

**DISPUTE RESOLUTION SERVICE**

**DRS D00007027**

**Decision of Independent Expert**

Dance Experiences Limited

and

Josie Slaymaker

**1. The Parties:**

Complainant: Dance Experiences Limited  
Address: 78 Quarry Lane  
Northfield  
Birmingham  
West Midlands  
Postcode: B31 2PY  
Country: United Kingdom

Respondent: Josie Slaymaker  
Address: t/a Impact Dance Group  
192 Gravelly Hill  
Erdington  
Birmingham  
Postcode: B23 7PE  
Country: United Kingdom

**2. The Domain Name:**

danceexperiences.co.uk

### 3. Procedural History:

1. A copy of the Complaint was received in full by Nominet on 19<sup>th</sup> March 2009. On the same day, Nominet validated the Complaint and notified the Respondent.
  
2. No formal Response was filed by the Respondent in accordance with the Procedure for the Conduct of Proceedings under the Nominet Dispute Resolution Service (“the Procedure”). However, following the Complaint there were a number of emails to Nominet. These do not fit into the conventional pattern of the Respondent filing a Response and the Complainant filing a Reply. The emails were however as follows;
  - Email from the Respondent dated 20<sup>th</sup> March 2009;
  - Reply from the Complainant dated 23<sup>rd</sup> March 2009;
  - Email from the Respondent (headed “Reply”) and dated 24<sup>th</sup> March 2009;
  - Email from the Complainant to Nominet dated 5<sup>th</sup> October 2009.

There has also been some discussion between the parties and Nominet about these various documents and there seems to be no serious objection from either side to me taking all of these documents into account when deciding this matter. I therefore intend to treat the various emails set out above (together with the Complaint) as containing the parties’ submissions in this case. I should however add that this should not be taken as a precedent or encouragement to other parties to file non-standard submissions as has happened here. The Procedure sets out very clearly the process that is to be followed with the Respondent filing a Response to the Complaint and the Complainant then filing a Reply. I would expect this process to be followed in all cases and non-standard submissions are only to be used in exceptional circumstances.

3. There are two further procedural issues which I need to mention here. Firstly, in the Complaint the remedy which the Complainant sought was for the Domain Name to be “cancelled”. Subsequently following discussions with Nominet the Complainant changed its mind and at the same time as paying the fee for this expert decision to Nominet indicated that the remedy it would like was in fact a “transfer” of the Domain Name. I shall deal with the remedy that the Complainant is entitled to as part of my decision.
  
4. The second procedural issue which I must address is the fact that on 8<sup>th</sup> October 2009 Nominet received a request from the Complainant to submit a non-standard statement under paragraph 13b of the Procedure. The Complainant’s explanatory paragraph reads as follows:  
  
*“I would like to bring the following new evidence in support of my case as I feel it clearly demonstrates how the use of the abusive Domain Name is directly affecting my company Dance Experiences Ltd. I feel it is integral that this submission be viewed in its entirety by the adjudicator as it shows how the abusive registration is having a direct effect on our business activities and confusing clients and suppliers. I feel the need is exceptional as the Respondent is claiming our services have been directly copied from her within her responses which, although irrelevant to the domain dispute, does smear my own and my company’s professional integrity.”*
  
5. I have decided not to look at the “new evidence” submitted by the Complainant. I have decided this for the following reasons. Firstly, having considered the various submissions made by both parties I do consider that there is already more than enough material here for me to reach a decision and indeed it is difficult to see what the Complainant’s new evidence will add to this. Secondly, I am conscious that this is a dispute which has already generated an unusually large number of emails and which has already gone well beyond the usual Complaint – Response – Reply procedure which is set out in the

Procedure. I am also conscious that if I allow in the Complainant's new evidence then I would almost certainly be obliged to allow the Respondent to comment on it and I have formed the view that a line needs to be drawn somewhere. The purpose of Nominet's DRS is to provide a quick dispute resolution process for the parties. This has already been stretched to its limits and I therefore am not inclined to allow the position to get worse by allowing in any further evidence from the Complainant and/or any comments on that evidence that the Respondent may offer.

