

# **DISPUTE RESOLUTION SERVICE**

**D00020310**

## **Decision of Independent Expert**

The BAANDD Ltd

and

Ms Cheryl Barton

### **1. The Parties:**

Lead Complainant: The BAANDD Ltd  
20 Papplewick Lane  
Hucknall  
Nottingham  
Nottinghamshire  
NG15 8EF  
United Kingdom

Complainant: Dr Karen Littleton  
20 Papplewick Lane  
Hucknall  
Nottingham  
Nottinghamshire  
NG15 8EF  
United Kingdom

Respondent: Ms Cheryl Barton  
12 Manor Road  
Kiveton Park Station  
Sheffield  
South Yorkshire  
S26 6PB  
United Kingdom

### **2. The Domain Names:**

baandd.co.uk  
baandd.org.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 a such a nature as to call into question my independence in the eyes of any or all of the parties.

21 June 2018 16:28	Dispute received
22 June 2018 11:25	Complaint validated
22 June 2018 12:07	Notification of complaint sent to parties
11 July 2018 02:30	Response reminder sent
13 July 2018 18:01	Response received
13 July 2018 18:01	Notification of response sent to parties
18 July 2018 02:30	Reply reminder sent
20 July 2018 11:14	Reply received
20 July 2018 11:15	Notification of reply sent to parties
25 July 2018 17:04	Mediator appointed
30 July 2018 14:08	Mediation started
22 August 2018 12:10	Mediation failed
22 August 2018 12:11	Close of mediation documents sent
03 September 2018 11:09	Expert decision payment received

### **4. Factual Background**

The following summary is taken from the parties' submissions and supporting exhibits.

The group of individuals involved in this dispute are all medical professionals who are engaged in cosmetic medicine. Sometime before 1 March 2018, being the date on which the Domain Names were registered, they got together and set out to form a professional members association which they decided to call the "British Association of Aesthetic Nurses Doctors & Dentists" or "BAANDD" for short. However, tensions soon surfaced over the pace of progress and whom should be appointed Chair. One of the group in particular, Dr Dinesh Kumar Dhunna, withdrew and five others appointed themselves as an Executive Committee and set about completing the logistics of establishing the BAANDD organisation. The five members of the Executive Committee were the second Complainant, the Respondent, Dr Aarti Narayan-Denning, Ms Susan Young and Ms Sureyya Ibrahim.

On 1 March 2018, the Respondent registered the Domain Names in her name as registrant and paid the registration fees.

On 10 May 2018 the Lead Complainant was registered as a company with the name 'The BAANDD Ltd', and, on the same date, UK trade mark registrations for both "British Association of Aesthetic Nurses Doctors and Dentists" and "BAANDD" were applied for and subsequently registered with effect from that date. The founding directors and shareholders of the Lead Complainant were the five members of the Executive Committee, including the Respondent. The trade mark applications were made by and subsequently registered in the name of Dr Narayan-Denning, one of the members of the Executive Committee and a director of the Lead Complainant.

But a few days later, the Respondent ceased communicating with the other members of the Executive Committee. She may or may not have joined forces with Dr Dinesh Kumar Dhunna, who has been vocal in social media platforms in expressing criticism of the Complainants and hinted that an alternative, competing organisation is being set up.

## 5. Parties' Contentions

### The Complaint

In summary, in the Complaint, which was supported by various exhibits, the Complainants made the following submissions:

- The Lead Complainant, The BAANDD Ltd (Company number 11353937), was registered on 10 May 2018 and its current web presence is in the form of a landing page and contact form on [www.baandd.org](http://www.baandd.org) which displays the BAANDD acronym and the full name, British Association of Aesthetic Nurses Doctors & Dentists.
- The Lead Complainant:
  - is currently setting up a business bank account;
  - has taken out Professional Indemnity insurance (around 12 June 2018);
  - has corresponded with statutory regulators such as the General Medical Council and the Department of Health using the baandd.org email address between 31 May 2018 and 12 June 2018;
  - has received over 190 membership enquiries and 30 completed membership applications so far; and
  - has engaged a PR firm to plan promotion and has been filmed for a BBC documentary (airing date not known yet) about patient safety.
- The BAANDD organisation is a recently created group and aims to improve the safety and outcomes of patients considering or undergoing cosmetic medical treatment.
- The Domain Names were purchased by the Respondent on 1 March 2018 on behalf of and for use by the BAANDD organisation at a time when a steering committee of individuals (including the Respondent) was working towards the actual formation and later incorporation of the organisation.
- A number of the steering committee members were lobbying each other to appoint themselves as chairperson of the group. One of the members, Dr Dinesh Kumar Dhunna, known in social circles as Dan Dhunna, was particularly aggressive to one of the initiators of the group, Mrs Sureyya Ibrahim and wanted his web developer, Mark Bugg, to develop the organisation's website.
- In the first week of May 2018, five members of the steering committee (including the Respondent) became frustrated with the continued arguing and lack of progress and decided to move forward with the essential activities of incorporation, communicating with regulatory organisations and securing educational partnerships. This group of five formed the Executive Committee of BAANDD.
- The Respondent said in social media messages that she had purchased the Domain Names for the development of the web presence of BAANDD and that she had "brokered" a

landing page on one of the domains by instructing Mark Bugg, the web developer, who has also made other websites for Dr Dhunna.

- On 10 of May 2018, the Respondent, along with the four other members of the Executive Committee of BAANDD, incorporated the organisation as the Lead Complainant, The BAANDD Ltd, company registration number 11353937. The Respondent was one of the five directors and shareholders.
- Further related domains were purchased by the Lead Complainant to secure the web presence of BAANDD, i.e. baandd.org, baandd.uk. The Respondent was hesitant to allow development on the Domain Names that she had purchased so the website landing page and official emails were set up using the baandd.org domain name.
- The Directors of the Lead Complainant then proceeded to correspond with the General Medical Council to approve standards, contact various educational providers, pharmacies etc. in order to set up collaborations. In addition, UK trade marks for the mark BAANDD and for 'British Association of Aesthetic Nurses Doctors and Dentists' were applied for on 10 May 2018 (and have now been registered).
- At this point there occurred an argument on the chat message board between the Respondent and the other members of the Executive Committee. The Respondent left the discussion and removed herself from the Facebook forum for the Executive Committee. Other committee members tried to contact her by various means, but she did not respond.
- The Respondent was asked if she wished to continue as a Director and what she intended to do with the Domain Names originally purchased for use by BAANND. At this point the Respondent resigned as a director of the Lead Complainant. She has not responded on the question of the Domain Names. She did not transfer the Domain Names' registrations to any of the directors of the Lead Complainant. She also did not respond to communications asking her what she wished to do with the Domain Names.
- The Domain Names were originally registered by the Respondent for developing the web presence of the BAANDD organisation. The Domain Names are an exact match to the name of the Lead Complainant and to the registered trade mark BAANDD.
- The Respondent was a Director of the Lead Complainant until her resignation on 30 May 2018. She was privy to all the efforts made in order to build relationships with medical experts, apply and get the trade marks registered and plan for the future of the BAANDD organisation. Although she was initially very supportive of all these efforts, her behaviour changed when the progress being made became obvious. The other members of the Executive Committee attempted to find out her motives for her departure as she had been a trusted Director in the company that had been set up together in good faith, but she did not respond to any communication, other than to say "Thanks" in a Facebook messenger post in reply to one of the directors.
- Since the Respondent's departure, taking the Domain Names with her, the Respondent is now back on the same forums as her friend, Dr Dinesh Kumar "Dan" Dhunna, who had earlier wished to develop the BAANDD website using his web developer, Mark Bugg, but who has now built a website for the Respondent. Dr Dhunna had a strong personal dislike of one of the Directors of the Lead Complainant and had openly said that he would not be

on a committee that had her in it. Dr Dhunna has been making increasingly frequent derogatory statements about the leadership of BAANDD, saying the current Executive Committee is "unfit for purpose", calling us "weak legged" and openly urging potential members "DO NOT JOIN".

