

DISPUTE RESOLUTION SERVICE

DRS 20781

**Decision of Independent Expert
(Summary Decision)**

Bilton Pet Hotel Limited

Complainant

and

Lightbulb

Respondent

1 The Parties

Complainant:	Bilton Pet Hotel Limited
Address:	406 Bilton Lane Harrogate North Yorkshire HG1 4DH

Respondent:	Lightbulb
Address:	31 Deanhouse Netherthong Holmfirth West Yorkshire HD9 3UG

2 Domain Name

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

3 Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the complaint to the Respondent in accordance with paragraphs 3 and 6 of the Policy.

Yes No

4 Rights

The Complainant has, to my reasonable satisfaction, shown Rights in respect of a name or mark which is identical or similar to the Domain Name.

Yes No

5 Abusive Registration

The Complainant has, to my reasonable satisfaction, shown that the Domain Name is an Abusive Registration.

Yes No

6 Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances.

Yes No

7 Comments (optional)

1. This appears to be another unfortunate example of a Complainant, who might have had a perfectly good claim, not focusing sufficiently on the DRS Policy and other helpful materials on Nominet's website before filing its complaint, and therefore failing to make out its case.
2. To succeed under the DRS Policy, the Complainant must prove on the balance of probabilities, first, that it has Rights (as defined in the Policy) in respect of a name or mark that is identical or similar to the Domain Name (paragraph 2.1.1 of the Policy), and, secondly, that the Domain Name is an Abusive Registration in the hands of the Respondent (paragraph 2.1.2). That burden of proof must be discharged even in a 'no response' case such as this one.
3. Mere assertion is not the same as proof. The Complainant must provide enough information, supported by evidence, to demonstrate to the Expert that it has – on the balance of probabilities – a strong enough claim to satisfy both the Rights and the Abusive Registration tests.
4. The Complainant's case on Rights is essentially that it has traded as Bilton Pet Hotel Limited since 2006 and has provided boarding kennels and cattery services by reference to that name. It makes no case on similarity to the Domain Name. However, on the basis of a generous interpretation of its submissions, it just about gets home on Rights.
5. Abusive Registration is defined in paragraph 1 of the Policy in the following terms:

"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) is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights."

6. The DRS Policy sets out, in section 5, a non-exhaustive list of factors which may be evidence that the domain name in question is an Abusive Registration (as defined). They are easily understood by a non-lawyer. The Experts' Overview, also on Nominet's website, provides detailed and user-friendly guidance on how the Experts tend to approach various issues when adjudicating on Complaints.
7. The Complainant's case on Abusive Registration appears to be that it is unable to contact the registrant which it says has gone out of business. This may be a case that falls within paragraph 5.1.5 of the Policy, but it is impossible to know because no such submission is made by the Complainant. Nor does the Complainant submit, let alone evidence, that the Respondent's use of the Domain Name is otherwise taking unfair advantage of or unfairly detrimental to its rights.
8. Accordingly, the Complainant has failed to prove on the balance of probabilities, as required under paragraph 2.1.2 of the DRS Policy, that the Domain Name is an Abusive Registration in the hands of the Respondent.
9. The Complaint therefore fails.

8 Decision

Accordingly I refuse the Complainant's application for a summary decision. The domain name registration will therefore remain with the Respondent.

David Engel

Signed:

Dated: 12 December 2018