

Nominet UK Dispute Resolution Service

DRS 04632

David Munro v Celtic.com, Inc.

Decision of Appeal Panel

Dated: 2 November, 2007

1. Parties:

Complainant/

Appellant:

David Munro
Address: 28 King Street
Mossley
Ashton under Lyne
Lancs
Postcode OL5 9HX
Country UK

Respondent:

Celtic.com, Inc.
Address: 438 Savoie Drive
Palm Beach Gardens
Florida
Postcode: 33410
Country: USA

2. Domain Name in dispute:

ireland.co.uk

This domain name is referred to below as the "the Domain Name"

3. Procedural Background:

20/04/2007 Dispute entered into system
30/04/2007 Hardcopies received in full
01/05/2007 Complaint documents generated and sent to Respondent
25/05/2007 Response hardcopies received and Response forwarded to Complainant
07/06/2007 Reply received and Mediation initiated
02/07/2007 End of Mediation documents generated
03/07/2007 Fees for Expert Decision received from Complainant
04/07/2007 Sally Spilsbury selected as expert
25/07/2007 Expert Decision documents received and circulated
07/08/2007 Notice of intent to appeal received from Complainant together with the appropriate fee
30/08/2007 Full Appeal Notice received and forwarded to Respondent

- 13/09/2007 Appeal Notice response received and copied to Complainant
- 13/09/2007 Mr Tony Willoughby selected as chair of Panel; Messrs Ian Lowe and Robert Elliott selected as co-panellists

Each of Messrs. Tony Willoughby, Ian Lowe and Robert Elliott (the undersigned, "the Panel") have individually confirmed to the Nominet Dispute Resolution Service that:

"I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of a such a nature as to call in to question my independence in the eyes of one or both of the parties."

This is an Appeal against a Decision at first instance. The Panel for this Case was appointed to provide a decision on or before 5th November 2007. This process is governed by the *Procedure for the conduct of proceedings under the Dispute Resolution Service* ("the Procedure") and the Decision is made in accordance with the *Dispute Resolution Service Policy* ("the Policy"). Both of these documents are available for inspection on the Nominet website (<http://www.nominet.org.uk/disputes/drs>).

4. The Nature of This Appeal:

This Panel has considered the nature of this appeal process and the manner in which it should be conducted. The Policy §10a provides that: *"the appeal panel will consider appeals on the basis of a full review of the matter and may review procedural matters"*.

The Panel concludes that in so far as an appeal involves matters other than purely procedural complaints the appeal should proceed as a re-determination on the merits. Accordingly, the Panel does not propose to undertake a detailed analysis of the Expert's decision and will only refer to the Expert's decision where the Panel feels it would be helpful to explain any difference in approach.

5. Formal and Procedural Issues:

There are no outstanding formal or procedural matters, which need to be addressed by the Panel.

6. The Facts:

The Panel gratefully adopts the factual background as set out by the Expert in her decision of 23 July 2007:

The Complainant

The Expert has little information before her about the status of the Complainant in this matter save that his "Complainant Type" is given as "Individual". Annex 8 to the Complaint suggests that the Complainant sought to acquire the Domain Name from the Respondent in 2006 in order to set up an Ireland travel portal.

The Respondent

The Respondent is a corporation chartered in the State of New York, and having a place of business in Florida. A Nominet WHOIS search shows that the Domain Name was registered by the Respondent on 20 October 1996. The Complaint records that the earliest recorded website under the Domain Name occurred on 29 February 2000 and was simply a "Site under Construction" sign. From at least 21 June 2000, the Domain Name resolved to a "Celtic Store" – selling inter alia Celtic jewellery, music and travel information. There have been various incarnations of the site but its essential content remained the same. The Respondent does not take issue with this information. The Respondent updated its Nominet contact details in October 2006. Previously a New York address had been given but this was changed to the Florida address shown at the beginning of this decision. This point is of relevance to the Complainant's submissions.

Background to the Dispute

The Complainant alleges that in September 2006 a binding contract was formed between the Respondent and the Complainant for the transfer of the Domain Name and that the Respondent is in breach of the contract by failing to transfer the Domain Name as agreed.

