

Nominet UK Dispute Resolution Service

DRS 00055

The Sheffield College -v- Andrew Getz

Decision of Independent Expert

1. Parties

Complainant: The Sheffield College
Address: PO Box 345
Sheffield
Postcode: S2 2YY
Country: Great Britain

Respondent: Andrew Getz
Address: 102 Albert Road
Sheffield
Postcode: S8 9QW
Country: Great Britain

2. Domain Name

sheffcol.co.uk (“the Domain Name”)

3. Procedural Background

The Complaint was lodged with Nominet on 17 October 2001. Nominet validated the Complaint on 23 October 2001. 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, and neither was returned as undeliverable, but no response was received. Nominet again tried to contact the Respondent on 14 November 2001 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. Again neither of these pieces of correspondence was returned and no response was received.

Mediation not being possible in those circumstances, Nominet so informed the Complainant and on 23 November 2001 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 30 November, 2001, 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

The Respondent has not responded to any of Nominet's communications. This could be for a variety of reasons, for example that:

- a) The communications have not reached him.
- b) He has nothing useful to say in response to the complaint.
- c) He feels that his broader interests would be better served by silence in this case, although he does have something useful to say in response to the complaint.

Given that the contact details used by Nominet are under two years old, and that Nominet has made two unsuccessful attempts to contact the Respondent using these details without receiving any indication that they are invalid, the Expert finds that a) is improbable and that the explanation is more likely b) or c). Under Nominet's Terms and Conditions of Registration for Domain Names (paragraph 2), it is the Registrant's responsibility to inform Nominet promptly of any change in his registered details, including in particular his postal address. However, the decision will be tested against the eventuality that the communications have in fact not reached the Respondent.

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

The Complainant relies heavily on evidence supplied in the form of copies of email messages. Because it is relatively easy to fabricate such evidence either wholly or in part, the question must arise as to whether the Expert should accept these copies as authentic. For the following reasons, the Expert finds it very probable that the material supplied has not been fabricated.

- a) The punctuation and formatting characters (in particular, as commonly used in forwarding emails) have reached Nominet recognisably in their usual form. It would have taken a lot of care to fabricate an exchange of this kind accurately. Such a level of care is not reflected in the overall presentation of the complaint, which reached the Expert in a single unbroken block of text.
- b) The amount of evidence supplied is not great. Had the Complainant been fabricating evidence in his own support, he might reasonably have supplied rather more.

The discussion and decision below therefore proceed on the assumption that the evidence supplied is authentic, and the evidence itself is included in its correct chronological order as part of the facts set out in paragraph 5.

5. The Facts

1. The Complainant is the leading college of further education in Sheffield. As such it is well-known in and around Sheffield. Its nickname "SheffCol" is similarly widely known and recognised. According to the Complainant, it has provided web services associated with the work of the college under the academic domain name "sheffcol.ac.uk" since 1988.
2. On 9 April, 2000 the Respondent registered the Domain Name.
3. At the time of deciding the Complaint, and according to the Complainant "for several months" before the Complaint was lodged, a visitor to www.sheffcol.co.uk would

find himself at www.leeds.co.uk. This website is described at 10 below. However, according to the Complainant, for an unspecified earlier period, a visitor to www.sheffcol.co.uk would find himself at www.sheffcol.ac.uk, and later at the website of “a competitor organisation”.

4. During 2000, the Complainant invoked the Nominet Dispute Resolution Service unsuccessfully, under the old rules.
5. During September 2000 the following exchange of emails took place (supplied by the Complainant as part of his evidence, here reformatted and summarised to enhance clarity).

Date: 5 September 2000

Original sender: [name removed], [name removed]@[domain removed].com

Sent to: tony.fletcher@sheffcol.co.uk

Forwarded on: 10 September 2000

Forwarded to: tony.fletcher@sheffcol.ac.uk

Forwarded from: Fred Bloggs, fbloogs@hotmail.com [sic]

Subject: enrolment

Text:

Dear Tony

Just received your letter I will not be able to attend the enrolment session night or the first night of the course as I am away on holiday. I go away this friday and dont get back until friday 22 Sept 00. I wish to attend the course. [sic]

Thank you

[name removed]

Tony Fletcher intended to reply to [name removed], to say “Hi David, See you when you get back from your hols – going anywhere nice?”. However, on 14 September he accidentally addressed this reply to the address this message had been forwarded from, fbloogs@hotmail.com. He received the following reply.

