

# Nominet UK Dispute Resolution Service

**DRS 3655**

## Ryanair Limited v. Michael Coulston

### Decision of Independent Expert

#### 1. Parties

Complainant: Ryanair Limited  
Address: Corporate Head Office  
Dublin Airport  
County Dublin  
Country: Ireland

Respondent: Michael Coulston  
Address: 97 Armoury Road  
London  
Postcode: SE8 4LB  
Country: GB

#### 2. Domain Name

The domain name in dispute is *ryanair.org.uk* ("the Domain Name").

#### 3. Procedural Background

3.1 The Complaint was received in full (including annexes) by Nominet on 8 May 2006. Nominet validated the Complaint and sent a copy to the Respondent on 9 May 2006, informing the Respondent that he had until 1 June 2006 to lodge a Response.

3.2 The hard copies of the Respondent's Response were received on 30 May 2006 and were forwarded to the Complainant the same day. The Complainant's Reply was received in full and was forwarded to the Respondent on 12 June 2006. The dispute then proceeded to Informal Mediation, starting on 15 June 2006. This was unsuccessful.

3.3 On 5 July 2006 the Complainant paid Nominet the required fee to obtain a decision of an Expert pursuant to paragraph 7(a) of the Nominet UK Dispute Resolution Service ("DRS") Policy ("the Policy"). Nominet invited me, Anna Carboni, to provide a decision on this case and, following confirmation to Nominet that I knew of no reason why I could not properly accept the invitation to act in this case and of no matters which ought to be drawn to the attention of the parties which might appear to call into question my independence and/or impartiality, Nominet appointed me as Expert on 12 July 2006.

#### 4. Outstanding Formal/Procedural Issues (if any)

There are no outstanding formal or procedural issues to deal with.

## 5. The Facts

5.1 The Complainant runs the largest low fares airline in Europe, which operates under the name RYANAIR. The Complainant has used the name RYANAIR in marketing and advertising its business since 1985. As a result of this use, the RYANAIR name has become well-known in the UK, Europe and elsewhere as that of the Complainant.

5.2 The Complainant owns several registered trade marks consisting of or including the name RYANAIR in the European Community, including various trade marks in the UK, Germany, France and Benelux, as well as some Community trade marks. It has also registered a number of domain names that include the name RYANAIR, such as *ryanair.com*, *ryanair.co.uk*, *ryanair.ie* and *travelyanair.com*.

5.3 The Respondent is an individual called Michael Coulston, who lives in the UK. The Respondent once had a bad experience when travelling with the Complainant in which his luggage was temporarily lost and his holiday ruined, since when he has devoted some considerable time and energy to publicising what he perceives as deficiencies in the way in which the Complainant deals with problems and complaints by its customers. He does this under the name "Ryanair Refund Campaign".

5.4 Nominet's records show that the Respondent registered the Domain Name on 20 September 2003. From the printouts that have been supplied to me, it appears that from at least September 2004, and possibly for almost a year before that, the Respondent has used the Domain Name to resolve to a website at the web address *www.ryanair.org.uk*, which he operates under the name "Ryanair Refund Campaign" as described in further detail below.

## 6. The Parties' Contentions

### Complainant

6.1 The Complainant claims that it has Rights in respect of a name or mark which is identical or similar to the Domain Name (Policy, paragraph 2(a)(i)) and provides considerable evidence in support of this claim. Since the Respondent does not contest the bulk of this evidence in its Response, it only needs to be set out briefly. In summary, it comprises:

- (1) several Community and other national European trade mark registrations for the mark RYANAIR or derivative marks, which are said to be "highly reputed";
- (2) depictions of use of the name RYANAIR on aeroplanes (of which the Complainant has 107), stationery, publications and websites;
- (3) evidence of advertising expenditure of €20 million in 2005, from which I infer high expenditure in earlier years as well;
- (4) assertions of ownership of numerous domain name registrations including those mentioned in paragraph 5.2 above;
- (5) an assertion that the Complainant has passing off and unfair competition rights on which it can rely to prevent third parties from trading as RYANAIR or using RYANAIR as a trade mark.