The sequence of events is set out in the Complaint and is supported by Annex 8 which contains copies of email correspondence. The sequence is as follows:

The Complainant first enquired about purchasing the Domain Name by completing a form on the Respondent's website on 5 April 2006. There followed what the Complainant records as "a brief flurry of emails", the upshot of which was that the price suggested by the Respondent for transfer of the Domain Name (\$15,000) was higher than the Complainant was prepared to pay and the matter proceeded no further at that time.

On 2 September 2006 the Respondent contacted the Complainant by email to enquire whether he remained interested in purchasing the Domain Name. The email read as follows:

"I was wondering are you still interested to purchase the domain name you inquired about? Please let me know and perhaps we can work out an agreeable price." (sic)

In an email of 4 September 2006 the Complainant asked: *"What is lowest price you can accept?"* He received a reply from the

Respondent on 5 September stating *"\$6,000 is my lowest. I paid \$5,000 for it"*

The Complainant replied on 6 September: *"OK, I agree to your price of \$6,000. How do we proceed from here?"*

The Respondent replied as follows by email of 6 September 2006:

There are two ways to proceed. You could use Escrow.com to initiate this transaction.... Your payment will stay with them until the domain is transferred to you. Then they will send me the payment. However you would be responsible for their fees.....

The other approach is to wire money directly to my bank account....

Either way works....

Let me know which way you want to proceed.

It was decided that the transaction would take place using the services of Escrow.com. In an email dated 6 September 2006 the Respondent agreed to pay the Nominet transfer charge of £30. By return email the Complainant wrote *"Thanks for offering to pay the Nominet transfer charge"*.

The Complainant made the payment which was received by Escrow.com on 11 September 2006. Under the procedure envisaged by the parties the Respondent should then have completed the sale by returning completed Nominet transfer forms for the Domain Name to the Complainant; at which point the funds would have been released to the Respondent. This did not occur. The Complainant chased the Respondent on 14 September and 28 September 2006. The Respondent replied on 29 September 2006 in the following terms: *"I am sorry but I have decided not to proceed with the sale of this domain. I got a well know(n) independent domain appraisal company to appraise ireland.co.uk and they said it was worth between \$125,000 and \$150,000. So Escrow.com will wire the money back to your account. Again I apologize for the inconvenience."*

By email of 30 September the Complainant wrote *"As far as I am concerned we have a binding contract and I expect the deal to be honoured"*.

The Complainant confirms in its Reply that the monies remain in the escrow account.

This factual account is not disputed by the Respondent.

7. The Parties' Contentions:

The Panel does not feel it necessary to set out in full here the parties' contentions at first instance. They are set out by the Expert in her decision of 23 July 2007.

The issues before the Panel are amply set out in the Appeal Notice and Response, which are quoted in full below.

The Complainant's Appeal Notice

Introduction

This is a simple case of a breach of contract. The contract formed online in September 2006 gives me rights in the domain. The Respondent's retention of the domain and refusal to allow the rights to vest in me is abusive.

If the Respondent were based in the UK then the matter could be put before a Court and an application for summary judgment made. However they are based in the US and have raised issues of Choice of Law and Jurisdiction. The DRS was intentionally set up to cover more than only trademark claims to domains; and is also cross-jurisdictional in that it recognises rights that are "***not limited to, rights enforceable under English law***".

I rely on the DRS to do what it was set up to do – namely provide me with a cost effective alternative to seeking a remedy in court.

Choice of Law

I re-assert that the contract is subject to English law – not least as both I and the subject matter (an English contractual right and the Nominet register) are in England. When I sent acceptance by email, the "postal rule" about sending acceptance applies to the communication.

The Respondent seeks to muddy the waters by trying to complicate the question faced by the Expert. It asserts that – as a US corporation – the emails exchanged and the agreement on Escrow.com would not form an enforceable contract in the US. It asserts:

no contract would be found here, as it would exceed the monetary limit of the respective Statutes of Frauds, requiring a signed writing.

The Expert accepted this possibility and held that – in the absence of being able to decide the question of choice of law – the issue meant she could not find that there was a binding contract.

I now know that the claim is not true. It was a red herring that misled the Expert.

An exchange of emails, followed up by an agreement entered into on the Escrow.com website, is the type of thing that routinely leads to contract formation for assets of this value in the US. Common sense tells us that e-commerce in the US would collapse if deals over \$500 could not be formed online.

