

**Nominet UK Dispute Resolution Service**

**DRS 368**

**Camelot Group Plc –v- Euilleam Ross**

**Decision of Independent Expert**

**1. Parties**

Complainant: Camelot Group Plc  
Address: Tolpits Lane  
Watford  
Postcode: WD1 8RN  
Country: GB

Respondent: Mr Euilleam Ross  
Address: Seacrest  
Barbaraville  
Invergordon  
Ross-shire  
Scotland  
Postcode: IV18 ONA  
Country: GB

**2. Domain Name:**

camelotto.co.uk.

**3. Procedural Background**

The Complaint was lodged with Nominet on 22 April 2002. Nominet validated the Complaint and informed the Respondent on 25 April 2002 that the Dispute Resolution Service (“DRS”) had been invoked and that the Respondent had 15 days (until 20 May 2002) to submit a Response. The Respondent submitted a Response on 17 May 2002.

On 17 May 2002 Nominet forwarded the Response to the Complainant. On 24 May 2002 the Complainant lodged a Reply electronically. Nominet extended the deadline by 2 working days to allow for receipt of the hard copy of the Reply which was lodged on 28 May 2002. The Reply was forwarded to the Respondent on 28 May 2002. It was not possible to achieve a resolution to the dispute by mediation. On 13 June 2002 the Complainant paid Nominet the

appropriate fee for a decision by an expert pursuant to paragraph 6 of the DRS Policy (“the Policy”).

On 20 June 2002 Nominet appointed Andrew Clinton (“the Expert”) who has confirmed to Nominet that he knows of no reason why he could not properly accept the invitation to act as expert in this case, and further confirmed that he knows 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:**

None

5 **The Facts**

The Complainant holds an exclusive licence from the National Lottery Commission to oversee the running of the National Lottery. The Complainant is the registered proprietor of the trade mark “CAMELOT” registered under number 1543720 in classes 16 and 36 as of 3 August 1993.

On 2 April 2002 the Respondent registered the Domain Name. The URL [www.camelotto.co.uk](http://www.camelotto.co.uk) currently points to the page of a company offering internet services.

6. **The Parties Contentions:**

**Complainant**

The Complaint, so far as is material, reads as follows:

The Complainant has rights in the UK for the registered trade mark CAMELOT (No.1543720) and the trade mark LOTTO (stylised) (No.2286699B).

The Complainant has acquired a considerable reputation and therefore possesses extensive rights in the word ‘Camelot’ in connection with running the National Lottery in the UK and the lottery services arising therefrom. The Complainant holds an exclusive licence from the National Lottery Commission to oversee the running of the Lottery. Moreover, the Complainant

also has rights in the word LOTTO in connection with the lottery services that they provide.

In this regard, we submit that the Respondent's registration of camelotto.co.uk is an abusive registration for the following reasons:

1. This domain name consists of the word CAMELOT with only the addition of the letter 'O' at the end of the domain. Therefore, the domain is virtually identical to the trade mark rights in the word CAMELOT held by the Complainant. Moreover, the domain could be seen as a combination of the words CAMELOT and LOTTO, both of which the Complainant possesses trade mark rights in respect of. This domain name is therefore confusingly similar to the trade mark rights held by the Complainant. The holding of this domain by the Respondent therefore takes unfair advantage of the Complainant's trade mark rights and could easily be construed as originating or being affiliated with the Complainant, thereby leading to confusion or association between the domain name and the Complainant in the eyes of a user.
2. We submit that this domain name was acquired primarily for the purpose of unfairly disrupting the business of the Complainant. In this regard, enclosed with the Complaint are copies of a publication run by the Respondent, which shows his refusal to co-operate with previous requests from the lawyers of the Complainant to remove trade mark matter from his publications. This evidence supports the view that the Respondent has acted in an acrimonious manner to the Complainant on previous occasions and has continued to do so by registering the domain name camelotto.co.uk. His publications are extremely critical and outspoken toward the Complainant, which is evidence of the bad feeling which the Respondent clearly has toward the Complainant.
3. As a result of these submissions, the Complainant requests that the domain name camelotto.co.uk be transferred into its name, due to the existence of their trade mark rights and to avoid the confusion and association of the user which would result were the domain to remain in the name of the Respondent.

