

Nominet UK Dispute Resolution Service

DRS 407

Huxley Associates Limited –v- Victoria Davies

Decision of Independent Expert

1. Parties:

Complainant: *Huxley Associates Limited*
Address: *35 St Thomas Street*
London
Postcode: *SE1 9SN*
Country: *GB*

Respondent: *Victoria Davies*
Address: *Unit D11*
Maws Craft Centre
Jackfield
Telford
Postcode: *TF8 7LS*
Country: *GB*

2. Domain Names:

HuxleyFinance.co.uk / Huxley-Finance.co.uk (“the Domain Names”)

3. Procedural Background:

The Complaint was lodged with Nominet on 21st May 2002. Nominet validated the Complaint and notified the Respondent of the Complaint on 27th May 2002 and informed the Respondent that she had 15 days within which to lodge a Response. The Respondent responded on 18th June 2002 and a copy of the response was forwarded to the Complainant on 18th June 2002 with an invitation to the Complainant to make any further submission in reply to the Response by 25th June 2002. The Complainant replied to the Response on

24th June 2002 and a copy of this was sent to the Respondent on 26th June 2002.

The dispute was not resolved by mediation and was referred for a decision by an Independent Expert following payment by the Complainant of the required fee for a decision of an Expert pursuant to paragraph 6 of the Nominet UK Dispute Resolution Service Policy (“the Policy”).

David Flint, the undersigned, (“the Expert”) confirmed to Nominet that he knew of no reason why he could not properly accept the invitation to act as expert in this case and further confirmed that he knew of no matters which ought to be drawn to the attention of the parties, which might appear to call into question his independence and/or impartiality.

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

None

5. The Facts:

Complainant:

“1. The Complainant, Huxley Associates Ltd, is and was at all material times a company carrying on business as a recruitment consultancy providing recruitment services in the field of information technology, and in particular placing information technology professionals into permanent and temporary positions in client companies. The Complainant was incorporated on 22nd August 1995.

2. Huxley Finance operates as a trading division of the Complainant and has been trading since approximately October 1999. At its inception this trading division operated under the name Huxley Banking and Finance. During April 2000, however, it was rebranded Huxley Finance and has been operating under this name since that date.

The Respondent

3. The Respondent, Miss Victoria Davies is the registered owner of the domain names HuxleyFinance.co.uk and Huxley-Finance.co.uk. The Complainant’s Rights in a Name or Mark

4. As stated above the Complainant was incorporated on 22nd August 1995 and since that date has built up substantial goodwill in the brand name ‘Huxley’ and subsequently in the brand names ‘Huxley Banking and Finance’ and ‘Huxley Finance’.

5. Furthermore, the Complainant is the registered owner of the trademark ‘Huxley’ (Great Britain and Northern Ireland Trademark No. 2144564 (Class

35) registered as of 9th September 1997 and European Community Trademark No. 001633403 registered as of 29th June 2001).

Facts Giving Rise to the Complaint

6. The Complainant has long considered that a web-based service would become Huxley Finance's main means of conducting business. The Complainant anticipates that client companies will come to use the Huxley Finance web-site to browse through available applicants or to transmit the details of further vacancies. The Complainant further anticipates that candidates will come to recognise the Huxley Finance web-site as a quick and reliable mechanism through which they will be able to secure employment. It has for some time been the Complainant's belief that an individual candidate or client searching for the Huxley Finance web-site would typically expect to access it via one of the following Internet domain names; HuxleyFinance.co.uk, HuxleyFinance.com, Huxley-Finance.co.uk or Huxley-Finance.com.

7. Accordingly between April and November 2001 the Complainant looked into the possibility of acquiring Internet domain names bearing the name Huxley Finance, in particular the domain names; HuxleyFinance.co.uk and HuxleyFinance.com. Through its enquiries the Complainant was able to establish that the domain names HuxleyFinance.co.uk and HuxleyFinance.com had already been registered and that their registered owner was the Respondent.

8. During November of 2001 the Complainant wrote to the Respondent enquiring about the possibility of acquiring the above domain names. In response the Complainant received correspondence from Network Cabling Limited ('Network Cabling') stating that it would be prepared to sell the domain names HuxleyFinance.co.uk and HuxleyFinance.com for the sum of £10,000. The Complainant made no response to this letter.

9. Early in 2002 the Complainant again looked into the possibility of acquiring ownership of the domain names HuxleyFinance.co.uk and HuxleyFinance.com. By this time ownership of these domain names had changed hands, their new registered owner being a Mr J Ghattaura ('Jagdeep Ghattaura'). Jagdeep Ghattaura's contact address was listed as being 17 Mimosa Close, Great Hay, Telford, Shropshire, TF7 4DU.