6. On 5<sup>th</sup> October 2009, the Complainant paid the fee to obtain the expert decision pursuant to paragraph 21 of the procedure for the conduct of proceedings under the Nominet Dispute Resolution Service ("the Procedure")
7. On 5<sup>th</sup> October 2009, Nick Phillips, the undersigned ("the Expert"), confirmed to Nominet that he knew no reason why he could not properly accept the invitation to act as the Expert in this case and further confirmed that he knew of no matters which ought to be drawn to the attention of the parties, which might appear to question his independence and/or impartiality.

#### **4. Factual Background**

1. The Complainant is Dance Experiences Limited, a company incorporated under the laws of England and Wales under company registration number 6483473.
2. The Respondent is Josey Slaymaker who trades as Impact Dance Group.
3. The Complainant is the proprietor of the domain name [dancexperiences.co.uk](http://dancexperiences.co.uk) and it has a website linked to this domain name.

6. The Complainant's business is, inter alia, a dance company and specialist workshop provider, offering a range of dance experience masterclasses, hen party activities and choreography. These include a choreography service for a wedding "first dance". The Complainant has promoted this service at national and local events, and has provided evidence of this in relation to the National Wedding Show at Birmingham NEC Arena.
7. The Complainant was incorporated on 24 January 2008.
8. The Domain Name was registered by the Respondent on 31<sup>st</sup> October 2008.
9. The Respondent trades as Impact Dance Group and the Respondent's business is also, inter alia, a dance company, providing choreography and the use of dancers at events. These include a choreography service for a wedding "first dance" and the provision of dancers to dance at weddings.
10. In addition to the Domain Name the Respondent also has a number of other different domain names including impactdancers.co.uk and impactshowgirls.co.uk.
11. The Respondent's business has been going for considerably longer than the Complainant's and indeed a director of the Complainant and the author of the Complaint, a Hannah Williams danced for the Respondent for some time prior to the Complainant becoming established.

## **5. Parties' Contentions**

### **The Complainant's Submissions:**

#### **Complaint**

The Complaint reads as follows;

“What Rights you are asserting?

*Dance Experiences is my legally registered company name incorporated at company's house January 24th 2008 company no. 6483473 under companies' act 1985 as a private and limited company. The domain name in dispute uses my companies name in its entirety, with the exact spelling as registered by myself with companies' house. The main purpose of registering our company name was to protect it and inextricable link the name Dance experiences with me as a director and our company services.*

*The name Dance Experiences has been my company and web site trading name since march 2007 with incorporation following in January 2008 and is used implicitly by my company in relation to all commercial advertising, on all business articles and as our brand name promoting all our products and services at national events (such as The National Wedding show NEC Birmingham). Our company name and all articles featured on my web pages are covered by standard copyright laws. My domain name of [www.dancexperiences.co.uk](http://www.dancexperiences.co.uk) has been in my possession since March 2007 hosted by Net Benefit [www.netbenefit.com](http://www.netbenefit.com) which is my company's one and only web site.*

*I hold a business banking account for the company with Abbey plc, named under dance experiences and all activities and services come under the Dance Experiences company name for all Tax, governmental and industry purposes. Please view both domains below; the offending domain name is copying all aspects of my companies name and the linking between the two words of dance and experiences.*

*[www.dancexperiences.co.uk](http://www.dancexperiences.co.uk) (my domain)  
[www.danceexperiences.co.uk](http://www.danceexperiences.co.uk) (competitor's domain)*

Why is the domain name an Abusive Registration?

