

NOMINET-UK DISPUTE RESOLUTION SERVICE

BETWEEN:

GREENE KING BREWING AND RETAILING LTD

Claimant

-and-

BREWORLD LIMITED

Respondent

DECISION

Appointment

1. I was appointed, by a letter dated the 12th March 2002 to decide, under the DRS Procedure, a complaint of Abusive Registration. I am required to give my decision by the 28th March 2002.

Terminology

2. In this Decision:
 - "Nominet" means Nominet-UK
 - "the DRS Procedure" means Nominet's current dispute resolution procedure
 - "the Policy" means Nominet's current dispute resolution policy
 - "the Domain Name" means the domain name ruddles.co.uk

Materials

3. I have been provided with the following materials:
 - (1) Dispute History
 - (2) Complaint
 - (3) Standard correspondence between Nominet UK and the parties
 - (4) Register entry for ruddles.co.uk
 - (5) Nominet WHOIS query result for ruddles.co.uk

- (6) Printout of website at www.ruddles.co.uk
- (7) Copy of Nominet UK's Policy and Procedure.

The Complaint

4. The Complainant asserts that the Domain Name in the hands of the Respondent is an "Abusive Registration".

5. The terms of the Complaint, so far as material, are as follows:

"The domain name www.ruddles.co.uk was registered by Brewworld for Morlands Brewery, which was subsequently taken over by Greene King PLC. Brewworld had registered a number of domains for Morlands which have since been transferred to another Tag Holder (UUNET) (examples www.morland.co.uk & www.morlands.co.uk). The remaining domain www.ruddles.co.uk was due to be transferred in September 2001. This did not occur and subsequent attempts to contact Thomas Lange of Brewworld have remained fruitless. He is not answering email or telephone calls. I have contacted the company RealBeer.com in America (...) with whom Brewworld unofficially merged and they do not know what has happened to him and have also been unable to contact him for at least six months. I have contacted his office ... which is where a company called Orbit 24/7 are based and they do not know where he has gone. Up until Monday 21st January 2002 the domain name was live and pointing to our website www.greeneking.co.uk. For some reason on this day the domain pointing ceased hence the action we are now forced to take. The name Ruddles is a registered trademark for Greene King and the domain www.ruddles.co.uk was purchased for Morlands now Greene King. At the time of purchasing the domain Brewworld registered the domain in their name which is unusual considering the others were registered for Morlands, this is one of the reasons we are having trouble making the domain live again. I do not know the reason why this was done although I might add up until his disappearance the intention was to

officially transfer the domain to Greene King. We as a company have tried every way possible to contact Brewworld to rightfully have our domain transferred to us. These attempts to contact Brewworld have failed. This is why I am contacting yourselves to transfer the domain name to us so we can make it point to our website AGAIN! To conclude this domain name is included on every bottle and can of Ruddles ale, it has also just recently been added to a number of our vehicles. So we are very keen to reclaim it as quickly as possible. Thankyou"

6. The signatory of the Complaint, a Mr. Furnell, asserted that he was submitting documentation with the Complaint, but none was submitted.

Response

7. No Response has been provided by or on behalf of the Respondent.

Jurisdiction

8. Under paragraph 2a of the Policy a Respondent is required to submit to proceedings if a Complainant asserts to Nominet in accordance with the DRS Procedure that
 - "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, in the hands of the Respondent, is an Abusive Registration".*
9. Under paragraph 2b of the Policy a Complainant is required to prove both these elements on the balance of probabilities. I consider this standard of proof also to be the appropriate standard to be applied where the burden of proof lies upon a Respondent.

Rights

10. Paragraph 1 of the Policy defines "*Rights*" as including "*rights enforceable under English law*". This definition is subject to a qualification which is not material.

11. Mr. Furnell asserts that:
 - (1) The Respondent was engaged by Morlands Brewery to register the Domain Name.

 - (2) Morlands Brewery were subsequently taken over by Greene King PLC.

 - (3) The name Ruddles is a registered trademark for Greene King.

12. The information and material provided by the Complainant is not entirely satisfactory. No documentation is provided to support any of the matters referred to in the last paragraph. No information is provided as to the form of the take-over of Morlands Brewery by Greene King PLC or as to how the Complainant succeeded to the rights now asserted which earlier belonged to Morlands Brewery. No explanation is provided as to why Greene King PLC is not itself the Complainant. I do not know whether the explanation is that Greene King PLC has changed its name, or that the Complainant is a separate company in the same group.