- The comments have steadily grown more insistent, more defamatory and are currently demanding that the present Executive Committee should be dissolved in order for BAANDD to be run better by others. There are comments urging people to not join BAANDD unless the current executive is removed and saying that a new organisation that is the same but better is waiting in the wings. As a result of this constant vilification on social media forums, many of those who expressed interest in joining BAANDD have told us they may not proceed with applying for membership. This directly impairs the Lead Complainant's cash flow and thereby we have had to put on hold our plans to provide member education programs and other supporting activities. This is an unfair disruption of the Lead Complainant's business. It is costing us our reputation in our nascent state and is extremely damaging to our future as an organisation.
- Due to the Domain Names not being in our possession, we are increasingly concerned and anxious about these threats to weaken our position and be taken over by a different group. There is still a "coming soon" landing page on the website to which the baandd.org.uk Domain Name resolves, which has similar fields to the enquiry form on the BAANDD organisation's website at [www.baandd.org](http://www.baandd.org). We are concerned that potential members would be misled by the presence of a website using a very similar domain name and lose faith in the BAANDD organisation as the enquiry form on the website to which the baandd.org.uk Domain Name resolves is non-functional.
- We are deeply concerned that if the Respondent sets up emails using the Domain Names they would be confusingly similar to ours. Potential members may email them with details intended for the BAANDD organisation.
- By retaining the Domain Names with no plausible reason other than to obstruct our progress or mislead our potential members, the Respondent's current continued registration of them amounts to abusive use of them. Knowing that the Domain Names, which had been intended for the UK web presence of the BAANDD organisation, are very likely to be soon used by others who clearly want to damage our reputation, coerce potential members away from us and then take over the identity of BAANDD is a frightening and extremely worrying prospect for us. It would not be an exaggeration to say that we are living in constant apprehension that the Respondent, who is a former director of the Lead Complainant, and her friends who are publicly denigrating us are working to mislead our potential members and to start a business in competition to ours. By transferring the Domain Names to the Lead Complainant, we would be able to feel safe again, work on our business objectives, and consolidate our web presence.

## **The Response**

In summary, in the Response, which was supported by various exhibits, the Respondent made the following submissions:

- The Respondent is a Registered Nurse on the Nursing and Midwifery Council Register (NMC), a full member of The Royal College of Nursing (RCN) and the British Association of Cosmetic Nurses (BACN), a founding member of the Private and Independent Aesthetic

Practitioners Association (PIAPA) and was appointed Consultant Editor of the Journal of Aesthetic Nursing in 2014 and a specialist visiting lecturer, teaching aesthetics and ethics at Sheffield Hallam University.

- The Respondent has, for some time, wished to set up an association for nurses, doctors and dentists that provide aesthetic treatments. Since December 2016 she has discussed the concept of setting up such an association with other aesthetic nurses, doctors and dentists via social media.
- On 1 March 2018 the Respondent registered the Domain Names using her own personal funds. From 6 May 2018, she used the baandd.org.uk Domain Name by arranging for it to resolve to a landing page website with the title “*coming soon, join the BAANDD*”. On 1 May 2018 the Respondent had made arrangements for another domain name, baandd.ac.uk, to point to the same landing page website.
- The Rights claimed in the Domain Names by the Complainants are not valid rights. The Lead Complainant was incorporated on 10 May 2018 and on the same day, the domain name baandd.org was registered in its name. The Complaint suggests that a landing page was set up on the domain baandd.org after this date. It is therefore clear that on 1 March 2018, the date the Domain Names were registered, the Complainants had made no use of BAANDD and had no rights to challenge the registration of the Domain Names.
- Until shortly after the Lead Complainant was incorporated on 10 May 2018, the Respondent was unaware of her appointment as a Director of the company. Her appointment as a Director was a shock to her and was done without her explicit consent after the date on which she had registered the Domain Names. The Respondent was also subsequently removed as a Director of the Lead Complainant on 30 May 2018 without her consent.
- The Domain Names are not Abusive Registrations because:
  - The Complainants had no rights on 1 March 2018, the date of registration of the Domain Names, so they cannot be considered an Abusive Registration of any Right held by the Complainants under the provisions of the Nominet Dispute Resolution Service Policy.
  - The Respondent has used the Domain Name baandd.org.uk in relation to a genuine offering of services, prior to the Complainants.
  - It is clear that the Domain Names have not been registered for the purpose of selling, renting or otherwise transferring to another party, because the Respondent has used and intends to use the Domain Names in the future.
  - The Domain Names were registered and subsequently used for a genuine offering of services and not as an attempt to block the registration of another domain name.
  - The purpose of registering the Domain Names has been to provide a genuine offering of services and cannot therefore be considered unfairly disruptive of the business of the Complainants.