## **Respondent**

The Response is summarised as follows:

1. The Complainant's submission, made by its representative Rob White ("Mr White") of David Keltie Associates, that the Domain Name consists of the word CAMELOT with only the addition of the letter 'O' at the end of the Domain Name is erroneous and in a court his statement would lose all credence.
2. Mr White appears to state, on behalf of the Complainant, that the Respondent intends to use [www.camelotto.co.uk](http://www.camelotto.co.uk) for the promotion of "games of chance" and his belief beggars belief.
3. Mr White, on behalf of the Complainant, has done his best to blacken the Respondent's name to the extent that a civil court action may well result from the libellous allegations made against the Respondent.
4. Without doubt the word 'CAMELOTTO' was first penned by the Respondent and later the Domain Name was registered.
5. As an OAP the Respondent is in the throes of negotiating with a Scottish registered company for the transfer of [www.camelotto.co.uk](http://www.camelotto.co.uk) for a substantial sum of money, the Scottish company being Camelotto Ltd, registered at Companies House, Edinburgh.
6. A letter sent to the Board of Directors of the Complainant relating to the dispute has gone unanswered.
7. The Respondent is prepared to listen to a proposition from the Board of the Complainant for a satisfactory conclusion to their claim, or even to the suggestion that they secure the whole of the Independent Highlander, thus rendering the Respondent's pen permanently dry.

## **Complainant's Reply**

The Reply is summarised as follows:

1. The Respondent's reference to the 'erroneous statement' 'this domain consists of the word CAMELOT with only the addition of the letter 'O' at the end of the domain' is noted. The intention of the Complainant was to indicate that phonetically, the domain name would be heard simply as CAMELOTO, i.e. the Complainant's name and

registered trade mark with only the addition of the letter 'O' at the end. Therefore, phonetically, the domain name is virtually identical to the Complainant's UK trade mark registration (No. 1543720) for CAMELOT.

2. It is noted that the Respondent does not address the Complainant's submissions that the domain name could be seen as a combination of the words CAMELOT and LOTTO, both of which are trade marks of the Complainant, nor does he address the issue of confusion.
3. The Respondent's submission that the Complainant 'appears to state' that he intends to use the domain name for the promotion of games of chance is noted. However, nowhere in the complaint did the Complainant state that the Respondent had such an intention. The Complainant simply submitted that the domain name is confusingly similar to the company name and registered trade mark of the Complainant and that it was acquired for the purpose of unfairly disrupting the business of the Complainant, thereby indicating the presence of bad faith.
4. The fact that the Respondent states that he is now negotiating with a Scottish company for the transfer of camelotto.co.uk is irrelevant to these proceedings. Such negotiations do not alter the fact that the domain is confusingly similar to the Complainant's earlier registered trade mark and recognised company name and that the holding of this domain by the Respondent takes unfair advantage of the Complainant's trade mark rights and reputation.
5. Regarding the Respondent's reference to the Scottish company, Camelotto Limited, the Complainant enclosed a printout from the Companies House website showing that this company was incorporated on 15 May 2002. The complaint against the registration of this domain name was filed on 19 April 2002. The existence of this company name does not prove that the Respondent had a bona fide interest in the domain name camelotto.co.uk at the time that the Domain Name was registered or that the Respondent has a bona fide interest in the domain name now.
6. The Complainant therefore maintains its request that the Domain Name camelotto.co.uk be transferred into its name due to its company name and reputation and the existence of its registered trade mark rights.

7. **Discussion and Findings:**

Under paragraph 2 of the Policy the Complainant has to prove on the balance of probabilities: first, that it has Rights in respect of a name or mark which is identical or similar to the Domain Name; and, secondly that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

### **Complainant's Rights**

The Expert is satisfied that the Complainant has Rights in the mark CAMELOT as it is the registered proprietor of the trade mark registration number 1543720 as of 3 August 1993.

The Complainant asserts that it also has trade mark rights in the mark LOTTO and relies upon Trade Mark Application No. 2286699B. However, according to the Case Details provided by the Complainant, the applicant is the National Lottery Commission and not the Complainant. The Complainant states that it holds an exclusive licence from the National Lottery Commission to oversee the running of the Lottery but not give any evidence as to the rights it may have in connection with the trade mark application for the mark LOTTO.

In addition, the Case Details submitted by the Complainant (dated 19 April 2002) show that the trade mark application was filed on 27 November 2001 but had not (as at 19 April 2002) been registered. Under section 9(3)(a) of the Trade Mark Act 1994 proceedings for infringement may not be brought before the date on which the mark is in fact entered on the register. The Complainant refers to a considerable reputation in the word "CAMELOT" but provides no evidence of any rights or reputation in the word "LOTTO" other than by reference to the trade mark application.

The Expert is not satisfied on the basis of the Complaint that the Complainant has Rights in the mark LOTTO. Whilst the application for a trade mark (particularly one that has been published) may imply the existence of certain rights, the Expert does not consider it part of his functions under the DRS to make assumptions on behalf of the Complainant in the absence of evidence. Paragraph 19 of the DRS Procedure states that the Expert will decide the Complaint on the basis of the Parties' submissions, the Policy and the

Procedure. It is not open to the Expert to make independent enquiries into whether the Complainant has any other rights in the mark LOTTO.

