

# Nominet UK Dispute Resolution Service

**DRS 00104**

**BRITISH BOARD OF FILM CLASSIFICATION v. BULLETIN BOARD FOR FILM CENSORSHIP (represented by JAMIE DURRANT)**

## Decision of Independent Expert

### **1. Parties:**

Complainant: British Board of Film Classification  
Address: 3 Soho Square  
London  
Postcode: W1D 3HD  
Country: GB

Respondent: The Bulletin Board for Film Censorship (represented by Mr Jamie Durrant)  
Address: 8 Kingsway  
Woking  
Surrey  
Postcode: GU21 1NU  
Country: GB

### **2. Domain Name:**

bbfc.org.uk (“the Domain Name”)

### **3. Procedural Background:**

The complaint was received by Nominet on 14 November 2001. Nominet validated the complaint and informed the Respondent, by both letter and by e-mail on 16 November 2001, noting that the Dispute Resolution Service had been invoked and that the Respondent had 15 working days (until 10 December 2001) to submit a Response. A Response was received on 7 December 2001 and forwarded to the Complainant on the same day with an invitation to the Complainant to make any further submission in reply to the Response by 18 December 2001. The Complainant duly filed a Reply on 17 December 2001, which was forwarded on to the Respondent on the same day. In accordance with Nominet’s practice I have not been provided with any of the materials, records or correspondence generated during the Informal Mediation stage which followed, though I infer that it did not result in a mediated compromise agreement. On 8 January 2002 the Complainant was invited to pay the fee to obtain an Expert

Decision pursuant to paragraph 6 of the Nominet UK Dispute Resolution Service Policy (“the Policy”). The fee was duly paid on 9 January 2002.

On 15 January 2002 Nominet invited the undersigned, Philip Roberts (“the Expert”), to provide a decision on this case and, following confirmation to Nominet that the Expert knew of no reason why he 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 his independence and/or impartiality, Nominet duly appointed the undersigned as Expert with effect from 18 January 2002.

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

The Registrant of the Domain Name is recorded on the Whois database as “Bulletin Board for Film Censorship”, with Mr. Jamie Durrant’s name given as administrative contact. As it does not appear that the “Bulletin Board for Film Censorship” is a firm or corporation with separate legal personality from Mr Durrant, I have been content to treat this Complaint as being properly constituted against Mr Durrant either in a representative capacity on behalf of all members of the “Bulletin Board for Film Censorship” or alternatively in his own personal capacity. This Decision is binding upon the proper Respondent and registrant of the Domain Name, whoever that may be as a matter of law.

#### **5. The Facts:**

The Complainant, the British Board of Film Classification, is a private company limited by guarantee with no share capital. It was incorporated in England and Wales on 17 August 1911 under company number 117289 as “The Incorporated Association Of Kinematograph Manufacturers Limited”. Its name was changed to the present designation on 31 May 1985. It is an independent, non-governmental body, which has exercised responsibilities over the classification of films in cinemas since 1913, and over videos since 1985 (as a result of *de facto* delegation by local government and *de jure* delegation by central government respectively).

The Complainant is the proprietor of UK trade mark registration number 2234541 (‘BBFC’), and a number of others which do not feature those initials, all registered as of 1 June 2000.

The Nominet WHOIS search with which I have been provided shows that the Domain Name, [bbfc.org.uk](http://bbfc.org.uk), was registered on behalf of the Respondent on 4 December 1999, through the agency of Tag Holder UK2NET.

I have been supplied with and have reviewed various printouts of the website – styled ‘Ban the Board of Film Censors’ – which has been published under the URL <http://www.bbfc.org.uk>. The site contains sustained criticism of the Complainant (which is referred to consistently as ‘the BBFC’), principally on the basis of allegedly arbitrary classification and allegedly over-zealous redaction of films.

#### **6. The Parties’ Contentions:**

##### **Complainant:**

The Complainant claims that:

1. *The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name (Policy Paragraph 2a(i)):*

The Complainant has for many years used the mark BBFC and is the registered owner of the trade mark BBFC. Examples of the use of the mark BBFC by the Complainant are:

(a) The use of the mark BBFC in the 1985 Annual Report of the Complainant which was the first annual report to the Home Secretary as required by s.6 of the Video Recordings Act 1984. A copy of the cover of this report is attached, together with examples of the use of the mark BBFC in subsequent annual reports.

