

**DISPUTE RESOLUTION SERVICE****Decision of Appeal Panel****D00023761**

Universal Navigation Inc., d/b/a Uniswap Labs

and

Joseph Phillips

**1. The Parties:**

Complainant: Universal Navigation Inc.,  
d/b/a Uniswap Labs  
181 N 11th St, Suite 307  
Brooklyn  
New York 11211  
United States

Respondent: Mr Joseph Phillips  
Bentley Heath  
Solihull  
West Midlands  
B93 8LY  
United Kingdom

**2. The Domain Name:**

The domain name at issue is <uniswap.co.uk>. It is referred to as the "Domain Name" in this decision.

**3. Appeal Panel Declaration**

Nick Gardner, Ian Lowe and David King (the Panel") have each made a statement in the following terms:

*"I confirm 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 such a nature as to call into question my independence in the eyes of one or both of the parties".*

#### **4. Procedural History**

This is an appeal against the decision of Alan Limbury (the “Expert”) issued on 12 December 2021 in favour of the Complainant. Definitions used in this decision have the same meaning as set out in the Nominet UK Dispute Resolution Service Policy (as in effect from 1 October 2016) (the “Policy”) unless the context or use indicates otherwise.

For convenience the Panel will continue to refer to the parties as the “Complainant” and the “Respondent”.

#### **5. The Nature of This Appeal**

Paragraph 20.8. of the Policy provides that: “The appeal panel will consider appeals on the basis of a full review of the matter and may review procedural matters. The appeal panel should not normally take into consideration any new evidence presented in an appeal notice or appeal response, unless they believe that it is in the interests of justice to do so”.

The Panel concludes that insofar as an appeal involves matters other than purely procedural complaints the appeal should proceed as a re-determination on the merits.

#### **6. The Facts**

The Panel adopts the factual background as set out in the Expert’s decision which was as follows.

In around early 2013 the Respondent, Joseph Phillips, and his colleague Christopher Brown had the idea for Uniswap, a website that would facilitate the exchange of items between students at university, with revenue being derived from each trade undertaken. The domain name <uniswap.com> (initially registered on 30 July 2000) and the Domain Name (initially registered on 16 January 2005) were purchased and a trading entity, Phillips and Brown Limited, was incorporated on 24 January 2013 with Mr Phillips and Mr Brown as directors. The company was used to administer their Uniswap business, which ceased operation by August 2018, since when the websites at the Domain Name and <uniswap.com> were replaced with a holding page stating “Uniswap is offline”.

The Complainant is Universal Navigation Inc. d/b/a Uniswap Labs, a United States company operating in the financial field of blockchain, cryptocurrency and trading protocol software for digital currency. The Complainant owns United States trade mark registrations and pending applications for UNISWAP and operates the website at “www.uniswap.org”. The Complainant has used the UNISWAP brand worldwide in relation to blockchain, cryptocurrency and digital currency software since November 2018.

In April 2021 the Complainant saw 656,000 unique addresses access the Uniswap protocol through its UNISWAP-branded interface. Overall, transactions through the Uniswap protocol account for 30% of all network transactions on the Ethereum blockchain on a daily basis. In the week of 12 May to 18 May 2021, the UNISWAP Interface had nearly 11.2 million users, with 794,740 of those being based in the UK, representing the location with the second highest number of users of the UNISWAP Interface.

On 13 August, 2020, the Respondent emailed the Complainant in order to gauge whether there would be any interest in obtaining either of the Uniswap domain names.

On 14 August 2020, the Complainant replied:

“Thanks for reaching out. We would be interested in purchasing it. It's not hugely important to us or something we want to spend a lot on, but view it as a nice-to-have. We're mostly trying to prevent it from ending up in the wrong hands, as there are a ton of malicious 3rd party sites that impersonate us. Would something in the range of \$10,000 make sense?”

On 18 August 2020, the Respondent replied:

“... You are quite correct, our initial contact was sponsored because of the third-party interest shown in the domain. We are clearly aware that there are malicious intentions harboured by third parties in connection to your offering in the marketplace.

Domains tend to be bought for a variety of reasons, completeness of offering, standing in the marketplace and to prevent those behaviours mentioned above. Arguably, more important than all of these is the need to put a marker down as to intent.

