

DISPUTE RESOLUTION SERVICE

D00011270

Decision of Independent Expert

Casheuronet UK, LLC

and

Advanced Web Services

1. The Parties:

Complainant: Casheuronet UK, LLC
483 Green Lanes
London
N13 4BS
United Kingdom

Respondent: Advanced Web Services
113 W San Mateo Rd
Santa Fe
NM
87505
United States

2. The Domain Name:

quidquid.co.uk

3. Procedural History:

27 April 2012 14:06 Dispute received
30 April 2012 09:01 Complaint validated
30 April 2012 09:03 Notification of complaint sent to parties
18 May 2012 02:30 Response reminder sent
21 May 2012 07:51 Response received

21 May 2012 07:51 Notification of response sent to parties
24 May 2012 02:30 Reply reminder sent
29 May 2012 09:44 Reply received
29 May 2012 09:48 Notification of reply sent to parties
29 May 2012 09:49 Mediator appointed
01 June 2012 13:06 Mediation started
11 June 2012 17:19 Mediation failed
11 June 2012 17:22 Close of mediation documents sent
12 June 2012 15:46 Expert decision payment received

Ravi Mohindra was appointed as Independent Expert as of 18 June 2012 and confirmed to Nominet that he was independent of the parties and knew of no facts or circumstances that might call into question his independence in the eyes of the parties.

4. Factual Background

4.1 The Complainant is a business that provides personal financing by way of online cash advances to its customers in the UK. It operates this business under the name QuickQuid and owns the following UK registered trade marks:

- No. 2458778B QUICKQUID in Class 36; and
- No. 2458778A QuickQuid.co.uk (stylised) also in Class 36.

4.2 The Complainant is also the owner of the domain name <quickquid.co.uk>, registered on 1 December 2006.

4.3 The Domain Name was registered on 26 January 2008.

4.4 For a period of time during the Respondent's ownership of the Domain Name, the Domain Name resolved to a website which linked to the Complainant's website at <quickquid.co.uk>.

4.5 As at the date of the Complaint, the Domain Name resolved to a website which contained, inter alia, links to websites located at <KwikCash.co.uk> and <easyloanscompany.co.uk>.

5. Parties' Contentions

5.1 A summary of the parties' contentions is set out below:

The Complainant

Rights

5.2 The Complainant owns registered trade mark rights in the UK in respect of the marks QUICKQUID and QuickQuid.co.uk (stylised), both registered in

respect of certain financial services covered by Class 36. Details of these trade mark registrations are set out in Section 4 above.

- 5.3 As far as the Complainant is aware, the trade mark QUICKQUID is not registered in relation to the provision of financial services by any third party in the UK, nor does any third party lawfully use the QUICKQUID mark in respect of financial services other than with the consent of the Complainant.
- 5.3 The Complainant is well known in the UK as a market leader in the provision of personal financing. It was selected as the Finalist for Alternative Lender of the Year in 2010 in the Annual Credit Today awards.
- 5.4 As a result of the Complainant's extensive advertising, including as set out in section 4 above, the QUICKQUID mark has come to represent extraordinarily valuable goodwill owned by the Complainant and is a well known mark.
- 5.5 The Complainant has also developed a formidable presence on the Internet, including its websites located at <quickquid.co.uk> and <quickquid.com> and the Complainant's facebook page which has 7,359 likes.
- 5.6 The Complainant prominently features its QUICKQUID mark on every page of its websites.
- 5.7 The Complainant's website located at <quickquid.co.uk> has an Alexa rating of 4,302 for the UK and 85,429 globally and received over 3,200 unique visitors per month according to a third party service Compete.com in December 2011. In comparison, the website to which the Domain Name resolves does not possess an Alexa ranking for the UK and is ranked at 16,869,527 globally by Alexa.
- 5.8 The Respondent registered the Domain Name after the Complainant had obtained trade mark registrations in the UK.
- 5.9 The Domain Name is confusingly similar to the Complainant's registered trade mark for QUICKQUID. Significantly, the 'quidquid' element of the Domain Name possesses a 77% similarity to the Complainant's registered trade mark, according to the algorithm used by the Internet Corporation for Assigned Names and Numbers ("ICANN") to compare the similarity of potential new Generic Top Level domain name extensions.
- 5.10 The Collins English Dictionary has no meaning for the 'quidquid' element of the Domain Name, and no acronym for this element has been registered with acronymfinder.com. As such, the only meaning the Domain Name possesses is in reference to the Complainant's registered mark QUICKQUID.

