

DISPUTE RESOLUTION SERVICE

D00020410

Decision of Independent Expert

H Limited

and

Domain Capital, LLC

1. The Parties

Lead Complainant: H Limited
32 Chapel Road
Flitwick
Bedfordshire
MK45 1EB
United Kingdom

Respondent: Domain Capital, LLC
10 Dominion Street
London
EC2M 2EE
United Kingdom

2. The Domain Names

<h.uk> and <h.co.uk> ("the Domain Names")

3. Procedural History

The Complaint was filed with Nominet on 16 July 2018. Nominet validated the Complaint on 17 July 2018 and notified the Respondent by post and by email, stating that the Response had to be received on or before 7 August 2018. The Response was filed on 7 August 2018. The next day Nominet notified the Complainant that a Reply had to be received on or before 15 August 2018. A Reply was received on 15 August 2018 and the mediator was appointed on 20 August 2018.

The Informal Mediation procedure failed to produce an acceptable solution for the parties and so on 6 September 2018 Nominet informed the Complainant that it had until 20 September 2018 to pay the fee for the decision of an Expert pursuant to paragraph 13 of the Nominet Dispute Resolution Service Policy ("the Policy"). The Complainant subsequently paid Nominet the required fee.

On 20 September 2018 the undersigned, Jane Seager ("the Expert"), confirmed to Nominet that she was independent of each of the parties and that, to the best of her knowledge and belief, there were no facts or circumstances, past or present (or that could arise in the foreseeable future) that needed to be disclosed which might be of such a nature as to call in to question her independence in the eyes of one or both of the parties.

4. Factual Background

The Complainant is a company incorporated in the UK in 1988. It changed its name to H Limited in 1992.

The Respondent is US company established in 2006 that specialises in domain financing.

The Domain Names were registered on 13 September 2011 (<h.co.uk>) and 19 August 2014 (<h.uk>). The former is currently pointing to a webpage stating that it is for sale (including <h.uk>) and giving the Respondent's contact details, and the latter is pointing to a registrar holding page.

5. Parties' Contentions

The parties' contentions are summarised below.

Complaint

Complainant's Rights

The Complainant states that, whilst it does not have a registered trade mark, it makes active use of the "H" logo, which is used on its corporate letterhead. It states that company accounts filed with Companies House demonstrate ongoing turnover and assets, and existing business to business relationships are demonstrated by legal contracts in its name.

The Complainant argues that "Limited" is a legal identifier and therefore effectively not part of the company name, and so the Company name is effectively "H".

The Complainant points out that, in order to expand the business further, an internet presence is required, and as a UK registered company it would expect this to take the form of <company name.co.uk>, in other words <h.co.uk>.

The Complainant states that it has already secured the domain name <h.ltd.uk> which is in active use for all its email correspondence. The Complainant points out that domain names under .LTD.UK are only available to the matching legal entity, which in this case is H Limited.

The Complainant argues that the only other UK based company that could lay claim to <h.co.uk> is H & Co (UK) Limited, an entity registered with Companies House under number 4155971 on 7 February 2001. However this company is also owned by the Complainant's director who is in the process of winding it down to focus purely on H Limited.

The Complainant states that it is therefore the only trading UK company with the name H and thus should be entitled to use a domain name matching its name, specifically <h.co.uk>.

Abusive Registration

The Complainant explains that the Respondent registers and purchases what could be considered "premium" or desirable domains for resale, including a number of UK domains, as listed on its web site. As <h.co.uk> is a single letter, the Complainant states that it believes that it was registered purely for the purpose of selling on at a vastly inflated cost.

The Complainant points out that, at the date of registration of <h.co.uk>, 13 September 2011, the Complainant already existed and had done so for nearly 20 years. Any search of Companies House would have revealed this. In the Complainant's opinion, the Respondent was therefore registering the name of a known company that had no association with it and which was in a different country. Therefore this could only have been done to prevent the Complainant from registering it.

The Complainant states that the Respondent has no intention of using <h.co.uk> and, if it did so, this would adversely disrupt the Complainant's business since it would be effectively trading using the Complainant's company name.

The Complainant states that it has been in touch with the Respondent who offered to sell <h.co.uk> to it for \$600,000 (including <h.uk> which was registered for the same purpose). Since <h.co.uk> can only legitimately be used by the Complainant, and therefore only has value for it, the Complainant considers this to be an abusive registration.

