

DISPUTE RESOLUTION SERVICE

D00023849

Decision of Independent Expert

Aspire Estate Agency Limited

and

Capes Education and Academy

1. The Parties:

Lead Complainant: Aspire Estate Agency Limited
Unit 4 Griffin Accountants, Silverdown Office Park
Exeter
Devon
EX5 2UX
United Kingdom

Respondent: Capes Education and Academy
34 Rigdale Close
Plymouth
Devon
PL6 5PR
United Kingdom

2. The Domain Name(s):

myaspire.co.uk

3. Procedural History:

I can 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 a such a nature as to call in to question my independence in the eyes of one or both of the parties.

22 June 2021 14:31 Dispute received
24 June 2021 13:20 Complaint validated
24 June 2021 13:24 Notification of complaint sent to parties
13 July 2021 02:30 Response reminder sent
16 July 2021 14:43 No Response Received
16 July 2021 14:43 Notification of no response sent to parties
16 July 2021 15:33 Response received
16 July 2021 15:43 Notification of response sent to parties
21 July 2021 14:54 Reply received
21 July 2021 14:54 Notification of reply sent to parties
27 July 2021 13:00 Mediator appointed
29 July 2021 11:57 Mediation started
18 August 2021 11:15 Mediation failed
18 August 2021 11:16 Close of mediation documents sent
24 August 2021 11:07 Expert decision payment received

4. Factual Background

The Complainant is a company with a registered address in the south west of England, operating an estate agency business. The Complainant uses a website hosted at the Domain Name to promote its business. The Complainant's limited company was established in May 2019.

The Respondent is also a company with a registered address in the south west of England. It changed its registered company name to "Ignite Academy & Training Limited" in April 2019.

It appears to be common ground between the parties that Mr Ryan Buckle is a director of the Respondent company. It also appears to be common ground that Mr Ryan Buckle has been one of three shareholders of the Complainant company.

The Domain Name is part of a wider dispute between the parties in relation to the position of Mr Ryan Buckle as a shareholder of the Complainant and his alleged activities in such capacity.

5. Parties' Contentions

The Complainant states that Mr Ryan Buckle purchased the Domain Name around the time of the establishment of the Complainant's business in May 2019. Mr Ryan Buckle registered the Domain Name at that time using an account with the registrar Fasthosts in the name of the Respondent.

The Complainant claims that the domain purchase was paid for by the Complainant, and that it also paid for the most recent renewal of the Domain Name. The Complainant has submitted evidence of a payment to Fasthosts dated 8 March 2021 claiming to relate to such renewal but the payment evidence does not reference the Domain Name. There is no evidence of payment by the Complainant for the original registration of the Domain Name.

The Complainant has explained in its submissions that its relationship with Mr Ryan Buckle has deteriorated and that, in or around March 2021, it unsuccessfully attempted to recover the Domain Name through the registrar. The Complainant is concerned about the risk of the Respondent deleting or deactivating the website hosted at the Domain Name and thereby disrupting its business.

The Complainant has submitted in its evidence a series of correspondence with the Respondent's solicitor and the registrar Fasthosts from April to May 2021 in which it sought recovery of the Domain Name.

The Respondent's Response is a basic denial of all of the Complainant's claims, and references a wider dispute between the parties, without specifically addressing any of the points raised by the Complainant. No evidence was provided in the Response.

The Complainant's Reply challenges the Respondent's blanket denial and reiterates its claim to ownership of the Domain Name, but adds nothing material to the Complaint.

6. Discussions and Findings

Under paragraph 2.2 of the Policy, the Complainant must prove, on the balance of probabilities, each of the two elements set out in paragraph 2.1.1 and 2.1.2 of the Policy, namely that the Complainant 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.

Rights

Paragraph 1 of the Policy provides that Rights means "rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning".

The requirement to demonstrate Rights under the Policy does not have a high threshold. Rights may be established by way of a trade mark registration, or

unregistered rights arising from use of a name to the standard required under common law.

The Complainant has not provided evidence of any registered trade mark rights in the names “aspire” or “myaspire”.

The Complainant’s registered company name includes the word “Aspire”, but it is a commonly-held position under the Policy that such registration does not give rise to “enforceable” rights and therefore a company name alone does not amount to Rights for the purposes of the Policy.