10. On 7th March 2002 the Complainant wrote to Jagdeep Ghattaura stating that it was interested in obtaining the rights over the domain names HuxleyFinance.co.uk and HuxleyFinance.com. This letter was sent to Jagdeep Ghattaura on Huxley Finance headed paper and clearly referred to Huxley Finance as a trading division of the Complainant.

11. The Complainant previously employed Jagdeep Ghattaura as a Recruitment Consultant. Jagdeep Ghattaura's employment with the Complainant commenced on 13th July 1998 and terminated on 12th May 2000 following his resignation. Jagdeep Ghattaura would have therefore been

aware that the Complainant had rights in the trademark 'Huxley' and would have further been aware of the Complainant's trading division operating under the name Huxley Banking and Finance and subsequently Huxley Finance.

12. On 27th March 2002 the Complainant received a telephone call from a Mr Al Ghattaura who stated that he was calling in reference to the above letter of 7th March 2002. Al Ghattaura stated that his brother, Jagdeep Ghattaura, had initially bought the domain names HuxleyFinance.co.uk and HuxleyFinance.com. However, Al Ghattaura went on to say that he had subsequently purchased these domain names from his brother with the express intention of selling them on with a view to making profit. He stated that he would be prepared to sell the domain names to the Complainant for the sum of £10,000. Al Ghattaura was asked by the Complainant to confirm the content of this telephone conversation in writing.

13. The Complainant subsequently received correspondence from Network Cabling dated 4th April 2002 offering for sale the domain names HuxleyFinance.co.uk and HuxleyFinance.com for the sum of £10,000.00. The letter of 4th April 2002 also offered for sale the domain names Huxley-Finance.co.uk and Huxley-Finance.com again for the sum of £10,000.00 and the limited company with the trade name Huxley Finance Limited (Registered Company No. 04407054), this for the sum of £5,000.00. In the letter of 4th April 2002 a further offer was made for the sale of the domain names HuxleyFinance.co.uk, HuxleyFinance.com, Huxley-Finance.co.uk and Huxley-Finance.com and the limited company Huxley Finance Limited for a total sum of £23,000.00.

14. The letter of 4th April 2002 also made the claim that the domain names were bought by Al Ghattaura with the intention of using them at a later date for his wife's company. No mention of this was ever made by Al Ghattaura in the telephone conversation of 27th March 2002 and, indeed, as indicated above, he expressly contradicted this contention by stating that he had purchased the domain names with the express intention of selling them on with a view to making profit.

15. The Complainant wrote to Network Cabling under cover of letter dated 24th April 2002 declining the above offer. It was further stated in this letter that an application would be made to the appropriate bodies for ownership of the disputed domain names to be transferred to the Complainant.

16. Ownership of the domain names HuxleyFinance.co.uk, Huxley-Finance.co.uk, HuxleyFinance.com, and Huxley-Finance.com has at some point recently, again changed hands. Ownership of these domain names transferred from Jagdeep Ghattaura back to the Respondent, with Miss Victoria Davies once again being listed as the registered owner of the domain names. The Respondent's contact address is also, however, listed as being 17 Mimosa Close, Great Hay, Telford, Shropshire, TF7 4DU.

17. The Complainant has subsequently been able to establish that Network Cabling is a Private Limited Company of whom Al Ghattaura is a director and

the Respondent is the Company Secretary. Through her role as company secretary of the limited company Network Cabling, and therefore through her connection with Al Ghattaura and his brother Jagdeep Ghattaura, the Respondent, would also likely have been aware that the Complainant had rights in the trademark 'Huxley' and that the Complainant operated a trading division under the name Huxley Banking and Finance and subsequently Huxley Finance.

18. The trading company Huxley Finance Limited was incorporated on 30th March 2002. Al Ghattaura is a director of Huxley Finance Limited and the Respondent is the Company Secretary. Huxley Finance Limited was incorporated some twenty days subsequent to the date on which the Complainant sent to Jagdeep Ghattaura a letter expressing an interest in acquiring the HuxleyFinance.co.uk and HuxleyFinance.com domain names and only three days subsequent to the telephone conversation between the Complainant and Al Ghattaura in which Al Ghattaura admitted that the domain names had been purchased solely for resale at a profit and could be purchased by Complainant for a price of £10,000.00. The incorporation of the trading company Huxley Finance Limited was, therefore, clearly a cynical action. The intention of the Respondent and Al Ghattaura in incorporating the trading company Huxley Finance Limited was solely to resell this company to the Complainant at a profit.”