6.2 Secondly, the Complainant claims that the Domain Name is an Abusive Registration (Policy, paragraph 2(a)(ii)) because it has been used in a manner which takes unfair advantage of or is unfairly detrimental to the Complainant's Rights. To support this contention, the Complainant makes the following points in particular:

- (1) The Respondent has no legitimate interest in the Domain Name and cannot conceivably expect that it does or ever did.

- (2) The Domain Name is confusing with the Complainant's mark RYANAIR and is used to confuse internet users.
- (3) The Complainant cannot avoid a finding of intention to confuse simply by not making any commercial gain from the Domain Name registration.
- (4) The argument of confusion is supported by the fact that (i) the Respondent's website appears within the top ten results (out of 53,700) if the search terms 'ryanair' and 'refund' are put into the search engine at [www.google.co.uk](http://www.google.co.uk) and (ii) the Respondent's website appears ahead of the Complainant's if a search for the exact term 'ryanair refund' is done, which means that a customer seeking a refund from the Complainant is more likely to find the Respondent's website than that of the Complainant.
- (5) Customers who type *ryanair.org.uk* (.org.uk being a popular top-level domain) into their web browser are likely to be confused, at least initially, and therefore the Domain Name was registered purposely to disrupt the Complainant's business (Policy, paragraph 3(a)(i)(C)).
- (6) The Respondent has criticised the Complainant and made misleading, false and defamatory statements about the Complainant on his website, which is causing the Complainant damage. While justified criticism may be proper, the use of a confusingly similar domain name for these purposes is not, as has been stated in correspondence to the Respondent on several occasions.
- (7) The circumstances and content of the website indicate that the Respondent has used the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant and causing it unfair loss and damage.
- (8) The Complainant has been forced to spend thousands of pounds in legal fees to have false, malicious and defamatory statements removed from the Respondent's website and to stop the Respondent publishing individual email addresses of key personnel within Ryanair in breach of the Data Protection Act 1998 and with the sole purpose of causing personal harassment and disruption to the Complainant's business.

6.3 The Complainant provides documentary evidence to support these contentions. It also argues that, since the Domain Name (ignoring the suffix *.org.uk*) is identical to the name RYANAIR and the Respondent uses the Domain Name for the purposes of a criticism site without the Complainant's authorisation, the burden falls on the Respondent to prove that its registration is not abusive (following the decision in British Board of Film Classification v Bulletin Board for Film Censorship [DRS 00104, *bbfc.org.uk*, 28 January 2002]).

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

#### Respondent

6.5 In the Response, the Respondent first lists a number of "specific points of note or disagreement with the Complaint". These include the following points:

- (1) The Complainant showed no interest in the Domain Name until discovering that it linked to material whose publication it wished to prevent. On the other hand, there are several other domain name registrations owned by third parties which the Complainant cannot be interested in recovering or has failed to do so, including *ryanair.net*, *ryanair.info*, *ryanair.biz*, *ryanair.uk.net*, *ryanair.uk.com* and *ryanair.org*, registered on various dates between 12 April 1998 and 27 April 2004.
- (2) In referring to domain names that were registered after registration of the Domain Name among those that it has registered, the Complainant is guilty of "blatant obfuscation".
- (3) It is clearly not true that the Domain Name has been registered to confuse internet users, given that there is a bold statement on the website that it is not Ryanair.

- (4) The reference to search engine results is further obfuscation. The Respondent cannot be responsible for search engine results, and in any case, it is to be expected that sites giving information about a particular subject will be listed. Many other sites are in fact listed, some of which lead to critical content. Further, the Complainant's own acts caused press coverage and a twelve-fold increase in visits to the Respondent's website, which explains the high search engine listing.
- (5) Despite the Complainant referring to *.org.uk* being one of the most popular top level domains, the Complainant has not itself shown any interest in other *.org.uk* domains.
- (6) The Complainant has not provided any evidence of its claimed damage, which in any event is refuted by its huge and ever-increasing profits.
- (7) The email addresses published on the Respondent's website were business, not personal, emails. They were published in the spirit of sharing information and helping people, given that the Complainant does not publish any email addresses, nor any telephone numbers other than premium rate numbers which charge callers to wait indefinitely in a queue. The fact that the Complainant wishes to prevent its own customers from contacting them does not make it a breach of the Data Protection Act for someone else to assist them in doing so.
- (8) Any material that was removed from the website was removed voluntarily rather than by the Complainant's solicitors. The Complainant did not cooperate with the Respondent in trying to correct any defamatory statements, but eventually came up with a number of inferences which were entirely its own.

