

**DISPUTE RESOLUTION SERVICE**

**D00014440**

**Decision of Independent Expert**

Renew Life Canada Inc.

and

Kinetic Enterprise

**1. The Parties:**

Complainant: Renew Life Canada Inc.  
8-1273 North Service Road East  
Oakville  
L6H 1A7  
Canada

Respondent: Kinetic Enterprise  
Unit 1, Central Way  
London  
United Kingdom

**2. The Domain Name(s):**

renew-life.co.uk

**3. Procedural History:**

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future that need be disclosed as they might be of such a nature as to call into question my independence in the eyes of one or both of the parties.

26 June 2014 10:44	Dispute received
26 June 2014 12:20	Complaint validated
26 June 2014 12:41	Notification of complaint sent to parties
15 July 2014 02:30	Response reminder sent
24 July 2014 16:08	Response received

24 July 2014 16:08	Notification of response sent to parties
29 July 2014 02:30	Reply reminder sent
31 July 2014 16:29	Reply received
01 August 2014 08:52	Notification of reply sent to parties
01 August 2014 08:54	Mediator appointed
11 August 2014 11:50	Mediation started
05 September 2014 15:44	Mediation failed
05 September 2014 15:46	Close of mediation documents sent
15 September 2014 10:49	Expert decision payment received

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

The Complainant is part of the Renew Life Group based in Canada which sells a range of natural healthcare products under the RENEW LIFE brand to a number of countries around the world, including the UK. The worldwide annual sales of those products now amount to £50 million.

The Complainant and an associated company have a number of trade mark registrations for RENEW LIFE, including a Community Trade Mark registration held by the Complainant.

From about 2000 until 2013 the Respondent acted as the UK distributor for the Renew Life Group, selling its range of RENEW LIFE products. The arrangement was informal with no written agreement.

On 1 August 2012, the Respondent registered the Domain Name and used it to resolve to a website at [www.renew-life.co.uk](http://www.renew-life.co.uk) which sold a range of RENEW LIFE products to online customers in the UK and Europe. It was a successful website and soon accounted for 60% of all of the Respondent's sales of the products. The website content used the Complainant's RENEW LIFE name and its associated Sun device logo and also copied various text and images from the Renew Life Group's own website. The Complainant was aware of this and made no complaint.

On 1 March 2013 the Complainant wrote to the Respondent advising it of its decision to terminate the distribution relationship in the United Kingdom and gave it a 'use-up period' until 30 April 2013 to sell its existing inventory and stock. Since then, the Complainant has not supplied any further stock to the Respondent.

The Respondent acknowledges the termination of the relationship but complains about the short 'use-up' notice period given.

The Complainant wrote on several occasions to demand that the Respondent cease using the Domain Name and transfer the registration of it to the Complainant. The Respondent has refused to do so.

The Respondent continues to use the Domain Name to resolve to its website at [www.renew-life.co.uk](http://www.renew-life.co.uk) which continues to use the Complainant's RENEW LIFE name and its associated Sun device logo and various text from the Renew Life Group's own website.

The Respondent also continues to sell RENEW LIFE products through that website and also through its other website at [www.kinetic4health.co.uk](http://www.kinetic4health.co.uk), the latter website also selling other competing products. The Complainant says the Respondent's current stocks of RENEW LIFE products are being sourced from the USA and therefore infringe its trade mark rights.

## 5. Parties' Contentions

In its Complaint, the Complainant made the following points:

