

Nominet UK Dispute Resolution Service

DRS 00298

Tenby House Hotel -v- A1 Epos

Decision of Independent Expert

**1. Parties:**

Complainant:	Tenby House Hotel
Address:	Tudor Square, Tenby, Pembrokeshire
Postcode:	SA70 7AJ
Country:	GB
Respondent:	A1 Epos
Address:	C/o Cracknell ITC Penally Tenby, Pembrokeshire
Postcode:	
Country:	GB

**2. Domain Name:**

Tenbyhouse.co.uk and  
Tenbyhousehotel.co.uk ("the Domain Names")

**3. Procedural Background:**

The Complaint was lodged with Nominet on 14<sup>th</sup> March 2002. Nominet validated the Complaint and notified the Respondent of the Complaint by both letter and e-mail sent on 19<sup>th</sup> March 2002. The Respondent was advised in those communications that the Respondent had 15 days within which to lodge a Response.

No Response was received. The Respondent's postal notification was not returned by the Royal Mail and there is no indication that the notification was not received by the Respondent. There was no notice that e-mails had not been delivered and therefore it is assumed that delivery was successful. As no response was received from the Respondent, mediation was not possible. The Complainant was informed accordingly and on 17<sup>th</sup> 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 17<sup>th</sup> April 2002, Nick Lockett, 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):**

The consequences of the Respondent not having submitted a Response to Nominet in time (or at all) in compliance with paragraph 5a of the Procedure for the conduct of proceedings under the Dispute Resolution Service ("the Procedure") are:

- a) Paragraph 15b of the Procedure provides, inter alia, that "If in the absence of exceptional circumstances, a Party does not comply with any time period laid down in this Policy or the Procedure, the Expert will proceed to a Decision on the complaint."

There is no evidence before the Expert to indicate the presence of exceptional circumstances; accordingly, the Expert will now proceed to a Decision on the Complaint and notwithstanding the absence of a Response.

- b) Paragraph 15c of the Procedure provides that " If, in the absence of exceptional circumstances, a Party does not comply with any provision in the Policy or this Procedure ..... , the Expert will draw such inferences from the Party's non-compliance as he or she considers appropriate."

The Expert is conscious that Respondents may fail to respond for a variety of reasons. The reason may simply be that the Respondent has nothing useful to say in his defence, or it may be that he has not received the Complaint, perhaps because he is away and not in email contact or perhaps because he has not kept his contact details with Nominet up-to-date.

Generally, the absence of a Response from the Respondent does not, in the Expert's view, entitle an expert to accept as fact all uncontradicted assertions of the Complainant, irrespective of their merit.

In this case it seems to the Expert that the probable facts speak for themselves and that it is not necessary to draw any special inferences. The Expert finds that the probable facts asserted by the Complainant and set out in the next following section are indeed facts.

In many cases, as in this one, the principal disadvantage attached to failing to respond will be the loss of an opportunity for the Respondent to demonstrate, pursuant to paragraph 4 of the Policy, circumstances tending to show that the Domain Name is not an Abusive Registration. Where, as here, the Respondent has a case to answer (i.e. the Complainant has made out a prima facie case) and there is no answer, the Complaint must ordinarily succeed.

## 5. **The Facts:**

The Complainant is the owner and proprietor of the Tenby House Hotel in Tudor Square, Tenby and the premises trade under, and are known by customers, as the Tenby House Hotel. The Complainant asserts that the premises are also known by customers as "Tenby House". The Complainant asserts goodwill in the marks "Tenby House" and "Tenby House Hotel".

The Complainant states that it was drawn to the proprietor's attention that the site at [tenbyhouse.co.uk](http://tenbyhouse.co.uk) redirects to the Normandie Inn, Upper Frog Street, Tenby. Evidence is provided to this effect.

The Complainant also deposes that e-mail to "@ tenbyhouse.co.uk" addresses appears to be handled rather than rejected and that the Respondent appears to be receiving e-mail addressed to those email addresses.

The whois records for the internet addresses [www.tenbyhousehotel.co.uk](http://www.tenbyhousehotel.co.uk) and [www.tenbyhouse.co.uk](http://www.tenbyhouse.co.uk) record that the domains were registered on the same day, 11<sup>th</sup> March 2000, by WEBCONSULTANCY on behalf of the Respondent, A1 EPOS, and that they are hosted via [www.easily.co.uk](http://www.easily.co.uk). The three contact addresses (admin, billing and technical) are identical, being Crackwell ITC of Tenby.

The site at [www.tenbyhousehotel.co.uk](http://www.tenbyhousehotel.co.uk) has been redirected to the site of [easily.co.uk](http://easily.co.uk). Evidence is provided to this effect.

## 6. **The Parties' Contentions:**

*Complainant:*

The Complainant asserts that:

1. The Domain Name is identical or similar to the name and mark in which the Complainant has rights.
2. The Domain Name is an Abusive Registration, as defined by the Policy, because it has been used in a manner which takes unfair advantage of or is unfairly detrimental to the Complainant's rights.

The Complainant asserts goodwill in the name "Tenby House" and "Tenby House Hotel". These assertions are unchallenged and accordingly, as the Complainant's trading names, these assertions are accepted by the Expert.

The Complainant asserts that the redirection of [www.tenbyhouse.co.uk](http://www.tenbyhouse.co.uk) evidences that the Domain Name is being used solely to attract, for commercial gain, Internet users to the Normandie Inn's website and that neither the Respondent nor Normandie Inn have any rights or legitimate interests in respect of the Domain Name nor have they acquired such rights through use.

The Complainant asserts that the registration of the domain is abusive and that the failure to handle e-mail addresses is damaging to the Tenby House Hotel by suggesting that the Tenby House Hotel staff ignore e-mail addresses.