We appreciate that you are currently at a fledgling stage of your development, and it may be that this is a little too early in the journey for you, if that is the case, let us keep talking.

As to your valuation, we thank you for that. We have already been offered greater sums from interested third parties, so we will have to respectfully decline. Please however feel free to keep dialogue open in the meantime...”

Later that day the Complainant replied:

“Good to hear from you. We really do appreciate that you came to us considering the third parties that have malicious intentions for this domain.

We're open to going higher. Do you have a number in mind? I'm happy to try and meet it if we can, but don't really want to play a guessing game to figure out what amount you're hoping for.”

There was no further communication between the parties until 1 February 2021, when the Respondent (through Mr. Brown) emailed the Complainant:

“Hope you are well, it has been nearly 6 months since we last spoke - how time flies. The rapid growth of Uniswap continues to amaze both Joseph and myself.

Just to give you a bit of background (you may find it slightly interesting/amusing) into how we acquired <uniswap.com> and .co.uk, we both finished university in 2012 and attempted to start a free, safe student marketplace for students to use on campus similar to an up cycle type venture...

Long story short we both got sidetracked by jobs in engineering and manufacturing. If you are interested at all we would really appreciate your opinion on the business model.

Anyway back to the point in hand, we received another offer for 60,000 USD from a third party at the back end of 2020 (can provide the details if required). As before we do not want this website to go to anybody other than yourselves due to the magnitude of what you are doing and the sensitivity around your brand etc.

To answer your previous question we are hoping to get somewhere between \$1.5 and \$1.8m dollars for the domain inc both .com and .co.uk. This is purely based on some research we have done on relative domain sales. Again only you know the true value.

Please let me know your thoughts, Thanks for your time as always..."

On 23 February 2021 the Respondent emailed the Complainant:

"Just one further point for your consideration. We have pulled the analytics on the site and have had around 31,000 visits since the beginning of December, if cash outlay for the website is not an option in your mind, would you open to some kind of affiliate agreement where we take a small payment for every new user you get from our page? Just an idea, let me know thoughts..."

On 1 March 2021 the Respondent further emailed the Complainant:

"Any updates on the emails below? Can you let us know your thoughts so that we know where we stand? If we don't hear back will assume no interest and look to sell, as stated before would prefer if the domain went to you."

The Complainant did not reply to the Respondent's emails of 1 February, 23 February and 1 March 2021.

On 16 March 2021, the Respondent received an email from Afternic:

"I am contacting you from Afternic, the largest domain reseller in the world and owned by GoDaddy. I have a client that is interested in the domain name <uniswap.com>. Do you still own this domain name? If so, would you be open to selling the domain name?"

If you are open to selling it, what would you be looking to net from the sale? I will gross it up to quote my client to cover any related fees to ensure it is a guaranteed transaction for both parties..."

The Respondent replied that day indicating a willingness to sell.

On 18 March 2021, Afternic communicated an offer to the Respondent, who replied next day:

"Originally we were looking for [redacted] I'm sure all parties involved know the value of this domain so I'm not going to waste time explaining.

From our point of view we have exchange rates and taxes to pay. There are three existing shareholders that the money will be split, each have historical investments that would like to be covered. This being said the bottom figure we can really take to accommodate everting [sic] is [redacted] which would be around [redacted]

If you can get near this figure we'd be happy to let it go. We would also include Uniswap.co.uk for peace of mind."

On 22 March 2021 Afternic emailed the Respondent:

“I have some really good news.... I was able to get my buyer to make an offer that will net you [redacted].”

The sale of the <uniswap.com> domain name to the broker’s (unnamed) client was completed on 7 April 2021.

On 13 May 2021 the Respondent emailed the Complainant:

“...just wanted to touch base reference the resent [sic] sale of the domain, we sold to a reputable broker and assumed because of no contact from yourself that they were acting on your behalf, really sorry to see that a competitor is using it. As before we did everything we could to try and get it to yourself and assumed it had gone that way.

We still own the co uk [sic] and have similar brokers trying to buy from us. Can we please in this instance sell to you to save any issues? Appreciate your time as always. Sorry one further point we also have the instagram account and would be happy to include this.”