(b) The use of the mark BBFC on the Complainant's stationary and publications of the Complainant, such as: letterheads, fax lead sheets, and video submission forms; the Classification Guidelines, Sense and Sensibilities: Public Opinion and the BBFC Guidelines and Classification of Digital Works.

(c) The use of the mark BBFC in the classification symbols used by the Complainant from 1985.

As stated above, the Complainant is the owner of the trade mark BBFC and the classification symbols in which the mark BBFC appears. Details of the trade mark registration are attached. The Complainant is the owner of the domain name [bbfc.co.uk](http://bbfc.co.uk) which was registered with Nominet.uk on 12 January 1998. It is clear from the above that the Complainant has substantial and long-standing rights in the mark BBFC.

2. *The Domain Name, in the hands of the Respondent, is an Abusive Registration (Policy Paragraph 2a(ii)) principally because it has been used in a manner which takes unfair advantage of or is unfairly detrimental to the Complainant's rights:*

The registration of the domain name [bbfc.org.uk](http://bbfc.org.uk) by Bulletin Board for Film Censorship occurred on 4th December 1999. The site of the domain [bbfc.org.uk](http://bbfc.org.uk) is identified on the home page as "ban the board of film censors". The site does not identify the authors of any material on the site or the true ownership of the site and its contents.

It is clear on the face of it that the disputed domain name is confusing with the Complainant's mark BBFC. The mark BBFC has been used by the Complainant for many years in its publications, letterhead and other materials. People could easily, at least initially, go to the Respondent's site thinking they were going to the Complainant's site.

The Respondent has no right or legitimate rights in the domain name. It was adopted by the Respondent at a time when it was well known that the Complainant had for many years used the mark BBFC. The Complainant submits that the most likely reason the domain name [bbfc.org.uk](http://bbfc.org.uk) was chosen by the Respondent was because of the recognition and association it has with the Complainant. The Respondent clearly wanted to take advantage of the reputation developed by the Complainant in the mark BBFC.

No fair use of the domain name is made by the Respondent. The sole purpose of the use of the domain name by the Respondent is in relation to a site used for the purposes of criticising the Complainant and causing it damage by, among other things, encouraging employees to disclose confidential information concerning the Complainant. It is clear from the contents of the site that the primary purpose of the Respondent's site bbfc.org.uk is as part of a campaign criticising the policies and activities of the Complainant and causing it damage. Although criticism of the Complainant is quite proper, the registration and use of an identical or confusingly similar domain name for the purpose of criticising and/or damaging the owner of the mark to which it is confusingly similar or identical, constitutes bad faith and unfair use.

It is clear, from all the circumstances of this case, that the use of the domain name by the Respondent is improper and unjustified.

The Complainant asserts that: (a) The Complainant has long-standing rights in the mark BBFC (b) The disputed domain name is confusingly similar and/or identical to the Complainant's mark; (c) The Respondent has no rights or legitimate interest in the domain name; and (d) The domain name was registered and is being used in bad faith and unfairly. The Complainant requests that the domain name bbfc.org.uk should be transferred to the Complainant.

**Respondent:**

In response, the Respondent claims as follows:

1. The Bulletin Board for Film Censorship strongly reject the allegation that our domain name BBFC.ORG.UK is an abusive registration. We assert that the Complainants have made no substantial case against our legitimate acquisition and use of BBFC.ORG.UK. The Complainant has failed to satisfy any of the tests set out in the Nominet.uk Dispute Resolution Service Policy and has also failed to establish any legitimate interest in the domain name BBFC.ORG.UK. We shall respond to each of their allegations in turn and will assert forcefully that our organization legitimately acquired the domain name BBFC.ORG.UK and has been using it for perfectly proper purposes for many years.
2. The Bulletin Board for Film Censorship (BBFC.ORG.UK) is an electronic community comprising of individuals with an interest in issues relating to film and video censorship, freedom of speech and artistic freedom. We have a large membership consisting of subscribers to our website and discussion board located throughout the United Kingdom, in continental Europe and in the United States of America. BBFC.ORG.UK is hosted by HOSTME.COM of Bethlehem, Pennsylvania, USA and therefore benefits from the freedom of information provisions of the United States Constitution. We will not, therefore, enter into any substantial discussions about the content of the site which is protected by the laws of the United States. While we have a substantial membership, we have no formal structure and there is no commercial dimension of any kind to our activities. Payment for the domain name registration is made by one of our members on an individual basis and we do not conduct any other financial transactions of any kind.
3. The Bulletin Board for Film Classification came into being in early 1999 when a number of individuals who were regular visitors to the MELON FARMERS website (www.melonfarmers.co.uk) decided to establish a forum to enable those interested in the censorship issues raised by that site to engage in debate and discussion and to