Abusive Registration

- 5.11 At the time the Respondent registered the Domain Name, it was well known that the Complainant was trading extensively in the UK under the QUICKQUID mark.
- 5.12 The Complainant applied for UK trade mark registration No. 2458778B QUICKQUID on 18 June 2007, before registration of the Domain Name.
- 5.13 It is beyond doubt that the Respondent selected and registered the Domain Name with the Complainant's well known QUICKQUID trade mark in mind. There can be no other plausible circumstance for the Respondent to select the Domain Name.
- 5.14 In the past the Domain Name resolved to a website which linked to the Complainant's website. This was the result of the Complainant engaging Commission Junction to drive web traffic to the Complainant's website. Any agreement was between the Complainant and Commission Junction, and at no time did the Complainant request or consent to the Respondent's registration of the Domain Name.
- 5.15 On the Complainant becoming aware of the Domain Name and its use in relation to the Complainant's registered trade mark, the Complainant's solicitors sent a letter of demand to David Colon of the Respondent on 14 December 2011, alleging (i) unauthorised use of the Domain Name as well as the domain name <quitquid.co.uk> and (ii) infringement of the Complainant's UK registered trade marks (as detailed in section 4 above). A copy of this letter is attached to the Complaint.
- 5.16 David Colon acknowledged this letter by email on 21 December 2011, stating that he had invested significant expenses and time into the domain name over the 4 years of his ownership of it, and as such its loss would cause him financial hardship and loss of investment. He also indicated that he was willing to "*explore alternative options when available to reach businesslike and amicable ends*" and was open to a discussion with the Complainant. A copy of this response is also attached to the Complaint.
- 5.17 At some point following this correspondence, Mr Colon deleted his registration of the <quitquid.co.uk> domain name and arranged for the Domain Name to redirect to the website located at the domain name <fastcashcommissions.com>.
- 5.18 The Respondent is currently using the Domain Name to resolve to a website located at <quidquid.co.uk> that includes links to competing services (as described in section 4 above).
- 5.19 By registering the Domain Name, the Respondent has prevented the Complainant from incorporating the Domain Name into its portfolio of domain names that closely reflect its QUICKQUID trade mark. The Complainant's family of companies own 'typo's' of their registered marks as domain names where this becomes necessary. For example, Cash America International, Inc., the Complainant's parent company, holds the registered UK trade mark POUNDS TO POCKET (No. 2543533) and two of

the Complainant's affiliates hold the 343 corresponding .co.uk domain names.

- 5.20 The Respondent is currently using the Domain Name as an instrument of fraud to confuse and deceive consumers into visiting the website to which the Domain Name resolves, and thereby increasing the amount of traffic to this website to the detriment of the Complainant's rights. This activity is clearly disruptive to the Complainant's business and was clearly the Respondent's intention when it registered the Domain Name. It is being used in a manner 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.
- 5.21 Given the Respondent's current activities and use of the Domain Name, it is clear that the Respondent has intentionally registered the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant.
- 5.22 Such typo-squatting is an abusive registration, as displayed in previous DRS decisions.
- 5.23 The Complainant's research suggests that the Respondent has registered a number of other domain names which are confusingly similar to the Complainant's well-known trade marks. The domain names include <quitquid.co.uk>.
- 5.24 The Respondent is not using the Domain Name in connection with a genuine offering of goods or services, as any user redirected to the Respondent's website under the Domain Name would be seeking the Complainant's services.
- 5.25 The Respondent has no legitimate interest in the Domain Name, due to the fact that the QUICKQUID mark is well-known in the UK, is a distinctive mark, and as far as the Complainant is aware, is used exclusively in a manner which is confusingly similar to the Complainant's registered mark and on a fraudulent basis which cannot possibly be considered a legitimate non-commercial or fair use of the Domain Name.
- 5.26 The Respondent is not a licensee of the Complainant. The Complainant has never consented to the registration or use of the Domain Name by the Respondent.
- 5.27 In conclusion, it is evident that:
- in the UK, the term QUICKQUID is exclusively associated with the Complainant with regard to financial services;
 - the Respondent registered the Domain Name in full knowledge of the Complainant's rights in the term QUICKQUID and knowing that in the UK that term is exclusively associated with the Complainant with regard to financial services;

- the Respondent did not and does not intend to use the Domain Name for any legitimate purpose;
- the Domain Name is used to confuse and divert consumers to the website of the Respondent to the detriment of the Complainant's Rights;
- the benefit to the Respondent of users of the Respondent's website via the Domain Name is unfair;
- the Respondent has engaged in a pattern of abusive registrations; and
- the Domain Name is an Abusive Registration under paragraphs 1(i) and 1(ii) of the Policy.

