

## Nominet Dispute Resolution Service (DRS)

### New Summary Transfer Process.

On 29th July 2008 the Nominet DRS Policy was updated following extensive public consultation.

One of the changes was that, in undefended cases, a complainant would be able to pay for a summary decision. The complainant would still be able to choose a full decision, but the cost of the summary decision would be £200 instead of £750.

The rationale for the introduction of a summary decision was that:

- The overwhelming majority of undefended cases were straightforward, and decided in the complainant's favour. In these cases, the wronged party (complainant), was therefore paying unnecessarily for expert time to draft a fully reasoned decision.
- The unrecoverable cost of decisions was a frequent source of dissatisfaction amongst complainants.
- It appeared that complainants who had perfectly good complaints were not proceeding to expert decision, even where the complaint was not defended, due to the cost.

For an Expert to grant a request for summary decision he or she must be satisfied that

*(i) Nominet has sent the complaint to the Respondent in accordance with paragraphs 2 and 4 of the Procedure;*

*ii. The Complainant has, to the Expert's reasonable satisfaction, shown that he or she has Rights in respect of a name or mark which is identical or similar to the Domain Name and the Domain Name is an Abusive Registration; and*

*iii. No other factors apply which would make a summary decision unconscionable in all the circumstances.*

One PAB member has complained that the Expert's reasoning for reaching a decision is not sufficiently clear from the summary transfer decision, and drew attention to the cases of [swindale.co.uk](http://swindale.co.uk) (where a transfer was refused), and [sacs.org.uk](http://sacs.org.uk) where a transfer was granted. It should be noted that the Expert need not give any reason to support a decision.

In [sacs.org.uk](http://sacs.org.uk) the Expert clearly indicated that he was satisfied that all the conditions to justify a summary transfer had been fulfilled. In that case, the complainant is the Scottish Association of Country Sports, whose initials are "SACS" and so it is relatively easy to see why they were able to demonstrate rights in [sacs.org.uk](http://sacs.org.uk) where there was no response to their complaint. (Incidentally, there is now a seemingly bona fide website at the domain). In the case of [swindale.co.uk](http://swindale.co.uk) the Expert used the optional comments section to explain why the complaint has failed: "*The Complainant has not provided sufficient evidence to show, on the balance of probabilities, that the disputed domain name is an abusive registration*".

Consequently it is clear that the Expert did not order summary transfer of [swindale.co.uk](http://swindale.co.uk) quite simply because the Complainant did not show, on the balance of probabilities, that the disputed domain name is an abusive registration.

These decisions can be seen at [http://www.nic.uk/digitalAssets/31711\\_swindale.co.uk.pdf](http://www.nic.uk/digitalAssets/31711_swindale.co.uk.pdf)  
And [http://www.nic.uk/digitalAssets/32955\\_sacs.org.uk.pdf](http://www.nic.uk/digitalAssets/32955_sacs.org.uk.pdf)

Another concern raised by the same member is that the policy is open to abuse and there has been a discussion on the forum "Acorn Domains" whether spurious complaints could or even should be

filed against well known brands. See <http://www.acorndomains.co.uk/domain-name-disputes/39262-just-launched-drs.html>

The member also pointed out that this apparent misconception that the policy is designed to aid “brand owners” rather than to simplify procedures may not be confined to so-called “domainers”, and drew attention to a press release from Eversheds solicitors on: <http://tinyurl.com/5o2tnk>

*"From 29 July, brand owners will be able to opt for a summary decision; that is, rather than obtain a full decision, the expert will consider the complaint and, if it is considered that the complaint should be upheld, the expert will merely sign a form to certify that the complainant has proven (on the balance of probabilities) that it has rights in the disputed domain name and that it is an abusive registration. No reasoned decision will be provided".*

It might be thought that these illustrate a failure to understand the policy rather than a failure of the policy. From the discussion on the Acorn Domains web site there appears to be a lack of understanding that to succeed, Complainants must prove to the reasonable satisfaction of an independent expert, both that they have rights in the disputed name and that the registration is an “abusive registration”; and the Eversheds press release does not explain that the summary process is only available where a complaint is not defended.

Consequently, my own view is that these illustrate a failure to understand the policy rather than a failure of the policy, but if the PAB thinks otherwise, I will discuss the position with the Executive and ask them to present their thoughts at a future meeting.

Eric Ramage  
Chair, Nominet’s Policy Advisory Body.  
7<sup>th</sup> January 2009.