It is accepted under the Policy that enforceable rights may arise through an organisation’s trading activities. From paragraph 2.2 of the Experts’ Overview (emphasis added):

...evidence needs to be put before the Expert to demonstrate the existence of the right. This will ordinarily include evidence to show that (a) the Complainant has used the name or mark in question for a not insignificant period and to a not insignificant degree (e.g. by way of sales figures, company accounts etc) and (b) the name or mark in question is recognised by the purchasing trade/public as indicating the goods or services of the Complainant (e.g. by way of advertisements and advertising and promotional expenditure, correspondence/orders/invoices from third parties and third party editorial matter such as press cuttings and search engine results).

The Complainant was established in May 2019, but has not submitted any evidence of advertising or promotional materials, press coverage, sales figures or company accounts.

The Complainant has asserted that the purchase of the Domain Name by the Respondent (or Mr Ryan Buckle acting for the Respondent) was paid for by the Complainant, but has provided no evidence of such payment. Furthermore, the Complainant has not provided any evidence that the Domain Name was purchased by the Respondent following any kind of agreement between the parties that the Respondent should do so.

The Complainant also claims to have paid for the most recent renewal of the Domain Name, but the evidence of payment provided (a sum of £25.18 paid to Fasthosts on 8 March 2021) does not reference the Domain Name. In any event, the Complainant (on its own submissions) made such payment by accessing the Respondent’s own registrar account and adding the Complainant’s contact details to the Respondent’s registrar account, seemingly without the Respondent’s consent.

There is therefore no basis to indicate any form of contractual entitlement on the part of the Complainant.

The Expert therefore has no basis upon which to establish that the Complainant has Rights in respect of a name or mark which is similar to the Domain Name. Had the Complainant provided any substantive evidence of its trading activity under the “Aspire” name, or evidence of communication with the Respondent relating to the purchase of the Domain Name, the Expert may have been convinced to find otherwise in relation to Rights.

Abusive Registration

Paragraph 1 of the Policy defines “Abusive Registration” as 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. 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;

This general definition is supplemented by paragraph 5.1 of the Policy which provides a non- exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration. Paragraph 8.1 of the Policy provides a similar non-exhaustive list of factors which may be evidence that a Domain Name is not an Abusive Registration.

The Policy requires the Complainant to prove, on the balance of probabilities, that the Domain Names are an Abusive Registration. The burden of proof is therefore firmly on the Complainant.

Notwithstanding the above finding in relation to Rights (which alone is enough for the Complaint to fail), the Expert observes that the Complainant has not demonstrated evidence of any specific behaviour on the part of the Respondent which would amount to an Abusive Registration.

The Complainant suggests implicitly that the Respondent’s activities fall within paragraph 5.1.5 of the Policy as evidence of an Abusive Registration:

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

*5.1.5.1 has been using the Domain Name registration exclusively, and
5.1.5.2 paid for the registration and/or renewal of the Domain Name registration.*

Whilst it appears to be the case that the Domain Name has been used exclusively by the Complainant, the Complainant has failed to provide evidence of payments for the registration or renewal of the Domain Name, or that there was any arrangement around this point between the parties.

The Expert further notes that, based on the submissions of the parties, the Respondent has not threatened, whether through action or inaction, to take any steps in relation to the Domain Name which might adversely affect the Complainant's business.

Had the Complainant provided any evidence of its payment of (or reimbursement to Mr Ryan Buckle for payment of) the purchase of the Domain Name, or evidence of payment of the renewal in a way that was clearly connected to the Domain Name, the Expert may have been convinced to find otherwise in relation to the finding on Abusive Registration.

Whilst the above discussion has been concerned in the main with the lack of evidence provided by the Complainant, the Respondent has not sought to substantiate in any meaningful way why its ownership of the Domain Name is not an Abusive Registration. Furthermore, the Respondent has not provided any evidence to support its blanket denial of all of the points raised in the Complaint, or provided its own account of the situation described in the Complaint. There is an onus on the Respondent to meaningfully address the Complainant's concerns, and the Respondent has not engaged in the DRS process in any meaningful way.

The dispute between the parties is evidently far broader than matters concerning the Domain Name, and the DRS is not the appropriate forum for resolution of such a dispute. The Expert hopes that the parties are able to reach a mutually agreeable conclusion to their dispute in due course.

7. Decision

The Expert finds that the Complainant has not been able to establish that it has Rights in a name which is identical to or similar with the Domain Name, or that the acts of the Respondent amount to an Abusive Registration. The Expert therefore directs that no action is taken in relation to the Domain Name.

Signed

Dated 8 September 2021