

Nominet UK Dispute Resolution Service

DRS 00262

Meadway Estates -v- Michael Wright & Co

Decision of Independent Expert

1. Parties

Complainant: Meadway Estates
Address: 13 Station Parade
Cockfosters
Barnet
Hertfordshire
Postcode: EN4 0DL
Country: GB

Respondent: Michael Wright & Co
Address: 125 Cockfosters Road
Cockfosters
Barnet
Hertfordshire
Postcode: EN4 0DA
Country: GB

2. Domain Name

meadwayestates.co.uk (“the Domain Name”)

3. Procedural Background

The Complaint was lodged with Nominet on 21 February 2002. Nominet validated the Complaint on 27 February 2002. On the same day, Nominet attempted to contact the Respondent and to inform him that he had 15 (working) days within which to lodge a response. Messages were sent by email and by post. Email messages were returned as undeliverable, but there was no indication of the postal message not having been delivered and no response was received. Nominet again tried to contact the Respondent on 21 February 2002 via email and post informing him that as no response had been received, the Complainant would be given the option of paying for an expert decision. The messages fared as before and again no response was received.

Mediation not being possible in those circumstances, Nominet so informed the Complainant and on 2 April 2002 the Complainant paid Nominet the appropriate fee for a decision of an Expert pursuant to paragraph 6 of the Nominet UK Dispute Resolution Service Policy (“the Policy”).

On 2 April 2002 Claire Milne, the undersigned, (“the Expert”) confirmed to Nominet that she knew of no reason why she could not properly accept the invitation to act as expert in this case and further confirmed that she knew of no matters which ought to be drawn to the attention of the parties, which might appear to call into question her independence and/or impartiality.

4. Formal/Procedural Issues

Response

No response has been received from the Respondent. Nominet sent emails both to the contact at Yell recorded on the registry entry for meadwayestates.co.uk and to the assumed address postmaster@meadwayestates.co.uk but in both cases received only “undeliverable” notices. However, ordinary postal packets were also sent, and I see no reason to doubt that they were delivered to the address in question, which simple internet research confirms as valid.

The documents provided to me show a discrepancy in the name of the contact at Michael Wright & Co. This person is given as Ms C Michael on the DRS Complaint Form, but as Michael Wright on the registry entry, and correspondence has been addressed to Mr Michael Wright. However, as the firm of Michael Wright & Co (also known as Wright Michael & Co) and the premises at 125 Cockfosters Road do not appear to be large, I believe that in all probability these packets were received by a responsible person at this address.

I therefore proceed on the assumption that the Respondent is aware of the current proceeding and has chosen not to respond.

Complaint

For the complaint to succeed, the Complainant must prove to the Expert that on the balance of probabilities:

- (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.

The complaint is very short and is not accompanied by any argumentation or evidence. As it stands, it does not prove anything. However, as:

- the points made in the complaint are simple, clear and largely capable of confirmation from publicly available sources (such as the postcode database and Yellow Pages); and also
- the complaint was submitted by a manager in a small business without legal assistance,

I choose to read into the complaint an appeal to common sense. Therefore, if after full consideration of the case (including the exercise of common sense), I find myself convinced of any point, I shall regard this point as having been proven by the Complainant.

No “exceptional circumstances” (Paragraph 15b of the Procedure) are known to the Expert which would justify any further delay in deciding the case.

5. The Facts

The facts of this case are mainly summarised in the Complaint, whose substance is reproduced below in full (the parts I regard as factual being italicised):

“Meadway Estates is a firm of estate agents based in Cockfosters, Southgate, Oakwood & Winchmore Hill. We would like to be able to use the Domain Name of Meadwayestates.co.uk as well as the Domain name we have registered of meadwayestates.com, which we have registered because meadwayestates.co.uk has

been registered to Michael Wright. Michael Wright are also a firm of estate agents in direct competition with our firm, being directly opposite our Cockfosters office. The only reason for them buying our domain name co.uk version is to restrict our access to people trying to search for us on the internet. They have no connection with this firm, their name bears no resemblance and yet they see fit to take our domain name away from us. We respectfully request that meadwayestates.co.uk be registered to us for our use as our own web site has been built and is about to be launched. As our company name, we would obviously like to have use of both meadwayestates.co.uk and meadwayestates.com.”

