

**DISPUTE RESOLUTION SERVICE**

**D00014983**

**Decision of Independent Expert**

**Mrs Amanda Vincent**

**and**

**Brittenden Ltd**

**1. The Parties:**

Complainant: Mrs Amanda Vincent  
1 Sharp House Road  
Leeds  
LS10 4GL  
United Kingdom

Respondent: Brittenden Ltd  
154 Houghside Road  
Pudsey  
Leeds  
West Yorkshire  
LS28 9JJ  
United Kingdom

**2. The Domain Names:**

whiteboxphotography.co.uk

whiteboxphotographyuk.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.

24 November 2014 15:20	Dispute received
25 November 2014 11:40	Complaint validated
27 November 2014 13:5	Notification of complaint sent to parties
16 December 2014 01:30	Response reminder sent
17 December 2014 11:33	Response received
17 December 2014 11:38	Notification of response sent to parties
18 December 2014 09:05	Reply received
18 December 2014 09:10	Notification of reply sent to parties
18 December 2014 09:10	Mediator appointed
05 January 2015 10:23	Mediation started
09 January 2015 16:33	Mediation failed
12 January 2015 12:34	Close of mediation documents sent
12 January 2015 12:34	Expert decision payment received

#### 4. Factual Background

The Complainant is a minority shareholder in a company called White Box Photography Limited (Company 05759450) (“the Company”). The business of the Company was started in 2007 by the Complainant and a Mr and Mrs Owen. Mr and Mrs Owen are the directors and officers of the Company, with Mrs Owen and her mother being the majority shareholders. Mr Owen also owns the Respondent company.

The Domain Name whiteboxphotography.co.uk had always been used by the Company to resolve to its website through which its business was conducted. The Complainant and Mr and Mrs Owen worked together in relation to the business of the Company until September 2012 when there was a break down in the relationship between the Complainant on the one hand and Mr and Mrs Owen on the other. At that time, the second Domain Name, whiteboxphotographyuk.co.uk, was registered by the Respondent. In addition, another company, White Box Photography (UK) Limited, was established by Mr Owen.

Since then, the Complainant says she has been frozen out of the Company’s business and the Respondent, through Mr Owen, has taken steps wrongfully to transfer the use of the Domain Name whiteboxphotography.co.uk and the business of the Company to his new company, White Box Photography (UK) Limited. This is denied by Mr Owen. He also points out that the Company itself is making no complaint about the registration or use of the Domain Names by the Respondent.

#### 5. Parties’ Contentions

##### Complainant’s Complaint

In summary, in her complaint the Complainant stated as follows:

- She is a founder member of the Company and owns 33 of the 100 shares in it. Her husband originally came up with the name “White Box Photography” as the name for the Company and its business.
- The owners of the remaining shares in the Company are Larisa Owen 34/100 and Nina Shuklina 33/100 (Larisa Owen’s mother). Larisa Owen is married to Chris Owen and

they are currently the officers of the Company. Mr and Mrs Owen live at 152-154 Hough Side Road, Leeds, LS28 9JJ, which is the registered office of the Company.

- The Company provides photographic services in the form of inexpensive family portraiture using the generic “white box” photographic process and digital photography.
- Chris Owen is the sole owner of all shares in the Respondent, Brittenden Limited (company number 00454062 of 152 Houghside Road, Pudsey, Leeds, LS28 9JJ). This company also provides photographic services and the like.
- Although she is a founder member of the Company and has been involved in the development of the Company since early 2007, the Complainant has never been an officer or an employee of the Company.
- At the time when the Company’s business was started in 2007, Chris Owen worked as a marketing consultant for the Complainant’s husband’s business and Larisa Owen worked part time in the accounts office of the same business. The Company’s business started in 2007 soon after the Complainant gave birth to twins. She took some photographs of the twins using a white background of Duvets and sheets to use on the christening invitations. Mr and Mrs Owen were close family friends and were invited to the christening and were sent one of the invitations which showed one of the photographs. Chris Owen was asked to be god father to one of the twins.
- Chris Owen commented on the photograph taken for the christening invitations and identified that the Complainant had a talent for photography. He was already aware that she had experience in sales, selling by computer communication and by tele-sales. He knew she wanted to get into business and had an interest in photography. He explained to the Complainant that he had an idea about a photographic business taking inexpensive family portraits using digital photography using the “white-box” photographic principle.
- At that time in early 2007 it was nothing more than an idea that the parties hoped one day would become a franchise business. Chris Owen had some equipment from the Respondent’s existing photographic services business, Larisa Owen had basic accountancy skills, the Complainant had experience in sales and her husband had substantial experience in systems and processes being Managing Director of a £6 million turnover business.
- Chris Owen said the new “white-box” photographic business would be jointly owned by his wife, Larisa Owen, and the Complainant. The Complainant believed him. However, she later found out that the share capital of the Company did not reflect this.
- The Complainant and Chris Owen set about perfecting the lighting set up and backgrounds for the white-box” photographic system. Various lighting techniques and background materials were experimented with, eventually settling on a white vinyl roll for the background and floor. Together they worked out a system consistently to get good, well lit images, experimenting on the families of the Complainant’s husband’s workers and their own family.
- The Complainant’s husband came up with the idea to call the Company “White Box Photography” and later that year, as agreed, Chris Owen renamed an existing company (The Real Paparazzi Limited) to be called White Box Photography Limited. The Complainant assumed the shares were split evenly between herself and Mrs Owen. However, it transpired that Chris Owen had in fact allocated all the shares to himself and his wife.