The Respondent

- 5.28 The Respondent has submitted a lengthy response, in which it makes general points relating to the Domain Name, the Respondent, the Complainant and the Complainant's rights, and it then goes on to deal with each of the points raised in the Complaint in turn.
- 5.29 The Respondent is neither a lender nor a provider of financial services and as such there is no conflict with the Complainant's trade mark rights.
- 5.30 The Respondent has owned the Domain Name for over 4 years.
- 5.31 For over a year starting in November 2010 the Complainant paid the Respondent on a commission basis to send new clients to them from the website located at the Domain Name. Through its authorised promotion of the Complainant's marks, the Respondent provided enough leads to qualify for additional performance incentive payments offered by their affiliate scheme and received its final incentive on 12 December 2011. Prior to that time, the Respondent had no knowledge of the Complainant or its business, and only discovered it after it offered its product through a US affiliate programme in 2010.
- 5.32 The Respondent registered the Domain Name in 2008 because "*it tickled me intellectually*" and because of its multiple meanings and generic nature. QuidQuid is a Latin dictionary term meaning 'whatever', it is used in famous poems and well known Latin phrases. It also means "doubly" good for all 'quid' related meanings. The word 'quid' has a more well known meaning which has been in use as common slang for the Pound Sterling since the late 1600's.
- 5.33 The Respondent had no knowledge of the Complainant or its business at the time of registration of the Domain Name. In 2008 the Complainant was unknown or virtually unknown in the US and likely not well known in the UK despite the Complainant's contentions. It is currently virtually unknown in the US where the Respondent resides. The Complainant has provided no evidence that shows its popularity in 2008.
- 5.34 The Complainant has not proved that any confusion between their mark and the Domain Name exists. Google's analytics have shown that the traffic to the website located at the Domain Name is for the Respondent's

unique domain keywords and not the Complainant's mark. A discriminating look at any computer keyboard quickly eliminates the possibility of any typo confusion.

- 5.35 The Complainant has failed to substantiate any wrong-doing and has falsely asserted fraud where none exists. The Respondent requests such allegations of fraud to be struck from the Complaint. The Complainant has shown proof that dictionary definitions of 'quidquid' exist in the listings of a search it conducted for 'quidquid' on <google.co.uk>, the results of which are attached to the Complaint.
- 5.36 The Respondent has used the Domain Name within the acceptable Nominet rules with regard to parked and review/critique sites as per Nominet definitions, which it turned to for guidance after 14 December 2011 (receipt of first communication from the Complainant) until the present. The Domain Name has moved between a few different parking options and currently resolves to a parked site containing important links and information, even though the Respondent has not yet developed the site for its future use.
- 5.37 The Respondent denies that the Complainant's mark 'QuickQuid' (which it acknowledges the Complainant has rights in when applied to financial services in class 36) and the Domain Name are confusing to the average person. The Complainant has no rights in respect of the Domain Name. The website that the Domain Name resolves to does not provide financial services.
- 5.38 There are clear and distinct differences between the Domain Name and the Complainant's trade mark and domain name. The Complainant's domain and mark contain a descriptive adjective and/or adverb in front of the generic 'quid', not present in the Domain Name. 'QuickQuid' is slang and refers to the acquisition of fast money.
- 5.39 The Respondent contests the Complainant's evidence regarding similarity according to the ICANN algorithm, and states that there is only a 59% similarity.
- 5.40 The Latin term 'quidquid' is unlikely to be in any English dictionary and no acronym would be listed on acronymfinder.com until they add a Latin acronym finder.
- 5.41 The Complainant was only granted trade mark registration on 19 September 2008, after registration of the Domain Name by the Respondent. Further, the Complainant's trade mark application and subsequent registration were both published after registration of the Domain Name.
- 5.42 The Respondent strongly denies the Complainant's contention that it is beyond doubt that it selected and registered the Domain Name with the Complainant's well known QUICKQUID trade mark in mind. It is an unreasonable conclusion that the Complainant, which was unknown to the

Respondent in 2008, had any impact on the Respondent's decision to register the Domain Name. The contention is unsubstantiated and the Complainant has failed to provide any proof that they knew what was in the Respondent's mind in 2008 or currently.