The Complainant therefore requests that the Domain Names be transferred to it.

Response

The Respondent argues that the Complaint is an attempt by an obscure and relatively unknown company to claim that it alone is entitled to the single letter "H". The Respondent states that the Complainant does not state what the business of the company is, and the Complainant's recently-acquired <h.ltd.uk> domain name resolves merely to a parking page. In the Respondent's view, the Complainant presents no evidence of any public reputation as being identified with the letter "H".

The Respondent explains that in late 2011, Nominet decided to conduct an auction of single-letter .CO.UK domain names. The domain name <h.co.uk> was duly purchased in the auction for £16,000 by an Andrew Hugh. The Respondent states that the Complainant does not explain why it believes that the Nominet auction of single character domain names was conducted by Nominet in bad faith.

The Respondent notes that it is a finance agency that loans money using valuable generic and non-exclusive domain names as collateral. The Respondent's business is, for example, described in WIPO UDRP Case No. D2015-0080 involving its domain name <fiesta.com>: "[R]espondent acquired the disputed domain name as part of a leaseback financing deal concluded with the previous owner of the disputed domain name before

knowledge of the present dispute. Such deal was most likely based on the potential value of the disputed domain name, which is comprised of a common generic Spanish word."

The Respondent explains that, shortly after the Nominet auction of single letter domain names was conducted, the Respondent entered into a leaseback financing arrangement with Mr Hugh, who had prevailed in the Nominet auction of both <h.co.uk> and <d.co.uk> (in addition to a few other dictionary word names). When Mr Hugh defaulted on his agreement with the Respondent, it gained full possession of <h.co.uk> domain name. In order to protect the value of the collateral thus obtained, the Respondent states that it further applied for and obtained the <h.uk> domain name upon Nominet's further release of .UK domain names to matching .CO.UK registrants.

The Respondent argues that its acquisition and ownership of the Domain Names is premised on the same principle that led Nominet to auction single letter domain names in the first place, namely that such a considerably strong claim of rights or fame would be required to be considered the "rightful owner" of an entire single letter of the alphabet; and that single characters have substantial inherent market value. As relied upon in Nominet Dispute Resolution Service (DRS) Decision No. D00010339, concerning the domain name <9.co.uk>: *"It is a well established principle that in the case of a purely generic or descriptive term, or a dictionary word, it requires a much higher level of evidence to establish that the use of such a term or word in a domain name is abusive. [...] These principles in relation to generic, descriptive and dictionary words must hold true in respect of the single digit and short domain names released by Nominet. The Complainant has not presented any evidence to overcome the hurdles presented by such principles."*

The Respondent argues that the Complainant does not explain how the Respondent's finance agreement with the Nominet auction winner of the <h.co.uk> domain name is "abusive" in relation to any rights claimed by the Complainant, nor how the Respondent's further acquisition of <h.uk> in accordance with Nominet allocation rules has been conducted to the detriment of any rights claimed by the Complainant. In the Respondent's opinion, the Complainant's assertion that it is entitled to the letter "H" for all intents and purposes is remarkably expansive and there no discernible public reputation to support this.

The Respondent notes that, in correspondence with the Respondent attempting to buy the domain name in 2015, the Complainant's representative proposed splitting the .CO.UK and .UK domain names among different purchasers, stating, *"I can imagine a number of individuals to whom 'H.UK' would have the numerical value you describe"*. The Respondent argues that the Complainant's imagination has become much more limited in the intervening several years, during which the Complainant has acquiesced in the Respondent's registration of the Domain Names.

The Respondent concludes that the Complainant has failed to establish abusive registration of the Domain Names under the Policy.

Reply

The Complainant argues that it is not "obscure" and "relatively unknown" and that, whilst it may not be well known in the USA where the Respondent is based, it is well known by its clients in the United Kingdom where it is based.

The Complainant then lists some of its clients and states that it provides management consultancy services, specialising in business transformation and business continuity, and underlines that its clients insist on high levels of discretion and confidentiality. The Complainant states that historically all of its business has come from recommendations and it has not needed to advertise. It underlines that, whilst the general public may not know it, it does have a reputation in the UK in its particular industry.