In particular, the Uniform Electronic Transaction Act 1990 ("UETA") expressly disposes with the requirements under the Statute of Frauds cited by the Respondent's lawyer. This statute (as well as E-Sign) has been adopted in most US states – including Florida and California. Electronic communications –

including a name typed in an email "signature" or an agreement on a website – satisfy the requirements of the Statute of Frauds.

I also refer to the NY Supreme Court decision in **Rosenfeld v. Zerneck [4 Misc.3d 193, 776 N.Y.S.2d458]**; and NY District Court in **Bazak International Corp. v. Tarrant Apparel Group [2005 WL 1705095, 58 UCC Rep Serv 2d 612]**. These and other authorities showing that the Respondent's claim is untrue can be found at the *Internet Library* online.

It is rather surprising that the Respondent's lawyer did not advise that the issue of the Statute of Frauds had ceased to be an issue some time ago in cases such as this. I ask the panel to draw their own conclusion in this respect; as well as the false claim regarding the "recent" change of address to Florida offered as explanation for the change on the register in October 2006.

I have an enforceable contract right to the domain. The question of choice of laws is moot.

Contract Formation

I submit that the Respondent's characterisation of the email is false – there was a clear intention on both sides to enter into a legally enforceable contract. There was agreement, there was certainty (all administrative details had been agreed) and there was mutual consideration.

There was agreement on the Escrow.com website. The Respondent claims that we:

"tentatively explored the use of a US escrow system"

In fact both parties agreed that a contract had been formed and that it would be transacted on the Escrow.com platform. I could not have sent the payment to Escrow.com until both parties had clicked on the "Agree" button on the site.

Jurisdiction

The DRS is intentionally a cross jurisdictional platform. I am entitled to use it, rather than have to argue issues such as "where was an online contract formed?" in Court. Rather than being an inappropriate forum, it is entirely the appropriate and proportionate forum to enforce an otherwise simple contract right to a .uk domain.

Abusive Registration

childrensinjuries.co.uk and *accidentclaimsadvice.co.uk* both involve rights in generic domains that stemmed only from a contract. The issues surrounding that contract were more complex, yet in both cases the Expert found that they gave rise to rights and abuse under the DRS.

Remedy

There should be no concern about only being able to enforce one side of the contract. The same was true in the disputes in the above DRS cases. The Respondent has open to make a claim in court for any payment it feels is due to it. I would argue that the costs incurred enforcing the contract have extinguished that obligation.

Conclusion

The truth is simple. The Respondent regretted agreeing to sell the domain for the agreed sum; having obtained a higher valuation. It then simply failed to meet its obligations. It changed the registration details – falsely claiming that this was due to a recent move. It invented a false claim that an agreement for something of this value cannot be conducted by email or on a website in the US. It pleads that the DRS has no jurisdiction and only provides for one side of the bargain to be enforced.

None of this should sway the Panel. I have a contractual right to the domain and it is an abuse of that right for the Respondent to continue to have use of it. The DRS provides a cost effective cross-jurisdictional forum to someone in my position and I am entitled to claim the transfer of the domain using it.

The Respondent's Response

I. Scope – First Decisional Basis

The Primary disputed point in this Proceeding is encapsulated in the first sentence of the Appeal Notice – “This is a simple case of a breach of contract.” This is not a case of breach of contract, this is a proceeding under the DRS Policy. A contract claim has several elements, and a variety of remedies. The DRS Policy, has two elements and a sole remedy.

The Complainant believes that if it can establish contract formation, then it is entitled to transfer of the domain name, to the exclusion of the second element of the Policy, and of any other remedy or obligation that may be imposed if this were a “case of a breach of contract”. The Complainant seeks to have applied the rule of convenience, “If the only tool you have is a hammer, then treat everything else as a nail.”

The Policy is inclusive as to what "right" may be. The Policy is permissive as to recognition of sources of rights. But the Policy is not mandatory concerning any right which may be claimed. No DRS decision of record in this proceeding has been premised upon a non-performed contract, except where obligation was recognized by both parties by complete performance **but for** transfer of a domain name. The summary nature of the Policy is effective in situation of **manifest** right, and less appropriate to conditional rights where performance of acts cannot be compelled under the sole remedy. Here, the claim of right is disputed, and it is common ground that payment has not been made. The Complainant merely asserts without evidence or accounting that its costs here have been sufficient, and without regard to whether costs would be awarded if, again **if**, this were a "case of a breach of contract" under applicable law.