exchange information about the availability of films, videos and DVDs. The MELON FARMERS website is a long established site which has been vociferous in its criticism of the Complainant and has published numerous articles attacking the work of the British Board of Film Classification. An electronic community was formed of individuals who decided to set up a bulletin board which would operate in parallel with the MELON FARMERS website. It was agreed that the bulletin board would be called THE BULLETIN BOARD FOR FILM CENSORSHIP and work began on the structure and design of the site.

4. At the same time a search began for a suitable domain name and one of our members discovered that the domain name BBFC.ORG.UK was available. The name was purchased 4th December 1999 and within four weeks, the Bulletin Board for Film Censorship was launched. It contained numerous discussion boards on various subjects and also mirrored the editorial content published by the MELON FARMERS website including numerous articles highly critical of the Complainant, its director, president and other members of staff. The website was in continuous operation from the beginning of 2000 until October 2001 when a redesign took place with a change of emphasis under the campaigning slogan "BAN THE BOARD OF FILM CENSORS". The boards continue to operate and we now publish content both from the Melon Farmers website and submittals by our members.
5. The Complainant has always been aware of the existence of the MELON FARMERS website and has never complained about either its existence or its content. The Complainant has also been aware of the existence of the Bulletin Board for Film Censorship (a high proportion of our hits come from within the Complainant's offices) and has made no complaint whatsoever to us or anyone else about our use of our domain name or the content of our website. We believe that the Complainant is abusing the Nominet.uk complaints procedure in order to censor criticism of The British Board of Film Classification (which is accepted in the complainant's submission to be right and proper) at a time when the government is considering setting up an alternative body to carry out functions currently carried out by the Complainant. We believe this is a disgraceful purpose and urge Nominet.uk to resist the demands of the Complainant and allow us to keep our domain name.
6. Firstly, THE BRITISH BOARD OF FILM CLASSIFICATION is a private limited company which operates on a commercial basis. It was set up by the Film industry to rate films in 1911 when it was called THE INCORPORATED ASSOCIATION OF KINEMATOGRAPH MANUFACTURERS (Co. Reg. No. 00117289). This name was changed to their current name in 1985. The Complainant is not a statutory body, has no legal powers of any kind, is not referred to in any Act of Parliament and has no status whatsoever as a public body. It is secretive about its membership and resists attempts to make it open and accountable for its activities. Legitimate public bodies such as the ITC (INDEPENDENT TELEVISION COMMISSION) and the BSC (BROADCASTING STANDARDS COMMISSION) are not registered as private limited companies, do not provide commercial services and were established by Act of Parliament and have full statutory powers (ITC – Broadcasting Acts 1990 and 1996, BSC – Broadcasting Act 1996). They are both legitimate public organisations who publish full names of their members (including photographs in the case of the ITC) and are entitled to use an "org.uk" domain name. The Complainant issues film certificates on behalf of the film industry (by which it is wholly owned) and these certificates are informally accepted by local authorities who exercise statutory powers over what is shown in cinemas. Moreover, the government engages the Complainant to issue certificates in respect of videos and DVDs on its behalf. This arrangement can be terminated at any time and does not bestow any statutory powers on the Complainant. The Complainant makes commercial charges to film companies for its

services and runs a substantial surplus (over £1m in 1999). It also provides cinema facilities on a commercial basis [www.bbfc.co.uk/website/Commercial.nsf](http://www.bbfc.co.uk/website/Commercial.nsf) (on this page the Complainant clear states that it is not a government body but is a private company with commercial activities). We therefore dispute that the Complainant has any right to use the BBFC.ORG.UK domain name since it is not an organization but a commercial company which properly uses a .co.uk domain name. BBFC.ORG.UK, on the other hand, is a public information organization with no commercial activities of any kind and is fully entitled to use this domain name.