On 17 May 2021 the Complainant emailed the Respondent:

“Please give me the broker’s name and contact information.

It is very concerning that the <uniswap.com> domain is being used to redirect traffic to a Sushiswap’s website. That is wrong. You also should not sell the other domain(s) to anyone who might do something similar, including a broker.

I ask that you share that information by the end of the day on Tuesday.”

On 18 May 2021 the Respondent replied:

“Completely agree that [sic] why we got in contact with you straight away and have fixed the co uk, this now directs to our original branding as you can see, happy to get it changed to direct to your site in the short term for free if that helps?

The broker was Afternic who are owned by Go Daddy.

We had no choice but to accept that particular offer as we had no comms from you (understand how busy you must be) but due to the large sums of money being offered and the reputable broker we assumed it could only be you.

We have offers for the co uk for 1.5m GBP but as said, would like to give you all the items so would also include the Instagram page and agree to not sell to any other parties if you can match that offer.”

On 18 May 2021 the Complainant initiated proceedings under the Uniform Domain Name Dispute Resolution Policy (UDRP) against the registrant of the <uniswap.com> domain name.

On 21 May 2021 the Respondent emailed the Complainant:

“Hope the information we provided has helped, I fear you might struggle getting the domain back without a substantial payout. We really did try and get the domain to you as per all previous correspondences.

We know the beast you’re building but the little things help the big picture. Perhaps an overlook with the .com or your competitors have been quicker to react or saw the potential.

Having a business with the same name has always linked us weirdly and we want the domain and social media account to go to yourself.

We’d like to put this to bed and move on, please make us an offer so we can do so. Let’s not let history repeat itself.

Would appreciate a response by Thursday, if we don’t hear will assume no interest. We can’t be held response [sic] who buys the domains and what the use will be. If you don’t come back we hope you all the best in the future and hope you achieve the platform you set out to build.”

The Complaint in this proceeding was filed with Nominet on May 26, 2021.

## **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 his decision.

### **Appeal Notice**

In his Appeal notice the Respondent says that the Expert’s finding that the Respondent’s offer for sale of the Domain Name to the Complainant was “exorbitant” was wrong. Neither party filed evidence to support that finding, and there was contrary evidence. Accordingly, the Respondent argues that:

- (a) the finding was not properly available on the evidence; and
- (b) the Expert failed to apply Section 2.2 of the DRS Policy, which requires the Complainant to prove its Complaint.

The Respondent goes on to estimate what a fair price for the Domain Name might be. He says that if a calculation is done on the [Complainant’s] business (it seems to the Panel that, although the Appeal Notice referred to the Respondent’s business, this was a mistake and that the Respondent intended to refer to the Complainant’s business) it might be earning £80,000 per week in commission on UK sales. He says this evidence shows that the Domain Name is hugely valuable to the Complainant. Domain names regularly sell for several million dollars, and £1.5m is on its face an eminently reasonable valuation for a domain name that could generate such vast revenue. He says that it was for the Complainant to prove to the contrary, but it did not do so. It conveniently avoided stating what it thought the Domain Name was worth, and made only a patently derisory offer to the Respondent of \$10,000 in August 2020.

The Respondent says his evidence was that

(a) he was approached by a legitimate company, Afternic (the largest domain reseller in the world), to purchase <uniswap.com>

(b) the valuation of £1.5m for <uniswap.co.uk> was “based entirely on the significant sums received for <uniswap.com>” so it was reasonable for the Expert to assume that the price paid to the Respondent was in the region of £1.5m; and

(c) he had “similar brokers” interested in <uniswap.co.uk> and offers of £1.5m.

The Respondent says the evidence did not support the Expert’s finding that the Respondent’s £1.5m offer was “exorbitant”. Rather, applying the Expert’s test to the evidence, the proposed price was a fair one, and the proposed sale was to a legitimate domain name trader (not knowingly to a nefarious purchaser). The Respondent was not seeking to exploit the Complainant’s Rights, but only to sell at a market price.

