

Nominet UK Dispute Resolution Service

DRS 000297

The Met Office v Mr Christopher Fell of BUYdomain.co.uk

Decision of Independent Expert

1. *Parties:*

Complainant: *The Met Office*
Address: *Simpson Building*
Unit 1
The Western Centre
Western Road
Bracknell
Postcode: *RG12 1RQ*
Country: *UK*

Respondent: *Christopher Fell of BUYdomain.co.uk*
Address: *39 Banbury Road*
Stratford-Upon-Avon
Warwickshire
Postcode: *CV37 7HW*
Country: *UK*

2. *Domain Name:*

metoffice.co.uk ("the Domain Name")

3. *Procedural Background:*

The Complaint was lodged with Nominet on March 13, 2002. Nominet validated the Complaint and notified the Respondent of the Complaint on March 15, 2002 and informed the Respondent that he had 15 days within which to lodge a Response. As a result of the Complaint being incorrectly addressed the deadline for a response was extended until April 19 2002, the date on which the Respondent provided a Response which was communicated to the Complainant the same day. Complainant's Reply was received on May 1, 2002. There was another submission submitted by each party received subsequent to the Reply. Since they both contained

relevant information and were received by the Expert at the same time as the other papers they were both taken into account.

Mediation not succeeding, on May 24, 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").

Dawn Osborne, 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. The Facts:

The Complainant is an Executive Agency of the Ministry of Defence and a leading provider of environmental and weather related services. It is the owner of UK trade mark MET OFFICE for a wide variety of goods and services including weather prediction services and has used the name MET OFFICE since 1988.

The Defendant is a domain name reseller and registered the Domain Name in September 1999.

5. The Parties' Contentions:

Complainant:

The substance of the Complaint is as follows:

- 1. The Complainant is an executive agency of the Ministry of Defence and is one of the world's leading providers of weather related services. It has a worldwide reputation and a name instantly recognisable by the public.*
- 2. The Complainant has built up substantial goodwill and reputation in the name. The Complainant also has various trade marks including MET OFFICE including a UK registration 2235926 for the words MET OFFICE for a large variety of goods and services including, inter alia, weather prediction services. The Complainant also has a large number of domain names including the word string MET OFFICE. The name MET OFFICE is exclusively associated with the Complainant.*
- 3. The Respondent's domain name registration for metoffice.co.uk was registered in September 1999.*
- 4. The buydomain.co.uk web site seeks to sell domain names. If a who is search is carried out against the Domain Name on the register.com web site, the results page includes*

an advert inviting people to make an offer to buy the name through the Afternic Virtual Broker with a minimum offer of \$200. The Respondent has registered the name to sell it for profit.

5. When the Complainant first accessed the domain name metoffice.co.uk in May 2001 it pointed to a website www.hairandbeauty.co.uk. There is no connection between the Respondent and the MET OFFICE name. The Respondent has registered the name to disrupt the business of the Complainant or as a way of capitalising upon the Complainant's goodwill in the MET OFFICE name and confusing Internet users that the person owning the name is somehow connected with the Complainant.
6. The Respondent has failed to respond to three letters sent to it by the Complainant.

Respondent:

The substance of the Response is as follows:

1. The Respondent complains this is domain name hijacking and that his incorrect address details have been used by the Complainant.
2. The Complainant's trade mark and the Complainant's rebranding exercise in November 2000 post dates the registration of the Domain Name.
3. The Respondent registered over 700 generic domain names. He purchased metoffice.co.uk as a generic domain name to cover worldwide meteorological offices as an informative site and as part of a shopping directory and not just to cover the UK. It was registered in good faith. It is not a blocking registration.
4. By registering so many different MET OFFICE domain names in different top level domains and pointing them to different sites the Complainant is contributing to confusion. There should be no confusion between the Domain Name and official .gov.uk domains. There has been no connection of the Domain Name to any third party sites since the Complainant wrote to the Respondent.
5. The Respondent is not responsible for the Register.com site and has received no offers to purchase the domain name except the Complainant's offer of £1000. The metoffice.co.uk name is not for sale on the BUYdomain.co.uk site. The Complainant itself is selling domain names including MET OFFICE on its web sites.
6. There is no connection between the Respondent and the MET OFFICE name but this is no reason why he could not use it as an information site.