7. Secondly, at the time the Complainant registered an interest in the domain name [bbfc.co.uk](http://bbfc.co.uk) (12 Jan 1998) no attempt was made to register BBFC.ORG.UK which was available and remained available for a further two years. This is a clear indication that the Complainant did not feel entitled to the .org.uk domain and for several years operated an extensive company website at the .co.uk address without complaint. When the bulletin board registered the .org.uk domain name two years later in December 1999 it was vacant and available and we registered it as an appropriate and legitimate name at which to locate our activities. Moreover, we checked with the patent office to ensure that 'bbfc' was not a registered trademark. It was not. The Complainant did not register 'bbfc' as a trademark until 27th November 2000, nearly a year after we acquired the domain name. Our site has been fully operational for nearly two years and during that time we have had no communication of any kind from the Complainant about the content of our site or our use of the domain name BBFC.ORG.UK.
8. Thirdly, Section 3 (a) (i) sets out the evidence required to prove an abusive registration. There is no such evidence. (A) We did not register BBFC.ORG.UK in order to sell it to the complainant or to a competitor of the complainant. We have never offered it for sale to the Complainant or to any party connected with the Complainant. The domain name is not for sale. (B) This is not a blocking registration. The domain name was freely available for 2 years after [bbfc.co.uk](http://bbfc.co.uk) was registered by the complainant who operated a company website at that address. BBFC.ORG.UK was purchased by us in December 1999 and within 4 weeks our bulletin board was up and running and has run continuously since that time. (C) We have made no attempt to disrupt the business of the Complainant whose sole customers are the film industry with which we have no contact whatsoever. We offer no commercial services of any kind to the film industry or anyone else. We have not affected the commercial activities of the Board in any way. The complainant has not provided evidence of such disruption. Our campaign is about freedom of speech and open discussion. Section 3 (a) (ii) – There is no confusion of any kind between our organization and the respondent's company. We do not purport to have any relationship of any kind with the respondent or its activities. The website makes that totally clear. In two years we have received no comments or complaints of any kind regarding such confusion. Nor have we ever received any misdirected e-mails or communications intended for the complainant. Section 3(a)(ii) The contact details of our member, Mr. Jamie Durrant, are correct and true. He owns the domain name on behalf of our organization as described above.
9. Fourthly, Section 4 of the Policy sets out the basis of our defence. Section 4 (a)(i)(A) Before we were made aware of the Complaint we had used the domain name to provide sole access to our website which has operated continuously for two years and is intended to discuss freedom of expression, censorship and the work of the British Board of Film Classification. Our discussion boards have been used by thousands of individuals each month. Section 4 (a)(i)(B) We have always been known as the Bulletin Board for Film Censorship although we are currently running a campaign called "ban the board of film censors" in the run up to the government's review of

media regulation. Section 4(a)(i)(C) – We are a non commercial organization with a public service aim. Section 4 (a)(ii) We assert that the domain name, formed of a 4 letter acronym is generic and since it represents the initial letters of our organization, we are equally entitled to it. Section 4(b) We invoke the fair use provisions allowing criticism of the Complainant on the basis that we have provided ample evidence that our domain name is not an abusive registration.

10. Finally, we urge Nominet.uk to dismiss the complaint which is motivated by a desire to stifle criticism and debate. The Complainant's company has been the subject of sustained criticism over the years, some of it abusive in tone and some written by ex-employees. In the Guardian article a film director makes references to the size of the penis of the Board and suggests giving axes to a revolutionary mob with which to attack the Board's premises. The Complainant has until now accepted this criticism. We believe that our sustained, authoritative, detailed and comprehensive criticism of the Complainant's company has led to this frivolous complaint. It is no co-incidence that in the first week of our new campaign 70% of all our hits came from within the Complainant's offices. The legislative changes about which we wish to generate a debate are also motivating the Complainant. We ask you to dismiss the complaint and allow us to keep our legitimately acquired domain name. To remove it would deprive the thousands of regular visitors to our site of their freedom of speech and association.