- In November 2007 the Domain Name whiteboxphotography.co.uk was registered by Chris Owen to his company, the Respondent, as a convenience and the cost was reimbursed by the Company. In the following years, the Company was invoiced directly and paid the invoices for renewal of the Domain Name registration. This Domain Name was registered for the sole purpose of promoting the Company and has not until recently been used to promote anything other than the Company.
- The Company paid a third party for the design of the website. The Company's "White Box" logo was developed and paid for by the Company.
- The Complainant started marketing the Company's business. The Complainant was selling the concept to very sceptical potential customers, taking the bookings manually, chasing the payments by endless emails to and fro to customers and to Larisa Owen in accounts, working from home for full days at a time and making endless phone calls explaining the Company's business concept. As a result of this work, within two years the Company went from photographing friends at £10.00 per session to photographing families at £30.00 a session.
- The Complainant's husband came up with the business system and process to turn the business into profitability and the Complainant and Chris Owen started to build a franchiseable model.
- The Complainant did the lion's share of the selling and promoting of the Company and believed she owned half of it. By Christmas 2009 the Company sold out nine full days of sessions on two backgrounds. All profits after costs were split evenly between Larisa Owen and the Complainant. Neither Chris Owen nor the Complainant's husband received any payment in these early times.
- The Complainant's husband then suggested promoting the Company via Facebook. The Complainant then spent almost every night on Facebook doing so, and the business grew on the back of its growing reputation and hard selling by the Complainant. The Company has been actively promoted using social media and for several years all sales came via the Company's e-commerce website at [www.whiteboxphotography.co.uk](http://www.whiteboxphotography.co.uk), to which the [whiteboxphotography.co.uk](http://whiteboxphotography.co.uk) Domain Name resolved.
- In addition to being fundamental to the growth of the Company, the Complainant also took on a franchise licensed trading area for the Company, as did others. By Christmas 2010, the Company's business was showing clear potential and it was at this time that Chris Owen "dropped the bombshell" that he had supposedly meant that the Complainant could have 50% of the profit after costs but did not own 50% of the Company.
- As a result of this, in early January 2011, the Complainant and her husband, together with Mr and Mrs Owen, discussed methods of folding the Company and sharing out the assets, but the Complainant chose to accept a compromise of having 33/100 of the shares in the Company with a corresponding three way split of its earnings.
- The Complainant subsequently developed her franchise licensed area and continued to play an active part in the development of the Company. Several additional franchise licensees also joined and the business grew larger.
- However, whilst Mrs Owen produced summary accounts, whenever the Complainant asked to see invoices they were usually "locked away", "not here" or "at the

accountants". The Complainant's level of trust in Mr and Mrs Owen became eroded to nil.

