

Nominet UK Dispute Resolution Service

DRS 153

Cofton Country Holidays v. Mr A. J. Jefferey

Decision of Independent Expert

1. Parties

Complainant: Cofton Country Holidays

Address: Starcross,
Exeter,
Devon

Postcode: EX6 8RP

Country: UK

Respondent: Mr Jason Jeffery

Address: Lady's Mile Holiday Park,
Exeter Road,
Dawlish,
Devon

Postcode: EX7 0LX

Country: UK

2. Domain Name

coftoncountry.co.uk

3. Procedural Background

The Complaint was lodged with Nominet on December 10, 2001. Nominet validated the Complaint and notified the Respondent on December 12, 2001 and informed the Respondent that he had 15 days within which to lodge a Response. On January 9, 2002 the Response dated January 4, 2002 was received out of time.

On 15 February 2002 Nominet informed the Complainant and the Respondent that it had not been possible to achieve a resolution of the dispute by Informal Mediation..

On February 15, 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 February 15, 2002 Andrew Goodman, 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.

On February 22, 2002 Andrew Goodman was appointed as the Expert.

4. Procedural Issues

The Respondent made an oral representation to Nominet that its procedural time limit for serving the Response did not take into account the possibility of delays caused by the Christmas/New Year period. I have accepted and taken into account the Response as if it had been served within the timetable for the purpose of accepting its contents.

5. The Facts

On 29 February 2000 the Domain Name was registered by Easyspace for Lady's Mile Holiday Park. As at the date of the complaint the Domain Name operated to host a website advertising the facilities at the Lady's Mile Holiday Park, a static caravan holiday centre at Dawlish, Devon. This caravan holiday centre has no obvious connection with Cofton Country Holidays, a rival caravan holiday centre operated by the Complainant situated at Starcross, Devon, approximately three miles away.

6. Contentions of the Parties

Complainant:

The substance of the Complaint is short and reads as follows:

Lady's Mile Holiday Park registered www.coftoncountry.co.uk and they display a copy of their own website at this address. They have no connection with our holiday business whatsoever. The two Parks are totally independent but are situated three miles apart. Not only are they blocking registration against our name but they are advertising their own Park at this address. We both offer the same type of holidays and therefore are very competitive and in displaying their website in this manner they are misrepresenting themselves deliberately to confuse the general public.

The complainant requests that the Domain Name is transferred.

Respondent:

The Response does not address the substance of the complaint nor the remedy requested. By his letter of 4 January 2002 he merely writes to inform Nominet that the link from www.coftoncountry.co.uk to the Lady's Mile website has now been erased.

On 8 January 2002 the Domain Name operated a "Document not found" page displaying an "SSI error: recursion exceeded" message. At the date of writing this decision the Domain Name currently links to the Easyspace website.

7. Discussion and Findings:

General

- (1) The complaint is founded on an allegation of abusive registration. Under the Nominet Dispute Resolution Service Policy an abusive registration is defined as

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

For the purpose of this definition "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.

- (2) Part 3 of the Nominet Dispute Resolution Service Policy provides a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. I set out the relevant sections as follows:

I Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name:

A: primarily for the purpose of selling, renting or otherwise transferring the Domain Name to the Complainant or 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;

B: as a blocking registration against a name or mark in which the Complainant has Rights; or

C: primarily for the purpose of unfairly disrupting the business of the Complainant

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.

- (3) Part 4 of the Nominet Dispute Resolution Service Policy provides a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration. I set out the relevant sections as follows:

I Before being informed of the Complainant's dispute, the Respondent has

A: used or made demonstrable preparations to use the Domain Name or a Domain Name which is similar to the Domain Name in connection with a genuine offering of goods and services;

B: been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;

C: made legitimate non-commercial or fair use of the Domain Name; or

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

Complainant's Rights

(4) To succeed on this complaint the Complainant has to prove pursuant to paragraph 2 of the Policy that on balance of probabilities first that it has rights as defined in paragraph 1 of the Policy in respect of a name identical or similar to the Domain Name and secondly, that the Domain Name in the hands of the Respondent is an Abusive Registration as defined in paragraph 1 of the Policy.

(5) The Domain Name uses the mark "coftoncountry". The Complainant trades as Cofton Country Holidays and has done so for some time. I consider it reasonable to infer that the Complainant has goodwill associated with that name sufficient to mount an action for passing off that

name. The name is neither generic nor descriptive. There is no evidence that the words “Cofton Country” when taken together have any commercial, geographical or etymological connection with the words “Lady’s Mile” specifically or any other words in which “Cofton” and “Country” are used together.

- (6) Accordingly I find that the Complainant has rights in respect of a name which is identical or similar to the Domain Name.

Abusive Registration

- (7) There is no evidence before me concerning the purpose for which the Respondent registered or otherwise acquired the Domain Name. In particular there is no evidence upon which I can make a finding that the Respondent registered or otherwise acquired the Domain Name primarily for the purpose of selling, renting or otherwise transferring the Domain Name to the Complainant or 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; nor is there any or any sufficient evidence from which I can properly infer that the Domain Name was registered or otherwise acquired as a blocking registration against a name or mark in which the Complainant has Rights.
- (8) However the Respondent used the Domain Name as a link to the Lady’s Mile website which advertised a competing or rival business to that of the Complainant. There is no evidence that the Domain Name was used for any other purpose. I am fortified in this view by the failure of the Respondent to use the Domain Name for any other purpose at present.
- (9) I consider it reasonable to infer that members of the public who searched the web by use of the Domain Name expected to find a site connected with

the Complainant's business and not connected with the Respondent's business. I have arrived at this conclusion because the Respondent also owns and uses the domain name ladysmile.co.uk which I reasonably assume would be the first point of search for members of the public who wished to visit the Lady's Mile site. On that basis I consider that the Respondent's use of the Domain Name is primarily for the purpose of unfairly disrupting the business of the Complainant, particularly as the Complainant is a local trade rival. I also find that such circumstances indicate that the Respondent used 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.

- (10) There is no evidence adduced by the Respondent in the Response that before being informed of the Complainant's dispute, the Respondent used or made demonstrable preparations to use the Domain Name or a Domain Name which is similar to the Domain Name in connection with a genuine offering of goods and services: the Respondent did not and in my view could not offer goods and services using the name Cofton Country or any similar name. The Respondent had not been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name. The Respondent had not, in my view, made legitimate non-commercial or fair use of the Domain Name. I have already found that the Domain Name is not generic or descriptive and the Respondent was not making fair use of it.
- (11) Accordingly I find that the Domain Name in the hands of the Respondent is an Abusive Registration as defined in paragraph 1 of the Policy.
- (12) I am satisfied that the Response may properly be construed as an implied admission by the Respondent that the Respondent was not making fair use

of the Domain Name. I am further satisfied that in the absence of any legitimate use the only use which the Respondent may have for the Domain Name in the absence of a direction for transfer by me is either as a blocking registration against a name or mark in which the Complainant has Rights, or, for the purpose of selling, renting or otherwise transferring the Domain Name to the Complainant or 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. Accordingly I find that the Respondent's Abusive Registration of the Domain Name does not cease because he has ceased to use it unfairly.

8. Decision

In light of the foregoing findings, namely that the Complainant has rights in respect of a name or mark which is identical to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration, I direct that the Domain Name, coftoncountry.co.uk, be transferred to the Complainant.

Andrew Goodman

22nd February 2002