*The offending domain name has been registered by a known competitor who operates in the same geographic location of Birmingham West Midlands and offers the same services and products as my company. The name dance experiences have no correlation to or commercial advantage for this company who operate under the trading name “Impact Dance Group”. The domain name has been registered in the last month and copies as closely as possible my company's web address as well as linking to pages offering similar services and products. Please see below the extreme similarity of the two domains:*

*[www.dancexperiences.co.uk](http://www.dancexperiences.co.uk) (my domain)  
[www.danceexperiences.co.uk](http://www.danceexperiences.co.uk) (competitor's domain)*

*The competitor could have chosen any domain under which to launch their wedding services but instead has chosen to use my companies registered name in an abusive attempt to link their services with my hard earned reputation and company brand. The domain also serves the purpose of intercepting and*

*confusing clients and other members of our industry with a detrimental affect on my companies name and revenue.*

*The past association between me and the company owner of Impact dance group enforces my case of abusive use of a domain. I acknowledge that as a self employed, freelance dance artist I undertook performance work for Impact dance group from the age of eighteen. I was at no point employed by Impact Dance group and continued to work for numerous other dance agencies and companies as a self employed individual and have always been a choreographer and dance artist in my own right. I amicably (on my part) left Impact dance group to pursue my own business aspirations informing Mrs Josie Slaymaker of my intentions.*

*I have been registered as Self employed since 2006, please see below one dance company with whom I have worked as a freelance artist since 2006 and who will testify to this:*

*Education Group Ltd, the old stables, Northamptonshire Tel: 08702412638 ref: Tina Jackson*

*Since starting my own company Mrs Slaymaker has placed advertisements on all sites I have utilised and recently made a move into the Wedding market under the offending domain name. She has several other web sites linked to her company in an attempt to monopolise the market within the Birmingham area, please see below, through which she can advertise her services she has no need or right to the offending domain name which has been purchased with the sole purpose of infringing on my companies business practices.*

*<http://www.impactdancers.co.uk/>  
<http://www.impactshowgirls.co.uk/>  
<http://danceexperiences.co.uk/> (abusive domian)”*

### **Complainant's email of 23<sup>rd</sup> March 2009**

In its email of 23<sup>rd</sup> March 2009 the Complainant makes the following submissions;

“How do you reply to the response?

*Dance Experiences is not contesting the fact that the offending domain has been purchased by Mrs Slaymaker, it is the reasons behind the domains purchase that we are highlighting as abusive. Mrs Slaymaker acknowledges that she is aware of Dance Experiences as a company and trading name “I was aware, the complainant was Dance Experiences Ltd” but does not explain why she has chosen to purchase a domain reflecting her known competitors registered business name, or why she needed a domain name featuring the words “Dance Experiences”?*

*Dance Experiences is indeed a limited company but it is up to the discretion of the director of any limited company, whether to add “Ltd” after the company name in any public advertising; this also does not change the inherent fact that Dance Experiences domain name is dancexperiences.co.uk and the one*

*purchased by the competitor is differing only by one letter “e” and includes the plural “s” danceexperiences.co.uk (which is our registered company name in all aspects).*

*She presents the argument that “There are quite a few companies on the web who use the term “Dance experiences” we would like to highlight that other dance companies may use the term dance experience (the singular not plural) to describe a dance service, class or dance workshop but no other competitor uses the term or differing versions of the phrase “Dance Experiences” as a domain name within the UK and legally cannot trade under that name. No sensible competitor would use such a domain as they would want their company to stand apart from any other competitor within the market place, not confuse potential customers.*

*She also states that “there are groups called Impact Dance and Impact that are nothing whatsoever to do with me.” Suggesting it is something that happens to all companies and has to be tolerated. This is undoubtedly so in some situations, however Dance Experiences has a history with the individual as outlined in our previous statement and both companies trade within the same geographical location, offering the same services intensifying the situation.*

*Dance Experiences is fully aware that there are many dance companies offering similar services both on the internet and within the industry and openly accepts healthy competition, however the “other dance groups” referenced are in totally different geographical locations from her company “Impact dance group “and she has never met or had any dealings with the owners of the said companies.*

*What Dance Experiences object to is the abusive use of the domain danceexperiences.co.uk by an individual who is fully aware of the company, its trading name, and its services and has known the company director personally.*