- In September 2012, the Complainant's franchise area licence for the Company came to an end and she decided not to renew it but to concentrate on her other business interests. Chris Owen took legal action to try to prevent the Complainant from operating her other photographic business, despite the fact that he also owned the Respondent, which itself provides similar services.
- The Complainant discovered in the same month that Chris Owen had registered a "clone" company, White Box Photography (UK) Limited.
- Mr and Mrs Owen have complete control over the Company's income and expenditure. Up until September 2012 the Complainant was receiving a regular share of the profits of the Company. But in September 2012 there was an irreconcilable dispute between the Complainant on the one hand and Mr and Mrs Owen on the other. Since then, all passwords to Google documents were changed by Mr and Mrs Owen and they shunned all requests for information making it impossible for the Complainant to gain any financial insight into the Company.
- Up until September 2012, the Complainant was receiving regular payments of 1/3 of the Company's profits. Since September 2012 she has received no shareholder's payments. Up to this point she had also enjoyed access to Google document sheets showing income and expenditure for the Company but around this time Larisa Owen removed this information.
- On 23rd September 2012, Mr and Mrs Owen formed the new company, White Box Photography (UK) Ltd (company number 8226295). They have effectively transferred the major assets of the Company to their new company. Recently, Chris Owen has redirected traffic for the whiteboxphotography.co.uk Domain Name to his own "look-a-like" company, White Box Photography (UK) Limited. He has renamed the Company's e-commerce website so it now appears to be the property of White Box Photography (UK) Limited. This has been done to confuse the market and frustrate the Complainant's rights as a shareholder as revenue due to the Company is being diverted to White Box Photography (UK) Limited.
- The Company's "White Box" logo was developed and paid for by the Company for use on the Company's website and exclusively to promote the Company. The White Box logo has only been used by the Company until recently, but is now being used on Chris Owen's White Box Photography (UK) Limited website. The logo is registered as being owned by the Respondent but it is clearly the property of the Company which paid for its design. Chris Owen is using this logo and registered mark on White Box Photography (UK) Limited's web site. This is causing confusion and frustrating the Complainant's rights as a shareholder in the Company.
- Many of the photographs appearing on the website of White Box Photography (UK) Limited were taken by the Complainant and "copyright approval" was given by the families shown in the photographs to the Company to use specifically on its website.
- There are many breaches of copyright being committed by Chris Owen simply changing the website to now be the property of White Box Photography (UK) Limited. In the changeover, he has forgotten that "the T&C's" state that the copyright in the photographs is owned by the Company.

- The Complainant has monitored the performance of the Company by reference to “DueDill” company search reports which show performance increasing to the end of 2012 and then plummeting. She has been unable to get an analysis of the performance of White Box Photography (UK) Ltd but on its website it is stated that “*More than 5,000 families across the UK have said YES to a White Box Family portraiture session so far this year!*” Therefore, with the busiest months of the year still to come, White Box Photography (UK) Limited has channelled to itself circa £225,000 of revenue which was rightfully the Company’s revenue.
- In addition, the Company’s e-commerce website is now shown to be the property of White Box Photography (UK) Limited and the Domain Name whiteboxphotography.co.uk points to the website of White Box Photography (UK) Limited. That website displays the Company’s White Box logo and the photographs that had been on the Company’s website. This includes photographs the Complainant took, including of her own family, which she approved to be used for publicity on the Company’s website but she has not extended that permission to any other website. Any photographs taken remain the copyright of the Company as stated in the Terms and Conditions displayed on the website.
- Rather than offering to buy out the Complainant’s shareholding in the Company, Mr and Mrs Owen have “cloned” the Company in order to asset strip and syphon or misdirect revenue from the Company to the cloned company owned by them.
- No shareholders’ meetings have taken place since August 2012. The actions of Mr and Mrs Owen are not in keeping with those of directors of a company and they have not acted in the best interests of the shareholders but have simply asset striped one company to drive profits to another for their own interests.
- In September 2014, a new shareholder was introduced to White Box Photography (UK) Limited, Philip Hopkins, who appears to have purchased 45% of that company.
- The second Domain Name whiteboxphotographyuk.co.uk should also be treated as an abusive registration as it has the potential to likewise be used to confuse the market place and frustrate the Complainant’s rights as a shareholder of the Company.

Given these circumstances the Complainant requested that Nominet:

1. suspend the Domain Name whiteboxphotography.co.uk and also the separate Domain Name whiteboxphotographyuk.co.uk pending the mediation process;
  2. if such mediation was unsuccessful, that both these “*web domains are taken down permanently*”;
  3. take down White Box Photography (UK) Limited’s website due to copyright infringement;
  4. consider whether the actions to direct legitimate traffic from the Company’s website to the new unconnected company’s e-commerce website are committing the criminal offence of “obtaining a pecuniary advantage by deception”;
- or
5. transfer the Domain Name whiteboxphotography.co.uk to the Company.