The Respondent says that in our free-market economy, an owner of an asset lawfully acquired may retain it, allow it to appreciate, and sell it for a profit to any *bona fide* purchaser. Thus the Expert correctly noted that the Respondent could legitimately sell the Domain Name to a domain name trader at a market rate. It must therefore be equally legitimate for the Respondent to make an offer direct to the Complainant, and to flag to the Complainant that if the offer is not accepted, the Respondent will take the alternative legitimate route of selling to the trader. That is all fair.

By contrast, the Respondent says that the Complainant through its Complaint seeks to acquire a hugely valuable asset, legitimately acquired and maintained by the Respondent, without paying a bean. The Complainant has made only a derisory offer to the Respondent, and refused to engage in a market-rate transaction. That is not fair.

Alternatively the Respondent says that under Section 2.2 of the Policy it was for the Complainant to prove its case. The Respondent says that for the reasons set out above, the Expert should have found that the Complainant failed to prove the price was exorbitant. Instead, the Expert focused upon the Respondent having not led evidence that it was not exorbitant (see the final paragraph on page 20 of the Decision: “In the absence of such disclosure however...”). By deciding the matter upon inferences from the absence of evidence from the Respondent, in circumstances where the Complainant had led no positive evidence of its own, the Expert failed properly to apply section 2.2.

### **Response to Appeal Notice**

The Complainant does not deny that trading in domain names can in principle be lawful as per paragraph 8.4 of the Policy. However paragraph 8.4 of the Policy also states that “the Expert will review each case on its merits”. The Complainant says that the Expert correctly identified that the question was whether the price demanded by the Respondent for the Domain Name was exorbitant.

The Complainant disputes the Respondent’s statement that domain names regularly sell for several million dollars. Rather, domain names typically sell for low amounts. Sales of domain names in excess of GBP 1 million may not be unheard of, however these are the exception not the rule. Regardless of how common it might be for domains to sell for these sorts of

prices, GBP 1.5m remains a significant and substantial amount that a purchaser would be reasonable to not take at face value.

The Complainant says its opening offer of 10,000 USD for the Domain Name along with <uniswap.com> was not, as the Respondent seeks to argue, “derisory”, but was intended to represent a starting point for negotiations. The Complainant had indicated they were open to going higher.

Since first contacting the Complainant in August 2020 (prior to receiving the offer from Afternic for <uniswap.com> or the alleged offers of GBP 1.5m for the Domain Name) the Respondent has demanded significant and substantial amounts for the Domain Name without providing any justification for the amounts requested. These demands culminated in the demand of GBP 1.5m for the Domain Name, after the sale of the <uniswap.com> domain to a party whose main purpose was to exploit and abuse the Complainant’s rights.

Contrary to the Respondent’s assertions, the Respondent has, despite being given numerous opportunities to do so, not provided any evidence that the amount the Respondent received for <uniswap.com> was in the region of GBP 1.5m and justified the demand of GBP 1.5m for the Domain Name. Nor has the Respondent provided any evidence that he had similar brokers offering GBP 1.5m for the Domain Name. The Respondent has instead simply made bald statements on these points. Considering the significance of the amount of GBP 1.5m, it is therefore not reasonable for the Expert to simply assume on the basis of those bald statements that the Respondent is justified in seeking that amount for the Domain Name.

In any case, a valuation of the Domain Name based on the sale of <uniswap.com> is not a fair valuation and does not represent market value. The sale of the domain name <uniswap.com> was as evidenced in the Complaint to a party closely associated with a competitor of the Complainant, which bought that domain for the purpose of using it in an abusive, unfair and confusing manner.

Therefore, if as the Respondent states, the valuation of GBP 1.5m is “based entirely on the significant sums received for <uniswap.com>”, this is the value placed on the domain by a party that seeks to exploit and abuse the Complainant’s rights. It is not a fair amount.

Further, if the Respondent has as it claims received offers of GBP 1.5m for the Domain Name, considering that this substantial amount is in the same region as the amount for which the equivalent .com allegedly sold to a third party whose primary purpose was to use that .com abusively, it is reasonable to assume, in absence of evidence to the contrary, that those offers are made by nefarious actors whose intentions behind acquiring the Domain Name are also in bad faith. A valuation of the Domain Name based on these offers is therefore also unfair.