The Expert's decision was a reasoned analysis of the Policy, with reference to prior relevant decisions, that legal questions of contract, as distinguished from factual questions of performance, can be complex beyond scope of the Policy. The Complainant does not claim error in that analysis, and mischaracterizes the Expert's analysis and basis of the decision.

II. Expert's Findings On Contract Formation

The Expert declined to consider whether a contract had been formed. The Complainant erroneously argues that contract formation was decided in the Respondent's favour. The salient point of the "rights" analysis were:

"This is a (relatively sophisticated) question of law.

[...]

On the submissions before her the subsistence of a binding contract is a question which the Expert is simply unable to determine. **She has received no useful submissions from the parties about which law should apply** to decide whether a contract had been formed or indeed about the relevant national/state laws which she should apply having determined the governing law.

[...]

[T]he Policy is not a suitable vehicle for the determination of anything other than very straightforward legal questions relating to contract formation.

[...]

Complainant has not standing to make a Complaint if it does not have a binding contractual right to transfer of the Domain Name. The Policy is not the vehicle to determine whether an enforceable right arises."

Complainant now raises a US statute adopted by some states, and claims the Expert was misled as to substantive law in New

York or Florida. However, the Expert actually rejected the Parties' submissions as not "useful".

The Uniform Electronic Transaction Act, raised of late, has more conditions than can be briefed here. The provisions thereof relating to adoption of an electronic signature and the use of such adopted signature to signify intent to contract, do not render each of dozens of emails the Respondent may send each day a manifest intent to contract. If the Respondent's submission was "red herring", the Panel may invest in a trawler.

The Expert was not deceived. The Expert declined to engage, as a matter of scope, in a choice of law analysis, and application of the chosen law, in order to determine the threshold existence of a contract..

III. The Expert Assumed A Contract – Second Decisional Basis

The Expert went further in her analysis to **assume the existence of a contract**, and to consider whether exercising the sole remedy was jurisdictionally appropriate:

It therefore becomes unnecessary in this decision for the Expert to decide whether- **had there been a binding agreement to transfer the Domain Name in existence**- the Policy would be an appropriate mechanism to enforce the transfer of the Domain Name through the concept of Abusive Registration in circumstances where the Complainant's Rights arise solely from a breach of contract.

[...]

[A]n Expert has no power to enforce the reciprocal obligations of the parties to the contract. The jurisdiction is simply to order a transfer of the Domain Name. Where the consideration for the transfer has yet to be paid it will generally be inappropriate for the Expert to enforce one half of the bargain and to leave the transferor to pursue a remedy through the courts should the transferee fail to fulfil its obligations.

Clearly the Expert's decision was not based upon a finding of whether a contract was formed, regardless of any law that may be applied, because the Policy has strictly limited remedial scope.

IV. Abusive Registration Is Still Not Established

The "abusive registration" prong requires the Complainant to show how registration or use of the Domain Name is a "detriment" to the Complainant. Simply, the Complainant has not been harmed. The Complainant is legally uninjured, and Respondent is not unjustly enriched at the Complainant's expense. The Complainant's claims of detriment here are: (a) it does not possess the domain name, and (b) it pursued this Proceeding. "Abusive registration" would be inherent in every DRS claim if these "injuries" were cognizable.

8. Discussion and Findings:

General

In order for the Complainant to succeed it must (Policy §2) prove to the Panel, on the balance of probabilities, **both**:

*that it has Rights in respect of a name or mark which is 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.

Rights are defined in the Policy as:

***Rights** includes, but is not limited to, rights enforceable under English law. However, a Complainant will be unable to rely on rights in a name or term which is wholly descriptive of the Complainant's business;*

If the Complainant satisfies the Panel that the Complainant has relevant rights, the Panel must address itself to whether the registration by the Respondent of the Domain Name is abusive.

An Abusive Registration is defined in the Policy as follows:

***Abusive Registration** means a Domain Name which either:*

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

has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights;

The Factual Background

It does not appear to the Panel to be in dispute that at the outset the Complainant approached the Respondent with a view to purchasing the Domain Name, but backed off on learning the price (\$15,000). Some months later the Respondent approached the Complainant and asked the Complainant if he was still interested in purchasing the Domain Name. The Complainant indicated that he was still interested and enquired as to the Respondent's lowest price. The Respondent said that his lowest price was \$6,000. The parties then agreed on that price and a discussion ensued as to the mechanism for completing the transaction.