The Complainant states that it purchased the domain name <h.ltd.uk> on 3 August 2015, just over three years ago, not recently as claimed by the Respondent. The Complainant points out that it uses this domain name for email and has a number of addresses known by its contacts. This domain name resolves to a parking page, but the Complainant states that it is looking to grow and expand the business and move to larger premises. It would like to launch a website but asserts that it did not want to cause any confusion with potential new customers who would naturally use <h.co.uk> on the basis of its company name. The Complainant argues that the domain name <h.co.uk> will allow it to market to a new audience and that no other domain name would be appropriate for a UK based company named H.

The Complainant points out that the Respondent is currently pointing the Domain Names to live websites and argues that this has the potential to cause "initial interest confusion". The Complainant cites Section 3.3 of the Nominet Experts' Overview and contends that, where the disputed domain name is identical to the name of the Complainant, as in this case, there is a severe risk that a visitor to either of these websites will be doing so in the expectation of finding the Complainant.

The Complainant states that it is not laying claim to a single letter, as argued by the Respondent, but its company name, and the fact that it only contains a single letter is not relevant. In this regard the Oxford English Dictionary defines both "name" and "word" but sets no minimum number of letters.

The Complainant notes that one of the articles annexed as evidence by the Respondent to illustrate details of the Nominet auction contains various quotes underlining its views, for example *"you have a large number of people hoping to make a fast buck and using the specialist knowledge of the process to steal a march on other parties who might potentially be interested in the future"* and *"speculation on domain names is fraught with legal risk, with at least one trademark owner already threatening to take a recent buyer to court"*.

The Complainant states that, whilst it does not have a formally registered trade mark, it has been using its H logo and brand strapline "Vision – Strategy – Reality" for a number of years, as reflected on its letterhead. The Complainant argues that these are effectively unregistered trade marks. Under English law, it is the only company that can use, trade as or present itself as H, as such it has never felt the need to trade mark its name, like other similar service providers.

The Complainant disputes the Respondent's statement that Andrew Hugh "duly purchased" <h.co.uk> and refers to the Financing Agreement exhibited by the Respondent. The Complainant argues that Andrew Hugh paid for the domain name with money provided to him by the Respondent, as evidenced by the Agreement, and bid for a number of domain names on a purely speculative basis with a view to selling them on for profit. In the Complainant's opinion, the domain names purchased cover a range of

industries and interests, and Mr Hugh could clearly not have been involved in all of these simultaneously.

The Complainant contends that the Respondent knowingly bought and rented domain names to Mr Hugh, safe in the knowledge that it could retake possession of them in the event of any breach and that Mr Hugh would indemnify it in the event of any infringement actions. The Complainant highlights that the Agreement required Mr Hugh to confirm to the Respondent that the domain names did not infringe upon the rights of any third party and certify that they would be used for business purposes. In the Complainant's opinion, Mr Hugh could not possibly have complied with this, but the terms of the Agreement meant that the Respondent was not taking any risk. The Complainant asserts that the Respondent then chose to profit from Mr Hugh's default by attempting to charge \$600,000 for a domain name that initially cost £16,000, a 26000% increase, which was morally reprehensible.

The Complainant then goes on to examine its correspondence with the Respondent regarding a potential sale, and highlights the Respondent's assertion that <h.uk> was essentially being offered for free. The Complainant argues that this means that the Respondent saw little value in <h.uk> because the value was in <h.co.uk> as one of only 26 single letter domain names. In the Complainant's opinion, this reinforced the view that the Respondent was seeking to profit from its position and also that it had no legitimate claim to <h.co.uk> other than to sell it on. In the Complainant's view, further proof of this may be illustrated by the fact that the Respondent did not answer its question as to who the Respondent's target purchaser would be following the information that it supplied about UK law, Companies' House practice and an explanation that it would be the only company who could legitimately and legally use <h.co.uk>.

The Complainant argues that, at the point of acquisition, the Respondent had no legitimate, legal or contractual rights to the name H or any associations with it. It was not a UK company and therefore could not have had any intent to use <h.co.uk>. The Complainant contends that the Respondent's only objective was to sell, rent or otherwise transfer <h.co.uk> for an amount in excess of its out-of-pocket costs. In the Complainant's opinion this is the definition of an abusive registration.

The Complainant states that the case cited by the Respondent, DRS D00010339, does not support its argument. Unlike the Complainant, 9 Ltd was a non-trading company, yet by virtue of the fact that the name of the limited company was the same as the domain name being challenged, the Expert's opinion was that the complainant had rights in the mark identical to the domain name. The Complainant contends that it has a far stronger case in this regard, and so given this precedent it would expect no issue. The Complainant argues that the reason for the failure of that case was that 9 Ltd failed to provide the evidence required and asked for by Nominet in other areas, despite being given the opportunity to do so, which is not the situation in this case.