- The Complainant was formed 12 years ago to be the Canadian division of the Renew Life Group. It also began to look after the export division of Renew Life Formulas Inc. ("RLF"), the parent company of the Renew Life Group, in and around the end of 2010. RLF was founded in 1997 by Brenda Watson and her husband Stan Watson following her own poor health which inspired her to create a company based on the natural healing methods that helped restore her well-being.
- Brenda Watson began by establishing five natural healthcare clinics and then soon started formulating her own line of natural supplements using only ingredients found in nature. The products were an enormous success and the business grew very quickly.
- Around the end of 2010, the Complainant was appointed by RLF to assume responsibility for the export division and the global reach of the "Renew Life" products. Part of this activity was to establish an exclusive distributor in the United Kingdom for those "Renew Life" products.
- The "Renew Life" name and corporate brand has been used continuously since 1997. Over the years, a wide range of goods have been promoted under the "Renew Life" trade mark and due to the quality of its products and comprehensive advertising, RLF and its products have acquired a substantial reputation. The "Renew Life" trade mark has become synonymous with RLF and goods promoted under "Renew Life" are now exported to a range of countries including the USA, Canada, Kenya, Estonia, the United Arab Emirates, Finland, Hungary, Iceland, Iraq, Kuwait, Mexico, Norway, St. Maarten, Sweden, Trinidad and the United Kingdom. Examples of RLF's and the Complainant's brochures and advertisements were exhibited.
- RLF's annual turnover across the product range is some £50 million (sterling).
- In addition to its substantial reputation and goodwill, RLF and the Complainant own a number of registered trade marks, including US trade mark registration numbers 2185793 RENEW LIFE and 2227428 SUN DEVICE (in the name of RLF), Canadian Registration 1618648 RENEW LIFE and most relevant to these DRS proceedings, Community Trade Mark registration number 11609534 RENEW LIFE in classes 5, 16 and 29 (in the name of the Complainant). Details of the registrations were exhibited.
- US trade mark registration numbers 2185793 RENEW LIFE and 2227428 SUN DEVICE are in the name of RLF and not in the name of the Complainant for historical reasons only, as they were filed before the incorporation of the Complainant entity and the decision for the Complainant to be responsible for the export division. The Canadian Registration is in the name of the Complainant.
- RLF is also the proprietor of the domain name renewlife.com, which was registered on 26 March 1998 and has been used continuously since that time for the sale of Renew Life products. The Complainant also owns the registrations for renewlife.co.uk, renewlife.ca and renewlife.no.
- The Domain Name is identical to the Complainant's trade mark. As established in previous DRS Decisions, the .co.uk suffix is purely descriptive.
- RLF's distribution relationships with different companies in various countries around the world were often informally entered into without supporting written distribution agreements being executed. The Complainant was established in late 2010 with the aim of providing structure to the export side of the business and was tasked with formalising the distribution arrangements and outlets in each territory of interest.

- The relationship between RLF and the Respondent goes back to on or around November 2000, when talks started for the Respondent to act as a distributor for RLF in the UK. Due to the rapid growth of RLF's business there was no formal distribution agreement with the Respondent, but various letters, faxes and emails relating to pricing information and marketing literature, and invoices relating to the sale of products were exhibited from November 2000 through to September 2012 illustrating the relationship between the parties.
- On 1 August 2012, the Respondent registered the Domain Name. At this time, the Respondent had already been acting as RLF's distributor for a long time. The Respondent did not ask the permission of the Complainant, express or otherwise, before registering the Domain Name but the Complainant did not raise any objection since, at that time, the Respondent was acting as an authorised distributor in the UK.
- The get up and layout of the website to which the Domain Name resolves mirrored RLF's website at [www.renewlife.com](http://www.renewlife.com). In particular, the website to which the Domain Name resolves still uses the Renew Life logo and Sun Device and the history given on the website as to the history of RLF is also taken directly from RLF's website at [www.renewlife.com](http://www.renewlife.com). The ownership of the Renew Life logo and the Sun Device in the United States by RFL dates back to July 1997 which confirms that the Renew Life logo and the Sun Device have been used continuously since 1997 by RFL and would be automatically associated with the Renew Life Group and its authorised distributors.
- At the time the Domain Name was registered by the Respondent, RLF had no objection to the existence or content of the accompanying website as it correctly reflected the position of the Respondent as an authorised distributor in the UK. The Complainant also accepts that at the time the Domain Name was registered it was an obvious point of reference for the UK customer base which the Respondent was building up on the Complainant's behalf.
- On 1 March 2013 the Complainant sent a letter to the Respondent advising it of its decision to terminate the distribution relationship in the United Kingdom. The Respondent was given a 'use-up period' until 30 April 2013 to sell on existing inventory and stock.
- The Respondent failed to comply with the request or issue any substantive reply to the letter.
- The Complainant issued a further letter on 27 May 2013 which again re-iterated the need for the sale of "Renew Life" goods to cease and provided a response date of 5 July 2013. This letter specifically asked for the use of the Domain Name to cease as the retention of the Domain Name by the Respondent was no longer appropriate given the termination of the distribution relationship.
- The Respondent failed to comply with the request or issue any substantive reply to the letter.
- On or around 9 June 2013 the Complainant consulted UK Attorneys to assess its available options. The Complainant was understandably concerned that the on-going ownership and use of the Domain Name by the Respondent would lead to confusion and divert customers from the newly appointed and authorised exclusive UK distributor for "Renew Life" products.
- On 2 August 2013, a letter was issued to the Respondent by Barker Brettell LLP on behalf of the Complainant asking for use of 'Renew Life' to cease and for the Domain Name to be transferred to the Complainant. The Complainant also maintained that the Respondent was considered to be in breach of passing off laws and using images which resulted in an infringement of copyright. A response date of 16 August 2013 was given.