Date: 16 September 2000

From: Fred Bloggs, fbloogs@hotmail.com

Subject: Re: enrolment

To: tony.fletcher@sheffcol.ac.uk

Text:

I'm not David you know would you like to buy www.sheffcol.co.uk

6. On 4 January 2001 the Complainant registered the following domain names:

sheffcoll.co.uk sheffcol.co.uk shefcoll.co.uk
sheffcol.org.uk sheffcoll.org.uk shefcol.org.uk shefcoll.org.uk

7. During May 2001 the Complainant received the following two emails (supplied by the Complainant as evidence, reproduced here as supplied but slightly reformatted for clarity).

From: [name removed] <[name removed]@[domain removed].com> 29/05/2001

16:37Subject: shefcol.co.uk

To: Seb Schmoller <seb.schmoller@sheffcol.ac.uk>

Hi Seb I mistyped the URL for sheffcol.ac.uk (as sheffcol.co.uk) and ended up at leeds.co.uk. Any ideas why this is? It looks like a deliberate attempt to profit from people's mistakes to me. This is the kind of thing I'd expect from a porn site, not a site extolling the business virtues of leeds. Its a pity cheeky, I'd email them if I were you.

Regards ----- [name removed]

e: mailto: [name removed]

w: http://www.[domain removed].com

p: [number removed]

From: "[name removed]" <[name removed]@[domainremoved].co.uk> 31/05/2001

10:44Subject: sheffcol.co.uk

To: seb.schmoller@sheffcol.ac.uk

Hi Seb, Accidentally typing: www.sheffcol.co.uk (substituting the co.uk for the ac.uk - easily done) appears to redirect to leeds.co.uk This could be a tad confusing for those new to the web and may even be costing you student places.

8. In a letter dated 5 June 2001, Nominet advised the Complainant that he might wish to consider complaining again under the new rules once these came into effect.

9. On 5 November 2001 the Complainant registered the following domain names:

sheffcol.org	sheffcoll.org	shefcol.org	shefcoll.org
sheffcol.net	sheffcoll.net	shefcol.net	shefcoll.net

10. At the time of deciding on the complaint (in early December 2001), a visitor to www.sheffcol.co.uk would find himself at www.leeds.co.uk. According to the Complainant, this had been the case for "several months" already when the Complaint was submitted.

This website purported to provide information on facilities and attractions in Leeds. Several of its pages were shown as "under construction". One page advertised the services of Vital Online, a web design and hosting company and internet service provider, giving for enquiries the email address webmaster@leeds.co.uk. Vital Online appears to be a company with around 40 employees based in Harrogate with websites (among others) www.vital.co.uk and www.vitalisp.co.uk, giving for enquiries email addresses based on the associated domain names.

6. The Parties' Contentions

Complainant:

The substance of the Complaint is as follows:

1. The Complainant does not claim formal Rights in the name "sheffcol", but states that this name has come to be associated with the College.
2. The Respondent's domain name is identical to the Complainant's domain name, apart from the second level "co" in place of "ac".
3. It is submitted that the Respondent's domain name registration is abusive because:

- (a) there is evidence (summarised at 5 5 above) that the Respondent has tried to sell the Domain Name to the Complainant. The Complainant contends that this supports a finding under 3 a i A of the Policy, that the Respondent has registered the Domain Name:

“A. primarily for the purpose of selling ... the Domain Name to the Complainant...for valuable consideration ...”

- (b) there is evidence (summarised at 5 7 above) that the Respondent’s use of the Domain Name is detrimental to the interests of the Complainant, in that it could confuse people who inadvertently type “co” in place of “ac” when trying to find the College’s website. The Complainant contends that this supports a finding under 3 a i B and/or C of the Policy, that the Respondent has registered the Domain Name:

“B. as a blocking registration against a name...in which the Complainant has rights” or

“C. primarily for the purpose of unfairly disrupting the business of the Complainant”

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

To succeed in this Complaint, according to paragraph 2 of the Policy, the Complainant has to prove to the Expert 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 Complainant does not claim formal Rights in the name “SheffCol”, but maintains that it has come to be associated with the College in the Sheffield area. The Expert has no reason to doubt this statement, which is implicitly supported by the emails supplied as evidence, both of which are from email addresses associated with businesses in the Sheffield area. This is adequate to establish common law Rights. The Expert therefore finds that the Complainant has Rights in respect of a name or mark, which is identical to the Domain Name.

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."