As regards whether the Respondent knew about the Complainant's rights at the time of registration, the Complainant underlines that its company name pre-dates the registration of <h.co.uk> by 19 years. The Complainant states that it would expect that anyone registering a UK Company Domain under .CO.UK should do their due diligence to see if a company with that name already existed. A quick search at Companies House would have revealed that the Complainant did exist and had rights to the name. In the Complainant's opinion, doing the search and then buying the domain name anyway would indicate that the Respondent could clearly only have the intention of selling it back

to it at an inflated price and / or preventing it from using it, and not doing the search would be reckless, irresponsible and have the same effect.

In response to the Respondent's assertion that the Complainant had not explained how the registration was abusive, the Complainant states that, in addition to the above, it would argue that the following clauses of Section 5 of the Policy apply:

5.1.1.1 – By the Respondent's own admission.

5.1.1.2 – The Respondent is preventing it from using a name in which it has rights.

5.1.2 – As illustrated by the current pointing.

5.1.3 – As per the domain names listed on the Respondent's web site.

5.1.6 – As above and by the principle set out in Nominet DRS Decision No. D00010339 quoted by the Respondent.

6. Discussion and Findings

General

Under paragraph 2.1 of the Policy, for the Expert to order a transfer of the Domain Names, the Complainant is required to demonstrate, on the balance of probabilities, both of the following elements:

"2.1.1 The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

2.1.2 The Domain Name, in the hands of the Respondent, is an Abusive Registration."

Complainant's Rights

The Policy defines Rights as *"rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning"*.

By far the easiest way to demonstrate Rights under the Policy is usually the provision of a registered trade mark. However the Complainant has supplied no evidence that it owns any registered trade marks.

The Complainant is an incorporated company called H Limited. Section 1.7 of the Nominet Experts' Overview deals with the question of whether a company name registration can give rise to a Right under the Policy in and of itself, and provides as follows:

"There are decisions going both ways, DRS 00228 (activewebsolution.co.uk) and DRS 04001 (generaldynamics.co.uk). The issue is this: does the mere fact that under the Companies Acts (section 28(2) of the Companies Act 1985 and sections 66 and 67 of the Companies Act 2006) the Secretary of State can direct NewCo to change its name because it is the same as, or 'too like', OldCo's name, mean that OldCo enjoys 'rights enforceable under English law and/or 'Rights' within the full meaning of the Policy?"

The consensus view of recent Experts' meetings has been that mere registration of a company name at the Companies Registry does not of itself give rise to any rights for this purpose".

Having reviewed the relevant previous cases, the Expert considers that there is no justification in this case to depart from the consensus view. It is advisable for complainants, respondents and their advisors to have certainty in relation to the Policy and predictability when it comes to decisions, and so, in line with the vast majority of cases, the Expert finds that the Complainant's registered company name is not enough to provide it with Rights under the Policy.

The question then arises as to whether the Complainant has any other Rights in the term H. Given that the Complainant has not supplied evidence of any registered trade marks, the issue is whether the Complainant has established that it has any unregistered rights in the term, by virtue of having used it in the course of trade, which would amount to Rights for the purposes of the Policy. In this regard it should be noted that, in answer to the question "*What is required for a Complainant to prove that he/she/it 'has rights' in paragraph 2.1.1 of the Policy?*", section 2.2 of the Nominet Experts' Overview provides as follows:

"If the right is an unregistered trade mark right, evidence needs to be put before the Expert to demonstrate the existence of the right. This will ordinarily include evidence to show that (a) the Complainant has used the name or mark in question for a not insignificant period and to a not insignificant degree (e.g. by way of sales figures, company accounts etc) and (b) the name or mark in question is recognised by the purchasing trade/public as indicating the goods or services of the Complainant (e.g. by way of advertisements and advertising and promotional expenditure, correspondence/orders/invoices from third parties and third party editorial matter such as press cuttings and search engine results)."

In this regard, the Complainant has provided some limited evidence to illustrate that it is trading, such as its financial statements in 2016, a VAT certificate and an example of a customer contract. However, in the Expert's opinion this falls well short of what would be required to demonstrate that H has acquired a secondary meaning and is recognised by the relevant public as indicating the goods or services of the Complainant.