- On 19 August 2013 (3 days after the response deadline), the Respondent replied by email advising they were on summer holiday and asked for a further 28 days to provide substantive comments. This email confirms the Respondent was in receipt of the cease and desist letter of 2 August 2013 and therefore that all subsequent use of the Domain Name since at least this point has been wilful and deliberate.
- The Complainant confirmed a further 28 days would be allowed which gave a new working deadline of 16 September 2013. The Complainant contends that all responsible steps and time had been allowed to try and secure the transfer of the Domain Name without the need for external intervention.
- The Respondent failed to provide any comments and the Complainant had no choice but to commence the Nominet DRS procedure to try and recover the Domain Name.
- Although the termination of the distribution relationship was at the Complainant's instigation, the Respondent was unequivocally advised on 1 March 2013 that the distribution relationship was to end.
- The Complainant contends that the Domain Name is an Abusive Registration because it has been used in a manner that takes unfair advantage of and is unfairly detrimental to the Complainant's Rights.
- The Complainant contends that with effect from the end of the notice period given on the termination of the distribution arrangement, namely, 30 April 2013, the Respondent was not authorised to use RLF's trade mark or the Domain Name and that the continued use takes unfair advantage of and is unfairly detrimental to the Complainant's Rights.
- Under Paragraph 2b of the DRS Policy the Complainant must prove 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.
- The Complainant contends that it has demonstrated that it owns the relevant Rights in respect of the name 'Renew Life' by virtue of the Community Trade Mark registration in the name of the Complainant. In addition, and as confirmed by earlier DRS Decisions, the Complainant's trade mark is identical to the Domain Name if, as is appropriate for this purpose, one ignores the generic domain suffix.
- A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is set out in Paragraph 3 of the Nominet DRS Policy. In particular, Paragraph 3(a)(ii) of the Policy states as follows "*... 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 contends that on termination of the distribution relationship between the parties on 30 April 2013, the Respondent lost all right to use the Domain Name and that all subsequent use of it by the Respondent was calculated to cause confusion.
- The continued use of the Domain Name and RLF's and the Complainant's trade mark, logo and get up will inevitably confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant.
- The "About Us" section of the website under the Domain Name states "*For more than a decade our company has been making superior-quality products*" and refers to "*our award-winning product line*" and makes various references to "Renew Life" which clearly suggest that the Domain Name is still authorised by, or otherwise connected with the

Complainant. This is, however, false. Therefore 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. The Domain Name is therefore an Abusive Registration under the Policy.