It is untrue that the Complainant seeks to obtain the Domain Name “without paying a bean”. As can be seen at Annex F, the Complainant made good faith offers in August 2020 for purchase of the Domain Name, but was met with demands for extraordinarily high amounts presented with no evidence that those amounts were justified.

Under paragraph 2.2 of the Policy the Complainant is required to prove the Complaint on the balance of probabilities. The Respondent claims that GBP 1.5m is a justifiable price for the Domain Name, based on the sale of <uniswap.com> and offers received for the Domain



Name. Only the Respondent is able to provide evidence to substantiate these facts, which it has refused to do.

Considering the specific circumstances of this case, and in particular the exceptional sum the Respondent demands for the Domain Name and the Respondent's refusal to provide the evidence it claims to have of offers for the Domain Name, the Complainant has made out its case to the standard of proof required.

The Complainant has shown that on the balance of probabilities, in seeking GBP 1.5m for the Domain Name, the Respondent has used the Domain Name in a manner that has taken unfair advantage of or has been unfairly detrimental to the Complainant's rights, and is an Abusive Registration under paragraph 1.ii of the Policy. The Appeal should therefore be dismissed.

## **8. Discussion and Findings**

### Rights

There is no dispute that the Complainant has Rights in the trade mark UNISWAP for the purpose of the Policy. The Panel has accordingly not found it necessary to analyse this issue in any more detail. The Panel is satisfied that the Complainant has Rights in a name or mark that is identical to the operative part of the Domain Name.

### Transfers of Domain Names generally

Nominet's Terms and Conditions of Domain Name Registration (version effective 24 April 2020 – copy available on Nominet's website) (the "Terms") are contractually binding upon domain name registrants and the following provisions are of relevance:

"7. Nature of domain names and the register

7.1 A domain name is not an item of property and has no 'owner' ....." and

"11.3 If you want to transfer your domain name to someone else, you must: 11.3.1 use our current published transfer process; and 11.3.2 make sure that the person taking over your domain name accepts these conditions in full".

Note that the effect of these provisions may mean it is technically more accurate to refer to the "transfer" of a domain name rather than its "sale". However in practical terms it is common (as in the present case) for references to be made to "sale" or "offer for sale" in relation to such transfers and the Panel adopts that approach where it is convenient,

The Terms say nothing at all about what payment a registrant may seek in return for a transfer of a domain name.

Paragraph 8.4 of the Policy provides that "Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves lawful activities. The Expert will review each case on its merits".

Taking these provisions together the Panel concludes that there is no prohibition on a registrant transferring a domain name to a third party and he may do so at a profit and there

is no express restriction on the price he may seek for such a transfer. The Panel also cannot see any reason why there should be some form of implied restriction on the price sought. This of course reflects reality in that there is an active trade in domain names both by individual registrants and by professional traders. Information about the price that may be paid for a given transfer is generally a matter between the parties unless they choose to make it public.

#### Abusive Registration generally

Given the definition of Abusive Registration in the Policy, in order to establish that the Domain Name in the hands of the Respondent is an Abusive Registration, the Complainant must show that the Domain Name either:

- i) was registered or otherwise acquired in a manner which, at the time when the registration took place, took unfair advantage of or was unfairly detrimental to the Complainants' Rights; or
- ii) is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainants' Rights.

Establishing either or both of these requirements on the balance of probabilities will result in a finding of Abusive Registration.

In the circumstances of this case it is clear that the original registration of the Domain Name was entirely unobjectionable. It was registered by the Respondent long before the Complainant existed in connection with a *bona fide* venture which in the end did not progress. Some years later the Complainant came into existence and entirely coincidentally coined the same name – uniswap – for a business which has turned out to be immensely successful. The question for the Panel is whether the events that have taken place since the Complainant came into existence amount to the Domain Name being used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainants' Rights.

#### Previous DRS cases

Consideration as to how an innocently acquired domain name may be used when a third party subsequently adopts the same name was considered by an appeal panel in DRS 04962 - *MySpace, Inc v Total Web Solutions Limited*.. That case turned on the analysis of the behaviour of a "parking page" to which the domain name <myspace.co.uk> resolved. The appeal panel observed:

"However, the registration of domain names is still a first-come- first-served system and the Panel is reluctant to place any duty on a registrant, who has merely had the good fortune (or maybe ill fortune) to register a name in good faith, which subsequently, through no fault of his own, acquires notoriety, provided that he does nothing actively to exploit his position" [underlining present in original].

