

**NOMINET UK DISPUTE RESOLUTION SERVICE**

**DRS 421**

**TNT UK Limited –v- Craig Sibley**

**Decision of Independent Expert**

**1. Parties:**

Complainant: TNT UK Ltd  
Address: Express House  
Holly Lane  
Atherstone  
Warwickshire  
Postcode: CV9 2RY  
Country: GB

Respondent: Mr Craig Sibley  
Address: 68 Otterway  
Eatonsocon  
St Neots  
Cambridgeshire  
Postcode: PE19 8LB  
Country: GB  
Email: craig17uk@hotmail.com

**2. Domain Name:**

tntsameday.co.uk (“Domain Name”)

**3. Procedural Background:**

The Complaint was lodged with Nominet on 31 May 2002. Nominet validated the Complaint and notified the Respondent of the Complaint on 7 June 2002 and informed the Respondent that he had 15 days within which to lodge a Response. The Respondent failed to respond. Mediation not being possible in those circumstances, Nominet so informed the Complainant and on 4 July 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 5 July 2002, Cerryg Jones, 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):**

It is first necessary to deal with any matters arising from the fact that no response has been received from the Respondent. Clause 5a of the Procedure for the Conduct of Proceedings under the Dispute Resolution Service ("the Procedure") requires the Respondent to submit a Response to Nominet within 15 days of the date of the commencement of proceedings under the Dispute Resolution Service. Paragraph 15b of the Procedure provides, amongst other matters 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. Paragraph 16a provides that the Expert will decide a complaint on the basis of the Parties' submissions, the Policy and the Procedure.

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.

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 the Procedure, the Expert will draw such inferences from the Party's non-compliance as he or she considers appropriate. The inferences, which have been drawn from non-compliance, are explained below.

## **5. The Facts:**

The Complainant is a well-known delivery and distribution business for parcels and mail. The complaint is exceedingly brief and is not supported by any documentation. The Complainant states that it has a trading division named TNT Sameday that has been in operation since 1982 and that it wishes to market this division on the internet. The Complainant alleges that the Respondent admitted in a telephone conversation that his main consideration in registering the Domain Name was to sell it to the Complainant at a profit. It is further alleged that the Respondent subsequently demanded over £1,000 for the Domain Name. A WHOIS search shows that on 8 November 2000, the Domain Name was registered by NAMESCO for the Respondent.

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

### Complainant:

The Complainant asserts that the Domain Name is identical or similar to the name and mark in which the Complainant has rights.

The Complainant asserts the Domain Name is an Abusive Registration because (a) the Respondent allegedly confirmed by telephone that his main consideration in purchasing the domain name was to sell it to the Complainant at a profit (b) the Respondent allegedly rejected an offer to sell the Domain Name for £300 and asked for £1,000 and (c) the Respondent allegedly configured a website at [www.tntsameday.co.uk](http://www.tntsameday.co.uk) to forward traffic to [www.tnt.co.uk](http://www.tnt.co.uk) (the Complainant's corporate website) but subsequently removed the redirection thereby misleading the Complainant's existing and potential customers.

### 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 has to prove to the Expert on the balance of probabilities, 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

Unfortunately, very little evidence of any common law or registered rights or other rights in the Complainant's name or any derivative mark has been provided. Although it would be possible for the Expert to conduct his own investigations from publicly available material to substantiate whether or not such rights exist (for example by searching the Trade Marks Registry database), the Expert does not believe it would be appropriate under the Policy and Procedure to do so. In the Expert's view, the Complaint should be determined on the evidence submitted by the parties in accordance with Paragraph 16a and not on the basis of any evidence that the Expert has to unearth himself, even where, as here, the Complainant has not obtained professional assistance.

However, the Complainant has identified its website (www.tnt.co.uk) in the complaint and has made submissions based on its existence. The website identifies a list of products and services, one of which is TNT Sameday. There is no evidence on the website as to when the Complainant commenced offering services under this name, or any evidence which can be gleaned from the website as to how this mark is used. The Expert has not been provided with sufficient evidence as to the existence of Rights in the name TNT Sameday (as compared to TNT). However, the mark TNT is widely used on the website to denote the origin of the Complainant's services and the Expert is familiar with the mark TNT. In the Expert's view, the Complainant has proven on a balance of probabilities that it has Rights in TNT.

The dominant and distinctive part of the Domain Name is TNT. Accordingly, on the basis of the evidence of the use of the TNT mark on the website, the Expert finds that the Complainant has Rights in respect of a name or mark (TNT) that is similar to the Domain Name.

### 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.

The Complainant alleges that the Domain Name is an Abusive Registration as a result of paragraphs 3a i A, and 3 a ii of the Policy:

"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;

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 Complainant has not discharged the burden of proof required under Paragraph 3 ii of the Policy. This clause requires evidence of confusion on behalf of people or businesses that the Domain Name is being used by the Respondent in a way that has confused people or businesses into believing that the Domain Name is connected with the Complainant. No such evidence has been submitted.

The only evidence that the Respondent's motivation has been to sell, rent or otherwise transfer the Domain Name to the Complainant is the allegation in the complaint that the Respondent confirmed that this was his motivation for registering the Domain Name in a telephone conversation with the Complainant and that, in subsequent discussions with the Complainant's marketing Department, the Respondent stated that he wanted a payment of over £1,000 for the Domain Name.

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 the Respondent has a case to answer but fails to file a response, the Complaint should ordinarily succeed.

In the absence of any response from the Respondent, the Expert has little choice but to accept on a balance of probabilities the truth of the facts asserted by the Complainant as to the content of the telephone conversations referred to in the complaint. Accordingly, the Expert finds that the Domain Name is an Abusive Registration under 3 a i A of the Policy.

## **8. Decision:**

In the light of the foregoing findings, namely that the Complainant has rights in respect of a name or mark which is similar 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 be transferred to the Complainant.

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Cerryg Jones

24 July 2002

**Date**