

**Dispute Resolution Service**

**DRS 14066**

**Decision of Independent Expert**

**Brightstar 20:20 UK Limited**

and

**Steve Fraser**

**1. Parties**

Complainant : Brightstar 20:20 UK Limited  
Weston Road  
Crewe  
Cheshire  
CW1 6BU  
United Kingdom

Respondent : Mr. Steve Fraser  
Westfield Barn  
Long Wittenham  
OX14 4PT  
United Kingdom

**2. Domain Name**

brightstar2020.co.uk (the "Domain Name")

### **3. Procedural Background**

On 8<sup>th</sup> April 2014 the Complaint was lodged with Nominet UK Limited (“Nominet”) and validated. On 8<sup>th</sup> April 2014 Nominet sent the notification of the complaint letter to the Respondent by e-mail and post, advising him to log into his account to view the details of the Complaint and giving him 15 business days within which to lodge a Response on or before 1<sup>st</sup> May 2014.

The Respondent responded on 25<sup>th</sup> April 2014. On 25<sup>th</sup> April 2014 Nominet informed the Complainant that the Response was available to be viewed via the Complainant’s online services account and inviting it to Reply to the Response on or before 2<sup>nd</sup> May 2014. On 30<sup>th</sup> April 2014 Nominet informed the Respondent that the Reply was available to be viewed via the Respondent’s online services account. Mediation documents were generated for the Complaint and mediation commenced on 6<sup>th</sup> May 2014. Mediation was unsuccessful and concluded on 21<sup>st</sup> May 2014.

On 22<sup>nd</sup> May 2014 the Complainant paid the appropriate fee for a Decision to be made by an Expert pursuant to paragraph 6 of Nominet’s Dispute Resolution Service Policy (“the DRS Policy”).

On 22<sup>nd</sup> May 2014 Mr. Niall Lawless (“the Expert”) was selected and formally appointed to act as Expert in this dispute, having confirmed that he knew of no reason why he could not properly accept the appointment and knew of no matters which ought to be drawn to the attention of the parties which might appear to call in to question his impartiality and -/- or independence. He is required to give his Decision by 18<sup>th</sup> June 2014.

### **4. Outstanding Formal -/- Procedural Issues**

There are no outstanding formal or procedural issues.

### **5. Factual background**

The Complainant, Brightstar 20:20 UK Limited is a wholly owned subsidiary of Brightstar Corp., a privately owned company based in the USA. Brightstar Corp is a leading global distributor of mobile phones and mobile phone accessories with revenues in excess of \$7 billion. In February 2014, Brightstar Corp purchased 20:20 Mobile (UK) Limited which was the largest mobile phone and mobile phone accessories distributor in Europe with revenues in excess of £1 billion. Brightstar Corp has incorporated the 20:20 Mobile (UK) Limited business under the name “Brightstar 20:20

UK Limited” which is registered in the UK with Companies House. Prior to its purchase of 20:20 Mobile (UK) Limited, Brightstar Corp did business in Europe through Brightstar Europe, which was a joint venture with Tech Data Limited.

Mr. Steve Fraser is a senior executive in the mobile phone and mobile phone distribution industry. Mr. Fraser registered the Domain Name on 26<sup>th</sup> September 2012.

The Complainant seeks transfer of the Domain Name.

## 6. The Parties’ contentions

### The Complainant

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration because:-

- the Respondent registered the Domain Name with the unfair motive of holding the Domain Name until he could profit from selling it.
- the Respondent could use the Domain Name to cause confusion.

### The Respondent

The Respondent says that the Domain Name is not an Abusive Registration because:-

- the Domain Name was registered “to provide commentary” and it has not been used in a derogatory way.
- The Domain Name has not been used in a way that would cause confusion.
- The Complainant is attempting to bully him into giving up control of the Domain Name, and that this is a clear case of reverse domain name hijacking.

## 7. Discussions and Findings

Nominet’s DRS Policy requires that for a complaint to succeed the Complainant must 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.

Rights include, but are not limited to, rights enforceable under English Law.

The Policy Paragraph 3 - Evidence of Abusive Registration – gives guidance as to what factors may evidence that the Domain Name is an Abusive Registration.

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

3(a)(i). Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:-

3(a)(i)(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 ...

3(a)(ii). Circumstances indicating that the Respondent is using or 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 ...”

## 7.2 Complainant’s Rights

The Complainant Brightstar 20:20 UK Limited is a wholly owned subsidiary of Brightstar Corp which has been using the trading name Brightstar since 1997, and is known worldwide by that name. Through its purchase of 20:20 Mobile (UK) Limited the Complainant owns EU and UK trademarks for 20:20 and 20:20 Mobile. To promote the sale of its products and services, the Complainant has advertised and marketed itself with editorial coverage in the press using Brightstar 20:20. There is no doubt (and the Respondent does not dispute), that the Complainant has relevant Rights in respect of a name or mark that is identical to the Domain Name. I decide that the Complainant has Rights in a name or mark, which is identical or similar to the Domain Name.

## 7.3 Abusive Registration

### Selling the Domain Name

As indicated above, one factor which may evidence that the Domain Name is an Abusive Registration are circumstances indicating that the Respondent registered or otherwise acquired the

Domain Name primarily for the purposes of selling, renting or otherwise transferring the Domain Name to 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.