It seems to the present Panel that this observation was directed at how the domain name in question was being used in terms of the content of the linked website. If that had been changed in a manner which took unfair advantage of, or was unfairly detrimental to, the Complainant's Rights, then the complaint would have succeeded. On the facts of that

particular case the appeal panel was not satisfied this was the case and concluded it was a matter better further investigated by means of litigation.

The present case is different in that there is no allegation that there has been any material change in the content of the Domain Name website. Instead it is the offer to sell the Domain Name which is said to be material. That is a matter where DRS 04962 does not seem to be directly relevant - it does not seem to the Panel that the reference in DRS 04962 to the respondent actively "exploit[ing] his position" was directed at offers by the respondent to sell the domain name – indeed in that case the respondent had indicated to the complainant in correspondence that it was willing to sell the domain name for £220,000 + VAT. This fact does not appear to have been relied upon by the complainant or addressed by the appeal panel in the case.

### The Key Question

The key question in the present case is whether an offer to sell a domain name can amount to the domain name being "used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainants' Rights"? That question can be broken down into two subsidiary questions: (i) is an offer to sell a domain name "use" at all of the type the Policy is directed at; and (ii) if it is such "use" how, if at all, does it take unfair advantage of, or cause unfair detriment to, the Complainant's Rights? The second question only arises if the answer to the first question is in the affirmative.

### Is an Offer to Sell a Domain Name "use" at all?

So far as the wording of the Policy is concerned, the word "use" is employed in a number of provisions. Those of relevance (and apart from in the definition of Abusive Registration) are as follows.

Paragraph 5.2 provides that "Failure on the Respondent's part to use the Domain Name for the purposes of email or a web site is not in itself evidence that the Domain Name is an Abusive Registration".

Paragraph 8.1 provides that: "A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is as follows:

8.1.1 Before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under the DRS), the Respondent has:

8.1.1.1 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;

8.1.1.2 [omitted]

8.1.1.3 made legitimate non-commercial or fair use of the Domain Name"

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

Paragraph 8.2 provides that: "Fair use may include sites operated solely in tribute to or in criticism of a person or business"

Paragraph 8.5 provides that: "Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) is not of itself objectionable under this Policy. However, the Expert will take into account:

8.5.3 that the use of the Domain Name is ultimately the Respondent's responsibility".

The Terms contain the following provisions which have relevant references to "use" or "used" or "using":

"1. Definitions and interpretation

In these conditions, the following words have the following meanings:... 'proscribed' – That the domain name in our sole discretion would on the face of it (i) tend to indicate, comprise or promote a serious sexual offence and (ii) that there is no legitimate use of the domain name which could be reasonably contemplated": and

"6.1 By registering your domain name you promise that .... 6.1.3 by registering or using your domain name in any way, you will not infringe the intellectual property rights (for example, trade marks) of anyone else" and

"6.1.5 that you will not use the domain name for any unlawful purpose"

"10.1 We may cancel or put a domain name into a special status by notifying you if:... in our sole discretion we believe the domain name is being used, or has a high risk of being used, in a way that is likely to endanger any part of the domain name system, other internet users (including but not limited to the distribution of viruses and malware, phishing activity or facilitating distributed denial of service attacks), or our systems and internet connections"

The Oxford Dictionary of English Third Edition (2010) defines "use" (so far as relevant here) as to "take, hold, or deploy (something) as a means of accomplishing or achieving something".

In the view of the Panel, taking this definition and all of the above provisions into account a domain name is "used" when it is deployed for Internet related purposes such as part of a website address, for an email server or as part of a file server address. Whilst it is clearly permissible to trade in domain names, the Panel does not consider that selling a domain name, offering it for sale or threatening to sell it constitute "use" of the domain name for the purposes of the Policy. On the contrary, those activities merely involve dealing in a contractual right, namely the right to registration of the domain name.