In light of these findings, the issue that arises is whether the Complainant can prove that it has Rights in a name or mark which is identical or similar to the Domain Name.

The Domain Name, ignoring for these purposes the first and second level suffixes, is CAMELOTTO. The Expert is not satisfied that the Complainant has Rights in the word CAMELOTTO.

It therefore falls to be determined whether the word in relation to which the Complainant has established its Rights (namely CAMELOT) is similar to CAMELOTTO.

The Expert has had regard to previous decisions under the DRS on this issue, in particular the following:-

<b>DRS Number</b>	<b>Domain Name (ignoring first and second level suffixes)</b>	<b>Name in which Complaint had Rights</b>
00068	Nokiagsm	Nokia
00058	Nokiaringtones	Nokia
00138	Lmeholdings	Lme
00177	Tarmacvandal	Tarmac
00145	Vistacomp	Vista
00161	Mylearndirect	Learndirect
	Letslearndirect	learndirect
	Yourlearndirect	learndirect
00187	4pickfords	pickfords
00239	Interflora-uk	interflora
00267	Elite-speakers	elite
0341	Zippo-lighters	zippo

In each of the above decisions the Expert came to the conclusion that the Complainant had Rights in a name that was similar to the Domain Name.

In his Response the Respondent has taken issue with the Complainant's assertion that the only difference between the two words in this dispute was

the addition of the letter “O” at the end of the Domain Name. The Complainant explained its submission in the Reply that the words CAMELOT and CAMELOTTO are virtually identical phonetically.

The first three syllables of the two words are identical both in sound and idea. Thereafter, they differ by the addition of the letters “TO” in the case of the Domain Name, which results in the Domain Name extending to four syllables. Phonetically the only difference is the addition of the sound “O” in the case of the Domain Name.

The overall idea of the two words is not identical but there is a clear relationship between them and the Expert finds on the balance of probabilities that the relationship is sufficiently close to satisfy the test that the two words are similar within the meaning of the Policy. The fact that the Expert is not satisfied on the evidence as to the Complainant’s Rights in the word LOTTO does not alter that conclusion.

### **Abusive Registration**

Abusive Registration is defined in paragraph 1 of the Policy to mean 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 of an Abusive Registration is set out in paragraph 3 of the Policy. The applicable aspects of paragraph 3 for the purposes of this decision are as follows:-

### **Paragraph 3aiC – Unfair Disruption**

This reads as follows:



“Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant.”

The Complainant submits that the Domain Name was acquired primarily for the purpose of unfairly disrupting the business of the Complainant and refers to copies of publications run by the Respondent which, it is asserted, establish the following:-

- i) The Respondent refused to co-operate with previous requests from the lawyers of the Complainant to remove trade mark matter from his publications;
- ii) The Respondent acted in an acrimonious manner to the Complainant on previous occasions and continued to do so by registering the Domain Name;
- iii) The Respondent has been extremely critical and outspoken towards the Complainant which is evidence of the bad feeling which the Respondent clearly has towards the Complainant.

The publications include a one page newsletter which appears to be from the Respondent and is headed “CAMELOTTO.CO.UK” Issue 1 Spring 2002. The newsletter does not in terms refer to the Complainant, although there is reference to a game of chance and a parody of the National Lottery Commission’s logo.

The Complainant has also produced a copy of the April 2002 edition (Issue 27) of a newsletter entitled “The Independent Highlander.” This is a four page newsletter and the e-mail address of the Respondent appears at the foot of the publication. It also states at the foot of the publication that a new web site will be coming soon at [www.camelotto.co.uk](http://www.camelotto.co.uk).

‘The Independent Highlander’ newsletter contains an article about the Complainant headed “Camelot denies misleading the public”. The article refers to a letter from the Complainant’s solicitors which included a demand that the Respondent sign a document ensuring that he would not use the

registered National Lottery Commission's logos in future publications. The article says that the Respondent refused to sign an undertaking and instead invited the Complainant/National Lottery Commission to procure a court injunction, which has not materialised.

The letter from the solicitors is not produced by the Complainant and it is not clear from the evidence what right the Complainant (as opposed to the National Lottery Commission) was asserting when demanding that the Respondent stop using the National Lottery Commission's logos.

The Expert places very little weight on the fact that the Respondent refused to co-operate with a request from lawyers of the Complainant to remove the trade mark matter from his publications as it is not within the remit of the Expert to determine the legitimacy of the request or its refusal.

There are other references in the newsletter to the Complainant. The comments about the Complainant are critical and outspoken and the Complainant may feel that the Respondent has acted in an acrimonious manner towards it.

However, paragraph 3aiC of the Policy is directed at the Respondent's purpose at the time of registration of the Domain Name, being 2 April 2002. The issue to be considered is whether the Respondent registered the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant.

