complainant has Rights, i.e. "Michael Page" is identical or similar to the Domain Name i.e. "Michael Page". I am in no doubt at all that the two names are similar. They differ

only by one letter which does not change the overall character of the name and indeed the Domain Name is most likely to be viewed as a common misspelling of the name in which the Complainant has rights.

Abusive Registration

7.11. Having concluded that the Complainant has Rights in a name which is identical to the Domain Name, I must consider whether the Domain Name constitutes an Abusive Registration. An Abusive Registration is defined in the Policy as a Domain Name which *either*:

(a) 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

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

7.12. This definition allows me to consider whether a Domain Name constitutes an Abusive Registration at any time and not, for example, just the time of registration / acquisition.

7.13. Paragraph 3 of the Policy provides a non-exhaustive list of the factors which may evidence that a domain name is an Abusive Registration. It is worthwhile setting out paragraph 3 of the Policy in full:

"3. Evidence of Abusive Registration

a. A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows:

i. Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

A 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 for the purpose of unfairly disrupting the business of the Complainant;
- 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;
 - 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;
 - iv. It is independently verified that the Respondent has given false contact details to us; or
 - v. The domain name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant:
 - A has been using the domain name registration exclusively; and
 - B paid for the registration and / or renewal of the domain name registration.
- b. Failure on the Respondent's part to use the Domain Name for the purposes of e-mail or a website is not in itself evidence that the Domain Name is an Abusive Registration.
- c. 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."

7.14. The Respondent has been found to have made an abusive Registration in three or more Dispute Resolution Service cases in the last two years. These cases are as follows:

Respondent	Case No.	Domain Name	Decision
Robert Morrison	DRS03408	sheetmusicdirect.co.uk	Transfer
Robert Morrison	DRS03035	seachpress.co.uk	Transfer
Robert Morrison	DRS03028	harrycorrey.co.uk	Transfer
Robert Morrison	DRS03021	lintran.co.uk	Transfer
Robert Morrison	DRS02775	guilbertonline.co.uk	Transfer

7.15. Therefore, and in accordance with the provision of Paragraph 3c of the Policy, there is a presumption of Abusive Registration against the Complainant. This presumption may be rebutted; for example, by the Respondent making out one of the non-exhaustive list of factors which may evidence that Domain Name is not an Abusive Registration and which are set out in Paragraph 4. In this case, however, the Respondent has decided not to file a Response and the presumption has not been rebutted.

7.16. I therefore find that, pursuant to Paragraph 3c of the Policy, the Domain Name constitutes an Abusive Registration in the hands of the Respondent. Having reached this conclusion I will not go on to look at whether the Complainant had established whether the Respondent was guilty of an Abusive Registration under one of the non-exhaustive list of factors set out in Paragraph 3a of the Policy or otherwise.

8. DECISION

8.1. In the circumstances, I find that the Complainant has proved on the balance of probabilities that it has Rights in a name or mark which is identical or similar to the Domain Name and that the Domain Name is an Abusive Registration in the hands of the Respondent. I therefore decide that the Domain Name should be transferred to the Complainant.

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NICK PHILLIPS

13th June 2006