

## Definitions

Abusive Registration means a Domain Name which either:

- 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 took unfair advantage of or was unfairly detrimental to the Complainant's Rights;

Complainant means a third party who asserts to us the elements set out in paragraph 2 of this Policy and according to the Procedure;

Contract means the contract between us and the Respondent, made up of our Terms and Conditions, the Rules for .uk domain and sub-domains, this Policy and the Procedure;

Days means unless otherwise stated any day other than Saturday, Sunday or any Bank or public holiday in England and Wales;

Decision means the decision reached by an Expert and where applicable includes decisions of an appeal panel;

Dispute Resolution Service means the service provided by us according to this Policy and the Procedure;

Domain Name means a domain name registered in any sub-domain of the .uk domain;

Expert means the expert(s) we appoint under paragraphs 8 or 18 of the Procedure and references to Expert where applicable also refer to the Experts appointed under paragraph 18 of the Procedure;

Informal Mediation means impartial mediation which we conduct to facilitate an acceptable resolution to the dispute;

ISP means the internet service provider through which the Domain Name in dispute has been registered or is hosted;

Party means a Complainant or Respondent and 'Parties' has a corresponding meaning;

Procedure means the Procedure for the conduct of proceedings under the Dispute Resolution Service;

Respondent means the person (including a legal person) in whose name or on whose behalf a Domain Name is registered and against whom the Complainant makes a complaint;

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;

we means Nominet UK (company no. 3203859) whose registered office is at Sandford Gate, Sandy Lane West, Littlemore, Oxford, OX4 6LB and us and our have corresponding meanings.

## Dispute Resolution Service

a. A Respondent must submit to proceedings under the Dispute Resolution Service if a Complainant asserts to us, according to the Procedure, that:

i. The Complainant 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.

b. The Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.

## Evidence of Abusive Registration

a. A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows:

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

A. primarily 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;

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;

iii. In combination with other circumstances indicating that the Domain Name in dispute is an Abusive Registration, the Complainant can demonstrate that the Respondent is engaged in a pattern of making Abusive Registrations; or

iv. It is independently verified that the Respondent has given false contact details to us.

b. Failure on the Respondent's part to use the Domain Name for the purposes of e-mail or a web-site is not in itself evidence that the Domain Name is an Abusive Registration.

## How the Respondent may demonstrate in its response that the Domain Name is not an Abusive Registration

a. A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is 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 or 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.
- b. Fair use may include sites operated solely in tribute to or criticism of a person or business, provided that if:
- i. the Domain Name (not including the first and second level suffixes) is identical to the name in which the Complainant asserts Rights, without any addition; and
  - ii. the Respondent is using or intends to use the Domain Name for the purposes of a tribute or criticism site without the Complainant's authorisation then the burden will shift to the Respondent to show that the Domain Name is not an Abusive Registration.

#### Informal Mediation

- a. After we have received the Parties' submissions under the Procedure, we will initiate and conduct a period of Informal Mediation under paragraph 7 of the Procedure.

#### Appointment of Expert

- a. If an acceptable resolution cannot be found by Informal Mediation we will notify the Parties that we will appoint an Expert when the Complainant has paid the applicable fees set out in paragraph 21(a) of the Procedure and within the time specified in paragraph 21(c) of the Procedure. The Expert will come to a written Decision.

#### Notification and Publication

- a. We will communicate a Decision to the Parties according to paragraph 17 of the Procedure and will publish all Decisions in full on our web site.
- b. Fees are payable by the Complainant or otherwise according to paragraph 21 of the Procedure only if an acceptable resolution has not been reached by Informal Mediation and once we have notified the Parties that an Expert is to be appointed.

#### Exclusion of Liability

a. Neither we nor our directors, officers, employees or servants nor any Expert shall be liable to a party for anything done or omitted in connection with any proceedings under the Dispute Resolution Service unless the act or omission is shown to have been in bad faith.

#### Appeal and Availability of Court Proceedings

a. Either Party will have the right to appeal a Decision under paragraph 18 of the Procedure. The appeal panel will consider appeals both on the basis that a matter be re-examined on the facts, and that procedure has not been correctly followed.

b. We may refer questions of interpretation of the Policy and Procedure to the appeal panel. Any decision rendered as a result of our referral will not affect any Decision previously made under the Dispute Resolution Service.

c. We will publish decisions of the appeal panel. Appeal decisions will not have precedent value, but will be of persuasive value to Experts in future decisions.

d. The operation of the Dispute Resolution Service will not prevent either the Complainant or the Respondent from submitting the dispute to a court of competent jurisdiction.

#### Implementation of Expert Decisions

a. If the Expert makes a Decision that a Domain Name registration should be cancelled, suspended, transferred or otherwise amended, we will implement that Decision by making any necessary changes to the Register according to the process set out in paragraph 17 of the Procedure.

#### Other action by us

a. We will not cancel, transfer, activate, deactivate or otherwise change any Domain Name registration except as set out in paragraph 10 above and as provided under [paragraph 8] of the Terms and Conditions.

#### Transfers During a Dispute

a. A Respondent may not transfer a Domain Name registration:

i. whilst proceedings under the Dispute Resolution Service are ongoing in relation to the Domain Name or for a period of ten (10) Days after their conclusion, unless to the Complainant as a result of a settlement reached between the Parties and approved by us whether or not pursuant to Informal Mediation; or

ii. whilst a court proceeding or arbitration in respect of the Domain Name registration is ongoing in a court of competent jurisdiction.

We reserve the right to reverse any transfer of a Domain Name registration which does not comply with this paragraph.

b. A Respondent may not without the Complainant's consent (which the Complainant will not unreasonably withhold) transfer the hosting of a Domain Name to another ISP whilst proceedings under the Dispute Resolution Service are ongoing in relation to the Domain Name or for a period of ten (10) Days after the conclusion of the Dispute Resolution Service.

#### Modifications to the Policy and Procedure of the Dispute Resolution Service

a. The internet is an emerging and evolving medium and the regulatory and administrative framework under which we operate is constantly developing. For these reasons we reserve the right to make reasonable modifications to the Policy and Procedure at any time. We will only do so when we have good reason. Except where we are acting in pursuance of a statutory requirement or a court order, changes will be implemented following a process of open public consultation. Each such change will be published in advance (where practicable, 30 calendar days in advance) on our web site: <http://www.nominet.org.uk/> and will become binding and effective upon the date specified therein.

b. The Respondent will be bound by the Policy and Procedure which are current at the time the Dispute Resolution Service is commenced until the dispute is concluded.