

Nominet UK Dispute Resolution Service

DRS Number 05270

Dell, Inc -v- Daniel De Luca

Decision of Independent Expert

1. Parties

Complainant Type: Business
Complainant: Dell, Inc
Address: One Dell Way
Round Rock
Texas
Postcode: 78682-2244
Country: USA

Respondent: Daniel De Luca
Address: not provided
Postcode: UB10 9JB
Country: GB

2. Domain Names

dell-support.co.uk ('the Domain Name')

3. Procedural Background

The complaint was lodged electronically with Nominet on 22 November 2007 and hard copy was received on 23 November 2007. The Respondent made no reply to Nominet's correspondence, and the Complainant decided to proceed to an expert decision.

The fee for an expert decision was received on 28 December 2007. On 2 January 2008 Claire Milne was selected to act as expert in the case, having confirmed that she knew of no reason why she could not properly do so; and that she knew of no matters which ought to be drawn to the attention of the parties, which might appear to call into question her independence and/or impartiality. Her date of appointment was 7 January 2008.

4. Outstanding Formal/Procedural Issues (if any)

Apart from a British postcode of valid type, no postal address for the Respondent has been supplied to the expert, and none seems to have been available to Nominet staff (correspondence sent to the Respondent at the postcode was returned as undeliverable because of an incomplete address). Email correspondence to the Respondent however appears to have been delivered. I therefore assume that the Respondent has been made aware of this Complaint, and has chosen not to respond.

5. The Facts

I accept the following account (derived from the Complaint) as factual because of convincing accompanying evidence. All quotations from correspondence reproduce the original wording and spelling.

1. The Complainant is a large and well-known US-based supplier of personal computers and related equipment. Its trade mark DELL has been used since 1987 and was registered in the EU from 1998 onwards.

2. On 6 June 2007, Daniel De Luca ("the Respondent") registered the domain name.
3. On 12 June 2007, the Respondent contacted Dell with the following email message: "Hi I have a domain name you might want to buy the domain name is www.dell-support.co.uk, if you are intrested please feel free to contact me I am reciving around an extra 25,000 hits because of this domain name."
4. On 2 July 2007, the domain name resolved to a web page that advertised "providing cost effective support for all you IT needs" and linking to "Daniel's CV". The name DELL appeared only in repetitions of the URL, at the head and foot of the page.
5. On 3 July 2007, the Complainant's solicitors Field Fisher Waterhouse LLP sent the Respondent (by email) a "cease and desist" letter, requesting transfer of the domain name to Dell. The Respondent replied by two separate emails the same day, in the first saying "As per the above the details have been removed", and in the second, "I can confirm the domain is not in use any more and will not be used for anything eles in the future. Regards, Dan".
6. On 9 July 2007 a further email exchange took place between the parties. The Complainant's solicitors pointed out that the domain name still pointed to a holding page, and was still registered to the Respondent, and requested an immediate transfer. The Respondent replied "I will get this started asap, I am having trouble with this at the moment as am unable to login to my control panel but will ge thtis done asap. Can you provide the details of who i need to trans fer too. Regards, Daniel".
7. On 16 July 2007 the Complainant's solicitors told the Respondent to transfer the domain name to Dell Inc (including its full name and address), and asked for the undertakings requested in the original letter of 3 July by return. This letter was followed up by reminders on 18 July 2007 and 8 August 2007. On 9 August 2007 the Respondent replied "this will be done by the end of next week, Ive had to wait 60 days befor i could transfer it to someone eles. Kind of regards".
8. A Nominet WHOIS query for dell-support.co.uk made on 2 November 2007 shows that the registration record was last amended on 15 August 2007, but remained registered to the Respondent. (Incidentally, this query showed the name servers as parts of dell.com. The expert's query today showed the same registrant, name servers and date of last amendment, but a different entry in the address field – the country "USA" and the Complainant's zip code 78682).
9. On 3 October 2007 the Complainant's solicitors sent a final reminder to the Respondent, but received no reply.

6. The Parties' Contentions

Complainant's Contentions

In relation to the Complainant's Rights in the domain name:

1. The Complainant has Rights to the name DELL in many countries, including the UK, through various registered trade marks. It also has registered and uses the domain name dellsupport.com, as an online portal providing technical support and customer service for Dell customers.
2. Dell Inc is a large and very well-known company, which sells mainly online. In the computer industry, where the mark is best known, the word "support" is generic; so the combination "Dell Support" (as in the domain name) remains very similar to the trade mark DELL.

In relation to Abusive Registration:

3. The Respondent's claim that he was receiving 25,000 extra hits because of the domain name shows that he was obtaining an advantage by using it. This advantage was unfair, because it derived from the well-known Dell name.
4. In his email correspondence, the Respondent has also used other well-known names in the computer industry, in particular an email address daniel.deluca@pccompaq.com (the domain name pccompaq.com is registered to him) and the company name MicrosoftPC Ltd (which does not appear on the Companies House register). This amounts to a pattern of registrations of names in which the Respondent has no apparent rights.
5. The Respondent's use of the domain name caused unfair detriment to the Complainant. Most of the 25,000 hits claimed by the Respondent must have been people looking for Dell's support website who found the Respondent's instead. Visiting it will have delayed these people, or even prevented them from finding Dell's own support website.
6. Dell has a strict policy of not allowing anyone, including resellers, to use its mark in their domain name. As a result, internet customers believe that any domain name incorporating the DELL mark is associated with Dell. The inferior nature of the Respondent's website may therefore have damaged Dell's reputation.
7. The continuing registration of the domain name to the Respondent amounts to a blocking registration, preventing Dell from registering it.
8. The evidence shows that the Respondent registered the domain name expressly in order to benefit from Dell's world-wide reputation.

Respondent's Contentions

There has been no response.

7. Discussion and Findings

The Nominet Dispute Resolution Service Policy ('the Policy') paragraph 2 requires that for a complaint to succeed the Complainant must demonstrate to the Expert, on the balance of probabilities, 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.*

Rights

The Policy paragraph 1 states

Rights include, but are not limited to, rights enforceable under English law. However, a Complainant will be unable to rely on rights in a name or term that is wholly descriptive of the Complainant's business.

The Complainant has demonstrated Rights in the name DELL. I accept that in the context of the computer industry (and indeed more broadly), combining the mark with the word "support" does not dilute the distinctiveness of the name, and it remains similar to Dell. Therefore, the Complainant has the Rights required by the Policy.

Abusive Registration

The Policy paragraph 1 states that an Abusive Registration is a domain name that:

- 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.*

The Complainant has provided evidence that the registration was both made and used in manners which both took unfair advantage of and were unfairly detrimental to the Complainant's Rights. The Respondent has not responded to the Complaint. However, in his correspondence with the Complainant he both provided much of this evidence and accepted the Complainant's case. He even stated his intention to transfer the name to the Complainant, but did not do so.

Everything points very clearly to this being an Abusive Registration.

8. Decision

The Complaint succeeds. I direct a transfer of the name to the Complainant, as requested.

Claire Milne
11 January 2008