13. However, the Complaint is not contested, and there is no reason to doubt the veracity of what is asserted on behalf of the Complainant. In these circumstances, I consider that I am entitled to and do find on the balance of probabilities that:
 - (1) Morlands Brewery had rights in respect of a name identical to the Domain Name; and

 - (2) The Complainant has succeeded to those rights and does now hold them.

Abusive Registration

14. 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;"*

15. The Policy provides:

3.2 Evidence of Abusive Registration

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

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

A primarily for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

B as a blocking registration against a name or mark in which the Complainant has Rights; or

C primarily for the purpose of unfairly disrupting the business of the Complainant;

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

- iii. *In combination with other circumstances indicating that the Domain Name in dispute is an Abusive Registration, the Complainant can demonstrate that the Respondent is engaged in a pattern of making Abusive Registrations; or*
- iv. *it is independently verified that the Respondent has given false contact details to us.*
- b. *Failure on the Respondent's part to use the Domain Name for the purposes of e-mail or a web-site is not in itself evidence that the Domain Name is an Abusive Registration.*

4 *How the Respondent may demonstrate in its response that the Domain Name is not an Abusive Registration*

- a. *A non-exhaustive list of factors which may be evidence that the Domain Name is not an abusive Registration is as follows:*
 - i. *Before being informed of the Complainant's dispute, the Respondent has:*
 - A *used or made demonstrable preparations to use the Domain Name or a Domain name which is similar to the Domain Name in connection with a genuine offering of goods or services;*
 - B *been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;*
 - C *made legitimate non-commercial or fair use of the Domain Name; or*
 - ii. *The Domain Name is generic or descriptive and the Respondent is making fair use of it.*
- b. *Fair use may include sites operated solely in tribute to or criticism of a person or business, provided that if:*

- 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.*

then the burden will shift to the Respondent to show that the Domain Name is not an Abusive Registration".

16. It is material to note that the registrant of the Domain Name is the Respondent and not Mr Thomas Lange, who is named respondent in the Complaint. The Nominet register shows Mr Lange as being "the contact" for all purposes connected with the registration. Having regard to the fact that it is the Respondent which is the registrant, the Domain Name is "*in the hands of the Respondent*" within the terms of paragraph 2a(ii) of the Policy, and I so find.
17. From the terms of the Complaint it appears that the Respondent (certainly at one time) provided a service registering domain names on behalf of others, and that it agreed to register the Domain Name for Morlands Brewery. In fact, for some reason, the Respondent, rather than Morlands Brewery, became the registrant.
18. The Respondent's service was apparently a bona fide one. I do not consider that any of the factors referred to in the non-exhaustive list set out in paragraph 3a of the Policy (see paragraph 15 above) are to be found in the present case. Further, it is to be noted that under paragraph 3b, mere inactivity does not by itself amount to evidence of an Abusive Registration. Nor, however, do I consider any of the factors referred to in paragraph 4 of the Policy (see paragraph 15 above) are present.
19. However, the lists set out in paragraphs 3 and 4 of the Policy are, of course, non-exhaustive, and no explanation is before me as to why:

- (1) the registration was made in the name of the Respondent rather than in the name of Morlands Brewery; or
- (2) the site ceased pointing to Greene King's web-site in January 2002.

Accordingly, I approach these actions on the basis that there was and is no justification for either of them.

20. In my judgment, the effect of the first of the actions described in the last paragraph is that the Domain Name was registered in a manner which at the time when such registration took place was unfairly detrimental to what are now the Complainant's Rights. The effect of the second of these actions is that the Domain Name has been used in a manner which was unfairly detrimental to the Complainant's Rights. Accordingly, both "limbs" of the definition, in paragraph 1 of the Policy, of Abusive Registration are fulfilled.

Decision

21. For the reasons given above, I find that the Domain Name, in the hands of the Respondent, is an Abusive Registration.
22. On the basis of the material before me the Domain Name should have been transferred to Morlands Brewery long ago, and it should now be transferred to the Complainant, as it requests.

Signed.....

David Blunt QC

25th March 2002