### **Complainant's Reply**

In Reply to the what the Complainant perceived to be the three main substantive points made in the Respondent's Response, the Complainant contended as follows:

1. Paragraph 2 of the DRS Policy sets out the two criteria which the Complainant must fulfil i.e. (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 is an Abusive Registration. The Complainant is obliged, on the balance of probabilities, to prove that both elements are present. Paragraphs 3 and 4 contain a non-exhaustive list of factors which may be adduced as evidence and clearly therefore other relevant factors may be taken into account when determining the issue of Abusive Registration. For the reasons set out in the Complaint Form, e.g. many years of usage, registration as a trademark, it is clear beyond doubt that the Complainant has a legitimate interest in the mark "BBFC". The Complainant has used the acronym BBFC since 1913. This long and legitimate use is in marked contrast to that of the Respondent who commenced use of the initials BBFC at the time of the registration of the domain name. In respect of Abusive Registration the Complainant asserts that the Respondent's conduct in registering and using a domain name which is in substance a version of the Complainant's mark without any wording which indicates that it related to a site mainly containing criticism amounts, by itself, to bad faith (see e.g. para 63 of Leonard Cheshire Foundation-v-Paul Darke; Case No. D2001-0131). The Respondent was well aware of the Complainant's use of the mark and domain name BBFC at the time of registration of the bbfc.org.uk domain name. No fair use of the domain name bbfc.org.uk is made by the Respondent. The sole use of the domain name by the Respondent is in relation to a site which is now used for the purpose of criticising the Board and causing it damage, by among other things, encouraging employees to disclose confidential information and which contains abusive material concerning individual members of the Board. Until October 2001 the bbfc.org.uk site contained little more than discussion boards and mirrored content published by the

Melon Farmers website including comment critical of decisions made by the Board; however it did not contain abusive material of the type now to be found on the site.

2. The Complainant does not seek to censor lawful criticism of its activities. Indeed, the Respondent notes that the Melon Farmers website includes “numerous articles highly critical of the Complainant, its directors, president and other members of staff”. The Complainant has taken no steps to stifle lawful comment and criticism contained on that site. The transfer of the domain name bbfc.org.uk will not stifle or censor criticism. That criticism can and will, no doubt, continue but under another non-abusive domain name reference.
3. A brief history of the Board was included in the Complaint. The Board is essentially a non commercial organisation carrying out statutory and non-statutory classification functions in respect of video and film. Any commercial activities it conducts are secondary to its classification functions e.g. hire of cinema. It is a company limited by guarantee and its Memorandum of Association states:- “The income and property of the Company whencesoever derived shall be applied solely towards the promotion of its objects as set forth in the Memorandum of Association and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of distribution in specie or otherwise to members of the Company” The fact that the Complainant would be entitled to use the .org.uk registration is reflected in the fact that the Complainants have successfully registered without objection the domain name bbfc.org. Further far from being secretive as alleged by the Respondent, the Complainant publishes details of its principal officers and senior staff in its Annual Reports, its policy and guidelines and details of all appeals. This contrasts strongly with the Respondent and his site which identifies no individual or group of individuals as responsible for its contents. The Complainant remains unclear whether the Respondent accepts responsibility for the website bbfc.org.uk and its contents. If he does not accept responsibility for the contents of the website what proper interest can he have in the domain name in dispute?

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

### **General**

Paragraph 2 of the Policy requires that, for the Complainant to succeed, it must prove to the Expert, on the balance of probabilities, both that it has Rights in respect of a name or mark which is identical or similar to the Domain Name; and that the Domain Name, in the hands of the Respondent, is an Abusive Registration as defined in Paragraph 1 of the Policy.

### **Complainant’s Rights**

From the evidence before me, it appears that the Complainant has used the acronym BBFC in the United Kingdom continuously since 1985. I have seen no evidence to substantiate the Complainant’s assertion in its Reply that the designation was used between 1913 and 1985. Indeed, a commencement date of 1985 sits more easily with the records held at Companies House and the assertions made in the Complaint.