6.6 The Respondent then explains why he has merely made legitimate non-commercial and fair use of the Domain Name:

- (1) The Domain Name was initially registered for two purposes: to tell the Respondent's own story (and others if provided) and to comment on the implications of the Complainant's policies. A third purpose arose subsequently, which became the most significant, which was to assist people with contacting the Complainant.
- (2) None of these purposes would confuse internet users into believing that the site was operated by the Complainant, and no attempt was made to do so. The Respondent even complied with a request to change the design of the website to make it look more different from the Complainant's site at the time.
- (3) The Respondent's website encourages potential travellers to consider their best options in the light of the Complainant's policies. It acknowledges that the Complainant's service may be ideal in some circumstances, and the ultimate aim is to see the Complainant's cheap flight service combined with better customer services to everyone's benefit. This would make the *ryanair.org.uk* site redundant.
- (4) The Respondent has never attempted to sell on the Domain Name and has never gained any financial advantage from it.
- (5) The Complainant's site at *www.ryanair.com* lists only premium rate telephone numbers as a means of contacting the airline and does not publish email addresses. The Respondent has no evidence of the premium rate telephone numbers ever being answered beyond being charged to wait in a queue.
- (6) Emails received at *ryanair.org.uk* are predominantly (in roughly descending order of frequency):
  - junk and worms
  - messages from people who urgently need to change or correct booking details
  - messages from people who have not received a confirmation of a booking
  - messages from people with general questions, eg about baggage allowances

- messages from people wanting to criticise Ryanair
  - messages from people wanting to praise Ryanair
- (7) The Complainant's customers send messages to ryanair.org.uk in desperation when they cannot find any realistic way of contacting the Complainant, and the Respondent does his best to help, e.g. by passing on an email address for customer services or providing a fax number.
- (8) The Complainant has tried to suppress the Respondent giving out this type of information by threatening use of the data protection legislation.

6.7 The Respondent suggests that the Complainant's main motive in bringing the Complaint does not relate to the use of the Domain Name but to censoring the content of the website to which it points. The Respondent is said to have used tactics that include misleading, threatening statements and a refusal to make their objections specific. Further detail of the alleged motives and tactics of the Complainant are given and can be summarised as follows:

- (1) The Complainant has shown little interest in similar domain names that do not lead to critical content; it has not itself registered other likely domain names including its name, such as *.org*, *.info* and *.net*; and it has not retrieved a number of domain names in which they might have claimed an interest.
- (2) For a long time the Complainant failed to identify the inaccuracies that it claimed were on the Respondent's website, merely claiming that whole sections of the site were untrue. When they eventually listed the specific items to which they objected, the objections were based on their own inferences and not to any direct statements on the site.
- (3) The Complainant has made a number of misleading statements in an attempt to intimidate the Respondent into removing the site and as part of its Complaint in these proceedings

6.8 The Respondent concludes by asserting that the whole situation would be best resolved by the Complainant responding favourably to an offer made in February 2005, the gist of which was that "the best possible outcome would be for cheap flights with good customer service to be available to ordinary people through Ryanair". He exhibits an email sent to the Complainant on 15 February 2005 which opens with the following sentence: "We would like to offer an opportunity for Ryanair to improve its profits while avoiding becoming the new McLibel (see <http://www.mcspotlight.org>)." It goes on to suggest that, in return for the Complainant changing the methods by which it deals with customer complaints, the Respondent will remove elements of its website until eventually the Complainant's customer service improvements are sufficient to enable the Respondent to close down the site.

