

Nominet UK Dispute Resolution Service

DRS Number **5338**

Norfolk Line DV

and

Grosvenor Properties

Decision of Independent Expert

1. Parties:

Complainant: Norfolk Line BV
Address: Kranenburgweg 180
 Scheveningen
Postcode: 2583 ER
Country: Netherlands

Respondent: Grosvenor Properties
Address: 113 - 123 Upper Richmond Road
 London

Postcode:
Country: UK

2. Domain Name:

norfolkline.co.uk

3. Procedural Background:

The Complainant lodged its complaint on 24 December 2007 with hard copies being received the same day. Copies of the complaint were sent to the Respondent by email (to hostmaster@gxn.net and postmaster@norfolkline.co.uk) and by post to 113-123 Upper Richmond Road, London, and by fax to +44 181 957 1100. The email to postmaster@norfolkline.co.uk was returned as undeliverable. No response was received to the complaint from the Respondent. The Complainant was informed by

Nominet that on 17 December 2007 Nominet's Registrant Services Department had issued a notice to the Respondent requiring it to provide accurate contact details by 16 January 2008 otherwise registration of the Domain Name would be suspended and then cancelled 30 days after that if accurate contact details had not by then been supplied. However, the Complainant decided to proceed and paid the fees for an expert decision on 22 January 2008. In view of that, the suspension was not implemented. On 28 January 2008 I was selected as the expert.

4. Outstanding Formal/Procedural Issues (if any):

None

5. The Facts:

The Complainant is a large European shipping company, having been established in 1961 under the name "Norfolk Lijn NV". Since 1973 it has traded as "Norfolk Line". In 1998 the Complainant began trading also as "Norfolkline". The Complainant now operates 18 vessels and trades in 13 countries across Europe employing more than 2000 employees in 39 different locations providing both passenger and freight services.

The Domain Name was registered by the Respondent on 14 December 1999. In 2005 the Complainant says it became aware of a website to which the Domain Name resolved which, it says, consisted of affiliate links to shipping websites. A letter of complaint was sent to the Respondent on 21 December 2005, but no response was received. However, at some time after that, the website associated to the Domain Name was taken down.

6. The Parties' Contentions:

Complainant:

In summary the Complainant says that:

- It is a long established major shipping company in Europe having started in 1961 trading under the name "Norfolk Lijn NV". In 1973 it changed its trading name to "Norfolk Line" and then to "Norfolkline" in 1998. However, even after the change in 1998, it still continued to use the name "Norfolk Line" on the sides of its ships.
- It has a substantial business throughout Europe. For example in 2006, more than 2 million passengers used the Complainant's Norfolk Line ferry service across the English channel and the Irish sea.
- A Google search for the words "Norfolk Line" shows that each of the ten entries on page 1 of the results relate to the Complainant's business.

- The Complainant has registered European Community trade marks for NORFOLKLINE and NORFOLKLINE MAERSK dating from 15 June 2004.
- It also has common law rights by virtue of its extensive trading and marketing activities under the name "Norfolk Line" since at least 1973 and the names "Norfolk Line" and "Norfolkline" are recognised by the public as being distinctive of the Complainant's business.
- The Respondent has no association with the Complainant and has not been authorised or licensed to use its trade marks.
- The Respondent had the Complainant and its business in mind when registering the Domain Name. The Complainant relies upon the lack of response from the Respondent to the Complainant's letter and says that it was inconceivable the Respondent registered the Domain Name independently of the Complainant's distinctive trade mark.
- By way of further support the Complainant points to two other domain names registered by the Respondent on the same day (danzas.co.uk and cobelfret.co.uk). Both "Danzas" and "Cobelfret" are the names and trade marks of large transport/freight companies similar to the Complainant. The Respondent has engaged in a pattern of similar behaviour in relation to the danzas.co.uk and cobelfret.co.uk domain names and the registration of the Domain Name is part of this pattern.
- The Respondent registered the Domain Name for the purpose of unfairly disrupting the Complainant's business by attracting and diverting its business to affiliate websites competing with the Complainant.
- It is inconceivable that the Respondent intended to operate a genuine business or had any other genuine reason to use the Domain Name which comprises the Complainant's well known trade mark, particularly as the name of the Respondent indicates that it is a property company.
- The Domain Name previously resolved to a website for affiliate shipping links which was a scheme adopted by the Respondent to confuse, attract and profit from internet users who were searching for the Complainant's business on the internet.
- At some point after receiving the Complainant's cease and desist letter in December 2005, the Respondent took down the website. The Complainant says that this amounts to an admission by the Respondent that its previous use was illicit.
- Such use of the Domain Name by the Respondent was intended to confuse the public into believing that it was connected with the Complainant and the intention to confuse is a factor evidencing an Abusive Registration, whether or not there is evidence of actual confusion.

- If the Respondent did have a legitimate purpose, it would have responded to the cease and desist letter and said so. On the contrary, subsequent to the cease and desist letter, the Respondent removed its address details from "whois" which the Complainant suggests is evidence of bad faith.

Respondent:

The Respondent has not responded to the complaint.

7. Discussion and Findings:

General

In order to succeed the Complainant must prove, on the balance of probabilities, two matters, i.e. that:

1. The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
2. The Domain Name, in the hands of the Respondent, is an Abusive Registration.