- Further, customers can place orders on the website under the Domain Name using the auto prompt 'contact us' button which automatically generates an email to 'orders@renew-life.co.uk'. It follows that this functionality to order products will divert custom from the Complainant and cause confusion for the end consumer.
- The on-going use of the Renew Life logo and Sun Device wrongly implies an on-going relationship with the Complainant. The continued presentation of the content of the website which mirrors the official Renew Life websites equates to a clear misrepresentation of the relationship between the Respondent and the Complainant.
- By continuing to use the Domain Name after the termination of the distribution relationship with the Complainant and in a manner calculated to encourage visitors to the site to contact the Respondent, the Respondent is inevitably attracting people interested in Renew Life products in the UK to order those products from the Respondent and not from the Complainant.
- In this connection, the Respondent is no longer selling "Renew Life" products acquired during the course of the distribution relationship with the Complainant but is in fact sourcing a new supply of "Renew Life" products directly from the United States of America. This is a blatant infringement of the Complainant's trade mark rights and a matter which the Complainant will pursue separately should it have to do so.
- The Respondent is also selling "Renew Life" goods from its own website at [www.kinetic4health.co.uk](http://www.kinetic4health.co.uk) along with other brands. Once again the "Renew Life" products which are available to purchase from this site have been imported from the United States of America and again are infringing goods.
- The Complainant therefore maintains that the continued ownership of the registration of the Domain Name following the termination of the distribution relationship means the Respondent is conducting business in a manner which is likely to attract new customers to its business and divert those new customers from the legitimate and authorised appointed UK distributor for Renew Life.

In its Response, the Respondent made the following points:

- The Respondent is the registered owner of the Domain Name and has been since it first registered it on 1 August 2012.
- Despite being formed 12 years ago, the Complainant purports that in late 2010 (just over 3 years ago) it was appointed to assume responsibility for the export division of Renew Life products. In both instances no substantiating documents have been exhibited by the Complainant in respect of the same.
- The Complainant says that it was tasked (supposedly by Renew Life US) to establish an exclusive distributor in the UK for Renew Life products and to formalise distribution arrangements and outlets in each territory of interest. However, this task was clearly not fulfilled because, until 1 March 2013, the arrangement with the Respondent continued on the same informal basis as it had for over 15 years.
- The Respondent has been a supplier of ethical, natural and organic body care brands, herbal and dietary supplements to the health food industry and its practitioners for over 25 years. The Respondent first agreed to distribute Renew Life products with Renew Life

US more than 15 years ago and certainly before the Complainant was formed and/or appointed to the purported position of the export division of the Renew Life Group.

- As admitted by the Complainant, there was no formal distribution agreement between the parties. In fact, even after its purported appointment in late 2010 no agreement between the parties was committed to writing despite it being specifically tasked to formalise the same.
- Furthermore, despite their present assertions, the documents and correspondence exhibited by the Complainant do not illustrate the intention and relationship between the parties. These merely reflect the fact that the Respondent was acquiring goods from Renew Life US from as early 2000 for onward sale to its own customers.
- This highlights the fact that the arrangement between the parties was sufficiently informal to the extent that neither party, not even after the Complainant first approached the Respondent on or around 25 January 2011, felt it necessary to commit the terms of the arrangement to paper.
- There was no restriction placed on the Respondent from setting up a website to promote the onward sale of Renew Life products, hence why it acquired the Domain Name. More importantly, neither Renew Life US nor the Complainant raised any objection to this at the relevant time.
- Over 15 years, the Respondent developed a significant client base for Renew Life products to customers across UK and Europe. This commercial relationship began through negotiations with Renew Life US in or around 2000 to act as distributor to health stores in the UK and Europe.
- As a result of significant time and financial investment by the Respondent it alone developed a significant customer base as well as a strong distribution network for Renew Life products across a number of leading health stores, as per the understanding between the parties.
- However, during this time the Respondent identified a market for customers in both the UK and across Europe wishing to buy Renew Life products not via a health store but direct via the internet instead. It was for this reason that it registered the Domain Name in order to reach those customers to whom, as per their informal agreement, it had not been tasked by Renew Life US (or, subsequently, the Complainant) to market products.
- The commercial relationship between the Respondent and Renew Life US was always on an informal level and it continued in this way post 2010 when the Complainant approached it as the (purported) new export division for Renew Life products. Had either company had any objection to the Respondent registering the Domain Name they should have raised their objections at the relevant time or documented the same. They did not.
- In fact, even after the Respondent notified them of its decision to branch out the sale of Renew Life products via the internet using the Domain Name, there was still no objection raised by the Complainant as, no doubt, it only saw the benefits at the time; namely that it could sell more products to the Respondent.
- As a result of the Respondent's own initiative, sales of Renew Life products grew significantly and at their peak, almost 60% of the Respondent's sales were achieved online via the Domain Name. This was primarily as a result of the significant goodwill the Respondent had developed through this alternative customer base.
- On 1 March 2013, the Complainant abruptly terminated the informal distribution relationship with the Respondent and stopped supplying it with Renew Life products for onward sale to health stores in the UK and across Europe, as per the original agreement between the parties (including Renew Life US). The Respondent understood this was on the basis that it wished to work with a new UK distributor instead.