#### The Complainant's Reply

6.9 By way of Reply, the Complainant reiterated the crux of its Complaint and followed up some of the specific points raised by the Respondent.

6.10 In relation to the Complainant's policy of recovering abusive domain names, the Complainant states inter alia:

- (1) At the time of establishing and protecting its intellectual property rights the Complainant did not register *ryanair.org.uk* since it believed the registration of *ryanair.com* and *ryanair.co.uk* to be sufficient representations of its commercial interests in the UK. Only as the Internet's growth continued, and as it transpired that abusive registrations of domains including the mark RYANAIR were disrupting its business, did it commence a gradual and methodical recovery of abusive domain names. With regard to the Domain Name, the Complainant's interest arose in November 2004 when it first became aware of its existence.

- (2) The inclusion of RYANAIR, a protected trade name, in website metadata is generally prohibited and the Complainant has succeeded in forcing several travel websites to remove the word RYANAIR from their metadata. The Complainant has never given the Respondent permission to include the word RYANAIR in the metadata of its Website, and this will help explain the favourable position it achieves within the search engine results quoted. In this regard the Respondent, contrary to its contention, does have responsibility for listings on search engines, albeit indirectly.
- (3) The Respondent appears confused by the differentiation between its ownership of the Domain Name, which infringes the rights of the Complainant, and the content of the Website. Whilst there is obviously some degree of overlap, the Complainant's intention in these proceedings is to recover the Domain Name in order to prevent further infringement of its rights. Remedies with regard to any defamatory statements and the publication of personal and private information will be pursued, if considered appropriate, through other legal channels. (The Complainant has already lodged a complaint with the Information Commissioner's Office).

6.11 In relation to the Complainant's claim that confusion is being/will be caused to its customers, the following is said:

- (1) With specific regard to confusion created by the Website, it is significant that the Respondent confirms (with the exception of junk and worm emails) that the three types of email most frequently received at *ryanair.org.uk* are 'messages from people who urgently need to change or correct booking details; messages from people who have not received a confirmation of a booking; and messages from people with general questions, eg. concerning baggage allowances'.
- (2) It is therefore unequivocally the case that customers and/or potential customers of the Complainant perceive the Website to be linked, to some degree, with the Complainant. That the Website is confusing Internet users is evidenced by their mistaken belief that they can contact the Complainant through the Website. This confusion is caused as a consequence of the Website being parked behind a domain name which includes the Complainant's trade mark. This confusion was heightened for a long period since the website mimicked the layout and colour scheme of the Complainant's website until the Respondent was forced to make appropriate changes.

6.12 As far as the Complainant's Customer Service Policy is concerned, the Reply states as follows:

- (1) The Complainant has a structured and successful system in place which allows customers to contact it. It also has an efficient and effective complaints procedure in place, but which does not require email communication. The Respondent cannot simply force the Complainant, through his tactics of publishing customer service personnel information, to amend this established procedure.
- (2) The Complainant offers a variety of means by which customers can contact the airline via post, facsimile and telephone (the call charges for which are modest compared with a major competitor). All complaints are answered within seven days and telephone enquiries are dealt with immediately.
- (3) The breakdown of emails received by the Respondent confirms a genuine misuse of the Domain Name and demonstrates confusion not least with those individual customers who need to communicate with the Complainant. To this end, the Respondent is not, as it insists it is, assisting Ryanair customers. On the contrary it is hindering any attempt they may make to contact the Complainant's customer service department. Customers of the Complainant are misled by the Respondent since they believe their requests will be dealt with expeditiously when, in actual fact, their request will not be dealt with at all unless they follow recognised procedures. The Respondent's misguided attempts to improve the Complainant's customer service have also resulted in serious disruption to its business.

