

DISPUTE RESOLUTION SERVICE

D00009476

Decision of Independent Expert

Amorc Services Ltd

and

Mr Brian Woodrow

1. The Parties

Complainant: Amorc Services Ltd
Greenwood Gate
Blackhill
Crowborough
East Sussex
TN6 1XE
United Kingdom

Respondent: Mr Brian Woodrow
88, Lockesley Drive
Orpington
London
Kent
BR5 2AF
United Kingdom

2. The Domain Name

<amorc.co.uk>

3. Procedural History

The Complaint in this matter was received on 18 January 2011 and validated and sent to the Respondent the following day. The Response was received on 20 January 2011 and a Reply on 24 January 2011. The Complainant made a non-standard submission on 27 January 2011. Mediation having failed, the Complainant paid the fee for a Full Expert Decision on 31 January 2011. The matter was referred to me for such a Decision on 3 February 2011.

The Complainant states that it submitted a non-standard submission because the Respondent removed the content from the website linked to the Domain Name. The submission is said to enclose screen-shots of that content. I do not consider it necessary to review that material and have not therefore taken account of the non-standard submission.

4. Factual Background

The Respondent registered the Domain Name on 30 July 2010.

5. Parties' Contentions

Complaint

The Complainant makes the following contentions:

1. The name AMORC denotes the 'Ancien et Mystique Ordre de la Rose-Croix'.
2. The Complainant is wholly-owned by the English Grand Lodge for Europe, the Middle East and Africa of AMORC ("EGL") and that that organisation is in turn wholly-owned by the Supreme Grand Lodge of AMORC ("SGL"), being a Californian not-for-profit corporation.
3. SGL is the proprietor of the following registered trade marks:
 - (1) UK registered trade mark 700587 for AMORC in various classes.
 - (2) EU registered trade mark 659673 for A.M.O.R.C. in various classes (this is in fact an International trade mark registered under the Madrid system).
4. The Complainant is authorised and mandated to protect SGL's intellectual property rights in the UK. The Complainant exhibits a 'mandate' dated 1 December 2010 to this effect.
5. The Complainant is the owner of the domain name <amorc.org.uk> and owned the Domain Name itself until the expiry of its registration in or about July 2010.
6. The Complainant makes numerous allegations concerning the Respondent. It is sufficient to say that there is a long-standing history of acrimony between the parties including extensive litigation. The Complainant exhibits County Court Orders dated April 2008 and September 2008 striking out claims brought by the Respondent and an Extended Civil Restraint Order preventing the Respondent from issuing further County Court claims without prior permission.
7. The Respondent registered the Domain Name in July 2010 after the Complainant forgot to renew it.

8. The Respondent has used the Domain Name to link to a website which exhibits untrue and defamatory material concerning the Complainant and in particular the prior litigation. This material includes documents that have been falsified. The Complainant has no way of answering these allegations which have caused immense harm to it.
9. The Respondent chose the Domain Name deliberately to cause confusion.
10. The Complainant seeks a transfer of the Domain Name.

Response

The Respondent makes no submissions concerning the Complainant's rights in the name AMORC.

The Respondent states that the allegations contained on his website are true and are written for the benefit of the membership of AMORC. Therefore they cannot be considered libellous or damaging to the Complainant.

Reply

Although a Reply has been filed by the Complainant it contains no further submissions.

6. Discussions and Findings

This dispute falls to be determined under the Nominet Dispute Resolution Service Policy ("the Policy") and the Procedure. Under paragraph 2 of the Policy:

- (a) *A Respondent must submit to proceedings under the Dispute Resolution Service if a Complainant asserts to [Nominet], according to the Procedure, 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.*
- (b) *The Complainant is required to prove to the Expert that both elements are present on the balance of probabilities."*

Under paragraph 1 of the Policy the term "Rights":

"includes, but is not limited to, rights enforceable under English law..."