I am not satisfied that the Complainant’s cited trade mark registrations (only one of which contains the letters ‘BBFC’) are of direct relevance to the question of ownership of rights. This is because the Domain Name was registered on 4 December 1999 and none of the trade mark registrations to which I have been referred were applied for until 1 June 2000. It is implicit in the definition of Abusive Registration (“*at the time when the registration ... took*



place”) that the question of the ownership of Rights must be determined as of the date of the allegedly abusive registration, not at the date of the Complaint or the date of the Decision. The registrations may have some residual relevance in so far as they constitute circumstantial evidence of the distinctiveness of the initials BBFC built up and acquired by the Complainant as a result of use prior to 1 June 2000, but I do not attach any significant weight to such evidence.

Notwithstanding these evidential shortcomings, I am satisfied that for present purposes the designation BBFC is synonymous with the Complainant. In any event it does not lie in the Respondent’s mouth to claim that the *“4 letter acronym is generic and since it represents the initial letters of our organization, we are equally entitled to it”* in circumstances where both the editorial and externally-submitted content on the Respondent’s web pages consistently uses the acronym as a shorthand for the Complainant (e.g. *“Goodbye BBFC. Your time is up ... secretary of the BBFC ... Ads earn money for BBFC ... Are you a disgruntled BBFC employee”*). In combination with the evidence of use put forward by the Complainant, this is in my view compelling evidence of the Complainant’s common law rights in the designation BBFC.

For these reasons I am satisfied that the Complainant owns Rights in the designation BBFC. I am further satisfied that this name is identical to the Domain Name (ignoring, as I am required to do, the first and second level suffixes).

### **Abusive Registration**

As stated above, the usual rule under paragraph 2(b) of the Policy is that the Complainant is required to prove on the balance of probabilities that the Domain Name is an Abusive Registration. However, the easily-overlooked proviso to paragraph 4(b) of the Policy is of particular relevance to this Complaint. The proviso reverses the burden of proof where:

- i. the Domain Name (not including the first and second level suffixes) is identical to the name in which the Complainant asserts Rights, without any addition; and
- ii. the Respondent is using or intends to use the Domain Name for the purposes of a tribute or criticism site without the Complainant’s authorisation.

In my view these requirements for identity of names and unauthorised criticism are both satisfied on the facts of the present Complaint. Therefore the burden of proof of establishing whether or not the Domain Name is an Abusive Registration shifts to the Respondent and I will determine below whether or not he has discharged that burden.

Paragraph 1 of the Policy defines “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.

A non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration are set out in Paragraph 3(a) of the Policy. A non-exhaustive list of countervailing factors are set out in Paragraph 4(a) of the Policy.

Firstly the Respondent contends that he (or the organisation he represents) did not register the Domain Name in order to sell it to the Complainant or to a competitor of the Complainant; and that he has never offered it for sale to the Complainant or to any party connected with the Complainant. I accept the Respondent's evidence on this point.

Secondly the Respondent contends that he has made no attempt to disrupt the business of the Complainant. I regard this as a surprising submission in the light of the content of the present bbfc.org.uk web site. The Respondent's stated "ultimate aim" is for the Complainant to be disbanded (surely the ultimate disruption), and the methods adopted for bringing this about include the publication of "scurrilous tittle-tattle" and the incitement of "disgruntled employees" of the Complainant to breach their duties of good faith and fidelity owed to their employer. The Complainant concedes that it is not above criticism but asserts that the primary purpose of the Respondent's site is as part of a campaign criticising the policies and activities of the Complainant and unfairly causing it damage. On the evidence before me I accept this assertion and I find that the Respondent has failed to discharge his burden of demonstrating that he did not register the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant.

Thirdly the Respondent contends that there is no confusion of any kind between the parties to this Complaint. I accept his evidence that one would not have to read far into the material on the website to dispel any belief that one had found the Complainant's site and that he has never received any misdirected e-mails or communications intended for the Complainant. Nevertheless I accept the Complainant's uncontroverted submission that the most likely reason the Domain Name was chosen by the Respondent was because of the recognition and association it has with the Complainant. I have little doubt that the Respondent wanted to take advantage of the reputation developed by the Complainant in the mark BBFC – the fact that the Respondent's organisation uses the initials BBFC to stand for several different things supports the inference that the titles Bulletin Board for Film Censorship and Ban the Board of Film Censors were contrived to justify the use of the acronym *ex post facto*. In circumstances where I take the view that the Domain Name was selected precisely because of its potential for diverting would-be visitors to the Complainant's site to the Respondent's site, I am not satisfied that the Respondent has discharged the burden of demonstrating lack of confusion.