The Respondent has not said, in his Response, what his primary purpose was in registering the Domain Name. The evidence does establish that the Respondent has used his newsletters to criticise the Complainant and Issue 27 of the Independent Highlander indicates an intention to establish a web-site at [www.camelotto.co.uk](http://www.camelotto.co.uk). It is the Expert's view, having considered the available evidence and in the absence of any other explanation, that the most likely purpose for which the Domain Name was acquired was that it was to be a platform for criticism of the Complainant. Criticism may have a disruptive

effect on a business but does the evidence support a finding that the Respondent's primary purpose was to unfairly disrupt the business of the Complainant?

The Expert has had regard to the following factors:-

1. The Complainant holds an exclusive licence to oversee the running of the Lottery. The Respondent is not involved in a competing business. The Respondent is effectively a commentator rather than a competitor and does not appear to be engaged in any form of commercial activity. There is no risk of disruption in the sense of loss of business to a competitor.
2. The Respondent has not used the Domain Name for the purposes of e-mail or a web-site and therefore there is no evidence of actual disruption.
3. In cases where the Domain Name is or may be used as a criticism site one very important factor in determining whether the Domain Name took unfair advantage of or was unfairly detrimental to the mark is whether the mark and Domain Name are identical. In the Pharmacia decision (DRS 00048) the Expert found that the Respondent had unfairly diverted users seeking information on the Complainant and its products to a criticism site by use of a Domain Name that was identical to the trade mark, thereby taking unfair advantage of that trade mark. In this case the Domain Name and the word in which the Complainant has established Rights are not identical. The Domain Name can be seen as a combination of the words CAMELOT and LOTTO but the Expert does not accept, on the evidence before him, that the Complainant has Rights in the word LOTTO.
4. The increasing number of top level domains and the right to freedom of expression both support the view that a protest site does not, in its choice of domain name, have to differentiate itself as independent.
5. There appears to be a degree of animosity between the parties and threats of legal action have been made. The DRS Policy cannot be used as a vehicle to determine all disputes between parties and there may well be issues that go much further than the Respondent's

entitlement to register the Domain Name. If unfair criticism is made the Complainant may have other remedies against the Respondent.

6. The Respondent has a right of freedom of expression safeguarded under Article 10 of the European Convention on Human Rights and the Human Rights Act 1998. That right is not unrestricted and is subject to legitimate and proportionate legal restraints including intellectual property laws and defamation.

The Respondent's explanations in his Response are not fully satisfactory. However, the Complainant faces the difficulty that it cannot rely on use of the Domain Name (as it is not being used) and is thrown back to seeking to establish that the Respondent's primary purpose was unfair disruption. The fact that the most likely explanation of the Respondent's purpose in registering the Domain Name was to criticise the Complainant and the Respondent was in the habit of doing so does not of itself show that the primary purpose was to unfairly disrupt the business of the Complainant. Taking into account all of the factors above the Expert is not satisfied on the balance of probabilities that the Domain Name 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.

### **Paragraph 3a(ii) – Use and Confusion**

This reads as follows:

“Circumstances indicating that the Respondent is using the Domain Name in a way which has confused people or businesses into believing the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant.”

It is necessary for the Complainant to prove 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 connection with the Claimant.

There is no evidence the Respondent is using or has used the Domain Name. The URL [www.camelotto.co.uk](http://www.camelotto.co.uk) points to a page offering internet services with no obvious connection to the Respondent.

There is no evidence of any confusion, merely a bare assertion by the Complainant that the Domain Name “could easily” be construed as originating or being affiliated with the Complainant, thereby leading to confusion or association between the Domain Name and the Complainant in the eyes of the user. In the absence of any evidence as to use or confusion the Complainant has failed to prove to the Expert, on the balance of probabilities, that the requirements of paragraph 3aii are satisfied.

### **Other Grounds**

In his Response the Respondent refers to negotiations to transfer the Domain Name to Camelotto Limited for a substantial sum of money. The Complainant regards this as irrelevant to this dispute. Therefore, the Expert need not consider whether paragraph 3aiA applies which deals with circumstances indicating that the primary purpose was to transfer the Domain Name to the Complainant or a competitor of the Complainant for consideration in excess of the out-of-pocket expenses of acquisition of the Domain Name. In any event there is no evidence that Camelotto Limited is a competitor of the Complainant.

### **8. Decision:**

The Expert finds on the balance of probabilities that the Complainant has Rights in a word or mark that is similar to the Domain Name. However, the Expert is not satisfied on the balance of probabilities that the Domain Name is, in the hands of the Respondent, an Abusive Registration. The Expert therefore concludes that the dispute is not within paragraph 2 of the Policy and rejects the Complaint.

Andrew Clinton

4 July 2002