The only other available facts are:

The domain name meadwayestates.co.uk was registered by Yellow Pages on 2 September 1999 in the name of Michael Wright, giving the Cockfosters postal address but a telephone number and email address belonging to the technical contact at Yellow Pages.

The URL www.meadwayestates.co.uk yields a page in the electronic Yellow Pages (www.yell.com) marked as reserved for the Respondent, and giving the Respondent's name, address and telephone number.

The URL www.meadwayestates.com yields an unidentified parking page at NetNames. Meadway Estates currently has an internet presence through the shared site www.teamprop.co.uk (run by the North London and Hertfordshire Consortium of estate agencies), while Michael Wright & Co has no internet presence found by the Google search engine (though it is listed in local directories as a Cockfosters estate agent).

6. The Parties' Contentions

Complainant:

The substance of the Complaint is as follows:

- Meadwayestates is the Complainant's business name (and also the domain name of which they have registered the .com version).
- The Respondent is a direct local competitor of the Complainant.
- The Respondent has no connection with the Complainant and no rightful claim to the name.
- The Respondent must have registered the name in order to restrict the Complainant's business.

Respondent:

As already explained, no response has been received from the Respondent to communications from Nominet in connection with this Complaint.

7. Discussion and Findings

For the complaint to succeed, according to paragraph 2 of the Policy, the Complainant must prove to the Expert that on the balance of probabilities:

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

Complainant's Rights

Simple checks such as those mentioned above confirm the use of the name "Meadway Estates" to be exactly as stated by the Complainant, and do not reveal any alternative uses for the name. I therefore accept that the Complainant is generally recognised by this name as an estate agent in the local area and believe that this constitutes sufficient Rights for the present purpose. I regard the domain name "meadwayestates" as identical to "Meadway Estates" because capital letters and spaces are immaterial in this context.

Abusive Registration

This leaves the second question raised above, that is, whether the Domain Name, in the hands of the Respondent, is 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."

The only use made of meadwayestates.co.uk of which I am aware is the present one, namely that it leads to a page in the electronic Yellow Pages (www.yell.com) marked as reserved for the Respondent, and giving the Respondent's name, address and telephone number. (Nominet found when trying to contact the Respondent that email addressed to postmaster@meadwayestates.co.uk was returned as undeliverable.)

Any potential customer accessing www.meadwayestates.co.uk (which would be a natural domain name to guess at) in search of Meadway Estates will fail to find Meadway Estates, and instead will find the contact details of a direct competitor. This is plainly detrimental to the Complainant's business and possibly advantageous to the business of the competitor (the respondent).

But is the detriment or advantage unfair? I believe that it is, because there is no suggestion that the Respondent has any reason to choose this particular name other than the fact that it exactly describes their competitor. Simply, the Respondent is taking free advantage of the reputation built up by a competitor. This is unfair.

Therefore, this has been shown to be an Abusive Registration under limb (ii) of the definition. It is unnecessary to speculate about events at the time of registration (2 September 1999), as would be required if we needed to look at limb (i). However, in the absence of specific evidence, on the balance of probabilities, I regard it as likely that the reason for the

acquisition was competitive advantage, and that this would have been unfair then in the same way as it is unfair now.

The natural explanation for the respondent registering this domain name, so plainly associated with the competitor, would be a desire to make life harder for the complainant while at the same time making life easier for himself or herself – such a desire being a normal part of competition. Other explanations are possible, but to me seem plainly less likely and I therefore see no need to contrive them.

I therefore believe that limb (i) would probably be satisfied even if limb (ii) were not (for example, if no use had been made of the Domain Name).

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 decides in favour of the Complainant. The Complainant's requested remedy is transfer, and accordingly the Expert directs that the Domain Name be transferred to the Complainant.



Claire Milne

10 April 2002

Date