

Sublimsport Limited -v- Sublim Sport

Nominet UK Dispute Resolution Service

DRS 03999

Sublimsport Limited -v- Sublim Sport

Decision of Independent Expert

1. **Parties:**

Complainant: Sublimsport Limited
107-111 Fleet Street
Suite 503
London
EC4A 2AB
UK

Respondent: Sublim Sport
Kajgaardsvej 6
Strandby DK 9970
Denmark

2. **Domain Name:**

sublimsport.co.uk ("the Domain Name"). The Nominet records show that it was registered on 14 September 2005.

3. **Procedural Background:**

The Complaint was received by Nominet on 14 September 2006. Nominet validated the Complaint and sent a copy to the Respondent.

No Response was received by Nominet.

On 26 October 2006 the Complainant paid Nominet the required fee for a decision of an Expert pursuant to the Nominet UK Dispute Resolution Service Policy ("the Policy").

Nominet appointed the undersigned, Jason Rawkins ("the Expert"), to provide a decision on this case.

The Complainant subsequently submitted two non-standard submissions under paragraph 13b of Nominet's Dispute Resolution Service Procedure. The first of these was a certified translation of a Danish Court decision. The second, at the Expert's request, was a certified translation of an email dated 9 August 2006. The Expert has accepted and considered both these submissions. As a consequence of the two additional submissions, the time for this decision was extended.

4. **The Parties' Contentions:**

Complainant:

The Complainant's submissions are as follows:

1. The Complainant has rights in a trade mark which is identical or similar to the Domain Name:
 - (1) The Complainant has been registered at Companies House under the name of Sublimsport Limited since 7 July 2004.
 - (2) The Complainant provides sports supplements and other related goods under the name Sublimsport, as evidenced by its website at *www.sublimsport.com*.

2. The Domain Name is an Abusive Registration in the hands of the Respondent:
 - (1) The Domain Name was primarily registered for the purposes of selling, renting or otherwise transferring it to the Complainant or its competitor for a price greater than the Respondent's costs, in that:
 - (a) In September 2005 (the month in which the Domain Name was registered), the Complainant reluctantly agreed to purchase a domain name from the Respondent. However, it declined for business reasons to purchase the Domain Name at that stage.
 - (b) By way of a letter dated 31 August 2006, Danish counsel for the Complainant demanded the transfer of the Domain Name by the Respondent to the Complainant. However, the Domain Name has not been transferred by the Respondent.
 - (c) The Respondent had, by email to the Complainant dated 9 August 2006, sought to strike a deal with the Complainant. The Complainant is unwilling to deal with the Respondent further.

 - (2) The Registration of the Domain Name is one of a series of registrations that the Respondent has made, acting through Mr Olsen and otherwise, which, because of their number, type and pattern prove that the Respondent is in the habit of making registrations of domain names which correspond to trade marks or other well-known names in which the Respondent or Mr Olsen have no apparent interest, in that:
 - (a) The Complaint filed herein followed complaints filed against the Respondent on 8 September 2006 with the Belgian domains registry regarding *sublimsport.be* and with the Dutch domains registry in relation to the domain name *sublimsport.nl*.
 - (b) On 13 September 2005 the Danish Maritime and Commercial Court gave judgment against the registrants in respect of the registration of the domain names *taabel.dk* and *taabel.com* in violation of the Danish Trade Mark Act. The Complainant considers this to be strong evidence of cybersquatter tendencies.

Respondent:

The Respondent did not file a Response.

5. Discussion and Findings:

No Response

The Respondent has not filed any Response. In spite of this, it is still for the Complainant to prove its case on the balance of probabilities.

General

Paragraph 2 of the Policy provides that, to be successful, the Complainant must prove on the balance of probabilities that:

- i it has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
- ii the Domain Name, in the hands of the Respondent, is an Abusive Registration (as defined in paragraph 1 of the Policy).

Complainant's Rights

With regard to its corporate name of Sublimsport Limited, the Complainant has done no more than submit as evidence a copy its certificate of incorporation, together with copies of its memorandum and articles of association and an annual return filed with Companies House on 21 August 2006. The Complainant has not filed any evidence at all to show that it has been trading, on what scale and since what date. In fact, aside from there being no such evidence, it is not even stated in the Complaint when the Complainant is alleged to have commenced trading under the name of "Sublimsport", nor on what scale.

The only other submission made by the Complainant with regard to Rights is the bare statement that it provides sports supplements and other related goods under the name Sublimsport "as evidenced by the website at www.sublimsport.com". In relation to this statement:

- (a) the Complainant has not put in any evidence to demonstrate that it owns the domain name [sublimsport.com](http://www.sublimsport.com);
- (b) no evidence has been submitted to show that there is a website at www.sublimsport.com, nor of its content;
- (c) no statement, let alone evidence, is made as to for how long the Complainant is alleged to have operated any such website.

In summary, there is nothing in the Complaint and the documentation submitted with it which would allow the Expert to draw any conclusion as to whether or not the Complainant has actually traded under the name of "Sublimsport", far less for how long and on what scale. The mere existence of a registered company name is not, without any evidence of trading under that name having occurred (and therefore the possibility of legally protectable goodwill having been generated), sufficient to lead to the Complainant having Rights in the name "Sublimsport". The same point applies to the Complainant's alleged website. Even if the relevant domain name [sublimsport.com](http://www.sublimsport.com) is owned by the Complainant (and no evidence has been submitted to show this), as I have said the Complainant has not submitted any evidence to demonstrate that it operates a website at www.sublimsport.com, nor for how long it may have done so.

When it comes to the issue of Rights, the Complaint is accordingly seriously defective. The Expert is therefore unable to find that the Complainant has Rights in the name Sublimsport. Since, on that basis, there is no way in which

the Complaint can succeed, the Expert does not go on to consider the Complainant's submissions relating to the Domain Name being an Abusive Registration.

6. Decision:

Since the Complainant has not demonstrated that it has Rights in the name "Sublimsport", the Complaint fails and the Expert therefore directs that the Domain Name *sublimsport.co.uk* should not be transferred to the Complainant.

Jason Rawkins

27 November 2006