Respondent

1. The respondent Miss Victoria Davies is the wife of Mr Al Ghattaura and operate an I.T. service delivery company called Network Cabling Ltd.
2. Since 1997 it has been Mr Ghattaura's goal to build businesses based in UK that will continue to grow to have interests abroad and specifically in India.
3. With this in mind he and his wife have built plans to effect this goal.
4. The business now known as Huxley Finance Ltd, has been within these plans for many years and is due to make its first full expansion into India in August 2002.
5. There is absolutely no connection between this company and the complainant Huxley Associates and there is no possibility of confusion as the business activities are completely different and the arena of operations is geographically different.
6. Following the approach made to the respondent to acquire the domains, the letter was sent by Network Cabling, stating a sum of money which they regarded as a protective action, since there was no existing intention to sell these domains as they were intended to be used in connection with the business plans mentioned in our introduction.

7. The company Huxley Finance Ltd had been registered by the respondent in for the purpose mentioned in this introduction [...]. Again the sum mentioned in the letter from Network cabling was a protective action.

6. *The Parties' Contentions:*

Complainant:

The substance of the Complaint is short and reads as follows: -

"[T]he Complainant believes that there has been an Abusive Registration of the domain names HuxleyFinance.co.uk and Huxley-Finance.co.uk. and that the Respondent should be considered as having no rights or legitimate interest in respect of the contested domain names."

Respondent:

The substance of the Response is short and reads as follows: -

"The Respondent has not acted with bad faith and can see no reason why the Complainant has suggested that she seeks to make profit from the "goodwill" of Huxley Associates.

The Respondent maintains that the actions she and her husband have taken are to protect and defend their own rights to the domain names and not any abuse of the Nominet regulations."

The Respondent knows of no value associated with the Complainants name and any value is not evident.

If the Website was so critical it is reasonable to consider that the Complainant would have sought to register the domain names in April 2000, i.e. when they say that they rebranded and not waited until April 2001.

No intention of causing inconvenience to the Complainant.

There was no intention of buying the domains to sell for profit.

There was no intention of making profit from the trademark and no intention of selling the company, the letter was a protective action against a substantially larger company seeking to obtain domains that it has no rights to.

There is no abuse of registration and so no pattern exists.

7. Discussion and Findings:

General

To succeed in this Complaint the Complainant has to prove to the Expert pursuant to paragraph 2 of the Policy on the balance of probabilities, first, that it has rights (as defined in paragraph 1 of the Policy) in respect of a name or mark identical or similar to the Domain Names and, secondly, that each of the Domain Names, in the hands of the Respondent, is an Abusive Registration (as defined in paragraph 1 of the Policy).

Complainant's Rights

In this case the first limb of that task is straightforward. The Complainant is the proprietor of trade mark rights in the name Huxley. The Domain name comprises the name Huxley combined with the word "finance" and the suffix <.co.uk>. In assessing whether or not a name or mark is identical or similar to a domain name, it is appropriate to discount the domain suffix, which is of no relevant significance and wholly generic.

Huxley is not a common word and, although it is common knowledge that the author Aldous Huxley is connected with the Indian study of mysticism through his work "*The Perennial Philosophy*", the Expert finds it incredible that the Respondent should have chanced upon a name which happened to be known to one of her business associates through an consultancy relationship and indeed no reason is given by the Respondent for this choice of name.

Accordingly, the Expert finds that the Complainant has rights in respect of a name or mark, which is identical to each of the Domain Names.

Abusive Registration

This leaves the second limb. Is each of the Domain Names, in the hands of the Respondent, an Abusive Registration? 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 each Domain Name is an Abusive Registration is set out in paragraph 3a of the Policy.

There being no suggestion that the Respondent has engaged in a pattern of making Abusive Registrations and there being no suggestion that the Respondent has given to Nominet false contact details, the only potentially relevant 'factors' in paragraph 3 are to be found in subparagraphs i and ii, which read 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."

The Expert interprets "as" in sub-paragraph i. B as being synonymous with "for the purpose of". Were it to be interpreted otherwise all domain name registrations would inevitably constitute "blocking registrations" for any later arrival wishing to use the name in question.

If, as the Respondent suggests, "The Respondents' interest is not in Europe but in India", it is unclear why a UK company registration was considered necessary after the approach by the Complainant.

In the Opinion of the Expert, the activities of the Respondent and those connected with her in the various transfers of the names and the setting up of a company with the name in dispute shortly after the contact from the Complainant seeking the names is, in the opinion of the Expert, further evidence of a pattern of behaviour to support the prior registration of the Domain Name and the circumstances narrated in paragraphs 3.a.i.A and C.

Accordingly, the Expert finds that each of the Domain Names are Abusive Registrations within the definition of that term in paragraph 1 of the Policy on

the basis that each was registered in a manner which, at the time when the registration took place, took unfair advantage of the Complainant's rights.

8. *Decision:*

In light of the foregoing findings, namely 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 directs that the Domain Names, huxleyfinance.co.uk and Huxley-finance.co.uk, be transferred to the Complainant.

David Flint

17 July 2002
Date