It was agreed that they would use the services of Escrow.com. The Respondent agreed to pay the Nominet £30 transfer charge and duly discharged its obligation in that regard by paying that sum to Escrow.com. The Complainant paid to Escrow.com the purchase price of \$6,000. It then merely remained for the Respondent to send partially completed Nominet transfer forms to

the Complainant and for him to complete them and forward them to Nominet. Once the transfer had been effected by Nominet, Escrow.com would have released the purchase price to the Respondent.

The Respondent did not send the forms to the Complainant but instead informed the Complainant that it did not propose to complete the deal. In the interim, the Respondent had consulted someone else who had informed it that the Domain Name was worth very much more than the sum the Respondent had been willing to accept for it.

Rights

As indicated above, Rights are rights *in respect of a name or mark which is identical or similar to the domain name* being rights which include, but are not limited to *rights enforceable under English law*.

Two preliminary issues arise from a consideration of the Rights claimed by the Complainant in this case: first, are rights *to* a domain name itself (as opposed to rights *in* a name or mark identical or similar to the domain name) sufficient to found Rights for the purposes of the Policy? second, if so, is a contractual right to use the domain name or to require the transfer of the domain name sufficient to constitute the necessary Rights?

The primary purpose of the Policy (and of similar dispute resolution policies in respect of other domains) is to deal with unfair or abusive registration or use of domain names that trespass on the rights of the owners of trade marks or of those who have acquired similar rights such as to give rise to a claim in passing off under English law. The definition of Rights in the Policy does not, however, exclude rights in respect of the domain name itself or, indeed, contractual rights to the domain name.

Furthermore, the Policy itself clearly recognises that rights (including contractual rights) to a domain name may validly found a complaint under the Policy. Paragraph 3a sets out the following as one of the factors on the non-exhaustive list of those that may be evidence that a domain name is an Abusive Registration:

“ The Domain Name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant:

A. has been using the domain name registration exclusively; and

B. paid for the registration and/or for the renewal of the domain name registration.”

The underlying assumption is that such circumstances, reflecting a contractual or similar relationship between the parties, may well have given rise to relevant Rights in the first place.

The Panel has also had cited to it a number of DRS cases in which Experts have had to consider whether the relevant rights may include contractual rights. In the majority of those cases, Experts have concluded that contractual rights may suffice for this purpose.

The fundamental issue in this case, however, is the suitability of the DRS to determine contractual disputes. The Panel supports the view expressed by several Experts (including the Expert in this case) that as a general proposition contractual disputes are best left to the courts to resolve.

In addition, there remains the difficulty as to how the Nominet DRS might deal with overseeing the performance of the contract and what jurisdiction it has to do so.

The Scope of the Policy

The significant point to note about this case is that, almost uniquely in the experience of the Nominet DRS¹, the rights claimed by the Complainant are purely contractual and nothing about the Respondent's continued use of the Domain Name is claimed to be in any sense abusive, save for the fact that the Domain Name should no longer be in the Respondent's hands.

The Nominet website features the following question and answer:

What is the purpose of the Dispute Resolution Service (DRS)?

*Almost all of the tens of thousands of registrations and renewals we make each month are problem-free, but about 1 in 1,600 causes someone to make a complaint. Some **examples** of the most common types of complaint are available.*

For most people the court system is too expensive and difficult, so we provide the DRS as a cheap, fair and quick way of dealing with these disputes.

The examples provided on the website are primarily cases where the Complainant has trade mark rights (registered or unregistered). They are all cases where the Complainant has used and/or is recognised by the name or mark in which the rights are claimed.

The fact that this case is, in this sense, virtually unique and outside the non-exhaustive list of examples of abusive registration set out in paragraph 3 of the Policy is not fatal to the

¹ The exception being DRS 1863 which is referred to below and which is distinguishable on other grounds

Complainant's case, but it does raise the question as to whether this was a set of circumstances contemplated by the legislator (Nominet).