- As the Respondent has entered into no contract with the Complainants, her actions cannot be considered contrary to any contractual arrangement.

## The Reply

In summary, in the Reply, which was supported by various exhibits, the Complainants made the following submissions:

- The Respondent's claims to have wished to set up an association for nurses, doctors and dentists that provide aesthetic treatments and corresponded with others about it via social are inaccurate, misleading and irrelevant to this dispute. One of the Respondent's exhibited emails is unrelated to BAANDD and it is clear from the content of it and other exhibited emails that the idea to establish such an association came from third parties and not the Respondent. The Respondent merely indicated that she supported the idea.
- Established professionals practising aesthetic medicine, including those associated with the Complainants, have long been striving for better organisation of this speciality and this has been reported in industry media.
- Whilst the Respondent used her own funds to purchase the registration of the Domain Names she did so on behalf of and for the sole purpose of the BAANDD organisation. Correspondence shows that the Respondent made the purchase on the clear instruction of Ms Ibrahim, then interim Chair of the steering committee and later one of the directors of the Lead Complainant.
- All of the five directors of the Lead Complainant, including the Respondent, had been communicating in a Facebook group and agreed to divide the work involved in setting up the organisation amongst themselves. The Respondent was assigned the task of purchasing and securing the relevant domains / URLs. On 1 March 2018, having purchased the two Domain Names, the Respondent reported to Ms Ibrahim to confirm the purchase of them and sent Ms Ibrahim the invoices for their purchase because Ms Ibrahim had agreed that the Respondent would be reimbursed for the purchase.
- In the message which the Respondent sent attaching the invoices, the Respondent actually asked Ms Ibrahim "*is that enough for now or should we have baandd.org as well?*" The Respondent herself referred to "we" in the message. This proves that she was purchasing the Domain Names for the BAANDD organisation, not for herself.
- On 9 May 2018, the director responsible for registering the Lead Complainant as a company, Karen Littleton, confirmed, via the Facebook message group, that she had submitted the application to Companies House, including the Respondent as one of the directors. At no point did the Respondent raise any objections. In fact, the Respondent actively participated and contributed to setting up the company and was very much a member of the team as one of its directors. On 9 May 2018, the Respondent sent a message to Ms Littleton asking for her personal details and stating that she needed to set up the limited company as soon as possible. The Respondent provided her own details in the message for that purpose. It is therefore incorrect for the Respondent to say that she was not aware of her appointment as a director. The Respondent consented to being appointed as a director by providing her personal details and actively pushing for the setting up of the company. Similarly, on 10 May 2018, when Ms Littleton announced in

the group message that the Lead Complainant had been incorporated with five directors, including the Respondent, she did not raise any objections.

- Having incorporated the Lead Complainant, when the other directors requested access to the Domain Names from the Respondent in order to begin building and developing websites, the Respondent became evasive and stated that she was not comfortable with the idea that a single person would have all of the company's digital keys. It was at this point that the Respondent's relationship with the rest of the directors of the Lead Complainant began to deteriorate and she continued to withhold access to the Domain Names in order to keep them for herself.
- On 10 May 2018 at 11:26pm, during a message exchange with the Respondent, she was asked expressly whether the Domain Names had been purchased by her for the BAANDD organisation. The Respondent replied "yes". On 12 May 2018, in email correspondence to other potential colleagues, the Respondent expressly stated that "*we have secured URLs, website, incorporated BAANDD, TM, Bank Account, are you in or out*". It is clear from this correspondence that the Respondent did not purchase the Domain Names for her personal use. The intention was to purchase the Domain Names for the Lead Complainant (that was then in the process of being set up) and the Respondent was fully aware of that. The Respondent was referring to "we" as all of the directors of the Lead Complainant, which included the Respondent, and the URLs she had referred to include the two Domain Names, which she had registered and purchased for the Lead Complainant. It is also clear from this that she was aware of her position as a director of the Lead Complainant that had by then been incorporated. In the circumstances, it is clear the Respondent purchased the Domain Names and held them on trust for the benefit of the Lead Complainant.
- The Respondent did not arrange on 1 May 2018 for the baandd.ac.uk domain name to point to the landing page of the website to which the baandd.org.uk Domain Name resolved. On 28 April 2018, Dr Narayan-Denning, one of the other directors of the Lead Complainant, recommended that registration of an academic .ac domain name should be sought, and shared the results of research about the eligibility criteria. The Respondent's email of 1 May 2018 was not actually applying to register the baandd.ac.uk domain name but merely making enquiries about the application process. The Respondent has been privy to all the discussions in the BAANDD organisation's steering group messenger group and forum, which later became the Lead Complainant's directors' Facebook group, and she remained a director until 30 May 2018. Therefore, the Respondent had always known that the directors intended to apply for the baandd.ac.uk domain name.
- It was Dr Narayan-Denning and not the Respondent who purchased the web-hosting starter package for the baandd.ac.uk domain from Nominote on 5 May 2018, which included an application to register the domain name to JISC (a membership organisation providing digital solutions for UK education and research organisations). On 16 May 2018, the day after the Respondent had fallen out with the other directors of the Complainant company, she sent an email to JISC objecting to the BAANDD organisation's application for the baand.ac.uk domain.
- At that point, the Respondent was still a director of the Lead Complainant and has therefore openly acted against the interests of the Lead Complainant and its other directors. Although the Respondent resigned as director on 30 May 2018, she still remains a shareholder of the Lead Complainant to this date. The Respondent is acting in bad faith