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration because he registered the Domain Name with the unfair motive of holding Domain Name until he could profit from selling it.

The Respondent registered the Domain Name on 26<sup>th</sup> September 2012.

On 11<sup>th</sup> December 2013 the Respondent sent an e-mail on the subject URL's to the Complainant's Mr. Max Caballero *"Hi Max, I hope you are well and congratulations on the purchase of 20:20. I personally own the brightstar2020.co.uk and brightstar2020.com URL's. Would you like to make an offer on them?"*

The Complainant says that in December 2013, it declined the Respondent's invitation to make an offer to purchase the Domain Name. The Complainant says that on 7<sup>th</sup> April 2014, the Complainant's Mr. Dan Langston contacted the Respondent by telephone and offered to reimburse him for the costs involved in registering the Domain Name, if he would transfer its control. The Respondent declined the Complainant's offer.

The Complainant says that later on 7<sup>th</sup> April 2014 it contacted the Respondent again and offered him £500.00 to transfer control of the Domain Name. The Respondent declined the Complainant's offer. The Respondent also said that the Domain Name had been registered purely for use as tribute or criticism.

The Respondent has not demurred from the Complainant's account of the 7<sup>th</sup> April 2014 telephone conversations.

In his Response in this proceeding, the Respondent says that he intended to use the Domain Name "to provide commentary" and that it has not been used in a derogatory way. The Respondent also

says that at the time of registering the Domain Name he had no knowledge that Brightstar Corp would purchase 20:20 Mobile (UK) Limited.

As the Complainant correctly points out the Respondent's position is incongruous.

If the Respondent had no knowledge or sense that Brightstar Corp would purchase 20:20 Mobile (UK) Limited, there would be no reason for the Respondent to purchase the Domain Name for tribute or criticism.

The Respondent is a senior executive in the mobile phone and mobile phone distribution industry. On 1<sup>st</sup> April 2014 his LinkedIn profile said that he is the Managing Director at A1 Comms Retail Solutions and had previously been Sales Director for UK and Ireland at Tech Data Mobile, General Manager Retail and Distribution LG Mobile at LG Electronics and Director of Indirect Distribution at The Carphone Warehouse Ltd.

When he registered the Domain Name on 26<sup>th</sup> September 2012, the Respondent was the Sales Director at Tech Data Mobile responsible for Ireland and the UK. At that time, Brightstar Corp conducted business in Europe through Brightstar Europe, which was a joint venture with Tech Data Limited.

I have little doubt that with the advantage of his senior status in the mobile phone industry and as a Director of Tech Data Limited, the Respondent became aware of the possibility or probability that Brightstar Corp would purchase 20:20 Mobile (UK) Limited. At that time, this would have been a "hot topic" and was newsworthy. For example, on 8<sup>th</sup> October 2012 a short time after he registered the Domain Name the Mobile News website reported that *"Brightstar confirms interest in acquiring 20:20 Mobile Group"*.

Secondary trading in domain names is not in itself abusive. However, in this dispute I am convinced that the Respondent registered the Domain Name opportunistically, to have the ability to sell its' control to the Complainant at some time in the future.

It is the fact that it was the Respondent who first contacted the Complainant and not for any purpose associated with his claimed motive for registering the Domain Name, but in an attempt to try to sell control of the Domain Name to the Respondent for valuable consideration in excess of out-of-pocket costs directly associated with acquiring or using the Domain Name. In his 11<sup>th</sup> December 2013 e-mail the Respondent invited the Complainant to make him an offer for the Domain Name; and on 7<sup>th</sup> April 2014 the Respondent dismissed the Complainant's offer of £500.00 for the Domain Name.

The offer of £500.00, which was rejected on 7<sup>th</sup> April 2013, is valuable consideration in excess of the out-of-pocket costs directly associated with acquiring or using the Domain Name, and based on that I decide that in the control of the Respondent the Domain Name is an Abusive Registration.

#### Confusion

As indicated above, another factor which may evidence that the Domain Name is an Abusive Registration are circumstances indicating that the Respondent is using or 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.

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration because the Respondent could use the Domain Name to cause confusion.

The Respondent says that the Domain Name has not been used in a way that would cause confusion to any customer, and therefore it is not an Abusive Registration.

There is no evidence that the Respondent is using or threatening to use the Domain Name to cause confusion.

#### Reverse domain name hijacking

The Respondent says that the Complainant is attempting to bully him into giving up control of the Domain Name, and that this is a clear case of reverse domain name hijacking.

The Complainant says that it has simply made a measured and valid complaint under Nominet's DRS.

Nominet's DRS defines reverse domain name hijacking as an attempt by a complainant to misuse the DRS Policy with the intent of depriving a registrant of a domain name.

There no evidence to support the Respondents assertion that the Claimant is attempting to use Nominet's DRS to perform "reverse domain name hijacking".

#### 7.4 Conclusion

The Expert finds on the balance of probabilities that the Complainant has Rights in respect of a name identical or similar to the Domain Name and that the Complainant has proved, on the balance of probabilities, that the Domain Name in the hands of the Respondent is an Abusive Registration.

### **8. Decision**

For the reasons set out in detail above, having decided that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name be transferred to the Complainant.

**Niall Lawless, Nominet Expert**

**10<sup>th</sup> June 2014**