- 5.43 The Respondent no longer required the domain name <quitquid.co.uk> and it used the process that Nominet provides to allow it to be registered by others.
- 5.44 The Respondent agrees that it forwarded all traffic to the Domain Name to an alternative website, whilst it sought advice from counsel regarding the receipt of the letter of demand. The Respondent specifically chose an affiliate that would not conflict in any way with the Complainant, and no confusion was created.
- 5.45 The Respondent is free to allow whoever it wishes to advertise on its website, and it continues to affiliate with companies that are not the Complainant. It also uses third party providers to display advertising and the Respondent has no control over any such advertising content.
- 5.46 The Respondent did not block the Complainant from registering the Domain Name, particularly as the Respondent had no knowledge of the Complainant in 2008.
- 5.47 The Domain Name does not appear in search results when people search for the Complainant's business. Traffic to the website to which the Domain Name resolves is not related to the Complainant's business but to the Respondent's website and its Domain Name. There is no proof that visitors to the Respondent's website are searching for the Complainant's site, product or service.
- 5.48 Since 8 December 2011, the website to which the Domain Name resolves has not featured anything relating to the Complainant or its trade mark. Prior to that, the Respondent was fully authorised to show the Complainant's mark.
- 5.49 No financial services or loans of any type are offered under the Respondent's website, and therefore no confusion can exist. The Complainant is exclusively in the business of making high cost loans. No such loans are offered on the Respondent's website. If inadvertently someone ends up on the Respondent's website, it is immediately apparent that they did not arrive at the site they were seeking and they would immediately leave and seek out the site which they were looking for.
- 5.50 There is no evidence of any patterns in registration of domain names by the Respondent. It has submitted evidence to show its domains under the same registrar that the Domain Name is registered through as proof that no pattern of abusive registration exists. The Respondent registered the <quitquid.co.uk> domain to protect its own domain from typos. The Respondent has no abusive registration judgments against it and has never

had a complaint issued against it prior to this Complaint from the Complainant – a former business relation.

- 5.51 Although the Respondent's Domain Name is less popular or well known than the Complainant's, it is more distinctive and unique. The Respondent has legitimate interests in the Domain Name.
- 5.52 The Respondent does not need to obtain a licence to use the Domain Name from the Complainant, since the Complainant has no rights in the Respondent's Domain Name.

The Reply

- 5.53 The Complainant repeats the point that the marks QUICKQUID and QUIDQUID are confusingly similar, visually and aurally, and that the extensive use made by the Complainant of its QUICKQUID mark makes confusion by the relevant public inevitable.
- 5.54 QUIDQUID is not a generic term that would be recognised by a significant number of consumers in the UK.
- 5.55 Despite the Respondent claiming that the term 'quidquid' means 'whatever' in Latin, it does not use the Domain Name for this claimed meaning but instead the website to which the Domain Name resolves focuses on pay day loans and consumer lending – services identical to the services provided by the Complainant and its trade mark registrations. It also provides links to competitors of the Complainant.
- 5.56 The Complainant's trade mark rights do pre-date the registration of the Domain Name. In particular, the Complainant registered the domain name <quickquid.co.uk> in December 2006, it launched its QuickQuid business in early 2007 and registration of its trade marks in the UK date back to the date of filing, namely 18 June 2007.
- 5.57 The Respondent has submitted evidence that it is also the owner of other financial-related domain names, including <readycashloans.com> which also provides multiple links to competitors of the Complainant. The Respondent is benefitting from affiliate sponsorship in the same way as it did via the Respondent's use of the Domain Name. The Respondent also operates a blog on which it states that "*It is important for you to post advertisements related to your site's visitors to be successful*". By displaying information associated with the Complainant's mark, the Respondent demonstrates that visitors to the website to which the Domain Name resolves are seeking the Complainant and its services, and not the Respondent's claimed Latin dictionary term of 'whatever'.
- 5.58 The Complainant denies that it has or has had a direct relationship with the Respondent. The Respondent was never engaged by the Complainant and there has never been any direct payment or relationship between the Complainant and Respondent. The Respondent was engaged by Commission Junction, an aggregator/broker. Neither the Complainant nor

Commission Junction authorised the Respondent to use the Complainant's mark on its website. On becoming aware of the Respondent's use of the Domain Name and its mark, the Complainant instructed Commission Junction to terminate the Respondent from the affiliate programme.