Complainant:

The substance of the Reply is as follows:

1. If the Respondent intended to use the Domain Name for worldwide meteorological offices then why was it registered in the .co.uk domain.
2. The Complainant has been known as The Met Office since 1988 long before the Respondent registered the Domain Name. The rebranding the Respondent refers to was only in relation to a new logo.
3. The Complainant should not be restricted to .gov domain names it provides sale of weather data products and services to local authorities, the private sector and individuals.
4. The only thing incorrect about the Respondent's address details being used by the Complainant is that the Complainant addressed the Complaint to Mr Christopher Fell at Bodyline Hair and Beauty instead of BUYdomain.co.uk but the actual address used was correct.

Respondent:

There was a further submission from the Respondent the only key point in which is as follows:

1. The Respondent could get .co.uk names cheaper than other types of generic domain name like.com and he does not regard .co.uk domain names as geographically restricted.

Complainant:

There was a further submission from the Complainant the only key point in which is as follows:

1. The Complainant is the owner of two UK trade mark registrations for THE MET OFFICE trade mark numbers 1562382 filed on 12 February 1994 and trade mark number 2179831 filed on 7 October 1998. These registrations prove the Complainant was using The MET OFFICE name prior to the registration of the Domain Name by the Respondent.

6. *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 name and, secondly, 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

In this case the first limb of that task is straightforward. The Complainant is the proprietor of UK registered trade marks for THE MET OFFICE and MET OFFICE and has been using the name MET OFFICE since 1988 acquiring reputation and goodwill in the same for weather prediction goods and services. The Domain Name consist of the name METOFFICE 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.

The Expert finds that the Complainant has rights in respect of a name or mark, which is identical or substantially identical to the Domain Name.

Abusive Registration

This leaves the second limb. Are the Domain Names, in the hands of the Respondent, Abusive Registrations? 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 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 subparagraph 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 is of the opinion that the Respondent's conduct and use of the Domain Name is indicative of relevant abusive conduct. The Domain Name is either identical or substantially identical to the name used by the Complainant since 1988 as a provider of weather prediction related goods and services and is a famous name in the UK. The Respondent is based in the UK and must have been aware of the Complainant and its goodwill in the MET OFFICE name at the time of the registration of the Domain Name in September 1999. The Respondent clearly has a background in selling domain names through his business BUYdomain.co.uk. The Expert agrees that the choice of ".co.uk" as a domain name heavily indicates that the Respondent did indeed have the UK and the Complainant in mind when he registered the Domain Name and indicates that the names were registered to sell for profit to the Complainant, as a blocking registration or to be used to ride on the Complainant's goodwill, thereby disrupting the Complainant's business and taking undue advantage.

There is no obvious reason why the Respondent might be said to have been justified in registering the Domain Name and he has produced no evidence to prove his alleged intention to use the name as an information site. Indeed the Domain Name has been pointed by the Respondent to a hair and beauty Internet business which has no connection to the Complainant. In so doing, the Respondent has used the metoffice.co.uk name to disrupt the Complainant's business and to confuse Internet users into thinking that an unconnected Internet business site is connected to the Complainant. The Expert does not believe that the fact that the Respondent has not used a .gov domain name avoids any possible confusion. The Complainant uses and is entitled to use other types of domain names which are not .gov domain names.

In the view of the Expert in its registration and use of the Domain Name the Respondent took unfair advantage of the Complainant's rights.

Accordingly, the Expert finds that the Domain Name is an Abusive Registration within the definition of that term in paragraph 1 of the Policy.

7. *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 Name, metoffice.co.uk be transferred to the Complainant.

19 June 2002

Dawn Osborne

Date