*There is no commercial benefit to using the offending domain name as it has no correlation to the companies trading name “Impact Dance Group” and the lady in question already owns several other websites under which she can advertise her company’s services and lists them on her reply. The services advertised under the offending domain are of the same nature as those offered by Dance Experiences Ltd, please note evidence attached, including wedding first dance and choreographic dance services which is not an issue other than they appear under the “copy cat” domain. The linked website to the offending domain heavily advertises “Impact Dance Group” referencing the name and even linking clients to the main web pages of [www.impactdancers.co.uk](http://www.impactdancers.co.uk), why then does all this appear under the domain [www.danceexperiences.co.uk](http://www.danceexperiences.co.uk) what is the commercial relevance?*

*I conclude that the use of the domain by a known competitor who has personal history with the director of Dance Experiences is an abusive use of a domain name. Not only do both companies share a geographical location but offer the same services in a competitive market place, the web page caring the offending domain name is one of three web sites used by Impact Dance Group to*



*advertise her services and ultimately directs clients to her main web pages [www.impactdancers.co.uk](http://www.impactdancers.co.uk). She is then using the offending domain [www.danceexperiences.co.uk](http://www.danceexperiences.co.uk) to draw on the Google listing and internet presence, not to mention, reputation of her competitor Dance Experiences Ltd and directing clients to her web pages whilst causing a detrimental effect to Dance Experiences Ltd and confusing both its past and future clients.*

Are there any web pages that support this dispute?

- [www.dancerspro.com](http://www.dancerspro.com)
- [www.danceexperiences.co.uk](http://www.danceexperiences.co.uk)

### **Email of 5<sup>th</sup> October 2009**

The Complainant's submissions in its email of 5<sup>th</sup> October 2009 can be summarised as follows;

- Ms Williams had not worked for the Respondent for six years;
- Ms Williams left the Respondent in September 2008 and the last work that she did for the Respondent was in July 2008;
- The Respondent was well aware of the Complainant's business months prior to this.

### **The Respondent's Submissions**

#### **Email of 20<sup>th</sup> March 2009**

In her email of 20<sup>th</sup> March 2009 the Respondent makes the following submissions;

- The Domain Name was available to buy and was bought legitimately by the Respondent;
- The name of the Complainant is not "Dance Experiences" but "Dance Experiences Limited";
- There are quite a few companies on the web who use the term "Dance Experiences". Similarly, there are a number of sites which use the Respondent's trading names which are Impact Dancers and Impact Showgirls.

#### **Email of 24<sup>th</sup> March 2009**

In her email of 24<sup>th</sup> March 2009 the Respondent makes the following submissions;

- The Respondent's website at the Domain Name was launched in October 2008 and not within the last month as the Complainant contends;
- Ms Williams of the Complainant was regularly employed on a freelance basis by the Respondent for six years;
- Ms Williams of the Complainant did inform the Respondent in March 2008 about her venture although the Respondent believed that it provided dance tuition for brides and grooms, stag and hen parties;
- The Respondent told Miss Williams of the Complainant there was no reason why Ms Williams should not continue to work with the Respondent notwithstanding Ms Williams' new business provided that Ms Williams did not use the Respondent's ideas and provide the same area of entertainment;
- The Respondent has always provided dancers for weddings although the services have been extended and are described as, "dance with impact professional dancers at your wedding";
- The Respondent chose the Domain Name because the expressions "dance experiences" is a term that clients use when searching the web;
- The wedding service provided by the Respondent is not the same as the one provided by the Complainant;
- The Complainant is now providing most of the things that the Respondent does;
- The Respondent has not received any enquiries for hen or stag parties but only in relation to dancing with professional dancers and dancers for weddings/civil partnerships;
- The Respondent has been in the entertainment business since before the Complainant was born and does not feel the need to compete with the Complainant in any way;
- The Respondent's actions have been legitimately aimed at moving her sights to the top of the search engines using free link sites.