- Though it is accepted that the Respondent may have retained certain logos and literature from the websites of other companies in the Renew Life Group, this has only been as a result of the Complainant having given it an unreasonable period of notice of just 2 months to sell the remainder of its stock. The Complainant would have been well aware at the time that the Respondent was holding over 6 months of stock and also had entered into terms of trading on a 'sale or return' basis with many independent health stores (in an effort to support them), meaning some stock could be returned to the Respondent in the future too.
- This clearly made it impossible for the Respondent to comply with such an unreasonable request to wind down its business by 30 April 2013 and then hand over its domain name and on-line customers to the Complainant for its next UK distributor.
- In respect of the latter, it is worth noting that it is the Respondent's understanding that there is no new UK distributor as the Complainant has set up a branch of the company itself in the UK to take over the European market that the Respondent has spent years developing to maturity and, effectively, cut it out as the 'middle man'.
- This would significantly prejudice the Respondent as it would result in a loss to it of a substantial customer base from a market which the Respondent itself identified and developed to maturity, together with the significant goodwill it has in the same; all to be handed over to the Complainant for nothing.
- An "Abusive Registration" is defined in the DRS Policy as *"a Domain Name which either 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 has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights"*
- From this definition it is clear that one of the key elements of an Abusive Registration is the party's intention at the relevant time. The Respondent registered the Domain Name after several years of business with both Renew Life US and subsequently the Complainant in order to develop its own online presence as a distributor of Renew Life products.
- Therefore, the Respondent's intention was neither to take an unfair advantage of its relationship with the Renew Life Group nor for its actions to be unfairly detrimental to the Renew Life Group. On the contrary, the Respondent was promoting the brand in order to increase its own sales to the ultimate benefit of the Complainant, from whom it purchased Renew Life products.
- Furthermore, in order to distinguish its own website under the Domain Name at [www.renew-life.co.uk](http://www.renew-life.co.uk) from those registered and used by Renew Life US and the Complainant, the Respondent included the use of a hyphen (-) whereas it is clear from the documents exhibited to the Complaint that the Complainant's trade mark and all domain names registered to the Complainant or its parent company do not make use of a hyphen. This creates a clear distinction notwithstanding that the Complainant had argued (incorrectly) that the disputed Domain Name is identical to its trade mark given that previous DRS Decisions have established that the .co.uk suffix is purely descriptive.
- As stated in Nominet's DRS Policy, evidence is necessary to suggest an Abusive Registration has taken place. Paragraph 3(a)(v) of the Policy states an Abusive Registration exists if *"the Domain Name was registered as a result of the relationship between the Complainant and the Respondent, and the Complainant has been using the Domain Name registration exclusively and, paid for the registration/renewal of the Domain Name"*.
- In this case, the Domain Name was registered as a result of a commercial relationship between the Respondent and the Complainant. However, it was the Respondent that



paid for and registered the Domain Name itself and has continually had exclusive use of the Domain Name to the present day.

- Furthermore, Nominet's DRS Policy goes on to state at Paragraph 4(a)(iii) that a domain name is not an Abusive Registration, in relation to paragraph 3(a)(v), if the *"Respondent's holding of the Domain Name is consistent with an express term of a written agreement entered into by the parties."*
- Both parties admit that there was no written agreement between them but the Complainant admits that, having learnt of the Respondent's registration of the Domain Name, it agreed to allow the Respondent to continue using the same.
- There was certainly no objection at the time and, in fact, if the Complainant had been concerned (particularly as to what would happen in the event that their working arrangement came to an end) it would have no doubt encouraged the Respondent to document this and any other appropriate restriction in writing.
- In fact, the Complainant did neither and instead is now trying to seek an unfair advantage by asking for the Domain Name to be transferred to it after the Respondent spent years developing its on-line presence, significant goodwill and a substantial client base which now accounts for up to 60% of its sales.
- The Respondent is therefore not prepared to give up the Domain Name thus significantly prejudicing its business by losing what it has worked so hard for and simply hand over all its online customers and significant goodwill to the benefit of the Complainant.
- The Respondent should not need to give up the Domain Name because there was no restriction, either orally or in writing, placed on the Respondent from undertaking this on-line initiative, neither Renew Life US nor the Complainant objected at the relevant time or invested monies into the same giving them a right to the Domain Name now and, ultimately, it is now clear this is not an Abusive Registration (despite the Complainant's assertions) given the Complainant agreed to allow the Respondent to use the Domain Name.