Fourthly the Respondent submits that before he was made aware of the Complaint his organisation had been commonly known by the designation BBFC and that this was evidence of non-abusive registration under paragraph 4(a)(i)(B) of the Policy. In the light of the Respondent's consistent use of the acronym BBFC to refer to the Complainant (see above) I am unable to accept this submission. I further reject his submission under paragraph 4(a)(ii) of the Policy on the grounds that the Domain Name is not generic for the same reasons.

Fifthly the Respondent urges Nominet to dismiss the Complaint on the grounds that it is motivated by a desire to stifle criticism and debate, and that to order the transfer of the Domain Name would be "*to deprive the thousands of regular visitors to our site of their freedom of speech and association*". In the UK the Respondent undoubtedly enjoys the right of freedom of expression, safeguarded under Article 10 of the European Convention of Human Rights and the Human Rights Act 1998. Of course, that right is not unqualified and is subject to legitimate and proportionate legal restraints including the UK laws of intellectual property infringement and defamation. The Respondent seeks for obvious reasons to portray this Complaint as an attempt by the Complainant to "censor" the Respondent's criticism of censorship, but that is not in my view an accurate characterisation. As the Complainant rightly points out, the requested transfer of the Domain Name would not "*stifle or censor criticism. That criticism can and will, no doubt, continue but under another non-abusive domain name reference*". I reject the Respondent's claims accordingly.

Sixthly the Respondent alleges acquiescence or waiver by the Complainant, in that the Complainant failed to register the Domain Name for itself for two years after it registered bbfc.co.uk and delayed complaining about the Respondent's registration of the Domain Name for a further period of two years. I do not regard either of these factors as fatal to the Complaint – the fact that a Complainant has failed to secure a domain name for itself is axiomatic to the initiation of a DRS Complaint, rather than being a relevant consideration in the decision of that Complaint; and there are no time bars or limitation periods stipulated in the Policy. I would however have regarded these factors as material to the rebuttal of any allegation that the Domain Name was a “blocking registration” under paragraph 3(a)(i)(B) of the Policy, had such an allegation been made in the first place by the Complainant.

Finally the Respondent has challenged the Complainant's entitlement to registration of an “.org.uk” domain name on the basis that it *“is a private limited company which operates on a commercial basis ... is not a statutory body, has no legal powers of any kind, is not referred to in any Act of Parliament and has no status whatsoever as a public body ... is secretive about its membership and resists attempts to make it open and accountable for its activities”*. The Respondent contrasts the Complainant with *“Legitimate public bodies such as the ITC (INDEPENDENT TELEVISION COMMISSION) and the BSC (BROADCASTING STANDARDS COMMISSION) [which] are entitled to use an ‘org.uk’ domain name”*. I am not aware of any restriction to this effect imposed on the registration of “.org.uk” domain names. Indeed, I note that Nominet itself is a private company limited by guarantee with no share capital and yet is registrant of the domain name nominet.org.uk. I do not therefore regard this ground of complaint as a bar to the requested transfer of the Domain Name.

The considerations set out above and in paragraphs 3 and 4 of the Policy are illustrative and non-exhaustive. The ultimate question for my consideration is whether, on the evidence as a whole, the Respondent has discharged the burden of proving that the Domain Name (i) was not registered in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights and (ii) has not been used in a manner which takes unfair advantage of or is unfairly detrimental to the Complainant's Rights. My overall impression – informed but not dictated by the considerations set out above – is that the Respondent has failed to discharge that burden. I conclude that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

## **8. Decision:**

Having concluded that the Complainant has Rights in respect of a name or mark which is identical to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration, the Expert determines that the Domain Name, bbfc.org.uk, should be transferred to the Complainant.

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Philip Roberts

January 28, 2002  
Date