The main points of the parties' submissions are summarised above. I confirm that in addition I have read and considered the other points made by the respective parties in their various submissions.

## **6. Discussions and Findings**

## Rights

### **General**

1. Under paragraph 2 of the Dispute Resolution Service Policy (“the Policy”) the Complainant is required to show, on the balance of probabilities, that;
  - (1) *it has rights in respect of a name or mark which is identical or similar to the Domain Names; and*
  - (2) *the Domain Names in the hands of the Respondent are an Abusive Registration.*

### **Complainant’s Rights**

2. The first question I must answer is whether the Complainant has proved on the balance of probabilities that it owns Rights in a name or mark that is identical or similar to the Domain Name.
3. The Policy defines rights as including but not limited to “...rights enforceable under English laws or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.” This has always been treated in decisions under Nominet DRS as a test with a low threshold to overcome and I think that that must be the correct approach.
4. The Complainant is a limited company named Dance Experiences Limited and was incorporated in January 2008. The Complainant submits that it has been trading under the name “Dance Experiences” from March 2007 and indeed the domain name “dancexperiences.co.uk” was registered by the Complainant on 9<sup>th</sup> May 2007.
5. The Complainant has provided an extract from a bank statement and a booking at the National Wedding Show in October 2009 to evidence its use of the name Dance Experiences. In addition, I have

looked briefly at the Complainant's website. The "news" section of that website provides several examples of the kind of engagements that the Complainant has fulfilled under the name Dance Experiences including the press coverage which it has obtained.

6. It is clear from all of this that the Complainant is in a reasonably serious way of business and that it trades under the name Dance Experiences. The Respondent argues that the name "Dance Experiences" is a descriptive one which is used widely by other companies in this field. The Respondent does not however provide any evidence of the use of this term by other customers whether descriptively or otherwise.
  
7. Whilst I agree that the words "dance experiences" have a certain descriptive character they are in my view not so descriptive that the Complainant cannot have Rights in them and they are by no means the only or even the most obvious words which could have been used to describe the Complainant's business. Alternatively, and given the Complainant's trade in the name Dance Experiences the name has acquired a secondary meaning at least in the Complainant's reasonably narrow field of use and in its fairly narrow geographic area, i.e. only the West Midlands or Birmingham area. In any event, I am satisfied that the Complainant does, on the balance of probabilities, have Rights in the name Dance Experiences.
  
8. Having found that the Complainant has Rights in the name Dance Experiences I must now decide whether the name or mark in which the Complainant has Rights is identical or similar to the Domain Name. On this issue, ignoring as I must do the first and second level suffixes, the Domain Name differs to the name or mark in which the Complainant has Rights only by the omission of a space and is therefore clearly either identical or similar to the name or mark in which the Complainant has Rights. Therefore I find that, on the

balance of probabilities, the Domain Name is identical or similar to the name or mark in which the Complainant has Rights.

### **Abusive Registration**

9. Having concluded that the Complainant has Rights in a name or mark which is identical or similar to the Domain Name, I must consider whether the Domain Name constitutes an Abusive Registration. Abusive Registration is defined in the Policy as

*“... a domain name which either*

*(a) was registered or otherwise acquired in the 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*

*(b) has been used in a manner which took unfair advantage of, was unfairly detrimental to the Complainant’s Rights.”*

This definition allows me to consider whether the Domain Name constitutes an Abusive Registration at any time and not, for example, just the time of registration/acquisition.