having fallen out with the other directors of the Lead Complainant and is attempting to sabotage the BAANDD organisation.

- Whilst a landing page website had been created using the baand.org.uk Domain Name, the Respondent refused to allow further web development to proceed on that Domain Name. Accordingly, the Complainants have had to continue development on alternative global 'baandd' domains. The Respondent's statement in her Response that she intends to continue using the Domain Names would imply she is threatening abusive use of the Domain Names. Because they were registered for the BAANDD organisation, this would indicate that the Respondent intends actively to obstruct the business processes of the Lead Complainant.

### **Further Non-Standard Submission from the Respondent**

I have been informed that after receiving the Reply the Respondent sent a further non-standard submission pursuant to paragraph 17 of the DRS Policy. The Explanatory Paragraph submitted with it stated as follows:

*"I consider that there is an exceptional need for this Non-Standard Submission because of the misleading nature of the written submissions and evidence filed in reply by the Complainant. The evidence has been taken out of context and does not reflect events or my understanding of the matter. For example, it is not clear who is party to the various conversations contained within the evidence, when they occurred and any other communication that took place at the time."*

I decided not to receive the non-standard submission for the following reasons:

1. The Reply did not introduce any new issues that had not previously been raised. It was a pure reply on a point by point basis to the content of the Response.
2. If I receive the Respondent's non-standard submission I would have to allow the Complainants an opportunity to see and respond to it. Such an additional round of evidence after the Reply should only be allowed in exceptional circumstances. In this case, voluminous evidence has already been submitted by the parties, with in excess of 60 separate exhibits. The material documents exhibited were clear and unambiguous, and I found no real difficulty in understanding who the parties were to the various message conversations or when they took place. It is however apparent that the Complainants may have misinterpreted one of the exchanges when stating in their Reply that on 9 May 2018 the Respondent had sent a message to Ms Littleton, the second Complainant, asking for her personal details and stating that she (i.e. the Respondent) needed to set up the limited company as soon as possible. In fact, when read with another of the exhibited message strings, it was clear that it was Ms Littleton who had sent the group message asking for everyone's personal details and stating that she (i.e. Ms Littleton) needed to set up the limited company as soon as possible. The Respondent responded to that request and then provided the details requested.

## **6. Discussions and Findings**

In order to succeed the Complainants must prove, on the balance of probabilities, two matters, namely that:

1. the Lead 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 Abusive Registrations.

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

- **Rights** means rights enforceable by the [Lead] 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 [Lead] Complainant's Rights; or
  - ii. has been used in a manner which took unfair advantage of or was unfairly detrimental to the [Lead] Complainant's Rights.

Where, as in this case, there is more than one Domain Name in issue, it is of course possible for the Complainants to succeed in relation to one Domain Name but fail in relation to the other.

