

Dispute Resolution Service

Emily Taylor, Solicitor, Nominet UK

Original Service

- Started in May 1997
- 1,500 cases handled in 4½ years
- Written submissions
- Informal mediation
- Initial decisions made by Nominet
- Appeal to independent experts

Original Service

- 30% of cases resolve through mediation
- Most commonly relied on ground:
 - Where it is brought to Nominet's attention that the domain name is being used in a manner likely to cause confusion to internet users
- Discretionary
- Not transparent

Aims of the revised service

- To provide an alternative dispute resolution service to match speed and ease of registration
- To resolve disputes through mediation
- Low cost, quick, transparent service
- Restricted to clear cases of abuse

Overriding principles

- Increased transparency:
 - Policy and Procedure
 - Published Decisions
 - Online forms with Help facility

The Policy

An Abusive Registration

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

What are Rights?

- **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.

A successful complainant must show...

- 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.

Burden of Proof

- Complainant has burden of proof
- Standard of proof: balance of probabilities

Non-exhaustive list of examples

- Offer for sale
- Blocking registration
- Disruption of business
- Actual confusion
- Pattern of conduct
- False contact details
- Failure to use is not in itself enough

Non-exhaustive list of defences

- Genuine offering of goods or services
- Commonly known by or legitimately connected with
- Non-commercial or fair use
- Generic or descriptive name

Burden of proof shifts to respondent 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

The Procedure

Overview

- Written submissions:
 - Complaint
 - Response
 - Reply (optional)
- Informal Mediation (10 working days)
- Fee paid by complainant (GBP 750)
- Expert decision
- Appeal

Mediation

- Conducted informally
- By telephone
- 10 working days
- Without prejudice
- Confidential

Experts

- Impartial
- Independent
- Next available expert takes the next case, subject to:
 - Conflict of interest
 - Holiday, sickness, work pressure

Experts' Decision

- Stand alone document
- Published in full
- Unless exceptional circumstances apply, decision based on paper submissions only

Appeal

- Experts may be invited to participate in Appeals
- Time limits more flexible
- Fee is £3,000 + VAT divided by 3



Establishing a revised service

April-December 2000

Building consensus:

- Internal report on previous service
- Meeting with stakeholders
- Board approval of initial draft documents

January – March 2001

Public consultation

- Documents published on web site
- Meetings with Internet & Legal communities
- Public outreach through media campaign
- Public feedback published on web site

April – July 2001

Refining documents

- Redrafting in light of consultation comments
- Board approval of final drafts

August– September 2001

Preparation

- Advertising for experts
- Recruitment of staff
- Developing database and web site support



Can you weigh up the evidence?

Nominet UK manages the Registry for Internet Names ending .uk. Following successful consultation, Nominet is introducing a revised Dispute Resolution Service (DRS) in autumn 2007 and is seeking independent experts for the DRS panel.

Nominet's Dispute Resolution Service, established in 1997, attempts to mediate between two parties in dispute over the registration of a Domain Name. If mediation is unsuccessful, the case is referred to an independent expert for a decision under Nominet's Rules.

Nominet is now seeking approximately 30 independent experts to evaluate DRS submissions and prepare written decisions on cases. You will be joining a team of highly regarded experts in the field.

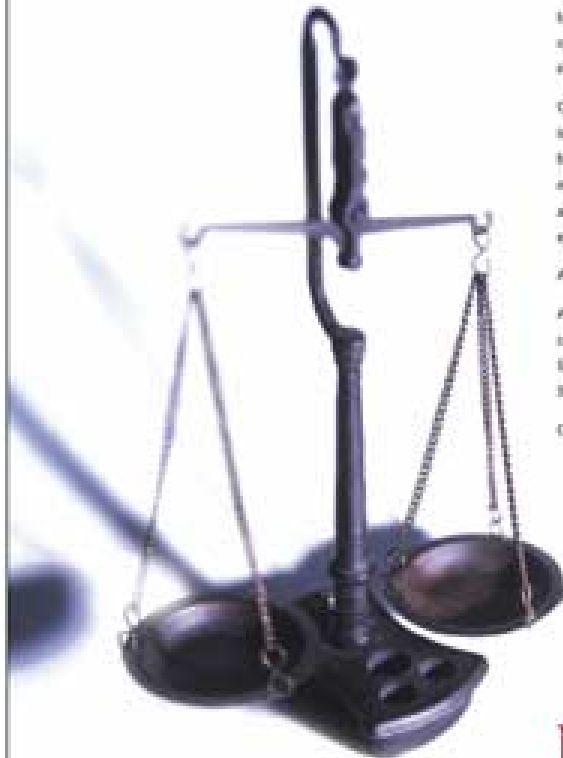
Candidates must have a general knowledge of Domain Name issues as well as experience of working on disputes; a legal background is useful but not compulsory. Suitable candidates may be industry figures, those involved in mediation or arbitration, IT consultants or academics with the relevant expertise to decide on disputes.

A fixed fee is offered at £750 per case.

Applications are invited in the first instance by sending a covering letter and CV to:

Sharon Barwood, HR Manager, Nominet UK,
Sandford Gate, Sandy Lane West, Oxford, OX4 6LB

Or e-mail recruitment@nominet.org.uk



Nominet:uk

The UK Internet Name Organisation

24 September 2001

Launch of new service

- Information to stakeholders and media
- Key role of technical back up
- 18 complaints in first two weeks

Further information

<http://www.nominet.org.uk/drs.html>