In its Reply, the Complainant made the following comments:

- The Respondent questions the lack of evidence regarding the assumption of responsibility of the Complainant for the export division. This is not necessary or needed for the current DRS proceedings, the purpose of which is to consider whether the on-going ownership of the Domain Name is an Abusive Registration.
- The Respondent implies that the Complainant was unsuccessful in fulfilling the exclusive distributor position in the UK. The Complainant strongly denies this and acknowledges that it takes time to make changes and create new exclusive distribution agreements. In any event, this point is, again, irrelevant to these DRS proceedings.
- The Respondent agrees that there was no formal distribution agreement in place between the parties but acknowledges that it *"agreed to distribute Renew Life products with Renew Life US more than 15 years ago"*. The Respondent is therefore categorically stating that it knew Renew Life products originated from Renew Life US and that it was acting in the capacity of a distributor for Renew Life. This is also acknowledged in several other sections of the Response.
- The Complainant has repeatedly stated that at the time the Domain Name was registered it was acceptable for the Respondent to register it and this was the reason that the Domain Name was not previously challenged. However, following the termination of the distribution agreement (which is specifically acknowledged by the Respondent), the continued ownership of the Domain Name is an Abusive Registration. It is interesting to note that the fact the Respondent stated *"neither Renew Life US nor Renew Life Canada raised any objection to the same at the relevant time"* implies that the Respondent

acknowledges the Complainant could have been in a position and duly entitled to object to the registration of the Domain Name.

- The Respondent states that "*at their peak over 60% of its sales*" were generated via the Domain Name for Renew Life products. If this is to be accepted, then it is clear why the Respondent is reluctant to transfer the Domain Name to the Complainant despite the termination of the distribution agreement and the Complainant's rightful claim to the Domain Name and associated goodwill.
- The Respondent clearly acknowledges the termination of the informal distribution relationship.
- The Respondent claims a 2 month use-up period was unreasonable as the Complainant would have been aware of the existing stock levels. This is not directly relevant to the current DRS proceedings but, in any event, the Complainant did not know the Respondent's stock levels but had offered to buy back any unsold stock at market value, so the point is moot.
- The Respondent refers to a loss of substantial customer base and goodwill should the Domain Name be handed over to the Complainant. The Respondent is overlooking the fact that both the customer base and goodwill are in the Renew Life products themselves and so are directly attributable to the Complainant as the brand owner. The statement "*all to be handed over to [the Complainant] for nothing*" confirms the belief that the continued ownership of the Domain Name equates to an Abusive Registration.
- The Respondent recites the definition of an Abusive Registration but is incorrect in the interpretation of the second clause of the definition "*or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights*" by erroneously interpreting this clause as also being assessed at the time the Domain Name "*was either registered or otherwise acquired*". The use of the semi colon in the definition makes it clear that there are two separate and standalone clauses which in turn means there are two situations where the ownership of a Domain Name could be held to be abusive.
- The first clause is not relevant in this case as the Complainant has repeatedly stated that at the time the Domain Name was registered it did not have an issue, however, as per the second clause, the use of the Domain Name, since the termination of the distribution agreement, is in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.
- The Respondent denies an intention to take unfair advantage of its relationship with the Complainant. This is not accepted. The refusal to transfer the Domain Name to the Complainant following the termination of the distribution agreement directly equates to the Respondent having an unfair advantage in the marketplace.
- Similarly the arguments that the hyphen (-) in the selection of the Domain Name was specifically selected to distinguish the Domain Name from the Complainant's other domain names is weak. It is strongly denied that this would create any difference. Moreover, the domain name renewlife.co.uk was initially registered on 3 May 2006 and so was unavailable for the Respondent to register in 2012 in any event.
- The Respondent references Paragraph 3(a)(v) of the DRS Policy. Rather usefully, the Respondent confirms that "*the Domain Name was registered as a result of a commercial relationship between [the Respondent] and the Complainant*". Both parties have confirmed that relationship has now ceased. Consequently, there is no justifiable reason for the continued ownership of the Domain Name by the Respondent. The reference to the Respondent having had "*exclusive use of the Domain Name to the present day*" is only due to the refusal of the Respondent to transfer the Domain Name as requested.