These terms are defined in the Nominet UK DRS Policy as follows:

- **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.
- **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's Rights

The Complainant has provided details of two trade mark registrations incorporating the name "Norfolkline". The Complainant has also provided details from its website giving the history of its business, together with articles from independent publications referring to the Complainant and its business by the "Norfolkline" and "Norfolk Line" names.

The Complainant clearly has a very extensive business trading under the names "Norfolkline" and "Norfolk Line" in relation to its shipping, freight, and ferry services. Ignoring the .co.uk suffix, the Domain Name is identical to the Complainant's trade mark and trading name.

I find that the Complainant does have Rights in the name "Norfolkline" and "Norfolk Line", each variant being a name or mark which is identical or similar to the Domain Name.

Abusive Registration

From the matters relied on by the Complainant in its submissions the following parts of paragraph 3 of the Policy (being factors which may be evidence that the Domain Name is an Abusive Registration) are potentially relevant:

Paragraph 3 a. i. B "Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily as a blocking registration against a name or mark in which the Complainant has Rights;"

Paragraph 3 a. i. C "Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant."

Paragraph 3 a. 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."

Paragraph 3 a. iii "The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern."

The name "Norfolkline", with or without a gap between the two words, is not descriptive of the Complainant's business. It is a distinctive name which has, through extensive use by the Complainant, clearly acquired substantial reputation and goodwill, particularly in relation to anything to do with ferries, freight or shipping in general.

It seems inconceivable that the Respondent cannot have had the Complainant and its business in mind when registering the Domain Name, particularly as on the very same day the Respondent registered two other domain names incorporating the names or trade marks or other well known shipping/freight companies. The fact that the Respondent has registered the Domain Name, being a name identical to the Complainant's name, inevitably acts as a blocking registration.

The Complainant exhibits the results of a Google search against "www.norfolkline.co.uk". The results of the search state that there were 23 results and the first page, being results 1 to 10, have been exhibited. Seven of those entries have been highlighted in the exhibit, each one being a third party website relating to holidays, ferry bookings and travel, etc, which specifically refer to booking ferry trips via "www.norfolkline.co.uk". For example, one of the results is an extract from the website www.expats.com taken from their "Q&A" page. The extract on the Google

search states *"Norfolklime run ferries across the channel and the Irish sea - They have some very good offers at the moment www.norfolklime.co.uk..."*

The Complainant says in or about December 2005 it became aware that the Respondent was using the Domain Name to resolve to a website consisting of affiliate links to various shipping websites. The Complainant does not have a printout of that website to produce in evidence, but its claim, supported by a statement of truth, that such a website existed has not been challenged by the Respondent. The Complainant's cease and desist letter written on 21 December 2005 does provide some support for that claim. Whilst it does not make specific reference to such a website it does refer to the Respondent's "use of the "norfolklime.co.uk" domain name" and demands that the Respondent immediately ceases and desist any use of it. With that supporting evidence, I find that, on the balance of probabilities, the Respondent was, as claimed by the Complainant, using the Domain Name to resolve to a website consisting of affiliate links to various shipping websites.

The examples shown in the Google search exhibited by the Complainant may simply be the result of those third parties intending to refer to the Complainant's own website at www.norfolklime.com and mistyping or incorrectly remembering the true website address, rather than having resulted from the previous use made by the Respondent of the Domain Name. However, it quite clearly indicates the obvious scope for confusion should the Respondent choose again to use the Domain Name to resolve to a website, in particular, the scope for people or businesses being confused into believing that the Domain Name is registered to, operated or authorised by or otherwise connected with the Complainant. Whilst at present the Respondent is not using the Domain Name to resolve to any website, it has done so previously and it seems clear that if it does so again, it will be likely to lead to substantial confusion of the sort envisaged by paragraph 3.a.ii of the policy.

The Domain Name was registered on 14 December 1999 by the Respondent. On the very same day, the Respondent also registered danzas.co.uk and cobelfret.co.uk. The Complainant incorrectly refers to the latter domain name as cobolfret.co.uk (incorrectly spelt with an "o" rather than an "e") but it has exhibited details of the registration showing the correct spelling. The Complainant has also provided details of the shipping business trading under the COBELFRET name and trade mark which the documents show was founded in 1928 and had a turnover in 2006 of 966 million Euros. It has also exhibited documents evidencing the freight business operated under the DANZAS name and trade mark, which according to the documents exhibited was founded in 1815 and is now part of the well known DHL freight and mail delivery business. On the evidence before me I find that both "Danzas" and "Cobelfret" are, at least in the transport/shipping/freight business, well known names and trade marks in which the Respondent has no apparent rights.

On balance, I believe that a series of three domain names all registered on the same day and each corresponding to the name of a well known shipping/freight company is sufficient to amount to a pattern of registrations. The Respondent does not appear to have any rights in any of the three names and the Domain Name is part of that pattern.

8. Decision:

For the reasons outlined above I find that the Complainant has proved, on the balance of probabilities, that it has Rights in respect of the names "Norfolkline" and "Norfolk Line", each being 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.

In the circumstances I order that the Domain Name be transferred to the Complainant.

Chris Tulley
13 February 2008