Nominet describes the DRS as *a cheap, fair and quick way of dealing with these disputes* as an alternative to the court system which *is too expensive and difficult*.

This presupposes that the DRS is capable of providing a **fair** result in the cases contemplated.

The members of the Panel consider that the parties in this case may well have entered into a contract in respect of the Domain Name so that in refusing to transfer the Domain Name to the Complainant the Respondent is in breach of contract. But the members of the Panel each recognise that they were not appointed as experts in the law of contract. This Panel happens to comprise three experienced Intellectual Property lawyers. Their experience outside that specialist field is variable. A significant minority of the body of Experts are not lawyers at all.

Although it may be said that at first sight the contractual issues in the case are apparently straightforward, the dispute between the Complainant and the Respondent has raised a number of contested legal issues. These concern questions such as jurisdiction, was a binding and enforceable contract entered into, where was any contract made, what is the proper law of the contract, what are the terms of any contract, and what statutory provisions might govern the enforceability of the contract.

The members of the Panel are not in a position to come to a clear view on the contractual issues. The Panel is well aware that other Experts will be at least as uncomfortable on the topic. Had Nominet contemplated that pure, possibly complex, contractual disputes would fall to be resolved under the Policy, its system for selecting and appointing Experts to cases would have been very different and the procedure for dealing with the disputes more comprehensive than the simple paper-based system it is.

Moreover, the Complainant seems to assume that the natural consequence of a finding of breach of contract by a court will lead inexorably to an order for transfer of the domain name in issue. That is not so. A court might decide that the fair result should be a damages award. Yet, the only sanction available to the Panel is transfer (or cancellation). The Panel is not satisfied that in this case an order for transfer of the Domain Name would necessarily be the just result.

Even if specific performance of the contract were the just result, steps would have to be taken to ensure that the purchase price was paid over to the Respondent. Unlike a court, the Panel has no power to give any effective supervision to the enforcement of the contract.

For all the above reasons, the Panel is confident that pure contractual disputes of this kind are outwith the scope of the Policy. In all the circumstances, not only is the Panel unable to satisfy itself on the balance of probabilities that the Complainant has Rights but in any event it declines to allow the appeal.

Previous DRS Cases

Given the basis upon which the Panel is dismissing the appeal, it is only right that we should identify the cases relied upon by the Complainant and indicate why we say that they are to be distinguished.

DRS 0442 (<1and1.co.uk) – contractual rights found, but not a contract between the parties to the dispute, and complaint dismissed for lack of any evidence of goodwill in the name. No abuse.

DRS 0984 (<trghotpress.co.uk>) – common law rights found. The domain name had been registered for the Complainant by the Respondent.

DRS 1336 (<wiredsussex.co.uk>) – common law rights found. The contractual issue was peripheral.

DRS 1863 (<longlife.co.uk>) – this case is perhaps the closest to the case in hand. The domain name was descriptive/generic and the complainant had no rights apart from those arising from the purchase contract. However, the vendor respondent had pocketed the purchase price paid by the complainant, and did not contest the proceedings (and therefore did not contest the effect of the purchase contract).

DRS 4376 (<hamperco.co.uk>) – the contract in question was the contract of purchase of the goodwill in the vendor business (including the assets of the business, of which the domain name was one). The respondent was an ex-employee of the vendor who had registered the domain name for the vendor.

DRS 4438 (<childrensinjuries.co.uk>) – the complainant purchased the domain name from the respondent for a substantial sum, which was paid to the respondent. Moreover for several months following the 'purchase' the complainant had free and uninterrupted commercial use of the domain name².

DRS 4447 (<dragon-hotel.co.uk>) – common law rights found. The abuse lay in the attempt by the respondent to extort money from the complainant for transfer of the domain name, a domain

² See also the parallel case (on very similar facts) of DRS 4436 (<accidentclaimsadvice.co.uk>), in which the Expert found the existence of common law rights as well as contractual rights

name which the respondent had registered for the benefit of the complainant.

The Panel does not therefore consider that its decision in this case is at odds with the decisions of the Experts in any of the previous cases cited.

9. Decision

The Panel therefore dismisses the Appeal, determines that the decision at first instance should be confirmed and directs that NO ACTION be taken in respect of the Complaint.

Ian Lowe

Tony Willoughby

Robert Elliott

Dated: 2 November, 2007