Also under paragraph 1 of the Policy, the term "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.”*

Paragraph 3 of the Policy sets out a non-exhaustive list of factors that may be evidence that a domain name is an Abusive Registration. Paragraph 4 sets out a non-exhaustive list of factors that may be evidence that it is not. However, all these factors are merely indicative of, and subject to, the overriding test of an Abusive Registration as set out above.

Rights

The Complainant has provided evidence concerning the two registered trade marks referred to in section 5 above and of its ‘mandate’ to protect those trade mark interests in the UK.

While both the trade mark registrations and the ‘mandate’ relied on by the Complainant refer to the ‘Ancien et Mystique Ordre de la Rose-Croix’, the exact nature and relationship of the various legal entities in question is unclear. The Complainant’s evidence of the ownership of the trade marks and ‘chain of title’ is therefore imperfect. However, its submissions in this regard are unchallenged by the Respondent and there is nothing in the papers to contradict its assertion that it is entitled to administer the relevant trade mark rights in the UK. Accordingly I find on the balance of probabilities that the Complainant has Rights in the trade marks AMORC and A.M.O.R.C. for the purposes of the Policy.

The Domain Name is identical to the mark AMORC and virtually identical to the mark A.M.O.R.C. but for the formal suffix ‘.co.uk’.

Accordingly, the Complainant has established that it has Rights in a name or mark that is identical or similar to the Domain Name.

Abusive Registration

The Domain Name consists of the name and registered trade mark AMORC without any addition or adornment other than the formal suffix ‘.co.uk’.

There is no evidence that the name AMORC is generic or descriptive or that it has any meaning in the UK other than to refer to the Complainant’s organisation.

In these circumstances, I infer that an internet user who types the Domain Name or finds it as the result of a search is likely do so in the expectation that it will lead to the Complainant’s own, or authorised, website. Even if the user discovers on accessing the site that it is the Respondent’s ‘protest’ site, he will have arrived at the site because he intended to access the Complainant’s site, and therefore on the back of the Complainant’s goodwill in the AMORC name.

It is well established in Nominet DRS decisions that a registration of this nature is liable to be abusive, as causing ‘initial interest confusion’ which takes unfair

advantage of a complainant's Rights. The concept was considered, for example, in *Emirates –v- Michael Toth* DRS 8634 where the Appeal Panel approved the following analysis contained in the DRS Experts' Overview:

“...the vice being that even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant, the visitor has been deceived. Having drawn the visitor to the site, the visitor may well be faced with an unauthorised tribute or criticism site (usually the latter) devoted to the Complainant; or a commercial web site, which may or may not advertise goods or services similar to those produced by the Complainant. Either way, the visitor will have been sucked in/deceived by the domain name.”

As is made clear in paragraph 4 of the Policy, the use of a domain name for the purpose of a 'protest' site is capable of being legitimate. For example, under paragraph 4.a.i.C of the Policy the Respondent may demonstrate that the registration is not abusive if he can show that he has made legitimate non-commercial or fair use of the Domain Name. Further, paragraph 4.b of the Policy states that fair use may include sites operated solely in tribute to or in criticism of a person or business.

However, the Respondent's use of the Domain Name in this case is neither legitimate nor fair. The Respondent is using the Complainant's trade mark in an unadorned form in circumstances that I find are highly likely to give rise to 'initial interest confusion' as described above. Indeed, the Respondent does not deny that the Domain Name would be understood to refer to the Complainant's mark and states that he intended his website to be for the benefit of AMORC's members.

I make no finding concerning the nature of the material contained on the Respondent's website. The only point of relevance is that, despite the nature of the Domain Name, the website linked to the Domain Name is neither the Complainant's nor authorised by the Complainant. While the Respondent may or may not be free to publish his materials on a website linked to some other domain name, what he may not do is to misrepresent, by his choice of the Domain Name, that internet users will be visiting the Complainant's own website.

In the circumstances I find that the registration in the hands of the Respondent is an Abusive Registration.

7. Decision

The Complainant has established for the purposes of the Policy that it 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. The Complaint therefore succeeds and I direct that the Domain Name be transferred to the Complainant.

Steven A. Maier
3 February 2011