As noted above the Policy and the Terms clearly contemplate that transfers of domain names may occur and are permissible, and may be carried out at a profit, and there is nothing in either the Policy or the Terms which seeks to limit what price a registrant may seek to obtain for the transfer of a domain name. In this regard the Panel has considered whether the inclusion of Paragraph 8.4 in the Policy (which provides that "Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves lawful activities. The Expert will review each case on its merits") indicates that such activities are within the meaning of the word "use". Would such a provision be unnecessary if acts of selling and offering for sale were outside the scope of the Policy? The Panel considers that this provision is principally directed at negating what might otherwise be a presumption that, because the respondent was in the business of registering and/or holding a large number of domain names and/or trading in domain names for profit, it followed that the respondent had registered or acquired the domain name in a manner that took unfair advantage of or was unfairly detrimental to relevant Rights. It does not follow that such a respondent's sale or offer to sell a domain name constituted "use" of the domain name.

Accordingly the Panel concludes that offering to sell a domain name is not use at all within the second limb of the definition of Abusive Registration (i.e. “a Domain Name which ... Is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant’s Rights”). The Panel would however add that in appropriate circumstances the offering for sale of a domain name may well be evidence that is relevant to an assessment of the registrant’s motives in registering a domain name and which may support a finding of Abusive Registration under the first limb of the relevant definition. That does not arise on the facts of the present case as it is clear that the original registration of the Domain Name was entirely legitimate,

The Panel also considers that there are good practical and fairness reasons why the price at which a legitimately held domain name is offered for sale is not a matter for the Policy. These are as follows.

It seems to the Panel that if a registrant legitimately holds a domain name the starting point in any analysis is that he can seek whatever price he likes. As indicated above there is nothing in the Policy or the Terms to indicate otherwise. The Complainant in the present case suggests the Respondent was under an obligation to offer the Domain Name at a fair or reasonable price. It would appear the Expert agreed – or at least he thought the price could not be “exorbitant”. The Panel does not agree. As the Respondent correctly observes, in an open market economy a party who holds an asset is normally entitled to ask whatever price he likes for that asset. That principle is applicable to real property and to personal property. If a person happens legitimately to hold an asset that is for whatever reason of special value to a given person he is entirely within his rights to set his asking price at what he believes the value of the asset is to that person, even if that is much higher than its value to others. Indeed he can set his asking price higher if he wishes.

Ultimately it is a question for the offeree as to whether he is prepared to pay the price asked (or of course seek to negotiate a different price). Whilst a domain name is really a contractual right, rather than property in the strict sense, the Panel considers the same principles apply. There may be exceptions to the general rule (for example if there is a contractual obligation to sell at a reasonable price) but the Panel cannot see that any such exceptions apply here. If a person asks for a price that is said to be exorbitant the offeree does not have to pay it. In this context it is worth noting that any person can invariably find an alternative domain name to use – indeed in the present case the Complainant had been using <uniswap.org> prior to the events in question and, now having obtained <uniswap.com>, the www.uniswap.com url redirects to the website at [www.uniswap.org](http://www.uniswap.org). In any given case the availability and suitability of alternatives will no doubt affect the value placed upon any given domain name.

Every domain name is by definition unique. A domain name that is immensely valuable to one person may be worth very little or nothing to other persons. Some domain names may be potentially valuable to a large number of persons, other domain names may be of value only to one or a few persons. There is no publicly available record of prices paid for domain names. Some information about transactions enters the public domain but it is often anecdotal and unverified<sup>1</sup>. Furthermore transactions may involve domain names in different top level domains or country codes. Given the lack of objective information and the effect of

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<sup>1</sup> Anecdotally, and so far as the Panel is aware, the most expensive domain name sale that has been reported is the sale of <voice.com> which was said to have sold for USD 30 million in cash – see <https://www.godaddy.com/garage/the-top-20-most-expensive-domain-names/>

all these variables the Panel considers the matter of what a given domain name is worth is impossible to determine as an abstract question and is better assessed by the market place - what is a purchaser willing to pay for it?