6.13 In relation to damage and disruption caused by the Respondent's actions:

- (1) The Policy does not require a Complainant to show that it has suffered loss. However, the Respondent's own evidence is sufficient to show a loss of potential customers. In addition there has been unjustified damage to the Complainant's reputation; lost fees; a significant number of wasted man-hours (especially since the customer services team's email addresses were published); a loss of management time in light of legal action; and not insignificant legal costs.
- (2) There can be no doubt that the publication of individual email addresses has caused disruption to business. As a consequence of the most recent postings, one of the Complainant's top-level managers, Ms Green, spends a substantial period of time each day, sometimes several hours, clearing her inbox and dealing with unsolicited emails and as a consequence is unable to perform her normal duties. Ms Green estimates that she previously received 20-30 emails per day in comparison with the current average of 160 per day. Whilst this is the most extreme example, there have been similar problems for other employees of the Complainant. The content of these emails is often abusive and highly insulting.
- (3) The Complainant has spent approximately £7,500 on legal costs removing defamatory and other infringing material from the Website. Approximately £5,500 further has been spent on legal fees associated with this Complaint and the complaint lodged with the Information Commissioner's Office. The statement by the Respondent that 'any material removed was removed voluntarily' is disingenuous; several letters from the Complainant's legal representatives were required before material was removed.

6.14 The Complainant refers to what it describes as a threat to auction the Domain Name to the highest bidder, possibly to competitors of the Complainant, or to donate it to a trade union. The Complainant exhibits a printout from a page on the Respondent's website headed "Options if Ryanair Doesn't Respond" which considers the situation where the Respondent may be forced to stop saying the things it does on the website, at which point something else could be done with the Domain Name. It goes through three options: auction the Domain Name to the highest bidder (proceeds to charity); donate it to a worthy cause, such as the trade unions trying to organise in Ryanair; or leave it domain pointing at a site that says nothing at all, but just links to articles and correspondence.

6.15 The Complainant reiterates that it has no issue with the Respondent relaying his own story and 'others if provided' so long as the information posted is accurate. Likewise the Complainant does not take issue with the Respondent's comments upon the implications of Ryanair's policies, so long as the information is accurate, and so long as any such comment falls within the parameters of 'fair and honest criticism'. The Respondent, as a publisher, has an obligation not to publish defamatory material and to verify the truth of all postings on the website.

6.16 The Complainant denies the Respondent's contention that it has made misleading statements and states that the contention is in any event irrelevant.

6.17 The points made by both parties are very detailed and have not been set out in full here. However, I have read all of them and take them all into account in reaching my findings below.

## **7. Discussion and Findings:**

### General

7.1 Paragraph 2 of the Policy provides that, to be successful, the Complainant must prove on the balance of probabilities that:

- (i) it 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 (as defined in paragraph 1 of the Policy).

7.2 The Complainant relies on the *bbfc.org.uk* case [DRS 00104] to argue that the burden of proof should be reversed in this case because it involves use of the identical name in which the Complainant has Rights for the purposes of a criticism site. However, that case was decided in January 2002 at a time when an earlier version (“version 1”) of the Policy was in place, which contained an express provision to the effect contended for. The current version (“version 2”) of the Policy, which come into effect on 25 October 2004, does not contain such an express provision, even though it still contains a provision (at paragraph 4(b)) that sites operated solely in tribute to or in criticism of a business may constitute fair use. Therefore I proceed on the basis that the burden of proof remains with the Complainant.

### Complainant’s Rights

7.3 Under paragraph 1 of the Policy, “**Rights** includes, but is not limited to, rights enforceable under English law”. Previous cases have established that this broad definition extends to registered trade mark rights and unregistered rights in names and marks, such as rights in passing off in the United Kingdom and similar rights in jurisdictions elsewhere.

7.4 The Complainant has registered trade mark rights in the European Community in respect of the name RYANAIR, some of which date back to the late 1990s. It has also used the name RYANAIR extensively in relation to its low cost airline business since at least the mid-1990s and has built up a reputation and goodwill in relation to the business carried on under the name, such that it has acquired passing off rights in the UK and unfair competition rights in other European jurisdictions. RYANAIR is a distinctive name, and there is no evidence anywhere in the papers that anyone other than the Complainant has conducted business or built up goodwill under that name.