## Respondent's Response

Mr Owen responded on behalf of the Respondent. His response was short. He stated as follows:

- He had been unable to access the relevant documents for the dispute on Nominet's website as the link was not working.
- He confirmed he was the Managing Director of the Respondent, of the Company and of White Box Photography (UK) Ltd.
- He was unable to provide full disclosure to the Complainant "*due to a legal binding agreement in place with the complainants [sic] other*".
- He confirmed there was an outstanding legal dispute with the Complainant yet to be completed and disclosure could prejudice their right to compensation.

## Complainant's Reply

The Complainant replied to the response and, in summary she stated as follows:

- She was not surprised that Nominet received the Respondent's "*terse and misleading response*" as "*he has been caught with his hand in the cookie jar*" and thinks the Complaint will be dismissed if he claims there is an existing legal action on the issue of the Domain Names being abusive registrations.
- There is no such legal action.
- Since Mr Owen became aware of the Complainant's copyright infringement complaint that she is investigating, Mr Owen has removed dozens of images from the website he now claims for White Box Photography (UK) Ltd, thereby all but admitting copyright infringement. There is still some copyright infringement on that site.
- She has gained access to the Nominet site many times via the link Mr Owen said was not working and never had any technical difficulties.
- Mr Owen had legal issues with the company the Complainant's husband works for, which was not related to the Company or White Box Photography (UK) Limited, and Mr Owen has made a significant financial settlement to avoid further legal action.
- The Complainant's husband had confirmed that he did not sign a confidentiality agreement.
- Mr Owen's claim that there is an outstanding legal dispute with the Complainant is misleading. Mr Owen attempted to restrict the Complainant's business through legal action which he commenced in September 2012. The last correspondence on that issue was from the Complainant's solicitor to Mr Owen's solicitor on 26th October 2012 and no response was given to the questions raised on her behalf. There was no reference to an abusive registration in relation to the Domain Names.
- Mr Owen is raising these other irrelevant legal matters to cause confusion and in the hope that the Complaint is dismissed.

Both parties asked for permission to submit additional submissions under paragraph 13b of the Nominet DRS procedure to which I agreed having read their explanatory reasons.

### **Complainant's Paragraph 13b submission**

In summary, in her further submission, the Complainant stated as follows:

- Looking at the [www.whiteboxphotography.co.uk](http://www.whiteboxphotography.co.uk) website today does not give the full picture as alterations have recently been made to it by Mr Owen to "muddy the water" during the Expert's determination of the Complaint.
- At some point after September 2012, Mr Owen arranged for the Company's website to be altered so that it appeared to be owned by White Box Photography (UK) Limited.
- Since the change, the Complainant believes Mr Owen has been channelling income due to the Company (of which she owns 33%) to his "(UK)" version in which she has no interest, thereby confusing the market place and frustrating her rights as a shareholder in the Company.
- The website is now once again shown to be owned by the Company, presumably because Mr Owen has been caught out.

### **Respondent's Paragraph 13b submission**

In summary, Mr Owen made the following points on behalf of the Respondent:

- It is not exactly clear in what capacity the Complainant is complaining nor specifically what about. Many of the statements she makes are simply untrue.
- The [whiteboxphotography.co.uk](http://www.whiteboxphotography.co.uk) Domain Name was registered on 2 November 2007 by the Respondent and is owned by the Respondent and is currently in use and trading as it should be for promoting family portraiture and franchise opportunities by resolving to the website at [www.whiteboxphotography.co.uk](http://www.whiteboxphotography.co.uk).
- The [whiteboxphotographyuk.co.uk](http://www.whiteboxphotographyuk.co.uk) Domain Name was registered on 23 September 2012 by the Respondent and is owned by the Respondent and was bought initially to protect the mark.
- There is also one other relevant domain name, being [whiteboxphotographyblog.co.uk](http://www.whiteboxphotographyblog.co.uk), which was registered on 14 December 2010 by the Respondent in order to promote stories relevant to taking better photographs of children and families, and other stories relevant to the Company.
- The Company provides family portraiture and currently has 8,500 clients located across the M62 corridor. It also provides a franchise opportunity that offers the "White Box" system in the form of a geographical related trading licence.
- The Respondent is the trading vehicle for Mr Owen's activities. It is owned by him.
- The Company is a business operating in the field of photographic services. It is owned by Larisa Owen 33% shareholder, Nina Shuklina 33% shareholder and the Complainant, Amanda Vincent 33% shareholder.