Therefore the Expert finds that paragraph 2.1.1 of the Policy is not satisfied and that the Complainant does not have Rights in respect of a name which is identical or similar to the Domain Names. In view of the Expert's findings on Rights, it is not strictly necessary to consider the parties' arguments in relation to Abusive Registration. However the Expert has gone on to do so below for the sake of completeness.

Abusive Registration

"Abusive Registration" is defined in paragraph 1 of the Policy to mean a domain name which:

- "(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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights."*

The Expert has considered both (i) and (ii) in turn, as follows:

(i) Abuse at the Time of the Registrations

In the Expert's opinion the Complainant has not succeeded in proving limb (i) above. The Respondent asserts that when it acquired the Domain Names it was not aware of the Complainant and, in view of all the surrounding circumstances, the Expert is prepared to accept that. The items that the Complainant attaches in evidence do not assist the Complainant, as none of them relate to the Complainant's public reputation.

In the Expert's view, the Respondent's lack of knowledge of the Complainant at the time of registration of the Domain Names is quite simply fatal to a successful finding under limb (i). In this regard the Expert finds the reasoning of the Appeal Panel in *Verbatim Ltd v Michael Toth*, DRS 04331, to be useful. The Panel states:

"The DNS is a first-come-first-served system. The Panel cannot at present conceive of any circumstances under which a domain name registrant, wholly unaware of the Complainant and its Rights, can be said to be taking unfair advantage of or causing unfair detriment to the Complainant's Rights...[F]or this complaint to succeed, the Complainant must satisfy the Panel, as an opener, that the Respondent was aware of the existence of the Complainant or its brand at the date of registration of the Domain Name or at commencement of an objectionable use of the Domain Name."

The Expert would agree with this and also notes that Section 2.4 of version 3 of the Experts' Overview makes the point that:

"The body of expert decisions under the Policy is developing and certain principles are emerging. The section of the Appeal decision in DRS 04331 (verbatim.co.uk) dealing with 'knowledge' and 'intent' sets out one panel's views on that topic. However, new domainer practices (e.g. automated bulk transfers of domain names) are becoming commonplace and to the extent that the Verbatim decision suggests that for a finding of Abusive Registration, the Respondent must have had knowledge of the Complainant and/or its Rights at the relevant time, it is now thought by some Experts that that might overstate the position."

However in the Expert's opinion, for the reasons outlined above, this is not a case where the Respondent should be penalised because it should have known of the Complainant had it investigated (even though it may not have actually been aware of it), as asserted by the Complainant. Indeed, the Complainant's case seems to be based almost entirely on the premise that there is a link between a CO.UK or a .UK domain name and the name of a limited company in the UK, which is not the case. This function is fulfilled by the .LTD.UK extension, as outlined by Nominet on its website:

"This is a restricted SLD available to registrants who pass a test outlined in the Rules for the Registration and Use of Domain Names. The restrictions work with the system Companies House uses, and mean that companies should always be able to have a domain name which closely matches their company name – and has not already been taken."

No such test applies for .CO.UK or .UK domain names. They are available on a "first come, first served" basis, and this may only be overturned in very specific circumstances. Registrants may well have a matching limited company, or a matching trade mark, but this is by no means mandatory, and it is possible to register brand names, individual

names, charity names, team names, partnership names, project names, the list is endless.

In view of this the Expert finds that there was nothing objectionable about the Respondent's acquisition of the Domain Names, presumably simply on the basis that they were very valuable pieces of internet real estate, given their rarity as single characters, and that they may therefore be of interest to many different parties for many different reasons.

As a result, the Expert finds that the Complainant has not succeeded in proving that the Domain Names were registered in a manner which, at the time when the registrations took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights (had the Complainant been able to demonstrate such Rights).

(ii) Abusive Use

Turning to limb (ii) of the definition of Abusive Registration and the Respondent's subsequent *use* of the Domain Names, the Expert also finds that the Complainant has not succeeded in proving this. The Respondent is offering the Domain Names for sale. Paragraph 8.4 of the Policy reads as follows:

"Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves lawful activities. The Expert will review each case on its merits."

In this regard it is important to note that the nature of the Domain Names is crucial, and the Expert would agree with the findings set out in the Nominet DRS Decision No. D00010339, cited by the Respondent, concerning the domain name <9.co.uk>:

"It is a well-established principle that in the case of a purely generic or descriptive term, or a dictionary word, it requires a much higher level of evidence to establish that the use of such a term or word in a domain name is abusive. [...] These principles in relation to generic, descriptive and dictionary words must hold true in respect of the single digit and short domain names released by Nominet."