The alternative of expecting a DRS Expert or Appeal Panel to make a finding seems to the Panel quite inappropriate. The value of a domain name can only really be established by the price someone is prepared to pay. Does this mean that any price above what the rights holder is prepared to pay is exorbitant? If not, then how much above what it is prepared to pay would be exorbitant? And what difference does it make if the sum requested is exorbitant rather than simply being more than the putative purchaser is prepared to pay? The question of what evidence would be needed to inform a DRS Expert's decision on the reasonableness or otherwise of a given price is far from straightforward and would likely present real difficulties in practice.

The present case neatly illustrates the problems. The Domain Name is likely worth more to the Complainant than to any other person. On the other hand the Complainant is now the registrant of <uniswap.com> as well as <uniswap.org> and that may diminish the importance/value it attaches to the Domain Name. The Respondent suggests the Domain Name is worth GBP 1.5 million. The Complainant suggests that the figure of USD 10,000 was a fair "opening shot" in negotiations (for a sale including also the <uniswap.com> domain name). If the approach to be adopted is identifying whether an exorbitant price is being asked, how is that to be done? If the figure of GBP 1.5 million is exorbitant (a matter on which the Panel offers no view), where does the correct non-exorbitant figure lie and how is it to be determined? Would GBP 1 million be satisfactory? Or GBP 500,000? Or GBP 200,000? Or some other figure and if so what?

Another way of looking at this is as suggested by the Respondent. Suppose the Domain Name was held by a domain name trader who had legitimately acquired it. It seems to the Panel beyond dispute that such a trader could ask whatever price he wanted for the Domain Name and is not obliged to accept any lower price if he does not want to. That would not make him liable to a finding that he had used the Domain Name in bad faith. It cannot sensibly be suggested that the activities of domain name traders are subject to adverse DRS findings if they ask "exorbitant" prices for legitimately held domain names in their portfolio when offering them for sale to a person who holds Rights in the term in question. If that is so, why should the Respondent be in any different position? The answer in the Panel's opinion is that he should not be in any different position.

Further if the Complainant's approach was correct, what would happen if a domain name holder simply invited offers from the holder of the relevant Rights for a domain name he was prepared to sell. Would some sort of auction process arise where a purchaser could make gradually increasing bids but the holder was at risk of an adverse finding in a DRS complaint if he declined an offer which an Expert subsequently thought was reasonable? That would be very unsatisfactory.

The Panel also agrees with the Respondent that, were the Complaint to succeed, the effect would be that the Complainant would end up acquiring at little or no cost a domain name registration which even on the Complainant's view is of substantial value, and the Respondent would receive nothing. In circumstances where that registration was legitimately acquired by the Respondent that would be unfair.

The above analysis has focused on the Respondent offering the Domain Name for sale to the Complainant, who is the person most likely to be interested in it or to attach value to it. Is the position any different if either the offer is made to the world at large or to a specific third party, particularly if the registrant of the domain name knows or suspects the third party will itself use it in a way that is adverse to the Complainant?

The Panel does not think the position is any different – the registrant is entitled to seek whatever price a third party purchaser is prepared to pay. It may be that, if a third party acquires the domain name, the third party’s motivation, or the use it subsequently makes of the domain name would support a finding of Abusive Registration but that is a separate matter entirely. In such a case, the Complainant would very likely be able to take advantage of the low cost Nominet DRS to retrieve the domain name, as the Complainant did under the UDRP in respect of <uniswap.com>. On the other hand, if the third party were in a position to make entirely proper use of the domain name then it would merely have been the successful acquirer of a domain name it wished to use.

**Conclusion**

In summary, the Panel does not accept that the offer to sell or sale of a domain name constitutes “use” of the domain name for the purposes of the Policy. The Panel’s finding on the issue of use is sufficient to determine this Appeal.

Accordingly, the Panel declines to find that the Domain Name is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainants’ Rights.

**9. Decision**

The Panel concludes that the Complainant has Rights in a mark (UNISWAP) which is identical to the Domain Name but has failed to establish that the Domain Name is an Abusive Registration. Accordingly, the Panel upholds the appeal and rules that the Domain Name should not be transferred.

**Signed** ..... **Dated** 22 February 2022  
Nick Gardner

**Signed** ..... **Dated** 22 February 2022  
Ian Lowe

**Signed** ..... **Dated** 22 February 2022  
David King