10. Paragraph 3 of the Policy provides a non-exhaustive list of the factors which may evidence that a domain name is an Abusive Registration. It is worthwhile setting out paragraph 3 of the Policy in full:

*“3. Evidence of Abusive Registration*

*a. A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows:*

*i. Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:*

*A for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly associated with acquiring or using the Domain Name;*

*B as a blocking registration against a name or mark in which the Complainant has Rights; or*

- C        *for the purpose of unfairly disrupting the business of the Complainant;*
  - ii.       *Circumstances indicating that the Respondent is using the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;*
  - 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;*
  - iv.       *It is independently verified that the Respondent has given false contact details to us; or*
  - v.        *The domain name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant:*
    - A        *has been using the domain name registration exclusively; and*
    - B        *paid for the registration and / or renewal of the domain name registration.*
- b.       *Failure on the Respondent's part to use the Domain Name for the purposes of e-mail or a website is not in itself evidence that the Domain Name is an Abusive Registration.*
- c.       *There shall be a presumption of Abusive Registration if the complainant proves that Respondent has been found to have made an Abusive Registration in three (3) or more Dispute Resolution Service cases in the two (2) years before the complaint was filed. This presumption can be rebutted."*

11. Paragraph 3a is non-exhaustive which may be evidence that the Domain Names are an Abusive Registration. It is however also relevant to consider in broader terms whether the Domain Names constitute Abusive Registrations within the definition set out in the Policy.

12. The Complainant does not identify any particular provisions of paragraph 3 that it relies on to indicate that the Respondent's registration or use of the Domain Name is an Abusive Registration. A number may however be relevant with the most likely candidate perhaps being paragraph 3a(ii). What I therefore intend to do is to consider the question of Abusive Registration in the round before

turning to look at any individual provisions in paragraph 3 of the Policy.

13. It is well established that in order for the Complainant to establish Abusive Registration it must show that the Respondent had knowledge of its Rights either at the time of registration or at the time of the conduct complained of. The one exception to this is that a Complaint based on giving false contact details under paragraph 3 (a) (iv) which is not in issue here. This, and other principles are set out in the Appeal Panel decision in *Verbatim Limited –v- Michael Toth DRS04331*:

*“In this Panel’s view the following should be the approach to the issues of knowledge and intent in relation to the factors listed under paragraph 3 of the Policy:*

- (1) *First, some knowledge of the Complainant and/or its brand/rights is a pre-requisite for a successful complaint under all heads of the DRS Policy other than paragraph 3(a)(iv) (giving false contact details). The DNS is a first-come-first-served system. The Panel cannot at present conceive of any circumstances under which a domain name registrant, wholly unaware of the Complainant and its Rights, can be said to be taking unfair advantage of or causing unfair detriment to the Complainant’s Rights.*
- (2) *Secondly, ‘knowledge’ and ‘intention’ are pre-requisites for a successful complaint under all heads of paragraph 3(a)(i) of the Policy. The wording of that paragraph expressly calls for the relevant intent, which cannot exist without the relevant knowledge.*
- (3) *Thirdly, ‘intention’ is not a necessary ingredient for a complaint under paragraph 3(a)(ii) of the DRS Policy. The test is more objective than that. However, some knowledge of the Complainant or its name/brand is a pre-requisite.*
- (4) *Fourthly, while some knowledge of the Complainant or its name/brand is a pre-requisite for a successful complaint under the DRS Policy (save for a complaint under paragraph 3(a)(iv)), knowledge is not of itself conclusive in favour of the Complainant. The Expert/Appeal Panel will still need to be satisfied that the registration/use takes unfair advantage of or is causing unfair detriment to the Complainant’s Rights.*

(5) *Fifthly, when a Respondent denies all knowledge of the Complainant and/or its Rights at the relevant time, that denial is not necessarily the end of the matter. The credibility of that denial will be scrutinised carefully in order to discern whether, on the balance of probabilities, the relevant degree of knowledge or awareness was present.*

8.14 *Accordingly, in the view of this Panel, for this complaint to succeed, the Complainant must satisfy the Panel, as an opener, that the Respondent was aware of the existence of the Complainant or its brand at the date of registration of the Domain Name or at commencement of an objectionable use of the Domain Name.”*