6. Discussions and Findings

General

- 6.1 The Complainant is required under paragraph 2b. of the Policy to prove 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.

Complainant's Rights

- 6.2 Paragraph 1 of the Policy provides that Rights means "*rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning*". Rights may be established in a name or mark by way of a trade mark registered in an appropriate territory, or by a demonstration of unregistered so-called 'common law rights'.
- 6.3 By virtue of its UK trade mark registrations, the Complainant has shown that it has Rights in relation to the mark 'QUICKQUID'. The Expert notes that on the face of it the mark QUICKQUID could be seen as being descriptive of the fast provision of cash to consumers - whether through a short term loan or otherwise. However, the Complainant has submitted some evidence (advertising campaigns in particular) to show that it has generated some goodwill in the name, at least amongst the relevant public in the UK. On that basis, the Expert is prepared to find that for the purposes of the Policy the Complainant also holds unregistered rights in the name QuickQuid.
- 6.4 It is also worth exploring whether the Complainant has rights in relation to the mark 'QUIDQUID', which is the main element (excluding the generic .co.uk top level suffix) of the Domain Name. The Complainant has not claimed, nor has it submitted any evidence to prove, that it has rights in relation to this mark. All the evidence submitted by the Complainant is in relation to its mark QuickQuid. The Complainant does not hold any trade mark registrations in respect of the mark QUIDQUID, nor has it generated any unregistered rights in relation to the mark, as there is no evidence which proves any use of it, whether in the UK or elsewhere.

Similarity

6.5 Having established that the Complainant has Rights in respect of the mark QUICKQUID, the Expert is required to decide whether this mark is identical or similar to the Domain Name.

6.6 Clearly the mark QUICKQUID is not identical to the Domain Name <quidquid.co.uk>, so is it similar? In determining the answer to this question, the guidance provided by paragraph 2.3 of the Expert's Overview¹ is helpful. It states:

“Those responsible for the drafting of the Policy were aware of some of the difficulties arising under the UDRP (the policy covering disputes in the gTLDs) as a result of its wording, “identical or confusingly similar”. The wording of the Policy is broader and less restrictive, which matches the reality that the first hurdle (i.e. proving the existence of rights in a relevant name or mark) is intended to be a relatively low-level test. Issues relating to confusion are best addressed under the second hurdle. The objective behind the first hurdle is simply to demonstrate a bona fide basis for making the complaint.

For the purposes of the first hurdle, nothing turns on the distinction between “identical” and “similar”, but a name or mark will ordinarily be regarded as identical to the domain name if, at the third level, and ignoring the presence of hyphens and the absence of spaces and ampersands, they are the same. However, because nothing turns on the distinction, Experts will usually not bother to draw a distinction and will merely find that the Complainant's name or mark is “identical or similar” to the domain name in issue. See, for example, DRS 04478 (bandq.co.uk). Mis-spelled versions of names are normally found to be similar to their originals. Additional elements rarely trouble experts. For example, in DRS 06973 veluxblind.co.uk the expert commented “The Domain Name consists of the Complainant's distinctive trademark and the descriptive word “blind”, which does nothing to distinguish the Domain Name from the mark, since the mark is associated in the public mind with the Complainant's blinds.”

6.7 The only difference between the Complainant's mark QUICKQUID and the QUIDQUID element of the Domain Name is that the third and fourth letters of the Complainant's mark, namely “CK” are replaced in the QUIDQUID element of the Domain Name by the letter “D”. They are therefore visually similar and, in the Expert's opinion, they are also phonetically similar. In the expert's opinion, on a direct comparison of the marks QUICKQUID and QUIDQUID there is no conceptual similarity. The marks differ in their first elements, namely QUICK and QUID, and these two words have very different meanings.

6.8 In light of the visual and phonetic similarity, the Expert finds that the Complainant has Rights in respect of the mark QUICKQUID which is similar to the Domain Name.

¹ The Experts' overview is a document put together by Nominet's panel of Experts which deals with a range of issues that come up in DRS disputes. It is published on Nominet's website at: http://www.nominet.org.uk/digitalAssets/39192_DRS_Expert_Overview.pdf.