#### Does the Lead Complainant have Rights?

The Lead Complainant is registrant of the baandd.org domain name which is being used to resolve to a website that prominently displays and uses the BAANDD name and logo along with the full name the "British Association of Aesthetic Nurses Doctors & Dentists". In addition, the Lead Complainant has taken out Professional Indemnity insurance under its name, corresponded with statutory regulators using the baandd.org email address, engaged a PR firm, been filmed for a BBC documentary and already received over 190 membership enquiries and 30 completed membership applications. That use is likely to be sufficient to have generated enforceable rights in both "BAANDD" and the full name of the "British Association of Aesthetic Nurses Doctors & Dentists".

There are also two UK registered trade marks for "BAANDD" and "British Association of Aesthetic Nurses Doctors and Dentists" dating from 10 May 2018. However, the registered proprietor and legal owner of both trade mark registrations is Dr Narayan-Denning, one of the directors rather than the Lead Complainant itself. That is likely explained by the fact that the trade marks were applied for on the same day that the Lead Complainant was being registered at Companies House.

Both trade marks are being used by the Lead Complainant and I have been told no details of any licence agreement between the registered proprietor and the Lead Complainant. I note that Dr Narayan-Denning was the main author of the Reply on behalf of the Complainants in which it was unequivocally submitted that, in the circumstances of this case, the Respondent had registered and held the Domain Names on trust for the Lead Complainant, once it had been set up. There is great force in those submissions made by Dr Narayan-Denning on behalf of the Lead Complainant and, in the circumstances, it would seem almost impossible for Dr Narayan-Denning to argue, even if she did in fact wish to do so, that the same does not apply

to the trade mark registrations. Therefore, on the evidence before me, it is likely that the Lead Complainant is the beneficial owner of the trade mark registrations in equity, with the right to call on Dr Narayan-Denning to assign the legal title to it.

As beneficial owner of the registered trade marks, the Lead Complainant has Rights in those registered trade marks for the purposes of the Nominet DRS. Those Rights are in addition to the common law rights arising from the Lead Complainant's use of them discussed above.

Are those Rights in respect of a name or mark which is identical or similar to the Domain Names?

Ignoring the suffixes, each of the Domain Names is identical to the BAANDD mark in which the Lead Complainant has Rights. I do not need to go further and consider the Rights in the full name of the "British Association of Aesthetic Nurses Doctors and Dentists". But if I had needed to I would have held that, again ignoring the suffixes, the Domain Names are "similar" to that mark for the purposes of the Nominet DRS, being an obvious acronym or shortened version of the full name.

Are the Domain Names, in the hands of the Respondent, Abusive Registrations?

The Respondent relies on the fact that she registered the Domain Names a couple of months before the Lead Complainant even existed and therefore it had no Rights on the date of registration. She submits that, in those circumstances, the Domain Names cannot be considered Abusive Registrations of any Right held by the Complainants under the provisions of the Nominet DRS Policy.

The Respondent has considered Paragraph 5.1.1 of the DRS Policy, which is part of a non-exhaustive list of factors which may be evidence that the Domain Names are Abusive Registrations. It states as follows:

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

*5.1.1.1 for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the [Lead] Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;*

*5.1.1.2 as a blocking registration against a name or mark in which the [Lead] Complainant has Rights; or*

*5.1.1.3 for the purpose of unfairly disrupting the business of the [Lead] Complainant;*

The Respondent says that none of these circumstances apply in this case because the Domain Names were registered by her for the purpose of a genuine offering of services. She has subsequently used one of them and intends to use both of them for that purpose. In addition, the Respondent says she has not entered into any contract with the Complainants, so her actions cannot be considered contrary to any contractual arrangement.

But it is abundantly clear from the evidence that the Domain Names were registered by the Respondent in her capacity as a member of what became the 5-person Executive Committee

of the BAANDD organisation that she and her colleagues were then setting up, and that the purpose of their registration was for them to be used by the Lead Complainant, once it was established.

On 1 March 2018, having just registered the baandd.co.uk Domain Name, the Respondent sent a message to Ms Ibrahim confirming that she had registered it, attaching the receipt for the cost and asking if she should also register baandd.org as well. She was instructed to do so by Ms Ibrahim and the Respondent then answered, *“so we just need a website now”*. It is not clear if the Respondent’s reference to *“baannd.org”* in this message was in fact a reference to the baandd.org.uk Domain Name, but it would appear to have been so.