- The Respondent references Paragraph 4(a)(iii) of the DRS Policy which states that the Domain Name may not be an Abusive Registration if the *"Respondent's holding of the Domain Name is consistent with an express term of a written agreement entered into by the Parties"*. Both parties have admitted that there is no written agreement and so this is a moot point.
- The Respondent concludes by categorically stating it will not give up the Domain Name thus *"significantly prejudicing its business"*. The Respondent is overlooking the fact that there should not be any continuing business around Renew Life products, for, as both parties have agreed, the distribution agreement was terminated on 1 March 2013. There has been no legitimate reason for the Respondent to retain the Domain Name after this date. The Complainant is no longer supplying the Respondent with Renew Life products. The Respondent should therefore no longer have any stock left in its possession. The Respondent stated it had over 6 months of stock left. At the date of the Complaint, it is now nearly 16 months after the termination of the agreement. The retention of the Domain Name by the Respondent in the circumstances described is an Abusive Registration.
- In conclusion, the Respondent has simply confirmed that it acted as a UK distributor for the Complainant for a number of years, confirmed that this agreement was an informal agreement with no written version but which both parties worked with in any event, and most importantly, confirmed notice was given to terminate the agreement.
- The Complainant therefore maintains that the continued ownership of the Domain Name following the termination of the distribution relationship means the Respondent is conducting business in a manner which is likely to attract new customers to its business and divert those new customers from the legitimate and authorised appointed UK distributor for Renew Life.

## 6. Discussions and Findings

### General

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

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

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

- **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;
- **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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

### Complainant's Rights

The Complainant has, amongst others, a Community Trade Mark registration for RENEW LIFE. In addition, the Complainant has demonstrated substantial use on an international basis of the RENEW LIFE name in relation to the sale of a range of natural healthcare products.

In the circumstances, I am satisfied that the Complainant does have Rights in the name RENEW LIFE. That name is clearly identical or similar to the Domain Name, ignoring the .co.uk suffix.

The Respondent has made a point about the hyphen in the Domain Name and claims this creates "a clear distinction" between the Domain Name and the Complainant's name and the domain names it uses. It does not. The addition of the hyphen is immaterial.

The matter therefore falls to be decided on the issue of whether or not the Domain Name is, in the hands of the Respondent, an Abusive Registration.

### Abusive Registration

When the Domain Name was first registered by the Respondent, the Complainant made no complaint as, at that time, the Respondent was acting as its distributor in the UK and the Complainant was content for the Respondent to have the Domain Name. Therefore, the first limb of the definition of an Abusive Registration is not relevant and the outcome of this Complaint depends upon whether or not the Domain Name has subsequently "been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights".

In this case, it clearly has. Both parties acknowledge that the distribution relationship has been terminated and the argument over whether the notice period of 2 months should have been at least 6 months is no longer material as it is now 19 months since the termination notice was given. Whilst the use made of the Domain Name when the Respondent remained the UK distributor was not objectionable, its continued use long after the relationship terminated is objectionable.