In this case nothing would suggest that the Respondent is specifically targeting the Complainant in an effort to take unfair advantage of (or be unfairly detrimental to) the Complainant's Rights (were they to exist), as required by the Policy. As a result, the Respondent's use cannot be said to be abusive.

For the sake of completeness, it should be noted that a list of five factors which may be evidence that Domain Names are an Abusive Registration is set out at paragraph 5.1 of the Policy, and the Complainant argues that paragraphs 5.1.1.1 and 5.1.1.2 apply, as follows:

"5.1.1 Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

5.1.1.1 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;

5.1.1.2 as a blocking registration against a name or mark in which the Complainant has Rights"

As far as paragraph 5.1.1.1 is concerned, there is no doubt that the Respondent registered the Domain Names for resale. However, given that it was unaware of the Complainant at the time of registration, it is difficult to see how such resale could have been intended to be to the Complainant or to a competitor of the Complainant. It is clear that the Respondent acquired the Domain Names to sell them to anyone at the right price, and not specifically to the Complainant or to one of the Complainant's competitors. Trading in domain names can be lawful, and indeed there is a thriving domain name aftermarket. What is prohibited is attempting to profit from another's goodwill and reputation in a name and, as explained above, the shorter that name, the more difficult it is to convincingly evidence abuse. In the case at hand, the letter H could relate to just about anything, hence its value when used as a .CO.UK or a .UK domain name.

The Complainant contends that paragraph 5.1.1.2 also applies as the Respondent is preventing it from using a name in which it has Rights under the Policy. However, as explained above, having a limited company does not in itself grant Rights in the sense of the Policy, and the Complainant has not evidenced that it possesses either a registered or an unregistered trade mark. Thus the Expert finds that paragraph 5.1.1.2 has not been made out.

The Complainant also argues that paragraph 5.1.2 applies, and this reads as follows:

"5.1.2 Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant"

In this regard the Complainant argues that the websites to which the Domain Names currently resolve will confuse internet users into thinking that the Domain Names are connected with the Complainant. However, given that there is no link between the existence of a limited company and a .CO.UK or a .UK domain name, the Expert finds that this is not the case, particularly in view of the lack of evidence supplied relating to the Complainant's public reputation.

The Complainant also contends that paragraph 5.1.3 applies in view of the domain names listed on the Respondent's web site:

"5.1.3 The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .UK or otherwise) which correspond to well known names or trademarks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern"

However, the Expert has visited the Respondent's website and can see no evidence of anything but valuable descriptive and/or generic domain names being offered for sale.

Finally, the Complainant argues that paragraph 5.1.6 applies, which reads as follows:

"5.1.6 The Domain Name is an exact match (within the limitations of the character set permissible in domain names) for the name or mark in which the Complainant has

Rights, the Complainant's mark has a reputation and the Respondent has no reasonable justification for having registered the Domain Name."

However clearly this is not the case - the Complainant cannot claim all-encompassing rights in the letter H on the basis of the evidence put forth (and indeed it is highly unlikely that any brand owner could ever claim exclusive rights in a single letter of the alphabet, even a huge conglomerate), and the Respondent certainly does have a reasonable justification for having registered the Domain Names, namely resale.

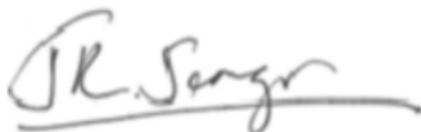
Furthermore, a list of five factors which may be evidence that the Domain Names are not an Abusive Registration is set out at paragraph 8.1 of the Policy, and the Expert finds that paragraph 8.1.2 is of assistance to the Respondent, as follows:

"The Domain Name is generic or descriptive and the Respondent is making fair use of it."

In conclusion, the Expert has considered the admissibility, relevance, materiality and weight of the evidence as a whole and is not satisfied that the Complainant has succeeded in proving, on the balance of probabilities, that the Domain Names are an Abusive Registration in accordance with paragraph 2.1.2 of the Policy.

7. Decision

The Expert finds that the Complainant does not have Rights in a name which is similar to the Domain Names, and is not satisfied that the Domain Names, in the hands of the Respondent, are an Abusive Registration. No action should therefore be taken in relation to the Domain Names.



Jane Seager
12 October 2018