The Complainant also asserts that the [www.tenbyhousehotel.co.uk](http://www.tenbyhousehotel.co.uk) Domain Name is being used unfairly detrimental to the Complainant's rights.

The Complainant asserts that neither the Respondent nor Normandie Inn have any rights or legitimate interests in respect of the Domain Names nor have they acquired such rights through use and that the Respondent is taking unfair advantage of the Claimant's goodwill and that the Domain Name has been used in a manner which takes unfair advantage of or is unfairly detrimental to the Complainant and may create a likelihood of confusion.

*Respondent:*

As explained above, the Respondent has not responded

## **7. Discussion and Findings:**

*General*

Paragraph 2 of the Policy requires that, for the Complainant to succeed, it must prove to the Expert on the balance of probabilities, both that it has rights in respect of a name or mark identical or similar to the Domain Name and 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*

The Complainant in this case has asserted that it has rights in the names "Tenby House" and "Tenby House Hotel" and this is accepted by the Expert for the reasons stated above. The Complainant asserts that these names are identical or similar to the Domain Names. In considering whether or not a name or mark is identical or similar to a domain name, it would usually be appropriate not to take into account the domain suffix or spaces between words.

On the basis of the evidence submitted, it is clear that the Complainant has rights in the Domain Names. Those rights are established from the material submitted with the Complaint.

*Abusive Registration*

The Complainant also has to show that the Domain Name 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."*

A non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration are set out in paragraph 3a of the Policy. However, these are only examples of conduct which may be evidence that a Domain Name is an Abusive Registration.

It is not asserted that the Respondent has engaged in a pattern of making Abusive Registrations (which can be an indication that the Domain Name is an Abusive Registration under paragraph 3a (iii) of the Policy) or that the Respondent has given to Nominet false contact details (which can be evidence of an Abusive Registration under clause 3a(iv) of the Policy). Accordingly, the only potentially relevant factors are contained in subparagraphs i, and ii, that is:

*"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."*

In relation to Tenbyhouse.co.uk

Sub-clause A is applicable; In the case of [www.tenbyhouse.co.uk](http://www.tenbyhouse.co.uk) there is evidence that the domain has been directed to the website of a competitor and therefore it is clear that the Respondent's motivation in registering the site was to sell, rent or otherwise transfer the Domain Name (or the use thereof) to a competitor of the Complainant.

Sub-clause B is inapplicable; The Complainant has not alleged that the Respondent's motivation has been to stop the Complainant using the Domain Name. The Complainant has not stated that the Complainant would otherwise have sought to acquire it, were it not for the Respondent's conduct.

Sub-clause 3 C is applicable; The re-direction of [tenbyhouse.co.uk](http://tenbyhouse.co.uk) to a competitor of the Complainant is clearly an attempt to disrupt the business of the Complainant. It is in the Expert's judgment beyond dispute that the registration was intended to infringe the Complainant's rights and to disrupt their business.

The Respondent is using the Domain Name [tenbyhouse.co.uk](http://tenbyhouse.co.uk) to forward traffic to a competitor site and doing more than simply passively retaining that Domain Name. The use of

the domain name takes unfair advantage of and/or is it unfairly detrimental to the Complainant's Rights by that redirection and it is clear that the Respondent's motivation in registering the site was to sell, rent or otherwise transfer the Domain Name (or the use thereof) to a competitor of the Complainant

Accordingly, the Expert finds that the Domain Name tenbyhouse.co.uk is an Abusive Registration as defined by paragraph 1 of the Policy on the basis that it is being used in a manner which takes unfair advantage of the Complainant's rights and/or is it unfairly detrimental to the Complainant's Rights by that redirection.

#### In relation to Tenbyhousehotel.co.uk

Registration of Tenbyhousehotel.co.uk Domain Name is also tainted by the parallel registration of Tenbyhouse.co.uk. The case of British Telecommunications Plc and others v One in a Million Ltd and others, 1998 made it clear that the motives imputed to the registration of a domain name may taint the other registrations by the Respondent and this is the case for the registration of tenbyhousehotel.co.uk. The Respondent's actions show a deliberate practice of registering the names by which the Complainant is known and as a matter of common sense, it is clear that the registration of tenbyhousehotel.co.uk is a blocking registration, alternatively that the domain name was registered with the intention of redirection, and is likely to be redirected, to a competitor of the Complainant in the same way that the tenbyhouse.co.uk domain has been directed.

Clause 3 ii of application requires evidence of actual confusion on behalf of people or businesses that the Domain Name is being used by the Respondent in a way which has confused people or businesses into believing that the Domain Name is connected with the Complainant. No such evidence has been submitted.

The registration of the domain name Tenbyhousehotel.co.uk constitutes an Abusive Registration as defined by paragraph 1 of the Policy on the basis that it takes unfair advantage of and/or is it unfairly detrimental to the Complainant's Rights. It is clear that it was primarily registered for the purpose of unfairly disrupting the business of the Complainant or to sell, rent or otherwise transfer the Domain Name (or the use thereof) to a competitor of the Complainant in the manner already done in relation to tenbyhouse.co.uk. The Expert is persuaded that the domain name, if left in the hands of the Respondent, is likely to be redirected or otherwise used as an instrument of fraud within the meaning of that term used in British Telecommunications Plc and others v One in a Million Ltd and others, 1998. Accordingly, the Expert finds that the Domain Name Tenbyhousehotel.co.uk is an Abusive Registration.

#### **8. Decision:**

In light of the findings that the Complainant has rights in respect of a names or marks which are the same or similar to the Domain Names in question and that the Domain Names, in the hands of the Respondent, constitute Abusive Registrations, the Expert directs that the Domain Names, Tenbyhousehotel.co.uk and Tenbyhouse.co.uk be transferred to the Complainant.