7.5 Although some of the trade mark and domain name registrations mentioned in the Complaint were registered after the Domain Name was registered, others pre-dated the Domain Name, as did the Complainant’s use of the name RYANAIR, so this does not assist the Respondent. The Respondent’s assertions that the Complainant has failed to register RYANAIR as part of *.org.uk* and other domain name variants is irrelevant.

7.6 The Complainant therefore clearly has Rights in the name and trade mark RYANAIR.

7.7 Ignoring the *.org.uk* suffix, the Domain Name is identical to RYANAIR. So paragraph 2(i) of the Policy is satisfied.

### Abusive Registration

7.8 Paragraph 1 of the Policy defines an “**Abusive Registration**” as:

“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.”

7.9 I must take into account all relevant facts and circumstances which point to or away from the Domain Name being an Abusive Registration.

7.10 Paragraph 3 of the Policy sets out a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration. Those which are brought into play by the Complainant are as follows:

“3(a)(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)...; 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;...”

7.11 On the other side of the coin, paragraph 4 of the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration. The Respondent relies on paragraphs 4(a)(C) and 4(b) in asserting that it has made legitimate non-commercial or fair use of the Domain Name, such fair use being the operation of a website solely in criticism of aspects of the Complainant’s business.

7.12 The assertion by the Complainant that the Respondent has threatened to auction the Domain Name to the highest bidder, possibly to competitors of the Complainant, was only made in the Reply and is not heavily relied on. Having reviewed the email of 15 February 2005 in which the alleged threat was made, I do not regard this as a serious threat. The Respondent was simply making rather flippant suggestions as to what he could theoretically do if prevented from using the Domain Name for the purpose of his criticism site. There is no evidence that he has ever taken steps to sell the Domain Name.

7.13 The allegations of unfair disruption of the Complainant’s business and of causing confusion as to a connection between the Domain Name and the Complainant are more serious, though, and are to some extent connected.

7.14 The first point to note is that, where a name or mark that is strongly linked in the minds of the public to a particular business is registered as a domain name, without any addition or alteration (apart from a standard domain name suffix, such as *.org.uk*), there is always going to be some risk that internet users will type into the address field [NAME] followed by [suffix] with the aim of finding the relevant business website on the internet. So, in this case, someone who types in the address *RYANAIR.org.uk* is likely to expect to be taken to a website operated by the Complainant. The fact that, when s/he gets to the Respondent’s website, it quickly becomes clear that it is not in fact connected with the Complainant, does not detract from that short period of confusion. Additionally, in this case, during the time when the Respondent’s website used get-up that was similar to that of the Complainant, the realisation that it was not the Complainant’s website would not have dawned immediately.

7.15 It does not help the Respondent to say that, because the Complainant had not itself registered the Domain Name (or various other domain names including the RYANAIR mark), it cannot have been worried about the prospect of confusion. There are numerous possible permutations of the RYANAIR mark that could be registered in numerous different internet domains, and the Complainant (and other brand owners) should not be required to pay to register all such permutations in all available domains for the defensive purpose of keeping other people out. Whilst it might be cheaper to register most of the main permutations in the key domains than to pay the cost of trying to retrieve them from third parties who use them in a manner prohibited by a relevant law or domain name policy, brand owners should not be penalised merely for taking a pragmatic approach to its domain name portfolio.

7.16 There is force in the Complainant’s observation that the Respondent’s website appears within the top ten results in a Google search for ‘ryanair’ and ‘refund’ and appears above the Complainant in a Google search for ‘ryanair refund’, such that anyone searching for the place to go to seek a refund from the Complainant may well end up first on the Respondent’s website. While the tendency of many people (including myself) might be first to

look for the Complainant's main website and then to search on the website for information about refunds, it is reasonably likely that others would, as the Complainant suggests, type 'ryanair refund' in a search engine.