During the night of 10 May 2018, Dr Narayan-Denning was working on setting up a website for the BAANDD organisation and asked the Respondent to give her access to the Domain Names for that purpose. There followed an exchange of messages in which the Respondent expressed reluctance to do so as she did not want to put just one person in the position of *“having all of the digital keys”* as she put it. However, during this exchange, the Respondent also expressly confirmed that she had registered the Domain Names *“for all of BAANDD”*.

The previous day, on 9 May 2018, Ms Karen Littleton had sent a message to the Executive Committee group confirming that she was going to set up the Lead Complainant company that morning and that she needed each of them to provide her with their date of birth, nationality, occupation, national insurance number, address and full name. The Respondent replied, *“Do you want mine Karen”* and a couple of minutes later the Respondent confirmed to Ms Littleton that she had sent her details to her by private message. Later that day, Ms Littleton sent an update message to the group confirming that the application to register the Lead Complainant as a company had been submitted to Companies House. The Respondent responded to that message with a ‘thumbs up’ icon. It is therefore disingenuous for the Respondent to claim in her Response that her appointment as a director of the Lead Complainant was a shock to her and done without her explicit consent.

On 15 May 2018, the Respondent sent a group message confirming that *“Once the smoke has cleared and the official website is up, we can simply use the domain I host to forward to the official one. Being hosted on different servers will also give an SEO [search engine optimisation] advantage and drive traffic to the main website”*. She then said, *“I’ve taken it upon myself to put a FAQ together for the Website Page”* and set out her first draft of a ‘Frequently Asked Questions’ section, inviting the group to comment on it.

Notwithstanding the above, it is difficult for the Complainants to make out a case under the first limb of the definition of an Abusive Registration. That considers the circumstances at the time the Domain Names were registered and whether or not it took unfair advantage of or was unfairly detrimental to the Lead Complainant’s Rights. At that time, the Lead Complainant did not exist.

The evidence indicates that the group of individuals involved at this matter, which included the Respondent, decided on the names of ‘BAANDD’ and the ‘British Association of Aesthetic Nurses Doctors & Dentists’ sometime in February 2018. But there had not been any material external use of the names in order to have generated enforceable passing off rights by the time the Respondent registered the Domain Names on 1 March 2018. However, it is certainly arguable that the individuals involved at that time were working together under mutual obligations of trust and confidentiality and that those rights could have been enforced by the group against the Respondent or any other individual member who broke ranks and sort to

acquire rights in those names for their own personal benefit, rather than for the company that the group intended subsequently to set up.

However, I do not need to decide and will leave open the question of whether or not such rights, held by a group of individuals arguably on trust for a then non-existent company which is subsequently set up and becomes a lead complainant, could be sufficient for that lead complainant to succeed under the first limb of the definition of an Abusive Registration.

That is because the Lead Complainant in this matter has the second limb of the definition of an Abusive Registration to rely upon. That considers the use the Domain Names have been put to at any time after their initial registration and whether or not that use took unfair advantage of or was unfairly detrimental to the Lead Complainant's Rights.

The baandd.org.uk Domain Name has been used, and still is being used, to resolve to a website home page with the title "*Coming SOON. Join the BAANDD*". It then invites visitors to the website to complete a "Register your interest" enquiry form. One of the fields asks, "*Are you registered with the GMC, GDC or NMC*". They are well-known acronyms for three medical professional bodies, the General Medical Council, General Dental Council and the Nursing and Midwifery Council.

In the Response, the Respondent boldly states that she has used the baandd.org.uk Domain Name as described above and that she intends to use both Domain Names in the future, even though she is no longer involved with the Lead Complainant or the BAANDD organisation.

Paragraph 5.1.2 of the DRS Policy, being another of the non-exhaustive list of factors which may be evidence that the Domain Names are Abusive Registrations, 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 [Lead] Complainant"*

It is readily apparent that use of either Domain Name by the Respondent to resolve to a website of or as a contact email address for a different medically related organisation to that of the Lead Complainant would cause the sort of confusion envisaged by paragraph 5.1.2 of the DRS Policy.

In the circumstances, I have no hesitation in deciding that both Domain Names are Abusive Registrations in the hands of the Respondent.

## **7. Decision**

For the reasons outlined above, I find that the Complainants have proved, on the balance of probabilities, that the Lead Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Names and that the Domain Names, in the hands of the Respondent, are Abusive Registrations.

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

**Signed**

**Dated** 5 October 2018

Chris Tulley