The parties have both pointed to paragraphs of the DRS Policy in support of their case. The Complainant relies in particular on Paragraph 3(a)(ii), which sets out one of the non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. That paragraph states as follows:

*"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 home page of the website to which the Domain Name still resolves prominently features the Complainant's 'Renew Life' name and sun device logo along with a "Welcome to Renew Life®" heading and message copied directly from the website of the Complainant's Group, as shown below:



### **WELCOME TO RENEW LIFE®**

ReNew Life was established in 1997 by Brenda Watson and her husband Stan. Brenda has become one of the nation's leading authorities on natural digestive health, detoxification and

internal cleansing. She has helped millions of people live longer, healthier lives through improved digestion—by educating them via public television, books, TV and radio appearances, regular articles and seminars, and more. ReNew Life takes great pride in producing only the finest quality supplements and leads the industry in digestive health products available in health food stores and fine retailers nationwide. We believe that through proper digestion and sensible dietary choices we can obtain the nutrition we all require to maintain optimal mental and physical health.

In addition, the "Company Info, About Us" section of the website to which the Domain Name still resolves is also copied directly from the website of the Complainant's Group, as shown below:

## **ABOUT US**

For more than a decade our company has been making superior-quality products and functional foods using only the purest ingredients found in nature. Our philosophy has always been that only through proper digestion and a sensible diet can we obtain the nutrients necessary to improve our overall well being, and it is that philosophy that continues to enable our customers to achieve and maintain the vibrant health they deserve.

At ReNew Life, our award-winning product line is growing constantly to meet the needs of today's consumer. In addition to a full line of quality internal cleansing formulas, we've developed a complete line of intestinal support formulas, daily fiber supplements, digestive enzymes, Omega oils, high-potency probiotics, natural weight management products and more.

With each new product we develop, we demonstrate our commitment to keeping pace with the latest advancements in natural healthcare. Coupled with our pledge to provide superior education and customer service, it is because of that commitment that we have grown to become the largest digestive care and cleansing company in America.

ReNew Life understands that optimum digestive function is not simply about one single category. For this reason, all of our products are formulated specifically with the health of the entire digestive system in mind.

Our unique ingredients work synergistically with one another to provide a solid foundation of superior digestive health, and because natural digestive care is our main focus, we are able to devote the time and energy necessary to make the best possible products available today.

Everything about the website informs the visitor that the website is, contrary to the fact, that of the Complainant (or its Group). However, the 'Contact Us' section of the website has the telephone, fax and email contact details of the Respondent.

The Respondent points to Paragraph 4(a)(iii) of the DRS Policy, being one of the non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration, which states as follows:

*"In relation to paragraph 3(a)(v); that the Respondent's holding of the Domain Name is consistent with an express term of a written agreement entered into by the Parties;"*

However, even discounting the fact that the original holding of the Domain Name by the Respondent was with the informal consent of the Complainant rather than being an express term of a written agreement, Paragraph 3(a)(v) of the Policy deals with the situation where the Domain Name was registered as a result of a relationship between the parties and the Complainant not the Respondent has been using the Domain Name registration exclusively and paid for the registration and/or renewal of the Domain Name registration. That is not the situation here.

The Respondent may feel aggrieved by the Complainant's decision to terminate the relationship after it had successfully built up a business over a period of approximately 13

years and used the Domain Name with the Complainant's knowledge and tacit consent for the last six months of that period to establish a successful website. However, the Respondent was at all times during that period using the Complainant's name and logo as an official distributor of the Complainant's (and its Group's) product range. The fact that such a relationship may someday come to an end is a risk that any distributor of someone else's products takes when agreeing to be such a distributor, particularly when doing so without the protection of a written agreement to regulate how and when that relationship may be ended and the consequences of it doing so.

There is nothing to prevent the Respondent from continuing to sell the Complainant's range of products to its customers through its website at *www.kinetic4health.co.uk* if it is able to source those products without infringing the Complainant's trade mark rights.

However, now that the distribution relationship has long since ended there is simply no legitimate excuse for the Respondent to continue to retain the Domain Name and to use it to resolve to a website that claims to be a website of the Complainant's Group. Such continued use of the Domain Name is now clearly misleading in the extreme.

## **7. Decision**

For the reasons outlined above I find that the Complainant has proved, on the balance of probabilities, that it has Rights in respect of the name 'Renew Life', being a name or mark which is identical or similar to the Domain Name, and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

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

**Signed**

**Dated 7 October 2014**

**Chris Tulley**