Paragraph 3 gives examples of factors which may be evidence that the Domain Name is an Abusive Registration. The Complainant claims to have provided evidence in support of factors 3 a i A and 3 a i B and/or C.

The Expert notes that factors 3 a i A and 3 a i C in fact appear to be mutually exclusive, as they both refer to the Respondent's primary purpose in registering the Domain Name. Normally a course of action can have only one primary purpose, though it may have a number of subsidiary purposes. In any event, little clear evidence is available to the Expert as to the Respondent's purposes in making this registration, and certainly not enough evidence is available for the Expert to say with any confidence what was his primary purpose. The Expert finds that the evidence supplied leads to the following conclusions.

- a) The [email exchange referred to in] (5 5) strongly suggests that in September 2001 the person in control of the Domain sheffcol.co.uk (who may or may not be the original registrant Andrew Getz) was interested in selling it. This in turn provides some support for the contention that the original registration was (at least in part) for the purpose of selling the domain name.
- b) The emails [referred to in] (5 7) suggest that the Respondent is using the Domain Name to benefit his own business at the expense of the Sheffield College, by diverting to his own website people wishing to visit www.sheffcol.ac.uk, and furthermore that the resulting confusion could act to the detriment of the Sheffield College. These are reasonable arguments, but the Expert finds that in present circumstances they carry little weight.

The www.leeds.co.uk website does not appear to mention, or to have any overt connection with, any educational establishment whether in Leeds, Sheffield or elsewhere. It is hard to see how visitors to this site could be influenced in any way that could be detrimental to the Sheffield College, other than by taking a little longer to find the correct site. Conceivably some intending visitors might never find the correct site. SheffCol presumably mean to help them by registering a wide range of alternative spellings and suffixes, though these have yet to be pointed to the actual website.

In the Expert's view, the current detriment to SheffCol from diverted visitors is very minor. The detriment could of course have been greater in the past when the Domain Name was pointed to the website of "a competitor organisation" (unspecified) and in principle this situation could recur so long as the Domain Name is not under SheffCol's own control.

- c) A greater risk attaches to the misrouting of email to name@sheffcol.co.uk in place of name@sheffcol.ac.uk (as happened with David Marples' message to Tony Fletcher). People might unjustly blame SheffCol staff if they failed to receive replies to their enquiries, or if they received misleading or wrong replies. Evidence along these lines could in principle support a contention of Abusive Registration under 3 a ii. No evidence has been supplied about misrouted emails, however, beyond the single incident involving Tony Fletcher. That instance (as already commented) supports an intent on the Respondent's part to sell the Domain Name rather than an intent to

mislead to SheffCol's detriment; indeed, the reply said clearly that the sender had got the wrong person.

Summary

The most difficult feature of this case is that no clear inferences can be made about the Respondent's purpose or purposes in making the registration. Indeed, the fact that the Domain Name has been put to a variety of uses since the initial registration suggests that his intentions may have been confused initially, or that they may since have changed. But the following points do emerge:

- a) The Respondent (or other person acting on his behalf) has recently thought to take advantage of his ownership of sheffcol.co.uk by selling it to the Sheffield College.
- b) The respondent (or other person acting on his behalf) is increasing traffic to his website at www.leeds.co.uk by diverting to it a proportion of people who want to view the website of the Sheffield College.

These two points taken together, in the Expert's view, amount to evidence under 1 i of the Policy that the Domain Name "has been used in a manner which took unfair advantage of ... the Complainant's Rights".

In addition:

- c) There is a risk to Sheffield College's reputation from emails intended for its staff (but incorrectly addressed using "co" in place of "ac") being delivered instead to the Respondent (or other person acting on his behalf).
- d) At some time in the past the Domain Name was pointed to the website of a competitor to the Sheffield College.

These two points taken together, in the Expert's view, amount to evidence under 1 i of the Policy that the Domain Name "has been used in a manner which ... was unfairly detrimental to the Complainant's Rights".

No evidence or argument to the contrary has been submitted. Reverting to the discussion at paragraph 4 of possible reasons for the Respondent's failure to respond, the Expert finds that these conclusions still stand irrespective of which (if any) of these reasons may hold.

Accordingly, the Expert finds that the Domain Name is an Abusive Registration within the definition of that term in paragraph 1 of the Policy, on the basis that it has been used in a manner which took unfair advantage of or was unfairly detrimental to 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 decides in favour of the Complainant. The Complainant's requested remedy is transfer, and accordingly the Expert directs that the Domain Name, sheffcol.co.uk, be transferred to the Complainant.

Claire Milne

Date