14. In this case there is no dispute that the Respondent knew about the Complainant. It is common ground that the director (and I suspect the founder) of the Complainant, a Ms Williams, worked for the Respondent for some time both before and after the Complainant was established. Indeed, the Respondent accepts that she knew about the Complainant’s business even while Ms Williams was working for the Respondent.
15. Given the past connection between the Complainant and the Respondent and the fact that the Complainant’s business and the Respondent’s business are geographically very close and are also broadly in the same field of activity it seems to me to be an irresistible inference that the Respondent’s registration of the Domain Name and her subsequent use of the Domain Name took unfair advantage of or was unfairly detrimental to the Complainant’s Rights.
16. Put another way, by registering the Domain Name and by setting up a website at the Domain Name there must have been a significant chance that people looking for the Complainant’s business would instead find the Respondent’s business and that either the Respondent would benefit or gain an advantage as a result or that the Complainant would suffer harm as a result. Given the fact that the Respondent was clearly aware of the Complainant and that the



Respondent's registration and use of the Domain Name was done with full knowledge of the Complainant it is difficult to see how this advantage and/or detriment could have been anything other than unfair.

17. This is not of course the end of the story. Having made a prima facie finding of Abusive Registration it is now open to the Respondent to rebut this finding by, for example, establishing any of the non-exhaustive factors under paragraph 4 of the Policy.

18. Paragraph 4 provides a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration and I have set out below the relevant parts of clause 4a of the Policy

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

*(a) 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;*

*(b) been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;*

*(c) made legitimate non-commercial or fair use of the Domain Name; or*

*(ii) the Domain Name is generic or descriptive and the Respondent is making fair use of it.*

19. Given that the Complainant has, with the Respondent's full knowledge, been trading under the name Dance Experiences for a considerable period of time prior to the Respondent registering the Domain Name I think that the whole of paragraph 4(a)(i) can immediately be discounted. Indeed, the thrust of what the

Respondent says is that she registered the Domain Name because it was a name that customers regularly used to search for the kind of dance services which the Respondent (and indeed the Complainant) offers. What this really amounts to is an assertion that because of the generic or descriptive nature of the Domain Name the Respondent is making fair use of it.

20. As I have already said earlier in this decision the Complainant's name clearly does have a slightly descriptive nature and if the Respondent had never heard of the Complainant or if the Respondent was in a different part of the country to the Complainant then I would be more minded to have sympathy for the Respondent. However, in my view, it stretches credibility for the Respondent to say that it decided to register the Domain Name purely because it was a nice descriptive term which customers often use in search engines when one of the Respondent's competitors, run by a person who used to work for the Respondent, has been trading very close by to the Respondent under the self same name.
21. I therefore find, that on the balance of probabilities, that the Respondent has failed to rebut the finding that her use/registration of the Domain Name is an Abusive Registration.

### **Relief**

22. Having decided, on the balance of probabilities, that the Domain Name is in the hands of the Respondent and Abusive Registration there is one further matter for me to address. That is the matter of what kind of relief the Complainant should be entitled to. As I set out earlier in this decision, in its Complaint the Complainant asked for the Domain Name to be "cancelled". Subsequently, at the same time as it paid its money for the decision the Complainant changed its mind and decided that the Domain Name should be "transferred" to the Complainant rather than "cancelled".

23. I am very conscious that the Respondent has not had an opportunity to comment or make representations in relation to this late change by the Complainant and also that the Respondent may very well argue that it may be prejudiced far more if the Domain Name is transferred to the Complainant than if it was simply cancelled. However, I do think that this possible prejudice to the Respondent is outweighed by the possible prejudice to the Complainant if I simply suspend the Domain Name as it would then be available for re-registration on a first come first served basis and there would be no reason why the Respondent should not re-register it. This situation would be ludicrous and would defeat the whole purpose of Nominet's DRS. Added to this, by far the most usual remedy in these cases is for the domain name to be transferred and therefore I see no reason to deviate from this normal remedy and to transfer the Domain Name to the Complainant.

## **7. Decision**

For the reasons set out above I find, on the balance of probabilities, that the Complainant has Rights in 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. I therefore direct that the Domain Name should be transferred to the Complainant.

**Signed: Nick Phillips**

**Dated: 2 November 2009**