7.17 The order of 'hits' in a Google search can often vary from day to day. I tested the system just before signing off on this decision and found that a search for 'ryanair refund' on UK pages using *www.google.co.uk* brought up the following entry as the third item on the list, above the first hit for the Complainant's website:

"Ryanair Campaign

I regret to advise you that in accordance with Ryanair's general conditions of carriage, no refund applies in the case of your ticket...  
[www.ryanair.org.uk/story.html](http://www.ryanair.org.uk/story.html)"

7.18 It is reasonably likely that an internet user would click on that link, believing that it would take them to the genuine Ryanair site. The Respondent cannot disclaim responsibility for its website listing in search engine results since these listings are derived from the use of the RYANAIR name in the Respondent's web address itself and almost certainly also from the use of the name in metadata from his website. The Respondent is responsible for such uses of the name.

7.19 The fact that other sites containing comment and criticism about the Complainant are also listed among the search engine hits does not avoid a finding of likely confusion in the Respondent's case. They may or may not also be confusing or otherwise objectionable, but that is a separate issue for the Complainant to pursue if it so wishes.

7.20 The Respondent himself admits to receiving emails through his website from people with comments, queries, complaints and praise about the Complainant. What he does not say is whether these people believe that he has the power to deal with these things on the Complainant's behalf. Since he has not exhibited any of these emails, I cannot be sure either way. In view of the arrangements that the Complainant clearly does have in place to deal with complaints, albeit not including email, the Respondent's assertion that people only come to him in desperation is not sufficient to persuade me that none of the people who have sent emails through his website have been under the impression that he/his website has some sort of trade connection with the Complainant.

7.21 Turning to the content of the Respondent's website, I do not propose to deal with the question of whether any of the statements made on it now or in the past are or have been defamatory or otherwise objectionable, or whether publishing email addresses of the Complainant's employees is contrary to the Data Protection Act 1998, since that would be outside the scope of my remit as Expert (save perhaps in an absolutely clear case). I also do not propose to go into whether or not the Complainant's approach to raising its various objections has been reasonable, since this is not relevant to the matters that I have to determine. However, the consequence of the Respondent's use of the Domain Name to point to a website on which statements and information are published is of relevance where this leads to unfair disruption of the Complainant's business.

7.22 The Complainant complains about the time, effort and money that have been expended in persuading the Respondent to take down content on the website that it regards as untrue, misleading or defamatory. Without being able to assess properly whether the Complainant's allegations are right, I cannot make a finding that the resultant expense and management time has been unfairly caused, or whether this is just a fact of life for a company that is open to fair criticism.

7.23 On the other hand, the disruption that has been caused to the Complainant as a result of the Respondent's publication of the internal email addresses of its employees is significant. However unsatisfactory the Complainant's customer complaints system is, in the Respondent's opinion, the fact is that it has such a system in place, which directs customers to contact the Complainant by post, fax or phone, but which does not invite email correspondence. As a result of the Respondent's use of its website to publish email addresses and to encourage people to use them to make complaints, the Complainant and

certain of its employees have experienced considerable inconvenience in their daily business. It must have been obvious to the Respondent that this would happen. Indeed, his stated intention is to force the Complainant to change its customer complaints system so as to permit email correspondence, and this is one of the means by which he has chosen to do it.

7.24 Although I do not have full details of the chronology of statements and information posted to the Respondent's website, it is probable – as he asserts – that his initial purpose in registering the Domain Name was to tell his own story of the lost baggage and to comment on the Complainant's customer complaints policies. Nevertheless, my findings in relation to the inherent likelihood of confusion in adopting an essentially identical Domain Name to the mark RYANAIR, lead me to conclude that the Domain Name was from the start registered in a manner which took unfair advantage of and was unfairly detrimental to the Complainant's Rights and, as such, was an Abusive Registration.

7.25 If there is any doubt about that, however, the additional unfair disruption caused by the Respondent's later acts of posting the email addresses on his website lead me to conclude that the subsequent use of the Domain Name also took unfair advantage of and was unfairly detrimental to the Complainant's Rights, which – even ignoring the Respondent's initial intentions on registration – leads to the conclusion that the Domain Name is an Abusive Registration.

## 8. Decision

I find that the Complainant has Rights in respect of a name and mark which is similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration. I therefore direct that the Domain Name *ryanair.org.uk* should be transferred to the Complainant.

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Anna Carboni

26 July 2006