Abusive Registration

- 6.9 Paragraph 1 of the Policy defines “Abusive Registration” as 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 has been unfairly detrimental to the Complainant’s Rights.
- 6.10 A non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration, is set out in paragraph 3a. of the Policy. The Complainant’s case is based on three of these factors, namely:
- Paragraph 3a.i.

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

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;
 - Paragraph 3a.ii.

Circumstances indicating that the Respondent is using or is threatening to use 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;
 - Paragraph 3a.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.
- 6.11 Paragraph 3a.i concerns the registrant’s (who in this case is the Respondent) motives at the time of registration of the Domain Name. In this regard, on the evidence put before it the Expert considers that, on the balance of probabilities, the Respondent was not aware of the Complainant at the time that it registered the Domain Name and only became aware of

it after the Respondent came across its US affiliate programme in 2010 which appears to have been offered through Commission Junction.

- 6.12 Further, the Complainant has admitted that it only launched its business under the name QuickQuid in early 2007 and its customers are based in the UK. The Respondent is domiciled in the US and the Complainant has provided no evidence that at any time has it specifically targeted US consumers or launched any advertising campaigns in the US using its QuickQuid name. The Complainant's website located at the domain name <quickquid.co.uk> (to which the domain name <quickquid.com> also redirects) specifically refers to personal loans offered in Pounds Sterling and under the 'About Us' section of the website it states:

"QuickQuid is the premier online provider of cash advances sent within 10 minutes of approval\$ in the United Kingdom. Our fast, convenient services have helped thousands of Britons bridge the gap between paydays from the comfort and privacy of home."

"QuickQuid provides fast and convenient online cash advance services to customers all across the United Kingdom. Discover why our hassle-free online loans have made QuickQuid Britain's trusted online lender."

- 6.13 The Complainant does not appear to hold any trade mark applications or registrations in the US, and there is also no evidence that the Complainant's parent company or any of its related companies trade in the US under the name 'QuickQuid' or anything similar to this name.
- 6.14 In addition, the service provided by the Complainant is a local one, in that the loans provided by it are in the currency of the consumer's country. Indeed, two of the eligibility criteria on the Complainant's website for obtaining a payday loan specifically refer to the consumer's presence in the UK (the consumer must be a resident in the UK and must hold a valid UK bank account that can receive direct debit).
- 6.15 Finally in relation to paragraph 3a.i, the Respondent claims that it registered the Domain Name in 2008 because of its multiple meanings and generic nature. Given (i) that the Respondent is, and at the date of registration was, based in the US and (ii) the Respondent's likely lack of knowledge of the Complainant at the date of registration of the Domain Name, this claim in isolation has some merit. The Respondent has submitted evidence to support its assertion that the term 'quidquid' means 'whatever' in Latin and the fact that the term does not appear in an acronym finder online database (as alleged by the Complainant) does not prove that it has no meaning. However, as will be seen below, for the purposes of paragraph 3a.ii the Expert has taken into account the Respondent's conduct in relation to the use of the Domain Name (subsequent to its registration) when assessing other circumstances relating to Abusive Registration under the Policy.
- 6.16 The Complainant goes on to make a number of allegations regarding the Respondent's conduct in relation to use of the Domain Name and its

associated website in its Complaint, which the Respondent deals with in its Response (see the summary of the Parties' Contentions above). These centre on the content of the websites to which the Domain Name has resolved, and accordingly relate to the circumstances set out in paragraph 3a.ii of the Policy regarding confusing use of the Domain Name.