- White Box Photography (UK) Limited is a dormant company which is owned by Chris Owen, 55% shareholder and Philip Hopkins, 45% shareholder. It was incorporated in September 2012 but has not yet commenced trading.
- The Complainant has other business activities which do not operate under the name of the Company and which do directly compete with its business. The Complainant's company is called Amanda V Photography and her website is www.amandavphotography.co.uk.
- The Complainant appears to be acting on her own behalf as a (minority) shareholder in the Company. She is not a director and she is not authorised to make any complaint to Nominet on behalf of the Company. She owns no direct rights to any of the intellectual property or other assets of the Company. In particular, she does not (contrary to her assertion) own any of the copyright to any images appearing on the website.
- The Company itself has no complaint.
- The Domain Names and whiteboxphotographyblog.co.uk have been properly registered by parties authorised to do so by the directors of the relevant vehicles. The Domain Names and whiteboxphotographyblog.co.uk are being used to further the business interests of the relevant companies and are undergoing or have undergone several changes that are still on-going.
- The Company's accounts have been filed at Companies House for the year ended 31 March 2014 and include all of the income from "the White Box activity" during that period. No revenue has been "siphoned off" elsewhere. Indeed, there are significant costs for management time which have as yet not been charged to the Company.
- If the Complainant is unhappy with the way that the Company is being run, the website or its 2014 results, then she should make contact with the Company at its registered office in the first instance.

The Complainant then made a further request to submit a further Paragraph 13b submission. I refused permission for her to do so.

## 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 Names; and
2. the Domain Names, in the hands of the Respondent, are 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 took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

### Complainant's Rights

At its heart, this is a dispute between the shareholders of a company and is not something with which the Nominet DRS can or should become embroiled. That is evident from the requests made in the Complaint for Nominet to "take down" White Box Photography (UK) Limited's website due to alleged copyright infringement and to consider whether the actions of which the Complainant complains amount to the commission of the criminal offence of "obtaining a pecuniary advantage by deception".

I note that the Complainant describes the business of the Company as using "*the generic 'white box' photographic process*" and hence raises the question as to whether or not anyone can own rights in the name "White Box Photography" if it is an entirely generic, descriptive term. But even putting that to one side, and acknowledging that there is a registered trade mark for a logo which includes the words "White Box Photography", the Complainant fails at the first hurdle. That is because, as a minority shareholder in the Company that she believes to be the rightful owner and user of the Domain Names, she herself as an individual minority shareholder in that company has no Rights "*in respect of a name or mark which is identical or similar to the Domain Names*". Nor does the Complainant have any authority to make a Nominet DRS complaint on behalf of the Company as she is not a director, officer or employee of the Company (and never has been).

The Complainant did at one stage operate an independent franchise business as a licensee of the Company. In doing so, she will have made use of the White Box Photography name and logo. But whilst a franchise business is owned by the franchisee, it is always on the basis that the trade mark rights and goodwill being generated through use of the relevant trade mark accrues and belongs to the franchisor, in this case the Company.

As she was never an employee of the Company, she will not have been subject to the effect of section 11(2) of the Copyright, Designs and Patents Act 1988 under which the copyright in work created by an employee in the course of their employment is automatically owned by the employer. She therefore may have been the owner of, at least, the legal title to the copyright in the photographs she took that are or were being used on the Company's website, although I note that she herself states that the Company is the rightful owner of the copyright. In addition, she has statutory rights under section 994 of the Companies Act 2006 as a minority shareholder of a company not to be subjected to "unfair prejudice" at the hands of the majority shareholders.

But neither copyright in photographs nor minority shareholder statutory "unfair prejudice" rights amounts to Rights in respect of a name or mark which is identical or similar to the Domain Names for the purposes of the Nominet DRS. In the circumstances I must reject the Complaint.

## **6. Decision**

For the reasons outlined above I find that the Complainant has not proved, on the balance of probabilities, that she has Rights in respect of a name or mark which is identical or similar to

the Domain Names. In the circumstances, I cannot find that the Domain Names, in the hands of the Respondent, are Abusive Registrations.

In the circumstances I order that no action should be taken in relation to the registration of the Domain Names.

**Signed .....**

**Dated 5 February 2015**

**Chris Tulley**