- 6.17 The Respondent claims that it was a member of the Complainant's affiliate programme for a period of more than 12 months beginning in November 2010 (when it claims that it first became aware of the Complainant). According to the Respondent, that programme allowed it to promote the Complainant's marks in return for incentive payments. The Complainant does not deny that the Respondent was a member of its affiliate programme but claims that the Respondent was engaged not by the Complainant directly, but by the Commission Junction, an aggregator/broker, and that (i) neither the Complainant nor the Commission Junction provided consent to the Respondent's use of the Complainant's mark on its website and (ii) the Complainant only became aware of the Respondent and its website at the Domain Name in late 2011, when it instructed solicitors to write to the Respondent.
- 6.18 Irrespective of whom the Respondent held an affiliate relationship with, it is clear that the Respondent was using the website to which the Domain Name resolved to promote the Complainant's business. It made a conscious decision to do so, and earn revenue as a result of the promotion, despite the Respondent claiming alternative, non-financial, meanings for the term 'quidquid'.
- 6.19 In addition, despite the Respondent claiming in its Response that it is neither a lender nor a provider of financial services and that the term 'quidquid' has multiple meanings, the website to which the Domain Name resolves has provided and continues to provide links to competitors of the Complainant as well as information related to financial services and the corresponding sector as a result of the arrangements it has with third party providers (arrangements which the Respondent acknowledges in its Response). For example, one of the tag links on the Respondent's website is to "Payday Loan Alternatives". Clicking on that link takes the user to a page which contains a link to the Complainant's website as well as links to other payday loan providers such as Wonga.com and various articles on payday loans. The Respondent had an opportunity to use the Domain Name to resolve to a website which reflected the alternative meanings the Respondent has offered in its Response for the term 'quidquid' but despite there being some information on its website regarding the Latin meaning of 'quidquid', the website is very much geared towards financial services, information regarding loans and provision of the same via third party links.
- 6.20 Under the Policy, sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) is not of itself objectionable (paragraph 4(e) and it is for the Expert to take into account the nature of the Domain Name and the nature of the advertising links on any parking page associated with the Domain Name. Further, the Respondent claims that it has no control over the content of the advertisements on its website,

however as stated in paragraph 4.7 of the Experts' Overview, "*where the domain name is connected to a parking page operated on behalf of the Respondent by a third party (eg a hosting company), the Respondent is unlikely to be able to escape responsibility for the behaviour of that third party.*"

- 6.21 Considering (i) the nature of the Domain Name, (ii) the nature of the advertising links that have appeared on the Respondent's website to which the Domain Name resolves, (iii) that use of the Domain Name is ultimately the Respondent's responsibility, and (iv) the visual and phonetic similarity of the 'quidquid' element of the Domain Name to the Complainant's QUICKQUID mark, the Expert finds that on the balance of probabilities there is a likelihood of confusion that some consumers seeking the Complainant and its 'QuickQuid' business will come across the Respondent's website, thinking that the Complainant's business is operated under the name 'QuidQuid', or in the alternative that the Domain Name is otherwise connected with the Complainant. .
- 6.22 In the circumstances, the Expert finds that on the balance of probabilities the Domain Name has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights (in the mark QUICKQUID) and therefore that the Domain Name, in the hands of the Respondent, is an Abusive Registration.
- 6.23 For completeness, the Expert is not convinced by the Complainant's arguments that the Domain Name is also an Abusive Registration as the Respondent is engaged in a pattern of registrations pursuant to paragraph 3a.iii of the Policy. The Complainant bases its claim in this regard solely on the prior registration of the domain name <quitquid.co.uk> by David Colon who the Complainant claims has a connection with (or indeed is) the Respondent. This evidence alone does not satisfy the requirements under paragraph 3a.iii to establish an Abusive Registration. As stated in paragraph 3.5 of the Experts' Overview:

"The purpose behind this paragraph is to simplify matters for a Complainant, where the only available evidence against the registrant is that he is a habitual registrant of domain names featuring the names or marks of others. However, there is a divergence of view among Experts as to what constitutes a pattern for this purpose.

One view, as expressed by the Appeal Panel in DRS 04884 (maestro.co.uk), is that the mere fact that a registrant has some objectionable domain names in his portfolio cannot of itself be enough to render the domain name in issue an Abusive Registration. To get the benefit of this provision, the Complainant must show that the domain name in issue is part of a conscious policy on the part of the registrant. There must be evidence to justify the linking of the domain name in issue to the other objectionable domain names. The link may be found in the names themselves and/or in the dates of registration, for example.

The contrary view is that the pattern does not need to result from any conscious policy on the part of the Respondent. If the domain name in issue is a well-known name or mark of the Complainant and the Respondent is the proprietor of other domain names featuring the well-known names or marks of others, the pattern is likely to be established, even if there is no obvious link between the names or the manner or their dates of registration.

In practice this difference of view is unlikely to have much of an impact. If the domain name in issue is a well-known trade mark of the Complainant and there is no obvious justification for the Respondent being in possession of the domain name, it is probable that the Complaint will succeed on other grounds.”

7. Decision

- 7.1 The Expert finds that the Complainant has Rights in the mark QUICKQUID which is similar to the Domain Name, and further that the Domain Name, in the hands of the Respondent, is an Abusive Registration. The Expert therefore directs that the Domain Name should be transferred to the Complainant.

Signed

Ravi Mohindra

Dated

6 July 2012